

Meeting Date
8/8/2017



AGENDA	
Section	Consent
Item No.	II.A.1

**AGENDA REPORT**  
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

<b>SUBJECT:</b>	Stormwater Program Interlocal Agreements with the City of West Melbourne, the Town of Malabar, and the Town of Grant Valkaria
<b>DEPT/OFFICE:</b>	Natural Resources Management Department/ Watershed Management Program

**Requested Action:**

It is requested that the Board of County Commissioners 1) authorize the Chairman to execute the attached Interlocal Agreements to allow the County to continue to administer and manage the City of West Melbourne, the Town of Malabar, and the Town of Grant Valkaria's Stormwater Programs; 2) authorize the County Manager to execute future amendments and up to two one-year extensions; and 3) authorize associated budget change requests.

**Summary Explanation & Background:**

Since 1999 ,2000 and 2006 respectively, the City of West Melbourne, the Town of Malabar and the Town of Grant Valkaria have partnered with the County to implement a regional stormwater management program. This regionalization creates synergistic partnerships between participating governments and results in greater water quality and flood protection for the residents.

It is requested that the Board execute each agreement to continue providing services for the City of West Melbourne the Town of Malabar, the Town of Grant Valkaria for three years, with an option to extend the agreement for two (2) additional years, in one (1) year increments, if agreed by the parties.

These Interlocal Agreements continue to provide administration of the stormwater program in a manner consistent with the policies and procedures of the County's Stormwater Program and the National Pollutant Discharge Elimination System, General Permit. The City and the Town are billed quarterly for administrative and direct costs which serve to reimburse the County for costs incurred. The cost of administering each program is borne by the City and the Towns, respectively through the payment of the quarterly fees as indicated in each agreement.

**Fiscal Impact:** FY 17-18: Revenue to Stormwater Management Program Business Area 1110, Cost Center 30331, G/L Account 3490001 West Melbourne \$39,285.39, Malabar \$7,297.74, Grant Valkaria \$9,321.93 (Revenue estimates are based on stormwater rates of \$36/ERU)  
**FY 18-19: Revenue (estimated) West Melbourne \$40,465.00, Malabar \$7,517.00, Grant Valkaria \$9,602.00**

**Name:** Virginia Barker, or Carolina Alvarez - Natural Resources Management Department  
**Phone:** 633-2016

**Clerk to the Board instruction:** Wait for signature by the City and Town. The agreement will be executed first by the City and Towns, then sent to the County for signature. Please sign and return two originals of each to NRMD.

**Exhibits Attached: Interlocal Agreements**

<b>Contract /Agreement (If attached):</b> Reviewed by County Attorney		Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
<b>County Manager's Office</b>		<b>Natural Resources Management Office</b> PR <input type="checkbox"/>	
Frank Abbate, County Manager <i>[Signature]</i>		Virginia Barker, Director <i>[Signature]</i>	
John Denninghoff, Assistant County Manager <i>[Signature]</i>			



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

Telephone: (321) 637-2001  
Fax: (321) 264-6972  
Tammy.Rowe@brevardclerk.us

August 9, 2017

**M E M O R A N D U M**

**TO:** Virginia Barker, Natural Resources Management Office Director

**RE:** Item II.A.1., Interlocal Agreements with the City of West Melbourne, Town of Malabar, and Town of Grant Valkaria for Allowing the County to Continue Administering and Managing Stormwater Programs

The Board of County Commissioners, in regular session on August 8, 2017, executed Interlocal Agreements to allow the County to continue to administer and manage the City of West Melbourne, Town of Malabar, and Town of Grant Valkaria's Stormwater Programs; authorized the County Manager to execute future amendments and up to two one-year extensions; and authorized associated budget change requests. Enclosed are three executed copies of the Agreement.

**Upon execution by all parties, please forward a fully-executed copy of the Agreement to this office for inclusion in the official minutes.**

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS  
SCOTT ELLIS, CLERK

*Tammy Rowe*

Tammy Rowe, Deputy Clerk

/cmw

Encls. (3)

cc: County Manager  
Contracts Administration  
Finance  
Budget

CTB

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

**THIS AGREEMENT** is made and entered into this 8 day of August, 2017, by and between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA (hereinafter referred to as "County") and the CITY OF WEST MELBOURNE, a Florida municipal corporation, (hereinafter referred to as the "City,")

**WITNESSETH:**

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

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

**WHEREAS**, the County and City 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 City Council of West Melbourne, Florida has determined that the County's administration of the City'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 City's Stormwater Program consistent with the policies, procedures, and practices of the County's Natural Resources Management Department Stormwater 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 City Manager; provided that said amendments do not vary the specific terms and conditions of this agreement or any applicable City or County ordinances. Procedural amendments shall be in writing executed by the County Manager and City Manager. Administration of the City'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 City Manager and approved by the City Attorney. All such actions shall be adopted by the City Council, as required by law.
- Review and adjustment of Stormwater Assessment bills, when appropriate, through the Error and Insolvency process.
- Coordination with the City Council and staff to identify and select capital improvement projects which are consistent with County policies and procedures and have benefit to the West Melbourne Stormwater Management System Benefit Area (WMSMSBA).
- Providing information and coordination related to billing inquiries to the citizens within the WMSMSBA.
- Management of technical staff employed by the County's Stormwater Program.
- Educational activities for the public and/or City staff to meet the minimum NPDES requirements.
- Activities related to the coordination of the City of West Melbourne Stormwater Management Program (SWMP) required under the Generic Permit for Discharge of Stormwater Phase II, Municipal Separate Storm

Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) permit.

- Participation in the Stormwater Education and Outreach Interlocal Agreement (Blue Life), as long as the Blue Life Agreement between the County and the Zoo, is in effect.

### **SECTION 3. ASSESSMENT REVENUE**

Special assessment revenues as budgeted by City Council and collected within the City for the Stormwater Program will be used for administering, planning, constructing, operating, and maintaining stormwater management systems benefiting the City. The City may utilize up to fifty percent (50%) of the total funds available for maintenance of and/or capital improvements to the City's existing stormwater system as further specified in Section 11.

### **SECTION 4. CUSTODIAN OF FUNDS**

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

### **SECTION 5. ADJUSTMENT OF ASSESSMENTS AND EXPENDITURE OF 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 City 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 collected within the WMSMSBA shall require the approval of the Director and the City Manager. In the event of a disagreement as to the approval of expenditure, the decision of the City Manager shall prevail. It is recognized

that during the period covered by this Interlocal Agreement, services of City 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 City's policies and procedures, as amended from time to time.

#### **SECTION 7. ADMINISTRATIVE COSTS**

The City 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— Director based on the annual assessment roll. Prior to the adoption of the City's annual budget, the County's Natural Resources Management Department shall advise the City in writing of the proposed administrative budget for the forthcoming year. The City's share of administrative costs shall be calculated as a lump sum constituting ten percent (10 %) of the City'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 assessments billed. 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, Stormwater Program shall refer to administrative costs as outlined in Section 2 of this Interlocal Agreement.

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

## SECTION 8. DIRECT COSTS

In addition to administrative costs; the City will pay direct labor and related costs incurred for project or program related efforts pre-approved in scope and budget by the City. These costs will be charged on an hourly rate, to be submitted to and approved by the City, and shall also include associated cost of supplies and expenses, and capital equipment. The County will maintain appropriate records in a format acceptable to the City, to support these charges.

1) Project Management services may include but are not necessarily limited to:

- Project management of engineering or environmental consultant contracts.
- Project management of construction contracts.
- Construction projects inspections.
- Monitoring or environmental assessments.

In-house design, drafting, or graphic services.

2) Yearly compliance inspections of stormwater management systems receiving stormwater credit.

.3) Public education related to water quality or flooding projects implementation or Grant requirements (outside of services related to Blue Life and/or NRM provided public or staff education on Pollution Prevention).

4) Preparation of activities directly related to the NPDES generic permit, including:

- Collection of documentation related to annual reporting,
- Preparation of the annual report.
- Preparation of the permit renewal Notice of Intent (NOI),
- Responses to request for additional documentation by the FDEP Stormwater Section,
- Any other documentation request as deemed necessary to meet the NPDES permit requirements.
- Structure inventory and mapping.
- Investigation of environmental or water management concerns (Illicit discharges) other than the inspections in item 2 above.
- Coordination and documentation required to complete DEP Audits.

5) Property Appraiser administration of the non-ad valorem fee: Per Florida Statute Chapter 197.3632(2), and the agreement between the Brevard County and the Brevard county Property Appraiser dated August 9, 2016, the Property Appraiser shall be compensated for all administrative costs incurred in carrying out the maintenance of the expanded use code system at a rate of \$0.50 per parcel. The rate is based on the Fiscal Year 17-18 parcel count. The fee is set through the end of Fiscal Year 18-19, at which time a new agreement can be renewed and a new fee established. The County shall invoice the City for the Property Appraiser's fee, once a year, on the second quarterly invoice.

**SECTION 9. REMITTANCE OF ADMINISTRATIVE COSTS**

The City will remit to the County one quarter (1/4) of the estimated annual administrative costs 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. 4<sup>th</sup> quarter payment (final payment) will be due September 1<sup>st</sup> after any adjustments are completed based on actual revenues. The estimate shall be based upon ten percent (10%) of the City's assessment roll revenue to be billed in November of that year. During the fourth (4<sup>th</sup>) quarter, the estimated administrative costs for the City'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 will be billed quarterly and shall be processed for payment within thirty (30) days of receipt.

**SECTION 10. LEGAL SERVICES**

During the period covered by this agreement, the City agrees that any claims or suits involving operation of the stormwater program within the City limits will be defended by and at the expense of the City. However, the County, pursuant to a separate agreement, at the request of the City may defend the City 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 \$250.00 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 City stormwater assessments. 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 stormwater assessment imposed by the City.

### **SECTION 11. SELECTION OF PROJECTS**

The County Stormwater Program staff will work with the City's staff and the City Council to select projects which benefit the WMSMSBA. Projects shown in the City's Stormwater Needs Assessment Plan shall be considered during the project selection process. 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 revenue collected. However, where the City determines that projects relating to the maintenance of and/or capital improvements to the City's existing stormwater system are necessary to protect the public health, safety and welfare, the City may utilize up to fifty percent (50%) of the total available funds for such projects related to the existing stormwater system. In addition, it is recognized the parties will endeavor to apply the funds identified for capital improvement projects that would equally benefit and improve both water quality and flood control.

### **SECTION 12. CONTINUING CONSULTANTS**

The City 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 CITY**

The City makes the following representations to the County:

- a) The City 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 City 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 City (i) has been duly authorized by the City Council of the City of West Melbourne; (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 City, except as otherwise provided herein.

#### **SECTION 14. REPRESENTATION OF THE COUNTY**

The County makes the following representations to the City of West Melbourne:

- 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 City and without posing an exemption to the City's rights set forth in Section 119.07(1), Florida Statutes, the County shall permit inspection of the foregoing public records by the City, and the City 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 City.

**SECTION 16. NOTICE**

All notices, demands, annual renewals, 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 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 CITY:**             **City Manager  
City of West Melbourne  
2240 Minton Road  
West Melbourne, Florida 32904**

**with a copy to:**       **City Clerk  
City of West Melbourne  
2240 Minton Road  
West Melbourne, Florida 32904**

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 City.

(b) Partnership. The County and the City 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 City determines the County, or the County determines the City, 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 City or the County of, or failure of the City 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 date specified in Section 22, of this Agreement or upon termination by either party. Either the City 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 Notice, the City 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) years after its date of execution by both parties, unless this agreement is terminated as otherwise provided herein. In addition, this agreement may be extended by both parties in one (1) year increments for up to two (2) years beyond the initial three (3) year period of the Agreement. Annual extensions shall be made by mutual written consent of both parties and as authorized by the Director and the City Manager, and proper notification per Section 16.

**SECTION 23. EFFECTIVE DATE**

The effective date of this Interlocal Agreement shall be the date on which this fully executed agreement has been filed with the Brevard County Clerk of the Circuit Court.

**SECTION 24. GOVERNING LAW**

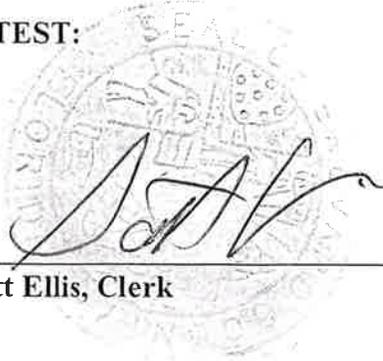
The laws of the State of Florida shall govern the validity and interpretation of this Interlocal Agreement.

**SECTION 25. VENUE**

Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.

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

ATTEST:



\_\_\_\_\_  
Scott Ellis, Clerk

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

\_\_\_\_\_  
**Curt Smith, Chairman**  
(As approved by the Board on  
August 8, \_\_\_\_\_, 2017)

Reviewed for legal form and content by:

\_\_\_\_\_  
Christine Valliere, Assistant County Attorney

ATTEST:

**CITY OF WEST MELBOURNE**

\_\_\_\_\_  
Sue Frank, City Clerk

\_\_\_\_\_  
**Hal J. Rose, Mayor**  
(As approved by the City Council on  
\_\_\_\_\_, 2017)

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

**THIS AGREEMENT** is made and entered into this 8 day of August, 2017, by and between the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA (hereinafter referred to as "County") and the TOWN OF MALABAR, 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 Malabar, Florida has determined that the County's administration of the Town's Stormwater Program will best serve the interests of its citizens.

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Stormwater 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 Manager; 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 Manager. Administration of the Town's Stormwater Program will include but not necessarily be limited to:

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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.

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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— Director 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 assessments billed. 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, Stormwater Program shall refer to administrative costs as outlined in Section 2 of this Interlocal Agreement.

The proposed annual budget, 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 Manager and 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 will be charged on an hourly rate, to be submitted to and approved by the Town, and shall also 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.

1) Project Management services may include but are not necessarily limited to:

- Project management of engineering or environmental consultant contracts.
- Project management of construction contracts.
- Construction projects inspections.
- Monitoring or environmental assessments.

In-house design, drafting, or graphic services.

2) Yearly compliance inspections of stormwater management systems receiving stormwater credit.

.3) Public education related to water quality or flooding projects implementation or Grant requirements (outside of services related to Blue Life and/or NRM provided public or staff education on Pollution Prevention).

4) Preparation of activities directly related to the NPDES generic permit, including:

- Collection of documentation related to annual reporting,
- Preparation of the annual report.
- Preparation of the permit renewal Notice of Intent (NOI),
- Responses to request for additional documentation by the FDEP Stormwater Section,
- Any other documentation request as deemed necessary to meet the NPDES permit requirements.
- Structure inventory and mapping.
- Investigation of environmental or water management concerns (Illicit discharges) other than the inspections in item 2 above.
- Coordination and documentation required to complete DEP Audits.

5) Property Appraiser administration of the non-ad valorem fee: Per Florida Statute Chapter 197.3632(2), and the agreement between the Brevard County and the Brevard county Property

Appraiser dated August 9, 2016, the Property Appraiser shall be compensated for all administrative costs incurred in carrying out the maintenance of the expanded use code system at a rate of \$0.50 per parcel. The rate is based on the Fiscal Year 17-18 parcel count. The fee is set through the end of Fiscal Year 18-19, at which time a new agreement can be renewed and a new fee established. The County shall invoice the Town for the Property Appraiser's fee, once a year, on the second quarterly invoice.

#### **SECTION 9. REMITTANCE OF ADMINISTRATIVE COSTS**

The Town will remit to the County one quarter (1/4) of the estimated annual administrative costs 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. 4<sup>th</sup> quarter payment (final payment) will be due September 1<sup>st</sup> 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 (4<sup>th</sup>) 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 will be billed quarterly and shall be processed for payment within thirty (30) days of receipt.

#### **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, pursuant to a separate agreement, at the request of the Town may 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 \$250.00 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 stormwater assessments. 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 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 WMSMSBA. Projects shown in the Town's Stormwater Needs Assessment Plan shall be considered during the project selection process. 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 revenue collected. However, where the Town determines that projects relating to the maintenance of and/or capital improvements to the Town's existing stormwater system are necessary to protect the public health, safety and welfare, the Town may utilize up to fifty percent (50%) of the total available funds for such projects related to the existing stormwater system. In addition, it is recognized the parties will endeavor to apply the funds identified for capital improvement projects that would equally benefit and improve both water quality and flood control.

### **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 by the Town (i) has been duly authorized by the Town Council of the TOWN OF MALABAR; (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 MALABAR:

- 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, annual renewals, 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 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 Manager  
TOWN OF MALABAR  
2725 Malabar Road  
Malabar, FL 32950**

**with a copy to:**       **Town Clerk  
TOWN OF MALABAR  
2725 Malabar Road  
Malabar, FL 32950**

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 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 Notice, 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) years after its date of execution by both parties, unless this agreement is terminated as otherwise provided herein. In addition, this agreement may be extended by both parties in one (1) year increments for up to two (2) years beyond the initial three (3) year period of the Agreement. Annual extensions shall be made by mutual written consent of both parties and as authorized by the Director and the Town Manager, and proper notification per Section 16.

**SECTION 23. EFFECTIVE DATE**

The effective date of this Interlocal Agreement shall be the date on which this fully executed agreement has been filed with the Brevard County Clerk of the Circuit Court.

**SECTION 24. GOVERNING LAW**

The laws of the State of Florida shall govern the validity and interpretation of this Interlocal Agreement.

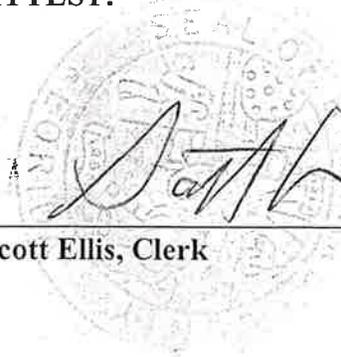
**SECTION 25. VENUE**

Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.

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

  
\_\_\_\_\_  
Curt Smith, Chairman  
(As approved by the Board on  
August 8, \_\_\_\_\_, 2017)

Reviewed for legal form and content by:

\_\_\_\_\_  
Christine Valliere, Assistant County Attorney

ATTEST:

  
TOWN OF MALABAR

\_\_\_\_\_  
Debby K. Franklin, CMC  
Town Clerk Treasurer

\_\_\_\_\_  
Douglas C. Hoyt, Town Manager  
(As approved by the Town Council on  
\_\_\_\_\_, 2017)

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

**THIS AGREEMENT** is made and entered into this 8 day of August, 2017, 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.
- Participation in the Stormwater Education and Outreach Interlocal Agreement (Blue Life), as long as the Blue Life Agreement between the County and the Zoo, is in effect.

### **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:

1) Project Management services may include but are not necessarily limited to:

- Project management of engineering or environmental consultant contracts.
- Project management of construction contracts.
- Construction projects inspections.
- Monitoring or environmental assessments.
- In-house design, drafting, or graphic services.

2) Yearly compliance inspections of stormwater management systems receiving stormwater credit.

3) Public education related to water quality or flooding projects implementation or Grant requirements (outside of services related to Blue Life and/or NRM provided public or staff education on Pollution Prevention).

4) Preparation of BMAP activities and annual updates directly related to comply with TMDLs and NPDES permit requirements.

5) Property Appraiser administration of the non-ad valorem fee: Per Florida Statute Chapter 197.3632(2), and the agreement between the Brevard County and the Brevard county Property Appraiser dated August 9, 2016, the Property Appraiser shall be compensated for all administrative costs incurred in carrying out the maintenance of the expanded use code system at a rate of \$0.50 per parcel. The rate is based on the Fiscal Year 17-18 parcel count. The fee is set through the end of Fiscal Year 18-19, at which time a new agreement can be renewed and a new fee established. The County shall invoice the Town for the Property Appraiser's fee, once a year, on the second quarterly invoice.

#### **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 (4<sup>th</sup>) quarter payment (final payment) will be due September 1<sup>st</sup>, 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 (4<sup>th</sup>) 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) years after its date of execution by both parties, unless this agreement is terminated as otherwise provided herein. In addition, this agreement may be extended by both parties in one (1) year increments for up to two (2) years beyond the initial three (3) year period of the Agreement. Annual extensions shall be made by mutual written consent of both parties and as authorized by the Director and the Town Manager, and proper notification per Section 16

**SECTION 23. EFFECTIVE DATE**

The effective date of this Interlocal Agreement shall be the date on which this fully executed agreement has been filed with the Brevard County Clerk of the Circuit Court.

**SECTION 24. GOVERNING LAW**

The laws of the State of Florida shall govern the validity and interpretation of this Interlocal Agreement.

**SECTION 25. VENUE**

Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.

**(THIS AREA LEFT BLANK IN PURPOSE)**

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

ATTEST:

  
\_\_\_\_\_  
Scott Ellis, Clerk

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

  
\_\_\_\_\_

**Curt Smith, Chairman**  
**(As approved by the Board on**  
**August 8, \_\_\_\_\_, 2017)**

**Reviewed for Legal form and content**

\_\_\_\_\_  
**Christine Valliere, Assistant County Attorney**

ATTEST:

\_\_\_\_\_  
**Rebekah Raddon, Town Clerk**

**TOWN OF GRANT-VALKARIA**

\_\_\_\_\_  
**Del Yonts, Mayor, Grant-Valkaria**  
**(As approved by the Town Council on**  
**\_\_\_\_\_, 2017)**

**Reviewed for Legal form and content**

\_\_\_\_\_  
**Karl Bohne, Town Attorney**