

**BOARD OF SUPERVISORS OF**  
**THE SAN CARLOS ESTATES WATER CONTROL DISTRICT**  
**TUESDAY, MAY 15, 2018**

**6:15 P.M.**

**TRIANON BONITA BAY, 3401 BAY COMMONS DRIVE, BONITA SPRINGS, FL 34134**

1. **Call Meeting to Order:** Judy Tapply (Judy) called the Meeting to Order at 6:15.
2. **Roll call of the Board of Officers:** Present are Supervisors Judy and Ben Bogacz (Ben); Attorney Richard Pringle; Sec/Treas Julia Roberts (Julia) and 0 guests.
3. **Receive Engineer's Report on District Works (Report given by Julia):**
  - **Maintenance Report;** Maintenance Report sent to Supervisors 5/14/18. Morris Depew is actively working to clear all inactive permits.
  - **Driveway on Waterfall (BSU):** Still no response from BSU. Morris Depew (Bill) is going to re examine this site to determine if a driveway is needed since the site is rarely used.
  - **Status of Water Monitoring:** A portion of the report is complete. Bill is still working to complete the report to submit to DEP.
  - **Slope Fail on Moriah Canal** – Thrasher Site Development submitted an estimate (attached) for the slope repair on Moriah Canal east of Busy Bee using sod to restore the berm. Bill recommends rip rap in place of sod. Bill will speak to Thrasher about a change and we will get a new estimate. Since rainy season is near the Board would like to approve this work as soon as possible.
  - **Violations within the District** – Bill has met with David Larcardi (City of Bonita Springs Permitting) to verify that the City and District have a clear communication avenue and understanding of the new driveway permitting processing.
  - **Update on Bonita Bill Paving** – Bill has submitted the conditions of permit approval to Maastricht Engineering, Inc. for the Bonita Bill Paving. Mr. Maastricht has accepted these conditions.
  - **June 21, 2018 SFWM Meeting** – SFWM will meet in June and an agenda item regards the SECWCD. Bill plants to attend this meeting to represent the District's interests.
4. **Chairs Report:**
  - At least one of the tag cameras is working. Judy asked Julia to monitor the effectiveness of the cameras. If they do not provide the information needed Julia will peruse other options if needed
  - Judy as asked that Julia contact Comcast regarding the need for a permit when working within the District in areas that effect our infrastructure.
5. **Receive Treasurer's Report:**
  - The Supervisors will conduct the annual budget meeting during the July duly advertised meeting.
6. **Received Attorney's Report:**
  - Mr. Pringle submitted the First Amendment to the Boy, Milller, Kisker & and Perry, P.A. auditor contract (attached). Mr. Pringle informed the Board that the current contract is still in effect for the upcoming 2016-2017audit.
8. **Old, New and Unfinished Business:**
  - Melanie cul de sac – Mr. Pringle is still in contact with Keith Gomez from Lee County Lands regarding the damage to the Melanie cul de sac. Mr. Pringle will suggest to Mr. Gomez that boulders placed in the Melanie cul de sac similar to the placement at Strike and Imperial and on Waterfall.
  - The property owner at 24000 Claire regarding the boulders on the Bonita Bill berm - Julia has asked several government entities to take these boulders but as of now there are no takers. The property owner is planning to have these moved prior to the August canal cleaning.

- During Hurricane Irma a large pine on the south berm of the Strike Lane canal fell onto a fence belonging to Bonita Lakes. Bonita Lakes has asked that the District remove the tree. Mr. Pringle advised Julia to contact our insurance company to determine if the District has liability insurance that could cover this damage.
- Kozak Litigation – no update at this time.
- Next meeting date July 17, 2018.
- Judy asked for any public input
- No public input
- A Motion was made by Ben and 2<sup>nd</sup> by Judy to approve a Thrasher Site Development estimate not to exceed \$5,500 to repair the Moriah Canal slope failure east of Busy Bee using rip rap in place of sod. Motion passed 2-0.
- A Motion was made by Judy and 2<sup>nd</sup> by Ben to approve the First Amendment to Auditor Agreement with a fee of \$4,500 not to exceed 4% increase per year thru 2021 and authorize the Chair (Judy) to execute the Amendment. Motion passed 2-0.

**9. Approve Bank Statement and Payment of Bills:**

- A Motion was made by Judy and 2<sup>nd</sup> by Ben to approve the April 2018 bank statements. Motion passed 2-0.

**10. Approval of Minutes:**

- A Motion was made by Judy and 2<sup>nd</sup> by Ben to approve the 4/17/18 Monthly Meeting Minutes. Motion passed 2-0.

**11. Adjournment (By Motion, Second and Vote of the Supervisors.)**

- A Motion was made by Judy and 2<sup>nd</sup> by Ben to adjourn the Meeting. Motion passed 2-0.
- Meeting adjourned at 7:24 pm.

Thrasher Site Development, Inc.

Post Office Box 367672  
Bonita Springs, FL 34136

Estimate

(239) 370-2205 PHONE  
(239) 390-3927 FAX

Date                      Estimate #  
  
5/2/2018                8603

Address to:	Project / Job Location
JULIA ROBERTS Secretary/Treasurer SAN CARLOS ESTATES WATER CONTROL DISTRICT PO BOX 367807 BONITA SPRINGS, FL 34136	MORIAH CANAL

PO Number

Description	Qty	Unit	Cost	Total
WE PROPOSE TO DO THE FOLLOWING SITE WORK. THIS ESTIMATE INCLUDES EQUIPMENT, MATERIALS AND LABOR. THIS ESTIMATE IS IN ACCORDANCE WITH THE SCOPE OF WORK REQUESTED BY OWNER/CONTRACTOR AND OBSERVED ONSITE.				
BERM RESTORATION: CLEAN-OUT DITCH BOTTOM RESTORE BERM SOD AND PIN DISTURBED AREAS	1	LS	3,500.00	3,500.00

THRASHER SITE DEVELOPMENT INC, IS NOT RESPONSIBLE FOR PERMITS, ENGINEERING AND TESTING OF THE MATERIALS.  
PAYMENT TERMS:  
WITHIN 30 DAYS OF INVOICE.  
CUSTOMER SHALL PAY SUM DUE WITHIN (30) DAYS OF RECEIPT OF INVOICE. PAYMENTS BECOME PAST DUE IF NOT PAID WITHIN (30) DAYS THEREAFTER. INTEREST SHALL ACCRUE AT THE RATE OF 1.5% (18% ANNUAL). CUSTOMER IS RESPONSIBLE FOR ALL COST OF COLLECTION, INCLUDING RESPONSIBLE ATTORNEY'S FEES. VENUE FOR ANY PROCEEDING FROM SUBJECT TRANSACTION SHALL BE IN LEE COUNTY, FLORIDA.

Acceptance of Proposal-your signature enters you into a binding contract with TSD, Inc. to provide the services listed in the above proposal. Signature also shows acceptance of pricing terms, specifications and conditions. This proposal is based on no retainage being held, unless other wise submitted in writing and approved by TSD, Inc., If our proposal is accepted please sign and return to our office so scheduling can begin.

We appreciate the opportunity to submit this estimate for your project.	<b>Total</b>	\$3,500.00
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**FIRST AMENDMENT TO AGREEMENT BETWEEN SAN CARLOS ESTATES  
WATER CONTROL DISTRICT AND BOY, MILLER, KISKER & PERRY, P.A.**

WHEREAS, the San Carlos Estates Water Control District ("District") and Boy, Miller, Kisker & Perry, P.A. ("Auditor") have previously entered into an Agreement dated October 19, 2016 ("Agreement") for the Auditor to provide services to the District; and,

WHEREAS, the parties wish to amend the Agreement between them; and

WHEREAS, each of the parties has taken all necessary action to approve this Amendment to the Agreement between them.

NOW THEREFORE, for the mutual promises of the parties and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows.

SECTION ONE. The parties agree to extend the term of the Agreement through the preparation of the annual audit by Auditor for the District's fiscal year ending September 30, 2018, for a not to exceed fee of \$\_\_\_\_\_ for the Auditor's services for auditing the financial statements of the District in compliance with Florida law, especially Chapter 218, Florida Statutes, for the fiscal year ending September 30, 2018. Thereafter, the term of the Agreement may be extended for additional terms as authorized by Florida law. A copy of the Auditor's most recent external peer review report and any letter of comment is attached hereto and made a part hereof as Exhibit "A".

SECTION TWO. Notwithstanding anything else in the Agreement, as amended, to the contrary, the District shall have the unilateral right to cancel the Agreement, with or without cause, without penalty, in the District's sole discretion, for any future fiscal year during any future extension of the Agreement term. In the event the District terminates the Agreement, the District must provide written notice of the District's termination of the Agreement to the Auditor on or before September 30 of the last fiscal year of the District for which the Auditor will perform audit services for the District pursuant to this Agreement. Notwithstanding anything else in the Agreement, as amended, to the contrary, the Auditor shall have the unilateral right to cancel the Agreement in the event the District fails to pay an undisputed invoice of the Auditor within forty-five (45) days after the District's receipt of the Auditor's invoice. As a prerequisite to terminating the Agreement, the Auditor must provide the District with thirty (30) days written notice of the Auditor's termination of the Agreement to the District after which the District can pay the

Auditor's outstanding unpaid invoice and the District's payment will cancel the Auditor's termination of the Agreement.

SECTION THREE. In addition to the extension of the term of the Agreement through the completion of the audit for the District's fiscal year ending September 30, 2018, as described in Section One above, the parties also agree to extend the term of the Agreement for an additional term for the Auditor's preparation of the District's annual audit for the fiscal years ending September 30, 2019, September 30, 2020, and September 30, 2021. The not to exceed audit fee for the Auditor's preparation of the District's annual audit for the District's fiscal year ending September 30, 2019, is \$ \_\_\_\_\_, and the not to exceed fee for the completion of the District's annual audit for the District's fiscal year ending September 30, 2020, is \$ \_\_\_\_\_, and the not to exceed fee for the completion of the District's annual audit for the District's fiscal year ending September 30, 2021, is \$ \_\_\_\_\_.

SECTION FOUR. Notwithstanding anything else contained in the Agreement, as amended, to the contrary, to the fullest extent permitted by law the Auditor 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 Auditor'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 Auditor or anyone directly or indirectly employed by the Auditor 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 rights or obligations of indemnity which would otherwise exist under the Agreement. Auditor 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 Auditor 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 Auditor of the liability and obligation to defend, hold harmless, and indemnify District as set forth herein.

SECTION FIVE. Notwithstanding anything else contained in the Agreement, as amended, 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 SIX. Venue of any legal proceedings shall be in Fort Myers, Lee County, Florida, and Florida law shall be the choice of law.

SECTION SEVEN. To protect the privacy and provide for the security of any protected health information, as such is defined by the Health Insurance Portability and Accountability Act of 1996, as amended from time to time, and the regulations and policy guidelines thereunder ("HIPAA") the District may require the Auditor to enter into a HIPAA business associate agreement in the standard form used by the District with others.

SECTION EIGHT. No subcontractors shall be used to perform any audit services; however, subcontractors may be used to perform related services, but only upon prior written approval of the District. Any such subcontractors will be subject to the same restrictions on the use of the District's information and records as apply to the Auditor under the Agreement between the District and the Auditor. The Auditor will be as responsible for any act done by any of its subcontractors as it is for its personnel under this Agreement between the District and the Auditor.

SECTION NINE. If any portion of this Amendment or the Agreement is for any reason held or declared to be unconstitutional, invalid, or void, by a Court of competent jurisdiction, the remainder of this Amendment or the Agreement shall not be affected thereby and all the remaining parts of this Amendment or the Agreement shall remain in full force and effect.

SECTION TEN. Except as amended herein, all of the terms, conditions, provisions, and agreements of the parties as stated in the Agreement shall remain in full force and effect and are restated herein as if fully set forth. In particular, and not in way of limitation, the description of the Auditor's scope of work in providing the annual audit services to the District pursuant to the Agreement and this Amendment is described in the proposal of the Auditor attached hereto and expressly made a part hereof as Exhibit "B".

SECTION ELEVEN. This Amendment 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.

SECTION TWELVE. Delivery of an executed counterpart of this Amendment by facsimile or electronic mail shall be as effective as delivery of a manually executed counterpart of this Amendment. In proving this Amendment, 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 Tapply, Chairman

Attest: \_\_\_\_\_  
Print name: \_\_\_\_\_

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

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

**AUDITOR:  
BOY, MILLER, KISKER & PERRY, P.A.**

By: \_\_\_\_\_  
Print name: \_\_\_\_\_

Attest: \_\_\_\_\_  
Print name: \_\_\_\_\_

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

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