

**FUNDING AGREEMENT**  
**FOR**  
**ISLE OF PALMS DREDGING PROJECT**

**THIS FUNDING AGREEMENT FOR ISLE OF PALMS DREDGING PROJECT** (the “Agreement”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2020, between the **City of Jacksonville**, a consolidated municipal and county government under the laws of Florida (“City”) and **Isle of Palms Special District**, a special district created pursuant to Section 182.02, Florida Statutes (2011), by virtue of City Ordinance No. 2011-724-E (“IOPSD”).

**RECITALS**

**WHEREAS**, there is a system of canals located within the Isle of Palms community that provide access to the Atlantic Intercoastal Waterway which require continuous maintenance in order to remain navigable and sanitary; and

**WHEREAS**, IOPSD was created for the continuing maintenance of these canals; and

**WHEREAS**, IOPSD is required under its charter to fulfill its purpose by dredging the Isle of Palms canals to provide access to and from the Atlantic Intercoastal Waterway; and

**WHEREAS**, restoring and improving navigability in the Isle of Palms canal system serves a public purpose beneficial to the citizens of the City; and

**WHEREAS**, IOPSD is in the process of having a dredging project engineered and permitted, and is preparing to commence said dredging and related work; and

**WHEREAS**, IOPSD and the City (collectively “Parties) desire to enter into this Agreement setting forth the terms and conditions upon which the City will contribute towards the funding of the dredging 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 above-stated recitals are accurate, true and correct and are incorporated herein and made a part hereof by this reference.
2. Parties’ Representatives. The Parties’ representatives for purposes of the administration of this Agreement are set forth below.
  - a. City’s Representative:

City Engineer

214 North Hogan Street, 10<sup>th</sup> Floor  
Jacksonville, Florida 32202  
Phone: 255-8710  
Email: [robinsmith@coj.net](mailto:robinsmith@coj.net)

b. IOPSD Representative:

Paul Raudenbush  
Isle of Palms Special District- Vice Chairman  
4356 Coquina Drive  
Jacksonville, Beach, Florida  
32250  
Phone: 904-838-0421  
Email: Paul.Raudenbush@haskell.com

3. Definitions. Certain capitalized terms used in this Agreement shall be defined as follows:

- a. Draw Payment – means a payment made from the City to IOPSD under this Agreement.
- b. Draw Request – means a request from IOPSD to the City for a payment under this Agreement.
- c. Effective Date – means the last date on which a Party executed this Agreement.
- d. Funding – means the funds disbursed or to be disbursed to IOPSD under this Agreement.
- e. Project or Project Scope – means the IOPSD’s dredging project as outlined in **Exhibit A**, attached and incorporated herein by this reference, as may be amended from time to time in accordance with this Agreement.
- 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 IOPSD 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 in this Agreement, and provided that all payments are subject to lawful appropriation of funds by City Council, the City agrees to pay TWELVE PERCENT (12%) or SEVEN HUNDRED

SIXTY-EIGHT THOUSAND AND 00/100 DOLLARS (\$768,000.00) of the Project Costs, whichever is less.

- a. The Funding will be paid to IOPSD on a reimbursement basis for 12% of Project Costs incurred and paid by IOPSD.
- b. The City's payment obligations under this Agreement shall not exceed \$768,000.00.
- 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 IOPSD in good faith as circumstances may allow or dictate. In the event the Project Budget is amended by IOPSD, IOPSD shall first discuss the matter with the City and, following any 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%) shall be re-calculated by dividing \$768,000.00 by the revised total Project cost.

5. Isle of Palm Special District Obligations.

- a. IOPSD shall request Draw Payments only to reimburse Project Costs that have been paid.
- b. IOPSD 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. IOPSD 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, IOPSD shall promptly provide the City with a copy of the amended Project Schedule.
- d. IOPSD 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 thirty (30) days of any subsequent request for proof of Project financing, IOPSD shall provide proof of Project financing to the City.
- e. IOPSD 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, IOPSD may submit Draw Requests, which shall:
  - i. State the Project Costs incurred and paid by IOPSD and request disbursement of 12% of such amount ; and
  - ii. 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 for which IOPSD has established entitlement in accordance with the terms of 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. IOPSD 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 ten (10) days written notice to IOPSD, the City shall have the right to terminate this Agreement without further obligation to IOPSD, and to recover any Funding previously paid to IOPSD hereunder:
  - i. Prior to substantial completion of the Project, the Project is abandoned by IOPSD or work ceases for more than one hundred eighty (180) days for reasons within IOPSD's reasonable control;
  - ii. IOPSD fails to properly and timely distribute Funding received on account of Project Costs not yet paid by IOPSD; or
  - iii. IOPSD 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 ten (10) days' written notice to IOPSD, the City shall have the right to terminate this Agreement without further obligation to IOPSD.
- 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, IOPSD shall comply with all applicable laws and regulations, including but not limited to Ch. 119, Florida Statutes, and all permitting and licensing requirements. IOPSD 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 SEVEN HUNDRED AND SIXTY-EIGHT THOUSAND AND 00/100 DOLLARS (\$768,000.00).

10. Competitive Procurement. To the extent IOPSD purchases any goods, services or capital improvements related to the Project that are reimbursable by the City under this Agreement, IOPSD shall utilize appropriate competitive purchasing processes prior to purchasing such goods, services or capital improvements. IOPSD's contractor selection shall be based on the bid or quote most advantageous to the IOPSD and the City as determined by IOPSD. IOPSD shall maintain written documentation regarding such procurements and provide the City with the same upon request.

11. Indemnification. IOPSD'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. IOPSD 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. IOPSD 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. IOPSD represents that it has adopted and will maintain a policy of non-discrimination as defined by ordinance throughout the term of this contract.

b. IOPSD agrees that, upon written request, it will permit reasonable access to its 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 non-discrimination provisions of this Agreement; provided, that IOPSD shall not be required to produce for inspection records covering periods of time more than one (1) year prior to the date of this Agreement.

c. IOPSD agrees that, if any of the obligations of this Agreement 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.

*[Remainder of page intentionally left blank. Signature page to follow.]*

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

**ATTEST:**

**CITY OF JACKSONVILLE**

By: \_\_\_\_\_  
James R. McCain, Jr.  
Corporation Secretary

By: \_\_\_\_\_  
Lenny Curry, Mayor

**ISLE OF PALMS SPECIAL DISTRICT**

a special district created pursuant to Section 182.02, Florida Statutes (2011), by virtue of City Ordinance No. 2011-724-E

**WITNESS:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

In compliance with Section 24.103(e) of 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**

### **PROJECT SCOPE**

The Isle of Palms District was established in 2011 with the limited purpose of maintaining the system of canals within the community. The District is charged with the continuing maintenance of the system of canals located in the Isle of Palms community. The District consists of three unconnected canal areas all of which have a separate canal access to the intracoastal waterway. These areas are referred to as the North Isle of Palms, the Central Isle of Palms and the South Isle of Palms. The District fulfills its purpose by dredging the canals to provide the access to the Atlantic Intracoastal Waterway. The district's board has the authority to impose an assessment in amount not to exceed \$1,000 annually for each residential unit within the district and to appropriate those funds for the limited purpose of maintaining the canals.

Since its creation the District has completed the necessary surveys, engineering and permitting to allow the work to commence. After the approval of this agreement the district will complete and issue a request for proposals to qualified licensed contractors with experience in project of similar type and scope. After the competitive bid process, the District will contract with the selected low qualified bidder to dredge the district canals to a depth of -5 feet below mean water level, in accordance with the permits approved by the US Army corps of engineers and Florida Department of Environmental Protection. The dredging operation is expected to generate approximately 150,000 cubic yards of spoils material which will be transported, approximately 12 miles to the Harbor Waterways DMMA, which has been specifically engineered and permitted for receiving dredge spoils material. Upon completion of the dredging a series of bathymetric surveys will confirm that the expected depth and width of canals has been achieved.



## EXHIBIT B

### PROJECT BUDGET

#### Appendix A: Preliminary Order of Magnitude Engineering and Construction Cost Estimate

Client: Isle of Palms Special DISTRICT

Prepared by: RJW

Project: Northern, Central, & Southern Isle of Palms "Central Channel" Dredging

Date: December 06, 2018

Project No.: 6735179416

Revision 2.0

Preliminary Order of Magnitude Engineering & Construction Cost Estimate<sup>1</sup>

Reviewed by: LML

Item	Description	Plan Qty.	Unit	Unit Price	Total
<b>1.00</b>	<b><u>ENGINEERING ITEMS:</u></b>				
1.01	Construction Plans & Specifications <sup>2</sup>	1	LS	\$17,774	\$17,774
1.02	Bidding Assistance <sup>3</sup>	1	LS	\$9,885	\$9,885
1.03	Construction Administration / Project Closeout <sup>4</sup>	1	LS	\$169,667	\$169,667
<b>Subtotal (Engineering Items):</b>					<b><u>\$197,326</u></b>
<b>2.00</b>	<b><u>GENERAL ITEMS:</u></b>				
2.01	Mobilization/Demobilization <sup>5</sup>	1	LS	\$85,000	\$85,000
2.02	Construction Surveys (pre- & post-dredging & pre- & post-placement DMMA) <sup>6</sup>	4	LS	\$18,000	\$72,000
<b>Subtotal (General Items):</b>					<b><u>\$157,000</u></b>
<b>3.00</b>	<b><u>DREDGING, TRANSPORTATION, &amp; DISPOSAL:</u></b>				
3.01	Harbour Waterway DMMA Preparation <sup>7</sup>	1	LS	\$28,000	\$28,000
3.02	Sediment Chemistry Testing <sup>8</sup>	1	LS	\$37,000	\$37,000
3.03	Floating Turbidity Barrier & Monitoring <sup>9</sup>	1	LS	\$25,000	\$25,000
3.04	Material Removal (Dredging) <sup>10</sup>	150,000	CY	\$17.50	\$2,625,000
3.05	Barge Dewatering	150,000	CY	\$0.50	\$75,000
3.06	Transportation/Disposal <sup>11</sup>	150,000	CY	\$9.50	\$1,425,000
3.07	Pump-out into Harbour Waterway DMMA <sup>12</sup>	150,000	CY	\$1.25	\$187,500
3.08	Harbour Waterway DMMA Tipping Fee <sup>13</sup>	150,000	CY	\$3.96	\$594,000
3.09	Rehabilitation of Staging Areas <sup>14</sup>	1	LS	\$13,000	\$13,000

**Subtotal (Dredging Items):** **\$5,010,000**

**Project Total (with contingency<sup>15</sup>):** **\$6,400,000**

<b>Approximate Dredge Volume (cubic yards):</b>	<b>150,000</b>
<b>Average Engineering &amp; Construction Cost/cubic yards:</b>	<b>\$42.70</b>

## EXHIBIT C

### INDEMNIFICATION

IOPSD (the “Indemnifying Party”) 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 Party that causes injury (whether mental or corporeal) to persons (including death) or damage to property, whether arising out of or incidental to the Indemnifying Party’s performance of the Agreement, operations, services or work performed hereunder; and

2. Environmental Liability, to the extent this Agreement 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 Agreement; and

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

If an Indemnifying Party exercises its rights under this Agreement, 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 Agreement or otherwise. Such terms of indemnity shall survive the expiration or termination of the Agreement.**

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.