

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

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

**THIS INTERLOCAL AGREEMENT (“Agreement”)** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by and between the Florida Department of Transportation (“Department”) and 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 (2016) 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 investigations (“Illicit Discharge Program”), and Public Education, Outreach and Participation (“Public Outreach”); and
- D. The City agrees to provide services to the Department for 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, Alachua Sink and Lochloosa Lake; and
- F. The Florida Department of Environmental Protection (FDEP) has enacted Total Daily Maximum 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 the City are stakeholders in the OCBMAP; and
- I. The City has proposed project(s) for the OCBMAP; and

J. The City has requested the Department's participation by sharing the cost and the project(s) generated to TMDL load reduction and TMDL credits; and

K. Sections 376.021, 376.30, and 403.021, Florida Statutes (2016) provide that the preservation of surface and groundwaters are a matter of the highest urgency and priority, as these waters provide the primary source for potable water is the state; and

L. The Florida Transportation Plan, pursuant to Section 334.046(2) Florida Statutes (2016), states that "the mission of the Department of Transportation shall be to provide a safe statewide transportation system that ensures the mobility of people and goods, enhances economic prosperity, and preserves the quality of our environment and communities; and

M. The City's undersigned representative is vested with the authority to execute this Agreement on behalf of the City by virtue of the City's Resolution, a copy of which is attached hereto as Exhibit "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 Exhibit(s) are incorporated in and made part of this Agreement.

#### **2. EFFECTIVE DATE**

The effective date ("Effective Date") of this Agreement shall be October 1, 2017.

#### **3. TERM**

This Agreement shall begin on the effective date and shall remain in full force and effect through September 30, 2022.

#### **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 ("Federal, State, and Local Rules and Regulations").

B. The City shall be responsible for performing 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 FIVE HUNDRED THIRTY FIVE THOUSAND NINETY FIVE AND NO/100 DOLLARS (\$535,095.00) over the five year period for providing deliverables demonstrating compliance with the Department's MS4 requirements for the Illicit Discharge Program and Public Outreach Program.

### **B. Orange Creek BMAP Projects (Project).**

The Department shall pay the City FIVE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$550,000.00) to develop plans and construct projects that will provide pollutant load reduction credits for Total Phosphorous and Total Nitrogen within the Newnans Lake TMDL. Projects include minor stormwater projects to address long standing localized drainage complaints and will include water quality improvement elements; a Lake Forest and Little Hatchett Creek erosion control study that will evaluate the drainage system and propose projects needed to stabilize the system and reduce phosphorous loading into Newnans Lake; and a Little Hatchett and Lake Forest Creek project to construct a stormwater facility. The Department shall participate in the Project and pay the City for providing deliverables demonstrating compliance with the Department's Orange Creek BMAP project. The City shall pay all other costs for the Project. All costs overruns shall be the responsibility of the City.

### **C. Standard Financial Provisions.**

The City shall provide the Department's MS4 Permit requirements as quantifiable, measureable, and verifiable units of deliverables. Payment shall be made by the Department to the City after the Department's receipt and approval of goods and services. Invoices shall be submitted by the City in detail sufficient for a proper pre-audit and post-audit thereof, based on the quantifiable, measureable, and verifiable units of deliverables. Deliverables must be received and accepted by the Department's NPDES Administrator prior to payments. Supporting documentation must establish that the deliverables were received and accepted and that the required minimum level of service has been met. The City's providing of goods and services to the Department should be aware of the following timeframes. Upon receipt, the Department has five (5) working days to inspect and approve the goods and services. The Department has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods and services are received, inspected, and approved.

## **8. INDEMNIFICATION**

A. The City shall promptly defend, indemnify, and 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 civil and criminal environmental liability arising, directly or indirectly under any Federal, State, and Local Rules and Regulations, including, without limitation, liability under the Resource Conservation and Recovery Act ("RCRA"), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Clean Air Act ("CAA") and the Clean Water Act ("CWA"). 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 the Department's negligence, intentional or wrongful acts, omissions, and 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), Florida Statutes (2016).

#### **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 39<sup>th</sup> 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. INITIAL DETERMINATION OF DISPUTES**

The Department's District Two Secretary ("District Secretary") or designee shall act as the initial arbiter of all questions, difficulties, and disputes concerning the interpretation, validity, performance or breach of this Agreement.

**13. 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 or designee 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.

**14. 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.

**15. ASSIGNMENT**

The City shall not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the Department's District Secretary or designee. The Department has the sole discretion and authority to grant or deny proposed assignments of this Agreement, with or without cause. 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.

**16. 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.

**17. 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.

**18. 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.

**19. 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.

**20. SUFFICIENCY OF CONSIDERATION**

By their signatures 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.

**21. 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.

**22. 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.

**23. 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.

**24. 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.

**25. 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.

**26. 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.

**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), Florida Statutes (2016), 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. The Department shall notify the City in writing within thirty days of the date the Department is notified by the Legislature the funds shall not be appropriated. Upon notification by the 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.

### **30. RECORDKEEPING**

Records of costs incurred under the terms of the Agreement shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the Participant's general accounting records and the project records, together with supporting documents and records, of the City and all subcontractors performing work on the project, and all other records of the City and subcontractors considered necessary by the Department for a proper audit of costs. Prior to the destruction of any documents, the City, shall transfer all documents to the Department in compliance with Section 31 below.

### **31. COMPLIANCE WITH LAWS**

The City shall comply with Chapter 119, Florida Statutes, and shall specifically:

A. Keep and maintain public records required by the Department to perform this Agreement.

B. Upon request from the Department's custodian of public records, provide the Department 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, Florida Statutes, or as otherwise provided by law.

C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the City does not transfer the records to the Department.

D. Upon completion of the Agreement, transfer, at no cost, to the Department, all public records in possession of the City or keep and maintain public records required by the Department to perform the service. If the City transfers all public records to the Department upon completion of the Agreement, the City shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the City keeps and maintains public records upon completion of the Agreement, the City shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Department, upon request from the Department's custodian of public records, in a format that is compatible with the information technology systems of the Department.

**IN WITNESS WHEREOF**, intending to be legally bound hereby, the parties hereby execute this Agreement, consisting of nine (9) pages.

***- Signatures on Following Pages-***



**Florida Department of Transportation**

By: \_\_\_\_\_

Printed Name: Greg Evans

Title: District Two Secretary

Date: \_\_\_\_\_

**Attest:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

State of Florida  
County of Columbia

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by Greg Evans,  
District Two Secretary, who is personally known to me.

**Legal Review:**

By: \_\_\_\_\_

Office of the General Counsel District 2

**City of Gainesville Florida**

**Attest**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Legal Review Approved as to Form:

\_\_\_\_\_  
City Attorney