

**AGENCY COST-SHARE AGREEMENT BY AND BETWEEN THE  
IRL COUNCIL AND CITY OF COCOA FOR THE DIXON BLVD. AT INDIAN  
RIVER DRIVE WATER QUALITY AND RESILIENCY PROJECT, DESIGN  
AND ENGINEERING**

THIS AGREEMENT (“Agreement”) is entered into between the IRL COUNCIL (“Council”), whose address is 1235 Main Street, Sebastian, Florida 32958, and CITY OF COCOA, whose address is 65 Stone Street, Cocoa, Florida 32922 (“Recipient”). All references to the parties hereto include the parties, their officers, employees, agents, successors, and assigns.

**RECITALS**

The waters of the state of Florida are among its basic resources, and the Council has been authorized by the United States Environmental Protection Agency to be the local sponsor for the Indian River Lagoon National Estuary Program.

Pursuant to the IRL Council Interlocal Agreement, the Council is responsible for managing the Indian River Lagoon National Estuary Program.

The Council has determined that providing cost-share funding to Recipient for the purposes provided for herein will benefit the management of the water resources of the Indian River Lagoon.

The parties have agreed to jointly fund the following project to benefit the water resources in accordance with the funding formula further described in the Statement of Work, Attachment A (hereafter “the Project”):

Project description: The objective of this project is to complete the design and engineering phase which once constructed will treat roughly 37 acres of vacant, multi-family, and single-family land-uses. This would result in approximately 98.36 lbs/yr and 15.538 lbs/yr of TN and TP removed, respectively.

In consideration of the above recitals, and the funding assistance described below, Recipient agrees to perform and complete the activities provided for in the Statement of Work, Attachment A. Recipient shall complete the Project in conformity with the contract documents and all attachments and other items incorporated by reference herein. This Agreement consists of all of the following documents: (1) Agreement, (2) Attachment A- Statement of Work; and (3) other attachments, if any. The parties hereby agree to the following terms and conditions.

**1. TERM; WITHDRAWAL OF OFFER**

- (a) The term of this Agreement is from the date upon which the last party has dated and executed the same (“Effective Date”) until September 30, 2023 (“Completion Date”). Recipient shall not commence the Project until any required submittals are received and approved. Recipient shall commence performance on October 1, 2022 and shall complete performance in accordance with the time for completion stated in the Statement of Work. Time is of the essence for every aspect of this Agreement, including any time extensions.
- (b) This Agreement constitutes an offer until authorized, signed and returned to the Council by Recipient. This offer terminates forty-five (45) days after receipt by Recipient; provided, however, that Recipient may submit a written request for extension of this time limit to the

Council's Project Manager, stating the reason(s) therefor. The Project Manager shall notify Recipient in writing if an extension is granted or denied. If granted, this Agreement shall be deemed modified accordingly without any further action by the parties.

2. **DELIVERABLES.** Recipient shall fully implement the Project, as described in the Statement of Work, Attachment A. Recipient is responsible for the professional quality, technical accuracy, and timely completion of the Project. Both workmanship and materials shall be of good quality. Unless otherwise specifically provided for herein, Recipient shall provide and pay for all materials, labor, and other facilities and equipment necessary to complete the Project. The Council's Project Manager shall make a final acceptance inspection of the Project when completed and finished in all respects. Upon satisfactory completion of the Project, the Council will provide Recipient a written statement indicating that the Project has been completed in accordance with this Agreement. Acceptance of the final payment by Recipient shall constitute a release in full of all claims against the Council arising from or by reason of this Agreement.

3. **OWNERSHIP OF DELIVERABLES.** Unless otherwise provided herein, the Council does not assert an ownership interest in any of the deliverables under this Agreement.

#### 4. **AMOUNT OF FUNDING**

- (a) **Compensation.** For satisfactory completion of the Project, the Council shall pay Recipient approximately thirty three percent (33%) of the total cost of the Project, but in no event shall the Council cost-share exceed \$40,000. The Council cost-share is not subject to modification based upon price escalation in implementing the Project during the term of this Agreement. Recipient shall be responsible for payment of all costs necessary to ensure completion of the Project. Recipient shall notify the Council's Project Manager in writing upon receipt of any additional external funding for the Project not disclosed prior to execution of this Agreement.
- (b) **In-Kind Services.** Recipient agrees to provide \$40,000 in the form of cash and/or in-kind services for the Project, as further described in the Statement of Work, which shall count toward Recipient's total cost-share obligation of \$79,906.

#### 5. **PAYMENT OF INVOICES**

- (a) **Submission of Invoices.** Recipient shall submit one invoice upon successful completion of the Project by one of the following two methods: (1) by mail to the IRL Council, 1235 Main Street, Sebastian, Florida 32958, or (2) by e-mail to [kolodny@irlcouncil.org](mailto:kolodny@irlcouncil.org). The invoice shall be submitted in detail sufficient for proper pre-audit and post-audit review. It shall include a copy of contractor and supplier invoices to Recipient and proof of payment. For all approved expenses incurred on or after October 1, 2022, Recipient shall be reimbursed for approximately thirty three percent (33%) of approved costs or the not-to-exceed sum of \$40,000, whichever is less. The Council shall not withhold any retainage from this reimbursement. If necessary, for audit purposes, Recipient shall provide additional supporting information as required to document invoices.
- (b) **End of Council Fiscal Year Reporting.** The Council's fiscal year ends on September 30. Irrespective of the invoicing frequency, the Council is required to account for all encumbered funds at that time. When authorized under the Agreement, submittal of an invoice as of September 30 satisfies this requirement. The invoice shall be submitted no later than October 30. If the Agreement does not authorize submittal of an invoice as of September 30, Recipient shall submit, prior to October 30, a description of the additional work on the Project

completed between the last invoice and September 30, and an estimate of the additional amount due as of September 30 for such Work. If there have been no prior invoices, Recipient shall submit a description of the work completed on the Project through September 30 and a statement estimating the dollar value of that work as of September 30.

- (c) **Final Invoice.** The final invoice must be submitted no later than 45 days after the Completion Date; provided, however, that when the Completion Date corresponds with the end of the Council's fiscal year (September 30), the final invoice must be submitted no later than 30 days after the Completion Date. **Final invoices that are submitted after the requisite date shall be subject to a penalty of 10 percent of the invoice. This penalty may be waived by the Council, in its sole judgment and discretion, upon a showing of special circumstances that prevent the timely submittal of the final invoice. Recipient must request approval for delayed submittal of the final invoice not later than ten (10) days prior to the due date and state the basis for the delay.**
  - (d) **Invoice Requirements.** All invoices shall include the following information: (1) Council contract number; (2) Council encumbrance number; (3) Recipient's name and address (include remit address, if necessary); (4) Recipient's invoice number and date of invoice; (5) Council Project Manager; (6) Recipient's Project Manager; (7) supporting documentation as to cost and/or Project completion (as per the cost schedule and other requirements of the Statement of Work); (8) Progress Report (if required). Invoices that do not correspond with this paragraph shall be returned without action within twenty (20) business days of receipt, stating the basis for rejection. Payments shall be made within forty-five (45) days of receipt of an approved invoice.
  - (e) **Travel expenses.** If the cost schedule for this Agreement includes a line item for travel expenses, travel expenses shall be drawn from the project budget and are not otherwise compensable. If travel expenses are not included in the cost schedule, they are a cost that is borne by Recipient.
  - (f) **Payments withheld.** The Council may withhold or, on account of subsequently discovered evidence, nullify, in whole or in part, any payment to such an extent as may be necessary to protect the Council from loss as a result of: (1) defective work not remedied; (2) failure to maintain adequate progress in the Project; (3) any other material breach of this Agreement. Amounts withheld shall not be considered due and shall not be paid until the ground(s) for withholding payment have been remedied.
  - (g) **Annual budgetary limitation.** For multi-fiscal year agreements, the Council must budget the amount of funds that will be expended during each fiscal year as accurately as possible. The Statement of Work, Attachment A, includes the parties' current schedule for completion of the Work and projection of expenditures on a fiscal year basis (October 1 – September 30) ("Annual Spending Plan"). If Recipient anticipates that expenditures will exceed the budgeted amount during any fiscal year, Recipient shall promptly notify the Council's Project Manager and provide a proposed revised work schedule and Annual Spending Plan that provides for completion of the Work without increasing the Total Compensation. The last date for the Council to receive this request is August 1 of the then-current fiscal year. The Council may in its sole discretion prepare a Supplemental Instruction Form incorporating the revised work schedule and Annual Spending Plan during the then-current fiscal year or subsequent fiscal year(s).
6. **LIABILITY AND INSURANCE.** Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party, its officers and employees.

Nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available under the laws of the State of Florida, nor as a waiver of sovereign immunity of the State of Florida beyond the waiver provided for in Section 768.28, Fla. Stat., as amended. Each party shall acquire and maintain throughout the term of this Agreement such liability, workers' compensation, and automobile insurance as required by their current rules and regulations, which may include participation in a self-insurance program.

7. **FUNDING CONTINGENCY.** This Agreement is at all times contingent upon funding availability, which may include a single source or multiple sources, including, but not limited to: (1) revenues appropriated by the Council's Board of Directors; (2) annual appropriations by the Florida Legislature, or (3) appropriations from other agencies or funding sources. Agreements that extend for a period of more than one Fiscal Year are subject to annual appropriation of funds in the sole discretion and judgment of the Council's Board of Directors for each succeeding Fiscal Year. Should the Project not be funded, in whole or in part, in the current Fiscal Year or succeeding Fiscal Years, the Council shall so notify Recipient and this Agreement shall be deemed terminated for convenience five (5) days after receipt of such notice, or within such additional time as the Council may allow. For the purpose of this Agreement, "Fiscal Year" is defined as the period beginning on October 1 and ending on September 30.

8. **PROJECT MANAGEMENT**

- (a) The Project Managers listed below shall be responsible for overall coordination and management of the Project. Either party may change its Project Manager upon three (3) business days prior written notice to the other party. Written notice of change of address shall be provided within five (5) business days. All notices shall be in writing to the Project Managers at the addresses below and shall be sent by one of the following methods: (1) hand delivery; (2) U.S. certified mail; (3) national overnight courier; (4) e-mail or, (5) fax. Notices via certified mail are deemed delivered upon receipt. Notices via overnight courier are deemed delivered one (1) business day after having been deposited with the courier. Notices via e-mail or fax are deemed delivered on the date transmitted and received.

COUNCIL

Daniel Kolodny, Project Manager  
IRL Council  
1235 Main Street  
Sebastian, FL 32958  
(772) 216-7148  
E-mail: [kolodny@irlcouncil.org](mailto:kolodny@irlcouncil.org)

RECIPIENT

Bryant Smith III, P.E., Public Works Director  
City of Cocoa  
65 Stone Street  
Cocoa, FL 32922  
(321) 433-8770  
E-mail: [bsmith@cocoaf.gov](mailto:bsmith@cocoaf.gov)

- (b) The Council's Project Manager shall have sole responsibility for transmitting instructions, receiving information, and communicating Council policies and decisions regarding all matters pertinent to performance of the Project. The Council's Project Manager may also issue a Council Supplemental Instruction (CSI) form, Attachment B, to authorize minor adjustments to the Work that are consistent with the purpose of the Work. Both parties must sign the CSI. A CSI may not be used to change the Total Compensation, quantity, quality, or the Completion Date of the Work, or to change or modify the Agreement.

9. **PROGRESS REPORTS AND PERFORMANCE MONITORING**

- (a) **Progress Reports.** Recipient shall provide to the Council Project update/status reports as

provided in the Statement of Work. Reports will provide detail on progress of the Project and outline any potential issues affecting completion or the overall schedule. Reports may be submitted in any form agreed to by Council's Project Manager and Recipient, and may include emails, memos, and letters.

- (b) **Performance Monitoring.** For as long as the Project is operational, the Council shall have the right to inspect the operation of the Project during normal business hours upon reasonable prior notice. Recipient shall make available to the Council any data that is requested pertaining to performance of the Project.

- 10. TERMINATION.** The IRL Council may terminate this Agreement without cause upon 10 days written notice. In such event Recipient shall be compensated for all Work performed in accordance with this Agreement to the effective date of termination. If Recipient materially fails to fulfill its obligations under this Agreement, including any specific milestones established herein, the Council shall provide Recipient written notice of the deficiency by forwarding a Notice to Cure, citing the specific nature of the breach. Recipient shall have thirty (30) days to cure the breach. If Recipient fails to cure the breach within the thirty (30) day period, the Council shall issue a Termination for Default Notice and this Agreement shall be terminated upon receipt of said notice. In such event, Recipient shall refund to the Council all funds provided to Recipient pursuant to this Agreement within thirty (30) days of such termination. The Council may also terminate this Agreement upon ten (10) days written notice in the event any of material misrepresentations in the Project Proposal.

#### **ADDITIONAL PROVISIONS (Alphabetical)**

- 11. ASSIGNMENT.** Recipient shall not assign this Agreement, or any monies due hereunder, without the Council's prior written consent. Recipient is solely responsible for fulfilling all work elements in any contracts awarded by Recipient and payment of all monies due. No provision of this Agreement shall create a contractual relationship between the Council and any of Recipient's contractors or subcontractors.

#### **12. AUDIT; ACCESS TO RECORDS; REPAYMENT OF FUNDS**

- (a) **Maintenance of Records.** Recipient shall maintain its books and records such that receipt and expenditure of the funds provided hereunder are shown separately from other expenditures in a format that can be easily reviewed. Recipient shall keep the records of receipts and expenditures, copies of all reports submitted to the Council, and copies of all invoices and supporting documentation for at least five (5) years after expiration of this Agreement. In accordance with generally accepted governmental auditing standards, the Council shall have access to and the right to examine any directly pertinent books and other records involving transactions related to this Agreement. In the event of an audit, Recipient shall maintain all required records until the audit is completed and all questions are resolved. Recipient will provide proper facilities for access to and inspection of all required records.
- (b) **Repayment of Funds.** Council funding shall be subject to repayment after expiration of this Agreement if, upon audit examination, the Council finds any of the following: (1) Recipient has spent funds for purposes other than as provided for herein; (2) Recipient has failed to perform a continuing obligation of this Agreement; (3) Recipient has received duplicate funds from the Council for the same purpose; and/or (4) Recipient has received more than one hundred percent (100%) contributions through cumulative public agency cost-share funding.

- (c) **Florida Inspectors General.** It is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section.
13. **CIVIL RIGHTS.** Pursuant to Chapter 760, Fla. Stat., Recipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, age, handicap, or marital status.
14. **COMMUNICATION AND ACKNOWLEDGEMENT OF FUNDING:** As a granting agency, the Council achieves its mission through partnerships with state agencies, local governments, community organizations, and others. The Council requires Recipient to acknowledge the Council when describing this project or program funded in whole or in part with Council funds in any of the following products: (1) press releases, speaking engagements, and other public statements; (2) publications and other documents; (3) websites; (4) visual presentations; (5) resource guides/toolkits; (6) bid solicitations and/or; (7) social media.
15. **DISPUTE RESOLUTION.** Recipient is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute involving performance of this Agreement by submitting a written statement to the Council's Project Manager no later than ten (10) business days after the precipitating event. If not resolved by the Project Manager, the Project Manager shall forward the request to the Council's General Counsel, which shall issue a written decision within ten (10) business days of receipt. This determination shall constitute final action of the Council and shall then be subject to judicial review upon completion of the Project.
16. **DIVERSITY REPORTING.** The Council is committed to the opportunity for diversity in the performance of all cost-sharing agreements, and encourages Recipient to make a good faith effort to ensure that women and minority-owned business enterprises (W/MBE) are given the opportunity for maximum participation as contractors. The Council will assist Recipient by sharing information on W/MBEs. Recipient shall provide with each invoice a report describing: (1) the company names for all W/MBEs; (2) the type of minority, and (3) the amounts spent with each during the invoicing period. The report will also denote if there were no W/MBE expenditures.
17. **ENTIRETY OF CONTRACTUAL AGREEMENT; AMENDMENT.** The Council and the Recipient agree that this Agreement (including all exhibits, attachments, etc.) sets forth the entire contract between the parties, and that there are no promises or understandings other than those stated in these documents. None of the provisions, terms and conditions contained in this Agreement may be added to, modified or otherwise altered, except by written instrument executed by the parties hereto.
18. **E-VERIFY.** Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021, the Recipient shall:
- (a) Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;
  - (b) Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien;

- (c) Maintain copies of all subcontractor affidavits for the duration of this Agreement;
- (d) Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
- (e) Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and
- (f) Be aware that if the Council terminates this Agreement under Section 448.095(2)(c), Florida Statutes, the Recipient may not be awarded a public contract for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the Recipient as a result of the termination of the Agreement.

## 19. FLORIDA SINGLE AUDIT ACT

- (a) **Applicability.** The Florida Single Audit Act (FSAA), section 215.97, Fla. Stat., applies to all sub-recipients of state financial assistance, as defined in section 215.97(1)(q), Fla. Stat., awarded by the Council through a project or program that is funded, in whole or in part, through state financial assistance to the Council. In the event Recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year, Recipient must have a state single or project-specific audit for such fiscal year in accordance with section 215.97, Fla. Stat.; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. In determining the state financial assistance expended in its fiscal year, Recipient shall consider all sources of state financial assistance, including state financial assistance received from the Council, other state agencies, and other non-state entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a non-state entity for Federal program matching requirements. Recipient is solely responsible for complying with the FSAA.

If Recipient expends less than \$750,000 in state financial assistance in its fiscal year, an audit conducted in accordance with the provisions of section 215.97, Fla. Stat., is not required. In such event, should Recipient elect to have an audit conducted in accordance with section 215.97, Fla. Stat., the cost of the audit must be paid from the non-state entity's resources (i.e., Recipient's resources obtained from other than State entities).

- (b) **Additional Information.** For information regarding the state program under the above CSFA number, University should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa/catalog.aspx> for assistance. The following websites may be accessed for additional information: Legislature's Website at <http://www.leg.state.fl.us/>, State of Florida's website at <http://myflorida.com>, District of Financial Services' Website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.
- (c) **Allowable Costs.** Recipient may only charge allowable costs to this Agreement, as otherwise provided herein in Attachment C. Any balance of unobligated cash that have been advanced or paid that is not authorized to be retained for direct program costs in a subsequent period must be returned to the Council.

- (d) **Audit Requirements.** Recipient shall ensure that the audit complies with the requirements of section 215.97(7), Fla. Stat. This includes submission of a financial reporting package as defined by section 215.97(2), Fla. Stat., and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. Recipient shall comply with the program requirements described in the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/catalog.aspx>]. The services/purposes for which the funds are to be used are included in the Statement of Work.
- (e) **Financial Reporting.** Recipient shall provide the Council with a copy of any reports, management letters, or other information required to be submitted in accordance with Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable, no more than 20 days after its preparation. Recipient shall indicate the date the reporting package was delivered to Recipient in correspondence accompanying the reporting package. This information shall be directed to: IRL Council, Mr. Daniel Kolodny, Chief Operating Officer, 1235 Main Street, Sebastian, FL 32958. A copy of the report shall also be provided to the Auditor General's Office at the following address: State of Florida Auditor General, Room 401, Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450.
- (f) **Monitoring.** In addition to reviews of audits conducted in accordance with section 215.97, Fla. Stat., as revised, monitoring procedures may include, but not be limited to, on-site visits by Council staff, limited scope audits, and/or other procedures. Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Council. In the event the Council determines that a limited scope audit of Recipient is appropriate, Recipient agrees to comply with any additional instructions provided by the Council to Recipient regarding such audit. Recipient agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Council's Independent Financial Auditor or the state Chief Financial Officer or Auditor General.
- (g) **Examination of Records.** In addition to the Council's audit rights otherwise provided for herein, Recipient shall permit the Council or its designated agent, the state awarding agency, the Department of Financial Services, the state's Chief Financial Officer and the state's Auditor General to examine Recipient's financial and non-financial records to the extent necessary to monitor Recipient's use of state financial assistance and to determine whether timely and appropriate corrective actions have been taken with respect to audit findings and recommendations, which may include onsite visits and limited scope audits.
- (h) **Records Retention.** Notwithstanding any other provision of this Agreement to the contrary, Recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of five (5) years from the date the audit report is issued, and shall allow the Council, or its designee, state Chief Financial Officer, or Auditor General access to such records upon request. Recipient shall ensure that audit working papers are made available for such access for a period of three years from the date the audit report is issued, unless extended in writing by the Council.

20. **GOVERNING LAW, VENUE, ATTORNEY'S FEES, WAIVER OF RIGHT TO JURY TRIAL; REMEDY.** This Agreement shall be construed according to the laws of Florida and shall not be construed more strictly against one party than against the other because it may have been drafted by one of the parties. As used herein, "shall" is always mandatory. In the event of any legal proceedings arising from or related to this Agreement: (1) venue for any state or federal legal proceedings shall be in Indian River County; (2) each party shall bear its

own attorney's fees, including appeals; (3) for civil proceedings, the parties hereby consent to trial by the court and **WAIVE THE RIGHT TO JURY TRIAL**; (4) no remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

21. **INDEPENDENT ENTITIES.** The parties to this Agreement, their employees and agents, are independent entities and not employees or agents of each other. Nothing in this Agreement shall be interpreted to establish any relationship other than that of independent entities during and after the term of this Agreement. Recipient is not a contractor of the Council. The Council is providing cost-share funding as a cooperating governmental entity to assist Recipient in accomplishing the Project. Recipient is solely responsible for accomplishing the Project and directs the means and methods by which the Project is accomplished. Recipient is solely responsible for compliance with all labor, health insurance, and tax laws pertaining to Recipient, its officers, agents, and employees.
22. **INTEREST OF RECIPIENT.** Recipient certifies that no officer, agent, or employee of the Council has any material interest, as defined in Chapter 112, Fla. Stat., either directly or indirectly, in the business of Recipient to be conducted hereby, and that no such person shall have any such interest at any time during the term of this Agreement.
23. **NON-LOBBYING.** Pursuant to Section 216.347, Fla. Stat., as amended, Recipient agrees that funds received from the Council under this Agreement shall not be used for the purpose of lobbying the Legislature or any other state agency.
24. **PERMITS.** Recipient shall comply with all applicable federal, state and local laws and regulations in implementing the Project and shall include this requirement in all subcontracts pertaining to the Project. Recipient shall obtain any and all governmental permits necessary to implement the Project. Any activity not properly permitted prior to implementation or completed without proper permits does not comply with this Agreement and shall not be approved for cost-share funding.
25. **PUBLIC ENTITY CRIME.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO (\$35,000) for a period of 36 months following the date of being placed on the convicted vendor list.
26. **PUBLIC RECORDS.**
  - (a) Records of Recipient that are made or received in the course of performance of the Project may be public records that are subject to the requirements of chapter 119, Fla. Stat. If Recipient receives a public records request, Recipient shall promptly notify the Council's Project Manager. Each party reserves the right to cancel this Agreement for

refusal by the other party to allow public access to all documents, papers, letters, or other material related hereto and subject to the provisions of chapter 119, Fla. Stat., as amended.

- (b) **IF RECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE RECIPIENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE COUNCIL'S CUSTODIAN OF PUBLIC RECORDS AT (772) 216-7148, [KOLODNY@IRLCOUNCIL.ORG](mailto:KOLODNY@IRLCOUNCIL.ORG), 1235 MAIN STREET, SEBASTIAN, FLORIDA 32958.**
- (c) Recipient shall keep and maintain public records required by the Council to perform the Project.
- (d) Upon request from the Council's custodian of public records, Recipient shall provide the Council with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, Fla. Stat. or as otherwise provided by law.
- (e) Recipient shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the Council.
- (f) Upon completion of the contract, Recipient may transfer, at no cost, to the Council all public records in possession of the Recipient or keep and maintain public records required by the Council to perform the service. If the Recipient transfers all public records to the Council upon completion of the contract, the Recipient shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Recipient keeps and maintains public records upon completion of the contract, the Recipient shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Council, upon request from the Council's custodian of public records, in a format that is compatible with the information technology systems of the Council.

**27. ROYALTIES AND PATENTS.** Recipient certifies that the Project does not, to the best of its information and belief, infringe on any patent rights. Recipient shall pay all royalties and patent and license fees necessary for performance of the Project and shall defend all suits or claims for infringement of any patent rights and save and hold the Council harmless from loss to the extent allowed by Florida law.

**28. SEVERABILITY; SURVIVABILITY; WAIVER**

- (a) If any term or provision of the Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of the Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of the Agreement shall be deemed valid and enforceable to the extent permitted by law.

- (b) Any provision of the Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of the Agreement shall survive its expiration or earlier termination.
- (c) Failure of either party to enforce or exercise any right(s) under this Agreement shall not be deemed a waiver of either party's right to enforce or exercise said right(s) at any time thereafter.

**IN WITNESS WHEREOF**, the Parties have executed on the day and year written below. This Agreement may be executed in separate counterparts, which shall not affect its validity.

IRL COUNCIL

CITY OF COCOA

By: \_\_\_\_\_  
Duane E. De Freese, Ph.D., Executive Director

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form and legal sufficiency

\_\_\_\_\_  
Glen J. Torcivia, IRL Council General Counsel

#### ATTACHMENTS

Attachment A – Statement of Work

Attachment B – Council Supplemental Instruction Form

Attachment C – Contract Payment Requirements for State-Funded Cost Reimbursement Contracts

Cost-share: Agency general  
Last updated: 3-16-20

## **ATTACHMENT A – STATEMENT OF WORK**

### **I. PROJECT TITLE:**

Dixon Blvd at Indian River Drive Water Quality and Resiliency Project (Design and Engineering)

### **II. INTRODUCTION/BACKGROUND:**

This project once constructed will provide stormwater treatment and resiliency at Dixon and Indian River Drive (IRD). The project will elevate the roadway providing resiliency and safety. Also, an existing 19”x30” drainage pipe will be transitioned from a direct untreated outfall to the Indian River to a Nutrient Removing Filtration System (NRFS) Baffle Box. This project will also seek to tie in additional untreated outfalls on IRD to treat stormwater prior to entering the Indian River. The requested funding within this proposal is for the final design and permitting needed prior to construction.

### **III. PROJECT VALUE PROPOSITION STATEMENT:**

The project once constructed will provide treatment to two or more direct outfalls, out of the over 65 within the City of Cocoa, to the Indian River. This project helps to address four of the CCMP Vitals, which are Impaired Waters, Stormwater, Trash-Free Waters, and Climate-Ready Estuary. The NRFS will help treat stormwater and remove trash and debris before entering into an impaired body of water. The City of Cocoa anticipates including a small pedestrian and bicycle lookout at the discharge location. This will provide a much-needed rest stop for both bicyclists and pedestrians using the Indian River Scenic Drive. An educational display will be included showing the benefits of this project and by providing resources to users on what they can do to help achieve our goal of a clean lagoon. This project has the potential to treat roughly 40 acres of vacant, multi-family, and single-family land-uses. This would result in approximately 130.52 lb/yr and 20.62 lb/yr of TN and TP removed, respectively.

### **IV. LOCATION OF PROJECT:**

This project is located in the City of Cocoa, Florida at the intersection of Dixon Blvd. and Indian River Drive. Attached please find the Project Location Map.

### **V. SCOPE OF WORK (Outputs/Deliverables):**

- Output 1 (Deliverable) – 60% Design
- Output 2 (Deliverable) – 90% Design and Construction Cost Estimate
- Output 3 (Deliverable) – Permits
- Output 4 (Deliverable) – Final Design
- Output 5 (Deliverable) – Final Report

### **VI. PROJECT TASK IDENTIFICATION:**

- Task 1. 60% Design.  
The City will complete the 60% design drawing
- Task 2. 90% Design and Construction Cost Estimate.  
The City will complete the 90% design drawings and develop a construction cost estimate.
- Task 3. Permitting.  
The City will submit all the necessary permits for construction.
- Task 4. Final Design  
The City will complete the final design and construction drawings.
- Task 5. Final Report  
The City shall complete 100 percent of the project and submit a Final Report that

summarizes all the prior tasks.

**VII. TIME FRAMES and DELIVERABLES:**

- Task 1. Deliverable: 60% Design  
 Deliverable: 60% Design drawings  
 Deliverable due: December 31, 2022.
- Task 2. Deliverable: 90% Design and Construction Cost Estimate  
 Deliverable: 90% Design drawings and a construction cost estimate  
 Deliverable due: March 31, 2023.
- Task 3. Deliverable: Permits  
 Deliverable: Copies of all permits required for construction  
 Deliverable due: September 30, 2023
- Task 4. Deliverable: Final Design  
 Deliverable: The 100% completed Final design that includes signed and sealed construction drawings.  
 Deliverable due: September 30, 2023
- Task 5. Project Final Report.  
 Deliverable: A Report that summarizes all activities from the prior tasks.  
 Deliverable due: September 30, 2023

**VIII. BUDGET:**

| Task line Item | Deliverable        | IRLNEP Funding Amount | Cost Share Funding Amount | Cost Share Funding Source (In-kind or Cash) |
|----------------|--------------------|-----------------------|---------------------------|---|
| 1              | 60% Design         | \$17,988              | \$35,768                  | SW Utility Enterprise Fund                  |
| 2              | 90% Design         | \$10,792              | \$21,460                  | SW Utility Enterprise Fund                  |
| 3              | Permits            | \$3,858               | \$7,706                   | SW Utility Enterprise Fund                  |
| 4              | 100% Design        | \$7,195               | 14,307                    | SW Utility Enterprise Fund                  |
| 5              | Final Report       | \$167                 | \$665                     | SW Utility Enterprise Fund                  |
|                | Summary Cost       | 40,000                | 79,906                    |   |
|                | Project total cost | <b>\$119,906</b>      |                           |   |

DATE:

TO:

FROM: \_\_\_\_\_, Project Manager

CONTRACT/PURCHASE ORDER NUMBER:

CONTRACT TITLE:

The Work shall be carried out in accordance with the following supplemental instruction issued in accordance with the Contract Documents without change in the Contract Sum or Contract Time. Prior to proceeding in accordance with these instructions, indicate your acceptance of these instructions for minor changes to the work as consistent with the Contract Documents and return to the Council's Project Manager.

1. CONTRACTOR'S SUPPLEMENTAL INSTRUCTIONS:
2. DESCRIPTION OF WORK TO BE CHANGED:
3. DESCRIPTION OF SUPPLEMENTAL INSTRUCTION REQUIREMENTS: \_\_\_\_\_.

**Contractor's approval: (choose one of the items below):**

Approved: \_\_\_\_\_ Date: \_\_\_\_\_

(It is agreed that these instructions shall not result in a change in the Total Compensation or the Completion Date.)

Approved: \_\_\_\_\_ Date: \_\_\_\_\_

(Contractor agrees to implement the Supplemental Instructions as requested, but reserves the right to seek a Change Order in accordance with the requirements of the Agreement.)

Approved: \_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_, Council Project Manager

Acknowledged: \_\_\_\_\_ Date: \_\_\_\_\_  
\_\_\_\_\_, Council Contracts Administrator

cc: Contract/Purchasing file

**ATTACHMENT - C**

**CONTRACT PAYMENT REQUIREMENTS FOR  
STATE-FUNDED COST REIMBURSEMENT CONTRACTS**

Invoices for state-funded cost reimbursement contracts must be supported by an itemized listing of expenditures by category (salary, travel, expenses, etc.). Supporting documentation must be provided for each amount for which reimbursement is being claimed, indicating that the item has been paid. Check numbers may be provided in lieu of copies of actual checks. Each piece of documentation shall clearly reflect the dates of service. Only expenditures for categories in the approved contract budget will be reimbursed.

Listed below are examples of the types of documentation representing the minimum requirements by cost category:

Salaries: Submit a payroll register or similar documentation showing gross salary charges, fringe benefits, other deductions, and net pay. If an individual is paid by the hour, a document reflecting the hours worked times the rate of pay is acceptable.

Fringe Benefits: Fringe benefits should be supported by invoices showing the amount paid on behalf of the employee (e.g., insurance premiums paid). If the contract specifically states that fringe benefits will be based on a specified percentage, rather than the actual cost of fringe benefits, then the calculation for the fringe benefits amount must be shown.

Exception: Governmental entities are not required to provide check numbers or copies of checks for fringe benefits.

Travel: Reimbursement for travel must be in accordance with section 112.061, Florida Statutes, which includes submission of the claim on the approved State of Florida (State) or Council travel voucher.

Other direct costs: Reimbursement is based upon paid invoices/receipts. If nonexpendable property is purchased using State funds, the contract should include a provision for the transfer of the property to the State when services are terminated. Documentation must be provided to show compliance with Department of Management Services Rule 60A-1.017, Florida Administrative Code, regarding the requirements for contracts which include services and that provide for the contractor to purchase tangible personal property as defined in section 273.02, Florida Statutes, for subsequent transfer to the State.

In-house charges: Charges which may be of an internal nature (e.g., postage, copies, etc.) may be reimbursed on a usage log which shows the units times the rate being charged. The rates must be reasonable.

Indirect costs: If the contract specifies that indirect costs will be paid based on a specified rate, then the calculation should be shown.

The "Reference Guide for State Expenditures" prepared by the Florida Department of Financial Services can be found at this web address: [http://www.fldfs.com/aadir/reference\\_guide.htm](http://www.fldfs.com/aadir/reference_guide.htm)