



# Agenda Report

2725 Judge Fran Jamieson  
Way  
Viera, FL 32940

## Consent

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F.1.

10/8/2019

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### Subject:

Project Reimbursement Contract Template with Private Grantees for Save Our Indian River Lagoon Project Cost Share Funding for Wastewater Treatment Improvement Projects

### Fiscal Impact:

There is no known impact to the General Fund, only the Save Our Indian River Lagoon Trust Fund (Fund 1260), as approved by the County Commission through annual plan updates. Based on the 2019 Update to the Save Our Indian River Lagoon Project Plan approved by the County Commission on April 9, 2019, the maximum fiscal impacts for the next two fiscal years are:

FY 19-20: \$836,100

FY 20-21: \$1,991,700

### Dept/Office:

Natural Resources Management Department

### Requested Action:

It is requested that the Board of County Commissioners 1) authorize the Chair to execute the Private Grantee Reimbursement Contract with DHY, LLC & CJY, LLC; and 2) authorize the Chair to execute any future Reimbursement Contracts of \$100,000 or more and the County Manager or his designee to execute future Reimbursement Contracts less than \$100,000 with private grantees (substantially in the form of the attached template pending County Attorney and Risk Management review and approval).

### Summary Explanation and Background:

The Save Our Indian River Lagoon Project Plan includes funding for several types of wastewater treatment improvement projects including wastewater treatment plant upgrades, package plant upgrades, septic to sewer conversions, septic upgrades and sewer lateral rehabilitation. Many of the prioritized facilities are owned by governmental entities or private individuals, for which contract templates have already been approved. A fraction of the most cost-effective projects identified for funding are owned by private entities such as businesses, trusts, or corporations.

Contracting terms most appropriate for collaborating with private grantees for Wastewater Treatment Improvement Projects are substantially different enough from previous contract templates approved by the County Commission that an additional template is proposed. The attached Reimbursement Contract Template provides the terms and conditions for providing cost share funding to private grantees from the Save Our Indian River Lagoon Trust Fund. Attachment A for each Cost-Share Funding Contract will include the Statement of Work. Attachment E for each Cost-Share Funding Contract will calculate the maximum amount of cost share that the project is eligible to receive from the Save Our Indian River Lagoon Trust Fund.

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The attached Private Grantee Reimbursement Contract with DHY, LLC & CJY, LLC will fund the removal of 19 septic systems at a mobile home park in Titusville and connect the park to the City's central sewer service.

**Clerk to the Board Instructions:**

When provided, execute 2 originals per private grantee reimbursement contract and return both to Natural Resources Management Department to send for signatures.

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

# INITIAL CONTRACT REVIEW AND APPROVAL FORM

## SECTION I - GENERAL INFORMATION

<b>1. Contractor:</b> DHY, LLC, and CJY, LLC (Briarwood Septic-to-Sewer)	
<b>2. Fund/Account #:</b> 1260	<b>3. Department Name:</b> Natural Resources
<b>4. Contract Description:</b> Private Grantee Reimbursement - Save Our Indian River Lagoon	
<b>5. Contract Monitor:</b> Anthony Gubler	<b>7. Contract Type:</b>  CONSTRUCTION
<b>6. Dept/Office Director:</b> Virginia Barker	

## SECTION II - REVIEW AND APPROVAL TO ADVERTISE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
Risk Management	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
County Attorney	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____

## SECTION III - REVIEW AND APPROVAL TO EXECUTE

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>SIGNATURE</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Gubler, Anthony <small>Digitally signed by Gubler, Anthony Date: 2019.09.23 09:48:34 -0400</small>	09/23/2019
Risk Management	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Lairsey, Matt <small>Digitally signed by Lairsey, Matt Date: 2019.09.23 11:15:59 -0400</small>	09/23/2019
County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Valliere, Christine <small>Digitally signed by Valliere, Christine Date: 2019.09.24 09:26:40 -0400</small>	09/24/2019

## SECTION IV - CONTRACTS MANAGEMENT DATABASE CHECKLIST

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

**BREVARD COUNTY  
BOARD OF COUNTY COMMISSIONERS**

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<b>6. Dept/Office Director:</b> Virginia Barker	CONSTRUCTION	

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County Attorney	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Valliere, Christine <small>Digitally signed by Valliere, Christine Date: 2019.09.24 09:28:42 -0400</small>	09/24/2019

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BOARD OF COUNTY COMMISSIONERS**

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Monitored items: Uploaded to database (Insurance, Bonds, etc.)	<input type="checkbox"/>



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

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Tammy.Rowe@brevardclerk.us

October 9, 2019

MEMORANDUM

TO: Virginia Barker, Natural Resources Management Director

RE: Item F.1., Project Reimbursement Contract Template with Private Grantees for Save Our Indian River Lagoon Project Cost Share Funding for Wastewater Treatment Improvement Projects

The Board of County Commissioners, in regular session on October 8, 2019, authorized the Chair to execute the Private Grantee Reimbursement Contract with DHY, LLC and CJY, LLC; authorized the Chair to execute any future Reimbursement Contracts of \$100,000 or more; and the County Manager or his designee to execute future Reimbursement Contracts less than \$100,000 with private grantees. Enclosed are two executed copies of the Reimbursement Contract.

**Upon execution by DHY, LLC and CJY, LLC, please return a fully-executed Contract to this office for inclusion in the official minutes.**

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

Tammy Rowe, Deputy Clerk

/cmw

Encls. (2)

cc: Contracts Administration  
Finance  
Budget

## **SAVE OUR INDIAN RIVER LAGOON PROJECT REIMBURSEMENT CONTRACT**

**CONTRACT NUMBER: SOIRL 19-108**

**THIS CONTRACT** ("Contract") is made and entered into by and between the Board of County Commissioners of Brevard County, Florida, a political subdivision of the State of Florida (hereinafter "COUNTY"), DHY, LLC, and CJY, LLC, Florida limited liability companies, organized and existing under the laws of the State of Florida (hereinafter the "GRANTEE").

### **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 reimbursement grant funding to the GRANTEE 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 Contract incorporates all of the following:

- a. The Recitals set forth above;
- b. The terms of the Contract 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;
- g. Attachment E – Eligible Tax Funding Cost Share Form;
- h. Attachment F – Nutrient Monitoring Plan

**Section 2. Statement of Work.**

In consideration of the above recitals, and the funding assistance described below, the GRANTEE agrees to perform and complete the activities provided for in the **Statement of Work, Attachment A**. GRANTEE 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 Contract is from the date on which the last party has dated and executed the same (“Effective Date”) until September 30, 2021 (“Completion Date”).
- 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 six (6) months or longer may only be approved by the Board of County Commissioners. Requests to extend for less than six (6) months may be approved by the County Manager or his/her designee.
- c. Notwithstanding specific mention that certain provisions survive termination or expiration of this Contract, all provisions of this Contract that by their nature extend beyond the Completion Date, for example, 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 Contract constitutes an offer until authorized, signed and returned to the COUNTY by the GRANTEE. This offer terminates sixty (60) days after receipt by the GRANTEE; provided, however, that the GRANTEE 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 Contract, does not begin within one hundred eighty (180) days of the Effective Date, this Contract 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

Anthony Gubler  
Project Manager  
Department of Natural Resources  
2725 Judge Fran Jamieson Way, Building A  
Viera, Florida 32940  
321-633-2016  
Email: anthony.gubler@brevardfl.gov

GRANTEE

Matt Yu  
Property Manager  
DHY, LLC, CJY, LLC  
PO Box 14  
Westport, CT 06880  
917-502-4633  
Email: mattyu747@gmail.com

**Section 6. Deliverables.**

a. The GRANTEE shall fully implement the Project, as described in the **Statement of Work, Attachment A**. The GRANTEE 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 GRANTEE 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 GRANTEE will provide the COUNTY a written statement indicating that the Project has been completed in accordance with this Contract. Acceptance of the final payment by the GRANTEE shall constitute

a release in full of all claims against the COUNTY arising from or by reason of this Contract.

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

**Section 7. Progress Reports and Performance Monitoring**

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

b. The GRANTEE shall use the COUNTY'S **Project Progress Report Form, Attachment B**. GRANTEE 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 GRANTEE 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 GRANTEE shall make available to the COUNTY any available data that is requested pertaining to the performance of the Project.

**Section 8. Written Authorization**

If the GRANTEE is not the property owner, the GRANTEE shall obtain written authorization from the property owner(s) where the site is to be constructed that authorizes and secures permission for the GRANTEE and the COUNTY to enter [the property/properties] to conduct periodic inspections and/or maintenance of the [site(s)], with reasonable advanced prior notice. This authorization must be obtained prior to beginning work and must contain an indemnification clause that extends to the COUNTY the ability to access the [property/site] where the Project will be constructed. As part of the authorization agreement, the GRANTEE shall include the following language:

The [property owner] hereby authorizes and permits the Brevard County Board of County Commissioners, its agents, employees, officers, directors, and those under its direction or agency, (the "COUNTY") to access the [property/site] to conduct periodic inspections of and/or maintenance for the [Project located on the property/site]. The COUNTY shall provide reasonable advanced notice to [the property owner] prior to any inspection or maintenance. As part of this authorization and permission to access the [property/site], [the property owner] shall fully indemnify, defend, and hold the COUNTY harmless from and against any and all claims, suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to bodily injury, sickness, disease, death personal injury, damage to property or loss of use of any property or assets resulting therefore, resulting from or arising out of the performance of the services or products for which the COUNTY and/or the GRANTEE is providing to [the property owner].

**Section 9. Notifications.**

- a. *Commencement of Construction.* The GRANTEE shall notify the COUNTY'S Project Manager once construction has started at the site.
- b. *Completion of Construction.* The GRANTEE shall notify the COUNTY'S Project Manager once construction has been completed in order for surveyors to complete their survey and analyze the site.

**Section 10. Amount of Funding.**

- a. For satisfactory completion of the Project, the COUNTY shall pay the GRANTEE 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 the reimbursement grant amount 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 reimbursement grant amount is not subject to modification based upon price escalation in implementing the Project during the term of this Contract. The GRANTEE shall be responsible for payment of all additional costs necessary to ensure completion of the Project.
- c. During contract negotiations, the GRANTEE 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 in Section 10.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 GRANTEE 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 Contract. 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. For connections within unincorporated Brevard, connection fees may be paid directly to the Brevard County Utility Services Department. This fee will be deducted from the total grant available to the GRANTEE for reimbursement. This option must be detailed in the **Statement of Work, Attachment A**.

**Section 11. Payment of Invoices. Letter of Credit.**

a. The GRANTEE may either submit an invoice upon completion of the Project or 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: (1) By mail; (2) hand delivery; or (3) national overnight courier to the Brevard County Department of Natural Resource Management, Anthony Gubler, Project Manager, 2725 Judge Fran Jamieson Way, Building A, Viera, Florida 32940; or (4) By e-mail to [anthony.gubler@brevardfl.gov](mailto:anthony.gubler@brevardfl.gov).

b. If the GRANTEE selects to submit quarterly invoices, the GRANTEE must provide a performance bond or an irrevocable letter of credit to the COUNTY, concurrent with the execution of this Contract in the amount of \$381, 895.00, the full cost of the Project. Said bond or letter of credit shall be in favor of the COUNTY, issued by an insurance company or a bank acceptable to the COUNTY, in its sole discretion, and in form and substance acceptable to the COUNTY, in its sole discretion (the "Letter of Credit"), it being expressly understood and agreed that any draws on the Letter of Credit shall be for completion of the Project or repayment of funds provided to GRANTEE, as described in this Contract. The Bond or Letter of Credit shall provide for automatic annual renewals through that date which is sixty (60) days after the Completion Date of this Contract and any extensions thereof. In the event the Bond or Letter of Credit is not renewed by the issuing institution on or before twenty (20) days prior to the then-scheduled expiration date of the Letter of Credit, then the COUNTY shall have the right to draw the full amount of such Bond or Letter of Credit and to hold such amount as a cash bond to secure completion of the Project or repayment of funds provided to GRANTEE in the event the Project is not completed. Upon any default by GRANTEE and GRANTEE's failure to cure the same within any applicable cure period, the COUNTY shall be entitled to draw upon said Bond or Letter of Credit or cash bond by the issuance of the COUNTY'S sole written demand to the issuing financial institution or notice to GRANTEE if accessing the cash bond. Such draw shall be in an amount necessary to cure the default in question and if such amount cannot be readily determined by the COUNTY, then the full amount can be drawn by the COUNTY pending determination of said amount. If the amount of any such draw(s) shall ultimately exceed the amount of damages actually incurred by the COUNTY for the cost to complete the Project or repayment of funds provided to GRANTEE, as the result of GRANTEE'S default, then the COUNTY shall promptly refund any such excess to GRANTEE. Any such draw shall be without waiver of any rights the COUNTY may have under this Contract or at law or in equity as a result of the GRANTEE'S default.

c. All invoices shall be submitted using **Reimbursement/Invoice Form, Attachment C**, and include the following information: (1) the COUNTY'S contract number; (2) the GRANTEE'S name, address, and authorization to directly deposit payment into the GRANTEE'S account; (3) the GRANTEE'S invoice number and date of invoice; (4) the COUNTY'S Project Manager; (5) the GRANTEE'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.

Reimbursement Address

DHY LLC, CJY LLC  
PO Box 14  
Westport, CT 06880

- d. 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 Sections 10.c. and/or d. in the Eligible Tax Funding Cost Share Form, Attachment E) divided by Project cost multiplied by the amount of the GRANTEE'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.
- e. 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 GRANTEE and proof of payment. If necessary for audit purposes, the GRANTEE shall provide additional supporting information as required to document invoices.
- f. GRANTEE shall be reimbursed for the actual cost of the Project, or the contracted amount, whichever is less, in accordance with Attachments A and E. The COUNTY shall not withhold any retainage from this reimbursement. COUNTY reimbursement is subject to annual budgetary limitation, if applicable.
- g. The COUNTY'S fiscal year ends on September 30<sup>th</sup>. The COUNTY is required to account for all encumbered funds at that time. Submittal of an invoice as of September 30<sup>th</sup> satisfies this requirement. Regardless of whether the GRANTEE chooses monthly, quarterly, or annual invoices, if any expenses occur between a previous invoice and September 30<sup>th</sup>, the GRANTEE shall submit a description of the work completed on the Project through September 30<sup>th</sup> and a corresponding invoice for that reimbursement grant eligible amount achieved during that time interval.

**Section 12. Final Invoice.**

- a. The final invoice must be submitted no later than forty-five (45) days after the GRANTEE's final payment to its vendors for the Project or October 30<sup>th</sup> if the GRANTEE's final payment is made between September 15<sup>th</sup> and September 30<sup>th</sup>.
- 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 GRANTEE 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 13. 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 Contract. Amounts withheld shall not be considered due and shall not be paid until the ground(s) for withholding payment have been remedied.

**Section 14. Multi-Year Contracts.**

For multi-fiscal year contracts, 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 Contract, 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").

**Section 15. Indemnification and Insurance.**

a. Grantee agrees to the fullest extent permitted by law, to indemnify, defend and hold harmless the County from and against all claims, losses, damages, personal injuries (including but not limited to death), or liability, arising from, out of, or caused by: Grantee, its officers, employees, agents, or contractors, negligent or intentional acts, errors, omissions in the operation, maintenance, construction, repair or other activity contemplated in this Contract.

b. The indemnification provided above shall obligate the Grantee to defend at its own expense or to provide for such defense, at the option of the County, as the case may be, of any and all claims of liability and all suits and actions of every name and description that may be brought against the County which may result under this Contract. In all events, the County shall be permitted to choose legal counsel of its sole choice, the fees for which shall be subject to and included with this indemnification provided herein, as long as said fees are not greater than a rate deemed reasonable in Brevard County, Florida.

c. The GRANTEE shall require all contractors and sub-contractors to keep in force and to maintain at all times during the term of this Contract the following minimum levels of insurance:

1. General Liability Insurance: General Liability Insurance issued by responsible insurance companies as outlined in subsection (c) below, with combined single limits of not less than one million dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.
2. Workers' Compensation Coverage: Full and complete Workers' Compensation Coverage, as required by State of Florida law, shall be provided.
3. Auto Liability Insurance which includes coverage for all owned, non-owned and rented vehicles with a \$ 1,000,000 combined single limit for each occurrence.
4. Insurance Certificates: the GRANTEE shall provide the County copies of all contractors and sub-contractors Certificate(s) of Insurance as proof that insurance is being maintained. Said General Liability Policies shall provide that the County be included as an additional insured. The COUNTY shall be notified in writing of any reduction, cancellation or

substantial change of policy or policies at least thirty (30) days prior to the effective date of said action if replacement insurance meeting the requirements and specifications therein cannot be obtained. All insurance policies shall be issued by responsible companies who are licensed and authorized under the laws of the State of Florida.

**Section 16. Funding Contingency.**

This Contract 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. Contracts 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 GRANTEE and this Contract 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 Contract, "Fiscal Year" is defined as the period beginning on October 1 and ending on September 30.

**Section 17. Failure to Complete Project.**

- a. Should the GRANTEE fail to complete the Project and if grant funds have been paid to the GRANTEE, the COUNTY will draw funds from the Letter of Credit or cash bond pursuant to Section 11.b above to complete the Project or refund to the COUNTY all of the funds provided to the GRANTEE pursuant to this Contract, in its sole discretion.
- b. With a recommendation from its Citizen Oversight Committee, the COUNTY, in its sole judgment and discretion, may determine that the GRANTEE has failed to complete the Project due to circumstances that are beyond the GRANTEE's control, due to termination of this Contract for reasons of funding availability, or due to a good faith determination that the Project is no longer environmentally or economically feasible. In such event, the COUNTY may excuse the GRANTEE from the obligation to return funds provided hereunder.
- c. If the Project has not been completed within thirty (30) days after the Completion Date, the GRANTEE 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.
- e. Force Majeure. GRANTEE will not be responsible for failure to carry out any terms of this Contract due to any one of the following circumstances beyond the control of the GRANTEE: (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 GRANTEE shall not be subject to any liability for failure to carry out any of the terms of this Contract to the extent that such failure shall be due to a Force Majeure event as defined herein. In such event, the GRANTEE 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 18. Termination.**

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

c. This Contract 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, GRANTEE shall be paid for work completed and costs incurred in good faith through the date of termination. In the event the GRANTEE 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 19. Assignment.**

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

**Section 20. Audit; Access to Records; Repayment of Funds.**

a. Maintenance of Records. The GRANTEE 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 GRANTEE 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 Contract. In addition, the GRANTEE shall maintain records to demonstrate satisfaction of its obligation under subparagraph 17b. 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 Contract. In the event of an audit, the GRANTEE shall maintain all required records until the audit is completed and all questions are resolved. The GRANTEE 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 Contract if, upon audit examination, the COUNTY finds any of the following: (1) the GRANTEE has spent funds for purposes other than as provided for herein; (2) the GRANTEE has failed to perform a continuing obligation of this Contract; (3) the GRANTEE has received duplicate funds from the COUNTY or other external funding entity for the same purpose; (4) the GRANTEE has been advanced or paid unobligated funds; (5) the GRANTEE has been paid funds in excess of the amount the GRANTEE is entitled to receive under the Contract; and/or (6) the GRANTEE has received contributions amounting to more than one hundred percent (100%) of the Project cost through cumulative public agency grant or cost-share funding.

**Section 21. Dispute Resolution.**

The GRANTEE is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute involving performance of this Contract 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 be subject to judicial review upon completion of the Project.

**Section 22. Governing Law, Venue, Attorney's Fees, Waiver of Right to Jury Trial.**

This Contract 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 Contract: (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 23. Permits.**

The GRANTEE 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 GRANTEE 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 Contract and shall not be approved for reimbursement grant funding.

**Section 24. Independent Contractors.**

The parties to this Contract, their employees and agents, are independent contractors and not employees or agents of each other. Nothing in this Contract shall be interpreted to establish any relationship other than that of independent contractors during and after the term of this

Contract. The GRANTEE is not a contractor of the COUNTY. The COUNTY is providing reimbursement grant funding to assist the GRANTEE in accomplishing the Project. The GRANTEE is solely responsible for accomplishing the Project and directing the means and methods by which the Project is accomplished. The GRANTEE is solely responsible for compliance with all labor, health care, and tax laws pertaining to the GRANTEE, its officers, agents, and employees.

**Section 25. Public Records.**

Records of the GRANTEE 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 GRANTEE receives a public records request, the GRANTEE shall promptly notify the COUNTY'S Project Manager. Each party reserves the right to cancel this Contract 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 26. 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.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

**IN WITNESS WHEREOF**, the COUNTY has caused this Contract to be executed on the day and year written below in its name by its duly authorized representative, and GRANTEE has caused this Contract to be executed on the day and year written below in its name by its duly authorized representatives. This Contract may be executed in separate counterparts, which shall not affect its validity. Upon execution, this Contract constitutes the entire Contract of the parties and supersedes all other stipulations, proposals, representations, statements, or understandings, whether written or oral, regarding this subject matter. This Contract cannot be changed by any means other than written amendments referencing this Contract and signed by all parties.

Brevard County Board of County Commissioners

DHY LLC; CJY LLC

By:  \_\_\_\_\_  
Kristine Isnardi, Chair

By: \_\_\_\_\_

Date: October 8, 2019

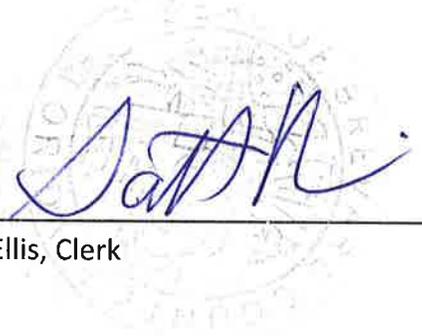
Name: \_\_\_\_\_

As Approved by the Board on October 8, 2019

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest

  
By:  \_\_\_\_\_  
Scott Ellis, Clerk

Reviewed for legal form and content by:

 \_\_\_\_\_  
Christine Valliere, Assistant County Attorney

## **ATTACHMENT A STATEMENT OF WORK**

**PROJECT TITLE:**

Briarwood Septic-to-Sewer

**PROJECT LOCATION:**

481 N Washington Ave; Titusville, Florida 32796

**PROJECT BACKGROUND:**

The Save Our Indian River Lagoon Project has identified the Briarwood mobile home park as a high loading septic-to-sewer priority with 19 septic systems adjacent to a waterway that flows into the North Indian River Lagoon.

**PROJECT DESCRIPTION:**

Install a private sanitary sewer system from the mobile homes to a private lift station which would then connect to the City of Titusville force main in the US 1 ROW slightly to the north of the property.

**IS A NUTRIENT MANAGEMENT PLAN PART OF THE PROJECT?**

No

**TASKS and DELIVERABLES:**

**Task #1: Design and Permitting**

**Task Description:**

1. Review site conditions and the available information from the City of Titusville (City) Utility Department and the Florida Department of Transportation (FDOT).
2. Coordinate on your behalf with a surveying company to obtain a fee for preparing a topographic survey of the site to include locations of the mobile homes utilizing the existing boundary survey.
3. Upon receipt of the survey, we will prepare a preliminary plan of the sanitary sewer layout for discussion with you and for initial coordination with the City.
4. Conduct a pre-application meeting with the City.
5. Prepare construction plans for the sanitary sewer collection (gravity) and transmission (pump station) systems. These plans will be consistent with the City's input during the pre-application meeting as well as Florida Department of Environmental Protection (FDEP) requirements.
6. Submit civil engineering plans to the City of Titusville for their review.
7. Respond to comments from the City and coordinate receipt of the City's Letter of Approval.
8. Prepare the FDEP permit application for signature by you and then submit to the City for approval and forwarding to the FDEP for their approval.
9. Prepare the FDOT permit application for the US Highway 1 Right of Way utilization permit and coordinate with the City and FDOT.
10. Coordinate final approval with the City, FDEP and FDOT.

**Task Deliverable:**

**Task #2 Construction of Project**

**Task Description:**

1. Mobilization & site preparation
2. Installation of lift station and force main connection to sanitary sewer.
3. Install gravity sewer, manholes, service laterals, connections
4. Abandon 19 septic tanks.

5. Restore site

**Task Deliverable:**

Task	Task Title	Task Start Date	Task End Date
1	Design & Permitting	3/5/2019	11/4/2019
2	Construction of Project	1/10/2020	9/30/2020

**Estimated Reimbursement Schedule:**

Project reimbursements will be requested quarterly.

Please provide a schedule of estimated amounts in the quarter (1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> quarter 20xx) for each reimbursement that will be requested. Note that quarters go by the County fiscal year so 1<sup>st</sup> quarter is Oct.-Dec., 2<sup>nd</sup> quarter is Jan.-Mar., 3<sup>rd</sup> quarter is Apr.-Jun., 4<sup>th</sup> quarter is Jul.-Aug.) You do not need to include quarters that reimbursement is not requested. If project goes beyond the two years provided in the table below you may insert another table.

Task #	Quarter 2/2019	Quarter 3/2019	Quarter 4/2019	Quarter 1/2020	Quarter 2/2020	Quarter #/Year	Quarter #/Year	Quarter #/Year
1	8,875		6,500	23,500	7,000			
2				297,000	39,020			

**Deliverables:**

Quarterly and final reports including pictures of progress made, or plans if pictures are not yet available.

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

Other: The Project is required by the City of Titusville but was not included in the budget for GRANTEE

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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:**

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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**

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

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									
<b>TOTALS:</b>								\$ -	\$ -

**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

\_\_\_\_\_  
Recipient's Fiscal Agent

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Telephone Number

**ATTACHMENT E (SEPTIC)**

Recipient Name:	DHY LLC, CJY LLC
Project Name:	Briarwood
Agreement Number:	19-108

Estimated Project Cost-Share Table							
Task Number	Task Description	Task Cost	Grant 1 (319)	Grant 2 (FDEP)	Grant 3 (SIRWMD)	Eligible Lagoon Tax Cost Share, Adjusted	Local Match
1	Permitting						\$ -
2	Engineering						\$ -
3	Construction	\$ 347,645.00				\$ 342,000.00	\$ 5,645.00
4	Monitoring						\$ -
	<b>Total</b>	<b>\$ 347,645.00</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 342,000.00</b>	<b>\$ 5,645.00</b>

Funding Eligibility Calculation	
Project Type: Septic Upgrade, Quick Connects Force Main, Quick Connects Gravity	Force Main
Number of Septic Systems Removed	19
Eligible Cost Share per System	\$18,000
Eligible Tax Funding Cost Share	\$ 342,000.00
Reduction so Sum of Grants does not exceed Project Cost	\$ -
Eligible Lagoon Tax Cost Share, Adjusted	\$ 342,000.00
Percent Cost Share to be contributed by the Lagoon Tax	98%