



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.1.

10/6/2020

Subject:

Agency Cost-Share Agreement with the Indian River Lagoon (IRL) Council for Testing Steel Gabions and Concrete Core Modules for Use in Oyster Bars in the IRL

Fiscal Impact:

FY20-21: IRL Council Grant \$1,750, Save Our Indian River Lagoon Fund 1260, \$625

Dept/Office:

Natural Resources Management Department (NRM)

Requested Action:

It is requested that the Board of County Commissioners: 1) authorize the Chair to execute a Cost-Share Agreement with the Indian River Lagoon Council to complete a material testing study related to oyster restoration; 2) waive venue in the event of any legal proceedings to Indian River County; 3) authorize the County Manager or designee to execute any future amendments, change orders, or extensions; and 4) authorize associated budget change requests.

Summary Explanation and Background:

On October 17, 2013, the Board of County Commissioners approved a General Fund allocation of \$150,000 to develop and implement a County-Wide Community-Based Oyster Propagation Program in partnership with the Brevard Zoo. The program grew through a grant funded by the Florida Department of Environmental Protection on September 16, 2014. To date, over 1400 waterfront property owners have participated in this program by growing oysters in caged gardens under their docks. Additional community volunteers have assisted in building oyster bars from recycled shell and seeded with the gardened oysters. Due to the water quality, filtration and habitat benefits, oyster restoration continues with annual funding from the Save Our Indian River Lagoon Trust Fund. As this program continues to develop, exploring plastic-free materials to use in oyster bar construction is an important next step, for which we have obtained grant funding through the Indian River Lagoon National Estuary Program.

Background: Oyster reefs have been shown to increase water quality through filter feeding activity, reducing turbidity, sequestering nitrogen and phosphorus in their shells and tissues, and increasing denitrification under the reefs. Oyster restoration projects typically use plastic mesh bags to contain the recycled shell and live oysters needed to establish a reef. Recently, scientific and public concern has been growing regarding the occurrence and impacts of plastics in the environment, particularly the breakdown of plastics and the presence of microplastics in marine environments and organisms.

This project aims to test new non-plastic materials for oyster recruitment potential, longevity in the system, and ability as a substrate to support oyster reef development in Brevard County. By building on current efforts in material development in nearby environments, we can serve as an additional data source, while ensuring the

products will endure our local conditions and work to the site-specific constraints of the Indian River Lagoon in Brevard County.

The awarded grant will help Brevard County address the following questions: (1) Do the materials persist in the local environment long enough for oysters to secrete a sustainable reef formation? (2) How do the materials and designs tested compare for oyster recruitment? (3) Do oysters grow out of the footprint of the deployment material and form bridges? (4) How do they perform in relation to fouling? The results of this material test will help inform additional, plastic-free, options to incorporate into the design of oyster bars throughout the Indian River Lagoon. These oyster bar projects throughout the county filter and clarify lagoon waters, reduce erosion, provide habitat, and remove nitrogen from the water column.

Clerk to the Board Instructions:

Please execute two original Cost-Share Agreements and return to Natural Resources.

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: IRL National Estuary Program		2. Amount: \$2,375
3. Fund/Account #: 1260/271210	4. Department Name: Natural Resources	
5. Contract Description: Testing Steel Gabions and Concrete Core Modules for Use in Oyster Bars in the IRL		
6. Contract Monitor: Jenny Hansen		8. Contract Type: GRANT
7. Dept/Office Director: Virginia Barker		
9. Type of Procurement: Other		

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	☒	☐	
Purchasing	☐	☐	
Risk Management	☐	☐	
County Attorney	☐	☐	

SECTION III - CONTRACTS MANAGEMENT DATABASE CHECKLIST

APPROVAL

<u>COUNTY OFFICE</u>	<u>YES</u>	<u>NO</u>	<u>SIGNATURE</u>
User Agency	☒	☐	Hansen, Jenny Digitally signed by Hansen, Jenny Date: 2020.09.15 18:20:34 -04'00'
Purchasing	☒	☐	Darling, Steven Digitally signed by Darling, Steven Date: 2020.09.16 13:03:47 -04'00'
Risk Management	☒	☐	Lairsey, Matt Digitally signed by Lairsey, Matt Date: 2020.09.16 09:58:15 -04'00'
County Attorney	☒	☐	Esseesse, Alexander Digitally signed by Esseesse, Alexander Date: 2020.09.28 11:14:14 -04'00'

SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

CM DATABASE REQUIRED FIELDS	Complete ✓
Department Information	☐
Department	☐
Program	☐
Contact Name	☐
Cost Center, Fund, and G/L Account	☐
Vendor Information (SAP Vendor #)	☐
Contract Status, Title, Type, and Amount	☐
Storage Location (SAP)	☐
Contract Approval Date, Effective Date, and Expiration Date	☐
Contract Absolute End Date (No Additional Renewals/Extensions)	☐
Material Group	☐
Contract Documents Uploaded in CM database (Contract Form with County Attorney/ Risk Management/ Purchasing Approval; Signed/Executed Contract)	☐
"Right To Audit" Clause Included in Contract	☐
Monitored items: Uploaded to database (Insurance, Bonds, etc.)	☐



Kimberly Powell, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Kimberly.Powell@brevardclerk.us

October 7, 2020

M E M O R A N D U M

TO: Virginia Barker, Natural Resources Management Director

RE: Item F.1., Agency Cost Share Agreement with the Indian River Lagoon (IRL) Council for Testing Steel Gabions and Concrete Core Modules for Use in Oyster Bars in the IRL

The Board of County Commissioners, in regular session on October 6, 2020, approved and authorized the Chair to execute a Cost-Share Agreement with the IRL Council to complete a material testing study related to oyster restoration; approved waiving venue in the event of any legal proceedings to Indian River County; authorized the County Manager, or his designee, to execute any future amendments, change orders, or extensions; and authorized associated Budget Change Requests. Enclosed are two executed Agreement.

Upon execution by all parties, please return a fully-executed Agreement to this office for inclusion in the official minutes.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Kimberly Powell
Kimberly Powell, Clerk to the Board

Encl. (2)

cc: Finance
Budget

**AGENCY COST-SHARE AGREEMENT
BY AND BETWEEN THE IRL COUNCIL AND BREVARD COUNTY, FLORIDA, A
POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, FOR
TESTING STEEL GABIONS AND CONCRETE CORE MODULES FOR USE IN OYSTER
BARS IN THE IRL**

THIS AGREEMENT ("Agreement") is entered into by and between the IRL COUNCIL ("Council"), whose address is 1235 Main Street, Sebastian, Florida 32958, and BREVARD COUNTY, FLORIDA, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA ("Recipient"), whose address is 2725 Judge Fran Jamieson Way, Building A, Viera, Florida 32940. 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"):

This project will test two different plastic free alternatives, steel gabions and concrete CORE modules, to ascertain their effectiveness in the use of oyster bar restoration in the Indian River 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) all 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 May 31, 2022 ("Completion Date"). Recipient shall not commence the Project until any required submittals are received and approved. Recipient shall commence performance on October 1, 2020 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) therefore. 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) For satisfactory completion of the Project, the Council shall pay Recipient approximately seventy-four (74%) percent of the total cost of the Project, but in no event shall the Council cost-share exceed \$1,750. 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 \$625 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 cost-share obligation of \$625.
5. **PAYMENT OF INVOICES**
- (a) Within 30 days after the closing date of each calendar quarter (March 31, June 30, September 30 and December 31), Recipient shall submit an itemized invoice for the reimbursable expenses incurred during the previous quarter 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. Invoices 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 the effective date of this agreement, the Council shall reimburse Recipient for the approved expenses until the not-to-exceed amount of the Council's cost-share has been expended. The Council shall not withhold any retainage from this reimbursement. Council reimbursement is subject to annual budgetary limitation, if applicable, as provided in subsection (g). 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) 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); (9) Diversity Report (if otherwise required herein). 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.
- (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 Council 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, employees and agents. 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.
- | | |
|--|---|
| <u>COUNCIL</u>
Daniel Kolodny, Project Manager
IRL Council
1235 Main Street
Sebastian, Florida 32958
(772) 216-7148
E-mail: kolodny@irlcouncil.org | <u>RECIPIENT</u>
Jenny Hansen, PhD
Brevard County Natural Resources
Management Department
2725 Judge Fran Jamieson Way, Bldg A
Viera, FL 32940
(321) 633-2016
E-mail: Jenny.Hansen@brevardfl.gov |
|--|---|
- (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 issue a Council Supplemental Instruction (CSI) form, Attachment C, to authorize minor changes in the Project that the parties agree are not inconsistent with the purpose of the Project, do not affect the Council cost-share or Completion Date, or otherwise significantly modify the terms of 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.
14. **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.
15. **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.
16. **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.
17. **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.
18. **FEDERAL FUNDING REQUIREMENTS.** This Agreement is funded, in whole or in part, with funds received by the Council from the United States Environmental Protection Agency under the National Estuary Program for the Indian River Lagoon (CFDA No. 66.456), under the authority of section 320 of the Clean Water Act, 33 U.S.C. § 1251, et seq., and 40 C.F.R. Part 31 and 40 C.F.R. Part 35, Subpart P. The amount of federal funds provided under this Agreement is \$1,750. Recipient, as a sub-grantee of these federal funds, must comply with the provisions of Attachment B.
19. **GOVERNING LAW, VENUE, ATTORNEY'S FEES, WAIVER OF RIGHT TO JURY TRIAL.** 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.

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 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 s. 287.017 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.** 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.
 - (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.

IN WITNESS WHEREOF, the IRL Council has caused this Agreement to be executed on the day and year written below in its name by its Executive Director, and Recipient has caused this Agreement to be executed on the day and year written below in its name by its duly authorized representatives, and, if appropriate, has caused the seal of the corporation to be attached. This Agreement may be executed in separate counterparts, which shall not affect its validity. Upon execution, this Agreement constitutes the entire agreement of the parties, notwithstanding any stipulations, representations, agreements, or promises, oral or otherwise, not printed or inserted herein. This Agreement cannot be changed by any means other than written amendments referencing this Agreement and signed by all parties.

IRL COUNCIL

BREVARD COUNTY, FLORIDA, A POLITICAL
SUBDIVISION OF THE STATE OF FLORIDA

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

By:  _____
Bryan Andrew Lober, Chair

Date: _____

Typed Name and Title
Date: October 6, 2020

APPROVED BY THE IRL
GENERAL COUNSEL

Attest:  _____
SCOTT ELLIS, CLERK

Attest: _____

Carolyn S. Ansay, General Counsel

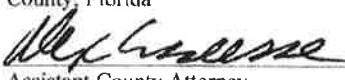
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ATTACHMENTS

Attachment A – Statement of Work
Attachment B – Terms and Conditions for Subawards
Attachment C – Council Supplemental Instruction Form

Cost-share: Agency general
Last updated: 05-31-2019

Approved for legal form and content for Brevard
County, Florida

 _____
Assistant County Attorney

ATTACHMENT A - STATEMENT OF WORK

I. PROJECT TITLE:

Testing Steel Gabions and Concrete Core Modules for Use in Oyster Bars in the Indian River Lagoon

II. INTRODUCTION/BACKGROUND:

Plastics in the environment, particularly in a marine environment, are garnering great scientific and public concern. This project aims to test new non-plastic materials for oyster recruitment potential, longevity in the system, and ability as a substrate to support oyster reef development in Brevard County. Oyster reefs have been shown to increase water quality through filter feeding activity, reducing turbidity (Reidenbach et al. 2013), sequestering nitrogen and phosphorus in their shells and tissues, and increasing denitrification under the reefs (Schmidt and Gallagher 2017).

III. PROJECT VALUE PROPOSITION STATEMENT:

This study will provide additional data for large-scale restoration and material testing elsewhere in Florida. As participants in the Northeast Florida Estuarine Restoration Team, Brevard County is positioned to contribute to these large-scale experimental efforts with the potential to transform restoration methodology in terms of materials used, facilitate greater restoration efforts, renew natural resources, support the improvement of water quality, and re-establish habitat in the IRL.

IV. LOCATION OF PROJECT:

Materials will be hung from the docks at Marina Isles (28.15256°, -80.60641°), located just north of Mathers Bridge toward the southern end of the Banana River Lagoon, the Riverview Senior Resort (28.017123°, -80.566320°) to the south of Turkey Creek, and the Castaway Cove Condos (28.042071°, -80.581411°) north of Turkey Creek. (See JPEG map attachment)

V. SCOPE OF WORK:

Deliverable 1: Construction and Deployment – Prepare galvanized steel gabions, oyster Core modules (as per design by Dr. Jose Nunez), and traditional Naltex™ mesh bags for testing. Deploy materials under docks at the three proposed locations.

Deliverable 2: Abiotic Monitoring – Collection of salinity, temperature, and pH quarterly with additional continuous water depth and temperature at each location. Assessment of structural integrity and fouling of each module will also occur quarterly.

Deliverable 3: Biotic Monitoring – Data on the number and size of oyster recruits to each module type will be collected one month post deployment and approximately quarterly thereafter. Data will also be collected from nearby oyster bar restoration projects for reference.

VI. TASK IDENTIFICATION:

Task 1. Initial Project Executive Summary Sheet

The county will fill out and submit Council's Initial Project Executive Summary Sheet.

Task 2. Construct and deploy galvanized steel gabions, oyster Core modules, and traditional Naltex™ mesh bags.

Task 3. Abiotic Monitoring which will include salinity, temperature, and pH quarterly.

Biotic Monitoring. Collection on the number and size of oyster recruits to each structure type will be collected one-month post deployment and quarterly thereafter.

Task 4. Quarterly Reports. Brevard County will prepare quarterly progress reports that include Council's Quarterly Report Summary Cover Page.

Task 5. Brevard County will prepare a final report upon completion of all short-term deliverables that includes Council's Final Report Executive Summary Cover Page.

VII. TIME FRAMES and DELIVERABLES:

Task 1: Council's Initial Project Executive Summary Sheet

Deliverable: Council's Initial Project Executive Summary Sheet

Due: October 31, 2020

Task 2: Post Deployment report containing accounting of material acquisition and images of construction and field deployment.

Deliverable: Post-deployment report

Due: December 31, 2020

Task 3: Abiotic and Biotic Monitoring data

Deliverable: Data to be included in quarterly reports

Due: January 31, 2021; April 30, 2021; July 31, 2021; October 31, 2021; and January 31, 2022

Task 4: Quarterly Reports

Deliverable: Quarterly reports that include Council's Quarterly Report summary cover page

Due: January 31, 2021; April 30, 2021; July 31, 2021; October 31, 2021; and January 31, 2022

Task 5: Project Final Report

Deliverable: Project Final Report that includes Council's Final Project Executive Summary Cover Page

Due: May 31, 2022

VIII. BUDGET:

Task Line Item	Deliverable	IRL Council Funding Amount	Cost Share Funding Amount	Cost Share Funding Source (Cash or In-Kind)
1	Initial Project Executive Summary Sheet	\$0	\$0	N/A
2	Materials for deployment	\$1,000	\$0	N/A
3	Abiotic/Biotic data	\$750	\$625	SOIRL (Cash)
4	Quarterly reporting	\$0	\$0	
5	Project Final Report	\$0	\$0	N/A
Summary		\$1,750	\$625	
Total Project Cost		\$2,375		

Note: County Staff time is not a component of total project cost thus the no cost amounts for reporting.

ATTACHMENT – B
TERMS AND CONDITIONS FOR SUBAWARDS
Effective October 1, 2019

1. Introduction

This Agreement is a subaward as defined at 2 CFR 200.92. Pursuant to requirements of 2 CFR 200.331, Recipient acknowledges the following:

Federal Award Identification:

- i. Subrecipient name: Brevard County, Florida, A political subdivision of the state of Florida
- ii. Subrecipient unique entity identifier (DUNS#): 078278643
- iii. Federal subaward Identification Number (FAIN): 00D90119-1
- iv. Federal subaward Date of subaward to IRL Council ("Council") by the Federal agency: 7/22/2020;
- v. Subaward Period of Performance Start and End Date: 10/1/2020 thru 5/31/2022;
- vi. Amount of Federal Funds Obligated by this action by Council to Recipient: \$1,750;
- vii. Total Amount of Federal Funds Obligated to Recipient by Council including the current obligation: \$1,750;
- viii. Total Amount of the Federal subaward committed to the Recipient by Council: \$1,750;
- ix. Federal subaward project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA): National Estuary Program support of the Indian River Lagoon National Estuary Program's Comprehensive Conservation and Management Plan implementation;
- x. Name of Federal subawarding agency, pass-through entity, and contact information for subawarding official of the pass-through entity:
 - a. Name of Federal subawarding agency: U.S. Environmental Protection Agency;
 - b. Pass-through entity: IRL Council;
 - c. Pass-through entity contact information: Daniel Kolodny, 1235 Main St., Sebastian, FL 32958, (772) 453-0975, kolodny@irlcouncil.org;
- xi. CFDA Number, Name and amount of Federal subaward (total subaward to Council): 66.456 – National Estuary Program \$1,287,500;
- xii. Award is not R&D;
- xiii. Council's indirect cost rate for the Federal subaward: 0%;

Recipient and any sub-recipient must comply with the applicable EPA general terms and conditions outlined below. Failure to comply with the general terms and conditions outlined below may result in enforcement actions as outlined in 2 CFR 200.338 and 200.339.

2. Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal subawards

This subaward is subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal subawards; Title 2 CFR, Parts 200 and 1500. 2 CFR 1500.1, Adoption of 2 CFR 200, states Environmental Protection Agency adopts the Office of Management and Budget (OMB) guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal subawards to Non-Federal Entities (subparts A through F of 2 CFR 200), as supplemented by 2 CFR Part 1500, as the Environmental Protection Agency (EPA) policies and procedures for financial assistance administration. 2 CFR Part 1500 satisfies the requirements of 2 CFR 200.110(a) and gives regulatory effect to the OMB guidance as supplemented by 2 CFR Part

1500. This subaward is also subject to applicable requirements contained in EPA programmatic regulations located in 40 CFR Chapter 1 Subchapter B.

Selected Items of Cost

3. Consultant Cap

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by subrecipients or by a subrecipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, available at: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the subrecipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are subawarded using the procurement requirements in Subpart D of 2 CFR 200 are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 2 CFR 1500.9.

4. Establishing and Managing Subawards

If Recipient chooses to pass funds from this subaward to other entities, the recipient must comply with applicable provisions of 2 CFR Part 200 and the EPA Subaward Policy, which may be found at: <https://epa.gov/grants/epa-subaward-policy>.

5. Access to Records

Recipient agrees to permit Council and authorized representatives' access to the Recipient's records and financial statements as necessary to determine compliance with the term and condition for subawards.

6. Indirect Cost Rate

The approved federally recognized indirect cost rate negotiated between the Recipient and the Federal Government is 0%.

7. Management Fees

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses; unforeseen liabilities; or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

Reporting and Additional Post-Award Requirements

8. Subrecipient Requirements

Recipient, as a subrecipient of the EPA award, is subject to the same requirements as those that apply to the pass-through entity's (Council's) EPA award as required by 2 CFR 200.331(a)(2). These requirements include, among others:

- a) Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable;
- b) Reporting Subawards and Executive Compensation under Federal Funding Accountability and

Transparency Act (FFATA) set forth in the General Condition pass-through entity's agreement with EPA;

- c) Limitations on individual consultant fees as set forth in 2 CFR 1500.9 and the General Condition of the pass-through entity's agreement with EPA;
- d) EPA's prohibition on paying management fees as set forth in General Condition of the pass-through entity's agreement with EPA;
- e) The Procurement Standards in 2 CFR Part 200 including those requiring competition when the subrecipient acquires goods and services from contractors (including consultants).

General Terms and Conditions

9. Copyrighted Material and Data

In accordance with 2 CFR 200.315, EPA has the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this subaward for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the other grantee to use the copyrighted works or other data.

Under Item 6, the Recipient acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this subaward as a result of:

- the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or;
- termination or expiration of this subaward.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this subaward to perform another grant when such use promotes efficient and effective use of Federal grant funds.

10. Patents and Inventions

Rights to inventions made under this subaward are subject to federal patent and licensing regulations, which are codified at Title 37 CFR Part 401 and Title 35 USC Sections 200-212.

Pursuant to the Bayh-Dole Act (set forth in 35 USC 200-212), EPA retains the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the assistance agreement holder, as defined in the Act. To streamline the invention reporting process and to facilitate compliance with the Bayh-Dole Act, the Recipient must utilize the Interagency Edison extramural invention reporting system at <http://iEdison.gov>. Annual utilization reports must be submitted through the system. The Recipient is required to notify the EPA Project Officer identified on the award document when an invention report, patent report, or utilization report is filed at <http://iEdison.gov>. EPA elects not to require the Recipient to provide a report prior to the close-out of a subaward listing all subject inventions or stating that there were none.

In accordance with Executive Order 12591, as amended, government owned and operated laboratories can enter into cooperative research and development agreements with other federal laboratories, state and local governments, universities, and the private sector, and license, assign, or waive rights to intellectual property "developed by the laboratory either under such cooperative research or development agreements and from within individual laboratories."

11. Acknowledgement Requirements for Non-ORD Assistance Agreements

The Recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this subaward shall contain the following statement:

"This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement 00D36215 to the IRL Council. The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this document."

Recipients of EPA Office of Research Development (ORD) research awards must follow the acknowledgement requirements outlined in the research T&Cs available at: <http://www.nsf.gov/awards/managing/rtc.jsp>. A Federal-wide workgroup is currently updating the Federal-Wide Research Terms and Conditions Overlay to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal awards and when completed recipients of EPA ORD research must abide by the research T&Cs.

12. Electronic and Information Technology Accessibility

Recipients are subject to the program accessibility provisions of Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7, which includes an obligation to provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology ("EIT"). In compliance with Section 504, EIT systems or products funded by this subaward must be designed to meet the diverse needs of users (e.g., U.S. public, recipient personnel) without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology. At this time, the EPA will consider a recipient's websites, interactive tools, and other EIT as being in compliance with Section 504 if such technologies meet standards established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194. While Section 508 does not apply directly to grant recipients, we encourage recipients to follow either the 508 guidelines or other comparable guidelines that concern accessibility to EIT for individuals with disabilities.

Recipients may wish to consult the latest Section 508 guidelines issued by the U.S. Access Board or W3C's Web Content Accessibility Guidelines (WCAG) 2.0 (see <http://www.access-board.gov/sec508/guide/index.htm>).

13. Human Subjects

Human subjects research is any activity that meets the regulatory definitions of both research AND human subject. *Research* is a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. *Human subject* means a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. [40 CFR 26.102 (d)(f)]

No research involving human subjects will be conducted under this subagreement without prior written approval of the EPA to proceed with that research. If engaged in human subjects research as part of this agreement, the Recipient agrees to comply with all applicable provisions of EPA Regulation 40 CFR 26 (Protection of Human Subjects). This includes, at Subpart A, the Basic Federal Policy for the Protection of Human Research Subjects, also known as the Common Rule. It also includes, at Subparts B, C, and D, prohibitions and additional protections for children, nursing women, pregnant women, and fetuses in research conducted or supported by EPA.

The Recipient further agrees to comply with EPA's procedures for oversight of the recipient's compliance with 40 CFR 26, as given in EPA Order 1000.17 Change A1 (Policy and Procedures on Protection of Human Research Subjects in EPA Conducted or Supported Research). As per this order, no human subject may be involved in any research conducted under this assistance agreement, including recruitment, until the research has been approved or determined to be exempt by the EPA Human Subjects Research Review Official (HSRRO) after review of the approval or exemption determination of the Institutional Review Board(s) (IRB(s)) with jurisdiction over the research under 40 CFR 26.

For HSRRO approval, the recipient must forward to the EPA Project Officer: (1) copies of all documents upon which the IRB(s) with jurisdiction based their approval(s) or exemption determination(s), (2) copies of the IRB approval or exemption determination letter(s), (3) copy of the IRB-approved consent forms and subject recruitment materials, if applicable, and (4) copies of all supplementary IRB correspondence.

Following the initial approvals indicated above, the Recipient must, as part of the annual report(s), provide evidence of continuing review and approval of the research by the IRB(s) with jurisdiction, as required by 40 CFR 26.109(e). Materials submitted to the IRB(s) for their continuing review and approval are to be provided to the EPA Project Officer upon IRB approval. During the course of the research, investigators must promptly report any unanticipated problems involving risk to subjects or others according to requirements set forth by the IRB. In addition, any event that is significant enough to result in the removal of the subject from the study should also be reported to the EPA Project Officer, even if the event is not reportable to the IRB of record.

14. Light Refreshments and/or Meals

APPLICABLE TO ALL SUBAGREEMENTS EXCEPT STATE CONTINUING ENVIRONMENTAL PROGRAMS (AS DESCRIBED BELOW):

Unless the event(s) and all of its components are described in the approved statement of work, the Recipient agrees to obtain prior approval from Council for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops and outreach activities (events). The Recipient must send requests for approval to the Council Project Manager and include:

- (1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);
- (2) A description of the purpose, agenda, location, length and timing for the event; and,
- (3) An estimated number of participants in the event and a description of their roles.

Costs for light refreshments and meals for Recipient staff meetings and similar day-to-day activities are not allowable.

Recipients may address questions about whether costs for light refreshments, and meals for events may be allowable to the Council's Project Manager; however, the Agency award Official or Grant Management Officer will make final determinations on allowability. Agency policy prohibits the use of EPA funds for receptions, banquets and similar activities that take place after normal business hours

unless the Recipient has provided a justification that has been expressly approved by EPA's award Official or Grants Management Officer.

EPA funding for meals, light refreshments, and space rental may not be used for any portion of an event where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if EPA funds are not used to purchase the alcohol.

Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. (41 CFR 301-74.7)

FOR STATE CONTINUING ENVIRONMENTAL PROGRAM GRANT RECIPIENTS EXCLUDING STATE UNIVERSITIES:

If the state maintains systems capable of complying with federal grant regulations at 2 CFR 200.432 and 200.438, EPA has waived the prior approval requirements for the use of EPA funds for light refreshments and/or meals served at meetings, conferences, and training, as described above. The state may follow its own procedures without requesting prior approval from EPA. However, notwithstanding state policies, EPA funds may not be used for (1) evening receptions, or (2) other evening events (with the exception of working meetings). Examples of working meetings include those evening events in which small groups discuss technical subjects on the basis of a structured agenda or there are presentations being conducted by experts. EPA funds for meals, light refreshments, and space rental may not be used for any portion of an event (including evening working meetings) where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if EPA funds are not used to purchase the alcohol.

By accepting this subaward, the state is certifying that it has systems in place (including internal controls) to comply with the requirements described above.

15. Tangible Personal Property

- a) **Reporting** Pursuant to 2 CFR 200.312 and 200.314, property reports, if applicable, are required for Federally-owned property in the custody of a non-Federal entity upon completion of the subaward or when the property is no longer needed. Additionally, upon termination or completion of the project, residual unused supplies with a total aggregate fair market value exceeding \$5,000 not needed for any other Federally-sponsored programs or projects must be reported. For Superfund awards under Subpart O, refer to 40 CFR 35.6340 and 35.6660 for property reporting requirements. Recipients should utilize the Tangible Personal Property Report form series (SF-428) to report tangible personal property.

- b) **Disposition**

- 1. **Most Recipients.** Consistent with 2 CFR 200.313, unless instructed otherwise on the official award document or this subaward term, the recipient may keep the equipment and continue to use it on the project originally funded through this subaward or on other federally funded projects whether or not the project or program continues to be supported by Federal funds.
 - 2. **State Agencies.** Per 2 CFR 200.313(b), state agencies may manage and dispose of equipment acquired under this subaward in accordance with state laws and procedures.
 - 3. **Superfund Recipients.** Equipment purchased under Superfund projects is subject to specific disposal options in accordance with 40 CFR Part 35.6345.

16. Dual Use Research of Concern (DURC)

The Recipient agrees to conduct all life science research* in compliance with EPA's Order on the Policy and Procedures for Managing Dual Use Research of Concern (EPA DURC Order) and United States Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern (iDURC Policy). If the Recipient is an institution within the United States that receives funding through this subaward, or from any other source, the Recipient agrees to comply with the iDURC Policy if they conduct or sponsor research involving any of the agents or toxins identified in Section 6.2.1 of the iDURC Policy. If the institution is outside the United States and receives funding through this subaward to conduct or sponsor research involving any of those same agents or toxins, the Recipient agrees to comply with the iDURC Policy. The Recipient agrees to provide any additional information that may be requested by EPA regarding DURC and iDURC. The Recipient agrees to immediately notify the EPA Project Officer should the project use or introduce use of any of the agents or toxins identified in the iDURC Policy. The Recipient's Institution/Organization must also comply with USG iDURC policy and EPA DURC Order and will inform the appropriate government agency if funded by such agency of research with the agents or toxins identified in Section 6.2.1 of the iDURC Policy. If privately funded the Recipient agrees to notify the National Institutes of Health at DURC@od.nih.gov.

*"Life Sciences Research," for purposes of the EPA DURC Order, and based on the definition of research in 40 CFR §26.102(d), is a systematic investigation designed to develop or contribute to generalizable knowledge involving living organisms (e.g., microbes, human beings, animals, and plants) and their products. EPA does not consider the following activities to be research: routine product testing, quality control, mapping, collection of general-purpose statistics, routine monitoring and evaluation of an operational program, observational studies, and the training of scientific and technical personnel. [Note: This is consistent with Office of Management and Budget Circular A-11.]

Public Policy Requirements

17. Civil Rights Obligations

Recipient must comply fully with applicable civil rights statutes and implementing EPA regulations.

a) Statutory Requirements

1. In carrying out this subaward, the recipient must comply with:
 - i. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
 - ii. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
 - iii. The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.
2. If the recipient is an education program or activity (e.g., school, college or university) or if the recipient is conducting an education program or activity under this subaward, it must also comply with:
 - i. Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance. For further information about your compliance obligations regarding Title IX, see 40 CFR Part 5 and <https://www.justice.gov/crt/title-ix>
3. If this subaward is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:

- i. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

b) Regulatory Requirements

1. The Recipient agrees to comply with all applicable EPA civil rights regulations, including:
 - i. For Title IX obligations, 40 C.F.R. Part 5; and
 - ii. For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 CFR Part 7.
 - iii. These regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator and providing notices of non-discrimination.

c) TITLE VI – LEP, Public Participation and Affirmative Compliance Obligation

1. As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The guidance can be found at: <https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi>
2. If the Recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at <http://edocket.access.gpo.gov/2006/pdf/06-2691.pdf>.
3. In accepting this subaward, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The Recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

18. Drug-Free Workplace

The recipient organization of this EPA subaward must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the subaward.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at www.ecfr.gov/.

19. Hotel-Motel Fire Safety

Pursuant to 15 USC 2225a, the Recipient agrees to ensure that all space for conferences, meetings, conventions or training seminars funded in whole or in part with federal funds complies with the

protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <https://apps.usfa.fema.gov/hotel/> to see if a property is in compliance, or to find other information about the Act.

20. Lobbying and Litigation

a. All Recipients.

- i. The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this subaward are used to engage in lobbying of the Federal Government or in litigation against the U.S. unless authorized under existing law. The recipient shall abide by the Cost Principles available at 2 CFR 200 which generally prohibits the use of federal grant funds for litigation against the U.S. or for lobbying or other political activities.
- ii. The recipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.
- iii. In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- iv. Contracts subawarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.
- v. Pursuant to Section 18 of the Lobbying Disclosure Act, the recipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a nonprofit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act. Nonprofit organizations exempt from taxation under section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are ineligible for EPA subawards.

21. Recycled Paper

When directed to provide paper documents, the Recipient agrees to use recycled paper and double-sided printing for all reports which are prepared as a part of this subaward and delivered to Council or EPA. This requirement does not apply to reports prepared on forms supplied by EPA.

22. Resource Conservation and Recovery Act

Consistent with goals of section 6002 of RCRA (42 U.S.C. 6962), State and local institutions of higher education, hospitals and non-profit organization recipients agree to give preference in procurement programs to the purchase of specific products containing recycled materials, as identified in 40 CFR Part 247.

Consistent with section 6002 of RCRA (42 U.S.C. 6962) and 2 CFR 200.322, State agencies or agencies of a political subdivision of a State and its contractors are required to purchase certain items made from recycled materials, as identified in 40 CFR Part 247, when the purchase price exceeds \$10,000 during the course of a fiscal year or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. Pursuant to 40 CFR 247.2 (d), the recipient may

decide not to procure such items if they are not reasonably available in a reasonable period of time; fail to meet reasonable performance standards; or are only available at an unreasonable price.

23. Trafficking in Persons

a. Provisions applicable to a recipient that is a private entity.

- i. The recipient, the recipient's employees, subrecipients under this subaward, and subrecipients' employees may not—
 1. Engage in severe forms of trafficking in persons during the period of time that the subaward is in effect;
 2. Procure a commercial sex act during the period of time that the subaward is in effect; or
 3. Use forced labor in the performance of the subaward or further subawards under the subaward.
- ii. We as the awarding entity may unilaterally terminate this subaward, without penalty, if the recipient or a subrecipient that is a private entity—
 1. Is determined to have violated a prohibition in paragraph a of this subaward term; or
 2. Has an employee who is determined by the Council official authorized to terminate the subaward to have violated a prohibition in paragraph a of this subaward term through conduct that is either—
 - a. Associated with performance under this subaward; or
 - b. Imputed to the recipient or subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our Agency at 2 CFR 1532.

b. Provision applicable to a recipient other than a private entity. Council may unilaterally terminate this subaward, without penalty, if a subrecipient that is a private entity—

- i. Is determined to have violated an applicable prohibition in paragraph a. of this subaward term; or
- ii. Has an employee who is determined by the Council official authorized to terminate the subaward to have violated an applicable prohibition in paragraph a of this subaward term through conduct that is either—
 1. Associated with performance under this subaward; or
 2. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by EPA at 2 CFR 1532

c. Provisions applicable to any recipient.

- i. The recipient must inform the Council immediately of any information received from any source alleging a violation of a prohibition in paragraph a of this subaward term.
- ii. Our right to terminate unilaterally that is described in paragraph a and b:
 1. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 2. Is in addition to all other remedies for noncompliance that are available to us under this subaward.

- iii. The recipient must include the requirements of paragraph a of this subaward term in any subaward made to a private entity.

d. Definitions. For purposes of this subaward term:

- i. "Employee" means either:
 - 1. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this subaward; or
 - 2. Another person engaged in the performance of the project or program under this subaward and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- ii. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- iii. "Private entity":
 - 1. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - 2. Includes:
 - a. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - b. A for-profit organization.
- iv. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

ATTACHMENT C — 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