

## FUNDING AGREEMENT

THIS FUNDING AGREEMENT (this "Agreement") is made and entered into by and between PINELLAS COUNTY, a political subdivision of the State of Florida, which is located at 315 Court Street, 5<sup>th</sup> Floor, Clearwater, Florida 33756, hereinafter called "the County," and TIERRA VERDE COMMUNITY ASSOCIATION, INC., a non-profit Florida corporation in unincorporated Pinellas County, with its principal address located at 1275 Pinellas Bayway S, Second Floor, Tierra Verde, FL 33715, hereinafter called "TVCA."

### WITNESSETH:

WHEREAS, the County recognizes the recreational benefits TVCA provides the community;

WHEREAS, TVCA has demonstrated financial need for improvements at the TVCA Recreational Sports Complex (the "Complex"), which is located on lands owned by the County in unincorporated County at 540 Sands Point Drive S, Tierra Verde, FL 33715, and benefits residents of both incorporated and unincorporated areas of the County;

WHEREAS, the County has a license agreement with TVCA for Complex operation pursuant to which TVCA has sole responsibility for Complex maintenance;

WHEREAS, the County has a mutually beneficial relationship with TVCA and has provided TVCA with funds for Complex improvements in this and prior years; and

WHEREAS, the County accordingly desires to use Municipal Services Taxing Unit Grant Funds to assist TVCA with additional Complex improvements, specifically installation of a light-emitting diode (LED) sign (the "LED Sign") to notice TVCA business and Complex events.

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions set forth herein, the parties hereto mutually agree as follows:

1. Funding

The County shall pay TVCA up to \$20,000 ("Funding") for purchase and installation of the LED Sign. TVCA shall solicit at least three bids to construct and install the LED Sign and hire the contractor that submits the lowest bid. The total Funding amount shall be based upon this lowest bid plus any incidentals or unforeseeable expenses incurred by that contractor (and subcontractors); in no event, however, shall Funding exceed \$20,000.00. No Funding shall be paid until TVCA presents the County with written proof, which shall be deemed satisfactory at the County's sole discretion, that TVCA has solicited the requisite bids. TVCA shall provide the County with such satisfactory proof by December 31, 2018. If TVCA fails to provide the County with such satisfactory proof, the County may terminate this Agreement immediately in accordance with Section Twelve (12) below and no Funding shall be owed to TVCA. If TVCA does provide the County such satisfactory proof, the County shall provide TVCA with written confirmation of acceptance and pay TVCA the full amount of Funding owed in accordance with this Section One (1). TVCA shall expend all Funding by September 30, 2019.

In addition to the foregoing, no Funding shall be paid until TVCA presents the County with a written plan depicting the exact location and dimensions of the LED Sign and the County approves such plan in writing. TVCA shall utilize Funding exclusively for payment of the contractor that constructs and installs the LED Sign. After the LED Sign is installed, TVCA shall be solely responsible for operating and maintaining the LED Sign, as well as any costs associated therewith.

2. Reports

TVCA shall deliver reports to the County by (1) April 15, 2019 for the period October 1, 2018 through March 31, 2019, and (2) October 15, 2019 for the period April 1, 2019 through September 30, 2019. Each report shall be signed by an authorized TVCA representative and include a combined financial budget and expenditure report detailing how Funding has been and/or will be expended. Where no Funding activity has occurred within a preceding report period, TVCA shall provide a written explanation for such non-activity. If the County determines that a report or explanation is satisfactory, it shall provide written confirmation of acceptance to TVCA. If the County determines that a report or explanation is inadequate, it shall provide written notice of the defect(s) to TVCA; TVCA shall then have thirty (30) days from receipt of said notice of defect(s) to provide a corrected report or explanation to the County. If the County determines that a corrected report or explanation is satisfactory, it shall provide written confirmation of acceptance to TVCA. If TVCA does not provide the County with any report or explanation by the applicable deadline, or if the County deems that a corrected report or explanation inadequate, it may terminate this Agreement immediately in accordance with Section Twelve (12) below.

3. Records Retention

TVCA acknowledges that information and data it manages pursuant to this Agreement may be public records in accordance with Chapter 119, Florida Statutes, and agrees to comply therewith. TVCA shall not charge the County any special service or duplication fees under Chapter 119, Florida Statutes, should the County request public records pursuant to a public records request, audit, or otherwise. Notwithstanding the termination or expiration of this Agreement and in addition to any records retention requirements under Chapter 119, Florida

Statutes, TVCA shall retain all records relating to this Agreement until at least September 30, 2023.

4. Audit

TVCA shall utilize reasonable financial procedures, including adequate supporting documents, to account for the use of Funding. Notwithstanding the termination or expiration of this Agreement, all TVCA records relating to this Agreement shall be subject to audit without prior notice by the County until September 30, 2023. A copy of the TVCA's IRS 990 form may be requested by the County at any time.

5. Appropriation Requirement

This Agreement is not a general obligation of the County. No liability shall be incurred by the County, or any department, beyond the monies budgeted and available for this purpose. If funds are not appropriated by the County for any or all of this Agreement, the County shall not be obligated to pay any sums provided pursuant to this Agreement beyond the portion for which funds are appropriated. The County agrees to promptly notify TVCA in writing of such failure of appropriation, and upon receipt of such notice, this Agreement, and all rights and obligations contained herein, shall terminate without liability or penalty to the County.

6. Conflicts of Interest

No officer, member, or employee of the County, and no member of its governing body, and no other public official of the governing body of any locality where Funding is expended who exercises any functions or responsibility in the review or approval of the undertaking or carrying out of this Agreement, shall participate in any decisions relating to this Agreement which affect his personal interest or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested; nor shall any such officer, member, or employee of the County,

or any member of its governing body, or public official of the governing body, or public official of the governing body of any locality where such Funding is expended, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this Agreement, have any interest, direct, or indirect, in this Agreement or the proceeds thereof.

7. Liability

Nothing herein shall be construed to create a duty upon the County for Complex maintenance, for which the County expressly has no duty and shall undertake no action. Any duty or liability for Complex maintenance rests solely with TVCA. Notwithstanding the above, each party agrees to be liable for its own negligence under this Agreement. Nothing herein shall be construed as a waiver of Sovereign Immunity by the County or consent by the County to be sued by third parties in any manner arising from this Agreement, including but not limited to the contractor hired to construct and install the LED Sign. TVCA acknowledges that it is an independent party and not an agent of the County.

8. Compliance with Laws

TVCA shall comply with all applicable federal, state, county and local laws, ordinances, rules, and regulations in the performance of its obligations under this Agreement, including the procurement of permits, licenses, and certificates where required, and including but not limited to, laws related to Workers' Compensation, occupational safety and health and the environment, equal employment opportunity, and privacy of medical records or information.

9. Term

The term of this Agreement shall commence upon execution by both parties and, unless terminated earlier by the County in accordance with Section Twelve (12) below, expire upon

receipt by TVCA of the County's written confirmation of acceptance of TVCA's second six-month report as provided in Section Two (2) above.

11. Amendment

This Agreement may be amended by mutual written agreement of the parties at any time.

12. Termination by the County

Failure of TVCA to comply with any of the provisions herein shall be considered a material breach of the Agreement. Should the County determine in its sole discretion that a breach has occurred, this Agreement shall be subject to immediate termination by the County upon receipt of written notice of such termination by TVCA. Within thirty (30) days of receipt of such notice, TVCA shall, at the option and direction of the County as provided in such notice, refund up to the entire Funding amount paid by the County (potential maximum of \$20,000.00); this remedy is notwithstanding that this Agreement, except as otherwise provided herein, shall terminate immediately upon receipt of such notice. Nothing herein shall prevent the County from availing itself of all available legal remedies.

13. Assignment

TVCA shall perform this Agreement. No assignment shall be allowed without the prior written consent of the County.

14. Notice

All notices, invoices, approvals, and other correspondence required by law and this Agreement shall be in writing and delivered via e-mail or USPS Certified Mail to the following respective persons. Notice shall be considered delivered when reflected by an e-mail read receipt or a certified mail delivery receipt.

County:

Pinellas County Parks and Conservations Resources Department  
Attn: Paul Cozzie, Bureau Director  
12520 Ulmerton Road  
Largo, FL 33774  
[pcozzie@pinellascounty.org](mailto:pcozzie@pinellascounty.org)

TVCA:

Tierra Verde Community Association, Inc.  
Attn: Jerry Frulio, President  
1275 Pinellas Bayway S, Second Floor  
Tierra Verde, FL 33715  
[tassn@tampabay.rr.com](mailto:tassn@tampabay.rr.com)

15. Governing Law

The laws of the State of Florida shall govern this Agreement.

16. Insurance

TVCA shall provide insurance coverage and limits as shown on Attachment A:

Insurance Requirements attached.

IN WITNESS WHEREOF, the parties hereto or their lawful representatives have executed this Agreement on the day and year set forth under their signatures below:

TIERRA VERDE COMMUNITY ASSOCIATION, INC.:

PINELLAS COUNTY, FLORIDA:

By: 

By: 

Name/Title: Jerry Frulio  
President

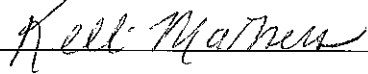
Name/Title: Barry A. Burton  
County Administrator

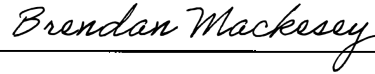
Date: 11/27/18

Date: January 3, 2019

ATTEST:

APPROVED AS TO FORM:

By: 

By: 

Name/Title: LCAM

Name/Title: Brendan Mackesey  
Assistant County Attorney



### Attachment A: Insurance Requirements

Notice: The TVCA must provide a certificate of insurance and endorsement in accordance with the insurance requirements listed below.

The TVCA shall obtain and maintain, and require any sub-contractors to obtain and maintain, at all times during its performance of the Agreement, insurance of the types and in the amounts set forth. For projects with a Completed Operations exposure, Contractor shall maintain coverage and provide evidence of insurance for two (2) years beyond final acceptance. All insurance policies shall be from responsible companies duly authorized to do business in the State of Florida and have an AM Best rating of A- VIII or better.

- a) The TVCAs current Certificate(s) of Insurance in accordance with the insurance requirements listed below. If TVCA does not currently meet insurance requirements from their broker or agent that any required insurance not provided at that time of execution will be in place prior to commencement of work.
- b) Prior to commencement of work, TVCA shall email certificate that is compliant with the insurance requirements to [InsuranceCerts@Pinellascounty.org](mailto:InsuranceCerts@Pinellascounty.org). The Certificate(s) of Insurance shall be signed by authorized representatives of the insurance companies shown on the Certificate(s). **A copy of the endorsement(s) referenced in paragraph d) for Additional Insured shall be attached to the certificate(s) referenced in this paragraph.**
- c) No work shall commence at any project site unless and until the required Certificate(s) of Insurance are received and approved by the County. Approval by the County of any Certificate(s) of Insurance does not constitute verification by the County that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate(s) of Insurance is in compliance with the requirements of the Agreement. County reserves the right to require a certified copy of the entire insurance policy, including endorsement(s), at any time during the Quote and/or contract period.

- d) All policies providing liability coverage(s), other than professional liability and workers compensation policies, obtained by the TVCA and any subcontractors to meet the requirements of the Agreement shall be endorsed to include Pinellas County a Political Subdivision of the State of Florida as an Additional Insured.
- e) If any insurance provided pursuant to the Agreement expires prior to the completion of the Work, renewal Certificate(s) of Insurance and endorsement(s) shall be furnished by the TVCA to the County at least thirty (30) days prior to the expiration date.
  - (1) TVCA shall also notify County within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, nonrenewal or adverse material change in coverage received by said TVCA from its insurer. Notice shall be given by certified mail to: **Pinellas County Risk Management 400 South Fort Harrison Ave Clearwater FL 33756**
  - (2) Should the TVCA, at any time, not maintain the insurance coverages required herein, the County may terminate the Agreement, or at its sole discretion may purchase such coverages necessary for the protection of the County and charge the TVCA for such purchase or offset the cost against amounts due to TVCA for services completed. The County shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the County to purchase such insurance shall in no way be construed to be a waiver of any of its rights under the Agreement.
- f) The County reserves the right, but not the duty, to review and request a copy of the Contractor's most recent annual report or audited financial statement when a self-insured retention (SIR) or deductible exceeds \$50,000.

If subcontracting is allowed under this Quote, the Prime TVCA shall obtain and maintain, at all times during its performance of the Agreement, insurance of the types and in the amounts set forth; and require any subcontractors to obtain and maintain, at all times during its performance of the Agreement, insurance limits as it may apply to the portion of the Work performed by the subcontractor; *but in no event will the insurance*

*limits be less than \$500,000 for Workers' Compensation/Employers' Liability, and \$1,000,000 for General Liability and Auto Liability if required below.*

- (1) All subcontracts between TVCA and its subcontractors shall be in writing and are subject to the County's prior written approval. Further, all subcontracts shall (1) require each subcontractor to be bound to TVCA to the same extent TVCA is bound to the County by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the subcontractor; (2) provide for the assignment of the subcontracts from TVCA to the County at the election of Owner upon termination of the Contract; (3) provide that County will be an additional indemnified party of the subcontract; (4) provide that the County will be an additional insured on all insurance policies required to be provided by the subcontractor except workers compensation and professional liability; (5) provide waiver of subrogation in favor of the County and other insurance terms and/or conditions as outlined below; (6) assign all warranties directly to the County; and (7) identify the County as an intended third-party beneficiary of the subcontract. TVCA shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this Section C and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents.
- g) Each insurance policy and/or certificate shall include the following terms and/or conditions:
- (1) The Named Insured on the Certificate of Insurance and insurance policy must match the entity's name that responded to the solicitation and/or is signing the agreement with the County. If TVCA is a Joint Venture per Section A. titled Joint Venture of this Quote, Certificate of Insurance and Named Insured must show Joint Venture Legal Entity name and the Joint Venture must comply with the requirements of Section C with regard to limits, terms and conditions, including completed operations coverage.

- (2) Companies issuing the insurance policy, or policies, shall have no recourse against County for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of Contractor.
- (3) The term "County" or "Pinellas County" shall include all Authorities, Boards, Bureaus, Commissions, Divisions, Departments and Constitutional offices of County and individual members, employees thereof in their official capacities, and/or while acting on behalf of Pinellas County.
- (4) The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by County or any such future coverage, or to County's Self-Insured Retentions of whatever nature.
- (5) All policies shall be written on a primary, non-contributory basis.
- (6) Any Certificate(s) of Insurance evidencing coverage provided by a leasing company for either workers compensation or commercial general liability shall have a list of covered employees certified by the leasing company attached to the Certificate(s) of Insurance. The County shall have the right, but not the obligation to determine that the TVCA is only using employees named on such list to perform work for the County. Should employees not named be utilized by TVCA, the County, at its option may stop work without penalty to the County until proof of coverage or removal of the employee by the contractor occurs, or alternatively find the TVCA to be in default and take such other protective measures as necessary.
- (7) Insurance policies, other than Professional Liability, shall include waivers of subrogation in favor of Pinellas County from both the TVCA and subcontractor(s).

The minimum insurance requirements and limits for this Agreement, which shall remain in effect throughout its duration and for two (2) years beyond final acceptance for projects with a Completed Operations exposure, are as follows:

(1) Workers' Compensation Insurance

Limit: Florida Statutory

Employers' Liability Limits:

Per Employee	\$ 500,000
Per Employee Disease	\$ 500,000
Policy Limit Disease	\$ 500,000

(2) Commercial General Liability Insurance including, but not limited to, Independent Contractor, Contractual Liability Premises/Operations, Products/Completed Operations, and Personal Injury.

Limits:

Combined Single Limit Per Occurrence	\$ 1,000,000
Products/Completed Operations Aggregate	\$ 2,000,000
Personal Injury and Advertising Injury	\$ 1,000,000
General Aggregate	\$ 2,000,000

(3) Business Automobile or Trucker's/Garage Liability Insurance covering owned, hired, and non-owned vehicles. If the TVCA does not own any vehicles, then evidence of Hired and Non-owned coverage is sufficient. Coverage shall be on an "occurrence" basis, such insurance to include coverage for loading and unloading hazards, unless TVCA can show that this coverage exists under the Commercial General Liability policy.

Limit:

Combined Single Limit Per Accident	\$ 1,000,000
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(4) Property Insurance TVCA will be responsible for all damage to its own property, equipment and/or materials.