

AGREEMENT FOR TRAFFIC SIGNAL MAINTENANCE AND REPAIR

THIS AGREEMENT FOR TRAFFIC SIGNAL MAINTENANCE AND REPAIR (“Agreement”) is made this ____ day of _____, 2024, by and between the **ORCHID ISLAND GOLF & BEACH COMMUNITY ASSOCIATION, INC.**, a Florida corporation, whose address is 1 Beachside Drive, Orchid, FL 32963, hereinafter "**Orchid**," and **INDIAN RIVER COUNTY**, a political subdivision of the State of Florida, whose address is 1801 27th Street, Vero Beach, FL 32960, hereinafter "**County**".

WHEREAS, Orchid desires to retain the services of the County's Public Works Department to perform the necessary maintenance and repairs to the traffic signals and/or other applicable devices (collectively, the “**Traffic Signals**”) identified in Schedule “B” attached hereto, which will be installed by Orchid at the intersection of Highway A1A and Orchid Island Drive, in accordance with the provisions that certain AIA Document A104 – 2017 dated December __, 2023, by and between Orchid and Gerelco Traffic Controls, Inc., and;

WHEREAS, it is the intent of both parties to ensure provisions for the continuous, coordinated and professional maintenance of the Traffic Signals to ensure their continuous operations; and

WHEREAS, the County has an executed agreement (“**County Agreement**”) with the Florida Department of Transportation (“**FDOT**”) for the maintenance of traffic equipment on the State Highway System and has modified the County Agreement to include all signals as they are added onto the system; and

WHEREAS, both parties agree that Orchid shall utilize painted mast arms for the Traffic Signals in lieu of galvanized mast arms.

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

1. SCOPE OF WORK,

A. The County shall provide all labor, equipment, and materials, including preventative maintenance activities, at the rates specified in Schedule "A" attached hereto, as may be reasonable and necessary to maintain in good operating condition, or to repair, replace, reconstruct, and/or restore to good operating conditions all of the Traffic Signals. The County Agreement also includes the County’s maintenance of all related hardware and control equipment in relation to the Traffic Signals, once such hardware and/or control equipment is installed by the contractor and approved for operation by FDOT. All work to be performed hereunder by the County shall be done in a skillful and workmanlike manner, in accordance with accepted industry practices and customs, and in accordance with all laws, rules, and regulations.

B. The County shall be free to determine the design, style, make model, manufacturer, or other specification of any material or equipment used or provided hereunder subject to any applicable law, rule or regulation, and the provisions of the County Agreement (including any amendment thereto).

C. Any traffic signal design modifications developed by the County as part of this Agreement for portions of the traffic system serving Orchid shall be reviewed and approved by Orchid (such approval to not be unreasonably withheld or conditioned), and Orchid shall have the option of substituting the County’s proposed modifications, equipment, and/or materials with equal or better modifications, equipment and/or materials. Orchid shall be responsible for any additional reasonable costs incurred in connection with such approved modifications or substitution. Any traffic signal design modifications developed by the County for portions of the traffic system not serving Orchid, shall be paid for by either FDOT or the County.

D. Notwithstanding anything in this Agreement to contrary, the parties hereby agree that Orchid plans on utilizing painted mast arms for the Traffic Signals instead of galvanized mast arms. Because it is the policy of FDOT to only utilize galvanized mast arms for its traffic signals, neither the County nor FDOT shall be responsible for the maintenance of the paint coating on the Traffic Signals' mast arms, but rather, Orchid shall be solely responsible for the costs and expenses of maintaining the paint coating on the Traffic Signals' mast arms.

2. TERM OF AGREEMENT,

A. The initial term of this Agreement shall commence on _____ and expire on _____. Thereafter, this Agreement shall be subject to automatic, consecutive five (5) year extensions, coinciding with the fiscal year of the County, until, the earlier of: (i) either party provides to the other party written notice of its intention to terminate this Agreement at least one hundred-eighty (180) days in advance of the then outstanding expiration date; or (ii) both parties mutually agree in writing to terminate this Agreement.

B. Modifications, additions, or deletions to this Agreement, other than updating the notice information in Section 3 of this Agreement, shall not be enforceable unless such modifications, additions, or deletions are in a written addendum executed by both parties, and such addendum shall meet all appropriate terms and conditions of the County Agreement (as amended).

3. NOTICE TO THE COUNTY FOR REPAIR,

A. Notice to the County for repair will be accomplished directly to the following Personnel:

County Traffic Engineer
Indian River County
1801 27th Street
Vero Beach, FL 32960
(772) 226-1568

B. Orchid hereby designates the following individuals or officers (each a "Designee") as its exclusive authorized agents for communication with the County of any notice to proceed with repairs or reconstruction:

Francis X. Kelly
Community Association Board President
Orchid Island Golf & Beach Community Association, Inc.
1 Beachside Drive
Orchid, FL 32963

C. It shall be the responsibility of Orchid, or any Designee, to notify and request from the County that repairs or reconstruction of the Traffic Signals is necessary prior to the County being obligated to perform any maintenance or repair obligations hereunder. All notices and requests must include a general description of the problem or deficiency of the Traffic Signals, and shall be communicated to the County by Orchid, or its Designee, at the County's above address. For the avoidance of doubt, the County shall not be required to perform any maintenance or repair obligations under this Agreement, nor shall the County be held in breach of this Agreement for its non-performance of any maintenance or repair obligations hereunder, in the event that Orchid, or its Designee, fails to properly give County prior notice and requests in accordance with this Section 3.

4. RESPONSE TIME,

A. It is the County's goal to use its best efforts to respond to any notice or request for emergency repairs of the Traffic Signals within a "Zero Response Time"; provided, however, in no event shall the County

respond to any such emergency notice or request longer than two (2) hours following receipt of such emergency notice or request. Additionally, the County shall respond to any notice or request of non-emergency repairs or routine repairs of the Traffic Signals within twenty-four (24) hours following receipt of any such notice or request. Notwithstanding the foregoing, if the County fails to respond to any notice or request within the previously stated time periods due to (i) the County's good cause, or (ii) a disaster pursuant to Section 6 below, then the County shall not be considered to be in breach of this Agreement.

B. For the purposes of this Agreement, a notice or request will be considered received by the County upon the County's designated agent's receipt of notice or request from Orchid and/or its Designee.

C. A notice or request shall be deemed an "emergency request," if (i) the damage to the Traffic Signal, or (ii) the malfunction or failure thereof of the Traffic Signal results in or has resulted in the creation of a serious and/or immediate traffic hazard; for example, including, but not limited to, total loss of power to the Traffic Signal; loose, hanging equipment on the Traffic Signal; the loss of a red signal face color indication; or flashing operation of the Traffic Signal at a critical time. A notice or request shall be deemed a "non-emergency request" or a "routine repair request," if (1) the damage to the Traffic Signal, or (2) the malfunction or failure thereof of the Traffic Signal does not result in or has not resulted in the creation of a serious and/or immediate traffic hazard; for example, including, but not limited to, cracked or broken lenses on the Traffic Signal; loss of a non-red signal face color indication; or flashing operation of the Traffic Signal at a non-critical time.

5. PAYMENT,

A. The County shall invoice (along with any and all applicable supporting documentation) Orchid quarterly for all services provided during the Term of this Agreement, in accordance with the charges provided for in Schedule "A". Orchid shall pay the County all amounts invoiced within forty-five (45) days of receipt of the invoice (along with applicable supporting documentation).

B. Notwithstanding the prior subparagraph, Orchid shall have the right to question and/or dispute the accuracy of the County's invoice; provided however, that Orchid agrees to not unreasonably withhold its approval of the County's invoice. In the event any portion of the invoice is in bona fide dispute between the parties, Orchid agrees to remit payment to the County of the undisputed portion of such invoice within forty-five (45) days of receipt of the invoice (along with applicable supporting documentation), and the disputed portion of such invoice shall not be due and payable until the parties resolve such dispute. The County and Orchid agree to work together to amicably resolve the disputed portion(s) of the invoice. Upon the parties' resolution of such disputed portion(s) of the invoice, Orchid shall remit payment, if any, to the County of such resolved portion(s) of the invoice within forty-five (45) days following the parties' resolution.

6. DISASTERS, The occurrence of any natural or man-made disaster, when declared as such by federal, state, or local government, including, but not limited to a hurricane, tornado, flood, act of war, or airliner crash, may result in the impossibility of performance of this Agreement. The parties agree that this Agreement shall be considered temporarily suspended during any such state of disaster, and the County's performance and/or response times, as set forth elsewhere in this Agreement, may be temporarily delayed.

7. LIABILITY, To the extent provided by law, the County will be responsible for all claims, demands, suits, liabilities, damages and losses arising out of or resulting from the negligent acts of commission or omission by its contractors, subcontractors, employees, agents or representatives. Nothing in this Agreement shall be construed as any waiver of County's sovereign immunity.

8. THIRD PARTIES, Orchid hereby agrees that, upon prior written notice to Orchid and prior approval of the FDOT District Traffic Operations Engineer, the County may enter into services or maintenance agreements with any third party providers with respect to any or all of the services or obligations contemplated herein, either on a full-time or stand-by basis, in accordance with the charges provided for in Schedule "A"; provided, however, that

the terms and conditions of this Agreement or the County Agreement shall continue to govern the relationship between the parties.

9. MISCELLANEOUS, This Agreement shall be binding on and shall inure to the benefit of the parties and their successors and assigns. This Agreement may be assigned, transferred or conveyed by either party with the prior written consent of the other party. Any number of counterparts of this Agreement may be signed and delivered, each of which shall be considered as original and all of which, together, shall constitute one in the same instrument. For purposes of this Agreement, a signature delivered by facsimile or similar electronic method shall be as binding upon the delivering party as an original signature. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or enforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

10. GOVERNING LAW, This Agreement shall be governed by and construed under the laws of the State of Florida. Venue shall be Indian River County, Florida.

11. WAIVER OF JURY TRIAL, THE PARTIES EACH IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO A JURY TRIAL WITH RESPECT TO ANY CLAIMS OR DISPUTES ARISING OUT OF OR RELATED TO THIS AGREEMENT.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

[SIGNATURE PAGE TO AGREEMENT FOR
TRAFFIC SIGNAL MAINTENANCE AND REPAIR]

IN WITNESS WHEREOF, the duty authorized officials of the County and Orchid have executed this agreement as of the day and year first above written.

ORCHID ISLAND GOLF & BEACH
COMMUNITY ASSOCIATION, INC.

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA

BY: _____
Name: _____
Title: _____

BY: _____
Susan Adams, Chairman

(Corporate seal)

BCC Approved: _____

Approved:

By _____
John A. Titkanich, Jr.
County Administrator

Attest: Ryan L. Butler, Clerk of Court
and Comptroller

By: _____
Deputy Clerk

Approved as to form and legal sufficiency

William K. DeBaal
County Attorney

SCHEDULE "A"

SERVICE RATE SCHEDULE

1. **EMPLOYEES:**

Actual base salary of the County Staff utilized for the required remedial and/or maintenance activities plus a factor of forty percent (40%) markup to cover fringe, overhead, and burden costs. Afterhours, weekend, and holiday work to include a fifty percent (50%) overtime markup as required by County policy.

2. **PARTS:**

Cost plus ten percent (10%)

3. **EQUIPMENT:**

Rates will be determined by the County using either (i) the "Rental Rate Blue Book for Construction Equipment" as published EquipmentWatch or (ii) FEMA Schedule of Equipment Rates.

4. **SUBCONTRACT:**

If any County services or obligations are sub-contracted per Section 8 of this Agreement, actual costs will be reimbursed.

SCHEDULE "B"

TRAFFIC SIGNAL(S) TO BE MAINTAINED

1. Intersection of Orchid Island Drive and Highway A1A