

**FIRST AMENDMENT TO THE
INTERAGENCY AGREEMENT
WITH TIERRA VERDE COMMUNITY ASSOCIATION, INC.
FOR HIGHWAY LANDSCAPE MAINTENANCE**

This Amendment, made and entered into this _____ day of _____, 2017, by and between PINELLAS COUNTY, a political subdivision of the State of Florida, (hereafter the "County") and the Tierra Verde Community Association, Inc., a not-for-profit corporation organized under the laws of the State of Florida having its principal office at 1275 Pinellas Bayway, Tierra Verde, FL 33715 (hereinafter the "Agency") agree as follows:

WHEREAS, the County and the Florida Department of Transportation (hereinafter the "Department") entered into an agreement on June 6, 2017, whereby the Department imposed certain grant restrictions upon the County and agreed to reimburse the County up to \$1 million for landscaping enhancements to portions of State Road 679 (Pinellas Bayway South) right-of-way between Shore Boulevard and Yacht Club Lane in Pinellas County; and

WHEREAS, the Agency desires to have landscaping installed on Pinellas Bayway South and has agreed to assume maintenance obligations in consideration of the County installing such landscaping; and

WHEREAS, the terms of the County's agreement with the Department impose specific restrictions and requirements on the County, some of which must be passed on to the Agency.

NOW THEREFORE, for and in consideration of the mutual benefits that flow to each other, the parties covenant and agree to amend the above-referenced agreement (hereinafter "Original Agreement") entered into by the Parties on January 26, 2006, with the following provisions which amend or add the following numbered paragraphs to the Original Agreement as follows:

1. In addition to maintaining landscape improvements in accordance with Exhibit A to the Original Agreement, the Agency shall at all times maintain landscape improvements on those areas of the Pinellas Bayway (State Road 679) from W. Shore Boulevard to Yacht Club Lane between M.P. 6.664 and M.P. 8.202 as specified in the Construction Plans and Specifications attached hereto as Exhibit "B" and incorporated herein, being hereinafter referred to, along with the area specified in the Construction Plans and Specifications attached to the original agreement as Exhibit "A", collectively referred to as the "Project." Except as permitted in this agreement, the Agency shall not modify the Project as installed, without prior written approval of the County. In the event that any portion of the Project is at any time determined by the County to not be in conformance with all applicable laws, rules, procedures and guidelines of the County, or is determined to be interfering with the safe and efficient operation of any transportation facility, or is otherwise determined to present a danger to public health, safety or

welfare, said portion shall be immediately brought into departmental compliance at the sole cost and expense of the Agency.

2. Specifically, the Agency agrees to carry out the following maintenance responsibilities:

- (a) removal of litter from all landscaped areas of the Project;
- (b) watering and fertilization of all plants;
- (c) mulching of all plant beds;
- (d) keeping plants as free as practicable from disease and harmful insects;
- (e) weeding the Project premises routinely;
- (f) mowing and/or cutting grass within the areas delineated on the landscape plans;
- (g) pruning all plants, specifically removing all dead or diseased parts of plants and pruning of all parts of plants which present a visible hazard to those using the roadway;
- (h) replacement, or at the Agency's option, removal of all dead or diseased plants or other parts of the Project that have fallen below Project standards. All replacements should be of substantially the same grade, size and specification as originally provided for in the plans and specifications, unless otherwise authorized by the County;
- (i) routine maintenance as prescribed by the manufacturer of all parts of any Project irrigation system; and
- (j) trim, alter, relocate or remove landscaping as needed for any future Intelligent Transportation System (ITS).

4. The County and the Department shall be notified two (2) business days in advance of commencing any scheduled maintenance activities. The Agency shall notify the County by contacting Director of Transportation, Pinellas County, 22211 US 19 N, Building 1, Clearwater, FL 33765 or such other person as the County may from time to time designate by written notice to the Agency. The Agency shall notify the Department by contacting the FDOT Maintenance Engineer, at Florida Department of Transportation, MS 7-1200, 11201 N. McKinley Dr., Tampa, FL 33612-6456 or at such other address as the County from time to time notify the Agency that the Department has designated.

5. Prior to commencing any reconstruction, maintenance, or renovation activities on the Project, the Agency is to notify the County and receive written approval of same and notify the County and all the utilities of their work schedule so that affected utilities can be field located and marked to avoid damage. Work shall not start until the County notifies the Agency that the Department has issued a Design Approval and Notice to Proceed with Construction letter to the County.

6. If the Agency desires to position vehicles, equipment, or personnel, or to perform maintenance activities closer than fifteen (15) feet to the edge of pavement, or to close a traffic lane, Maintenance of Traffic shall be in accordance with the Project plans and all applicable Department's Maintenance of Traffic Regulations. The Agency shall have

a Worksite Traffic Supervisor certified in Advanced Maintenance of Traffic supervise the set up and operation of Maintenance of Traffic devices at the site of the construction or maintenance activity. Prior to proceeding with construction, the Agency shall provide the Department with the Worksite Traffic Supervisor's certification.

11. To the extent provided by law, the Agency shall indemnify, defend, and hold harmless the Department and the County and all of its officers, agents and employees from any claim, loss, damages, cost, charge, or expense arising out of any act, error, omission, or negligent act by the Agency, its agents, or employees, during the performance of the Agreement, except that neither the Agency, its agents, or its employees will be liable under this paragraph for any claim, loss, damage, cost, charge or expense arising out of any act, error, omission, or negligent act by the Department and/or County or any of its officers, agents, or employees during the performance of the Agreement. When either party receives notice of a claim for damages that may have been caused by the other party in the performance of services required under this Agreement, that party will immediately forward the claim to the other party. Each party will evaluate the claim, and report its findings to each other within fourteen working days and jointly discuss options in defending the claim. A party's failure to promptly notify the other of a claim will not act as a waiver of any right herein.

17. The Agency agrees to comply with Florida Statutes, Section 20.055(5) (2017).

18. The Agency shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Agency during the term of this Agreement.

19. Insurance: Agency shall maintain the following insurance, and/or require their contractors to maintain:

- A. Commercial General Liability, including, but not limited to, Independent Contractor, Contractual, Premises/Operations and Personal Injury covering liability assumed under indemnification provisions of this License, with limits of liability for personal injury and/or bodily injury, including death, and property damage of not less than \$1,000,000 each occurrence; \$2,000,000 general aggregate Coverage shall be on an "occurrence" basis.
- B. Comprehensive Automobile and Truck liability, if vehicles are used in performance of work, covering owned, hired and non-owned vehicles with minimum limits of \$1,000,000 each accident aggregate for bodily injury including death, and property damage. Coverage shall be on an "occurrence" basis, such insurance to include coverage for loading and unloading hazards.
- C. Workers' Compensation and Employers' Liability, where applicable, in at least the limits required by Florida law, including Employers' Liability, where applicable, of not less than \$500,000.
- D. A Certificate of Insurance shall be filed annually with Pinellas County Public Works Department, Director of Transportation, 22211 US 19N, Building 1, Clearwater, Florida 33765. Pinellas County Board of County

Commissioners, and Florida Department of Transportation (Department), shall be endorsed to the required policy or policies as an additional insured, except for Workers' Compensation. Such coverage shall be primary and the policy clause "Other Insurance" shall not apply to any insurance coverage currently held by County, to any such future coverage, or to County's Self Insured Retentions of whatever nature.

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IN WITNESS WHEREOF, the Parties hereto, governed by the laws of Florida, have caused these presents to be executed by their duly authorized officers and their official seals hereto affixed, the day and year first above written.

Tierra Verde Community Association, Inc.

PINELLAS COUNTY, by and through its County Administrator

By: _____
Print Name: _____
Title: _____

By: _____
Mark S. Woodard
County Administrator

ATTEST: _____