

SECOND AMENDMENT TO MAINTENANCE AND MANAGEMENT AGREEMENT

THIS SECOND AMENDMENT TO MAINTENANCE AND MANAGEMENT AGREEMENT is made this ____ day of _____, 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: _____

Print Name: _____ Kelli Snow

Title: _____

Title: _____ Chairman PHCSA

Print Name: _____

Title: _____

PINELLAS COUNTY, FLORIDA

By: _____

Chairman

Print Name: _____

Title: _____

Print Name: _____

Title: _____

APPROVED AS TO FORM

By: *Chelsea Mandy*
Office of the County Attorney