

RESOLUTION NO. 2013- 229

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, PROVISIONS, AND REQUIREMENTS OF A JOINT PARTICIPATION AGREEMENT BETWEEN THE STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION, DISTRICT TWO, AND ST. JOHNS COUNTY, FLORIDA, AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE JOINT PARTICIPATION AGREEMENT ON BEHALF OF THE COUNTY

RECITALS

WHEREAS, the Florida Department of Transportation (FDOT) requires that St. Johns County execute three (3) originals of the Joint Participation Agreement (JPA) with regard to the County's withdrawal of funds from an escrow account administered by the Treasury with regard to a memorandum of agreement among St. Johns County, the Treasury and the Florida Department of Transportation that pertains to the County's performance of certain activities that are related to the NPDES Phase III Municipal Separate Storm Sewer System (MS4) generic permit program, pursuant to the Federal Clean Water Act and Section 403.0855, F.S.; and

WHEREAS, County staff has reviewed the attached and incorporated Joint Participation Agreement; and

WHEREAS, the County has determined that the Joint Participation Agreement is in the long-term interest of the County.

NOW, THEREFORE BE IT RESOLVED, by the Board of County Commissioners of St. Johns County, Florida that:

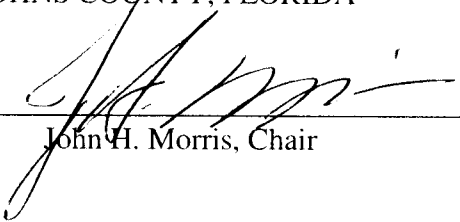
Section 1. The above Recitals are incorporated by reference into the body of this Resolution, and such Recitals are adopted as Findings of Fact.

Section 2. The Board of County Commissioners hereby approves the terms, conditions, provisions, and requirements of the attached Joint Participation Agreement between the State of Florida, Department of Transportation, District Two, and St. Johns County, Florida, and authorizes the County Administrator, or designee, to execute the Joint Participation Agreement on behalf of the County.

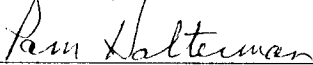
Section 3. The Board of County Commissioners hereby authorizes the County Administrator, or designee, to execute any other paperwork necessary, and/or associated with the Joint Participation Agreement with the Florida Department of Transportation, District Two.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 15th day of October 2013.

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

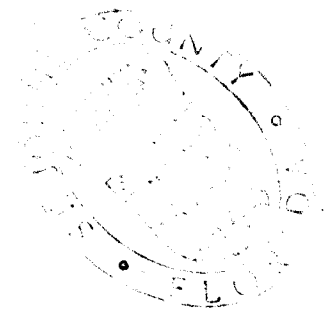
By: 
John H. Morris, Chair

ATTEST: Cheryl Strickland, Clerk

By: 
Deputy Clerk

Effective Date: 10/15/13

RENDITION DATE 10/17/13



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

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

THIS JOINT PARTICIPATION AGREEMENT (“Agreement”) made and entered into this _____ day of _____, 2013 by and between the Florida Department of Transportation (“Department”) and St. Johns County, Florida (“County”), a municipal corporation existing under the laws of the State of Florida.

- Recitals -

A. The Department is authorized to enter into this Agreement pursuant to §334.044(7), Florida Statutes (2012), and other applicable law; and

B. The Board of County Commissioners of St. Johns County, Florida, (“Board”) is authorized by Florida Statutes 125.01 authorizes to protect the health, safety, and welfare of its citizens; and

C. The County has a State of Florida Department of Environmental Protection Generic Permit for Discharge of Stormwater from Phase II Municipal Separate Storm Sewer System (“County Permit”). The County has filed a Notice of Intent (“County NOI”) to utilize the County Permit; the County Permit and County NOI are incorporated herein and made part of the Agreement by reference; and

D. The Department has a State of Florida Department of Environmental Protection Generic Permit for Discharge of Stormwater from Phase II Municipal Separate Storm Sewer System (“Department Permit”). The Department has received a Notice of Intent (“Department NOI”) to utilize the Department Permit; the Department Permit and Department NOI are incorporated herein and made part of the Agreement by reference; and

- E. The Department Permit requires the Department to perform:
1. Public Education and Outreach as to Stormwater Impacts (“Public Education”); and
 2. Public Participation/Involvement (“Public Involvement”) and;
 3. Illicit Discharge Detection and Elimination (“IDDE”); and
 4. Pollution Prevention/Good Housekeeping for Municipal Operations

F. The Board by Ordinance 2010-19 has adopted the Florida Department of Environmental Protection’s Model Ordinance for Florida Friendly Fertilizer Use on Urban Landscapes 2009 (“Model Ordinance”); the Model Ordinance is incorporated herein and made part of the Agreement by reference; and

G. The Board has adopted an illicit discharge ordinance; St. Johns County Ordinance 2006-62 (“Stormwater Ordinance”) prohibits the construction, use, maintenance or continued existence of illicit connections to a storm sewer or the MS4; the Stormwater Ordinance is incorporated herein and made part of the Agreement by reference; and

H. The Stormwater Ordinance also authorizes the County to perform Industrial and High Risk Runoff inventory, mapping, inspection, investigation and enforcement ("MSGP & High Priority Industry Inspections"); and

I. The County agrees to provide services to the Department as required by the Department Permit; and

J. In 2003, the Department and County entered into a Joint Participation Agreement ("JPA") and the JPA was renewed with a supplemental JPA in 2009; and

K. The 2009 supplemental JPA will expire on October 31, 2013; and

L. 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

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

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

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

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

2. EFFECTIVE DATE

The effective date of the Agreement shall be _____ ("Effective Date").

3. TERM

A. This Agreement shall begin on effective date and shall remain in full force and effect to close of business on 10/31/2018.

B. 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 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. SERVICES

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

B. The County 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

Nothing in this Agreement shall establish any responsibility by either party as a source of any impairment or pollution. Nothing in this Agreement shall establish any current or future apportionment or percentage of any impairment or pollutant allocation for any TMDL reduction requirements in any water body within or flowing into or from the Upper East Coast Basin, the Lower St. Johns Basin, or St. Johns County.

7. COMPENSATION AND PAYMENT

A. MS4 Permit Requirements.

The Department shall pay one hundred ninety thousand dollars (\$ 190,000 dollars) to the County over the term of the Agreement for the County’s performance of all services required to meet all of the Department’s Permit and Department NOI requirements for

- (1) Public Education and Outreach (“Public Education”); and
- (2) Public Participation/Involvement (“Public Involvement”) and;
- (3) Illicit Discharge Detection and Elimination (“IDDE”)

B. The County shall provide the Department’s Permit and Department NOI requirements as quantifiable, measureable, and verifiable units of deliverables.

C. Standard Financial Provisions

- i. Payment shall be made after receipt and approval of goods and services.
- ii. Invoices shall be submitted by the County in detail sufficient for a proper preaudit and post audit thereof, based on the quantified, measureable and verified units of deliverables as established in Section A. above. Deliverables must be received and accepted by the Department's Project Manager prior to payments.
- iii. Supporting documentation must establish that the deliverables were received and accepted and that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in Section A (see above) has been met.
- iv. The County's providing of goods and services to the Department should be aware of the following time frames. Upon receipt, the Department has 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 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

8. INDEMNIFICATION

A. To the extent permissible by law, the County will 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 County's performance or breach of this Agreement ("Liabilities"). The term "Liabilities" shall also specifically include all environmental liability arising, directly or indirectly under any Governmental Law caused by or resulting from the County's performance or breach of this Agreement. The County'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 County'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 County shall notify the Department in writing immediately upon becoming aware of any Liabilities. The County's obligations under this section shall be triggered by the Department's written notice of claim for indemnification to the County. The County'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 (2012), as amended from time to time. The Department's liability for breach of this Agreement is specifically: (1) limited to actual damages incurred by County as a direct result of the Department's breach; and (2) further limited in amount and shall not, under any circumstances, exceed the limitations of liability for tort actions set forth in §768.28(5), Fla. Stat. (2012).

10. NOTICE

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

Department: Attention: NPDES Administrator
Florida Department of Transportation
1109 South Marion Ave MS 2010

Lake City, FL 32025

County: Attention: County Engineer
St. Johns County Engineering Division
2740 Industry Center Road
St. Augustine, FL 32084

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 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, duties and obligations provided in this Agreement without the prior written consent of the other party. Any assignment shall comply with all Governmental Law including without limitation §163 Fla. Stat. (2012). Nothing herein shall prevent the County from delegating its duties hereunder, 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; (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 (ILA), joint participation agreements (JPA), supplemental JPA, 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, JPA , supplemental JPA, or supplemental agreement then 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 County agrees that in the event the funds are not appropriated to the Department then this Agreement may be terminated. Department shall notify the County 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 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.

29. RECORDKEEPING

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 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 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. The County shall obtain written approval from the Department prior to the destruction of any documents

related to this Agreement. Upon expiration of the five (5) years and written request by the County, the Department may approve in writing the destruction of documents.

30. COMPLIANCE WITH LAWS

A. The County shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County in conjunction with this Agreement.

B. Specifically, the County shall: (i) keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the services being performed by the County; and (ii) provide the public with access to public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided in chapter 119, Florida Statutes, or as otherwise provided by law; and (iii) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (iv) meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the County upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

C. All records stored electronically must be provided to the Department 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, excluding content of attached exhibits.

- Signatures on Following Pages-

Florida Department of Transportation

Attest:

By: _____

By: _____

Printed Name: Greg Evans, P.E.

Printed Name: _____

Title: District Two Secretary

Title: _____

Date: _____

Date: _____

State of Florida
County of Columbia

The foregoing instrument was acknowledged before me this ___ day of _____, 2013, by Greg Evans, P.E., District Two Secretary, who is personally known to me.

Legal Review:

By: _____
Office of the General Counsel District 2

St. Johns County, Florida

Attest:

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this _____ day of _____, 2013, by _____, who is personally known to me, or who produced _____ as identification.

Approved as to Form, Legality:

St. Johns County Legal Department