

## **MAINTENANCE AND EQUIPMENT LEASE AGREEMENT**

**THIS MAINTENANCE AND EQUIPMENT LEASE AGREEMENT** (this "Agreement") is entered into and effective as of the 25 day of November, 2020, by and between the **HIDEAWAY BEACH TAX DISTRICT**, a dependent special district established pursuant to Chapter 189, Florida statutes (the "District"), and the **HIDEAWAY BEACH ASSOCIATION, INC.**, a Florida not-for-profit corporation (the "Association").

### **RECITALS:**

A. That District has the authority to exercise any and all provision or powers granted to the district by applicable law, adopt and enforce reasonable rules and regulations or procedures pertaining to the use, acquisition, maintenance, development, operation or disposal of any of the properties, services, facilities, or projects of the district, enter into interlocal agreements or other contracts with public or private entities, if necessary, for the purpose of accomplishing the purposes of the district and to enter into contracts with public or private entities for the provision of assistance in planning, financing and constructing any and all facilities and services as determined to be appropriate and desirable by the district board.

B. The Association is an organization which owns and operates certain recreational Facilities located within the area comprised of real property subject to the District. The membership of the Association is comprised solely of property owners within the District and all property owners within the District are members of the Association. As the Association is currently responsible for maintaining certain common areas contiguous to the areas within which the "District Facilities", as such term is defined in Recital "C" below, are located, and as the members of the Association are the direct beneficiaries of the District Facilities, the Association is uniquely positioned and qualified to provide maintenance to the District Facilities.

C. The District desires to purchase certain equipment described as Kubota 4 WD Tractor and Equipment as approved by the Hideaway Beach Tax District Board on May 14, 2020 (the "Equipment") and lease it to the Association so it can maintain the following systems and Facilities under the control of the District and located within the boundaries of the District and the Association: (i) All beachfront adjacent to the property platted and shown within the Hideaway Beach Plat and the plat of Royal Marco Point (collectively, the "District Facilities").

D. The Association agrees to lease the Equipment for the purpose of maintaining the District Facilities, all on the terms and conditions set forth herein.

E. The District and the Association agree that having the Association lease the Equipment for the purpose of maintaining the District Facilities is in the best interests of the District and the property owners intended to benefit from the District Facilities. Specifically, having the Association lease the Equipment and maintain the

District Facilities will provide for and facilitate ease of administration, potential cost savings, and the benefits of fulltime on-site maintenance purposes.

**NOW, THEREFORE,** the District and the Association agree as follows:

1. The above recitals are true and correct and incorporated by reference herein.

2. The District and the Association expressly agree that the District purchasing the Equipment and the Association maintaining the District Facilities is in the best interests of the District and the property owners intended to benefit from the District Facilities.

3. The District will purchase the Equipment through the bid process proscribed in Fla. Stat. § 189.053.

4. Once the Equipment is purchased and received by the District, it will be leased to the Association pursuant to the following terms:

A. **LEASE TERM:** The term of this Agreement is for a period of five (5) years commencing on October 20, 2020 and terminating on October 20, 2025. At the end of the five (5) year term, the parties have the option to either (1) renew the Agreement for an additional five (5) year term or (2) the Association may purchase the Equipment from the District for a price to be agreed to at that time. The District has the right to terminate this Agreement at any time during the term upon providing written notice of the termination to the Association and this Agreement shall stand terminated 60 days after receipt by Association of the written notice. Such termination need not be with cause and the District specifically retains the right to terminate this Agreement without cause.

Upon termination of this Agreement, the Equipment shall be returned to the District, if the Association has not exercised its option to purchase the Equipment.

B. **LEASE PAYMENTS:** The Association agrees to pay to the District as rent for the Equipment the amount of \$2,028.06, plus applicable sales tax ("Lease Payment") each month, due and payable as described below. If the Lease Term does not start on the first day of the month or end on the last day of the month, the Lease Payment will be prorated accordingly. The Association will be billing the District, from time to time for its maintenance charges, and in lieu of paying any Lease Payments directly will net against the maintenance charges on the invoice the amount of any accrued Lease Payments.

C. LATE CHARGES: There are no late charges or interest on Lease Payments as long as they are periodically credited against the Association's invoices for maintenance charges.

D. EXPENSES RELATED TO THE EQUIPMENT: With the exception of the initial purchase cost, which shall be paid by the District, the Association shall be responsible for all expenses and costs associated with Equipment, including maintenance, insurance and storage.

E. USE: The Association may use the Equipment for maintenance of other areas outside the District Facilities, as long as such use is consistent with the Equipment's intended purpose.

5. The Association shall be solely responsible for all costs necessary to perform the maintenance responsibilities set forth in this Agreement, including but not limited to staffing, budgeting, financing, billing, etc. The Association will bill the District for its work based on an agreed upon time/material basis or set fee structure to be negotiated between the parties and adjusted from time to time as costs change.

6. The Association shall procure at its expense and at all times include the District as an additional named insured on comprehensive liability insurance policies to cover the maintenance responsibilities set forth in this Agreement. Comprehensive liability insurance shall be in amounts determined by the District and/or the Marco Island City Manager. The Association, in consideration of Ten (\$10.00) Dollars, the receipt and sufficiency of which is accepted, by signing this Agreement agrees to hold harmless, defend and indemnify the District, its agents and employees, from all claims, suits and actions (whether for negligence or otherwise), including claims for reasonable attorney's fees and all costs of litigation, and judgments of any name and description, arising out of or incidental to the performance of this Agreement or work performed hereunder. This Section does not pertain to any incident arising from the sole negligence of the District.

7. The Association shall indemnify, defend and hold harmless the City of Marco Island, Florida from and against any and all liability, suits, actions, damages, costs, losses and expenses, including attorneys' fees, demands and claims for personal injury, bodily injury, sickness, diseases or death or damage or destruction of tangible property or loss of use resulting therefrom, arising out of any errors, omissions, misconduct or negligent acts of Association, its respective officials, agents, employees or subcontractors in connection with this Lease. Nothing in this Agreement shall be deemed or treated as a waiver by the City of any immunity to which it is entitled by law, including but not limited to the City's sovereign immunity as set forth in Section 768.28, Florida Statutes.

8. All other operation and maintenance responsibilities for the District Facilities not otherwise addressed in this Agreement shall remain the sole responsibility of the District.

9. This Agreement may only be amended by a written amendment executed by both parties.

10. The Association recognizes, acknowledges and agrees that the records and materials associated with the provisions of the services under this Agreement constitute public records under the laws of the State of Florida and will be maintained in accordance with the provisions of the law governing public records.

In addition to any other right or termination that the District possesses, the District shall have the right to unilaterally cancel this Agreement for refusal by the Association or any subcontractor to allow public access to all documents, papers, letters, or other materials subject to the provisions of Chapter 119, F.S. and made or received by the Association in conjunction with this Agreement.

**IF THE ASSOCIATION HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ASSOCIATION'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF MARCO ISLAND, 50 BALD EAGLE DRIVE, MARCO ISLAND, FLORIDA, 34145.**

The Association agrees to comply with Florida's public records laws, specifically to:

- A. Keep and maintain public records required by the District to perform the service.
- B. Upon request from the District's custodian of public records, provide the District with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, F.S. or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement term and following completion of this Agreement if the Association does not transfer the records to the District.
- D. Upon completion of this Agreement, transfer, at no cost, to the District all public records in possession of the Association or keep and maintain public records required by the District to perform the service. If the Association transfers all public records to the District upon completion of

this Agreement, the Association shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Association keeps and maintains public records upon completion of this Agreement, the Association shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the District, upon request from the District's custodian of public records, in a format that is compatible with the information technology systems of the District.

11. This Agreement may not be assigned by the Association without the prior written specific consent of the District, which consent may be withheld in the District's sole and absolute discretion.

12. This Agreement is made and shall be governed and construed by the laws of the State of Florida. Any litigation arising out of this Agreement shall be in the state court of appropriate jurisdiction in Collier County, Florida.

13. If any litigation shall be instituted, or other action taken for the purpose of enforcing or interpreting any of the provisions of this Agreement, the prevailing party or parties as determined by the Court having jurisdiction shall be entitled to recover, in addition to all other relief, an amount equal to all costs and expenses incurred in connection, including without limitation, reasonable attorneys' fees.

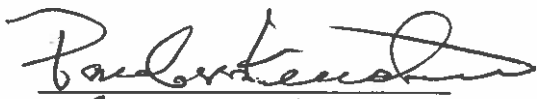
14. The parties represent that the individuals signing this agreement have the authority to bind the respective parties to the terms of this Agreement and are authorized to sign on behalf of the respective parties.

15. In the event that a provision of this Agreement is held to be illegal or unenforceable, the offending provision shall be severed, with the remaining portion of the Agreement continuing in full force and effect.

16. This Agreement was approved by the Board of Supervisors of the District on October 20, 2020, the City of Marco Island's City Council on N/A, 2020 and upon execution by the undersigned parties shall become effective as of December 1, 2020.

**IN WITNESS WHEREOF**, the parties hereto have executed this Maintenance Agreement on the day and year first above written.

Attest:

  
Paul FERNSTROM, Secretary

**HIDEAWAY BEACH TAX DISTRICT**

By:   
as its Chairman

Witnesses:

Thomas L. Ryan  
Signature

Thomas L. Ryan  
Printed Name

Tyler Legar  
Signature

Tyler Legar  
Printed Name

**HIDEAWAY BEACH ASSOCIATION, INC.**

By: [Signature]  
as its President

## **AGREEMENT**

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### **RECITALS:**

A. The Association agrees to lease the Equipment for the purpose of maintaining the District Facilities, all on the terms and conditions set forth herein.

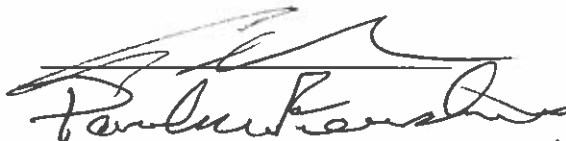
**NOW, THEREFORE**, the District and the Association agree as follows:

1. The above recitals are true and correct and incorporated by reference herein.
2. Notwithstanding anything set forth herein, this Agreement shall incorporate the terms of the Maintenance and Equipment Lease Agreement executed on November 25, 2020.
3. The Association shall be solely responsible for all costs necessary to perform the maintenance responsibilities set forth in this Agreement, including but not limited to staffing, budgeting, financing, billing, etc. The costs are more fully set forth in Exhibit "A" as attached hereto and incorporated herein.
4. Raking will be done once per week at the price set forth in Exhibit "A". Extra raking can be done at an additional cost.
5. Raking can be done during sea turtle nesting season pursuant to DEP permit # 8035414-CO and City of Marco Island permit # VEHB-20-05718.
6. This Agreement is made and shall be governed and construed by the laws of the State of Florida. Any litigation arising out of this Agreement shall be in the state court of appropriate jurisdiction in Collier County, Florida.
7. The parties represent that the individuals signing this agreement have the authority to bind the respective parties to the terms of this Agreement and are authorized to sign on behalf of the respective parties.
8. In the event that a provision of this Agreement is held to be illegal or unenforceable, the offending provision shall be served, with the remaining portion of the Agreement continuing in full force and effect.

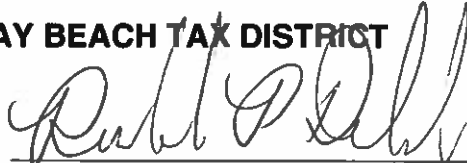
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

Attest:

HIDEAWAY BEACH TAX DISTRICT

  
PAUL FERNSTROM, Secretary

By:

  
CHAIRMAN

Witnesses:

HIDEAWAY BEACH ASSOCIATION, INC.

  
Signature

Thomas L. Ryan  
Printed Name

  
Signature

Tyler Legan  
Printed Name

By:





# **EXHIBIT A**

		<u><b>12-month Raking Operation</b></u>		<u><b>Extra Raking Cost</b></u>
<u><b>Operational Expenses:</b></u>			<b>Annual Costs</b>	
<b>1</b>	Payroll - hourly wage	\$30.00	\$18,720	\$30.00
<b>2</b>	Employee Taxes / Benefits (20%)		\$3,744	\$6.00
	Subtotal		<b>\$22,464</b>	<b>\$36</b>
<b>3</b>	Lease payments	\$2,170.06/month	\$26,040.72	
<b>4</b>	Diesel (Fuel)	2.50 / gallon x 10 gallons / week	\$1,300	\$8.00
<b>5</b>	Uniforms	\$7.32 / week x 52 weeks	\$400	
<b>6</b>	Permits of Operation	\$500 - vehicle on beach permit	\$500	
<b>7</b>	Dumpsters / Refuse		\$11,880	
			2 dumpster / month @ \$495	
<b>8</b>	Total Expenses		<b>62,585</b>	<b>\$44</b>