# INTERLOCAL AGREEMENT BETWEEN THE CITY OF TALLAHASSEE AND LEON COUNTY REGARDING THE CREATION AND OPERATION OF A WATERSHED PROTECTION PLAN

This Interlocal Agreement ("Agreement") is made and entered into as of this ___ day of _____, 2005, by and between Leon County, Florida, a charter county and political subdivision of the State of Florida (the "County"), and the City of Tallahassee, Florida, a municipal corporation created and existing under the law of the state of Florida (the "City").

RECITALS

WHEREAS, the County and City desire to protect their residents and natural resources from adverse impacts of stormwater runoff; and,

WHEREAS, the County and City intend, in order to eliminate inconsistencies, to improve environmental protection and the efficient use of their financial resources; and,

WHEREAS, the County and City desire to no longer base the standards applied to stormwater management on jurisdictional boundaries, though the County and City may either continue to operate distinct stormwater departments or join them at a future date; and,

WHEREAS, the County and City aspire to adopt consistent sets of stormwater plans for each specific basin, tailored to the soil types, typography and other conditions specific to that basin,

WHEREAS, the Stormwater and Conservation Elements of the Tallahassee/Leon County Comprehensive Plan requires a coordinated stormwater approach and encourages cooperation with other local governments; and,

WHEREAS, the creation of a Consolidated Stormwater Program or a single Stormwater Utility in Leon County, if adopted, does not resolve the most frequently cited challenges of differing development standards and program revenue generation that would exist between the County and City; and,

WHEREAS, to accomplish the above goals, the County and City aspire to develop a coordinated approach to watershed management by transitioning both jurisdictions to basin specific Watershed Management Plans;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises hereinafter set forth, the parties do hereby agree as follows:

Section 1: Authority

This Interlocal Agreement is entered into pursuant to the powers and authority granted to the parties under the Constitution and the laws of the State of Florida.

Section 2: Definitions

Unless otherwise defined herein, the following words and phrases shall have the following meanings:

a. **"Affected Watersheds"** refers to the five major urbanized watersheds in Leon County.

b. **"Agreement"** means this document and the exhibits and documents that are expressly incorporated herein by reference.

c. **"City"** means the City of Tallahassee, a Municipal Corporation under the laws of the State of Florida.

d. **"County"** means Leon County, Florida, a Political Subdivision of the State of Florida, a Charter County.

e. **"Effective Date"** means the date upon which the last party to this Agreement has fully executed same in accordance with the formalities imposed upon such entity required by Florida Law.

f. **"Total Maximum Daily Load (TMDL)"** is the amount of a particular pollutant that a stream, lake, estuary or other waterbody can handle without violating state water quality standards.

g. **"Watershed Protection Plan"** refers to the joint watershed management approach and initiatives recommended under it as set forth in this Agreement.

h. **"Watershed Management Plans"** refer to the specific watershed basin plans crafted by the Board for adoption by the County and City Commissions pursuant to section 4.b below.

Section 3: The Watershed Management Policy Board and Technical Support Staff.

a. The parties hereby create a Watershed Management Policy Board (hereinafter, the "Board") that will serve in an advisory capacity to coordinate and monitor the implementation of the "Strategic Action Plan" outlined in Section 4 of the Agreement.

1. Membership – The Board is to be comprised of one County Commissioner; one City Commissioner; one Leon County Science Advisory Committee Member who works in the private sector; one science academic from either Florida State University or Florida A&M University with credentials relevant to the subject of stormwater and watershed management; and one private

citizen who has knowledge of stormwater issues and directly engaged in permitting in the City/County.

2. Appointment – The County Commissioner and City Commissioner on the Board will be appointed by the County Commission, and City Commission, respectively. The remaining members of the Board are to be jointly appointed by the Mayor of the City and the Board of County Commissioners.

3. Terms – The County Commissioner and City Commissioner on the Board will serve one year terms. The members of the Board who are appointed jointly by the mayor and chair will each serve a three year staggered term. In order to facilitate the staggering of these terms, the Leon County Science Advisory Committee Board member's initial appointment will be for one year and the science academic Board member's initial appointment will be for two years. All terms of service are to begin on December 1st.

4. Chairperson – The County Commissioner and City Commissioner on the Board will serve one-year rotating terms as the Chairperson of the Board. The County Commissioner on the Board will serve the first one year-term as the Chairperson of the Board. The jurisdiction whose Commissioner is serving as Chairperson of the Board will have the responsibility of managing all administrative tasks necessary for the Board to carry out its responsibilities under this Agreement.

5. Voting – Members of the Board are to have equally weighted voting power.

6. Meetings – The Board is to meet at least quarterly, with the authority to vote for additional meetings on an as needed basis.

b. The Board is advisory in nature and will make recommendations to the City and County Commissions.

c. The Board is to be assisted in its mission by a Technical Support Staff.

1. Membership – The Technical Support Staff is to be comprised of one County stormwater director or appointee; one City stormwater director or appointee; a staff member of the Northwest Florida Water Management District with an expertise in the natural sciences, including, but not limited to, hydrology; a staff member of the Florida Department of Environmental Protection; and a member of the Florida Lakes Management Society who has a background in a relevant scientific field.

2. Appointment – Members of the Technical Support Staff will be identified by the relevant governmental body or association providing the Staff to the Board.

Section 4: The Strategic Action Plan

a. Three-Year Phase-In Period – Over the next three years, the collective approach between the parties to watershed protection is to be phased in by the Board through its implementation of the following:

1. Collection, Review and Organization of Data – The Board is to create and manage a database of all existing water quality and bioassessment data, incorporating all valid existing data on these subjects, with advice and input from the Technical Support Staff. To accomplish this goal, the Board will:

   (a) review all water quality and flood data/maps; and

   (b) identify any areas where more research should be undertaken, and recommend any studies or stormwater models that may be utilized in addressing the areas where more research is needed, with advice and input from the Technical Support Staff.

2. Structural and Non-structural Capital Projects – The Board will review and prioritize the capital projects undertaken by each jurisdiction that relate to watershed management or stormwater, according to the following:

   (a) Inventory of Projects – The Board will inventory and map all completed, under construction, and proposed City and County capital projects relating to stormwater or watershed management in the Affected Watersheds.

   (b) Prioritization – The Board shall, on an annual basis, review County and City stormwater projects lists in the Affected Watersheds and recommend any reprioritization or new projects as deemed advisable. First priority will be given to those capital projects directed toward upstream water quality and flooding solutions, and second priority to in-lake restoration projects. The Board will solicit and consider advice and input from the Technical Support Staff in making its prioritization decisions.

3. Regulatory and Fee Structure Review – The Board will undertake a review of the current regulatory and fee structure systems for each jurisdiction relating to stormwater management with a view toward identifying inconsistencies and developing consistent stormwater standards to the extent feasible.

4. New Projects – The Board is to recommend to the relevant jurisdiction(s) any new projects that are needed to accomplish the goals set forth in this Agreement.

5. New Policies – The Board is to recommend additional policies that will serve to increase recreational opportunities, public access and habitat enhancement to all area lakes.

6. TMDL Process – The Parties recognize that the Federal and State TMDL program is independent of this Watershed Protection Plan and will result in the setting of TMDLs for area watersheds governed under this Plan. The City and County intend to participate in the process of developing TMDLS for Affected Watersheds. This Plan does not address or affect the role of the City or County in the independent process of developing the TMDLs. The final TMDL standards will be implemented in the time frame prescribed by state or federal law and will be incorporated into the respective Watershed Management Plans recommended under Section 4 below.

b. Long-Term Board Responsibilities – After the three year period, the Board will draft specific Watershed Management Plans for approval by the County and City Commissions and monitor the ongoing implementation of these Watershed Protection Plans. The Board's responsibilities will include the following:

1. Reporting – The Board shall submit to the County and City Commissions an annual report summarizing the Board's prior year efforts in implementing the Watershed Protection Plan. Additionally, the Board shall submit every five years a report to the County and City Commissions that outlines the status of the implementation of this Agreement. These reports are to be jointly reviewed by the County and City Commissions.

2. Watershed Management Plans – The Board shall propose to the County and City Commissions specific Watershed Management Plans for each Affected Watershed pursuant to the data collection and prioritization of projects developed during the three-year phase-in period.

3. Implementation of the Watershed Management Plan – The Board shall monitor the implementation of the recommended Watershed Management Plans, working with the Technical Support Staff and other City/County personnel as needed to ensure the coordination and completion of all projects.

4. Ongoing Data Collection and Oversight -- The Board shall monitor the ongoing collection of stormwater and water quality data and compilation of that data into a database accessible to both jurisdictions and to the public through a source such as the City and County websites. The Board shall also recommend as necessary the implementation of any additional data collection or monitoring projects necessary to fill gaps in the database or improve the quality of the data.

5. Recommended Changes to Support Watershed Management Plans – The Board shall consider and recommend to the County and City Commissions changes to each jurisdiction's stormwater management policies and regulations as necessary to support the proposed Watershed Management Plans.

c. Public Education and Participation – The Board is to advance public education in and involvement with watershed protection. Specifically, the Board shall undertake the following in support of this goal:

1. hold public meetings in accordance with Florida Statutes, Section 286.011, to permit public review and comment on proposed Watershed Management Plans

2. recommend the design and installation of signs on major roadways identifying the locations of the various watersheds,

3. create and disseminate educational materials on non-point source pollution to watershed residents on various resources and projects occurring in the respective watershed;

4. educating lakeside residents, through use of explanatory material, public meetings, and the like, as to appropriate actions lakeside residents should take to facilitate the protection of the watershed;

5. prepare an annual report, compiled from existing data and on-going Lake Monitoring Annual Reports, on the condition of major water bodies in the County;

6. establish and maintain a Watershed Protection Initiative website;

7. create an annual Watershed Champion Award given to those citizens, neighborhoods, and/or businesses that have served to facilitate pollutant reduction or flood control.

Section 5: General Provisions

a. Funding – The funding required to implement this Agreement shall be shared equally between the County and City. Funding for implementation of this Agreement for the first year is not expected to exceed $100,000.

b. Compliance with Applicable Law. In providing services and otherwise carrying out its obligations under this Agreement, the parties shall comply with Applicable Law. Such compliance shall include obtaining any and all federal, state, or local permits or licenses required to perform its obligations under this Agreement.

c. Independent Contractor. Nothing in this Agreement shall be construed to create a relationship or employer and employee or principal and agent, partnership, joint venture, or any other relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of the Agreement. Nothing in the Agreement shall create any right or remedies in any third party, it being solely for the benefit of the County and the City.

d. Choice of Law, Venue, and Severability. This Agreement shall be construed and interpreted in accordance with Florida Law. Venue for any action brought in relation to this Agreement shall be placed in a court of competent jurisdiction in Leon County, Florida. If any provision of this Agreement is subsequently held invalid, the remaining provisions shall continue in effect.

e. Third Party Beneficiary. This Agreement is solely for the benefit of the County and the City, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party. Nothing in this Agreement, either express or implied is intended or shall be construed to confer upon or give any person, corporation, or governmental entity or agency, other than the parties hereto, any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof.

f. Dispute Resolution

a. The parties shall attempt to resolve any disputes that arise under this Agreement in good faith and in accordance with this Paragraph. The provision of the "Florida Governmental Conflict Resolution Act" shall not apply to disputes under this Agreement, as an alternative dispute resolution process is hereby set forth in this section. The aggrieved party shall give written notice to the other party in writing, setting forth the nature of the dispute, date of occurrence (if known), and proposed resolution, hereinafter referred to as the "Dispute Notice."

b. Should the parties be unable to reconcile any dispute, the appropriate Agency, City and County personnel shall meet at the earliest opportunity, but in any event within ten (10) days from the date that the Dispute Notice

is received, to discuss and resolve the dispute. If the dispute is resolved to the mutual satisfaction of both, they shall report their decision, in writing, to the City Manager and County Administrator. If they are unable to reconcile their dispute, they shall report their impasse to the City Manager and the County Administrator who shall then convene a meeting of the City Manager and County Administrator at their earliest opportunity, but in any event within 20 days following receipt of a Dispute Notice, to attempt to reconcile the dispute.

c. If a dispute is not resolved by the foregoing steps within thirty (30) days after receipt of the Dispute Notice, unless such time is extended by mutually agreement of the parties, then either party may require the dispute to be submitted to mediation by delivering written notice thereof (the "Mediation Notice") to the other party. The mediator shall meet the qualifications set forth in Rule 10.010(c), Florida Rules for Mediators, and shall be selected by the parties within 10 days following receipt of the Mediation Notice. If agreement on a mediator cannot be reached in that 10-day period, then either party can request that a mediator be selected by an independent conflict resolution organization, and such selection shall be binding on the parties. The costs of the mediator shall be borne equally by the parties.

d. If an amicable resolution of a dispute has not been reached within 60 calendar days following selection of the mediator, or by such later date as may be mutually agreed upon by the parties, then such dispute may be referred to binding arbitration by either party. Such arbitration shall be conducted in accordance with the Florida Arbitration Code (Chapter 682, Florida Statutes).

1. Such arbitration shall be initiated by delivery, from one party (the "Claimant") to the other (the "Respondent"), or a written demand therefore containing a statement of the nature of the dispute and the amount, if any, involved. The Respondent, within ten (10) days following its receipt of such demand, shall deliver an answering statement to the Claimant. After the delivery of such statements, either party may make new or different claims by providing the other with written notice thereof specifying the nature of such claims and the amount, if any, involved.

2. Within ten (10) days following the delivery of such demand, each party shall select an arbitrator and shall deliver written notice of that selection to the other. If either party fails to select an arbitrator within such time, the other party may make application to the court for such appointment in accordance with the Florida Arbitration Code. Within ten (10) days following delivery of the last of such written notices, the two arbitrators so selected shall

confer and shall select a third arbitrator. Each of the arbitrators so appointed shall have experience in local government issues relating to Community Redevelopment Agencies.

3. The arbitration hearing shall be commenced in Leon County, Florida within sixty (60) days following selection of the third arbitrator. Except as may be specifically provided herein, the arbitration shall be conducted in accordance with Rules R-23 – R-48 of the Commercial Arbitration Rules of the American Arbitration Association.

g. Severability. The provisions of this Agreement are declared by the parties to be severable. However, the material provisions of this Agreement are dependent upon one another, and such interdependence is a material inducement for the parties to enter into this Agreement. Therefore, should a material term, provision, covenant, or condition of this Agreement be held unenforceable by a Court of competent jurisdiction, the party protected or benefited by such term, provision, covenant, or condition may demand that the parties negotiate such reasonable alternative contract language or provisions as may be necessary either to restore the protected or benefited party to its previous position, or otherwise mitigate the loss of protection or benefit resulting from the mitigation.

h. This Agreement can be terminated by either Party for any reason upon ninety (90) days notice to the other party.

**IN WITNESS WHEREOF**, the parties cause this Agreement to be executed by their duly authorized representatives this ___ day of _____, 2004.

**LEON COUNTY, FLORIDA**

By:_____
Cliff Thaell, Chairman
Board of County Commissioners

Date:_____

Attested by:
Bob Inzer, Clerk of the Court

By:_____
Bob Inzer, Clerk

Approved as to form:
County Attorney's Office

By:_____
Herbert W.A. Thiele, Esq.
County Attorney

**CITY OF TALLAHASSEE, FLORIDA**

By:_____
John R. Marks, III
Mayor, City of Tallahassee

Date:_____

Attested by:
Gary Herndon, City Treasurer-Clerk

By:_____

Approved as to form:
City Attorney's Office

By:_____
James R. English, Esq.
City Attorney