

# ORIGINAL

## TRAFFIC SIGNAL WARRANTY AND INDEMNIFICATION AGREEMENT FOR POST STREET AND TOWN CENTER BOULEVARD BETWEEN EL DORADO COUNTY AND SPANOS CORPORATION

*AGMT #20-54962*

**THIS TRAFFIC SIGNAL WARRANTY AND INDEMNIFICATION AGREEMENT**, hereinafter called “Agreement” made and entered into by and between the **COUNTY OF EL DORADO**, a political subdivision of the State of California (herein after referred to as “the County”) and **THE SPANOS CORPORATION**, a California corporation (hereinafter referred to as “the Developer”) whose principal place of business is Trinity Pkwy #5, Stockton, California 95219, concerning the **TRAFFIC SIGNAL AT TOWN CENTER BOULEVARD AND POST STREET** in the El Dorado Hills Town Center (hereinafter referred to as “Signal”).

### RECITALS

**WHEREAS**, the County and the Developer are sometimes hereinafter collectively referred to as the “parties”, or individually, as a “party”; and

**WHEREAS**, the Final Environmental Impact Report of the El Dorado Hills Apartments Project (“Project”); was certified on February 13, 2018 (Res. No. 016-2018), and Mitigation Measure C-TRANS-2 require the Developer to be responsible for ensuring that a traffic signal is installed at the intersection of Post Street and Town Center Boulevard and requires the signal to be installed before the building department issues a certification of occupancy for the Project;

**WHEREAS**, Sections 14 through 16 of the Final Conditions of Approval for the Project, as approved by the Board of Supervisors (February 13, 2018, Item 31), require the Developer to a) construct the signal at the intersection, b) provide an interconnect to the County’s signal controller at the Latrobe Road Town Center Blvd. intersection to allow for interconnectivity and coordination of the operations of the two signals, and c) provide signal timing plans for the Signal to the County upon initial turn-on and whenever timing plans are changed, or when requested by the County;

**WHEREAS**, the Developer, at its own cost and expense, and after obtaining the relevant approvals and permits from the County, designed and is installing a traffic signal at the intersection of Post Street and Town Center Boulevard (“Post Street”);

**WHEREAS**, PG&E is expected to energize the Signal on or before April 1, 2021 after which the parties shall begin the process of activating and programming the Signal. The Signal and interconnect must be operational and approved by the County before issuance of the Certificate of Occupancy for any of the units within the Project; and

**WHEREAS**, the County and the Developer desire to enter into this Agreement to memorialize the understanding that the Developer warrants the materials and workmanship of the Signal, subject to the terms and conditions set forth herein.

**NOW, THEREFORE**, the parties hereto in consideration of the recitals, terms and conditions herein, do hereby agree as follows:

**SECTION 1.                    DESIGN OF SIGNAL**

1.        The Developer has, at its own cost and expense, designed and is installing a traffic signal at Post Street. The work includes construction of an interconnect (including conduit, cable and appropriate modifications to the controller) to the County’s signal controller at the intersection of Latrobe Road and Town Center Boulevard (“Latrobe Road”). The Developer shall notify the County at least seventy-two (72) hours in advance before performing work in the County’s signal cabinet at Latrobe Road or performing work at Post Street that will affect the Latrobe Road cabinet (e.g., timing changes, appurtenance checks, etc.) in order for County Signal Staff to be on-site for coordination. The Signal shall be energized by PG&E on or before April 1, 2021 after which the parties shall begin the process of activating and programming the Signal. Absent events outside of Developer’s control, the Signal shall be operational on or before May 1, 2021.

2.        The Developer has designed and is installing traffic signal improvements in accordance with and as described in the following documents:

- a.        Improvement Plans – Town Center Apartments – Town Center Boulevard and Post Street Intersection – Signal and Striping Plans, signed and dated by the County on December 15, 2019;
- b.        Encroachment Permit Work Order No. 67782;
- c.        El Dorado County Building Permit No. 033577 – Electrical Services; and
- d.        Signal Timing Plans approved by the County on August 5, 2020.

These items may be substituted or changed from the specifications above only upon written approval from the County provided the items will interface with existing County equipment.

**SECTION 2.                    WARRANTY PERIOD**

Developer warrants the materials and workmanship on the Signal for either a period of one (1) year from the date the County issues a Certificate of Occupancy for the Project (Warranty Period), or the County certifying the Signal is fully operational, whichever is later. The Developer shall make such replacements and repairs as necessary during the Warranty Period, at its sole cost and expense. This Agreement shall terminate at the end of the Warranty Period.

Developer shall procure a warranty bond in favor of County in the amount of ten percent (10%) of the total cost of the Signal, as reflected in Exhibit A to this agreement, guaranteeing said Signal for the duration of the Warranty Period.

**SECTION 3. INDEMNIFICATION**

To the fullest extent permitted by law, the Developer shall defend at its own expense, indemnify, and hold the County harmless, its officers, employees, agents, and volunteers, against and from any and all liability, claims, suits, losses, damages, or expenses of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of injuries to or death of any person including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the acts or omissions of Developer or its officers, agents, or employees in rendering the services, operations, or performance hereunder, except for liability, claims, suits, losses, damages or expenses arising from the sole or active negligence or willful acts of the County, its officers and employees, or as expressly prescribed by statute. This duty of the Developer to indemnify and save the County harmless includes the duties to defend set forth in California Civil Code Section 2778.

**SECTION 4. ATTORNEY FEES**

In any action or proceeding at law or in equity brought to enforce any provision of this Agreement, the prevailing party shall be entitled to all reasonable attorney's fees, costs, and expenses incurred in said action or proceeding.

**SECTION 5. INSURANCE**

**GENERAL INSURANCE REQUIREMENTS:** The Developer shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Management Division and documentation evidencing that the Developer maintains insurance that meets the following requirements. In lieu of this requirement, the Developer may have its Contractor provide proof of a policy of insurance satisfactory to the County's Risk Management Division and documentation evidencing that Contractor maintains said insurance so long as Contractor's insurance meets these same requirements and standards, and subject to Contractor assuming the same obligations as the Developer as follows:

1. Full Workers' Compensation and Employers' Liability Insurance covering all employees performing work under this Agreement as required by law in the State of California.
2. Commercial General Liability (CGL) Insurance of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage, including but not limited to endorsements for the following coverage: premises, personal injury, operations, blanket contractual and independent contractor's liability and a Two Million Dollar (\$2,000,000) aggregate limit.
3. Automobile Liability Insurance of not less than One Million Dollars (\$1,000,000) is required in the event motor vehicles are used by the Developer in performance of the Agreement.

4. In the event the Developer or its agent(s) are licensed professionals and are performing professional services under this Agreement, Professional Liability Insurance is required, with a limit of liability of not less than One Million Dollars (\$1,000,000).

5. Explosion, Collapse, and Underground (XCU) coverage is required when the scope of work includes XCU exposure.

**PROOF OF INSURANCE REQUIREMENTS:**

1. The Developer shall furnish proof of coverage satisfactory to the County's Risk Management Division as evidence that the insurance required herein is being maintained. The insurance will be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.

2. The County, its officers, officials, employees, and volunteers shall be included as additional insureds, but only insofar as the operations under this Agreement inclusive of the obligation to design and construct the Signal are concerned. This provision shall apply to all general and excess liability insurance policies. Proof that the County is named additional insured shall be made by providing the Risk Management Division with a certified copy, or other acceptable evidence, of an endorsement to the insurance policies naming the County an additional insured.

3. In the event the Developer cannot provide an occurrence policy, the Developer shall provide insurance covering claims made as a result of performance of this Agreement.

4. Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Developer shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

**INSURANCE NOTIFICATION REQUIREMENTS:**

1. The insurance required herein shall provide that no cancellation or material change in any policy shall become effective except upon prior written notice to the County at the office of the Department of Transportation, 2850 Fairlane Court, Placerville, CA 95667.

2. The Developer agrees that the insurance required herein shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, the Developer shall immediately provide a new certificate of insurance as evidence of the required insurance coverage. In the event the Developer fails to keep in effect at all times insurance coverage as herein provided, the County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event. New certificates of insurance are subject to the approval of the Risk Management Division,

and the Developer agrees that no work or services shall be performed prior to the giving of such approval.

**ADDITIONAL STANDARDS:** Certificates shall meet such additional standards as may be determined by the Department of Transportation (“Transportation”), either independently or in consultation with the Risk Management Division, as essential for protection of the County.

**MATERIAL BREACH:** Failure of the Developer to maintain the insurance required herein, or to comply with any of the requirements of the insurance provisions, shall constitute a material breach of the entire Agreement.

**REPORTING PROVISIONS:** Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees, or volunteers.

**PRIMARY COVERAGE:** The Developer’s insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Developer’s insurance and shall not contribute with it.

**PREMIUM PAYMENTS:** The insurance companies shall have no recourse against the County of El Dorado, its officers, agents, employees, or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

**THE DEVELOPER’S OBLIGATIONS:** The Developer’s indemnity and other obligations shall not be limited by the insurance required herein and shall survive the expiration of this Agreement.

**SECTION 6.                    TERMINATION AND MODIFICATION**

Agreement may only be terminated upon written mutual consent of both parties or by cause. No changes, alterations or modifications may be made to this agreement without El Dorado County Board of Supervisors approval.

**SECTION 7.                    INSPECTION**

An authorized representative of the County will perform construction inspection and material testing in accordance with the most current State of California, Department of Transportation, Standard Specifications. All testing shall be accomplished to the reasonable satisfaction of the County.

**SECTION 8.                    RECORD DRAWINGS**

The Developer shall submit Record Drawings describing the finished Signal to the Department of Transportation upon the completion of the Signal.

**SECTION 9. DEFAULT, TIME TO CURE, AND REMEDY**

The Developer's failure to perform any obligation at the time specified in this Agreement will constitute a default and the County will give written notice of said default ("Notice") in accordance with the notice provisions of this Agreement. Notice shall specify the alleged default and the applicable Agreement provision. The Developer shall cure the default within ten (10) days ("Time to Cure") from the date of the Notice. In the event that the Developer fails to cure the default within the Time to Cure, the Developer shall be deemed to be in breach of this Agreement.

**SECTION 10. ASSIGNMENT**

Except for transfer of the Signal improvements to the El Dorado Hills Town Center East Owner's Association, neither party hereto shall assign, or transfer any interest in this Agreement hereunder, without the prior written consent of the other party, and no assignment shall be of any force or effect whatsoever unless and until the other party furnishes such consent in writing, signed by both parties to this Agreement.

**SECTION 11. CONTRACT ADMINISTRATOR**

The County Officer or employee with responsibility for administering this Agreement is Rafael Martinez, Director, Department of Transportation, or successor.

**SECTION 12. AMENDMENTS**

This Agreement may be modified or amended, or any of its provisions waived, only by a subsequent written amendment executed by each of the parties hereto.

**SECTION 13. REIMBURSEMENT TO THE COUNTY**

The County shall be entitled to reimbursement by the Developer of costs and expenses incurred by the County for construction oversight, inspection, right of way, signal timing, signal operations, signal maintenance, administration, and acceptance of the work performed pursuant to this Agreement until termination of this Agreement.

**SECTION 14. THE SIGNAL/THE DEVELOPER STATUS**

The Developer has constructed and completed the Signal improvements as described herein and in doing so, has acted as an independent agent and not as an agent of the County.

**SECTION 15. CONSTRUCTION**

This Agreement shall be construed as a whole, the captions being for the convenience of the parties only and not intended to describe or define the provisions in the portions of the Agreement to which they pertain. Each party hereto acknowledges and agrees that each has had independent counsel review and participate in the drafting of this Agreement, and each hereby fully waives the

application of any law, statute or rule of construction or interpretation to the effect that any ambiguities are to be resolved against the drafting party.

**SECTION 16.            NOTICE TO PARTIES**

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to the County shall be in duplicate and addressed as follows:

To County:

With a copy to:

County of El Dorado  
Department of Transportation  
2850 Fairlane Court  
Placerville, California 95667

County of El Dorado  
Department of Transportation  
2850 Fairlane Court  
Placerville, California 95667

Attn: Rafael Martinez, Director  
Department of Transportation

Attn: Gregory Hicks, P.E.,  
Senior Civil Engineer

or to such other location as the County directs.

Notices to the Developer shall be in duplicate and addressed as follows:

The Spanos Corporation  
10100 Trinity Parkway 5<sup>th</sup> Floor  
Stockton, California 95219

Attn: Alexandros Economou  
Executive Vice President

or to such other location as the Developer directs.

**SECTION 17. AUTHORIZED SIGNATURES**

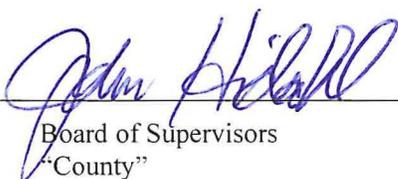
The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

**Requesting Contract Administrator and Department Concurrence:**

By:   
Rafael Martinez  
Director Department of Transportation

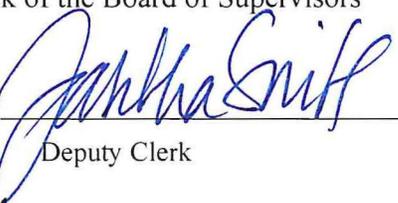
**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates indicated below, the latest of which shall be deemed to be the effective date of this Agreement.

**--COUNTY OF EL DORADO--**

By:   
Board of Supervisors  
"County"

Dated: 4/13/2021

Attest:  
Kim Dawson  
Clerk of the Board of Supervisors

By:   
Deputy Clerk

Dated: 4/13/2021

**--THE SPANOS CORPORATION--**

By:   
Steven L. Cohen  
Executive Vice President

Dated: 03/15/2021

**DEVELOPER**

**ACKNOWLEDGMENT**

State of California  
County of San Joaquin

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

On March 15, 2021 before me, Sonia Lopez, Notary Public,  
(here insert name and title of the officer)

personally appeared Steven L. Cohen,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature *Sonia Lopez*  
Sonia Lopez



(Seal)

# Exhibit A

## Town Center Apartments Project

El Dorado Hills CA

March 4, 2021

### Traffic Signal Addition at Town Center Dr and Post St

#### Construction Costs

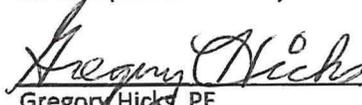
1. Site Concrete / Demo – ADA Ramp Modification	\$17,400.00
2. Dry Utilities – Electrical	\$28,900.00
3. Striping	\$8,821.00
4. Traffic Signal / Controllers – Complete	<u>\$393,247.00</u>
Total	\$448,368.00

 3,12,2021

Robert Romero  
Project Manager  
The Spanos Corporation

Date

No Exceptions Taken by:

 March 18, 2021  
Gregory Hicks, PE  
Sr Civil Engineer  
Department of Transportation

Date