ROAD MAINTENANCE AGREEMENT FOR THE BRIARCLIFF PROPERTY OWNERS ASSOCIATION, INC. TO PROVIDE RIGHT OF WAY MAINTENANCE SERVICES TO THE VILLAGE OF BRIARCLIFF

This Agreement is made and entered into by the Village of Briarcliff, Texas, a Type A General-Law Municipality and municipal corporation, hereinafter referred to as the "Village," and the Briarcliff Property Owners Association, Inc., a Texas Non-Profit Corporation, hereinafter referred to as the "BPOA," each acting by and through its duly elected officials. The Village and the BPOA are hereinafter collectively referred to as the "Parties."

RECITALS

1. The Village has the duty and authority to maintain the streets within its corporate limits. ("Village Streets")
2. The Village desires to obtain, and the BPOA is capable of providing maintenance services for Village streets, including, but not limited to, right of way management, patching of road surfaces, roadway striping, and street signage (together, the "Services"), as more further described in the attached Exhibit A.
3. The Village and the BPOA have determined that it would be in the best interest of the citizens of the Village and the BPOA for the BPOA to perform the Services on behalf of the Village.
4. The governing body of the BPOA and the Village's governing body each finds that the Services will provide increased safety for persons using Village streets, facilitate the movement of people, goods, and services in the Village, and benefit the residents of the Village and the residents of the BPOA.
5. Pursuant to applicable law, a municipality may expend its funds for the construction, improvement, maintenance, and repair of municipal streets located in the municipality, and the work authorized by applicable law may be done or financed by, among other things:
   (a) The municipality through the use of municipal equipment; or
   (b) An independent contractor with whom the municipality has contracted.
6. The Village and the BPOA intend to conform this Agreement in all respects to applicable law.

NOW, THEREFORE, it is mutually agreed by the Parties as follows:

Section 1. TERM OF AGREEMENT

The term of this Agreement shall commence on the last date of execution of this Agreement by the BPOA and the Village and shall continue in full force and effect until the 28th day of February 2025, and will be automatically renewed for successive one-year terms unless terminated earlier by either party by providing 30 days' written notice to the other at any time. By entering into this Agreement, the Village does not waive, and shall not be deemed to have waived, any right, immunity, or defense it may have, including the right to not appropriate any or further funds for this Agreement.

Section 2. SERVICES THAT MAY BE REQUESTED

(a) The Village may request that the BPOA perform services for Village streets, as more fully

described in Exhibit A, and in accordance with the terms and conditions set forth in this Agreement. Notwithstanding any provision to the contrary, the Services to be provided by the BPOA pursuant to this Agreement do not include the construction of new streets or roads.

(b) Street Signage Services. The Village may request that the BPOA provide the Village with road and street signs, along with the posts and hardware for the signs if these materials exist in current BPOA inventory. Otherwise the Village will provide the materials needed. And that the BPOA install the signs at the Village street locations specified by the Village.

(c) The Parties acknowledge and agree that the Village will not be making any requests of the BPOA to construct a building, road, or other facility pursuant to this Agreement.

Section 3. VILLAGE REPRESENTATIVE

The governing body of the Village hereby designates the Village's mayor, hereinafter called "Village Agent" to serve as the representative and agent for the Village. The designated Village Agent is authorized to request performance of service as set forth in this Agreement, and, to the extent permitted by law, any such request made by the Village Agent shall bind the Village as fully as if such request had been made by specific action of a majority of the governing body of the Village.

Section 4. BPOA REPRESENTATIVE

The governing body of the BPOA shall appoint an individual to represent its interests under this Agreement, hereinafter the "Director," who will act on behalf of the BPOA with respect to the Services, coordinate with the Village and the Village Agent, receive, and transmit information and instructions, and will have complete authority to perform all instructions and directions with respect to the Services.

Section 5. REQUESTS FOR SERVICES

Each request for Services from the Village Agent must be submitted in writing and must specify in detail:

(a) the nature and extent of the Services requested,

(b) the Village Street or streets or portions thereof upon which the Services are to be performed, and

(c) the timeframe within which the Village desires the requested Services to be commenced and to be completed.

Section 6. PROCESSING REQUESTS FOR SERVICES

(a) Upon receipt of a request for service in conformance with Section 5 hereof, the Director shall promptly inform the Village Agent whether the BPOA will be able to perform the requested service. Nothing in this Agreement requires the Village to request services solely from the County.

(b) If the Director determines that the BPOA has the capacity to perform a requested service, the Director will cause to be prepared a written work order setting forth in detail:
   (1) the nature and the extent of the service requested that the BPOA can perform.
   (2) the Village Street or streets or portions thereof upon which the service is to be

performed, the estimated time within which the services are to be commenced and to be completed,

(3) the estimated additional cost of the requested services if not covered by the consideration for this Agreement, if any.

(c) Not later than 30 days after receiving a work order from the BPOA, the Village will return the work order to the BPOA with a written response as to whether the Village approves the BPOA to proceed with the work described in the work order.

(d) If the Village fails to provide written approval of the work order within 30 days after receiving the work order, the Village will be deemed to have declined the work order.

(e) The terms of a written work order signed by the Village Agent shall control over any oral or prior written request for service.

Section 7. PERFORMANCE OF SERVICES

(a) Upon the BPOA's receipt of the Village's approval of a written work order, the BPOA will perform the requested services.

(b) The services requested by the Village, including requests regarding street signs and for striping, will be performed to the same standard and using the same quality of materials as for Travis County roads of similar size, use, and construction.

(c) The BPOA shall furnish all personnel, equipment, and materials necessary to perform the services set forth in each work order, unless otherwise agreed to by the Parties.

Section 8. CLOSING STREETS

(a) If the Director determines that it is necessary to deny public access to any Village street or streets or portions thereof during the performance of any service requested pursuant to this Agreement, the Director will notify the designated Village Agent in writing. The written notification may be contained in the written work order or may be by separate writing and may be submitted at any time during the performance of any services requested hereunder.

(b) Upon receipt of a written notice regarding the necessity to close a Village street, the Village will promptly act to close the specified Village street.

(c) If the Director has notified the Village Agent about the need to close all or a portion of a Village street, the BPOA will have no further obligation for the performance of any services unless and until the requested closure takes place.

(d) If a street closure results in the denial of public access by any third party to private property, the Village, at its sole cost and expense, shall provide any alternative public access that may be required by law.

Section 9. WARRANTIES.

The BPOA agrees to use reasonable efforts to perform services pursuant to this Agreement so as to deliver maintenance services to Village at the same standard of quality which BPOA would provide for its own roads and to the specifications set forth by the Village Agent.

Section 10. FINANCIAL OBLIGATIONS

The Village agrees to pay the BPOA FORTY THOUSAND AND 00/100 DOLLARS ($40,000.00), for the initial term of this Agreement, subject to annual appropriation by the governing body of the Village for the Services described in Exhibit A. The initial term of this agreement is from March 1, 2024 through February 28, 2025 and will be automatically renewed for successive one year terms on the first day of March of each year with a 5% increase of the previous year's total. The Village shall make payments from current revenues available to the Village. Payments will be made in two equal payments on March 1st and September 1st of each year.

Section 11. INDEMNITY

(a) TO THE EXTENT PERMITTED BY LAW, THE VILLAGE SHALL NOT BE LIABLE OR RESPONSIBLE FOR AND SHALL BE **SAVED AND HELD HARMLESS** BY THE BPOA, AND **BPOA AGREES TO INDEMNIFY** VILLAGE, ITS OFFICERS, AGENTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING ALL EXPENSES OF LITIGATION, BPOA COSTS AND ATTORNEYS' FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH THE WORK PERFORMED UNDER THIS AGREEMENT. **SUCH INDEMNITY** SHALL APPLY WHERE THE CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION ARE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF BPOA PROXIMATELY CAUSED BY THE BPOA, ITS EMPLOYEES, OR AGENTS.

(b) Claims Notification. If the Village or the BPOA receives notice or becomes aware of any claim or other action, including proceedings before an administrative agency, which is made or brought by any person, firm, corporation, or other entity against the Village or the BPOA in relation to this Agreement, the Party receiving such notice must give written notice to the other Party of the claim or other action within three working days after being notified of it or the threat of it; the name and address of the person, firm, corporation or other entity that made or threatened to make a claim or that instituted or threatened to institute any type of action or proceeding; the basis of the claim, action, or proceeding; the court or administrative tribunal, if any, where the claim, action, or proceeding was instituted; and the name or names of any person against whom this claim is being made or threatened. This written notice must be given in the manner provided in Section 13 of this Agreement. Except as otherwise directed, the notifying Party must furnish to the other Party copies of all pertinent papers received by that Party with respect to these claims or actions.

Section 12. MISCELLANEOUS

(a) Force Majeure. In the event that the performance by the Village or the BPOA of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God, or the common enemy, or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not a party or privy hereto, then it shall be excused

from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects hereto.

(b) Notice. Any notice given hereunder by either party to the other shall be in writing and may be effected by personal delivery in writing or by registered or certified mail, return receipt requested when mailed to the proper party, at the following addresses:

VILLAGE: Mayor
Village of Briarcliff
302 Sleat Drive
Briarcliff, Texas 78669

WITH COPY TO: Ken Campbell
Village Attorney
P. O. Box 26300
Austin, Texas 78755-6300

BPOA: President
Briarcliff Property Owners Association, Inc.
22801 Briarcliff Drive
Briarcliff, Texas 78669

WITH COPY TO: Cagle Pugh LTD, LLP
Attn: Gregory Cagle
4301 Westbank Dr. Ste A-150
Austin, Texas 78746

(c) Number and Gender Defined. As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others.

(d) Entire Agreement. This Agreement contains the complete and entire Agreement between the Parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, and understanding, if any, between the parties concerning this Agreement. This Agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by authorized representatives of the Parties. NO OFFICIAL, REPRESENTATIVE, AGENT, OR EMPLOYEE OF THE VILLAGE OF BRIARLIFF, TEXAS HAS ANY AUTHORITY TO MODIFY THIS AGREEMENT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THEBOARD OF ALDERMAN OF THE VILLAGE OF BRIARCLIFF, TEXAS. The recitals set forth above are incorporated herein.

(e) Effective Date. This Agreement takes effect upon the last date of execution of the Agreement by the Village and the County and will continue in full force and effect until September 30, 2024. This Agreement will automatically renew from year to year, unless terminated earlier by the Parties, unless earlier terminated by thirty days' written notice from either party to the other at any time.

(f) Other Instruments. The Parties covenant and agree that they will execute other and further instruments and documents as may become necessary or convenient to effectuate and carry out the purposes of this Agreement.

(g) Invalid Provision. Any clause, sentence, provision, paragraph, or article of this agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.

(h) Current Funds. The Party or Parties paying for the performance of governmental functions or services shall make payments therefore from current revenues available to the paying Party.

(i) This Agreement shall be binding upon and inure to the benefit of the BPOA and the Village and their respective successors, executors, administrators, and assigns.

(j) Non-Assignment of Rights. No assignment of this Agreement or of any right accruing hereunder shall be made in whole or in part by the Village without the prior written consent of the County.

(k) No Third-Party Beneficiary. This Agreement is not intended to and shall not be construed to create any rights or remedies in any person or legal entity that is not a Party to it and the Parties are not waiving any defense or immunity to which they are entitled against any person or legal entity that is not a party to this Agreement.

(l) This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Texas, and venue shall be in Travis County.

(m) Computation of Time. When any period of time is referred to in this Agreement or in any work order prepared and executed hereunder, it shall be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday, Sunday, or a day made a legal holiday by the County or the Village, such day shall be omitted from the computation.

(n) The headings at the beginning of the various provisions of this Agreement have been included only in order to make it easier to locate the subject.

(o) Non-Exclusivity. This Agreement does not create and should not be regarded as an exclusive arrangement between the Parties to the Agreement.

(p) No Partnerships. This Agreement shall not make or be deemed to make any Party to this Agreement an agent for or the partner of any other Party.

(q) Multiple Counterparts. This Agreement may be executed (original or facsimile) by the Parties in one or more counterparts, each of which shall be considered one and the same agreement.

VILLAGE OF BRIARCLIFF, TEXAS

By: _____
Al Hostetler, Mayor

Date: May 9, 2024

BRIARCLIFF PROPERTY OWNERS ASSOCIATION, INC.

By: _____
Jessy Brashears, President

Date: May 1st, 2024

EXHIBIT A

The Briarcliff Property Owners Association, Inc. shall perform the following items (these items are not exclusive, and are not set forth in any order of importance):

1. Trim hedges, shrubs, trees, and other vegetation or landscaping in the Village's right of way.
2. Remove dead, damaged, or unwanted vegetation or landscaping in the right of way.
3. Maintain the Brush Pit for the disposal of removed vegetation or landscaping.
4. Operate and maintain vehicles, mowers, tractors, grass/hedge trimming machinery, power tools, communications equipment, or other specialized equipment used in the performance of this Agreement;
5. Patch road surfaces with all materials provided by the Village.
6. Check and clean culverts, ditches, and shoulders in the right of way as necessary.
7. Maintain roadway signage (Village will purchase any such signs or other hardware as necessary).
8. Remove trash and debris from the right of way.
9. Maintain all striping and painting in right of way, specifically including paved surfaces; with all materials provided by the Village.
10. Erect and remove barricades, cones, and fencing as necessary.
11. Mow the right of way, including string-trimming as necessary; and,
12. Maintain drainage in the right of way.

The areas described as right of way herein are in accordance with the attached deed filed with Travis County on or about August 11, 2023.

Any conflicts as to duties hereunder shall be negotiated between the Village Agent and the governing body representative of the BPOA.

The Agreement between the Village and the BPOA for road cuts created by the Village is hereby terminated and rescinded.

The Village shall have legal access to the BPOA Brush Pit for disposal of vegetation debris resulting from disasters. In the event of a disaster that produces excessive vegetation debris, both parties would agree to cost share the additional removal fees. For example, dumpsters, chipping and third-party removal services.