

**FUNDING AGREEMENT  
FOR  
MILLERS CREEK SPECIAL DISTRICT ECOLOGICAL 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 **Millers Creek Special District**, a Florida non-profit corporation, whose address is 1510 Mayfair Road, Jacksonville, FL 32207 ("MCSD").

**RECITALS**

WHEREAS, EPB supports the efforts of MCSD to improve the quality of life in Jacksonville through restoration of Millers Creek; and

WHEREAS, EPB supports MCSD's desire to clean the waterway by spearheading an eco-restoration project which will also remove some contaminated sediments located within the creek; and

WHEREAS, MCSD has made the funding request detailed in the request attached and incorporated herein as Exhibit A, seeking \$25,000 in funding to assist in the Millers Creek ecological restoration project described in Exhibit A ("PROJECT"); and

WHEREAS, the EPB considered the request and desired to increase the funding provided to the project to \$50,000 due to a deficit in funding of the total project costs associated with the 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, EBP and MCSD (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 \$50,000.00 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, \$50,000.00 shall be disbursed upon review and acceptance of documentation that MCSD has secured a contractor to remove, transport and dispose of contaminated soils from the creek.
    - iii. EPB further agrees to use its best efforts to share information about the PROJECT with the public.
  - b. **MCSD Obligations**
    - i. MCSD agrees to accept EPB funding in the amount of \$50,000.00 according to the payment schedule set forth above.
    - ii. MCSD 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. MCSD agrees to take actions as necessary to accomplish the PROJECT in a timely manner.
    - iv. MCSD shall submit a report to the EPB providing an overview of construction progress made, an accounting of Funding disbursements

and corresponding expenditures, and other general information about the PROJECT upon completion.

3. **Term and Renewal.** This Agreement shall continue in effect through September 30, 2020 and may not be extended. 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 MCSD 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.** MCSD 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 MCSD agree that the safety of all employees, contractors, and the public shall always be considered as having priority. Either EPB or MCSD 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 MCSD 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 MCSD's performance is rendered impossible or ineffective by the event or delay, then all funds distributed to MCSD 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 MCSD 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. MCSD 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.

**MILLER CREEK SPECIAL DISTRICT**  
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

# SCHEDULE A – PROJECT SCOPE

## **Project Overview**

The residents living on the creek took action in 2014, to help preserve the creek by establishing a Special Tax District to restore the creek and help clean up the water way by doing an eco-restoration project. It has been a long process and we have had excellent help from our local city council member Lori Boyer. We also have spoken to several other boards and committees across the community with very little success or help. We are shouldering a lot of the responsibility of cleaning up the creek when there are several factors contributing to the stagnation and backing up of the creek. We have over 240 storm drains within the St. Nicholas area that are directed into the creek. We also have a former dumping grounds area from sixty years ago that is less than fifty yards from the creek. JEA has had a few instances of illicit discharge into the creek (they have been cited twice by EQD that we are aware of). We have completed a multitude of test and several scientists have reviewed our creek. Dr. Quinton White has been a strong advocate of dredging the creek to help improve environment for wildlife and fish in the creek. Just last year, a manatee got stuck in the creek and had to be rescued and taken to the zoo to be rehabilitated (Miller as he/she was names was rehabilitated and released several months later). We have approval for the restoration project from DEP and the U.S. Army Corps of Engineers.

## **Total Funding Request**

\$25,000.00

## **Total Project Budget (specific to project overview only)**

See Table and Chart

## **Funding Match (Sources and Uses) by Non- EPB sources, but should include other City funding**

See Table and Chart

## **Funding Impact/Benefit Statement**

The Special District will perform the restoration project to the extent of available funding as presented. Currently the Special District is engaging a contractor to remove sediment from the creek. Any additional funds from EPB would go directly to the removal, preparation, and transport to Trail Ridge Landfill. The Special District has already covered the fixed contractor costs such as mobilization/demobilization, and site preparation. As related to this volume (10,000 cy) this cost if required solely for this portion of the project would double the cost per cubic yard. By tagging this onto the overall restoration project we can double the impact on removing contaminated sediment.

**Explanation of how the project meets EPB charge/mission**

The restoration of Millers Creek qualifies as a surface water restoration and is the type of project former Councilwoman Boyer made mention of to the EPB.

**1-time request or is there intention to apply for future year requests for the same project**

So long as there is the need for additional contaminant removal, the Special District would always welcome financial assistance in continuing the creek's restoration. It is worth noting that the City recently cleaned up the Linden Road Landfill which we recently learned was contaminated with Benzo(A)Pyrene and a likely source of the contaminant into Millers Creek. While we cannot guarantee that there are no other sources, we do anticipate that the old landfill will no longer be a future source.

# SCHEDULE B - PROJECT BUDGET

## Miller's Creek Ecological Restoration

### ZONE A-1 - Benzo(A)Pyrene

#### Costs

Total Contaminated Sediment Volume:	10,000	Cubic Yards
Cost for Removal and Transport	\$25.00	per Cubic Yard
Disposal at Trailridge Landfill (Cover) *	\$0.00	per Cubic Yard
Total cost for complete removal	\$250,000.00	

#### Available Funding

Source	Amount	Volume	Percent
Special District (Homeowners)	\$49,200.00	1968	20%
COJ Matching (12.5%)	\$7,481.60	299	3%
EPB Funds Sought	\$50,000.00	2000	20%
Unfunded	\$0.00	0	57%
Projected Project Funding	\$106,681.60	4267	43%
			67%

\* otherwise fee is \$5.00/ton, Approx 1.38 tons/yd<sup>3</sup>

