BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA

RESOLUTION NUMBER 66-2021

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A COST-SHARE AGREEMENT FOR THE TRESSLER DRIVE WATER QUALITY IMPROVEMENT PROJECT WITH THE INDIAN RIVER LAGOON (IRL) COUNCIL; PROVIDING AN EFFECTIVE DATE, AND FOR OTHER PURPOSES.

* * * * *

WHEREAS, the Indian River Lagoon (IRL) Council provides cost-share funding to Recipients for the purposes provided for herein which will benefit the management of the water resources of the Indian River Lagoon.

WHEREAS, the proposed Tressler Drive Water Quality Improvement Project will align with the IRLNEP's "One Lagoon - One Community- One Voice" mission.

WHEREAS, the City of Stuart continues to implement strategies to improve the quality of runoff entering the St. Lucie River to advance toward BMAP goals and improving the water quality of the St. Lucie River and Estuary.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA that:

SECTION 1: The Mayor is hereby authorized and directed to execute an Indian River Lagoon (IRL) Council Cost-Share Agreement for the Tressler Drive Water Quality Improvement Project.

SECTION 2: This resolution shall take effect on adoption.

Resolution No. 66-2021
Tressler Drive Water Quality Improvement Project – IRL Cost-Share Agreement

Commissioner MCDONALD offered the foregoing resolution and moved its adoption. The motion was seconded by Commissioner MATHESON and upon being put to a roll call vote, the vote was as follows:

	YES	NO	ABSENT	ABSTAIN
EULA R. CLARKE, MAYOR	Y			
MERRITT MATHESON, VICE MAYOR	Y			
BECKY BRUNER, COMMISSIONER	Y			
TROY MCDONALD, COMMISSIONER	Y			
MIKE MEIER, COMMISSIONER	Y			

ADOPTED this 12th day of July, 2021.

ATTEST:

MARY R. KINDEL
CITY CLERK

EULA R. CLARKE
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY

Contract# IRL2021-16
Encumbrance# GL01-1542

AGENCY COST-SHARE AGREEMENT BY AND BETWEEN THE IRL COUNCIL AND CITY OF STUART, FLORIDA FOR THE TRESSLER DRIVE WATER QUALITY IMPROVEMENT PROJECT

THIS AGREEMENT ("Agreement") is entered into between the IRL COUNCIL ("Council"), whose address is1235 Main Street, Sebastian, Florida 32958, and the CITY OF STUART, whose address is 121 SW Flagler Avenue, Stuart, Florida 34994 ("Recipient"). All references to the parties hereto include the parties, their officers, employees, agents, successors, and assigns.

RECITALS

The waters of the state of Florida are among its basic resources, and the Council has been authorized by the United States Environmental Protection Agency to be the local sponsor for the Indian River Lagoon National Estuary Program.

Pursuant to the IRL Council Interlocal Agreement, the Council is responsible for managing the Indian River Lagoon National Estuary Program.

The Council has determined that providing cost-share funding to Recipient for the purposes provided for herein will benefit the management of the water resources of the Indian River Lagoon.

The parties have agreed to jointly fund the following project to benefit the water resources in accordance with the funding formula further described in the Statement of Work, Attachment A (hereafter "the Project"):

Project description: This project will redirect stormwater runoff to a treatment train, where a 2nd Generation Baffle Box will provide nutrient and sediment removal. The baffle box will discharge to a Bioswale, which will provide retention with filter media, removing additional nutrients and sediment prior to discharge to Poppleton Creek and ultimately to the St. Lucie River. It is estimated that 40.92 pounds per year of TN and 7.67 pounds per year of TP will be kept from entering the lagoon.

In consideration of the above recitals, and the funding assistance described below, Recipient agrees to perform and complete the activities provided for in the Statement of Work, Attachment A. Recipient shall complete the Project in conformity with the contract documents and all attachments and other items incorporated by reference herein. This Agreement consists of all of the following documents: (1) Agreement, (2) Attachment A- Statement of Work; and (3) other attachments, if any. The parties hereby agree to the following terms and conditions.

1. TERM; WITHDRAWAL OF OFFER

(a) The term of this Agreement is from the date upon which the last party has dated and executed the same ("Effective Date") until September 30, 2022 ("Completion Date"). Recipient shall not commence the Project until any required submittals are received and approved. Recipient shall commence performance on October 1, 2021 and shall complete performance in accordance with the time for completion stated in the Statement of Work. Time is of the essence for every aspect of this Agreement, including any time extensions. Notwithstanding specific mention that certain provisions survive termination or expiration of this Agreement, all provisions of this Agreement that by their nature extend beyond the Completion Date survive termination or expiration hereof.

(b) This Agreement constitutes an offer until authorized, signed and returned to the Council by Recipient. This offer terminates forty-five (45) days after receipt by Recipient; provided, however, that Recipient may submit a written request for extension of this time limit to the Council's Project Manager, stating the reason(s) therefor. The Project Manager shall notify Recipient in writing if an extension is granted or denied. If granted, this Agreement shall be deemed modified accordingly without any further action by the parties.

2. **DELIVERABLES.** Recipient shall fully implement the Project, as described in the Statement of Work, Attachment A. Recipient is responsible for the professional quality, technical accuracy, and timely completion of the Project. Both workmanship and materials shall be of good quality. Unless otherwise specifically provided for herein, Recipient shall provide and pay for all materials, labor, and other facilities and equipment necessary to complete the Project. The Council's Project Manager shall make a final acceptance inspection of the Project when completed and finished in all respects. Upon satisfactory completion of the Project, the Council will provide Recipient a written statement indicating that the Project has been completed in accordance with this Agreement. Acceptance of the final payment by Recipient shall constitute a release in full of all claims against the Council arising from or by reason of this Agreement.

3. **OWNERSHIP OF DELIVERABLES.** Unless otherwise provided herein, the Council does not assert an ownership interest in any of the deliverables under this Agreement.

4. **AMOUNT OF FUNDING**

(a) **Compensation.** For satisfactory completion of the Project, the Council shall pay Recipient approximately fifty percent (50%) of the total cost of the Project, but in no event shall the Council cost-share exceed $80,000. The Council cost-share is not subject to modification based upon price escalation in implementing the Project during the term of this Agreement. Recipient shall be responsible for payment of all costs necessary to ensure completion of the Project. Recipient shall notify the Council's Project Manager in writing upon receipt of any additional external funding for the Project not disclosed prior to execution of this Agreement.

(b) **In-Kind Services.** Recipient agrees to provide $80,000 in the form of cash and/or in-kind services for the Project, as further described in the Statement of Work, which shall count toward Recipient's total cost-share obligation of $80,000.

5. **PAYMENT OF INVOICES**

(a) **Submission of Invoices**. Recipient shall submit one invoice upon successful completion of the Project by one of the following two methods: (1) by mail to the IRL Council, 1235 Main Street, Sebastian, Florida 32958, or (2) by e-mail to kolodny@irlcouncil.org. The invoice shall be submitted in detail sufficient for proper pre-audit and post-audit review. It shall include a copy of contractor and supplier invoices to Recipient and proof of payment. For all approved expenses incurred on or after October 1, 2021, Recipient shall be reimbursed for approximately fifty percent (50%) of approved costs or the not-to-exceed sum of $80,000, whichever is less. The Council shall not withhold any retainage from this reimbursement. If necessary, for audit purposes, Recipient shall provide additional supporting information as required to document invoices.

(b) **End of Council Fiscal Year Reporting.** The Council's fiscal year ends on September 30. Irrespective of the invoicing frequency, the Council is required to account for all encumbered funds at that time. When authorized under the Agreement, submittal of an invoice as of September 30 satisfies this requirement. The invoice shall be submitted no later than October 30. If the Agreement does not authorize submittal of an invoice as of September 30, Recipient shall submit, prior to October 30, a description of the additional work on the Project completed between the last invoice and September 30, and an estimate of the additional amount due as of September 30 for such Work. If there have been no prior invoices, Recipient shall submit a description of the work completed on the Project through September 30 and a statement estimating the dollar value of that work as of September 30.

(c) **Final Invoice.** The final invoice must be submitted no later than 45 days after the Completion Date; provided, however, that when the Completion Date corresponds with the end of the Council's fiscal year (September 30), the final invoice must be submitted no later than 30 days after the Completion Date. **Final invoices that are submitted after the requisite date shall be subject to a penalty of 10 percent of the invoice. This penalty may be waived by the Council, in its sole judgment and discretion, upon a showing of special circumstances that prevent the timely submittal of the final invoice. Recipient must request approval for delayed submittal of the final invoice not later than ten (10) days prior to the due date and state the basis for the delay.**

(d) **Invoice Requirements.** All invoices shall include the following information: (1) Council contract number; (2) Council encumbrance number; (3) Recipient's name and address (include remit address, if necessary); (4) Recipient's invoice number and date of invoice; (5) Council Project Manager; (6) Recipient's Project Manager; (7) supporting documentation as to cost and/or Project completion (as per the cost schedule and other requirements of the Statement of Work); (8) Progress Report (if required). Invoices that do not correspond with this paragraph shall be returned without action within twenty (20) business days of receipt, stating the basis for rejection. Payments shall be made within forty-five (45) days of receipt of an approved invoice.

(e) **Travel expenses.** If the cost schedule for this Agreement includes a line item for travel expenses, travel expenses shall be drawn from the project budget and are not otherwise compensable. If travel expenses are not included in the cost schedule, they are a cost that is borne by Recipient.

(f) **Payments withheld.** The Council may withhold or, on account of subsequently discovered evidence, nullify, in whole or in part, any payment to such an extent as may be necessary to protect the Council from loss as a result of: (1) defective work not remedied; (2) failure to maintain adequate progress in the Project; (3) any other material breach of this Agreement. Amounts withheld shall not be considered due and shall not be paid until the ground(s) for withholding payment have been remedied.

(g) **Annual budgetary limitation.** For multi-fiscal year agreements, the Council must budget the amount of funds that will be expended during each fiscal year as accurately as

possible. The Statement of Work, Attachment A, includes the parties' current schedule for completion of the Work and projection of expenditures on a fiscal year basis (October 1 – September 30) ("Annual Spending Plan"). If Recipient anticipates that expenditures will exceed the budgeted amount during any fiscal year, Recipient shall promptly notify the Council's Project Manager and provide a proposed revised work schedule and Annual Spending Plan that provides for completion of the Work without increasing the Total Compensation. The last date for the Council to receive this request is August 1 of the then-current fiscal year. The Council may in its sole discretion prepare a Supplemental Instruction Form incorporating the revised work schedule and Annual Spending Plan during the then-current fiscal year or subsequent fiscal year(s).

6. **LIABILITY AND INSURANCE.** Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that party, its officers and employees. Nothing contained herein shall be construed or interpreted as denying to any party any remedy or defense available under the laws of the State of Florida, nor as a waiver of sovereign immunity of the State of Florida beyond the waiver provided for in Section 768.28, Fla. Stat., as amended. Each party shall acquire and maintain throughout the term of this Agreement such liability, workers' compensation, and automobile insurance as required by their current rules and regulations, which may include participation in a self-insurance program.

7. **FUNDING CONTINGENCY.** This Agreement is at all times contingent upon funding availability, which may include a single source or multiple sources, including, but not limited to: (1) revenues appropriated by the Council's Board of Directors; (2) annual appropriations by the Florida Legislature, or (3) appropriations from other agencies or funding sources. Agreements that extend for a period of more than one Fiscal Year are subject to annual appropriation of funds in the sole discretion and judgment of the Council's Board of Directors for each succeeding Fiscal Year. Should the Project not be funded, in whole or in part, in the current Fiscal Year or succeeding Fiscal Years, the Council shall so notify Recipient and this Agreement shall be deemed terminated for convenience five (5) days after receipt of such notice, or within such additional time as the Council may allow. For the purpose of this Agreement, "Fiscal Year" is defined as the period beginning on October 1 and ending on September 30.

8. **PROJECT MANAGEMENT**

(a) The Project Managers listed below shall be responsible for overall coordination and management of the Project. Either party may change its Project Manager upon three (3) business days prior written notice to the other party. Written notice of change of address shall be provided within five (5) business days. All notices shall be in writing to the Project Managers at the addresses below and shall be sent by one of the following methods: (1) hand delivery; (2) U.S. certified mail; (3) national overnight courier; (4) e-mail or, (5) fax. Notices via certified mail are deemed delivered upon receipt. Notices via overnight courier are deemed delivered one (1) business day after having been deposited with the courier. Notices via e-mail or fax are deemed delivered on the date transmitted and received.

COUNCIL	RECIPIENT
Daniel Kolodny, Project Manager	Timothy Voelker, P.E., Director, Utilities
IRL Council	City of Stuart
1235 Main Street	121 SW Flagler Avenue
Sebastian, FL 32958	Stuart, FL 34994
(772) 216-7148	(772) 288-5332
E-mail: kolodny@irlcouncil.org	E-mail: tvoelker@ci.stuart.fl.us

(b) The Council's Project Manager shall have sole responsibility for transmitting instructions, receiving information, and communicating Council policies and decisions regarding all matters pertinent to performance of the Project. The Council's Project Manager may also issue a Council Supplemental Instruction (CSI) form, Attachment B, to authorize minor adjustments to the Work that are consistent with the purpose of the Work. Both parties must sign the CSI. A CSI may not be used to change the Total Compensation, quantity, quality, or the Completion Date of the Work, or to change or modify the Agreement.

9. PROGRESS REPORTS AND PERFORMANCE MONITORING

(a) **Progress Reports.** Recipient shall provide to the Council Project update/status reports as provided in the Statement of Work. Reports will provide detail on progress of the Project and outline any potential issues affecting completion or the overall schedule. Reports may be submitted in any form agreed to by Council's Project Manager and Recipient, and may include emails, memos, and letters.

(b) **Performance Monitoring.** For as long as the Project is operational, the Council shall have the right to inspect the operation of the Project during normal business hours upon reasonable prior notice. Recipient shall make available to the Council any data that is requested pertaining to performance of the Project.

10. TERMINATION. The IRL Council may terminate this Agreement without cause upon 10 days written notice. In such event Recipient shall be compensated for all Work performed in accordance with this Agreement to the effective date of termination. If Recipient materially fails to fulfill its obligations under this Agreement, including any specific milestones established herein, the Council shall provide Recipient written notice of the deficiency by forwarding a Notice to Cure, citing the specific nature of the breach. Recipient shall have thirty (30) days to cure the breach. If Recipient fails to cure the breach within the thirty (30) day period, the Council shall issue a Termination for Default Notice and this Agreement shall be terminated upon receipt of said notice. In such event, Recipient shall refund to the Council all funds provided to Recipient pursuant to this Agreement within thirty (30) days of such termination. The Council may also terminate this Agreement upon ten (10) days written notice in the event any of material misrepresentations in the Project Proposal.

ADDITIONAL PROVISIONS (Alphabetical)

11. ASSIGNMENT. Recipient shall not assign this Agreement, or any monies due hereunder, without the Council's prior written consent. Recipient is solely responsible for fulfilling all work elements in any contracts awarded by Recipient and payment of all monies due. No provision of this Agreement shall create a contractual relationship between the Council and any of Recipient's contractors or subcontractors.

12. AUDIT; ACCESS TO RECORDS; REPAYMENT OF FUNDS

(a) **Maintenance of Records.** Recipient shall maintain its books and records such that receipt and expenditure of the funds provided hereunder are shown separately from other expenditures in a format that can be easily reviewed. Recipient shall keep the records of receipts and expenditures, copies of all reports submitted to the Council, and copies of all invoices and supporting documentation for at least five (5) years after expiration of this Agreement. In accordance with generally accepted governmental auditing standards, the Council shall have access to and the right

to examine any directly pertinent books and other records involving transactions related to this Agreement. In the event of an audit, Recipient shall maintain all required records until the audit is completed and all questions are resolved. Recipient will provide proper facilities for access to and inspection of all required records.

(b) **Repayment of Funds.** Council funding shall be subject to repayment after expiration of this Agreement if, upon audit examination, the Council finds any of the following: (1) Recipient has spent funds for purposes other than as provided for herein; (2) Recipient has failed to perform a continuing obligation of this Agreement; (3) Recipient has received duplicate funds from the Council for the same purpose; and/or (4) Recipient has received more than one hundred percent (100%) contributions through cumulative public agency cost-share funding.

(c) **Florida Inspectors General.** It is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section.

13. **CIVIL RIGHTS.** Pursuant to Chapter 760, Fla. Stat., Recipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, age, handicap, or marital status.

14. **COMMUNICATION AND ACKNOWLEDGEMENT OF FUNDING**: As a granting agency, the Council achieves its mission through partnerships with state agencies, local governments, community organizations, and others. The Council requires Recipient to acknowledge the Council when describing this project or program funded in whole or in part with Council funds in any of the following products: (1) press releases, speaking engagements, and other public statements; (2) publications and other documents; (3) websites; (4) visual presentations; (5) resource guides/toolkits; (6) bid solicitations and/or; (7) social media.

15. **DISPUTE RESOLUTION.** Recipient is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute involving performance of this Agreement by submitting a written statement to the Council's Project Manager no later than ten (10) business days after the precipitating event. If not resolved by the Project Manager, the Project Manager shall forward the request to the Council's General Counsel, which shall issue a written decision within ten (10) business days of receipt. This determination shall constitute final action of the Council and shall then be subject to judicial review upon completion of the Project.

16. **DIVERSITY REPORTING.** The Council is committed to the opportunity for diversity in the performance of all cost-sharing agreements, and encourages Recipient to make a good faith effort to ensure that women and minority-owned business enterprises (W/MBE) are given the opportunity for maximum participation as contractors. The Council will assist Recipient by sharing information on W/MBEs. Recipient shall provide with each invoice a report describing: (1) the company names for all W/MBEs; (2) the type of minority, and (3) the amounts spent with each during the invoicing period. The report will also denote if there were no W/MBE expenditures.

17. **ENTIRETY OF CONTRACTUAL AGREEMENT; AMENDMENT**. The Council and the Recipient agree that this Agreement (including all exhibits, attachments, etc.) sets forth the entire contract between the parties, and that there are no promises or understandings other than those stated in these documents. None of the provisions, terms and conditions contained in this

Agreement may be added to, modified or otherwise altered, except by written instrument executed by the parties hereto.

18. **E-VERIFY.** Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021, the Recipient shall:

(a) Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;

(b) Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien;

(c) Maintain copies of all subcontractor affidavits for the duration of this Agreement;

(d) Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;

(e) Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and

(f) Be aware that if the Council terminates this Agreement under Section 448.095(2)(c), Florida Statutes, the Recipient may not be awarded a public contract for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the Recipient as a result of the termination of the Agreement.

19. **GOVERNING LAW, VENUE, ATTORNEY'S FEES, WAIVER OF RIGHT TO JURY TRIAL; REMEDY.** This Agreement shall be construed according to the laws of Florida and shall not be construed more strictly against one party than against the other because it may have been drafted by one of the parties. As used herein, "shall" is always mandatory. In the event of any legal proceedings arising from or related to this Agreement: (1) venue for any state or federal legal proceedings shall be in Indian River County; (2) each party shall bear its own attorney's fees, including appeals; (3) for civil proceedings, the parties hereby consent to trial by the court and **WAIVE THE RIGHT TO JURY TRIAL**; (4) no remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

20. **INDEPENDENT ENTITIES.** The parties to this Agreement, their employees and agents, are independent entities and not employees or agents of each other. Nothing in this Agreement shall be interpreted to establish any relationship other than that of independent entities during and after the term of this Agreement. Recipient is not a contractor of the Council. The Council is providing cost-share funding as a cooperating governmental entity to assist Recipient in accomplishing the Project. Recipient is solely responsible for accomplishing the Project and directs the means and methods by which the Project is accomplished. Recipient is solely responsible for compliance with all labor, health insurance, and tax laws pertaining to Recipient, its officers, agents, and

employees.

21. **INTEREST OF RECIPIENT.** Recipient certifies that no officer, agent, or employee of the Council has any material interest, as defined in Chapter 112, Fla. Stat., either directly or indirectly, in the business of Recipient to be conducted hereby, and that no such person shall have any such interest at any time during the term of this Agreement.

22. **NON-LOBBYING.** Pursuant to Section 216.347, Fla. Stat., as amended, Recipient agrees that funds received from the Council under this Agreement shall not be used for the purpose of lobbying the Legislature or any other state agency.

23. **PERMITS.** Recipient shall comply with all applicable federal, state and local laws and regulations in implementing the Project and shall include this requirement in all subcontracts pertaining to the Project. Recipient shall obtain any and all governmental permits necessary to implement the Project. Any activity not properly permitted prior to implementation or completed without proper permits does not comply with this Agreement and shall not be approved for cost-share funding.

24. **PUBLIC ENTITY CRIME.** A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO ($35,000) for a period of 36 months following the date of being placed on the convicted vendor list.

25. **PUBLIC RECORDS.**

(a) Records of Recipient that are made or received in the course of performance of the Project may be public records that are subject to the requirements of chapter 119, Fla. Stat. If Recipient receives a public records request, Recipient shall promptly notify the Council's Project Manager. Each party reserves the right to cancel this Agreement for refusal by the other party to allow public access to all documents, papers, letters, or other material related hereto and subject to the provisions of chapter 119, Fla. Stat., as amended.

(b) **IF RECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE RECIPIENTS'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE COUNCIL'S CUSTODIAN OF PUBLIC RECORDS AT (772) 216-7148, KOLODNY@IRLCOUNCIL.ORG, 1235 MAIN STREET, SEBASTIAN, FLORIDA 32958.**

(c) Recipient shall keep and maintain public records required by the Council to perform the Project.

(d) Upon request from the Council's custodian of public records, Recipient shall provide the Council with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, Fla. Stat. or as otherwise provided by law.

(e) Recipient shall 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 the contract if the contractor does not transfer the records to the Council.

(f) Upon completion of the contract, Recipient may transfer, at no cost, to the Council all public records in possession of the Recipient or keep and maintain public records required by the Council to perform the service. If the Recipient transfers all public records to the Council upon completion of the contract, the Recipient shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Recipient keeps and maintains public records upon completion of the contract, the Recipient shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Council, upon request from the Council's custodian of public records, in a format that is compatible with the information technology systems of the Council.

26. ROYALTIES AND PATENTS. Recipient certifies that the Project does not, to the best of its information and belief, infringe on any patent rights. Recipient shall pay all royalties and patent and license fees necessary for performance of the Project and shall defend all suits or claims for infringement of any patent rights and save and hold the Council harmless from loss to the extent allowed by Florida law.

27. SEVERABILITY; SURVIVABILITY; WAIVER

(a) If any term or provision of the Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of the Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of the Agreement shall be deemed valid and enforceable to the extent permitted by law.

(b) Any provision of the Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of the Agreement shall survive its expiration or earlier termination.

(c) Failure of either party to enforce or exercise any right(s) under this Agreement shall not be deemed a waiver of either party's right to enforce or exercise said right(s) at any time thereafter.

IN WITNESS WHEREOF, the Parties have executed on the day and year written below. This Agreement may be executed in separate counterparts, which shall not affect its validity.

IRL COUNCIL

By:_____
Duane E. De Freese, Ph.D., Executive Director

Date: _____

Approved as to form and legal sufficiency

_____
Glen J. Torcivia, IRL Council General Counsel

CITY OF STUART

By: _____

_____
Name, Title and Date

Attest: _____

Mary R. Kindel, City Clerk
Name and Title

ATTACHMENTS

Attachment A – Statement of Work
Attachment B – Council Supplemental Instruction Form

Cost-share: Agency general
Last updated: 3-16-20

ATTACHMENT A – STATEMENT OF WORK

I. PROJECT TITLE:

Tressler Drive Water Quality Improvement Project

II. INTRODUCTION/BACKGROUND:

The project is in the City of Stuart, Florida in the Poppleton Creek drainage basin. Stormwater runoff from a 13.7-acre urban residential development currently discharges directly to Poppleton Creek. This project proposes to construct a 2nd generation baffle box and bioswale to treat runoff prior to discharge. The project will remove nutrients and sediment and provide stormwater retention and is important for the City to continue progress towards BMAP requirements for the St. Lucie River.

III. PROJECT VALUE PROPOSITION STATEMENT:

The improvements will remove 40.92 pounds per year of TN, 7.67 pounds per year of TP, and 502.72 pounds per year of TSS from untreated stormwater prior to discharge to Poppleton Creek, and ultimately to the St. Lucie River.

IV. LOCATION OF PROJECT:

Located in Stuart, Florida within the Poppleton Creek drainage basin. Latitude 27°11'10.20"N, Longitude 80°15'1.52"W.

V. SCOPE OF WORK (Outputs/Deliverables):

Outputs include:

- Construction of a 2nd generation baffle box and bioswale to treat runoff into Poppleton creek.
- Public Education about the benefits of the project through signage at the project location, website materials, and social media posts.

VI. PROJECT TASK IDENTIFICATION:

Task 1. Bidding. The City of Stuart will bid the permitted design drawings for the bioswale construction, baffle box installation, and associated restoration. A contractor will be selected, and the City will execute a contract with the contractor. A copy of the bid documents, construction drawings, technical specifications, and the notice to proceed will be provided.

Task 2. Construction. The project proposes to construct a 2nd generation baffle box and bioswale to treat runoff prior to discharge. All improvements will be constructed according to the approved construction drawings and technical specifications. As built drawings will be provided at the completion of construction.

Task 3. Education. The City will post signage at the project site showing the project concept plan during construction. The City will also include a new project summary on the City's website and social media sharing the project benefits at the completion of the project.

Task 4. Quarterly Reports. The City will submit quarterly reports updating the Indian River Lagoon Council on the progress for the project.

Task 5. Final Report. The City will submit a final report at the completion of the project. The final report is intended to capture a brief summary of the project, financial summary of the actual grant and match expenditures, and include construction photos

VII. TIME FRAMES and DELIVERABLES:

Task 1: Bid Documents, Construction drawings and technical specs, notice to proceed letter
Due: February 1, 2022
Task 2: As-builts
Due: June 1, 2022
Task 3: Photo of project signage, copy of website literature and social media posts.
Due: July 31, 2022
Task 4: Quarterly Reports that include Council's Quarterly Report Summary Cover Page.
Due: January 31, 2022; April 30, 2022; July 31, 2022.
Task 5: Final Report that includes Council's Final Report Cover Page
Due: September 30, 2022.

VIII. BUDGET:

Task line Item	Deliverable	IRLNEP Funding Amount	Cost Share Funding Amount	Cost Share Funding Source (In-kind or Cash)
1	Bidding	$0	$3,000	City (Cash)
2	Construction of Improvements	$80,000	$70,000	City (Cash)
3	Education	$0	$3,000	City (Cash and In-Kind)
4	Quarterly Reports	$0	$0	
5	Final Report	$0	$4,000	City (Cash)
	Summary Cost	$80,000	$80,000	
	Project total cost	**$160,000**		

ATTACHMENT B — COUNCIL'S SUPPLEMENTAL INSTRUCTIONS (sample)
COUNCIL SUPPLEMENTAL INSTRUCTIONS #

DATE:

TO:

FROM: , Project Manager

CONTRACT/PURCHASE ORDER NUMBER:

CONTRACT TITLE:

The Work shall be carried out in accordance with the following supplemental instruction issued in accordance with the Contract Documents without change in the Contract Sum or Contract Time. Prior to proceeding in accordance with these instructions, indicate your acceptance of these instructions for minor changes to the work as consistent with the Contract Documents and return to the Council's Project Manager.

1. CONTRACTOR'S SUPPLEMENTAL INSTRUCTIONS:

2. DESCRIPTION OF WORK TO BE CHANGED:

3. DESCRIPTION OF SUPPLEMENTAL INSTRUCTION REQUIREMENTS: .

Contractor's approval: (choose one of the items below):

Approved: _____ Date: _____

(It is agreed that these instructions shall not result in a change in the Total Compensation or the Completion Date.)

Approved: _____ Date: _____

(Contractor agrees to implement the Supplemental Instructions as requested, but reserves the right to seek a Change Order in accordance with the requirements of the Agreement.)

Approved: _____ Date: _____
, Council Project Manager

Acknowledged: _____ Date: _____
, Council Contracts Administrator

cc: Contract/Purchasing file