

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 prior years; and

WHEREAS, the County accordingly desires to use Municipal Services Taxing Unit Grant Funds to assist TVCA with Complex improvements, specifically tennis court resurfacing ("Resurfacing").

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

1. Funding

The County shall pay TVCA up to \$15,000 (“Funding”) for Resurfacing at the Complex. TVCA shall solicit at least three bids to perform the Resurfacing and hire the contractor that submitted 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 \$15,000.00. 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, by January 31, 2019, 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.

TVCA shall utilize Funding exclusively for payment of contractors that perform the Resurfacing. TVCA shall communicate and collaborate with other organizations providing recreational opportunities that are receiving or have received funding from the County, including, but not limited to, Cross Bayou Little League Association, Inc., Seminole Junior Warhawks Athletic Association, Inc., and Seminole Youth Athletic Association, Inc., whose missions and

objectives are commensurate with TVCA's commitment to enhancing youth recreational opportunities.

2. Reports

TVCA shall deliver reports to the County by (1) April 15, 2019 for the period September 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 contractors hired to perform the Resurfacing. TVCA acknowledges that it is an independent party and not an agent of the County.

8. Nondiscrimination

TVCA shall not discriminate against any applicant for employment or employee with respect to recruitment, selection, promotion, transfer, pay, tenure, discipline, discharge, or any other terms, conditions or privileges of employment or any matter directly or indirectly related to employment in violation of federal, state, or local law, with respect to that person's age, gender (including gender identity or gender expression), race, color, religion, national origin, disability, sexual orientation, pregnancy, political affiliation or military status or any other characteristic protected by law. TVCA shall, during the performance of this Agreement, comply with all

applicable provisions of federal, state and local laws and regulations pertaining to prohibited discrimination.

9. 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.

10. Term

The term of this Agreement shall commence upon execution by both parties and, unless terminated earlier by the County in accordance with Section Thirteen (13) 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 Three (3) 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 \$15,000.00); 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)

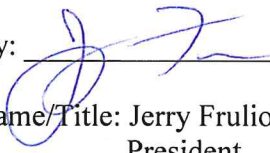
15. Governing Law

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

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:   
Name/Title: Jerry Frulio  
President


By: \_\_\_\_\_  
Name/Title: Mark S. Woodard  
County Administrator

Date: 10/5/18

Date: \_\_\_\_\_

ATTEST:

APPROVED AS TO FORM:

By:   
Name/Title: Kelli Mathers, LCAM

By: Brendan Mackesey  
Name/Title: Brendan Mackesey  
Assistant County Attorney