

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 21 day of June, 2016 by and between the Florida Department of Transportation (“Department”) and the City of Jacksonville, 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 (2014), and other applicable law; and

B. The Department has a National Pollutant Discharge Elimination System (“NPDES”) Municipal Separate Storm Sewer System Phase I Permit which includes a Monitoring Plan (“MS4 Permit”), all of which are incorporated herein and made part of the Agreement by reference; and

C. The MS4 Permit requires the Department to perform:

1. Inventory and Mapping of Structural Controls and Stormwater Collection Systems, see MS4 Permit III Section A 1; and
2. Illicit Discharge and Improper Disposal proactive inspection program for identification and elimination, see MS4 Permit III Section 7c; and
3. Industrial and High Risk Runoff inventory, mapping, inspection, investigation and enforcement, see MS4 Permit III Section 8a; and
4. Monitoring Requirements, see MS4 Permit Part V; and
5. Stormwater Discharge compliance and Water Quality; Total Maximum Daily Load (TMDL) TMDL Monitoring Assessments, TMDL prioritization, and implementation, see MS4 Permit Part III Section VIII; and

D. The City agrees to provide services to the Department as required by the MS4 Permit and the Monitoring Plan; and

E. Article II of the Ordinance Code of the City of Jacksonville created the City’s Environmental Protection Board and Chapter 360 is the Environmental Regulation Ordinance; and the Environmental Protection Board has enacted rules to regulate Water Pollution; and Water Pollution Rule 3.103(E) prohibits the construction, use, maintenance or continued existence of illicit connections to a storm sewer or the MS4; and

F. Florida Statute 334.044(15) and Florida Administrative Code 14-86 authorize the Department to permit drainage connections to its rights of way (“ROW”). Per 334.044, the Department defers water quality assessment to “a water management district, the Department of Environmental Protection, a surface water

permit issued by a delegated local government, or a permit issued pursuant to an approved Stormwater Management Plan or Master Drainage Plan...”; and

G. The Department and the City agree to work together within the respective jurisdictions under the aforementioned authorities; thus the City is not responsible for determining if any discharge is authorized per a Department Drainage Connection Permit (DCP); and the City is also not responsible for DCP Site Construction Inspections to confirm that all erosion and sediment controls are in place and effectively maintained; and

H. The City and the Department submitted a TMDL Prioritization Report including the implementation of a Bacteria Control Plan. The City is not responsible for the Department’s participation in any Walk the WBID exercise Permit Part VIII B3a and B4; and

I. Sections 376.021, 376.30, and 403.021, Fla. Stat. (2014) 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

J. Section 334.044(26), Fla. Stat. (2014), requires the Department to provide for the enhancement of environmental benefits, including air and water quality; and

K. The City’s undersigned representative is vested with the authority to execute this Agreement on behalf of City by virtue of the City’s Ordinance, 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 exhibits are incorporated in and made part of this Agreement.

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

The effective date of the Agreement shall be the date the last of the parties to be charged executes the Agreement (“Effective Date”).

#### **3. TERM**

A. This Agreement shall begin June 1, 2016 and shall remain in full force and effect through May 31, 2021.

B. The Agreement may be renewed for up to one year. The renewal may be entered upon written request by the Department and written concurrence by the City. The renewal shall be in writing and shall be subject to the same terms and conditions as set forth in this Agreement.

C. This Agreement may be canceled by the Department in whole or in part at any time the interest of the Department requires such termination.

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

B. The City shall deliver an annual submission to the Florida Department of Environmental Protection (FDEP) documenting services performed in association with this agreement; including without limitation all documents and data demonstrating the Department is in compliance with the referenced MS4 permit terms and conditions covered by this agreement. Upon the Department's written request the City shall certify in writing to the Department that the services and submission to FDEP has been completed.

C. The City shall be responsible for performing or administering contracts to perform all services under this Agreement. The services 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. TOTAL MAXIMUM DAILY LOAD**

On May 7, 2015, the City and the Department entered into the Agreement for the Trade of Nitrogen Credits in the Marine Section of the Lower St. Johns River Basin (Trade Agreement). Nothing in this Agreement shall supersede the Trade Agreement or modify the percentage of any impairment, participation, or pollutant allocation for any TMDL reduction requirements in any water body within or flowing into or from drainage basins within the City of Jacksonville, or Duval County.

## **7. COMPENSATION AND PAYMENT**

A. MS4 Permit Requirements.

The Department shall pay \$1,900,171.00 to the City over the term of the Agreement for the City's performance of all services required to meet all of the Department's requirements for the MS4 permit for:

- (1) Inventory and Mapping of Structural Controls and Stormwater Collection Systems ("MS4 GIS Inventory Updates"); and
- (2) Illicit Discharge and Improper Disposal investigation, mapping and enforcement ("Proactive and reactive IDDE Support, mapping, Field Investigation, and Report"); and
- (3) Industrial and High Risk Runoff inventory, mapping, inspection, investigation and enforcement ("MSGP & High Priority Industry Inspections"); and
- (4) Water quality monitoring; and
- (5) TMDL prioritization, TMDL monitoring, assessment and implementation plan; and
- (6) Bacterial Pollution Control Plan ("Fecal Coliform SWMP/TMDL");

As listed in Exhibit B.

B. 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 "DOT Invoice Submittal Form" to the Department's NPDES Program Administrator for payment as described in this Agreement. The City will invoice, on a periodic basis, only for work completed. 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 Federal, State, and Local Rules and Regulations 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 (2014). The Department's liability for breach of this Agreement is specifically: (1) limited to actual damages incurred by City 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. (2014).

## **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: City Engineer  
City of Jacksonville  
214 N. Hogan Street,  
10th Floor  
Jacksonville, Florida 32202



**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. (2014). 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 without additional costs upon written request by the Department. 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, excluding content of attached exhibits.

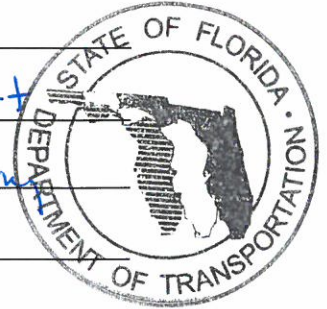
*- Signatures on Following Pages-*

Florida Department of Transportation

By: [Signature]  
Printed Name: Greg Evans, P.E.  
Title: District Two Secretary  
Date: 06/21/16

Attest:

By: [Signature]  
Printed Name: Lisa Lambert  
Title: Executive Secretary  
Date: June 21, 2016



State of Florida  
County of Columbia

The foregoing instrument was acknowledged before me this 21 day of June, 2016, by Greg Evans, P.E., District Two Secretary, who is personally known to me.

[Signature]

Legal Review:

By: [Signature]  
Office of the General Counsel District 2



City of Jacksonville

By: [Signature]  
Printed Name: Lenny Curry  
Title: Mayor  
Date: 6/15/16

Attest:

By: [Signature]  
Printed Name: James R. McCain, Jr  
Title: Corp. Secretary  
Date: 6/15/16



Executive Order No. 2015-05  
Under Authority of:  
For: Mayor Lenny Curry

STATE OF FLORIDA  
COUNTY OF DUVAL

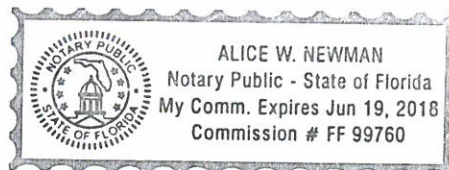
The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of May, 2016, by Sam Mousa, who is personally known to me, or who produced \_\_\_\_\_ as identification.

*for on behalf of the Mayor*

Form Approved:

[Signature]  
Office of the General Counsel City of Jacksonville

[Signature]







## Croci, Jocelyn

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**From:** Newman, Alice <ANEWMAN@coj.net>  
**Sent:** Monday, June 20, 2016 10:57 AM  
**To:** Croci, Jocelyn  
**Subject:** RE: COJ FDOT NPDES Interlocal Agreement

Jocelyn, in reference to the agreement between COJ FDOT NPDES Interlocal agreement. I concur with this proposal and I apologize for my notary mistake it should state the month of June. Again Thanks!

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**From:** Croci, Jocelyn [mailto:Jocelyn.Croci@dot.state.fl.us]  
**Sent:** Monday, June 20, 2016 10:08 AM  
**To:** Newman, Alice  
**Cc:** Croci, Jocelyn  
**Subject:** COJ FDOT NPDES Interlocal Agreement

Good morning Ms. Newman,

Thank you for taking my call and talking with me this morning about the signature page of the NPDES Interlocal Agreement between the Florida Department of Transportation (Department) and the City of Jacksonville (COJ). I have attached the signature page by itself, the entire agreement, and the enacted ordinance above for your reference. The Department proposes the notary block may contain a scrivener's error in the date and inadvertently says May rather than June.

If you would review and let me know if the COJ concurs with this proposal. If the COJ does then if you could email me the concurrence for the Department's files it would be greatly appreciated.

If you have any questions about the attached or the email above please do not hesitate to let me know.

Thank you in advance for your time and assistance.

Best regards,  
Jocelyn

Jocelyn Croci  
Assistant General Counsel  
Office of the General Counsel  
Florida Department of Transportation  
1109 South Marion Avenue  
Mail Station 2008  
Lake City, FL 32025-5874  
Telephone (386) 758-3708  
Facsimile (386) 758-3771

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, please notify the sender, delete this message, and do not use, disseminate, or copy its contents. Thank you.

The OGC would appreciate FDOT employees completing our Quality Assurance Legal Services Survey by clicking [here](#). Thank you.



Doc # 2015156380, OR BK 17227 Page 600,  
Number Pages 3  
Recorded 07/08/2015 at 03:34 PM,  
Ronnie Fussell CLERK CIRCUIT COURT DUVAL  
COUNTY  
RECORDING \$27.00

## OFFICE OF MAYOR LENNY CURRY

ST. JAMES BUILDING  
117 WEST DUVAL STREET, SUITE 400  
JACKSONVILLE, FLORIDA 32202

PHONE: (904) 630-1776  
FAX: (904) 630-2391  
www.COJ.NET

### EXECUTIVE ORDER NO. 2015-05

**TO: Sam E. Mousa, Chief Administrative Officer**

**FROM: Lenny Curry, Mayor**

**SUBJECT: Delegation of Authority to Sign Documents on Behalf of the Mayor:**

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By virtue of the authority vested in me as Mayor by the Charter of the City of Jacksonville and by Section 20.107, *Ordinance Code*, and as chief executive and administrative officer of the Consolidated Government, it is ordered as follows:

**Section 1. Discussion.** The Mayor is required by various laws and ordinances to sign a great many documents (the term "document" in this Executive Order includes applications, contracts, notices, real estate instruments, and other documents that must be recorded in the public records of Duval County and other formal and official papers) during the course of a day, a week, a month or a year. In many cases, the final recommendation as to whether I should sign a document will have been made by you, as my Chief Administrative Officer, in which recommendation I shall concur before I sign the document. As Chief Administrative Officer, you are one of my direct links with the departments, agencies, and other entities both within and without the Consolidated Government, and you have my complete confidence as evidenced by my appointment of you to that position pursuant to authority contained in Section 6.07, Charter of the City of Jacksonville. Consequently and because of the tremendous paperwork burden in the Office of the Mayor, it is my intention in this Executive Order to authorize you to sign all documents which I am required to sign except, as expressly provided herein, specified classes of documents which, by their very nature, must be personally signed by the Mayor. Notwithstanding any thing in this Executive Order to the contrary, it is my intent that this authority shall be supplemental to, but shall not replace, any similar authority which may be given to other persons for the purposes stated herein.

**Section 2. Delegation of Authority.** Pursuant to the Authority contained in Section 20.107, *Ordinance Code*, you, as an administrative aide to the Mayor appointed pursuant to authority of Section 6.07, Charter of the City of Jacksonville, and designated as my Chief Administrative Officer, are hereby authorized to sign on behalf of the Mayor, and with no other approval of the Mayor being necessary, all documents requiring the Mayor's signature except for the classes of documents designated in paragraphs (a) through (f) below:

- (a) legislative measures which have passed the Council and which have been transmitted to the Mayor for approval or disapproval under Section 6.05, Charter of the City of Jacksonville;
- (b) messages returning legislative measures to the Council expressing my disapproval of them under Section 6.05, Charter of the City of Jacksonville;
- (c) the selection of persons in order of preference for negotiations under Section 126.304, *Ordinance Code*;
- (d) proclamations and Executive Orders;
- (e) documents which I have authorized other persons to sign on my behalf under another delegation of authority pursuant to Section 20.107, *Ordinance Code*; and
- (f) documents which are required by federal, state, or local law to be signed by the Mayor in his *personal and individual* capacity.

**Section 3. Documents Which Must Be Recorded in the Public Records of Duval County.** From time to time it is necessary for me to sign certain real estate documents (including, but not limited to, deeds, easements, licenses, and leases), and other documents that must be recorded in the public records of Duval County (the "Recorded Documents"). The authority to sign documents contained in this Executive Order also relates to and specifically includes such Recorded Documents. The Authority herein is neither prohibited nor limited by Sections 2 (e) or (f) of this Executive Order. The Corporation Secretary is directed to take appropriate steps to have this Executive Order recorded in the public records of Duval County as notice of this authority.

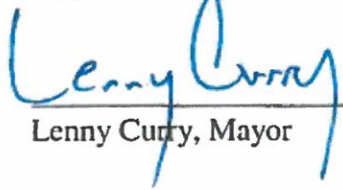
**Section 4. Personal Authority; Reservation to Modify Authority.** The authority contained in this Executive Order is personal to you as a mayoral aide and designated as my Chief Administrative Officer. Where necessary and required, you shall reference this Executive Order as your written authority to sign documents on behalf of the Mayor. The authority contained in this Executive Order is not exclusive and I reserve the right under Section 20.107, *Ordinance Code*, to confer such authority on others, revoke or reduce this authority at any time, or impose conditions in writing for the further exercise of this authority; *provided however*, any such revocation of the authority shall not be effective against *bona fide* purchasers without notice.




Approved as to conformity with  
sound fiscal policy:

  
\_\_\_\_\_  
Director of Finance

Approved and Issued:

  
\_\_\_\_\_  
Lenny Curry, Mayor

Approved as to Form:

  
\_\_\_\_\_  
Jason R. Gabriel, General Counsel

Approval Date: July 1, 2015


Effective Date: July 1, 2015

ORDINANCE 2016-347-E

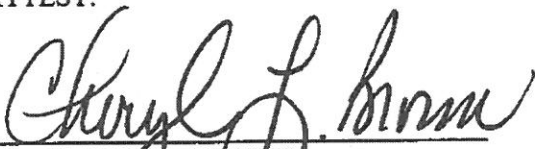
CERTIFICATE OF AUTHENTICATION

ENACTED BY THE COUNCIL


June 14, 2016

  
\_\_\_\_\_  
GREG ANDERSON  
COUNCIL PRESIDENT

ATTEST:

  
\_\_\_\_\_  
DR. CHERYL L. BROWN  
COUNCIL SECRETARY

APPROVED: JUN 16 2016

  
\_\_\_\_\_  
LENNY CURRY, MAYOR



1 Introduced by the Council President at the request of the Mayor:  
2  
3

4 **ORDINANCE 2016-347-E**

5 AN ORDINANCE APPROVING AND AUTHORIZING THE  
6 MAYOR, OR HIS DESIGNEE, AND THE CORPORATION  
7 SECRETARY TO EXECUTE AND DELIVER ON BEHALF OF  
8 THE CITY THE INTERLOCAL AGREEMENT FOR  
9 ALLOCATION AND IMPLEMENTATION OF NATIONAL  
10 POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM  
11 REQUIREMENTS BETWEEN THE FLORIDA DEPARTMENT OF  
12 TRANSPORTATION AND THE CITY; PROVIDING FOR  
13 CITY OVERSIGHT BY THE DEPARTMENT OF PUBLIC  
14 WORKS; PROVIDING AN EFFECTIVE DATE.  
15

16 **BE IT ORDAINED** by the Council of the City of Jacksonville:

17 **Section 1. Interlocal Agreement approved and execution**  
18 **authorized.** There is hereby approved, and the Mayor, or his  
19 designee, and the Corporation Secretary are hereby authorized to  
20 execute and deliver on behalf of the City, the Interlocal Agreement  
21 for Allocation and Implementation of National Pollutant Discharge  
22 Elimination System (NPDES) Program Requirements (the "Agreement")  
23 between the Florida Department of Transportation (FDOT) and the  
24 City of Jacksonville, in substantially the same form as is attached  
25 hereto as **Exhibit 1** and incorporated herein by this reference. The  
26 State holds a NPDES Municipal Separate Storm Sewer Phase 1 Permit,  
27 which includes a monitoring plan (MS4 permit). The Agreement will  
28 replace the previous agreement for the MS4 permit requirements for  
29 Cycle 3 to reflect the most recent MS4 permit requirements,  
30 identified as Cycle 4, and ensure that the responsibilities  
31 associated with COJ/FDOT MS4 permit are updated to meet the Cycle 4

1 requirements and that appropriate financial responsibilities are  
2 addressed.

3       **Section 2. Oversight.**       The Department of Public Works  
4 shall oversee the project described herein.

5       **Section 3. Effective Date.**       This ordinance shall become  
6 effective upon signature by the Mayor or upon becoming effective  
7 without the Mayor's signature.

8

9 Form Approved:

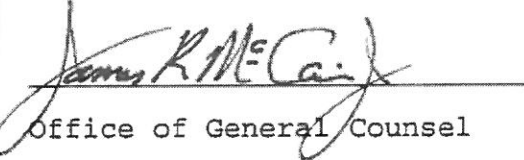
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Office of General Counsel

Legislation prepared by: James R. McCain, Jr.

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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 \_\_\_\_\_, 2016 by and between the Florida Department of Transportation ("Department") and the City of Jacksonville, 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 (2014), and other applicable law; and

B. The Department has a National Pollutant Discharge Elimination System ("NPDES") Municipal Separate Storm Sewer System Phase I Permit which includes a Monitoring Plan ("MS4 Permit"), all of which are incorporated herein and made part of the Agreement by reference; and

C. The MS4 Permit requires the Department to perform:

1. Inventory and Mapping of Structural Controls and Stormwater Collection Systems, see MS4 Permit III Section A 1; and
2. Illicit Discharge and Improper Disposal proactive inspection program for identification and elimination, see MS4 Permit III Section 7c; and
3. Industrial and High Risk Runoff inventory, mapping, inspection, investigation and enforcement, see MS4 Permit III Section 8a; and
4. Monitoring Requirements, see MS4 Permit Part V; and
5. Stormwater Discharge compliance and Water Quality; Total Maximum Daily Load (TMDL) TMDL Monitoring Assessments, TMDL prioritization, and implementation, see MS4 Permit Part III Section VIII; and

D. The City agrees to provide services to the Department as required by the MS4 Permit and the Monitoring Plan; and

E. Article II of the Ordinance Code of the City of Jacksonville created the City's Environmental Protection Board and Chapter 360 is the Environmental Regulation Ordinance; and the Environmental Protection Board has enacted rules to regulate Water Pollution; and Water Pollution Rule 3.103(E) prohibits the construction, use, maintenance or continued existence of illicit connections to a storm sewer or the MS4; and

F. Florida Statute 334.044(15) and Florida Administrative Code 14-86 authorize the Department to permit drainage connections to its rights of way ("ROW"). Per 334.044, the Department defers water quality assessment to "a water management district, the Department of Environmental Protection, a surface water

permit issued by a delegated local government, or a permit issued pursuant to an approved Stormwater Management Plan or Master Drainage Plan..."; and

G. The Department and the City agree to work together within the respective jurisdictions under the aforementioned authorities; thus the City is not responsible for determining if any discharge is authorized per a Department Drainage Connection Permit (DCP); and the City is also not responsible for DCP Site Construction Inspections to confirm that all erosion and sediment controls are in place and effectively maintained; and

H. The City and the Department submitted a TMDL Prioritization Report including the implementation of a Bacteria Control Plan. The City is not responsible for the Department's participation in any Walk the WBID exercise Permit Part VIII B3a and B4; and

I. Sections 376.021, 376.30, and 403.021, Fla. Stat. (2014) 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

J. Section 334.044(26), Fla. Stat. (2014), requires the Department to provide for the enhancement of environmental benefits, including air and water quality; and

K. The City's undersigned representative is vested with the authority to execute this Agreement on behalf of City by virtue of the City's Ordinance, 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 exhibits are incorporated in and made part of this Agreement.

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

The effective date of the Agreement shall be the date the last of the parties to be charged executes the Agreement ("Effective Date").

#### **3. TERM**

A. This Agreement shall begin June 1, 2016 and shall remain in full force and effect through May 31, 2021.

B. The Agreement may be renewed for up to one year. The renewal may be entered upon written request by the Department and written concurrence by the City. The renewal shall be in writing and shall be subject to the same terms and conditions as set forth in this Agreement.

C. This Agreement may be canceled by the Department in whole or in part at any time the interest of the Department requires such termination.

#### **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

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

B. The City shall deliver an annual submission to the Florida Department of Environmental Protection (FDEP) documenting services performed in association with this agreement; including without limitation all documents and data demonstrating the Department is in compliance with the referenced MS4 permit terms and conditions covered by this agreement. Upon the Department's written request the City shall certify in writing to the Department that the services and submission to FDEP has been completed.

C. The City shall be responsible for performing or administering contracts to perform all services under this Agreement. The services 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. TOTAL MAXIMUM DAILY LOAD**

On May 7, 2015, the City and the Department entered into the Agreement for the Trade of Nitrogen Credits in the Marine Section of the Lower St. Johns River Basin (Trade Agreement). Nothing in this Agreement shall supersede the Trade Agreement or modify the percentage of any impairment, participation, or pollutant allocation for any TMDL reduction requirements in any water body within or flowing into or from drainage basins within the City of Jacksonville, or Duval County.

## **7. COMPENSATION AND PAYMENT**

A. MS4 Permit Requirements.

The Department shall pay \$1,900,171.00 to the City over the term of the Agreement for the City's performance of all services required to meet all of the Department's requirements for the MS4 permit for:

- (1) Inventory and Mapping of Structural Controls and Stormwater Collection Systems ("MS4 GIS Inventory Updates"); and
- (2) Illicit Discharge and Improper Disposal investigation, mapping and enforcement ("Proactive and reactive IDDE Support, mapping, Field Investigation, and Report"); and
- (3) Industrial and High Risk Runoff inventory, mapping, inspection, investigation and enforcement ("MSGP & High Priority Industry Inspections"); and
- (4) Water quality monitoring; and
- (5) TMDL prioritization, TMDL monitoring, assessment and implementation plan; and
- (6) Bacterial Pollution Control Plan ("Fecal Coliform SWMP/TMDL");

As listed in Exhibit B.

B. 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 "DOT Invoice Submittal Form" to the Department's NPDES Program Administrator for payment as described in this Agreement. The City will invoice, on a periodic basis, only for work completed. 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 Federal, State, and Local Rules and Regulations 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 (2014). The Department's liability for breach of this Agreement is specifically: (1) limited to actual damages incurred by City 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. (2014).

#### **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: City Engineer  
City of Jacksonville  
214 N. Hogan Street,  
10th Floor  
Jacksonville, Florida 32202



**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. (2014). 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 without additional costs upon written request by the Department. 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, excluding content of attached exhibits.

*- Signatures on Following Pages-*

**Florida Department of Transportation**

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

Printed Name: Greg Evans, P.E.

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 \_\_\_\_\_, 2016, 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 Jacksonville**

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

Printed Name: Lenny Curry

Title: Mayor

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

**Attest:**

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

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

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

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

STATE OF FLORIDA  
COUNTY OF DUVAL

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, who is personally known to me, or who produced \_\_\_\_\_ as identification.

**Form Approved:**

\_\_\_\_\_  
Office of the General Counsel City of Jacksonville

