

Meeting Date
October 7, 2014



AGENDA	
Section	Consent
Item No.	<i>II.A.2</i>

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Grant Valkaria Stormwater Program Interlocal Agreement Fiscal Impact: Revenue up to \$ 9,151.00 (Fund 1100) (D3)
DEPT/OFFICE:	Natural Resources Management Department (NRM)

Requested Action:

It is requested that the Board: 1) authorize the Chairman to execute the Interlocal Agreement (Attachment A), and any subsequent amendments, as necessary, between Brevard County and the Town of Grant-Valkaria, for the implementation of the Towns Stormwater Program, subject to County Attorney and Risk Management final approval, and 2) authorize any necessary budget change requests.

Summary Explanation & Background:

The Town of Grant-Valkaria, recognizing that there are benefits associated with a regional approach to the management of stormwater issues, determined that the County's administration of the Town's Stormwater Program will best serve the interests of its citizens. In addition, the Board of County Commissioners has authorized expansion of the County's Stormwater Program for administration and operation of municipally adopted benefit areas. The County has provided these services to the Town since the Town's incorporation in 2006. The current agreement with the Town is due to expire in October. The attached Interlocal Agreement shall be effective for three (3) fiscal years with the option to renew yearly for two (2) additional years.

For administration of their Stormwater Program, the Town will pay a pro-rata share of their Stormwater fees to the County's Stormwater Program. The costs shall be estimated annually for the forthcoming fiscal years by the County's Natural Resources Management Department based on the annual Stormwater assessment roll. If necessary, the Town will also pay Direct Costs incurred for project or program related efforts, pre-approved in scope by the Town Manager and the County's Natural Resources Management Department Director.

The Agreement also makes available to the Town the services of the County's continuing contract consultants, as selected under the Competitive Consultant Negotiation Act (CCNA).

Fiscal Impact: FY14-15 - Revenue up to \$9,151.00 (Fund/Account # 1100/R30331/3490001)
FY15-16 - Revenue to be determined based on Stormwater fees collected.

Name: Ernest Brown, NRM
Phone: 321-633-2016

Clerk to the Board Instructions: Originals will be provided for Chairman's signature upon receipt from Town's review and approval.

Exhibits Attached: **Attachment A: Grant-Valkaria Interlocal Agreement**

Contract /Agreement (If attached): Reviewed by County Attorney		Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager <i>[Signature]</i> Stockton Whitten	Assistant County Manager <i>[Signature]</i> Mel Scott	Department Director / Extension Ernest N. Brown/52439					



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972

October 8, 2014

M E M O R A N D U M

TO: Ernie Brown, Natural Resources Management Director

RE: Item II.A.2., Interlocal Agreement with Town of Grant-Valkaria for Implementation of the Town's Stormwater Program

The Board of County Commissioners, in regular session on October 7, 2014, authorized the Chairman to executed Interlocal Agreement with the Town of Grant-Valkaria, and any subsequent amendments, as necessary, for implementation of the Town's Stormwater Program, subject to County Attorney and Risk Management final approval; and authorized any necessary budget change requests.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge

Tammy Etheridge, Deputy Clerk

cc: Finance
Budget

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

INITIAL CONTRACT FORM


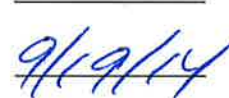
SECTION I

The following information must be completed on all new contracts submitted to the Board.

1. Contractor: N/A	
2. Fund/Account #: 1100/760038	Division Name: Watershed Management
4. Contract Description: Grant-Valkaria Stormwater Program Interlocal Agreement	
5. Contract Monitor: Carolina Alvarez	6. Mail Stop #: 81
7. Dept./Office Director: Natural Resources Management Department/ Ernest N. Brown	8. Contract Type: Interlocal Agreement
ACTION DATE: 09/22/14	ACTION REQUIREMENT: Review for Board Approval

SECTION II

The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	_____	_____	_____	_____
Risk Management	_____	_____	_____	_____
County Attorney	✓	_____		

If any office denies approval, the package will be returned immediately to the User Agency.

NOTE: *This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form to department for contract to be entered into the Contract Management System.*

**NATURAL RESOURCES MANAGEMENT DEPARTMENT
STORMWATER PROGRAM INTERLOCAL AGREEMENT**

THIS AGREEMENT is made and entered into this ____ day of September, 2014 (effective date October 1, 2014), and between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA (hereinafter referred to as "County") and the TOWN OF GRANT-VALKARIA, a Florida municipal corporation, (hereinafter referred to as the "Town").

WITNESSETH:

WHEREAS, the County currently operates and manages a Stormwater Program under the authority of Chapters 403 and 197, Florida Statutes; and

WHEREAS, the Town currently operates and manages a Stormwater Program under the authority of Chapters 403 and 197, Florida Statutes; and

WHEREAS, the County and Town recognize that there are benefits associated with a regional approach to the management of stormwater issues; and

WHEREAS, the Board of County Commissioners has authorized expansion of the County's Stormwater Program for administration and operation of municipally adopted benefit zones; and

WHEREAS, the Town Council of Grant-Valkaria, Florida has determined that the County's administration of the Town's Stormwater Program will best serve the interests of its citizens.

NOW, THEREFORE, in consideration of the premises and the covenants herein contained, it is mutually agreed between the parties as follows:

SECTION 1. STATUTORY AUTHORITY

This agreement shall be considered an Interlocal Agreement pursuant to the authority of Section 163.01, Florida Statutes.

SECTION 2. PROGRAM ADMINISTRATION

The County shall administer and manage the Town's Stormwater Program consistent with the policies, procedures, and practices of the County's Natural Resources Management Department (NRM) Watershed Management Program in effect on the effective date of this agreement. For

the purpose of this agreement the authority to make minor adjustments in procedures and practices not affecting policy is hereby delegated to the County Manager and Town Administrator; provided that said amendments do not vary the specific terms and conditions of this agreement or any applicable Town or County ordinances. Procedural amendments shall be in writing executed by the County Manager and Town Administrator. Administration of the Town's Stormwater Program will include but not necessarily be limited to:

- Management of the parcel database including coordination with the County Property Appraiser, Tax Collector, and Information Technology offices.
- Administration of the Credit Policy Program.
- Drafting of required Ordinances, Rate Resolutions, and annual assessment rolls as necessary. All such actions must be reviewed by the Town Manager and approved by the Town Attorney. All such actions shall be adopted by the Town Council, as required by law.
- Review and adjustment of Stormwater Assessment bills, when appropriate, through the Error and Insolvency process.
- Coordination with the Town Council and staff to identify and select capital improvement projects which are consistent with County policies and procedures and have benefit to the Grant-Valkaria Stormwater Management System Benefit Area (GVSMSBA).
- Providing information and coordination related to and the future collection of the Stormwater assessments within the Town.
- Management of technical staff employed by the County's Stormwater Program.
- Providing coordination and completing application packages to obtain grant funding for Stormwater Capital Improvement projects.

SECTION 3. ASSESSMENT REVENUE

Special assessment revenues as budgeted by Town Council and collected within the Town for the Stormwater Program will be used for administering, planning, constructing, operating, and maintaining stormwater management systems benefiting the Town. When necessary, the Town may utilize up to thirty percent (30%) of the total funds available for maintenance of, and/or capital improvements of the Town's existing stormwater system, and may authorize, as specified

in Section 11, an additional thirty percent (30%) of the total funds available for the same purpose, with a simple majority vote of the Town Council.

SECTION 4. CUSTODIAN OF FUNDS

During the period covered by this Interlocal Agreement, the Town shall be the custodian of funds generated within the GVSMSBA.

SECTION 5. ADJUSTMENT OF ASSESSMENTS AND EXPENDITURE OF DIRECT COSTS

In the event that an adjustment or individual calculation of an annual Stormwater Assessment is required, the County's Natural Resources Management Department Director [Director] or his/her designee shall have authority to make such adjustment in accordance with County policies and procedures. Any appeals related to credit issuance, exemptions from, or adjustments to, any stormwater assessment will be resolved utilizing the County Stormwater Program Appeals Committee and Appeals Committee procedure as outlined in Chapter 110, Article V, Section 110-373(c) of Brevard County Code. The Town shall be given notice of any request for adjustment and/or appeal and has the right, but not the obligation, to participate in any hearing requesting an adjustment or an appeal.

All expenditures of funds pursuant to this agreement which are considered direct costs shall require the approval of the Director and the Town Administrator. In the event of a disagreement as to the approval of expenditure, the decision of the Town Administrator shall prevail. It is recognized that during the period covered by this Interlocal Agreement, services of Town Departments/Divisions, such as purchasing, financial, or legal services, may require reasonable compensation, and if required, will be set forth in the annual program operating budget.

SECTION 6. PURCHASING AND FINANCIAL PRACTICES

During the period covered by this Interlocal Agreement, purchasing and financial processes shall be in accordance with the Town's policies and procedures, as amended from time to time.

SECTION 7. ADMINISTRATIVE COSTS

The Town will pay a pro-rata share of the County's Stormwater Program administrative costs. These costs shall be estimated annually for the forthcoming fiscal year (i.e. October 1st to September 30th) by the County's Natural Resources Management Department based on the annual assessment roll. Prior to the adoption of the Town's annual budget, the County's Natural Resources Management Department shall advise the Town in writing of the proposed administrative budget for the forthcoming year. The Town's share of administrative costs shall be calculated as a lump sum constituting ten percent (10 %) of the Town's assessment roll revenue to be billed in November of that year. Invoicing for the County's services will be on a quarterly basis. Final administrative costs will be adjusted in the fourth quarter's billing based upon the actual revenue collected. Adjustments will be performed in accordance with Section 9 of this Interlocal Agreement. As used in this Agreement, the term "administrative costs" when used in reference to the administrative costs of the County's Natural Resources Management Department Watershed Management Program shall refer to administrative costs as outlined in Section 2 of this Interlocal Agreement.

The proposed Town annual budget for the Stormwater Program, including administrative costs, direct costs, and all other costs and list of projects, will be coordinated with the Town for review and approval. In the event of a disagreement as to the budget or list of projects by the Town and County, the Town Administrator and the County NRMD Director shall meet and resolve the disagreement.

SECTION 8. DIRECT COSTS

In addition to administrative costs, the Town will pay direct labor and related costs incurred for project or program related efforts pre-approved in scope and budget by the Town. These costs shall be approved by the Town Council and made part of the Town Budget. The County will invoice the Town quarterly for the direct cost of environmental, engineering, and project management labor based upon time spent on identified projects. These costs will be charged on an hourly rate, to be submitted to and approved by the Town, to include associated cost of supplies and expenses and capital equipment. The County will maintain appropriate records in a format acceptable to the Town, to support these charges. Direct costs may include but are not necessarily limited to:

- Project management of engineering or environmental consultant contracts.
- Project management of construction contracts.
- Onsite inspection of construction projects.
- Compliance inspection of stormwater management systems receiving Stormwater credit.
- Monitoring or environmental assessments.
- Additional Public education outside of the existing Blue Life Program.
- Stormwater structure inventory and mapping of existing stormwater structures such as, pipes, ditches, ponds, etc.
- Investigation of stormwater related complaints referred to our Department by the Town.
- In-house design, drafting, or graphic services.
- Preparation of BMAP activities and annual updates directly related to comply with TMDLs and NPDES permit requirements.

SECTION 9. REMITTANCE OF ADMINISTRATIVE AND DIRECT COSTS

The Town will remit to the County one quarter (1/4) of the estimated annual administrative costs described in Section 7, at the beginning of each calendar quarter, i.e., October 1 to December 31, January 1 to March 31, April 1 to June 30, and July 1 to September 30. Fourth (4th) quarter payment (final payment) will be due September 1st, after any adjustments are completed based on actual revenues. The estimate shall be based upon ten percent (10%) of the Town's assessment roll revenue to be billed in November of that year. During the fourth (4th) quarter, the estimated administrative costs for the Town's Stormwater Management System Benefit Area will be adjusted based on the actual revenue collected and the final payment for that year will be adjusted accordingly. Administrative costs and direct costs will be billed quarterly and shall be processed for payment within thirty (30) days of receipt of invoice.

SECTION 10. LEGAL SERVICES

During the period covered by this agreement, the Town agrees that any claims or suits involving operation of the stormwater program within the Town limits will be defended by and at the expense of the Town. However, the County may at the request of the Town through a separate written agreement defend the Town against all claims arising out of decisions relating to

adjustments or credits to an individual fee; or appeals to or from the Stormwater Program Appeals Committee as set forth in Section 5, including actual attorney fees for the County Attorney's office at \$250 per hour of attorney's time. For internal control and auditing purposes, time records will be kept by the County Attorney's office for all time charged against Town's stormwater program. Time records will include who performed the individual task [e.g.-draft letters, research], date task performed; time expended for each task expressed in tenths of an hour; and total amount billed. Costs of such defense shall be paid from the funds received from the stormwater assessment imposed by the Town.

SECTION 11. SELECTION OF PROJECTS

The County Stormwater Program staff will work with the Town's staff and the Town Council to select projects, which benefit the Grant-Valkaria Stormwater Management System Benefit Area (GVMSBA). It is recognized that, in general, program operation costs, capital improvements, and the maintenance of capital improvements constructed by the program are the primary uses allowable for the Town's Stormwater assessment funds. In addition, it is recognized the parties will endeavor to apply these funds for capital improvement projects that would equally benefit and improve both water quality and flood control. In those situations where the Town Council determines that projects relating to maintenance of, and/or capital improvements of the Town's existing stormwater system constitute an emergency situation necessary to protect public health, safety and welfare, and therefore are of a higher priority than the stormwater program's primary purpose of water quality and flood control, then the Town Council through simple majority vote may direct staff to utilize up to sixty (60%) of the funds available on specific projects related to the existing system.

SECTION 12. CONTINUING CONSULTANTS

The Town shall have available for its use the services of continuing consultants as selected by the County under the Competitive Consultant Negotiation Act (CCNA).

SECTION 13. REPRESENTATIONS OF THE TOWN

The Town makes the following representations to the County:

- a) The Town is duly organized and in good standing under the laws of the State of Florida, and is duly qualified and authorized to carry on the governmental functions and operations set forth in this Interlocal Agreement.
- b) The Town has the power, authority, and legal right to enter into and perform the obligations set forth in this Interlocal Agreement, and the execution, delivery, and performance hereof the by Town (i) has been duly authorized by the Town Council of the Town of Grant-Valkaria; (ii) does not constitute a default under, or result in the creation of any lien, charge, encumbrance or security interest upon the assets of the Town, except as otherwise provided herein.

SECTION 14. REPRESENTATION OF THE COUNTY

The County makes the following representations to the Town of Grant-Valkaria:

- a) The County is duly organized and in good standing under the laws of the State of Florida, and is duly qualified and authorized to carry on the governmental functions and operations under the laws of the State of Florida, and is duly qualified and authorized to carry on the governmental functions and operations set forth in this Interlocal Agreement.
- b) The County has the power, authority, and legal right to enter into and perform the obligations set forth in this Interlocal Agreement, and the execution, delivery, and performance hereof by the County (i) has been duly authorized by the Board of County Commissioners of Brevard County; (ii) does not constitute a default under, or result in the creation of any lien, charge, encumbrance, or security interest upon the assets of the County, except as otherwise provided herein.

SECTION 15. RECORDS REVIEW

It is hereby specifically agreed that any record, document, computerized information and program, audio or video tape, photograph, or other writing of the County's Stormwater Program relating to this Agreement shall be deemed to be a "Public Record," whether in the possession or control of the County's Stormwater Program or one of its consultants, as defined in Section 119.011, Florida Statutes. Said record, document, computerized information and program, audio

or videotape, photograph, or other writing shall be subject to the provisions of Chapter 119, Florida Statutes. Upon request by the Town and without posing an exemption to the Town's rights set forth in Section 119.07(1), Florida Statutes, the County shall permit inspection of the foregoing public records by the Town, and the Town may obtain copies of said public records. All books, cards, registers, receipts, documents, and other papers in connection with this Agreement shall at any and all reasonable times during the normal working hours of the County be open and freely exhibited by the County for the purpose of examination and/or audit by the Town.

SECTION 16. NOTICE

All notices, demands or other writings in this Agreement are to be given, made or sent, or which may be given or made or sent, by either party through this Agreement to the other, shall be deemed to have been given, made or sent when personally delivered, or made in writing and deposited in the first class United States mail, certified, return receipt requested and postage prepaid, and addressed as follows:

**TO COUNTY: Director, Natural Resources Management Department
Brevard County Government Center
Building "A", Suite 219
2725 Judge Fran Jamieson Way
Viera, Florida 32940**

**with a copy to: County Manager
Brevard County Government Center
Building "C"
2725 Judge Fran Jamieson Way
Viera, Florida 32940**

**TO TOWN: Town Administrator
TOWN OF GRANT-VALKARIA
Post Office Box 766
Grant, Florida 32949**

**with a copy to: Town Clerk
TOWN OF GRANT-VALKARIA
Post Office Box 766
Grant, Florida 32949**

The person or address to which any notice or other writing may be given, made or sent, as above provided, may be unilaterally changed by written notice given as above provided.

SECTION 17. THIRD-PARTY BENEFICIARIES; PARTNERSHIP

(a) No Third-Party Beneficiaries. It is expressly agreed to by the parties, and it is the expressed intent of the parties that there are no intended or unintended, expressed or incidental, third-party beneficiaries of this Agreement. Consequently, this Agreement may NOT be relied upon by any person or entity other than the County or the Town.

(b) Partnership. The County and the TOWN shall not be deemed to be partners or co-joint ventures of one another by virtue of this Agreement.

SECTION 18. DEFAULT

(a) It is expressly agreed between the parties hereto that in the event the Town determines the County, or the County determines the Town, to be in default of any of the conditions, covenants, or agreements of this Agreement, the Manager of the party hereto alleging a default will provide written notice thereof to the Manager of the party hereto alleged to be in default. Default with regard to any provision hereof shall be construed as a material breach of this Agreement, the intent of the parties being that all terms of this Agreement are material. The party alleged to be in default shall, within fifteen (15) days of the receipt of such notice, initiate action to correct such default and promptly and diligently prosecute such corrective action to completion; provided, however, that during said fifteen (15) day period if the Manager of the entity alleged to be in default disagrees with the determination of the entity alleging a default, then in such event both Managers shall meet and discuss the alleged default and possible correction thereof. In the event the two Managers cannot agree on whether or not a default exists or how to resolve the default, they shall each present an agreed upon statement of the issue(s) outstanding to their respective governing bodies, together with alternatives proposed by both Managers for any corrective action to be undertaken. At this point, both parties shall immediately coordinate with one another to simultaneously satisfy the requirements of subsection (b) and Section 164.103, Florida Statutes, in a prompt manner.

(b) (1) If the governing body of the entity alleging a default determines no default to have occurred, no further action by the entity claimed to be in default shall be necessary.

(2) If the governing body of the entity alleging a default determines a default to have occurred, but the governing body of the entity alleged to be in default determines no default to have occurred, then the entity alleging a default shall retain all legal and equitable rights and remedies available, but unless otherwise terminated by either party, this Agreement shall continue in full force and effect during any judicial proceeding initiated by the entity alleging a default. If the governing body of the entity alleging a default is dissatisfied with the remedy elected by the party alleged to be in default or the progress in remedying the default, the entity alleging a default shall retain all legal and equitable rights and remedies available.

(3) If a majority vote of each of the governing bodies determines a default to have occurred and agrees upon a method for the prosecution of corrective action and appropriate corrective action, the entity in default shall initiate corrective action within fifteen (15) days of the date of final determination of such default by both governing bodies and promptly and diligently prosecute such corrective action to completion. Thereafter, the parties to this Agreement shall retain all legal rights and remedies available to them, but unless otherwise terminated by either party hereto, this Agreement shall continue in full force and effect during any judicial proceeding initiated by either party.

(c) Remedies Cumulative; Waiver. All remedies conferred on either party shall be deemed cumulative, and no one remedy is exclusive of the other or of any other remedy conferred by law. Waiver by the Town or the County of, or failure of the Town or the County to take action with respect to, any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or subsequent breach of the same, or any other term, covenant, or condition herein contained. In no event shall the County be deemed liable for costs, damages, or attorney's fees incurred as a result of services provided herein.

SECTION 19. SEVERABILITY

If any part of this Interlocal Agreement is found invalid, unconstitutional, or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Interlocal Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can be accomplished. This agreement shall be enforced and interpreted as if such invalid, unenforceable, or unconstitutional provision did not exist.

SECTION 20. ENTIRETY

This Interlocal Agreement, including exhibits, if any, represents the understanding and agreement of the parties in its entirety. There shall be no amendments to this Interlocal Agreement unless such amendments are in writing, signed by all the parties, and filed with the Brevard County Clerk of the Circuit Court.

SECTION 21. TERMINATION

This Agreement shall remain in effect until the date specified in Section 22 of this Agreement, or upon termination by either party. Either the Town or County may serve written notice to the other party to terminate the contract upon not less than one hundred twenty (120) days' notice. Should termination of the agreement occur within less than one hundred and twenty (120) days the Town shall be responsible for all outstanding costs as permitted by this agreement.

SECTION 22. DURATION OF AGREEMENT

This agreement shall remain in full force for a period of three (3) fiscal years after its effective date, unless this agreement is terminated as otherwise provided herein. In addition, this agreement may be extended by the County in one (1) year increments for up to two (2) years beyond the initial three (3) year period of the Agreement by mutual written consent of both parties.

SECTION 23. GOVERNING LAW

The laws of the State of Florida shall govern the validity and interpretation of this Interlocal Agreement. Venue shall be in Brevard County.

(THIS AREA LEFT BLANK IN PURPOSE)

11A2

IN WITNESS THEREOF, the parties have hereunto set their hands and seals on the date and year aforementioned.

ATTEST: ✓ ✓

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**

Scott Ellis, Clerk

Mary Bolin Lewis, Chairman
(As approved by the Board on _____, 2014)

Reviewed for Legal form and content

Scott Knox, County Attorney

ATTEST:

TOWN OF GRANT-VALKARIA

Susanne Krueger, Town Clerk

Del Yonts, Mayor, Grant-Valkaria
(As approved by the Town Council on _____, 2014)

Reviewed for Legal form and content

Karl Bohne, Town Attorney