



AGENDA REPORT
July 24, 2018

**Approval Re: Right of Way Use Agreement with Ashley Manor Association
of Owners, Inc. – (District 5) (Fiscal Impact: None)**

SUBJECT:

Approval Re: Right of Way Use Agreement with Ashley Manor Association of Owners, Inc.

FISCAL IMPACT:

None

DEPT/OFFICE:

Public Works

REQUESTED ACTION:

It is requested that the Board of County Commissioners approve and authorize the Chair to execute the Right of Way Use Agreement with Ashley Manor Association of Owners, Inc. to permit irrigation to be installed and maintained in a portion of the Sheridan Road right of way.

SUMMARY EXPLANATION and BACKGROUND:

Ashley Manor Association of Owners, Inc. desires to install and maintain improvements in a portion of the public right of way of Sheridan Road. The improvements will consist of irrigation installation pursuant to permit application #18RW00551 at the entrance to the Ashley Manor subdivision along Sheridan Road.

The County may allow the use of the public right of way for purposes which do not conflict with the interests of the public as set forth in Section 125.01, Florida Statutes. In accordance with the Agreement, Ashley Manor Association of Owners shall be required to maintain the permitted improvements without cost to the County. Additionally, Ashley Manor is required to provide general liability insurance in an amount not less than one million dollars and name the County as additional insured. The Use Agreement for Ashley Manor has been reviewed and approved by the County Attorney's Office and Risk Management. The initial term of this Agreement shall be ten (10) years commencing with the date of execution by the Board and shall automatically renew annually unless terminated by either party with forty-five (45) days' written notice. Upon termination, Ashley Manor, at the request of the County, shall remove all improvements from the right of way or Ashley Manor shall reimburse the County for the cost of such removal.

CLERK TO THE BOARD INSTRUCTIONS:

Please return 2 fully executed Right of Way Use Agreements to the Public Works Department.

ATTACHMENTS:

Description

- **Right of Way Use Agreement - Ashley Manor**

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT REVIEW AND APPROVAL FORM

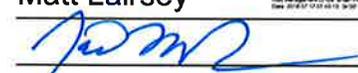
SECTION I - GENERAL INFORMATION

1. Contractor:	
2. Fund/Account #:	3. Department Name: Public Works
4. Contract Description: Right of Way Use Agreement Ashley Manor	
5. Contract Monitor: Jeanette Scott	7. Contract Type: USE AGREEMENT
6. Dept/Office Director: Andrew J. Holmes, P.E.	

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>
	<u>YES</u>	<u>NO</u>	
User Agency	<input type="checkbox"/>	<input type="checkbox"/>	_____
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____

SECTION III - REVIEW AND APPROVAL TO EXECUTE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>
	<u>YES</u>	<u>NO</u>	
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Matt Lairsey <small>Digitally signed by Matt Lairsey, DN: cn=Matt Lairsey, o=Brevard County Board of County Commissioners, ou=Brevard County Board of County Commissioners, email=matt.lairsey@brevard.gov, c=US</small>
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	<input type="checkbox"/>
Department	<input type="checkbox"/>
Program	<input type="checkbox"/>
Contact Name	<input type="checkbox"/>
Cost Center, Fund, and G/L Account	<input type="checkbox"/>
Vendor Information (SAP Vendor #)	<input type="checkbox"/>
Contract Status	<input type="checkbox"/>
Contract Title	<input type="checkbox"/>
Contract Type	<input type="checkbox"/>
Contract Amount	<input type="checkbox"/>
Storage Location (SAP)	<input type="checkbox"/>
Contract Approval Date	<input type="checkbox"/>
Contract Effective Date	<input type="checkbox"/>
Contract Expiration Date	<input type="checkbox"/>
Contract Absolute End Data (No Additional Renewals/Extensions)	<input type="checkbox"/>
Material Group	<input type="checkbox"/>
Contract Documents Uploaded in CM database (Initial Contract Form with County Attorney/ Risk Management Approval; Signed/Executed Contract)	<input type="checkbox"/>
"Right To Audit" Clause Included in Contract	<input type="checkbox"/>
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

July 25, 2018

M E M O R A N D U M

TO: Andrew Holmes, Public Works Director

RE: Item F.8., Right-of-Way Use Agreement with Ashley Manor Association of Owners, Inc.

The Board of County Commissioners, in regular session on July 24, 2018, approved and authorized the Chair to execute the Right-of-Way Use Agreement with Ashley Manor Association of Owners, Inc. to permit irrigation to be installed and maintained in a portion of the Sheridan Road right-of-way. Enclosed are two fully-executed Agreements.

Your continued cooperation is always appreciated.

Sincerely,

**BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK**

Tammy Rowe

Tammy Rowe, Deputy Clerk

Encls. (2)

cc: Contracts Administration

USE AGREEMENT

THIS AGREEMENT, made and entered into this 24 day of July 2018 by and between the BOARD OF COUNTY COMMISSIONERS OF BREVARD, COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY", and ASHLEY MANOR ASSOCIATION OF OWNERS, INC., a Florida not for profit corporation having a principal address of 542 Lake Ashley Circle, West Melbourne, Florida 32904, hereinafter referred to as the "ASSOCIATION".

WITNESSETH

WHEREAS the COUNTY owns the public right of way of Sheridan Road; and

WHEREAS, the ASSOCIATION desires to install and maintain irrigation on a portion of said right of way; and,

WHEREAS, the COUNTY pursuant to the authority set forth in Section 125.01, Florida Statutes, may allow the use of public right of way for purposes which do not conflict with the interests of the public; and

NOW THEREFORE, in consideration of the covenants herein contained, it is mutually agreed between the parties as follows:

1. TERM. The initial term of this Agreement shall be ten (10) years commencing with the date of the execution of this Agreement and shall thereafter be automatically renewed annually unless terminated by either party, in accordance with paragraph 13 Termination herein.
2. PREMISES. The COUNTY hereby agrees to permit the ASSOCIATION to utilize certain portions of the public right of way, hereinafter referred to as "PREMISES" for the purposes and under the conditions expressed herein and pursuant to Permit #18RW00551. The PREMISES are described as follows: The area from the southern edge of the sidewalk along the south side of Sheridan Road to the southerly right of way line of Sheridan Road (As defined in Plat Book 35, Page 69), fronting the subdivision of Ashley Manor (As defined in Plat Book 32, Page 30).
3. PURPOSES. The ASSOCIATION shall use the PREMISES for irrigation purposes only, and under the conditions expressed herein. It is hereby mutually agreed and understood that the use of any improvements now or hereafter located on the PREMISES shall be for decorative purposes only and not for human occupancy, nor shall such improvements create traffic hazards. ASSOCIATION shall not install any irrigation improvements on, under, or over the sidewalk or in a manner which causes damage to any other COUNTY owned improvements. It is specifically agreed and understood that the use herein set forth shall be the only use consented to by the COUNTY, and that failure to comply with this provision shall be considered a material breach of this Agreement, whereupon the COUNTY shall be entitled to immediately terminate this Agreement.

It is expressly stipulated that this Agreement and the accompanying permit is a license for permissive use only and that the placing of improvements and/or facilities upon public property pursuant to this Agreement and permit shall not operate to create or vest any property right in said holder.

4. IMPROVEMENTS. The plans and specifications for all improvements on the PREMISES shall be in accordance with all COUNTY specifications and shall be submitted as an attachment to the COUNTY's "Roadway and Easement Improvement Application Form" with appropriate fees, for approval by the COUNTY or its designated representative. It is hereby agreed and understood that any improvements placed on or constructed on the PREMISES and permanently attached thereto, shall remain the property of the ASSOCIATION and that the ASSOCIATION retains the right to remove such improvements within forty-five (45) days of the date of termination of this Agreement, whether by breach or by expiration of its natural term. In the event such improvements are not removed within forty-five (45) days of termination, the improvements shall become the property of the COUNTY.
5. UTILITIES. The ASSOCIATION shall pay all charges for electrical service and other utility services supplied to the ASSOCIATION at the PREMISES.
6. REPAIRS AND MAINTENANCE. The ASSOCIATION shall, at its own expense, maintain the grounds and all improvements, including the, irrigation, on the PREMISES and make all necessary repairs and replacements to the PREMISES and to any improvements constructed thereon. Such maintenance, repairs and replacements shall be made promptly as and when necessary. The ASSOCIATION shall provide the COUNTY with a written list of all contractors or other persons other than the members of the ASSOCIATION that will be performing work other than regular, routine maintenance for the ASSOCIATION pursuant to this Agreement.
7. ILLEGAL, UNLAWFUL OR IMPROPER USE. The ASSOCIATION shall make no unlawful, improper, immoral or offensive use of the PREMISES, nor will the ASSOCIATION use the PREMISES or allow use of the PREMISES for any purposes other than that hereinabove set forth. Failure of the ASSOCIATION to comply with this provision shall be considered a material default under this Agreement. In the event any improvement is deemed traffic safety hazard by the COUNTY or Florida Department of Transportation, such use shall be deemed an improper use and the Agreement shall be subject to immediate termination.
8. INDEMNIFICATION AND INSURANCE. Except where limited by law, the ASSOCIATION agrees that it will indemnify and save harmless the COUNTY from any and all liability, claims, damages, expenses, proceedings and causes of action of every kind and nature arising out of or connected with the ASSOCIATION's use, occupation, management or control of the PREMISES, or any improvement placed thereon by the ASSOCIATION, or any equipment or fixtures used by the ASSOCIATION in connection with the PREMISES. The ASSOCIATION agrees that it will, at its own expense, defend any and all actions, suits or proceedings which may be brought against the COUNTY in connection with any negligent, reckless, or intentional wrongful act or omission of the ASSOCIATION and persons employed or utilized by the ASSOCIATION as it relates to the PREMISES, and that it will satisfy, pay and discharge any and all judgments that may

be entered against the COUNTY in any such action or proceedings, except that the ASSOCIATION will not be liable under this provision for damages arising out of the injury or damage to persons or property directly caused or resulting from the negligence, recklessness, or intentional wrongful misconduct of the COUNTY or any of its agents, servants, or employees. The parties acknowledge specific consideration has been exchanged for the provision. Nothing herein is intended to be or shall be construed as a waiver of the COUNTY'S sovereign immunity beyond statutory provisions.

- a. The ASSOCIATION further agrees to provide and maintain at all times during the term of this Agreement, without cost or expense to the COUNTY, the following types of insurance. The policy limits required are to be considered minimum amounts:

General Liability Insurance insuring the ASSOCIATION against any and all claims, demands, demands or causes of action whatsoever for injuries received and damages to property in connection with the use, occupation, management and control of the PREMISES and the improvements thereon. Such policies of insurance shall insure the ASSOCIATION in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit for each occurrence.

- b. A certificate of such insurance policies shall be provided to the Public Works Department, 2725 Judge Fran Jamieson Way, Bldg. A-201, Viera, Florida, 32940, demonstrating that the aforementioned insurance requirements have been met within ten (10) days of the date of execution of this Agreement and annually upon insurance renewal. The certificates of insurance shall indicate that the aforementioned policies have been endorsed to name the COUNTY as an additional insured and that these policies may not be canceled or modified without thirty (30) days prior written notice to the COUNTY.
- c. The ASSOCIATION shall include in any contract for work upon or involving the PREMISES that the contractor shall indemnify and hold harmless ASSOCIATION and the COUNTY from liabilities, damages, losses and costs, including but not limited to attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of the contract.
- d. The ASSOCIATION shall notify the COUNTY immediately in writing of any potentially hazardous condition existing on or about the PREMISES.
- e. All personal property, equipment, fixtures, structures or improvements constructed or placed on or about the PREMISES shall be at the risk of the ASSOCIATION and the COUNTY shall not be liable for any damage or loss to personal property, equipment, fixtures, structures, or improvements located thereon for any cause whatsoever. The ASSOCIATION agrees and understands that the COUNTY does not and shall not carry liability, theft, or fire insurance on any of said improvements or facilities to cover the ASSOCIATION's interests therein.
- f. At the time of execution of this Agreement, any existing improvements installed on the PREMISES, will be the responsibility of the ASSOCIATION. In the event this

existing landscaping improvements causes damage to COUNTY property, to include but not limited to, sidewalk/roadway/curb and gutter/drainage inlets, the ASSOCIATION will be responsible for immediate repair to COUNTY property. If the ASSOCIATION fails to repair the damage, the ASSOCIATION will pay the COUNTY all costs incurred by the COUNTY to repair the damage.

9. RIGHT OF ENTRY. The COUNTY or its agents may enter in and on the PREMISES at any reasonable time for the purpose of inspecting such property or performing other duties as are required by law or by the terms of this Agreement.
10. COMPLIANCE WITH STATUTES. The ASSOCIATION shall promptly execute and comply with all statutes, ordinances, rules, regulations, and requirements of all local, state and federal governmental; bodies applicable to the PREMISES, for the correction, prevention and abatement of nuisances or other grievances in, upon, or connected with the PREMISES during the term of the Agreement.
11. ASSIGNABILITY. The ASSOCIATION shall not assign its responsibilities under this Agreement without the prior written consent of the COUNTY. In the event the ASSOCIATION does assign this Agreement, the ASSOCIATION and any such assigns shall be jointly and severally responsible for the ASSOCIATION's responsibilities under this Agreement.
12. INDEPENDENT CONTRACTOR. The ASSOCIATION shall perform the services under this Agreement as an Independent Contractor and nothing herein shall be construed to be inconsistent with this relationship or status. Nothing in the Agreement shall be interpreted or construed to constitute that the ASSOCIATION or any of its agents or employees to be the agent, employee or representative of the COUNTY.
13. TERMINATION. This Agreement may be terminated with or without cause by either party upon forty-five (45) days' written notice thereof to the other party; provided, however, that upon termination, the ASSOCIATION shall, at the request of the COUNTY, remove all improvements to the PREMISES, or, in the alternative, reimburse the COUNTY for the cost of such removal.
14. RIGHT TO AUDIT RECORDS: In performance of this Agreement, the ASSOCIATION shall keep books, records, and accounts of all activities related to this Agreement in compliance with generally accepted accounting procedures. All documents, papers, books, records and accounts made or received by the ASSOCIATION in conjunction with this Agreement and the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the COUNTY. The ASSOCIATION shall retain all documents, books and records for a period of five (5) years after termination of this Agreement, unless such records are exempt from section 24(a) of Article I of the State Constitution and Ch. 119, Florida Statutes. All records or documents created by or provided to the ASSOCIATION by the COUNTY in connection with this Agreement are public records subject to Florida Public Records Law, Chapter 119, Florida Statutes. All records stored electronically must be provided to the COUNTY in a format compatible with the information technology systems of the COUNTY.

15. NOTICE. Notice under this Agreement shall be given to the:
Brevard County Public Works Department
Attn: Support Services Manager
2725 Judge Fran Jamieson Way, Bldg. A-201
Viera, Florida 32940

Ashley Manor Association of Owners, Inc.
c/o Pat Bentley, President
542 Lake Ashley Circle
West Melbourne, FL 32904

16. WAIVER. The waiver by the COUNTY of any of the ASSOCIATION's obligations or duties under this Agreement shall not constitute a waiver of any other obligation or duty of the ASSOCIATION under this Agreement.

17. ENTIRETY. This Agreement represents the understanding between the parties in its entirety and no other agreements, either oral or written, exist between the COUNTY and the ASSOCIATION.

DONE, ORDERED and ADOPTED in Regular Session this 24 day of July 2018.

ATTEST:



Scott Ellis, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA



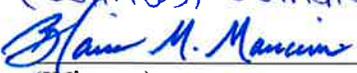
Rita Pritchett, Chair
As approved by the Board on JUL 24 2018

REVIEWED FOR LEGAL FORM AND CONTENT:



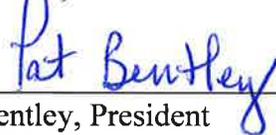
Assistant County Attorney



(Witness) Jeanette Scott


(Witness) Blaise M. Mancini

ASHLEY MANOR ASSOCIATION OF
OWNERS, INC.

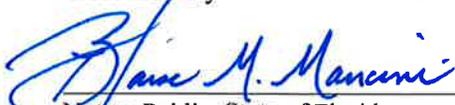


Pat Bentley, President
July 16, 2018

STATE OF FLORIDA
COUNTY OF BREVARD

BEFORE ME personally appeared Pat Bentley, known to me to be the person who executed the foregoing Agreement, and they acknowledged before me that they executed the same for the purposes described therein.

WITNESS my hand and official seal this 16 day of July, 2018. *(DRIVER'S Lic.)*



Notary Public, State of Florida
My Commission Expires _____



CERTIFICATE

I, the undersigned, PAT BENTLEY, do HEREBY CERTIFY that the following is a true and correct statement of resolutions adopted by Consent of the Board of Directors of Ashley Manor Association of Owners, Inc., on 15 July 2018 and the action taken has not in any manner been rescinded or modified.

APPROVAL OF AGREEMENT

RESOLVED, that the Agreement between Ashley Manor Association of Owners, Inc. and the Board of County Commissioners of Brevard County, Florida, appended hereto and by reference made a part hereof is hereby approved by the Association.

FURTHER RESOLVED, that the President or Vice President, as well as other appropriate officers of this Association, are empowered to execute any and all documents, and/or instruments, to effect the purposes of the above Resolution.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said ASSOCIATION this 16th day of July, 2018.

Jeanette Scott
(Witness) Jeanette Scott

Blaise M. Mancini
(Witness) Blaise M. Mancini

Pat Bentley
Pat Bentley, President
Ashley Manor Association of Owners, Inc.

I HEREBY CERTIFY that on this day personally appeared before me PAT BENTLEY, to me known to be the person who signed the foregoing Certificate as such officer, and acknowledged the execution thereof to be his free act and deed on behalf of Ashley Manor Association of Owners, Inc. that he affixed thereto the official seal of Association; and that as such officer, he is duly authorized to do so. (DRIVER'S LIC.)

WITNESS my signature and official seal this 16 day of July 2018.

Blaise M. Mancini
Notary Public, State of FLORIDA
My Commission Expires _____

