

AGREEMENT FOR INDIAN RIVER LAGOON MUCK RESEARCH

THIS AGREEMENT, entered into this __ day of _____, 2023, by and between INDIAN RIVER COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the “**COUNTY**”, and Florida Institute of Technology, Inc., hereinafter referred to as the “**FLORIDA TECH**”.

BACKGROUND RECITALS:

FLORIDA TECH, in furtherance of its education and research mission, has knowledge, experience, and expertise in research, design, and development in the fields necessary to evaluate Muck in the Indian River Lagoon (“IRL”).

COUNTY desires the services of FLORIDA TECH, as described in Exhibit A, and as authorized in individual work orders issued under this Agreement.

NOW THEREFORE, in accordance with the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. STATEMENT OF WORK

1.1 All services (“Services”) provided by FLORIDA TECH for the County shall be as identified in Exhibit A. The parties agree that the Budget Table provided in Exhibit A is the basis to be used for billing purposes and that FLORIDA TECH’s compensation is the total lump sum as set forth in paragraph 5.1.

1.2 Additional services which would increase, decrease or which are otherwise outside the scope of Services or level of effort contemplated by the Exhibits shall be Services for which FLORIDA TECH must obtain the prior written approval of the County as provided by this Agreement. All terms for the performance of such Services must be agreed upon in a written document prior to any deviation from the terms of the Agreement, and when properly authorized and executed by both FLORIDA TECH and the County, shall become an amendment to the Agreement.

2. COUNTY OBLIGATIONS

2.1 The COUNTY will provide FLORIDA TECH with a copy of any related data or reports available, in connection with the work to be performed under this Agreement, together with all available drawings, surveys, right-of-way maps, and other documents in the possession of the COUNTY pertinent to a Project. FLORIDA TECH shall satisfy itself as to accuracy of any data provided.

2.2 FLORIDA TECH shall not be considered in default for a failure to perform if such failure arises out of causes reasonably beyond FLORIDA TECH 's control and through no fault or negligence of FLORIDA TECH. The parties acknowledge that adverse weather conditions, acts of God, or other unforeseen circumstances of a similar nature, may necessitate modifications to this Agreement. If such conditions and circumstances do in fact occur, then the COUNTY and FLORIDA TECH shall mutually agree, in writing, to the modifications to be made to this Agreement.

3. RESPONSIBILITIES OF THE FLORIDA TECH

3.1 FLORIDA TECH agrees to provide diligent efforts to perform all necessary Services in connection with the assigned work, as set forth in this Agreement. Services will be rendered

at a level commensurate with professional standards acceptable in the discipline and within the scope of the project, to the satisfaction of COUNTY.

3.2 FLORIDA TECH shall report the status of the Services under this Agreement to the County Project Manager upon request and hold all drawings, calculations and related work open to the inspection of the County Project Manager or his authorized agent at any time, upon reasonable request.

3.3 All documents, reports, tracings, plans, specifications, field books, survey notes and information, maps, contract documents, and other data developed by FLORIDA TECH for the purpose of this Agreement, are and shall remain the property of the COUNTY. The foregoing items will be created, maintained, updated, and provided in the format specified by the COUNTY. When all work contemplated under this Agreement is complete, all of the above data shall be delivered to the County Project Manager.

3.4 FLORIDA TECH shall not assign or transfer any work under this Agreement without the prior written consent of the COUNTY. When applicable and upon receipt of such consent from the COUNTY, FLORIDA TECH shall cause the names of the firms responsible for such portions of the work to be inserted on the reports or other data.

3.5 FLORIDA TECH is registered with and will use the Department of Homeland Security's E-Verify system (www.e-verify.gov) to confirm the employment eligibility of all newly hired employees for the duration of this agreement, as required by Section 448.095, F.S. FLORIDA TECH is also responsible for obtaining proof of E-Verify registration and utilization for all subconsultants.

4. TERM; DURATION OF AGREEMENT

This Agreement shall remain in full force and effect for a period of five years after the date of execution thereof, or until completion of all projects, as defined by the COUNTY, whichever occurs later, or unless otherwise terminated by mutual consent of the parties hereto, or terminated pursuant to Section 9 "Termination."

5. COMPENSATION

5.1 The County shall pay to FLORIDA TECH a mutually agreed professional fee on a deliverable basis, all as set forth in Exhibit A. Invoices shall be submitted to the County Project Manager, in detail sufficient for proper prepayment and post payment audit. Upon submittal of a proper invoice the County Project Manager will determine if the tasks or portions thereof have been satisfactorily completed. Upon a determination of satisfactory completion, the County Project Manager will authorize payment to be made. All payments for services shall be made to the FLORIDA TECH by the County in accordance with the Florida Prompt Payment Act, as may be amended from time to time (Section 218.70, Florida Statutes, et seq.).

5.1.1 FLORIDA TECH acknowledges and agrees that it will not be reimbursed for travel within the State of Florida.

5.2 The COUNTY may at any time notify FLORIDA TECH of requested changes to the Services, and thereupon the COUNTY and FLORIDA TECH shall execute a mutually agreeable amendment to this Agreement.

5.3 The COUNTY shall have the sole right to reduce or eliminate, in whole or in part, any portion of the Services under Exhibit A at any time and for any reason, upon written notice to FLORIDA TECH specifying the nature and extent of the reduction. In such event,

FLORIDA TECH shall be paid for the Services already performed and also for the Services remaining to be done and not reduced or eliminated, upon submission of invoices as set forth in this Agreement.

5.4 The COUNTY may, at any time and for any reason, direct FLORIDA TECH to suspend Services, in whole or in part under this Agreement. Such direction shall be in writing, and shall specify the period during which Services shall be stopped. FLORIDA TECH shall resume its Services upon the date specified, or upon such other date as the COUNTY may thereafter specify in writing. Where the COUNTY has suspended the Services under this Agreement for a period in excess of six (6) months, the compensation of FLORIDA TECH for such suspended Services may be subject to modification. The period during which the Services are stopped by the COUNTY shall be added to the time of performance of this Agreement.

6. ADDITIONAL WORK

6.1 If services in addition to the Services provided hereunder are required or desired by the County in connection with the Project, the COUNTY may, at the sole option of the COUNTY: separately obtain same outside of this Agreement; or request FLORIDA TECH to provide, either directly by FLORIDA TECH or by a subconsultant, such additional services by written amendment to this Agreement.

7. PUBLICATIONS

7.1 COUNTY recognizes that under FLORIDA TECH policy, the results of FLORIDA TECH's research must be publishable, and agrees that the researchers engaged in activities under this Agreement shall be permitted to present at symposia, professional meeting, and to publish in journals, theses or dissertations, or otherwise of their own choosing, methods and results of such services. COUNTY shall review and approve any publications prepared for non-scientific audiences, such as elected officials, media, or the general public, where the publication or presentation is not a part of a recognized scientific or academic venue

8. INSURANCE AND INDEMNIFICATION

8.1 During the performance of the work covered by this Agreement, FLORIDA TECH shall provide the COUNTY with evidence that the FLORIDA TECH has obtained and maintains the insurance listed in the Agreement.

8.2 Minimum Scope of Insurance

A. Worker's Compensation as required by the State of Florida. Employers Liability of \$100,000 each accident, \$500,000 disease policy limit, and \$100,000 disease each employee.

B. General Liability \$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall include premises/operations, products/completed operations, contractual liability, and independent contractors. COUNTY shall be named an "Additional Insured" on the certificate of insurance.

C. Auto Liability \$500,000 combined single limit per accident for bodily injury and property damage. Coverage shall include owned vehicles, hired vehicles, and non-owned vehicles.

8.3 FLORIDA TECH's insurance coverage shall be primary.

8.4 All above insurance policies shall be placed with insurers with a Best's rating of no less than A-VII. The insurer chosen shall also be licensed to do business in Florida.

8.5 The insurance policies procured, other than professional liability, shall be occurrence

forms, not claims made policies.

8.6 FLORIDA TECH shall indemnify and hold harmless the County and its commissioners, officers, employees and agents, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of its students, agents, and other persons employed or utilized by FLORIDA TECH in the performance of this Agreement.

8.7 COUNTY shall indemnify and hold harmless FLORIDA TECH and its respective directors, officers, employees, students, and agents, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of COUNTY or its employees or agents in connection with the performance of this Agreement.

9. TERMINATION

9.1 This Agreement may be terminated: (a) by the COUNTY, for any reason, upon thirty (30) days' prior written notice to FLORIDA TECH; or (b) by FLORIDA TECH, for any reason, upon thirty (30) days' prior written notice to the COUNTY; or (c) by the mutual Agreement of the parties; or d) as may otherwise be provided below. In the event of the termination of this Agreement, any liability of one party to the other arising out of any Services rendered, or for any act or event occurring prior to the termination, shall not be terminated or released.

9.2 In the event of termination by the COUNTY, the COUNTY's sole obligation to FLORIDA TECH shall be payment for those portions of satisfactorily completed under this Agreement. Such payment shall be determined on the basis of the hours of work performed by the FLORIDA TECH, or the percentage of work complete as estimated by FLORIDA TECH and agreed upon by the COUNTY up to the time of termination. In the event of such termination, the COUNTY may, without penalty or other obligation to FLORIDA TECH, elect to employ other persons to perform the same or similar services.

9.3 In the event of termination of this Agreement, FLORIDA TECH agrees to surrender any and all documents prepared by FLORIDA TECH for the COUNTY in connection with this Agreement.

9.4 The COUNTY may terminate this Agreement for refusal by FLORIDA TECH to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119 Florida Statutes and made or received by FLORIDA TECH in conjunction with this Agreement.

9.5 The COUNTY may terminate this Agreement in whole or in part if FLORIDA TECH submits a false invoice to the COUNTY.

9.6 FLORIDA TECH certifies that it and those related entities of FLORIDA TECH, as defined by Florida law are not on the Scrutinized Companies that Boycott Israel List, created pursuant to s. 215.4725 of the Florida Statutes, and are not engaged in a boycott of Israel. OWNER may terminate this Agreement if FLORIDA TECH, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies that exist for the purpose of making profit, is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel as set forth in section 215.4725, Florida Statutes.

10. MISCELLANEOUS PROVISIONS

10.1 Independent Contractor. It is specifically understood and acknowledged by the

parties hereto that FLORIDA TECH or employees or sub-consultants of FLORIDA TECH are in no way to be considered employees of the COUNTY, but are independent contractors performing solely under the terms of the Agreement and not otherwise.

10.2 Governing Law; Venue. This Agreement, including all attachments hereto, shall be construed according to the laws of the State of Florida. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this Agreement shall be in Indian River County, Florida, or, in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida.

10.3 Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable for the remainder of this Agreement, then the application of such term 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 this Agreement shall be deemed valid and enforceable to the extent permitted by law.

10.4 Availability of Funds. The obligations of the COUNTY under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Board of County Commissioners of Indian River County.

10.5 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy and all of which shall constitute but one and the same instrument.

10.6 Public Records Compliance

COUNTY is a public agency subject to Chapter 119, Florida Statutes. FLORIDA TECH shall comply with Florida's Public Records Law. Specifically, FLORIDA TECH shall:

- (1) Keep and maintain public records required by the County to perform the service.
- (2) Upon request from the County's Custodian of Public Records, provide the County 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 or as otherwise provided by law.
- (3) 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 Agreement term and following completion of the Agreement if FLORIDA TECH does not transfer the records to the County.
- (4) Upon completion of the Agreement, transfer, at no cost, to the County all public records in possession of FLORIDA TECH or keep and maintain public records required by the County to perform the service. If FLORIDA TECH transfers all public records to the County upon completion of the Agreement, FLORIDA TECH shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If FLORIDA TECH keeps and maintains public records upon completion of the Agreement, FLORIDA TECH shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the Custodian of Public Records, in a format that is compatible with the information technology systems of the County.

B. IF FLORIDA TECH HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FLORIDA TECH 'S DUTY TO PROVIDE PUBLIC RECORDS

RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

(772) 226-1424

publicrecords@ircgov.com

Indian River County Office of the County Attorney

1801 27th Street

Vero Beach, FL 32960

C. Failure of FLORIDA TECH to comply with these requirements shall be a material breach of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first written above.

FLORIDA TECH:

By _____

Date _____

Witness:

By _____

Printed Name _____

INDIAN RIVER COUNTY

By its Board of County Commissioners

By _____

Joseph H. Earman, Chairman

Date Approved by BCC: _____

Attest: Ryan L. Butler, Clerk of Court
And Comptroller

By _____

Deputy Clerk

Approved:

John A. Titkanich, Jr., County Administrator

Approved as to form and legal sufficiency:

Dylan Reingold, County Attorney

Designated Representative:

Austin Fox, Ph.D., Assistant Professor
Florida Tech Department of Engineering
And Marine Science
150 W University Blvd., Melbourne, FL 32901
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Designated Representative:

Eric Charest, Natural Resources Director
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echarest@ircgov.com
(772) 226-1569

Exhibit A – Indian River County Muck Survey Scope of Work