



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 (“Permit”) 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)* _____ 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 the date of Construction Completion and Issuance of Final Acceptance by the District

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, RMEC, LLC, 2223 McGregor Blvd, 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 a 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.

constitutes 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, and in 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.

h) 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.

i) 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, in the District Engineer's sole discretion.

j) 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.

k) 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.

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

m) 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.

n) 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.

o) 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.

p) 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.

q) 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.

r) 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 immediately remove the unauthorized improvements without further notice to the Permittee and at the sole expense of the Permittee and at no expense to the District.

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

t) 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 the 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.

u) 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.

v) 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.

w) 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.

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

20. As clarification of the District's rights and authority over the District's right of ways and the District's real and personal property, notwithstanding anything else contained in any policy, regulation, or standard of the District to the contrary, the District's right of ways and real and personal property, including the District's canals, roadways and driveway connections onto the District's roadways, cannot be used for any illegal purposes or for access to any parcels of land in the District where illegal uses are occurring. If any parcel of land in the District or the District's right of ways are being used for an illegal use, including uses in violation of the City of Bonita Springs Land Use Code, the District is authorized to take any and all action to terminate the illegal use of the District's right of ways up to and including the cancellation of any driveway permit onto a parcel of land where an illegal use is occurring and the extinguishment of any special use conditions or easements that have been previously granted by the District for the benefit of a parcel of land in the District, said District authorization to be exercised by the Board of Supervisors in the sole discretion of the District Board of Supervisors, without claim or recourse by the owner of the parcel of land where the illegal use is occurring. The illegal use of the District's right of ways or the use of the District's right of ways to access a parcel of land where an illegal use is occurring, including an illegal use under the City of Bonita Springs Land Use Code, constitutes a trespass on the District's right of ways which can be corrected and stopped by the District through any legal means, including but not limited to the District notifying the City of Bonita Springs of the illegal use and requesting a permit cessation/suspension or requesting the use of a code enforcement action against the land owner who is performing the illegal use.



SAN CARLOS ESTATES WATER CONTROL DISTRICT

By: _____

Attest: _____

Printed Name: _____

Printed Name: _____

Title: _____

Date: _____

Date: _____

OWNER:

Signature: _____

Attest: _____

Printed Name: _____

Printed Name: _____

Date: _____

Date: _____

CONTRACTOR:

Signature: _____

Attest: _____

Printed Name: _____

Printed Name: _____

Date: _____

Date: _____

AGREEMENT EXHIBIT A:

OWNER'S "BENEFITTED REAL PROPERTY" LEGAL DESCRIPTION

(Provide legal description as it appears on the Property Deed or similar conveyance)





AGREEMENT EXHIBIT B:

**SAN CARLOS ESTATES WATER CONTROL DISTRICT
(SCEWCD)**

**ACCESS AND RIGHT OF WAY USE PERMIT
(To be provided by SCEWCD)**

