

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: December 18, 2018

<input checked="" type="checkbox"/>	Consent	<input type="checkbox"/>	Regular
<input type="checkbox"/>	Workshop	<input type="checkbox"/>	Public Hearing

Department: Engineering & Public Works
Submitted By: Engineering & Public Works
Submitted For: Roadway Production Division

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: an Agreement with Boynton Beach Associates XXVI, LLLP, a Florida Limited Partnership (Developer) to allow Palm Beach County (County) and Developer to collaborate on constructing a modified alignment of Flavor Pict Road, from State Road 7 (SR 7) to Lyons Road (Project).


SUMMARY: Approval of this Agreement will allow Palm Beach County (County) to work with the Developer to complete the construction of the Project on a straight alignment in lieu of the previously designed alignment (Curved Alignment). The western segment of the Project is from SR 7 to 2,300 feet east of SR 7. The County began construction of the Project on October 11, 2017, under contract with Rosso Site Development, Inc. (Rosso). While the Project was under construction, the Developer acquired ownership of the property immediately adjacent to the Project. During the development planning for the property, the Developer determined that the Curved Alignment on the western segment of the Project conflicted with the development plans of the property. The Developer subsequently contacted the Engineering Department, and offered to pay all additional costs to construct a road that would replace the Curved Alignment with a straight alignment on the western segment. The Developer also offered to dedicate all of the necessary rights-of-way, prepare the necessary design plans, and obtain all required permits to build the straight alignment on the western segment instead of the Curved Alignment. The Engineering Department reviewed the Developer's offer and recommends approval of this Agreement. District 5 (LBH)

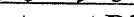
Background and Justification: The County owned right-of-way for the Project required the design of a Curved Alignment within the western segment of the Project, and Rosso began construction of the Project on October 11, 2017. Following the Developer's acquisition of the property and subsequent development planning after the start of Project construction, the

(Continued on Page 3)

Attachments:

1. Location Map
2. Agreement with Exhibits A, B, and C (2)

Recommended by:  26 Nov 2018
Department Director Date

Approved By:  12/6/18
Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures	\$ -0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	\$ **	-0-	-0-	-0-	-0-
# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes No
Does this item include the use of federal funds? Yes No X

Budget Acct No.: Fund__ Dept.__ Unit__ Object
Program

Recommended Sources of Funds/Summary of Fiscal Impact:

**This item has no fiscal impact. The Developer will be responsible for all costs, including change orders, related to the Stop Work Order and payment of all change orders in the RWS Contract including County administrative time.

C. Departmental Fiscal Review: . Alii Kovalainen

III. REVIEW COMMENTS

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

Shirley 11/27/16 OFMB 11/26 am 11/26
Ar. J. Javaloy 12/4/18 Contract Dev. and Control 12/3/18 TW

B. Approved as to Form and Legal Sufficiency:

Assistant County Attorney 12/6/2018
Assistant County Attorney

C. Other Department Review:

Department Director

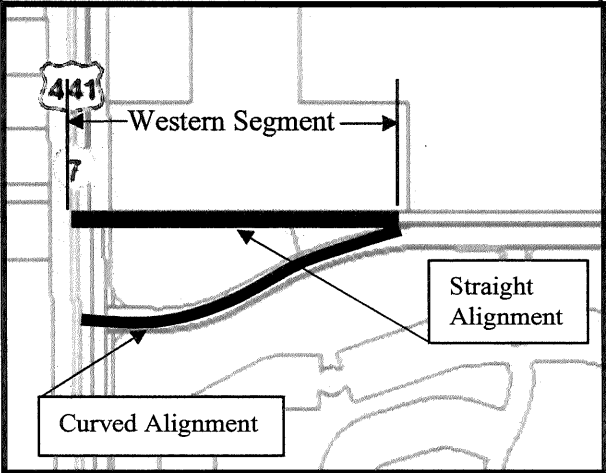
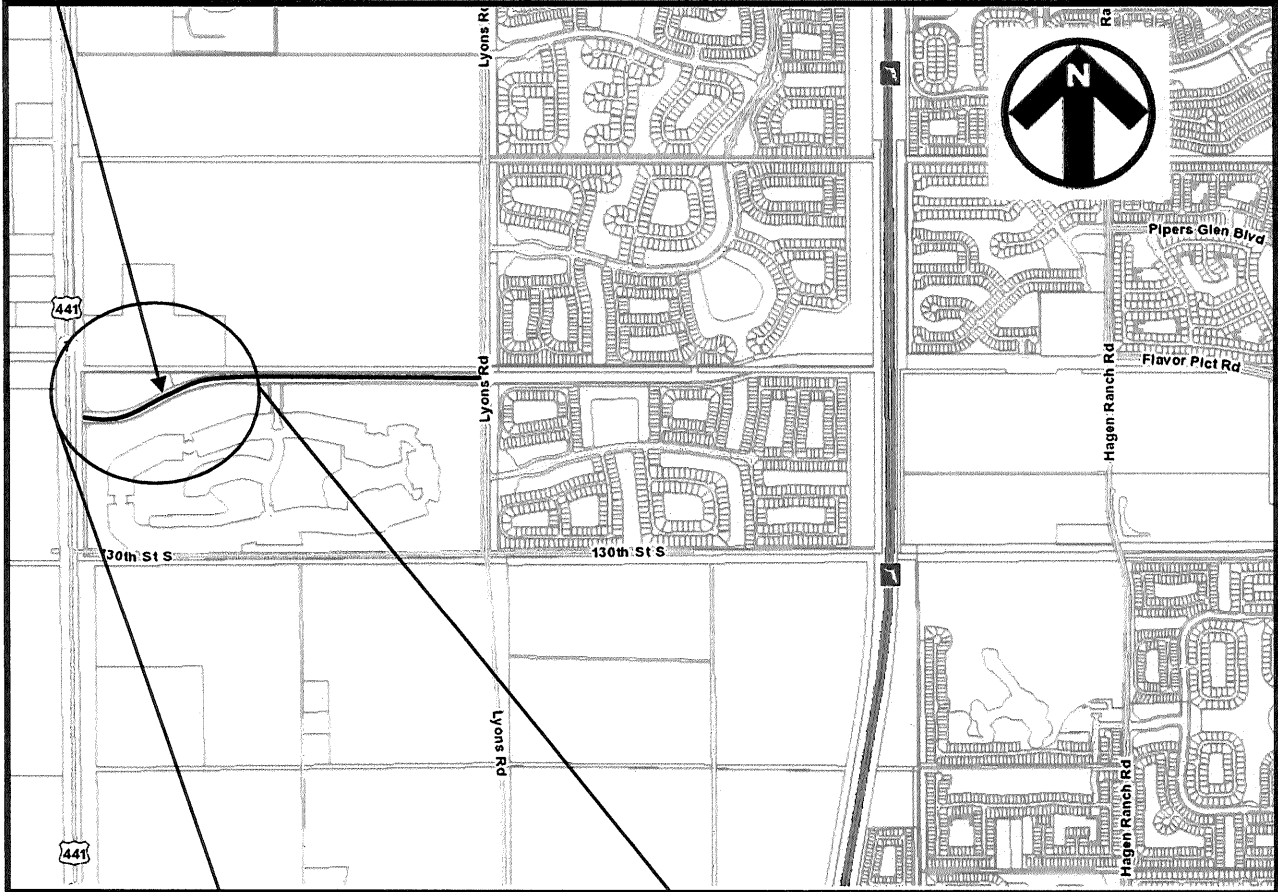
This summary is not to be used as a basis for payment.

Background and Justification: (Continued from Page 1)

Developer determined that a straight alignment in the western segment of the Project would better serve its site. The Developer contacted the Engineering Department and offered to dedicate all necessary right-of-way to the County to accommodate the straight alignment in lieu of the Curved Alignment, and further offered to prepare the design plans and secure the permits at the Developer's cost, and to pay all additional costs associated with construction of a straight alignment. The County issued a stop work order to Rosso on the Curved Alignment, but has allowed Rosso to complete construction of the remainder of the Project. Approval of this Agreement will allow the County and the Developer to proceed with designing, permitting and construction of the western segment of the Project on the straight alignment, and the Developer shall pay for any additional costs incurred by the County to construct it.

LOCATION MAP

FLAVOR PICT ROAD FROM STATE ROAD 7 TO 2,300' WEST OF LYONS ROAD



**AGREEMENT BETWEEN PALM BEACH COUNTY
AND BOYNTON BEACH ASSOCIATES XXVI, LLLP,
FOR CONVEYANCE OF RIGHT-OF-WAY, ENGINEERING DESIGN, PERMITTING
AND CONSTRUCTION OF
IMPROVEMENTS ON FLAVOR PICT ROAD, FROM SR7 TO 2300' EAST OF SR7
PALM BEACH COUNTY, FLORIDA
PALM BEACH COUNTY PROJECT NO. 2013526**

THIS AGREEMENT is made and entered into this _____ day of _____, 2018, by and between Palm Beach County, a political subdivision of the State of Florida by and through its Board of County Commissioners ("County"), and Boynton Beach Associates XXVI, LLLP, a Florida Limited Partnership, ("Developer"), individually as a "Party" and collectively as the "Parties."

W I T N E S S E T H:

WHEREAS, the County has entered into a construction contract with Rosso Site Development, Inc., ("Rosso") dated August 15, 2017 ("Rosso Contract") for the construction of Flavor Pict Road ("Road"), from SR7 to Lyons Road ("Project"); and

WHEREAS, the County's Department of Engineering and Public Works ("Department") has provided the Developer with a true, correct and complete copy of the Rosso Contract; and

WHEREAS, on or about October 11, 2017, the County has issued a Notice to Proceed to Rosso, and Rosso has commenced construction activities on the Project; and

WHEREAS, the original contract amount for the Rosso Contract is \$2,936,034.65, with a scheduled completion date of September 5, 2018; and

WHEREAS, subsequent to the Notice to Proceed, the Developer had acquired ownership of certain real properties adjacent to the Project ("Developer Property"), as shown on Exhibit "A" attached and incorporated herein; and

WHEREAS, the Developer has determined that the Project's design of a segment of the Road conflicts with the Developer's future planned development of the Developer Property, and Developer has requested a modified alignment of the western segment of the Road ("Reconfigured Western Segment"); and

WHEREAS, the Reconfigured Western Segment includes design and construction of a bridge at the LWDD E-1 canal; and

WHEREAS, the Developer has requested that the County terminate (or suspend) construction on a segment of the Project from SR7 to approximately station 123+22.33 ("Western Segment of the Project"), as shown on the Project plans, a portion of which is attached and incorporated herein as exhibit "B;" and

WHEREAS, the Department has issued a temporary stop work order to Rosso, to stop work on the Western Segment of the Project ("Stop Work Order"); and

WHEREAS, Rosso has continued work from approximately station 123+22.33 to Lyons Road, ("Eastern Segment of the Project"), as shown on Exhibit C; and

WHEREAS, the Reconfigured Western Segment would be constructed under a new contract ("RWS Contract").

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Developer and the County agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.
2. Purpose. The purpose of this Agreement is to set forth the Parties' respective roles and obligations regarding the design, construction, inspection and funding of the improvements to be carried out in relation to the Project.
3. Developer Responsibilities
 - a. Developer acknowledges and agrees that the Stop Work Order will result in additional costs to the County. Developer understands and agrees that it shall be responsible for payment of all costs, including change orders, related to the Stop Work Order.
 - b. Within ten (10) calendar days of receiving written requests from the County, Developer shall pay the County for all costs and expenses related to the Stop Work Order, including but not limited to, change orders and administrative time.
 - c. Developer acknowledges that work under the RWS Contract may result in additional costs above the original RWS Contract amount, due to, among other reasons, unexpected events during construction. Developer understands and agrees that it shall be responsible for payment of all change orders in the RWS Contract, including County administrative time, that are related to RWS Design Plans changes and unexpected or unforeseen site conditions ("Change Order(s)").
 - d. Developer agrees to promptly apply for, obtain and provide to the Department, all development order approvals (DOA) for the Developer Property that are required and necessary for the design and construction of the Reconfigured Western Segment.
 - e. Within 14 calendar days of the Effective Date of this Agreement, Developer agrees to procure the necessary engineering professionals to prepare RWS Design Plans, as defined herein, to obtain all required permits for the Reconfigured Western Segment, including the required bridge construction at the LWDD E-1 Canal ("RWS Design Plans").
 - f. Developer agrees to submit the RWS Design Plans to the Department for review and approval. RWS Design Plans submittals shall be made to the Department at the preliminary, 65% and 100% or final stage of design. Developer agrees to submit to the Department, all completed RWS Design Plans and permits pursuant to Section 3.g. below, within 120 days of the Effective Date. The Department agrees that the RWS Design Plans shall generally follow the same design criteria as the design of the Western Segment of the Project. If the Department elects to make changes to the design criteria for the Reconfigured Western Segment that significantly deviates from the design for the Western Segment of the Project, Developer shall not be responsible for additional costs associated with said changes, unless said changes are necessary to comply with the current edition of the Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, (commonly known as the Florida Greenbook).
 - g. Subject to Section 3.h. below, Developer shall notify the Department when all approvals and permits for the Developer Property have been obtained by Developer. Within thirty (30) days of receiving a written request from the Department, Developer will convey to County the following property rights necessary to construct the Reconfigured Western Segment: (1) rights-of-way in fee simple for the Reconfigured Western Segment ("ROW") which shall be free and clear of all encumbrances; (2) all easements for the Reconfigured Western Segment; and (3) a 20' wide Civic Tract along and adjacent to the south side of the ROW (collectively, "ROW Conveyances").
 - h. In the event the Developer fails to submit to the County, within one hundred and fifty (150) days of the Effective Date of this Agreement, final RWS Design Plans and permits, obtain all required DOA with all development permits necessary for the

County to construct the Reconfigured Western Segment, the Developer shall pay the County within thirty (30) days all outstanding costs related to this Agreement, including administrative and construction costs, in addition to any and all costs, pursuant to Sections 3.a. and b., above.

- i. Within 14 days of the Developer receiving Department's request for Developer Payment, as defined below, Developer shall deliver a check to the Department for the Developer Payment.
- j. Within fourteen (14) days of Developer receiving final accounting of the RWS Contract, Developer shall pay the County all outstanding amounts due.
- k. Upon Department's final acceptance of the construction of the Reconfigured Western Segment and final payment by the Developer of all outstanding amounts due under the RWS Contract, the County shall be responsible for the operation and maintenance of the Road, and Developer shall be relieved of all further financial obligations related to the Rosso and RWS Contracts.

4. County Responsibilities

- a. Upon the Department's receipt of the ROW Conveyances, the Department will review the documents for compliance with County's free and clear requirements. Upon approval of the ROW Conveyances, the Department will present an agenda item at the next available Board of County Commissioners ("BCC") meeting, requesting the BCC to release the County's right-of-way for the Western Segment of the Project, and to accept the ROW Conveyances.
- b. Upon final acceptance of the Rosso Contract, the Department shall perform and provide to Developer accurate accounting of the final contract amount ("Rosso Final Contract Amount"). The difference between the original Rosso contract amount and the Rosso Final Contract Amount shall be deemed as credit toward the RWS Contract ("Credit Amount"), which the Department will provide to Developer.
- c. Within one hundred and twenty (120) days of the Developer's compliance with the last of its conditions under Sections 3.b. through 3.g., above, the Department agrees to bid the RWS Contract.
- d. The Department will notify the Developer of the winning bidder, the amount for the RWS Contract, and the amount due from Developer toward the RWS Contract ("Developer Payment"). The Developer Payment is equal to the difference between the RWS Contract amount and the Credit Amount.
- e. Upon receiving Developer Payment, the Department will recommend approval of the RWS Contract by the BCC. The Department agrees to construct the Reconfigured Western Segment, pursuant to the terms of this Agreement.
- f. Department agrees to maintain and make available to the Developer, accurate accounting of the County's expenditures, as provided in Sections 3.b., 3.f., and 3.h. above.
- g. Department agrees to notify the Developer of a proposed change order under the RWS Contract, as soon as possible. Department shall grant the Developer three (3) business days to review and comment on the proposed change order before approving the change order, except in the case of an emergency. In an emergency, the Developer will be notified as soon as possible, but may not be afforded the time to review and comment. Notwithstanding anything stated above, the County has sole discretion and control over the management of the RWS Contract, including authority to approve any change orders.
- h. Upon final acceptance of the RWS Contract, the Department shall perform and provide to Developer accurate accounting of the final contract amount.

- i. In the event the Developer fails to submit to the County, within one hundred and fifty (150) days of the Effective Date of this Agreement, final RWS Design Plans and permits, obtain all required DOA with all development permits necessary for the County to construct the Reconfigured Western Segment, the County shall proceed to construct the Road as originally designed and permitted under the Rosso Contract, including the Western Segment of the Project. Notwithstanding, County's actions herein, Developer shall not be relieved of any of its responsibilities under Section 3, above.
5. Liability. Neither Party shall be deemed to assume any liability for the negligent or wrongful acts or omissions of the other Party. Nothing contained herein shall be construed as a waiver or expansion by the County of the liability limits established in Section 768.28 of the Florida Statutes. Liability for injury to personnel and the loss or damage of equipment shall be borne by the Party employing such personnel or owning such equipment. Developer shall protect, defend, reimburse, indemnify and hold County, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of Developer's performance of the terms of this Agreement or due to the acts or omissions of Developer.
6. Notice. Any notice or other communication required or permitted to be given under this Agreement shall be in writing (including facsimile or electronically) and shall be delivered, as elected by the Party, by means of courier or messenger service, by facsimile or email (followed by mailing of hard copy by U.S. mail) or by certified mail, postage prepaid, and certified return receipt requested to the following addresses or such other addresses as the Parties may provide to each other in writing:

As to County:

Tanya N. McConnell, P.E., Deputy County Engineer
Palm Beach County
Engineering and Public Works Department
2300 North Jog Road, 3rd Floor
West Palm Beach, FL 33411
Attn: Roadway Production Division

As to County's
Legal Representative:

Yelizaveta Herman, Esquire
Palm Beach County Attorney's Office
301 North Olive Avenue, Suite 601
West Palm Beach, FL 33401

As to Developer:

Larry Portnoy
Boynton Beach Associates XXVI, LLLP
1600 Sawgrass Corporate Suite 400
Sunrise, FL 33323

As to Developers'
Legal Representative:

Steve Helfman, Esquire
c/o G.L. Homes
1600 Sawgrass Corporate Pkwy, Suite 400
Sunrise, FL 33323

7. Legal Fees. Each Party shall bear its own costs or expenses, including reasonable attorney's fees, associated with the enforcement of the terms and conditions of this Agreement.

8. Amendments. Except as expressly permitted herein to the contrary, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless agreed to by the Parties in writing and executed in the same manner, as was this Agreement.
9. Venue. This Agreement shall be construed and governed by the laws of the State of Florida. Venue for any and all legal action necessary to enforce this Agreement shall be held in Palm Beach County. No remedy conferred upon either Party by this Agreement is intended to be exclusive of any other remedy existing at law, in equity or otherwise. No single or partial exercise by either Party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.
10. Preparation. Preparation of this Agreement was a joint effort of the Parties and should not be construed more severely against one Party than the other.
11. Non-Discrimination. The Parties agree that no person shall be excluded on the grounds of race, color, sex, age, national origin, disability, religion, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information from the benefits of or be subjected to any form of discrimination under any activity carried out by the performance of this Agreement.
12. Severability. In the event any provision hereof is held invalid by a court of competent jurisdiction, the remaining portions of the Agreement shall remain in full force and effect.
13. Entire Understanding. This Agreement represents the entire understanding of the Parties and supersedes all other negotiations, representations or agreements, written or oral, relating to this Agreement.
14. Inspector General. The County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of Developer, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor provided such Local Government is a special district that has previously and by separate written instrument agreed to be subject to said Inspector General's authority or is a municipality.
15. Contractual Relationship. County and Developer are and shall be, in the performance of all work, services and activities under this Agreement independent contractors and not employees, agents or servants of the other Party. All County employees engaged in the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to County's sole direction, supervision, and control. All Developer employees engaged in the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to Developer's sole direction, supervision, and control. The Parties shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Parties' relationship and the relationship of its employees to the other Party shall be that of an independent contractor and not as employees or agents of the other. The County and Developer do not have the power or authority to bind each other in any promise, agreement or representation without the prior written consent of the other Party.
16. Waiver. Any waiver by either Party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or other matter. The failure of either Party to enforce strict performance by the other Party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provisions or rights in that or any other instance.

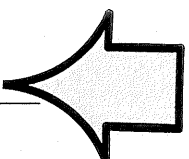
17. Legal Compliance. County and Developer shall abide by all applicable federal, State and local laws, orders, rules and regulations when performing under this Agreement. County and Developer further agree to the inclusion of this provision in all subcontracts issued as a result of this Agreement.
18. Convicted Vendor List. As provided in Sections 287.132-133, Florida Statutes, as may be amended from time to time, by entering into this Agreement or performing any work in furtherance hereof, County shall have its contractor certify that their affiliates, suppliers and sub-consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within thirty-six (36) months immediately preceding the date hereof.
19. Survivability. The obligations, rights, and remedies of the Parties hereunder, which by their nature are intended to survive the termination of this Agreement or the completion of the work related to this Agreement, shall survive such termination or work completion and inure to the benefit of the Parties.
20. No Third Party Beneficiaries. The Agreement is not intended to, nor shall be construed to create a third party beneficiary.
21. Effective Date. This Agreement shall be effective and binding upon the Parties hereto upon the date shown above, once the Agreement has been signed by both Parties and filed with the Clerk of the Court in and for Palm Beach County, Florida. ("Effective Date")

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals on the day and date first written above.

BOYNTON BEACH ASSOCIATES XXVI, LLLP by Boynton Beach XXVI Corporation, General Partner

By: [Signature]
Alan Fant, Vice President

PALM BEACH COUNTY, BY ITS
BOARD OF COUNTY COMMISSIONERS

By: _____ Mayor 

ATTEST:

By: [Signature]
Secretary or Assistant Secretary

ATTEST:

SHARON R. BOCK
CLERK & COMPTROLLER
By: _____
(Deputy Clerk)

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: [Signature]
Steven M. Helfman, Esq, General Counsel

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

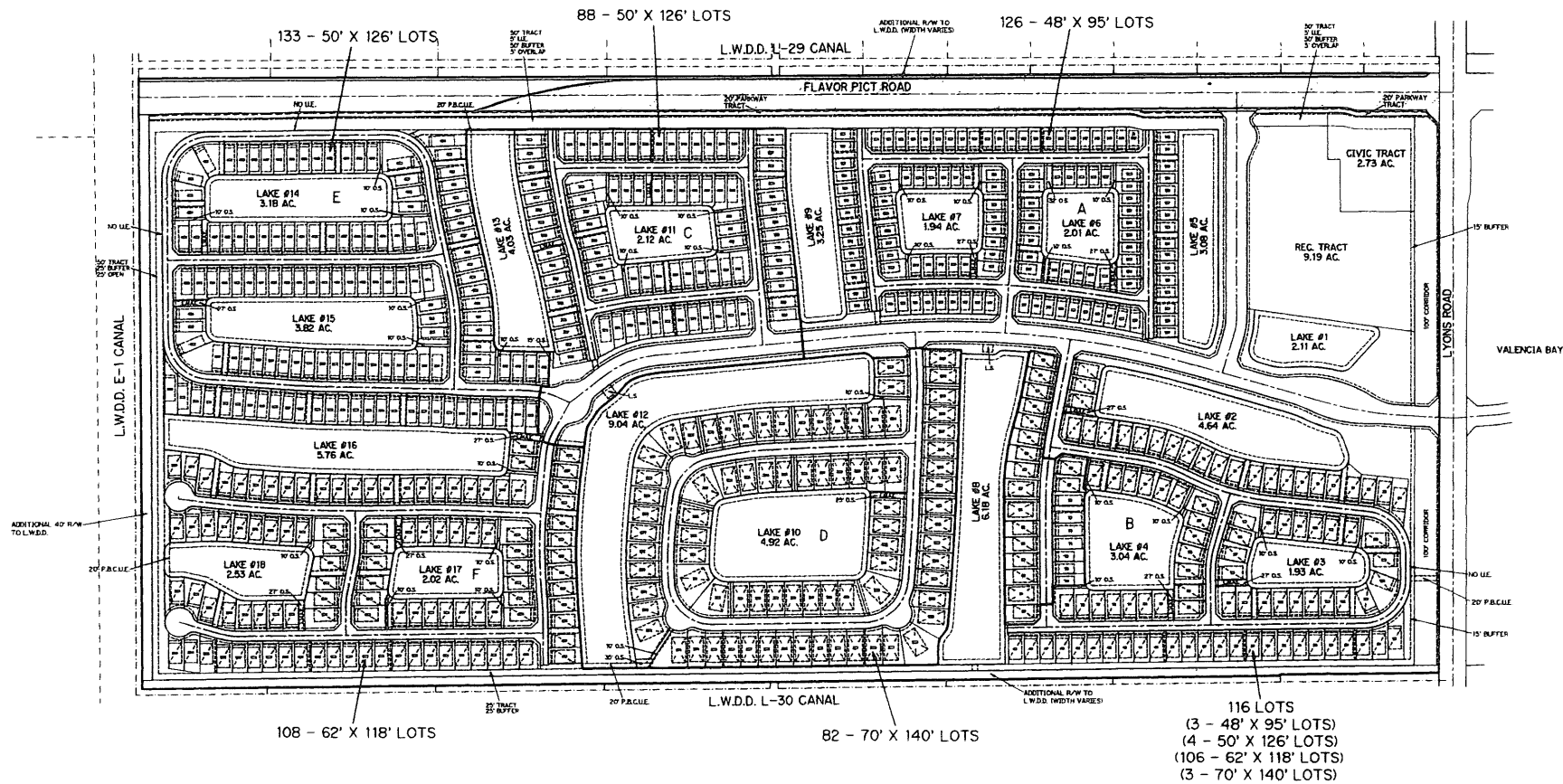
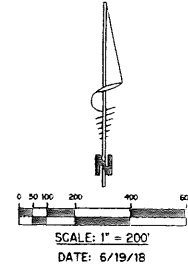
APPROVED AS TO TERMS
AND CONDITIONS

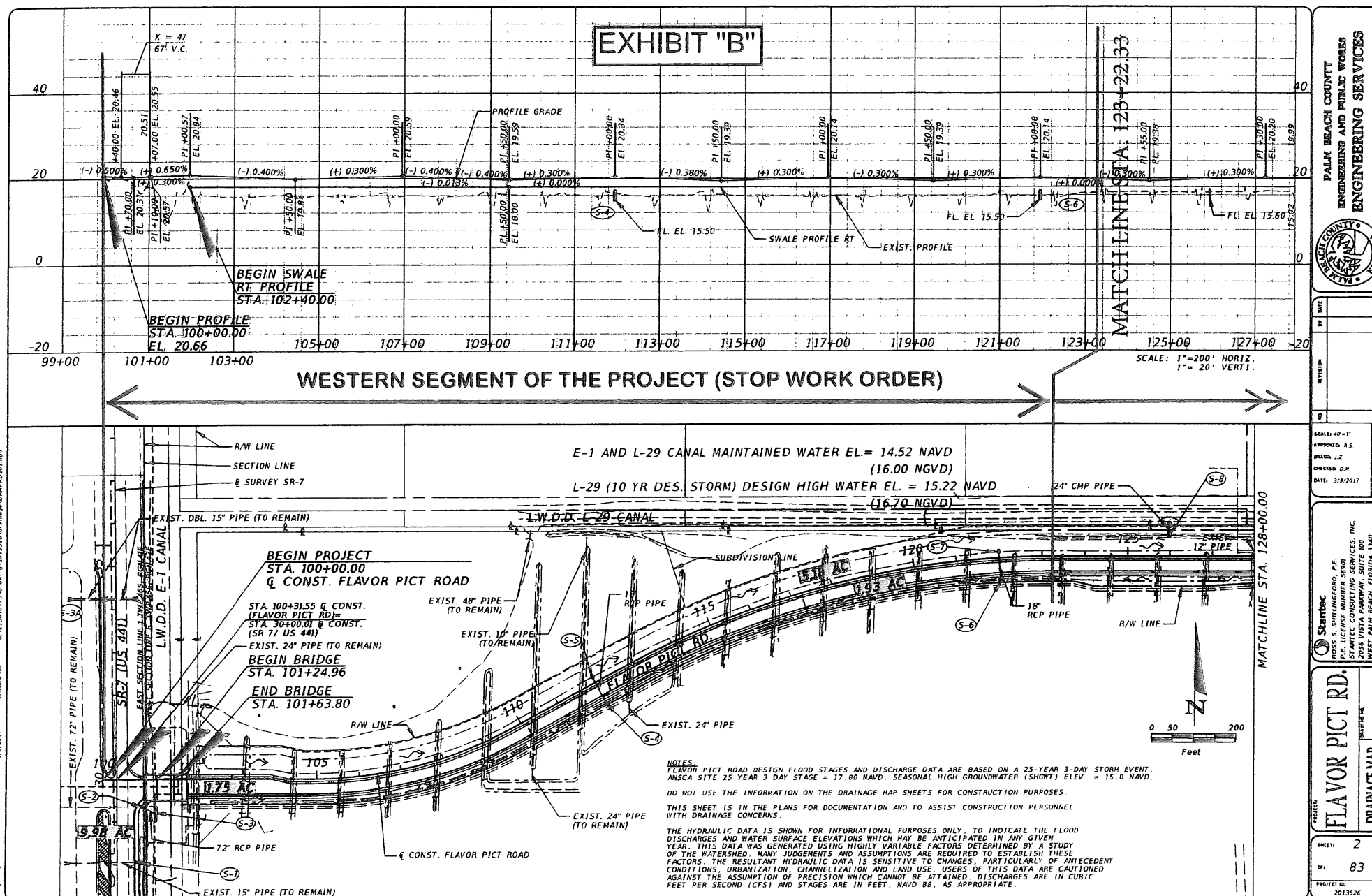
By: [Signature]
[Signature]

EXHIBIT "A"

SITE PLAN FOR DELRAY 282

TOTAL LOTS - 653
 48' X 95' ZERO LOT LINE LOTS - 129
 50' X 126' ZERO LOT LINE LOTS - 225
 62' X 118' ZERO LOT LINE LOTS - 214
 70' X 140' SINGLE FAMILY LOTS - 85
 TOTAL LAKE TRACTS - 65.60 AC.
 RECREATION TRACT - 9.19 AC.
 CIVIC TRACT - 2.73 AC.
 TOTAL ACREAGE - 270.36 AC.



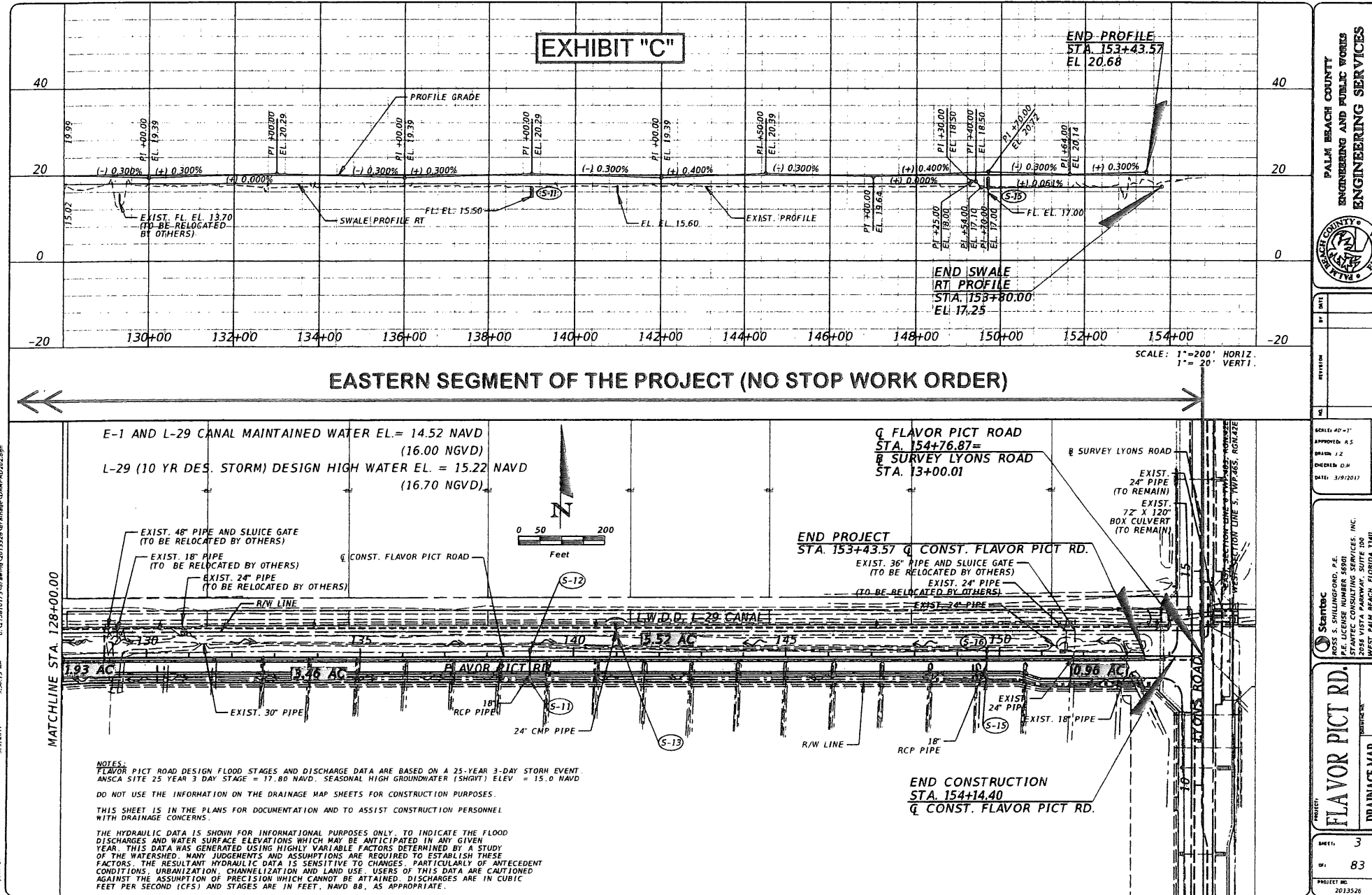


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11/9/2017

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PALM BEACH COUNTY
ENGINEERING AND PUBLIC WORKS
ENGINEERING SERVICES
P. O. BOX 3088 WEST PALM BEACH, FLORIDA

DATE	
BY	
REVIEW	
APPROVED	

SCALE: 40' = 1"
APPROVED: A.S.
DRAWN: J.Z.
CHECKED: D.M.
DATE: 3/9/2017
FILED: 0002703

Stantec
ROSS S. SHILLINGFORD, P.E.
P.E. LICENSE NUMBER 5690
STANTEC CONSULTING SERVICES, INC.
1000 WEST PALM BEACH BOULEVARD, SUITE 200
WEST PALM BEACH, FLORIDA 33411
CERTIFICATE OF AUTHORIZATION 0002703

PROJECT
FLAVOR PICT RD.
DRAINAGE MAP

SHEET: 3
OF: 83
PROJECT NO.: 2013526