

## **BAYWAY LANDSCAPE FUNDING AGREEMENT**

**THIS AGREEMENT** (“**Agreement**”) is made and entered into as of the 29 day of June, 2018 (“**Effective Date**”), by and among Pinellas County, a political subdivision of the State of Florida (“**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 (the “**Association**”) (each of the foregoing, a “**Party**”, and, collectively, the “**Parties**”).

**WHEREAS**, in accordance with the Interagency Agreement with Tierra Verde Community Association, Inc. for Highway Landscape Maintenance entered into on January 26, 2006, (“**Interagency Agreement**”), the County installed landscaping on the Pinellas Bayway and the Association maintains the landscaping;

**WHEREAS**, the Parties have determined that the landscaping benefits both Parties by beautifying an area which serves as a gateway to the County’s Fort De Soto Park, as well as to the beaches; and

**WHEREAS**, the costs of maintenance exceed that anticipated by the Association and the County desires to help defray the maintenance costs.

**NOW, THEREFORE**, for and in consideration of the mutual benefits that flow to each other, the Parties covenant and agree as follows:

1. **RECITALS.** The above recitals are true and correct and are adopted as an integral part of this Agreement.
2. **CONDITIONS PRECEDENT TO THE DISBURSEMENT OF FUNDS BY THE COUNTY.**

The disbursement of any portion of the County Funding Amount for the maintenance of landscaping is subject to the following conditions:

A. The Association continues to maintain the landscaping in accordance with the Interagency Agreement, as previously amended and as may be subsequently amended.

B. All funds and funding amounts available through this Agreement are subject to an annual appropriation. In the event sufficient budgeted funds are not available for a new fiscal period, this Agreement shall terminate on the last day of the current fiscal period without penalty or expense to the County.

3. **COUNTY’S RESPONSIBILITY.**

The County shall pay the Association Eighteen Thousand Dollars (\$18,000.00) annually to offset the costs of landscape maintenance as follows:

- (1) Payments shall be made only when the conditions precedent set forth in paragraph 2 have been made;
- (2) The initial payment shall be made within thirty (30) days of execution of this Agreement or within thirty (30) days of October 1, 2018, whichever is later; and

- (3) Subsequent payments shall be made within thirty (30) days of receipt of an invoice from the Association.

#### **4. ASSOCIATION'S RESPONSIBILITIES.**

A. In addition to maintaining the landscaping in accordance with the minimum standards set forth in the Interagency Agreement, the Association specifically agrees that the funding provided by the County will not be the sole source of funding for the annual cost of maintenance of the landscaping.

B. Beginning October 1, 2018, the Association shall annually submit an invoice covering the period of October 1 through September 30, which coincides with the County's Fiscal Year.

C. All of the Association's records related to the expenditure of funds for the maintenance of landscaping shall be open to inspection and subject to reproduction by the County during normal working hours to the extent necessary to permit adequate evaluation and verification of the proper use of the funding provided by the County as well as the Association's expenditure of additional funds. Such records shall include, but not be limited to, accounting records, written policies and procedures, original estimates, any supporting evidence necessary to the expenditure of funds related to this Agreement, and any records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement.

D. For the purpose of audits, inspections, examinations and evaluations, the County shall have access to records from the effective date of this Agreement, for the duration of this Agreement, at a minimum of thirty-six (36) months after the date of final payment by the County, or as otherwise required by applicable law. The Association hereby agrees to maintain records in safe and dry storage.

#### **5. EFFECTIVE DATE, TERM AND TERMINATION.**

A. This Agreement shall take effect immediately upon execution by both Parties and shall continue in full force and effect for five (5) years, with two (2) options of renewal for the same term, unless terminated.

B. Unless terminated due to fiscal non-funding in accordance with the provisions of Section 2, this Agreement may be terminated by either Party upon thirty (30) days written notice. If the Association desires to terminate before the end of the fiscal year (September 30) for which payment has been made, the Association shall refund the County's funding at the rate of One Thousand Five Hundred Dollars (\$1,500.00) per month for each month, or part thereof, remaining in the fiscal year.

C. The Termination of this Agreement for any reason shall not relieve the Parties of their independent obligations pursuant to the Interagency Agreement.

**6. AMENDMENT OR MODIFICATIONS**

This Agreement shall not be amended or modified without written consent by each Party hereto.

**7. DEFAULT**

Should either Party fail to perform in accordance with the terms of this Agreement, upon written notice of default, the defaulting Party shall have thirty (30) days to cure the default. If the default is not cured, this Funding Agreement shall immediately terminate. Should this Agreement terminate due to the Association's failure to cure a default, the Association shall refund the County's funding in accordance with the provisions of Section 5B.

**8. ENTIRE AGREEMENT**

This Agreement, shall constitute the entire Agreement between the Parties. Any prior understanding or representation of any kind preceding the date of this Agreement and not expressly incorporated herein shall not be binding on either Party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

PINELLAS COUNTY,  
by and through its County Administrator

Tierra Verde Community Association

By: Mark S. Woodard  
Mark S. Woodard, County Administrator

By: [Signature]  
President, Tierra Verde Community Association

Date: June 29, 2018

Date: 6-20-18

Witness: Della Klug

Witness: [Signature]

Date: June 29, 2018

Date: 6-20-18

Legal Review

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Approval As To Form

APPROVED AS TO FORM

By: [Signature]  
Office of the County Attorney