

**FUNDING AGREEMENT BETWEEN
THE TAMPA BAY ESTUARY PROGRAM AND PINELLAS COUNTY
FOR HABITAT RESTORATION AT ROOSEVELT CREEK CHANNEL 5**

THIS AGREEMENT BETWEEN PINELLAS COUNTY AND THE TAMPA BAY ESTUARY PROGRAM FOR PARTIAL FUNDING OF THE ROOSEVELT CREEK HABITAT RESTORATION PROJECT BY PINELLAS COUNTY (“this “Agreement”) is entered into this 7 day of February, 2022, by and between PINELLAS COUNTY, a political subdivision of the State of Florida (“COUNTY”), and the Tampa Bay Estuary Program, a special district of the State of Florida (“TBEP”).

W I T N E S S E T H:

WHEREAS, TBEP and COUNTY are involved with habitat restoration within the Tampa Bay watershed; and

WHEREAS, TBEP and COUNTY agree that removal of non-functioning weirs can provide habitat benefits to the upstream and downstream portions of tidal tributaries; and

WHEREAS, the COUNTY wishes to remove a non-functioning weir and conduct habitat restoration associated with Roosevelt Creek Channel 5 (the “Project”), which drains into Old Tampa Bay, a waterbody of critical concern to TBEP and its partners; and

WHEREAS, TBEP received \$100,000.00 from a settlement agreement arising from Tampa Bay Waterkeeper, et al. v. City of Largo, Florida (Case No.: 8:16-cv-03319-JDW-AEP) to improve environmental quality in the Old Tampa Bay Watershed; and

WHEREAS, TBEP is willing to contribute 100% (\$100,000.00) of these funds to the COUNTY to enhance the habitat restoration benefits of 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:

COUNTY shall perform all services defined under the “Project Scope of Services,” which is attached hereto and incorporated herein as Exhibit A below, and comply with the terms and conditions therein. COUNTY shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, reports, and other services furnished by COUNTY under this Agreement. COUNTY shall orally consult with TBEP regarding the Project on a bi-monthly basis or at any time upon TBEP’s request.

2. Funding:

TBEP agrees to provide up to \$100,000.00 for completion of the Project in

accordance with the following:

COUNTY shall submit invoice(s) to TBEP upon completion of the Project Tasks defined under the Project Scope of Services (“Invoices”). Together with each Invoice, COUNTY shall submit the following accompanying records: (1) a certification that the Invoice is accurate and that COUNTY has expended all invoiced funds in furtherance of the Project (“Certification”); (2) a task completion report detailing how funds from any and all sources have been and/or will be expended in furtherance of the Project (“Task Completion Report”); and (3) any newly completed deliverables as defined under the Project Scope of Services (“Deliverables”). Certifications shall consist of appropriate language composed by COUNTY; the requisite composition of Task Completion Reports and Deliverables are expounded upon in the Project Scope of Services.

Within thirty (30) days of receiving an Invoice, TBEP shall either: (1) provide full payment to COUNTY for that Invoice; or (2) if TBEP finds the Invoice, Certification, Task Completion Report, or Deliverables unacceptable for any reason, provide written notice to COUNTY of any defects. If TBEP provides a written notice of defects, COUNTY shall have thirty (30) days from receipt of said notice to cure said defects and provide written evidence of same to TBEP.

3. Agreement Term:

This Agreement shall become effective upon execution by both parties and filing by COUNTY with the Pinellas County Clerk of Court. This Agreement shall expire upon receipt by COUNTY of full payment due hereunder unless terminated earlier as provided in Section Four (4) below.

4. Termination:

This Agreement may be terminated without cause by mutual written agreement of the parties at any time.

For this Agreement to be terminated with cause, the non-breaching party must first provide written notice to the breaching party, wherein the breaching party shall be offered no less than thirty (15) days to cure its breach. If the breaching party fails to timely cure its breach, the non-breaching party may send a subsequent written notice effectuating termination upon receipt by the breaching party. In such event, COUNTY shall be due funding from TEBP for work performed up to the date of termination.

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.

5. Project Managers and Notice:

To assure proper coordination and review throughout the term of this Agreement,

TBEP and County each designate a "Project Manager" as follows:

TBEP

Gary Raulerson, Ph.D.
Ecologist
Tampa Bay Estuary Program
263 - 13th Avenue South, Suite 350
St. Petersburg, FL 33701
727-893-2765
graulerson@tbep.org

COUNTY

Jennifer W. Shannon, P.E.
Professional Engineer II
Capital Improvement Division
14 S Ft. Harrison, 4th Floor
Clearwater, FL 33756
727-464-5674
jshannon@co.pinellas.fl.us

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.

TBEP shall not be responsible for the operation, maintenance, or capital refreshment of any assets resulting in any way from the Project, including but not limited to any and all Deliverables.

Compensation to the COUNTY under this agreement is payable solely from funds that have been provided to TBEP from the settlement of the case styled the Suncoast Waterkeepers et al. v. City of Largo (Case No.: 8:16-cv-03319-JDW-AEP).

This Agreement is not a general obligation of either party. It is understood that neither this Agreement nor any representation by any employee or officer of either party 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 either party beyond the monies budgeted and available for this purpose. If

funds are not appropriated by either party for any or all of this Agreement, that party shall not be obligated to pay any sums provided pursuant to this Agreement beyond the portion for which funds are appropriated. Each party agrees to promptly notify the other party 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 the terminating party.

7. Records and Audit:

COUNTY 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 TBEP 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 TBEP personnel and other personnel duly authorized by TBEP.

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:

Each party is responsible for its own negligence under this Agreement. 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.

COUNTY acknowledges that it is an independent party and not an agent of TBEP.

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, including any contractor or subcontractor identified in the Project Scope of Services, begins any work under this Agreement, the TBEP must provide prior written consent to COUNTY.

12. Compliance with Applicable Laws:

COUNTY shall ensure that at all times and in all aspects of the Project, COUNTY, 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.

14. Miscellaneous Conditions:

Per Paragraph 6 of the settlement agreement, projects will be in Old Tampa Bay and support nutrient reduction, habitat restoration (e.g., artificial reefs, seagrasses, oyster beds, wetlands, stream restoration) or water quality monitoring or improvements. Furthermore, the funds will not be used for political lobbying activities.

Termination or expiration of the consent decree approving the settlement agreement, for any reason, is a condition subsequent to performance of this Agreement.

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: 
Barry A. Burton, County Administrator

Approved as to Form:

BY: 
Brendan Mackesey, Assistant County Attorney

TAMPA BAY ESTUARY PROGRAM

BY: 
Ed Sherwood, Executive Director

ATTEST: 

EXHIBIT A
PROJECT SCOPE OF SERVICES
Roosevelt Tributary Restoration

PROJECT SUMMARY:

Pinellas County intends to complete Phase 2 of enhancements to Roosevelt Creek Channel 5, a tributary to Old Tampa Bay, including: weir removal, grading, exotic plant removal, and native plant installation. The TBEP 2020 Habitat Master Plan included several 2030 restoration targets of which this project directly aligns. In addition, TBEP has prioritized habitat and stormwater restoration initiatives within the Old Tampa Bay watershed because this bay segment has failed to meet water quality targets for multiple years.

The main outcome of this project is to remove the existing salinity barrier (concrete weir) to create a more natural connection to Tampa Bay that will allow the passage of aquatic organisms, improve water quality, flood flows, and tidal tributary connectivity and habitat value. Bank stabilization and direct habitat restoration in the area immediately adjacent to the existing weir is anticipated. Earlier phases of this project also included removal of accumulated sediment in Channel 5 from Executive Drive north to the existing weir.

The county completed a comprehensive Preliminary Engineering Report (PER) providing alternatives for flood protection and water quality benefits in 2016. This project implements Alternative 2 of the PER, which provides water quality, flood protection, sediment removal, and habitat improvements within Channel 5, with the added benefit of establishing a more natural connection between Channel 5 and Old Tampa Bay. The TBEP wishes to support implementation of the weir removal and enhance the habitat restoration components of the project to support continued ancillary benefits to water quality in Old Tampa Bay.

PROJECT TASKS

Task 1: Construction Activities

Summary, Including Measurable Benefit: Removal and modification of weir structure within 12 months of contractor's notice to proceed.

Description: Task 1 includes construction activities centered around the removal of exotic plants at the weir location, removal of the existing weir, construction of the existing weir, pipe lining, installation of manatee exclusion devices, bank stabilization and grading in preparation for native plant restoration outlined in Task 2.

Task 1 Deliverables: Construction plans permits, as-builts. photographs documenting progress. Description of exotic vegetation removed (e.g., species, total area).

Task 1 Budget: \$25,000.00

Task 2: Tidal Tributary Habitat Restoration

Summary, Including Measurable Benefit: Installation of native plants within 7 months following all relevant construction activities.

Description: Task 2 includes habitat restoration activities upon removal of the weir which primarily constitutes, but is not limited to, planting of native species along the channel banks. The re-contoured embankments associated with this project will be vegetated with the appropriate

canopy and herbaceous species. Maintenance activities (exotics removal and watering) will occur as needed.

Task 2 Deliverables: Table displaying information for installed native vegetation (including species name, zonation, size, and number), site photographs documenting progress.

Task 2 Budget: \$75,000.00

PROJECT DELIVERABLES:

- Quarterly Progress Reports (due March 31, June 30, September 30, and December 31 each year);
- Task Completion Summary Report & Invoicing;
- Final Project Report summarizing results of the project, including permits, as-builts and final certifications; and
- A minimum of 1 presentation to the TBEP Technical Advisory Committee, Habitat Restoration Consortium, Tampa Bay Regional Resiliency Coalition, or similar entity.

PROJECT TIMELINE:

Task No.	Task Title	Task Start Date	Task End Date
1	Construction Activities (Weir removal, bank stabilization and grading)	July 1, 2022	October 31, 2023
2	Habitat restoration (~2.5 acres native plantings and maintenance)	November 1, 2023	April 30, 2024

PROJECT BUDGET:

Description	Pinellas County	TBEP
Task 1: Construction/Weir Removal	\$3,350,000	\$25,000.00
Task 2: Debris & Exotics Removal, Plant Installation	\$50,000	\$75,000.00
TOTAL	\$3,400,000	\$100,000.00