

CS-17-143

Letter to extend or renew a Contract

Nassau County Contract Management

96135 Nassau Place, Suite 6

Yulee, FL 32097

Dear Ms. Palminsano,

Renewal of Maintenance Agreement

This letter confirms the renewal of the Contract on the terms set out below.

General information

18 JAN -5

No.	Topic	Details
1	Department	Name: Public Works
2	Vendor	Name: Range at Crane Island LLC
3	Contract	Contract title: Maintenance Agreement for Round-about at Amelia Island Parkway and Bailey Road Effective Date: 12/21/15 Contract tracking number: CM2285-AR2

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Contract Renewal

On behalf of the Nassau County Board of County Commissioners, the Department gives notice that it wishes to exercise the option to automatically renew the term of the Contract for one (1) year, beginning December 21, 2017 and ending December 20, 2018, in accordance with Section 3 of the Maintenance Agreement.

If you need more information or would like to discuss this matter further, please contact Charlotte Young on 904-530-6040 or at cyoung@nassaucountyfl.com

Yours sincerely


Becky Bray, Public Works Director

12/29/17
Date

Approved by:


Contract Management

1/5/18
Date


Office of Management & Budget

1/10/18
Date


County Attorney

1/12/18
Date

COUNTY MANAGER – FINAL SIGNATURE APPROVAL


Shanea Jones, County Manager

1-23-18
Date

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NASSAU COUNTY FL

2018 JAN 25 PM 4:39

RECEIVED

MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT ("Agreement") is made and entered into by and between the Nassau County Board of County Commissioners of Nassau County, Florida, a political subdivision of the State of Florida ("County") and the Range at Crane Island LLC ("RCI").

WITNESSETH:

WHEREAS, the RCI has a permit from Nassau County to construct a roundabout within the intersection of the Amelia Island Parkway and Bailey Road; and

WHEREAS, the RCI received approval from the County for the proposed roundabout pursuant to Ordinance No. 2006-80 adopted October 30, 2006; and

WHEREAS, the RCI plans to enhance the roundabout with certain improvements that are in addition to the normal Florida Department of Transportation design standards for roundabouts and that are excluded from County maintenance upon acceptance of the constructed roundabout for maintenance including but not limited to special landscaping in the center island, splitter islands and along the roundabout shoulders, irrigation, ornamental lighting including tree and landscape lighting and general overhead illumination and underground conduits for irrigation, communication lines and electrical services ("enhancements").

NOW, THEREFORE, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the foregoing recitals and the mutual covenants and conditions contained in this Agreement, the parties, intending to be legally bound hereby, acknowledge and agree as follows:

1. **RECITALS AND EXHIBITS**

The recitals set forth above and Exhibits attached hereto are specifically incorporated herein by reference and made part of this Agreement.

2. **EFFECTIVE DATE**

The effective date of this Agreement shall be the date the last of the parties to be charged executes the Agreement ("Effective Date").

3. **TERM**

The initial term of this Agreement shall be for the period of one (1) year, commencing on the Effective Date. This Agreement shall automatically renew for successive and continuing (1) year terms unless terminated by the County upon thirty (30) days' notice.

4. **COMPLIANCE**

The RCI shall perform this Agreement, including, without limitation, its obligations to operate, maintain and repair the enhancements, in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, procedures,

guidelines, standards and permits, as the same may be constituted and amended from time to time, including, without limitation, those of the Florida Department of Transportation, St. Johns River Water Management District, Florida Department of Environmental Protection, Environmental Protection Agency, Army Corps of Engineers, United States Coast Guard, and Nassau County, Florida ("Governmental Law").

5. **OPERATION, MAINTENANCE AND REPAIR**

- A. From the Effective Date of this Agreement, the RCI shall continually operate, maintain and repair the enhancements at its sole cost and expense, in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions of this Agreement. Nothing in this Agreement shall obligate the County to operate, maintain, repair or improve the enhancements, said obligations to remain the sole responsibility of the RCI.
- B. If the County determines that the RCI is not operating, maintaining and repairing the enhancements in accordance with the terms and provisions of this Agreement, the County shall deliver written notification of such to the RCI. The RCI shall have thirty (30) days from the date of the County's written notice, or such other time as the County and the RCI mutually agree in writing, to correct the deficiency and provide the County with written notice of the same ("Notice of Correction").
- C. If the County determines that the deficiency remains after receipt of the RCI's Notice of Correction, the County, at its sole discretion, may: (1) provide the RCI with written authorization granting such additional time as the County deems appropriate to correct the deficiency; or (2) correct the deficiency at the RCI's sole cost and expense. Should the County elect to correct the deficiency, the County shall provide the RCI with an invoice for the costs incurred by the County to correct the deficiency and the RCI shall pay the invoice in accordance with the "Payment" section of this Agreement.
- D. If at any time in the sole determination of the County, the integrity or safety of the Improvements requires immediate maintenance or repair for the benefit of public health, safety or welfare, the County may perform such maintenance and repairs it deems appropriate under the circumstances. The County shall attempt to notify the RCI prior to action under this section, but may take necessary steps to correct emergency situations prior to such notification in order to prevent eminent danger to public health, safety or welfare. The County shall provide the RCI with written notice of the emergency maintenance and repairs performed by the County and an invoice for the same. The RCI shall pay the invoice in accordance with the "Payment" section of this Agreement.

6. **MAINTENANCE OF TRAFFIC**

- A. The RCI shall be responsible for the maintenance of traffic ("MOT") at all times during the performance of this Agreement. MOT shall be performed in accordance with applicable Governmental Law and the most current edition of each of the following, as the same may be constituted and amended from time to time, all of which are incorporated herein and made part of this Agreement by reference: (1) Section 102 of the Departments Standard Specifications for Road and Bridge Construction; (2) the Manual on Uniform Traffic Control Devices; (3) the Departments Roadway Design Standards Index 600 Series; and (4) other applicable Governmental Law.
- B. If the RCI fails to perform MOT as required herein, the County, within its discretion, may elect to perform MOT at the RCI's sole cost and expense. Should the County perform

MOT, the County shall provide the RCI with an invoice for the costs incurred by the County and the RCI shall pay the invoice in accordance with the "Payment" section of this Agreement.

7. **PAYMENT**

All County invoices submitted for payment pursuant to the terms and provisions of this Agreement are due and payable within 30 days of the date of the invoice ("Due Date"). Any portion of any invoice not received by the County by the Due Date shall immediately thereafter begin accruing interest at a rate of interest established pursuant to §55.03, Fla. Stat., until paid in full.

8. **INDEMNIFICATION**

A. To the maximum extent permissible under applicable Florida law, the RCI shall promptly defend, indemnify, hold the County harmless from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, penalties, costs, expenses, attorneys' fees and suits of any nature or kind whatsoever cause by, arising out of or related to the County's performance or breach, of this Agreement ("Liabilities"). The term "Liabilities" shall also specifically include, without limitation, all civil and criminal environmental liability, arising, directly or indirectly from the Environmental Investigation and Remediation Work, under any Governmental Law, including, without limitation, liability under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), the Clean Air Act ("CAA") and the Clean Water Act ("CWA"). The RCI's duty to defend, indemnify and hold the County harmless specifically does not encompass indemnifying the County for its negligence, intentional or wrongful acts, omissions or breach of contract. Additionally the RCI, or its successors or assigns shall maintain insurance coverage naming the County as an additional insured as follows:

1. **Commercial General Liability Insurance.** Commercial General Liability insurance coverage (ISO or comparable Occurrence Form) (Modified Occurrence or Claims Made forms are not acceptable) shall be purchased for the life of the contract.

The Limits of this insurance shall not be less than the following limits:

Each Occurrence Limit	\$1,000,00
Personal & Advertising Injury Limit	\$1,000,00
Fire Damage Limit (any one fire)	\$
Medical Expense Limit (any one person)	\$ 5,000
Products & Completed Operations Aggregate Limit	\$2,000,000
General Aggregate Limit (other than Products & Completed Operations) Applies Per Project	\$2,000,000

2. **Workers' Compensation and Employer's Liability Insurance.** Workers' Compensation and Employer's Liability insurance coverage shall be purchased for the life of this contract.

The Limits of this insurance shall not be less than the following limits:

Part One - Workers' Compensation Insurance – Unlimited Statutory

Benefits are provided in the Florida Statutes and

Part Two - Employer's Liability Insurance

Bodily Injury by Accident	\$100,000	Each Accident
Bodily Injury by Disease	\$500,000	Policy Limit
Bodily Injury by Disease	\$100,000	Each Employee

'If leased employees are used, policy must include an Alternate Employer's Endorsement.

3. Automobile Liability Insurance. Automobile Liability Insurance coverage shall be purchased for the life of this contract.

The Limits of this insurance shall not be less than the following limits:

Combined Single Limit	\$1,000,000 Each Accident
OR	
Split Limits	\$ 500,000 Bodily Injury-Per Person
	\$1,000,000 Bodily Injury-Per Accident
	\$ 500,000 Property Damage-Per Accident

Covered Automobiles shall include any auto owned or operated by the Insured including autos which are leased, hired, rented or borrowed, including autos owned by their employees which are used in connection with the business.

4. Excess Liability Insurance. Excess Liability (Umbrella Form) insurance coverage shall be purchased for the life of this contract.

The Limits of this insurance shall not be less than the following limits:

Each Occurrence Limit	\$1,000,000
Aggregate Limit	\$1,000,000

A copy of the Certificate of Insurance shall be attached hereto as Exhibit A. If any of the Insurance referenced above contains deductible(s), penalty(ies) or self insured retention(s) provision(s), the insured shall be solely responsible for payment of such deductibles(s), penalty(ies) and/or self-Insured retention(s).

B. The RCI shall notify the County in writing immediately upon becoming aware of any liabilities. The RCI's obligation to defend, indemnify and hold the County harmless from any liabilities, or at the County's option to participate and associate with the County in defense and trial of any Liabilities, including any related settlement negotiations, shall be triggered by the County's written notice of claim for indemnification to the RCI. The RCI's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this paragraph.

9. **SOVEREIGN IMMUNITY & LIMITATION OF LIABILITY**

Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the County's sovereign immunity protections, or as increasing the limits of liability set forth in §768.28, Fla. Stat. The County's liability for breach of this Agreement is specifically: (1) limited to actual damages incurred by the County as a direct result of the County's breach; and (2) further limited in amount and shall not, under any circumstances, exceed the limitations of liability for tort actions set forth in §768.28(5), Fla. Stat.

10. **NOTICE**

Any notices, communications and determinations between the parties hereto and those required by this Agreement, including, without limitation, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States Mail, postage prepaid, to the parties at the following addresses:

COUNTY: Nassau County Board of County Commissioners
Attention: Nassau County Manager
96135 Nassau Place, Suite 1
Yulee, Florida 32097

RCI: The Range at Crane Island LLC
Attention: Laura Palminsano, Attorney in Fact
4001 Centurion Way
Fernandina Beach, FL 32034

11. **GOVERNING LAW**

This Agreement shall be governed in all respects by the laws of the State of Florida.

12. **VENUE AND JURISDICTION**

- A. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of this Agreement that are not resolved to the mutual satisfaction of the parties shall lie exclusively in a state court of appropriate jurisdiction in Nassau County, Florida.
- B. The RCI and all persons and entities accepting an assignment of this Agreement, in whole or in part, shall be deemed as having consented to personal jurisdiction in the State of Florida and as having forever waived and relinquished all personal jurisdiction defenses with respect to any proceeding related to the interpretation, validity, performance or breach of this Agreement.

13. **JURY TRIAL**

The parties hereby waive the right to trial by jury of any dispute concerning the interpretation, validity, performance or breach of this Agreement, including, without limitation, damages allegedly flowing there from.

14. **ASSIGNMENT**

The RCI may not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the County except RCI may transfer the rights, duties and obligations provided in this Agreement to the Crane Island Home Owners Association or successor developer. The County has the sole discretion and authority to grant or deny proposed assignments, with or without cause. Nothing herein shall prevent the RCI from delegating its duties hereunder, but such delegation shall not release the RCI from its obligation to perform this Agreement.

15. **THIRD PARTY BENEFICIARIES**

This Agreement shall be binding upon and inure to the benefit of the parties hereunder and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for herein.

16. **VOLUNTARY EXECUTION OF AGREEMENT**

Each party warrants and represents to the other: (i) that it understands all of the rights and obligations set forth in the Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of this Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and disadvantages of this Agreement and executes this Agreement freely and voluntarily of its own accord and not as a result of any duress, coercion, or undue influence; and (iv) it had the opportunity to have independent legal advice by counsel of its own choosing in the negotiation and execution of this Agreement.

17. **ENTIRE AGREEMENT**

This Agreement embodies the entire agreement between the parties and no representations or promise have been made except those that are specifically set out in this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants and warranties with respect to the subject matter of this Agreement, and any part hereof, are waived, merged herein and superseded hereby.

18. **SUFFICIENCY OF CONSIDERATION**

By their signatures below, the parties hereby acknowledge the receipt, adequacy and sufficiency or consideration provided in this Agreement and forever waive the right to object to or otherwise challenge the same.

19. **WAIVER**

The failure of either party to insist on the strict performance or compliance with any term or provision of this Agreement on one or more occasions shall not constitute a waiver or relinquishment thereof and all such terms and provisions shall remain in full force and effect unless waived or relinquished in writing.

20. **INTERPRETATION**

No term or provision of this Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

21. **CAPTIONS**

Paragraph title or captions contained herein are inserted as a matter of convenience and reference and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof.

22. **SEVERANCE**

If any section, paragraph, clause or provision of this Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of this Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principle purposes of this Agreement remain enforceable.

23. COMPUTATON OF TIME

In computing any period of time prescribed in this Agreement, the day of the act, event or default from which the designated period of time begins to run, shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

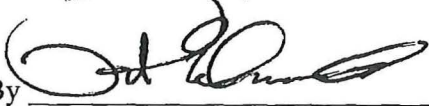
24. MODIFICATION OF AGREEMENT

A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement.

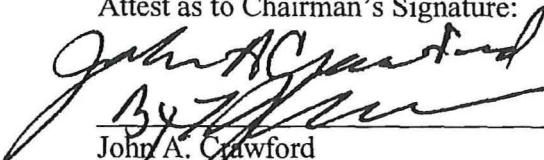
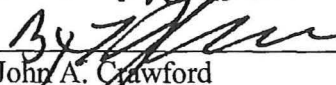
IN WITNESS WHEREOF, the Board and the RCI have caused this Agreement to be executed and delivered as of the day and year first above written.

Board:

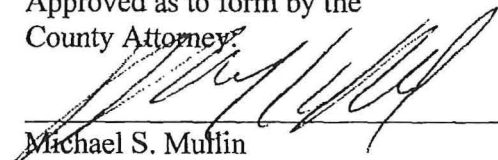
BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA

By 
Pat Edwards, Chairman


Attest as to Chairman's Signature:

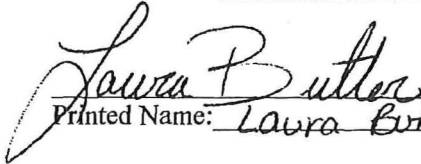

By 
John A. Crawford
Its: Ex Officio Clerk

Approved as to form by the
County Attorney

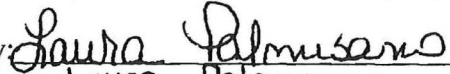

Michael S. Mullin

Witnesses:


Printed name: Brenda Linnelle


Printed Name: Laura Butler

The Range at Crane Island, LLC (RCI)

By 
Name: Laura Palmisano
Title: attorney-in-fact

LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That **THE RANGE AT CRANE ISLAND LLC**, a Florida limited liability company ("Principal"), having an address of 4001 Centurion Way, Fernandina Beach, FL 32034, expressly revokes any and all previously executed powers of attorney, and hereby designates **RICHARD SCHURIG** and **LAURA T. PALMISANO**, or either of them acting alone, as Attorney-In-Fact and Agent (hereinafter called "Agent") in the Principal's name and for the Principal's benefit:

ARTICLE I

GENERAL GRANT OF POWER

Principal hereby grant to Agent full power and authority to do anything necessary in exercising any of the powers herein granted as fully an Principal might or could do if personally present, with full power of substitution or revocation, hereby ratifying and confirming all that my Agent shall lawfully do or cause to be done by virtue of this power of attorney and the powers herein granted.

The Agent shall have the following powers:

- (A) **Powers of Collection and Payment.** To forgive, request, demand, sue for, recover, collect, receive, hold all such sums of money, debt, dues, commercial paper, checks, drafts, accounts, deposits, legacies, bequests, devises, notes, interests, stock certificates, bonds, dividends, certificates of deposit, annuities, pensions, profit sharing, retirement, social security, insurance and other contractual benefits and proceeds, all documents of title, all property, real or personal, intangible and tangible property and property rights, and demands whatsoever, liquidated on unliquidated, now or hereafter owned by, or due, owing, payable or belonging to me, or in which the Principal has or may hereafter acquire an interest; to have, use, and take all lawful means and equitable and legal remedies and proceedings in my name for the collection and recovery thereof, and to adjust, sell, compromise and agree for the same, and to execute and deliver for me, on behalf of the Principal, and in the name of the Principal, all endorsements, releases, receipts, or other sufficient discharge for the same;
- (B) **Power to Acquire and Sell.** To acquire, purchase, exchange, grant options to sell, and sell and convey real or personal property, tangible or intangible, owned by the Principal presently, and all future owned property and interest therein, on such terms and conditions as the Agent shall deem proper;
- (C) **Management Powers.** To maintain, repair, improve, invest, manage, insure, rent, lease, encumber, and in any manner deal with any real or personal property, tangible or intangible, or any interest therein, that is now owned by the Principal or may

ARTICLE II

INTERPRETATION AND GOVERNING LAW

This instrument is to be construed and interpreted as a general durable power of attorney. The enumeration of specific powers herein is not intended to, nor does it, limit or restrict the general powers herein granted to the Agent. This instrument is executed and delivered in the State of Florida and the laws of the State of Florida shall govern all questions as to the validity of this power and the construction of its provisions.

ARTICLE III

REVOCATION

This instrument shall be revoked by the Principal by (1) causing all executed originals of this power of attorney to be physically destroyed; (2) signing a written revocation and causing it to be acknowledged; or (3) delivering a written revocation to the attorney in fact.

ARTICLE IV

THIRD-PARTY RELIANCE

Third parties may rely upon the representations of the Agent as to all matters relating to any power granted to the Agent, and no person who may act in reliance upon the representations of the Agent or the authority granted to the Agent shall incur any liability to me or the estate as a result of permitting the Agent to exercise any power. The Principal authorizes any third party to rely on a duly executed counterpart of this instrument, or a copy certified by the Agent to be a true copy of this original hereof, as fully and completely as if such third party had received the original of this instrument. The signature of the Agent is sufficient to exercise the powers delegated herein and may be relied upon by any third party as an authorized act of the Agent under this general durable power of attorney.