

FUNDING AGREEMENT

THIS FUNDING AGREEMENT (“Agreement”) is made and entered into as of this _____ day of _____, 2023 (“Execution Date”) by and between the City of St. Petersburg, Florida (“City”), Pinellas County, Florida (“County”), and Power Design, Inc. (“Power Design”) (collectively, the “Parties”).

RECITALS

WHEREAS, where it intersects with 116th Avenue North, Dr MLK Jr. Street North is a County owned and maintained roadway within the limits of the City of St. Petersburg; and

WHEREAS, 116th Avenue North is a City owned and maintained roadway that connects between Dr MLK Jr. Street North and 4th Street North in St. Petersburg; and

WHEREAS, pursuant to § 316.006(2), Florida Statutes (2022), the City has traffic control jurisdiction over the intersection of Dr. MLK Jr. Street North and 116th Avenue N., which includes operation and maintenance of traffic control devices; and

WHEREAS, Power Design applied for a vacation of 116th Circle North, a dead-end roadway directly across Dr MLK Jr. Street North from 116th Avenue North; and

WHEREAS, such vacation was approved by the St. Petersburg City Council pursuant to Ordinance No. 1119-V, and the vacated area (previously 116th Circle North) now serves as the main access point to Power Design’s campus; and

WHEREAS, the City and the County received a request from Power Design to install a traffic signal at the intersection of Dr MLK Jr. Street North and 116th Avenue North in order to control traffic movements and address growing traffic counts at the intersection; and

WHEREAS, the City performed a signal warrant analysis based on the Manual of Uniform Traffic Control Devices and found that the intersection of Dr MLK Jr Street North and 116th Avenue North warrants a signal based on traffic volume; and

WHEREAS, the Parties agree that the installation of a traffic signal at the intersection of Dr. MLK Jr Street North and 116th Avenue North will improve access and safety for both Power Design employees and the general public; and

WHEREAS, the Parties desire to share in the cost of the design and construction of the signalization project in accordance with the terms and conditions of this Agreement.

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, covenants, and conditions herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. PURPOSE

The Parties desire to enter into this Agreement for the County and Power Design to provide funding toward the design and construction of a traffic signal and related elements to be installed by the City at the intersection of Dr MLK Jr Street North and 116th Avenue North in St. Petersburg.

2. DESCRIPTION OF SIGNALIZATION PROJECT

The City will be responsible for procuring and retaining the necessary entities to design construct, and inspect a traffic signal and related elements at the intersection of Dr MLK Jr. Street North and 116th Avenue North in St. Petersburg (“Project”). The City will be responsible for negotiating the terms and conditions of any agreements for the design and construction of the Project, provided that the City will ensure that any such agreements require (i) the County and Power Design to be indemnified to the same extent as the City, (ii) the County and Power Design to be named as additional insureds on all insurance policies in which the City is an additional insured and (iii) the contractor to waive all subrogation rights of its insurance carriers for workers’ compensation coverage. The City will share design documents with the County and Power Design during the design phase of the Project in order to allow the County and Power Design to provide comments on the design. The design will be based on the Florida Department of Transportation (“FDOT”) Design Manual, FDOT Standard Specifications for Road & Bridge Construction, Florida Greenbook, and applicable design standards and specifications of the City. The Parties will cooperate and coordinate with each other during all phases of the Project, including, but not limited to, meeting to discuss the probable costs of construction no later than ten (10) days after all construction bids are received by the City. Nothing in this Agreement is intended to modify the City’s traffic control jurisdiction, including operation and maintenance of the traffic signal and related elements described herein. The City will retain sole ownership of the traffic signal and related elements.

3. FUNDING

A. **Eligible Costs.** “Eligible Costs” means design (which includes preliminary design through final design), construction, and construction engineering and inspection costs of the Project. Administrative work performed by the County and/or Power Design which are incidental to the design and construction are not Eligible Costs. Administrative work performed by the City which are incidental to the design and construction are Eligible Costs; provided, however that such costs must not exceed \$45,000. The Parties agree that the total Eligible Costs of the Project must not exceed \$900,000. The funding contributions from Power Design and the County will be as set forth in paragraphs 3.B(1) and 3.B(2) below.

B. **Funding Contribution.** The County and Power Design agree to co-fund the Eligible Costs as follows:

- (1) Power Design will be responsible for fifteen percent (15%) of the Eligible Costs, up to a maximum amount of \$135,000 (“Power Design Contribution”). No later

than sixty (60) days after the Execution Date, Power Design will pay the City \$40,000 as an initial advance toward the Power Design Contribution. No later than thirty (30) days after commencement of construction of the Project, the City will invoice Power Design for the remaining balance of the Power Design Contribution and Power Design will pay such invoice no later than sixty (60) days after receipt of the invoice.

(2) The County will be responsible for forty-two and one half percent (42.5%) of the Eligible Costs, up to a maximum amount of \$382,500 (“County Contribution”). After October 1, 2023, or within thirty (30) days after commencement of construction of the Project, whichever is later, the City will invoice the County for the County Contribution and the County will pay such invoice in accordance with the Florida Local Government Prompt Payment Act (§218.70, Florida Statutes, et seq.).

C. If the lowest responsive and responsible bid received by the City for construction of the Project will result in the total Eligible Costs exceeding \$900,000, then the City will notify the County and Power Design, and at that time (i) any party may agree in writing to an increase in that party’s maximum contribution, which must be reflected in a written amendment to this Agreement or (ii) any party may terminate this Agreement by providing written notice to the other parties. In the event of termination pursuant to this paragraph 3.C., the Parties agree to share in the Eligible Costs incurred for the Project up to effective date of termination as follows: 15% by Power Design, 42.5% by the County, and 42.5% by the City.

D. The Parties agree that, unless otherwise agreed upon by the parties in a written amendment to this Agreement, if the actual Eligible Costs are less than \$900,000, in no event will Power Design be responsible for more than 15% of the actual Eligible Costs incurred for the Project and in no event will the County be responsible for more 42.5% of the actual Eligible Costs incurred for the Project. If Power Design and/or the County remit payment to the City that exceeds their proportionate share of actual Eligible Costs, then the City will reimburse the excess funds no later than ninety (90) days after final completion of the Project.

4. EFFECTIVE DATE AND TERM OF AGREEMENT

Pinellas County will be responsible for filing this Agreement with the Clerk of the Circuit Court of Pinellas County and this Agreement will be effective upon filing.

The term of this Agreement will commence on the Execution Date, and will terminate ninety (90) days after final completion of the Project.

5. AMENDMENTS

This Agreement may be modified or amended only by a document in writing executed by the Parties with the same formality of this Agreement.

6. GOVERNING LAW

The laws of the State of Florida govern this Agreement.

7. SEVERABILITY

The terms and conditions of this Agreement will be deemed to be severable. Consequently, if any clause, term, or condition hereof is held to be illegal or void, such determination will not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this Agreement will continue in full force and effect, unless the particular clause, term or condition held to be illegal or void renders the balance of the Agreement impossible to perform.

8. NOTICES

Unless and to the extent otherwise provided in this Agreement, all notices, demands, requests for approvals and other communications which are required to be given by one party to another must be in writing and will be deemed given and delivered on the date delivered in person, upon the expiration of five (5) days following the date mailed by registered or certified mail, postage prepaid, return receipt requested to the address provided below, or upon the date delivered by overnight courier (signature required) to the address provided below.

CITY OF ST. PETERSBURG

City of St. Petersburg
175 Fifth Street North
St. Petersburg, FL 33701
Attn: Evan Mory
Director of Transportation & Parking

PINELLAS COUNTY

Pinellas County
22211 U.S. Hwy 19 N, Bldg. 1
Clearwater, Florida 33756
Attn: Kelli Hammer Levy
Director of Public Works

POWER DESIGN, INC.

11600 9th St N,
St. Petersburg, FL 33716
Attn: David Redden
General Counsel

9. PUBLIC RECORDS AND RIGHT TO AUDIT

The parties must keep adequate records and supporting documentation applicable to this Agreement in accordance with the Public Records Law, (§119.01, Florida Statutes, et seq.). The County and Power Design reserve the right to audit or have a third-party auditor audit the City's records, at the sole cost and expense of the County and/or Power Design, as such records relate to

this Agreement during the term of this Agreement and until thirty-six (36) months after the date of final payment of funding hereunder.

10. LIABILITY

The City shall be responsible for its employees' acts of negligence when such employees are acting within the scope of their employment and shall only be liable for any damages resulting from said negligence to the extent permitted by Section 768.28, Florida Statutes. Nothing herein shall be construed as a waiver of sovereign immunity or the provisions of F.S. § 768.28 by the City or the County. Nothing herein shall be construed as consent by any party to be sued by third parties for any matter arising out of this Agreement.

11. ENTIRE AGREEMENT

This Agreement reflects the full and complete agreement between the Parties regarding the subject matter contained herein and supersedes all prior or contemporaneous agreements (whether oral or written) between them regarding the subject matter contained herein.

12. SURVIVAL

All obligations and rights of any party arising during or attributable to the period prior to expiration or earlier termination of this Agreement will survive such expiration or earlier termination.

13. EXECUTION

This Agreement may be signed in counterparts by the Parties hereto.

14. NON-APPROPRIATION

In the event that sufficient budgeted funds are not available for a new fiscal period, the County will notify the City and Power Design of such occurrence and this Agreement will terminate on the last day of the then current fiscal period without penalty or expense to the City or Power Design.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

CITY OF ST. PETERSBURG, FLORIDA

By: 

Print: Evan Mory
Transportation & Parking Management Director

ATTEST


City Clerk



Approved as to Form and Content:


City Attorney (Designee) 00672452

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

PINELLAS COUNTY, FLORIDA
Board of County Commissioners

ATTEST

By: _____

Print: Janet C. Long, Board Chair

APPROVED AS TO FORM:

Office of the County Attorney

APPROVED AS TO FORM

By: Joseph Morrissey
Office of the County Attorney

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

POWER DESIGN, INC.

By: 

Print: David Redden