



IRL Council

Guidelines for FY 2017-2018 Indian River Lagoon National Estuary Program

REQUEST FOR PROPOSALS CATEGORY 2: RESILIENT COASTAL COMMUNITIES PLANNING PROJECT

PROPOSAL SUBMISSION DEADLINE: Proposals are due by 5:00 p.m., May 19, 2017.

Proposals received after this deadline will be considered non-responsive and returned to the applicant.

ESTIMATED FUNDING SOURCES: Project funding from the IRL Council, an independent special district of Florida, is subject to annual funding from IRL Council members, local stakeholder contributions, Congressional appropriation to EPA under Section 320 of the Clean Water Act for the National Estuary Program and projected revenues from the sale of Indian River Lagoon license plates. Annually, strategic decisions related to the Indian River Lagoon National Estuary Program (IRLNEP) work plan funding will be determined by the IRLNEP Management Conference with final decision for project priorities and budget allocations by the IRL Council Board of Directors (Board).

IRLNEP FUNDING OPPORTUNITY CATEGORIES (FY 2017-2018):

In preparation for FY 2017-2018, five (5) competitive Request for Proposals (RFPs), and one (1) Request for Qualifications (RFQ) may be issued by the IRL Council during the April-May 2017 timeframe:

1. IRL Restoration Projects funded by IRL Council Local Contributions (\$860,000). Multiple awards anticipated. **RFP**
2. IRL Resilient Coastal Communities Planning project funded by EPA Section 320 funds

- (\$25,000). One award anticipated. **RFP**
3. IRL Science and Innovative Technology Projects funded by EPA Section 320 funds (\$300,000). Multiple awards anticipated. **RFP**
 4. IRL Citizen Engagement and Education funded by EPA Section 320 funds (\$100,000) Multiple awards anticipated. **RFP**
 5. IRL Small Grants Program. Projects will be funded by IRL Council Local Contributions for Martin and St. Lucie Counties (up to \$50,000) and IRL Specialty License plate revenues for Volusia, Brevard, and Indian River Counties pursuant to a Revenue Transfer Agreement with the St. Johns River Water Management District (estimated at \$25,000 Volusia, \$50,000 Brevard and \$25,000 Indian River Counties based on county-specific sales). Multiple awards between \$2,500 minimum and \$10,000 maximum anticipated. **RFP**
 6. IRL Grant Support and Capacity Building (\$80,000). One award anticipated; IRL COUNCIL reserves option to make multiple awards. **RFQ**

If combined funds or funding within individual RFP categories are insufficient to fully fund the recommended projects, proposal funding requests may be reduced. Furthermore, the IRL Council is under no obligation to expend all funds within a category. Proposal award recommendations will be based on rank order determined by the proposal review committee, subject to the availability of funds (i.e., a lower ranked project might be substituted for a higher ranked one if sufficient funding is available for the lower-ranked project and not the higher-ranked project). The IRL Council has final authority to make funding awards and request staff to initiate scope of work and contract negotiations with award recipients.

ANTICIPATED FUNDING FOR THIS RFP: Approximately **\$25,000** in IRL Council funding will be available for FY 2017-2018 IRL Resilient Coastal Communities Planning Project for this RFP category. These funds have been secured from US EPA Section 320.

IRL COUNCIL CONDITIONS FOR FUNDING: Proposals will be considered for funding only if:

- The proposal is complete and submitted per the instructions herein.
- The proposal is received by the IRL Council office on or before the deadline for submission.
- The proposal is accompanied by a cover letter from the organization director or a person authorized to submit a proposal on behalf of the organization, company or individual.

Incomplete applications will be considered non-responsive and returned to the applicant.

IRL COUNCIL FUNDING CONTINGENCIES AND RESTRICTIONS:

Funding of proposals selected under this Request for Proposals (RFP) is contingent upon availability of funds. There is no guarantee that sufficient funds will be available to make awards for all qualified projects. Proposal award recommendations will be based on rank order, subject to the availability of funds (i.e., a lower ranked project may be substituted for a higher ranked one, if sufficient funding is available for the lower-ranked project to be funded in whole and not the higher-ranked project). The exact amount of funds awarded will be determined in pre-award negotiations between the applicant and the IRL Council.

IRL Council staff will notify applicants in advance of any individual or across-the-board

proposal funding reductions and provide an opportunity to consider the effect the reduction will have on their project and to meet with IRL Council staff to discuss their project.

IRL Council project funding will be available October 1, 2017. Applicants selected for inclusion in the FY 2017-2018 Work Plan will negotiate a detailed scope of work and enter into a contract with the IRL Council. All contract awardees will be required to comply with all of the IRL Council's contract provisions, including relevant insurance requirements.

All projects funded by IRL COUNCIL have spatial boundary restrictions:

- Funds may be used for projects within the formal IRLNEP watershed boundary (Ponce de Leon Inlet, Volusia County to Jupiter Inlet, Palm Beach County), and the IRL-Halifax Buffer Planning Boundary (from Ponce de Leon Inlet, north 25 miles to High Bridge Road, Volusia County). Maps of the IRLNEP watershed and IRL-Halifax Buffer Planning Boundary may be found at www.irlcouncil.org.

COST SHARING:

Applicants are encouraged to match requested funds at the highest possible level. Projects with higher cost share ratios will receive higher scores within the applicable rating criteria.

Both cash and in-kind contributions are acceptable for match calculations. Applicants will be required to provide a declarative statement detailing the source of matching funds and when the matching funds will be secured for the project. Applicants using in-kind match will be required to describe in detail the method for documenting in-kind matching contributions and volunteer time.

IRL COUNCIL STRATEGIC PRIORITIES: For FY 2017-2018, the IRLNEP Management Conference will focus on an IRL coastal vulnerability assessment:

- This project will conduct a lagoon-wide, risk-based vulnerability assessment and incorporate climate change and sea level rise considerations for 2018 CCMP revisions.
- **Project Objectives:** Objective 1: Conduct a lagoon-wide, risk-based vulnerability assessment with full participation of the IRLNEP newly reorganized Management Conference; Objective 2. Develop a IRLNEP Summary Report of the findings and process.
- **Project Description:** Applicant will use the EPA "Being Prepared for Climate Change" Workbook to guide the process to conduct a lagoon-wide, risk-based vulnerability assessment and adopt risk-based adaptation planning into the CCMP revision process. The vulnerability assessment will follow steps 1 – 5 of the Workbook. (online at www.itsyourlagoon.com)

Applicants MUST identify:

- Specific 2008 CCMP action plans addressed by project.
- Outputs (deliverables) and expected outcomes with timeline expectation for outcomes (Short-term: 1-3 years; Mid-term: 3-5 years; and/or Long term: 5 years and beyond). IRLNEP strongly encourages applicants to review the National Estuary

Program Evaluation Logic Model and standardized performance measures for program management core elements. (posted online as a PDF with the RFP announcement)

Proposals that fail to identify outputs and outcomes in the proposal will be classified as non-responsive.

PROPOSAL SUBMISSION REQUIREMENTS

APPLICATION:

All applications for project funding are to be submitted electronically no earlier than 8:00 a.m., May 15, 2017 and no later than 5:00 p.m., May 19, 2017, via electronic mail to Frank Sakuma, IRL Council COO (sakuma@irlcouncil.org). Applications will not be accepted via U.S. Postal Service. Applications received outside of the above time frame will be considered non-responsive and returned to the applicant.

PROPOSAL FORMAT:

Proposals are required to be submitted in Portable Document Format (PDF) only. To be considered for funding, proposals must include all information requested on the Project Proposal Application form (Attached). During the review and evaluation process, applicants may be asked to provide additional details of the work and associated financial information.

Proposals are limited to a maximum of six pages including attachments and must include a draft statement of work and letter from the submitting entity's executive or person in a similar position endorsing the project application, funding request, and confirming the matching funds commitment. The draft statement of work and letter are not considered part of the proposal application and will not count as part of the six-page limit.

Questions regarding this RFP, the submission process or required documents must be submitted in writing to Frank Sakuma, sakuma@irlcouncil.org. Answers will be provided in writing to the submitter. Questions and answers will be posted to the RFP section of the IRL Council website. Because members of the IRLNEP Management Conference will participate in the review of proposals, Applicants should have no contact with IRLNEP Management Conference Members.

RATING CRITERIA:

See the spreadsheet included in the attachments titled "Rating Criteria". This spreadsheet is provided for informational purposes only and is not considered as part of the proposal package. The decision to award by the IRL Council Board of Directors will be based upon the scores developed by the IRLNEP Management Conference proposal review committee, further review and funding recommendations of the IRLNEP Management Conference, and with considerations of geographic location and the ecosystem value of the project.

Applicants may be required to provide an oral presentation on their project proposal(s) to members of the IRL Council Management Conference during May/June 2017. Oral presentations will be conducted at the Sebastian City Hall Complex, Main Street, Sebastian, FL 32958. Applicants will be notified of their assigned presentation time and date on or after May 19, 2017, via electronic mail. Oral presentations will be made during publicly noticed meeting(s), and open to the public.

The IRLNEP Management Conference project scores and rankings will be reviewed and considered by the IRL Council Board of Directors (Board) at a publicly noticed meeting. The Board will make all final determinations to award on or after the June 9, 2017 IRL Council meeting.

WORK PLAN DEVELOPMENT AND AWARD TIME FRAME:

The IRL Council will prepare and post a Notice of Intended Decision regarding proposal awards on the IRL Council website (itsyourlagoon.com). Applicants are responsible to monitor the website for addenda and notices regarding the Request for Proposals.

Once awards are authorized by the Board, IRL Council staff will enter negotiations and begin working with the successful applicants in finalizing the award amounts and Statements of Work. The goal is to have all Statements of Work completed and agreements executed on or before October 1, 2017. Funds administered through this program are typically provided as a single reimbursement after project completion.

SAMPLE AGREEMENT

A sample agreement is included in this RFP. While the IRL Council intends to use the sample agreement 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 Council Operating Procedures Manual.

RIGHT TO ACCEPT OR REJECT

The IRL 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 contracts on such coverage and terms it deems will best serve the interests of the Board.

**INDIAN RIVER LAGOON NATIONAL ESTUARY PROGRAM
FY 2017-2018 Work Plan
REQUEST FOR PROPOSAL APPLICATION**

Use this format to submit your application.

All items and questions must be addressed to receive funding consideration.

SUBMIT VIA EMAIL in PDF FORMAT TO:

Frank Sakuma, Chief Operating Officer, IRL Council, sakuma@irlcouncil.org BEGINNING 8:00
A.M., May 15, 2017 UNTIL 5:00 P.M. May 19, 2017

Executive Summary (Not Part of 6-page limit)

Provide a one-page, single sided summary that includes:

Project Title

Project Applicant and Partners

Amount of Request

Other Funding Sources and Amount of Total Match

Brief Project Description

- Project description narrative (limit 3 sentences)
- Project Location (Latitude and Longitude)
- IRL Location Map (High Resolution JPEG Image)
- Project Boundary Map (High Resolution JPEG Image)
- CCMP Action Plans addressed by project
- Project Outputs (Deliverables) and Outcomes
- List of all CCMP Action Plans Addressed by Project

Section 1 - Title Page

1. Provide the Project Title
2. Provide the Indian River Lagoon Comprehensive Conservation and Management Plan (CCMP) Action Plans implemented by this project
3. Provide Applicant Information
Name of applicant including contact information

Section 2: Project Specifics

A. Project Goals and Objectives

- Objective 1: Conduct a lagoon-wide, risk-based vulnerability assessment with full participation of the IRLNEP newly reorganized Management Conference;
- Objective 2. Develop a IRLNEP Summary Report of the findings and process.

B. Technical Merit/Justification

- Clearly demonstrate the need for the project.
- Identify the project location (latitude and longitude) and why the location is appropriate to achieve success.
- Does the project enhance existing or ongoing programs?
- Provide basin size and quantifiable pollutant loading reduction estimates and/or acres of habitat restored, if applicable.
- Confirm the project will be completed within the proposed budget and timeline.

C. Benefit(s) to the IRL

- Clearly outline the benefits of the project to the IRL/its tributaries/St. Lucie or Halifax

River, targeted species, habitat, water quality, and number of people reached through outreach/education (if an element of the proposal).

- Clearly cite methodology used to quantify project benefits.
- Does the project provide other resource benefits such as aquifer recharge, water conservation, flood protection, protect species propagation and sustainability?

D. Local commitment

- Address if the project is a component of any adopted local or regional management plan such as a stormwater master plan.

E. Project Readiness

- List all required permits, provide status of pending permit applications, if applicable.
- Report if project design is complete.
- Report on readiness to bid/award contracts.
- Provide project start and completion dates and project milestone dates.
- Clearly outline major project tasks and identify any tasks performed by subcontractors or project partners.

F. Project Monitoring/Evaluation and Maintenance Plans

- Define measurable project outcomes.
- Describe how project success will be achieved and monitored/evaluated and key points in the project where evaluation will occur.
- If applicable, describe how the project will be sustainable beyond the grant funding and maintained into the future.

G. Citizen/Volunteer Engagement and Outreach Components

- Identify if the project includes citizen/volunteer engagement and outreach through workshops, meetings, and/or social media.
- Will the project promote personal behavioral changes that benefit the IRL? If yes, provide specific information regarding how you will measure outcomes.
- Will the project use volunteers? How will they be trained and involved in the project?
- Will the project involve: Schools? Teachers? Students?
- How will the outreach/education aspects of the project be measured/reported?

H. Experience and Past Performance

- Clearly outline your capability/expertise and experience to implement the project.
- Include references to similar projects that you have successfully completed.
- Report if the project previously received funding from the NEP or IRL License Plate (if yes, how much and how many years?) and detail prior project accomplishments.
- Specify if the project received or applied to other funding sources (if yes, provide names of sources, amounts, and if funds are tied to specific project components).

I. Special Requirements – TMDLs; Climate Change; Under-represented Communities.

- Does the project help to implement an adopted Basin Management Action Plan (BMAP) or aid with TMDL implementation/enhancement?
- Does the project promote climate change adaptation or implement strategies to address sea-level rise?
- Does the project support small IRL communities that are economically disadvantaged or under-represented?

Section 3 — Project Funding

A. Partnership and Cost Sharing

- Identify any project partners, and what project components they will accomplish.
- Provide a declarative statement detailing all sources of matching funds, amounts and when the matching funds will be secured for the project.
- If using in-kind match, how will you document the in-kind contribution and volunteer time?
- Reduced Indirect (F&A) Costs will not be accepted as cost share.
- Federal funds cannot be used to match Section 320 EPA grant funds.
- Capital and habitat restoration projects are required to have a minimum 50% match.
- Education, research, monitoring must demonstrate a minimum 25% match.

\$_____ Requested Grant Funds \$_____ Match Funds

\$_____ Value of In-kind Match (volunteer labor time is \$22.14/hr.)

Match as percentage of Total Project Costs = _____%

B. Project Budget including in-kind and cash match amounts and source of all funds:

- Identify all Indirect (F&A) or overhead costs and their calculated rate. (i.e. percent of total project funds received from IRL Council)

Example budget table (revise task descriptions and number of budget lines as appropriate to your project):

Task Line Item	Task Description	IRL Funding Amount	Cost Share Funding Amount	Cost Share Funding Source (cash or in-kind)
1	Project Design			
2	Permitting			
3	Construction Bids			
4	Install Retrofits			
5	Final Report			
	Summary Cost			
	Project Total Cost			

C. Funding for projects under this RFP consist of: **EPA Section 320 Funds.**

FORMAT FOR STATEMENT OF WORK

(name of project)

I. INTRODUCTION/BACKGROUND

II. OBJECTIVE

Project objectives are:

-
-
-

III. LOCATION OF PROJECT

(narrative and project location map)

IV. SCOPE OF WORK

V. TASK IDENTIFICATION

Recipient shall complete the following tasks:

1. **Quarterly Progress Reports.** The recipient shall submit quarterly progress reports starting after the first quarter following contract execution and continuing to project completion.
- 2.
- 3.
4. **Project Administration and Final Report.** The recipient shall complete 100 percent of the project and submit a project final report.

VI. DELIVERABLES AND TIME FRAMES

Task 1. Quarterly progress reports starting after the first quarter following contract execution and continuing to project completion.

Deliverables due in Council office quarterly after contract execution.

Deliverables: quarterly reports.

Task 2.

Deliverable due in Council office by (date).

Deliverable:

Task 3.

Deliverable due in Council office by (date).

Deliverables:

Task 4. Project final report.

Deliverable due in Council office by (date).

Deliverable: Project final report.

VII. BUDGET

Task Line Item	Task Description	IRL NEP Funding Amount	Cost Share Funding Amount	Cost Share Funding Source
1	Quarterly Progress Reports	\$	\$	
2	Design & Permitting	\$	\$	i.e. Recipient
3	Construction & Deployment	\$	\$	i.e. County
4	Project Final Report	\$	\$	
	Summary Cost	\$	\$	
	Project Total Cost		\$	

SAMPLE AGREEMENT

COST-SHARE AGREEMENT BETWEEN THE IRL COUNCIL AND XXXXXXXXXXXX FOR XXXXXXXXXXXXX PROJECT

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 . 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 cost-share funding to Recipient for the purposes provided for herein will benefit the management of the water resources of the Indian River Lagoon.

The parties have agreed to jointly 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”):

Project description: .

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 XXXXXXXXXX, 2018 (“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.

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 approximately fifty percent (50%) of the total cost of the Project, but in no event shall the Council cost-share exceed \$XXXXX. The Council cost-share 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. Recipient shall notify the Council's Project Manager in writing upon receipt of any additional external funding for the Project not disclosed prior to execution of this Agreement.
 - (b) **In-Kind Services.** Recipient agrees to provide \$XXXX in the form of in-kind services for the Project, as further described in the Statement of Work, which shall count toward Recipient's cost-share obligation of \$XXXXX.
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 XXXX@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 based upon the Council's fifty percent (50%) cost-share of the total approved expenses until the not-to-exceed amount of the Council's cost-share 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 cost-share 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
XXXXXX, Project Manager
IRL Council
1235 Main Street
Sebastian, Florida 32858
(772) 742-2858
E-mail: XXXX@irlcouncil.org

RECIPIENT
XXXXXX, Project Manager
XXXXXXXXXXXX
XXXXXXXX
XXXXXX, FL 329XX
XXXXXX
E-mail: XXXXXX

(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 cost-share 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.
 - (c) **Inspector General.** It is the duty of every state officer, employee, agency, special district, board, commission, contractor, and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section.
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 (IF EPA FUNDED).** 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 cost-share 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 cost-share 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

XXXXXXXXXX

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
- Attachment D – National Estuary Program Grant Requirements

Cost-share: Non-profit corporation
Last updated: 11-15-2016

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)