

Date: 7/22/2019 - BizBen Posting: #254119 - Asphalt Paving Repair Maintenance Contractor In Greater San Francisco Bay

Contact: Tim Cunha at 650-600-3751, 844-237-6487 if you have any questions about this NDA or posting.

Instructions: Complete all the information below before emailing it back to: EvergreenGoldBA@gmail.com.

From: **Tim Cunha** Subject: **NDA For Your Asphalt Paving Repair Maintenance Contractor In Greater San Francisco Bay**

Your Name: _____ Your Phone: _____ Your Email: _____



TIM CUNHA, JD ~ BROKER, CA. RE #01919755
An EVERGREENGOLD® Business Broker
and the

EVERGREENGOLD® BizFSBO™ Business for Sale by Owner Advertising Service of Tim Cunha, J.D.
2225 E. Bayshore Road, Suite 200, Palo Alto, CA 94303
P: 650.600.3751 ♦ www.EvergreenGold.com ♦ Email@EvergreenGold.com

BUYER CONFIDENTIALITY (NON-DISCLOSURE) AGREEMENT, REGISTRATION, & AGENCY DISCLOSURE NOTICE ("NDA")

The undersigned Buyer, hereby requests Confidential Information (as defined below) about one (or more) Business(es) offered for sale by its respective Owner through the business brokerage services of Timothy M. Cunha, JD (CA BRE #01919755, hereinafter—"Broker") OR through the EVERGREENGOLD® BizFSBO™ Business for Sale by Owner Advertising Service of Timothy M. Cunha, through the www.EvergreenGold.com and/or the www.EvergreenGold.net website, other websites, advertising platforms or media, and communications, including but not limited to digitally, orally, and in print.

Any such Business Owner is referred to herein as "Seller." Term "Seller" refers to each and every Business Owner who provides Confidential Information to the Buyer, either directly or through a third party, and whether represented by Broker as an agent or selling the business on their own through the EVERGREENGOLD® BizFSBO™ Business for Sale by Owner Advertising Service of Timothy M. Cunha without an agent or broker. The Seller will rely upon the promises and representations made herein by the Buyer; and, Buyer acknowledges that Buyer's breach of the promises, representations, conditions, and terms contained herein may cause Seller severe and irreparable damages.

Term "Buyer" refers to the individual executing this Agreement **and** any entity on whose behalf the individual is executing this Agreement or is acting in any fiduciary or agency capacity. Confidential Information shall be provided to Buyer for the sole purpose of evaluating the possible purchase by Buyer of all or part of the Business.

Term "Business" refers to any one or more business(es), company(ies), or similar commercial enterprise(s), offered for sale by its respective Owner through the business brokerage services of Timothy M. Cunha, JD (CA BRE #01919755, hereinafter—"Broker") OR through the EVERGREENGOLD® BizFSBO™ Business for Sale by Owner Advertising Service of Timothy M. Cunha (as the case may be), through the www.EvergreenGold.com and/or the www.EvergreenGold.net website, other websites, advertising platforms or media, and communications, including but not limited to digitally, orally, and in print.

In consideration of receiving such Confidential Information from the Seller, Buyer agrees as follows:

1. NON-DISCLOSURE OF INFORMATION: Buyer acknowledges that the Owner of the Business (the "Seller") wants to maintain the confidentiality of the Confidential Information (as defined below). Buyer agrees not to disclose or permit access to (nor use to the detriment or disadvantage of the Seller) any Confidential Information, whether provided before or after execution of this Agreement, without the prior written consent of Seller, to anyone other than Buyer's legal counsel, accountants, lenders, or other agents or advisors to whom disclosure or access is necessary for Buyer to evaluate the Business (hereinafter referred to as the "Buyer's Associates"). Disclosure of Confidential Information shall be made to the Buyer's Associates only in connection with the potential acquisition of the Business and then only if such Buyer's Associates understand and agree to maintain the confidentiality of such Confidential Information. Buyer shall be responsible for any breach of this Agreement by the Buyer's Associates, and neither Buyer nor the Buyer's Associates shall use or permit the use of Confidential Information in any manner, except as may be required for Buyer to evaluate the Business. If the Buyer does not purchase the Business, Buyer and any Buyer's Associates, at the earlier of the close of negotiations or within five (5) business days, shall destroy or return to the Seller all information provided to Buyer and will not retain any copy, reproduction, or record thereof. Nevertheless, Buyer may disclose Confidential Information pursuant to any governmental, judicial, or administrative order, subpoena, or discovery request, provided that Buyer uses reasonable efforts to notify Seller sufficiently in advance so that Seller may seek to object thereto.

2. CONFIDENTIAL INFORMATION: The term "Confidential Information" shall mean, in the broadest possible sense, all confidential, proprietary, and/or trade secret information, including, without limitation, the fact that the Business is for sale, all financial, production, marketing, and pricing information, business methods, business manuals, manufacturing/production/operations procedures, correspondence, know-how, inventions, technical information, procedures, computer programs and systems, techniques, marketing plans and strategies, product or service information, research and product development results, customer and supplier lists and information. Confidential Information shall not include information that: (a) at the time of disclosure is in the public domain through no fault of, or action or failure to act by Buyer; (b) becomes known to Buyer through a third-party source without violation of any obligation of confidentiality or any other wrongful act; or, (c) which Buyer can establish was independently known or developed by Buyer without use of any Confidential Information.

3. BUYER RESPONSIBILITY: Buyer understands that no person or entity or broker has audited or verified any information given to them by the Seller and that no warranty or representation as to its accuracy or completeness is made by the Seller, the Broker, or any other person or entity. Nor does Seller, or Broker, or any other person or entity in any way guarantee future business performance. Buyer is solely responsible to examine and investigate the Business, its assets, liabilities, financial statements, tax returns and any other facts which might influence Buyer's purchasing decision or the price Buyer is willing to pay. Any decision by Buyer to purchase the Business shall be based solely on Buyer's own investigation and that of Buyer's legal, tax, and other advisors. Should the Buyer seek any representation, warranty, or guarantee from the Seller or any other person or entity, that would need to be by a separate subsequent document agreed to and executed by any and all persons to be so bound.

4. BUYER ACKNOWLEDGES NO RELIANCE ON ADVERTISING: The Buyer acknowledges that Buyer's inquiry is a result of one or more advertisements or presentations seen by the Buyer regarding the Business being available for purchase. Buyer represents and acknowledges that Buyer is not relying upon any representations made in any such advertisements or presentations, but rather will rely upon information provided directly by Seller to Buyer subsequent to Buyer signing and submitting this NDA to Seller directly (or through a third party).

5. ROLE & PARTICIPATION OF BROKER(S)—AGENCY DISCLOSURE. IF, and only if, the Business Seller is being represented by Broker as an agent, this Section 5 applies. If the Business Seller is using the BizFSBO™ Business for Sale by Owner Advertising Service, then the Business Seller is NOT REPRESENTED BY THE BROKER (nor is the Buyer represented by the Broker) and this Section 5 does NOT apply.

a. **All communications concerning the Business shall be conducted solely through Broker**, and Buyer agrees not to approach or contact any Seller or its principals or visit the physical location of any Selling Business without an appointment arranged through Broker. Buyer is not to contact or approach any Seller's employees, officials, agents, customers, suppliers, and/or competitors without the prior written consent of the respective Seller.

b. Buyer shall not buy, lease, or otherwise obtain any part of or interest in a Business disclosed to Buyer by Broker, nor enter into any management, consulting, employment, or similar agreement with a Business disclosed to Buyer by Broker, for three (3) years following that disclosure, *except* through Broker, with Broker receiving Broker's rightful compensation from the Seller.

c. Any and all representations and warranties shall be made solely by and between the Seller and Buyer in signed documents. Broker makes no representations or warranties, expressed or implied, to Buyer with respect to any Business and/or Proprietary Information disclosed to Buyer. Buyer must conduct due diligence and

Buyer's Initials: _____

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d. independently verify all information received by Buyer; Buyer does not and shall not rely upon any information, written or oral, furnished by Broker. All information furnished to Buyer and/or received by Buyer is provided by Seller and not verified in any way by Broker or Broker's agents; they and Buyer are relying upon the Seller for accuracy and completeness.

e. **Broker is an agent of the Seller only.** As such, **Broker is not an agent or representative of the Buyer.** Broker acts solely as an agent of and for the Seller. As such, by law, Broker owes to the Seller "a fiduciary duty of utmost care, integrity, honesty, and loyalty...." However, by law, **Broker also owes to both the Seller and the Buyer:** (a) *Diligent exercise of reasonable skill and care in performance of the agent's duties;* (b) *A duty of honest and fair dealing and good faith;* (c) *A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties* [California Civil Code §2079.16]. When Broker lists a business for sale, Broker becomes the agent representing the Seller. In the course of selling the business, Broker will work with prospective buyers, and afford them the duties of skill and care, honesty and fair dealing and good faith, and to disclose known material facts, as prescribed by law. Broker, however, does **not** become the "agent" of or for the Buyer, and does **not** represent the Buyer. If Buyer inquires about any Business involving the Broker representing the Seller in the transfer of real estate, the Broker will first provide to Buyer a formal Real Estate Agency Disclosure Form with regard to that real property.

f. On behalf of the Seller, Broker may provide and sometimes prepare forms for the Buyer to make an offer to the Seller; but, Broker advises the Buyer to **consult with and seek the advice of an attorney at law** with expertise in business transition negotiations and transactions.

g. Under law, the Buyer and the Seller of a business are each required to fully and fairly disclose to the other any and all information which is known to that party, or reasonably should be known, and which may or will be "material" to the other party's decision to enter into the transaction. A Seller's agent must fully disclose all such material information known to the agent to the Seller *and* to the Buyer (or to the Buyer's agent), and cannot withhold any material information which the Seller's agent may know, or in the exercise of reasonable diligence, should discover.

h. Unless disclosed to Broker *at the time this NDA is signed*, Buyer is not represented by a "buyer's broker" or "buyer's agent", and no such broker or agent was the procuring cause of any resulting transaction and shall not be entitled to any "co-brokerage" commission, fee, or compensation from Broker or Seller.

i. Buyer is advised to consult an attorney and/or certified public accountant for assistance in reviewing and verifying the legal, financial, and/or any other pertinent information concerning any Business. Buyer acknowledges and agrees that Broker is acting only as a conduit of information from Seller, and that **Broker provides no legal, accounting, business, financial, or tax advice.**

j. The Broker will rely upon the promises and representations made herein by the Buyer; and, Buyer acknowledges that Buyer's breach of the promises, representations, conditions, and terms contained herein may cause Broker severe and irreparable damages.

6. FURTHER ASSURANCES: At their sole and absolute discretion, any Seller may require a Buyer to execute and sign an additional Confidentiality and Non-Disclosure Agreement specifically identifying the particular business and, possibly, with different terms and conditions; however, this Agreement shall remain in full force and effect, nevertheless.

7. FURTHER TERMS: For a period of three years following the date hereof, Buyer shall not contact Seller's employees, customers, landlords, or suppliers, or otherwise observe or monitor the Business, without Seller's consent; nor shall Buyer directly or indirectly solicit for employment any employees of Seller. Seller and Seller's successors, and Broker if applicable, are specifically intended to be beneficiaries of the duties and obligations of this Agreement and may prosecute any action at law or in equity necessary to enforce its terms and conditions as though a party hereto. This Agreement can only be modified in writing, signed by both Buyer and Seller. Waiver of any breach of this Agreement shall not be a waiver of any subsequent breach. This Agreement supersedes all prior understandings or agreements between the parties with respect to its subject matter. This Agreement shall be construed under and governed by the laws of the State of California. The venue for any action instituted to enforce any terms of the Agreement shall be in the County and State where Seller's principal place of business located. Buyer acknowledges that it would be extremely difficult to measure the amount of damages to Seller and/or Broker arising from a breach or threatened breach of any provision of this Agreement, and that money damages would be an inadequate remedy. Seller and/or Broker shall be entitled to temporary and permanent injunctive relief to restrain the Buyer from any such breach or threatened breach. This Agreement may be signed in counterparts and faxed or emailed, and electronic signatures may be considered as originals. If Buyer is a corporation, limited liability company, partnership, or other such entity, the undersigned executes this Agreement on behalf of Buyer and represents and warrants that he or she is duly authorized to do so. In the event of any litigation to enforce this Agreement, the prevailing party shall be entitled to recover all costs and expenses incurred, including reasonable attorneys' fees and court costs, in addition to such other relief as may be awarded. Buyer acknowledges retention of a fully completed copy of this Agreement.

If the Owner (Seller) of any respective Business is selling such Business on their own through the EVERGREENGOLD® BizFSBO™ Business for Sale by Owner Advertising Service of Timothy M. Cunha then they are doing so without an agent or broker and are not represented by an agent, broker, or intermediary, and no agent, broker, or intermediary is involved on behalf of Buyer, Seller, or any other party.

Our agreements with Sellers require that we obtain evidence of financial ability before disclosing the name and location of the business.
Please fill out below. If there is some information you cannot disclose, please advise. Your information will be held in strict confidence by Broker and Seller.

Are you currently employed? Yes No | Present Occupation/Business: _____ Current Income/Year: \$ _____

Own a business in the past? Yes No | Own a business currently? Yes No | What type?: _____

Previous Occupation(s)/Business(es): _____

Funds for down payment: \$ _____ Source(s) of funds: Savings 401K Other Retirement Funds Home Equity Loan Other

Your Approximate Net Worth: \$ _____ [ASSETS (home, real estate, savings, stocks, etc.) MINUS DEBTS (mortgage, credit cards, car loans, etc.)]

ACQUISITION TARGET: Targeted price range \$ _____ "Owner Benefit" or "Cash Flow" you prefer: \$ _____

BUYER: Signature: _____ Date: _____

Individual Name (Printed): _____ Title (if applicable): _____

Name of Buying Entity ("Inc.," "Corp.," "LLC," if any): _____

Email Address: _____ Phone: ____ (____) _____ - _____

Mailing Address: _____

STREET CITY STATE ZIP