

IRL COUNCIL SMALL GRANTS PROGRAM AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into between the IRL COUNCIL (“the Council”), whose address is 1235 Main Street, Sebastian, Florida 32958, and the INDIAN RIVER COUNTY, whose address is 5500 77th Street Vero Beach, Florida 32967 (“Recipient”). All references to the parties hereto include the parties, their officers, employees, agents, successors, and assigns.

RECITALS

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

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

The Council has determined that providing small grant funding to Recipient will benefit the management of the water resources of the Indian River Lagoon.

Recipient agrees to perform and complete the activities provided for in the Statement of Work, Attachment A.

1. **TERM.** The term of this Agreement is from the date upon which the last party has dated and executed the same (“Effective Date”) until June 30, 2022 (“Completion Date”). Recipient shall begin the project within six (6) months after the Effective Date and shall complete performance within one (1) year of the effective date or by the completion date, whichever is sooner.
2. **DELIVERABLES.** Recipient shall fully implement the Project, as described in the Statement of Work, Attachment A. Acceptance of the final payment by Recipient shall constitute a release in full of all claims against the Council arising from or by reason of this Agreement.
3. **OWNERSHIP OF DELIVERABLES.** Unless otherwise provided herein, the Council does not assert an ownership interest in any of the deliverables under this Agreement.
4. **AMOUNT OF FUNDING.** The Council shall pay Recipient up to \$3,816.49. The Council grant is not subject to modification based upon price escalation during the term of this Agreement. Recipient shall be responsible for payment of all costs necessary to ensure completion of the Project.
5. **PAYMENT OF INVOICES.** Recipient shall submit one invoice upon successful completion of the Project by one of the following two methods: (1) by mail to the IRL Council, 1235 Main Street, Sebastian, Florida 32958, or (2) by e-mail to kolodny@irlcouncil.org. The invoice shall be submitted in detail sufficient for proper pre-audit and post-audit review.
6. **INDEMNITY.** The Recipient agrees to indemnify, defend and hold the Council, its officers, employees, agents and representatives harmless from and against any and all liability on account of any injuries, damages, omissions, commissions, actions, causes of action, claims, suits, judgments and damages accruing, including court costs and attorney’s fees at all levels of trial and appeal, as a result of any negligence, recklessness, or other action or inaction on the part of the Recipient or any officer, director, employee, agent, independent contractor, subcontractor or representative of the Recipient which arises out of (directly or indirectly) or is related to the services provided under this

Agreement. Nothing contained in this provision or elsewhere in the Agreement shall be construed or interpreted as consent by the Council to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes. The Recipient shall further indemnify the Council for all costs and penalties the Council incurs related to any failure to offer Patient Protection and Affordable Care Act compliant health care coverage to Recipient-employees performing under this Agreement.

7. **INSURANCE.** Recipient shall acquire and maintain all insurance required by Attachment B, Insurance Requirements, and shall not commence Work until it has provided Certificates of Insurance to the Council as per Attachment B. Receipt of Certificates of Insurance indicating less coverage than required does not constitute a waiver of the Insurance Requirements. Recipient waives its right of recovery against the Council to the extent permitted by its insurance policies. Recipient's insurance shall be considered primary, and Council insurance shall be considered excess, as may be applicable to Recipient's obligation to provide insurance.
8. **FUNDING CONTINGENCY.** This Agreement is contingent upon funding availability. Should the Project not be funded, in whole or in part, the Council shall so notify Recipient and this Agreement shall be deemed terminated for convenience five (5) days after receipt of such notice, or within such additional time as the Council may allow.
9. **PROJECT MANAGEMENT.** The Project Managers listed below shall be responsible for overall coordination and management of the Project.

<u>COUNCIL</u>	<u>RECIPIENT</u>
Daniel Kolodny, Project Manager	Beth Powell
IRL Council	Indian River County
1235 Main Street	5500 77 th Street
Sebastian, FL 32958	Vero Beach, FL 32967
(772) 216-7148	(772) 226-1873
E-mail: Kolodny@irlcouncil.org	Email : bpowell@ircgov.com

10. **PROGRESS REPORTS AND PERFORMANCE MONITORING**
 - (a) **Progress Reports.** Recipient shall provide to the Council Project update/status reports as provided in the Statement of Work.
 - (b) **Performance Monitoring.** The Council shall have the right to inspect the operation of the Project during normal business hours upon reasonable prior notice. Recipient shall make available to the Council any data that is requested pertaining to performance of the Project.
11. **TERMINATION.** The IRL Council may terminate this Agreement without cause upon 10 days written notice. In such event Recipient shall be compensated for all Work performed in accordance with this Agreement to the effective date of termination. If Recipient materially fails to fulfill its obligations under this Agreement, including any specific milestones established herein, the Council shall provide Recipient written notice of the deficiency and this Agreement shall be terminated upon receipt of said notice. In such event, Recipient shall refund to the Council all funds provided to Recipient pursuant to this Agreement within thirty (30) days of such termination.
12. **ASSIGNMENT; SUCCESSORS.** Recipient shall not assign this Agreement, or any monies due hereunder, without the Council's prior written consent. No provision of this Agreement shall

create a contractual relationship between the Council and any of Recipient's contractors or subcontractors. The Council and the Recipient each binds itself and its partners, successors, executors, administrators and assigns to the other party and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement.

13. **INDEPENDENT CONTRACTOR.** No relationship of employer or employee is created by this Agreement, it being understood that the Recipient will act hereunder as an independent contractor and none of the Recipient's, officers, directors, employees, independent contractors, representatives or agents performing services for Recipient pursuant to this Agreement shall have any claim against the Council for compensation of any kind under this Agreement. The relationship between the Council and the Recipient is that of independent contractors, and neither shall be considered a joint venturer, partner, employee, agent, representative or other relationship of the other for any purpose expressly or by implication.
14. **AUDIT; ACCESS TO RECORDS; REPAYMENT OF FUNDS**
 - (a) Maintenance of Records. Recipient shall maintain its books and records such that receipt and expenditure of the grant funds are shown separately from other expenditures in a format that can be easily reviewed. The Council shall have access to and the right to examine any directly pertinent books and other records involving transactions related to this Agreement. In the event of an audit, Recipient shall maintain all required records until the audit is completed and all questions are resolved.
 - (b) Repayment of Funds. Council funding shall be subject to repayment after expiration of this Agreement if, upon audit examination, the Council finds any of the following: (1) Recipient has spent funds for purposes other than as provided for herein; (2) Recipient has failed to perform a continuing obligation of this Agreement; (3) Recipient has received duplicate funds from the Council for the same purpose; and/or (4) Recipient has received more than one hundred percent (100%) contributions through cumulative public agency cost-share funding.
15. **CIVIL RIGHTS.** Pursuant to Chapter 760, Fla. Stat., Recipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, age, handicap, or marital status.
16. **COMMUNICATION AND ACKNOWLEDGEMENT OF FUNDING:** As a granting agency, the Council achieves its mission through partnerships with state agencies, local governments, community organizations, and others. The Council requires Recipient to acknowledge the Council when describing this project or program funded in whole or in part with Council funds in any of the following products: (1) press releases, speaking engagements, and other public statements; (2) publications and other documents; (3) websites; (4) visual presentations; (5) resource guides/toolkits; (6) bid solicitations and/or; (7) social media.
17. **DIVERSITY.** The Council is committed to the opportunity for diversity in the performance of all cost-sharing agreements, and encourages Recipient to make a good faith effort to ensure that women and minority-owned business enterprises (W/MBE) are given the opportunity for maximum participation as contractors.
18. **GOVERNING LAW, VENUE, ATTORNEY'S FEES, WAIVER OF RIGHT TO JURY TRIAL; REMEDY.** This Agreement shall be construed according to the laws of Florida and shall not be construed more strictly against one party than against the other because it may have been drafted by one of the parties. As used herein, "shall" is always mandatory. In the event of any legal proceedings arising from or related to this Agreement: (1) venue for any state or

federal legal proceedings shall be in Indian River County; (2) each party shall bear its own attorney's fees, including appeals; (3) for civil proceedings, the parties hereby consent to trial by the court and **WAIVE THE RIGHT TO JURY TRIAL**; (4) no remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

19. **INDEPENDENT ENTITIES.** The parties to this Agreement, their employees and agents, are independent entities and not employees or agents of each other. Recipient is not a contractor of the Council. The Council is providing grant funding as a cooperating governmental entity to assist Recipient in accomplishing the Project. Recipient is solely responsible for accomplishing the Project and directs the means and methods by which the Project is accomplished. Recipient is solely responsible for compliance with all labor, health insurance, and tax laws pertaining to Recipient, its officers, agents, and employees.
20. **INTEREST OF RECIPIENT.** Recipient certifies that no officer, agent, or employee of the Council has any material interest, as defined in Chapter 112, Fla. Stat., either directly or indirectly, in the business of Recipient to be conducted hereby, and that no such person shall have any such interest at any time during the term of this Agreement.
21. **NON-LOBBYING.** Pursuant to Section 216.347, Fla. Stat., as amended, Recipient agrees that funds received from the Council under this Agreement shall not be used for the purpose of lobbying the Legislature or any other state agency.
22. **PERMITS.** Recipient shall comply with all applicable federal, state and local laws and regulations in implementing the Project and shall include this requirement in all subcontracts pertaining to the Project. Recipient shall obtain any and all governmental permits necessary to implement the Project. Any activity not properly permitted prior to implementation or completed without proper permits does not comply with this Agreement and shall not be provided grant funding.
23. **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.
24. **PUBLIC RECORDS.**
 - (a) Records of Recipient that are made or received in the course of performance of the Project may be public records that are subject to the requirements of chapter 119, Fla. Stat. If Recipient receives a public records request, Recipient shall promptly notify the Council's Project Manager. Each party reserves the right to cancel this Agreement for refusal by the other party to allow public access to all documents, papers, letters, or other material related hereto and subject to the provisions of chapter 119, Fla. Stat., as

amended.

- (b) **IF RECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE RECIPIENTS'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE COUNCIL'S CUSTODIAN OF PUBLIC RECORDS AT (772) 216-7148, KOLODNY@IRLCOUNCIL.ORG, 1235 MAIN STREET, SEBASTIAN, FLORIDA 32958.**
 - (c) Recipient shall keep and maintain public records required by the Council to perform the Project.
 - (d) Upon request from the Council's custodian of public records, Recipient shall provide the Council with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, Fla. Stat. or as otherwise provided by law.
 - (e) Recipient shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the Council.
 - (f) Upon completion of the contract, Recipient may transfer, at no cost, to the Council all public records in possession of the Recipient or keep and maintain public records required by the Council to perform the service. If the Recipient transfers all public records to the Council upon completion of the contract, the Recipient shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Recipient keeps and maintains public records upon completion of the contract, the Recipient shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Council, upon request from the Council's custodian of public records, in a format that is compatible with the information technology systems of the Council.
25. **ROYALTIES AND PATENTS.** Recipient certifies that the Project does not, to the best of its information and belief, infringe on any patent rights. Recipient shall pay all royalties and patent and license fees necessary for performance of the Project and shall defend all suits or claims for infringement of any patent rights and save and hold the Council harmless from loss to the extent allowed by Florida law.
26. **E-VERIFY.** Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021, the Recipient shall:
- (a) Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;
 - (b) Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien;
 - (c) Maintain copies of all subcontractor affidavits for the duration of this Agreement;

- (d) Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;
- (e) Be aware that a violation of Section 448.09, Florida Statutes (Unauthorized aliens; employment prohibited) shall be grounds for termination of this Agreement; and
- (f) Be aware that if the Council terminates this Agreement under Section 448.095(2)(c), Florida Statutes, the Recipient may not be awarded a public contract for at least 1 year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the Recipient as a result of the termination of the Agreement.

27. **SEVERABILITY; SURVIVABILITY; WAIVER**

- (a) If any term or provision of the Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to remainder of the Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of the Agreement shall be deemed valid and enforceable to the extent permitted by law.
- (b) Any provision of the Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of the Agreement shall survive its expiration or earlier termination.
- (c) Failure of either party to enforce or exercise any right(s) under this Agreement shall not be deemed a waiver of either party's right to enforce or exercise said right(s) at any time thereafter.

28. **ENTIRETY OF CONTRACTUAL AGREEMENT; AMENDMENT.** The Council and the Recipient agree that this Agreement (including all exhibits, attachments, etc.) sets forth the entire contract between the parties, and that there are no promises or understandings other than those stated in these documents. None of the provisions, terms and conditions contained in this Agreement may be added to, modified or otherwise altered, except by written instrument executed by the parties hereto.

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

IRL COUNCIL

INDIAN RIVER COUNTY

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

By: _____

Typed Name and Title

Date: _____

Date: _____

Attest: _____

APPROVED AS TO FORM

Glen J. Torcivia, IRL Council General Counsel

Typed Name and Title

ATTACHMENTS

- Attachment A – Statement of Work
- Attachment B – Insurance Requirements
- Attachment C – Council Supplemental Instruction Form

ATTACHMENT A - STATEMENT OF WORK

- I. **NAME OF PROJECT:**
Jones' Pier Educational Building Wet Lab
- II. **INTRODUCTION/BACKGROUND:** Indian River County has constructed improvements to the 16-acre Jones' Pier Conservation Area (JPCA). These improvements include construction of a 4-acre saltmarsh, which receives flow from the nearby Lagoon, a restored hydric hammock, a living shoreline, as well as boardwalks, trails and other amenities. This grant application will further the County's objective of converting the small cottage on site into a research and education building. The project will include the purchase of materials needed to convert the small kitchen area into a rudimentary wet lab for use in analyzing and storing samples collected within the adjacent JPCA habitats. This portion of the project will include the purchase of a refrigerator, dissecting microscope, macroinvertebrate sampling equipment, materials to build storage shelving, and a new countertop. The County has recently re-roofed the building, and is making additional repairs and improvements. The students will be part of the construction of the wet lab. The project will have an educational component as well, as students from Indian River State College (IRSC) and other schools will be using the saltmarsh/Lagoon habitats to create their monitoring program to be carried out for the duration of the grant. The County intends for the relationship with these local schools to be an on-going process, with a new group of student brought in each year to continue research and education.
- III. **VALUE PROPOSITION:** The environmental education incorporated within this project not only benefits the students by providing a hands-on experience with sampling and monitoring in the Lagoon, but also promotes awareness of current challenges that are on-going relative to Lagoon health. These young adults can carry forward the message of responsible stewardship, and many may decide to choose a career path with an environmental component.
- IV. **LOCATION OF PROJECT:** 7770 Jungle Trail - approximately 2-miles to the south of the intersection of CR 510 and Jungle Trail, in Vero Beach, Florida.
- V. **SCOPE OF WORK (Outputs/Deliverables):**
- Output 1 (Deliverable) – renovation of the existing kitchen into a wet lab
 - Output 2 (Deliverable) – completion of student-coordinated ecological research projects within the natural areas on site.
- VI. **TASK IDENTIFICATION:**
Recipient shall complete the following tasks: (add or removes tasks as needed)
- Task 1. Demolition of existing kitchen
 - Task 2. Renovation of kitchen into wet lab (painting, installation of countertops, construction of shelving, etc.)
 - Task 3. Coordination of student study plans
 - Task 4. Implementation of plans of study by students. Coordination with local scientists.
 - Task 5. Presentation of study results by students.
- VII. **DELIVERABLES AND TIME FRAMES:**
Task 1. Deliverable due in Council office by within 2 months of execution

- Deliverable: Description of activities within demolition and renovation
 Task 2. Deliverable due in Council office by June 30, 2022
 Deliverable: Periodic reports on student progress with research efforts
 Task 3. Deliverable due in Council office by June 30, 2022
 Deliverable: Summary of student projects
 Task 4. Deliverable due in Council office by June 30, 2022
 Deliverable: Summary of student project implementation
 Task 5. Deliverable due in Council office by June 30, 2022
 Deliverable: End of study presentation (on site)

VIII. **BUDGET:**

Task Line Item	Task Description	IRLNEP Funding Amount	Cost Share Funding Amount	Cost Share Funding Source
1	Kitchen Demo	\$0	\$0	1
2	Kitchen Renovation	\$1,452.94	\$500	IRC
3	Study Plan Coordination	\$2,363.55	\$2,438.15	IRSC,IRC
4	Study Plan Implementation	\$0	\$0	2
5	Study Results	\$0	\$0	2
	Summary Cost	\$3,816.49	\$2,938.15	
	Project total cost	\$6,754.64		

¹ – to be completed by County staff, volunteers, & students

² – to be completed with College & County staff, students, and local scientists

ITEM	IRLNEP SHARE	MATCH (Source)	TOTAL
Epoxy Tops-Resin Countertop	\$658.62		\$658.62
Epoxy Tops – Resin Workstation 1 &2 (qty 2)	\$394.32		\$394.32
Hardware and Lumber for framing and shelving units		\$500 (IRC)	\$500
Nikon SMZ-745 Stereo Microscope	\$1,550		\$1,550
10.1 Cubic Foot Top Freezer/Refrigerator	\$400		\$400

Expendable Lab Supplies – Petri dishes, trays, graduated cylinders, slides		\$200 (IRSC)	\$200
Water Mark Hester – Dendy Round Multiple Plate Sampler (Qty 6)	\$215.70		\$215.70
Macroinvertebrate Sampling Tray (Qty 3)	\$71.25		\$71.25
Sorting Spot Plates (Pack of 12, Qty 24)	\$246		\$246
LaMotte Student Grade Kick Net (Qty 2)	\$88.50		88.50
Watermark Retractable net (Qty 3)	\$146.85		\$146.85
Lighted Magnigrip Tweezers (Qty 3)	\$45.25		\$45.25
Water Sampling Equipment (pH Meter, DO meter with probe, connectivity Meter)		\$2,238.15	\$2,238.15
TOTAL	\$3,816.49	\$2,938.15	\$6,754.64

ATTACHMENT B - INSURANCE REQUIREMENTS

Contractor shall acquire and maintain until completion of the Work the insurance coverage listed below, which shall be considered primary coverage, with any Council insurance considered excess coverage. Contractor shall not commence the Work until it has provided Certificates of Insurance to the Council documenting such coverage. The "IRL Council" shall be shown as an additional insured under all policies to the extent of the Council's interests under this Agreement, except workers' compensation and auto liability. The insurance certificate shall include an endorsement requiring ten (10) days prior written notice to the Council before any change or cancellation is made effective. In addition, it shall have the words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents, or representatives" stricken from the cancellation clause in the Certificate of Insurance. Any deductibles or self-insured retentions must be declared to and approved by the Council. Contractor is responsible for any deductible or self-insured retention. Insurance is to be placed with insurers having an A.M. Best rating of A-:V or greater. Council receipt of insurance certificates providing less than the required coverage does not waive these insurance requirements.

- (a) **Workers' Compensation Insurance.** Workers' compensation and employer's liability coverage, including maritime workers compensation, if applicable, in not less than the minimum limits required by Florida law. If an exemption from workers' compensation is declared, an exemption letter issued by Florida Department of Financial Services, Division of Workers' Compensation, shall be submitted to the Council.
- (b) **General Liability.** Commercial General Liability Insurance on an "Occurrence Basis," with limits of liability not less than \$300,000 per occurrence and/or aggregate combined single limit, personal injury, bodily injury, and property damage. Coverage shall include: (1) contractual liability, (2) products and completed operations, (3) independent contractors, (4) broad form property damage, and (5) property damage resulting from explosion, collapse or underground (x, c, u) exposures. Extensions shall be added or exclusions deleted to provide the necessary coverage. "Claims made" coverage will be accepted only after verification that "occurrence" coverage is not available.
- (c) **Automobile Liability.** Minimum requirements of Florida law.
- (d) **Watercraft Liability if applicable.** \$100,000 for bodily injury and property damage.

ATTACHMENT C-COUNCIL'S SUPPLEMENTAL INSTRUCTIONS (sample)
COUNCIL SUPPLEMENTAL INSTRUCTIONS

DATE: [DATE]

TO: [NAME], Project Manager

FROM: [NAME], Project Manager

CONTRACT/PURCHASE ORDER NUMBER: [CONTRACT/PO NUMBER]

CONTRACT TITLE: [TITLE]

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

1. CONTRACTOR'S SUPPLEMENTAL INSTRUCTIONS:
2. DESCRIPTION OF WORK TO BE CHANGED:
3. DESCRIPTION OF SUPPLEMENTAL INSTRUCTION REQUIREMENTS:

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

Approved: _____ Date: _____

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

Approved: _____ Date: _____

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

Approved: _____ Date: _____
[NAME], IRL Council Project Manager

cc: Contract file