

FUNDING AGREEMENT BETWEEN
THE TOWN OF KENNETH CITY
AND
PINELLAS COUNTY
FOR
STORMWATER LAKES WATER QUALITY PROJECT

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

W I T N E S S E T H:

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, Kenneth City is one of the entities necessary to effectuate the “Kenneth City Pond Fountains” Project approved by the Pinellas County Board of County Commissioners, which proposes to install fountains and diffusers in three Kenneth City stormwater lakes to improve water quality (the “Project”).

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

1. Performance of Services:

Kenneth City shall complete the Project in accordance with (1) the Scope of Services and (2) the Project Budget, which are attached hereto and incorporated herein as Exhibits A and B respectively, by September 30, 2018. For purposes of this Agreement, the Project shall be considered complete once all line items under the “Design” and “Construction” sections of the Project Budget have been completed and invoiced to the County in accordance with Section Two (2) of this Agreement below.

Kenneth City shall comply with all terms and conditions of the Scope of Services and Project Budget. Kenneth City shall be responsible for the professional quality, technical accuracy,

timely completion, and coordination of all designs, drawings, specifications, reports, and other services furnished by Kenneth City under this Agreement. Kenneth City 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 \$22,500.00 for the Project on a matching reimbursement basis in accordance with the following:

After the Project is complete and no later than September 30, 2018, Kenneth City shall deliver a Project invoice up to \$22,500.00 ("Invoice") to County.

Together with the Invoice, Kenneth City shall submit a certification that (1) the Invoice is accurate, that (2) Kenneth City has expended all invoiced funds in furtherance of the Project, and (3) that Kenneth City has expended non-invoiced (matching) funds in at least the invoiced amount in furtherance of the Project ("Certification). Also together with the Invoice, Kenneth City shall submit a project completion report, summarizing how the cumulative amount of invoiced and non-invoiced funds have been expended for Project completion along with comprehensive evidence thereof ("Project Completion Report").

Within thirty (30) days of receiving the Invoice, County shall either: (1) provide full payment to Kenneth City for the Invoice; or (2) if County finds the Invoice, Certification, or Project Completion Report unacceptable for any reason, provide written notice to Kenneth City of any defects. If County provides a written notice of defects, Kenneth City shall have thirty (30) days from receipt of said notice to cure said defects and provide written evidence of same to County; if Kenneth City 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, Kenneth City shall, within seven (7) days of receipt of such notice, refund to County all funding awarded to Kenneth City 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, Kenneth City and County each designate a “Project Manager” as follows:

Kenneth City
Matthew Campbell, Town Manager
Town of Kenneth City
6000 54th Avenue North
Kenneth City, FL 33709
campbellm@kennethcityfl.org

COUNTY
Kelli Levy, Division Director
Pinellas County Environmental Management
22211 US Hwy 19 N, Bldg. 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 Kenneth City 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:

Kenneth City 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, Kenneth City 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.

Kenneth City 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 begins any work under this Agreement, the County must provide prior written consent to Kenneth City.

12. Compliance with Applicable Laws:

Kenneth City shall ensure that at all times and in all aspects of the Project, TBEP, 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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

TOWN OF KENNETH CITY, FLORIDA

BY: _____
Matthew Campbell, Town Manager

ATTEST: _____