

**St. Petersburg City Council Agenda Item**  
**Meeting of October 18, 2018**  
**Consent Agenda**

**To: The Honorable Chair Lisa Wheeler-Bowman and Members of City Council**

**Subject:**

Approving a supplemental appropriation in the amount of \$125,000 from the unappropriated balance of District 8 in the Multimodal Impact Fees Capital Improvement Fund (Fund 3071) to construct a connector roadway, authorizing the Mayor or his designee to execute Construction Agreements between the City of St. Petersburg, Ulmerton Enterprises, Inc., and Extended Stay LLC; and to execute all other documents necessary to effectuate this resolution; and providing an effective date.

**Explanation:**

In May of 2004, the City of St. Petersburg (“City”) entered into an Annexation Agreement with EIC Realty, Inc. and Ulmerton Enterprises, Inc. (“Owners”) to incorporate certain land north of Ulmerton Road into the City of St. Petersburg from an unincorporated area of Pinellas County. Included in the agreement were several City-funded improvements to enhance the newly annexed area including roadway improvements, pedestrian streetlights, landscaping, directory signage and the construction of a new driveway entrance from Ulmerton Road into one of the annexed parking lots, subject to permitting by the Florida Department of Transportation (“FDOT”). It was contemplated in the agreement that all improvements would be complete within three years of the effective date.

The need for a driveway from Ulmerton Roadway (“Ulmerton”) into what is now known as Feather Sound Square (“Square”) was well-established and continues to exist today. With no direct access to Ulmerton Road, essentially all trips to and from the Square must occur through the Egret Boulevard (“Egret”) and Ulmerton intersection. Not only does this make for longer than desired trip lengths, it adds to significant delay that continues to occur at this intersection despite the addition of a second southbound left-turn lane that was constructed in 2016. As required by the Annexation Agreement, the City worked with the Owners to seek a driveway permit from FDOT. However, the permit was denied due to spacing requirements between the proposed driveway and the intersection of Ulmerton and Egret due to safety concerns.

Based on the permit denial, City staff worked with the owners on an alternative connectivity option that would allow more direct access to the businesses located within the Square. The solution was to establish a connector between the Homestead Studio Suites driveway from Ulmerton to the Square parking lot, parallel with Ulmerton that, along with existing pavement already in place, would serve as a short access road. This solution was deemed feasible, cost-effective, and a logical alternative to the new driveway entrance that was not achievable. In April of 2011, the City and Owners agreed that the connector would satisfy the driveway-related requirements of the Annexation Agreement. Unfortunately, the validity of a 1981 easement that would have granted rights to the cross-access was called into question by the Homestead Studio Suites owner. After review, the City did not construct the roadway due to the dispute, and in May of 2012 informed the Owners that work on the connector was terminated.

On August 3, 2017, a Sixth Judicial Pinellas County Circuit Court Judge signed an Order Approving Stipulation for Settlement and Order of Dismissal regarding litigation that was ongoing between the Extended Stay owners and the Square owners. The order validates an “Access Easement Agreement” between the two owners that was written specifically to allow the connection that was previously agreed to between the City and Square owners. The Owners requested that the City build the connector now that the legal matter had been clearly settled.

From a safety and traffic flow perspective, City staff deems the FDOT determination to deny the additional driveway reasonable and prudent. While often not a property owner's preference, reducing driveways and increasing cross-access between developments is a design concept that is encouraged throughout the City to improve safety and shorten trip lengths. In fact, the County's Multimodal Impact Fee Ordinance encourages such connections by allowing developers to deduct the cost of such improvements as a credit against the normally calculated fee. The proposed connection will indeed shorten trips to and from Feather Square and reduce delay at the Egret/Ulmerton intersection compared to existing conditions and is a more appropriate way to address access than the originally contemplated driveway. While at this time there may be no legal requirement that the City construct the connector, it is in the City's best interest to realize the benefits of the project for traffic flow on the public roadways and the safety of the driving public. At the same time the city will be able to honor and fulfill the intent of the original Annexation Agreement. Once the City constructs the connector, all future maintenance obligations will become that of the property owners. City staff has determined that multimodal impact fee revenue is an appropriate funding source for the connector. The unappropriated balance for District 8 in the Multimodal Impact Fees Capital Improvement Fund (Fund 3071) is \$283,000. The subject properties are located within the boundary of District 8.

**Cost/Funding:**

The design for the project was substantially completed when previously contemplated. The design will be updated as needed and construction can be accomplished with city forces for a total project budget of \$125,000. Funds are available from the unappropriated balance of District 8 in the Multimodal Impact Fees Capital Improvement Fund (Fund 3071).

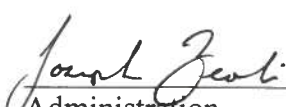

**Recommendations:**

Administration recommends that Council adopt the attached Resolution approving a supplemental appropriation in the amount of \$125,000 from the unappropriated balance of District 8 in the Multimodal Impact Fees Capital Improvement Fund (Fund 3071) to construct a connector roadway, authorizing the Mayor or his designee to execute Construction Agreements between the City of St. Petersburg, Ulmerton Enterprises, Inc., and Extended Stay LLC; and to execute all other documents necessary to effectuate this resolution; and providing an effective date.

**Attachments:**

- (1) Resolution
- (2) Aerial of connector location
- (3) Agreement

**Approvals:**

  
Administration 

10/5/18  
Date

  
Budget  
00409072.doc v4

10/05/18  
Date

**RESOLUTION NO. 2018-\_\_\_\_\_**

**A RESOLUTION APPROVING A SUPPLEMENTAL APPROPRIATION IN THE AMOUNT OF \$125,000 FROM THE UNAPPROPRIATED BALANCE OF DISTRICT 8 IN THE MULTIMODAL IMPACT FEES CAPITAL IMPROVEMENT FUND (FUND 3071) TO CONSTRUCT A CONNECTOR ROADWAY; AUTHORIZING THE MAYOR OR HIS DESIGNEE TO EXECUTE CONSTRUCTION AGREEMENTS BETWEEN THE CITY OF ST. PETERSBURG, ULMERTON ENTERPRISES, INC., AND EXTENDED STAY LLC; AND TO EXECUTE ALL OTHER DOCUMENTS NECESSARY TO EFFECTUATE THIS RESOLUTION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of St. Petersburg (“City”) entered into an Annexation Agreement with EIC Realty, Inc. and Ulmerton Enterprises, Inc. (“Owners”) to incorporate certain land north of Ulmerton Road into the City of St. Petersburg from an unincorporated area of Pinellas County in May of 2004; and

**WHEREAS**, included in the agreement were several City-funded improvements to enhance the newly annexed area including the construction of a new driveway entrance from Ulmerton Road into one of the annexed parking lots, subject to permitting by the Florida Department of Transportation (“FDOT”); and

**WHEREAS**, the City worked with the Owners to seek a driveway permit from FDOT, but the permit was denied due to spacing requirements between the proposed driveway and the intersection of Ulmerton Road and Egret Boulevard and due to safety concerns; and

**WHEREAS**, City staff then worked with the Owners on an alternative connectivity option that would allow more direct access to the businesses located within the Feather Sound Square (“Square”), which was determined to be a connector between the Homestead Studio Suites driveway from Ulmerton Road to the Square parking lot; and

**WHEREAS**, although there may no longer be a legal requirement that the City construct the connector, it is in the City’s best interest to realize the benefits of the project for traffic flow on the public roadways and the safety of the driving public, and the City will be able to honor and fulfill the intent of the original Annexation Agreement; and

**WHEREAS**, the total project budget is \$125,000 for the connector and funds are available for appropriation from the unappropriated balance of District 8 in the Multimodal Impact Fees Capital Improvement Fund (Fund 3071).

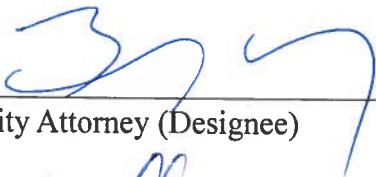
**NOW, THEREFORE, BE IT RESOLVED** that there is hereby approved the following supplemental appropriation for FY2019:


Multimodal Impact Fees Capital Improvement Fund (3071)

Ulmerton Roadway Connector Construction Project (TBD) \$125,000.00

**BE IT FURTHER RESOLVED** that the Mayor or his designee is authorized to execute Construction Agreements between the City of St. Petersburg, Ulmerton Enterprises, Inc., and Extended Stay LLC., and all documents necessary to effectuate this resolution.

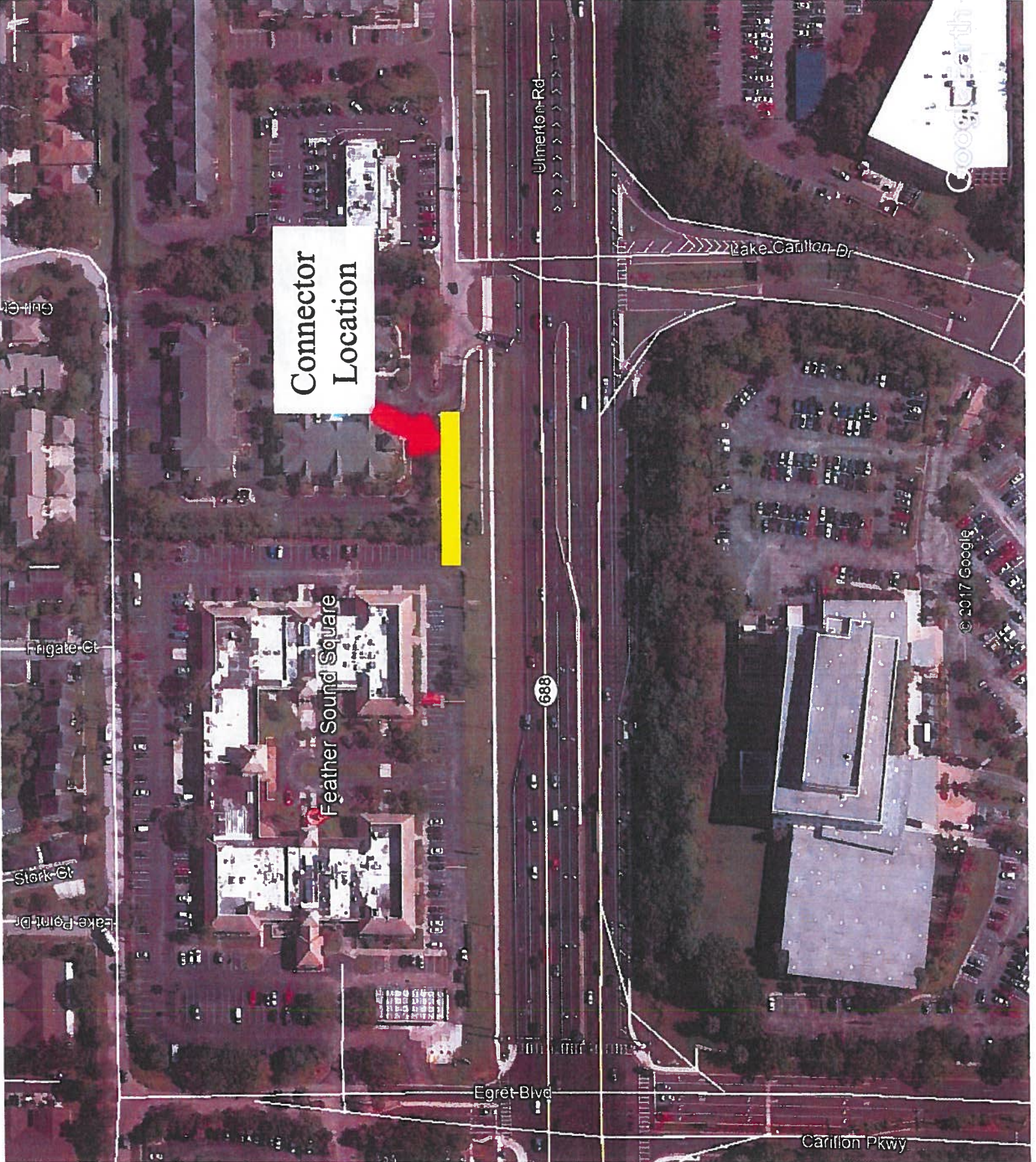
This resolution shall become effective immediately upon its adoption.

  
\_\_\_\_\_  
City Attorney (Designee)

  
\_\_\_\_\_  
Administration

  
\_\_\_\_\_  
Budget  
00403073.doc v2





Connector  
Location

Feather Sound Square

Ulmerlon-Rd

Lake Carillon-Dr

688

Egret Blvd

Carillon Pkwy

Google Earth

© 2017 Google



Recording: \_\_\_\_\_  
Doc. stamps: \_\_\_\_\_  
Int. tax: \_\_\_\_\_  
TOTAL: \_\_\_\_\_

THIS INSTRUMENT WAS PREPARED BY AND,  
AFTER RECORDING, RETURN TO:

Joel B. Giles, Esquire  
Florida Bar No.: 350591  
CARLTON FIELDS JORDEN BURT, P.A.  
4221 West Boy Scout Boulevard, Suite 1000  
Tampa, Florida 33607-5736  
(813) 223-7000  
(813) 229-4133 (Facsimile)  
jgiles@carltonfields.com

### TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

This TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (this “**Agreement**”) is made this \_\_\_\_ day of September 2018 (the “**Effective Date**”), by and among the City of St. Petersburg, Florida, a municipal corporation (the “**City**”), with a mailing address of 175 Fifth Street North, St. Petersburg, Florida 33701, Extended Stay LLC, a Delaware limited liability company (“**ESA**”), with a mailing address of 11525 North Community House Road, Charlotte, North Carolina, 28277, and Ulmerton Enterprises, Inc., a Florida corporation (“**Ulmerton**”), with a mailing address of 2325 Ulmerton Road, Suite 20, Clearwater, Florida 33762. For purposes of this Agreement, ESA and Ulmerton shall be referred to herein, collectively, as “**Land Owners.**” The City and Land Owners shall be referred to herein, collectively, as the “**Parties.**”

#### RECITALS:

WHEREAS, ESA owns that certain parcel of land situated within Pinellas County, Florida, as more particularly described in **Exhibit “A”** attached hereto (the “**Easement Area**”); and

WHEREAS, ESA granted an access and construction easement to Ulmerton with respect to the Easement Area, pursuant to that certain Access Easement Agreement, dated July 27, 2017, and recorded on August 1, 2017 in Official Records Book 19724, at page 2576, of the public records of Pinellas County, Florida, concerning the Easement Area (the “**2017 Easement**”); and

WHEREAS, Land Owners desire, and the City agrees, that the City construct a driveway over the Easement Area, pursuant to the construction plans attached hereto as **Exhibit “B,”** which will allow improved traffic flow and access to Ulmerton Road by connecting two parking lots (the “**Construction Work**”); and

WHEREAS, the City anticipates completing the Construction Work on or before the date that is six (6) months following the Effective Date of this Agreement; and

WHEREAS, Land Owners have agreed to grant and convey to the City, an access and construction easement over, upon, and across the Easement Area for the purposes set forth herein.

NOW THEREFORE, for and in consideration of the foregoing recitals (all of which are hereby adopted as an integral part of this Agreement), the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Grant and Use of Easement. Land Owners, for themselves and their successors and assigns, hereby grant and convey to the City a non-exclusive temporary easement upon, over, across and through the Easement Area for the purposes of: (a) performing the Construction Work, (b) ingress, egress, and access upon, over, and across the Easement Area for the purposes of performing such Construction Work, and (c) other purposes incidental to the foregoing, but for no other purposes whatsoever. Notwithstanding anything in the 2017 Easement to the contrary, the City shall have until the date that is six (6) months following the Effective Date to complete the Construction Work.

The City shall have the right to grade, stabilize soils, place clean fill, and perform other construction it deems necessary or convenient over and upon the Easement Area in connection with the Construction Work. Ulmerton shall be responsible for any and all costs and expenses not borne by the City relating to permits, approvals, and site plans for the Construction Work and for the subsequent intended use. Ulmerton shall be responsible for maintenance of the Easement Area and shall have the duty to maintain to prevent injuries or property damage thereon irrespective of whether ESA voluntarily assumes any such duty.

2. Termination. The easements herein granted shall terminate upon the earlier to occur of (a) the completion of the Construction Work by the City, and (b) six (6) months following the Effective Date of this Agreement.

3. Indemnity.

A. Ulmerton shall defend, pay on behalf of, indemnify and hold ESA and the City, and their respective officers, agents, employees, elected and appointed officials, and volunteers (collectively, the “**Indemnified Parties**”) harmless from any and all claims, suits, demands, liabilities, losses, damages, liens and fines, regardless of whether a lawsuit is filed, arising out of or in any way connected with the Construction Work or with respect to the City’s or ESA’s use of the Easement Area or with respect to claims for maintenance of the easement (collectively, the “**Claims**”), including but not limited to any and all Claims (i) for damage to property or bodily or personal injuries sustained by any person or entities arising out of the Construction Work or maintenance of the easement; (ii) the Construction Work obstructs physical access to property; and (iii) for trespass, nuisance, and/or encroachment during the Construction Work or maintenance of the easement.

B. Notwithstanding the above paragraph, Ulmerton shall not be required to indemnify ESA for claims against ESA and its respective officers, agents, employees, and volunteers (collectively, the “**ESA Indemnified Parties**”) which resulted solely from the gross negligence or willful misconduct of the ESA Indemnified Parties, nor shall Ulmerton be required to indemnify claims against the City and its respective officers, agents, employees, elected and appointed officials, and volunteers (collectively, the “**City Indemnified Parties**”) which have resulted solely from the gross negligence or willful misconduct of the City Indemnified Parties. ESA shall have no indemnity obligations under this Agreement to the City or Ulmerton.

4. City Responsibility. The City shall be responsible for the sole negligence of its employees and agents arising out of the Construction Work when such employees are acting within the scope of their employment, and the City shall only be liable for any damages resulting from said negligence to the extent permitted by Section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by the City. Nothing herein shall be construed as consent by the City to be sued by third parties in any matter arising out of this Agreement, and there are no Third-Party Beneficiaries to this Agreement.

5. Restoration of Easement Property. The City or Ulmerton shall, at their sole cost and expense, restore any portions of the Easement Area that are damaged by the City or related in any way to its performance of the Construction Work to a condition that resembles as nearly as possible the condition of the Easement Area prior to being damaged by the City. If the City or Ulmerton fail to restore the Easement Area as provided for herein, or fail to commence restoration thereof after thirty (30) days written notice from ESA to the City and Ulmerton, Ulmerton shall reimburse ESA for all reasonable costs incurred with respect to such restoration.

6. Release. Upon notification from the City that the City has completed the Construction Work, Land Owners shall release, acquit and forever discharge the City Indemnified Parties, of and from all Claims that Land Owners ever had, now have, or can, shall or may have against the City Indemnified Parties, arising out of the use of the Easement Area after completion of the Construction Work.

7. Minimizing Intrusion. The City shall use commercially reasonable efforts during its performance of the Construction Work to cause minimal intrusion to ESA and ESA's use of the remainder of the adjacent property owned by ESA (the "ESA Property"). At no time shall the City, during its performance of the Construction Work, unreasonably block ingress or egress to the ESA Property by its guests, patrons, employees, and the like.

8. Lien Free Construction. At no time shall ESA be responsible or liable for any mechanics or similar liens arising out of or resulting from the Construction Work. If any mechanics liens or similar liens are recorded against the Easement Area, the ESA Property, or any part thereof, arising out of or resulting from the Construction Work, Ulmerton shall immediately remove such liens at its sole cost and expense.

9. Reservation of Rights. ESA reserves to itself, its successors and assigns, the non-exclusive right to use the Easement Area.

10. No Warranty. No warranty (express or implied) is given by the City to the Land Owners with respect to the Construction Work.

11. Maintenance and Repairs. After the City has completed the Construction Work, Ulmerton shall be responsible for all maintenance and repairs to the Easement Area.

12. Taxes and Fees. Land Owners shall be responsible for any increase in taxes for their respective properties assessed by the County or state upon or otherwise arising from improvement of the property resulting from the Easement.



13. Successors, Assigns. All covenants, terms, provisions and conditions herein contained shall inure and extend to and be obligatory upon the successors and assigns of the respective parties hereto.

14. Survival. All obligations and rights of any party arising during or attributable to the period prior to expiration or earlier termination of this Agreement, including but not limited to those obligations related to indemnification, shall survive such expiration or earlier termination.

15. Applicable Law, Venue, and Jurisdiction. This Agreement shall be governed by and be interpreted in accordance with the laws of the State of Florida. Venue for state court actions shall be in Pinellas County, St. Petersburg Division. Venue for federal court actions shall be in the Middle District of Florida, Tampa Division, unless a division is created in St. Petersburg, or Pinellas County, in which case the action shall be brought in that division. Each party waives any defense of improper or inconvenient venue as to either court and consents to personal jurisdiction in either court.

16. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement

*(Signatures on following pages)*

IN WITNESS WHEREOF, this Agreement shall become effective as of the date of last execution set forth below.

WITNESSES (as to Extended Stay LLC)

EXTENDED STAY LLC  
a Delaware limited liability company

By:

\_\_\_\_\_

Sign: \_\_\_\_\_

Print: Christopher N. Dekle

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

As its: Vice President

Date:

Sign: \_\_\_\_\_

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

STATE OF FLORIDA        )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was sworn to and subscribed before me this \_\_\_\_ day of September 2018, by Christopher N. Dekle, as Vice President of Extended Stay LLC, a limited liability company organized and existing under the laws of the State of Delaware, on behalf of the limited liability company, who is personally known to me or has produced as identification.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Sign on this line)

\_\_\_\_\_  
(Legibly print name on this line)

NOTARY PUBLIC, State of Florida  
COMMISSION NO.: \_\_\_\_\_

EXPIRATION DATE: \_\_\_\_\_

(SEAL)

WITNESSES (as to Ulmerton)

Sign: Cynthia D. Armsden

Print: CYNTHIA D. ARMSDEN

Sign: Kelly Prestac

Print: Kelly Prestac

Ulmerton Enterprises, Inc.,  
a Florida corporation

By: Fred B. Bullard, Jr.

Print: FRED B. BULLARD, JR.

As its: President

Date: ~~August~~ 25<sup>th</sup>, 2018  
SEPT.

STATE OF FLORIDA       )  
COUNTY OF PINELLAS    )

The foregoing instrument was sworn to and subscribed before me this 25<sup>th</sup> day of ~~August~~ SEPT., 2018, by FRED B. BULLARD, JR., as President of ULMERTON ENTERPRISES, INC., a corporation organized and existing under the laws of the State of Florida, on behalf of the corporation, who is personally known to me or has produced \_\_\_\_\_ as identification.

Suzanne N. Pierce

(Sign on this line)  
SUZANNE N. PIERCE  
(Legibly print name on this line)

NOTARY PUBLIC, State of Florida

COMMISSION NO: GG91861  
EXPIRATION DATE: 5/20/21



WITNESSES (as to City)

Sign: \_\_\_\_\_

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

Sign: \_\_\_\_\_

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

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

Approved as to Content:

\_\_\_\_\_  
City Attorney (Designee)

By: \_\_\_\_\_  
Assistant City Attorney

The City of St. Petersburg, Florida

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

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

As its: \_\_\_\_\_

Attest: \_\_\_\_\_  
Chan Srinivasa, City Clerk

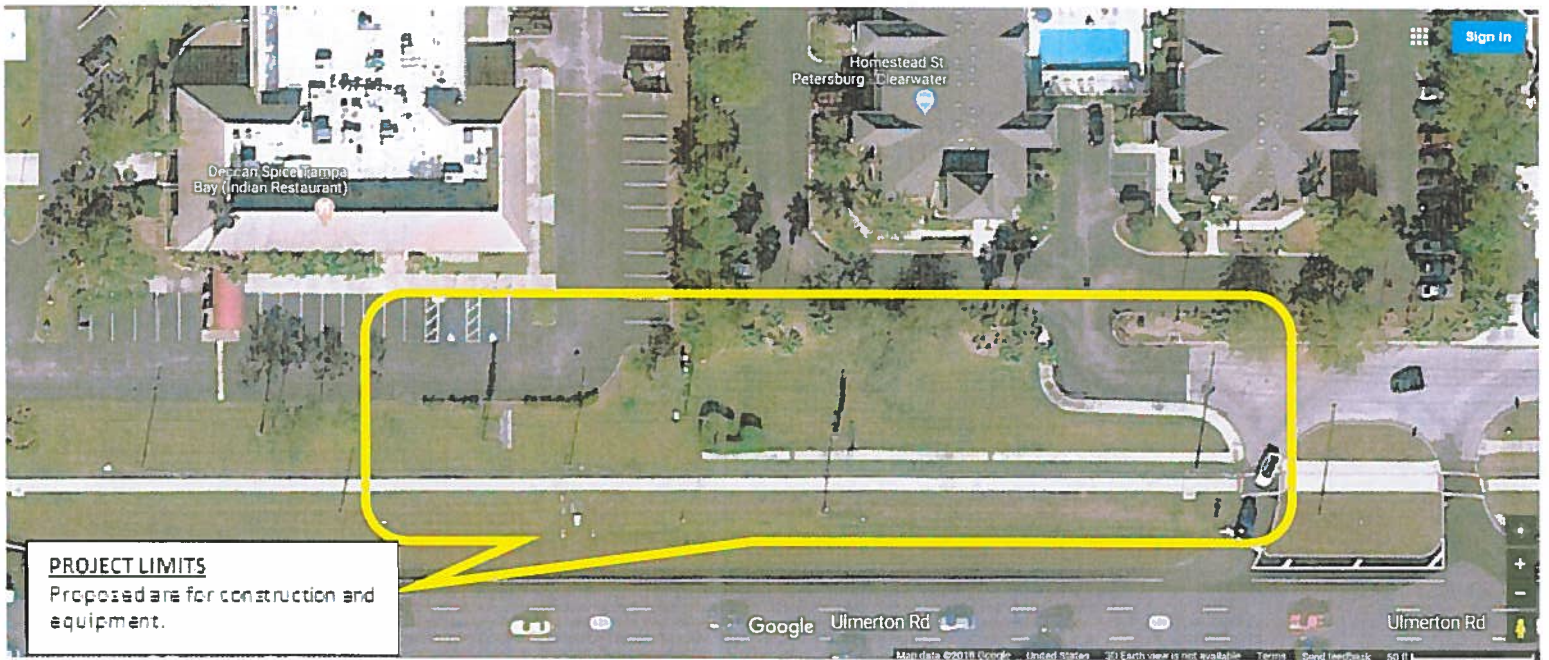
Approved as to Form:

\_\_\_\_\_  
City Attorney (Designee)

By: \_\_\_\_\_  
Assistant City Attorney



**Exhibit "A"**  
**Easement Area**



**PROJECT LIMITS**  
Proposed area for construction and equipment.

