

**INTERLOCAL AGREEMENT FOR ALLOCATION AND IMPLEMENTATION
OF NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM
REQUIREMENTS**

THIS INTERLOCAL AGREEMENT (“Agreement”) made and entered into this _____ day of _____, 2017 by and between Alachua County (“County”), a charter county and a political subdivision of the State of Florida and the City of Gainesville, Florida (“City”), a municipal corporation existing under the laws of the State of Florida.

- Recitals -

WHEREAS, The City, Alachua County, and the Florida Department of Transportation District 2 (FDOT) entered into a tri-party Interlocal Agreement for the joint implementation of the National Pollutant Discharge Elimination System (NPDES) Phase II Municipal Separate Stormwater Systems (MS4) program in the Gainesville Urbanized Area dated September 20, 2001; and

WHEREAS, The tri-party Interlocal Agreement expires on September 30, 2017; and

WHEREAS, The City and County entered into an Agreement dated June 24, 2003 to establish funding and responsibilities for an Illicit Discharge Detection; and,

WHEREAS, Upon expiration of the tri-party agreement the FDOT and County mutually agree to enter into separate Interlocal Agreements with the City to partner in programs to assist the FDOT and County in implementation of their respective NPDES Phase II MS4 Program and Permit; and

WHEREAS, The County represents that it has full power and authority to enter into this agreement in accordance with its terms; and

WHEREAS, The County has a Municipal Separate Storm Sewer System Phase II Permit #FLR04E0005 (“MS4 Permit”); and

WHEREAS, The MS4 permit requires the County to perform Public Education, Outreach and Participation, Illicit Discharge Detection and Elimination, Enhanced Mapping, and Municipal Operation Pollution Prevention and Good Housekeeping Programs; and

WHEREAS, The City agrees to partner with the County in providing services for Public Education, Outreach and Participation, Illicit Discharge Detection and Elimination, Enhanced Mapping, and Municipal Operation Pollution Prevention and Good Housekeeping Programs; and

WHEREAS, The Orange Creek Basin includes verified impaired waterbodies per the 303 (d) list of Impaired Surface Waters in the Clean Water (Section 303 (d)); and

WHEREAS, The Florida Department of Environmental Protection (FDEP) has enacted a Total Maximum Daily Load for Impaired Waters within the Orange Creek Basin (“TMDLs”); and

WHEREAS, The Orange Creek Basin Management Action Plan (“OCBMAP”) incorporated by reference requires a management plan for meeting the TMDLs; and

WHEREAS, As MS4 permittees, the County and City are stakeholders in the OCBMAP; and

WHEREAS, The City has proposed projects for the OCBMAP; and

WHEREAS, The County is still required to meet its requirements for compliance with its MS4 Permit; and

WHEREAS, 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

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 Exhibits are incorporated in and made part of this Agreement.

2. EFFECTIVE DATE

The effective date (“Effective Date”) of this Agreement shall be October 1, 2018.

3. TERM

This Agreement shall begin on effective date and shall remain in full force and effect through September 30, 2022 unless earlier terminated as provided herein.

The County's performance and obligation to pay under this Agreement is contingent upon a specific annual appropriation by the Board of County Commissioners. The parties hereto understand that this Agreement is not a commitment of future appropriations.

4. 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 FDOT, 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 coordinating and performing services as detailed in Attachment “B” under this Agreement. The general budget shall be in accordance with Attachment “A”. (in accordance with 112.061, Florida Statutes as applicable) and the Services to be coordinated and provided shall be as described in Attachment “B”

C. The NPDES Contact Person for the City and the Director of Public Works for the County or designees as designated by each Agency, are authorized to make modifications to the required services provided so long as such changes are consistent with the intent of the program. Notice of such modifications will be agreed to by the parties as required herein.

5. 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.

6. COMPENSATION AND PAYMENT

A. MS4 Permit Requirements.

The County shall pay the City the following for coordinating and/or implementing the following programs that addresses the Florida Department of Environmental Protection’s and US Environmental Protection Agency’s MS4 Public Education, Outreach and Participation, Illicit Discharge Detection and Elimination, Enhanced Mapping, and Municipal Operation Pollution Prevention and Good Housekeeping Program requirements as provide in Attachment “ A” and for local Stream Gage Maintenance related to maintaining these requirements;

Public Education, Outreach/Participation and Illicit Discharge Detection/Elimination Programs

The goals of the *Public Education, Outreach and Participation Program* include increasing awareness of local water resources and stormwater collection system, reducing stormwater pollutants by changing behaviors that contribute to poor water quality’ and conducting outreach efforts designed to reach polluters through a variety of outlets to ensure exposure and increase behavior change. The program is an integrated outreach program, where each outreach activity supports the others building a comprehensive program to address target audiences. This program brings together various organizations which share some of the same goals. The goals of the

Illicit Discharge Detection and Elimination (IDDE) Program include detecting and eliminating sources of pollution to the municipal separate storm sewer system (MS4) as required by NPDES. The Alachua County Environmental Protection Department provides contractual services to help reach program goals.

Enhanced Mapping, Municipal Operation Pollution Prevention/Good Housekeeping and Stream Gage Maintenance Programs

The goal of the ***Enhanced Mapping Program*** is to maintain a digital map of the entire stormwater conveyance network in the Gainesville Urban Area, which includes City and County stormwater conveyance networks, for use in a Geographic Information System. The goals of the ***Municipal Operation Pollution Prevention/Good Housekeeping Program*** are to develop appropriate best management practices for existing municipal facilities and activities and to provide training resources that encourage prevention or reduction of pollutant runoff from municipal operations. In the ***Stream Gage Program***, stream gages related to maintaining NPDES and other Clean Water Act requirements have been maintained collectively by the City and County in previous agreements. Annual collection of stage, discharge, and rainfall data will continue from 2013 through 2017.

The total estimated cost of these programs of the five (5) year period is TWO MILLION NINE HUNDRED FORTY THOUSAND ONE HUNDRED SEVENTY FOUR DOLLARS (\$2,940,174). The County shall participate in the program and pay to the City an amount not to exceed SEVEN HUNDRED NINETY SIX THOUSAND FOUR HUNDRED EIGHTY DOLLARS (\$796,480) as outlined in Attachment A.

B. Reimbursements requests shall be made to the County no later than 45 days after the end of each fiscal quarter documenting the direct cost incurred in providing the services required hereunder. The City shall provide a statement and backup documentation to support the invoice as shall be reasonably required by the County. Reimbursements shall be paid by the County within twenty-five (25) business days of receipt of a City invoice in compliance with this Agreement.

7. LIABILITY

Each party shall be solely responsible for the negligent or wrongful acts of its employees and agents.

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.

It is understood that each partner is responsible for meeting its own individual permit conditions. This Agreement is to provide services that the County has agreed will help meet its Permit requirements.

8. 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:

County: Attention: Public Works Director
Alachua County Public Works Department
5620 NW 120th Lane
Gainesville, FL 32653

City: Attention: Assistant Public Works Director
City of Gainesville
405 NW 39th Avenue
Gainesville, FL 32609

A copy of any notice, request or approval to the County must also be sent to:

J. K. Irby
Clerk of the Court
12 SE 1st Street
Gainesville, FL 32602
ATTN: Finance and Accounting

and

Office of Management and Budget
105 Se 1st Avenue, Suite 6
Gainesville, Florida 32601
Attn: Contracts

9. GOVERNING LAW

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

10. INITIAL DETERMINATION OF DISPUTES

The City Manager shall act as the initial arbiter of all questions, difficulties, and disputes concerning the interpretation, validity, performance or breach of this Agreement.

11. 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 City Manager shall lie exclusively in a state court of appropriate jurisdiction in Alachua County, Florida.

12. 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.

13. 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. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. ANNUAL APPROPRIATION

A. The County 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 City agrees that in the event the funds are not appropriated to the County then this Agreement may be terminated. County shall notify the City in writing within thirty days of the date County is notified by the Commission the funds shall not be appropriated. Upon notification by County 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 County.

Either party to this Agreement may terminate with 200 days notice prior to the beginning of the next fiscal year, if either party determines, in its sole discretion, that it is in its interest to do so. Upon termination, the City will cease all work and return to the County any unexpended funds provide by the County.

27. RECORDKEEPING

Throughout the term of this Agreement and for a minimum of five (5) years. or fifteen (15) years if related to a capital improvement project, after the completion of all work to be performed, or as required by Chapter 119, Florida Statutes (Public Records Act) and schedules published by the Florida Bureau of Archives and Records Management, or federal requirements, whichever shall be greater (The “retention period” 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 County upon request. The City shall provide the County any and all reports, technical documents, and compliance documents related to this Agreement Upon expiration of the retention period and written request by the City, the County's Public Works Director shall approve in writing the destruction of documents.

28. RECORDING OF AGREEMENT

The County, upon execution of this Agreement by all parties, shall record this Interlocal Agreement in the public records of Alachua County, Florida.

DRAFT

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties hereby execute this Agreement,

Alachua County Board of County Commissioners

Attest:

By: _____
Paula M. DeLaney, Chair

By: _____
J. K. Irby, Clerk
(seal)

Date: _____

Approved as to Form

By: _____
Alachua County Attorney

City of Gainesville

Attest:

By: _____

By: _____

Printed Name: Anthony Lyons

Printed Name: _____

Title: City Manager

Title: _____

Date: _____

Date: _____

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____, who is personally known to me, or who produced _____ as identification.

Approved as to Form and Legality:

City Attorney

ATTACHMENT A						
Attachment A - NPDES Program Budget 2018-2022						
Program Area	FY2018	FY2019	FY2020	FY2021	FY2022	Total
Public Outreach	117,000	121,000	127,405	132,925	138,672	637,002
Illicit Discharge	164,600	182,500	214,200	213,700	209,700	984,700
Part A Total	281,600	303,500	341,605	346,625	348,372	1,621,702
Enhanced Mapping	108,500	108,500	108,500	108,500	108,500	542,500
Good Housekeeping	108,701	109,433	110,179	110,941	111,718	550,972
Stream Gage Maintenance	45,000	45,000	45,000	45,000	45,000	225,000
Part B Total	262,201	262,933	263,679	264,441	265,218	1,318,472
Total	543,801	566,433	605,284	611,066	613,590	2,940,174
Budget Share Allocation						
	FDOT	City	County	Totals		
Part A						
Public Outreach	210,144	280,325	146,534	637,003		
Illicit Discharge	324,951	433,268	226,481	984,700		
Total Part A	535,095	713,593	373,015	1,621,703		
Part B						
Enhanced Mapping	NA	374,325	168,175	542,500		
Good Housekeeping	NA	385,681	165,290	550,971		
Stream Gage Maintenance	NA	135,000	90,000	225,000		
Total Part B		895,006	423,465	1,318,471		
Total Contribution	535,095	1,608,599	796,480	2,940,174		
Payment Schedule						
	2018 - 2022					
FDOT*	535,095					
City	1,608,599					
County	796,480					
*The FDOT contribution amount is included for reference; the City has entered into a separate agreement with the FDOT.						