

FUNDING AGREEMENT
FOR
MILLER'S CREEK DREDGING PROJECT

THIS 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") and **Millers Creek Special District**, a special district created pursuant to Section 182.02, Florida Statutes, by virtue of City Ordinance No. 2014-700-E ("MCSD").

RECITALS

WHEREAS, Millers Creek is a tributary of the St. Johns River that is located within the City's jurisdictional boundaries;

WHEREAS, MCSD was created for the continuing maintenance of Millers Creek to enable continued access to and from the St. Johns River;

WHEREAS, MCSD is required under its charter to fulfill its purpose by dredging the Miller's Creek canals and channel that provide access to and from the St. Johns River, maintaining a jetty, and maintaining navigational aids;

WHEREAS, restoring and improving navigability in Millers Creek serves a public purpose beneficial to the citizens of the City;

WHEREAS, MCSD is in the process of having its initial dredging project engineered and permitted, and is preparing to commence the dredging and related work; and

WHEREAS, MCSD and the City (collectively "Parties") desire to enter into this Agreement setting forth the terms and conditions on which the City will contribute towards the funding of the Project.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are essential to and incorporated by this reference as terms of this Agreement.
2. **Parties' Representatives.** The Parties' representatives for purposes of the administration of this Agreement are set forth below.
 - a. City's Representative:

Phone: _____
Email: _____

b. **MCS D's Representative:**

Sharon Johnson, MCS D Board Chair
Phone: 904-396-0010
Email: sbjohn27@bellsouth.net

3. **Definitions.** As used in this Agreement:

- a. *Draw Payment* means a payment made from the City to MCS D under this Agreement.
- b. *Draw Request* means a request from MCS D to the City for a payment under this Agreement.
- c. *Effective Date* means the last date on which it is indicated that a Party executed this Agreement.
- d. *Funding* means the funds disbursed or to be disbursed to MCS D under this Agreement.
- e. *Project or Project Scope* means the MCS D initial dredging project as outlined in Exhibit A, attached and incorporated herein by this reference and as may be amended from time to time.
- f. *Project Budget* means the budget for the Project as outlined in Exhibit B, attached and incorporated herein by this reference.
- g. *Project Costs* means costs reasonably and necessarily incurred by MCS D to complete the Project, consistent with the Project Budget and Scope.
- h. *Total Project Cost* means the total cost of the Project as represented on the Project Budget.

4. **Project Funding.** Subject to the terms and conditions set forth below and elsewhere in this Agreement, and provided that all payments are subject to lawful appropriation of funds by City Council, the City agrees to fund 12.5% or \$275,000.00 of the Project Costs, whichever is less.

- a. The Funding will be paid out to reimburse MCS D for Project Costs incurred and paid by MCS D.
- b. The City's payment obligations under this Agreement shall not exceed \$275,000.00.

- c. In order to be reimbursable under this Agreement, Project Costs must be reasonably consistent with the Project Budget, which may be reasonably amended by MCSD in good faith as circumstances may allow or dictate. In the event the Project Budget is amended by MCSD, MCSD shall first discuss the matter with the City and, following amendment, timely provide an amended Project Budget to the City. In the event the total Project cost is increased, the percentage used to calculate Draw Payments (currently 12.5%) shall be re-calculated by dividing \$275,000.00 by the revised total Project cost.

5. MCSD's Obligations.

- a. MCSD shall request Draw Payments only to reimburse Project Costs that have been paid.
- b. MCSD shall communicate in good faith with the City regarding the Project and shall provide such information as the City may reasonably request, including but not limited to design or construction documents, progress updates, and as-built drawings, if prepared.
- c. MCSD shall endeavor in good faith and take all reasonable measures to meet the Project Schedule, provided that the Project Schedule may be reasonably amended in good faith as circumstances may allow or dictate. In the event the Project Schedule is amended, MCSD shall promptly provide the City with a copy of the amended Project Schedule.
- d. MCSD shall not commence the construction phase of the Project without having secured adequate funding to complete the Project. Prior to commencement of the construction phase and within 30 days of any subsequent request for proof of Project financing, MCSD shall provide proof of Project financing to the City.
- e. MCSD shall maintain a detailed accounting of its expenditure of the Funding, and shall allow the City access to and examination of such accounting records at all reasonable times, until the expiration of three years after final payment under this Agreement.

6. Draw Requests and Payments.

- a. As frequently as monthly, but only after construction commences, MCSD may submit Draw Requests, which shall include such information as the City reasonably requires to establish that the requested Funding is due under this Agreement.
- b. Within 30 days of receipt of a Draw Request, the City shall disburse Funding to which MCSD has established entitlement under this Agreement. If less than the full amount that has been requested is disbursed, the City shall provide a written explanation identifying any Draw Request omissions, irregularities, or other such issues that preclude disbursement of any Funding that has been requested. MCSD may correct or address any issues so identified in an amended or the subsequent Draw Request.

7. Default and Termination.

- a. Upon the occurrence of any of the following and 10 days written notice to MCSD, the City shall have the right to terminate this Agreement without further obligation to MCSD, and to recover any Funding previously paid to MCSD hereunder:
 - i. Prior to substantial completion of the Project, the Project is abandoned by MCSD or stopped for more than 180 days for reasons within MCSD's reasonable control;
 - ii. MCSD fails to properly and timely distribute Funding received on account of Project Costs not yet paid by MCSD; or
 - iii. MCSD requests or knowingly received and does not immediately return any Funding to which it is not entitled under this Agreement.
 - b. Upon the occurrence of any other material breach of this Agreement and 10 days written notice to MCSD, the City shall have the right to terminate this Agreement without further obligation to MCSD.
 - c. All rights and remedies set forth in this Agreement are cumulative and without prejudice to any other rights and remedies existing under applicable law.
- 8. Compliance with Applicable Laws.** In performing under this Agreement, MCSD shall comply with all applicable laws and regulations, including but not limited to Ch. 119, Florida Statutes, and all permitting and licensing requirements. MCSD warrants that all work requiring licensure, including but not limited to "marine contracting" as defined in

Section 61G4-15.033, F.A.C., and "engineering" as defined in Section 471.005, F.S., will be performed by persons or entities duly licensed to furnish such services.

9. **Maximum Indebtedness.** The maximum indebtedness of the City under this Agreement shall not exceed the sum of \$275,000.00.
10. **Competitive Procurement.** To the extent MCSD purchases any goods, services or capital improvements related to the Project that are reimbursable by the City under this Agreement, MCSD shall utilize appropriate competitive processes prior to purchasing such goods, services or capital improvements. MCSD's contractor selection shall be based on the bid or quote most advantageous to the MCSD and the City as determined by MCSD. MCSD shall maintain written documentation regarding such procurements and provide the City with the same upon request.
11. **Indemnification.** MCSD's indemnification obligations are set forth in Exhibit C, which is attached and incorporated herein by this reference.
12. **Term and Renewal.** Unless earlier terminated, this Agreement shall continue in effect until the earlier of (a) 60 months from the Effective Date, or (b) final completion of the Project and payment of all Funding due hereunder. Provisions surviving expiration or termination of this Agreement shall include but not be limited to all rights and remedies providing for recovery of damages under this Agreement, insurance and indemnification obligations, warranty obligations, and dispute resolution provisions, if any.
13. **Performance.** MCSD shall ensure that the work is performed in a workmanlike manner, using reasonable efforts and abilities, on a non-emergency basis.
14. **No Third Party Beneficiaries.** This Agreement does not provide third parties, including customers of the City or of the City, with any rights, remedies, or privileges.
15. **No Waivers.** Failure of the City to take action to enforce compliance with any of the terms or conditions of this Agreement 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.
16. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes all previous discussion, understandings and agreements between the Parties relating to the subject matter hereof.

17. **Joint Drafting.** This Agreement shall be deemed jointly drafted and not construed in favor of either Party.
18. **Severability.** In the event any portion of this Agreement is deemed to be unenforceable as written, said portion shall be given its nearest permissible meaning or, if there is none, severed from this Agreement with all other provisions remaining in effect.
19. **Applicable Law.** This Agreement shall be construed, interpreted and controlled by the laws of the State of Florida.
20. **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.
21. **Limitations of Government Liability.** Nothing in this Agreement shall be deemed a waiver of immunity or limits of liability of the City 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 statute as it now exists or may be changed 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.
22. **Accounting Records and Related Access.** MCSD shall maintain a detailed accounting of its expenditure of the Funding, and shall allow the City access to and examination of such accounting records at all reasonable times, until the expiration of three years after final payment under this Agreement.
23. **Non-Discrimination.**
 - a. MCSD represents that it has adopted and will maintain a policy of nondiscrimination as defined by ordinance throughout the term of this contract.
 - b. MCSD agrees that, on written request, it will permit reasonable access to his records of employment, employment advertisement, application forms and other pertinent data and records by the Executive Director for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of this contract; provided, that MCSD shall not be required to produce for inspection records covering periods of time more than one year prior to the date of this contract.
 - c. MCSD agrees that, if any of the obligations of this contract are to be performed by a

subcontractor, the provisions of subsections (a) and (b) of this Section shall be incorporated into and become a part of the subcontract.

24. This Agreement shall not constitute, create, or in any way be interpreted as a joint venture, employment or agency relationship, partnership or formal business organization of any kind among any of the parties.

(Signature page follows.)

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

ATTEST:

CITY OF JACKSONVILLE, a
Florida municipal corporation

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

By: _____
Lenny Curry, Mayor

FORM APPROVED:

By: _____
Assistant General Counsel

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: _____

MILLERS CREEK SPECIAL DISTRICT
a special district created pursuant to
Section 182.02, Florida Statutes, by
virtue of City Ordinance No. 2014-700-E

WITNESS:

By: _____
Print Name: _____
Title: _____

Print Name: _____

Exhibit A

MILLERS CREEK SPECIAL DISTRICT ECO-RESTORATION DREDGING PROJECT SCOPE OF SERVICES

- **Permit Based Project Limits and Goals (Completed)**
 - The District established the goals of the proposed eco-restoration dredging:
 - Improvement of water quality ✓
 - Enhancement of the natural system ✓
 - Providing flood control protection ✓
 - Reestablishing navigation ✓
 - The District established the limits of the project:
 - Service areas ✓
 - Proposed depth and template ✓
 - District responsibilities for private docks and in-water structures ✓
- **Phase I: Preliminary Feasibility Assessment (Completed)**
 - Data collection ✓
 - May 25, 2016, Bathymetric survey performed by Arc Surveying and Mapping, Inc. ✓
 - Preliminary dredging volume of approximately 57,000 cubic yards (CY), assuming a final dredge depth elevation of -5 feet mean low water (MLW) ✓
 - At the March 22, 2018, pre-application meeting, it was determined that the District would be applying to regulatory agencies for a permitted dredged depth elevation of greater than -5 feet MLW (-10 feet MLW plus +2 additional feet of allowable overdredge depth was suggested and agreed upon) ✓
 - Therefore, the District may decide to increase the final dredge depth, if funds are available, in which case the estimated dredge volume will be revised ✓
 - The District's has: ✓
 - Initiated an investigation of the various financing methods available ✓
 - Scheduled several past and future upstream cleanup events ✓
- **Phase II: Data Collection and Engineering (Completed)**
 - General natural resources survey of project site and dredged material management area (DMMA) ✓
 - Detailed dewatering and disposal plan for the DMMA ✓
 - Comprehensive geotechnical data collection and testing program ✓
 - Completed additional regulatory coordination, as recommended by the FDEP and USACE before final permit submittal ✓
- **Phase III Planning and Permitting (Ongoing)**
 - Created preliminary design figures for the dredging template ✓
 - Evaluated possible dredged material management area (DMMA) options including ✓
 - Jacksonville Port Authority (requires \$22/CY tipping fee) ✓
 - First Korean Baptist Church, Inc. (3405 Atlantic Boulevard) ✓
 - Non-traditional dewatering techniques (i.e., hydrocyclones, filter presses, geotextile tubes, etc.) and disposal in a contractor selected facility ✓
 - Store at least a portion of the dredged material within the creek by forming a natural resource island ✓
 - Created a project memorandum with figures for the regulatory pre-application meetings ✓
 - Federal - U.S. Army Corps of Engineers (USACE) ✓

- State - Florida Department of Environmental Protection (FDEP) ✓
- Coordinated a pre-application meeting (on-site) with the USACE and FDEP to determine the feasibility of permitting a cost-effective eco-restoration dredging and sediment disposal project before undertaking extensive data collection and fieldwork for permitting and final design ✓
- Submitted the permit application packages ✓
- Developed an order of magnitude construction cost estimate ✓
- The District has received a permit from the FDEP ✓
 - Permit file No.: 16-0368882-001-EI ✓
 - The permit expires on October 30, 2023 ✓
- The District has not yet received a permit from the USACE (Ongoing)
 - Permit file No.: SAJ-2018-00795 (SP-SCW) ✓
 - Permit file has been reviewed by the USACE ✓
 - On January 08, 2019, the USACE received a letter from the Division of Historical Resources and & State Historic Preservation Officer indicating an opinion of "no adverse effect on historical resources" ✓
 - On November 30, 2018, the USACE received a request for additional information letter from the National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS)
 - Coordination with the USACE and NOAA NMFS is ongoing
- **Phase IV: Final Design, Construction, Closeout**
 - Final design of the proposed eco-restoration dredging template and DMMA
 - Develop a project-specific bid package, including a set of plans and specifications, in a format acceptable to the District and COJ, for advertisement to dredging contractors
 - Develop a detailed project schedule will be prepared for inclusion in the bid package along with the qualification requirements for the dredge contractor
 - Created plan sets will include construction plans; computation memos, special provisions, and other items needed to construct the proposed project
 - Provide FDEP and the USACE with a copy of the FDEP "Construction Commencement Notice" form
 - Bid Package and Contractor Selection
 - Advertise and obtain bids responses
 - Award contract to the lowest responsible bidder
 - Construction
 - Constructed dredging volume of approximately 57,000 CY, assuming a final dredge depth of at least -5 feet mean low water (MLW)
 - Disposing of dredged material in locations authorized by the FDEP and USACE permits
 - Project closeout
 - Provide FDEP and the USACE with a copy of the FDEP "Request for conversion to Operation Phase" form
 - Submit a permit extension request to the FDEP and USACE through the next anticipated maintenance dredging event.

Exhibit B

Appendix A: Preliminary Order of Magnitude Construction Cost Estimate

Client: Millers Creek Special District

Prepared by: LGD

Project Millers Creek Eco-Restoration Project

Date: February 27, 2019

Project No.: 6735189426 Preliminary Order of Magnitude Construction Cost Estimate

Revision 2.0

Engineer's Estimated Cost

Reviewed by: RJW

Item	Description	Plan Qty	Unit	Unit Price	Total
1.00	ENGINEERING & Permitting ITEMS:				
1.01	Completed Engineering & Permitting Services	1	LS	\$ 130,000	\$ 130,000
1.02	Final Engineering	1	LS	\$ 35,500	\$ 35,500
1.03	Construction Administration / Project Closeout	1	LS	\$ 114,500	\$ 114,500
Subtotal (Engineering Items):					\$ 280,000
2.00	GENERAL ITEMS:				
2.01	Mobilization/Demobilization	1	LS	\$ 25,000	\$ 25,000
2.02	Construction Surveys	2	LS	\$ 8,200	\$ 16,400
2.03	Maintenance of Traffic	1	LS	\$ 1,250	\$ 1,250
Subtotal (General Items):					\$ 42,650
3.00	DREDGING, TEMPORARY HANDLING, & DISPOSAL:				
3.01	Staging Area Preparation	1	LS	\$ 2,700	\$ 2,700
3.02	Erosion Controls & Soil Tracking Prevention Device	1	LS	\$ 1,250	\$ 1,250
3.03	Floating Turbidity Barrier and Monitoring	1	LS	\$ 14,000	\$ 14,000
3.04	Tow to/from Shore	50,000	CY	\$ 1.00	\$ 50,000
3.05	Material Removal (Dredging)	50,000	CY	\$ 13.00	\$ 650,000
3.06	Dewatering - Sand	12,793	CY	\$ 0.75	\$ 9,595
3.07	Dewatering - Silt/Clay	33,977	CY	\$ 1.00	\$ 33,977
3.08	Dewatering - Landfill Silt/Clay/Sand	3,230	CY	\$ 5.00	\$ 16,150
3.09	Transportation/Disposal - Trail Ridge Landfill	3,230	CY	\$ 14.80	\$ 47,804
3.10	Transpiration/Disposal - Indp. Recycling	38,119	CY	\$ 18.50	\$ 705,202
3.11	Transpiration/Disposal - Public Use	8,652	CY	\$ 1.00	\$ 8,652
3.12	Rehabilitation of Staging Areas	1	LS	\$ 5,000	\$ 5,000
3.13	Labor	1	LS	\$ 10,000	\$ 10,000

Subtotal (Dredging Items): **\$ 1,550,000**

Total (with contingency) **\$ 2,200,000**

Approximate Dredge Volume (CY): **50,000**

Average Cost/CY: **\$39.20**

Notes:

1 The preliminary Order of Magnitude Construction Cost Estimate ("estimate") is consistent with the recommendations made to the DISTRICT by the CONSULTANT as outlined in the memorandum.

2 Before final bid document submission the CONSULTANT will update the draft construction drawings and specifications based on the Individual Permit conditions. This may significantly alter the final design.

Appendix A: Preliminary Order of Magnitude Construction Cost Estimate

Notes Continued:

- 3 The CONSULTANT's "Construction Administration / Project Closeout" effort assumes a contiguous 8-month construction period, which may prove to be unattainable due to unforeseen or unanticipated site conditions.
- 4 A hydrographic construction survey will establish (pre- and post-construction) horizontal and vertical limits and establish/verify existing elevations for payment applications.
- 5 The selected CONTRACTOR will dispose of any non-structural grade dredged material in an approved location. In no case should dredged material be placed in such a way as to impede entrance to the upland church overflow parking area for general use.
- 6 This estimate assumes that no special dewatering or decanting procedures will be required by regulatory agencies for any area of dredged material. The CONSULTANT assumes that the authorized dewatering process will allow for the return of water back to Millers Creek without additional treatment.
- 7 This estimate assumes that the Independence Recycling of Florida DMMA will accept dredged materials which do not meet residential SCTL standards and that a hazardous waste service will accept and dispose of dredged materials which do not meet commercial/industrial SCTL standards.
- 8 Currently, the CONSULTANT estimates that the selected CONTRACTOR will excavate roughly 50,000 cubic yards of dredged material from the Millers Creek substrate.
- 9 The selected CONTRACTOR's means and methods must indicate how the selected CONTRACTOR will offload dredged material onto the designated temporary DMMA, and dewater the dredged material in accordance with FDEP Individual Permit special conditions.
- 10 This estimate assumes that the CONTRACTOR will not be required to monitor environmental resources (e.g. manatee observation) during construction activities.
- 11 The preliminary estimate presented herein includes a 20 percent construction contingency & 3 percent contingency for construction supervision & permit closeout costs.

Exhibit C

EXHIBIT C
INDEMNIFICATION

MCSO shall hold harmless, indemnify, and defend the City of Jacksonville and City's members, officers, officials, employees and agents (collectively the "Indemnified Parties") from and against, without limitation, any and all claims, suits, actions, losses, damages, injuries, liabilities, fines, penalties, costs and expenses of whatsoever kind or nature, which may be incurred by, charged to or recovered from any of the foregoing Indemnified Parties for:

1. **General Tort Liability**, for any negligent act, error or omission, recklessness or intentionally wrongful conduct on the part of the Indemnifying Parties that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Parties' performance of the Contract, operations, services or work performed hereunder; and

2. **Environmental Liability**, to the extent this Contract contemplates environmental exposures, arising from or in connection with any environmental, health and safety liabilities, claims, citations, clean-up or damages whether arising out of or relating to the operation or other activities performed in connection with the Contract; and

3. **Intellectual Property Liability**, to the extent this Contract contemplates intellectual property exposures, arising directly or indirectly out of any allegation that the Services, any product generated by the Services, or any part of the Services as contemplated in this Contract, constitutes an infringement of any copyright, patent, trade secret or any other intellectual property right. If in any suit or proceeding, the Services, or any product generated by the Services, is held to constitute an infringement and its use is permanently enjoined, the Indemnifying Parties shall, immediately, make every reasonable effort to secure within 60 days, for the Indemnified Parties a license, authorizing the continued use of the Service or product. If the Indemnifying Parties fail to secure such a license for the Indemnified Parties, then the Indemnifying Parties shall replace the Service or product with a non-infringing Service or product or modify such Service or product in a way satisfactory to Buyer, so that the Service or product is non-infringing.

If an Indemnifying Party exercises its rights under this Contract, the Indemnifying Party will (1) provide reasonable notice to the Indemnified Parties of the applicable claim or liability, and (2) allow Indemnified Parties, at their own expense, to participate in the litigation of such claim or liability to protect their interests. **The scope and terms of the indemnity obligations herein described are separate and apart from, and shall not be limited by any insurance provided pursuant to the Contract or otherwise. Such terms of indemnity shall survive the expiration or termination of the Contract.**

In the event that any portion of the scope or terms of this indemnity is in derogation of Section 725.06 or 725.08 of the Florida Statutes, all other terms of this indemnity shall remain in full force and effect. Further, any term which offends Section 725.06 or 725.08 of the Florida Statutes will be modified to comply with said statutes.