

TEU 2019-91

**FUNDING AGREEMENT
FOR
MCCOY'S CREEK NATURAL CHANNEL RESTORATION**

THIS FUNDING AGREEMENT ("Agreement") is made as of the ___ day of _____ 2019, between the **City of Jacksonville**, a consolidated municipal and county government under the laws of Florida ("City") c/o its Environmental Protection Board ("EPB"), 214 N. Hogan Street, Suite 500, Jacksonville, Florida, 32202, and **Groundwork Jacksonville, Inc.**, a Florida non-profit corporation, whose address is FSCJ, 101 W. State Street - Bldg. A - Room 1003, Jacksonville, FL 32202 ("GWJ").

RECITALS

WHEREAS, EPB supports the mission of GWJ and their efforts to improve the quality of life in Jacksonville through conservation and protection of the natural and urban environment via education, awareness and facilitation and compliance; and

WHEREAS, EPB and GWJ both support the vision of the Emerald Necklace as a centerpiece of Jacksonville which - through the S-Line, Hogans Creek and McCoys Creek - connects urban core neighborhoods; and

WHEREAS, EPB and GWJ both support principles of the use of green infrastructure as a tool for stormwater management and water quality enhancement; and

WHEREAS, EPB supports GWJ's desire to construct a demonstration project along McCoys Creek which will feature implementation of natural channel design and the associated water quality benefits, with additional beneficial features including watershed conservation, low-impact development, green infrastructure practices and resiliency approaches; and

WHEREAS, GWJ has made the funding request detailed in the letter attached and incorporated herein as Exhibit A, seeking \$84,600 in funding to assist in the McCoy's Creek restoration project described in Exhibit A ("PROJECT"); and

WHEREAS, pursuant to Section 360.604(c), Jacksonville Ordinance Code, EPB has approved and the EPB Chairperson has authorized disbursements from the Environmental Protection Fund as set forth herein.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the foregoing, the mutual obligations set forth herein, and other good and valuable consideration, receipt of which is hereby acknowledged, EPB and GWJ (collectively "Parties") hereby agree as follows:

1. **RECITALS.** The Recitals set forth above are true and correct, and are incorporated in and made a part of this Agreement.

2. **OBLIGATIONS OF EACH PARTY.**

a. **EPB's Obligations:**

- i. EPB agrees to provide support for the PROJECT by seeking funding for the PROJECT. Specifically, EPB agrees to request the Mayor's Budget Review Committee ("MBRC") and, if approved by MBRC, the City Council to appropriate \$84,600.00 from the Environmental Protection Fund ("Fund") to fund the PROJECT, subject to the terms set forth herein.
- ii. To the extent that it is lawfully appropriated by City Council, EPB will disburse the funding set forth in section 2.a.i. above ("Funding") pursuant to the following payment schedule as also outlined in Exhibit B:
 1. Following final approval of the appropriation, \$42,300.00 shall be disbursed by EPB from the FUND to GWJ upon review and acceptance of the feasibility assessment of the watershed indicating that stream restoration is possible.
 2. The balance of the funding shall be disbursed upon review and acceptance of documentation that GWJ has secured at least \$109,000 in private donations to ensure that the natural channel design plans are completed to 30%.
- iii. EPB further agrees to use its best efforts to promote the PROJECT and share information about the PROJECT with the public.

b. **GWJ Obligations**

- i. GWJ agrees to accept EPB funding in the amount of \$84,600.00 according to the payment schedule set forth above.

- ii. GWJ agrees to expend the funds only for the PROJECT in accordance with the budget attached as Exhibit B, and that any portion of the Funding that is disbursed but not so used will be returned to EPB.
 - iii. GWJ agrees to provide the services and take other actions as necessary to accomplish the PROJECT in a timely manner.
 - iv. GWJ shall submit annual reports to the EPB, on or before September 15th of each year through September 30, 2021 providing an overview of construction progress made, an accounting of Funding disbursements and corresponding expenditures, and other general information about and metrics for the PROJECT as reasonably requested by EPB.
3. **Term and Renewal.** This Agreement shall continue in effect through September 30, 2021 and may be extended only with the agreement of both parties. EPB's performance and obligations to pay, if any, under the provisions of this Agreement are subject to appropriation by the City Council of the City of Jacksonville. Nothing in this Agreement shall be construed as providing GWJ or any third party with a cause of action against EPB or the City of Jacksonville for failure to obtain or make an appropriation for the PROJECT.
4. **Performance.** GWJ shall ensure that the PROJECT is conducted in a professional manner, using reasonable efforts and abilities, on a non-emergency basis.
5. **Safety.** EPB and GWJ agree that the safety of all employees, contractors, and the public shall always be considered as having priority. Either EPB or GWJ personnel may stop the PROJECT immediately due to any safety concerns.
6. **Force Majeure.** The Parties shall not be liable for any failure or delay in the performance of their obligations under this MOU due to a force majeure event, including but not limited to, acts of civil or military authority, acts of courts and/or regulatory agencies, war, riot or insurrection, embargoes, sabotages, strikes or lockouts (provided such strike or lockout does not arise from inequitable labor practices), epidemics, fires, floods, earthquakes, tornadoes, and hurricanes. If any failure or delay results from such causes, upon notice from GWJ within five days of the event giving rise to the delay, the time for performance shall be extended for a

period of time reasonably necessary to overcome the effects of such delays.

Notwithstanding the foregoing, if GWJ's performance is rendered impossible or ineffective by the event or delay, then all funds distributed to GWJ by EPB remaining unspent on the PROJECT shall be returned to EPB.

7. **No Waivers.** Failure of EPB or the City to take action to enforce compliance by GWJ with any of the terms or conditions of this Agreement after having received funds therefor, or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect.
8. **Entire Agreement.** This Agreement constitutes the entire understanding between the parties and supersedes all previous discussion, understandings and agreements between the parties relating to the subject matter hereof.
9. **Applicable Law.** This Agreement shall be construed, interpreted and controlled by the laws of the State of Florida.
10. **Public Records.** The Parties understand and agree that all documents of any kind provided in connection with this Agreement are public records and are treated as such in accordance with Florida law. GWJ expressly agrees to comply with Ch. 119, Florida Statutes, in connection with this Agreement.
11. **Limitations of Government Liability.** Nothing in this Agreement shall be deemed a waiver of immunity or limits of liability of either party or the City of Jacksonville beyond any statutory limited waiver of immunity or limits which may have been adopted by the Florida Legislature in Florida Statutes Section 768.28, or other statutes as amended from time to time, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim that would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement on the day and year first above written.

GROUNDWORK JACKSONVILLE, INC.,
a Florida Non-Profit Corporation

By: _____
Print Name: _____
Title: _____

ATTEST:

CITY OF JACKSONVILLE, a
Florida municipal corporation

By: _____
James R. McCain, Jr.
Corporation Secretary

By: _____
Lenny Curry, Mayor

In compliance with Section 24.103(e) the *Ordinance Code* of the City of Jacksonville, I do certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing Agreement, and provision has been made for the payment of the monies provided therein to be paid.

Director of Finance
Contract Number: _____

FORM APPROVED:

By: _____
Office of General Counsel

EXHIBIT A
FUNDING REQUEST

**Environmental Protection Fund
Request for Funding Assistance
GROUNDWORK JACKSONVILLE – MCCOYS CREEK HABITAT RESTORATION**

Purpose

The purpose of the bill is to authorize funding from the Environmental Protection Trust Fund to Groundwork Jacksonville (GWJ) to assist them in the development of a Habitat Restoration Plan for McCoys Creek. The McCoys Creek Habitat Restoration Project will serve as a demonstration project for the City, region, and beyond in the implementation of natural channel design and the associated water quality benefits. The funding will help ensure that plans are completed to the 30% design threshold. GWJ is assembling private funding to get the plan to 80% or 100% design. The plans will be provided to the City to help drive the long range plans in place for the McCoys Creek watershed.

Background

The Fund, which was created in 1984, was established under the Board's purview to be used by the Board for the purposes described in Section 360.602 O.C. The established purposes for use of the Fund include:

- Restoration of polluted areas subject to Board actions.
- Restoration where costs exceeded amount recovered from responsible party in judicial or administrative proceedings.
- To recover the costs and expenses of the Board in administering the Fund.
- To pay for the removal (emergency) or remedial actions (cleanup).
- To fund education and outreach activities, studies, surveys, tests and investigations pertaining to the duties of the Board.

Sources of Fund revenue include:

- Fines collected by the City
- Moneys received as a result of an administrative or judicial proceeding
- Moneys recovered as punitive damages
- Moneys recovered as civil penalties

Description

The goal of the McCoys Creek Master Plan is to provide natural channel design and bioengineering treatments for restoring approximately 2.8 miles of McCoys Creek from Hollybrook Park to the St. Johns River. The project area is approximately 142 acres (see attached map). The restoration is to be planned and implemented in a way that makes McCoys Creek a "shining part" of the proposed Emerald Necklace consistent with the vision and mission of Groundwork Jacksonville and addresses the needs of the City of Jacksonville. It is aimed at improving the waterway's health and function, habitat for wildlife, flooding, water quality, and aesthetics, while considering where recreational amenities and green and natural stormwater remedies can be incorporated.

Project Goals

The City of Jacksonville has identified McCoy's Creek as its flood mitigation priority. Two stormwater concepts were proposed by the City's stormwater consultant. Groundwork Jacksonville has proposed a more holistic approach that will address creek function, water quality, wildlife habitat and recreation. The City agrees that if Groundwork develops a creek restoration plan which provides an alternative plan at a reasonable cost and delivers it to the City for implementation, the City will implement the plan to the extent that funding is available. The Florida Department of Environmental Protection (FDEP) is looking for demonstration projects to monitor for water quality benefits associated with Urban Stream Restoration and natural channel design and GWJ was encouraged to move forward with the project. They have indicated that the COJ could receive TMDL credits for the project which makes this a project of interest. Any credits will reduce the COJ requirements that must be met by 2023.

Funding

- The EPB has authorized funding, pursuant to Section 111.755 O.C., in the amount of \$84,600 to support the project. The EPB unanimously approved the project at its July 2018 meeting.
- The Environmental Protection Fund consists of non-General Revenue monies collected by the City pursuant to O.C. Chapter 362, Chapter 368 or Chapter 376.

EXHIBIT B
PROJECT BUDGET

VI. Budget

Budget	EPB	Private Donors	Total
Direct Costs- CEO	\$14,000	\$14,000	\$28,000
Feasibility	\$0	\$42,210	\$42,210
Alternative Development	\$41,000	\$15,980	\$56,980
Conceptual Design and Community Event	\$20,000	\$12,590	\$32,590
Land Acquisition Costs	\$9,600	\$25,000	\$34,600
TOTAL	\$84,600	\$109,780	\$194,380