

MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT made by and between PINELLAS COUNTY, a political subdivision of the State of Florida (hereinafter referred to as the County) and the CITY OF CLEARWATER, a municipal corporation of the State of Florida (herein referred to as the City).

RECITALS

WHEREAS, a section of Drew Street median County Numbered Road (CR 528) located at Drew Street and Old Coachman Road is in need of landscaping; and

WHEREAS, the City desires to beautify the median on Drew Street which will include landscaping and irrigation; and

WHEREAS, the County will be approving the construction plans submitted by the City; and

WHEREAS, the County is in agreement that the City can install landscaping and an irrigation system pursuant to the approved engineering plans and the corresponding Right-of-Way Utilization Permit RUP18-0806 both of which are adopted and incorporated herein by reference.

NOW THEREFORE, in consideration of the mutual covenants herein contained and the benefits to be derived by the Parties to this Agreement and other good and valuable consideration hereby acknowledged, the Parties agree as follows:

SECTION 1 COUNTY'S COMMITMENT

1. The County hereby agrees that the City can install landscaping and an irrigation system pursuant to approved engineering plans for work to be done within the Drew Street median.
2. The County shall provide timely review of the City's application for Right-of-way Utilization permits relative thereto. Said applications shall not be unreasonably denied by the County.

SECTION 2 CITY'S COMMITMENT

1. The City shall install the landscaping and irrigation system within the Drew Street median in accordance with Right-of-way Utilization Permit RUP18-0806.
2. The City agrees to maintain said improvements at all times and, at its expense, including, but not necessarily limited to, the landscaping and irrigation system.

If contracting with a third party for the construction, installation, and/or maintenance permitted herein, the City shall require that the third party carry insurance in an amount equal to or greater than that specified by the County's Risk Management Department and

that the County be added as a first party primary additional insured to its Commercial General Liability Policy.

3. The City shall indemnify and cause any third-party contractor to indemnify the County.
4. The City agrees to indemnify, hold harmless, pay on behalf of, defend the County and pay the costs of defense of the County and its agents and employees from and against all claims, damages, losses and expenses, including, arising out of or resulting from the City's maintenance of the permitted facilities. The City consents to be sued by third parties for any alleged failure to properly maintain the landscaping and irrigation system should said claim arise during the term of this agreement. Nothing herein shall be construed as a waiver of sovereign immunity.
5. Any contract entered into by the City in furtherance of the activities permitted by this Agreement shall contain the following indemnification language:

"The Contractor agrees to indemnify, hold harmless, pay on behalf of, defend Pinellas County, its officers, agents, and employees, and pay the costs of defense of Pinellas County and its agents and employees from and against all claims, damages, losses and expenses arising out of or resulting from the Contractor's actions pursuant to this Agreement."

SECTION 3 EFFECTIVE DATE

This Agreement shall take effect immediately upon filing with the Clerk of the Circuit Court in Pinellas County in accordance with Florida Statutes, Section 163.01(11) (2016) and shall continue in full force and affect unless and until terminated. Should the City opt to discontinue maintenance of the improvements constructed pursuant hereto, the City shall provide thirty (30) days written notification to the County and additionally shall remove, at the City's sole expense, the improvements and restore the County's property to its original condition.

SECTION 4 AMENDMENT OR MODIFICATIONS

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

SECTION 5 DEFAULT

Should the City not abide by the terms outlined herein, the City shall automatically be found in default of this Agreement and the corresponding Right-of-way Utilization Permit. Upon written notice given by the County, the City shall have 60 days to cure the default. If the default is not cured, this Agreement and corresponding Right-of-way Utilization Permit shall immediately terminate unless otherwise agreed in writing by the County. Should the County choose to remove

the improvements made by the City and restore the County's property to its original condition, the City shall be liable for all costs associated therewith.

SECTION 6 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.

SECTION 7 MISCELLANEOUS PROVISIONS

1. If any word, clause, sentence or paragraph of the Agreement is held invalid, the remainder of this Agreement shall remain in full force.
2. This Agreement shall be construed in accordance with the laws of the State of Florida and venue for any action brought pursuant hereto shall be in Pinellas County.
3. Nothing herein shall be construed to create any third party beneficiary rights in any person not a party to this Agreement.
4. All notices required by law and by this Agreement to be given by one (1) party to the other shall be in writing and shall be sent to the following respective addresses:

COUNTY: Rahim Harji, PE
Director of Public Works
Department of Public Works
22211 US Highway 19
Clearwater, FL 33756

Phone: 727-464-8900
Email: rharij@pinellascounty.org

CITY: Kevin Dunbar
Director, Parks and Recreation
City of Clearwater
100 S Myrtle Avenue
Clearwater, FL 33756

Phone: 727-562-4823
Email: Kevin.dunbar@myclearwater.com

5. Both Parties acknowledge that the records relating to this Agreement and the carrying out of the obligations hereunder are subject to the provisions of Florida Statutes, Chapter 119.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date of the last signature as set forth below.

CITY OF CLEARWATER, FLORIDA

George N. Cretelos
Mayor

By: _____
William B. Horne, II
City Manager

Approved as to form:

Attest:

Owen Kohler
Assistant City Attorney

Rosemarie Call
City Clerk

PINELLAS COUNTY, FLORIDA
By and through its County Administrator

By: _____
Mark S. Woodard, County Administrator

Date: _____