

**INTERLOCAL AGREEMENT BETWEEN
MARION COUNTY, FLORIDA
AND
MARION SOIL AND WATER CONSERVATION DISTRICT
PROVIDING FOR DISTRICT EMPLOYEES**

THIS INTERLOCAL AGREEMENT (this “Agreement”) by and between **MARION COUNTY**, a political subdivision of the State of Florida, through its Board of County Commissioners, with a principal address of 601 SE 25th Ave., Ocala, FL 34471 (“**COUNTY**”) and the **MARION SOIL AND WATER CONSERVATION DISTRICT**, a governmental subdivision of this State and a public body corporate and politic organized under Section 582.10, Florida Statutes, with a principal address of 2710 E. Silver Springs Blvd., Ocala, FL 34470 (“**DISTRICT**”) (individually “**Party**,” collectively “**Parties**”).

WITNESSETH

WHEREAS, Section 163.01, Florida Statutes, provides that local government units may enter into interlocal agreements to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage; and

WHEREAS, **DISTRICT** promotes and encourages the wise use, management, and conservation of Marion County’s soil, water, and related natural resources; and

WHEREAS, **DISTRICT** and Florida Department of Agricultural and Consumer Services (“**FDACS**”) entered into a State Financial Assistance Recipient Agreement on or about July 7, 2019, as amended (collectively the “**FDACS Assistance Agreement**”), a copy attached hereto as **Exhibit A**, for the purpose of the **FDACS** funding **DISTRICT**’s employment of one or more Agricultural Best Management Practices Conservation Technician(s) [“**BMP Technician(s)**”] ; and

WHEREAS, the **BMP Technician(s)** provides technical assistance to producers with best management practice (“**BMP**”) implementation and enrollment and also facilitates outreach programs to educate citizens on natural resources conservation and statutory obligations to implement **FDACS BMP**; and

WHEREAS, the **FDACS Assistance Agreement** requires any person employed as **BMP Technician(s)** to meet certain employment standards; and

WHEREAS, **DISTRICT** has been unable to attract suitable applicants for a **BMP Technician(s)** position; and

WHEREAS, **DISTRICT** has requested that **COUNTY**, instead of **DISTRICT**, act as the employer for any **BMP Technician(s)** position, so as to offer a benefits package and, perhaps, attract suitable applicants; and

WHEREAS, **COUNTY** desires to assist **DISTRICT** in fulfilling its obligations under the **FDACS Assistance Agreement** and **COUNTY** supports the use of appropriate land and water resources protection practices in the State of Florida and particularly seeks to ensure such use in this area; and

WHEREAS, at the request of **DISTRICT**, the **COUNTY** provides to **DISTRICT** an administrative assistant to perform duties exclusively for **DISTRICT** but to remain on **COUNTY**’s payroll paid for by the General Fund; and

WHEREAS, the Parties seek to formalize COUNTY's provision of an administrative assistant to DISTRICT with this Agreement; and

WHEREAS, COUNTY and DISTRICT have determined that is in the best interests of the Marion County to enter in this Agreement.

NOW THEREFORE, the Parties hereby agree as follows:

SECTION 1. RECITALS.

The above recitals are incorporated in this Agreement by reference.

SECTION 2. TERM.

A. **Effective Date.**

This Agreement shall become effective upon the date of the last signature below (the "Effective Date").

B. **Period, re: BMP Technician(s).**

The obligations and benefits of the Parties with regard to the BMP Technician(s) shall begin upon the Effective Date and shall end upon:

1. Termination of this Agreement as provided herein, or
 2. Upon the expiration of the FDACS Assistance Agreement, copy attached as **Exhibit A** hereto, currently scheduled to expire June 30, 2022,
- whichever is later (the "BMP Period").

C. **Period, re: Administrative Assistant.**

The obligations and benefits of the Parties with regard to the Administrative Assistant shall begin upon the Effective Date and shall end upon termination of this Agreement as provided herein (the "AA Period").

D. **Term.**

The Parties agree that any reference herein to the "Term" of this Agreement shall refer to the BMP Period or the AA Period, whichever is longer.

SECTION 3. OBLIGATIONS REGARDING BMP TECHNICIAN(S).

A. **District Obligations.**

1. **Compliance.**

- a) DISTRICT shall fully comply with the FDACS Assistance Agreement as well as any other executed agreements with the State of Florida, the United States, or other entity regarding the administration of BMP Technician(s) services during the BMP Period.
- b) Should there be a conflict between the terms herein and the terms of the FDACS Assistance Agreement, the terms of the FDACS Assistance Agreement shall govern.

2. **Costs.**

- a. DISTRICT shall pay County all costs incurred in recruiting and hiring the BMP Technician(s) for the BMP Period.
- b. The costs referenced above in Paragraph "A(2)(a)" of this Section 3 shall include salary and benefits for the required full-time position(s).
- c. The Parties agree that one (1) existing BMP Technician(s) position was grandfathered in as a 1099 contractual labor and the individual filling that position shall remain employed through DISTRICT, until such time the position is no longer occupied. At that time, the grandfather provision shall expire and the open BMP Technician(s) position shall be filled by COUNTY as a full time employee pursuant to the terms of this Agreement.

3. **Selection.**

- a. DISTRICT, in partnership with FDACS, shall schedule and conduct all interviews when hiring the BMP Technician(s).

- b. DISTRICT shall provide any comments, objections and selection recommendation to COUNTY's Human Resources Department, regarding a BMP Technician(s) applicant within fourteen (14) days of the conclusion the applicant interview.
- 4. **Supervise.**
 - a. DISTRICT shall have jurisdiction over each individual filling a BMP Technician(s) position.
 - b. DISTRICT shall ensure each BMP Technician(s) follows all standards set forth in the Marion County Employee Handbook.
- 5. **Provide Location and Materials.**

DISTRICT shall provide and be responsible for a safe location from which the BMP Technician(s) shall operate and shall provide all necessary materials for the productive and efficient performance of the BMP Technician(s).

B. County Obligations.

- 1. **Recruit.**

COUNTY agrees to advertise, screen and provide a copy of all resumes or applications for the open position to DISTRICT and FDACS for review and comment.
- 2. **Hire.**

In making the hiring decision, COUNTY agrees to consider the recommendation provided by DISTRICT as the guiding authority in the selecting the BMP Technician(s).
- 3. **Employ.**
 - a. COUNTY will employ the BMP Technician(s) and maintain COUNTY's authority as the employer.
 - b. COUNTY will be responsible for paying the salary, benefits, Florida Retirement System payments, workers' compensation, vacation leave, sick leave and making any other payments an employer customarily makes on behalf of employees under State or Federal law.
- 4. **E-Verify.**

COUNTY affirms it is duly registered, uses, and adheres to the practices of the E-Verify system, and assures and certifies that it shall duly comply with Section 448.095, Florida Statutes to verify work authorization status of all newly hired employees.

SECTION 4. OBLIGATIONS, RE: ADMINISTRATIVE ASSISTANT.

A. District Obligations.

- 1. **Supervise.**
 - a. DISTRICT shall continue to have jurisdiction over the individual filling the administrative assistant position.
 - b. DISTRICT shall continue to ensure the employee follows all standards set forth in the Marion County Employee Handbook.
- 2. **Provide Location.**

DISTRICT shall provide and be responsible for a safe location from which the administrative assistant shall operate and shall provide all necessary materials for the productive and efficient performance of the administrative assistant.

B. County Obligations.

- 1. **Recruit.**

As needed, COUNTY agrees to advertise, screen and provide a copy of all resumes or applications for any open administrative position to DISTRICT for review and comment.
- 2. **Hire.**

As needed, in making the hiring decision, COUNTY agrees to consider the recommendation provided by DISTRICT as the guiding authority in the selecting any administrative assistant.
- 3. **Employ.**

- a. COUNTY shall continue to employ the administrative assistant and maintain COUNTY's authority as the employer.
 - b. COUNTY will be responsible for paying the salary, benefits, Florida Retirement System payments, workers' compensation, vacation leave, sick leave and making any other payments an employer customarily makes on behalf of employees under State or Federal law.
4. **E-Verify.**
COUNTY affirms it is duly registered, uses, and adheres to the practices of the E-Verify system, and assures and certifies that it shall duly comply with Section 448.095, Florida Statutes to verify work authorization status of all newly hired employees.

SECTION 5. PAYMENT, RE: BMP TECHNICIAN(S).

A. **FDACS Payment to District.**

1. In accordance with the FDACS Assistance Agreement, FDACS shall submit payments to DISTRICT for the administration of the BMP Technician(s) as DISTRICT completes enumerated deliverables and submits monthly invoices.
2. The Parties acknowledge that FDACS' payments to DISTRICT are contingent upon the availability of fiscal year appropriations. Should DISTRICT receive notice of any FDACS non-appropriation for the BMP Technician(s) funding, DISTRICT shall provide COUNTY with notice of same no later than three (3) business days after the date of the FDACS notice.

B. **District Payment to County.**

1. No later than the first business day of each month, COUNTY shall provide DISTRICT with a detailed financial statement of all BMP Technician(s) expenses incurred to date.
2. Upon receipt of each payment from FDACS, DISTRICT shall convey to COUNTY the appropriate funds to reimburse all costs reflected on COUNTY's monthly invoices.

SECTION 6. PAYMENT, RE: ADMINISTRATIVE ASSISTANT.

The Parties agree that no payment is made or required by either Party to the other regarding the Administrative Assistant.

SECTION 7. ANNUAL APPROPRIATIONS.

A. **FDACS.**

The Parties acknowledges that FDACS' payments to DISTRICT are contingent upon the availability of fiscal year appropriations. Should DISTRICT receive notice of any FDACS non-appropriation for the BMP Technician(s) funding, DISTRICT shall provide COUNTY with notice of same in a manner specified for the giving of notices herein no later than three (3) business days after the date of the FDACS notice. Should this contingency occur, the BMP Period shall end concurrently with the ending of the FDACS funding.

B. **COUNTY.**

During any fiscal year COUNTY shall not expend money, incur any liability, or enter into any agreement which, by its terms, includes the expenditure of money in excess of the amounts budgeted as available for expenditure. COUNTY's performance and obligation to make payment of the BMP Technician(s) and the Administrative Assistant under this Agreement is contingent upon annual appropriations being made for that purpose. If during the Term of this Agreement, COUNTY does not make an annual appropriation necessary to continue its performance under this Agreement as to:

1. The BMP Technician(s),
2. The Administrative Assistant, or
3. Both,

COUNTY shall provide DISTRICT notice as soon as the budget is adopted and this Agreement shall terminate to the extent of the non-appropriation upon the expiration of the funded fiscal year.

SECTION 8. MUTUAL INDEMNIFICATION.

A. Obligation.

Each Party agrees to indemnify, defend and hold harmless the other, its officers, board members, agents, representatives and employees from and against any and all fines, suits, claims, demands, penalties, liabilities, costs or expenses, losses, settlements, judgments and awards and action of whatever kind or nature arising out of this Agreement, including attorney's fees and costs (and costs and fees on appeal), and damages (including, but not limited to, actual and consequential damages) arising from any negligent, willful or wrongful misconduct, knowing misrepresentation or breach of this Agreement by such Party, its officers, board members, agents, representatives or employees.

B. Does Not Alter Sovereign Immunity.

This Section shall not be construed in any way to alter either Party's waiver of sovereign immunity or the limits established in Section 768.28, Florida Statutes, as same may apply.

C. Survival.

This Section survives the termination or expiration of this Agreement.

SECTION 9. SOVEREIGN IMMUNITY.

A. Does Not Alter Sovereign Immunity.

Nothing in this Agreement shall be deemed to alter either Party's waiver of sovereign immunity or the limits established in Section 768.28, Florida Statutes, as same may apply.

B. Survival.

This Section survives the termination or expiration of this Agreement.

SECTION 10. MODIFICATIONS.

Unless otherwise specified in this Agreement, no modification, amendment, or alteration of the terms or conditions contained herein will be effective unless contained in a written document executed by the Parties, with the same formality and of equal dignity herewith.

SECTION 11. NO ASSIGNMENT.

This Agreement may not be subcontracted or assigned without the prior written consent of the Parties.

SECTION 12. TERMINATION.

A. Termination for Cause.

1. For Cause.

Either Party, upon determination that the other Party has failed or refused to perform or is otherwise in breach of any obligation or provision under this Agreement shall give written notice of default to the defaulting Party in a manner specified for the giving of notices herein. Such notice shall provide detail of the default and shall provide the defaulting Party thirty (30) calendar days in which to cure said default.

2. If the default is not timely cured to the reasonable satisfaction of the non-breaching Party, the non-breaching Party may terminate this Agreement with no further notice required and shall be relieved of all further obligation under this Agreement.

B. Good Faith Effort.

The Parties agree that prior to termination, COUNTY and DISTRICT will attempt to resolve any dispute that arises under this Agreement in good faith

C. Termination for Convenience.

Either Party may terminate this Agreement without cause by providing the other Party sixty (60) days advance written notice in a manner specified for the giving of notices herein.

SECTION 13. NOTICES.

A. Addresses.

All notices, demands, or other writings required to be given or made or sent in this Agreement, or which may be given or made or sent, by either Party to the other, will be deemed to have been fully given or made or sent when in writing and addressed as follows:

COUNTY

County Administrator
Office of County Administrator
601 SE 25 Ave.
Ocala, FL 34471

DISTRICT

Marion SWCD Chairman
Marion County Growth Services Bldg.
2710 E Silver Springs Blvd,
Ocala, FL 34470

With a copy to:

County Attorney
Marion County Administration Bldg.
601 SE 25 Ave,
Ocala, FL 34471

OAWP Contracts & Grants
FDACS/OAWP
407 S. Calhoun St,
Tallahassee, FL 32399-0800

B. **Delivery.**

All notices required, or which may be given under this Agreement, shall be considered properly given if (1) personally delivered, (2) sent by certified United States mail, return receipt requested, or (3) sent by Federal Express or other equivalent overnight letter delivery company.

C. **Effective Date of Notice.**

The effective date of a notice shall be the date personally delivered, or if sent by certified mail, the date the notice was signed for, or if sent by overnight letter delivery company, the date the notice was delivered by the overnight letter delivery company. The Parties may designate other individuals or addresses to which notice will be sent by notifying, in writing, the other Party in a manner specified for the giving of notice under this Agreement.

SECTION 14. PUBLIC RECORDS.

IF DISTRICT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT:

Public Relations, 601 SE 25th Ave., Ocala, FL 34471

Phone: 352-438-2300 Fax: 352-438-2309

Email: PublicRelations@MarionCountyFL.org

SECTION 15. AMENDMENT.

This Agreement may not be modified or terminated except as provided herein.

SECTION 16. GOVERNING LAW AND VENUE.

This Agreement is made under, and in all respects will be interpreted, construed, and governed by and in accordance with, the laws of the State of Florida. Venue for any legal action resulting from this Agreement will lie solely in Marion County, Florida.

SECTION 17. WAIVER OF JURY TRIAL.

EACH PARTY HEREBY AGREES THAT IN ANY LITIGATION OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF THIS AGREEMENT, WHETHER SOUNDING ON CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE HAD BY A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY IRREVOCABLY WAIVES

ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS WAIVER.

SECTION 18. WAIVER.

No waiver or any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

SECTION 19. RIGHTS OF THIRD PARTIES.

Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or because of this Agreement on any persons other than the Parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any Party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any Party to this Agreement.

SECTION 20. SEVERABILITY.

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

SECTION 21. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the Parties related to the matters specified herein, and supersedes any prior oral or written statements or agreements between the Parties related to such matters.

[This portion of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties have made and executed this Agreement on the respective dates under each signature: Marion County, through its Board of County Commissioners, signing by and through its Chairman and the Marion Soil and Water Conservation District, through its authorized representative.

ATTEST:

**MARION COUNTY, FLORIDA through its
BOARD OF COUNTY COMMISSIONERS**

Gregory C. Harrell, Clerk

By: _____
Jeff Gold, Chairman

Date: _____, 2021

Date: _____, 2021

For Reliance of Marion County Only
Approved as to Form and Legal Sufficiency

Matthew "Guy" Minter
County Attorney

**MARION SOIL AND WATER CONSERVATION
DISTRICT**

By: _____
Justin Albright, Chairman

Date: March 31, 2021

EXHIBIT A

FDACS ASSISTANCE AGREEMENT