



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.1.

1/11/2022

Subject:

Contract for the Save Our Indian River Lagoon - Melbourne Tillman Water Control District Mechanical Aquatic Vegetation Harvesting Project (Districts 3 and 5)

Fiscal Impact:

This board action does not change the funding amount that was approved previously to come from the Save Our Indian River Lagoon Trust Fund

Dept/Office:

Natural Resources Management Department

Requested Action:

Authorize the Chair to execute contract number SOIRL 21-171 with Melbourne Tillman Water Control District for mechanical harvesting of vegetation from the District's canals.

Summary Explanation and Background:

The Board of County Commissioners, in regular session on February 9, 2021, approved the 2021 Save Our Indian River Lagoon Plan Update, which included the Melbourne Tillman Water Control District (MTWCD) Mechanical Aquatic Vegetation Harvesting Project to receive \$1,011,976 of cost-share from the Save Our Indian River Lagoon Trust Fund.

This project is expected to remove 16,636 pounds of total nitrogen through the mechanical harvest of aquatic vegetation from miles of canals within unincorporated Brevard County and the City of Palm Bay. Mechanical removal is an alternative to chemical vegetation control. The harvested material will be removed with a long-reach excavator and then trucked off-site or disposed of in an area where nutrients will not leach back into the waterbody. The amount of nutrient removal will be verified through weight tickets for vegetation removed and certified lab analysis of nutrient content in the harvested vegetation.

The MTWCD requested edits to sections of the Board approved Save Our Indian River Lagoon contract template that do not apply to the pay-for-performance structure of this two-year project. These changes include edits to sections regarding Failure to Complete the Project and Funding Contingency. Per the attached contract language and its Attachment E, if the amount of vegetation harvested contains less than the 16,636 pounds of nitrogen estimated, the District will only be paid for the amount of nutrients actually removed, at \$61 per pound. They will not be required to reimburse the County performance-based progress payments made for the amount of nutrients that are successfully removed each quarter. MTWCD will have the opportunity to finish the project and be reimbursed earlier than anticipated in the contract, as this would benefit the lagoon sooner.

If the District removes more than the contracted amount of total nitrogen, the cost for this overperformance is at their own risk, however they could request the County consider a contract amendment to reimburse them for additional costs associated with removing the additional nutrient loads. Such a request would have to follow the most current process adopted in the Contingency Fund Reserve Section of Save Our Indian River Lagoon Plan and its approval would be at the full discretion of the County.

Clerk to the Board Instructions:

Please execute two original copies of SOIRL 21-171 as provided in Attachment A.

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONTRACT REVIEW AND APPROVAL FORM

SECTION I - GENERAL INFORMATION

1. Contractor: Melbourne Tillman Water Control District		2. Amount: \$1,011,976
3. Fund/Account #: 1260/517238	4. Department Name: Natural Resources Management	
5. Contract Description: Mechanical Aquatic Vegetation Harvesting		
6. Contract Monitor: Terri Breeden		8. Contract Type: INTERGOVT/LOCAL
7. Dept/Office Director: Virginia Barker		
9. Type of Procurement: Exempt from Competition		

SECTION II - REVIEW AND APPROVAL TO ADVERTISE

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

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☐

Purchasing

☐
☐

Risk Management

☐
☐

County Attorney

☐
☐

SECTION III - CONTRACTS MANAGEMENT DATABASE CHECKLIST

APPROVAL

COUNTY OFFICE

YES

NO

SIGNATURE

User Agency

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☐

Breeden, Terri

Digitally signed by Breeden, Terri
Date: 2021.12.07 14:11:08 -05'00'

Purchasing

☒
☐

Darling, Steven

Digitally signed by Darling, Steven
Date: 2021.12.21 12:04:40 -05'00'

Risk Management

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☐

Lairsey, Matt

Digitally signed by Lairsey, Matt
Date: 2021.12.21 13:19:51 -05'00'

County Attorney

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☐

Balser, Heather

Digitally signed by Balser, Heather
Date: 2021.12.22 10:13:07 -05'00'

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.)	☐



January 12, 2022

M E M O R A N D U M

TO: Virginia Barker, Natural Resources Management Director

RE: Item F.1., Contract for the Save Our Indian River Lagoon (SOIRL) – Melbourne
Tillman Water Control District Mechanical Aquatic Vegetation Harvesting Project

The Board of County Commissioners, in regular session on January 11, 2022, authorized the Chair to execute Contract No. SOIRL 21-171 with Melbourne Tillman Water Control District for mechanical harvesting of vegetation from the District's Canals. Enclosed are two fully-executed Contracts.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK

A handwritten signature in cursive script, reading "Kimberly Powell".

Kimberly Powell, Clerk to the Board

Encls. (2)

**SAVE OUR INDIAN RIVER LAGOON PROJECT COST-SHARE FUNDING INTERLOCAL AGREEMENT
BETWEEN BREVARD COUNTY, FLORIDA AND THE MELBOURNE TILLMAN WATER CONTROL
DISTRICT.**

AGREEMENT NUMBER: SOIRL 21-171

THIS AGREEMENT ("Agreement") is made and entered into the date of last signature below by and between Brevard County, Florida, a political subdivision of the State of Florida (hereinafter "COUNTY"), and the Melbourne Tillman Water Control District, a dependent water control district of Brevard County, authorized by the Florida Legislature under Chapter 2001-336, Laws of Florida as amended by Chapter 2003-334, Chapter 2010-153, and Chapter 2019-175, Laws of Florida (hereinafter "DISTRICT").

RECITALS

WHEREAS, the COUNTY saw the urgent need to implement the "Save Our Indian River Lagoon Project Plan," with the aim to restore the Indian River Lagoon through financing, planning, constructing, maintaining, and operating capital improvements and capital maintenance projects and programs designed to improve water quality, fish, wildlife and marine habitat, remove muck and reduce pollution, as permitted under Section 212.055(2)(d)1., Florida Statutes; and

WHEREAS, pursuant to Section 212.055, Florida Statutes, the COUNTY is authorized to levy a discretionary infrastructure sales tax of one-half cent by ordinance enacted by a majority of the members of the Board of County Commissioners and approved by a majority of the electors of Brevard County voting in a referendum on the surtax; and

WHEREAS, the COUNTY promulgated and passed Brevard County Ordinance No. 2016-15, ("the Ordinance") imposing a one-half cent discretionary infrastructure sales tax for a period of ten (10) years from the date of levy, for the purposes expressed above, subject to approval of said surtax by a majority vote of those qualified electors of Brevard County voting in a referendum that was held on November 8, 2016; and

WHEREAS, it was contemplated that, if approved, said one-half cent discretionary infrastructure sales tax shall be imposed and collected County-wide, commencing on January 1, 2017, and continuing thereafter for a period of ten (10) years until December 31, 2027; and

WHEREAS, on November 8, 2016, a majority of those qualified electors of Brevard County voted in favor of the referendum, thereby authorizing the levy of the one-half cent surtax; and

WHEREAS, the COUNTY deems it in the best interest of all of the citizens and residents of Brevard County, Florida, that the proceeds of the one-half cent discretionary infrastructure sales tax be used to fund projects and programs designed to restore the Indian River Lagoon in the manner set forth in the Ordinance and its incorporated Save Our Indian River Lagoon

Project Plan, including operations, maintenance and reasonable administrative costs of those projects and programs; and

WHEREAS, the project identified in the Statement of Work ("the Project") has been included and approved by the Board of County Commissioners as part of the Save Our Indian River Lagoon Project Plan; and

WHEREAS, the COUNTY has determined that providing cost-share funding to the DISTRICT for the purposes provided for herein will assist the COUNTY in effectively and efficiently implementing the Ordinance and its incorporated Save Our Indian River Lagoon Project Plan, as amended from time to time, and would be a proper expenditure of the monies reserved in the Save Our Indian River Lagoon Trust Fund;

NOW, THEREFORE, for value received, and in consideration of the following covenants, promises and provisions; the Parties agree as follows:

Section 1. Documents.

This Agreement incorporates all of the following:

- a. The Recitals set forth above;
- b. The terms of the Agreement set forth herein;
- c. Attachment A – Statement of Work;
- d. Attachment B – Project Progress Report Form;
- e. Attachment C – Reimbursement/Invoice Form;
- f. Attachment D – Recipient's Certification of Payment Form; and
- g. Attachment E – Eligible Tax Funding Cost Share Form.

Section 2. Statement of Work.

In consideration of the above recitals, and the funding assistance described below, the DISTRICT agrees to perform and complete the activities provided for in the **Statement of Work, Attachment A**. DISTRICT shall complete the Project in conformity with the contract documents and all attachments and other items incorporated by reference herein.

Section 3. Term and Extensions.

- a. The term of this Agreement is from the date upon which the last party has dated and executed the same ("Effective Date") until November 30, 2023 ("Completion Date"). DISTRICT shall not commence the Project until any required submittals are received and approved. Time is of the essence for every aspect of this Agreement, including any time extensions.
- b. Any request for an extension of time beyond the Completion Date must be made in writing no less than forty-five (45) days prior to the contracted Completion Date. Timely requests to extend for up to six (6) months each may only be approved by the County Manager, or designee, or Board of County Commissioners, as appropriate. Up to two (2) requests to extend for less than six months each may be approved by the County Manager or his/her designee. Timely requests to extend for longer than the County Manager's authorization to approve, may only be approved by the Board of County Commissioners.

c. 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, including by way of example without limitation, delivery of a final progress report, will remain in full force and effect after the Completion Date as necessary to affect performance.

Section 4. Offer Limitations.

a. This Agreement constitutes an offer until authorized, signed and returned to the COUNTY by the DISTRICT. This offer terminates sixty (60) days after receipt by the DISTRICT; provided, however, that the DISTRICT may submit a written request for extension of this time limit which may be approved by the County Manager or his/her designee.

b. If the Project, which is eligible for reimbursement under this Agreement, does not begin within one hundred eighty (180) days of the Effective Date, or if the invoice for non-construction projects is not submitted within two hundred seventy (270) days of the Effective Date, this Agreement will be subject to termination and the funds subject to reallocation.

Section 5. Project Management.

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; or (4) e-mail. 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 are deemed delivered on the date received.

COUNTY

Terri Breeden
Project Manager
Department of Natural Resource Management
2725 Judge Fran Jamieson Way, Building A
Viera, Florida 32940
321-633-2016
Email: terri.breeden@brevardfl.gov

DISTRICT

Michael McCabe
District Engineer
Melbourne Tillman Water Control District
5990 Minton Road
Palm Bay, FL 32907
321-723-7233
E-mail: mike@melbournetillman.org

a. The COUNTY'S Project Manager shall have sole responsibility for transmitting instructions, receiving information, and communicating the COUNTY'S policies and decisions regarding all matters pertinent to performance of the Project. The COUNTY'S Project Manager may authorize minor changes in the Project that the parties agree are not inconsistent with the purpose of the Project, and do not affect the COUNTY'S cost-share funding amount, the Project's nutrient reduction benefits, Completion Date, or otherwise significantly modify the terms of the Agreement.

b. Should additional funding be acquired from sources other than the Indian River Lagoon one-half cent surtax, the County Manager and District Manager are authorized to sign amendments to this Agreement only if such additional funding: (1) reduces the Indian River Lagoon tax funding amount; and/or (2) reduces the DISTRICT's cost-share amount.

Section 6. Deliverables.

a. The DISTRICT shall fully implement the Project, as described in the **Statement of Work, Attachment A**. The DISTRICT 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, the DISTRICT shall provide and pay for all materials, labor, and other facilities and equipment necessary to complete the Project.

b. The COUNTY'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 DISTRICT will provide the COUNTY a written statement indicating that the Project has been completed in accordance with this Agreement. Acceptance of the final payment by the DISTRICT shall constitute a release in full of all claims against the COUNTY arising from or by reason of this Agreement.

c. Unless otherwise provided herein, the COUNTY does not assert an ownership interest in any of the deliverables under this Agreement.

Section 7. Progress Reports and Performance Monitoring

a. The DISTRICT shall provide to the COUNTY Project update/status reports as provided in the **Statement of Work, Attachment A**. Reports will provide detail on progress of the Project and outline any potential issues affecting completion or the overall schedule.

b. The DISTRICT shall use the COUNTY'S **Project Progress Report Form, Attachment B**. DISTRICT shall submit the Project Progress Reports to the COUNTY'S Project Manager within thirty (30) days after the closing date of each calendar quarter (March 31, June 30, September 30 and December 31).

c. Commencement of Construction. The DISTRICT shall notify the COUNTY once construction has started at the site.

d. For as long as the Project is operational, the COUNTY shall have the right to inspect the operation of the Project during normal business hours upon reasonable prior notice. The DISTRICT shall make available to the COUNTY any available data that is requested pertaining to the performance of the Project.

Section 8. Amount of Funding.

a. For satisfactory completion of the Project, the COUNTY shall pay the DISTRICT its "Eligible Tax Funding Cost Share" as stated in **Eligible Tax Funding Cost Share Form, Attachment E**. This amount is not to exceed the maximum amount of cost-share that was recommended by the Citizen Oversight Committee and approved by the County Commission unless additional

matching funds for the Project are secured by the COUNTY from external revenue sources and approved for allocation to this Project by the Board of County Commissioners or its duly authorized representative.

- b. The COUNTY cost-share amount is not subject to modification based upon price escalation in implementing the Project during the term of this Agreement. The DISTRICT shall be responsible for payment of all additional costs necessary to ensure completion of the Project.
- c. During contract negotiations, the DISTRICT must submit the adopted budget for the project, the amount of all secured grants for the Project, and an estimate of Project costs as defined below in Section 8.e. The Eligible Tax Funding Cost Share shall be reduced as necessary to not exceed the balance of Project costs minus external matching funds for the Project.
- d. The DISTRICT shall notify the COUNTY'S Project Manager in writing upon receipt of any additional external funding for the Project not disclosed prior to execution of this Agreement. The Eligible Tax Funding Cost Share shall be reduced as necessary to not exceed the balance of Project Costs minus external matching funds for the Project.
- e. "Project cost" is defined to include actual costs of constructing project facilities, including construction, construction management, construction QA/QC testing, land acquisition, engineering, design, permitting, permit fees, impact fees, and any other Project-specific costs authorized under the **Statement of Work, Attachment A**. Project cost does not include any costs incurred prior to the Effective Date, unless expressly authorized by the Statement of Work, nor any costs not included in the contracted Statement of Work.
- f. Funding shall not be provided for expenses incurred after the Completion Date.
- g. The DISTRICT is responsible for owning, operating and maintaining the Project for the typical operating life of the Project.

Section 9. Payment of Invoices.

- a. The DISTRICT shall submit itemized invoices as per the **Statement of Work, Attachment A** on a quarterly basis for reimbursable expenses by one of the following four methods by: (1) mail; (2) hand delivery; or (3) national overnight courier to the Brevard County Natural Resources Management Department, Terri Breeden, Project Manager, 2725 Judge Fran Jamieson Way, Building A, Viera, Florida 32940; or (4) e-mail to terri.breeden@brevardfl.gov. If a delivery method is not selected in this paragraph, the default invoicing basis will be quarterly increments and sent by mail to the Project Manager.
- b. All invoices shall be submitted using **Reimbursement/Invoice Form, Attachment C**, and include the following information: (1) the COUNTY'S contract number; (2) the DISTRICT'S name, address, and authorization to directly deposit payment into the DISTRICT'S account; (3) the DISTRICT'S invoice number and date of invoice; (4) the COUNTY'S Project Manager; (5) the DISTRICT'S Project Manager; (6) supporting documentation as to cost and/or Project completion (as per the cost schedule and other requirements of the **Statement of Work**,

Attachment A); and (7) **Project Progress Report Form, Attachment B**. Invoices that do not include the above-listed information shall be returned without action within ten (10) business days of receipt, stating the basis for rejection.

c. Incremental payments shall be calculated as the fraction of Eligible Tax Funding Cost Share listed in the **Eligible Tax Funding Cost Share Form, Attachment E** (after adjustments per Section 8c. and/or d.) divided by Project Cost multiplied by the amount of the District's Project Cost incurred during the respective incremental billing period. Payments shall be made within forty-five (45) days of receipt of an approved invoice.

d. The invoices shall be submitted in detail sufficient for proper pre-audit and post-audit review. Invoices shall include a copy of contractor and supplier invoices to the DISTRICT and proof of payment. If necessary for audit purposes, the DISTRICT shall provide additional supporting information as required to document invoices.

e. DISTRICT shall be reimbursed for the actual cost of the Project, or the contracted amount, whichever is less. The COUNTY shall not withhold any retainage from this reimbursement. COUNTY reimbursement is subject to annual budgetary limitations and allocations, if applicable.

f. The COUNTY'S fiscal year ends on September 30th. The COUNTY is required to account for all encumbered funds at that time. Submittal of an invoice as of September 30th satisfies this requirement. Regardless of whether the DISTRICT chooses monthly, quarterly, or annual invoices, if any expenses occur between a previous invoice and September 30th, the DISTRICT shall submit a description of the work completed on the Project through September 30th and a corresponding invoice for that cost-share eligible amount achieved during that time interval.

Section 10. Final Invoice.

a. The final invoice must be submitted no later than forty-five (45) days after the District's final payment to its vendors for the Project or October 30th if the District's final payment is made between September 15th and September 30th.

b. Final Invoices that are submitted after the requisite date shall be subject to a penalty of ten percent (10%) of the invoice. This penalty may be waived by the COUNTY, in its sole judgment and discretion, upon a showing of special circumstances that prevent the timely submittal of the final invoice. The DISTRICT 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.

Section 11. 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. Travel expenses are otherwise not compensable. If travel expenses are not included in the cost schedule, they are a cost of providing the service that is borne by the DISTRICT.

Section 12. Payments Withheld.

The COUNTY 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 COUNTY from loss as a result of: (1) defective work not remedied; (2) failure to maintain adequate progress in the Project; or (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.

Section 13. Multi-Year Agreements.

- a. For multi-fiscal year agreements, the COUNTY must budget the amount of funds that will be expended during each fiscal year as accurately as possible. Funds contracted for reimbursement beyond the COUNTY'S current fiscal year will be budgeted in subsequent fiscal years per the schedule specified in the Project Agreement, as amended. 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) ("Estimated Reimbursement Schedule").
- b. If the DISTRICT anticipates that expenditures will exceed the budgeted amount during any fiscal year, the DISTRICT shall promptly notify the COUNTY'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 COUNTY to receive this request is August 1 of the then-current fiscal year. Funds allocated in the current fiscal year that are not reimbursed in the current fiscal year due to slippage in the Project delivery schedule will be requested by COUNTY staff to roll forward to the next fiscal year as a Budget Amendment – (Regular), per BCC-21.
- c. The COUNTY may in its sole discretion prepare a Budget Change Request incorporating the revised work schedule and Estimated Reimbursement Schedule as appropriate for changes in the Project schedule.

Section 14. Liability and Insurance.

Each party is responsible for all personal injury and property damage attributable to the negligent acts or omissions of that respective party, its officers, employees and agents. The DISTRICT accepts all risks arising from construction or operation of the Project. 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 COUNTY or DISTRICT beyond the waiver provided for in section 768.28, Fla. Stat., as may be amended. Nothing in this Contract is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. 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.

Section 15. Funding Contingency.

- a. 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) the Save Our Indian River

Lagoon one-half cent surtax; (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 COUNTY 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 COUNTY shall so notify the DISTRICT and this Agreement shall be deemed terminated for convenience five (5) days after receipt of such notice, or within such additional time as the COUNTY may allow. For the purpose of this Agreement, "Fiscal Year" is defined as the period beginning on October 1 and ending on September 30.

Section 16. Failure to Complete Project.

- a. Because payment for the Project to the DISTRICT is solely on a reimbursement basis for the actual removal of nitrogen loads from DISTRICT canals, the DISTRICT shall not be required to reimburse the COUNTY for any payments made to the DISTRICT for completed work.
- b. If the Project has not been completed within thirty (30) days after the Completion Date, the DISTRICT shall provide the COUNTY with notice regarding its intention as to completion of the Project. The parties shall discuss the status of the Project and may mutually agree to revise the time for Project completion or the scope of the Project. Failure to complete the Project within ninety (90) days after the Completion Date shall be deemed to constitute failure to complete the Project for the purposes of this provision.
- c. Force Majeure. The failure to carry out any terms of this Agreement due to any one of the following circumstances beyond the control of the DISTRICT: (a) the operation and effect of rules, regulations, or orders promulgated by any commission, county, or governmental agency of the state of Florida or the United States; (b) a restraining order, injunction, or similar decree of any court of competent jurisdiction; (c) war; (d) flood; (e) earthquake; (f) fire; (g) severe wind storm or hurricane; (h) acts of public disturbance; (i) quarantine restrictions; (j) epidemic; (k) strikes; or (l) sabotage. The DISTRICT shall not be subject to any liability for failure to carry out any of the terms of this Agreement to the extent that such failure shall be due to a Force Majeure event as defined herein. In such event, the DISTRICT shall be excused from the obligation to return funds provided herein if the parties can agree, in writing, to a revised completion date for the Project based on the circumstances.

Section 17. Termination.

- a. If the DISTRICT materially fails to fulfill its obligations under this Agreement, including any specific milestones established herein, the COUNTY may provide the DISTRICT written notice of the deficiency by forwarding a "Notice to Cure," citing the specific nature of the breach. The DISTRICT shall have thirty (30) days following receipt of the notice to cure the breach. If the DISTRICT fails to cure the breach within the thirty (30) day period, the COUNTY may issue a "Termination for Default Notice" terminating this Agreement without further notice. In such event, the DISTRICT shall refund to the COUNTY all funds provided to the DISTRICT pursuant to this Agreement within thirty (30) days of such termination. The COUNTY may also terminate this Agreement upon ten (10) days written notice in the event of any material

misrepresentations in the Project Proposal.

b. Delay or failure by the COUNTY to enforce any right, remedy or deadline hereunder shall not impair, or be deemed a waiver of, any such right, remedy or deadline, or impair the COUNTY'S rights or remedies for any subsequent breach or continued breach of this Agreement.

c. This Agreement may be terminated by either party for convenience upon ninety (90) days prior written notice to the other party. In the event the COUNTY terminates for convenience, the DISTRICT shall be paid for work completed and costs incurred in good faith through the date of termination. In the event the DISTRICT terminates for convenience, COUNTY shall receive a full refund of the funds provided herein within thirty (30) days of the date of termination.

ADDITIONAL PROVISIONS

Section 18. Assignment.

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

Section 19. Audit; Access to Records; Repayment of Funds.

a. Maintenance of Records. The DISTRICT 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. The DISTRICT shall keep the records of receipts and expenditures, copies of all reports submitted to the COUNTY, and copies of all invoices and supporting documentation for at least five (5) years after expiration of this Agreement. In addition, the DISTRICT shall maintain records to demonstrate satisfaction of its obligation under subparagraph 15b. above.

b. Review and Auditing. In accordance with generally accepted governmental auditing standards, the COUNTY 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, the DISTRICT shall maintain all required records until the audit is completed and all questions are resolved. The DISTRICT will provide proper facilities for access to and inspection of all required records.

c. Repayment of Funds. COUNTY funding shall be subject to repayment after expiration of this Agreement if, upon audit examination, the COUNTY finds any of the following: (1) the DISTRICT has spent funds for purposes other than as provided for herein; (2) the DISTRICT has failed to perform a continuing obligation of this Agreement; (3) the DISTRICT has received duplicate funds from the COUNTY or other external funding entity for the same purpose; (4) the DISTRICT has been advanced or paid unobligated funds; (5) the DISTRICT has been paid funds in excess of the amount the DISTRICT is entitled to receive under the Agreement; and/or (6) the DISTRICT

has received contributions amounting to more than one hundred percent (100%) of the Project cost through cumulative public agency cost-share funding.

Section 20. Dispute Resolution.

The DISTRICT 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 COUNTY's Project Manager no later than ten (10) business days after the precipitating event. If not resolved by the COUNTY Project Manager within ten (10) business days, the COUNTY Project Manager shall forward the request to the County Manager's Office, which shall issue a written decision within ten (10) business days of receipt. This determination shall constitute final action of the COUNTY and may then be subject to judicial review upon completion of the Project.

Section 21. 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 a court of competent jurisdiction in and for Brevard 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.

Section 22. Permits.

The DISTRICT 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. The DISTRICT 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.

Section 23. Independent Contractors.

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

Section 24. Scrutinized Companies.

a. The DISTRICT certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, Florida Statutes, the COUNTY may immediately terminate this Agreement at its sole option if the DISTRICT or its subcontractors

are found to have submitted a false certification; or if the DISTRICT or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

b. If this Agreement is for more than one million dollars, the DISTRICT certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, Florida Statutes, the COUNTY may immediately terminate this Agreement at its sole option if the DISTRICT, its affiliates, or its subcontractors are found to have submitted a false certification; or if the DISTRICT, its affiliates, or its subcontractors are placed on the Scrutinized Companies that Boycott the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

c. The DISTRICT agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

d. As provided in Section 287.135(8), Florida Statutes, if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

Section 25. 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.

Section 26. Public Records.

Records of the DISTRICT 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, Florida Statutes. If the DISTRICT receives a public records request, the DISTRICT shall promptly notify the COUNTY'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 materials related hereto and subject to the provisions of Chapter 119, Florida Statutes, as amended.

Section 27. Royalties and Patents.

The DISTRICT certifies that the Project does not, to the best of its information and belief, infringe on any patent rights. The DISTRICT 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 COUNTY harmless from loss to the extent allowed by

Florida law.

Section 28. Employment Eligibility Verification (E-Verify):

The DISTRICT:

- a. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the DISTRICT during the term of the contract; and
- b. shall expressly require any subcontractors performing work or providing services pursuant to this contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term; and
- c. agrees to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the County consistent with the terms of the DISTRICT'S enrollment in the program. This includes maintaining a copy of proof of the DISTRICT'S and subcontractors' enrollment in the E-Verify Program; and
- d. compliance with the terms of this section is made an express condition of this Contract and the COUNTY may treat a failure to comply as a material breach; and
- e. shall require any contractor to provide the District with an affidavit stating that it does not employ, contract with, or subcontract with any unauthorized aliens; and
- f. nothing in this Section may be construed to allow intentional discrimination of any class protected by law.

Section 29. Severability.

If any portion of this Contract is found to be invalid or unenforceable or if applicable law mandates a different interpretation or result, the remaining provisions will remain in effect and the parties will negotiate in good faith to substitute for such invalid, illegal, or unenforceable provision a mutually acceptable provision consistent with the original intention of the parties.

Section 30. Sovereign Immunity and Liability

The COUNTY'S indemnity and liability obligations under this Contract shall be limited to the extent of the protections of and limitations on damages as set forth in Section 768.28, Florida Statutes. Nothing in this Contract is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law. Nothing herein shall constitute a waiver of the parties' respective sovereign immunity.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURES TO FOLLOW.]

IN WITNESS WHEREOF, the COUNTY has caused this Agreement to be executed on the day and year written below in its name by its duly authorized representative, and DISTRICT has caused this Agreement to be executed on the day and year written below in its name by its duly authorized representatives. 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.

Brevard County, Florida

By: 

Date: January 11, 2022

Kristine Zonka, Chair

As Approved by the Board on January 11, 2022

Attest



Rachel Sadoff, Clerk

Date: January 11, 2022

Reviewed for legal form and content for Brevard
County

 1-3-2022

Heather A. Balser, Assistant County Attorney

Melbourne Tillman Water Control District

By: 
Name: Philip A. Weinberg
Title: President Board of Directors
Date: 1/11/22

Attest

By: 
Name: District Manager
Title: District Manager
Date: 1-11-2022

ATTACHMENT A STATEMENT OF WORK

PROJECT TITLE: Mechanical Aquatic Vegetation Harvesting – Agreement #171

PROJECT LOCATION: Melbourne-Tillman Water Control District various canals within unincorporated Brevard County and the City of Palm Bay, within the Central Indian River Lagoon watershed.

PROJECT BACKGROUND: Melbourne-Tillman Water Control District (MTWCD) was authorized as an independent district in 1922 for land reclamation for agricultural development and was reorganized as a dependent district in 1986 and codified by legislature in 2001. MTWCD encompasses 102 square miles and maintains 163 miles of canals. The C-1 Re-diversion project, with St. Johns River Water Management District as the lead agency, funded the replacement of radial and AMIL gates at the MS-1 structure to overshot gates prior to discharging to Turkey Creek and Indian River Lagoon. The overshot gates allow water levels in the primary canal, C-1, be maintained at elevation 10.00 NGVD 29. Excess water levels skim over the top of the gates during non-tropical storm events with pumping captured runoff in canals westward to the St. Johns River. Due to the retained runoff and minimal flows, submerged aquatic vegetation growth has exploded in the canal system. Anticipated tropical cyclones allow the operation of the gates for flood control by lowering days prior to landfall for drawdown and storage. Large rainfall events create increase volume and flows within the canals transporting non-stormwater, i.e. organic matter downstream and through the MS-1 structure.

PROJECT DESCRIPTION: In order to reduce the potential release of nutrients and aquatic vegetation during large rain events into the Indian River Lagoon, MTWCD staff proposes to harvest vegetation from the secondary canals by mechanical methods, in lieu of chemical application. Harvesting will be by means of long-reach excavator, with harvested material either trucked off-site or disposed in an area where nutrients cannot leach back into the waterbody. Quantifying the material removed is done through dump truck weigh tickets, and photographs of the waterbody prior to work and after. Harvested material will be weighed and lab sampling of material will verify the concentration of Total Nitrogen and Total Phosphorus in the dried vegetation to use in the calculation of removal quantities.

TASKS and DELIVERABLES:

Task #1: Design and Permitting

Task Description: Determination of canals to be harvested by excavator is complete as well as the permit issued by the Florida Fish and Wildlife Conservation Commission (FFWCC).

Task Deliverable: See attached map of canal locations and FFWCC Aquatic Plant Control Permit IPM-13-01650B.

Task #2 Construction of Project

Task Description: Each canal will have floating turbidity barriers installed at the downstream convergence with the primary canal prior to vegetation removal. The excavator will be transported to the site with work beginning at the upstream end working downstream. Removal of vegetation is placed in dump trucks for areas where the potential of vegetated material has the ability to leach through the canal banks back into the canal waters. Removed vegetation will be stored on the ground for drying and later collected for disposal to upland site, within a timely manner of material drying (i.e., within 2 days to 2 weeks from initial harvest). Prior to harvesting of vegetation, photographs of the canal and vegetation will be taken as well as photographs of the removed vegetation, with reference for measurement, and of completed harvested canal. MTWCD owns three dump trucks that haul 5, 10, and 12 cubic yards, respectively. Each will be loaded and weighed at a local scale. The weight of subsequent loads may be estimated based on available dump truck weight averages and photographs of how full each load is relative to a fixed reference in each truck.

Task Deliverable:

Task	Task Title	Task Start Date	Task End Date
1	Design & Permitting	Complete	Complete
2	Construction of Project	January 2022	January 2024

Estimated Reimbursement Schedule:

Project reimbursements will be requested quarterly.

Task #	Quarter 2/FY21-22	Quarter 3/FY21-22	Quarter 4/FY21-22	Quarter 1/FY 21-22	Quarter 2/FY 22-23
1	\$0	\$0	\$0	\$0	\$0
2	\$43,909.72	\$218,223.05	\$109,673.44	\$51,416.08	\$74,008.60

Task #	Quarter 3/FY 22-23	Quarter 4/FY 22-23	Quarter 1/FY 22-23
1	\$0	\$0	\$0
2	\$280,873.93	\$138,742.67	\$95,128.51

It is currently contemplated the DISTRICT will complete the harvesting in the canals prior to the end of the First Quarter of 2024. In such event, the COUNTY agrees to reimburse the DISTRICT ahead of the quarterly Estimated Reimbursement Schedule as such funds may become available for such reimbursement.

Deliverables:

Quarterly and final reports including pictures of progress made, and/or dump tickets, if pictures are not available.

Project's Status without Trust Funds (Adjust the highlighted section and delete the other options that do not apply):

This project is not included in the MTWCD FY 2021-2022 budget, therefore without the Save Our Indian River Lagoon Funding the mechanical harvesting project would not have been executed in the near future.

Other: Acquisition of a custom-made vegetation bucket allows for capturing vegetation exclusively, limiting the amount of detritus material included in the harvesting.

**SAVE OUR INDIAN RIVER LAGOON
PROJECT PROGRESS REPORT FORM**

Date: _____

Report Number: _____

Project Information

Project Name:			
Recipient Name:			
Contract Number:		County Project Manager Email:	
Nitrogen Reduction Benefit (lbs/yr)		County Project Manager Phone:	
Phosphorus Reduction Benefit (lbs/yr)		Recipient's Email:	
TSS Reduction Benefit (lbs/yr)		Recipient's Phone:	

Construction Schedule

Start Date (mm/dd/yy):	
Completion (mm/dd/yy):	

Reporting Period

Beginning Date (mm/dd/yy):	
Ending Date (mm/dd/yy):	

Budget

Total Budget:	
Expended To-date:	
Contract Amount:	

Expended This Period:	
Percent Budget Expended:	
Percent Cost Share:	

Estimated Reimbursement Schedule**Fiscal Year 1**

Reimbursement #	Anticipated Amount	Anticipated Date
1		
2		
3		
4		

Fiscal Year 2

Reimbursement #	Anticipated Amount	Anticipated Date
1		
2		
3		
4		

Project Status

--

Tasks/Milestones/Deliverables Scheduled for this Reporting Period or Within the Next 90 days:

Task Number	Tasks/Milestones/Deliverables	Start Date	Finish	Comple	Date
1	Permitting				
2	Engineering				
3	Construction				

Problems, Issues, Solutions, Anticipated deviations from schedule:

--

Attach an additional page of notes if necessary to explain reasons for lateness or unusual events or circumstances.

Attachment C - Detail Sheet

Save Our Indian River Lagoon Cost-Share Program
Invoice for Reimbursement

RECIPIENT'S NAME:		
RECIPIENT'S EMAIL:		
PROJECT NAME:		
AGREEMENT NO.:		
PERFORMANCE PERIOD:		
FROM:		To:
PAYMENT REQUEST NO.:		
DATE OF REQUEST:		
COUNTY'S PROJECT MANAGER:		
PROJECT COST:		
LAGOON TAX COST SHARE PERCENTAGE:		
CONTRACTED LAGOON TAX COST SHARE AMOUNT:		
CURRENT REIMBURSEMENT AMOUNT REQUESTED:		

ITEM NO.	VENDOR	DESCRIPTION OF SERVICES/ CATEGORY OF EXPENDITURE	CHECK DATE	CHECK NUMBER	INVOICE NUMBER	INVOICES PREVIOUSLY PAID	INVOICES INCLUDED IN THIS REQUEST	PREVIOUS REIMBURSEMENT AMOUNT	CURRENT REIMBURSEMENT AMOUNT
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
TOTALS:								\$ -	\$ -

Recipient's Certification of Payment Request

I, _____, on behalf of _____, do hereby certify for
SOIRL Agreement No. _____ and Payment Request No. _____ that:

- ☐ The disbursement amount requested is for allowable costs for the project described in Attachment A of the Agreement.
- ☐ All costs included in the amount requested have been satisfactorily purchased, performed, received, and applied toward completing the project; such costs are documented by invoices or other appropriate documentation as required in the Agreement.
- ☐ All procurement for the amount requested was completed in a manner consistent with applicable law and contract requirements.
- ☐ If notified by the County of any restrictions on the use of local preference for this Agreement, the Recipient confirms that no local preference was used.
- ☐ The Recipient has paid such costs under the terms and provisions of contracts relating directly to the project; and the Recipient is not in default of any terms or provisions of the contracts.

Check all that apply:

- ☐ All permits and approvals required for the construction, which is underway, have been obtained.
- ☐ Construction up to the point of this disbursement is in compliance with the construction plans and permits.
- ☐ The Recipient's Grant Manager relied on certifications from the following professionals that provided services for this project during the time period covered by this Certification of Payment Request, and such certifications are included:

Professional Service Provider (Name / License No.)	Period of Service (mm/dd/yy – mm/dd/yy)

Recipient's Grant Manager's Signature

Print Name

Telephone Number

Recipient's Fiscal Agent

Print Name

Telephone Number

ATTACHMENT E

Recipient Name:	Melbourne-Tillman Water Control District
Project Name:	Mechanical Aquatic Vegetation Harvesting
Agreement Number:	#21-171

Estimated Project Cost-Share Table							
Task Number	Task Description	Task Cost	Grant 1 (319)	Grant 2 (FDEP)	Grant 3 (SJRWMD)	Eligible Lagoon Tax Cost Share, Adjusted	Local Match
1	Permitting	\$ -				\$ -	\$ -
2	Engineering	\$ -				\$ -	\$ -
3	Construction	\$ 1,011,976.00				\$ 1,011,976.00	\$ -
4	Monitoring	\$ 5,000.00					\$ 5,000.00
	Total	\$ 1,016,976.00	\$ -	\$ -	\$ -	\$ 1,011,976.00	\$ 5,000.00

Funding Eligibility Calculation		
Project Type		Vegetation Harvest
BMP Type (If stormwater)		
Pounds of Nitrogen Reduction		16636
Eligible Cost Share per Pound		\$61
Eligible Tax Funding Cost Share		\$ 1,014,796.00
Reduction so Sum of Grants does not exceed Project Cost		\$ 2,820.00
Eligible Lagoon Tax Cost Share, Adjusted		\$ 1,011,976.00
Percent Cost Share to be contributed by the Lagoon Tax		100%