

Midtown Improvement District

12051 Corporate Boulevard, Orlando, FL 32817; Phone: 407-723-5900

The following is the proposed agenda for the upcoming Meeting of the Board of Supervisors for the Midtown Improvement District ("District"), scheduled to be held at **4:30 p.m. on Tuesday, July 20, 2021 at Courtyard Orlando Lake Nona, 6955 Tavistock Lakes Blvd, Orlando, FL 32827**. A quorum will be confirmed prior to the start of the meeting.

Please use the following information to join via the computer or the conference line:

Phone: 1-844-621-3956

Computer: pfmgroup.webex.com

Participant Code: 796 580 192#

BOARD OF SUPERVISORS' MEETING AGENDA

Organizational Matters

- Roll Call to Confirm Quorum
- Public Comment Period

Business Matters

1. **Consideration of Resolution 2021-16, Delegating Authority to Chairman to Award Certain Contracts, Agreements and Other Documents**
2. **Presentation of Engineer's Report and Capital Improvement Program**
3. **Consideration of Construction Funding Agreement between the District and Lake Nona Land Company, LLC**
4. **Consideration of Interlocal Agreement between the District and the Poitras East Community Development District Regarding Construction of Centerline Drive Segment F**
5. **Consideration of Personnel Leasing Agreement for Landscape and Irrigation Monitoring and Maintenance with Berman Construction, LLC**
6. **Consideration of General Maintenance Services Agreement between the District and Berman Construction, LLC**
7. **Consideration of Project Management Agreement with Lake Nona Land Company, LLC**
8. **Consideration of Resolution 2021-27, Regarding the District's Direct Purchase of Construction Materials and the Approving Procedures Associated with the Same (*provided under separate cover*)**
9. **Consideration of Insurance Quote for Direct Purchase Materials (*provided under separate cover*)**
10. **Recommendation of Work Authorization/Proposed Services (if applicable)**

Other Business

A. Staff Reports

1. District Counsel
2. District Manager
3. District Engineer



- 4. Construction Supervisor
- B. Supervisor Requests

Adjournment



Midtown Improvement District

**Resolution 2021-16,
Delegating Authority to Chairman to Award Certain Contracts,
Agreement and Other Documents**

RESOLUTION 2021-16

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE MIDTOWN IMPROVEMENT DISTRICT AUTHORIZING THE CHAIRPERSON TO TAKE THE NECESSARY ACTIONS TO AWARD CERTAIN CONTRACTS, AGREEMENTS AND OTHER DOCUMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Midtown Improvement District (“District”) was established pursuant to the Uniform Community Development District Act of 1980, Chapter 190, *Florida Statutes*, as amended, and is validly existing under the Constitution and laws of the State of Florida for the purpose of planning, financing, constructing, operating and/or maintaining certain infrastructure; and

WHEREAS, Section 190.011(5), *Florida Statutes*, authorizes the District to adopt resolutions which may be necessary for the conduct of District business; and

WHEREAS, the District has a need to retain independent contractors to provide a variety of operational, maintenance, construction and other services within and around the District (“Services”); and

WHEREAS, the Board finds it necessary, for the efficient conduct of District business, that certain contracts, agreements and other documents, that do not exceed _____ Dollars (\$ _____ .00), by and between the District and any contractor be processed in a timely fashion; and

WHEREAS, in order to expedite District business matters, the Board desires to authorize and delegate the necessary authority to the District Chairperson to review the proposals for Services and award contracts for Services to the most qualified contractors; and

WHEREAS, any contracts, agreements or other documents executed by the District Chairperson will be brought before the Board at its next regularly scheduled meeting for ratification purposes; and

WHEREAS, the Board determines this resolution is in the best interest of the District and is necessary for the efficient conduct of District business; the health, safety and welfare of the residents within the District; and the preservation of District assets and liabilities.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE MIDTOWN IMPROVEMENT DISTRICT:

SECTION 1. All of the representations, findings and determinations contained within the recitals stated above are recognized as true and accurate and are expressly incorporated into this Resolution.

SECTION 2. The Board hereby authorizes and delegates authority to the District Chairperson to take all actions necessary in order to award and execute contracts, agreements or other documents related to the engagement of contractors for Services; provided however, that the amounts of such contracts do not exceed _____ Dollars (\$_____.00). Any contracts, agreements or other documents related to the engagement of contractors for Services that exceeds _____ Dollars (\$_____.00) shall be submitted to the Board for consideration at a regularly scheduled and publicly noticed Board meeting.

SECTION 3. Any such contracts, agreements and other documents executed by the District Chairperson shall be ratified by the Board at its next publicly noticed meeting.

SECTION 4. This Resolution shall become effective upon its passage and shall remain in effect unless rescinded or repealed.

PASSED AND ADOPTED this 20th day of July, 2021.

ATTEST:

MIDTOWN IMPROVEMENT DISTRICT

Secretary/Assistant Secretary

Chairperson/Vice Chairperson

Midtown Improvement District

Engineer's Report and Capital Improvement Program

ENGINEER'S REPORT AND
CAPITAL IMPROVEMENT PROGRAM

MIDTOWN IMPROVEMENT DISTRICT

July 7, 2021

FOR

MIDTOWN IMPROVEMENT DISTRICT

ORLANDO, FLORIDA

BY:

DONALD W. McINTOSH ASSOCIATES, INC.
2200 PARK AVENUE NORTH
WINTER PARK, FL 32789

**ENGINEER'S REPORT AND
CAPITAL IMPROVEMENT PROGRAM**

MIDTOWN IMPROVEMENT DISTRICT

I. BACKGROUND

The MIDTOWN IMPROVEMENT DISTRICT (District) was established under City of Orlando Ordinance No. 2021-33 adopted by the City Council with an effective date of June 28, 2021. It is located on approximately 389 acres of land. As of the date of this report, all real property located within the District is owned by Lake Nona Land Company, LLC, who will act as the Master Developer (Developer) of the property, and affiliated entities. The District has been created as a unit of special-purpose government to construct, acquire, finance and maintain certain necessary public infrastructure improvements as described herein. This Engineer's Report and Capital Improvement Program (Report) has been prepared at the request of the District.

The District is generally located east of Boggy Creek Road, south of State Road 417 (the "Central Florida Greenway"), west of Narcoossee Road, and north of the Orange/Osceola County boundary in the City of Orlando, Florida. The District is one of five improvement districts within the Lake Nona Development. Attached Exhibit "A" depicts the boundaries of all five districts. The lands within the District are currently encompassed within the Lake Nona Planned Development (PD) as approved by the City of Orlando. A map of the entire Lake Nona development is included as Exhibit "B."

The Capital Improvement Program (CIP) included herein reflects the proposed improvements within the currently approved District boundary, which will be discussed later in this Report.

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Engineer's Report and Capital Improvement Program
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As represented by the Developer, the currently contemplated Master Plan represents development of public infrastructure improvements to support a development program of approximately:

- 1,608,000 sq. ft. of retail, restaurant and other non-residential uses;
- 3,500 residential dwelling units; and
- community amenities and recreational facilities

Minor revisions to the currently contemplated development program can be implemented if consistent with the City-approved Planned Development. Ultimate build-out is presently expected to occur over an estimated period of ten (10) years.

II. OBJECTIVE

This Report has been prepared to assist with the financing and construction of various necessary public infrastructure improvements contemplated to be constructed, acquired and/or installed to provide safe and adequate access, utilities, etc. within the District. This Report presents a narrative description of the major components included within the infrastructure systems and current Engineer's opinions of probable costs for completing the District-related improvements necessary to support the development of the lands located within the District. The CIP is currently anticipated to be implemented in a single phase and includes:

- Centerline Drive Extension (Segment A) - a ±1,100-foot long 2-lane roadway extending from Nemours Parkway to Tavistock Lakes Boulevard
- Centerline Drive Extension (Segment B) - a ±1,120-foot long 2-lane roadway extending from Tavistock Lakes Boulevard to Laureate Boulevard

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- Centerline Drive Extension (Segment C) - a ±1,215-foot long widening of an existing 2-lane roadway (formerly Hartwell Court) extending southward from Laureate Boulevard along the eastern boundary of the VA Hospital
- Centerline Drive Extension (Segment D) - a ±1,200-foot long 2-lane roadway extending southward from southern terminus of Segment C, across pond SMA 11-A to the northern terminus of existing Centerline Drive (Segment E)
- Centerline Drive Extension (Segment F) - a ±950-foot long 2-lane roadway extending southward from southern terminus of Segment E, beyond which the roadway will be extended to Boggy Creek Road by the Poitras East Community Development District
- Turn lane improvements and traffic signal improvements at the intersections of Centerline Drive with Laureate Boulevard and Tavistock Lakes Boulevard

The CIP reflected in this Report represents the present intentions of the Developer and the District. The implementation of any CIP components discussed in this plan requires final approval by many regulatory and permitting agencies including the City of Orlando. The actual improvements described herein may vary from the CIP discussed in this Report. If additional improvements not described herein are identified, this Report may be amended to reflect such additional improvements.

Engineer's opinions of probable costs contained in this Report have been prepared based on the Engineer's opinion and interpretation of the best available information at this time. The actual costs of construction, engineering design, planning, approvals and permitting may vary from the cost opinions presented herein.

III. TRANSPORTATION IMPROVEMENTS

There are currently three (3) major east-west collector roadways running through or adjacent to the District boundary, including Nemours Parkway, Tavistock Lakes Boulevard and Laureate Boulevard. Additionally, the District's western boundary abuts Lake Nona Boulevard. The proposed roadway improvements within the District include approximately five thousand six hundred (5,600) linear feet of 2-lane roadway known as Centerline Drive, which will provide north-south interconnectivity with the existing east-west collector roadways and access to future residential, commercial, and support development within the District.

The primary roadway infrastructure includes that necessary to provide safe and adequate access to the lands within the District. A graphic depiction of the primary roadway infrastructure is set forth in Exhibit "C."

Centerline Drive will be a public roadway and is proposed to be constructed using asphalt concrete surface with curb sections and sidewalks. Portions of this roadway will have on-street parking, asphalt trails and/or bicycle paths, and landscaped parkways and/or medians. The District-constructed roadway will ultimately be owned, operated and maintained by the City of Orlando; however, the District will maintain the landscaping and irrigation within the City rights-of-way.

In addition to roadways, the District also intends to undertake improvements that will facilitate enhanced and/or alternative mobility solutions, including but not limited to shared mobility lanes, dedicated rights-of-way, recovery zones for user equipment repairs, rest and hydration, a head-end mobility hub, sheltered waiting areas, upgrading of existing pedestrian and bicycle paths, naturally shaded and streetscaped environments, wayfinding, etc.

The Developer has obtained approval for funding under the BUILD (Better Utilizing Investments to Leverage Development) Transportation Discretionary Grant program, which may help to offset some costs that would normally be expected to be borne by the District; however, the potential effect of BUILD Grant funding has not been factored into the estimated costs included in this report. The Developer is also pursuing potential transportation impact fee credits that may be available to offset the costs of transportation infrastructure; however, the applicability and amount are uncertain so they have not been factored into the estimated infrastructure costs included in this report.

An allowance has been included for the cost to acquire the right-of-way required to construct the necessary roadway improvements. The actual value of the right-of-way will be determined by appraisal and approved by the District's Board of Supervisors prior to acquisition at a cost not to exceed the appraised value. For the purposes of this report and based on guidance from the Developer, the District's monetary cost for right-of-way is assumed to be \$75,000.00 per acre and is utilized for the estimates presented herein.

IV. POTABLE WATER, RECLAIMED WATER, & SANITARY SEWER FACILITIES

The potable water distribution system for the District will include a potable water main extension that connects to the Orlando Utilities Commission (OUC) water mains in Nemours Parkway, Tavistock Lakes Boulevard and Laureate Boulevard. Distribution mains will run generally within the primary roadway corridor described above with the objective that the potable water distribution system will serve as a source of potable water and fire protection water for all of the development within the District. The potable water facilities constructed

**Midtown Improvement District
Engineer's Report and Capital Improvement Program
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by the District will ultimately be owned, operated and maintained by the Orlando Utilities Commission.

The reclaimed water distribution system for the District will include a reclaimed water main extension that connects to the City of Orlando reclaimed water mains in Nemours Parkway, Tavistock Lakes Boulevard and Laureate Boulevard. Like the potable water mains, the reclaimed water distribution mains will run generally within the primary roadway corridor described above with the objective that the reclaimed water distribution system will ultimately serve as a source of non-potable (irrigation) water for all of the development within the District. The District will only fund the operating cost of providing reclaimed water to District-owned common areas and landscaped right-of-way areas. The reclaimed water facilities constructed by the District will ultimately be owned, operated and maintained by the City of Orlando.

The sanitary sewer system for the District will include gravity sewer mains that discharge to the City of Orlando sanitary sewer collection systems in Nemours Parkway and Laureate Boulevard. The gravity sewer mains will run generally within the primary roadway corridor described above with the objective that the sanitary sewer collection system will convey wastewater from development within the District to the City of Orlando's existing pumping, transmission and treatment systems. These sanitary sewer facilities, along with contributing gravity sewer collection systems constructed by the Developer, will act as the wastewater collection systems for all development within the District. The sanitary sewer facilities constructed by the District will ultimately be owned, operated and maintained by the City of Orlando.

V. ELECTRICAL DUCT BANK AND STREET LIGHT CONDUIT

The infrastructure roadway corridor will accommodate a plastic pipe duct bank system and plastic pipe streetlight conduits, manholes and pull boxes. This duct bank system and conduit network will enable the efficient distribution of electric power provided by Orlando Utilities Commission (OUC) to the development, including power to the streetlights. The proposed duct bank system will run within the rights-of-way or easements established for the primary roadway corridor and be placed as part of the initial roadway construction to significantly limit the amount of disruption required to provide these needed services as development progresses. Street light conduit and the street light network are also intended to be completed concurrent with the roadway construction. These duct bank and conduit systems are included in the CIP. The electrical duct banks and conduits constructed by the District will ultimately be owned, operated and maintained by the Orlando Utilities Commission.

VI. STORMWATER MANAGEMENT AND DRAINAGE FACILITIES

To enable construction of the public infrastructure improvements required to support the District, a site-wide master stormwater management system has been and will continue to be implemented. This master stormwater management system consists of a series of surface water retention/detention ponds enabling treatment and attenuation of stormwater runoff from development within the District. The surface water retention/detention ponds have historically been constructed by the Developer; therefore, this CIP does not include costs for those improvements. Drainage works consisting of roadway inlets, collector pipes, manholes, outfall pipes, etc. to be constructed within the proposed infrastructure roadways will collect stormwater runoff and convey it to the master stormwater management system. These drainage

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Engineer's Report and Capital Improvement Program
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improvements are included in this CIP and are identified as “Drainage Works” in the estimates that follow.

At present, no allowance is included in the attached estimates for acquisition of the retention/detention stormwater management area tracts (real estate) required to construct the necessary master stormwater management improvements given the current understanding that the ponds are owned, operated and maintained by the Developer. Discussions are ongoing regarding the ultimate ownership, operation and maintenance of the stormwater retention/detention pond system, which may ultimately be by the District, the City of Orlando, the Developer or applicable owners' association(s).

VII. RECREATION FACILITIES AND AMENITIES

One of the major components of creating a community is the implementation of special common area and recreation facility improvements. The proposed development plan for the project includes the creation of several special amenities and “places,” which will help create a sense of community. These areas include park facilities and select land clearing and wetland edge cleaning. The District fully supports an elevated level of quality throughout the Lake Nona PD; however, the CIP does not anticipate District funding of recreational facilities or amenities beyond the District's intent to incorporate upgraded street sign poles, upgraded street lighting, and enhanced streetscaping, including community identification monuments. All other recreational facilities and/or amenities are anticipated to be funded by the Developer or their successor in title. However, the District may accept such facilities for ownership, operation and maintenance once constructed.

VIII. DESIGN/PERMITTING AND CONTINGENCY

Estimated soft costs associated with the CIP are included in the Opinion of Probable Costs included herein. These include but are not limited to:

- design/engineering/permitting;
- land surveying;
- legal consulting;
- environmental consulting;
- regulatory permitting;
- materials testing;
- as-built surveying; and
- observation during construction to assure the site is constructed as designed and maintained in a safe and secure manner until sufficient infrastructure is in place to allow for dedication to the appropriate jurisdictional or regulatory agency.

A project contingency estimate has also been included.

IX. COST ESTIMATES FOR DEVELOPMENT IMPROVEMENTS

A summary of the Engineer's Opinion of Probable Costs is provided as Table 1. A listing of the entities expected to receive the dedication of various improvements along with the entities expected to assume responsibility for operation and maintenance of the facilities is provided in Table 2.

The opinions of probable costs provided in this Report represent only those facilities to be designed, constructed, and/or installed by the District. Costs are based upon the Engineer's opinion and interpretation of the best available information; however, costs will vary based on final site planning, final engineering, approvals from regulatory agencies and economic factors.

In our opinion, the estimated costs identified herein are reasonable and sufficient for the design, construction and/or installation of the CIP.

TABLE 1
MIDTOWN IMPROVEMENT DISTRICT
ENGINEER'S OPINION OF PROBABLE COST
July 7, 2021

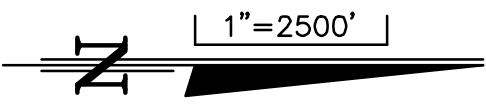
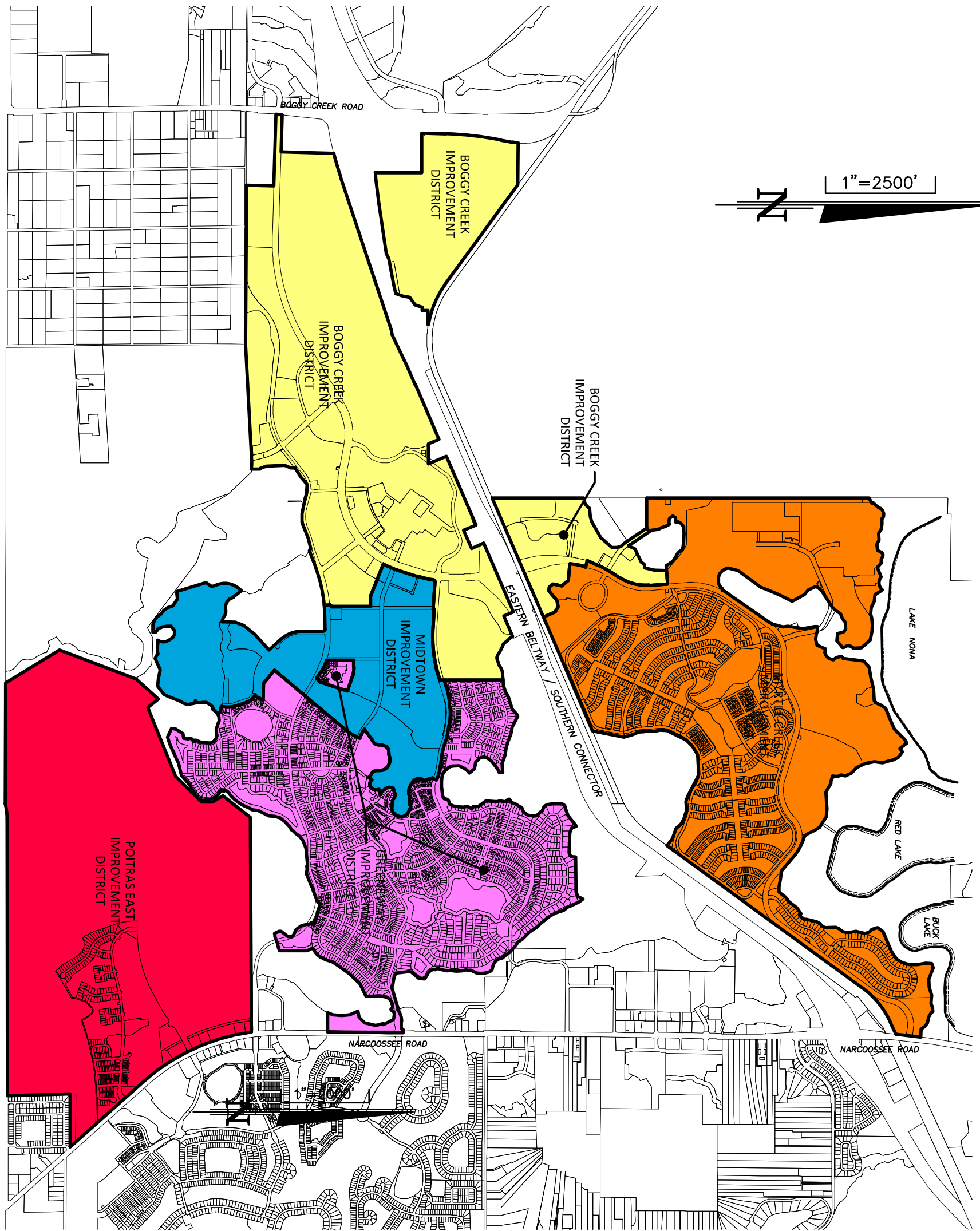
Component	Total District Capital Improvement Program
Roadway Construction	\$5,400,000
Potable Water	\$1,000,000
Sanitary Sewer	\$1,400,000
Reclaimed Water	\$700,000
Duct Bank Undergrounding/Street Lights	\$1,500,000
Drainage	\$2,400,000
Landscape and Irrigation	\$1,900,000
Soft Costs	\$1,600,000
	\$15,900,000

- 1) The estimated cost of Roadway Construction includes estimated cost of right-of-way acquisition, subject to an MAI appraisal and Board approval.
- 2) An allowance for wetland mitigation costs is included in the estimated cost of Roadway Construction.
- 3) Improvements identified in the Capital Improvement Plan, whether they are identified within the "Initial Phase Improvements" or the "Proposed Future Improvements" in the chart above, may be financed with proceeds of any series of Bonds or other available capital, subject to Board approval.
- 4) This opinion of probable cost represents the Engineer's judgment as a design professional and is supplied for the general guidance of the District. The Engineer has no control over the cost of labor and material, competitive bidding or market conditions. While it is the Engineer's opinion that the costs identified herein are reasonable and sufficient for the design, construction and/or installation of the CIP, the Engineer does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost to the District.

TABLE 2
MIDTOWN IMPROVEMENT DISTRICT
OWNERSHIP, OPERATION & MAINTENANCE SUMMARY
July 7, 2021

<u>DISTRICT CONSTRUCTED SYSTEM</u>	<u>OWNERSHIP</u>	<u>OPERATION AND MAINTENANCE ENTITY</u>
Public Roadways	City of Orlando	City of Orlando
Potable Water	Orlando Utilities Commission	Orlando Utilities Commission
Sanitary Sewer	City of Orlando	City of Orlando
Reclaimed Water	City of Orlando	City of Orlando
Electrical Duct Bank/Street Lights*	Orlando Utilities Commission	Orlando Utilities Commission
Drainage Works	City of Orlando	City of Orlando
Common Areas / Landscaping	District / City of Orlando	District / City of Orlando

*It is anticipated that the Orlando Utilities Commission will install, own, operate and maintain street lights under a lease agreement with the District.



- BOGGY CREEK IMPROVEMENT DISTRICT**
- GREENEWAY IMPROVEMENT DISTRICT**
- MYRTLE CREEK IMPROVEMENT DISTRICT**
- MIDTOWN IMPROVEMENT DISTRICT**
- POITRAS EAST COMMUNITY DEVELOPMENT DISTRICT**

PREPARED FOR:

MIDTOWN IMPROVEMENT DISTRICT



DONALD W. McINTOSH ASSOCIATES, INC.
ENGINEERS PLANNERS SURVEYORS
 2200 PARK AVENUE NORTH, WINTER PARK, FLORIDA 32789 (407) 644-4068
 CERTIFICATE OF AUTHORIZATION NO. LB68

DRAWN BY: <u>STAFF</u>	CHECKED BY: <u>JUN</u>	JOB NO. <u>21505</u>	SCALE <u>1"=2500'</u>	SHEET <u>1</u>
DATE: <u>07/07/21</u>	DATE: <u>07/07/21</u>			OF <u>1</u>

DATE	BY	DESCRIPTION
REVISIONS		

LAKE NONA®



Proposed Map H - Master Plan 8.7 PD Development Plan

April 15, 2020

Note:
Alignment of Road J through GOAA lands is conceptual and subject to refinement at a later time

Wildlife Corridor Easement
Natural Area
Avigation Easement

Note:
Alignment of Road J through GOAA lands is conceptual and subject to refinement at a later time

- Roadway Link
- Eagle Nest Buffer
- Avigation Easement
- Stormwater Management Area
- Residential Neighborhood
- Airport Support - High Intensity
- Airport Support - Medium Intensity
- Civic
- Conservation
- Village Center/Neighborhood Center
- Miscellaneous

EXHIBIT "B"

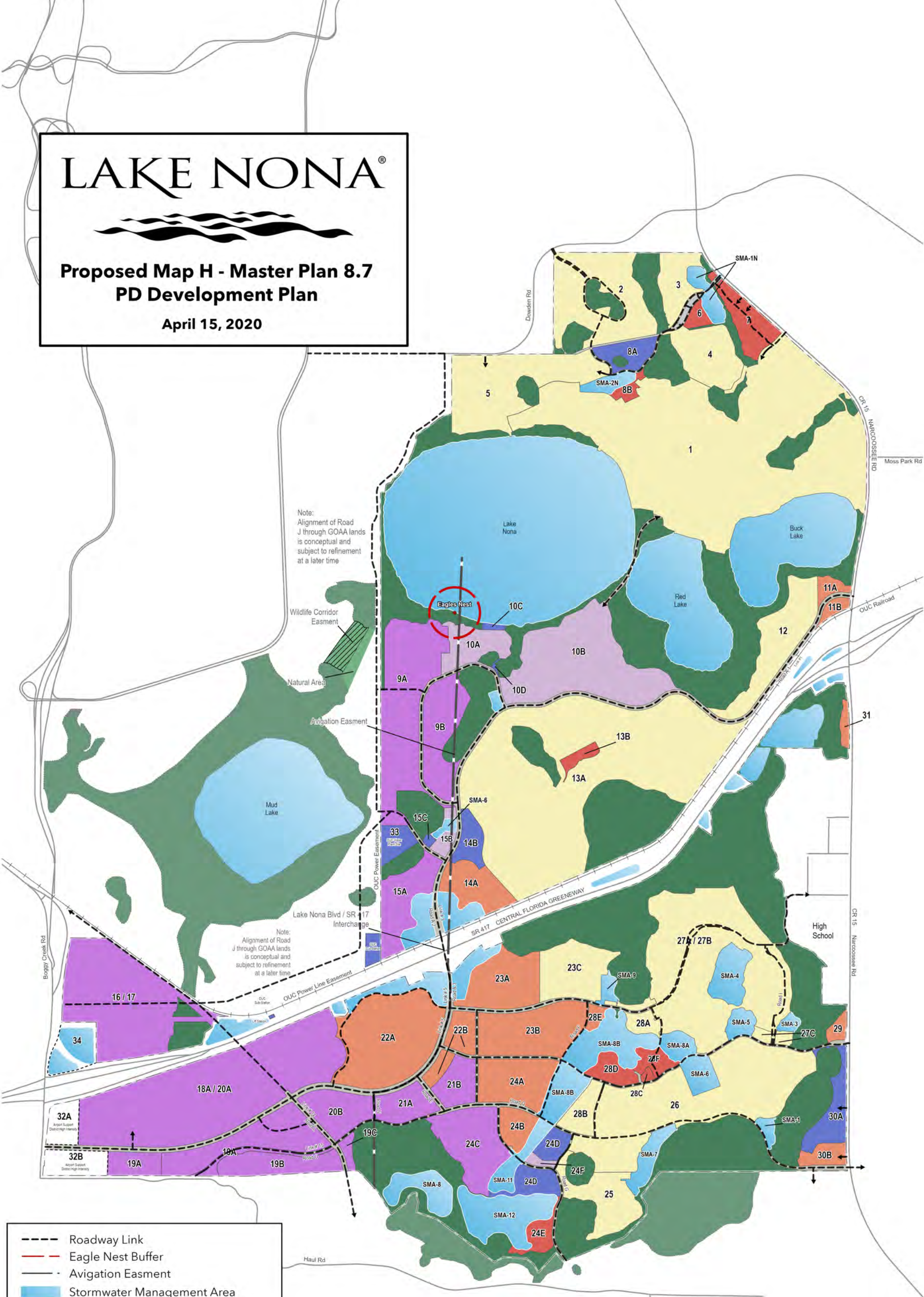
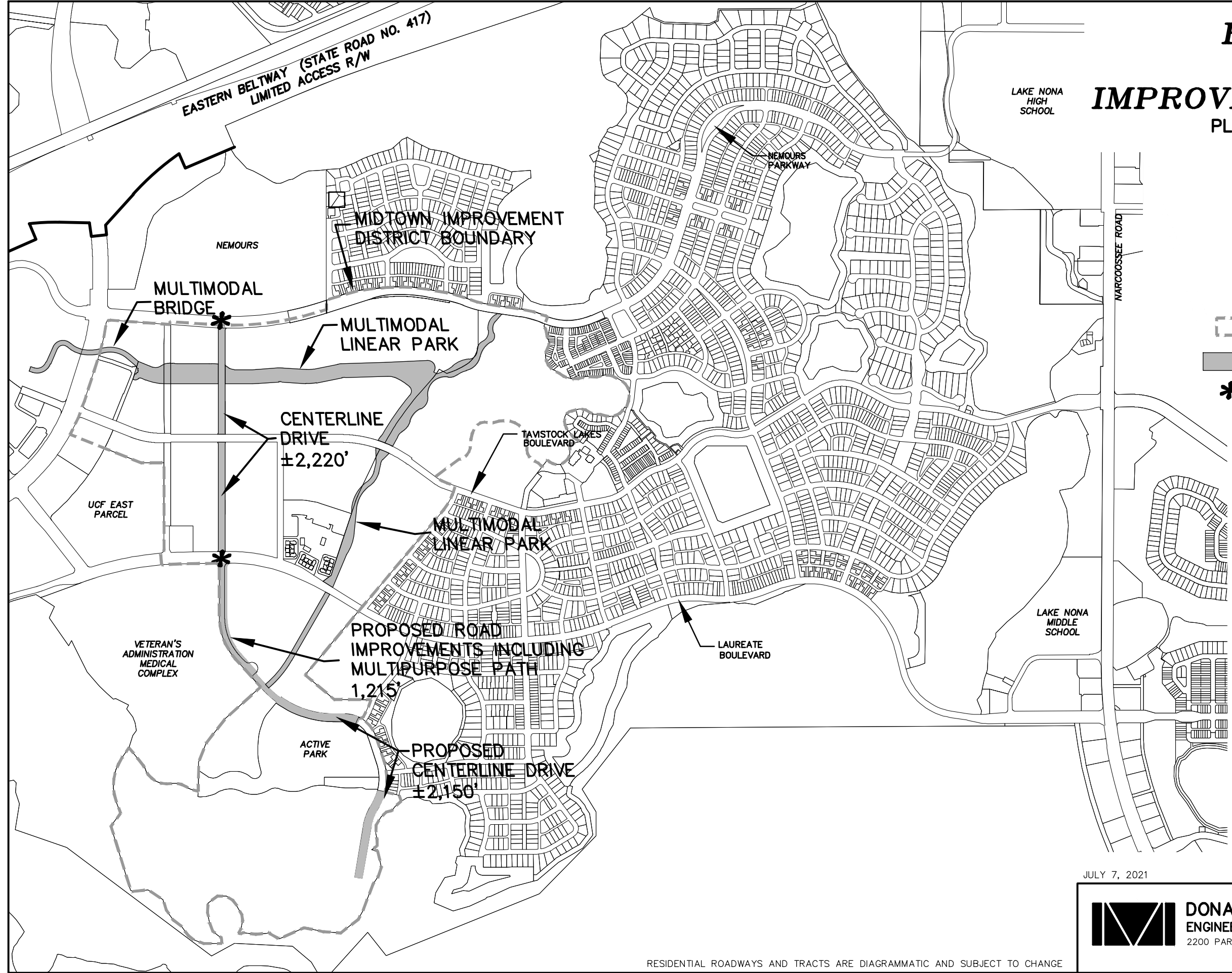



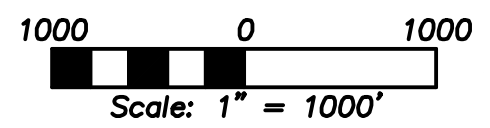
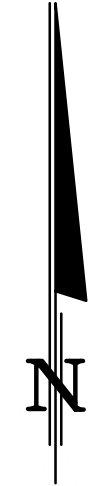


EXHIBIT C MIDTOWN IMPROVEMENT DISTRICT PLANNED IMPROVEMENTS



-  MIDTOWN IMPROVEMENT DISTRICT
-  PLANNED IMPROVEMENT
-  PLANNED TRAFFIC SIGNAL



JULY 7, 2021



DONALD W. McINTOSH ASSOCIATES, INC.
ENGINEERS PLANNERS SURVEYORS
 2200 PARK AVENUE NORTH, WINTER PARK, FLORIDA 32789 (407) 644-4068
 CERTIFICATE OF AUTHORIZATION NO. LB68

RESIDENTIAL ROADWAYS AND TRACTS ARE DIAGRAMMATIC AND SUBJECT TO CHANGE

Midtown Improvement District

**Construction Funding Agreement between the District
and Lake Nona Company, LLC**

**CONSTRUCTION FUNDING AGREEMENT BETWEEN THE
MIDTOWN IMPROVEMENT DISTRICT AND
LAKE NONA LAND COMPANY, LLC**

This Agreement is made and entered into this ____ day of _____, 2021, by and between:

MIDTOWN IMPROVEMENT DISTRICT, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, being situated in the City of Orlando, Florida, and whose mailing address is 12051 Corporate Boulevard, Orlando, Florida 32817 (hereinafter “**District**”), and

LAKE NONA LAND COMPANY, LLC, a Florida limited liability company, whose address is 6900 Tavistock Lakes Boulevard, Suite 200, Orlando, Florida 32827 (hereinafter “**Developer**”).

RECITALS

WHEREAS, the District was established by an ordinance adopted by the City Council of the City of Orlando, Florida, for the purpose of planning, financing, constructing, operating and/or maintaining certain infrastructure; and

WHEREAS, the District, pursuant to Chapter 190, *Florida Statutes* (the “**Act**”), is authorized to levy such taxes, special assessments, fees, and other charges as may be necessary in furtherance of the District’s activities and services; and

WHEREAS, the Developer is the developer of certain lands in the City of Orlando, Florida, located within the boundaries of the District; and

WHEREAS, the District presently intends to finance the planning, design, acquisition, construction, and installation of certain infrastructure improvements, facilities, and services (the “**CIP**”), as detailed in that certain *Engineer’s Report and Capital Improvement Program*, dated July 7, 2021 (“**Engineer’s Report**”), attached hereto and incorporated by reference herein as **Exhibit A**; and

WHEREAS, the District does not presently have sufficient funds available to provide for the acquisition/construction of the CIP, including construction and any design, engineering, legal, real property appraisal, or other construction or administrative costs; and

WHEREAS, the District intends to finance all or a portion of the CIP through the use of proceeds from the anticipated sale of special assessment revenue bonds or other similar financing instrument pursuant to the Act (“**Bonds**”); and

WHEREAS, in order to induce the District to proceed at this time with the acquisition and/or construction of the CIP, the Developer desires to provide the additional funds necessary to enable the District to proceed with such acquisition/construction.

NOW, therefore, based upon good and valuable consideration and the mutual covenants of the parties, the receipt of which and sufficiency of which is hereby acknowledged, the parties agree as follows:

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

2. FUNDING. Developer agrees to make available to the District such monies as are necessary to enable the District to proceed with the design, engineering, and acquisition/construction of the CIP, as set forth in Exhibit A and in subsequent engineering reports approved by the Board of Supervisors, including associated professional fees, costs and other expenses, but only if the Developer so agrees. Developer will make such funds available on a monthly basis, within fourteen (14) days of a written request by the District. The funds shall be placed in the District's depository as determined by the District. The District acknowledges that the Developer and any lender designated by Developer providing financing to Developer for any improvements in the District shall have a right to enter upon any property of the District for the purpose of inspection of the progress of construction. The District shall furnish the Developer copies of any invoices, draw requests, engineer's inspection certificates as to progress of completion of improvements and any other support for such payment request by the District which Developer may reasonably request as a condition to Developer's payment obligations provided herein.

3. ADDITIONS. The parties agree that the Developer may add to the provisions of Exhibit A and subsequent engineering reports approved by the Board of Supervisors by providing written notice to the District. Upon receiving notice, the District shall have ten (10) days to object to or request an informal meeting regarding the Developer's proposed amendments. Any such amendment is contingent upon the Developer's provision of sufficient funds to cover any and all fees, costs or expenses incurred by the District in connection with the work to be performed under this Agreement in the manner provided in paragraph 2. Upon provision of sufficient funds for the items set forth in Exhibit A and any amendments as contemplated herein, or sufficient funds for subsequent engineering reports approved by the Board of Supervisors and any amendments as contemplated herein, the District agrees to complete such items in accordance with the terms of its construction contracts.

4. REPAYMENT. The parties agree that all funds provided by Developer pursuant to this Agreement are intended to be properly reimbursable from proceeds of the District's future issuance of Bonds. Within forty-five (45) days of receipt of sufficient proceeds by the District for the District's improvements and facilities, the District shall reimburse Developer in full, exclusive of interest, for the funds advanced under paragraph two (2) and three (3) above; provided, however, that in the event it is determined that any such monies advanced or expenses incurred are not properly reimbursable for any reason, including, but not limited to federal tax restrictions imposed on tax-exempt financing, the District shall not be obligated to reimburse such monies advanced or expenses incurred. If the District does not or cannot issue Bonds to provide the funds for the construction described in Exhibit A, or in subsequent engineering reports approved by the Board of Supervisors and agreed to by Developer, and, thus does not reimburse the Developer for the funds

advanced, then the parties agree that such funds shall be deemed paid in lieu of taxes, fees, or assessments which might be levied or imposed by the District.

5. DEFAULT. 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 actual damages, injunctive relief and/or specific performance, but shall exclude, in any event, consequential, incidental, special or punitive damages.

6. ENFORCEMENT OF AGREEMENT. In the event that either party 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.

7. AGREEMENT. This instrument shall constitute the final and complete expression of this Agreement between the parties relating to the subject matter of this Agreement.

8. 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 of the parties hereto.

9. AUTHORIZATION. The execution of this Agreement has been duly authorized by the appropriate body or official of all parties hereto, each party has complied with all the requirements of law, and each party has full power and authority to comply with the terms and provisions of this instrument.

10. NOTICES. All notices, requests, consents and other communications hereunder ("Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

A. If to Developer: Lake Nona Land Company, LLC
6900 Tavistock Lakes Boulevard, Suite 200
Orlando, Florida 32827
Attn: _____

With a copy to: Holland & Knight LLP
200 South Orange Avenue, Suite 2600
Orlando, Florida 32801
Attn: Sara W. Bernard

B. If to District: Midtown Improvement District
12051 Corporate Boulevard
Orlando, Florida 32817
Attn: District Manager

With a copy to: Hopping Green & Sams, P.A.
119 South Monroe Street, Suite 300 (32301)
Post Office Box 6526
Tallahassee, Florida 32314
Attn: Tucker F. Mackie

Except as otherwise provided herein, any Notice shall be deemed received only upon actual delivery at the address set forth herein. 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 parties may deliver Notice on behalf of the parties. Any party or other person to whom Notices are to be sent or copied may notify the other 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 herein.

11. THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the formal parties herein and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto. 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 provisions or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the parties hereto and their respective representatives, successors and assigns.

12. ASSIGNMENT. Neither party may assign this Agreement or any monies to become due hereunder without the prior written approval of the other party; provided, however, the Developer may collaterally assign its rights and obligation under this Agreement to any institutional lender providing financing to Developer for funding of improvements to property within the District.

13. CONTROLLING LAW. This Agreement and the provisions contained herein shall be construed, interpreted and controlled according to the laws of the State of Florida.

14. EFFECTIVE DATE. The Agreement shall be effective after execution by both parties hereto and shall remain in effect unless terminated by either of the parties hereto.

15. PUBLIC RECORDS. Developer understands and agrees that all documents of any kind provided to the District or to District Staff in connection with the work contemplated under this Agreement are public records and are treated as such in accordance with Florida law.

16. COUNTERPARTS. This Agreement may be executed in one or more counterparts which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties execute this agreement the day and year first written above.

Attest:

MIDTOWN IMPROVEMENT DISTRICT

By: _____

By: _____
Its: _____

**LAKE NONA LAND COMPANY, LLC,
a Florida limited liability company**

Witness

By: _____
Its: _____

Exhibit A: Engineer's Report

Midtown Improvement District

**Interlocal Agreement between the District and the
Poitras East Community Development District Regarding
Construction of Centerline Drive Segment F**

**INTERLOCAL AGREEMENT BETWEEN THE POITRAS EAST COMMUNITY
DEVELOPMENT DISTRICT AND THE MIDTOWN IMPROVEMENT DISTRICT
REGARDING CONSTRUCTION OF CENTERLINE DRIVE SEGMENT F**

THIS AGREEMENT is made and entered into this 20th day of July, 2021, by and between the POITRAS EAST COMMUNITY DEVELOPMENT DISTRICT (“Poitras”) and the MIDTOWN IMPROVEMENT DISTRICT (“Midtown” and together the “Districts”), each of whom is a special purpose unit of local government located in the City of Orlando, Florida (this Agreement hereinafter referred to as the “**Interlocal Agreement**”).

RECITALS

WHEREAS, Poitras and Midtown are special-purpose units of local government located entirely within the City of Orlando, Florida, that have been established for the purpose of planning, financing, constructing, installing, operating, and/or acquiring certain improvements, facilities and services in conjunction with the development of lands located within the Districts; and

WHEREAS, Midtown anticipates providing certain infrastructure improvements consisting of a certain portion of roadway known as “**Centerline Drive Segment F,**” which is to be located within the boundaries of Midtown, the location of which is depicted in **Exhibit A**; and

WHEREAS, Centerline Drive Segment F is an extension of a portion of roadway known as “**Centerline Drive Segment G,**” which is part of a project known as “**Poitras East Master Infrastructure Phase 1C,**” which is to be located within the boundaries Poitras, the location of which is also depicted in **Exhibit A**; and

WHEREAS, the Districts wish to ensure the timely, efficient and cost effective provision of construction services and each has determined that the Centerline Drive Segment F and Poitras East Master Infrastructure Phase 1C should be constructed as one coordinated effort; and

WHEREAS, the Districts find that designation of Poitras as the entity responsible for the provision of construction services is the most efficient and cost-effective way to construct Centerline Drive Segment F; and

WHEREAS, the Districts’ Engineer, Donald W. McIntosh Associates, Inc. (the “**Engineer**”) has designed and permitted Centerline Drive Segment F (“**Design Work Authorization**”) and Poitras has entered into that certain *Agreement Between Owner and Contractor for Construction Contract (Stipulated Price) – Poitras East Master Infrastructure Phase 1C and Centerline Drive Segment F*, with Jr. Davis Construction Company, Inc., dated June 15, 2021, in connection with the construction of Centerline Drive Segment F, which contract is being administered by the Engineer (the “**Construction Contract**”); and

WHEREAS, Midtown is not a party to the Construction Contract; however, Midtown has agreed to bear the full cost of Centerline Drive Segment F, to be constructed pursuant to the Construction Contract, as hereinafter provided; and

WHEREAS, it is in the interest of each District to establish intergovernmental relations that encourage, promote and improve the coordination, overall effectiveness and efficiency of governmental activities and services within the boundaries of their respective districts; and

WHEREAS, section 163.01, *Florida Statutes*, known as the “Florida Interlocal Cooperation Act of 1969,” permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

WHEREAS, the Districts find this Interlocal Agreement to be necessary, proper and convenient to the exercise of their powers, duties and purposes authorized by law; and

WHEREAS, the Districts desire to exercise jointly their common powers and authority concerning the cost effective provision of construction services; the avoidance of inefficiencies caused by the unnecessary duplication of services; and the clarification of responsibilities, obligations, duties, powers, and liabilities of each of the governmental bodies; and

WHEREAS, Midtown and Poitras desire to memorialize and set forth clearly their understanding and agreement with respect to allocation of costs between the parties for improvements related to Centerline Drive Segment F as well as certain other matters addressed herein.

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:

AGREEMENT

1. RECITALS AND AUTHORITY. The foregoing recitals are true and correct and by this reference are incorporated as a material part of this Interlocal Agreement. This Interlocal Agreement is entered into pursuant to the provision of Florida law, including but not limited to Chapters 163, 189, and 190, *Florida Statutes*, and the Florida Constitution.

2. CONSTRUCTION. The parties agree that Centerline Drive Segment F shall only be constructed or otherwise provided for by Poitras. In order to ensure the efficient and timely completion of Centerline Drive Segment F, and to avoid unnecessary duplication of costs, the Districts hereby agree that Poitras shall be responsible for the construction, including construction management, of Centerline Drive Segment F through final acceptance by any applicable governmental body or authority with jurisdiction, subject to the terms and conditions of this Interlocal Agreement.

2.1 Contracts. Poitras agrees that all contracts for construction or provision of Centerline Drive Segment F shall name Midtown, its respective officers, directors, employees and agents, as additional insureds on all pertinent insurance policies. Poitras shall comply with the District’s Rules of

Procedure and all applicable laws regarding the procurement of goods, services or construction activities.

- 2.2 *Construction Administration.* Poitras shall be solely responsible for ensuring adequate construction administration and inspection for any construction of Centerline Drive Segment F. All contracts for construction administration shall ensure that Midtown is insured and indemnified to the extent then-permitted by Florida law.
- 2.3 *Conveyance for Maintenance.* The Districts acknowledge that Centerline Drive Segment F may be conveyed to other units of government. The Districts agree to cooperate and use their best efforts to ensure the timely acceptance of any such improvements by any such governmental authority, including the granting of any necessary property rights to the governmental body or authority, or the execution of a plat dedicating certain interests in any necessary property.
- 2.4 *Allocation of Costs for Centerline Drive Segment F.* The projected costs for the provision of Centerline Drive Segment F shall be borne fully by Midtown. Midtown agrees to reimburse Poitras for actual costs associated with Centerline Drive Segment F as confirmed by the Engineer.
- 2.5 *Payment.* Upon receipt of an application for payment from the contractor under the Construction Contract, the Engineer shall review and approve the application for payment and verify the portion of the pay application that represents costs attributable to the construction of Centerline Drive Segment F. Within five (5) days of approving any application for payment related to Centerline Drive Segment F completed pursuant to the Construction Contract, the Engineer shall forward the application for payment to Midtown for direct payment to the Contractor. Midtown shall remit the invoiced amount to the Contractor within the time period required by the Construction Contract and applicable Florida law.

3. INSURANCE. Poitras shall require any contractor selected to construct Centerline Drive Segment F to maintain liability and property insurance in amounts customary for the scope of such a construction project and shall name Midtown as an additional insured.

4. LIABILITY LIMITATIONS. Nothing in this Interlocal Agreement shall be deemed as a waiver of immunity or limits of liability of any of the Districts, including their supervisors, officers, agents and employees and independent contractors, beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in section 768.28, *Florida Statutes* or other statute, and nothing in this Interlocal Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

5. DEFAULT. A default by either party under this Interlocal Agreement shall entitle the other party to all remedies available at law or in equity, which may include, but not be limited

to, damages, injunctive relief and specific performance. Each of the parties hereto shall give the other party written notice of any defaults hereunder and shall allow the defaulting party not less than five (5) days from the date of receipt of such notice to cure monetary defaults and fifteen (15) days to cure other defaults.

6. ENFORCEMENT. In the event that either party seeks to enforce this Interlocal Agreement by court proceedings or otherwise, then the prevailing party or parties shall be entitled to recover all fees and costs incurred, including reasonable attorneys' fees and costs for trial, alternative dispute resolution or appellate proceedings.

7. CONTROLLING LAW. This Interlocal Agreement shall be construed and governed in accordance with the laws of the State of Florida.

8. SEVERABILITY. In the event any term or provision of this Interlocal Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be construed or deleted as such authority determines, and the remainder of this Interlocal Agreement shall be construed to be in full force and effect.

9. AMENDMENT. This Interlocal Agreement shall not be modified or amended except by written agreement duly executed by the parties hereto.

10. INTERPRETATION. This Interlocal Agreement has been negotiated fully between the parties as an arms-length transaction. The Districts participated fully in the preparation of this Interlocal Agreement. In the case of a dispute concerning the interpretation of any provision of this Interlocal Agreement, the Districts are deemed to have drafted, chosen and selected the language, and the doubtful language will not be interpreted or construed against any party.

11. TIME OF THE ESSENCE. The Districts each agree that time is of the essence of this Interlocal Agreement.

12. NOTICE. Each District shall furnish to the other such notice, as may be required from time to time, pursuant to this Interlocal Agreement, in writing, posted in the U.S. mail or by hand delivery, or by overnight delivery service and addressed as follows:

To Midtown: Midtown Improvement District
12051 Corporate Boulevard
Orlando, Florida 32817
Attn: District Manager

To Poitras: Poitras East Community Development District
12051 Corporate Boulevard
Orlando, Florida 32817
Attn: District Manager

With copy to: Hopping Green & Sams, P.A.
119 S. Monroe Street, Suite 300
Tallahassee, FL 32301

Attn: Tucker F. Mackie

Except as otherwise provided in this Interlocal 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 Interlocal 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. Any party or other person to whom Notices are to be sent or copied may notify the other 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 herein.

13. EFFECTIVE DATE. This Interlocal Agreement and the rights conferred herein shall become effective upon filing with the Clerk of the Circuit Court of Orange County, Florida, in accordance with the requirements of section 163.01(11), *Florida Statutes*.

[SIGNATURES CONTAINED ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties execute this Interlocal Agreement the day and year first written above.

Attest:

**POITRAS EAST COMMUNITY DEVELOPMENT
DISTRICT**

Secretary/Assistant Secretary

_____, Board of Supervisors

Attest:

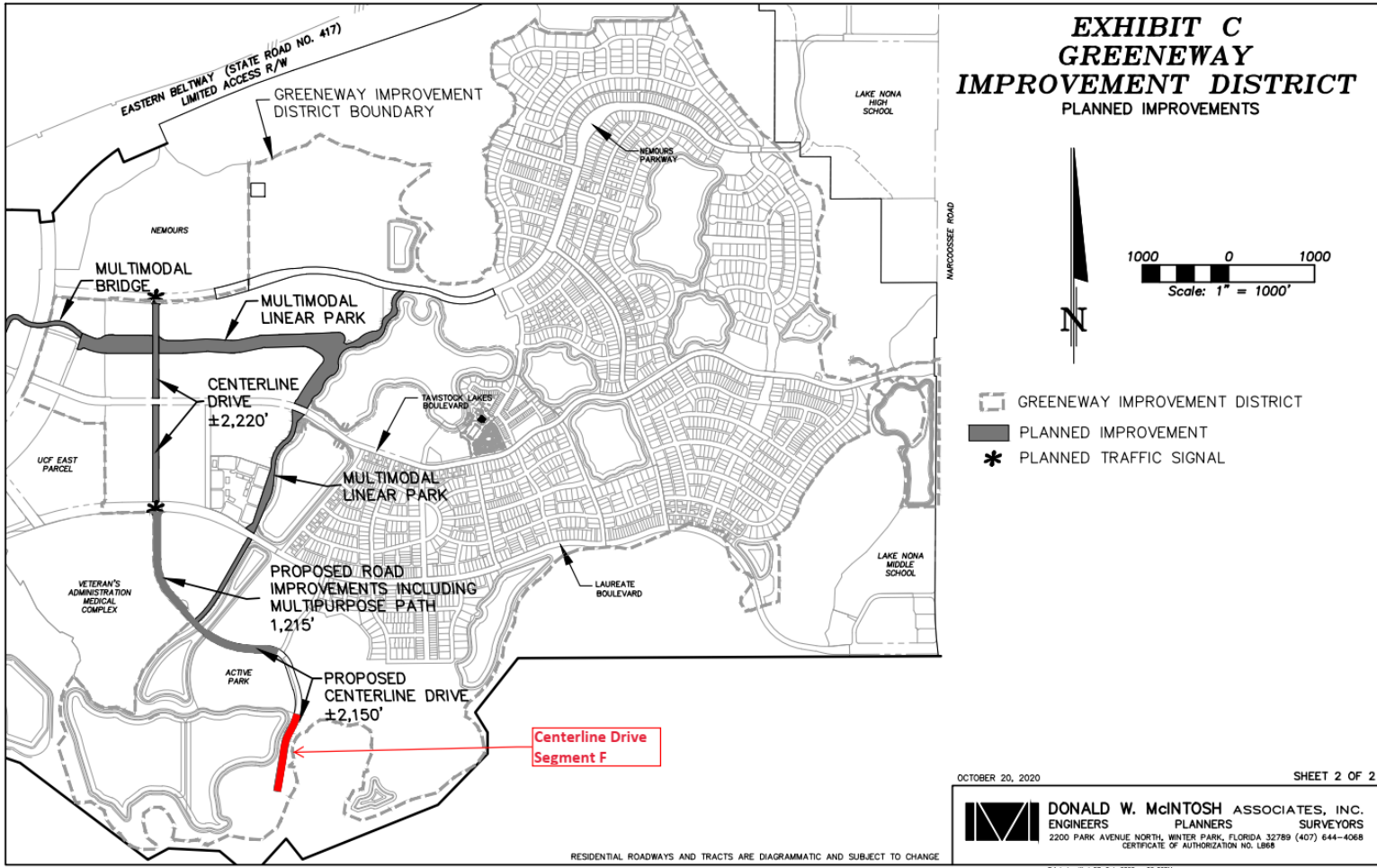
MIDTOWN IMPROVEMENT DISTRICT

Secretary/Assistant Secretary

_____, Board of Supervisors

Exhibit A: Map depicting the location of Centerline Drive Segment F and Poitras East Master Infrastructure Phase 1C

Exhibit A
Map depicting the location of Centerline Drive Segment F and
Poitras East Master Infrastructure Phase 1C



RESIDENTIAL ROADWAYS AND TRACTS ARE DIAGRAMMATIC AND SUBJECT TO CHANGE

OCTOBER 20, 2020 SHEET 2 OF 2

DONALD W. McINTOSH ASSOCIATES, INC.
ENGINEERS PLANNERS SURVEYORS
2200 PARK AVENUE NORTH, WINTER PARK, FLORIDA 32789 (407) 644-4068
CERTIFICATE OF AUTHORIZATION NO. LB88

Printed: Wed 07-Oct-2020 - 02:20PM
P:\Projects\2020\Map\msh\1020-10-20 GD EX C - SHEET 2.dwg

Midtown Improvement District

**Personnel Leasing Agreement for Landscape and Irrigation
Monitoring and Maintenance with Berman Construction, LLC**

PERSONNEL LEASING AGREEMENT
[LANDSCAPE AND IRRIGATION MONITORING AND MAINTENANCE]

THIS PERSONNEL LEASING AGREEMENT (“Agreement”) is made and entered into this 20th day of July, 2021, by and between **BERMAN PROPERTY MANAGEMENT, LLC**, a Florida limited liability company (“**Lessor**”), and the **MIDTOWN IMPROVEMENT DISTRICT**, a special-purpose unit of local government established pursuant to Chapter 190, *Florida Statutes* (“**Lessee**” or “**District**”).

RECITALS

WHEREAS, the District is responsible for maintaining certain landscaping and irrigation infrastructure improvements within and about the boundaries of the District; and

WHEREAS, pursuant to Chapter 190, *Florida Statutes*, PFM Group Consulting, LLC (“**District Manager**”) is charged with the supervision of the works of the District including the hiring or provision of employees and other personnel; and

WHEREAS, the District desires to enter into a lease agreement with Lessor to provide certain personnel to assist the District Manager with both the administration of the District’s landscape and irrigation maintenance contract(s) (“**Maintenance Contract**”) and the overall monitoring and maintenance of the District-owned irrigation improvements; and

WHEREAS, Lessor agrees to provide such a person who may work under the direction of the District Manager from time to time under such terms as are detailed below.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. RECITALS. The recitals set forth above are true and correct and are hereby incorporated in and made a part of this Agreement.

2. LEASE OF PERSONNEL. For and in consideration of the compensation described in Section 6 below, Lessee hereby agrees to lease from Lessor, and Lessor hereby agrees to lease to Lessee, individuals, acceptable to Lessee, for whatever sufficient time each week is necessary to complete the Maintenance Contract administration work (the “**Administrator**”) and the irrigation monitoring work (“**Irrigation Specialist**” and together with the Administrator, the “**Leased Specialist(s)**”). The Leased Specialist(s) salary and benefits shall be determined and paid by Lessor. At the discretion of Lessor, Lessor may replace the individual or individuals serving as the Leased Specialist(s); in such event, Lessor shall attempt to employ a replacement, acceptable to Lessee, to serve as the Leased Specialist(s) and shall notify Lessee of the replacement in writing. The initial Administrator shall be Scott Thacker. The initial Irrigation Specialist shall be Paul Stephens. Nothing shall prevent the same individual from serving as both the Administrator and

the Irrigation Specialist; however, in such event the compensation set forth in Section 6 herein may be subject to adjustment as agreed to in writing by the parties.

3. DUTIES.

A. DUTIES OF THE ADMINISTRATOR. The Administrator shall work for the benefit of the District and shall be responsible for performing such duties related to administration of the Maintenance Contract as directed by the District Manager. Specifically, the Administrator's duties shall include, but not be limited to, reviewing all maintenance performance, field conditions, and pay requests and ensuring that the proper processes are followed and documentation obtained pursuant to the requirements of the Maintenance Contract. The Administrator shall obtain such documentation from contractors and vendors related to payments tendered and work performed, as requested by the District from time to time. Lessor acknowledges the District is subject to certain prompt payment responsibilities required by law. In no event shall the actions or omissions of the Administrator result in a breach by the District of its prompt payment responsibilities.

B. DUTIES OF THE IRRIGATION SPECIALIST. The Irrigation Specialist shall work for the benefit of the District and shall be responsible for performing such duties related to monitoring and maintenance of the irrigation system as directed by the District Manager. Specifically, the Irrigation Specialist's duties shall include, but not be limited to, inspecting irrigation systems, scheduling controllers, coordinating and overseeing irrigation repairs, and monitoring water consumption. The Irrigation Specialist shall obtain such documentation from contractors and vendors related to payments tendered and work performed, as requested by the District from time to time. Lessor acknowledges the District is subject to certain prompt payment responsibilities required by law. In no event shall the actions or omissions of the Irrigation Specialist result in a breach by the District of its prompt payment responsibilities.

4. TERM. The term of this Agreement shall be for a one (1) year renewable period commencing as of the date written above ("**Commencement Date**"). This Agreement shall automatically renew each year unless terminated by either party. Either party may terminate this Agreement at any time, with or without cause, by giving at least thirty (30) days written notice to the other party specifying the date the termination is to become effective. Notwithstanding the preceding sentence, Lessee shall have the right to immediately terminate this Agreement upon a breach by Lessor. Any termination of this Agreement shall not release Lessee of its obligation to pay Lessor the compensation due pursuant to Section 6 below for all periods prior to termination.

5. OFFICE SPACE AND SUPPORT SERVICES. Lessor shall provide the Leased Specialist(s) such supplies or support as shall be reasonably necessary for the Leased Specialist(s) to render services on behalf of Lessee in accordance with this Agreement all at no cost to Lessee.

6. COMPENSATION.

A. COMPENSATION FOR ADMINISTRATOR. For and in consideration of the lease of the services of the Administrator to Lessee by Lessor and the office space, supplies, support services

and/or other overhead or facilities to be furnished to Lessee by Lessor pursuant to this Agreement, if any, Lessee shall pay Lessor Five Hundred Dollars (\$500.00) per month, for a total annual amount of Six Thousand Dollars (\$6,000.00) per year. Payment shall occur monthly and within thirty days of presentation of an invoice by Lessor. Lessor agrees that it shall be solely responsible for all salary, employee benefits and all payroll-related taxes and charges associated with Lessor's employment of the person serving Lessee as Administrator. In no event shall this Agreement be construed as an employment agreement between the Administrator and Lessee, or between Lessor and Lessee.

B. COMPENSATION FOR IRRIGATION SPECIALIST. For and in consideration of the lease of the services of the Irrigation Specialist to Lessee by Lessor and the office space, supplies, support services and/or other overhead or facilities to be furnished to Lessee by Lessor pursuant to this Agreement, if any, Lessee shall pay Lessor Five Hundred Dollars (\$500.00) per month, for a total annual amount of Six Thousand Dollars (\$6,000.00) per year. Payment shall occur monthly and within thirty days of presentation of an invoice by Lessor. Lessor agrees that it shall be solely responsible for all salary, employee benefits and all payroll-related taxes and charges associated with Lessor's employment of the person serving Lessee as Irrigation Specialist. In no event shall this Agreement be construed as an employment agreement between the Irrigation Specialist and Lessee, or between Lessor and Lessee.

C. The parties agree and covenant that any change in services or compensation under this Agreement shall reference this section of this Agreement in a writing signed by both parties hereto, approved by the District's Board of Supervisors.

7. CONTROL OF THE LEASED SPECIALIST(S). All services required to be rendered by the Leased Specialist(s) hereunder shall be rendered subject to the consent, control and direction of Lessee through the offices of the District Manager.

8. RELATIONSHIPS. Lessor and Lessee shall not, by virtue of this Agreement, be construed as joint venturers or partners of each other, and neither shall have the power to bind or obligate the other. Lessor and Lessee acknowledge and agree that the Leased Specialist(s) shall be an employee of Lessor. In furtherance thereof, Lessor shall be responsible for the payment of all compensation, taxes and employee benefits and other charges payable with respect to the Leased Specialist(s), including, but not limited to, all applicable federal income tax withholding, FICA, FUTA tax, unemployment compensation and any other taxes or charges imposed by law with respect to the Leased Specialist(s).

9. PREVAILING PARTY. If it should become necessary for either of the parties to resort to legal action, the non-prevailing party shall pay all reasonable legal fees and other expenses incurred by the prevailing party, including but not limited to attorneys' fees of in-house and outside counsel at all judicial levels.

10. JURY WAIVER. The parties hereby knowingly, irrevocably, voluntarily, and intentionally waive any rights to a trial by jury in respect of any action, proceeding or counter

claim based on this Agreement or arising out of, under or in connection with this Agreement or any document or instrument executed in connection with this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or action of any party hereto. This provision is a material inducement for the parties entering into the subject Agreement.

11. FORCE MAJEURE. Each party hereto shall give notice promptly to the other of the nature and extent of any event of force majeure claimed to delay or prevent its performance under this Agreement.

12. NOTICES. All notices, requests, consents and other communications hereunder (“Notices”) shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

A. If to Lessor: Berman Property Management, LLC
9801 Lake Nona Boulevard
Orlando, Florida 32827
Attn: Scott Thacker

B. If to District: Midtown 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: Tucker F. Mackie

Except as otherwise provided herein, any Notice shall be deemed received only upon actual delivery at the address set forth herein. 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 parties may deliver Notice on behalf of the parties. Any party or other person to whom Notices are to be sent or copied may notify the other 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 herein.

13. INDEMNIFICATION. Lessor agrees to indemnify and hold the Lessee harmless from and against any and all damages, losses or claims, including but not limited to legal fees and expenses, to the extent that such damages, losses or claims are attributable to actions, omissions or negligence of the Leased Specialist(s).

14. LIMITATIONS ON LIABILITY PRESERVED. Lessor agrees that nothing contained in this Agreement shall constitute or be construed as a waiver of the District's limitations on liability set forth in Section 768.28, *Florida Statutes*, and other law.

15. THIRD-PARTY BENEFICIARIES. This Agreement is solely for the benefit of the formal parties herein and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto. 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 provisions or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the parties hereto and their respective representatives, successors and assigns.

16. FURTHER ACTIONS. Each party shall take such actions to execute, file, record, publish and deliver such additional certificates, instruments, agreements and other documents as the other party may, from time to time, reasonably required in order to accomplish the purposes of this Agreement.

17. CONTROLLING LAW. This Agreement and the provisions contained herein shall be construed, interpreted and controlled according to the laws of the State of Florida.

18. EFFECTIVE DATE. The Agreement shall be effective after execution by both parties hereto and shall remain in effect unless terminated by either of the parties hereto.

19. PUBLIC RECORDS. 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, mullinsl@pfm.com, OR AT 12051 CORPORATE BLVD, ORLANDO, FL 32817.

20. WAIVER. No waiver of any breach of any term or condition of this Agreement shall be deemed to be a waiver of any subsequent breach of any term or condition of a like or different nature.

21. UNENFORCEABILITY. If any provisions of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability shall not, if possible, affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall, if possible, be construed in all respects as if such invalid or unenforceable provision were omitted.

22. SURVIVAL OF TERMS. The terms, conditions, obligations and covenants in this Agreement shall survive its execution by the parties hereto and the consummation of the transactions between the parties contemplated herein.

23. CAPTIONS. The captions used herein are inserted only as a matter of convenience, and are not to be used in the interpretation of any provision hereof.

24. ENTIRE AGREEMENT; BINDING EFFECT. Except as to modifications made under Section 6(C), above, this Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes any prior agreements and understandings relating to such subject matter. This Agreement shall inure to the benefit of, and be binding upon and enforceable by, the parties hereto and their respective successors and permitted assigns. Neither party to this Agreement may assign their rights or obligations hereunder without the prior written consent of the other party. Any purported assignment without such prior written consent is void.

25. EXECUTION IN 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 execute this Agreement the day and year first written above.

Attest:

MIDTOWN IMPROVEMENT DISTRICT

Secretary/Assistant Secretary

By: _____

Its: _____

**BERMAN PROPERTY MANAGEMENT, LLC, a
Florida limited liability company**

Witness:

By: _____

Its: _____

Midtown Improvement District

**General Maintenance Services Agreement between the
District and Berman Constriction, LLC**

**AGREEMENT BETWEEN THE MIDTOWN IMPROVEMENT DISTRICT AND
BERMAN CONSTRUCTION, LLC FOR GENERAL MAINTENANCE SERVICES**

THIS AGREEMENT (“Agreement”) is made and entered into this 20th day of July, 2021, by and between:

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

BERMAN CONSTRUCTION, LLC, a Florida limited liability company, with a mailing address of 9801 Lake Nona Club Drive, Orlando, Florida 32827 (hereinafter “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 owns, operates and maintains certain infrastructure with the boundaries of the District (“Infrastructure”); and

WHEREAS, the District desires to enter into an agreement with an independent contractor to provide general maintenance and repair services for the Infrastructure, consisting generally of landscaping, irrigation, lighting and hardscape improvements, on an *as-needed* basis; and

WHEREAS, Contractor represents that it is qualified to provide general maintenance and repair services (“Services”) and has agreed to provide to the District such services on an as-needed basis at the written request of the District pursuant to a work authorization, the form of which is attached hereto as **Exhibit A** (“Work Authorization”); 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 so stated are true and correct and by this reference are incorporated into and form a material part of this Agreement.

SECTION 2. DESCRIPTION OF WORK AND SERVICES.

A. The District desires that the Contractor provide professional general maintenance and repair services, consisting generally of landscaping, irrigation, lighting and hardscape improvements, within presently accepted standards. Upon all Parties signing this Agreement, the Contractor shall provide the District with Services requested pursuant to Work Authorization.

B. 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.

C. The Contractor shall provide the Services identified in Work Authorizations. Contractor shall solely be responsible for the means, manner and methods by which its duties, obligations and responsibilities are met to the satisfaction of the District.

D. 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.

SECTION 3. MANNER OF CONTRACTOR'S PERFORMANCE. The Contractor agrees, as an independent contractor, to undertake work and/or perform such services as specified in this Agreement or any addendum executed by the Parties or in any authorized written work order by the District issued in connection with this Agreement and accepted by the Contractor. All work shall be performed in a neat and professional manner reasonably acceptable to the District and shall be in accordance with industry standards. The performance of the Services by the Contractor under this Agreement and related to this Agreement shall conform to any written instructions issued by the District.

A. Should any work and/or services be required which are not specified in this Agreement or any addenda, but which are nevertheless necessary for the proper provision of services to the District, such work or services shall be fully performed by the Contractor as if described and delineated in this Agreement.

B. The Contractor agrees that the District shall not be liable for the payment of any work or services not included in a Work Authorization unless the District, through an authorized representative of the District, authorizes the Contractor, in writing, to perform such work.

C. The District shall designate in writing a person to act as the District's representative with respect to the services to be performed under this Agreement. The District's representative shall have complete authority to transmit instructions, receive information, interpret and define the District's policies and decisions with respect to materials, equipment, elements, and systems pertinent to the Contractor's services.

(1) The District hereby designates the District Manager to act as its representative.

(2) Upon request by the District representative, the Contractor agrees to meet with the District's representative to walk the property to discuss conditions, schedules, and items of concern regarding this Agreement.

D. 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.

SECTION 4. COMPENSATION; TERM.

A. Compensation and term for Services to be performed by the Contractor shall be determined and agreed upon by the Parties pursuant to Work Authorization.

B. If the District should desire additional work or services, or to add additional areas to be maintained, 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 to the Work Authorization. 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, materialmen, 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 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. Contractor agrees to defend, indemnify, and hold harmless the District and its officers, agents, employees, successors, assigns, members, affiliates, or representatives from any and all liability, claims, actions, suits, liens, demands, costs, interest, expenses, damages, penalties, fines, judgments against the District, or loss or damage, whether monetary or otherwise, arising out of, wholly or in part by, or in connection with the Services to be performed by Contractor, its subcontractors, its employees and agents in connection with this Agreement, including litigation, mediation, arbitration, appellate, or settlement proceedings with respect thereto. Additionally, nothing in this Agreement requires Contractor to indemnify the District for the District's percentage of fault if the District is adjudged to be more than 50% at fault for any claims against the District and Contractor as jointly liable parties; however, Contractor shall indemnify the District for any and all percentage of fault attributable to Contractor for claims against the District, regardless whether the District is adjudged to be more or less than 50% at fault. 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.

B. 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, attorneys' fees, paralegal fees

(incurred in court, out of court, on appeal, or in bankruptcy proceedings), any interest, expenses, damages, penalties, fines, or judgments against the District.

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. All permits and licenses required by any governmental agency directly for the District shall be obtained and paid for by the District. All other permits or licenses necessary for the Contractor to perform under this Agreement shall be obtained and paid for by the Contractor.

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. A default by either Party under this Agreement shall entitle the other Party to all remedies available at law or in equity. 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.

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 the 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: Midtown 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: Berman Construction, LLC
9801 Lake Nona Club Drive
Orlando, Florida 32827
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, mullinsl@pfm.com, OR 12051 CORPORATE BOULEVARD, ORLANDO, FLORIDA 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 and sealed this Agreement on the day and year first written above.

Attest:

MIDTOWN IMPROVEMENT DISTRICT

Secretary/Assistant Secretary

Chairperson, Board of Supervisors

Witness:

BERMAN CONSTRUCTION, LLC

Print Name: _____

By: _____

Its: _____

Exhibit A: Form of Work Authorization

WORK AUTHORIZATION FOR MAINTENANCE SERVICES

This Work Authorization (the "Work Authorization"), dated _____, 2021, authorizes certain work in accordance with that certain *AGREEMENT BETWEEN THE MIDTOWN IMPROVEMENT DISTRICT AND BERMAN CONSTRUCTION, LLC FOR GENERAL MAINTENANCE SERVICES* (the "Agreement"), dated _____, 2021, by and between:

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

Berman Construction, LLC, a Florida limited liability company, with a mailing address of 9801 Lake Nona Club Drive, Orlando, Florida 32827 (hereinafter "Contractor", together with District the "Parties").

Section 1. Scope of Services. Contractor shall provide _____ maintenance services, as set forth in the attached **Exhibit A**, which is incorporated herein by reference, all in accordance with the terms of the Agreement (collectively, the "Services").

Section 2. Compensation and Term. It is understood and agreed that the payment of compensation for the Services under this Work Authorization shall be in the amount and for the term set forth in the attached **Exhibit A**, and in the manner set forth in the Agreement.

Section 3. Acceptance. Acceptance of this Work Authorization will authorize the Contractor to complete the Services as outlined above and is indicated by the signature of the authorized representative of the District and the Contractor in the spaces provided below. Contractor shall commence the aforesaid Services as provided herein and shall perform the same in accordance with the terms and conditions of the Agreement, which, except to the extent expressly altered or changed in this Work Authorization, remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Work Authorization to be executed the day and year first above written.

MIDTOWN IMPROVEMENT DISTRICT

Secretary

By: _____
Its: _____

BERMAN CONSTRUCTION, LLC

Witness

By: _____
Its: _____

Exhibit A: Proposal/Scope of Services

Midtown Improvement District

**Project Management Agreement with
Lake Nona Land Company, LLC**

PROJECT MANAGEMENT AGREEMENT

This is a Project Management Agreement (the “**Agreement**”), dated and effective as of July 20, 2021, between the **Midtown Improvement District**, a local unit of special purpose government organized and existing under Chapter 190, *Florida Statutes* (the “**District**”) and _____, a Florida _____ (the “**Project Manager**”).

BACKGROUND AND PURPOSE

A. The District is seeking to fund infrastructure to serve lands within the District located in the City of Orlando, Florida.

B. The District has determined that it is in the best interests of the present and future landowners within the District to construct and deliver certain community development services and facilities within the District, including, without limitation, roadways, potable water, sanitary sewer, reclaimed water, utilities and street lighting, stormwater management and drainage, landscape and irrigation, and other infrastructure; and, all as described in that the certain *Engineer’s Report and Capital Improvement Program*, dated [REDACTED], as may be amended from time to time (such facilities, systems, and improvements are collectively referred to herein as the “**Project**”).

C. In order to finance the cost of constructing the Project, the District intends to issue special assessment revenue bonds or bond anticipation notes (the “**Bonds**”) or to fund such projects through a developer funding agreement approved by the District. The District's obligations hereunder are wholly contingent upon receiving funds through (i) the issuance and sale of the Bonds or (ii) a funding agreement with a developer containing terms acceptable to the District.

D. The District does not presently employ personnel nor is it otherwise interested in adding personnel or consultants sufficient to supervise construction of the Project and perform construction management services, contract management review services and certain technical services needed to support and ensure the quality of the envisioned construction. In addition, the District lacks the physical support facilities needed to properly and adequately supervise the construction of the Project.

E. The Project Manager is an affiliated company of the developer which is developing the land lying within the District and has personnel with the expertise necessary to perform on-site construction management, contract management review and certain technical and support services in a cost effective and efficient manner.

F. Given the relationship between the District and the Project Manager, the District has determined that it is in the District's best interest to enter into this Agreement with the Project Manager to provide the services described herein.

G. The Project Manager has agreed to perform the services provided for in this Agreement upon the terms and conditions set forth herein.

OPERATIVE PROVISIONS

Section 1. Engagement of The Project Manager.

The District hereby engages the Project Manager to perform the services set forth herein with respect to various contracts for design, permitting, planning, scheduling, cost estimating, surveying, and construction of the Project (collectively the “**Contracts**”) entered into or to be entered into between the District and certain construction and other firms (collectively, the “**Contractors**”). The Contracts include all contracts required to construct the Project.

Section 2. Services to be Performed by The Project Manager.

The Project Manager shall supervise and coordinate all work in connection with Contracts for the Project; provided however, Project Manager shall report to and take guidance from the District. In connection with the performance of such duties, the Project Manager is hereby authorized, and the Project Manager agrees to perform the following:

2.1. Monitor Development Budget. Provide regular monitoring of the District's development budget for the Project, identify variances between actual and budgeted or estimated costs, and advise the District whenever projected costs exceed budgets or estimates for such costs. The Project Manager shall deliver cost reports to the District at each monthly meeting of the District,

or at such other times as the District shall reasonably request and provide such other information as may reasonably be requested by the District.

2.2. Monitor Development Schedule. Provide regular monitoring of the District's development schedule for the Project, identify sources of delay, and advise the District whenever projected delays exist. The Project Manager shall deliver scheduling reports to the District at each monthly meeting of the District, or at such other times as the District shall reasonably request and provide such other information as may reasonably be requested by the District.

2.3. Project Scope. Assist the District in developing, modifying and refining the scope for the Project and shall propose any changes to the scope that the Project Manager deems necessary, beneficial or appropriate. In the event that the Project Manager identifies a change to the Project scope that the Project Manager believes to be necessary or beneficial to the Project, the Project Manager shall submit a proposal to the District describing the nature of the change in scope and providing as much detail as is available with regard to the change in the cost and schedule of the Project to accommodate the change in scope. The District shall approve or deny any changes in scope at the next board meeting held after being presented with a proposal by the Project Manager with specificity and suggestions. The failure of the District to approve a scope change at the next board meeting held after a proposal is made shall be deemed to be a denial of the proposal unless the District and the Project Manager mutually agree to extend the time for the District to consider the proposal. The Project Manager shall assist the District to amend the budget and schedule to accommodate any approved scope changes. The Project Manager shall have no liability for any delays caused by the District's approval process.

2.4. General Contractors. In accordance with all applicable bidding requirements and criteria for the District, recommend Contractors for specific scopes of work necessary to complete construction of the Project and shall negotiate with the Contractors and all other subcontractors and suppliers of materials and services necessary to complete construction of

the Project, subject to the approval of the District. The Project Manager shall recommend for selection by the District all other contractors and suppliers which the Project Manager reasonably believes may be necessary or helpful to complete the Project. Nothing in this Paragraph shall be construed to grant the Project Manager the authority to bind the District.

2.5. Project Engineer. Administer the engineering contracts for the Project and coordinate the performance by the project engineers and other consultants having responsibility for the design of the Project and the preparation of the plans and specifications therefore. All plans and specifications for the Project shall be submitted to the District Engineer for its review and approval. The Project Manager shall review all requests for payment by such professionals and shall determine that all work and materials contained in such requests have been performed and provided to the Project.

2.6. Contracts. Provide general administration of the Contracts and coordinate the work of the Contractors with each other and with the activities and responsibilities of the Project Manager and the project engineers and other consultants to complete the Project. Specifically, during the construction period, the Project Manager shall:

(a) Cause construction and progress meetings to be held at least monthly or at such other more frequent intervals as may be necessary to discuss such matters as procedures, progress, problems and scheduling, and cause prompt distribution of minutes for those meetings to all parties, including the District and District Engineer.

(b) Use all reasonable efforts to obtain satisfactory performance from all parties performing services or providing materials and supplies to the Project. The Project Manager, from time to time, shall send suitably qualified personnel to oversee construction, monitor the progress of the work on the Project, and observe the Project. The Project Manager shall make recommendations to the District when it learns that the requirements of a contract are not being fulfilled and the nonperforming party will not take satisfactory corrective action. Nothing herein shall be construed to give the

Project Manager control over any Contractor's construction means, methods, techniques, sequences, procedures or safety precautions and programs in connection with a Contractor's work on the Project. Upon authorization from the District, the Project Manager shall have the authority to require additional inspection or testing of work performed on the Project. The Project Manager shall furnish progress reports to the District monthly or at such other more frequent intervals as the District may reasonably request.

(c) Recommend necessary or desirable changes to the Project, review requests for changes, assist in negotiating proposed change orders, submit recommendations to the District, and if accepted, cause the project engineer to prepare change orders. Notwithstanding any of the other provisions of this Agreement, the Project Manager shall be authorized to present change orders proposed by Contractors that will not increase the cost of the Project by more than twenty-five thousand dollars (\$25,000.00) to the District Engineer for review and approval if the Project Manager deems such changes necessary and if the time necessary to obtain approval for such changes from the District would cause an overall delay to the completion of the Project or otherwise result in an increase in the cost of the Project.

(d) Identify and recommend, with the project engineer's review and the District's approval, the professional services of consultants and testing laboratories, if required, and coordinate their services and monitor their reports; provided however, that Project Manager shall have no authority to select and retain professionals subject to the Consultants' Competitive Negotiation Act. The Project Manager shall not perform any services that could be considered "engineering" under the definition set forth in Chapter 471, *Florida Statutes*.

(e) Consult with the project engineer and the District if the Contractors request interpretations of the meaning and intent of the plans and specifications or any other matter and shall assist in the resolution of questions which may arise.

(f) Collaborate with the project engineer in processing and approving shop drawings, samples, project data and other submittals; provided however, Project Manager shall not have the authority to approve change orders (except as provided in paragraph 2.6(c)) or pay requisitions. Project Manager acknowledges the District is subject to certain prompt payment responsibilities required by law. In no event shall the actions or omissions of the Project Manager result in a breach by the District of its prompt payment responsibilities.

(g) When the Project Manager considers a Contractor's work or a designated portion thereof to be substantially complete, the Project Manager shall prepare or cause to be prepared a list of incomplete or unsatisfactory items and a schedule for their completion and submit to District Engineer. The Project Manager shall assist the project engineer in conducting inspections. After the project engineer certifies the date of substantial completion of the work, the Project Manager shall work with the project engineer and Contractor to coordinate the final correction and completion of the work.

(h) Assist the project engineer in determining when the Project or a designated portion thereof is substantially complete. Use all reasonable efforts to secure and transmit to District required guarantees, permits, affidavits, releases, bonds and waivers. Deliver all keys, manuals, record drawings and maintenance stocks to the District.

(i) Perform such additional administrative and coordinating functions as the District may reasonably deem necessary to accomplish the orderly and proper

construction of the Project within the time and budgetary parameters set by District and in accordance with the approved plans and specifications for the Project.

2.7. Financing. Request disbursements to pay the cost of items in the District's development budget for the Project, subject to the review and approval of the District.

2.8. Dedication of Improvements to the City. Upon completion of certain units or phases of the Project, the District intends to dedicate certain improvements to other units of government. As necessary to assist the District Engineer, the Project Manager agrees to oversee and coordinate the inspections, submittals, and other requirements that must be met before the applicable units of government will accept the dedication and agree to maintain such improvements.

2.9. Limitations on The Project Manager's Duties. The Project Manager shall not be responsible for or have control of accounting or cash disbursements for the District, nor shall the Project Manager have the authority to approve change orders or pay requisitions except as provided in paragraph 2.6(c). The Project Manager shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work done on the Project, review construction means, methods, techniques, sequences or procedures for work performed by Contractors, review copies of requisitions received from Subcontractors and material suppliers and other data requested by the District to substantiate a Contractor's right to payment or ascertain how or for what purpose the Contractor has used money previously paid.

Section 3. Compensation.

3.1. Management Fee. In consideration of the performance by the Project Manager of the services to be provided pursuant to this Agreement, the District shall pay the Project Manager a management fee equal to ten dollars (\$10.00) per year (the "**Management Fee**"). The Management Fee to be paid hereunder is based on certain assumptions by the Project Manager and the District as to the extent of ongoing construction activities and the amount of work required to supervise and monitor such construction. Upon the request of either the Project Manager or the District, the amount of the Management Fee shall be subject to review and renegotiation on the first

or any subsequent anniversary of the effective date hereof. If the District terminates this Agreement for any reason, the Management Fee shall be paid through the effective date of such termination.

3.2. Reimbursable Expenses. In addition to the Management Fee, the Project Manager shall be entitled to be reimbursed for its reasonable and customary costs and expenses incurred by the Project Manager and its employees and consultants in the interest of the Project. Such expenses shall include, but not be limited to: expenses of transportation in connection with the Project, long-distance communications, fees paid for securing approval of authorities having jurisdictions over the Project (including all permit and impact fees), the cost of reproductions, postage, express deliveries, electronic facsimile transmissions, and costs for the handling of drawings, specifications and other construction documents (“**Reimbursable Expenses**”). All Reimbursable Expenses shall be supported by reasonable documentation.

Section 4. Term.

The term of this Agreement shall be for a one (1) year renewable period commencing as of the date written above (the “**Commencement Date**”). This Agreement shall automatically renew each year unless terminated by either party. Either party may terminate this Agreement at any time, with or without cause, by giving at least thirty (30) days’ written notice to the other party specifying the date the termination is to become effective. Notwithstanding the preceding sentence, if the Project Manager fails to substantially perform in accordance with the terms of this Agreement through no fault of the District, the District may issue written notice of its intent to terminate the Agreement to the Project Manager, setting forth the reasons for the termination and giving Project Manager thirty (30) days to cure the defaults. If Project Manager fails to cure or commence to cure for defaults requiring a cure period longer than thirty (30) days, the District may issue a second notice terminating the Agreement. The Project Manager may terminate this Agreement if the District fails to substantially perform in accordance with the terms of this Agreement through no fault of the Project Manager. In the event of such a default by the District, the Project Manager shall provide the District written notice of such default and thirty (30) days to cure such default. If the

District fails to cure such default within thirty (30) days, the Project Manager may issue a second notice terminating the Agreement. Any termination of this Agreement shall not release District of its obligation to pay Project Manager the compensation and Reimbursable Expenses due for all periods prior to termination.

Section 5. Management and Miscellaneous.

5.1 Management. The Project Manager shall provide the management and personnel necessary to perform its obligations under this Agreement and shall be responsible for the payment of all payroll taxes and benefits and shall comply with all workmen's compensation requirements and any and all other laws and regulations required to employ the personnel to perform this Agreement. Further, the Project Manager shall be responsible for obtaining all necessary permits and registrations and shall comply with all codes, laws and regulations for the performance of the work required under this Agreement. Employees of the Project Manager shall be managed, supervised and take their day-to-day direction from the Project Manager. The District shall have the authority to request status reports or request the attendance of employees of the Project Manager at District meetings to provide status reports and updates to the District at reasonable intervals. It is acknowledged and agreed that the Project Manager is an independent contractor with respect to the duties to be performed by it under this Agreement. In no event shall this Agreement be construed as an employment agreement between the Project Manager and District. District and Project Manager shall not, by virtue of this Agreement, be construed as joint venturers or partners of each other, and neither shall have the power to bind or obligate the other. District and Project Manager acknowledge and agree that all services provided under this Agreement shall be by employees of Project Manager. In furtherance thereof, Project Manager shall be responsible for the payment of all compensation, taxes and employee benefits and other charges payable with respect to the employees providing services under this Agreement,

including, but not limited to, all applicable federal income tax withholding, FICA, FUTA tax, unemployment compensation and any other taxes or charges imposed by law with respect to such employees.

5.2 Insurance. At all times, the Project Manager shall provide insurance coverage for its employees, any construction trailer, vehicle or structure used in connection with this Agreement pursuant to the following requirements:

(a) The insurance required in this Agreement shall be on an “occurrence” basis, if available, and if not, on a “claims made” basis and shall be written for the following limits of liability as a minimum:

- (i) bodily injury
 - \$1 million each occurrence
 - \$1 million each aggregate
- (ii) property damage
 - \$1 million each occurrence
 - \$1 million each aggregate

(b) Comprehensive automobile liability insurance coverage for all owned, hired or non-hired vehicles, including loading or unloading thereof with the following limits of liability:

- (i) automobile bodily injury
 - \$1 million each person
 - \$1 million each occurrence
- (ii) automobile property damage
 - \$1 million each occurrence

5.3 Additional Insurance Terms. All policies shall provide that they cannot be canceled or materially altered except after thirty (30) days’ advance written notice to the District and shall name the District as an additional insured.

5.4 Applicable Law. This Agreement, and the rights and interests and obligations of the District and the Project Manager hereunder shall be governed by and construed in accordance with the laws of the State of Florida.

5.5 Entire Agreement; Assignment. This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes any prior agreements and understandings relating to such subject matter. This Agreement shall inure to the benefit of, and be binding upon and enforceable by, the parties hereto and their respective successors and permitted assigns. Neither party to this Agreement may assign their rights or obligations hereunder without the prior written consent of the other party. Any purported assignment without such prior written consent is void.

5.6 No Modification. No modification to this Agreement shall be valid unless in writing and signed by the parties.

5.7 Notices. Any notice required by telecopy or permitted to be given under this Agreement shall be in writing and sent by registered or certified mail, postage prepaid, return receipt requested, or sent by expedited courier service to the addresses set forth below. Any notice shall be deemed given upon receipt.

A. If to District: Midtown Improvement
District
12051 Corporate Blvd.
Orlando, Florida 32817
Attn: District Manager

With a copy to: Hopping Green & Sams, P.A.
119 S. Monroe Street, Suite 300
Post Office Box 6526
Tallahassee, Florida 32314
Attn: Tucker F. Mackie

B. If to Project Manager: _____
6900 Tavistock Lakes Blvd., Suite 200
Orlando, Florida 32827

Attn: _____

With a copy to:

Holland & Knight LLP
200 South Orange Avenue, Suite 2600
Orlando, Florida 32801
Attn: Sara W. Bernard

C. If to District Engineer:

Midtown Improvement District
12051 Corporate Blvd.
Orlando, Florida 32817
Attn: District Engineer

5.8 Prevailing Party. If it should become necessary for either of the parties to resort to legal action, the non-prevailing party shall pay all reasonable legal fees, the cost of collection and other expenses incurred by the predominantly prevailing party, including but not limited to attorneys' fees of in-house and outside counsel at all judicial levels.

5.9 Force Majeure. "Force Majeure Event" shall mean an event causing delay occasioned by a cause or causes beyond the control of the party whose performance is so delayed, including, without limitation: adverse weather conditions; earthquake; acts of God; war; war-like operations; civil commotion; riots; sabotage; terrorism; governmental or judicial action/inaction, regulation, legislation, or controls (including permitting or approval delays); third party lawsuits; moratoria; labor disturbances; or material shortages. The parties acknowledge and agree that a party's incompetence or failure to deploy reasonable resources to meet its obligations under any agreement shall not be deemed to constitute a Force Majeure Event as to such party. The failure of any Party to perform an obligation under this Agreement (other than monetary obligations) due to the occurrence of a Force Majeure Event shall not constitute an event of default or a breach of any such obligation. The Parties shall be obligated to (i) use all reasonable efforts to mitigate the adverse effect and duration of any Force Majeure Event which affects such Party and (ii) to perform all of their other obligations hereunder that are

not affected by Force Majeure Event. As soon as possible after a Force Majeure Event occurs (and in no event later than ten (10) days after learning thereof), the affected Party shall give the other Party a statement describing the Force Majeure Event and its cause (to the extent known to such Party), a description of the conditions delaying the performance of such Party's obligations, an estimate of the expected duration of such Force Majeure Event and the probable impact of such Force Majeure Event on the effected Party's performance hereunder. The Party effected by the Force Majeure Event shall answer any inquiries of the other Parties regarding the conditions caused by the Force Majeure Event and the effected Party's plans with respect thereto and shall provide any information concerning them as may be reasonably requested by the other Party. The effected Party shall also provide notice to the other Party of the cessation of the Force Majeure Event and the effected Party's ability to recommence performance of its obligations under this Agreement by reason of the cessation of the Force Majeure Event, which notice shall be given as soon as possible after the cessation of the Force Majeure Event. The suspension of performance under this Agreement resulting from such Force Majeure Event shall be of no greater scope and no longer duration than is necessary and the effected Party shall use commercially reasonable efforts to remedy its inability to perform; provided, however, that in the event the suspension of performance continues for ninety (90) days after the date of the occurrence, that Parties shall meet and discuss in good faith how best to proceed and, if they cannot agree, either Party may terminate this Agreement provided the Party seeking termination has used best efforts to mitigate and recover from the Force Majeure Event.

5.10 Indemnification. Project Manager agrees to defend, indemnify and hold the District harmless from and against any and all damages, losses or claims, including but not limited to legal fees and expenses, to the extent that such damages, losses or claims are

attributable to actions, omissions or negligence of the Project Manager or its employees providing services under this Agreement. The Project Manager's obligations under this Subsection 5.10 shall survive any expiration or termination of this Agreement.

5.11 Limitations on Liability Preserved. Project Manager agrees that nothing contained in this Agreement shall constitute or be construed as a waiver of the District's limitations on liability set forth in Section 768.28, *Florida Statutes*, and other law.

5.12 Third-Party Beneficiaries. This Agreement is solely for the benefit of the formal parties herein and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto. 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 provisions or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the parties hereto and their respective representatives, successors and assigns.

5.13 Public Records. Project Manager understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records, and, accordingly, Lessor agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited to Section 119.0701, *Florida Statutes*. Project Manager acknowledges that the designated public records custodian for the District is Victoria Martinez ("**Public Records Custodian**"). Among other requirements and to the extent applicable by law, the Project Manager 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 Lessor 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 Lessor'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 Project Manager, the Project Manager 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 PROJECT MANAGER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO THE PROJECT MANAGER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (407) 723-5900, MULLINSL@PFM.COM, OR AT 12051 CORPORATE BOULEVARD, ORLANDO, FLORIDA 32817.

5.14 Waiver. No waiver of any breach of any term or condition of this Agreement shall be deemed to be a waiver of any subsequent breach of any term or condition of a like or different nature.

5.15 Unenforceability. If any provisions of this Agreement shall be held invalid or unenforceable, such invalidity or unenforceability shall not, if possible, affect the

validity or enforceability of any other provision of this Agreement, and this Agreement shall, if possible, be construed in all respects as if such invalid or unenforceable provision were omitted.

5.16 Survival of Terms. The terms, conditions, obligations and covenants in this Agreement shall survive its execution by the parties hereto and the consummation of the transactions between the parties contemplated herein.

5.17 Captions. The captions used herein are inserted only as a matter of convenience and are not to be used in the interpretation of any provision hereof.

5.18 Execution in 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.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS THEREOF, the District and the Project Manager have caused this Agreement to be duly executed effective as of the day and year first above written.

Witnesses:

_____ a Florida _____

Print Name

By: _____
Its: _____

Print Name

Midtown Improvement District

Attest:

Secretary/Assistant Secretary

By: _____
Its: _____

Midtown Improvement District

**Resolution 2021-27,
Regarding the District's Direct Purchase of
Construction Materials and the Approving Procedures
Associated with the Same**
(provided under separate cover)

Midtown Improvement District

**Insurance Quote
for Direct Purchase Materials**
(provided under separate cover)

Midtown Improvement District

**Work Authorization/Proposed Services
*(if applicable)***

MIDTOWN IMPROVEMENT DISTRICT

Recommendation for Work Authorization / Proposed Services

Project Name: Midtown Engineer's Report and CIP

Brief Description: Provide the Engineer's Report for the Capital Improvement Program proposed
for the new Midtown Improvement District.

Name of Consultant /Vendor: Donald W. McIntosh Associates, Inc.

Is this work pursuant to an existing Agreement? Yes No

If so, name and date of Agreement: _____

Is this project included in the District Capital Improvement Plan? Yes No

Are the services required contemplated in the Capital Improvement Plan? Yes No

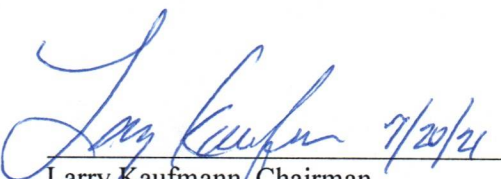
Is this a continuation of previously authorized work? Yes No

Proposal attached: Yes No

Form of Agreement Utilized: Proposal

Amount of Services: \$ 7,500.00

Recommendation: Approve Deny

By:  7/20/21
Larry Kaufmann, Chairman
Boggy Creek Improvement District Construction Committee

c: Jennifer Walden
Tucker Mackie
Jeffrey Newton



July 20, 2021

Midtown Improvement District

12051 Corporate Boulevard
City of Orlando, Florida

Subject: Work Authorization Number 2
Midtown Improvement District
DWMA Job No. 21505 (003)

Dear Chairman, Board of Supervisors:

Donald W. McIntosh Associates, Inc., is pleased to submit this work authorization to provide interim engineering services for the Midtown Improvement District. We will provide these services pursuant to our current agreement dated July 7, 2021 (“Engineering Agreement”), as follows:

I. Scope of Work

Midtown Improvement District (DISTRICT) will engage the services of Donald W. McIntosh Associates, Inc. (DWMA), as Interim Engineer to perform the following services:

- A. ENGINEER’S REPORT AND CIP – DWMA will prepare an Engineer’s Report and Capital Improvement Program (CIP) for the District, encompassing infrastructure projects that are intended to be constructed by the District and estimating the costs associated with such projects. DWMA will coordinate with District staff and Developer during the preparation of the report to assure consistency with established goals. Modifications to the Engineer’s Report and CIP after Board approval will be additional services and are not included in this work authorization.

II. Fees

The DISTRICT will compensate DWMA a fixed fee of \$7,500.00 for the referenced services. The DISTRICT will reimburse DWMA all direct costs, which include items such as printing, drawings, travel, deliveries, et cetera, pursuant to the Agreement.

This proposal, together with the Engineering Agreement, represents the entire understanding between the Midtown Improvement District and Donald W. McIntosh Associates, Inc. with regard to the referenced work authorization. If you wish to accept this work authorization, please sign both copies where indicated, and return one complete copy to our office. Upon receipt, we will promptly schedule our services.

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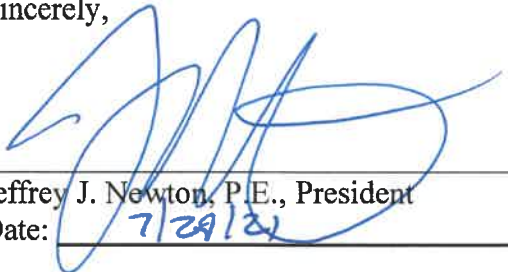


Thank you for considering Donald W. McIntosh Associates, Inc. We look forward to helping you create a quality project.

APPROVED AND ACCEPTED

Sincerely,

By: _____
Authorized Representative of
Midtown Improvement District



Jeffrey J. Newton, P.E., President
Date: 7/29/21

PURSUANT TO FLORIDA STATUTE 558.0035, AN INDIVIDUAL EMPLOYEE OR AGENT OF DONALD W. MCINTOSH ASSOCIATES, INC. MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE.