

Tri-Party Agreement
Between
The State of Florida - Department of Transportation,
The State of Florida - Department of Environmental Protection,
and
The City of Tallahassee

FOR TRANSFER OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION GENERAL PERMIT NO. 37-0074748-001-RG ("PERMIT") FOR THE WEEMS STORMWATER MANAGEMENT FACILITY ("FACILITY") FROM THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION TO THE CITY OF TALLAHASSEE; AND FOR THE TRANSFER OF OPERATION AND MAINTENANCE RESPONSIBILITY FOR THE FACILITY TO THE CITY OF TALLAHASSEE.

THIS TRI-PARTY AGREEMENT ("Agreement") is made and entered into this 16th day of June, 2008 ("Effective Date"), by and among the Florida Department of Transportation ("FDOT"), the Florida Department of Environmental Protection ("FDEP") and the City of Tallahassee ("CITY").

WHEREAS, FDOT and the CITY previously entered into a Tri-party Project Agreement with Leon County dated April 5, 1991, subsequently amended on June 1, 1992 and August 9, 1994, which provided for the construction, design and maintenance of the Facility by the FDOT and the eventual transfer of the operation and maintenance responsibility for the Facility from FDOT to the CITY; and

WHEREAS, "FDEP" previously issued General Permit No. 37-0074748-001-RG to the FDOT, dated February 29, 2000 ("Permit") that the parties hereto desire to transfer to the CITY; and

WHEREAS, FDOT conveyed ownership of Weems Pond to CITY and reserved a perpetual easement for stormwater drainage by Quit Claim Deed dated January 4, 2005 and recorded in Leon County on January 27, 2005, a copy of which is attached as Exhibit 1; and

WHEREAS, FDOT, FDEP and the CITY wish to formally effectuate transfer of all operation and maintenance responsibilities for the Facility under the Permit to the CITY at this time.

NOW THEREFORE, in consideration of the premises and covenants hereinafter set out to be kept and performed by each of the parties hereto, it is agreed:

1. Within 140 days of the effective date of this Agreement, FDOT shall complete the following maintenance activities at the Facility:

- a. Control of invasive aquatic plants through the application of an aquatic herbicide approved by the FDEP Bureau of Invasive Plant Management in advance. FDOT shall commence application of the FDEP approved aquatic herbicide in April or May of 2008, but no later than May 31, 2008. FDOT shall submit a plan for the aquatic plant removal to the FDEP Bureau of Invasive Plant Management for its approval prior to any herbicide application. Additionally, FDOT shall obtain any necessary permits from the FDEP Bureau of Invasive Plant Management prior to any herbicide application.
- b. Mow or clear and grub as necessary, the area between the Weems pond perimeter and the site fencing, and around the sediment berm to eliminate the invasive plants in the littoral and transitional zones.
- c. Re-submit to FDEP the most recent survey of the Facility, which shall be signed and sealed by a professional engineer.
- d. Clear the dam of woody vegetation as necessary to have the dam inspected by the Northwest Florida Water Management District ("NFWFMD") and complete corrective actions, if any, identified by the NFWFMD.
- e. The CITY hereby grants permission to FDOT to enter the Facility to perform the maintenance activities identified above.

2. Upon FDOT's completion of the items identified in Paragraph 1 above, FDEP will transfer General Permit No. 37-0074748-001-RG to the CITY to operate the Facility. Immediately upon transfer of the Permit, the CITY shall be responsible for the operation and maintenance of the Facility. The allocation of the total storage capacity previously established for the Facility in the Amendment to Amended Tri-Party Project Agreement between FDOT, the CITY, and Leon County will not change. FDOT has a perpetual easement for the drainage of stormwater volumes necessary for treatment from 114 acres of impervious area on public roads and 31.9 acres of impervious area on private developments. FDEP will terminate separate existing written agreements between FDEP and FDOT pertaining to the permit provisions potentially requiring supplemental or replacement upland facilities. Notwithstanding the date of termination of those agreements, it is hereby agreed that any provisions in them making them binding on FDOT's successor or assigns shall be waived and that said provisions shall not be binding on the CITY.

3. The CITY agrees to use due diligence to design, permit and construct an enhancement project (the "Enhancement Project") to further improve the performance of the Facility. Except as provided in Paragraph 4 below, FDEP agrees to not pursue enforcement action against the CITY for permit deficiencies that may exist subsequent to

FDOT completing the activities enumerated in Paragraph 1 above during the period of design and implementation of the Enhancement Project. The CITY included funding for the Enhancement Project in its fiscal year 2008 capital budget and will commence design of the Enhancement Project within the first calendar quarter following the Effective Date.

4. FDOT will pay the CITY the amount of \$187,000.00, which is 50% of the estimated cost of the maintenance activities that would have otherwise been required of FDOT absent the CITY's agreement to address the remaining corrective measures through the Enhancement Project. Remittance of this amount shall be made to the CITY within 90 days of the Effective Date of this Agreement. In the event that FDEP or the NFWFMD denies the CITY's permit application for the Enhancement Project, or if the CITY withdraws or does not submit a permit application for the Enhancement Project, the following conditions shall apply: within 9 months of FDEP or the NFWFMD's denial of the CITY's permit application for the Enhancement Project, or within 4 years of the effective date of this Agreement, whichever comes first, the CITY shall complete the following maintenance activities at the Facility:

- a. Remove the approximately 3,000 cubic yards of sediment from the sediment sumps.
- b. Plant the surrounding littoral and transitional zones as outlined on Exhibit 2, attached hereto and incorporated herein.
- c. Submit a maintenance plan to FDEP for FDEP approval, which shall include a schedule for maintenance of the sumps, control of aquatic vegetation within the pond, and exotic plant removal from the littoral and transitional zones. Within 30 days of FDEP's written approval of the maintenance plan, the CITY shall implement the maintenance plan.

5. This Agreement incorporates all agreements flowing from prior negotiations, correspondence, conversations, and understandings related to the transfer of the Permit and operation and maintenance responsibility for the Facility to the CITY. In the event of any conflict between this Agreement and any prior communications, the terms of this Agreement shall prevail.

6. The Effective Date of this Agreement shall be the date of execution by the last party to execute it.

**FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

By: *W. Richard Lee*

As Its: District Director

February 13, 2008
(Date)

**FLORIDA DEPARTMENT OF
TRANSPORTATION**

By: *L. J. Sullivan*

As Its: Dist. Secretary

June 16, 2008
(Date)

CITY OF TALLAHASSEE

By: *Michael Wright*

As Its: Assistant City Manager

3-25-08
(Date)

K. Woodham
FDOT Attorney

Approved As To Form:

Ann Wild
Ann Wild, Assistant City Attorney

ATTEST:

Gary Herndon
GARY HERNDON
City Treasurer-Clerk

3-26-08
(Date)

ACKNOWLEDGMENTS APPEAR ON FOLLOWING PAGE

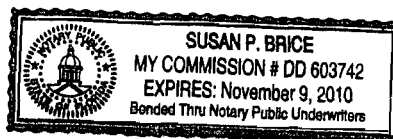
**Approved By City Commission
March 12, 2008**

STATE OF FLORIDA

COUNTY OF Escambia

The foregoing instrument was acknowledged before me this 13th day of FEBRUARY 2008, by, W. Richard Fancher, as Director of Northwest District Management of the State of Florida Department of Environmental Protection ☒ who is known to me personally or, ☐ who produced _____ as identification.

Susan P. Brice
Notary Public State of Florida



STATE OF FLORIDA

COUNTY OF Washington

The foregoing instrument was acknowledged before me this 16 day of June 2008, by Larry F. Kelley, as District Secretary of the State of Florida Department of Transportation ☒ who is known to me personally or, ☐ who produced _____ as identification.



TERESA J. PATTERSON
Commission DD 651173
Expires April 8, 2011
Bonded Thru Troy Fain Insurance 800-386-7019

Teresa J. Patterson
Notary Public State of Florida

STATE OF FLORIDA

COUNTY OF LEON

The foregoing instrument was acknowledged, before me this 25th day of March 2008, by Michael Wright, well known to me to be the City ^{Assistant} Manager of the City of Tallahassee, a Florida municipal corporation, on behalf of and under the authority duly vested in him by said municipal corporation.

Mary Helen Jackson
Notary Public State of Florida

