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Date: 4-29-19

Requestor's Name: Nagel Altrui / Lydia C. Department: PW&E

Phone/Extension: 2169

Title of Document: Lake Tohopekaliga Nutrient Reduction Plan Joint Agreement w/ Osceola County

Project Name: Lake Tohopekaliga Nutrient Reduction Plan

Number of Originals/Copies: 2

Requested Processing: (Please check all that apply)

7.M.

☒ Agenda Date: 5/7/19 Item # 2019-944 Agenda Location (i.e. 7.F.) _____

☒ Sign and Return - CA / CM / Mayor / City Clerk / Notary (please circle)

☐ Recording with Clerk of the Courts (Charge Department: _____)

☐ Vault Retention

☐ Laserfiche Scan and Retain

☐ Laserfiche Scan (Official Records) and Return

☐ Certified Copy (Resolutions / Ordinances)

Comments:

Return document to: PW&E
(Department)

Lydia Goetz
(Staff)

Number of originals/copies to be returned: 2

----- To be completed by the Clerk's Office -----

Processed by: A. Hamell Date: 5/13/2019

☐ Complete; no additional action necessary. ☐ _____

☒ Please returned fully executed original to the City Clerk for scanning. Thanks.

**JOINT PARTICIPATION AGREEMENT
BETWEEN
OSCEOLA COUNTY AND CITY OF KISSIMMEE
RELATING TO THE LAKE TOHOPEKALIGA
NUTRIENT REDUCTION PLAN**

THIS AGREEMENT ("Agreement") for sharing of costs related to the Lake Tohopekaliga Nutrient Reduction Plan ("Plan") is made and entered into this ____ day of _____, 2019, by and between OSCEOLA COUNTY, FLORIDA (hereinafter referred to as "COUNTY") and the CITY OF KISSIMMEE ("CITY"). The parties hereto are sometimes referred to individually as "Party" and collectively as "Parties".

WITNESSETH:

WHEREAS, the COUNTY and CITY reached a collective agreement with the State of Florida Department of Environmental Protection ("FDEP") on the Plan in December 2011; and

WHEREAS, the Plan outlines nutrient reduction goals to be completed through projects and outreach by the COUNTY and CITY within surface waters draining to Lake Tohopekaliga; and

WHEREAS, the Plan requires monitoring of surface waters for nutrient levels entering Lake Tohopekaliga from the COUNTY and CITY; and

WHEREAS, management activities within the Plan are also credited for downstream receiving waters within the Lake Okeechobee Basin Management Action Plan; and

WHEREAS, the COUNTY and CITY have agreed to work together through the Plan to act as a unified voice for the region and in the related Lake Okeechobee Basin Management Action Plan ("BMAP") process; and

WHEREAS, the COUNTY and CITY have agreed to establish and be recognized as a Working Group for its efforts in the Lake Tohopekaliga watershed; and

WHEREAS, the COUNTY and CITY have agreed to implement projects that meet the goals for the BMAP; and

WHEREAS, the COUNTY and CITY have agreed to identify, promote and fund research of the effects of management strategies on East Lake and Lake Tohopekaliga; and

WHEREAS, the COUNTY and CITY have agreed to identify and promote grant or other funding opportunities to assist in meeting the goals of the Plan and BMAP; and

WHEREAS, the COUNTY and CITY have agreed to identify, fund, and collaborate on projects that reduce nutrient loads within the watershed; and

WHEREAS; the COUNTY and CITY seek to work together to make the costs of the Plan manageable.

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **RECITALS.** The recitals contained above are true and correct and incorporated into the substantive body of this Agreement.
2. **INTENT AND PURPOSE.** The intent and purpose of this Agreement is to provide a structure for funding the ongoing reporting needs of the Plan. To achieve the goals of expediency and accuracy the COUNTY and CITY seek to work together in sharing the costs of continuing the Plan, as further specified by this Agreement. It is expected that the money that is expended on the Plan will continue to reduce unfunded mandate responsibilities of the separate jurisdictions in the implementation of the BMAP and continue to defer the implementation of inaccurate Total Maximum Daily Load nutrient reduction requirements on the contributing jurisdictions to surface waters on Lake Tohopekaliga. This Agreement is limited to funding the ongoing requirements of the Plan and the BMAP process as described in this Agreement and is not intended to, nor shall it be construed to create or require, any other obligation, expenditure, or action by CITY, including, but not limited to, any obligations recommended by the Plan or the BMAP.
3. **TERM.** The term of this Agreement shall be for the period necessary to complete the obligations of the Plan, unless terminated by any of the Parties hereto.
4. **TERMINATION.** This Agreement will automatically terminate upon completion of the Work. Prior to the COUNTY's execution of a contract with the Consultant for the Work, as hereinafter described, any Party may terminate this Agreement for any reason, upon twenty (20) days written notice, "Notice," to the other Parties. Otherwise, any Party may terminate this Agreement upon the default of any other Party as provided in Section 5, below. Upon termination, all unpaid Funds will be returned to the Parties in the ratios by which they were deposited.
5. **DEFAULT.** Each Party may give the other Parties written notice of any defaults by any Party hereunder and shall allow the defaulting Party thirty (30) days from the date of said notice to cure the default(s), failing which, the Party who provided the notice may terminate this Agreement upon submittal of a Notice of Termination to the other Parties.
6. **ALLOCATION OF COSTS.** As provided in Section 6, below, CITY agrees to pay the COUNTY for a portion of the costs, invoiced by the Consultant, to complete the Work, as hereinafter defined. CITY agrees to reimburse the COUNTY in an amount not to exceed the principal cost contribution set forth in Exhibit A. Under no circumstances shall CITY be responsible for any additional funds including contributions or monies which may be owed to the COUNTY by any other entities under this Agreement. Any changes in costs shall be

discussed and agreed upon by the Working Group by amendment to this Agreement, prior to any changes to total annual allocation for each party.

7. **TIMETABLE OF PAYMENT.** Within thirty days of each payment made to the Consultant under this Agreement, COUNTY will submit to CITY, the applicable invoice from the Consultant and will certify that the portion of Work referenced in the invoice was completed. CITY will submit the proportional share of that invoice within 45 days of receipt by CITY. For purposes of the Final Invoice, COUNTY will include a certificate of completion for the Work, as well as reasonable back up documentation supporting the expenditures.

8. **UNEXPENDED FUNDS: AUDIT.** Upon request, CITY shall have the right to inspect and audit the books and records of the COUNTY related to this Agreement, including but not limited to, for the purpose of verifying payment requests. COUNTY will maintain books, records, and other evidence relating to the Work in accordance with generally accepted accounting principles, procedures and practices.

9. **ADMINISTRATION OF PLAN.** The COUNTY, through its Public Works Department, is the administrator of the Plan and is solely responsible for the activities of the Consultant related to completion of the Work. The COUNTY shall assign task authorizations relating to the Work to be performed in accordance with the contract of the Consultant. It shall be the responsibility of the COUNTY to ensure communication between and meetings of the working group occur at regular intervals. The COUNTY shall not submit the report to the Florida Department of Environmental Protection or any other entity with the exception of the participating Working Group until all review and comment from the Working Group has occurred.

The Consultant is responsible for the professional quality, technical accuracy, timely completion, and coordination of all geospatial and data analysis, reports, and other services related to the Plan and furnished by the Consultant under the Task Authorization.

10. **CONSULTANT.** The COUNTY shall be solely responsible for selecting and contracting with a qualified consultant, "Consultant," to perform the Work. The COUNTY has contracted a consultant to manage aspects of the requirements under the Plan including data compilation, review, and analysis pertaining to impaired waters, TMDL and BMAP activities and documents; assistance with Plan compliance activities; analysis of environmental data for Lake Tohopekaliga; assistance with water grant related documents; meeting attendance with or on behalf of the COUNTY; and, provide coordination of stakeholders in the Plan. Within ten (10) days of the full execution of the contract between the Consultant and the COUNTY, the COUNTY will provide a copy of said contract to each Party.

11. **MISCELLANEOUS.**

- a. This Agreement may be executed in one or more counterparts, each of which shall be considered as original.

- b. The headings used are for convenience only and they shall be disregarded in the construction and interpretation of this Agreement.
- c. The drafting of this agreement constituted a joint effort of the parties and the Agreement's interpretation shall assume that no party had more input or influence than any other. All words, terms, and conditions herein contained are to be read in concert, each with the other, and a provision contained under one heading may be considered equally applicable under another heading in the interpretation of this Agreement.
- d. This Agreement is solely for the benefit of the parties to this Agreement and no causes of action shall accrue upon or by reason hereof to or for the benefit of any third parties.
- e. The laws of the State of Florida shall govern any and all claims arising under this Agreement. If any section, subsection, sentence, clause, phrase, or portion of this Interlocal Agreement is, for any reason, held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed as separate, distinct, and independent provision. Such holding shall not affect the validity of the remaining portions of this Interlocal Agreement.
- f. This Agreement is intended by the parties hereto to be the final expression of their Agreement and is a complete and exclusive statement thereof notwithstanding any representation or statements to the contrary heretofore made. This Agreement may be amended only if such amendment is in written form and executed by the parties.
- g. Nothing contained in this Agreement or in any instruments executed pursuant to the terms of this Agreement shall be construed as a waiver or attempted waiver by CITY or the COUNTY of their sovereign immunity under the Constitution and laws of the State of Florida.
- h. No right or remedy herein conferred upon or reserved to any Party hereto is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of a default hereunder. The failure of any Party to insist, at any time, upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy as provided in this Agreement, shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof with respect to subsequent defaults. Every right and remedy given by this Agreement to the Parties may be exercised from time to time and as often as may be deemed expedient by the Parties, as the case may be.
- i. Nothing in this Agreement shall be construed to make the Parties hereto partners or joint ventures or render any of said Parties liable for the debts or obligations of the other Parties.

12. **NOTICE.** Any notice or other document required or allowed to be given pursuant to this Agreement by any party to another shall be in writing, and shall be delivered personally, or by recognized overnight courier or sent by certified mail, postage prepaid, return receipt requested, or by email with written confirmation.

If to City of Kissimmee, such notice shall be addressed to City of Kissimmee at:

Mike Steigerwald, City Manager
101 Church Street
Kissimmee, FL 34741
msteriger@kissimmee.org

With a copy to:

Nagel Altrui, Stormwater Engineer
101 Church Street, Suite 301
Kissimmee, FL 34741
naltrui@kissimmee.org

If to Osceola COUNTY, such notice shall be addressed to Osceola COUNTY at:

Don Fisher, COUNTY Manager
1 Courthouse Square, Suite 4100
Kissimmee, FL 34741
Don.Fisher@osceola.org

With a copy to:

Susan Gosselin, Stormwater Program Manager
1 Courthouse square, Suite 3100
Kissimmee, FL 34741
Susan.Gosselin@osceola.org

13. **TIME IS OF THE ESSENCE.** Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Agreement.

14. **EFFECTIVE DATE.** The effective date, "Effective Date," of this Agreement shall be date last properly executed, as evidenced by dates under signatures.

IN WITNESS WHEREOF, the Board of COUNTY Commissioners of Osceola COUNTY, Florida, has caused this Agreement to be executed and delivered this 17 day of MARCH, 2019. 2020



BOARD OF COUNTY COMMISSIONERS
OF OSCEOLA COUNTY, FLORIDA

By: Don Fisher
~~Chair / Vice Chair~~ County manager

ATTEST:
OSCEOLA COUNTY CLERK OF THE BOARD

By: Sammy Ross
Clerk/ Deputy Clerk of the Board

As authorized for execution at the Board of
COUNTY Commissioners meeting of:

03/16/2020
JPA with City of Kissimmee

IN WITNESS WHEREOF, the City of Kissimmee Commission has caused this Agreement to be executed and delivered this 7th day May, 2019.

CITY OF KISSIMMEE

By: 
Jose Alvares, Mayor-Commissioner

(SEAL)

ATTEST:




~~Clerk/Deputy Clerk~~ City Clerk

Approved as to form and legal sufficiency:


City Attorney

EXHIBIT A

NRP Costs

Costs	Watershed Acres	Percent Share (%)
Osceola COUNTY	103,001	41%
City of Kissimmee	11,731	22%
City of St. Cloud	8,582	12%
City of Orlando	34,302	19%
FDOT	2,501	6%