

Asphalt Pavement Milling and Re-Surfacing Work Agreement

This Asphalt Pavement Milling and Re-Surfacing Work Agreement (this “**Agreement**”) is entered into as of the ____ day of _____, 2018, between the **Oakstead Community Development District**, whose mailing address is whose mailing address is c/o INFRAMARK, LLC, 210 North University Drive, Suite 702, Coral Springs, Florida 33071 (the “**District**”) and _____, a _____, whose mailing address is _____ (the “**Contractor**”).

Background Information:

The District owns and maintains the right-of-ways within the District. The right-of-ways have undergone normal wear and tear and require asphalt pavement milling and re-surfacing services. The Contractor is duly licensed in the state of Florida and qualified to perform the job duties and has any and all approvals and licenses as required by law to provide the public these services. The Contractor is familiar with the District’s property. The Contractor is willing to provide the services as described in this Agreement.

Operative Provisions:

1. **Incorporation of Background Information.** The background information stated above is true and correct and by this reference the background information is incorporated by reference as a material part of this Agreement.
2. **Scope of Services.** The Contractor shall provide the services for Option ____ described in the Subdivision Road Re-Surfacing Technical Specifications attached hereto as **Exhibit A**.
3. **Notices.** Contractor shall coordinate with the District and send notices, at least one time by mailed notice ____ weeks prior to the work beginning, and at least one time by a door hanger or flyer 1 week prior to applicable subdivision work, to all residents notifying them of the proposed work schedule. Contractor shall also notify all schools, utility companies, mail delivery services, waste and recycling pick up companies, and any other entities or organizations that normally serve the community or would be impacted by the work of the proposed work schedule. The District, at its own expense, will provide updates and notices via its website.
4. **Safety and Traffic Management.** Contractor shall take precautions at all times to protect any persons and property affected by Contractor’s work, utilizing safety equipment such as bright vests and traffic cones, and shall manage and minimize the disturbance to traffic patterns. Contractor shall maintain traffic control as necessary to prevent damage to the work. The Contractor at no additional cost to the District shall repair any such damage, done by traffic to the work. Contractor shall coordinate with the District and ensure that reasonable accommodations are available to ensure that residents may ingress and egress while the work is being performed.

5. **Time of Commencement.** Contractor shall commence the work no later than _____, 2018.
6. **Completion Date.** Contractor shall finish the work no later than _____, 2018. Contractor will perform the work in a timely manner, time being of the essence of this Agreement. All work shall be done Monday through Friday, between the hours of 8:00 am and 4:00 pm.
7. **Delays and Extension of Time of Completion.** If Contractor is delayed at any time in the progress of the work by any act or neglect of the District, or by any employee thereof, or by any separate contractor employed by the District, or by changes ordered in the work, or by prevention of performance because of governmental laws or regulation, or by fire, or unsuitable weather conditions, or unusual delays in delivery of materials and equipment beyond the control of Contractor, then the time of completion shall be extended in writing for such reasonable time as the District may determine.
8. **Payment and Performance Bond.** The District requires that the Contractor furnish bonds covering the faithful performance of this Agreement and payment of all obligations arising hereunder. The cost of such bonds shall be included in the compensation. Provided, no bond will be accepted from an insurance company with a general policyholder's rating of less than "A" and a financial rating of less than "AAA" as indicated in the Best's Insurance Guide. Attorneys-in-fact who sign performance and payment bonds must file with such bond a certified copy of their power of attorney to sign such bonds. Provided further, that the bonds shall be executed on the form set forth in Florida Statute Section 255.05, as amended, or on another form satisfactory to District amended as follows: "This Bond shall afford claimants thereunder, all the rights related thereto, including, but not limited to, the rights to recover attorneys' fees in the event any claim is made against this bond."
9. **Compensation.**
- a) The District agrees to compensate the Contractor for the work described above in the total amount of \$_____.
 - b) The District shall pay to Contractor a 30% refundable deposit of \$_____ upon notice to start the work.
 - c) The District shall pay to Contractor the remainder balance within thirty (30) days of receipt of the invoice after the work is completed and both the District Engineer and District Field Operations Manager have inspected and signed off on the work.
 - d) 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.
10. **Liquidated Damages.** Contractor shall pay liquidated damages, in the amount of one thousand Dollars (\$1,000) per day, for each and every day that the time consumed in

substantially completing the work extends beyond above completion date, except as extended pursuant to Section 7. This amount shall in no event, be considered as a penalty or otherwise but as liquidated and adjusted damages of the District because of said delay (actual damages as of the date hereof being unascertainable) and the Contractor and sureties of the Contractor upon the performance and payment bonds of the Contractor shall be liable therefor. Provided further, that such liquidated damages, if any, may be deducted and retained out of the monies payable to the Contractor. If not so deducted, the Contractor and sureties of the Contractor, if any, shall be liable therefor.

11. **Florida Sales Tax.** Contractor acknowledges that the District is a local unit of special purpose government established pursuant to Chapter 190, Florida Statutes, and is exempt from the Florida Sales and Use Tax, and shall not charge the District any sales tax for the work.

12. **Concealed Conditions**

- a) Contractor has reviewed all existing conditions and limitations affecting the work, including, without limitation, all property lines, utility locations, existing improvements, elevations, and site and local conditions, as applicable to the work. Claims for additional compensation or extensions of time because of the failure of Contractor to familiarize itself with conditions at the site will not be allowed.
- b) If conditions are encountered at the site which are (i) subsurface or otherwise concealed physical conditions which differ materially from those indicated in this Agreement, or (ii) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in this Agreement, then notice by the observing party shall be given to the other party promptly before the conditions are disturbed and in no event later than three (3) business days after first observance of the conditions. The District Engineer will promptly investigate such conditions and, if they are not governed by subsection (c) below and cause an increase or decrease in Contractor's cost of, or time required for, performance of any part of the work, will recommend an equitable adjustment in the compensation or completion date or both. If District Engineer determines that conditions at the site are not as described as above, and that no change in the terms of this Agreement is justified, District Engineer shall so notify District and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within fourteen (14) days after District Engineer has given notice of her determination.
- c) No adjustment in compensation or completion date shall be permitted, however, in connection with a concealed or unknown condition (i) which does not differ materially from those conditions disclosed or (ii) which reasonably should have been disclosed by (a) Contractor's inspections, tests, reviews and preconstruction services performed in connection with the work, including any tests made by or in the possession of Contractor, or (b) inspections, tests, reviews and preconstruction services which Contractor negligently failed to request in connection with the work.

13. **Performance of the Work and Warranty.**

- a) The work to be performed shall include all labor, materials, equipment, and transportation necessary to perform the services described above.
- b) The fact that any part of the work necessary to meet the requirements of District, or any governmental or other appropriate authorities, are not specifically mentioned in this Agreement, will not excuse Contractor from performance thereof if said part of the work to be performed is usual and normal in the crafts or trades required to perform the work or the crafts or trades usually employed to perform work similar to the work.
- c) Prior to commencing the work, the Contractor shall call 8-1-1 and all existing utilities and their appurtenances shall be protected throughout performance of the work.
- d) Contractor shall follow Best Management Practices throughout the work.
- e) The Contractor warrants that the work (a) conforms to the requirements of the this Agreement, (b) was performed in a prompt, diligent, good, safe and workmanlike manner in accordance with all laws, industry standards, building codes, and applicable regulations, (c) was performed without defects in materials to the extent the materials were provided by Contractor, and workmanship, (d) consists of new unused materials to the extent the materials are provided by Contractor, (e) is fit for the particular purposes or uses contemplated by this Agreement, (f) conforms to all accepted models and samples and all affirmations of fact, promises, descriptions or specifications agreed upon by the District and Contractor.
- f) Upon discovery of any information or defect that may affect the work, the Contractor shall immediately provide the District written notice of such information or defect. Failure of the Contractor to report such items shall result in the Contractor incurring full responsibility and cost for repairs necessary.
- g) Except as to latent defects or defects that are concealed and/or not disclosed due to fraud, the warranty period will expire one year form the date the District Engineer declares final completion of the work and authorizes release of the final payment for the work.
- h) Provided that the work is maintained in accordance with Contractor's recommendations, Contractor warrants any substantial defect in workmanship at no expense to the District.
- i) The District shall provide written notice to the Contractor of any defects after the work is complete.
- j) At the conclusion of the work, the Contractor shall dispose of any waste material at an off-site waste disposal facility.

14. **Change Orders.** Contractor understands that the work may be reduced, enlarged or otherwise modified in scope. If any additional services are proposed beyond those identified in this Agreement, Contractor shall perform them but only after receiving a written change order from the District. Contractor shall not perform any service omitted from the Agreement by deductive change order. Contractor shall cooperate with and assist the District in preparing and determining the scope of any change order. In the event this is a unit price Agreement, Contractor's compensation shall be adjusted for the added or deducted services proposed by the change order in accordance with the unit prices established in this Agreement. In the event this Agreement is not a unit price agreement, Contractor's compensation shall be adjusted for the added or deducted services proposed by the change order as reasonably determined by the District in conference with the Contractor.
15. **Damage to Property.** Contractor is responsible for ensuring that no private or public property is damaged, while providing the services described above. The Contractor assumes liability for all damage to work under construction or completed, whether from fire, water, winds, vandalism, or other causes, until final completion and acceptance by the District and notwithstanding the fact that partial payments, if any, may have been made during the progress of the work. The Contractor shall be responsible for any damage caused by Contractor's negligence.
16. **Permits and Regulations.** All permits necessary for the work to be performed under this Agreement shall be paid for and obtained by the Contractor. The Contractor shall comply with necessary economic, operational, safety, insurance, and other compliance requirements imposed by federal, state, county, municipal or regulatory bodies, relating to the contemplated operations and services hereunder. Contractor shall be responsible for any fines or penalties assessed against District as a result of Contractor's work.
17. **Subcontractors.**
- a) Contractor agrees to hold its Subcontractors, including all persons directly or indirectly employed by them, responsible for any damages due to breach of contract or any negligent act and to diligently endeavor to effect recoveries of such damages. District shall be deemed to be a third party beneficiary of, but shall not have any obligation under, each subcontract and may, if District elects, require (following Contractor's default under this Agreement or District's termination of this Agreement) that a Subcontractor perform all of the then unperformed duties and obligations of such Subcontractor thereunder for the benefit of District (rather than Contractor); however, in the event that District requires any such performance by a Subcontractor for the direct benefit of District, then District shall be bound and obligated to pay such Subcontractor for such portion of the work done by such Subcontractor in accordance with the terms of this Agreement for such portion performed in strict conformance to this Agreement to date (to-wit: the reasonable value of that portion of the subcontract performed by such Subcontractor) and subsequent to the date that District elects to invoke such rights. District's liability in connection herewith, however, is not to exceed the amount obtained by subtracting from the subcontract the total of all sums paid by Contractor to Subcontractor prior to District's invoking its rights hereunder with respect to direct performance by Subcontractor for District. In the event that District elects to invoke such rights, District shall give written notice of such election to Contractor and such

Subcontractor. Any amounts paid by District to a Subcontractor shall be either (a) deducted from the amount due to Contractor under this Agreement or (b) reimbursed if District has already paid Contractor, by Contractor to District upon District's written demand.

- b) Prior to the retention or hiring of a Subcontractor, Contractor shall inform the District which persons, firms or entities which Contractor proposes to engage to furnish labor and/or materials in constructing the improvements and, if requested by District, will furnish District with a copy of all written agreements (including subcontracts and purchase orders) therefor. Contractor agrees that District has the right in its sole discretion to disapprove any Subcontractor of any tier. District also shall have the right to telephone or otherwise communicate with each Subcontractor of every tier to verify the facts disclosed by any list or any invoice submitted to District, or for any other purpose. All subcontracts let or amended by Contractor relating to the work shall require disclosure to District of information sufficient to make verification. Each approved subcontract shall contain provisions which specifically bind such Subcontractor to the applicable terms and provisions of this Agreement and shall also contain provisions permitting assignment thereof to District and District's lender as provided below.
- c) Any Subcontractor or individual laborer whom District or District Engineer believes in good faith not to be qualified to pursue the work or whom District does not wish to be engaged in the work, shall be excluded from the work, and shall be replaced with a Subcontractor or laborer approved by District and District Engineer.

18. Insurance.

- a) The Contractor shall carry commercial general liability insurance of no less than \$2,000,000 and commercial automobile liability insurance of no less than \$1,000,000. The Contractor shall deliver to the District proof of insurance referred to herein or a certificate evidencing the coverage provided pursuant to this Agreement and naming the District as "Additional Insured" under such policy. Such insurance policy may not be canceled without a thirty-day written notice to the District. The Contractor will maintain Workers Compensation insurance as required by law.
- b) Contractor shall require all of its Subcontractors and suppliers of every tier to procure and maintain all of the same types of insurance coverages which are required of Contractor under this Agreement, and to furnish the District with certificates of insurance and endorsements complying with this section.
- c) With respect to any insurance Contractor is required to maintain pursuant to this Agreement, or does maintain, for the work and/or the site, including, without limitation, that set forth herein, Contractor warrants that Contractor has the right to waive any and all rights of subrogation which Contractor's insurance carriers might have or claim against District, and/or the Indemnified Parties (defined below), arising out of the work and/or the site. Contractor hereby waives to the fullest extent legally permitted all such present and future rights of subrogation and agrees to hold harmless, defend and indemnify District, and the Indemnified Parties from all such

subrogation claims. Contractor shall require such waivers from its subcontractors and suppliers. Contractor and its subcontractors' and suppliers' policies shall provide such waivers by endorsement. A waiver of subrogation shall be effective as to a person or entity even if that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium and whether or not the person or entity had an insurable interest in the property damaged or person injured.

19. **Indemnification.** Contractor agrees to indemnify, defend and hold the District and its supervisors, officers, managers, agents and employees (“**Indemnified Parties**”) harmless 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 Districts limitations on liability contained in section 768.28, Florida Statutes, or other statute or law. Any subcontractor retained by the Contractor shall acknowledge the same in writing. 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. The obligations under this section shall be limited to no more than \$2,000,000.00, which amount Contractor agrees bears a reasonable commercial relationship to this Agreement and was part of the bid documents. Nothing in this section is intended to waive or alter any other remedies that the District may have as against the Contractor.
20. **Relationship Between the Parties.** It is understood that the Contractor is an independent contractor and shall perform the services contemplated under this Agreement. As an independent contractor, nothing in this Agreement shall be deemed to create a partnership, joint venture, or employer-employee relationship between the Contractor and the District. The Contractor shall not have the right to make any contract or commitments for, or on behalf of, the District without the prior written approval of the District. The Contractor assumes full responsibility for the payment and reporting of all local, state, and federal taxes and other contributions imposed or required of the Contractor during the performance of services to the District.
21. **Termination.** Either party shall have the right to terminate this Agreement upon failure of to cure any defaults after thirty (30) days written notice. Upon receipt of a termination notice Contractor will cease performance of the work and make every reasonable effort to procure cancellation of all existing orders for materials. Contractor will be entitled to receive as its exclusive remedy payment for the actual cost of materials purchased by Contractor and the work performed up to the time of receipt of the notice (as the percentage of completion is reasonably determined by the District) with the compensation amount being prorated accordingly, if the deposit exceeds these costs, Contractor shall refund the appropriate amount to the District.

22. **Contractor's Default.**

- a) Contractor shall be in “Default” under this Agreement if, after seven (7) days written notice, Contractor fails or neglects to (i) carry out the work in accordance with this Agreement or in accordance with any specifications, applicable laws, (ii) make proper and timely payment to any Subcontractor for materials or labor, (iii) replace rejected material promptly or correct rejected workmanship as herein provided, or (iv) observe any other terms, provisions, conditions, covenants and agreements in this Agreement to be observed and performed on the part of Contractor.
- b) In the event of a Default by Contractor, District, without prejudice to any other right or remedy District may have, may correct such deficiencies and may deduct the cost thereof, including compensation for the District Engineer’s services and expenses made necessary thereby, from the payment then or thereafter due Contractor.
- c) Alternatively, after Contractor’s failure to cure such matter within such seven (7) day period, at the District’s option, District may terminate this Agreement and take possession of the site and remove all materials, tools and construction equipment and machinery thereon owned by Contractor (or require Contractor to immediately remove all such materials, tools and construction equipment and machinery from the site) and District may finish (or cause another contractor to finish) the work by whatever method District may deem expedient. If District takes possession of the site, District may, without any cost or liability to District, use materials, tools and construction equipment and machinery owned by Contractor and left on the site. If the unpaid balance of the compensation exceeds the cost of finishing the work, including compensation for District Engineer’s services and expenses made necessary thereby (including, without limitation, District’s reasonable attorney’s fees and costs), such excess shall be paid to Contractor following final completion of the work by District, but if such cost exceeds such unpaid balance, Contractor shall pay the difference to District. District shall not be responsible to Contractor for any loss of anticipated profits or other consequential damages on any of the work not performed on account of a termination of this Agreement under this section. After any termination of this Agreement by District pursuant to this section, Contractor shall not be entitled to any further payment under this Agreement except to the extent of any amount by which the authorized work completed or installed by Contractor prior to such termination and not previously paid for by District exceeds the amount due by Contractor to District under this section (including all damages which District would be entitled to recover from Contractor by reason of Contractor’s breach), and even then only at such time as the work is finally completed. Any sums payable by Contractor to District pursuant to this section shall be payable upon demand and shall bear interest at the lesser of 12% per annum or the highest lawful rate until paid.

23. **Public Records.** As required under Section 119.0701, Florida Statutes, Contractor shall (a) keep and maintain public records that ordinarily and necessarily would be required by the District in order to perform the service, (b) provide the public with access to public records on the same terms and conditions that the District would provide the records and at a cost that does not exceed the cost provided by law, (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law, (d) meet all requirements for retaining public

records and transfer, at no cost, to the District all public records in possession of the Contractor upon termination of this Agreement and 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 the information technology systems of the District.

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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (813) 991-1116, OR BY EMAIL AT ANDY.MENDENHALL@INFRAMARK.COM, OR BY REGULAR MAIL AT 210 NORTH UNIVERSITY DRIVE, SUITE 702, CORAL SPRINGS, FLORIDA 33071.

24. Public Entity Crimes. Pursuant to Section 287.133(3)(a), Florida Statutes:

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

Contractor represents that in entering into this Agreement, the Contractor has not been placed on the convicted vendor list within the last 36 months and, in the event that the Contractor is placed on the convicted vendor list, the Contractor shall immediately notify the District whereupon this Agreement may be terminated by the District.

25. Controlling Law. This Agreement shall be governed under the laws of the State of Florida with venue in Pasco County, Florida.

26. Enforcement of Agreement. In the event it shall become necessary for either party to institute legal proceedings in order to enforce the terms of this Agreement, the prevailing party shall be entitled to all costs, including reasonable attorney's fees at both trial and appellate levels against the non-prevailing party.

27. No Waiver of Claims. Approval of any portion of the work or payment therefor by District shall not constitute a waiver of any claims that District may have against Contractor with respect thereto.

28. **No Waiver of Remedies for Subsequent Breaches.** The waiver by District of any default, or of any breach of the terms of this Agreement, shall not be deemed a waiver of any subsequent breach. The remedies and rights of District, in the event of any Default by Contractor, are cumulative and in addition to those given by law.
29. **Severability.** If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect.
30. **Amendment.** This Agreement may not be altered, changed or amended, except by an instrument in writing, signed by both parties hereto.
31. **Assignment.** This Agreement is not transferrable or assignable by either party without the written approval of both parties.
32. **Arm's Length Transaction.** This Agreement has been negotiated fully between the District and the Contractor as an arm's length transaction. 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.
33. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute, but one and the same instrument.
34. **Entire Agreement.** This Agreement contains the entire agreement and neither party is to rely upon any oral representations made by the other party, except as set forth in this Agreement. To the extent that any provisions of this Agreement conflict with the provisions in any exhibit, the provisions in this Agreement shall control over provisions in any exhibit.

[signature page to follow]

**Oakstead Community
Development District**

By: _____
Name: _____
Title: _____

Norman Keith
Chair of the Board of Supervisors

DRAFT