

AMENDMENT 1 TO THE SAVE OUR INDIAN RIVER LAGOON PROJECT COST-SHARE FUNDING INTERLOCAL AGREEMENT BETWEEN BREVARD COUNTY, FLORIDA, AND THE CITY OF INDIAN HARBOUR BEACH, FLORIDA

AGREEMENT NUMBER: SOIRL 19-72

THIS AMENDMENT is made and entered into by and between the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida (hereinafter "COUNTY"), and the City of Indian Harbour Beach, 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 19-72 on October 18, 2019 ("Agreement"), which is incorporated herein by this reference; and

WHEREAS, the COUNTY received grant funding to initiate design and permitting; and

WHEREAS, the CITY has secured additional grant funding for this project from the Florida Department of Environmental Protection; and

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

1. Section 1. Documents. Attachment F – Foreign Disclosure Form (for projects over \$100,000) has been added.
2. Section 3. Terms and Extensions, paragraph 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 December 31, 2032 ("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.
3. Section 5. Project Management is amended to the following:

COUNTY

Terri Breeden  
Project Manager  
Department of Natural Resource Management  
2725 Judge Fran Jamieson Way, Building A  
Viera, Florida 32940  
321-633-2016  
Email: Terri.Breeden@brevardfl.gov

CITY

Jim Coffey  
City Manager  
City of Indian Harbour Beach  
2055 South Patrick Drive  
Indian Harbour Beach, FL 32937  
Project Manager Phone 321-773-3181  
E-mail: jcoffey@indianharbour.org

4. Section 7. Progress Reports and Performance Monitoring is amended to the following:

b. The CITY shall use the COUNTY'S Project Progress Report Form, Attachment B. CITY shall submit the Project Progress Reports to the COUNTY'S Project Manager within twenty (20) days after the closing date of each calendar quarter (March 31, June 30, September 30 and December 31).

5. Section 14. Sovereign immunity, Liability, and Insurance is amended to the following:

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.

6. Section 25 is deleted in its entirety.
7. Section 29. Employment Eligibility Verification (E-Verify) has the following sections added:
  - e. shall require any contractor to provide the City with an affidavit stating that it does not employ, contract with, or subcontract with any unauthorized aliens; and
  - f. nothing in this Section may be construed to allow intentional discrimination of any class protected by law.

8. Section 30. Severability is added to the contract:

If any portion of this Contract is found to be invalid or unenforceable or if applicable law mandates a different interpretation or result, the remaining provisions will remain in effect and the parties will negotiate in good faith to substitute for such invalid, illegal, or unenforceable provision a mutually acceptable provision consistent with the original intention of the parties.

9. As a result of the additional funds made available from the Florida Department of Environmental Protection appropriations grant, "Attachment E – Eligible Funding Cost Share Form" of the Agreement is hereby amended as follows:

**ATTACHMENT E**

Recipient Name:	Indian Harbour Beach
Project Name:	Muck Removal of IHB Canals and Muck Interstitial Water Treatment for IHB Canals
Agreement Number:	SOIRL 19-72

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 and Permitting	\$260,000		\$260,000.00			\$
2	Construction of Project	\$10,120,000		\$500,000.00		\$9,115,415.00	\$504,585
	Total	\$10,380,000	\$-	\$760,000.00	\$-	\$9,115,415.00	\$504,585

Funding Eligibility Calculation		
Project Type		Muck Dredging
Pounds of Nitrogen Reduction		31,213
Eligible Cost Share per Pound (Muck Dredging to reduce sediment flux by 3,795 pounds of Nitrogen)		\$957
Eligible Cost Share per Pound (Interstitial Treatment to remove 27,418 pounds of dissolved Nitrogen)		\$200
Eligible Tax Funding Cost Share		\$9,115,415
Reduction so Sum of Grants does not exceed Project Cost		\$-
Eligible Lagoon Tax Cost Share, Adjusted		\$9,115,415
Percent Cost Share to be contributed by the Lagoon Tax		88%

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

## ATTACHMENT F DISCLOSURE FORM

### FOREIGN INFLUENCE ON CONTRACTS OR GRANTS HAVING A VALUE OF \$100,000 OR MORE

**Summary of Form:** In order for the County to comply with section 286.101, Florida Statutes, all prospective contractors and grant recipients seeking to contract with the County, or receive a grant from the County, where said contract or grant has a value of \$100,000 or more must disclose to the County (1) any current or prior interest of, (2) any contract with, or (3) any grant or gift received from a foreign country of concern (defined as the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolas Maduro, and the Syrian Arab Republic, or an agency or other entity under the significant control of such foreign country of concern) if such interest, contract, or grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract or grant or gift was received or in force at any time during the previous five years. The disclosure is specified below. Within one year before applying for any grant or proposing any Contract, such entity must provide a copy of such disclosure to the Department of Financial Services. Disclosure is not required in certain circumstances, outlined below. A Contract is any agreement for the direct benefit or use of any party to such agreement, including an agreement for the sale of commodities or services. A Gift is any transfer of money or property from one entity to another without compensation. A Grant is a transfer of money for a specified purpose, including a conditional gift. An interest in an entity means any direct or indirect investment in or loan to the entity valued at 5 percent or more of the entity's net worth or any form of direct or indirect control exerting similar or greater influence on the governance of the entity.

#### I. SECTION I. Please answer yes or no to each statement below:

- YES / NO I AM BIDDING ON A CONTRACT/APPLYING FOR A GRANT WITH A POTENTIAL VALUE UNDER \$100,000. If yes, this disclosure form has been completed. Please sign and date at the bottom.
- YES / NO I AM BIDDING ON A CONTRACT/APPLYING FOR A GRANT WITH A POTENTIAL VALUE OF OVER \$100,000. If yes, proceed to the next question.
- YES / NO I HAVE MADE A FOREIGN INFLUENCE DISCLOSURE ONLINE WITH THE DEPARTMENT OF FINANCIAL SERVICES. If yes, please proceed to SECTION IV and provide the date of the disclosure, your name and address. Then sign and date at the bottom.

#### II. SECTION II. Please answer yes or no to the statement below:

- YES / NO Bidder/Grantee has (1) a current or prior interest of, any contract with, or any grant or gift received from a foreign country of concern (defined as the People's Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Republic of Cuba, the Venezuelan Regime of Nicolas Maduro, and the Syrian Arab Republic, or an agency or other entity under the significant control of such foreign country of concern); and (2) such interest, contract, or grant or gift has a value of \$50,000 or more; and (3) such interest existed, or such contract or

grant or gift was received or in force at any time during the previous five years.

**III. SECTION III.** If you answered NO to SECTION II, you have completed this form. Please sign/date at the bottom. If you answered YES to SECTION II, then answer YES or NO to the following:

- YES / NO      This is a proposal to sell commodities through an online procurement programs established pursuant to section 287.057(22), Florida Statutes.
  
- YES / NO      This is a proposal from an entity that discloses foreign gifts or grants under section 1010.25 or section 286.101(2), Florida Statutes.
  
- YES / NO      This is a proposal from a foreign source that, if granted or accepted, would be disclosed under section 286.101(2) or section 1010.25, Florida Statutes.
  
- YES / NO      This is a proposal from a public or not-for-profit research institution with respect to research funded by any federal Agency.

**IV. SECTION IV.** If you answered YES to any question in SECTION III, you have completed this form. Please sign/date at the bottom. If you answered NO to all of the questions in SECTION III, then you must make the following disclosures online to the State of Florida Department of Financial Services before the County may contract with you or award you said grant. Please disclose the following:

Date Disclosure of the information below was made by Bidder/Grantee to the State of Florida Department of Financial Services online: \_\_\_\_\_

Name of Bidder/Grantee: \_\_\_\_\_

Mailing Address of Bidder/Grantee: \_\_\_\_\_

Value of the Contract/Grant or Gift: \_\_\_\_\_

Foreign Country of Concern or the Agency or other entity under the significant

Control of such Foreign country of Concern: \_\_\_\_\_

Date of Termination of the contract or interest with the Foreign Country of Concern:  
\_\_\_\_\_

Date of Receipt of the Contract/Grant or Gift: \_\_\_\_\_

Name of the agent or controlled entity that is the source or interest holder: \_\_\_\_\_

I verify that the information provided on this form is true and correct, and that I am duly authorized to make said binding disclosures on behalf of myself or my Company, as applicable.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_

Sworn to and subscribed before me by means of  physical presence or  online notarization, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by (name of person making statement).

[Notary Seal]

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Name typed, printed or stamped

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_ Personally Known OR \_\_\_\_\_ Produced Identification

Type of Identification Produced \_\_\_\_\_

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

BREVARD COUNTY, FLORIDA

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

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

Rita Pritchett, Chair

As Approved by the Board on April 18, 2023

Attest

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

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

INDIAN HARBOUR BEACH, FLORIDA

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

Name: Jim Coffey

Title: City Manager

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

Reviewed for legal form and content for Brevard County

  
\_\_\_\_\_  
Heather A. Balsler, Assistant County Attorney