

LEGISLATIVE ID

#120050A

 Financial Project ID. No.: _____ Fund: _____
 SAMAS Approp: _____ Organization: _____
 SAMAS Obj. _____ Federal No. _____
 Contract No. _____ Vendor No. _____

**INTERLOCAL AGREEMENT FOR ALLOCATION AND IMPLEMENTATION
 OF NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM REQUIREMENTS
 AND FOR ORANGE CREEK BASIN MANAGEMENT ACTION PLAN PROJECTS**

THIS INTERLOCAL AGREEMENT (“Agreement”) made and entered into this _____ day of _____, 2012 by and between the Florida Department of Transportation (“Department”) and the City of Gainesville, Florida (“City”), a municipal corporation existing under the laws of the State of Florida.

- Recitals -

- A. The Department is authorized to enter into this Agreement pursuant to §334.044(7), Florida Statutes (2012), and other applicable law; and
- B. The Department has a Municipal Separate Storm Sewer System Phase II Permit #FLR04E018 (“MS4 Permit”); and
- C. The MS4 permit requires the Department to perform Illicit Discharge Detection and Elimination (“Illicit Discharge Program”), and Public Education and Outreach (“Public Outreach”); and
- D. The City agrees to provide services to the Department for elements of the Illicit Discharge Program, and Public Outreach; and
- E. The Orange Creek Basin includes the verified impaired waterbodies of Newnan’s Lake, Orange Lake, Lake Wauberg, Hogtown Creek, Sweetwater Branch, Tumblin Creek, and Alachua Sink; and
- F. The Florida Department of Environmental Protection (FDEP) has enacted Total Maximum Daily Loads for some impaired waters within the Orange Creek Basin (“TMDLs”); and
- G. The Orange Creek Basin Management Action Plan (“OCBMAP”) requires a management plan for meeting the TMDLs; and
- H. As MS4 permittees, the Department and City are stakeholders in the OCBMAP; and
- I. The City has proposed projects for the OCBMAP; and
- J. The City has requested the Department’s participation in the projects by sharing the cost and the project generated TMDL load reduction and TMDL credits; and

K. Sections 376.021, 376.30, and 403.021, Fla. Stat. (2012) provide that the preservation of surface and groundwaters is a matter of the highest urgency and priority, as these waters provide the primary source for potable water in the state; and

L. The Florida Transportation Plan, pursuant to Section 339.155(2)(d), Fla. Stat. (2012), requires the FDOT to take into consideration the protection and enhancement of the environment; and

M. The City's undersigned representative is vested with the authority to execute this Agreement on behalf of City by virtue of the City's Resolution, a copy of which is attached hereto as Attachment "A".

NOW THEREFORE, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the foregoing recitals and the mutual covenants and conditions contained in this Agreement, the parties, intending to be legally bound hereby, acknowledge and agree as follows:

1. RECITALS AND EXHIBITS

The recitals set forth above and attached Attachments are incorporated in and made part of this Agreement.

2. EFFECTIVE DATE

The effective date ("Effective Date") of this Agreement shall be October 1, 2012.

3. TERM

This Agreement shall begin on effective date and shall remain in full force and effect through June 30, 2017.

4. E-VERIFY

The City shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the City during the term of the Agreement. The City shall expressly require any subcontractors performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of the Agreement.

5. SERVICES

A. The City shall perform this Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions hereof and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, manuals, procedures, processes, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, without limitation, those of the Department, applicable Water Management District, Florida Department of Environmental Protection, Environmental Protection Agency, Army Corps of Engineers, United States Coast Guard and local governmental entities ("Governmental Law").

B. The City shall be responsible for performing or administering contracts to perform all services under this Agreement. The service unit rates shall include all costs, overhead, documents, copies, supervision, labor, materials, supplies, equipment and transportation required to fulfill the terms and conditions of this Agreement.

6. TOTAL MAXIMUM DAILY LOAD

Nothing in this Agreement shall establish any current or future apportionment or percentage of any impairment or pollutant allocation for any TMDL OCBMAP reduction requirements in any water body identification (WBID) within or flowing into or from the Orange Creek basin, the City of Gainesville, or Alachua County.

7. COMPENSATION AND PAYMENT**A. MS4 Permit Requirements.**

The Department shall pay the City THREE HUNDRED EIGHTY EIGHT THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$388,500.00) over the five year period as outlined in Attachment "B" for complying with the Department's MS4 requirements for Public Outreach and elements of the Illicit Discharge Program.

B. Orange Creek BMAP Projects**i. Tumblin Creek Regional Wetland and Trash Trap.**

The total cost of the Tumblin Creek Regional Wetland and Trash Trap ("Tumblin Project") is Nine Hundred and Eight Thousand Five Hundred and no/100 dollars (\$908,500). The Department shall participate in the Tumblin Project and pay to the City ONE HUNDRED NINETY THOUSAND SEVEN HUNDRED EIGHTY FIVE AND NO/100 DOLLARS (\$190,785.00) as outlined in Attachment "C". The City shall pay all other costs for the Tumblin Project. All costs overruns shall be the responsibility of the City. The Tumblin Project is within the Tumblin Creek upstream of the creek's discharge into Bivens Arm. The Tumblin Project is a regional wetland treatment project which includes the addition of a trash trap; re-hydration of wetlands adjacent to the outlet to treat runoff; creation of a wetland channel; creating a sheet pile weir system to hold back more runoff in the adjacent wetlands. The Tumblin Project estimates a fifty-one percent (51%) reduction in the biological oxygen demand, a sixty-six percent (66%) reduction in the total suspended solids, a fifteen percent (15%) reduction in total nitrogen, and fourteen percent (14%) reduction in total phosphorous.

ii. Gainesville Urban Area LID Projects

The total estimated cost of the Gainesville Urban Area LID Projects ("Urban Projects") is Four Hundred and Fifteen Thousand and no/100 dollars (\$415,000.00). The Department shall participate in the Urban Projects and pay to the City EIGHTY SEVEN THOUSAND ONE HUNDRED FIFTY AND NO/100 DOLLARS (\$87,150.00) as outlined in Attachment "C". The City shall pay all other costs for the Urban Projects. All costs overruns shall be the responsibility of the City. The Urban Projects include permeable pavement, exfiltration systems, rain gardens, and bio-retention swales and in-curb planter vault will be constructed. The Urban Project also includes a study of exfiltration systems within the right-of-way and the exfiltration system's impact on roadway base and sub-base. The study will assist with design these systems.

iii. Possum Creek and Hogtown Creek Watershed Management Plans

The total cost of the Possum Creek and Hogtown Creek Watershed Management Plans ("Creek Projects") is Five Hundred Thousand and no/100 dollars (\$500,000.00). The Department shall participate in the Creek Projects and pay to the City ONE HUNDRED AND FIVE THOUSAND AND NO/100 DOLLARS (\$105,000.00) as outlined in Attachment "C" for the Creek Projects. The City shall pay all other costs for the Creek Projects. All costs overruns shall be the responsibility of the City. The Creek Projects will develop management plans to address the anticipated 303(d) listing and the current phosphorous and nitrogen impairment in the creek's receiving water body Kanapaha Lake.

C. Expenditure of funds by the Department shall be made in accordance with the terms and provisions of this Agreement. The Department shall not reimburse the City for any expenditure made for items not in the

approved budget unless prior written approval is obtained from the Department. The City shall invoice the Department by submitting a "Request for Funding Form" to the Department's NPDES Program Coordinator for payment as described in this Agreement. The City shall invoice the MS4 Permit requirements quarterly as outlined in Attachment "B". The City will invoice for the Orange Creek BMAP projects on a percentage of work completed for the prior fiscal quarter, as outlined in Attachment "C". The City shall include all additional backup documentation to support the invoice. The Department shall review all invoices and determine if the invoice is in compliance with this Agreement. Payments shall be made by the Department within twenty (20) business days of receipt of a City invoice in compliance with this Agreement.

8. INDEMNIFICATION

A. The City shall promptly defend, indemnify, hold the Department harmless from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, costs, losses, penalties, construction delay costs / penalties, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by or resulting from the City's performance or breach of this Agreement ("Liabilities"). The term "Liabilities" shall also specifically include all environmental liability arising, directly or indirectly under any Governmental Law and caused by or resulting from the City's performance or breach of this Agreement. The City's obligations under this section include, at the Department's option, to participate and associate with the Department in settlement negotiations, mediation and the defense and trial of any Liabilities. The City's duties under this section of the Agreement specifically do not encompass indemnifying the Department for its negligence, intentional or wrongful acts, omissions or breach of contract.

B. The City shall notify the Department in writing immediately upon becoming aware of any Liabilities. The City's obligations under this section shall be triggered by the Department's written notice of claim for indemnification to the City. The City's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this section of the Agreement.

9. SOVEREIGN IMMUNITY

Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the parties' sovereign immunity protections, or as increasing the limits of liability set forth in §768.28, Florida Statutes, as the same may be amended from time to time. The Department's liability for breach of this Agreement is specifically: (1) limited to actual damages incurred by Department as a direct result of the Department's breach; and (2) further limited in amount and shall not, under any circumstances, exceed the limitations of liability for tort actions set forth in §768.28(5), Fla. Stat. (2012).

10. NOTICE

All notices, communications and determinations between the parties hereto and those required by the Agreement, including, without limitation, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States Mail, postage prepaid, to the parties at the following addresses:

Department: Attention: NPDES Administrator
 Florida Department of Transportation
 1109 South Marion Ave MS 2010
 Lake City, FL 32025

City: Attention: NPDES Program Coordinator
City of Gainesville
405 NW 39th Avenue
Gainesville, FL 32609

11. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

12. VENUE AND JURISDICTION

A. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of the Agreement that are not resolved to the mutual satisfaction of the parties by the Department's District Secretary shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

B. The City and all persons and entities accepting an assignment of this Agreement, in whole or in part, shall be deemed as having consented to personal jurisdiction in the State of Florida and as having forever waived and relinquished all personal jurisdiction defenses with respect to any proceeding related to the interpretation, validity, performance or breach of this Agreement.

13. JURY TRIAL

The parties hereby waive the right to trial by jury of any dispute concerning the interpretation, validity, performance or breach of the Agreement, including, without limitation, damages allegedly flowing from the same.

14. ASSIGNMENT

The parties shall not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the other party. Any assignment shall comply with all Governmental Law including without limitation §163 Fla. Stat. (2012). Nothing herein shall prevent the City from delegating its duties hereunder, but such delegation shall not release the City from its obligation to perform the Agreement.

15. THIRD PARTY BENEFICIARIES

This Agreement shall be binding upon and inure to the benefit of the undersigned parties and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for in the Agreement.

16. VOLUNTARY EXECUTION OF AGREEMENT

Each party warrants and represents to the other: (i) that it understands all of the rights and obligations set forth in the Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of the Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and disadvantages of the Agreement and executes the Agreement freely and voluntarily of its own accord and not as a result of any duress, coercion, or undue influence; and (iv) it had the opportunity to have independent legal advice by counsel of its own choosing in the negotiation and execution of the Agreement.

17. ENTIRE AGREEMENT

This instrument, together with any exhibits and documents made part hereof by reference, contains the entire agreement of the parties and no representations or promises have been made except those that are specifically

set out in the Agreement. All prior and contemporaneous interlocal agreements, joint participation agreements, conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of the Agreement, and any part hereof, are waived, merged herein and superseded hereby. If there is any conflict between this Agreement and any prior interlocal agreement, joint participation agreement, or supplemental agreement this Agreement shall supersede.

18. EXECUTION OF DOCUMENTS

The parties agree that they shall promptly execute and deliver to the other all documents necessary to accomplish the intent and purpose of the Agreement and shall do all other acts to effectuate the Agreement.

19. SUFFICIENCY OF CONSIDERATION

By their signature below, the parties hereby acknowledge the receipt, adequacy and sufficiency of consideration provided in the Agreement and forever waive the right to object to or otherwise challenge the same.

20. WAIVER

The failure of either party to insist on the strict performance or compliance with any term or provision of the Agreement on one or more occasions shall not constitute a waiver or relinquishment thereof and all such terms and provisions shall remain in full force and effect unless waived or relinquished in writing.

21. INTERPRETATION

No term or provision of the Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

22. CAPTIONS

Paragraph title or captions contained herein are inserted as a matter of convenience and reference and in no way define, limit, extend or describe the scope of the Agreement, or any provision hereof.

23. SEVERANCE

If any section, paragraph, clause or provision of the Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of the Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principle purposes of the Agreement remain enforceable.

24. COMPUTATION OF TIME

In computing any period of time prescribed in the Agreement, the day of the act, event or default from which the designated period of time begins to run, shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

25. MODIFICATION OF AGREEMENT

A modification or waiver of any of the provisions of the Agreement shall be effective only if made in writing and executed with the same formality as the Agreement.

26. PUBLIC RECORDS

The Parties understand and agree that all documents of any kind provided in connection with this Agreement are public records and are treated as such in accordance with Florida law.

27. EFFECT OF AGREEMENT

The parties shall offer this Agreement as evidence in any and all proceedings concerning any subject matter of this Agreement, and, if acceptable to the Court, will cause a copy of the Agreement to be incorporated by reference in the judgment rendered. Notwithstanding incorporation in the judgment, this Agreement shall not be merged in it, but shall survive the judgment and be binding on the parties for all time.

28. ANNUAL APPROPRIATION

A. The Department shall authorize services based upon priority and availability of budget. Execution of this Agreement does not guarantee that the work will be authorized.

B. The Department's obligation to pay is contingent upon the annual appropriation by the Florida Legislature. In the event this contract is for services in excess of \$25,000.00 and a term for a period of more than 1 year, the provisions of Section 339.135(6) (a), Fla. Stat., are hereby incorporated:

"The Department, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department shall require a statement from the Comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the department which are for an amount in excess of \$25,000 and which have a term for a period of more than 1 year."

C. The City agrees that in the event the funds are not appropriated to the Department then this Agreement may be terminated. Department shall notify the City in writing within thirty days of the date Department is notified by the Legislature the funds shall not be appropriated. Upon notification by Department that funds are not appropriated and this Agreement is terminated the City shall no longer be obligated to provide services not yet rendered. Nothing in this termination clause shall exempt the City from continuing to provide services already paid for by the Department.

29. RECORDKEEPING

The City shall obtain written approval from the Department prior to the destruction of any documents related to this Agreement Throughout the term of this Agreement and for a minimum of three (3) years after the Department submits final payment to the City for services, the City shall maintain all such records and documents including but not limited to records of costs incurred by the City, general accounting and all other supporting documents. Copies of these documents shall be furnished to Department upon request. The City shall provide the Department any and all reports, technical documents, and compliance documents related to this Agreement Upon expiration of the three years and written request by the City, the Department's NPDES Administrator may approve in writing the destruction of documents.

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties hereby execute this Agreement, consisting of eight (8) pages.

- Signatures on Following Pages-

Florida Department of Transportation

Attest:

By: _____

By: _____

Printed Name: Greg Evans, P.E.

Printed Name: _____

Title: District Two Secretary

Title: _____

Date: _____

Date: _____

State of Florida
County of Columbia

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by Greg Evans, P.E., District Two Secretary, who is personally known to me.

Legal Review:

By: _____
Office of the General Counsel District 2

City of Gainesville

Attest:

By: _____

By: _____

Printed Name: Russ Blackburn

Printed Name: _____

Title: City Manager

Title: _____

Date: _____

Date: _____

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by _____
_____, who is personally known to me, or who produced _____
_____ as identification.

Legal Review:

City Attorney