

**PINELLAS COUNTY GOVERNMENT IS COMMITTED TO
PROGRESSIVE PUBLIC POLICY, SUPERIOR PUBLIC SERVICE,
COURTEOUS PUBLIC CONTACT, JUDICIOUS EXERCISE OF AUTHORITY AND
SOUND MANAGEMENT OF PUBLIC RESOURCES,
TO MEET THE NEEDS AND CONCERNS OF OUR CITIZENS
TODAY AND TOMORROW**



**INTERLOCAL AGREEMENT BETWEEN
PINELLAS COUNTY AND THE FLORIDA DEPARTMENT OF TRANSPORTATION
FOR WATER QUALITY MONITORING AND ASSESSMENT**

**AGREEMENT PREPARED BY
DEPARTMENT OF PUBLIC WORKS
DIVISION OF ENVIRONMENTAL MANAGEMENT**

October 2020

**INTERLOCAL AGREEMENT BETWEEN PINELLAS COUNTY AND
THE FLORIDA DEPARTMENT OF TRANSPORTATION
FOR WATER QUALITY MONITORING AND ASSESSMENT**

This INTERLOCAL AGREEMENT BETWEEN PINELLAS COUNTY AND THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR WATER QUALITY MONITORING AND ASSESSMENT (this "Agreement"), is made and entered into on this 3rd day of December 2020, between (1) Pinellas County, a political subdivision of the State of Florida (the "COUNTY"); and (2) the Florida Department of Transportation (the "DEPARTMENT").

WITNESSETH:

WHEREAS, the COUNTY and the DEPARTMENT, together with certain municipalities in Pinellas County, are co-permittees on the Florida Department of Environmental Protection (FDEP) NPDES MS4 Permit FLS000005 (the "MS4 Permit"), which is effective July 1, 2018 through June 30, 2023;

WHEREAS, Part V.B.2 of the MS4 Permit requires that the permittees develop a Water Quality Monitoring and Assessment Program ("Assessment Program"), either individually or collaboratively, to gauge the overall effectiveness of each permittee's respective Stormwater Management Program in identifying local sources where the MS4 is adversely affecting surface water quality;

WHEREAS, the parties desire to complete the requisite Assessment Program collaboratively;

WHEREAS, the COUNTY is willing to fully perform the Assessment Program on the terms and conditions stated herein and the DEPARTMENT is agreeable to same;

WHEREAS, the COUNTY has entered into an interlocal agreement—similar to this Agreement—with its municipal MS4 co-permittees providing for cost sharing of the Assessment Program, with each municipality’s contribution adjusted annually based upon jurisdictional acreage;

WHEREAS, rather than adjust the DEPARTMENT’S financial contribution annually, the parties agree that \$40,000 per year is a fair DEPARTMENT contribution to the Assessment Program for DEPARTMENT Fiscal Years 2021, 2022, 2023,2024, and 2025; and

WHEREAS, a DEPARTMENT Fiscal Year runs from July 1 through June 30.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the parties mutually agree as follows:

SECTION 1. RECITALS

The recitals set forth in the “WHEREAS” clauses above are ratified, confirmed as true and correct, and are incorporated into this Agreement.

SECTION 2. COUNTY PERFORMANCE OF ASSESSMENT PROGRAM

The COUNTY shall fully perform the Assessment Program, as detailed in Exhibit A attached hereto, during the term of this Agreement.

SECTION 3. DEPARTMENT COST CONTRIBUTION

For its performance under this Agreement, the COUNTY shall be paid a \$40,000 yearly fee by the DEPARTMENT, or \$200,000 total for services provided during the term of this Agreement. Each County invoice shall include a breakdown of operating, labor, and laboratory analyses costs with the water quality data reports. Further invoicing terms

and conditions are outlined in the DEPARTMENT'S Standard Financial Provisions, which are attached as Exhibit B hereto.

SECTION 4. NOTICE

All notices, payments, and other written communications between the parties shall be sent by electronic mail, certified U.S. mail, or courier delivery service. Notices shall be considered effective when delivered as reflected by an electronic mail read receipt, a certified mail delivery receipt, or a courier service delivery receipt. Any notices, invoices, payments, and written communications shall be delivered to each party at the contact information provided below:

COUNTY:

Joseph Thames
NPDES Coordinator
Pinellas County Division of
Environmental Management
22211 US Hwy 19 N
Building 10
Clearwater, FL 33765
jthames@pinellascounty.org

DEPARTMENT:

John Iten
Maintenance Environmental Specialist
Florida Department of Transportation,
District 7
11201 N. McKinley Drive, M.S. 1200
Tampa, FL 33612-6456
John.Iten@dot.state.fl.us

SECTION 5. AGREEMENT TERM

This Agreement shall take effect after the COUNTY, pursuant to Section 163.01(11), Florida Statutes, has filed a fully executed version of this Agreement with the Clerk of Circuit Court of Pinellas County. This Agreement shall remain in effect until the DEPARTMENT fully pays the invoice for DEPARTMENT Fiscal Year 2025 (ending June 30, 2025).

SECTION 6. TERMINATION

Either party may terminate this Agreement by notifying the other party in writing at least thirty (30) calendar days prior to the beginning of the next DEPARTMENT Fiscal Year, which is no later than June 1. Should the DEPARTMENT opt to terminate this Agreement, the DEPARTMENT recognizes that (a) the County will notify FDEP of such termination; and (b) FDEP may require the DEPARTMENT to complete its own assessment program under the MS4 Permit. For example, if the DEPARTMENT does not wish to pay the COUNTY to perform the Assessment Program for DEPARTMENT Fiscal Year 2022 and future DEPARTMENT Fiscal Years, it must notify the COUNTY no later than June 1, 2021.

SECTION 7. NON-APPROPRIATION

The DEPARTMENT understand that the COUNTY'S performance of this Agreement is contingent upon annual appropriation of funds by the COUNTY'S governing body for obligations hereunder. If such appropriations by the COUNTY'S governing body are reduced or eliminated, the COUNTY shall promptly notify the DEPARTMENT. In such event, the COUNTY shall owe no funds for the Fiscal Year(s) that funds were not appropriated. The DEPARTMENT understands that this Agreement is not a commitment of future appropriations by the COUNTY's governing body. Non-appropriation language protecting the DEPARTMENT is included in Section 9 of Exhibit B.

SECTION 8. LIABILITY

Each party shall be responsible for its own negligence under this Agreement. Nothing herein shall be construed as a waiver of any party's sovereign immunity under Section 768.28, Florida Statutes. Nothing herein shall be construed as consent by any party to be sued by third parties.

SECTION 9. CHOICE OF LAW

This Agreement and the rights and obligations of the parties hereto shall be governed and construed according to the laws of the State of Florida. Any state litigation arising from this Agreement shall be filed in a court of competent jurisdiction in Pinellas County, Florida. Any federal litigation arising from this Agreement shall be filed in the Middle District of Florida, Tampa Division.

SECTION 10. COMPLIANCE WITH LAWS

At all times, the parties shall comply with all federal, state, and local statutes, rules, regulations and ordinances, the federal and state constitutions, and the orders and decrees of lawful authorities having jurisdiction over the matter at issue, including but not limited to Florida laws regarding the retention and disclosure of public records.

SECTION 11. ENTIRE AGREEMENT AND MODIFICATION

This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or allegations other than those contained herein, and this Agreement shall supersede all previous communications, representations, and agreements, whether written or verbal, between the parties.

This Agreement may be amended, extended, or terminated by mutual written agreement of the parties at any time.

SECTION 12. SEVERABILITY

If any clause or portion of a clause in this Agreement is determined to be invalid under the rule of law, the remainder of this Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

PINELLAS COUNTY, FLORIDA, by and through its County Administrator

By: 

Barry Burton, County Administrator

FLORIDA DEPARTMENT OF TRANSPORTATION

By: 

Title: Director of Operations

APPROVED AS TO FORM:


Brendan Mackesey, Assistant County Attorney


Florida Department of Transportation, Legal Representative

EXHIBIT B

FDOT Standard Financial Provisions

1. The Department agrees to compensate the County for costs accrued as part of the Ambient Water Quality Monitoring Program described within Exhibit A of this Interlocal Agreement. The method of compensation is described in Section 3 of the Interlocal Agreement.
2. The County shall provide quantifiable, measurable, and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. The Ambient Water Quality Monitoring Program and the quantifiable, measurable, and verifiable units of deliverables are described more fully in the body of the Interlocal Agreement and in Exhibit A attached thereto.
3. Invoices shall be submitted by the County in detail sufficient for a proper pre-audit and post-audit based on the quantifiable, measurable and verifiable units of deliverables as established in the body of the Interlocal Agreement and Exhibit A attached thereto. Deliverables must be received and accepted in writing by the Department prior to payments.
4. Supporting documentation must establish that the deliverables were received and accepted in writing by the County and must also establish that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in the Interlocal Agreement, was met. All costs invoiced shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of charges as described in FDOT Contract Payment Requirements.
5. Payment shall be made only after receipt and approval of goods and services unless advance payments are authorized by the Chief Financial Officer of the State of Florida under *Chapters 215 and 216, F.S.* or the Department's Comptroller under Section 334.044 (29), Florida Statutes. If the Department determines that the performance of the County is unsatisfactory, the Department shall notify the County of the deficiency to be corrected, which correction shall be made within a time-frame to be specified by the Department. The County shall, within five days after notice from the Department, provide the Department with a corrective action plan describing how the County will address all issues of contract non-performance, unacceptable performance, failure to meet the minimum performance levels, deliverable deficiencies, or contract noncompliance. If the corrective action plan is unacceptable to the Department, the County shall be assessed a non-performance retainage equivalent to 10% of the total invoice amount. The retainage shall be applied to the invoice for the then-current billing period. The retainage shall be

withheld until the County resolves the deficiency. If the deficiency is subsequently resolved, the County may bill the Department for the retained amount during the next billing period. If the County is unable to resolve the deficiency, the funds retained will be forfeited at the end of the Agreement's term.

7. A Party providing goods and services to the Department should be aware of the following time frames. Inspection and approval of goods or services shall take no longer than 5 working days unless the bid specifications, purchase order, or contract specifies otherwise. The Department has 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.

If a payment is not available within 40 days, a separate interest penalty at a rate as established pursuant to **Section 55.03(1), F.S.**, will be due and payable, in addition to the invoice amount, to the County. Interest penalties of less than one (1) dollar will not be enforced unless the County requests payment. Invoices that have to be 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.

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

8. 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 shall be retained according to the Records Retention Schedule posted on the Disbursement Operations SharePoint site 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 County's general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the Contractor and subcontractors considered necessary by the Department for a proper audit of costs.
9. 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), F.S.**, 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 such 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 \$25,000.00 and which have a term for a period of more than 1 year."

10. The Department's obligation to pay is contingent upon an annual appropriation by the Florida Legislature. (*Section 287.0582, F.S.*)
11. This contract does not involve the purchase of Tangible Personal Property, as defined in Chapter 273, F.S.