

RESOLUTION NO. 2020- 376

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING A LICENSE AGREEMENT TO ALLOW USE OF AN ACCESS DRIVE ACROSS A PORTION OF COUNTY OWNED PROPERTY SOUTH OF COUNTY ROAD 208 AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE LICENSE AGREEMENT ON BEHALF OF THE COUNTY.

RECITALS

WHEREAS, St. Johns County (“County”) owns a tower site located on the south side of County Road 208; and

WHEREAS, A. Joseph Smith and M. Denise Smith (“Smith”) own the land south of and contiguous to the County’s property that they plan to use as a borrow pit site; and

WHEREAS, Smith has requested from the County use of an access drive that runs along the east side of the County property to access the borrow pit as an alternative to using Stephen Colee Road and in return has offered to make substantial improvements to the County property; and

WHEREAS, the County and Smith have agreed to enter into a License Agreement, attached hereto as Exhibit “A”, incorporated by reference and made hereof, setting forth the terms, conditions and provisions of the use of the access drive and the improvements to be made.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:

Section 1. The above Recitals are incorporated into the body of this Resolution and such Recitals are adopted as findings of fact.

Section 2. The Board of County Commissioners hereby approves the License Agreement and authorizes the County Administrator, or designee, to execute the agreement on behalf of the County.

Section 3. The Clerk is instructed to record the original License Agreement in the public records of St. Johns County, Florida.

Section 4. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners this 6th day of October, 2020.

**BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA**

By: [Signature]
Jeb S. Smith, Chair

ATTEST: Brandon J. Patty
Clerk of the Circuit Court & Comptroller

RENDITION DATE 10/8/20

By: [Signature]
Deputy Clerk



LICENSE AGREEMENT

THIS LICENSE AGREEMENT is made and executed this ____ day of _____, 2020, by and between **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, by and through its Board of County Commissioners, whose address is 500 San Sebastian View, St. Augustine, Florida 32084, hereinafter referred to as the "County", and **A. JOSEPH SMITH** and **M. DENISE SMITH**, husband and wife,, whose address is 5195 Stephen Colee Road, St. Augustine, Florida 32092, hereinafter referred to as the "Licensees".

WHEREAS, the County is the owner of certain property more particularly described on Exhibit "A", attached hereto and by reference incorporated and made a part hereof, hereinafter referred to as the "County Property"; and

WHEREAS, the County Property is located north of and contiguous to property owned by Licensees and more particularly depicted on Exhibit "B", attached hereto and by reference incorporated and made a part hereof, hereinafter referred to as the "Licensees' Property"; and

WHEREAS, the Licensees have requested that the County enter into this License Agreement authorizing the use of a certain portion of the County Property more particularly described on Exhibit "C", attached hereto and by reference incorporated and made a part hereof, hereinafter the "Access Drive," for non-exclusive ingress and egress over, across, and on the Access Drive for the purpose of accessing Licensees' Property.

NOW, THEREFORE, in consideration of the respective agreements of the parties herein contained, the County does hereby license, without warranty, to the Licensees, the temporary use of the property mentioned above pursuant to the following conditions, provisions, and terms:

1. To use above-described Access Drive for an initial term of five (5) years, commencing on the date of execution of this License Agreement. Upon expiration of the initial term of this License Agreement, or any extension provided for hereafter, and provided Licensees are not then in default of this License Agreement, the parties shall have the option to renew this License Agreement for up to five (5) additional terms of five (5) years each, for a total term not to exceed thirty (30) years. This License Agreement shall automatically renew for each successive five (5) year term, on the same terms and conditions as contained herein, providing that Licensees are not then in default of this License Agreement and that neither party notifies the other in writing of intent not to accept such extension at least sixty (60) days prior to the end of the then current term.

2. Although the Licensees may enter and use the subject Access Drive for non-exclusive ingress and egress over, across, and on the Access Drive, to access Licensees'

Property, and for the purpose of use for Licensees only, the Licensees shall not be in possession of the Access Drive. The County shall possess and otherwise control all aspects of use of the Access Drive. This license shall be non-exclusive and Licensees will allow the continuance of any use or access by the County. Moreover, Licensees agree to allow the County to grant any easement it deems appropriate during the period of this license that burden the same Access Drive, so long as such easement does not substantially prevent Licensees' intended use of the Access Drive.

3. Licensees shall have the right to assign this License Agreement, with written consent of the County (which consent shall not be unreasonably denied), provided any assignment shall fully bind Assignee as a successor Licensee.

4. Licensees acknowledge that they have inspected the Access Drive and accept the License Agreement as-is with full knowledge of the condition of the Access Drive. The County makes no representations to Licensees with respect to the Access Drive other than those set forth in this License Agreement.

5. Licensees agree that they shall be solely responsible for the maintenance, repair, and replacement of the Access Drive and any related improvements or landscaping, including mowing grass and trimming trees. Licensees shall keep the Access Drive in good condition and repair and in compliance with all applicable laws, rules, regulations and ordinances, in their use and operation of the Access Drive.

6. In consideration for use of the Access Drive, the Licensees shall make the following improvements to the County Property and subject Access Drive at their sole cost and expense prior to the operation of any borrow pit on Licensees' Property, with the exception of subparagraphs c. and d., below, which Licensee shall complete no later than six (6) months after the approval of the borrow pit:

a. Expand a chain link fence. The Licensees shall extend the existing side fencing to connect said existing fencing across the County property parallel to County Road 208 and shall install a locking gate at the entrance to the Access Drive. The Licensees shall provide the County with the key or code for the locking gate.

b. Stabilize the Access Drive. The Licensees shall improve the Access Drive to a 20-foot wide stabilized surface following the general path of the drive that served the existing borrow pit on the County Property and providing a 20-foot buffer to and along the eastern property line of the County Property. The Licensees shall submit final plans for the improvement to the County for review and approval.

c. Demolish an existing derelict mobile home. The Licensees shall demolish and remove an existing derelict mobile home located on the County Property, including removal of the septic drain field, capping the water service, and removal and disposal of all demolition debris. Licensees, or their contractors, may require further authorization from the County to access the County Property.

d. Tree Removal. The Licensees shall remove any dead or diseased trees located elsewhere on the County Property. Licensees, or their contractors, may require further authorization from the County to access the County Property.

e. Stabilized Construction Entrance. The Licensees shall construct, or have constructed, a stabilized construction entrance to help reduce vehicle tracking of sediments. The Licensees shall sweep the paved street adjacent to the entrance daily to remove any excess mud, dirt, rock, or other material. All trucks hauling material from the Licensee's Property shall be covered with a tarpaulin at all times when using the Access Drive.

7. The Licensee shall not be permitted to make or suffer any waste or unlawful, improper or offensive use of the Access Drive.

8. The County and its agents, servants, and employees shall have and hereby reserve their right and privilege, at all reasonable times during the term of this license, to enter said Access Drive to examine and inspect the same. The Licensees shall not cause or permit any use of the Access Drive for other than those uses specifically provided for in this license.

9. The Licensees do hereby release and discharge and further will indemnify and save harmless the County from any and all claims for personal injuries or property damages during the existence of this license, arising in any manner by virtue of the use or occupancy of such Access Drive by the Licensees, that the Licensees do hereby further agree to indemnify and save harmless the County from liability for damage, injury or death to any person or persons arising out of the use of said property, or from the lack of keeping same in good repair and order, or from the negligent operation of same, or for any other cause for any nature whatsoever, provided such damage, injury or death is not due to County's own negligence.

10. The Licensees shall conform to and comply with all laws, orders and regulations of the federal, state, county and municipal governments and all of their departments and bureaus.

11. If Licensees fail to comply with or abide by any term, provision or stipulation in this license, and such default continues for sixty (60) days after receipt of written notice of default, the County may terminate this license and terminate Licensees' use of said Access Drive due to Licensee's failure to comply with the terms of this license.

12. The waiver of County of any such breach hereof on the part of the Licensees, or any time or from time to time, shall not be deemed, held, or construed as a waiver of any subsequent breach, or imply any further indulgence.

13. Notwithstanding any other provision of this license, the Licensees hereby release any rights they have in regards to the coupling of this license with an interest, other than the rights granted in this License Agreement. If sometime in the future, the County determines that the licensed portion of the property is needed for another public purpose, the County agrees to

give twelve (12) months written notice to the Licensees of its intent to terminate this license, without further liability between the parties except as expressly and specifically provided for in this license. The foregoing notice requirement shall not apply in the event the Access Drive is needed for disaster relief purposes as a result of a declared state of emergency by any unit of federal, state, or local government. In such event, the County shall provide the Licensees with as much notice as is reasonably practicable under the circumstances, and this license shall be suspended only for the duration of the emergency.

14. Licensees reserves the right to terminate this license by giving the County a sixty (60) day written notice advising of such unsuitability and electing to terminate this License Agreement at the end of the 60-day period.

15. This License Agreement shall be construed in accordance with the laws of the State of Florida. Venue for any legal, equitable, or administrative dispute arising in connection with this License Agreement shall lie exclusively in St. Johns County. Should any such dispute arise, the prevailing party shall be entitled to receive reasonable costs and attorney's fees incurred in connection with the dispute.

16. If any part of this License Agreement, or any application thereof, is declared invalid for any reason, then such part, or the proscribed application, shall be severable, and the remaining portions of this License Agreement, and all applications thereof, not having been declared invalid shall remain in effect.

17. The execution of this License Agreement shall not constitute a waiver by either party hereto of any right or claim of right to the subject lands or to use the subject lands.

18. Licensees shall leave the Access Drive, including any and all improvements thereto, in good condition upon termination or expiration of this license or any renewals thereof.

19. Nothing in this agreement shall be construed to relieve the Licensees from obtaining all necessary approvals and permits from the appropriate governmental agencies to accomplish the improvements required by paragraph 6, above, including but not limited to development permits, construction plan approval, clearance sheets, building permits and septic permits. Further, nothing in this agreement shall be construed as granting any required approval or permit relating to the use of the Licensees' Property, including but not limited to any special use permit or construction plan approval for the operation of a borrow pit.

[SIGNATURES APPEAR ON FOLLOWING PAGES.]

IN WITNESS WHEREOF, the undersigned parties have executed this License Agreement on the day and year first above written.

ST. JOHNS COUNTY, FLORIDA

By: _____
Hunter S. Conrad
County Administrator

ATTEST: Brandon Patty, Clerk

By: _____
Deputy Clerk

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 2020, by Hunter S. Conrad as County Administrator for St. Johns County, Florida.

Notary Public
My Commission Expires: _____

Personally Known or Produced Identification
Type of Identification Produced

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF WITNESSES:**

Witness: Brooke Hughes
Print Name: Brooke Hughes

Witness: Ethan Longo
Print Name: Ethan Longo

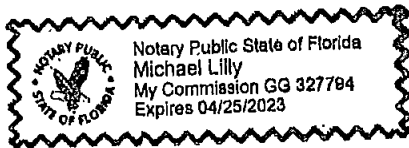
LICENSEES:

A. Joseph Smith
A. Joseph Smith

M. Denise Smith
M. Denise Smith

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 14th day of August, 2020, by A. Joseph Smith and M. Denise Smith.



Michael Lilly
Notary Public
My Commission Expires: 04/25/2023

Personally Known or Produced Identification
Type of Identification Produced

[REDACTED]

Exhibit "A"

A PART OF THE JOSE POPY GRANT, SECTION 38, TOWNSHIP 7 SOUTH, RANGE 28 EAST, ST. JOHNS COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: FOR A POINT OF REFERENCE, COMMENCE AT THE SOUTHEAST CORNER OF SAID SECTION 38; THENCE SOUTH 88°01'02" WEST, ALONG THE SOUTH LINE OF SAID SECTION 38, A DISTANCE OF 1,320.47 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 88°18'32" WEST, ALONG SAID SOUTH LINE OF SECTION 38, A DISTANCE OF 419.46 FEET; THENCE NORTH 00°36'44" WEST, ALONG THE EASTERLY LINE OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORDS 220 PAGE 503 OF THE PUBLIC RECORDS OF SAID COUNTY, A DISTANCE OF 1,251.16 FEET TO THE SOUTHERLY RIGHT OF WAY LINE OF COUNTY ROAD 208 AS NOW ESTABLISHED AS A 66 FOOT RIGHT OF WAY; THENCE SOUTH 63°59'31" EAST, ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 146.66 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1,882.41 FEET; THENCE SOUTHEASTERLY, ALONG AND WITH THE ARC OF SAID CURVE AND SAID RIGHT OF WAY LINE, A CHORD BEARING OF SOUTH 59°04'10" EAST AND A CHORD DISTANCE OF 323.05 FEET TO THE POINT OF TANGENCY OF SAID CURVE; THENCE SOUTH 54°08'51" EAST, ALONG SAID SOUTHERLY RIGHT OF WAY LINE, A DISTANCE OF 13.70 FEET; THENCE SOUTH 00°43'26" EAST, ALONG THE WESTERLY LINE OF THOSE LANDS AS DESCRIBED IN OFFICIAL RECORD 1525 PAGE 1435 OF SAID PUBLIC RECORDS, A DISTANCE OF 1000.41 FEET TO THE POINT OF BEGINNING.

Exhibit "B"

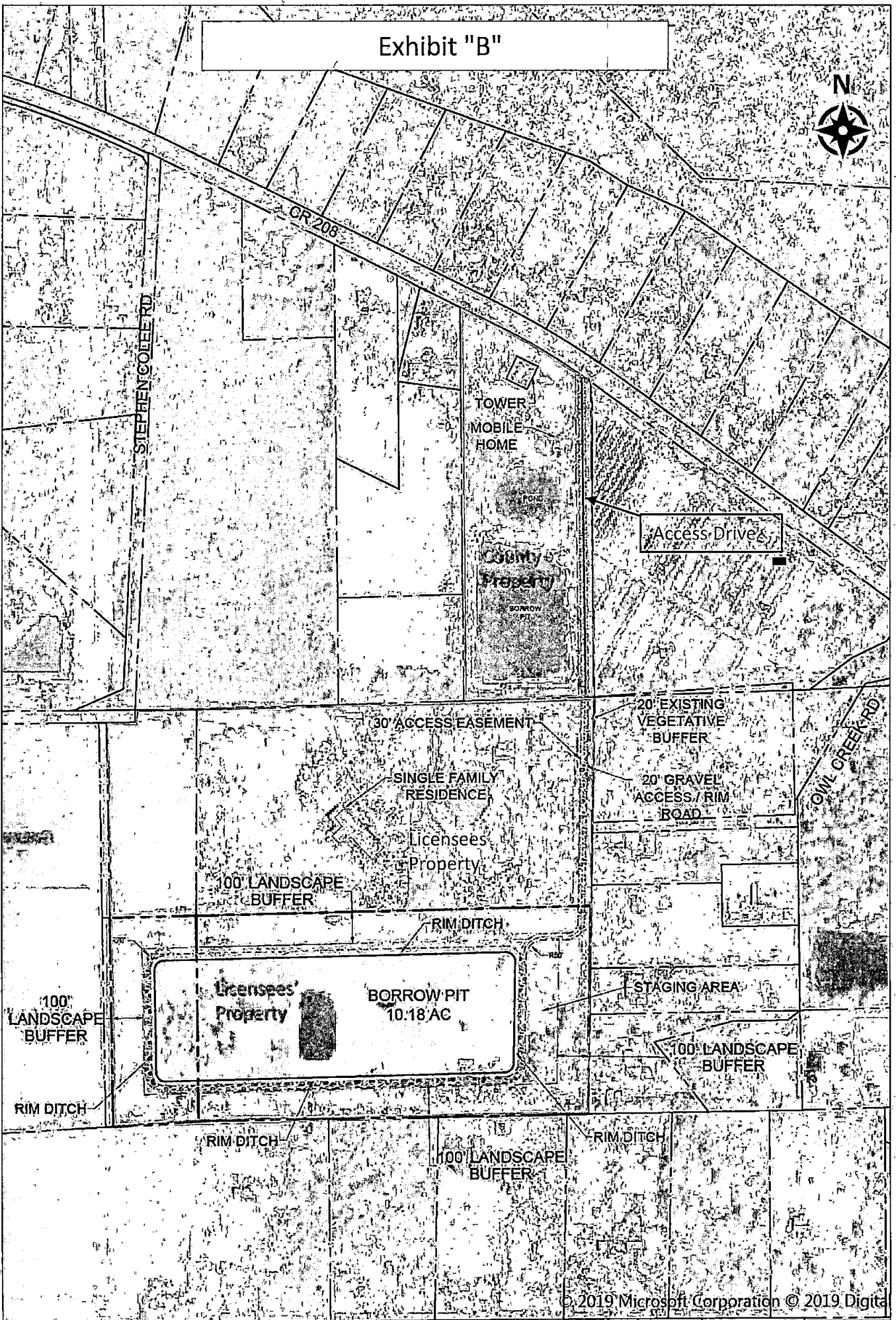


Exhibit "C"

A part of the Jose Papy Grant, Section 38, Township 7 South, Range 28 East, St. Johns County, Florida, being more particularly described as follows:

The East Thirty (30) feet, including the traveled road along the easterly property line, of that certain property described in deed recorded in Official Records Book 3494, page 1065, of the public records of St. Johns County, Florida.



February 11, 2020

Ms. Gail Oliver, P.L.S.
Land Management Systems Director and County Surveyor
St. Johns County
500 San Sebastian View, St. Augustine, FL 32084

Re: Joseph Smith License Agreement Request for 5865 CR 208

Ms. Gail Oliver,

On behalf of my client, Mr. Joseph Smith, I am pleased to share with you this request for a license agreement allowing for the use of the access drive located at 5865 CR 208 for ingress and egress serving a potential borrow pit development located south of the property on the parcel with the Parcel Identification Number: 029500-0000 (Smith Borrow Site).

The Smith Borrow Site is approximately 23.23 acres and is located immediately south of the client's residence whose address is 5195 Stephen Colee Road. While an access easement from Stephen Colee Rd could theoretically be achievable to serve the borrow pit, this would be less than ideal as Stephen Colee Road is quite narrow with approximately sixteen feet of edge-to-edge asphalt and ditches on either side making widening impractical. In addition, it is understood that the paving of Stephen Colee Road was part of an effort to use St. Johns County resources and equipment efficiently and reduce the linear feet of dirt roads in the County; however, current standards of stabilized subgrade were not incorporated into the improvement. While Stephen Colee Road has served its few residential users reasonably, a borrow pit operation could place unnecessary strain on the facility.

As an alternative that could be mutually beneficial to my client as well as St. Johns County, a license agreement is proposed which would provide Mr. Smith access to the Smith Borrow Site via 5865 CR 208 in exchange for certain improvements to the property. For background, St. Johns County purchased this 10.9-acre site with Parcel Identification Number: 030670-0000 (St. Johns County Site) in 2011 for the purpose of installing a communication tower. A borrow pit was in existence on the south end of the property when St. Johns County purchased the site and a trail road runs from CR 208 to and around the pit near the eastern boundary of the site. The property has since been developed with a 250-foot tall self-supporting tower with a collapse zone of 175 feet. This license agreement request proposes to use the existing driveway area to gain access to the proposed borrow pit in exchange for fencing the site for security, improving the access apron and stabilized access drive area, demolishing a derelict mobile home on the property, mowing the site, and removing any dead trees. As St. Johns County does not have immediate development plans for the balance of the site, these improvements would serve to better secure the site from trespassers and ready the site to be more marketable should development be planned in the future. The construction cost of all improvements proposed including mobilization and a 15% contingency allocation is estimated to be \$174,204.30.

Specifically, Mr. Smith proffers the following improvements to be made on the St Johns County Site:

- Expanding a chain link fence across the site: The tower area is fenced and there are adjacent fences along either side property line. However, the front of the site is not completely fenced.

We proffer to extend the fencing to connect the side fencing across the property parallel to CR 208 and gate the entrance to prevent trespassing and reduce liability for St. Johns County. It is noted that teens have frequented this location for bonfires and swimming. Fencing the property would better secure the site from public access as shown on the attached site plan. To pay for and install the fence is estimated to cost approximately **\$7,000**.

- Access improvements to the driveway: Our engineer will do a site visit to determine stabilization needs for the access drive on the eastern portion of the site, following the general path of the drive that served the existing borrow pit, while providing an estimated 20-foot buffer to the eastern property line. Improvements for the drive will include assurance of a 20-foot wide stabilized surface. We anticipate using asphalt millings for the improvements. In addition, the apron to CR 208 will be inspected and is anticipated to be repaved and confirmed to have a minimum radius of 25 feet. Improvements for the driveway including asphalt millings and drainage grading, and well as the concrete apron replacement are estimated to be **\$123,532**. These line items are further broken out in the attached cost estimate.
- Demolish an existing derelict mobile home: There is an existing mobile home on the site that has been abandoned for many years. Demolishing the unit would have a positive impact on the site and would further assist in reducing liability for St. Johns County. The client also proposed to remove associated infrastructure including removing the septic drain field and capping the water service. In addition, my client is receptive to St. Johns County using the structure for fire training should they find that a benefit to the St. Johns County Fire Services Division. Demolition, transport, and disposal of the mobile home and other demolition activity is estimated to cost **\$9,250**.
- Mowing and tree removal: In terms of landscaping improvements, we propose mowing the site, trimming trees as needed along the access drive, and removing any dead or diseased trees within the parcel. Landscaping services are valued at approximately **\$6,700**.

A cost estimate is attached to this request with further detail by line item as well as a general site plan of the proposed improvements to the St. Johns County Site along with fence details and a cross-section of the driveway improvements. Additionally, a preliminary site plan of the proposed borrow pit is included for reference.

The proposed borrow pit operation is expected to be small-scale in relation to other borrow pit operations within the County and is intended to operate on a market-based business model over a period of approximately five (5) years. As shown in the preliminary site plan, a 10-acre borrow pit is expected incorporating an area for staging and 100-foot wide buffers between the borrow pit and adjacent lots with residential uses. It is important to note that should this requested license agreement be approved by St. Johns County, it's implementation would be contingent upon an approval of a borrow pit use on the Smith Borrow Site by St. Johns County. As the Smith Borrow Site is within the Open Rural Zoning District, development and operation of a borrow pit is only allowable by an approved Special Use Permit which is determined by the St. Johns County Planning and Zoning Agency. In terms of process, we would first collaborate with St. Johns County to obtain an approved license agreement and then pursue the special use permit.

Special Use Permits are subject to the notice requirements which require written notice to all properties within 300 feet of the property. It is our intention to notify and work with adjacent neighbors to the proposed development as well as to the St. Johns County Site to ensure that neighbor concerns are heard and addressed. Several neighbors have already been contacted and are amenable to the proposed development. We are in the process of reaching out to these neighbors to request written letters of support.

We respectfully request that you consider this license agreement with the improvement considerations provided. We believe that this is a mutually beneficial opportunity for both St. Johns County and our client. Given the proximity to the existing borrow pit, potential for using a once established driveway for this very use, and the positive feedback received from neighbors thus far in the process, we believe this is a compatible site for the operation.

Thank you for your review and we look forward to your response.

Kind Regards,



Shannon Acevedo, AICP

Attachments:

- St Johns County Site Plan of Proposed Improvements
- Cost Opinion of Improvements for St. Johns County Site
- Smith Borrow Pit Conceptual Plan