

**FUNDING AGREEMENT**  
**FOR**  
**ISLE OF PALMS SPECIAL DISTRICT DREDGING PROJECT**

**THIS AGREEMENT** (“Agreement”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2020, between the **City of Jacksonville**, a consolidated municipal and county government under the laws of Florida (“City”) and **Isle of Palms Special District**, a special district created pursuant to Section 182.02, Florida Statutes, by virtue of City Ordinance No. 2011-724-E (“IPSD”).

**RECITALS**

WHEREAS, the canals within the IPSD connect to the Intracoastal Waterway within the City’s jurisdictional boundaries and are used by the general public for fishing and boating;

WHEREAS, IPSD was created for the continuing maintenance of canal system within the IPSD boundaries to enable continued access to and from the Intracoastal Waterway;

WHEREAS, IPSD is required under its charter to fulfill its purpose by dredging the canals with the IPSD that provide access to and from the Intracoastal Waterway;

WHEREAS, restoring and improving navigability in IPSD’s canals and waterways serves a public purpose beneficial to the citizens of the City;

WHEREAS, IPSD is in the process of having its initial dredging project engineered and permitted, and is preparing to commence the dredging and related work; and

WHEREAS, IPSD and the City (collectively “Parties”) desire to enter into this Agreement setting forth the terms and conditions on which the City will contribute towards the funding of the Project.

**TERMS AND CONDITIONS**

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are essential to and incorporated by this reference as terms of this Agreement.
2. **Parties’ Representatives.** The Parties’ representatives for purposes of the administration of this Agreement are set forth below.
  - a. City’s Representative:  
  
\_\_\_\_\_

Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

b. MCSD's Representative:

Kenneth Wright, IPSD Board Chair  
Phone: 904-398-1818  
Email: ken@jacobsonwright.com

3. **Definitions.** As used in this Agreement:

- a. *Draw Payment* means a payment made from the City to IPSD under this Agreement.
- b. *Draw Request* means a request from IPSD to the City for a payment under this Agreement.
- c. *Effective Date* means the last date on which it is indicated that a Party executed this Agreement.
- d. *Funding* means the funds disbursed or to be disbursed to IPSD under this Agreement.
- e. *Project* or *Project Scope* means the IPSD initial dredging project as outlined in Exhibit A, attached and incorporated herein by this reference and as may be amended from time to time.
- f. *Project Budget* means the budget for the Project as outlined in Exhibit B, attached and incorporated herein by this reference.
- g. *Project Costs* means costs reasonably and necessarily incurred by MCSD to complete the Project, consistent with the Project Budget and Scope.
- h. *Total Project Cost* means the total cost of the Project as represented on the Project Budget.

4. **Project Funding.** Subject to the terms and conditions set forth below and elsewhere in this Agreement, and provided that all payments are subject to lawful appropriation of funds by City Council, the City agrees to fund 12% or \$786,000.00 of the Project Costs, whichever is less.

- a. The Funding will be paid out to reimburse IPSD for 12% of Project Costs incurred and paid by IPSD.
- b. The City's payment obligations under this Agreement shall not exceed \$786,000.00.
- c. In order to be reimbursable under this Agreement, Project Costs must be reasonably consistent with the Project Budget, which may be reasonably amended by IPSD in

good faith as circumstances may allow or dictate. In the event the Project Budget is amended by IPSD, IPSD shall first discuss the matter with the City and, following amendment, timely provide an amended Project Budget to the City. In the event the total Project cost is increased, the percentage used to calculate Draw Payments (currently 12%) shall be re-calculated by dividing \$786,000.00 by the revised total Project cost.

**5. IPSD's Obligations.**

- a. IPSD shall request Draw Payments only to reimburse Project Costs that have been paid.
- b. IPSD shall communicate in good faith with the City regarding the Project and shall provide such information as the City may reasonably request, including but not limited to design or construction documents, progress updates, and as-built drawings, if prepared.
- c. IPSD shall endeavor in good faith and take all reasonable measures to meet the Project Schedule, provided that the Project Schedule may be reasonably amended in good faith as circumstances may allow or dictate. In the event the Project Schedule is amended, IPSD shall promptly provide the City with a copy of the amended Project Schedule.
- d. IPSD shall not commence the construction phase of the Project without having secured adequate funding to complete the Project. Prior to commencement of the construction phase and within 30 days of any subsequent request for proof of Project financing, IPSD shall provide proof of Project financing to the City.
- e. IPSD shall maintain a detailed accounting of its expenditure of the Funding, and shall allow the City access to and examination of such accounting records at all reasonable times, until the expiration of three years after final payment under this Agreement.

**6. Draw Requests and Payments.**

- a. As frequently as monthly, but only after construction commences, IPSD may submit Draw Requests, which shall:
  - i. State the Project Costs incurred and paid by IPSD and request disbursement of 12% of such amount; and

- ii. Include such information as the City reasonably requires to establish that the requested Funding is due under this Agreement.
- b. Within 30 days of receipt of a Draw Request, the City shall disburse Funding to which IPSD has established entitlement under this Agreement. If less than the full amount that has been requested is disbursed, the City shall provide a written explanation identifying any Draw Request omissions, irregularities, or other such issues that preclude disbursement of any Funding that has been requested. IPSD may correct or address any issues so identified in an amended or the subsequent

**7. Default and Termination.**

- a. Upon the occurrence of any of the following and 10 days written notice to IPSD, the City shall have the right to terminate this Agreement without further obligation to IPSD, and to recover any Funding previously paid to IPSD hereunder:
    - i. Prior to substantial completion of the Project, the Project is abandoned by IPSD or stopped for more than 180 days for reasons within IPSD’s reasonable control;
    - ii. IPSD fails to properly and timely distribute Funding received on account of Project Costs not yet paid by IPSD; or
    - iii. IPSD requests or knowingly received and does not immediately return any Funding to which it is not entitled under this Agreement.
  - b. Upon the occurrence of any other material breach of this Agreement and 10 days written notice to IPSD, the City shall have the right to terminate this Agreement without further obligation to IPSD.
  - c. All rights and remedies set forth in this Agreement are cumulative and without prejudice to any other rights and remedies existing under applicable law.
- 8. Compliance with Applicable Laws.** In performing under this Agreement, IPSD shall comply with all applicable laws and regulations, including but not limited to Ch. 119, Florida Statutes, and all permitting and licensing requirements. MCSD warrants that all work requiring licensure, including but not limited to “marine contracting” as defined in Section 61G4-15.033, F.A.C., and “engineering” as defined in Section 471.005, F.S., will be performed by persons or entities duly licensed to furnish such services.

9. **Maximum Indebtedness.** The maximum indebtedness of the City under this Agreement shall not exceed the sum of \$786,000.00.
10. **Competitive Procurement.** To the extent IPSD purchases any goods, services or capital improvements related to the Project that are reimbursable by the City under this Agreement, IPSD shall utilize appropriate competitive processes prior to purchasing such goods, services or capital improvements. IPSD's contractor selection shall be based on the bid or quote most advantageous to the IPSD and the City as determined by IPSD. IPSD shall maintain written documentation regarding such procurements and provide the City with the same upon request.
11. **Indemnification.** IPSD's indemnification obligations are set forth in Exhibit D which is attached and incorporated herein by this reference.
12. **Term and Renewal.** Unless earlier terminated, this Agreement shall continue in effect until the earlier of (a) 60 months from the Effective Date, or (b) final completion of the Project and payment of all Funding due hereunder. Provisions surviving expiration or termination of this Agreement shall include but not be limited to all rights and remedies providing for recovery of damages under this Agreement, insurance and indemnification obligations, warranty obligations, and dispute resolution provisions, if any.
13. **Performance.** IPSD shall ensure that the work is performed in a workmanlike manner, using reasonable efforts and abilities, on a non-emergency basis.
14. **No Third Party Beneficiaries.** This Agreement does not provide third parties, including customers of the City or of the City, with any rights, remedies, or privileges.
15. **No Waivers.** Failure of the City to take action to enforce compliance with any of the terms or conditions of this Agreement or to give notice or declare this Agreement or any authorization granted hereunder terminated shall not constitute a waiver or relinquishment of any term or condition of this Agreement, but the same shall be and remain at all times in full force and effect.
16. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes all previous discussion, understandings and agreements between the Parties relating to the subject matter hereof.
17. **Joint Drafting.** This Agreement shall be deemed jointly drafted and not construed in favor of either Party.

18. **Severability.** In the event any portion of this Agreement is deemed to be unenforceable as written, said portion shall be given its nearest permissible meaning or, if there is none, severed from this Agreement with all other provisions remaining in effect.
19. **Applicable Law.** This Agreement shall be construed, interpreted and controlled by the laws of the State of Florida.
20. **Public Records.** The Parties understand and agree that all documents of any kind provided in connection with this Agreement are public records and are treated as such in accordance with Florida law.
21. **Limitations of Government Liability.** Nothing in this Agreement shall be deemed a waiver of immunity or limits of liability of the City beyond any statutory limited waiver of immunity or limits which may have been adopted by the Florida Legislature in Florida Statutes Section 768.28, or other statute as it now exists or may be changed from time to time, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim that would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.
22. **Accounting Records and Related Access.** IPSD shall maintain a detailed accounting of its expenditure of the Funding, and shall allow the City access to and examination of such accounting records at all reasonable times, until the expiration of three years after final payment under this Agreement.
23. **Non-Discrimination.**
- a. IPSD represents that it has adopted and will maintain a policy of nondiscrimination as defined by ordinance throughout the term of this contract.
  - b. IPSD agrees that, on written request, it will permit reasonable access to his records of employment, employment advertisement, application forms and other pertinent data and records by the Executive Director for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of this contract; provided, that IPSD shall not be required to produce for inspection records covering periods of time more than one year prior to the date of this contract.
  - c. IPSD agrees that, if any of the obligations of this contract are to be performed by a subcontractor, the provisions of subsections (a) and (b) of this Section shall be incorporated into and become a part of the subcontract.

24. This Agreement shall not constitute, create, or in any way be interpreted as a joint venture, employment or agency relationship, partnership or formal business organization of any kind among any of the parties.

(Signature page follows.)

**IN WITNESS WHEREOF** the parties hereto have duly executed this Agreement on the day and year first above written.

**ATTEST:**

**CITY OF JACKSONVILLE, a**  
Florida municipal corporation

By: \_\_\_\_\_  
James R. McCain, Jr.  
Corporation Secretary

By: \_\_\_\_\_  
Lenny Curry, Mayor

**FORM APPROVED:**

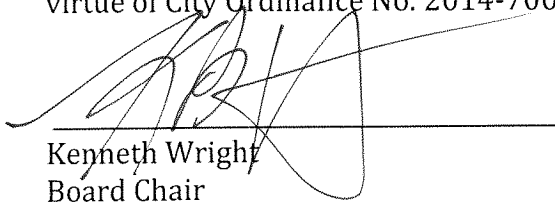
By: \_\_\_\_\_  
Assistant General Counsel

In compliance with Section 24.103(e) the *Ordinance Code* of the City of Jacksonville, I do certify that there is an unexpended, unencumbered and unimpounded balance in the appropriation sufficient to cover the foregoing Agreement, and provision has been made for the payment of the monies provided therein to be paid.

\_\_\_\_\_  
Director of Finance

Contract Number: \_\_\_\_\_

**ISLE OF PALMS SPECIAL DISTRICT**  
a special district created pursuant to  
Section 182.02, Florida Statutes, by  
virtue of City Ordinance No. 2014-700-E

  
\_\_\_\_\_  
Kenneth Wright  
Board Chair

**WITNESS:**

  
\_\_\_\_\_  
Print Name: VICKIE S. BARNES