

AMENDMENT 2 TO THE SAVE OUR INDIAN RIVER LAGOON PROJECT COST-SHARE FUNDING INTERLOCAL AGREEMENT BETWEEN BREVARD COUNTY, FLORIDA, AND THE CITY OF WEST MELBOURNE, FLORIDA

AGREEMENT NUMBER: SOIRL 21-138

THIS AMENDMENT is made and entered into by and between Brevard County, Florida, a political subdivision of the State of Florida (hereinafter "COUNTY"), and the City of West Melbourne, Florida, a Florida municipal corporation organized and existing under the laws of the State of Florida (hereinafter "CITY").

WHEREAS, the parties have previously entered into that certain Save Our Indian River Lagoon Project Cost-Share Funding Interlocal Agreement No. SOIRL 22-138 on April 6, 2021 ("Agreement"); and

WHEREAS, the parties previously entered into Amendment 1 to the Agreement on December 14, 2021, to update the CITY Project Manager and E-Verify language; and

WHEREAS, the CITY experienced delays in design due to expansion of the project to include addition treatment effectiveness; and

WHEREAS, the CITY has secured additional grant funding for this project from the Florida Department of Environmental Protection and St. Johns River Water Management District; and

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties hereby agree as follows:

1. Section 3. Terms and Extensions subsection 3.a. is amended to read as follows:
  - a. The term of this Agreement is from the date upon which the last party has dated and executed the same ("Effective Date") until January 31, 2025 ("Completion Date"). CITY shall not commence the Project until any required submittals are received and approved. Time is of the essence for every aspect of this Agreement, including any time extensions.
2. Section 9. Payment of Invoices, paragraph 9.c is amended to read as follows:
  - c. Incremental payments shall be calculated as the fraction of Eligible Tax Funding Cost Share listed in the **Eligible Tax Funding Cost Share Form, Attachment E** (after adjustments per Section 8c. and/or d.) divided by Project Cost multiplied by the amount of the City's Project Cost incurred during the respective incremental billing period. This percentage may be adjusted as needed if the project is partially funded through other grant funding sources. Payments shall be made within forty-five (45) days of receipt of an approved invoice.
3. Section 14. Sovereign immunity, Liability, and Insurance is amended to read as

follows:

To the extent provided by law, the CITY shall indemnify, defend, and hold harmless the COUNTY against any actions, claims, or damages arising out of, relating to, or resulting from negligent or wrongful act(s) of the CITY, or any of its officers, agents, or employees, acting within the scope of their office or employment, in connection with this Contract, to the extent and within the limitations of Section 768.28, Florida Statutes. The CITY accepts all risks arising from construction or operation of the Project. 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 COUNTY or CITY beyond the waiver provided for in Section 768.28, Florida Statutes, as may be amended. Nothing contained herein shall constitute agreement by the CITY to indemnify the COUNTY for the negligent acts or omissions of the COUNTY, its officers or employees. Nothing in this Contract is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. 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.

The selected contractor shall purchase and maintain general liability insurance in the amount of \$1,000,000/\$2,000,000 and auto liability insurance in the amount of \$500,000/\$1,000,000, and Workers' Compensation to the State of Florida's limits. The selected contractor shall provide Certificates of Insurance to the City and COUNTY demonstrating that the aforementioned insurance requirements have been met prior to the commencement of work under this Contract and is responsible for ensuring it has the coverage required hereunder throughout the length of this contract. Insurance carriers providing coverage required herein must be licensed or authorized to conduct business in the State of Florida and must possess A.M. Best's Financial Strength Rating of A-Class VIII or better. The Certificates of Insurance shall indicate that the policies (except professional liability) have been endorsed to cover the COUNTY and the CITY as an additional insured (a waiver of subrogation in lieu of additional insured status on the Workers' Compensation policy is acceptable) and that these policies may not be canceled or modified without thirty (30) days prior written notice being issued by the insurer to the COUNTY. The CONTRACTOR is also responsible for providing the COUNTY with thirty (30) days prior written notice of any change or cancellation of the policies.

The selected contractor shall submit a certificate of insurance that meets these requirements to both the CITY and the BOCC before the commencement of the project. Where the City is indemnified under any agreement awarded to the selected subcontractor, the County shall also likewise be so indemnified by the subcontractor and the City shall provide written proof of such indemnification.

The parties acknowledge that specific consideration has been exchanged for this

indemnification provision. This indemnification shall survive the termination of this Contract.

4. As a result of the additional funds made available from the Florida Department of Environmental Protection 2023 Water Quality grant program and the St. Johns River Water Management District 2023 Cost Share Funding, "Attachment E – Eligible Funding Cost Share Form" of the Agreement is hereby amended as follows:

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**ATTACHMENT E**

Recipient Name:		City of West Melbourne
Project Name:		Ray Bullard Water Reclamation Facility Nutrient Removal Upgrades
Agreement Number:		21-138

Estimated Project Cost-Share Table							
Task Number	Task Description	Task Cost	Grant 1 (319)	Grant 2 (FDEP)	Grant 3 (SJRWMD)	Eligible Lagoon Tax Cost Share, Adjusted	Local Match
1	Design & Permitting	\$710,000				\$600,000	\$110,000
2	Construction	\$7,300,000		\$1,510,000	\$1,343,250	\$3,660,000	\$786,750
	<b>Total</b>	<b>\$8,010,000</b>	<b>\$ -</b>	<b>\$1,510,000</b>	<b>\$1,343,250</b>	<b>\$4,260,000</b>	<b>\$896,750</b>

Funding Eligibility Calculation		
Project Type		Reclaimed Water
BMP Type (If stormwater)		
Pounds of Nitrogen Reduction		11360
Eligible Cost Share per Pound		\$375
Eligible Tax Funding Cost Share		\$4,260,000.00
Reduction so Sum of Grants does not exceed Project Cost		\$ -
Eligible Lagoon Tax Cost Share, Adjusted		\$4,260,000.00
Percent Cost Share to be contributed by the Lagoon Tax		53%

5. All terms and conditions of the Agreement, and any amendments or modifications thereto, are incorporated herein by this reference, not inconsistent with the provisions of this Second Amendment, shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the date last written below

BREVARD COUNTY, FLORIDA

WEST MELBOURNE, FLORIDA

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

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

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

Name: Hal Rose

Rita Pritchett, Chair

Title: Mayor

As Approved by the Board on July 25, 2023

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

Attest

\_\_\_\_\_  
Rachel Sadoff, Clerk

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

Reviewed for legal form and content for  
Brevard County

  
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Heather A. Balsler, Assistant County Attorney