

**SECOND AMENDMENT TO MAINTENANCE AND MANAGEMENT AGREEMENT**

THIS SECOND AMENDMENT TO MAINTENANCE AND MANAGEMENT AGREEMENT is made this 5 day of February, 2020, by and between PINELLAS COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY" and "County," which terms shall include County's designated agent(s) and/or successors in interest, and PALM HARBOR COMMUNITY SERVICES AGENCY, INC., a Florida non-profit corporation, hereinafter referred to as "PHCSA" or "AGENCY," jointly referred to as the "Parties."

WHEREAS, the Palm Harbor Community Services District, a municipal servicing taxing unit, hereinafter referred to as "MSTU", was created to fund recreation and library services for the citizens of Palm Harbor; and

WHEREAS, PHCSA is the non-profit corporation contracted to administer and operate the MSTU; and

WHEREAS, the Parties along with the Greater Palm Harbor Chamber of Commerce entered into that certain Maintenance and Management Agreement (MMA) in December 1988 to insure and maintain the neighborhood park facility, Pop Stansell Park, located at 797 Florida Avenue, Palm Harbor, Florida 34683; and

WHEREAS, on September 10, 2012 an amendment was signed by the Parties relinquishing the Greater Palm Harbor Chamber of Commerce from any further responsibilities under the MMA and removing them from the MMA; and

WHEREAS, the restrooms and the pier were originally constructed by the COUNTY, and the band shell was significantly improved by the COUNTY after its original construction.

WHEREAS, the Parties wish to amend the MMA to define responsibility for future capital improvements.

NOW THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, and the promises and covenants contained herein, the Parties agree as follows:

1. Delete paragraph 4, "Maintenance of the Park" in its entirety and replace with the following:

PHCSA is responsible for the general and routine maintenance and repair of all the buildings and grounds including but not limited to plumbing, electrical, HVAC, telecommunication wiring and installation, building systems, structural and non-structural aspects of the buildings, including but not limited to walls (bearing and non-bearing), floors, roof, windows, ceilings, painting interior and exterior, landscaping, site drainage, and parking lots.

**COUNTY shall be responsible for capital improvement replacements to the premises, subject structures identified in attached Exhibit "B", defined as improvements that add value to an existing capital asset either by lengthening its estimated useful life or increasing its service capacity. Capital improvement replacements include roof, building envelope, HVAC systems, elevators, fire alarm systems, exterior doors, and windows, but only if said replacements are not determined to be the result of action of PHSCA, its agents, employees, contractors, invitees, licensees, customers, or its clients. Replacement schedule shall be at COUNTY's sole discretion and shall be based on inspection and condition assessment by the COUNTY, conducted annually. PHSCA shall be responsible to maintain assets in conformance with manufacturer's specifications, use only OEM parts for repairs, and provide COUNTY maintenance and repair records for review at annual inspection.**

In the event COUNTY pays any monies required to be paid by PHCSA hereunder, COUNTY shall demand repayment of same from PHCSA within ten (10) days of payment and PHCSA shall make such payment within ten (10) days of receipt of demand. PHCSA's failure to timely reimburse COUNTY shall be deemed a breach of contract.

PHSCA shall not construct any improvements without the written consent of the COUNTY. PHCSA shall not have any power or authority to create any lien or permit any lien to attach to the present estate, reversion or other estate of COUNTY in the premises or improvements thereon. PHCSA is hereby charged with the responsibility of notifying all materialmen, contractors, artisans, mechanics and laborers and other persons contracting with PHCSA with respect to the premises or any part thereof, that such persons must look

to PHCSA to secure payment of any bill for work done or material furnished to PHCSA or for any other purpose during the term of this Agreement. If a lien attaches to the premises or other estate of the COUNTY as a result of work done by or on behalf of PHCSA, PHCSA shall satisfy the same.

2. Delete language in paragraph 5 "Insurance Provided" of original agreement and replace with the insurance requirements set forth in Exhibit "A" attached hereto and incorporated herein by reference.
3. Amend paragraph 6, "Indemnification," by deleting reference to "attorney's fees" and adding the following: "Nothing herein shall be construed as a waiver of COUNTY's sovereign immunity, subject to §768.28, Florida Statutes."
4. Amend paragraph 9, "Cancellation and Change," by deleting reference to cancellation upon the written consent of both parties and replace with the following: "The COUNTY may terminate this Agreement at any time by providing PHCSA at least ninety (90) days' notice of termination. Upon termination, the COUNTY shall assume responsibility of ongoing maintenance as referenced in section 7 herein."
5. Add paragraph 12, "Taxes," to read as follows:

In the event that any ad valorem, rental, sales, or similar taxes or special assessments are levied or placed on the premises due to the existence of this agreement, PHCSA shall pay all such taxes or special assessments so imposed.
6. This amendment shall take effect on January 1, 2020.
7. Except to the extent specifically modified herein all other terms and provisions of the Maintenance and Management Agreement and prior amendments thereto shall remain in full force and effect.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the undersigned have executed this Second Amendment to Maintenance and Management Agreement on the day and year first written above.

PALM HARBOR COMMUNITY SERVICES AGENCY, INC.

WITNESSES:

By: 

Print Name: Andrea Strothers

Print Name: Kelli Snow

Title: Site Lead

Title: Chairman PHCSA

Print Name: DEBORA GARCIA

Title: H.R.

PINELLAS COUNTY, FLORIDA

By: \_\_\_\_\_  
Chairman


Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM

By:   
Office of the County Attorney

**Exhibit "A" INSURANCE REQUIREMENTS**

**Notice:** PHCSA must provide a certificate of insurance and endorsement in accordance with the insurance requirements and procedures listed below.

- a) The PHCSA current Certificate(s) of Insurance in accordance with the insurance requirements listed below. If PHCSA does not currently meet insurance requirements verification 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, PHCSAs shall email their certificate of Insurance 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 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 Term of the Agreement.
- d) 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 PHCSA to the County at least thirty (30) days prior to the expiration date.
  - (1) PHCSA 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 PHCSA from its insurer. Notice shall be given by certified mail to: **Pinellas County Risk Management 400 South Fort Harrison Ave Clearwater FL 33756**; Nothing contained herein shall absolve PHCSA of this requirement to provide notice.
  - (2) Should the PHCSA, at any time, not maintain the insurance coverages required herein, the County may terminate the Agreement the County, at its sole discretion, may purchase such coverages necessary for the protection of the County and charge the PHCSA for such purchase or offset the cost against amounts due to PHCSA 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.
- e) The County reserves the right, but not the duty, to review and request a copy of the PHCSA most recent annual report or audited financial statement when a self-insured retention (SIR) or deductible exceeds \$50,000.

<b>Exhibit "A" INSURANCE REQUIREMENTS</b>
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- f) If subcontracting is allowed under the terms of the Agreement, the PHCSA 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 sub-PHCSA 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 sub-PHCSA; *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 PHCSA and its sub-PHCSA shall be in writing and may be subject to the County's prior written approval. Further, all subcontracts shall:
- (a.) Require each sub-PHCSA to be bound to PHCSA to the same extent PHCSA is bound to the County by the terms of the Agreement, as those terms may apply to the portion of the Work to be performed by the sub-PHCSA;
  - (b.) Provide for the assignment of the subcontracts from PHCSA to the County at the election of Owner upon termination of the Agreement;
  - (c.) Provide that any Party listed in (h)(3) below will be an additional indemnified party of the subcontract;
  - (d.) Provide that any Party listed in (h)(3) below will be an additional insured on all insurance policies required to be provided by the sub-PHCSA except workers compensation and professional liability;
  - (e.) Provide waiver of subrogation in favor of any Party listed in (h)(3) below and other insurance terms and/or conditions as outlined below;
  - (f.) Assign all warranties directly to the County; and
  - (g.) Identify the County as an intended third-party beneficiary of the subcontract.
- (2) PHCSA shall make available to each proposed sub-PHCSA, prior to the execution of the subcontract, copies of this Agreement to which the sub-PHCSA will be bound by same requirements and identify to the sub-PHCSA any terms and conditions of the proposed subcontract which may be at variance with the Agreement.
- g) The PHCSA shall 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, PHCSA shall maintain coverage and provide evidence of insurance for two (2) years beyond final acceptance. All insurance policies shall be from companies Licensed to do business in the State of Florida and have an AM Best rating of A- VIII or better.
- h) 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 responding PHCSA is a Joint Venture as outlined in the solicitation the certificate of Insurance and Named Insured must show Joint Venture Legal Entity name and the Joint Venture must comply with the same requirements with regard to limits, terms and conditions, including completed

**Exhibit "A" INSURANCE REQUIREMENTS**

operations coverage.

- (2) Any company 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 awarded PHCSA.
  - (3) All policies providing liability coverage(s), other than professional liability and workers compensation policies, obtained by the PHCSA and any sub-PHCSAs 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. Indicating coverage on certificate boxes is not adequate. A copy of the actual endorsement or policy declaration page indicating such coverage must be submitted along with Certificate.
  - (4) 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.
  - (5) 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.
  - (6) All policies shall be written on a primary, non-contributory basis.
  - (7) 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 PHCSA is only using employees named on such list to perform work for the County. Should employees not named be utilized by PHCSA, 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 PHCSA to be in default and take such other protective measures as necessary.
  - (8) Insurance policies, other than Professional Liability, shall include waivers of subrogation in favor of Pinellas County from both the PHCSA and sub-PHCSA(s). Indicating such coverage on certificate is not adequate. A copy of the actual endorsement or policy declaration page indicating such coverage must be submitted along with Certificate.
  - (9) For acceptance of any coverage included within another policy required herein, a statement notifying the certificate holder must be included on the certificate of insurance and the total amount of said coverage per occurrence must be greater than or equal to the amount of required limits per occurrence by line of coverage
- i) 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

<b>Exhibit "A" INSURANCE REQUIREMENTS</b>
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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 Aggregate	\$2,000,000
Personal and Advertising Injury General	\$1,000,000
Aggregate	\$2,000,000

(3) Property Insurance PHCSA will be responsible for all damage to its own property, equipment and/or materials.