

MYRTLE CREEK IMPROVEMENT DISTRICT BOARD OF SUPERVISORS' MEETING MINUTES

FIRST ORDER OF BUSINESS

The Board of Supervisors' Meeting for the Myrtle Creek Improvement District was called to order on Tuesday, June 25 2019 at 5:07 p.m. at 6900 Tavistock Lakes Blvd, Suite 200, Orlando, FL 32827. Board Members listed below constituted a quorum.

Jeff Macre
Bob da Silva
Kyle Scholl

Chair
Vice-Chair
Assistant Secretary

Also present were:

Lynne Mullins
Jennifer Walden
Kevin Plenzler
Tucker Mackie
Larry Kaufmann
Jeff Newton
Steven Flint

PFM
PFM
PFM (via phone)
Hopping Green & Sams (via phone)
Construction Supervisor
Donald W. McIntosh Associates
Tavistock

SECOND ORDER OF BUSINESS

Public Comment Period

Ms. Walden noted for the record that there were no public comments at this time.

THIRD ORDER OF BUSINESS

Consideration of the Minutes of the May 21, 2019 Board of Supervisors' Meeting

Board Members reviewed the minutes from the May 21, 2019 Board of Supervisors' Meeting.

On Motion by Mr. da Silva, second by Mr. Scholl, with all in favor, the Board of Supervisors of the Myrtle Creek Improvement District approved the Minutes of the May 21, 2019 Board of Supervisors' Meeting.

FOURTH ORDER OF BUSINESS

Consideration of Mr. Tubbs' Resignation Letter & Naming a Replacement Supervisor for Seat 3

Ms. Walden requested a motion to accept the resignation letter from Ms. Tubbs'.

On Motion by Mr. Scholl, second by Mr. Macre, with all in favor, the Board of Supervisors of the Myrtle Creek Improvement District accepted Mr. Tubbs' resignation.

Ms. Walden asked the board if they had a recommendation for a replacement for Seat 3. The term will expire in November 2022. Ms. Walden explained that to qualify to be on the Board they must be US Citizen and a registered voter of the District.

FIFTH ORDER OF BUSINESS

Discussion Regarding Power Supply to Narcoossee and Lake Nona Boulevard Entrance Feature

Mr. Kauffman provided information to the Board regarding power supply to Narcoossee and Lake Nona Boulevard entrance feature. District Staff was able to obtain a commitment from Advent Health to pay the full cost of removing the existing pole and transformer, installing a new transformer and running the necessary underground electric lines to power the District's existing electric meter serving the entry feature lighting. Ms. Mackie explained that District staff provided a letter to OUC providing documentation from Advent Health that they agree to fund the full cost of the work. The District has already provided the authorization to OUC that is needed to pursue the work. No action is required by the Board.

SIXTH ORDER OF BUSINESS

Consideration of Resolution 2019-07, Re-Setting the Date, Time and Location of the Public Hearing on the Proposed Budget for Fiscal Year 2020

Ms. Walden explained that the Lake Nona Lakehouse did not have availability for August 19, 2019, this resolution is to change the budget date. District Staff is proposing August 22, 2019 at 5:00 p.m. at the Lake Nona Lake House.

On Motion by Mr. Macre, second by Mr. da Silva, with all in favor, the Board of Supervisors of the Myrtle Creek Improvement District accepted Resolution 2019-07, Re-Setting the Date, Time and Location of the Public Hearing on the Proposed Budget for Fiscal Year 2020, for August 22, 2019 at 5:00 p.m. at the Lake Nona Lakehouse, 13623 Sachs Avenue, Orlando, FL 32827.

SEVENTH ORDER OF BUSINESS

Presentation of Preliminary Operations and Maintenance Methodology Report

Ms. Walden noted that behind the report is the form letter that will be going out to residents for the increase of assessments.

Mr. Plenzler presented the Preliminary Operations and Maintenance Methodology Report. Mr. Kaufmann asked what the impact is for residential based on the report. Mr. Plenzler stated that from the previous fiscal year the Board will see an increase on average of about 114% and the biggest reason for that was that there were some reserve funds that were paying down a lot of the O&M budget the last few years and the reserve is now depleted. The full O&M budget is now being allocated across all the units.

Ms. Walden explained that the SF medium for Fiscal Year 2019 was \$228.30 and it is going to \$488.00. Mr. Macre asked Mr. Plenzler about the increase. Mr. Plenzler stated that there is about a 114% increase for all the single family residential and townhome product, 40%-50% increase for multifamily, up to 400% increase for non-residential, and 35%-40% for vacant acres. Mr. Macre asked why increases are not flat across the size of the homes. He asked if the ERU values were not originally balanced. Mr. Plenzler stated that the ERU calculations were not being done year over year the past few years and now the District is seeing the full effect plus the impact of the depleted reserve funds. Going forward using this methodology the Board will see the 1 to 1 ratio.

The Board discussed the assessments and how to explain the increase to the residents. The Board asked if the unit count changed. Mr. Plenzler responded that the unit count adjusted slightly. There were some additional ERUs from one year to the next. The ERU values specifically related to the residential product type have not changed. Mr. Plenzler stated that a true ERU calculation was not done the prior fiscal year. The way the last fiscal year's budget was put together was not using this exact methodology.

If all the O&M assessments are added up it comes to \$986,000.00. Village walk is paying \$753,000.00 of that. Mr. Plenzler explained that the square footage for KPMG is not realized yet on the Property Appraiser Tax Roll. It is still in a vacant acres category via the property Appraiser data and when that shows up the square footage will be absorbed, the ERU will be applied and they will take on a much larger share on an ERU basis of O&M.

A Board Member asked if the District can provide residents feedback that once the commercial build outs are open and operating and being assessed the proper assessments going forward that they should see a decrease in the need of funds required from the residents. Mr. Plenzler stated that is correct.

Mr. Plenzler stated that he will bring back an example to show at the next meeting. The Board advised he explain the methodology to the residents in simplified terms and summarizing some of the statistics and showing the percentages will be valuable in putting the residents at ease. The Board asked Mr. Plenzler to prepare a bar chart showing the difference in dollar value. Mr. Plenzler will prepare that as a separate exhibit.

EIGHTH ORDER OF BUSINESS

Ratification of Operation and Maintenance Expenditures Paid in May 2019 in an amount totaling \$65,838.61

Board Members reviewed the Operation and Maintenance Expenditures paid in May 2019 in an amount totaling \$65,838.61. Ms. Walden noted that these have already been approved and paid and just needs to be ratified by the Board.

On Motion by Mr. Scholl, second by Mr. da Silva, with all in favor, the Board of Supervisors of the Myrtle Creek Improvement District ratified the Operation and Maintenance Expenditures Paid in May 2019 in an amount totaling \$65,868.61.

NINTH ORDER OF BUSINESS

Recommended Work Authorization/Proposed Services

Mr. Kaufmann stated that included in the agenda package is a proposal for a repair of the trails from Driveway Maintenance., Inc. Mr. Kauffmann proposed that under Section B of the agreement (Minutes Exhibit A) the work would be completed within 60 days of execution. Mr. Kauffman stated that the Contractor has not seen the agreement yet.

Mr. Kauffman requested Board approval of the agreement between the District and Driveway Maintenance, Inc. for asphalt repair services, as amended.

On Motion by Mr. da Silva, second by Mr. Scholl, with all in favor, the Board of Supervisors of the Myrtle Creek Improvement District Approved the Agreement between the District and Driveway maintenance, Inc. for asphalt repair services, as amended, by Mr. Kauffmann in the amount of \$65,600.00.

TENTH ORDER OF BUSINESS

Review of District's Financial Position and Budget to Actual YTD

Ms. Walden presented the District's financial statements to the Board. No action is required by the Board.

ELEVENTH ORDER OF BUSINESS

Staff Reports

District Counsel – Ms. Mackie stated that the Board previously discussed interest being earned on the District's Debt Service Reserve Account which is required pursuant to the Trust Indenture that pertains to the Series 2006 Refunded Bonds. To date the amount of excess in the Debt Service Reserve which is attributable to interest earned on those funds is about \$9,178.34. Absent direction from the District to

Trustee will continue to hold those funds in the Debt Service Reserve and those funds will continue to earn interest. The past three months have hovered around 2%. The District could leave the funds to accrue interest. The District could direct that the Trustee transmit those funds to the District to put in the General Fund or put towards reserves. The District could direct that the Trustee move those funds into the revenue account to go toward paying additional principle on the next interest payment date.

On Motion by Mr. da Silva, second by Mr. Macre, with all in favor, the Board of Supervisors of the Myrtle Creek Improvement District approved directing the Trustee to remit interest earned funds to the District to be held with the District's reserve monies

Ms. Mackie stated that the District received a letter from Tavistock Development requesting the District transmit a termination notice to Jr. Davis Construction Company relating to the construction of Performance Drive Phase 3, given that the need for project has been delayed until 2021 in terms of completion. Tavistock would bear all the costs related toward the termination of the agreement, however, the District is the contracting entity and would be required to formally terminate with Jr. Davis pursuant to the EJCDC contract by providing notice of the same.

On Motion by Mr. Macre, second by Mr. da Silva, with all in favor, the Board of Supervisors of the Myrtle Creek Improvement District directing District staff to transmit the Notice of Termination pursuant to the Construction Contract with Jr. Davis related to construction of Performance Drive Phase 3.

District Manager – Ms. Walden noted that the next meeting is Tuesday, July 16, 2019.

District Engineer – No Report

Construction Supervisor – No Report

Irrigation Specialist - No Report

TWELFTH ORDER OF BUSINESS

Supervisor Requests, Audience Comments & Adjournment

Mr. da Silva noted he was driving down Lake Nona Boulevard this morning and noticed a trailer parked on the District's lawn in front of the KPMG building being built. He talked to the Superintendent in charge for DPR and got it removed. It was the trailer of the contractor doing the fence.

On Motion by Mr. Scholl, second by Mr. Macre, with all in favor, the June 25, 2019 Meeting of the Board of Supervisors of the Myrtle Creek Improvement District was adjourned.


Secretary/Assistant Secretary


Chair/Vice Chair

EXHIBIT A

AGREEMENT BETWEEN THE MYRTLE CREEK IMPROVEMENT DISTRICT AND DRIVEWAY MAINTENANCE, INC., FOR ASPHALT REPAIR SERVICES

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2019, by and between:

Myrtle Creek Improvement District, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, being situated in City of Orlando, Florida, and whose mailing address is 12051 Corporate Boulevard, Orlando, Florida 32817 (the "District"); and

Driveway Maintenance, Inc., a Florida corporation, with a mailing address of P.O. Box 617585, Orlando, Florida 32861-7585 ("Contractor," together with District the "Parties").

RECITALS

WHEREAS, the District is a local unit of special-purpose government established pursuant to the Uniform Community Development District Act of 1980, as codified in Chapter 190, *Florida Statutes* (the "Act"), by ordinance adopted by the City of Orlando, Florida; and

WHEREAS, the District was established for the purpose of planning, financing, constructing, operating and/or maintaining certain infrastructure; and

WHEREAS, the District has a need to retain an independent contractor to provide asphalt repair services; and

WHEREAS, Contractor submitted a proposal and represents that it is qualified to provide asphalt repair services and has agreed to provide to the District those services identified in **Exhibit A**, attached hereto and incorporated by reference herein ("Services"); and

WHEREAS, the District and Contractor warrant and agree that they have all right, power and authority to enter into and be bound by this Agreement.

NOW, THEREFORE, in consideration of the recitals, agreements, and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

SECTION 1. INCORPORATION OF RECITALS. The recitals stated above are true and correct and by this reference are incorporated by reference as a material part of this Agreement.

SECTION 2. DUTIES. The District agrees to use Contractor to provide the Services in accordance with the terms of this Agreement. The duties, obligations, and responsibilities of the Contractor are described in **Exhibit A** hereto.

A. Contractor shall provide asphalt repair services, as described in **Exhibit A**. The

Services shall include any effort specifically required by this Agreement and **Exhibit A** reasonably necessary to allow the District to receive the maximum benefit of all of the Services and items described herein and demonstrated in **Exhibit A**, including but not limited to, the repair, construction, installation, and all materials reasonably necessary. To the extent any of the provisions of this Agreement are in conflict with the provisions of **Exhibit A**, this Agreement controls.

- B. Services shall commence upon execution of this Agreement and be completed within _____ (____) calendar days of execution of this Agreement, unless extended in writing by the District in its sole discretion or terminated earlier in accordance with Section 13 herein.
- C. This Agreement grants to Contractor the right to enter the lands that are subject to this Agreement, for those purposes described in this Agreement, and Contractor hereby agrees to comply with all applicable laws, rules, and regulations.
- D. Contractor shall perform all Services in a neat and workmanlike manner. In the event the District in its sole determination, finds that the work of Contractor is not satisfactory to District, District shall have the right to immediately terminate this Agreement and will only be responsible for payment of work satisfactorily completed and for materials actually incorporated into the Services.
- E. Contractor shall be solely responsible for the means, manner and methods by which its duties, obligations and responsibilities are met to the satisfaction of the District. While providing the Services, the Contractor shall assign such staff as may be required, and such staff shall be responsible for coordinating, expediting, and controlling all aspects to assure completion of the Services.
- F. Contractor shall report directly to the District Manager. Contractor shall use all due care to protect the property of the District, its residents and landowners from damage. Contractor agrees to repair any damage resulting from Contractor's activities and work within twenty-four (24) hours.
- G. Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement. At completion of the Services, the Contractor shall remove from the site waste materials, rubbish, tools, construction equipment, machinery and surplus materials. If the Contractor fails to clean up as provided herein, the District may do so and the cost thereof shall be charged to the Contractor.

SECTION 3. COMPENSATION, PAYMENT, AND RETAINAGE.

- A. The District shall pay Contractor _____ Dollars (\$_____) for the Services as identified in **Exhibit A** attached hereto and incorporated herein by reference. Contractor shall invoice the District for the

Services pursuant to the terms of this Agreement. The District shall provide payment within forty-five (45) days of receipt of invoices. Such amounts include all materials and labor provided for in **Exhibit A** and all items, labor, materials, or otherwise, to provide the District the maximum benefits of the Services.

- B.** If the District should desire additional work or services, the Contractor agrees to negotiate in good faith to undertake such additional work or services. Upon successful negotiations, the Parties shall agree in writing to an addendum, addenda, or change order(s) to this Agreement. The Contractor shall be compensated for such agreed additional work or services based upon a payment amount acceptable to the parties and agreed to in writing.
- C.** The District may require, as a condition precedent to making any payment to the Contractor, that all subcontractors, material men, suppliers or laborers be paid and require evidence, in the form of lien releases or partial waivers of lien, to be submitted to the District by those subcontractors, material men, suppliers or laborers, and further require that the Contractor provide an Affidavit relating to the payment of said indebtedness. Further, the District shall have the right to require, as a condition precedent to making any payment, evidence from the Contractor, in a form satisfactory to the District, that any indebtedness of the Contractor, as to services to the District, has been paid and that the Contractor has met all of the obligations with regard to the withholding and payment of taxes, Social Security payments, Workmen's Compensation, Unemployment Compensation contributions, and similar payroll deductions from the wages of employees.

SECTION 4. WARRANTY. The Contractor warrants to the District that all materials furnished under this Agreement shall be new, and that all services and materials shall be of good quality, free from faults and defects, and will conform to the standards and practices for projects of similar design and complexity in an expeditious and economical manner consistent with the best interest of the District. In addition to all manufacturer warranties for materials purchased for purposes of this Agreement, all Work provided by the Contractor pursuant to this Agreement shall be warranted for two (2) years from the date of acceptance of the Work by the District. Contractor shall replace or repair warranted items to the District's satisfaction and in the District's discretion. Neither final acceptance of the Work, nor final payment therefore, nor any provision of the Agreement shall relieve Contractor of responsibility for defective or deficient materials or Services. If any of the materials or Services are found to be defective, deficient or not in accordance with the Agreement, Contractor shall correct, remove and replace it promptly after receipt of a written notice from the District and correct and pay for any other damage resulting therefrom to District property or the property of landowners within the District.

SECTION 5. INSURANCE.

- A.** The Contractor shall maintain throughout the term of this Agreement the following insurance:

- (1)** Worker's Compensation Insurance in accordance with the laws of

the State of Florida.

- (2) Commercial General Liability Insurance covering the Contractor's legal liability for bodily injuries, with limits of not less than \$1,000,000 combined single limit bodily injury and property damage liability, and covering at least the following hazards:
 - (i) Independent Contractors Coverage for bodily injury and property damage in connection with any subcontractors' operation.
 - (3) Employer's Liability Coverage with limits of at least \$1,000,000 (one million dollars) per accident or disease.
 - (4) Automobile Liability Insurance for bodily injuries in limits of not less than \$1,000,000 combined single limit bodily injury and for property damage, providing coverage for any accident arising out of or resulting from the operation, maintenance, or use by the Contractor of any owned, non-owned, or hired automobiles, trailers, or other equipment required to be licensed.
- B. The District, its staff, consultants and supervisors shall be named as additional insured. The Contractor shall furnish the District with the Certificate of Insurance evidencing compliance with this requirement. No certificate shall be acceptable to the District unless it provides that any change or termination within the policy periods of the insurance coverage, as certified, shall not be effective within thirty (30) days of prior written notice to the District. Insurance coverage shall be from a reputable insurance carrier, licensed to conduct business in the State of Florida.
- C. If the Contractor fails to have secured and maintained the required insurance, the District has the right but not the obligation to secure such required insurance in which event the Contractor shall pay the cost for that required insurance and shall furnish, upon demand, all information that may be required in connection with the District's obtaining the required insurance.

SECTION 6. INDEMNIFICATION.

- A. Obligations under this section shall include the payment of all settlements, judgments, damages, liquidated damages, penalties, forfeitures, back pay awards, court costs, arbitration and/or mediation costs, litigation expenses, attorney fees, and paralegal fees (incurred in court, out of court, on appeal, or in bankruptcy proceedings) as ordered.
- B. Contractor agrees to indemnify and hold harmless the District and its

officers, agents and employees from any and all liability, claims, actions, suits or demands by any person, corporation or other entity for injuries, death, property damage or of any nature, arising out of, or in connection with, the work to be performed by Contractor, including litigation or any appellate proceedings with respect thereto. Contractor further agrees that nothing herein shall constitute or be construed as a waiver of the District's limitations on liability contained in Section 768.28, *Florida Statutes*, or other statute.

- C. In no event, however, shall Contractor be liable for incidental, special, punitive or exemplary damages in connection with this Agreement, even if notice was given of the possibility of such damages and even if such damages were reasonably foreseeable.

SECTION 7. LIMITATIONS ON GOVERNMENTAL LIABILITY. Nothing in this Agreement shall be deemed as a waiver of the District's sovereign immunity or the District's limits of liability as set forth in Section 768.28, *Florida Statutes*, or other statute, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under such limitations of liability or by operation of law.

SECTION 8. COMPLIANCE WITH GOVERNMENTAL REGULATION. The Contractor shall keep, observe, and perform all requirements of applicable local, State, and Federal laws, rules, regulations, or ordinances. If the Contractor fails to notify the District in writing within five (5) days of the receipt of any notice, order, required to comply notice, or a report of a violation or an alleged violation, made by any local, State, or Federal governmental body or agency or subdivision thereof with respect to the services being rendered under this Agreement or any action of the Contractor or any of its agents, servants, employees, or materialmen, or with respect to terms, wages, hours, conditions of employment, safety appliances, or any other requirements applicable to provision of services, or fails to comply with any requirement of such agency within five (5) days after receipt of any such notice, order, request to comply notice, or report of a violation or an alleged violation, the District may terminate this Agreement, such termination to be effective upon the giving of notice of termination.

SECTION 9. LIENS AND CLAIMS. The Contractor shall promptly and properly pay for all labor employed, materials purchased, and equipment hired by it to perform under this Agreement. The Contractor shall keep the District's property free from any materialmen's or mechanic's liens and claims or notices in respect to such liens and claims, which arise by reason of the Contractor's performance under this Agreement, and the Contractor shall immediately discharge any such claim or lien. In the event that the Contractor does not pay or satisfy such claim or lien within three (3) business days after the filing of notice thereof, the District, in addition to any and all other remedies available under this Agreement, may terminate this Agreement to be effective immediately upon the giving of notice of termination.

SECTION 10. DEFAULT AND PROTECTION AGAINST THIRD PARTY INTERFERENCE. A default by either party under this Agreement shall entitle the other to all remedies available at law or in equity, which may include, but not be limited to, the right of damages, injunctive relief, and/or

specific performance. The District shall be solely responsible for enforcing its rights under this Agreement against any interfering third party. Nothing contained in this Agreement shall limit or impair the District's right to protect its rights from interference by a third party to this Agreement.

SECTION 11. CUSTOM AND USAGE. It is hereby agreed, any law, custom, or usage to the contrary notwithstanding, that the District shall have the right at all times to enforce the conditions and agreements contained in this Agreement in strict accordance with the terms of this Agreement, notwithstanding any conduct or custom on the part of the District in refraining from so doing; and further, that the failure of the District at any time or times to strictly enforce its rights under this Agreement shall not be construed as having created a custom in any way or manner contrary to the specific conditions and agreements of this Agreement, or as having in any way modified or waived the same.

SECTION 12. SUCCESSORS. This Agreement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors, and assigns of the Parties to this Agreement, except as expressly limited in this Agreement.

SECTION 13. TERMINATION. The District agrees that the Contractor may terminate this Agreement with cause by providing thirty (30) days' written notice of termination to the District stating a failure of the District to perform according to the terms of this Agreement; provided, however, that the District shall be provided a reasonable opportunity to cure any failure under this Agreement. The Contractor agrees that the District may terminate this Agreement immediately for cause by providing written notice of termination to the Contractor. The District shall provide thirty (30) days' written notice of termination without cause. Upon any termination of this Agreement, the Contractor shall be entitled to payment for all work and/or services rendered up until the effective termination of this Agreement, subject to whatever claims or off-sets the District may have against the Contractor.

SECTION 14. PERMITS AND LICENSES. Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses.

SECTION 15. ASSIGNMENT. Neither the District nor the Contractor may assign this Agreement without the prior written approval of the other. Any purported assignment without such approval shall be void.

SECTION 16. INDEPENDENT CONTRACTOR STATUS. In all matters relating to this Agreement, the Contractor shall be acting as an independent contractor. Neither the Contractor nor employees of the Contractor, if there are any, are employees of the District under the meaning or application of any Federal or State Unemployment or Insurance Laws or Old Age Laws or otherwise. The Contractor agrees to assume all liabilities or obligations imposed by any one or more of such laws with respect to employees of the Contractor, if there are any, in the performance of this Agreement. The Contractor shall not have any authority to assume or create any obligation, express or implied, on behalf of the District and the Contractor shall have no authority to represent the District as an agent, employee, or in any other capacity, unless otherwise set forth in this Agreement.

SECTION 17. HEADINGS FOR CONVENIENCE ONLY. The descriptive headings in this Agreement are for convenience only and shall neither control nor affect the meaning or construction of any of the provisions of this Agreement.

SECTION 18. ENFORCEMENT OF AGREEMENT. In the event that either the District or the Contractor is required to enforce this Agreement by court proceedings or otherwise, then the prevailing party shall be entitled to recover all fees and costs incurred, including reasonable attorneys' fees and costs for trial, alternative dispute resolution, or appellate proceedings.

SECTION 19. AGREEMENT. This instrument shall constitute the final and complete expression of this Agreement between the Parties relating to the subject matter of this Agreement. None of the provisions of **Exhibit A** shall apply to this Agreement and **Exhibit A** shall not be incorporated herein, except that **Exhibit A** is applicable to the extent that it states the scope of services for the labor and materials to be provided under this Agreement.

SECTION 20. AMENDMENTS. Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both Parties.

SECTION 21. AUTHORIZATION. The execution of this Agreement has been duly authorized by the appropriate body or official of the Parties, the Parties have complied with all the requirements of law, and the Parties have full power and authority to comply with the terms and provisions of this Agreement.

SECTION 22. NOTICES. All notices, requests, consents and other communications under this Agreement ("Notice" or "Notices") shall be in writing and shall be hand delivered, mailed by First Class Mail, postage prepaid, or sent by overnight delivery service, to the Parties, as follows:

A. If to District: Myrtle Creek Improvement District
12051 Corporate Boulevard
Orlando, Florida 32817
Attn: District Manager

With a copy to: Hopping Green & Sams, P.A.
119 S. Monroe Street, Suite 300
Tallahassee, Florida 32301
Attn: District Counsel

B. If to the Contractor: Driveway Maintenance, Inc.
P.O. Box 617585
Orlando, Florida 32861-7585
Attn: _____

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any

time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the District and counsel for the Contractor may deliver Notices on behalf of the District and the Contractor. Any party or other person to whom Notices are to be sent or copied may notify the Parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the Parties and addressees set forth in this Agreement.

SECTION 23. THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the Parties hereto and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Parties hereto any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the Parties hereto and their respective representatives, successors, and assigns.

SECTION 24. CONTROLLING LAW AND VENUE. This Agreement and the provisions contained in this Agreement shall be construed, interpreted, and controlled according to the laws of the State of Florida. All actions and disputes shall be brought in the proper court and venue, which shall be Orange County, Florida.

SECTION 25. COMPLIANCE WITH PUBLIC RECORDS LAWS. Contractor understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records, and, accordingly, Contractor agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited to Section 119.0701, *Florida Statutes*. Contractor acknowledges that the designated public records custodian for the District is Jennifer Walden ("Public Records Custodian"). Among other requirements and to the extent applicable by law, the Contractor shall 1) keep and maintain public records required by the District to perform the service; 2) upon request by the Public Records Custodian, provide the District with the requested public records or allow the records to be inspected or copied within a reasonable time period at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*; 3) ensure that public records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of the contract term and following the contract term if the Contractor does not transfer the records to the Public Records Custodian of the District; and 4) upon completion of the contract, transfer to the District, at no cost, all public records in Contractor's possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred by the Contractor, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the District in a format that is compatible with Microsoft Word or Adobe PDF formats.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO

THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 407-723-5900, waldenj@pfm.com, OR AT 12051 Corporate Blvd, Orlando, FL 32817.

SECTION 26. SEVERABILITY. The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.

SECTION 27. ARM'S LENGTH TRANSACTION. This Agreement has been negotiated fully between the Parties as an arm's length transaction. The Parties participated fully in the preparation of this Agreement with the assistance of their respective counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, the Parties are each deemed to have drafted, chosen, and selected the language, and any doubtful language will not be interpreted or construed against any party.

SECTION 28. COUNTERPARTS. This instrument may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute an original, and such counterparts together shall constitute one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement on the day and year first written above.

Attest:

**MYRTLE CREEK IMPROVEMENT
DISTRICT**

Secretary

Chairperson, Board of Supervisors

DRIVEWAY MAINTENANCE, INC.

(Signature of Witness)

By: _____

Print: _____

Its: _____

Exhibit A: Scope of Services



PROPOSAL

11-191675

Yard: 677 Fairvilla Road • Mail to: P.O. Box 617585
Orlando, Florida 32861-7585
Orlando: (407) 298-8558 • Fax: (407) 298-8588
Kissimmee: (407) 870-7578 • Email: Orlando@Driveway.net
Web Site: www.Driveway.net

6/25/2019

Tavistock Development Company
6900 Tavistock Lakes Blvd. #200
Orlando, FL 32827

Myrtle Creek Improvement District
Lake Nona Blvd.
Orlando, FL 32827

(407)-816-6592

ATTENTION: Stephen Flint

As per directions to perform the following work:

ASPHALT REPAIR TREE ROOT DAMAGED ASPHALT: 127 AREAS TOTALING 23,850 SF.
(Path will be closed for seven days)

1. Sawcut root damaged asphalt where required and clean areas to be patched.
2. Cut and remove any exposed surface roots.
3. Clean off existing surface with a power street blower.
4. Tack area with MS-1 primer tack.
5. Install concrete fine road base, as needed
6. Install 1.5" average overlay using hot plant mixed asphalt, Type SP 9.5
7. Roll and compact using a dual steel drum vibratory roller.
8. Broadcast builders sand on newly paved surface to minimize initial scuffing and marking.
9. Remove and haul away any related debris from site.

Page 1 of 2

WE PROPOSE to furnish labor and material - complete in accordance with above specifications, and subject to conditions stated herein, for the sum of:

WITH PAYMENTS TO BE MADE AS FOLLOWS:

- Not responsible for any damage to underground utilities. •
- A Certificate of Insurance will be issued upon request prior to commencement of work. •

ACCEPTED: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

ACCEPTANCE OF PROPOSAL

DATE OF ACCEPTANCE

PRINT NAME

SIGNATURE

TITLE

X

Bryan Wilson



All material is guaranteed to be as specified. All work is to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance upon above work. Our workers are covered by Workmen's Compensation Insurance.

DRIVEWAY MAINTENANCE INC.



PROPOSAL

11-191675

Yard: 677 Fairvilla Road • Mail to: P.O. Box 617585
Orlando, Florida 32861-7585
Orlando: (407) 298-8558 • Fax: (407) 298-8588
Kissimmee: (407) 870-7578 • Email: Orlando@Driveway.net
Web Site: www.Driveway.net

6/25/2019

Tavistock Development Company
6900 Tavistock Lakes Blvd. #200
Orlando, FL 32827

Myrtle Creek Improvement District
Lake Nona Blvd.
Orlando, FL 32827

(407)-816-6592

ATTENTION: Stephen Flint

*DURING THE MILLING PROCESS ASPHALT IS SUBJECT TO BREAKING LOOSE THICKER THAN THE SPECIFIED MILLING DEPTH, RESULTING IN THE NEED FOR ADDITIONAL MATERIAL. SHOULD EXCESSIVE REMOVAL OCCUR, THE INCREASED TONNAGE WILL BE BILLED AT A RATE OF \$120.00 PER TON IN PLACE.

*NEW PAVEMENT IS SUSCEPTIBLE TO SCUFFING AND MARKS UNTIL IT HAS PROPERLY CURED. THIS CONTRACTOR WILL NOT BE RESPONSIBLE FOR POWER STEERING MARKS AND OTHER SURFACE ABRASIONS AND INDENTATIONS.

*THIS CONTRACTOR CANNOT GUARANTEE THE ELIMINATION OF STANDING WATER.

*THIS CONTRACTOR WILL NOT BE RESPONSIBLE FOR DAMAGES CAUSED TO OR BY CARS OR PERSONS TRESPASSING IN DESIGNATED AREAS.

*DUE TO INCREASES IN THE COSTS OF MATERIALS, THIS PRICE CAN ONLY BE GUARANTEED FOR 30 DAYS.

*PERMIT FEES, PROCUREMENT, RECORDS RETRIEVAL, ENGINEERING, AND ANY ADDITIONAL WORK REQUIRED BY THE PERMIT WILL BE AN ADDITIONAL COST TO THIS CONTRACT.

Page 2 of 2

WE PROPOSE to furnish labor and material - complete in accordance with above specifications, and subject to conditions stated herein, for the sum of:

** SIXTY FIVE THOUSAND SIX HUNDRED DOLLARS AND 00 CENTS **

WITH PAYMENTS TO BE MADE AS FOLLOWS:

NET UPON COMPLETION

- Not responsible for any damage to underground utilities. •
- A Certificate of Insurance will be issued upon request prior to commencement of work. •

ACCEPTED: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

ACCEPTANCE OF PROPOSAL

DATE OF ACCEPTANCE

PRINT NAME

SIGNATURE

TITLE



All material is guaranteed to be as specified. All work is to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance upon above work. Our workers are covered by Workmen's Compensation Insurance.

DRIVEWAY MAINTENANCE INC.

Bryan Wilson

X