

**JOINT PROJECT AGREEMENT
CULVERT AND ROADWAY DESIGN AND CONSTRUCTION**

PROJECT NAME: 102nd Ave North Culvert Replacement Project

PROJECT LIMITS: 102nd Avenue North / Cross Bayou Canal, including 100 feet northeast and 100 feet southwest from culverts. Western limit approximately 200 feet west and eastern limit approximately 350 feet east of culvert improvement.

COUNTY PROJECT IDENTIFICATION NO.: 004473A

THIS JOINT PROJECT AGREEMENT (this "Agreement") is made and entered into on this _____ day of _____, 2023, by and between Pinellas County, a political subdivision of the State of Florida, hereinafter the "County", and the City of Pinellas Park, a municipal corporation of the State of Florida, hereinafter the "City" (collectively, the "Parties").

WITNESSETH, that:

WHEREAS, the City is constructing a culvert replacement at 102nd Avenue North over Cross Bayou Canal (County Project No. 004473A), hereinafter referred to as the "Project";

WHEREAS, while the Project lies within City limits, Cross Bayou Canal is a major drainage channel undergoing a significant County Capital Improvement Project (the "Cross Bayou Canal Flood Control Improvement Project") that will enhance flow, water quality, and public recreation;

WHEREAS, in addition to the Cross Bayou Canal Flood Control Improvement Project, a larger culvert furthers the goals of the County Cross Bayou Watershed Master Plan (increased flow) and the County Blueway Program (non-motorized vessel use);

WHEREAS, the City is agreeable to enlarging the culvert if the County contributes to the Project cost;

WHEREAS, accordingly, on June 23, 2020, the Parties entered into a joint project agreement (the "Original Agreement") providing for the County to contribute funding to the design and construction of the Project;

WHEREAS, after contributing \$62,952.85 for Project design, the Original Agreement expired on June 13, 2022 because the City did not issue a Notice to Proceed for Project construction within 720 days as required by Section 6.2 of the Original Agreement; the City attributes the delay to unforeseen utility complications;

WHEREAS, moreover, after completing procurement, the lowest acceptable bid was \$1,689,857.07; and the County's contribution for Project construction costs were capped at \$700K;

WHEREAS, although under Section 6.2 of the Original Agreement the County is entitled to a full refund of its \$62,952.85 contribution for Project design costs, the County remains committed to the Project; and

WHEREAS, accordingly, the County waives its right to seek this \$62,952.85 refund under the Original Agreement – assuming that the City does not owe the County owe this refund for failure to perform this (new) Agreement pursuant to Section 5.2 or 6.3 below – and enter into this (new) Agreement committing no more than an additional amount of \$710K.

NOW, THEREFORE, in consideration of the mutual covenants herein, the Parties agree as follows:

1. City Responsibilities

1.1 The City, through its contractors, shall fully construct the Project in accordance with the specifications detailed in the Scope of Work attached as Exhibit A hereto by October 28, 2023. Within five days after the Project is fully complete, the City must notify the County of same; within thirty days of receipt of such notice, the County must notify the City of whether the County agrees that the Project is fully complete, or alternatively, provide the City with a chance to cure pursuant to Section 6.1 below.

1.2 The City shall ensure that work is performed in accordance the terms and conditions of this Agreement and with the City's Standard Specifications, the County's Standard Specifications for Road and Bridge Construction (2019), the Florida Department of Transportation (FDOT) Standard Specifications for Construction (most recent version). In the event of a conflict, the most restrictive engineering standard shall prevail. The City shall not allow work to commence on the Project until receipt from the County of a written notice to proceed.

1.3 The City shall invite the County to participate in all meetings with contractors.

1.4 The City shall ensure that the construction contract agreed to with the contractor includes provisions requiring that the contractor:

(i) indemnify, hold harmless, defend, and pay the costs of defense on behalf of, the County and its agents and employees from and against all claims, damages, losses, and expenses arising out of or resulting from construction of the Project;

(ii) provide a performance bond for total Project construction costs, naming the County and the City as dual obligees;

(iii) name the County as an additional insured and certificate holder for all insurance policies required under the construction contract and Invitation to Bid; and

(iv) ensure that the requirements imposed by this Section 1.4(iv) be passed on

to any subcontractors.

1.5 The City shall notify the County prior to entering into any supplemental agreement or change order with the construction contractor. No supplemental agreement or change order with the construction contractor shall be executed by the City until the County grants approval.

1.6 The County shall have the right to inspect the Project site at any time.

1.7 Upon completion of the Project, the City shall own and be responsible for maintenance of the Project infrastructure, including but not limited to the culvert, roadway, and kayak launch and its associated parking lot. The Parties may enter into separate agreements further refining maintenance responsibilities at and around the Project site.

1.8 Upon completion of the Project, the City shall assign to the County any warranty granted to the City by any contractor that furnishes labor or material in furtherance of the Project, including but not limited to any warranty for materials, equipment, workmanship, and closeout documents. -

2. Invoicing

2.1 The City may invoice the County on a quarterly, semi-annual, or annual basis for up to 50% of actual Project construction costs, subject to the terms and conditions in this Section 2 below.

2.2 Under no circumstances shall the County owe over \$710K for actual Project construction costs without an amendment to this Agreement.

2.3 Together with each invoice, the City shall submit the following accompanying documents: (i) an accounting of total City funds expended on the Project to date; (ii) supporting documentation for the work invoiced, including but not limited to any deliverables identified in the Project Scope of Work; and (iii) a brief Project progress report. The City shall also include with the final invoice: (iv) a Project completion report, which summarizes how the cumulative amount of invoiced and City funds have been expended on the Project and provides definitive evidence of Project construction completion; and (v) "as built" Project construction plans on standard size sheets of paper (11" x 17" or 24" x 36").

2.4 Within thirty (30) days of receiving an invoice, the County shall send the City either: (i.) full payment for that invoice; or (ii.) notice of any defects. If the County sends a notice of defects, the City shall have thirty (30) days from receipt of such notice to cure such defects and send written evidence of same to the County; if the City fails to cure the defects within the requisite timeframe, or if the County determines that the written evidence submitted by the City does not establish that the defects have been cured, the County may terminate this Agreement, effective upon receipt of notice of termination by the City; in such instance, the County shall be entitled to a full refund from the City pursuant to Section 6.3 below.

2.5 There shall be no reimbursement for travel expenses under this Agreement.

2.6 All payments to the City shall be mailed to:

Finance Department
Pinellas Park City Council
5141 78th Avenue North
Pinellas Park, FL 33780

2.7 All refunds to the County shall be mailed to:

Pinellas County
Clerk Finance Accounts Receivable
14 S. Fort Harrison Ave., 5th Floor
Clearwater, FL 33756

3. Records and Audit:

The City shall:

(i) retain all plans, correspondence, data, financial records, statistical records, and any other records (including electronic storage media) pertinent to this Agreement ("Records") for a period of five (5) years after termination or expiration of this Agreement, or, if an audit has been initiated in accordance with Section 4(iii) below and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings;

(ii) 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 the County under this Agreement;

(iii) ensure that all Records are subject at all reasonable times for inspection, review, audit, and duplication by County personnel and other personnel duly authorized by the County;

(iv) fully comply with F.S. § 119, as applicable; and

(v) ensure that all requirements in this Section 4 are included in all contracts and subcontracts related to the Project.

4. Project Managers

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

City

Kyle Arrison
Construction Services Director
City of Pinellas Park
6250 82nd Ave. N.
Pinellas Park, FL 33781
E-mail: KArrison@pinellas-park.com
Phone: 727-369-5621

County

Jennifer Shannon, P.E.
Engineer 2
Pinellas County Public Works Department
14 S. Fort Harrison Ave., 5th Floor
Clearwater, FL 33756
E-mail: jshannon@pinellascounty.org
Phone: 727-464-5674

Either Party may designate a replacement Project Manager, which shall become effective upon receipt of notice of such replacement designation by the other Party.

Unless otherwise provided herein, all notices, invoices, approvals, and other correspondence required by law and this Agreement shall be in writing and delivered to the respective Project Manager via e-mail, USPS Certified Mail, or courier delivery service. Notice shall be considered delivered or received as reflected by an e-mail read receipt, certified mail delivery receipt, or courier service delivery receipt.

5. Term

5.1 This Agreement shall take effect after the County files a duly executed version of this Agreement with the Clerk of Circuit Court of Pinellas County. Unless otherwise terminated in accordance herewith, this Agreement shall expire after the County accepts and pays the final invoice for Project construction in accordance with Section 2 above.

5.2 If the City fails to issue a Notice to Proceed for Project construction by May 1, 2023, this Agreement shall terminate and the \$62,952.85 payment made by the County to the City under the Original Agreement for Project design shall be refunded in full by the City within thirty (30) days.

6. Default; Waiver; Remedies

6.1 If either Party breaches this Agreement, the non-breaching Party shall provide the breaching Party with no less than thirty (30) to cure such breach. If the breaching Party fails to

cure the breach within the stipulated timeframe, the non-breaching Party may terminate this Agreement, effective upon receipt of notice of termination by the breaching Party. The termination provision in this Section 6.1 is supplemental and in addition to any other termination provisions provided herein.

6.2 The failure of either Party to require the performance of any term or obligation of this Agreement, or the waiver by either Party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

6.3 If the County terminates this Agreement because the City fails to timely cure a defective invoice per Section 2.4 above, or any other breach per Section 6.1 above, the City shall, within thirty days of the date of termination, refund any funds paid by the County to the City under this Agreement, as well as the \$62,952.85 paid by the County to the City under the Original Agreement, unless the County's termination notice provides otherwise.

7. Entire Agreement; Modification

7.1 This Agreement embodies the whole agreement of the Parties. There are no promises, terms, conditions, or allegations other than those contained herein, and this Agreement shall supersede all previous communications, representations, and agreements, whether written or verbal, between the Parties.

7.2 This Agreement may be amended, extended, or terminated by mutual written agreement of the Parties at any time.

8. Liability

Each Party shall be responsible for its own negligence under this Agreement. Nothing herein shall be construed as a waiver of sovereign immunity, or the provisions of F.S. § 768.28, by either Party. Nothing herein shall be construed as consent by either Party to be sued by third parties in any matter arising out of this Agreement.

9. Fiscal Non-Funding

Each Party understands that the other Party's performance of this Agreement is contingent upon annual appropriation of funds by that Party's governing body for obligations hereunder. If a Party's governing body reduces or eliminates appropriations for obligations hereunder, that Party shall promptly notify the other Party. Upon the other Party's receipt of such notice, this Agreement shall terminate without penalty to either Party.

10. Choice of Law

This Agreement and the rights and obligations of the Parties shall be governed and construed according to the laws of the State of Florida. Any State litigation arising from this Agreement shall be filed in a court of competent jurisdiction in Pinellas County, Florida. Any

Federal litigation arising from this Agreement shall be filed in the Middle District of Florida, Tampa Division.

11. Compliance with Laws

The Parties shall comply with all Federal, State, and local laws, regulations, and ordinances at all times.

12. Assignment

This Agreement may not be assigned by either Party without the written consent of the other Party.

13. Due Authority

Each Party to this Agreement represents and warrants that all appropriate authority exists so as to duly authorize the person executing this Agreement to so execute the same and fully bind the Party on whose behalf they are executing.

14. Severability

Should any section or part of any section of this Agreement be rendered void, invalid, or unenforceable by any court of law, such a determination shall not render void, invalid, or unenforceable any other section or part of any section of this Agreement.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed by their duly authorized representatives on the day and year first above written.

CITY OF PINELLAS PARK, FLORIDA,
a municipal corporation of the State of
Florida

PINELLAS COUNTY, FLORIDA, a
political subdivision of the State of Florida

By:  *Richard Bruckburg*

Mayor

By: _____

Janet Long

Chair

By: *B. D. B. D.*

City Manager

ATTEST:

ATTEST: Ken Burke, Clerk of the Circuit
Court

By: *Rene M. Carran*

City Clerk

By: _____

Deputy Clerk

Approved as to form:

Approved as to form:

By: *James W. DeLuna*

City Attorney

By: *Brendan Mackesey*

Brendan Mackesey
Senior Assistant County Attorney

OFFICIAL CITY SEAL