

**FUNDING AGREEMENT
FOR
MILLERS CREEK SPECIAL DISTRICT**

THIS FUNDING AGREEMENT (“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”), for and on behalf of its Environmental Protection Board (“EPB”), whose mailing address is 214 N. Hogan Street, Suite 500, Jacksonville, Florida 32202 and **Millers Creek Special District**, a special district created pursuant to Section 182.02 of the Florida Statutes by virtue of City Ordinance No 2014-700-E, whose address is 1510 Mayfair Road, Jacksonville, FL 32207 (“MCSD”).

RECITALS

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

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

WHEREAS, MCSD is required under its charter to fulfill its purpose by dredging the Millers Creek canals and the channel that provide ingress and egress to the St. Johns River, maintaining a jetty, and maintaining navigational aids; and

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

WHEREAS, during the permitting process with FDEP it was determined that sediments within the Southern Section of the channel (Zone A-1) contain benzo(a)pyrene, an environmental contaminate, the removal of which requires special dredging techniques and disposal in a registered landfill site; and

WHEREAS, MCSD made a funding request, as detailed in Exhibit A, attached hereto and incorporated herein, seeking \$25,000 in funding to assist with the costs of removing and disposing of the sediments within Zone A-1 (the “PROJECT”); and

WHEREAS, the EPB considered the request and desired to increase the funding amount to \$50,000 due to a current deficit in funding of 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 terms and conditions set forth herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, City and MCSD (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. **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”) to approve the Project and 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. 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 EPB agrees to fund an amount not to exceed \$50,000.

1. The funding will be paid out to MCSD for project costs incurred and paid by MCSD.

2. The EPB’s payment obligations under this agreement shall not exceed \$50,000.

3. 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.

4. All draw request submitted by MCSD will be reviewed jointly by EPB staff and appropriate staff from the Public Works Department of the City before disbursement.

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 as set forth in this Agreement will be returned to EPB.
 - 1. MCSD shall request draw payments only to reimburse project costs that have been paid.
 - 2. 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 the final payment under this agreement.
- iii. 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.
- iv. 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.
- v. MCSD agrees in good faith to take all reasonable actions necessary to accomplish the PROJECT in a timely manner.
- vi. MCSD shall submit a report to the EPB providing an overview of construction progress, 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. **Default and Termination**

- a. Upon the occurrence of any of the following and 10 days written notice to MCSD, the EPB 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 EPB shall have the right to terminate this agreement without any 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.

5. **Performance.** MCSD shall ensure that the PROJECT is conducted in a professional manner, using reasonable efforts and abilities, on a non-emergency basis.

6. **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.

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.** 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.

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.

[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

MILLERS 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: Michelle Wright
Title: Chair, Board of Supervisors
Millers Creek 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

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.

REVISED SCHEDULE B - PROJECT BUDGET

Miller's Creek Ecological Restoration

ZONE A-1 - Benzo(A)Pyrene

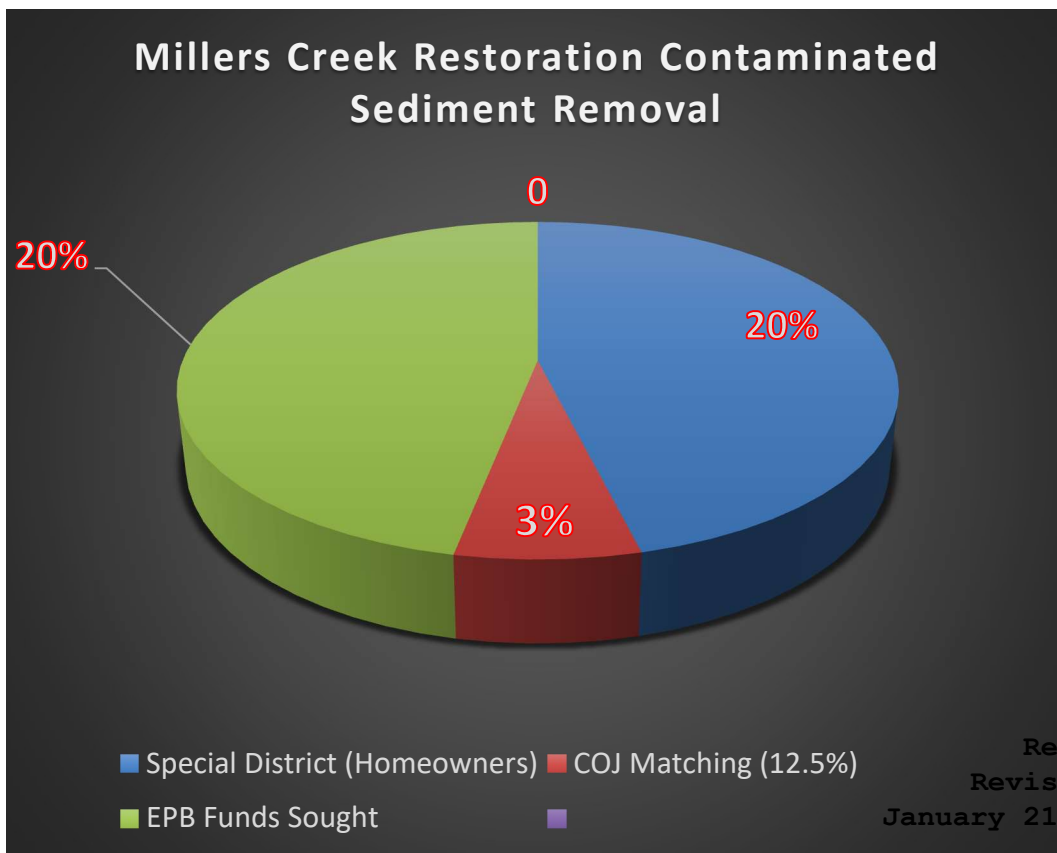
Costs

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	\$7,482.00	299	3%
EPB Funds Sought	\$50,000.00	1968	20%
Contaminated Remaining	\$143,318.00	5733	57%
Projected Project Funding	\$250,000.00	4235	42%

* otherwise fee is \$5.00/ton, Approx 1.38 tons/yd³



Miller Creek Eco restoration Project Overall Budget

Estimated Overall Total Dredging Project Costs (includes 1,968 cyd of contaminated soil removal)	\$877,150	
Contingencies	<u>\$78,850</u>	
Total Estimated Project Costs	\$956,000	
Ameris Bank Financing		\$850,000
Estimated COJ Funding		<u>\$106,000</u>
Total Estimated Funding		\$956,000
Estimated Project Balance (Overage)		\$0
Estimated Costs for additional 1,968 cyd of contaminated soil removal	\$49,200	
JEPB Funding	\$50,000	
<hr style="border: 2px solid black;"/>		
Estimated Total Contaminated Soil Volume (cubic yards)	10,000	
Contracted Volume to be removed		1,968
Additional Volume to be removed with JEPB funding		<u>1,968</u>
		3,936
Estimated Contaminated Soil Remaining (cubic yards)	6,064	