



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.4.

2/7/2023

Subject:

Approval Re: Agreement for Traffic Control on Private Roadways - Indian River Preserve - District 1

Fiscal Impact:

Any costs associated with Traffic Operations data collection and traffic evaluation will be reimbursed by the Homeowners' Association, estimated at \$2,988.27.

Dept/Office:

Public Works Department/Finance and Contracts Administration and Traffic Operations

Requested Action:

It is requested the Board approve and authorize the Chair to execute the Agreement for Traffic Control on Private Roadways for the Indian River Preserve community.

Summary Explanation and Background:

The Indian River Preserve Homeowners Association is the owner of the private roads lying within the gated community. Currently, Brevard County does not have jurisdiction over these private roads, including traffic control enforcement. The Association desires the county to exercise traffic control services as provided for in Florida Statutes Section 316.006 (3)(b). The Agreement for Traffic Control on Private Roadways provides the terms and conditions for these services. In accordance with Administrative Order 29, the Agreement has been reviewed and approved by the County Attorney's Office, Risk Management, and Purchasing.

The Public Works Department/Traffic Operations will conduct inspections and speed studies to ensure the roadways and signage meet local, state, and federal standards. The Association will reimburse the County for these tasks, estimated at \$2,988.27. Once appropriate signage is installed by the Association at their expense, the Brevard County Sheriff's Office (B.C.S.O.) will be able to provide traffic control enforcement. This Agreement does not mean there will be an increased law enforcement presence, but that the B.C.S.O. will have the jurisdiction to enforce traffic laws within the private community of Indian River Preserve.

Additionally, this Agreement does not impose any obligation on the County to provide maintenance for the roadways which will continue to be privately owned by the Association.

Clerk to the Board Instructions:

Return the fully executed Agreement to the Public Works Department.



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

Telephone: (321) 637-2001

Fax: (321) 264-6972

Kimberly.Powell@brevardclerk.us

February 8, 2023

M E M O R A N D U M

TO: Marc Bernath, Public Works Director

RE: Item F.4., Approval of Traffic Control on Private Roadways – Indian River Preserve

The Board of County Commissioners, in regular session on February 7, 2023, authorized and approved the Chair to execute the Agreement for Traffic Control on Private Roadways for the Indian River Preserve community. Enclosed is a fully-executed Agreement.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

Encl. (1)

cc: Contracts Administration
Finance
Budget

AGREEMENT FOR TRAFFIC CONTROL ON PRIVATE ROADWAYS

THIS AGREEMENT is entered into this 7th day of February, 2023, by and between the Board of County Commissioners of Brevard County, Florida, (the "County") a charter county and political subdivision of the State of Florida, Wayne Ivey in his capacity as the Sheriff of Brevard County, Florida, (the "Sheriff") a county constitutional officer and a county charter officer of the State of Florida, and the Indian River Preserve Homeowners' Association (the "Association"), a non-profit corporation organized and existing under the laws of the State of Florida. The County, the Sheriff and the Association are collectively referred to herein as the "parties" and singularly as a "party."

WITNESSETH:

WHEREAS, the Association is the owner of private roads lying within a gated community, known as Indian River Preserve, more specifically described in Exhibit "A" attached hereto and incorporated herein; and

WHEREAS, Brevard County does not have traffic control jurisdiction over private roads, such as those owned by the Association; and

WHEREAS, Section 316.006(3)(b), Florida Statutes, states that a county may exercise jurisdiction over any private road or roads located in the unincorporated area if the county in question and party or parties owning or controlling the road or roads provide, by written agreement, for the county in question to have traffic control jurisdiction; and

WHEREAS, the Association desires for the county to exercise jurisdiction for traffic control for the roads owned by the Association in Indian River Preserve; and

WHEREAS, the County and the Sheriff are willing to enter into such an agreement.

NOW, THEREFORE, in consideration of the following covenants and contributions, the receipt and sufficiency of which are hereby acknowledged, the County, the Sheriff and the Association agree as follows:

1. **Recitals above.** The above recitals are true and correct, and are incorporated herein by reference and form a material part of this Agreement.

2. **Jurisdiction.** The County agrees to exercise jurisdiction over traffic control upon the private roads specified in Exhibit "A" pursuant to the terms and conditions expressed in Section 316.006(3)(b), Florida Statutes, as it may be amended from time to time or any corresponding provision of law, and subject to the terms and conditions specified in this Agreement.

3. **Enforcement.** In exercising such traffic control jurisdiction, the Sheriff shall be authorized and empowered to enforce the traffic laws, which are generally applicable to public streets and highways under the County's original jurisdiction, to the private roads in Exhibit "A". Furthermore, the Sheriff shall be authorized and empowered to enforce the speed limit established by the County relative to the roads located in Exhibit "A", which speed limit shall be posted by appropriate signage at the expense of the Association. The Sheriff hereby agrees to undertake the aforesaid enforcement duties and specifically agrees to the institution of this Agreement upon execution.

The Association shall provide reasonable and necessary cooperation to the Sheriff and the County so that the Sheriff and the County can carry out their respective obligations set out by this Agreement.

It should be noted that the Sheriff will not be responsible for enforcing "No Parking" restrictions within Indian River Preserve.

4. **Signage.** The County agrees to perform, if needed, speed studies on the roadways, in Exhibit "A" to determine the appropriate speed limit to be posted. The Association shall reimburse the County for the actual cost of the speed study and/or the inspection to determine if existing signage meets or exceeds the Manual of Uniform Traffic Control Devices Standards. The Association shall be responsible for installing, fabricating, and maintaining all posted signage.

5. **Authority in Addition to Existing Authority.** The County's exercise of traffic control jurisdiction pursuant to this Agreement shall be in addition to the jurisdictional authority presently exercised by the County over said roads and nothing herein shall be construed to limit or remove any such jurisdictional authority. The County agrees to continue to provide such other current police and fire services as are otherwise provided by law.

6. **Fines - Traffic Citations.** All fines collected from traffic citations issued as a result of violation of traffic laws on the private roads covered under this Agreement shall be disbursed as provided by law.

7. **Liability Not Increased.** Neither the existence of this Agreement nor anything contained herein shall give rise to any greater liability on the part of the County or the Sheriff than the County or the Sheriff would ordinarily be subjected to when providing its normal law enforcement services. The parties agree that the Association does not have the authority to act for, bind, or subject the County or the Sheriff to any obligation, duty or liability. Likewise, neither the Sheriff nor the County have the authority to act for, bind, or subject the Association to an obligation, duty, or liability except as set forth herein.

8. **Indemnification.** Except as limited by law, the Association shall indemnify, defend, and hold the County and the Sheriff harmless from any loss, cost, damage, or expense, including attorney's fees, for any action arising, directly or indirectly, related to or stemming from the negligent or intentional acts or omissions of the Association, its officials, employees, or agents in the performance of this Agreement and/or any action or expense arising out of or related to, directly or indirectly, the maintenance, repair, and/or reconstruction of all roads and drainage by the Association and its agents, which, shall at times, be solely and exclusively the responsibility of the Association. Nothing herein shall be construed or interpreted as a waiver of the protections, immunities, and limitations of liability afforded the County or the Sheriff pursuant to Section 768.28, Florida Statutes.

9. **Road Maintenance.** Neither the existence of this Agreement nor anything contained herein shall impose any obligation or duty upon the County to provide maintenance on the roads and/or drainage of the roads covered in Exhibit "A". The maintenance, repair, and reconstruction of all roads and drainage, and any other such related obligations, shall at all times be solely and exclusively the responsibility of the Association.

10. **Term.** The term of this Agreement shall be for one year commencing on the date of execution by the parties, and shall thereafter automatically continue for successive one-year terms unless terminated by either party by sixty (60) days advance written notice to the other party.

11. **Entire Agreement.** This Agreement, including all Exhibits attached hereto, constitutes the entire understanding and agreement between the parties and may not be changed, altered, or otherwise modified except where reduced to writing and executed in the same manner, with approval of the County, the Sheriff and the Association.

12. **Applicable Law; Venue:** This Agreement shall be construed and enforced under the law of the State of Florida and codes/ordinances of Brevard County. Venue for any action brought to enforce this Agreement shall lie exclusively in the appropriate state court located in Brevard County, Florida. In the event of and legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs.

13. **Notice.** All notices to be given shall be in writing and sent by certified mail, return receipt requested to the following addresses:

As to the County: County Manager
Brevard County Government Center
2725 Judge Fran Jamieson Way
Viera, Florida 32940

Copy to: County Attorney
Brevard County Government Center
2725 Judge Fran Jamieson Way
Viera, Florida 32940

Copy to: Public Works Department
Brevard County Government Center
2725 Judge Fran Jamieson Way
Viera, Florida 32940

As to Sheriff: Sheriff Wayne Ivey
Brevard County Sheriff
700 South Park Avenue
Titusville, Florida 32780

Copy to: General Counsel
Brevard County Sheriff's Office
440 South Babcock Street
Melbourne, Florida 32901

As to Association: Ms. Sonja Pedretti
Indian River Preserve Homeowners Association
C/O: D.R. Horton, Inc
1430 Culver Dr, NE
Palm Bay, FL 32907

14. **Severability.** If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can still be accomplished.

15. **Effective Date.** The effective date of this Agreement shall be the date on which the last signature required to execute this Agreement is attached below. The Sheriff hereby waives in writing, pursuant to Section 316.006(3)(b), Florida Statutes, the requirement that this Agreement not be effective prior to October 1.

IN WITNESS WHEREOF, the parties have hereunto signed this instrument on the day and year as set forth below.

ATTEST:

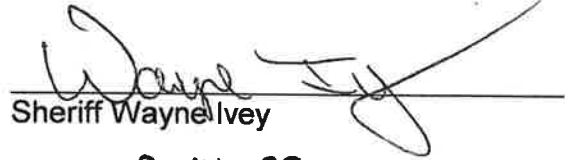

Rachel M. Sadoff, Clerk

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA


Rita Pritchett, Chair


As approved by the Board on 2-7-2023

BREVARD COUNTY SHERIFF'S OFFICE


Sheriff Wayne Ivey

Date: 12-14-22

WITNESS


Signature

Ayden Williams
Name

INDIAN RIVER PRESERVE
HOMEOWNERS' ASSOCIATION

By: Sanja Pedrotti

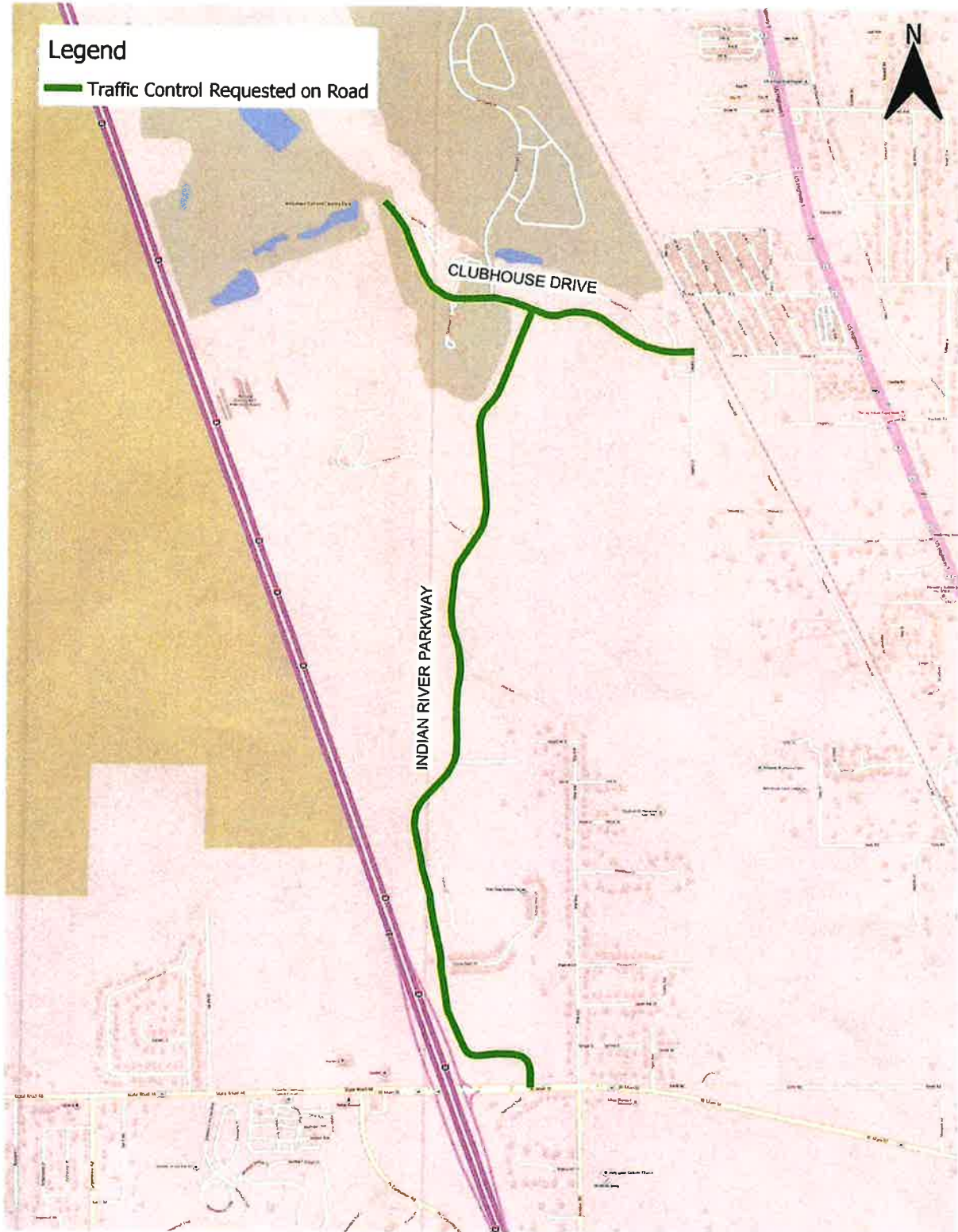
Name: Sanja Pedrotti

Title: Board President

Date: Dec. 5, 2022

Legend

 Traffic Control Requested on Road



Indian River Preserve Homeowners Association
Traffic Control Request Limits

Exhibit A