

**FIRST AMENDMENT TO THE LAKE HOLDEN STORMWATER
ALUM TREATMENT INTERLOCAL AGREEMENT**

THIS FIRST AMENDMENT TO THE LAKE HOLDEN STORMWATER ALUM TREATMENT INTERLOCAL AGREEMENT (“AGREEMENT”) is made and entered into as of the Effective Date defined herein by and between the **CITY OF ORLANDO, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida (“CITY”), whose mailing address is 400 S. Orange Ave., Orlando, Florida 32802, and **ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida (“COUNTY”), whose mailing address is P.O. Box 1393, Orlando, Florida 32802.

WITNESSETH:

WHEREAS, this AGREEMENT is entered into under the authority of the Florida Interlocal Act of 1969, codified at Section 163.01, Florida Statutes; and

WHEREAS, COUNTY has authority to enter into agreements pursuant to Section 125.01, Florida Statutes; and

WHEREAS, CITY has authority to enter into agreements pursuant to Section 166.021, Florida Statutes; and

WHEREAS, on December 22, 1980, the Orange County Board of County Commissioners (“BOARD”) adopted a resolution continuing and re-establishing the Lake

Holden Municipal Service Taxing Unit ("MSTU") for purposes of general improvement, and enhancement of Lake Holden; and

WHEREAS, on October 30, 1995, the CITY and the COUNTY entered into an Interlocal Agreement setting forth responsibilities and obligations concerning the design, construction, operation and maintenance of an alum injection treatment system ("SYSTEM") on property owned by the COUNTY (Parcel No. 03-23-29-0180-55-001), described more particularly on Exhibit "A," attached hereto and incorporated herein ("PROPERTY") to address urban stormwater pollution adversely affecting Lake Holden; and

WHEREAS, the SYSTEM was designed and constructed pursuant to Permit No. 42-095-1668IG ("PERMIT") issued by the St. Johns River Water Management District ("DISTRICT") on October 10, 1995 (all references to the PERMIT in this AGREEMENT shall include any subsequent modifications and amendments, as approved by the DISTRICT); and

WHEREAS, on or about October 30, 2005, the Interlocal Agreement expired, and on or about September 29, 2011 the CITY and the COUNTY entered into a new Interlocal Agreement continuing the operation and maintenance of the SYSTEM by the CITY on PROPERTY owned by the COUNTY; and

WHEREAS, presently, nearly one hundred percent (100%) of the stormwater treated by the SYSTEM originates from within the CITY's jurisdictional boundaries; and

WHEREAS, the CITY and the COUNTY desire to enter into this FIRST AMENDMENT TO THE AGREEMENT under the terms and conditions as set forth below:

NOW, THEREFORE, in consideration of mutual benefits, obligations, covenants, terms, conditions and restrictions contained herein, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The CITY shall be responsible for the satisfactory maintenance and operation of the SYSTEM in its current configuration and design in accordance with the PERMIT at its sole cost and expense, including, but not limited to, routine SYSTEM inspection and maintenance, pump maintenance, calibration, repair and replacement, pipe repair and replacement. The CITY shall also provide the COUNTY with quarterly reports detailing the operation and maintenance activities conducted on the SYSTEM, including for repairs, replacement or upgrades.

2. Within thirty (30) days of the execution of this AGREEMENT, the COUNTY shall notify the DISTRICT of the conveyance of the permitted SYSTEM to the CITY and request the PERMIT be transferred to the CITY.

3. COUNTY shall convey its entire interest in the PROPERTY to the CITY by County Deed, free and clear of encumbrances and subject to the Right of Re-Entry provision contained therein, within sixty (60) days of the recording of this Agreement in the Official Records of Orange County, Florida. COUNTY shall also convey its entire interest in the SYSTEM to the CITY by a Bill of Sale, within sixty (60) days of the execution of this AGREEMENT. Prior to conveyance of the PROPERTY and SYSTEM to the CITY as described herein, COUNTY shall deliver to the CITY for its review and approval (i) a signed/sealed survey (sketch and legal description) of the PROPERTY in NAVD88 showing the boundary of the PROPERTY and the location of the SYSTEM improvements within the PROPERTY and (ii) any

and all plans and specifications, maintenance records, study materials/data and reports, and any other such documentation, in the possession of the COUNTY relating to the SYSTEM.

4. Upon said conveyances, the CITY shall own the personal and real property which comprise the SYSTEM and CITY shall become responsible for maintaining the PROPERTY and exterior structure housing the SYSTEM in a reasonable manner, including all mowing and building maintenance. The CITY shall also become responsible for ensuring repair of any damage to the SYSTEM (to the CITY's satisfaction in its sole reasonable discretion) unrelated to mechanical breakdown and mechanical failure, including but not limited to, damage to the SYSTEM caused by vandalism, weather events, other acts of god, force majeure events and acts of third parties. This AGREEMENT does create an ownership and possessory interest in the CITY of the SYSTEM and the PROPERTY (Parcel No. 03-23-29-0180-55-001).

5. The CITY shall secure all permits, approvals, and favorable regulatory actions as may be necessary for the continued operation and maintenance of the SYSTEM. The CITY shall be solely responsible for ensuring the repair or replacement, (to the CITY's satisfaction in its sole reasonable discretion) beginning with the Effective Date of this AGREEMENT, to make the SYSTEM operative again after mechanical failure or mechanical breakdown. It is expressly agreed that any and all improvements or upgrades to the SYSTEM shall become the sole and exclusive property of the CITY upon their installation. Notwithstanding the above terms, CITY shall not be responsible for initiating or completing any studies or analyses of Lake Holden other than as determined necessary by the CITY in its sole reasonable discretion.

6. The CITY shall continue to operate the SYSTEM using the design dose rate of 7.5 mg alum per liter of stormwater in accordance with the February 2010 Environmental

Research and Design, Inc. study "Evaluation of the Current Status and Potential Water Quality Improvement Options for Lake Holden". The CITY shall provide the COUNTY with written notice and justification in the event the CITY elects to change the alum addition rate.

7. CITY shall maintain separate books and records of accounting in accordance with generally accepted governmental accounting procedures, principles, and practices which sufficiently and properly reflect all reviews and expenditures of funds provided for under this AGREEMENT.

8. This AGREEMENT is entered into solely for the benefit of the parties hereto. There are no third-party beneficiaries and no privity is established hereby between the COUNTY and any agent, consultant, contractor (or its subcontractors) engaged by the CITY in relation to the SYSTEM or between the CITY and any agent, consultant, contractor (or its subcontractors) engaged by the COUNTY in relation to the SYSTEM. This AGREEMENT shall not be assignable.

9. This AGREEMENT constitutes the complete understanding of the parties as to the matters set out herein and there are no other agreements or understandings between the parties except as above.

10. This AGREEMENT may be amended only by express written instrument approved by the CITY COUNCIL and the BOARD, and executed by the authorized officers of each party.

11. Any notice required to be given or otherwise given by one party to the other party shall be in writing and shall be deemed delivered when given by hand delivery; five (5) days after being deposited in the United States Mail, postage prepaid, certified or registered; or the

next business day after being deposited with a recognized overnight mail or courier delivery service; or when transmitted by facsimile or telecopy transmission, with receipt acknowledged upon transmission; and addressed as follows:

As to the CITY: Chief Administrative Officer
City of Orlando
400 S. Orange Ave.
Orlando, Florida 32801
Facsimile: 407-246-3342

As to the COUNTY: Manager, Environmental Protection Division
800 Mercy Drive, Suite 4
Orlando, Florida 32808
Facsimile: (407) 836-1499

With a copy to: County Attorney
Orange County Administration Center
201 South Rosalind Avenue
Orlando, Florida 32801
Facsimile: 407-836-5888

In all cases, notices shall be deemed delivered to a party only upon delivery of copies to the persons indicated above in the same manner as for the party being notified. Either party may change its designated official or address for receipt of notice by giving notice of such change to the other party in the manner provided in this section.

12. As required by Section 163.01(11), Florida Statutes, this AGREEMENT shall be recorded in the Official Records of Orange County, Florida upon execution by both parties, and shall take effect upon the date of recording (the "Effective Date"). The CITY shall pay all recording costs necessary to record this AGREEMENT in the public records.

13. The parties shall use reasonable diligence to complete the obligations set forth herein but shall not be liable to each other, or their successors or assigns for damages, costs, attorney's fees (including costs or attorney's fees on appeal) for breach of contract or otherwise

for failure, suspension, demolition or other variations of services occasioned by acts of god or of the public enemy, acts of other government (including regulatory entities or court) in its sovereign or prior contractual capacity, fires, floods, epidemics, quarantines, restrictions, strikes or failure or breakdown of transmission or other facilities.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT on the dates written below.

CITY OF ORLANDO

By: _____
Mayor/Mayor Pro Tem

Date: _____

ATTEST:

Alana Brenner, City Clerk

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the City of Orlando,
Florida, only

City Attorney
Orlando, Florida

STATE OF FLORIDA)
COUNTY OF ORANGE)

PERSONALLY APPEARED before me, the undersigned authority, _____
and _____, personally known to me, and known by me to be the Mayor and City
Clerk, respectively, and acknowledged before me that they executed the foregoing instrument on
behalf of the City of Orlando, Florida, as its true act and deed, and that they were duly authorized
to do so.

WITNESS my hand and official seal this ____ day of _____, 2014.

NOTARY PUBLIC
Print Name: _____
My Commission Expires: _____

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
Teresa Jacobs
Orange County Mayor

Date: _____

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk

Printed Name: _____

Exhibit "A"

Property Appraiser's Parcel Identification Number:

03-23-29-0180-55-001

That certain tract of land lying East of Lot 13 Block 55 of Angebilt Addition Subdivision recorded in Plat Book H, Page 79 and lying Southwesterly of Michigan Street per Official Records Book 2137, Page 132 and Road Book 1, Page 130 and Northerly of 29th Street as constructed, according to the Public Records of Orange County, Florida.