

FUNDING AGREEMENT BETWEEN
PINELLAS COUNTY
AND
THE CITY OF GULFPORT
FOR
CONSTRUCTION OF A
MOORING FIELD ON BOCA CIEGA BAY

THIS AGREEMENT is entered into this ____ day of _____, 2017, by Pinellas County, a political subdivision of the State of Florida ("County"), and the City of Gulfport, a municipality of the State of Florida within Pinellas County ("Gulfport") (this "Agreement").

WITNESSETH:

WHEREAS, County received funds through a settlement with parties responsible for the Deepwater Horizon accident which affected the Gulf of Mexico and communities in the region including Pinellas County;

WHEREAS, County has identified and approved projects intended to benefit the public or that serve a public benefit that the Pinellas County Board of County Commissioners intends to be enhanced with funding from the aforementioned settlement;

WHEREAS, on December 13, 2016, the Pinellas County Board of County Commissioners approved a resolution delegating to the County Administrator the authority to enter into agreements with entities necessary to effectuate the approved projects within the amounts approved by the Pinellas County Board of County Commissioners for each project; and

WHEREAS, Gulfport is one of the entities necessary to effectuate the "City of Gulfport Mooring Field Project" approved by the Pinellas County Board of County Commissioners, which proposes to construct a mooring field on Boca Ciega Bay to expand the capacity of the Gulfport Municipal Marina ("Project").

NOW THEREFORE, in consideration of the mutual terms, covenants, representations, and conditions herein contained, the parties agree as follows:

1. Performance of Services:

Gulfport shall perform all services defined under the "Project Scope of Services," which is attached hereto and incorporated herein as Exhibit A below. Gulfport shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, reports, and other services furnished by Gulfport under this Agreement. Gulfport shall orally consult with County regarding the Project on a monthly basis or at any time upon County's request.

2. Funding:

County agrees to provide up to \$100,000.00 to Gulfport on a reimbursement basis for Project Construction, solely to help fund the \$135,000.00 line item for "Construction (25 Moorings) costs" listed in the Project Scope of Services ("Construction"), in accordance with the following:

Remove term
"expend".
cbwilliams

Gulfport shall ~~expend~~ submit quarterly invoices ("Invoices") to County until Project Construction is complete. The first invoice is due March 31, 2017. If necessary, the second Invoice is due June 30, 2017, the third Invoice is due September 30, 2017, the fourth Invoice is due December 31, 2017, the fifth Invoice is due March 31, 2018, the sixth Invoice is due June 30, 2018, and the seventh Invoice is due September 30, 2018.

Together with each Invoice, Gulfport shall submit the following accompanying records: (1) a certification that the Invoice is accurate and that Gulfport has expended the amount of invoiced funds in furtherance of Project Construction ("Certification) and (2) a progress report detailing how funds from any and all sources have been and/or will be expended in furtherance of the Project ("Project Progress Report"); the final Invoice shall also include (3) a project completion report, summarizing how the cumulative amount of invoiced funds have been expended with comprehensive evidence of Project Construction completion ("Project Completion Report").

Within thirty (30) days of receiving an Invoice, County shall either: (1) provide full payment to Gulfport for that Invoice; or (2) if County finds the Invoice, Certification, Project Progress Report, or Project Completion Report unacceptable for any reason, provide written notice to Gulfport of any defects. If County provides a written notice of defects, Gulfport shall have thirty (30) days from receipt of said notice to cure said defects and provide written evidence of same to County; if Gulfport fails to cure the defects within the requisite timeframe, or if County finds the evidence of such corrections to be defective for any reason, this Agreement is subject to termination with cause in accordance with Section Four (4) below.

3. Agreement Term:

This Agreement shall become effective upon execution by both parties and expire on December 31, 2018, unless terminated earlier as provided in Section Four (4) below.

4. Termination:

This Agreement may be terminated in writing by either party: (1) without cause upon fifteen (15) days of receipt of notice of termination by the other party; or (2) with cause immediately upon receipt of a notice of termination by the other party. If County terminates the Agreement with cause, Gulfport shall, within seven (7) days of receipt of such notice, refund to County all funding awarded to Gulfport by County under this Agreement.

In accordance with Section Five (5) below, any termination notice shall be sent by e-mail

or USPS Certified Mail and deemed delivered or received on the date reflected by the e-mail read receipt or certified mail delivery receipt.

This Agreement may also be terminated at any time by mutual written agreement of the parties.

5. Project Managers and Notice:

In order to assure proper coordination and review throughout the term of this Agreement, Gulfport and County each designate a "Project Manager" as follows:

Gulfport

Denis Frain, Department Director
City of Gulfport, Marina Operations
2401 53rd Street South
Gulfport, FL 33707
dfrain@mygulfport.us

County

Kelli Levy, Division Director
Pinellas County Environmental Management Division
22211 U.S. 19 North, Building 10
Clearwater, FL 33765
klevy@pinellascounty.org

The Project Managers shall be responsible for transmitting and receiving all communications concerning this Agreement to the other party. 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 respective Project Manager. Notice shall be considered delivered or received as reflected by an e-mail read receipt or a certified mail delivery receipt.

6. Payment Limitations and Fiscal Non-Funding:

Project costs incurred prior to the effective date of this Agreement are not fundable under this Agreement.

County shall not be responsible for the operation, maintenance, or capital refreshment of any assets resulting in any way from the Project.

This Agreement is not a general obligation of County. It is understood that neither this Agreement nor any representation by any County employee or officer creates any obligation to appropriate or make monies available for the purpose of this Agreement beyond the fiscal year in which this Agreement is executed. No liability shall be incurred by County, or any department, beyond the monies budgeted and available for this purpose. If funds are not appropriated by County for any or all of this Agreement, County shall not be obligated to pay any sums provided pursuant to this Agreement beyond the portion for which funds are appropriated. County agrees

to promptly notify Gulfport 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 County.

7. Records and Audit:

Gulfport agrees:

a) To retain all data, financial records, statistical records, and any other records (including electronic storage media) pertinent to this Agreement ("Records") for a period of three (3) years after termination or expiration of this Agreement or, if an audit has been initiated in accordance with subsection c) of this Section Seven (7) below and audit findings have not been resolved at the end of three (3) years, the records shall be retained until resolution of the audit findings.

b) To maintain all Records in accordance with generally accepted accounting procedures and practices that sufficiently and properly reflect all revenues and expenditures of funds provided by County under this Agreement.

c) To assure that all Records are subject at all reasonable times for inspection, review, audit, copy, or removal from premises by County personnel and other personnel duly authorized by County.

d) To fully comply with the provisions of Chapter 119, Florida Statutes, as applicable.

e) To include all requirements in this Section Seven (7) in all approved contracts and subcontracts under this Agreement.

8. Indemnification and Non-Agency Relationship:

To the greatest extent under applicable law, Gulfport agrees to indemnify and defend County, its officers, and employees, against all claims of any nature arising out of the Project. Nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, F.S. Further, nothing herein shall be construed as consent by either party to be sued by third parties in any manner arising out this Agreement or contracts related thereto.

Gulfport acknowledges that is an independent party and not an agent of County.

9. Modification of Agreement:

This Agreement represents the entire agreement of the parties. Any alterations, variations, changes, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, duly signed by each of the parties hereto, and attached to the original of this Agreement.

10. Assignment:

This Agreement may not be assigned by either party without the prior written consent of the other party. The parties each bind itself, its successors, assigns, and legal representatives to the other party hereto and to the successors, assigns, and legal representatives of such other party in respect to all covenants and obligations contained herein.

11. Contractors:

Before any contractor or subcontractor commences with any Project Construction, the County must provide prior written consent to Gulfport.

12. Compliance with Applicable Laws:

Gulfport shall ensure that at all times and in all aspects of the Project, Gulfport, its employees, agents, and contactors are in compliance with all applicable Federal, state, and local laws.

13. Governing Laws:

This Agreement and the rights and obligations of the parties hereto shall be governed and construed according to the laws of the State of Florida.

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IN WITNESS WHEREOF, the parties have caused these presents to be duly executed, as of the day and year first above-mentioned.

PINELLAS COUNTY, FLORIDA

BY: _____
Mark. S. Woodard, County Administrator

Approved as to Form:

BY: _____
Assistant County Attorney

CITY OF GULFPORT, FLORIDA

BY: James E. O'Reilly
James E. O'Reilly, City Manager

APPROVED AS TO FORM:

Andrew Salzman
Andrew Salzman, City Attorney

ATTEST:

Lesley DeMuth
Lesley DeMuth, City Clerk

Exhibit A – Project Scope of Services

Funding in partnership with Pinellas County is solicited by the City of Gulfport for the construction of a mooring field on Boca Ciega Bay, construction would expand the transient or visitor capacity of the Gulfport Municipal Marina. The mooring field will add 25 mooring buoys, of which 22 would be reserved for transient use. The moorings would accommodate sailboats up to 60 feet long, and meet or exceed all applicable state and county standards for boater safety and water quality. The Florida Department of Environmental Protection has approved a permit for the project, and a permit from the Army Corps of Engineering is pending.

The project will address the issue of unregulated anchoring in Boca Ciega Bay, which is associated with damage to sea grass colonies from dragging anchors, degradation of water quality due to improper trash and sewage disposal, and increased incidence of derelict vessels. Construction of the mooring field would address these issues by providing boaters with a safe and environmentally sound alternative to free anchoring. The mooring field would provide the City the ability to require user registration and prohibit unsafe or environmentally damaging boating activities. The moorings would meet a need for new transient boating facilities in Gulfport, in which existing slips are filled to capacity during weekends and special events.

Project Budget:

Construction (25 Moorings) costs:	\$135,000.00
Final Design, Engineering and Permitting costs:	35,000.00
Permit Required – Pumpout Vessel:	<u>130,000.00</u>
Total Implementation/Construction Costs:	\$300,000.00
Estimated Annual Operating Expense/Cost:	<u>50,000.00</u>
Total Year One (1) Total Cost:	\$350,000.00