

MEMORANDUM

TO: Interested Parties

FROM: Duane E. De Freese, Ph.D., IRLNEP Executive Director

SUBJECT: Call for Proposals for the following project under the Indian River Lagoon National Estuary Program

DATE: January 19, 2017 **(Modified February 10, 2017)**

The IRL Council is soliciting proposals for the following Indian River Lagoon National Estuary Program project:

Title: Comprehensive Conservation and Management Plan Technical Support & Data Management Services.

The duration of this IRL Council project is 6 months with annual renewal for up to two additional one (1) year cycles pending need, annual approval and additional budget for continuation by the IRL Council.

Funding for this project is from the Indian River Lagoon National Estuary Program Work Plan submitted to the U.S. EPA for FY 2016-2017. These funds may be leveraged with additional local sources during FY 2016-2017, but cannot be used as match funds for other federal funding.

The attached Request for Proposals describes the review process, time schedule, and information to be included in the proposal. The deadline for submission of proposals is March 10, 2017.

Thank you for your interest in the Indian River Lagoon National Estuary Program. Please submit questions on the project and RFP by email by March 1, 2017 to:

B. Frank Sakuma, Jr.
Chief Operating Officer - IRL Council
Indian River Lagoon National Estuary Program
Email: sakuma@irlcouncil.org

IRL COUNCIL REQUEST FOR PROPOSAL (#2017-001)

The IRL Council is a Florida Independent Special District, and host of the Indian River Lagoon National Estuary Program (IRLNEP). The IRL council and IRLNEP are funded through a partnership among the U.S. Environmental Protection Agency (EPA), local and state governmental agencies, and other investors surrounding the Indian River Lagoon region.

The IRL Council is requesting proposals from qualified respondents to provide contractor support to the IRLNEP Comprehensive Conservation and Management Plan (CCMP) revision process as described below. In accordance with the Code of Federal Regulations (40 CFR 33.240), the IRL Council ensures to the fullest extent possible to negotiate a "Fair Share" percentage of not less than 10% of federal funds for prime contractors, subcontracts, supplies, etc. to organizations owned or controlled by minority business enterprises, organizations owned or controlled by socially and economically disadvantaged individuals, and women's business enterprises. Prime contractors hereunder are required to include the same "Fair Share" minimum percentage statement in their bid documents for subcontracts.

The IRL Council is soliciting proposals for the following consultant support project:

Title: Comprehensive Conservation and Management Plan Technical Support & Data Management Services.

The duration of this IRL Council project is 6 months with annual renewal for up to two additional one (1) year cycles pending annual approval and additional budget for continuation by the IRL Council, which serves as the IRLNEP Policy Board.

Funding for this project is from the Indian River Lagoon National Estuary Program Work Plan supported by funding through the U.S. EPA. These funds may be leveraged with additional local sources during FY 2016-2017, but cannot be used to match other federal dollars or projects.

Questions concerning this RFP must be in writing or as email and received at the Indian River Lagoon National Estuary Program address below no later than March 1, 2017. Copies of questions and responses will be posted on the Request for Proposals section of the IRL Council website (<http://www.irlcouncil.com/requests-for-proposals.html>). Please refer to the project title above on all correspondence.

Eight sealed copies of the proposal, and one CD in electronic format should be submitted to:

B. Frank Sakuma, Jr.
Chief Operating Officer - IRL Council
Indian River Lagoon National Estuary Program
1235 Main Street
Sebastian, Florida 32958

Sealed Proposals must be clearly marked "RFP #2017-001, CCMP Technical Support & Data Management Services."

Please do not submit copies of the proposals in three-ring binders, which are difficult to mail to the Review Team. Spiral-bound or stapled copies are requested.

Proposals will be accepted until 5:00 pm March 10, 2017. Proposals will be opened at the offices of the IRL Council. Late proposals will not be opened or considered.

Proposal review and evaluation will occur in March 2017. Members of the Review Team shall be selected by the IRL Council Executive Director, who shall also be a member of the Review Team. The Review Team will be a minimum of 5 and no more than 7 individuals chosen from the IRLNEP Management Conference (IRL Council appointed Management Board and/or Advisory Committee members). The Executive Director may designate another member of the Indian River Lagoon National Estuary Program staff to serve in his place as a member of the Review Team.

The Review Team shall review each proposal and develop findings, recommendations and final rankings which shall be presented to the IRLNEP Management Board and the IRL Council by the Executive Director, or her designee. The Management Board will consider the findings, recommendations and final rankings of the Review Team in making its recommendation to the IRL Council. The recommendation of the Review Team and the Management Board will be presented to the IRL Council which shall take the final action. The IRL Council reserves the right to request clarification of any applicant and refuse any or all proposals. All respondents will be notified of selection of the contractor under this RFP.

Proposals may be submitted by any public or private university, state or federal agency, private or public consulting organization or any combination of the above as allowed under existing state or federal law and regulations. Proposals will be evaluated for the total period of performance based on the enclosed evaluation criteria. The IRL Council may negotiate content, cost, and timeframe on selected proposals.

Project Objectives and Description, Scope of Work, Work Schedule, and Work Products Required for the project are included in this RFP following the instructions.

The Council reserves the right to accept or reject any or all Proposals, in whole or in part, with or without cause, to waive any irregularities and/or technicalities, and to award the contract on such coverage and terms it deems will best serve the interests of the Council.

A sample contract agreement is appended to this RFP. While the IRL Council intends to use the sample contract as a basis for the ultimate agreement entered into with the selected proposer, the IRL Council reserves the right to add, delete or amend terms contained in the sample agreement.

PUBLIC ENTITY CRIMES

As provided in the IRL Council Operating Procedures Manual, a person or affiliate who has been placed on the convicted Proposers list following a conviction for a public entity crime may not submit a Proposal on a contract to provide any goods or services to a public entity; may not submit a Proposal on a contract with a public entity for the construction or repair of a public building or public work; may not submit Proposals on leases of real property to a public entity;

may not be successful or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity.

NON-LOBBYING

Pursuant to section 216.347, Fla. Stat., as amended, funds received from the Council under this Agreement shall not be used for the purpose of lobbying the Legislature or any other state agency.

RIGHT TO PROTEST

Any actual Proposer aggrieved in connection with the solicitation or award of a contract may file a written protest in accordance with the procedures outlined in the IRL Operating Procedures Manual.

I. DOCUMENT FORMAT OF PROPOSALS

In order to be considered for this request, submitted proposals must meet the following document format specifications. The IRL Council reserves the right to refuse any proposal that does not meet the specifications outlined herein.

Total proposal length, including all supplemental material, should not exceed 50 single-sided, 8½” x 11” pages (preferably submitted as 25 double-sided pages). At a minimum, an 11-pt typeface, 1” margins, and 1.0-line spacing should be used throughout the body of the text.

Appropriate subsections should follow the structure below.

II. INFORMATION TO BE INCLUDED IN EACH PROPOSAL

In order to simplify the review process and obtain the maximum degree of comparison, the IRL Council requires that each proposal be organized according to the following format:

A. Project Summary

Complete a Project Summary sheet, including project name, address, email and telephone number of respondent; project manager and brief statement of qualifications; project objectives; and summary of the proposed scope of work. The Project Summary should not exceed three pages.

B. Title Page

Include the RFP title, the name of the respondent, local address, telephone number, name and email addresses of the contact persons, and the date.

C. Table of Contents

Include a clear identification of the material by section and by page number.

D. Letter of Transmittal

1. State the names and titles of persons who will be authorized to make representations for the respondent.
2. State the name of the person who will be authorized to bind the respondent.

E. Understanding and Approach

1. State your understanding of the technical support, data management, and web-based objectives needed to accomplish the services provided under this RFP announcement.

State your familiarity and ability to conduct analyses, administer processes,

and develop products through the IRL Council and its Committees (e.g. Management Board, STEM AC, CAC, task forces, etc.)

2. Clearly state the approach or approaches that will be used to accomplish the tasks in the RFP, particularly those approaches that involve the dissemination of products through web-based technologies.

F. Respondent Qualifications

1. State the location of the office(s) from which the work is to be performed and the number of partners, technical and other professional staff employed at the office.
2. List and describe experience pertinent to this project.
3. Provide names, addresses, email addresses and telephone numbers of client references for three completed or ongoing projects. Provide a summary description of work conducted, key objectives, and outcomes for the three projects submitted. More detailed information on previous projects can be submitted as an appendix.
4. Provide the names of the persons that will be assigned to this project along with a concise statement of qualifications and experience. Identify in the proposed approach how each person will be involved in the project. Resumes should be included as an appendix.
5. State the relevant staff training employed by the firm and name the various professional organizations for which membership is maintained.
6. Submit an Affirmative Action Plan, if available or required by state or federal government, which includes current employment statistics showing total number of employees and minorities employed by the respondent, and plans, if any, that respondent has which increase minority employment. Indicate if the respondent is a minority business enterprise, a women's business enterprise, or controlled by socially and economically disadvantaged individuals.
7. Include a statement that the respondent will hold the IRL Council harmless from any claims resulting from injury or damages incurred by volunteers participating in the program.

G. Quality Control and Conflict of Interest

1. Describe the quality control procedures utilized by the contractor in its performance of high quality work. State whether the respondent has been involved in a government contract that ended in termination, in litigation due to substandard quality, untimely submittal of deliveries or for other reasons that should be disclosed.
2. State whether the contractor has or anticipates a conflict of interest if the project is awarded.

H. Time Schedule and Effort Proposal

1. Provide a schedule of start-up and completion of each proposed task and subtask, project milestones, and deliverables.
2. Provide staff-hour estimates (separated into staff categories) by task and summarized for the entire project.
3. Provide cost estimates by staff categories and by task and summarized for the entire project.

I. Listing of Deviations

1. Provide a list of all deviations from the RFP.
2. Statement that if deviations are included but not listed, they will be waived.

J. Additional Data

Any additional data considered essential to the proposal should be included in this section.

III. SELECTION CRITERIA

The Review Team will review and evaluate all proposals submitted in response to this RFP, and the Team's findings and recommendations, including final rankings, will be presented to the Indian River Lagoon National Estuary Program Management Board by the Executive Director or his designee. The Management Board will consider the findings, recommendation and final rankings of the Review Team in making its recommendation to the IRL Council, which shall take the final action.

All meetings of the Review Team and discussions between two or more members of the Review Team during which proposals are reviewed or evaluated shall be noticed, open to the public and otherwise comply with Florida's Sunshine Law.

Members of the Review Team will have demonstrated that they have no existing or

anticipated conflict of interest in the project which they are evaluating.

The Review Team shall use the following five criteria to score proposal responses:

1. **Project Team Qualifications (15 pts total)**
 - Relevant experience, education, and training (10)
 - Organization and clarity of proposal (5)
2. **Project Approaches (30 pts total)**
 - Understanding of technical support, data management, and web-based objectives needed to accomplish the services listed under this RFP (10)
 - Familiarity and ability to conduct analyses, administer processes, and develop products through the IRL Council and its Committees (10)
 - Detailed description and justification of potential methods and analyses that use innovative, cost-effective approaches to accomplish scope of work objectives (10)
3. **Level of effort and cost by task (30 pts total)**
 - Detailed distribution of costs and level of effort (i.e., personnel and hours anticipated) between tasks outlined in RFP (20)
 - Detailed description on work flow, timeline and coordination of tasks and deliverables outlined in the RFP (10)
4. **Performance Considerations (15 pts total)**
 - Performance on similar projects (IRLNPEP and others) completed or underway, as provided in the project references (10)
 - Current workloads and availability of key project personnel (5)
5. **Management Approach (5 pts total)**
 - Merit of proposed project management system (5)

To provide consistency, IRL Council staff will assign scores for the following criteria, if the lead/prime contractor qualifies:

6. **Previous work awarded (5 pts)**

If contractor has been awarded two (2) or more IRLNEP projects as a prime contractor within the last 12 months or if contractor has been awarded IRLNEP project(s) totaling \$50,000 or more within the last 24 months as a prime contractor, the contractor will receive 0 points. Those who have not will receive 5 pts.

IV. REVIEW TEAM SCORING AND RANKING OF PROPOSALS

The Review Team shall meet for the purpose of discussing, scoring, and ranking proposals. Members may prepare a preliminary scoring of proposals prior to the meeting of the Team. Prior to the Review Team review meeting, IRL Council staff

will contact references listed in proposals for information concerning performance history from non-IRLNEP projects, and provide this information at the Review Team meeting. Team members may adjust scores and ranks based on discussions during the Review Team meeting prior to finalization of scores and ranks.

The evaluation process shall be conducted as follows:

Each Team member will add up their preliminary scores for Criteria 1 through 5 and IRL Council staff-provided scores for Criteria 6 for each respondent, and develop a preliminary ranking of respondents based on and reflective of their individual preliminary total scores (1 being the highest-ranked respondent).

Following discussion of each respondent and their preliminary scores/ranks, Review Team members shall make any adjustments to their preliminary scores that they determine are necessary and warranted and shall then develop final rankings reflective of their adjusted/final scores. The Team may perform as many preliminary scorings and rankings as the Team deems necessary to develop final scores and rankings. However, each member's ranking shall be based on and consistent with her/his scores in preliminary as well as final rankings.

The Executive Director (or his designee) shall insure that final rankings are reflective of final scores for each Team member. In the event of a tied score between two or more respondents, the Team member will assign a rank to the tied respondents by averaging the ranks. For example, if Respondents A and B are tied for second-highest rank (i.e., ranks 2 and 3), each would receive a rank of 2.5 from the Review Team member. In this example, the next-highest ranked respondent would receive a rank of 4. Team members can request oral presentations from one or more respondents prior to final ranking, if needed to provide a final score and ranked list. For purposes of scoring, the respondent receiving the highest score is the top respondent. For purposes of ranking, the respondent with the lowest sum total of rankings is the top respondent.

The Team's findings and recommendations shall be presented to the Management Board by the Executive Director, or his designee, and shall include final rankings, and whatever additional information the Team or its members feel would be useful for the Management and Board of Directors to consider. Only scores and rankings of Team members participating in the Review Team meeting shall be considered in the evaluation process.

APPENDIX

PROJECT SUMMARY TEMPLATE
(to be included with the proposal)

PROJECT SUMMARY
(3-page maximum)

Project Name:

Name, Address, and Telephone Number of Respondent:

Principal Investigator(s) and Brief Statement of Qualifications:

Project Objective:

Summary of Proposed Scope of Work:
**INDIAN RIVER LAGOON NATIONAL ESTUARY
PROGRAM COMPREHENSIVE CONSERVATION AND
MANAGEMENT PLAN TECHNICAL SUPPORT & DATA
MANAGEMENT SERVICES**

I. PROJECT DESCRIPTION AND OBJECTIVES

The IRL Council, host of the Indian River Lagoon National Estuary Program is seeking a broad range of technical support services to assist with the revision and implementation of the Indian River Lagoon Comprehensive Conservation and Management Plan (CCMP; http://www.irlcouncil.com/uploads/7/9/2/7/79276172/ccmp_update_2008_final.pdf). A summary of the scope of services anticipated under this request includes, but is not limited to, the following Tasks:

II. SCOPE OF WORK

Task 1. IRL RESTORATION PROJECT DATABASE: Develop a database of Indian River Lagoon restoration projects underway and proposed projects (with no or partial funding) within 6 broad categories of IRL CCMP interest: 1. Stormwater projects; 2. Groundwater projects (including septic conversions and other groundwater remediation projects); 3. Muck removal projects; 4. Habitat restoration projects (including living shorelines, wetlands, seagrasses, filter feeders and filter marshes); and 5. Education and outreach projects; and 6. Monitoring and research projects. At a minimum, these data will be assembled from the following IRLNEP stakeholders: Volusia, Brevard, Indian River, St. Lucie and Martin Counties; 45 cities within the IRLNEP project boundary; SJRWMD, SFWMD and FDEP.

Task 1 Deliverables: Database of IRL restoration projects underway and proposed projects with project name, project description including benefits to IRL, project partners, project location (latitude/longitude), size of project and estimated project cost (if available).

Task 2. PROVIDE SYNTHESIS OF ESSENTIAL IRL DATA FOR IRL NEP CCMP REVISION. Data synthesis to focus on nutrient load quantification and reduction from all sources.

Task 3 Deliverables: Data synthesis and GIS map development to graphically present projects underway. **Additional deliverables will be determined based on findings from workshop discussions and negotiation of Task 2 Scope of Work.**

Task 3. IRLNEP ADVISORY COMMITTEES SUPPORT: Assist the IRLNEP with CCMP revision meeting facilitation with support for a minimum of 6 meetings during a 6-month contract. Support services include Advisory Committees and Management Board workshop meetings facilitation for CCMP revisions, meeting notes and preparation of post-meeting reports.

Task 2 Deliverables: Meeting facilitation with support for a minimum of 6 meetings during a 6-month contract, and post-meeting reports.

All references listed in this Request for Proposals are available from the IRLNEP website (<http://www.irlcouncil.com/>).

III. WORK SCHEDULE

The proposal schedule and duration of the project are as follows:

- IRL Council issues RFP – January 19, 2017
- Written questions on RFPs due – March 1, 2017
- Final proposals due to IRL Council – March 10, 2017
- Review Team Evaluation – March 23, 2017 (Sebastian Offices)
- Respondent presentation(s) (if requested) – March 23, 2017
- Contractor selection – April 14, 2017
- Project start-date – on or after April 14, 2017

The duration of the IRLNEP CCMP Technical Support Contract is six (6) months. The contract may be renewed without bid for two additional one (1) year cycles (pending need, annual approval and additional budget for continuation by the IRL Council with support from the IRLNEP Management Board).

Total cost for FY 2016-2017 is estimated to be \$45,000. Total costs for each additional extension year to the initial contract are expected to be determined (pending need, annual approval and budget recommendations by the IRL Council).

IV. WORK PRODUCTS REQUIRED

A. Status Reports

The Contractor shall provide a status report describing all work planned and in progress on a periodic basis which will be coordinated with invoice submittal. This report will provide information on current work progress, status of assigned tasks, and costs. The report will be used by IRL Council staff to evaluate and guide progress and to monitor contract costs.

IRL Council strongly encourages the Contractor to use appropriate project management software and to submit routine status reports and invoices. The status report will include but is not limited to the following items:

1. Description of activities by task during the reporting period, including problem identification and recommendations for problem resolution;
2. In spreadsheet or chart form, the following information for each task and a project cost summary:

Hours expended by staff category
Hourly rate by staff category
Total salary cost by staff category
Other costs expended (materials, travel, supplies)
Total cost for this period
Total actual cumulative cost
Percent of cost expended to date
Percent of work accomplished to date;

The Contractor's financial system must be able to demonstrate accounting, budgetary and internal control, cash management, reporting capabilities, cost allowability, and source documentation. The financial reporting system must be able to trace funds to a level of expenditures that is sufficient to show that the funds have been spent in compliance with applicable laws and regulations.

3. Trips, technical visits, and their results;
4. Status of all items assigned to the Contractor for action;
5. Contract schedule status inclusive of percent of work;
6. Plans for activities during the next reporting period.

B. Deliverables

The contractor shall be responsible for delivery of draft and final products as designated in the finalized Scopes of Work for Tasks outlined above.

All deliverables will be the property of the IRL Council and are considered a public record. The Consultant must receive written permission from the IRL Council prior to releasing data to any party.

SAMPLE AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into by and between the IRL COUNCIL (“the Council”), whose address is 1235 Main Street, Sebastian, Florida 32958, and (Recipient), whose address is (address) (“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 funding to Recipient for the purposes provided for herein will benefit the management of the water resources of the Indian River Lagoon.

The Council has agreed to fund the following project to benefit the water resources in accordance with the funding formula further described in the Statement of Work, Attachment A (hereafter “the Project”):

[Enter Project description here](#)

In consideration of the above recitals, and the funding assistance described below, Recipient agrees to perform and complete the activities provided for in the Statement of Work, Attachment A. Recipient shall complete the Project in conformity with the contract documents and all attachments and other items incorporated by reference herein. This Agreement consists of all of the following documents: (1) Agreement, (2) Attachment A- Statement of Work; and (3) all attachments, if any. The parties hereby agree to the following terms and conditions.

1. TERM; WITHDRAWAL OF OFFER

- (a) The term of this Agreement is from the date upon which the last party has dated and executed the same (“Effective Date”) until XXXXXXXX (“Completion Date”). Recipient shall not commence the Project until any required submittals are received and approved. Recipient shall commence performance within fifteen (15) days after the Effective Date and shall complete performance in accordance with the time for completion stated in the Statement of Work. Time is of the essence for every aspect of this Agreement, including any time extensions. Notwithstanding specific mention that certain provisions survive termination or expiration of this Agreement, all provisions of this Agreement that by their nature extend beyond the Completion Date survive termination or expiration hereof.
- (b) This Agreement constitutes an offer until authorized, signed and returned to the Council by Recipient. This offer terminates sixty (60) days after receipt by Recipient.

- (c) This Agreement may be renewed for two (2) additional twelve (12) month terms by the mutual and written consent of each party.
- 2. **DELIVERABLES.** Recipient shall fully implement the Project, as described in the Statement of Work, Attachment A. Recipient 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, Recipient shall provide and pay for all materials, labor, and other facilities and equipment necessary to complete the Project. The Council'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 Council will provide Recipient a written statement indicating that the Project has been completed in accordance with this Agreement. 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.**
 - (a) For satisfactory completion of the Project, the Council shall pay Recipient \$XXXXXXX. The amount of funding is not subject to modification based upon price escalation in implementing the Project 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**
 - (a) Within 30 days after the closing date of each calendar quarter (March 31, June 30, September 30 and December 31), Recipient shall submit an itemized invoice for the reimbursable expenses incurred during the previous quarter 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 sakuma@irlcouncil.org . The invoice shall be submitted in detail sufficient for proper pre-audit and post-audit review. It shall include a copy of contractor and supplier invoices to Recipient and proof of payment. For all approved expenses, the Council shall reimburse Recipient the total approved expenses until the not-to-exceed amount of XXXXXXXX has been expended. The Council shall not withhold any retainage from this reimbursement. Council reimbursement is subject to annual budgetary limitation, if applicable, as provided in subsection (g). If necessary for audit purposes, Recipient shall provide additional supporting information as required to document invoices.
 - (b) **End of Council Fiscal Year Reporting.** The Council's fiscal year ends on September 30. Irrespective of the invoicing frequency, the Council is required to account for all encumbered funds at that time. When authorized under the Agreement, submittal of an invoice as of September 30 satisfies this requirement. The invoice shall be submitted no later than October 30. If the Agreement does not authorize submittal of an invoice as of September 30, Recipient shall submit, prior to October 30, a description of the additional Project work completed between the last invoice and September 30, and an estimate of the additional amount due as of September 30 for such work. If there have been no prior invoices, Recipient shall submit a description

of the work completed on the Project through September 30 and a statement estimating the dollar value of that work as of September 30.

- (c) **Final Invoice.** The final invoice must be submitted no later than 45 days after the Completion Date; provided, however, that when the Completion Date corresponds with the end of the Council's fiscal year (September 30), the final invoice must be submitted no later than 30 days after the Completion Date. **Final invoices that are submitted after the requisite date shall be subject to a penalty of 10 percent of the invoice. This penalty may be waived by the Council, in its sole judgment and discretion, upon a showing of special circumstances that prevent the timely submittal of the final invoice. Recipient 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.**
 - (d) All invoices shall include the following information: (1) Council contract number; (2) Council encumbrance number; (3) Recipient's name and address (include remit address, if necessary); (4) Recipient's invoice number and date of invoice; (5) Council Project Manager; (6) Recipient's Project Manager; (7) supporting documentation as to cost and/or Project completion (as per the cost schedule and other requirements of the Statement of Work; (8) Progress Report (if required); (9) Diversity Report (if otherwise required herein). Invoices that do not correspond with this paragraph shall be returned without action within twenty (20) business days of receipt, stating the basis for rejection. Payments shall be made within forty-five (45) days of receipt of an approved invoice.
 - (e) **Travel expenses.** If the cost schedule for this Agreement includes a line item for travel expenses, travel expenses shall be drawn from the project budget and are not otherwise compensable.
 - (f) **Payments withheld.** The Council 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 Council from loss as a result of: (1) defective work not remedied; (2) failure to maintain adequate progress in the Project; (3) any other material breach of this Agreement. Amounts withheld shall not be considered due and shall not be paid until the ground(s) for withholding payment have been remedied.
 - (g) **Annual budgetary limitation.** For multi-year agreements, it is necessary for the Council to budget as accurately as possible the amount of funds that will be expended by the Council during each fiscal year. The Statement of Work, Attachment A, includes the parties' current projection of the Council's funding amount on a fiscal year basis (October 1 – September 30). If Recipient's reimbursable costs exceed the budgeted amount during any fiscal year, the excess reimbursable costs shall be paid at the start of the next fiscal year. Recipient shall promptly notify the Council when it appears that Recipient's reimbursable costs will exceed the budgeted amount during any fiscal year and provide the Council with a revised funding plan. If the Council's annual budget permits, the Council may, in its sole discretion, prepare a Council Supplemental Instruction Form incorporating the revised funding plan and authorizing additional reimbursement during the current fiscal year.
6. **INDEMNITY.** Recipient shall indemnify and hold harmless, release, and forever discharge the Council, its public officers, employees, agents, representatives, successors, and assigns, from any

and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, arising from or caused by the Recipient, its employees or sub-contractors, in the performance of the Work. 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 contract.

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 at all times contingent upon funding availability, which may include a single source or multiple sources, including, but not limited to: (1) the United States Environmental Protection Agency; (2) annual appropriations by the Florida Legislature, or (3) appropriations from other agencies or funding sources. Agreements that extend for a period of more than one Fiscal Year are subject to annual appropriation of funds in the sole discretion and judgment of the Council's Board of Directors 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 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. For the purpose of this Agreement, "Fiscal Year" is defined as the period beginning on October 1 and ending on September 30.

9. **PROJECT MANAGEMENT**

- (a) 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; (4) e-mail or, (5) fax. 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 or fax are deemed delivered on the date transmitted and received.

COUNCIL
XXXXXXX, Project Manager
IRL Council
1235 Main Street
Sebastian, Florida 32858
(772) 742-2858 ext.
E-mail: XXXX@irlcouncil.org

RECIPIENT
(name)
(entity)
(street address)
(city, state, zip)
(phone)
E-mail:

- (b) The Council's Project Manager shall have sole responsibility for transmitting instructions, receiving information, and communicating Council policies and decisions regarding all matters pertinent to performance of the Project. The Council's

Project Manager may issue a Council Supplemental Instruction (CSI) form, Attachment C, to authorize minor changes in the Project that the parties agree are not inconsistent with the purpose of the Project, do not affect the Council funding amount or Completion Date, or otherwise significantly modify the terms of the Agreement.

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. Reports will provide detail on progress of the Project and outline any potential issues affecting completion or the overall schedule. Reports may be submitted in any form agreed to by Council's Project Manager and Recipient, and may include emails, memos, and letters.
- (b) **Performance Monitoring.** For as long as the Project is operational, 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. **FAILURE TO COMPLETE PROJECT.**

- (a) Should Recipient fail to complete the Project, Recipient shall refund to the Council all of the funds provided to Recipient pursuant to this Agreement. However, the Council, in its sole judgment and discretion, may determine that Recipient has failed to complete the Project due to circumstances that are beyond Recipient's control, or due to a good faith determination that the Project is no longer environmentally or economically feasible. In such event, the Council may excuse Recipient from the obligation to return funds provided hereunder. If the Project has not been completed within 30 days after the Completion Date, Recipient shall provide the Council 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 Completion Date or the scope of the Project. Failure to complete the Project within 90 days after the Completion Date shall be deemed to constitute failure to complete the Project for the purposes of this provision.
- (b) In the event the Project constitutes a portion of the total functional project, this paragraph shall apply in the event the total functional project is not completed. In such event, the 90-day timeframe provided herein shall commence upon the date scheduled for completion of the total functional project at the time of execution of this Agreement, unless extended by mutual agreement of the parties.
- (c) This paragraph shall survive the termination or expiration of this Agreement.

12. **TERMINATION**

- (a) **Termination for Default.** 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 by forwarding a Notice to Cure, citing the specific nature of the breach. Recipient shall have thirty (30) days to cure the breach. If Recipient fails to cure the breach within the thirty (30) day period, the Council shall issue a Termination for Default Notice 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. The Council may also terminate this Agreement upon ten (10) days written notice in the event any of material misrepresentations in the Project Proposal.

- (b) **Termination for Convenience.** The Council may terminate this Agreement at any time for convenience upon thirty (30) calendar days prior written notice to Recipient. Upon receipt of notice, Recipient shall place no further orders for materials, equipment, services, or facilities, for which reimbursement would otherwise be sought. Recipient shall also make every reasonable effort to cancel, upon terms satisfactory to the Council, all orders or subcontracts related to the Project for which reimbursement would otherwise be sought. In the event of such termination, Recipient shall be compensated for all work performed pursuant to this Agreement prior to the effective date of termination.

ADDITIONAL PROVISIONS (Alphabetical)

- 13. **ASSIGNMENT.** Recipient shall not assign this Agreement, or any monies due hereunder, without the Council's prior written consent. Recipient is solely responsible for fulfilling all work elements in any contracts awarded by Recipient and payment of all monies due. No provision of this Agreement shall create a contractual relationship between the Council and any of Recipient's contractors or subcontractors.
- 14. **AUDIT; ACCESS TO RECORDS; REPAYMENT OF FUNDS.**
 - (a) **Maintenance of Records.** Recipient shall maintain its books and records for the purpose of audit in accordance with the requirements of Attachment D, National Estuary Grant Program Requirements.
 - (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. **DISPUTE RESOLUTION.** Recipient is under a duty to seek clarification and resolution of any issue, discrepancy, or dispute involving performance of this Agreement by submitting a written statement to the Council's Project Manager no later than ten (10) business days after the precipitating event. If not resolved by the Project Manager, the Project Manager shall forward the request to the Council's General Counsel, which shall issue a written decision within ten (10) business days of receipt. This determination shall constitute final action of the Council and shall then be subject to judicial review upon completion of the Project.
- 17. **DIVERSITY REPORTING.** 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. The Council will assist Recipient by

sharing information on W/MBEs. Recipient shall provide with each invoice a report describing: (1) the company names for all W/MBEs; (2) the type of minority, and (3) the amounts spent with each during the invoicing period. The report will also denote if there were no W/MBE expenditures.

18. **FEDERAL FUNDING REQUIREMENTS.** This Agreement is funded, in whole or in part, with funds received by the Council from the United States Environmental Protection Agency under the National Estuary Program for the Indian River Lagoon (CFDA No. 66.456), under the authority of section 320 of the Clean Water Act, 33 U.S.C. § 1251, et seq., and 40 C.F.R. Part 31 and 40 C.F.R. Part 35, Subpart P. The amount of federal funds provided under this Agreement is \$XXXXXX Recipient, as a sub-grantee of these federal funds, must comply with the provisions of Attachment D.
19. **GOVERNING LAW, VENUE, ATTORNEY'S FEES, WAIVER OF RIGHT TO JURY TRIAL.** This Agreement shall be construed according to the laws of Florida and shall not be construed more strictly against one party than against the other because it may have been drafted by one of the parties. As used herein, "shall" is always mandatory. In the event of any legal proceedings arising from or related to this Agreement: (1) venue for any state or federal legal proceedings shall be in 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.
20. **INDEPENDENT ENTITIES.** The parties to this Agreement, their employees and agents, are independent entities and not employees or agents of each other. Nothing in this Agreement shall be interpreted to establish any relationship other than that of independent entities during and after the term of this Agreement. Recipient is not a contractor of the Council. The Council is providing funding 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 and tax laws pertaining to Recipient, its officers, agents, and employees.
21. **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.
22. **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.
23. **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 approved for funding.
24. **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 s. 287.017 for CATEGORY TWO (\$35,000) for a period of 36 months following the date of being placed on the convicted vendor list.

25. **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) 742-2858, SAKUMA@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.

26. **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.

IN WITNESS WHEREOF, the IRL Council has caused this Agreement to be executed on the day and year written below in its name by its Executive Director, and Recipient has caused this Agreement to be executed on the day and year written below in its name by its duly authorized representatives, and, if appropriate, has caused the seal of the corporation to be attached. This Agreement may be executed in separate counterparts, which shall not affect its validity. Upon execution, this Agreement constitutes the entire agreement of the parties, notwithstanding any stipulations, representations, agreements, or promises, oral or otherwise, not printed or inserted herein. This Agreement cannot be changed by any means other than written amendments referencing this Agreement and signed by all parties.

IRL COUNCIL

RECIPIENT

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

By: _____

Date: _____

Typed Name and Title
Date: _____

APPROVED BY THE IRL
GENERAL COUNSEL

Attest: _____

Carolyn S. Ansay, General Counsel

Typed Name and Title

ATTACHMENTS

- Attachment A – Statement of Work
- Attachment B – Insurance requirements
- Attachment C – Council Supplemental Instructions Form

Non-profit corporation
Last updated: 1/31/2017

ATTACHMENT A – STATEMENT OF WORK

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.

ATTACHMENT C — COUNCIL’S SUPPLEMENTAL INSTRUCTIONS (sample)
COUNCIL SUPPLEMENTAL INSTRUCTIONS #

DATE:

TO:

FROM: _____, Project Manager

CONTRACT/PURCHASE ORDER NUMBER:

CONTRACT 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: _____
_____, Council Project Manager

cc: Contract file

ATTACHMENT D
NATIONAL ESTUARY PROGRAM GRANT REQUIREMENTS
(see following pages)