

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

SUBJECT: Joint Facilitation of Infrastructure Agreement between Seminole County, Bishop and Buttrey, Inc. and BGM Mining, Inc. and the associated Budget Change Request

DEPARTMENT: Public Works **DIVISION:** Road Operations and Stormwater

AUTHORIZED BY: W. Gary Johnson **CONTACT:** Mark E. Flomerfelt **EXT.** 5710
W. Gary Johnson, P.E., Dir. Mark E. Flomerfelt, P.E., Mgr.
Public Works Dept. Road Ops/Stormwater Division

Agenda Date 06/8/04 **Regular** **Consent** **Work Session** **Briefing**
Public Hearing – 1:30 **Public Hearing – 7:00**

MOTION/RECOMMENDATION:

Approve and authorize Chairman to execute the Agreement between Seminole County, Bishop & Buttrey, Inc. and BGM Mining, Inc. as related to the Club II Monroe/ Midway Basin Stormwater Facility and the associated Budget Change Request related to use of the St. Johns River Water Management District funding within the Monroe Basin.
District 5; Commissioner McLain (Mark Flomerfelt)

BACKGROUND:

Staff has been working with the St. Johns River Water Management District (SJRWMD), Bishop & Buttrey, Inc. and BGM Mining, Inc. (owners and operators of the Club II borrow pit) in the conversion of an existing borrow pit into a regional stormwater management facility.

The Club II borrow pit sits on a 100 acre site located north of SR-46, west of Brisson Avenue (see attached exhibit). An exclusive, perpetual drainage easement over the entire 100 acre site has been previously dedicated to Seminole County for this purpose.

Currently, active borrow pit operations have ceased and no permit extension is required for the facility. In order to convert the existing borrow pit to a stormwater management facility, modifications to the completed borrow pit consisting of filling and regrading of slopes are required. These modifications will provide an estimated 130 acre-feet of storage capacity. The additional storage will provide flood control and water quality improvements to portions of the Midway Basin and the existing Sanford Airport outfall.

Reviewed by:	<u>SN</u>
Co Atty:	<u>LS/psb</u>
DFS:	<u>LS/psb</u>
Other:	<u>N/A</u>
DCM:	<u>MS</u>
CM:	<u>MS</u>
File No.	<u>RPWS01</u>

Agenda Memorandum –6/8/04
Joint Facilitation of Infrastructure Agreement
Page Two

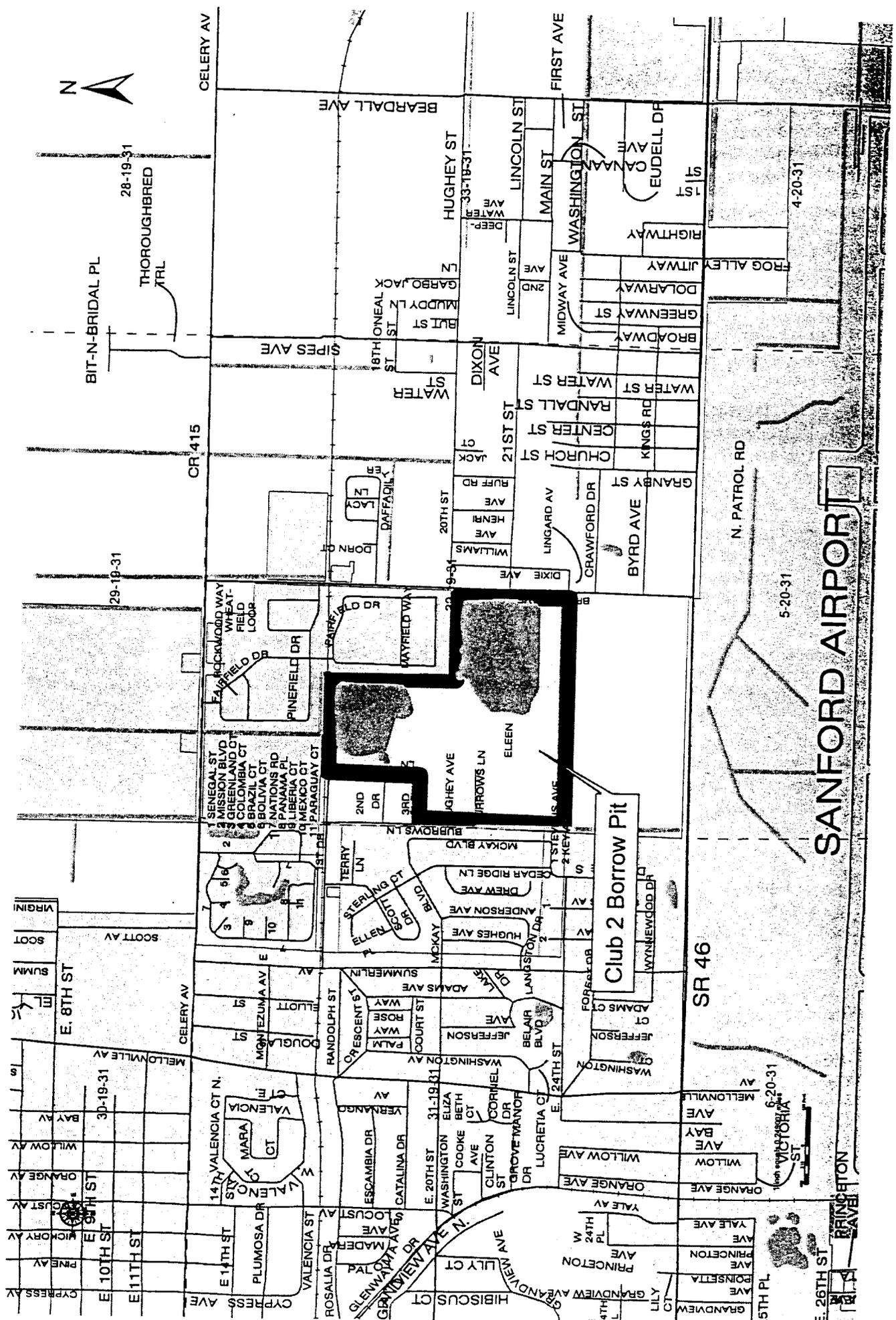
The subject agreement between Seminole County, Bishop & Buttrey, Inc. and BGM Mining, Inc. provides for the construction of the revised slopes by Bishop & Buttrey, Inc. and BGM Mining, Inc. with compensation for the cost of fill material, fill placement (approximately 207,170 cubic yards) and compaction. Compensation for this work is in the amount of \$574,640.60 to be paid upon completion and acceptance of the planned improvements. Since Bishop & Buttrey, Inc. already has the required equipment and fill material on-site, the cost benefit to the County in completing the work with Bishop & Buttrey, Inc. in lieu of contracting after completion of the borrow pit would be in excess of \$1,000,000.00. Funding for this work is currently available through previously executed funding agreements with the SJRWMD as part of the Middle Basin Initiative.

A budget change request is attached to re-allocate unencumbered SJRWMD funds from three Middle Basin projects that have either been completed or are in progress.

Staff is working with the SJRWMD and Florida Department of Environment Protection (FDEP) to secure future funding that will be required for design and permitting of individual control and diversion structures that will make the regional retention facility fully operational. When completed, water quality and flooding problems within this basin will be improved, including the correction of deficiencies along First Drive and Brisson Avenue.

Finally, it is important to note that independent from the proposed Agreement, the owner has the obligation to complete restoration of the borrow pit and adhere to all previously established permit conditions. Furthermore, Seminole County holds a bond for restoration purposes should the contractor fail to meet the conditions of the borrow pit reclamation permit.

- Attachments:
1. Location Map
 2. Joint Facilitation of Infrastructure Agreement
 3. Budget Change Request



BIT-N-BRIDAL PL

28-19-31

THOROUGHbred TRAIL

29-19-31

CR 415

CELERY AV

BEARDALL AVE

HUGHEY ST

33-18-31

DEEP WATER AVE

LINCOLN ST

MAIN ST

FIRST AVE

WASHINGTON ST

EUDELL DR

1ST ST

RIGHTWAY

DOLARWAY

BROADWAY

GREENWAY ST

MIDWAY AVE

FROG ALLEY

4-20-31

SIPES AVE

18TH ONEAL ST

MUDDY LN

BLT ST

WATER ST

DIXON AVE

21ST ST

RANDALL ST

CHURCH ST

WATER ST

WATER ST

GRANBY ST

KINGS RD

29-19-31

ROCKWOOD WAY

WHEAT FIELD LOOP

FAIRFIELD DR

PINEFIELD DR

20TH ST

N. PATROL RD

5-20-31

SANFORD AIRPORT

Club 2 Borrow Pit

SR 46

6-20-31

VICTORIA ST

MELLOWILL AV

WILLOW AVE

BAY AVE

ORANGE AVE

WILLOW AVE

WIRGINI

SCOTT AV

E. 8TH ST

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JOINT FACILITATION OF INFRASTRUCTURE AGREEMENT

THIS JOINT FACILITATION OF INFRASTRUCTURE AGREEMENT is made and entered into this _____ day of _____, 2004, between and Bishop & Buttrey, Incorporated, a Florida corporation whose address is 6239 Edgewater Drive, Suite D-1, Orlando, Florida 32810-4747 ("Bishop"), BGM Mining, Inc., a Florida corporation whose address is 801 N. Magnolia Avenue, Suite 401, Orlando, Florida 32803 ("BGM"), Bishop and BGM being hereinafter collectively referred to as "Owner", and Seminole County, a political subdivision of the State of Florida, whose address is Seminole County Services Building, 1001 East First Street, Sanford, Florida 32771, hereinafter referred to as the "County."

WITNESSETH:

WHEREAS, the Owner is the owner of that certain borrow pit located in the area of SR 46 and Brisson Avenue in Seminole County (the "Club II Pit"); and

WHEREAS, Owner is or will soon be constructing portions of the Club II Pit; and

WHEREAS, the County owns an easement over the Club II Pit allowing the use of same for stormwater storage and treatment; and

WHEREAS, modifications must be made to the Club II Pit in order for the County to use it for stormwater purposes, including extending slopes and maintaining the configuration of the storage dikes; and

WHEREAS, the modifications required by the County are not within the scope of work required for Owner to meet its obligations regarding construction and reclamation of the Club II Pit; and

WHEREAS, Owner is willing to perform the modifications required for the County and the County is willing to pay Owner for same, all in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration provided by each party hereto, the parties agree as follows:

1. **CLUB II PIT MODIFICATIONS.** Owner agrees to provide all equipment and materials required to:

(A) extend approximately eight thousand five hundred sixty nine (8,569) feet of 6:1 slopes to elevation twenty one (21) feet NGVD, 2:1 slopes to elevation eighteen (18) feet NGVD and 1:1 slopes to elevation zero (0) feet NGVD, all in accordance with the attached exhibit 1; and

(B) leave in place approximately eighty six thousand sixty one (86,061) cubic yards of borrow material in the dike separating the northern area of the pond from the south, all in accordance with the attached exhibit 1; and

(C) install approximately three thousand six hundred eighty (3,680) lineal feet of six (6) foot high chain link fence as shown on the attached exhibit 1.

All of the foregoing shall be accomplished in accordance with the plans and specifications dated April, 2004, prepared by Bishop, a copy of which is attached hereto as exhibit 1. All work hereunder will be performed within six (6) months after execution of this Agreement by all parties, with the actual construction time not to exceed three (3) months from beginning to end.

2. **COST OF MODIFICATIONS.** In consideration of Owner performing the modifications specified in paragraph 1 above, the County agrees to

VM 5/13/04

pay Owner a lump sum payment of five hundred seventy four thousand six hundred forty dollars and sixty cents (\$574,640.60).

Upon completion of the work Owner shall provide County with an as built survey certified by a Florida Registered Surveyor and density tests prepared by a Florida Registered Geotechnical Engineer, showing that the actual work performed meets the requirements of the Plans and Specifications. The County shall make payment in accordance with the Florida Prompt Payment Act, Section 218.70 *et seq.*, Florida Statutes (2004).

The parties specifically understand and agree that the County is not obligated to pay Owner any amount until all the work specified in Section 1 above is fully completed in accordance with the Plans and Specifications. The County will not make any partial payments and incurs no liability for any part performance by Owner.

3. MODIFICATION OF STORMWATER EASEMENT. The parties agree that there is an area of approximately one (1) acre on the south shore of the pond that was permitted for excavation and is subject to the County's easement, however, has not been and will not be excavated. Owner shall provide a survey and legal description of this area and the County shall release same from the operation of its Stormwater easement. Owner hereby abandons all rights to excavate this area.

4. INDEMNIFICATION. Owner shall indemnify and save the County harmless from and against all liability, claims for damages, and suits for any injury to or death of any person or persons, or damages to any property of any kind whatsoever arising out of or in any way connected with the work provided for in this Agreement or with any act or omission in any manner related to said work. This

agreement by Owner to indemnify and hold the County harmless shall include all charges, expenses and costs, including attorneys' fees, both at trial and on appeal, incurred by the County on account of or by reason of any such injuries, damages, liability, claims, suits or losses.

5. INDEPENDENT CONTRACTOR. It is agreed that nothing herein contained is intended or should be construed as in any manner creating or establishing a relationship of co-partners between Owner and the County, or as constituting Owner (including their officers, employees, and agents) the agent, representative, or employee of the County for any purpose, or in any manner, whatsoever. Owner is to be and shall remain an independent contractor with respect to all work performed under this Agreement.

6. RECORDS AND AUDITS. Owner shall maintain all books, permits, plans, papers, invoices, load sheets and other documents pertaining to work performed under this Agreement. Such records shall be available at Owner's place of business during normal business hours for the term of this Agreement and for three (3) years from the date of final payment under this Agreement. The County or its duly authorized representatives may have access to said records for audit, copying or inspection upon reasonable notice.

7. NOTICES. Whenever either party desires to give notice to the other, notice shall be sent to:

For the County: County Manager
Seminole County Services Building
1101 East First Street
Sanford, Florida 32771

For Owner: Bishop & Buttrey, Incorporated
6239 Edgewater Drive, Suite 1
Orlando, FL 32810-4747

BGM Mining, Inc.
801 N. Magnolia Avenue, Suite 401
Orlando, FL 32803

Any of the parties may change, by written notice as provided herein, the addresses or persons for receipt of notices or receipt of invoices. All notices shall be effective upon receipt.

8. GOVERNING LAW. This Agreement shall be governed by the Laws of the State of Florida.

9. Neither party has made any agreement or arrangement for payment of any finder's fee or broker's commission with respect to the transactions contemplated by this Agreement. Each party agrees to be responsible for the defense and payment of any such claim made through that party.

10. No prior or present agreements or representations shall be binding upon any of the parties hereto unless incorporated in this Agreement. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the parties to be bound thereby.

11. All terms and conditions of this agreement shall be binding upon and shall inure to the benefit of the parties to this agreement and their respective successors and assigns.

12. Owner acknowledges and agrees that nothing in this agreement shall be construed to alter or amend any regulatory requirements imposed by the County with respect to any permit covering the closure or reclamation of the borrow pit as the County is not contracting away any of its regulatory powers.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names on the date first above written.

WITNESSES:

BISHOP & BUTTREY, INCORPORATED

SIGNATURE

By: _____

PRINT NAME

SIGNATURE

PRINT NAME

WITNESSES:

BGM MINING, INC.

SIGNATURE

By: _____

PRINT NAME

SIGNATURE

PRINT NAME

Accepted By:

ATTEST:

BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA

MARYANNE MORSE
Clerk to the Board of County
Commissioners of Seminole County, Florida

By: _____
Daryl McLain, Chairman
Board of County Commissioners

Date: _____

For the use and reliance of
Seminole County only.
Approved as to form and legal
sufficiency.

As authorized for execution by the Board of
County Commissioners at their
_____, 2004 regular meeting



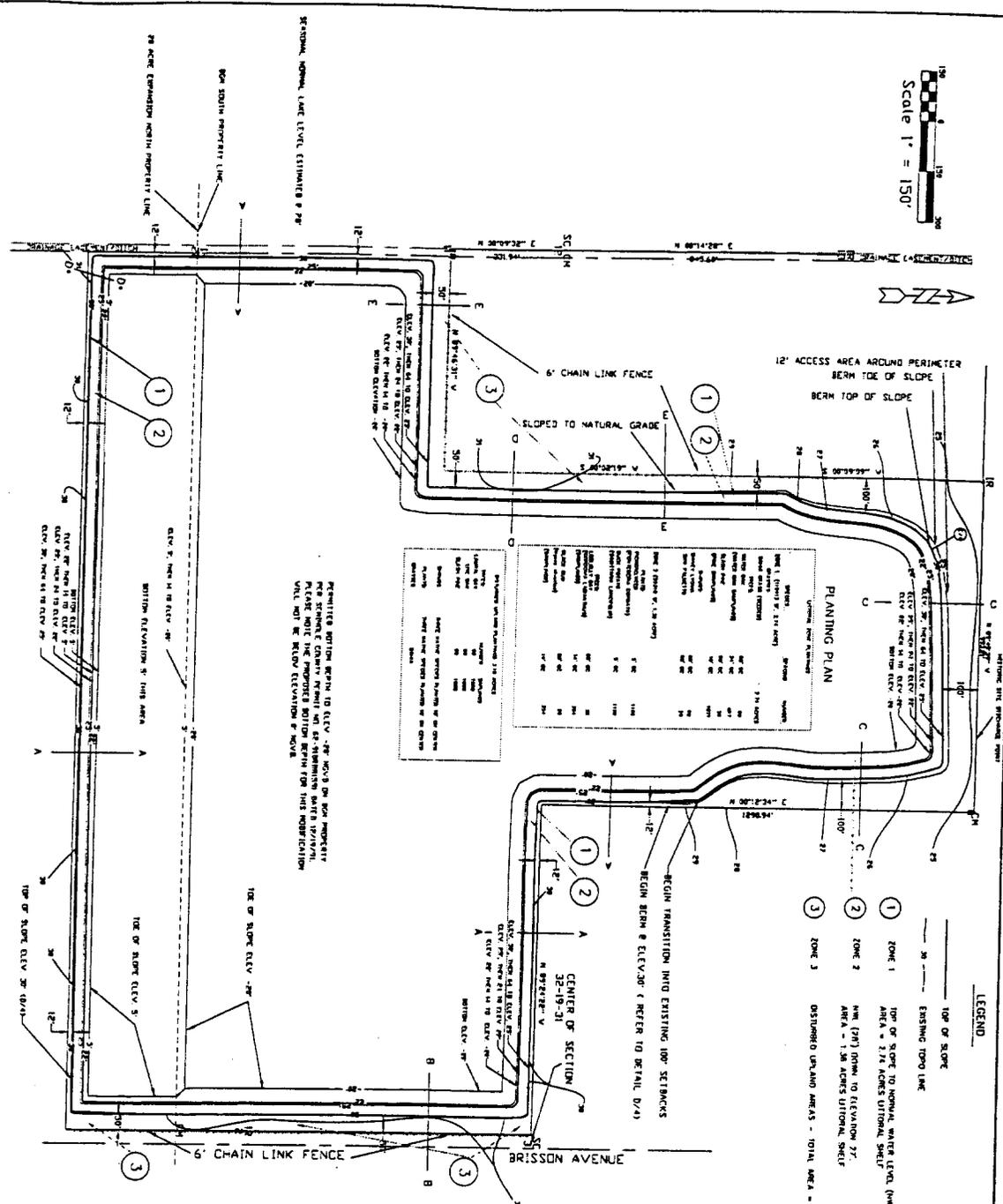
County Attorney

Date

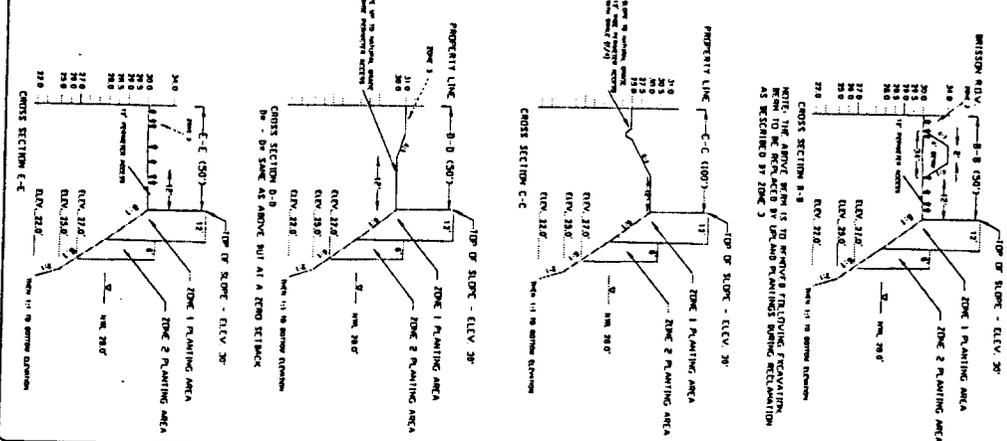
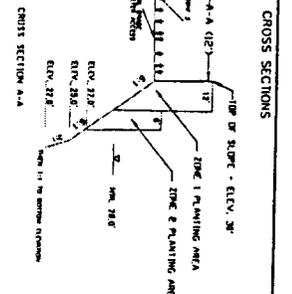
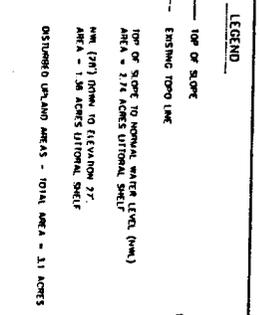
Attachment: Exhibit 1

Joint Facilitation of Infrastructure Agreement Between Seminole County, Bishop and Buttrey,
Inc. and BGM Mining Inc. and the associated Budget Change Request

Scale 1" = 150'



ALL EXISTING TREES AND VEGETATION TO REMAIN UNDISTURBED IN UPLAND SETBACK AREAS
REFER TO SHEET 4 OF 5 FOR RESTORATION NOTES



REVISIONS

NO.	DATE	BY	DESCRIPTION
1	08/21/00	SKW/CO	ISSUED FOR PERMITS
2	08/28/00	SKW/CO	ISSUED FOR PERMITS
3	07/17/00	SKW/CO	ISSUED FOR PERMITS
4	02/17/00	SKW/CO	ISSUED FOR PERMITS
5	05/05/00	SKW/CO	ISSUED FOR PERMITS

RESTORATION PLAN

SHEET 5 OF 5

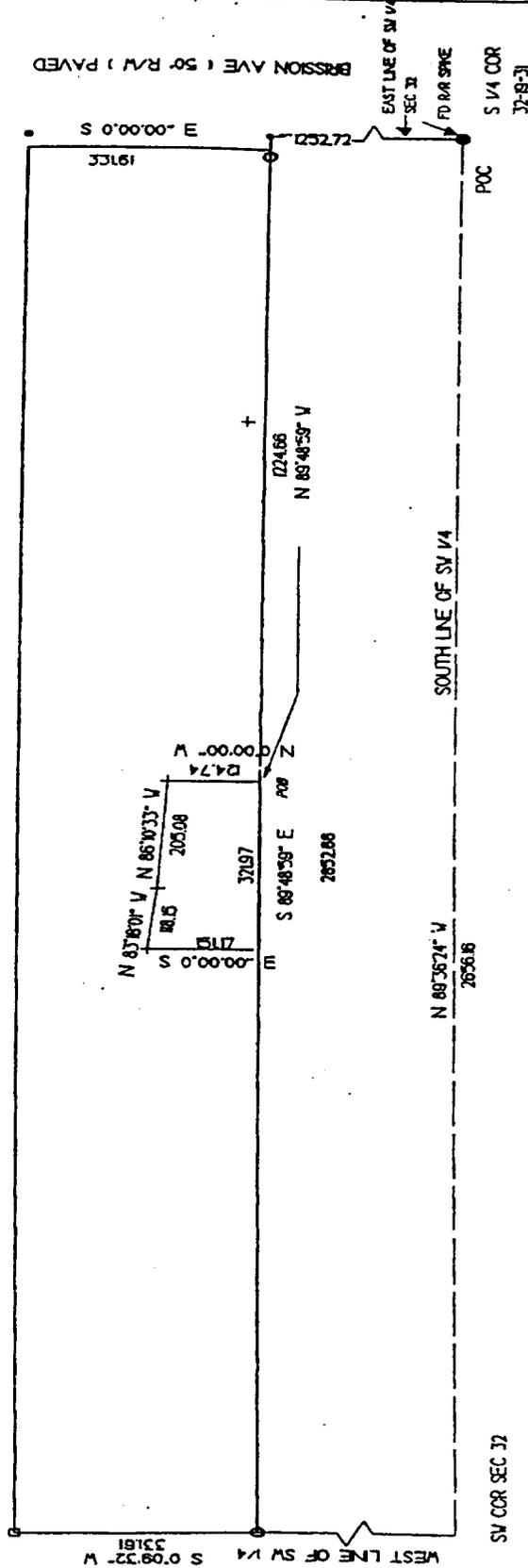
BISHOP & BUTTREY EXCAVATION NO. 116
Exhibit 1

BISHOP & BUTTREY, INC.

DESCRIPTION

COMMENCING AT THE S 1/4 CORNER OF SECTION 32, TOWNSHIP 18 SOUTH, RANGE 31 EAST, SEMINOLE COUNTY, FLORIDA; RUN N 00°00'00" E, 684.53 FEET ALONG THE EAST LINE OF THE SW 1/4 OF SAID SECTION 32 FOR A POINT OF BEGINNING; THENCE N 89°48'59" W, 2651.74 FEET; THENCE S 00°00'00" E, 331.01 FEET TO THE POINT OF BEGINNING. (LESS THE EAST 25.00 FEET FOR BRISSON AVE) CONTAINING 20.00 ACRES.

N 89°48'59" W
2651.74



SW COR SEC 32

BEARINGS BASED ON EAST LINE OF SW 1/4 OF SECTION 32 AS BEING N 00°00'00\"/>

DESCRIPTION OF 1 ACRE +/- PARCEL

COMMENCING AT THE SOUTH 1/4 CORNER OF SECTION 32, TOWNSHIP 18 SOUTH, RANGE 31 EAST; RUN N 00°00'00\"/>

M. EDWARD GORDON SURVEYING
 REGISTERED LAND SURVEYOR #1259
 PO Box 657 SANFORD, FLORIDA 32773 PHONE 324 3770
 508 WEST 11TH STREET SANFORD, FLORIDA

BISHOP & BUTTNEY, INCORPORATED

TYPE SURVEY	DATE	SHEET	OF
1" = 200'	5/15/2004	1	1
JOB NO.	2004-4		

*****SEMINOLE COUNTY BUDGET REQUEST*****

Budget Division Use only:

DATE: 5/05/04
 FROM: Department Public Works Department
 Division Road Operations/Stormwater

BCR	<input checked="" type="checkbox"/>	04-32

WHAT IS NEEDED:

- Accounting adjustment: Item is budgeted, but funds are in incorrect account line.
- More funds for Budgeted Item: Item is budgeted, but additional funds are required.
- New item: Item is not in this fiscal year's budget.
- Operational Adjustment (Transfer or Savings to cover overage)

Detailed Explanation:

The proposed project increase is a re-allocation of unencumbered Joint Participation Project (JPP) funding from the St. Johns River Water Management District (SJRWMD) to convert an existing borrow pit into the Brisson Ave Regional Stormwater facility within the County's Midway Basin. Funds from the project's land acquisition account line, and SJRWMD funds from three other Middle Basin stormwater projects (they have all been completed or are in progress) are proposed to convert the borrow pit into a stormwater facility (\$574,641). Staff is working with the Water Management District to secure the additional future funding that will be required to design, permit and construct various control and diversion structures to make the regional facility fully operational. When completed, water quality and flooding problems within this Basin, including First Drive and Brisson Avenue deficiencies will be corrected.

Fund # 13000 Fund Name Stormwater

	FUND/ACCOUNT NUMBER	Project #	ACCOUNT TITLE	AMOUNT
TRANSFER	077600 56065000	DC69036X 1918-01	JPP/Cameron Ave Stormwater Retrofit Construction	40,173
FROM	077600 56068000	DC69036X 1918-01	JPP/Cameron Ave Stormwater Retrofit Design	9,018
	077600 56065000	DC69038X 1918-03	JPP/First Drive Stormwater Retrofit Construction	150,000
	077600 56068000	DC69039X 1918-04	JPP/Celery Ave Regional Facility Design	26,643
	077600 56061000	DC69037X 1918-02	JPP/Brisson Ave Stormwater Retrofit Land	100,000
		TOTAL		\$325,834

	FUND/ACCOUNT NUMBER	Project #	ACCOUNT TITLE	AMOUNT
TRANSFER	077600 56065000	DC69037X 1918-02	JPP/Brisson Ave Stormwater Retrofit Construction	325,834
TO				
		TOTAL		\$325,834

CONCURRENCE OF OTHER INVOLVED DIVISIONS (ie: IT (hardware/software); Fleet/Vehicles; Purchasing/Capital; Support Svcs; etc)

Approval Date _____ Department/Division _____

RECOMMENDATION: Approval Date 5/6/04 Analyst Crockett Hunter Director LB

APPROVING AUTHORITY: FS Director County Manager BCC Meeting Date 6/8/04

Approved Date Signed _____ Signature _____

FINANCE: Transfer has been posted Date _____ Signature _____