
 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**

THIS INTERLOCAL AGREEMENT (“Agreement”) made and entered into this _____ day of _____, 2022, by and between the Florida Department of Transportation (“Department”) and Alachua County, Florida (“County”), a charter county and political subdivision of the State of Florida, by and through its Board of County Commissioners.

– Recitals –

WHEREAS, the Department is authorized to enter into this Agreement pursuant to Section 334.044(7), Fla. Stat., and other applicable law, as may be amended from time to time; and

WHEREAS, the Department has a National Pollutant Discharge Elimination System (“NPDES”) Municipal Separate Storm Sewer System (“MS4”) Phase II Permit (FLR04E018) issued by the Florida Department of Environmental Protection; which is incorporated herein and made part of the Agreement by reference; and

WHEREAS, the MS4 covers discharges located within the Orange Creek Basin which includes the verified impaired waterbodies of Newnan’s Lake, Orange Lake, Lake Wauberg, Hogtown Creek, Sweetwater Branch, Tumblin Creek, and Alachua Sink; and

WHEREAS, the Florida Department of Environmental Protection (“FDEP”) has established Total Maximum Daily Loads (“TMDLS”) for the Orange Creek Basin; and

WHEREAS, the Orange Creek Basin Management Action Plan (“OCBMAP”) was adopted and requires a management plan to address reducing the level of the pollutants of concern for meeting the TMDLS; and

WHEREAS, both the Department and the County are Stakeholders in the OCBMAP; and

WHEREAS, Stakeholders have engaged in a coordinated and collaborative manner through joint projects to address the reduction of nutrient loadings in order to achieve the Orange Creek Basin TMDLSs, and

WHEREAS, the County has proposed project(s) to address the TMDLS which includes the installation of the Main Street Wet Detention Pond Outflow Filter as a retrofit of an existing County maintained wet detention pond located off of Main Street (“project”), in the City of Gainesville, within Alachua County.; and

WHEREAS, the County has requested the Department's participation by sharing the cost of the OCBMAP structural best management retrofit project to reduce Nutrient Loadings to Hogtown Creek located within the Orange Creek basin; and

WHEREAS, Sections 376.021, 376.30, and 403.021, Florida Statutes (2021) 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 in the state; and

WHEREAS, the Florida Transportation Plan, pursuant to Section 334.046(2), Florida Statutes, as may be amended from time to time, 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

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 the date the last parties to be charged executes the agreement.

3. TERM OF AGREEMENT

3.1. This Agreement shall begin upon the Effective Date of this Agreement and shall remain in full force and effect through **December 31, 2023**.

3.2. The Agreement may be renewed for one or more additional terms with the combined length of all renewal terms not to exceed the length of the original term of the Agreement. The renewal may be entered upon written request by the Department and written concurrence by the County. The renewal shall be in writing and shall be subject to the same terms and conditions as set forth in this Agreement. Should both parties wish to renew, the Department will negotiate with the County an adjustment factor to be applied to the original Agreement amount. The adjustment factor may be positive, negative, or zero. The renewed Agreement amount will be calculated by applying the adjustment factor to the original Agreement amount.

4. E-VERIFY

The County 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 County during the term of the Agreement. The County 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. RIGHTS AND RESPONSIBILITIES OF THE DEPARTMENT AND THE COUNTY

5.1 The County's responsibility for the Orange Creek BMAP project is the installation of the Main Street Wet Detention Pond Outflow Filter. The project is a retrofit of an existing County maintained wet detention pond located off of Main Street, in the City of Gainesville, within Alachua County. The project area is 0.2 acres on the northern bank of the current wet detention pond. The retrofit will add an outflow filter system to enhance treatment processes and remove additional nutrients from pond outflow. The pond receives stormwater runoff from approximately 10.6 acres of commercial land use along and around North Main Street and discharges to Springstead Creek, which is a tributary to Hogtown Creek within the Orange Creek Basin. The outflow filter will use Bio-sorption Activated Media (BAM) to remove dissolved nitrogen and phosphorus. This will improve water quality discharge from the pond.

5.2 The County will provide the Department with the County's calculations of nutrient load reduction amounts from which the Estimated Load Reduction credits will be determined.

5.3 The Department's responsibility with respect to the project is to share the cost and to compensate the County as provided in this Agreement to a maximum amount not to exceed EIGHTY-SIX THOUSAND AND NO/100 DOLLARS (\$86,000.00) ("Maximum Participation Amount") over the Term of this Agreement which is up to and including December 31, 2023. In return, the Department shall receive 40% of the total Estimated Load Reduction credit allocated to this project as calculated and approved by FDEP under Section 403.067, Florida Statutes (2021), to meet the Department's load allocation for the OCBMAP.

6. SERVICES

6.1 The County shall perform the services outlined in 5.1 of this Agreement in a good and workmanlike manner, exercising 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 may be 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 government entities ("Governmental Law").

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

6.3 The County shall require its contractor(s) to add the County and the Department as additional insureds to required liability and umbrella insurance policies.

6.4 The County shall provide the Department with services as quantifiable, measurable, and verifiable units of deliverables.

7. COMPENSATION AND PAYMENT

7.1. INVOICES:

- a.** The County shall submit all invoices for payment to the Department's NPDES program administrator.
- b.** The Department shall reimburse the County for costs incurred to perform services described in Paragraph 5.1 above,
- c.** Invoices for fees or other compensation for services or expenses shall be submitted at least one time per year in detail sufficient for a proper pre-audit and post-audit, based on the quantifiable, measurable, and verifiable deliverables. Deliverables and costs incurred must be received and approved by the Department prior to reimbursements. Requests for reimbursement by the County shall include an invoice, progress report, and supporting documentation for the period of services being billed using the forms and spreadsheet provided by the Department. See Attachment (A) The County shall use the format for the invoice and progress report that is approved by the Department.
- d.** All cost invoices received and accepted by the Department shall be supported by documentation that includes contracts or vouchers evidencing the services performed in Paragraph 5.1 above
- e.** Travel expenses are not compensable under this Agreement.
- f.** Payment shall be made only after receipt and approval of deliverables and costs incurred unless advance payments are authorized by the Chief Financial Officer of the State of Florida under Chapters 215 and 216, Florida Statutes or the Department's Comptroller under Section 334.044(29), Florida Statutes.
 - i.** Recipients of financial assistance from the Department should be aware of the following time frames. Inspection and approval of deliverables and costs incurred shall take no longer than twenty (20) days from the Department's receipt of the invoice. 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 deliverables and costs incurred are received, inspected, and approved.

ii. If a payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to Section 55.03(1), Florida Statutes, will be due and payable, in addition to the invoice amount, to the Recipient. Interest penalties of less than one (1) dollar will not be enforced unless the County requests payment. Invoices that are returned to the County because of County's preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.

iii. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for the County who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.

- g.** If, after project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the County owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the Department. Offsetting any amount pursuant to this paragraph shall not be considered a breach of contract by the Department.
- h.** The County must submit the final invoice on the Project to the Department within one-hundred and twenty (120) days after the completion of the project, or by the end of the Effective Date of this Agreement, which is December 31, 2023, whichever comes first, unless otherwise extended or renewed in writing. Invoices submitted after the one-hundred and twenty (120) day time period may not be paid.
- i.** Any funds made available to the County by the Department pursuant to this Agreement which are determined by the Department to have been expended by the County in violation of this Agreement or any other applicable law or regulation, shall be promptly refunded in full to the Department. Acceptance by the Department of any documentation or certifications, mandatory or otherwise permitted, that the County files shall not constitute a waiver of the Department's rights as the funding agency to verify all information at a later date by audit or investigation.

7.2 In determining the amount of the payment, the Department will exclude all Permit Project costs incurred by the County prior to the execution of this Agreement, costs incurred after the expiration of the Agreement, costs agreed to be borne by the County or its contractors and subcontractors for not meeting the Project commencement and final invoice time lines, and costs attributable to goods or services received under a contract or other arrangements which have not been approved in writing by the Department.

8. SOVEREIGN IMMUNITY

The parties hereto intend to avail themselves of the benefits of §768.28 and §163.01(9)(a), Florida Statutes, and of other statutes and the common law governing sovereign immunity to the fullest extent possible. In accordance with §163.01(5)(o), Florida Statutes, therefore, one party shall not be jointly liable for the torts committed by the officers, employees, agents, representative or contractors of the other party. Each party shall be solely responsible for the negligent acts and omissions of its officers, employees, agents, representative and contractors, and then only to the extent of the limited waiver of sovereign immunity or limitation of liability specified in §768.28, Florida Statutes. Nothing in this Interlocal Agreement is intended to inure to the benefit of any third party for the purposes of allowing any claim that would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

9. 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 Avenue, MS 2010
Lake City, FL 32025

City: Attention: Director
Alachua County Environmental Protection Department
408 West University Avenue, Suite 106,
Gainesville, FL 32601

10. GOVERNING LAW

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

11. INITIAL DETERMINATION OF DISPUTES

If a dispute arises concerning the interpretation, validity, performance, or alleged breach of this Agreement which cannot be resolved at the staff level, such dispute shall be elevated to the attention of Alachua County Environmental Protection Department Director and the Department's Director of Transportation Operations (Director) or its designee. If the Environmental Protection Director and the Director are unable to resolve any dispute, then the matter will be elevated to the Department's District

2 Secretary and the County Manager who will meet to resolve the dispute. In the event there is not a resolution the parties retain all equitable and legal rights to enforce this Agreement.

12. VENUE AND JURISDICTION

12.1. Venue for 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.

12.2. The County 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 and obligations provided in this Agreement without the prior written consent of the other party. Any assignment shall comply with all applicable Law, including without limitation, Chapter 163 Florida Statutes, as may be amended from time to time. Nothing herein shall prevent the County from delegating its duties hereunder to contractors, but such delegation shall not release the County 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; and
- (ii) Each provision of the Agreement has been negotiated fairly at arm’s length; and
- (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 principal 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. EFFECT OF AGREEMENT

The parties shall offer this Agreement as evidence in 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.

27. ANNUAL APPROPRIATION

27.1. 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.

27.2. 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 one (1) year, the provisions of Section 339.135(6) (a), Florida Statutes, as may be amended from time to time, 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.”

27.3. The County agrees that in the event the funds are not appropriated to the Department then this Agreement may be terminated. The Department shall notify the County in writing within thirty (30) days of the date the Department is notified by the Florida Legislature the funds shall not be appropriated. Upon notification by the Department that funds are not appropriated, and this Agreement is terminated, the County shall no longer be obligated to provide services not yet rendered. Nothing in this termination clause shall exempt the County from continuing to provide services already paid for by the Department.

28. RECORDKEEPING

The County shall maintain an accounting system or separate accounts to ensure funds and projects are tracked separately. Records of costs incurred under the terms of this 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 the final payment is made. Copies of these documents and records shall be furnished to the Department upon request. Records of costs incurred include the County's general accounting records and the project records, together with supporting documents and records, of the County and all subcontractors performing work on the project, and all other records of the County and subcontractors considered necessary by the Department for a proper audit of costs. Prior to the destruction of any documents, the County shall transfer all documents to the Department in compliance with Section 29 below.

29. PUBLIC RECORDS

County shall comply with Chapter 119, Florida Statutes. Specifically, the County shall:

29.1 Keep and maintain public records that ordinarily and necessarily would be required by the Department to perform this Agreement.

29.2 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.

29.3 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 this Agreement and following completion of the Agreement if Agency does not transfer the records to the Department.

29.4 Upon completion of this Agreement, transfer, at no cost, to the Department all public records in possession of Applicant or keep and maintain public records required by the Department to perform this Agreement. If County transfers all public records to the public Agency upon completion of this Agreement, County shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If County keeps and maintain public records upon completion of this Agreement, County 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.

Failure by County to act in accordance with Chapter 119 and the foregoing shall be grounds for immediate unilateral cancellation of this Agreement by the Department. County shall promptly provide the Department with a copy of any request to inspect or copy public records in possession of County and shall promptly provide the Department a copy of Applicant's response to each such request.

IF THE CONSULTANT/CONTRACTOR/VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S/CONTRACTOR'S/VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

District 2
386-758-3727
D2prcustodian@ dot.State.FL.us
Florida Department of Transportation
District 2 - Office of General Counsel
1109 South Marion Avenue, MS 2009
Lake City, FL 32025

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties hereby execute this Agreement, consisting of 13 pages, excluding content of attached exhibits.

INTENTIONALLY LEFT BLANK

- Signatures on Following Pages-

Florida Department of Transportation

Attest:

By: _____

By: _____

Printed Name: Greg Evans

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 _____, 2022, by Greg Evans, District Two Secretary, who is personally known to me.

Legal Review Approved as to the Form:

By: _____

(signature)

(print)

Office of the General Counsel District 2

Legal Review:

By: _____

(signature)

Nona R. Schaffner

(print)

Office of the General Counsel CO

Alachua County

By: _____

Printed Name: _____

Title: _____

Date: _____

Attest:

By: _____

Printed Name: _____

Title: _____

Date: _____

Legal Review Approved as to the Form:

County Attorney

County Logo

To: Florida Department of Transportation
1109 S. Marion Avenue, MS 2010
Lake City Florida 32025-5874

December 3, 2020

Remit To

County's Specific
Department and
address

INVOICE No.

From To

SERVICE PERIOD:

ILA CONTRACT NO.

	Contract Amount	Amount Paid to Date	Current Balance	Amount This Invoice
Main Street Wet Detention Pond Outflow Filter Project				
Total				

Authorized Signature:

Name:

Phone:

Email:

See attachment for Supporting Document(s)