

**BOARD OF SUPERVISORS OF**  
**THE SAN CARLOS ESTAES WATER CONTROL DISTRICT**  
**TUESDAY MARCH 17, 2020**

**6:00 P.M.**

**TOWNPLACE SUITES, 23161 VIA COCONUT POINT, ESTERO, FL 34135**

1. **Call Meeting to Order:** Judy Tapply (Judy) called the meeting to Order at 6:00 pm.
2. **Roll Call of the Board of Officers:** Present are Supervisors Judy, and Ben Bogacz (Ben); Engineer Bill Morris (Bill); Attorney Richard Pringle and Sec/Treas Julia Roberts (Julia); and 0 guests.
3. **Receive Engineer's Report on District Works:**
  - Maintenance Report – there are 31 open permits, 3new permits and 4 permits closed.
  - 24676 Red Robin – it has been confirmed that he City of Bonita Springs (the City) issued a certificate of occupancy without driveway permit approval. There is no explanation. No more action to be taken.
4. **Chairs Report:** no report.
5. **Treasurer's Report:** the 9/30/19 Fiscal Year End Audit by Boy Miller Kisker Perry has been completed and sent to required agencies.
6. **Comments from Guests:** no comments
7. **Old, New and Unfinished Business:**
  - Tuck Road – no update.
  - Cameras – the technology for solar panel to enhance the night images is changing rapidly and our vendor Ring Innovations is evaluating the best way to move forward.
  - Reflectors – Bill is listing the locations requiring reflective signs and the type of material required. Bill will update at April meeting.
  - 24132 Cock Robin – the City has issued a stop work for the property. There has been a driveway permit completed but no payment has been received. Julia will follow up with the City Code Enforcement for status.
  - 24230 Red Robin – resolved.
  - 24266 Whip O Will – resolved
  - 24000 Dietz Dr – the swale has stabilized so no action required at this time.
  - 24231 Dietz Dr – Lee County Health Department is monitoring this situation. Bill will stay in contact with the County and provide updates.
  - 25272 Papillion - resolved
  - 24344 Rocky Rd – fill has been added to the north end of the paved portion of Rocky Rd. Bill will send a notice of violation.
  - 24300 Roger Dodger – there is damage to the swale and the swale south of the construction site due to heavy vehicles. A notice of violation will be sent.
  - District agreement with Utilities – Comcast submitted a permit for work to be done within the District. Mr. Pringle has been in contact with a Comcast representative that no work

will be allowed without a utility agreement. Waiting to hear back. Mr. Pringle has sent another request to FPL to obtain a utility agreement.

- Interlocal with City – Mr. Pringle will send a letter to the City stating that the District will prepare a draft for an Interlocal Agreement.
  - Contracts – the contract for Tony’s Custom Lawn/Landscaping Service has been completed (Attached).
  - **Audit** – as required by the State of Florida the Board must be advised of the outcome of the 2018-2019 Fiscal Year End Audit in the following manner: (the Annual Audit is found on the District website [scewcd.blogspot.com](http://scewcd.blogspot.com); reports; Annual Financial Statements: Page 2: **Opinions** “In our opinion, the financial statements referred to above **present fairly, in all material respects**, the respective financial position of the governmental activities and the major fund of San Carlos Estates Water Control District, as of September 30 2019.” Page 27: **Internal Control Over Financial Reporting** “Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses.” Page 29: **Prior Audit Findings** “There were no findings or recommendations made in the preceding financial audit report.” Page 30: **Financial Condition and Management** “Section 10.554(1)(i)2., Rules of the Auditor General, requires that we communicate any recommendations to improve financial management. In connection with our audit, we did not have any such recommendations.” **Additional Matters** “Section 10.554(1)(i)3., Rules of the Auditor General, requires us to communicate noncompliance with provisions of the contracts or grant agreements, abuse, that have occurred, or are likely to have occurred, that have an effect on the financial statements that is less than material but with warrants the attention of those charged with governance. In connection with our audit, we did not have any such findings.” Letter to Auditor General from SCEWCD (attached). A Motion was made by Ben and 2<sup>nd</sup> by Judy to accept the Fiscal Year 2018-2019 final audit. Motion passed 2-0.
  - **Next meeting date** - 04/12/2020. Due to the Corona Virus this is subject to change.
8. **Approve February 2020 Bank Statements and Payment of Bills:** A Motion was made by Ben and 2<sup>nd</sup> by Judy to approve the February Bank Statements and payment of bills. Motion passed 2-0.
  9. **Approve Minutes of 2/21/20 Monthly Meeting:** A Motion was made by Ben and 2<sup>nd</sup> by Judy to approve the 2/21/20 Monthly Meeting Minutes. Motion passed 2-0.
  10. **Adjournment:** A Motion was made by Ben and 2<sup>nd</sup> by Judy to adjourn the Monthly Meeting. Motion passed 2-0. Meeting adjourned at 6:39 P.M.

**AGREEMENT BETWEEN SAN CARLOS ESTATES WATER CONTROL DISTRICT  
AND TONY'S CUSTOM LAWN & LANDSCAPING SERVICE, INC.**

THIS AGREEMENT, is made by and between the SAN CARLOS ESTATES WATER CONTROL DISTRICT, a Florida Independent Special District created pursuant to special act and Chapter 298, Florida Statutes, ("DISTRICT") and TONY'S CUSTOM LAWN & LANDSCAPING SERVICE, INC., a Florida corporation, as an independent contractor, ("CONTRACTOR").

WHEREAS, the District requires contractual services, specifically the mowing and maintenance of DISTRICT swales and the roadways located within the District; and,

WHEREAS, CONTRACTOR represents that it possesses the knowledge, ability, skills, and qualifications to perform the contractual scope of work and services required by the DISTRICT in an expeditious and economical manner consistent with the DISTRICT'S interests and as described in CONTRACTOR'S Proposal, and District's Request for Proposals, both of which are incorporated herein by reference and expressly made a part hereof as if fully set forth herein; and,

WHEREAS, CONTRACTOR recognizes the reliance, trust and confidence placed in it by the DISTRICT and covenants with the DISTRICT to furnish its skills and best judgment to the DISTRICT in forwarding the DISTRICT'S interests; and,

WHEREAS, the DISTRICT has relied on representations made by CONTRACTOR that CONTRACTOR is capable and qualified and has or will acquire the equipment necessary to successfully prosecute the Agreement scope of work described herein; and,

WHEREAS, the DISTRICT, through its Board of Supervisors, determined at a duly advertised meeting of the DISTRICT Board of Supervisors that it is in the DISTRICT'S best

interest to enter into this Agreement for the subject contractual services work with CONTRACTOR.

NOW THEREFORE, the DISTRICT and CONTRACTOR agree as follows:

### **SECTION ONE – RECITALS**

The recitals and all statements contained therein are hereby incorporated into and made a part of this Agreement.

### **SECTION TWO – TERM OF THE AGREEMENT**

This Agreement shall become effective on December 1, 2019, and shall remain in effect until November 30, 2020, unless the term of the Agreement has been extended, in writing, upon the mutual agreement of the parties, or unless the term of the Agreement has been otherwise terminated prior to December 1, 2020, as provided herein. After December 1, 2020, the term of the Agreement shall be automatically extended for additional single calendar month terms, continuously and without interruption, until the parties mutually agree, in writing, to a longer agreement term or until one of the parties unilaterally, upon thirty (30) calendar days written notice to the other party, terminates the Agreement, with or without cause.

### **SECTION THREE – TERMINATION**

Either party shall have the right to terminate this Agreement “for cause”, as the non-defaulting party, if the other party, as the defaulting party, fails or refuses to perform any of the contractual obligations of this Agreement or otherwise fails to timely satisfy the Agreement provisions. The only prerequisite to termination of this Agreement by the non-defaulting party “for cause” shall be that the non-defaulting party shall provide the defaulting party with notice, in writing, of the default and the opportunity to cure the default within fifteen (15) days of the date of the written notice of default.

Notwithstanding anything else in the Agreement to the contrary, the DISTRICT shall have the unilateral right to cancel the Agreement, without cause, without recourse or penalty, in the DISTRICT'S sole discretion, upon providing ninety (90) days advance written notice of the DISTRICT'S termination of the Agreement to the CONTRACTOR.

#### **SECTION FOUR – SCOPE OF WORK**

1. CONTRACTOR shall promptly begin and diligently provide the contractual services required herein in accordance with the specifications for the mowing and maintenance of the DISTRICT'S swales and roadways described in the DISTRICT'S Request for Proposals and the CONTRACTOR'S response and in the scope of work attached hereto and made a part hereof as Exhibit "A."

2. CONTRACTOR shall furnish all labor, materials, equipment, tools and apparatus required to perform the contractual services required by this Agreement. CONTRACTOR'S contractual services are sometimes referred to as the CONTRACTOR'S "scope of work" or "work" or "services."

3. The DISTRICT may, from time to time, require or request the CONTRACTOR to provide and perform services for the DISTRICT that are beyond the scope of the contractual services of this Agreement. The CONTRACTOR agrees to provide and perform such additional services as may be agreed to in writing by both parties in an Amendment to this Agreement. Such additional services shall constitute a continuation of the contractual services required under this Agreement and shall be provided and performed in accordance with the covenants, terms, and provisions as set forth in this Agreement and the written Amendment to provide the additional services.

## **SECTION FIVE – COMPENSATION**

CONTRACTOR shall be compensated for the contractual services that are completed as described herein. The guaranteed maximum price for the contractual services through November 30, 2020, shall be One Hundred Fourteen Thousand Dollars and 00/100 (\$114,000.00) as set forth in CONTRACTOR'S response to the DISTRICT'S Request for Proposals dated October 22, 2019. After December 1, 2020, the Contractor shall be compensated for the contractual services that are completed on a calendar month basis in the guaranteed maximum price per calendar month of Nine Thousand Five Hundred Dollars and 00/100 (\$9,500.00) for each calendar month that the Agreement remains in effect.

## **SECTION SIX – TIMES OF PAYMENT AND METHOD OF PAYMENT OF COMPENSATION**

CONTRACTOR shall be paid by the DISTRICT as follows:

1. CONTRACTOR shall be paid by the DISTRICT in twelve (12) equal monthly installments of Nine Thousand Five Hundred Dollars and 00/100 (\$9,500.00) for the contractual services rendered in accordance with this Agreement through November 30, 2020, and thereafter on a calendar month basis for each calendar month that the Agreement remains in effect unless the parties agree otherwise, in writing. Invoices describing services rendered hereunder should be submitted by CONTRACTOR to the DISTRICT on or before the tenth (10<sup>th</sup>) day of each calendar month for the preceding calendar month's services beginning January 1, 2020, for the calendar month of December 1, 2019.

2. Invoices shall be due and payable within forty-five (45) calendar days after the DISTRICT'S receipt of said invoice.

## **SECTION SEVEN – INDEPENDENT CONTRACTOR RELATIONSHIP**

CONTRACTOR and its employees and agents and, any subcontractors and their employees and agents, shall be deemed to be independent contractors and not agents or employees of the DISTRICT. Nothing herein contained shall constitute a partnership between or joint venture by the parties hereto. No party shall hold itself out contrary to the terms of this Section and the DISTRICT shall not become liable for any representation, act or omission of the CONTRACTOR contrary to the provisions hereof. This Agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such party whether referred to herein or not.

## **SECTION EIGHT – INSURANCE**

1. CONTRACTOR, shall at its sole cost and expense, at all times during this Agreement, maintain such insurance as shall protect it from: claims under worker's compensation laws, disability benefit laws or other similar employee benefit laws; from claims for damage because of bodily injury, occupational sickness or disease, or death of its employees, and claims insured by usual personal liability coverage; from claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees including claims insured by usual personal injury liability coverage; from claims for injury to or destruction of tangible property, including loss of use resulting therefrom; and from claims arising out of performance of contractual services caused by a negligent error, omission or act, where any or all of said claims may arise out of or result from any act, or failure to act, of CONTRACTOR or its employees or others subject to CONTRACTOR'S control.

2. During the term of the Agreement, the CONTRACTOR shall continually maintain, Comprehensive General Liability Insurance in the minimum combined single limit amount of One

Million Dollars (\$1,000,000.00) per occurrence to protect the CONTRACTOR against claims for damages for bodily injury, including wrongful death, as well as against claims of property damage.

3. During the term of this Agreement, the CONTRACTOR shall maintain Comprehensive Automobile Liability Insurance in the amount of Five Hundred Thousand Dollars (\$500,000.00) per person for bodily injury and property damage liability, per occurrence, to protect the CONTRACTOR from claims for damages for bodily injury, including death, as well as from claims for property damage. This coverage shall be an "any auto" or "comprehensive form" type coverage.

4. The CONTRACTOR shall maintain, during the life of this Contract, adequate Workers' Compensation Insurance and Employer's Liability Insurance in at least such amounts as are required by law for all of its employees.

5. The CONTRACTOR shall provide that the DISTRICT is an additional insured under all required policies for any and all claims caused in whole or in part by the CONTRACTOR'S acts, negligence, or omissions described herein and shall further provide and deliver Certificates of Insurance to the DISTRICT indicating that all such insurance is in effect prior to the commencement of the performance of this Agreement, and at any time the DISTRICT requests.

6. Each insurance policy shall contain a provision that the policy will not be cancelled or allowed to expire until at least thirty (30) days' prior written notice has been given to the DISTRICT.

7. The insurance coverages procured by CONTRACTOR as required herein shall be, and CONTRACTOR agrees that said insurance coverages CONTRACTOR procures as required herein shall be, the primary insurance over and above any other insurance, or self-insurance,

procured by or available to DISTRICT, and any other insurance, or self-insurance, procured by or available to District shall be considered secondary to, or in excess of, the insurance coverages procured by CONTRACTOR as required herein.

8. All insurance policies shall include a clause or endorsement denying the insurer any rights of subrogation of recovery against the DISTRICT to the extent that rights have been waived by the insured before the occurrence of injury or loss. CONTRACTOR hereby waives any rights of subrogation or recovery against the DISTRICT for damage or loss to their property due to hazards covered, or hazards which should be covered, by policies of insurance obtained, or which should have been obtained, pursuant to this Agreement, to the extent of the injury or loss covered thereby, assuming that any deductible shall be deemed to be a part of the insurance coverage.

#### **SECTION NINE – STANDARD OF CARE, WARRANTY AND LIABILITY**

1. CONTRACTOR shall exercise the same degree of care, skill and diligence in the performance of the scope of work as ordinarily provided by an independent contractor performing the work and services described in this Agreement. CONTRACTOR shall, at no additional cost to the DISTRICT, perform the work and services described in this Agreement repetitively, as required, to satisfy the forgoing standards of care where the CONTRACTOR'S work or services have not been provided in compliance with the CONTRACTOR'S standard of care required by this Agreement.

2. CONTRACTOR warrants that its services under this Agreement shall be performed in a thorough, efficient and workmanlike manner, promptly and with due diligence and care, and in accordance with the best practices of the landscaping and real property maintenance profession.

3. CONTRACTOR shall be liable for work that is found to be defective for reasons attributable to CONTRACTOR, CONTRACTOR'S employees, independent contractors or subcontractors, during the term of this Agreement. CONTRACTOR'S liability for such defective work shall be the cost incurred by the DISTRICT to cure the defect and or damage caused by CONTRACTOR, CONTRACTOR'S employees, independent contractors or subcontractors. CONTRACTOR shall be notified in writing as soon as any defect is discovered. The DISTRICT reserves the right to deduct from any invoice of the CONTRACTOR, and the resulting payment to CONTRACTOR, an amount for defective or non-conforming work, or for work not provided by CONTRACTOR but invoiced, or for the DISTRICT'S costs in correcting defective or non-conforming work by the CONTRACTOR or for the DISTRICT performing work not provided by CONTRACTOR.

#### **SECTION TEN – NON-DELEGABILITY**

It is understood and agreed that the obligations undertaken by CONTRACTOR pursuant to this Agreement shall not be delegated or assigned to any other person or firm without the District's prior written consent, which may be withheld at DISTRICT'S sole discretion.

#### **SECTION ELEVEN – SOVEREIGN IMMUNITY**

Notwithstanding anything else contained in the Agreement, to the contrary, nothing stated in the Agreement shall waive or affect the District's rights, privileges and protections of sovereign immunity prescribed by law, including but not limited to Section 768.28, Florida Statutes.

#### **SECTION TWELVE – INDEMNIFICATION**

Notwithstanding anything else contained in the Agreement, to the contrary, to the fullest extent permitted by law, the CONTRACTOR shall indemnify, defend, and hold harmless the DISTRICT, its public officials, and officers, agents, or employees, or any of them, from and

against any and all claims, damages, losses and expenses, including but not limited to reasonable costs, collection expenses, and attorneys' fees, arising out of or resulting from performance, or lack thereof, of the CONTRACTOR'S work and services under the Agreement, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property, but only to the extent caused by the acts, negligence (whether passive or active), misconduct, omissions, or other fault, in whole or in part (whether joint, concurrent, or contributing) of the CONTRACTOR, a subcontractor, a material supplier, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other legal rights or obligations of indemnity which would otherwise exist under the Agreement, or otherwise. CONTRACTOR recognizes the broad nature of this indemnification and hold harmless clause, as well as the provision of a legal defense to DISTRICT when necessary, and CONTRACTOR voluntarily makes this covenant and expressly acknowledges receipt of such good and valuable consideration provided by DISTRICT in support of these indemnification, legal defense, and hold harmless contractual obligations in accordance with Florida law. This clause shall survive termination of the Agreement. Compliance with any insurance requirements required elsewhere in the Agreement shall not relieve CONTRACTOR of the liability and obligation to defend, hold harmless, and indemnify DISTRICT as set forth herein.

#### **SECTION THIRTEEN – SEVERABILITY**

If any portion of this Agreement is for any reason held or declared to be unconstitutional, invalid, or void, by a Court of competent jurisdiction, the remainder of this Agreement shall not

be affected thereby, and all the remaining parts of this Agreement shall remain in full force and effect.

**SECTION FOURTEEN – MISCELLANEOUS PROVISIONS**

1. In the event the DISTRICT makes a claim against CONTRACTOR, at law or otherwise, for any alleged error, omission or other act arising out of the obligations of this Agreement, the prevailing party shall recover attorney's fees and costs.

2. This Agreement shall be governed, interpreted and construed according to Florida Law in any dispute arising hereunder and venue for any litigation arising hereunder shall be in Lee County, Florida.

3. This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument executed by the DISTRICT and the CONTRACTOR.

4. All notices or other communications which shall or may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service, or by registered mail addressed to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served; or, if by mail, on the fifth day after being posted (return receipt requested) or the date of receipt, whichever is earlier.

5. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, assigns and legal representatives.

6. BY ENTERING INTO THIS AGREEMENT, THE CONTRACTOR AND THE DISTRICT HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

7. The CONTRACTOR affirms that it has not been convicted of a public entity crime within the last thirty-six (36) months from the date of this Agreement. The CONTRACTOR shall properly execute a Public Entity Crime Affidavit in the form required by the DISTRICT which verifies that the Contractor has not been convicted of a public entity crime within the last thirty-six (36) months.

8. It shall be the CONTRACTOR'S responsibility to be aware of and comply with all federal, state and local laws, rules and regulations, in the performance of the Agreement work and services.

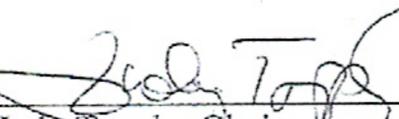
9. A waiver by either the DISTRICT or the CONTRACTOR of any default of this Agreement shall not be binding upon the waiving party unless such waiver is in writing and duly signed by both parties to this Agreement. In the event of a written waiver, such waiver shall not affect the waving party's rights with respect to any other or further default. The making or acceptance of a payment by either party with knowledge of the existence of a default shall not operate or be construed to operate as a waiver of any subsequent default.

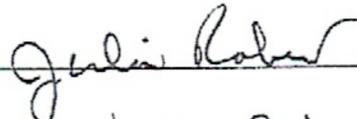
#### **SECTION FIFTEEN – COUNTERPARTS AND DELIVERY**

This Agreement may be executed at different times and in any number of counterparts, each of which, when so executed, shall be deemed to be an original and all of which, when taken together with the Agreement, shall constitute one and the same Agreement. Delivery of an executed counterpart of this Agreement or notice required by this Agreement by facsimile or electronic mail shall be as effective as mail or hand delivery of a executed counterpart of this

Agreement. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought.

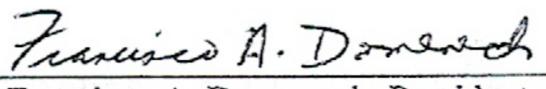
**SAN CARLOS ESTATES WATER CONTROL DISTRICT**

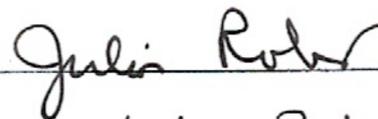
By:   
Judy Fapply, Chairman  
Date: 3-17-20

Attest:   
Printed name: Julia Roberts  
Date: 3-17-20

**CONTRACTOR:**

TONY'S CUSTOM LAWN & LANDSCAPING SERVICE, INC., a Florida corporation

By:   
Francisco A. Domenech, President  
Date: 3/20/20

Attest:   
Printed name: Julia Roberts  
Date: 3-20-20

## **EXHIBIT A – SCOPE OF WORK**

The CONTRACTOR shall furnish all labor, materials, equipment, tools and apparatus required to perform the contractual services required by this Agreement, said contractual services sometimes herein being referred to as the CONTRACTOR'S "Scope of Work" or "Work" or "Service." The Scope of Work specifications contained herein are intended to describe the services to be provided by the CONTRACTOR in connection with the mowing and maintenance of the District's turf areas and roadside swales. The CONTRACTOR shall contact the DISTRICT should any questions arise as to the Scope of Work requirements, including which areas of the DISTRICT'S right of ways are to be maintained. The CONTRACTOR shall promptly begin and diligently provide the contractual services described in the DISTRICT'S Request for Proposals and the CONTRACTOR'S Response thereto dated October 22, 2019, and in accordance with the specifications for the mowing and maintenance of the DISTRICT'S swales and roadways described in this Exhibit A.

1. DISTRICT Right of Ways to be Maintained.

The DISTRICT'S swales and roadways to be maintained by the CONTRACTOR in the DISTRICT are as follows:

a. All roadsides along the paved roadways of the DISTRICT with the District boundaries included in this Scope of Work are listed as follows:

Strike Lane, Red Robin Dr., Rodas Dr., Dietz Dr., Claire Dr., Amarillo Dr., Rocky Rd., Mountain View Dr., Stillwell Pkwy., Golden Eagle Ln., Melanie Ln., Sunny Ln., Cock Robin Ln., Whip O Will Ln., Roger Dodger, St., Waterfall Ln., Luci Dr., Busy Bee Dr., Pinson Dr., Papillion Dr., and Catskill Dr.

b. All of the two (2) retention ponds on the north side of Strike Lane are included in this Scope of Work but only for two (2) times per calendar year.

2. Mowing/Maintenance.

The CONTRACTOR shall mow and maintain all turf areas, from the edge of pavement to the top of bank on the back slope of the swales which includes the full width of right of way vegetation within the DISTRICT'S road sides and medians, to a height of between 4 inches and 6 inches. Mower blades shall be kept sharp at all times during mowing/maintenance. Areas that have standing water are to be mowed above the surface of the water only. The CONTRACTOR will not be required to remove grass cuttings from turf areas as long as cuttings are dispersed evenly enough to prevent clumping. Debris and grass cuttings shall not be left on road pavements, gutters, or curbs. Grass cuttings and debris shall not be deposited into any waterway or inlet. Grass cuttings and debris will not

be deposited into or left in work areas by the CONTRACTOR in such a manner so that the grass cuttings or debris will be able to wash, blow, or otherwise be transported by natural means to a waterway or inlet. Grass cuttings and debris will not be deposited into or left by the CONTRACTOR after work is performed so that the grass cuttings or debris prevent the normal operation of the stormwater management system at any time.

Each work area shall be completely edged and trimmed each mowing/maintenance cycle. Turf mowing/maintenance shall be conducted in such a manner as to not damage any existing DISTRICT property, facilities, or structures. Mowing/maintenance shall include the entire area of the two retention ponds on the north side of Strike Lane two (2) times a year.

3. Edging and Trimming.

Edging and trimming shall be performed by the CONTRACTOR simultaneously with each mowing/maintenance cycle and completed in the same areas required to be mowed. Curbs and gutters shall be mechanically edged. Grass or weeds growing through cracks, joints, or breaks in a work area shall be trimmed mechanically. Curbs, gutters, and all pavements shall be swept or blown free from all loose grass, weeds, or other vegetation as required to ensure a maintained appearance and such debris shall not be directed toward or allowed to enter any inlet or waterway. Line trimmers may be used around trees, telephone poles, fire hydrants, sign posts, railings, culvert ends, and any other such object within the work area. Edging and trimming shall be conducted in such a manner as to not damage any existing DISTRICT property, facilities, structures or plants.

4. Trash, Litter, Debris.

Immediately prior to mowing/maintenance operations, the CONTRACTOR shall remove all litter, waste materials, rubbish and debris, including vegetative debris greater than ¼ inch in diameter, within the work area. All litter, waste materials, rubbish and debris shall be removed and properly disposed of offsite in conformance with any and all applicable laws and regulations.

Copies of the records and receipts for the disposal of the litter, waste materials, rubbish and debris shall be supplied to the DISTRICT by the CONTRACTOR for accountability with DISTRICT permits. Large, heavy, dangerous, or hazardous waste items beyond the ability of the CONTRACTOR to safely and legally remove from the work area shall be reported to the DISTRICT and the other appropriate authorities immediately (if applicable).

In addition, CONTRACTOR will:

- a. Remove all silt and debris from in and around all stormwater drains and driveway culverts when encountered and such materials shall not be disposed of within waterways or into pipes or inlets;
- b. Remove all grass and debris that may clog culvert pipes;
- c. Provide four (4) trash pickups during the dry season within fifteen (15)

- d. calendar days of receiving written notice to do so from the DISTRICT;  
Report any suspected driveway pipe collapse to the DISTRICT Engineer;  
and,
- e. Report any suspected illicit discharge as defined by the NPDES MS-4 Permit to the DISTRICT Engineer upon discovery.

5. Quality Control / Assurance.

Completed work areas may be inspected by the DISTRICT at any time for quality control and assurance. Work determined by the DISTRICT to be unsatisfactorily completed by the CONTRACTOR shall be immediately corrected by the CONTRACTOR at no additional cost to the DISTRICT so that the work is properly performed by the CONTRACTOR in full compliance with the terms of this Agreement. The evaluation of the CONTRACTOR'S work by the DISTRICT shall be final and shall be made in the DISTRICT'S sole discretion.

6. Weather Conditions.

Areas of work which are saturated with water to the point where the CONTRACTOR'S equipment should not be used in order to avoid creating excessive damage to the work area shall not have any work performed when such conditions exist. The CONTRACTOR is required to notify the DISTRICT Secretary by email, or other written notification, when such weather conditions exist. Any work areas that are not maintained as a result of weather conditions shall be maintained as soon as weather conditions permit the work to be performed without creating excessive damage to the work area. The CONTRACTOR shall utilize the proper and necessary equipment in the saturated work areas to minimize damage to the area, but when damage is unavoidable, the CONTRACTOR must notify the DISTRICT and acquire the DISTRICT'S specific written permission to proceed with the performance of the CONTRACTOR'S work in the saturated work area.

7. Drainage Swale and Pond Inspection.

The CONTRACTOR shall visibly inspect the drainage system, including drainage structures for indications of improper functioning after each heavy rainfall event (defined as rainfall in excess of 2") but not more than once every fifteen (15) calendar days. Drainage structure inspections which are undertaken by the CONTRACTOR shall be recorded using the official inspection form provided by the DISTRICT Engineer.

During the course of drainage system inspections or other work by the CONTRACTOR, if the CONTRACTOR suspects there is an illicit discharge of oil, grease, sanitary waste, paint, solvents, etc., into the DISTRICT'S water management system, by sight or smell or otherwise, the CONTRACTOR shall immediately contact the DISTRICT Engineer, Stephen Vervaecke (239) 337-3993; email: [svervaecke@m-da.com](mailto:svervaecke@m-da.com), and if the DISTRICT Engineer is not immediately available, the CONTRACTOR shall contact the DISTRICT Secretary. The DISTRICT Engineer will then assess the suspected illicit discharge and

take appropriate action, including providing instructions to the CONTRACTOR for work to be performed.

The United States Environmental Protection Agency (EPA) defines an illicit discharge as a discharge into the drainage system that is not composed entirely of storm water. Exceptions to the definition of an illicit discharge includes NPDES-permitted industrial source discharges, discharges from firefighting activities, waterline flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, water from a spring, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, de-chlorinated swimming pool discharges and street wash water.

No discharge shall be made by the CONTRACTOR, or by any others, into the DISTRICT'S drainage system which could be construed as an illicit discharge. The DISTRICT'S drainage system consists of any and all swales, canals, ponds and other facilities or structures in the DISTRICT which are intended to convey or treat stormwater.

#### 8. Repairs.

While performing the CONTRACTOR'S work, the CONTRACTOR may discover defects in the condition of the DISTRICT'S roadside areas and swale areas which requires corrective work (repairs). In the event CONTRACTOR discovers a defective area of the DISTRICT'S roadsides or swales, the CONTRACTOR will notify the DISTRICT in writing of the defect and of the scope and cost of the corrective work required to correct the defect. The DISTRICT, in the DISTRICT'S sole discretion, can elect to authorize a change order to the CONTRACTOR'S work for the CONTRACTOR to perform the corrective work pursuant to the change order's description of the work for the Guaranteed Maximum Price of the change order. The DISTRICT Board of Supervisors will consider the CONTRACTOR'S request for a change order to perform the repair work for the Guaranteed Maximum Price stated in the change order request and the DISTRICT Board of Supervisors will have the authority to approve or not approve the CONTRACTOR'S change order request in the sole discretion of the DISTRICT. In the event the DISTRICT approves a request for a change order from the CONTRACTOR to correct a defect, the change order work will be performed by the CONTRACTOR as an amendment to this Agreement and in full compliance with all of the Agreement terms and conditions for the Guaranteed Maximum Price of the change order agreed to by the DISTRICT'S Board of Supervisors as a part of the amendment of this Agreement to include the change order to correct the defect. All work under the change order by the CONTRACTOR will be performed and completed within fourteen (14) calendar days of the DISTRICT'S approval of the change order to perform the corrective work.

#### 9. Frequency of Work.

All work areas shall be mowed/maintained by the CONTRACTOR at a frequency that is necessary to maintain the DISTRICT'S right of ways in a continuously maintained

condition that satisfies all of the maintenance requirements of this Agreement. At no time shall the height of any grass exceed 12 inches. All work by the CONTRACTOR shall be conducted during daylight hours before 6:00 p.m.

10. Supervision and Labor.

CONTRACTOR shall supervise, inspect, direct and oversee all of the work performed pursuant to this Agreement in a competent and efficient manner and in a good and workmanlike manner that meets or exceeds the community standard for similar work. The CONTRACTOR shall devote such attention to the performance of the work and shall apply such skills and expertise as may be necessary to perform the work in accordance with this Agreement. Personnel shall be properly attired at all times when performing work pursuant to this Agreement. CONTRACTOR shall provide competent, suitably qualified personnel to perform the work of this Agreement. CONTRACTOR shall at all times maintain good discipline and order of its workforce. The CONTRACTOR shall comply with all applicable county, state and federal labor, safety, and health regulations, including Workers Compensation. The CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in association with the CONTRACTOR'S work. The CONTRACTOR shall be responsible for following proper maintenance of traffic (MOT) procedures as outlined in the Florida Department of Transportation's Green Book.

11. Services, Materials, and Equipment.

The CONTRACTOR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, machinery, tools, appliances, fuel, and incidentals necessary for the performance and completion of the work of this Agreement, in full, as a part of the Agreement Guaranteed Maximum Price and for no additional compensation. At all times, the CONTRACTOR shall be an independent contractor of the DISTRICT.

Any damage to the DISTRICT'S right of ways or improvements shall be repaired by the CONTRACTOR as soon as possible, at the CONTRACTOR'S sole expense, to the full satisfaction of the DISTRICT.

All of CONTRACTOR'S equipment shall be capable of safely and efficiently performing the work of this Agreement. The CONTRACTOR shall specify the type of equipment that will be used to complete the work in the DISTRICT'S right of ways, at the DISTRICT'S sole discretion, and the DISTRICT shall approve or not approve the appropriateness of the CONTRACTOR'S equipment that is being proposed for the Scope of Work.

The CONTRACTOR shall not perform any equipment or vehicle maintenance on the DISTRICT'S right of ways and the CONTRACTOR shall not store materials on the DISTRICT'S right of ways, including but not limited to fuel, oils, herbicides, pesticides or fertilizers. While on the DISTRICT'S right of ways, the CONTRACTOR shall ensure that

all materials are maintained and used so as to be fully compliant with all applicable government regulations and so as to prohibit all illicit discharges.

The CONTRACTOR shall provide MSDS sheets for all materials having MSDS sheets that may be utilized by the CONTRACTOR or that may be introduced, in any way, into the DISTRICT. All materials, chemicals, insecticides, and herbicides used by the CONTRACTOR shall be used and applied in a manner consistent with the manufacturer's instructions and with all applicable laws and regulations.

The application of all fertilizer must be by an individual who is certified under the Green Industries BMP Program with proper certification on file with the CONTRACTOR.

All herbicide and pesticide must be applied by an individual who is licensed with current FBACS licenses on file with the CONTRACTOR.

All of CONTRACTOR'S employees performing work for the DISTRICT must be trained under an approved FDEP Stormwater Inspector's Program and must have attended classes in both sediment control and illicit discharge identification and resolution.

All services by the CONTRACTOR must be performed by an individual who holds all current and active licenses and certifications to perform the services they are engaged in on behalf of the CONTRACTOR as a part of the CONTRACTOR'S work for the DISTRICT.

At all times, the CONTRACTOR must follow all standard practices and procedures for the use of erosion control devices during all applicable work for the DISTRICT.

## 12. Safety and Protection.

The CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the CONTRACTOR'S work for the DISTRICT. The CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

- a. all persons in the DISTRICT, including the CONTRACTOR'S employees and work force personnel, or who may be affected by the CONTRACTOR'S work;
- b. all of the work and materials provided by the CONTRACTOR to the DISTRICT as a part of the CONTRACTOR'S work; and
- c. all of the property of the DISTRICT and third parties, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and underground facilities.

The CONTRACTOR shall comply with all applicable laws and regulations relating to the safety of persons or property, and relating to the protection of persons and property from damage, injury,

or loss, and shall erect and maintain all necessary safeguards to provide for the safety of persons and property. The CONTRACTOR shall notify the DISTRICT and the owners of adjacent property and of utility facilities, including underground facilities, when the CONTRACTOR'S performance of the CONTRACTOR'S work may affect them. Further, the CONTRACTOR shall cooperate with the DISTRICT, and all others, in the protection, removal, relocation, and replacement of their property from the area of the CONTRACTOR'S work, when it is necessary to protect said property.

**SAN CARLOS ESTATES WATER CONTROL DISTRICT**

P.O. Box 367807  
Bonita Springs, Florida 34135

February 10, 2020

Ms. Sherrill F. Norman, CPA  
Auditor General  
State of Florida  
111 W. Madison Street  
Claude Denson Pepper Building  
Tallahassee, FL 32399-1450

Re: Fiscal Year 2018-2019

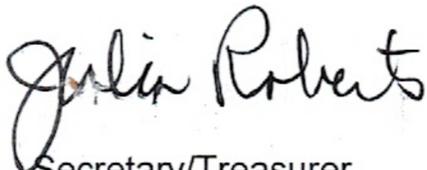
Dear Ms. Norman:

The Rules of the Auditor General require the audit report to include a written statement of explanation, including corrective action to be taken, or a rebuttal regarding any deficiencies cited by the auditor in the annual financial report.

There were no deficiencies cited in the current year auditor's reports or management letter.

If you need additional information, please contact our office.

Sincerely,



Secretary/Treasurer  
San Carlos Estates Water Control District