

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: October 7, 2014

Consent Regular

Public Hearing

Department

Submitted By: County Attorney's Office

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: First Amendment to Stipulated Settlement Agreement in the alternative dispute resolution proceeding styled, In re Complaint No.: C-2011-04010004, Petitioner Anshei Emuna Congregation, 16191 S. Jog Road, Delray Beach, FL, Property ID.#00-42-46-27-00-000-3900.

Summary: In 2011, Anshei Emuna Congregation ("the Temple") and T-Mobile Inc., filed a petition for alternative dispute resolution, pursuant to Fla. Stat. Sec. 70.51, to resolve pending code enforcement violations arising from the petitioners failure to install an approved Alternative Landscaping Plan before installing a cell-phone tower on the Temple property. The petitioners took the position that the Alternative Landscaping Plan related to development that was contemplated, but never developed, on the southern portion of the Temple's original site and should not be required for development on the Temple's existing site.

The parties executed a settlement agreement in the dispute resolution proceeding, which required, in part, that the Temple and T-Mobile remove invasive species from an existing thirty-foot ficus hedge on the Temple property and install additional vegetative material in the hedge, so that the hedge could serve as an opaque barrier between the Temple and the neighboring homes.

In spite of the Temple and T-Mobile's best efforts, the additional plantings have not restored the hedge to opacity, after the removal of the invasive species. The First Amendment to the Settlement Agreement allows the petitioners to plant no less than twenty-five (25) areca palms on the Temple's property, in order to make the hedge an opaque barrier. The First Amendment also requires the Temple and T-Mobile to expand the existing irrigation system, to further ensure the viability of the hedge. Staff recommends approval of the proposed First Amendment to the Settlement Agreement, as consistent with the intent of the parties in executing the original settlement agreement. District 5 (ATP)

Attachments:

1. Proposed First Amendment to Stipulated Settlement Agreement

Recommended By: 

9/18/14

Date

Approved By: _____

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>20 15</u>	<u>20 16</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>_____*</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
No. ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included In Current Budget? Yes _____ No _____

Budget Account No.: Fund _____ Department _____ Unit _____
 Object _____ Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

* No Fiscal impact.

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

Susan Neary 9/19/14
 9/19/14 OFMB
 9/19/14

Dr. J. Jacobson 9/23/14
 Contract Dev. and Control
 9-23-14 Wheeler

B. Legal Sufficiency:

Chry Taylor Petuck
 Assistant County Attorney

C. Other Department Review:

Rebecca J. Colledge
 Department Director

Background and Justification:

The Temple owns a synagogue, located at 16191 S. Jog Road, Delray Beach, Florida. In February, 2006, the synagogue requested a small scale land use amendment to the County's Comprehensive Plan, and a development order amendment to delete 1.5 acres from the southern portion of the Temple Anshei Emuna site, which was originally approved in 1980, to accommodate a proposed medical office building.

The neighboring Bristol Pointe residential community objected to the proposed medical office building, and a private agreement between the applicants and the Bristol Pointe community was negotiated, which required that an Alternative Landscape Plan be submitted to the County for the entire western property line between the Bristol Pointe Community and both the Temple site and the proposed medical office building site. In September, 2006, the Development Review Officer (DRO) approved final site plans for the Temple and medical office parcels, both of which reflected the Alternative Landscape Plan.

In June, 2009, T-Mobile submitted an application to install a 100-foot, camouflaged cell-phone tower at the synagogue site, pursuant to a lease from the Temple. The site plan submitted by T-Mobile as part of its application included the previously approved Alternative Landscape Plan. In November, 2009, the final site plan for the cell phone tower was approved by the DRO. Building permits were applied for and, in December 2010, a final electrical inspection was conducted. The final electrical inspection contained a note indicating that no power should be released until all other inspections are passed. Neither T-Mobile nor the Temple installed the Alternative Landscape Plan. Without installation of the Alternative Landscape Plan, T-Mobile was not entitled to a final certificate of occupancy for the cell phone tower. In spite of its failure to complete the requirements of the approved site plan, T-Mobile connected the cell phone tower to power through the Temple's irrigation system

Palm Beach County cited the Temple for failure to obtain a certificate of occupancy prior to connecting the cell phone tower to power in Complaint Number C-2011-04010004. Before the code enforcement complaint was brought to hearing, the Temple and T-Mobile Inc., petitioned, pursuant to F.S. §70.51, for alternative dispute resolution proceedings, alleging that the required implementation of the Alternative Landscape Plan was an unreasonable burden on the property owner. Bristol Pointe Homeowner's Association intervened in proceeding as an interested party.

The parties mediated the dispute at hearings in front of Special Magistrate Mark Berman on November 1, 2011, and March 19, 2012. Subsequent informal negotiations also occurred, resulting in a Settlement Agreement, approved on July 12, 2012. Under the agreement, Temple and T-Mobile paid \$25,000.00 to the Bristol Pointe Homeowner's Association for additional landscaping materials to mitigate the visual impact of the cell-phone tower. The Temple and T-Mobile also installed and continue to maintain additional camouflage material for the cell-phone tower. Further, the Temple obtained a variance to maintain a thirty-foot ficus hedge that exists on the Temple's property and removed invasive materials from the hedge. The Temple and T-Mobile installed additional plantings to ensure that the ficus hedge provided an opaque barrier between the parcels, however, the additional plantings did not survive.

Accordingly, the parties have developed the First Amendment to the Settlement Agreement, which provides for the planting of no less than twenty-five (25) areca palms on the Temple property, adjacent to the thirty-foot ficus hedge, in order to establish an opaque barrier between the parcels. The First Amendment to the Settlement Agreement also provides that the Temple and T-Mobile will expand the irrigation system to provide sufficient water to the landscape barrier. The additional plantings and irrigation system are required to be completed no later than November 17, 2014. The remainder of the original Settlement Agreement remains effective.

In the Matter of Request for
Relief from Code Enforcement
Pursuant to 70.51(3) F.S.
Complaint No.: C-2011-04010004
Anshei Emuna Synagogue
16191 S. Jog Road, Delray Beach, FL
Property ID #: 00-42-46-27-00-000-3900

FIRST AMENDMENT TO STIPULATED SETTLEMENT AGREEMENT

This First Amendment to Stipulated Settlement Agreement ("**Amendment**") is made by and between Palm Beach County, a political subdivision of the State of Florida ("the **County**" or "**PBC**"), Anshei Emuna Congregation, Inc., a Florida non-profit corporation ("**AEC**"), and T-Mobile USA Tower LLC, a Delaware limited liability company ("**T-Mobile**"), as successor in interest to T-Mobile South LLC, (each, a "**Party**" and collectively, the "**Parties**"), with the consent of Bristol Pointe Homeowner's Association ("**Bristol Pointe HOA**," who joined in the original action as an affected party in interest.

Whereas, AEC and T-Mobile South LLC ("**TMS**") entered into a Site Lease dated June 30, 2009 (as amended, the "**Lease**") pursuant to which TMS leased a portion of AEC's property (the "**Site**") located at 16191 South Jog Road, Delray Beach, Florida (the "**Property**"); and

Whereas, County, AEC, and TMS are parties to a Stipulated Settlement Agreement dated June 26, 2012 (the "**Agreement**"), to which Bristol Pointe HOA consented and which, among other things, required TMS to implement a landscaping plan to mitigate the visual impact of its antenna facilities on the Property; and

Whereas, TMS assigned its interest in the Lease to T-Mobile on November 28, 2012; and

Whereas, T-Mobile entered into a Master Prepaid Lease with CCTMO LLC on November 30, 2012 which granted CCTMO LLC certain rights to manage and operate the Site; and

Whereas, T-Mobile and AEC have entered into an agreement that will result in the satisfaction of the terms and conditions of the Agreement and this Amendment, and will provide for the ongoing maintenance of the landscaping of the Property; and

Whereas, in recognition of the foregoing, the Parties desire to amend the Agreement as follows:

1. **RECITALS**. The above recitals are true and correct and incorporated herein as a binding part of this Amendment.

2. ACTIONS. AEC will:

- (a) Trim the top and sides of the existing ficus hedge on the Property to allow additional sunlight to reach supplemental plantings, defined below. AEC will not trim the ficus hedge to a height shorter than thirty (30) feet, and will maintain the ficus hedge at a height not less than thirty (30) feet.
- (b) Install 25-gallon Areca Palms (the "Trees") on the Property in the approximate locations depicted on attached Exhibit A, which is incorporated herein by this reference, to fill in any areas of the ficus hedge that are not presently opaque as follows:
 - i. The Parties do not anticipate that more than fifty (50) Trees will be required, but agree that not less than twenty-five (25) will be installed, to fill in areas of the ficus hedge that are not presently opaque, however, nothing in this section relieves T-Mobile and AEC of the responsibility of rendering the barrier opaque. Regardless of the number of Trees required to accomplish opacity, the number of Trees required to be installed above the twenty-five tree minimum will remain at the determination of Palm Beach County, consistent with the provisions of the County's Unified Land Development Code.
 - ii. The spacing between the Trees will not exceed four (4) foot on center and the plants will be a minimum of six (6) feet in height. AEC will be responsible to maintain both the height and width of the Trees as necessary, so that the Trees will serve and will continue to serve the purpose of maintaining opacity in the barrier between the two properties.
- (c) Seek and obtain permits for and install the irrigation system to irrigate the ficus hedge and Trees within the 15-ft Incompatibility Buffer on the West side of Property. AEC will seek and obtain from PBC's Zoning Division an administrative amendment to the Zoning-approved regulating plan applicable to the Site (FRP-1), to indicate the installation of the irrigation system for the ficus hedge and Trees within the 15-ft Incompatibility Buffer on the West side of Property, and to identify the number of Trees, after installation.

3. TIME FOR ACTIONS TO OCCUR. AEC will take all actions required under Paragraph 2 above, and request an inspection of the work by the County, no later than November 17, 2014. Paragraph 10 of the Agreement between the Parties shall govern inspection of the landscaping and issuance of subsequent permits/approvals by the County. If all Parties are acting in good faith but the work cannot be completed by November 17, 2014 due to force majeure or other reasons outside the Parties' control, there shall be a thirty (30) day extension of the deadline.

4. ONGOING MAINTENANCE. After taking the actions described above in Paragraph 2, AEC will be responsible for the ongoing maintenance, replacement,

watering, and care of the landscaping and barriers on the Property, however, nothing in this section prevents County from enforce its codes against all violators.

5. SATISFACTION OF AGREEMENT. The County acknowledges and agrees that, once AEC has completed the actions described above in Section 2, has passed inspection for both the landscaping, the irrigation system, and any outstanding building permits/approvals for the Cell Tower that formed the subject of the original action, and has obtained said building permits/approvals, AEC and T-Mobile will be deemed in compliance with the terms and conditions of the Agreement, as amended, except for the ongoing maintenance requirements specified in Section 2.c of the Agreement, which are to be performed by AEC, as per Section 4 of this Amendment.

6. ORIGINAL TERMS. The Parties agree that, except as expressly modified herein, the terms of the original Agreement shall remain effective.

Executed effective as of the date of execution by the last Party to sign.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
PALM BEACH COUNTY, FLORIDA

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____
Date: _____


APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: *Amey Taylor Petrick*
Name: Senior Assistant County Attorney
Title: 9/11/14

ANSHEI EMUNA CONGREGATION, INC.

By: *Eric Gordon*
Name: Eric Gordon
Title: President
Date: 9/5/14

T-MOBILE USA TOWER LLC

By: 
Name: Allan Tantillo
Title: Director, National Siting Policy
Date: _____

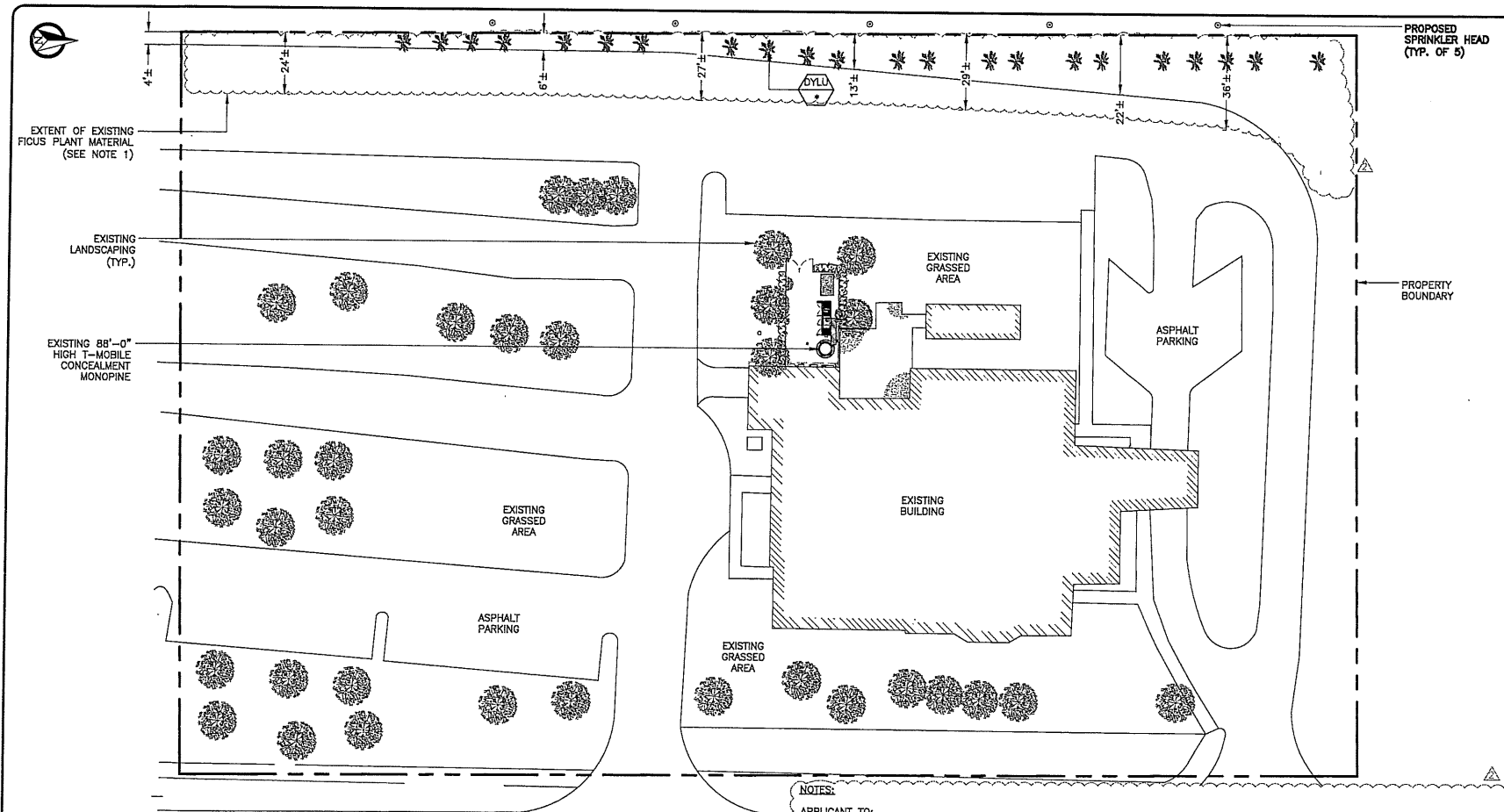
CONSENT & APPROVAL:

 9/3/14
T-Mobile Legal Approval
Edwin Lee

BRISTOL POINTE HOMEOWNER'S
ASSOCIATION

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A



REV	DATE	DESCRIPTION
A	2/27/12	PRELIMINARY
B	3/7/12	REVISED
0	8/9/12	FOR PERMIT
1	7/31/14	REVISED
2	8/4/14	REVISED

PROJECT NO.: 100-332.22
 DRAWN BY: O. JOHNSON
 CHECKED BY: M. ABBEY

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Telecom
 3400 LAKESIDE DRIVE
 SUITE 505
 MIAMI, FL 33027
 CERTIFICATE OF AUTHORIZATION 20214

T-Mobile
 stick together
 1300 CONCORD TERRACE
 SUITE 200
 SUNNYSIDE, FL 33323

NOT FOR CONSTRUCTION

DATE OF SIGNATURE: 8/1/14

DELRAY
 SYNAGOGUE
 WP1219H
 16189 JOG ROAD
 DELRAY BEACH, FL 33446
 SHEET NAME
 LANDSCAPE
 PLAN
 SHEET NUMBER
 L1

PROPOSED TREES, SHRUBS AND GROUND COVER						
SYMBOL	QUANTITY	BOTANICAL NAME	COMMON NAME	SIZE	SPECIFICATIONS	COMMENTS
DYLU	*	dypsis lutescens	ARECA PALM	6'	LOCATE AS DETERMINED IN FIELD	25 GAL. MAX 4'-0" O.C.

* QUANTITY TO BE DETERMINED IN FIELD BY APPLICANT AND PALM BEACH COUNTY TO ACCOMPLISH OPACITY AS DEFINED BY THE STIPULATED SETTLEMENT AGREEMENT BETWEEN THE PARTIES, AS AMENDED.

- NOTES:
 APPLICANT TO:
- TRIM THE TOP AND SIDE OF THE EXISTING FICUS EDGE ON THE PROPERTY TO ALLOW ADDITIONAL SUNLIGHT TO REACH SUPPLEMENTAL PLANTINGS. DEFINED BELOW. APPLICANT WILL NOT TRIM THE FICUS HEDGE TO A HEIGHT SHORTER THAN (30) FEET, AND WILL MAINTAIN THE FICUS HEDGE AT A HEIGHT NOT LESS THAN (30) FEET.
 - a. NOT WITHSTANDING THE FOREGOING, SOME OF THE FICUS HEDGES ARE LESS THAN THIRTY (30) FEET TALL AND WILL THUS NOT BE SUBJECT TO THIS HEIGHT REQUIREMENT, AS SHOWN.
 - INSTALL 25-GALLON ARECA PALMS (THE "TREES") ON THE PROPERTY IN THE APPROXIMATE LOCATION DEPICTED ON ATTACHED EXHIBIT A WHICH IS INCORPORATED HEREIN BY THIS REFERENCE, TO FILL IN ANY AREAS OF THE FICUS HEDGE THAT ARE NOT PRESENTLY OPAQUE AS FOLLOWS:
 - a. IT IS NOT ANTICIPATED THAT MORE THAN FIFTY (50) TREES WILL BE REQUIRED TO FILL IN AREAS IN THE FICUS HEDGE THAT ARE NOT PRESENTLY OPAQUE, HOWEVER THE NUMBER OF TREES REQUIRED TO ACCOMPLISH OPACITY WILL BE DETERMINED BY PALM BEACH COUNTY, CONSISTENT WITH THE PROVISION OF THE COUNTY'S UNIFIED LAND DEVELOPMENT CODE IN THE FIELD.
 - b. THE SPACING BETWEEN THE TREES WILL NOT EXCEED (4) FEET ON CENTER AND THE PLANTS WILL BE A MINIMUM OF (6) FEET IN HEIGHT. APPLICANT WILL BE RESPONSIBLE TO MAINTAIN BOTH THE HEIGHT AND WIDTH OF THE TREES AS NECESSARY, SO THAT THE TREES WILL SERVE AND CONTINUE TO SERVE THE PURPOSE OF MAINTAINING OPACITY IN THE BARRIER ALONG THE PROPERTY LINE.
 - c. INSTALL IRRIGATION FACILITIES TO PROVIDE NECESSARY WATER TO THE FICUS HEDGE AND SUPPLEMENTAL PLANTINGS AS REQUIRED TO SUSTAIN PLANT HEALTH AND MAINTAIN OPACITY.

SITE PLAN

