

**FUNDING AGREEMENT
FOR
DEEP BOTTOM CREEK SPECIAL DISTRICT**

THIS FUNDING AGREEMENT (“Agreement”) is made as of the ____ day of _____ 2023, between the **City of Jacksonville**, a consolidated municipal and county government under the laws of Florida (“City”), and **Deep Bottom Creek Dependent Special District**, a dependent special district created pursuant to Section 182.02 of the Florida Statutes by virtue of City Ordinance No 2022-489-E, whose address is 2570 Lynnhaven Terrace, Jacksonville, FL 32223 (“DBCDSD”).

RECITALS

WHEREAS, Deep Bottom Creek is a tributary of the St. Johns River that is located within the City’s jurisdictional boundaries; and

WHEREAS, DBCDSD was created for the limited purpose of maintaining the portion of Deep Bottom Creek adjacent to the properties within the District’s boundary to enable continuing access to the St. Johns River; and

WHEREAS, DBCDSD is required under its charter to fulfill its purpose of using its resources to maintain access to Deep Bottom Creek which is connected to the St. Johns River, and

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

WHEREAS, DBCDSD is in the process of completing the pre-dredging components required to proceed with the initial dredging project; and

WHEREAS, DBCDSD 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 initial phase 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, City and DBCDSD (collectively “Parties”) 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. **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, 10th Floor
Jacksonville, Florida 32202
Phone: 904-255-8710
Email: robinsmith@coj.net

b. DBCDSD's Representative:

Name:
Phone:
Email:

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

- a. *Draw Payment* means a payment made from the City to DBCDSD under this Agreement.
- b. *Draw Request* means a request from DBCDSD 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 DBCDSD under this Agreement.
- e. *Project* or *Project Scope* means the DBCDSD initial pre-dredging activities 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 DBCDSD 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 \$15,000.00 of the Project Costs, whichever is less.

- a. The Funding will be paid out to reimburse DBCDSD for \$15,000 of Project Costs incurred and paid by DBCDSD.
- b. The City's payment obligations under this Agreement shall not exceed \$15,000.00.
- 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 DBCDSD in good faith as circumstances may allow or dictate. In the event the Project Budget is amended by DBCDSD, DBCDSD 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 shall be recalculated by dividing \$15,000.00 by the revised total Project cost.

5. DBCDSD's Obligations.

- a. DBCDSD shall request Draw Payments only to reimburse Project Costs that have been paid.
- b. DBCDSD 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. DBCDSD 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, DBCDSD shall promptly provide the City with a copy of the amended Project Schedule.
- d. DBCDSD 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, DBCDSD may submit Draw Requests, which shall:
 - i. State the Project Costs incurred and request disbursement for 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 to which DBCDSD 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. DBCDSD 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 DBCDSD, the City shall have the right to terminate this Agreement without further obligation to DBCDSD, and to recover any Funding previously paid to DBCDSD hereunder:
 - i. Prior to substantial completion of the Project, the Project is abandoned by DBCDSD or stopped for more than 180 days for reasons within DBCDSD's reasonable control;
 - ii. DBCDSD fails to properly and timely distribute Funding received on account of Project Costs; or
 - iii. DBCDSD 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 DBCDSD, the City shall have the right to terminate this Agreement without further obligation to DBCDSD.
- 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, DBCDSD shall comply with all applicable laws and regulations, including but not limited to Ch. 119, Florida Statutes, and all permitting and licensing requirements. DBCDSD 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 \$15,000.00.
10. **Competitive Procurement.** To the extent DBCDSD purchases any goods, services or capital improvements related to the Project that are reimbursable by the City under this Agreement, DBCDSD shall utilize appropriate competitive processes prior to purchasing such goods, services, or capital improvements. DBCDSD’s contractor selection shall be based on the bid or quote most advantageous to the DBCDSD and the City as determined by DBCDSD. DBCDSD shall maintain written documentation regarding such procurements and provide the City with the same upon request.
11. **Indemnification.** DBCDSD’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.** DBCDSD 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.** The Parties hereto do not intend for the benefits of this Agreement to inure to any third party. Notwithstanding anything contained herein or any conduct or course of conduct by any of the parties hereto, this Agreement shall not be construed as creating any rights, claims, or causes of action

against the City or any of its respective officers, agents, or employees in favor of any contractor, subcontractor, supplier of labor, materials, or services, or any of their respective creditors, or any other person or entity other than the DBCDSD.

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.** In accordance with Section 119.0701, Florida Statutes, the Contractor shall:
 - (a) Keep and maintain public records required by City to perform the services; and
 - (b) Upon request from City's custodian of public records, provide City with a copy of the requested records or allow records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided for in Chapter 119, Florida Statutes, or as otherwise provided by law; and
 - (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Contract term and following completion of this Contract if Contractor does not transfer the records to City; and
 - (d) Upon completion of this Contract, transfer to City at no cost all public records in possession of Contractor or keep and maintain public records required by City to perform the Services. If Contractor transfers all public records to City upon completion of this

Contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of this Contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to City upon request from City's custodian of public records in a format that is compatible with City's information technology systems.

The above requirements apply to a "Contractor" as defined in Section 119.0701, Florida Statutes.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CITY'S CUSTODIAN OF PUBLIC RECORDS AT (904) 630-7678; PRR@COJ.NET; CITY OF JACKSONVILLE, PUBLIC RECORDS REQUEST, 214 N. HOGAN STREET, SUITE 1180, JACKSONVILLE, FLORIDA 32202.

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. DBCDSD 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. DBCDSD represents that it has adopted and will maintain a policy of nondiscrimination as defined by ordinance throughout the term of this contract.
- b. DBCDSD 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 DBCDSD 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. DBCDSD 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.
25. **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 DBCDSD or any third party with a cause of action against the City of Jacksonville for failure to obtain or make an appropriation for the PROJECT.
26. **Safety.** Parties agree that the safety of all employees, contractors, and the public shall always be considered as having priority. Personnel from either Party may stop the PROJECT immediately due to any safety concerns.

[Remainder of page left blank intentionally. Signature page follows immediately.]

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

DEEP BOTTOM CREEK SPECIAL DISTRICT

a special district created pursuant to
Section 182.02, Florida Statutes, by
Virtue of City Ordinance No. 2014-700E

By: _____
Print Name:
Title: Chair, Board of Supervisors
Deep Bottom Creek Dependent Special District

In compliance with Section 24.103(e), *Ordinance Code*, 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



ARC SURVEYING & MAPPING, INC.
5202 SAN JUAN AVENUE, JACKSONVILLE, FL 32210
PHONE (904) 384-8377 FAX (904) 384-8388
WWW.ARC SURVEYORS.COM

August 31, 2022

Attn: Alan Seabrooke
2570 Lynnhaven Terrace
Jacksonville, Fl. 32223
Cell : (904) 904-962-1362
Email : alanseabrooke@comcast.net

Re: Proposal for Professional Hydrographic Surveying Services for portion of the
Deep Bottom Branch Creek, located off the St. Johns River, Jacksonville, Fl.

Dear Mr. Seabrooke,

Per your email and our conversation today Arc Surveying and Mapping, Inc. is pleased to provide a proposal for the survey of a portion of Deep Bottom Branch Creek.

Scope:

Survey: Arc Surveying & Mapping, Inc. will perform a singlebeam 200 khz. survey commencing 200' into the St. Johns River, proceeding east from the entrance of Deep Bottom Branch approximately 1425' to the intersection of Deep Bottom Branch and Lynnhaven Terrace, refer to Exhibit 1. Survey cross-sections will be collected at 25' intervals edge of water to edge of water. Additional cross-sections will be taken along docks, pi's, or curves to adequately map the bottom conditions, refer Exhibit 1. Front of docks along both sides of the creek will be located.

Control: Horizontal data will be referenced to North American Datum (NAD) 1983 Florida East, US survey foot. Vertical elevations will be referenced to North American Vertical Datum (NAVD88).

Deliverables: Plan view Cad files will be completed in either AutoCAD or MicroStation formats at a scale sufficient to illustrate the survey site and elevations along with an ascii file containing the xyz and descriptor of each data point. Planview elevation maps will be color coded to template grades showing areas above and below grade -5.0. Cross section views will show the template design of -5.0' with 1' over-depth and 3/1 side slopes. Quantity calculations will be computed to grade and over-depth and submitted in an excel format illustrating material available at each cross-section.

Professional Fees: Arc surveying proposes to complete the pre-dredge survey for the lump sum amount of \$8,000.00. Post dredge surveys will be invoiced lump sum \$5,000.00 per survey event. Additional work completed outside the above-mentioned scope of services will be invoiced at the following hourly rates:

Clerical	- \$ 75.00
Topographic	- \$232.50
Hydrographic	- \$281.35
Cad Technician	- \$125.00

LAND SURVEYORS-TOPOGRAPHERS-HYDROGRAPHERS-PRECISE CONTROL-GLOBAL POSITIONING-MAPPING-CONSULTANTS

Payment Terms: Payment is due within 30 days of the date of the invoice. Client shall notify Arc, in writing, of any objections, if any, to an invoice within ten days of the date of the invoice. Otherwise, the client shall deem the invoice proper and acceptable. In the event the undersigned fails to make payment on the terms herein specified, the undersigned agrees to pay all costs and reasonable attorney's fees incurred by Arc, whether suit is filed or not. Furthermore, the undersigned agrees that the Duval County Circuit Court in Jacksonville, Florida will be the sole jurisdiction and venue for any legal actions filed as a result of any dispute concerning this agreement, including interpretation, enforcement and collection actions.

Thank you for considering Arc Surveying & Mapping, Inc. We look forward to being of service.

Respectfully submitted,

Patrick B. Sawyer

Patrick Sawyer
Vice-President

Accepted By: _____ Date: _____
For: Alan Seabrooke

Exhibit 1



LAND SURVEYORS-TOPOGRAPHERS-HYDROGRAPHERS-PRECISE CONTROL-GLOBAL POSITIONING-MAPPING-CONSULTANTS

Budget

DBCDSD - pre dredge initial funding budget

Item	\$
Hydro Survey (pre dredge)	8,000
Web Site Setup	350
State and other Admin Setup	350
Legal & other RFP Support	2,500
Permitting & Support (DEP, Army Corps)	1,500
Creek pre dredge prep & clean up	2,300
Total	15,000

EXHIBIT C
INDEMNIFICATION

DBCDS 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 Sections 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 Sections 725.06 or 725.08 of the Florida Statutes will be modified to comply with said statutes.

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