

INTERSECTION SIGNALIZATION CONSTRUCTION CONTRACT (N. Wickham Road, Deer Lakes Drive, & Meeting Lane)

THIS INTERSECTION SIGNALIZATION CONSTRUCTION CONTRACT (the “Contract”) is made and entered into the date of last signature below (the “Effective Date”) by and between BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida (the “County”), and CV MELBOURNE, LLC, a Florida Limited Liability Company (the “Developer”), collectively referred to as the “Parties.”

WHEREAS, the Developer has proposed to construct a traffic signal at the intersection of N. Wickham Road, Deer Lakes Drive, and Meeting Lane in order to better regulate traffic and to ensure public safety (the “Project”); and

WHEREAS, the Project will be located principally on County right-of-way within the city limits of the City of Melbourne, Florida (the “City”), as shown on Permit #: 20RW00167, as approved by the County and incorporated herein by this reference; and

WHEREAS, the Parties have determined that the Project will improve the safety of traffic traveling through the above-referenced intersection, which lies within the City’s boundaries, but falls under the permitting, construction, and maintenance jurisdiction of the County as part of the County’s road system; and

WHEREAS, Section 336.71, Florida Statutes, provides for public-private cooperation with respect to construction, extensions, and improvements to county roads, or portions thereof; and

WHEREAS, under Section 336.71, Florida Statutes, if the County receives an unsolicited proposal for the improvement of a County road, which the above-referenced intersection qualifies as, the County may enter into an agreement whereby payment may be made to the private entity, from public funds, if a public hearing is held and certain findings are made; and

WHEREAS, the County has determined that the Project is in the best interest of the public and serves the public health, safety, and welfare; and

WHEREAS, the County has agreed to contribute a maximum of \$200,000.00 toward the cost of the traffic signal, which will become part of the County road system and maintained by the County; and

WHEREAS, the County finds that the Developer will be able to complete the Project at a lower overall cost to County taxpayers, resulting in a financial benefit to the public; and

WHEREAS, the County will own and maintain the traffic signal upon completion, acceptance and proper transfer, and finds it necessary and appropriate to accept any easement(s) for the construction and maintenance of and access, ingress and egress to the traffic signal(s); and

WHEREAS, the Developer will be obligated to invest contributions in the approximate amount of \$403,720.93 in the form of engineering, design, permitting, and other Project-related fees and costs; and

WHEREAS, the Developer shall contribute the difference between the amount for the construction of the Project and the contributions toward the cost of the Project from the City and the County; and

WHEREAS, the City of Melbourne has indicated its intent to contribute \$302,847.91 in cash as well \$143,058.98 in City impact fee credits; and

WHEREAS, the Parties acknowledge that a Reimbursement Agreement with the City of Melbourne will be required to implement the Project both as to the City's contribution and the impact fee credits; and

WHEREAS, the Developer requires an easement to complete the work and, upon completion, shall transfer its interest in any necessary easement(s) to the County for maintenance and access, ingress and egress to the traffic signals(s), along with a bill of sale and a certificate of completion from the engineer of record.

NOW, THEREFORE, for and in consideration of the premises and covenants outlined herein, the Parties hereby agree as follows:

1. RECITALS

The above recitals are true and correct and are incorporated into this Contract by this reference.

2. THE PROJECT

- a. The Developer hereby agrees to prepare construction plans for the Project and receive applicable permitting approval of those plans from the County and any other authority(ies) having jurisdiction, which may include, but is not limited to, the City, as applicable.
- b. The Developer shall cause the Project to be constructed in accordance with all applicable governmental approvals and regulatory permits, rules, and regulations in connection therewith.

- c. It is anticipated that the Project will be commenced on or about July 1, 2021 (the “anticipated commencement date”), subject to County approvals of the plans; Reimbursement Agreements with the City of Melbourne, Florida; the grant of any necessary easement(s) by the Deer Lakes Homeowners’ Association (“Deer Lakes H.O.A.”), if required; and, issuance of any applicable permits to the Developer. The Developer shall be entitled to, without penalty, (i) commence construction of the Project prior to such anticipated commencement date if the authority(ies) having jurisdiction approve the plans, approve their respective Reimbursement Agreements, and issue applicable permits to the Developer before such anticipated commencement date, or (ii) commence construction of the Project after such anticipated commencement date if the Developer has applied for all necessary permit(s), without deficiency, and has been issued said permits by the authority(ies) having jurisdiction.

3. GENERAL REQUIREMENTS

- a. The Developer shall commence and complete the Project in accordance with the provisions outlined herein, and all applicable laws.
 - 1. The Developer agrees to place the Project out for bid and award the construction contract prior to commencing construction. The contract for construction of the Project shall be awarded to the lowest, responsive, responsible, and best bidder, as determined by the Developer.
 - 2. The Developer shall obtain all permit(s) and construct the Project in compliance with those permit(s), and provide all as-built plans as may be required by any authority(ies) having jurisdiction over the construction of the Project.
 - 3. The Developer shall require any contractor(s) or subcontractor(s) to indemnify and hold harmless the County.
 - 4. In order to complete the Project, the Developer agrees to obtain a transferable easement from the Deer Lakes H.O.A., if required. At its own expense, the Developer will draft and execute an agreement for the necessary easement(s) with the Deer Lakes H.O.A. once this Contract is executed, if required. Consequently, the implementation of this Contract is

contingent upon Developer receiving the executed easement(s) from the Deer Lakes H.O.A., if required and showing proof of same to the County.

5. Upon completion of the Project and demonstrate it is functioning properly, the Developer shall provide or convey: (i) a bill of sale to the County for the traffic signal(s); (ii) any easement(s) necessary for maintenance of and access, ingress and egress to the traffic signal(s); (iii) a certificate of completion from the engineer of record; and, (iv) obtain and provide a Certificate of Completion for the Project from the County and in all ways comply and conform with the Permit(s) associated with the Project.

6. The County shall make payment of the amount due for construction costs incurred but unpaid, up to \$200,000.00 upon completion of the Project.

b. The County agrees:

1. to expeditiously and without unnecessary delay, process all permit applications required under its permitting jurisdiction.

2. where necessary as the entity with control and ownership of the right-of-way in which the Project will be constructed, to process any applications for permit approval by other governmental agencies with jurisdiction.

3. that upon acceptance and recording of the bill of sale, and upon receipt of the other documents specified in paragraph 5b., below, the County shall assume all maintenance responsibility for the Project, which responsibility shall survive this Agreement.

4. PROJECT COSTS

The total estimated cost of the Project is currently \$1,049,627.82. However, the construction cost will be based upon the Developer's bidding process in accordance with Section 3.a.1. above.

a. County Contribution. Payment by the County shall only be made to the Developer after receipt and verification of the Project's expenses and proper functionality including receipt of acknowledgement by the County that the Project has been completed in compliance with Project Permit(s) and the County has issued a Certificate of Completion for applicable County permits. Verification of the Project's expenses means the Developer has made final payment for all project expenses (including; design, surveying, construction,

costs, fees etc.), received a final release of lien from the contractor, and otherwise completed all aspects of the Project.

- b. Developer Contribution. The Developer shall be responsible for ensuring the remaining balance of the Project is funded before proceeding with construction of the Project. The Developer will contribute \$357,380.00 in the form of in-kind costs already incurred for engineering, design, permitting, and other Project-related fees and costs. At a minimum, the Developer shall also provide funds to cover any additional costs associated with the Project.

5. DISBURSEMENTS UPON COMPLETION.

- a. Disbursement to the Developer. Upon completion of the Project, the Developer shall request disbursement from the County to reimburse the Developer up to the County's contribution limit of \$200,000.00. The Developer shall deliver a copy of such disbursement request to the County. Such disbursement request from the Developer shall include: (i) a certificate of completion from the County that the Project was completed in accordance with the Plans; and (ii) a certificate of completion or the legal equivalent issued by the County evidencing the completion of the Project.
- b. Disbursement to the County. The County shall receive a bill of sale for the traffic signal(s); a certificate of completion from the engineer of record and demonstrated proper functionality including obtaining a Certificate of Completion for the Project from the County; and, any easement(s) necessary for construction and maintenance of and access, ingress and egress to the traffic signal(s). The Developer shall pay any costs associated with recording.

6. TERMINATION OR SUSPENSION OF PROJECT

- a. If the Project is abandoned by the Developer, whether by agreement of the Parties or otherwise, the County shall only be responsible for payment of its amount of the construction cost due, up to \$200,000, if the Project is completed by the City of Melbourne or a Surety under a surety bond under which the City is the obligee.
- b. If, for any other reason, the Project is rendered improbable, not feasible, impossible, or illegal, either Party may deliver written notice to the other

Parties, all further obligations of the Parties under this Contract shall be terminated..

7. FAILURE TO COMPLETE PROJECT

If the Developer fails to timely cause the Project to be completed as required under this Contract, and a Surety fails to cause the Project to be completed within the time periods provided for in the applicable permit(s), the County shall be entitled to retain its fund contributions, unless the Project is partially completed and this agreement is extended to allow the Surety contractor additional time to complete the Project, which extension shall not be unreasonably withheld.

8. INDEMNIFICATION

The Developer shall indemnify and hold harmless the County, its officers, officials, employees, agents, and volunteers from and against all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from the performance of its work under this Contract, where such claim, damage, loss or expense is caused, in whole or in part, by the act or omission of the Developer, or anyone directly or indirectly employed by the Developer. The Parties acknowledge specific consideration has been exchanged for this provision. The County's indemnity and liability obligations hereunder shall be subject to the County's common law right of sovereign immunity and limited to the extent of the protections of and limitations on damages as set forth in Section 768.28, Florida Statutes. Nothing in this Contract is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. Nothing herein shall constitute a waiver of the County's sovereign immunity. The Developer, without exception, shall also indemnify and hold harmless the County, its officers, officials, employees, agents, and volunteers from liability of any nature or kind, including, but not limited to, the Project's design, construction, and/or operation, but only to the extent that the County, its officials or employees are the sole cause of such liability.

9. CONTRACT ADMINISTRATION

The County Manager, or his/her designee, shall provide budget oversight, performance monitoring, and administration of this Contract.

10. NOTICES

- a. Any notice, request, demand, instruction, or other communication ("Notice") under this Contract shall be given as follows:

To the County: Tammy Thomas-Wood
Support Services Manager
Brevard County Public Works Department
2725 Judge Fran Jamieson Way
Room A-201
Viera, FL 32940
Tammy.thomas-wood@brevardfl.gov

To the Developer: CV Melbourne, LLC
PO Box 4359 Edwards, CO 81632
Email: Bob@LandmarkFL.com

- b. Notice to be given to any Party with respect to this Contract may be given either by the Party or its legal counsel and shall be deemed to have been properly sent and given when:
- i. If delivered by hand, when received by the addressee;
 - ii. If sent by certified mail, on the third (3rd) business day following the date of such deposit, whether or not actually received by addressee;
 - iii. If sent by courier service, when received by the addressee;
 - iv. If sent by email, when the sending Party receives an electronic delivery receipt for such email.

Any Party may change the address to which notices are to be sent to such Party by sending a Notice to each other Party specifying such change of address.

11. TIME IS OF THE ESSENCE; PERMITTED DELAYS

Time is of the essence with this Contract and the performing Party shall use due diligence and commercial reasonableness to perform and complete the Project in a timely manner hereunder; provided, however, that if completion of performance by the performing Party shall be delayed at any time by reason outlined in Section 23 below (other than financial reasons), then the time for performing the Project hereunder and/or achieve any milestone under the construction schedule shall be extended by the time of the delay actually caused by the incident of any such Force Majeure, plus fourteen (14) days.

12. EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY)

The Developer:

- (a) Shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Developer during the term of the Contract; and
- (b) Shall expressly require any subcontractors performing work or providing services pursuant to this Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Contract; and
- (c) Agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the County consistent with the terms of the Developer's enrollment in the program. This includes maintaining a copy of proof of any contractors' and subcontractors' enrollment in the E-Verify program.

Compliance with the terms of this Section is made an express condition of this Contract and the County may treat a failure to comply as a material breach of this Contract.

The Developer, contractor(s), and/or subcontractor(s) who register with and participate in the E-Verify program may not be barred or penalized under this Section if, as a result of receiving inaccurate verification information from the E-Verify program, the Party hires or employs a person who is not eligible for employment.

Nothing in this Section may be construed to allow intentional discrimination of any class protected by law.

13. INDEPENDENT CONTRACTOR

The Developer shall perform the services under this Contract as an independent contractor and nothing herein shall be construed to be inconsistent with this relationship or status. Nothing in this Contract shall be interpreted or construed to make the Developer or any of its agents or employees to be the agent, employee, or representative of the County.

14. AMENDMENTS OR MODIFICATIONS

This Contract represents the understanding between the Parties in its entirety as to the subject matter of this Contract and no other agreements, either oral or written, exist between the County and the Developer as to the subject matter of this Contract. No alterations, amendments, deletions, or waivers of the provisions of this Contract shall be binding on either Party unless reduced to writing and signed by a duly authorized representative of the County and the Developer.

15. ASSIGNMENT

The County and the Developer each bind itself and its successors, legal representatives, and assigns to the other Party to this Contract, and to the partners, successors, legal representatives, and assigns of such other Party, and in respect to all covenants of this Contract; and neither the County nor the Developer shall assign nor transfer their interest in this Contract without prior written consent of the other Party. The County may elect to compensate the Developer for unfinished work product, provided it is in a form that is sufficiently documented and organized to provide for subsequent utilization in completion of the work product.

16. PUBLIC RECORDS

Both Parties understand that the County is subject to the provisions of Chapter 119, Florida Statutes, and other applicable Florida Statutes. The Developer is responsible for maintaining public records in accordance with Florida law. If the materials provided by either Party do not fall under a specific statutory exemption under Florida or federal law, then the materials will have to be provided to anyone making a public records request. The Developer is responsible for identifying what information, if any, it deems is exempt under Florida or federal law, and for specifying what statute exempts said information. Should the County face any kind of legal action to require or enforce inspection or production of any records provided by the Developer to the County which the Developer maintains are exempt or confidential from inspection or production, then the Developer shall hire and compensate attorney(s) who shall represent the interests of the County as well as the Developer in defending such action. The Developer shall also pay any costs to defend such action and shall pay any costs and attorneys' fees, which may be awarded pursuant to Chapter 119, Florida Statutes.

IF THE DEVELOPER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DEVELOPER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (321) 617-7202; BY

EMAIL TO Robert.hendricks@brevardfl.gov; OR BY MAIL TO THE BREVARD COUNTY PUBLIC WORKS DEPARTMENT, ATTN: PUBLIC RECORDS CUSTODIAN, 2725 JUDGE FRAN JAMIESON WAY, BUILDING A, VIERA, FLORIDA 32940.

17. RIGHT TO AUDIT RECORDS

In performance of this Contract, the Developer shall keep books, records, and accounts of all activities related to the Contract, in compliance with generally accepted accounting procedures. All documents, papers, books, records, and accounts made or received by the Developer in conjunction with the Contract and the performance of this Contract shall be open to inspection during regular business hours by an authorized representative and shall be retained by the Developer for a period of three (3) years after termination of this Contract, unless such records are exempt from Section 24(a) of Article I of the State Constitution and Chapter 119, Florida Statutes. All records or documents created by the Developer or provided to the Developer by the County in connection with the activities or services provided herein are public records unless exempt/confidential and the Developer agrees to comply with any request for such public records made in accordance with Chapter 119, Florida Statutes.

18. UNAUTHORIZED ALIEN WORKERS

The County will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) (Section 274A(e) of the Immigration and Nationality Act). The County shall consider the Developer intentional employment of unauthorized aliens as grounds for immediate termination of this Contract.

19. FEDERAL TAX ID NUMBER

The Developer has provided to the County its Federal Tax ID Number as follows:
CV Melbourne, LLC EIN: 58 268 3711

20. PUBLIC ENTITY CRIMES

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplied, subcontractor, or consultant under a contract with a public

entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for CATEGORY TWO for a period of thirty six (36) months from the date of being placed on the convicted vendor list.

21. CONSTRUCTION OF CONTRACT

The Parties hereby acknowledge that they fully reviewed this Contract, its attachments and had the opportunity to consult with legal counsel of their choice, and that this Contract shall not be construed against any Party as if they were the drafter of this Contract.

22. GOVERNING LAW

The laws of the State of Florida shall govern the validity of this Contract, its interpretation and performance, and any other claims related thereto. Venue for any legal action brought by any Party to this Contract to interpret, construe, or enforce this Contract shall be in a court of competent jurisdiction in and for Brevard County, Florida.
ANY TRIAL SHALL BE NON-JURY.

23. FORCE MAJEURE

Any delay in the performance by either Party hereto of its obligations hereunder shall be excused when such delay in performance is due to any cause or event of any nature whatsoever beyond the reasonable control of such Party, including, without limitation, any act of God; any fire, flood, or weather condition; pandemic; any computer virus, work, denial of service attack; any earthquake; any act of a public enemy, war, insurrection, riot, explosion, or strike; provided, that written notice thereof must be given by such Party to the other within twenty (20) days after occurrence of such cause or event.

24. CAPTIONS AND PARAGRAPH HEADINGS

Captions and paragraph headings contained in this Contract are for convenience and reference only and in no way define, describe, extend or limit the scope and/or intent of this Contract, nor the intent of any provisions thereof.

25. WAIVER

No waiver by the County of any provision of this Contract shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach, or any other provision or enforcement thereof. County's consent to or approval of any act by the Developer requiring consent or approval shall not be deemed to render unnecessary the obtaining of County's consent to or approval of any subsequent act by the Developer

requiring consent or approval, whether or not similar to the act so consented to or approved.

26. COMPLIANCE WITH LAWS

The Developer, its employees, subcontractors, agents, or assigns, shall comply with all applicable federal, State, and/or local laws and regulations relating to the performance of this Contract. The County undertakes no duty to ensure compliance, but will attempt to advise the Developer, upon request, as to any such laws of which it has present knowledge.

27. ATTORNEY'S FEES

In the event a dispute arises out of this Contract, each side shall be responsible for their own respective attorney's fees.

28. SEVERABILITY

If any of the provisions contained in this Contract are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision, and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

29. COUNTERPARTS

This Contract may be executed in counterparts, each of which so executed shall be deemed to be an original and such counterparts, together, shall constitute one in the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURES TO FOLLOW.]

IN WITNESS WHEREOF, the undersigned have caused this Contract to be duly executed by an authorized representative and effective the date of last signature below.

ATTEST:

Rachel Sadoff, Clerk

Approved for legal form and content
for Brevard County, Florida

 5/4/21
Assistant County Attorney

WITNESSES:

Name: _____

Name: _____

BREVARD COUNTY, FLORIDA

By: _____
Rita Pritchett, Chair

Date: _____

Approved by the Board: _____

DEVELOPER
CV MELBOURNE, LLC, a Florida
Limited Liability Company

By: _____
Name: Robert Kurlander

Title: Manager

Date: _____