

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: January 7, 2020 **Consent** **Regular**
 Workshop **Public Hearing**

Department: **Engineering & Public Works**
Submitted By: **Engineering & Public Works**
Submitted For: **Road and Bridge Division**

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve:

- A. a Settlement Agreement and Mutual Release (Agreement) with the Winddrift Homeowners Association, Inc. (Winddrift HOA) in the amount of \$72,000 for milling and resurfacing Wind Drift Lane, Wind Drift Terrace, and Sanibel Drive (WD Roads); and
- B. a budget amendment of \$72,000 in the Transportation Improvement Fund to recognize the agreed to amount from the Winddrift HOA and appropriate it to the Pavement Management/Roadway Striping unit.

SUMMARY: Approval of this Agreement will allow the Winddrift HOA to pay Palm Beach County (County) for milling and resurfacing County maintained WD Roads within and servicing the Winddrift HOA. The Winddrift HOA contracted or caused the sealcoating of the WD Roads in violation of Right-of-Way Permitting Ordinance No. 2019-030. The County does not allow sealcoating of County maintained roads due to safety and performance concerns. The sealcoating can be remedied by milling and resurfacing the WD Roads. The County has estimated this cost at \$72,000 and will mill and resurface the WD Roads within six months of receiving payment from the Winddrift HOA. District 4 (YBH)

Background and Justification: Right-of-Way Permitting Ordinance No. 2019-030 requires a County permit for work within and upon County rights-of-way.

- Attachments:**
- 1. Location Map
 - 2. Settlement Agreement and Mutual Release (3)
 - 3. Budget Amendment

Recommended by: 12-2-2019
 County Engineer **Date**

Approved by: 12/6/19
 Assistant County Administrator **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2020	2021	2022	2023	2024
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>\$72,000</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>(\$72,000)</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>\$ -0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE					
POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes No X
 Does this item include the use of federal funds? Yes No X

Budget Account No:

Fund 3500 Dept 363 Unit R002-290 Object 4612/6994

Recommended Sources of Funds/Summary of Fiscal Impact:

Transportation Improvement Fund
 Pavement Management/Roadway Striping
 Winddrift Community Roads Resurfacing

Milling and Resurfacing Cost	\$ 72,000.00
Funding Winddrift Community HOA	(\$ 72,000.00)
Fiscal Impact	<u>\$ 0.00</u>

C. Departmental Fiscal Review: Alice Kovalainen

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

 Loren 12/3/19
 OFMB 12/3

 A. J. Jacobo 12/5/19
 Contract Dev. and Control 12/3/19 Tu

B. Approved as to Form and Legal Sufficiency:

 M. Heenan 12/9/19
 Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.



LOCATION MAP

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Agreement”) is made and entered into on the Effective Date below, by and between Palm Beach County, a political subdivision of the State of Florida, by and through its Board of County Commissioners (“County”), and Winddrift Homeowners Association, Inc., a Florida not for profit corporation existing pursuant to a Declaration of Restrictions recorded in the Official Records of Palm Beach County at Book 2318, Page 443 (“Winddrift HOA”) (each referred to as a “Party” and collectively referred to as the “Parties”).

WHEREAS, the roads within and serving the Winddrift HOA, namely Wind Drift Lane, Wind Drift Terrace and Sanibel Drive, hereinafter referred to as “WD Roads” are County maintained rights-of-way, subject to the Right-of-Way Permitting Ordinance No. 2019-030 (“Ordinance”), as amended; and

WHEREAS, except as provided therein, the Ordinance requires that any person placing or maintaining any facility in the right of way shall have a Right of Way Permit; and

WHEREAS, the WD Roads are paved; and

WHEREAS, Winddrift HOA contracted or caused the sealcoating of the WD Roads without obtaining County approval or permit as required by the Ordinance (the “Sealcoating Violation”); and

WHEREAS, County does not allow the sealcoating of County maintained roads due to, inter alia, safety and performance concerns; and

WHEREAS, in an effort to resolve the Sealcoating Violation, the County is willing to mill and resurface the WD Roads, hereinafter referred to as “Project”, at the expense of the Winddrift HOA; and

WHEREAS, the cost of the Project is estimated at \$72,000.00, and in an effort to amicably resolve the Parties’ claims, the Parties agreed to settle all claims related to the Sealcoating Violation, as provided herein.

NOW THEREFORE, with the intent to be legally bound hereby, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. The above recitals are true, correct, and incorporated herein.
2. **Payment.** Winddrift HOA shall pay the County the sum of SEVENTY TWO THOUSAND AND 00/100 DOLLARS (\$72,000.00) in lawful money of the United States of America for the Project. Payment shall be within 60 days of the Effective Date and shall be made to Palm Beach County Board of County Commissioners.
3. **Performance.** County shall complete the Project within six months from the date the County receives payment pursuant to Paragraph 2 above.

4. **Mutual Release.** The Parties do hereby remise, release, and forever discharge, and by these presents, do for their heirs, affiliates, agents, insurers, reinsurers, partnerships, servants, employees, administrators, representatives, parents, attorneys, predecessors, successors, assigns and any other related or affiliated entities, remise, release, and forever discharge each of the other Parties and their respective past, present, and future insurers, reinsurers, agents, consultants, lawyers, employees, successors, officers, directors, and any and all other persons, firms, or corporations with whom any of the former have been, are now, or hereafter may be affiliated, together with any and all other persons, firms or corporations, of and from any and all past, present, or future claims, demands, obligations, actions, causes of action, suits, liens, rights, damages, costs, expenses, and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, and whether for compensatory or punitive damages, which the Parties now have, or which may hereafter accrue or otherwise be acquired, on account of, or in any way growing out of, or which relate to the Sealcoating Violation. Except for the Sealcoating Violation, this release does not apply to and the County expressly reserves any and all of its rights to enforce violations of the Ordinance, including, but not limited to, the installation of pavers and stamped and painted concrete to the sidewalks and the WD Roads in the Winddrift HOA.

The Parties fully understand and agree that this release includes, but is not limited to, a resolution of all claims and potential claims for attorneys' fees and costs related to the Sealcoating Violation. The Parties acknowledge that they may sustain unknown or unforeseen losses, costs, expenses, liabilities, claims, injuries, damages and consequences thereof which may be at this time unknown, unrecognized and not contemplated by the Parties. By executing this Agreement, it is the full intent of the Parties that they release each other of and from any and all liability for such unknown and/or unforeseen losses, costs, expenses, liabilities, claims, damages and consequences thereof relating to the Sealcoating Violation and Project. A portion of the consideration herein is for the release of such unknown or future claims or damages.

5. **Compromise of Disputed Claims.** This Agreement is entered into for the sole purpose of resolving the disputed and/or potentially disputed claims between the Parties. The Parties understand and agree that the payment of the aforescribed consideration by Winddrift HOA is not to be construed as an admission of fault or liability on the part of any and all parties and entities hereby released all of whom expressly deny same.
6. **Effective Date.** The Effective Date of this Agreement shall be the date that the last of the Parties executes this Agreement.
7. **Counterparts/Facsimile Signatures.** This Agreement may be executed in any number of counterparts; each of which when duly executed and delivered shall be an original, but all such counterparts shall constitute one and the same agreement. Any signature page of the Agreement may be detached from any counterpart without impairing the legal effect of any signatures, and may be attached to another counterpart, identical in form, but having attached to it one or more additional signature pages.

8. **Reliance on Own Judgment.** The Parties acknowledge herein that they have relied wholly upon their own judgment, belief and knowledge as to the nature, extent and duration of the issues, claims, defenses, rights and obligations, and causes of action, released herein, and have not been influenced to any extent whatsoever in making this Agreement by any representations or statements made by persons, firms, or corporations who are hereby released, or by any person or persons representing them.
9. **Authority to Execute.** In making this Agreement, each of the Parties covenant and warrant, which representations, covenants and warranties shall survive the execution of this Agreement, that:
 - a. They have all the required power, capacity and authority to enter into and execute this Agreement, including the releases provided herein;
 - b. The execution of this Agreement is and was free and voluntary;
 - c. All recitals herein are true and correct; and
 - d. They have not assigned or transferred to any person any matter released under this Agreement or any part or portion of any matter released under this Agreement.
10. **Legal Representation.** The Parties each acknowledge that they were fully and competently represented by legal counsel of their own choosing in negotiating and preparing this Agreement and certify to all others that they have had the opportunity to consult an attorney, and appreciate the legal significance and consequences of signing this Agreement as set forth herein. Therefore, the rule regarding construing ambiguities against the drafter of the agreement does not apply as it relates to this Agreement. Each of the Parties hereto has contributed equally to the drafting of this Agreement. Other than the recitals, each of the terms of this Agreement is contractual, not a mere recital, and is the result of even-handed negotiations among and between the Parties.
11. **Entire Agreement; No Waiver.** This Agreement constitutes the entire understanding between the Parties relating to the subject matter contained herein and supersedes all prior or contemporaneous agreements, representations and understanding of the Parties. No waiver of any of the provisions of this Agreement shall be deemed, nor shall such waiver constitute, a waiver of any other provision, whether or not similar, nor shall an amendment of this Agreement be binding unless executed in writing by all the Parties. The Parties expressly agree that the provisions of this section precluding modification of this Agreement may not be waived orally or by course of conduct, notwithstanding any law to the contrary.

12. **Partial Invalidity.** If any term of this Agreement or the application of any term of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, all provisions, covenants and conditions of this Agreement, and all of its applications, not held invalid, void or unenforceable, shall continue in full force and effect and shall not be affected, impaired or invalidated in any way.
13. **Captions.** The captions appearing at the commencement of the sections of this Agreement are descriptive only and for convenience and shall not define, limit, or describe the scope or intent of this Agreement, nor in any way affect this Agreement.
14. **Governing Law.** This Agreement shall be governed by the laws of the State of Florida, and the venue and jurisdiction for any action to enforce this Agreement shall be in the County or Circuit Court in and for Palm Beach County, Florida.
15. **Plural / Singular; Masculine / Feminine.** Whenever and wherever the context of this Agreement requires, any references to the singular shall be read, construed, and interpreted to mean the plural and vice-versa; any reference to the masculine gender shall be read, construed and interpreted to mean the feminine gender and vice-versa; and any references to the neuter gender shall be read, construed and interpreted to mean the masculine or feminine gender and vice-versa, whichever is applicable.
16. **Palm Beach County Office of the Inspector General.** Pursuant to Palm Beach County Code, Sections 2-421 through 2-440, as amended, Palm Beach County's Office of Inspector General is authorized to have the power to review past, present and proposed Palm Beach County contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with Palm Beach County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 through 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement to be effective as of the Effective Date.

WITNESSES:

Winddrift Homeowners Association, Inc.

C Short

Print Name: Collette Short

Mico Medel

Print Name: Monica Robble-Hernandez

By: [Signature]

Print Name: Brian Miller

Title: PRESIDENT

Date: 11/7/19

ATTEST:

**PALM BEACH COUNTY, BY ITS
BOARD OF COUNTY
COMMISSIONERS**

By: _____
Deputy Clerk

By: _____
Mayor

(SEAL)

**APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND
CONDITIONS**

By: YBH
County Attorney

By: [Signature]
Assistant County Engineer

