

BOARD OF SUPERVISORS OF
THE SAN CARLOS ESTAES WATER CONTROL DISTRICT
TUESDAY JANUARY 19, 2021

6:00 P.M.

TOWNPLACE SUITES, 23161 VIA COCONUT POINT, ESTERO, FL 33928

1. **Call Meeting to Order:** Judy Tapply (Judy) called the meeting to Order at 6:02 pm.
2. **Roll Call of the Board of Officers:** Present are Supervisors Judy, Ben Bogacz (Ben) and Jim Bradford (Jim); Engineer Bill Morris (Bill) and Attorney Richard Pringle and 4 guests.
3. **Receive Engineer's Report on District Works:**
 - There are 38 open driveway permits. 2 new and 2 closed.
 - Annual Maintenance -Sweeper Man was scheduled to complete the maintenance on 1/15/21. Bill will follow-up.
4. **Chairs Report:** the District Ecologist recommend planting some trees at price of \$500.
5. **Treasurer's Report:** Judy read the Treasures' Report regarding interest rates (attached). No action taken.
6. **Attorney's Report:**
7. **Comments from Guests:**
 - Michael Byrd expressed concern over the placement of the stop sign at Dietz and Strike. Tammy Bradford would like a flashing red light at this location. Bill advised that signs are approved by DOT. Bill will investigate new signage and cost of a solar powered red flashing light.
8. **Old, New and Unfinished Business:**
 - 24442 Golden Eagle – a culvert pipe was installed without a permit from the District. The contractor for this work has not completed the permit process.
 - 24200 Melanie Ln – stop work order is still in effect.
 - 24342 Red Robin – a driveway permit was issued and culvert has been installed.
 - 9251 Strike Ln – the pipe which was installed as been removed but swale is not restored.
 - Mike Bradford (Mike) has replaced Larry Rose to do misc. repairs for the District and has been given a list for repair.
 - 24345 Rocky Rd – the property owner at the address has requested aid with dealing with the illegal ATV noise and road damage. A possible solution is a locked gate and key access to all property owners. The property owner would be willing to share some of the cost. Bill will get the cost of a gate and boulders and report back to the Board.
 - Driveway Permits – Mr. Pringle explained the new driveway permit process (see attached). There were 4 responses; 3 have been approved, Elite Site Development, Thrasher Site Development and Christel Construction.
9. **Approve November and December 2020 Bank Statements and Payment of Bills:** A Motion was made by Judy and 2nd by Ben to approve the November and December Bank Statements and payment of bills. Motion passed 3-0.

10. **Approve Minutes of 11/17/20 Monthly Meeting:** A Motion was made by Judy and 2nd by Ben to approve the 11/17/20 Monthly Meeting Minutes. Motion passed 3-0.
11. **Adjournment:** A Motion was made by Judy and 2nd by Ben to adjourn the Monthly Meeting. Motion passed 3-0. Meeting adjourned at 7:15 P.M.

Treasurers Report:

The interest rate is at SunTrust is .01. We have \$572,000. We were earning 2% until the CD matured.

Northern Trust rate is .05 and we have \$113,000 here. They used to be the lowest so kept the least amount of cash here.

The Florida prime is .18 with a \$529,000 balance.

The contacts I have made do not expect any changes in the near future.

The only way to raise the rate is to have over a million and not that much *if an increase*

You might consider moving some money from SunTrust.

Any suggestions welcome.

1/15/21

Dear Supervisors,

The Request for Qualifications (RFQ) seeking responses from qualified driveway construction contractors was released. At the time of the deadline for responses, four (4) contractors (responders) have responded. Two of the four responders have met all of the documentation and criteria qualifications. The other two responders are submitting additional information to Morris-Depew so that they can also be considered for approval as qualified contractors to perform driveway construction within the District's right of ways.

Subsequent to the last Board meeting, I revised the RFQ so that additional qualified contractors can apply to the District for approval to perform construction in the District right of ways without having to go through another RFQ process. I added the language to the RFQ so that in the future if an owner wants to use a contractor who is not on the list of approved contractors to perform construction work in the District right of ways, the contractor can fill out an application for approval by the District engineer to be placed on the District's approved contractor's list. The goal of the changes I made to the RFQ is to allow the District to keep a continually growing list of contractors who meet the District's qualifications to perform construction work in the District's right of ways.

In addition to working through the RFQ process, Morris-Depew and I have revised the District's driveway construction permit application to address the changes to the driveway construction approval program that has been requested by the Board. A copy of the updated driveway construction permit application is attached.

I have also prepared an Agreement between the District and a lot owner and their contractor which authorizes the construction of driveway improvements and other improvements within the District's right of ways. The Agreement will provide the protection and contractual rights in favor of the District that are necessary to ensure that the construction of improvements within the District's right of way meets the District's requirements. In addition, the Agreement provides for liability protections of the District and the Agreement prohibits future additional construction in the District's right of way by a lot owner except upon the written approval of the District engineer. As written, the Agreement will provide the best protections of the District with regard to requiring proper construction within the District's right of way and will also protect the District from liability, all of which are in the best interest of the District and the lot owners of the District with regard to the preservation of the District's roads and swale ditches. At the same time, the use of the Agreement will allow the lot owners flexibility to use the "qualified" contractor of their choice to perform construction work in the District's right of ways instead of being required to use the District's contractor as is now occurring. A copy of the Agreement is attached.

In addition to the preparation of the driveway construction permit application and the Agreement between the District and the lot owner and their contractor for the construction of improvements in the District's right of way, Morris-Depew and I are also putting together a cover letter of explanation for the driveway construction permit process and we are also putting together an application form that can be used in the future by new contractors who want to be approved by the District to perform construction work in the District's right of ways. The cover letter and the contractor's application to perform work in the District should be completed very soon so that the new driveway construction permit approval

program can be implemented by the District engineer and used by lot owners who want to construct driveway improvements in the District's right of way.

As a final note, a lot owner can now use one of the two approved contractors to apply for a driveway construction permit and as soon as the other two responders get all of their paperwork turned into Morris-Depew, they can be used as well.

I will keep you updated as the matter progresses.

Best regards,

Richard W. Pringle

Richard W. Pringle, P.A.

2125 First Street, Ste. 200

Fort Myers, FL 33901

Telephone: 239.332.4717

Facsimile: 239.332.4718

Email: Richard@strayhornandstrayhornlaw.com

SAN CARLOS ESTATES WATER CONTROL DISTRICT (“DISTRICT”)
RIGHT OF WAY IMPROVEMENT AGREEMENT

Upon proper application by a landowner and their contractor (hereinafter collectively referred to as the “Permittee”) to construct improvements in the San Carlos Estates Water Control District’s right of ways made to the District engineer and upon payment by the Permittee of the District permit fee and upon the Permittee’s satisfaction of all of the conditions of the District’s requirements for the issuance of a permit by the District engineer, and upon the Permittee entering into this Agreement with the District, a permit/non-exclusive license to construct, maintain and use the Permittee’s improvements in the District’s right of way will be granted to *(fill in landowner’s name and contractor’s name)* _____ and _____ within the District’s right of way for the benefit of the real property described in Agreement Exhibit A.

The District and the Permittee, for Ten Dollars (\$10.00) and other good and valuable consideration, including the mutual promises and agreements of the parties described herein, agree to the Permittee’s construction and use (non-exclusive license) of the improvements described in the Permit, a copy of which is attached hereto as Agreement Exhibit B, within the District’s right of way. The parties agree as follows:

1. In consideration of the payment of the permit fee and other payments set forth herein and in consideration of the covenants and agreements made by the Permittee, and in consideration of the District granting the right to the Permittee to construct, maintain and use the Permittee’s improvements in the District’s right of way as described herein, the District grants to the Permittee a non-exclusive license to utilize space in the District’s right of way described in the Permit, a copy of which is attached hereto as Agreement Exhibit B and made a part hereof, for the purpose of constructing, maintaining, using and removing the Permittee’s improvements described in the Permit, a copy of which is attached hereto and made a part hereof as Agreement Exhibit B, for a term commencing on _____ and continuing for as long as the subject real property is improved, unless this Agreement is terminated earlier as provided in this Agreement.
2. The Permittee shall make payments to the District at the District engineer’s office of Morris-Depew Associates, Inc., 2914 Cleveland Avenue, Fort Myers, Florida 33901 or elsewhere as designated from time to time by written notice from the District to the

Permittee. The permit payment shall be made payable to San Carlos Estates Water Control District.

3. The size, location, placement and use of the Permittee's improvements in the District's right of way, as well as the manner and the method of installation, maintenance and removal of the Permittee's improvements in the District's right of way, shall be subject, in all instances, to the prior written approval of the District engineer in the District engineer's sole discretion. The Permittee shall reimburse the District for the reasonable costs of the District engineer's review and approval of the Permittee's permit submittals whether or not the District grants approval of the Permittee's permit application.
4. In addition to the permit fee referenced above, and in addition to any other fees payable to the District as provided in this Agreement and as approved by the Board of Supervisors, the Permittee shall be solely responsible and pay for all costs and expenses to install, maintain and use the Permittee's improvements in the District's right of way, as well as the costs of removal of the Permittee's improvements from the District's right of way upon the termination of this Agreement.
5. Prior to the construction of any improvements by the Permittee in the District's right of way, the Permittee shall secure, and shall at all times thereafter continuously maintain, all required approvals and permits of all government agencies having jurisdiction over the Permittee's construction, maintenance and use of all of the Permittee's improvements in the District's right of way. The Permittee shall at all times comply with all laws and ordinances and all rules and regulations of the District and of all municipal, state and federal governmental authorities relating to the construction, maintenance, use and removal of the Permittee's improvements in the District's right of way and shall fully indemnify the District against any loss, cost, or expense which may be sustained or incurred by the District as a result of the construction, maintenance, use or removal of the Permittee's improvements. The District makes no representation that applicable laws, ordinances or regulations permit the construction or use of the Permittee's improvements on the District's right of ways.
6. The District grants to the Permittee the non-exclusive license and non-exclusive right, to be exercised as set forth herein, to enter upon the District's right of way adjacent to the real property described in Agreement Exhibit A for the sole purpose of constructing,

maintaining, using and removing the Permittee's improvements in the District's right of way to serve the real property described in Agreement Exhibit A as authorized by the District and for no other purpose; provided, however, that the Permittee shall notify the District engineer, and shall acquire the District engineer's prior written approval, in the District engineer's sole discretion, each time the Permittee intends to modify any improvements in the District's right of way.

7. Notwithstanding anything else contained herein to the contrary, the Permittee shall notify the District engineer in writing each time the Permittee desires to enter upon the District's right of way to perform any construction, maintenance, or removal of any improvements in the District's right of way that is not already permitted and the Permittee shall only enter upon and use the District's right of way to perform any construction, maintenance, or removal of any improvements that is permitted by the District and only at such times, in such manner and under such circumstances as shall not cause damage or endangerment of life or limb or property. The Permittee shall promptly reimburse the District for all of the District's costs of repairs of any damage to the District's right of way and improvements that are directly or indirectly caused by the Permittee's construction, maintenance, use or removal of the Permittee's improvements in the District's right of way.
8. The Permittee, at its sole expense, shall be exclusively responsible for and shall maintain its improvements in safe, structurally sound, clean and slightly condition at all times and the Permittee shall, as described in Article 9 below, indemnify and save harmless the District against all liens and claims of mechanics and materialmen furnishing labor and materials in the construction and maintenance of the Permittee's improvements in the District's right of way.
9. Notwithstanding anything else contained in this Agreement to the contrary, to the fullest extent permitted by law, the Permittee 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 Permittee's construction, maintenance, use or removal of Permittee's improvements under this 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 Permittee, 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 this Agreement, or otherwise. The Permittee recognizes the broad nature of this indemnification and hold harmless clause, as well as the provision of a legal defense to the District when necessary, and the Permittee voluntarily makes this covenant and expressly acknowledges receipt of such good and valuable consideration provided by the 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 Permittee of the liability and obligation to defend, hold harmless, and indemnify the District as set forth herein.

10. During the term of any construction, maintenance or removal of any improvements in the District's right of way by the Permittee, the Permittee shall continually maintain, Comprehensive General Liability Insurance in the minimum combined single limit amount of One Million and 00/100 Dollars (\$1,000,000.00) per occurrence to protect the Permittee and the District against claims for damages for bodily injury, including wrongful death, as well as against claims of property damage. The Permittee 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 Permittee'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 construction of any improvements in the District's right of way. All insurance policies shall include a clause or endorsement denying the insurer any rights of subrogation of recovery against the District. The Permittee 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.

11. The Permittee waives and releases all claims against the District, its public officers, agents, employees and servants, and agrees that they shall not be liable for injury to person or damage to property sustained by the Permittee or by any other person occurring in or about or resulting directly or indirectly from any existing or future construction, maintenance, use or removal of the Permittee's improvements in the District's right of way or resulting directly or indirectly from any defect, matter or thing associated with the Permittee's construction, maintenance, use or removal of the Permittee's improvements, or from the occurrence, act or negligence of any other person or occupant of the District's right of ways.
12. The rights of the Permittee under this Agreement shall be exercised without causing interference with the activities being carried on by others who are also legally using the District's right of ways.
13. No notice or demand related to or required by this Agreement shall be effective unless the notice or demand is in writing and is either delivered personally to the party for whom intended, or to an officer of the party to whom intended, or is sent by United States registered or certified mail return receipt requested. If the notice or demand is sent to the Permittee, it must be sent to the following address (*fill in*) _____, or if the Permittee is not in possession of the above address, then to the Permittee's last known address. If the notice or demand is sent to the District, it must be sent to the following address: Morris-Depew Associates, Inc., 2914 Cleveland Avenue, Fort Myers, Florida 33901. Either party may, by written notice to the other party, from time to time designate another address to which written notices may be mailed. Notices mailed as described above shall be effectively given as of the date of mailing.
14. The District shall have the right to unilaterally terminate this Agreement upon written notice to the Permittee in the event that:
 - a) the Permittee shall default in the performance of any of the obligations imposed on it under this Agreement, including authorizations granted by the District engineer, and

shall not, after being notified by the District of the existence of default, immediately take all reasonable steps to cure the default;

b) it shall be determined that the installation or use of the Permittee's improvements materially interferes with the operation and use of the District's right of ways by the District or by any other persons who are legally authorized to use the District's right of ways; or

c) it is found by public authority having jurisdiction over the District's right of ways that the construction and use of the Permittee's improvements constitute a nuisance or hazard to the public or to other persons who have the legal authority to use the District's right of ways.

15. At termination of this Agreement, the Permittee shall, at the Permittee's sole expense, remove all of the Permittee's improvements installed on the District's right of way and the area of the District's right of way where the Permittee's improvements were installed shall be restored by the Permittee to at least as good a condition as existed immediately prior to the Permittee's construction and installation of the Permittee's improvements in the District's right of way.
16. The choice of law shall be the laws of Florida and venue of any legal action between the parties shall be in the appropriate Court of Lee County, Florida.
17. In the event of any litigation between the District and the Permittee to enforce any provision of this Agreement or any right of either party, the prevailing party shall be entitled to recover their reasonable attorney's fees and other costs of the litigation.
18. This Agreement shall be binding upon the successors and assigns of the parties. The Permittee shall not assign or transfer this Agreement, or any rights or obligations hereunder, to anyone else, except for a subsequent owner of the real property described in Agreement Exhibit A, without the District's prior written consent which may be granted or withheld in the District's sole discretion.
19. Notwithstanding anything else contained herein to the contrary, the following "conditions" shall apply to the Permittee's construction, maintenance, use and removal of the Permittee's improvements within the District's right of way. All of the conditions described below shall be read in light of and in conjunction with the other terms of this

Agreement. The specific conditions of the Permittee's construction, maintenance, use and removal of the Permittee's improvements in the District's right of way are as follows:

a) The Permittee shall provide the District with written notice of any work to construct, maintain or remove any improvements in the District's right of way being performed hereunder prior to commencement of the work and the Permittee shall provide the District with written notification of the completion of such work so that the District may timely inspect same.

b) The construction, maintenance, use and removal of the Permittee's improvements shall not interfere with the property, rights and interests of the District or of any third parties.

c) All work by the Permittee performed in the District's right of way shall be done in full compliance with the standards of the District, including the District's Right of Way (Access Standards) Manual, the District's Drainage Plan, the District's permit requirements with third party government agencies, and the District's right of way construction standards described in this Agreement, including the Permit, a copy of which is attached hereto and made a part hereof as Agreement Exhibit B, and shall be subject to the prior written approval or disapproval of the District engineer, in the District engineer's sole discretion.

d) All of the Permittee's materials and equipment, and their installation, use and removal, shall be subject to inspection and approval or disapproval by the District engineer, in the District engineer's sole discretion.

e) During the Permittee's construction, maintenance and removal of any or all of the Permittee's improvements in the District's right of way, all applicable safety regulations of all government agencies having authority over the District's right of ways shall be observed by the Permittee and the District shall be indemnified and held harmless of all responsibility from damage of any nature arising therefrom as described in Article 9 above.

f) Upon the Permittee's completion of any construction, maintenance or removal of any of the Permittee's improvements in the District's right of way, the Permittee shall restore the District's right of way to the original condition, or better, so that there is no adverse impact on the District or on the third parties who use the District's right of way.

g) To reiterate, in addition to the other standards and requirements of this Agreement related to the Permittee's construction, maintenance, use and removal of the Permittee's improvements in the District's right of way, all construction shall conform to the standards and requirements described and/or approved by the District engineer, in the District engineer's sole discretion. At no time shall any construction, maintenance or removal of any of the Permittee's improvements be performed by the Permittee unless the Permittee has first acquired the prior written approval from the District engineer, in the District engineer's sole discretion, for said construction, maintenance, use or removal. If at any time during the construction, maintenance or removal of an improvement by the Permittee, the District engineer finds that the Permittee has violated any of the District's permit conditions or any other applicable obligations, rules or regulations, the District engineer, in the District engineer's sole discretion, may issue an immediate stop work order to the Permittee which requires all work and use being performed by the Permittee within the District's right of way to immediately cease until further order of the District engineer. The stop work order shall be in effect until the construction, maintenance, use or removal of the Permittee's improvements is brought into full compliance with the District's requirements as determined by the District engineer, in the District engineer's sole discretion. Failure of the Permittee to perform satisfactory construction, maintenance, use or removal of the Permittee's improvements in the District's right of way shall result in a default of this Agreement and shall also result in the District engineer not issuing any additional permits to the Permittee until all deficiencies are corrected and the District engineer confirms in writing that the construction, maintenance, use or removal of the Permittee's improvements in the District's right of way has been brought into full compliance with all requirements of the District engineer.

h) It is expressly stipulated that this Agreement is a license for permissive use only and that the construction, maintenance, use or removal of improvements by the Permittee upon the District's right of ways pursuant to this Agreement shall not operate to create or to vest any property right or interest in the Permittee.

i) Whenever it is necessary for the construction, repair, improvement, alteration or relocation of all, or any portion of the District's roads or streets, as determined by the District, in the District's sole discretion, any or all of the Permittee's improvements

constructed on the District's right of way shall be immediately removed from said District right of way and relocated thereon as required by the District engineer, in the District engineer's sole discretion, at the sole expense of the Permittee.

j) The Permittee shall complete any construction, maintenance or removal activities commenced under the terms of this Agreement as authorized and directed in the Permit.

k) The Permittee agrees that prior to commencing any construction, maintenance or removal of any improvements under this Agreement, the Permittee will be solely responsible to ascertain the location of all existing utilities and other improvements of third parties within the District's right of way in the vicinity of the Permittee's construction area, both aerial and underground, and the Permittee shall furnish written notice of the Permittee's proposed work in the District's right of way to each third party who has improvements located in the area of the Permittee's construction work.

l) It is understood and agreed that the rights and privileges granted herein by the District are granted to the Permittee only to the extent of the District's right, title and interest in the District's right of way to be entered upon and used by the Permittee. No real property interest or other interest is created by this Agreement in favor of the Permittee in the District's right of way or other District property.

m) During the Permittee's construction, maintenance or removal of any of the Permittee's improvements in the District's right of way, all safety regulations required by the District engineer, which shall at a minimum be the safety regulations promulgated by the Florida Department of Transportation, shall be observed by the Permittee and the Permittee shall take all such measures, including placing and displaying of safety devices, as may be necessary in order to safely conduct the construction, maintenance and removal of the Permittee's improvements in the District's right of way.

n) Maintenance is defined as the repair or replacement of the Permittee's improvements constructed in the District's right of way pursuant to a District permit. All maintenance shall result in the placement of the Permittee's improvements, in the same position and approximately of the same size as the original permitted improvements of the Permittee that were constructed in the District's right of way pursuant to the District engineer's prior written approval. At no time shall the Permittee construct any

improvements, as maintenance or otherwise, where the construction results in any increase or change of the original constructed improvements from their original permitted and approved condition and status. Construction by Permittee as “maintenance” which results in an increase in the size or capacity of the improvements is not considered maintenance and instead is considered construction of additional improvements which requires the full prior written permit approval of the District engineer, in the District engineer’s sole discretion.

o) All maintenance of the Permittee’s improvements constructed in the District’s right of way, and all future construction of additional improvements by the Permittee in the District’s right of way, must first be approved and permitted, in writing, by the District engineer, in the District engineer’s sole discretion.

p) All construction that is performed by the Permittee without the prior written approval of the District engineer is “unauthorized” and shall be immediately removed by the Permittee at the Permittee’s sole expense, upon the District engineer’s written demand for said removal. If the Permittee does not remove unauthorized construction after written demand by the District engineer, the District is authorized to remove the unauthorized improvements at the sole expense of the Permittee and at no expense to the District.

q) All of the Permittee’s improvements constructed in the District’s right of way must continuously conform and comply with all of the current District requirements and future District requirements described in writing by the District engineer at all times.

r) Emergency repairs of the Permittee’s improvements can be performed outside of normal business hours without the prior written approval of the District engineer but only to the limited extent necessary to maintain the Permittee’s improvements in a useable condition. Written notice of all emergency repairs shall be given by the Permittee to the District engineer at the same time as the emergency repair is being made and the Permittee shall provide additional written notice to the District engineer the next business day after the emergency repairs occur which describes the emergency repairs that were made and which further describes the additional repairs that need to be made. The District engineer shall review the emergency repairs request and information and shall advise the Permittee, in writing, whether additional repair work is required by the Permittee related to the emergency repairs performed by the Permittee, up to and including the complete removal

and replacement of all emergency repairs performed by Permittee. The Permittee shall indemnify the District and hold the District harmless from all claims related to the Permittee's emergency repairs pursuant to the Permittee's indemnification of the District described elsewhere herein in this Agreement, especially in Article 9 above.

s) No construction, including paving, open cutting or trenching, across a paved or unpaved road shall be performed by the Permittee without the prior written approval of the District engineer which may be granted or denied in the District engineer's sole discretion. The Permittee shall be solely responsible, at the Permittee's sole cost, to restore all construction areas to their preconstruction condition, or better, as soon as possible and no construction area will be left in a dangerous condition or unsupervised by the Permittee. The Permittee shall indemnify the District and hold the District harmless from all claims related to the Permittee's construction area in the District's right of way pursuant to the Permittee's indemnification of the District described elsewhere in this Agreement, especially in Article 9 above.

t) The Permittee shall immediately repair the District's right of way improvements and restore them to their preconstruction condition, or better, at the sole cost of the Permittee as required by the District engineer, in the District engineer's sole discretion, in all instances where the Permittee's construction, maintenance, use or removal of the Permittee's improvements results in any damage of any of the District's right of way improvements. The Permittee shall be solely responsible for the repair and restoration of the District's right of way improvements, and the Permittee shall warranty same against defects and damage resulting from the Permittee's work for a period of thirty-six (36) months from the completion date of the Permittee's construction of improvements within the District's right of ways.

u) A construction performance bond may be required by the District engineer, in the District engineer's sole discretion, for any construction that the Permittee performs within the District's right of ways.

v) All construction work by the Permittee is subject to a final and interim inspections by the District engineer, at the Permittee's cost, to ensure compliance with all of the requirements of this Agreement.

SAN CARLOS ESTATES WATER CONTROL DISTRICT

By: _____
Printed name: _____
Title: _____
Date: _____

Attest: _____
Printed name: _____
Date: _____

**PERMITTEE:
OWNER:**

Printed name
Date: _____

Attest: _____
Printed name: _____
Date: _____

**PERMITTEE:
CONTRACTOR:**

Printed name
Date: _____

Attest: _____
Printed name: _____
Date: _____

**AGREEMENT EXHIBIT A
OWNER'S "BENEFITTED REAL PROPERTY" LEGAL DESCRIPTION**

DRAFT

**AGREEMENT EXHIBIT B
PERMIT AND ADDITIONAL REQUIREMENTS FOR THE USE OF THE
DISTRICT'S RIGHT OF WAY**

DRAFT

San Carlos Estates Water Control District
Access and Right of Way Use Permit Application

ATTN: District Engineer – Morris-Depew Associates, Inc.
2914 Cleveland Avenue
Fort Myers, Florida 33901
(239) 337-3993
scewcd.driveways@m-da.com

PART I – GENERAL INFORMATION

STRAP Number(s) (*attach additional sheets if necessary*):

		-			-			-					-				
		-			-			-					-				

Subject Property Street Number: _____

Brief description of proposed project: _____

PART II – OWNER/CONTRACTOR INFORMATION

Enter information below as applicable.

A. Owner Information

Name of Owner/Applicant: _____

Mailing Address: _____

City: _____ State: _____ ZIP: _____

Phone Number: _____ E-mail: _____

B. Contractor Information

Name of Contractor/Applicant: _____

Mailing Address: _____

City: _____ State: _____ ZIP: _____

Phone Number: _____ E-mail: _____

C. Authorized Agent Information

Name of Authorized Agent: _____

Mailing Address: _____

City: _____ State: _____ ZIP: _____

Phone Number: _____ E-mail: _____

Attach Letter of Authorization signed by Owner.

PART III – DISCLOSURE OF OWNERSHIP INTEREST FORM

A. If the property is owned in the fee simple by an **INDIVIDUAL**, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address	Percentage of Ownership

B. If the property is owned by a **CORPORATION**, list the officers and stockholders and the percentage of stock owned by each.

Name and Address	Percentage of Stock

C. If the property is owned by a **TRUSTEE**, list the beneficiaries of the trust with percentages of interest.

Name and Address	Percentage of Interest

D. If the property is owned by a **GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP**, list the names of general and limited partners.

Name and Address	Percentage of Interest

- E. If there is a **CONTRACT FOR PURCHASE**, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name and Address	Percentage of Interest

- F. If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name and Address	Percentage of Interest

PART IV – INSTRUCTIONS

- A. As adopted by the San Carlos Estates Water Control District (District) Board of Supervisors (Board), any and all work involving the lands, rights of way, infrastructure, and/or facilities of the District, shall not commence without a Board approved permit. The District has the authority to require a property owner to acquire a permit for the construction of improvements, including driveway connection improvements, in the District’s right of way. Further, the District has the authority to require a property owner to construct improvements located on the District’s right-of-way in full compliance with the District’s construction standards and requirements because the construction of the improvements located within the District’s right of way affects the District’s other improvements, including but not limited to the District’s drainage improvements and the District’s roadway improvements, and also because the District is responsible to other land owners located in the District and also to the government agencies that the District has permit obligations to such as the South Florida Water Management District for all improvements that are constructed in the District’s right of ways. The District’s requirements that improvements in the District’s right of ways must be constructed pursuant to the adopted standards of the District serves a valid public purpose and is for the benefit of the health, safety and welfare of the property owners in the District and the members of the public who use the District’s rights of way. Finally, it serves a public purpose of the District to require the proper construction of improvements in the District’s right of ways because the adopted standards of the District are designed to protect the District’s infrastructure and facilities, including but not limited to the District’s drainage and roadway facilities.
- B. The purpose of this permit application is to provide the information to the District that is necessary for the District to issue a permit for the construction, maintenance, and use of either permanent or temporary improvements to the District’s right of way for the benefit of the subject property which satisfies all of the adopted standards of the District as indicated in the Access Standards Handbook and as indicated by the District’s Engineer. The application fee associated with this permit shall cover costs for the permitting and compliance inspections as described below:

- Permit review and coordination with the applicant;
- Pre-construction meeting (required, on site);
- Monthly review of site activities;
- Pipe bedding inspection; and,
- Final inspection.

The approval by the District of a permit pursuant to this application together with the execution of the Agreement between the District and the Owner and their contractor for the construction, maintenance and use of improvements in the District's right of way will operate not only as the driveway connection and legal access permit for the subject property, but also as the authorization by the District for the construction of improvements in the District's right of way by the Owner and their contractor pursuant to the adopted standards of the District.

This permit application will not be considered for approval by the District Board or District Engineer until all the following has been accomplished:

- i. A complete Access and Right of Way Use Permit Application (this form) has been completed and submitted to the District Engineer together with the required permit application fee. The associated permit fee shall be made in the form of a check made payable to ***"San Carlos Estates Water Control District."***
- ii. A copy of the proposed plan of construction has been delivered to the District Engineer at either the physical or email address shown above. If the application is submitted by email, the same will not be reviewed until the required permit application fee is received in full. The receipt of the required permit application fee is necessary prior to any review and/or inspection(s) by staff or professionals. The Site Plan must include at a minimum:
 - The property boundary information
 - Location of the proposed improvements on the property
 - The location and specifications of the proposed improvements to be constructed in the District's right of way with enough information for the District Engineer to determine whether the proposed improvements, as constructed, will satisfy the District's permit requirements.
- iii. Any and all required information requested by the District Board and/or the District Engineer is delivered to the District and is determined by the District Engineer and/or the District Board to be complete.
- iv. The application indicates that the construction of the Applicant's improvements in the District's right of way will meet and satisfy all of the District's standards, including the standards described in the Access Standards adopted by the District Board, as may be amended from time to time. A copy of the District's Access Standards may be found on the District's website at: <http://scewcd.blogspot.com/>
- v. The Owner's contractor has been approved in writing by the District to perform construction in the District's right of ways.
- vi. The District's Agreement for the construction of improvements in the District's right of way has been executed by the Owner and the Owner's contractor.

Once all of the above-referenced tasks have been accomplished by the Applicant (Owner), the District Engineer will review the application for compliance with District Standards. Upon a finding of compliance, the District Engineer will issue the Access and Right of Way Use Permit ("Permit").

In the event the District Engineer, in his sole discretion, determines the proposed improvements are not in

compliance with District Standards, a list of deficiencies will be provided to the Applicant for revision of the application and the Applicant may revise their application accordingly.

In the event the Applicant requests a variance from the District Standards, District Staff will place the permit application request on the public meeting agenda for the District Board and the same will be considered at a duly advertised regular public meeting at which all interested persons are invited to attend and be heard with respect to the permit application. Interested persons may appear on their own behalf or by agent or attorney. Anyone wishing to appeal any action taken by the Board is responsible to have a verbatim record made, which record includes the testimony and evidence upon which the appeal is based.

- C. A property owner will be required to use a contractor that has been approved by the District to perform work in the District’s right of ways. An application for approval of a contractor can be acquired from the District Engineer.
- D. District permits approved and issued for the construction and installation of improvements in the District’s right of way shall expire no more than _____ (__) months after the date of District issuance.
- E. Inspection of the construction of the improvements in the District’s right of way shall follow the following sequence of events:
 - i. Pre-construction meeting (**on-site, prior to commencement of construction**);
 - ii. Pipe bedding (pre-backfill) inspection;
 - iii. Driveway substantial completion inspection; and,
 - iv. Final acceptance inspection.

It is the responsibility of the contractor to schedule each required inspection with the District Engineer **at least 48 hours prior** to commencement of said inspection. Failed inspections that require an additional reinspection for acceptance by the District Engineer will incur an **additional cost of \$60 per inspection paid to San Carlos Estates Water Control District prior to receiving the re-inspection**. Failure to provide the re-inspection fee at the time of the re-inspection will result in the cancellation of the inspection.

- F. The District has resolved that no construction will receive a Certificate of Occupancy without first receiving Final District approval of the construction of the Applicant’s improvements located in the District’s right of way. In accordance with the City of Bonita Springs Land Development Code, the City requires notification of District approval regarding final construction of any improvements in the District right of way BEFORE the City of Bonita Springs will issue a Certificate of Occupancy (CO) for any building permit in accordance with City of Bonita Springs Land Development Code Sections 3-6(7)b, 3-302(o), 3-325(b), 3-326, 3-537(e).
- G. Additional District conditions of approval (if any): _____

Part V - Improvement Details

Type of Improvement (check as applicable)

- Driveway & Culvert (\$750 application fee)
- Temporary Driveway & Culvert (\$750 application fee + \$2,500 security deposit – refundable on completion less any reinspection fees)
- Roadway Extension (\$1,500 application fee)
- Other - Please Identify: (Cost to be Determined)

In consideration of the District agreeing to allow the Applicant to construct improvements in the District's right of way for the benefit of the Applicant's real property, the Property Owner agrees with the District to continually use the District's Right of Way improvements, including the driveway improvements to be constructed for the benefit of the subject property, at all times in full compliance with the District's Right of Way Standards described in the District's Access Standards Handbook and any special conditions required by the District and/or the District Engineer. The Property Owner further agrees to notify the District immediately in the event there is any damage or defect caused to the District's right of way improvements by any cause whatsoever. Finally, the Property Owner agrees to continually maintain the Owner's subject parcel located outside the District's Right of Way and the right of way improvements so that there will be no adverse impact or deterioration of the District's right of way improvements, including the District's drainage improvements and roadway improvements.

By signing this application, the Owner, as the Applicant, hereby acknowledges reading and agreeing to comply, in full, with all of the requirements of this application, the Access Standards Handbook, and all of the Permit requirements imposed by the District.

Owner Signature: _____ Date: _____

PART VI – SCEWCD ENGINEER USE ONLY

Permit Number: _____

SCEWCD Access and Right of Way Use Permit Reviewed and Issued

Date: _____

Approved: _____

Pre-Construction Inspection

Date: _____

Approved: _____

Pipe Bedding (Pre-Backfill) Inspection

Date: _____

Approved: _____

Driveway Substantial Completion Inspection

Date: _____

Approved: _____

Construction Completion and Issuance of Final Acceptance

Date: _____

Approved: _____