

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“AGREEMENT”), is dated this ____ day of February, 2012, and is between the **SUMTER COUNTY BOARD OF COUNTY COMMISSIONERS**, whose address is 7375 Powell Road, Wildwood, Florida, 34785 (“COUNTY”), and **BLACK GOLD COMPOST COMPANY**, whose address is 11424 CR 237, Oxford, Florida, Florida, 34484 (“OWNERS”). In furtherance of this AGREEMENT, the Parties hereto state the following:

WHEREAS, OWNERS are the fee simple owners of certain real property located in Sumter County, Florida, more particularly described in Exhibit “A”, and recorded in the Official Records of Sumter County at O.R. Book: 864, Pages: 270 through 272; and,

WHEREAS, OWNERS submitted an application for the renewal of an operating permit, application # OP2011-0005 to COUNTY, which was approved by COUNTY after a properly noticed quasi-judicial hearing. The OWNER’s renewed operating permit is attached hereto as Exhibit “B”, and incorporated herein, *in haec verba*; and,

WHEREAS, the renewal of OWNER’S operating permit was subject to several conditions, including a condition that OWNERS: *Provide Construction plans to resurface CR 237 at C-466, extending south 300 feet. Said plans must incorporate pavement rehabilitation and 2” asphaltic overlay, and 50 ft. radius returns on CR 237 at C-466. OWNERS must correct CR 237 as a condition of approval based on the truck damage from COMPANY’s operations*; and,

WHEREAS, COUNTY has received bid proposals for the improvement of C-466W from CR209 to C-475N, which includes improvements to CR 237, in Sumter County, Florida, pursuant to ITB # 031-0-2011/AT, C-466W Resurfacing Project from CR 209 to C-475N (“PROJECT”), and intends to enter into a contract with the most responsive bidder, C.W. Roberts Contracting, Inc. (hereinafter referred to as “CONTRACTOR”), for the completion of the work; and,

WHEREAS, Section IV of CONTRACTOR’S bid contains a bid for the resurfacing of CR 237 at C-466, extending south 300 feet, as well as pavement rehabilitation and 2” asphaltic overlay, and 50 feet radius returns on CR 237 at C-466, contemplated by the condition of approval of renewal of Operation Permit #OP2001-0005 cited above. CONTRACTOR’S Bid Form, which includes Section IV, is attached hereto and incorporated herein as Exhibit “C”, *in haec verba*; and,

WHEREAS, in an effort to satisfy the conditions cited above, OWNER has agreed to pay the sums reflected in Section IV of CONTRACTOR’S Bid Form for the completion of the work referenced therein, which at this time, totals \$7,211.50; and,

WHEREAS, this after consideration, discussion, debate and vote of approval of this AGREEMENT at a properly noticed meeting of the Sumter County Board of County Commissioners, the Parties desire to enter into this Memorandum of Agreement and

record the same within the Public Records of Sumter County, Florida, for purposes of setting forth certain terms and conditions to be enforced against OWNERS and their successors and assigns, all as is more particularly set forth hereinafter.

NOW THEREFORE, in consideration of the foregoing recitals and adopting them as true and as if fully stated herein, and with the intention they be legally bound to the requirements stated herein, the Parties agree as follows:

1. Recitals. The above recitals are agreed by the Parties to be true and correct and incorporated herein by reference, *in haec verba*.

2. Memorandum of Agreement. The terms set forth in this AGREEMENT memorialize the intent of the Parties as to the re-surfacing and improvements of CR 237 as contemplated by the conditions imposed upon OWNERS by COUNTY pursuant to its conditional approval of OWNERS application to renew operating Permit # OP2011-0005.

3. Payment: OWNER agrees that it will provide COUNTY with certified funds in the amount of \$7,211.50 within seven (7) days of the execution of this AGREEMENT. COUNTY shall hold said funds in escrow until the re-surfacing and improvements to CR-237 identified in this AGREEMENT and contemplated by Section IV of CONTRACTOR'S Bid Form have been certified as complete by Richard Busche, P.E., the Project Engineer.

4. Extras. The cost of any extras or change orders required for the completion of the re-surfacing or improvements to CR-237 contemplated by Section IV of CONTRACTOR'S Bid shall be borne exclusively by OWNERS. Specifically, OWNERS shall be required to provide COUNTY with certified funds for any extras or change orders deemed necessary by OWNERS or CONTRACTOR to complete that portion of the project identified in Section IV of CONTRACTOR'S Bid, within five (5) days of OWNERS being notified that such extras or change orders are necessary. It is understood that any and all extras or change orders necessary for the completion of the re-surfacing or improvements to CR-237 contemplated by the conditions imposed upon OWNERS by COUNTY cited above, which are over and above the amounts reflected in Section IV of CONTRACTOR'S Bid, deemed necessary by the CONTRACTOR, must be in writing and signed by the CONTRACTOR and the Project Engineer. Change Orders negotiated between the CONTRACTOR and OWNERS must be in writing and signed by the CONTRACTOR and OWNERS.

5. Conflict. In the case of conflict between this Memorandum of Agreement and any other agreement between the Parties, this Memorandum of Agreement shall control. Matters not specifically addressed in this AGREEMENT shall be controlled by the County's Land Development Code.

6. Binding Effect. The terms and conditions as set forth in this Memorandum of Agreement shall inure to the benefit of, and shall constitute a covenant

running with the land and under the terms, conditions and provisions hereof, and shall be legally binding upon any heirs, assigns and successors in title or interest, and shall be subject to each and every condition herein set out.

7. Enforcement. Enforcement of this Memorandum of Agreement shall be through the Sumter County Board of County Commission. Specifically, the COUNTY reserves the right to enforce the terms and conditions of this AGREEMENT against OWNERS for any legal claim it may have. Failure to immediately take action against OWNER for any breach of this AGREEMENT shall not be considered to be a waiver of any of COUNTY'S rights under this AGREEMENT. The Parties agree that venue for any action brought to enforce the terms of this AGREEMENT shall lie exclusively in Sumter County, Florida. Furthermore, the Parties agree that the prevailing party in any action brought to enforce the terms of this AGREEMENT shall be entitled to recover their reasonable attorney's fees and costs, including reasonable costs and attorney's fees incurred for any appellate action.

8. Entire Agreement. This AGREEMENT constitutes the entire understanding of the Parties. Any change or amendment to the terms or conditions of this AGREEMENT must be in writing, and executed by each party.

IN WITNESS WHEREOF, the hands and seals of the parties on the date set forth above.

ATTEST:

SUMTER COUNTY BOARD OF
COUNTY COMMISSIONERS,
SUMTER COUNTY, FLORIDA

By: _____
Gloria R. Hayward, Clerk

By: _____
GARRY BREEDEN, Chairman

Approved as to form and content by
Sumter County Attorney

George G. Angeliadis, Esquire

STATE OF FLORIDA
COUNTY OF SUMTER

The forgoing instrument was acknowledged before me this _____ day of _____, 2012, by _____, Chairman and Gloria Hayward, Clerk, of and on behalf of the Board of County Commissioners, Sumter County, Florida, for the purposes expressed herein.

SEAL

Notary Public

Print Name:

Serial/Commission No.

Commission Expires:

WITNESSES: Joseph Futch
Joseph Futch

BLACK GOLD COMPOST COMPANY

Robert M. Lange
Print Name:

Robert M. Lange
ROBERT M. LANGE, PRESIDENT

STATE OF FLORIDA
COUNTY OF SUMTER

The forgoing instrument was acknowledged before me this 20th day of February, 2012, by Robert M. Lange, who is personally known to me or produced Personally Known as identification, for the purposes expressed herein.

SEAL

Maserati Wade
Notary Public

Maserati Wade
Print Name:

EE 102557
Serial/Commission No.

OCT 13 2015
Commission Expires:

