



MEMORANDUM

To: Susan Gosselin, Stormwater Program Manager
From: Lisa Lotti, Stormwater Compliance Program Manager
Date: January 29, 2020
Subject: Two Copies of Executed JPA for Osceola County Board Consideration

Susan,

Please find two copies of our executed Joint Participation Agreement (JPA) relating to the Lake Tohopekaliga Nutrient Reduction Plan.

We are hopeful that your County Council will approve the agreement. If this occurs, can you please return one of the executed agreements back to me for our records? My mailing address is:

City of Orlando
Streets and Stormwater Division
Attn: Lisa Lotti
1030 Woods Avenue
Orlando, FL 32805

If you need any additional information before Council, please do not hesitate to contact me at lisa.lotti@cityoforlando.net or (o) 407.246.2037 / (c) 321.228.0318.

Thank you for your patience though all of this. We look forward to continuing our work together in the near future.

Best regards,

A handwritten signature in blue ink, appearing to read "Lisa", located below the "Best regards," text.

CITY OF ORLANDO
COUNCIL AGENDA ITEM

I-6

Items Types:

Public Works

District: 1,2,4,5,6

Contract ID:

Exhibits: Yes

Grant Received by City?: No

For Meeting of:

January 13, 2020

From:

Document Number:

On File (City Clerk) : Yes

Draft Only: No

Subject:

Joint Participation Agreement between Osceola County and City of Orlando, relating to the Lake Tohopekaliga Nutrient Reduction Plan

Summary:

Osceola County, in cooperation with the Florida Department of Transportation, City of Kissimmee, City of St. Cloud and the City of Orlando, is continuing the Lake Tohopekaliga (Lake Toho) Nutrient Reduction Plan (NRP). The goal of the Nutrient Reduction Plan is to improve the water quality in Lake Toho by identifying all significant nutrients load entering this waterbody. Lake Toho has been identified as being impaired by the Florida Department of Environmental Protection (FDEP), therefore, water quality improvements are mandated. Osceola County has coordinated the preparation of the Nutrient Reduction Plan with local governments which discharge into the Shingle Creek and/or Boggy Creek basins, comprehensively referred to as the Lake Toho Watershed. The City of Orlando is an entity which discharges into both basins. Collectively, all participating governments opted to establish and be recognized as a Working Group for efforts in the Lake Toho watershed. As a member of the Working Group, the City of Orlando agrees to monitor surface waters and engage in management activities that will reduce nutrient loads within the watershed. Osceola County has negotiated a fee and scope of services with its engineering consultant to develop a Nutrient Reduction Plan coordinated with all stakeholders. The City of Orlando's cost share based on percentage of total area within the watershed, will be 19% or \$6,750, whichever is less.

Fiscal & Efficiency Data: Approving Joint Participation Agreement between Osceola County, Florida and the City of Orlando for the continuation of the Lake Tohopekaliga Nutrient Reduction Plan

Recommended Action:

Approve the attached agreement with Osceola County and authorize the execution of the agreement by the Mayor and City Clerk, subject to review and approval by the City Attorney's Office.

Agenda Item attachment(s) on file in the City Clerks Office.

Note: *All agenda items must be in the City Clerk's office by Noon Friday, six(6) business days prior to the regular Monday City Council meeting.*

Contact: Lisa Lotti, Stormwater Compliance Program Manager; lisa.lotti@cityoforlando.net

Approved By:

Department

Budget Outside Routing Approval

City Clerk

Date and Time

1/6/2020 1:24 PM

1/6/2020 1:42 PM

City Council Meeting: 01-13-2020

Item: I-6 Documentary: 200113I06



Fiscal Impact Statement

Indicate the **Total Fiscal Impact** of the action requested, including personnel, operating, and capital costs. Indicate costs for the current fiscal year and annualized costs. Include all related costs necessary to place the asset in service.

Description: Approving Joint Participation Agreement between Osceola County, Florida and the City of Orlando for the continuation of the Lake Tohopekaliga Nutrient Reduction Plan

Expenses

Will the action be funded from the Department's current year budget? ☒ Yes ☐ No

If No, please identify how this action will be funded, including any proposed Budget Resolution Committee (BRC) action(s). (enter text here)

	Current Fiscal Year Cost Estimate	Estimated Annualized Cost Thereafter
Personnel	\$0	\$0
Operating/Capital	\$6,750	\$6,750
Total Amount	\$6,750	\$6,750

Comments (optional): The Lake Toho NRP may be in effect for the next 9 years, with a maximum total cost of \$60,750 (\$6,750 x 9).

Revenues

What is the source of any revenue and the estimated amount? (enter text here) Amount \$0

Is this recurring revenue? ☐ Yes ☐ No

Comments (optional): (enter text here)

Funding

Expenses/Revenues will be recorded to:

	Source #1	Source #2	Source #3
Fund	<u>Stormwater Utility Fund</u>	<u>(enter text here)</u>	<u>(enter text here)</u>
Department /Division	<u>Public Works/Streets and Stormwater Division</u>	<u>(enter text here)</u>	<u>(enter text here)</u>
Cost Center/Project/Grant	<u>STW0005 C</u>	<u>(enter text here)</u>	<u>(enter text here)</u>
Total Amount	\$6,750	\$0	\$0

JOINT PARTICIPATION AGREEMENT

BETWEEN

Osceola County and City of Orlando, Relating to the **LAKE TOHOPEKALIGA NUTRIENT REDUCTION PLAN**
(the "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 _____, 2020, by and between OSCEOLA COUNTY, FLORIDA (hereinafter referred to as "County") and the City of Orlando ("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;

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;

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

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

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;

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

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

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;

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;

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

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

THEREFORE, it is mutually agreed between the parties as follows:

City Council Meeting: 01-13-2020
Item: I-6 Documentary: 20013-106

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 by this Agreement in sharing the costs of continuing the Plan. It is the County's intent to enter into a contract with a consultant, "Consultant," for the work necessary to fulfill the ongoing reporting requirements of the Plan and to some extent, the BMAP process, "Work." 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 reporting requirements of the Plan and to some extent, the BMAP process, as limited and 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 either 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, "Contract," with the Consultant for the Work, either Party may terminate this Agreement for any reason, upon twenty (20) days written notice, "Notice," to the other Party. County agrees to submit the Contract to the City for review and approval prior to the County's execution. Otherwise, any Party may terminate this Agreement upon the default of the other Party as provided in Section 5, below. Upon termination, all unpaid funds, as described in Paragraph 8, below, will be returned to the Parties in the ratios by which they were deposited.

5. **Default.** Each Party may give the other Party written notice of any defaults by that other 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 Party.

6. **ALLOCATION OF COSTS.** As provided in Section 7, below, CITY agrees to pay the County for a portion of the costs, invoiced by the Consultant, to complete the Work under the Contract. CITY agrees to reimburse the County in an amount not to exceed the principal cost contribution percentage set forth in Exhibit A or \$6,750, whichever is less. 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 by the County 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. 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 the Consultant to perform the Work. The County has contracted with 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 the City.

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 if 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 Orlando, such notice shall be addressed to City of Orlando at:

Rick Howard, Public Works Director
City of Orlando
400 South Orange Avenue
Orlando, FL 32801
richard.howard@orlando.gov

With a copy to:

Lisa Henry, Division Manager
City of Orlando
Streets and Stormwater Division
1010 Woods Ave
Orlando, FL 32805

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.

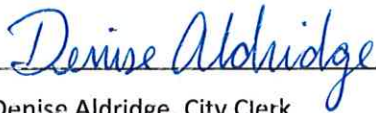
IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

CITY OF ORLANDO, FLORIDA



Mayor/Mayor Pro Tem

ATTEST:



Denise Aldridge, City Clerk

Date: JANUARY 28, 2020

APPROVED AS TO FORM AND

LEGALITY for the use and reliance of the City of Orlando,
Florida, only



, 2020



Assistant City Attorney

Orlando, Florida

City Council Meeting: 01-13-2020
Item: I-6 Documentary: 20013106

OSCEOLA COUNTY, FLORIDA

By: Board of County Commissioners



Don Fisher

Print Name: Don Fisher

Title: County Manager

ATTEST:

Timmy Ross

Print Name: Timmy Ross
Clerk to the Board of County Commissioners,
Osceola County, Florida

Date: 03/16/2020
SPA with City of Orlando

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%
Current Contract Cost: \$30,000		