

**INTERLOCAL AGREEMENT  
BETWEEN THE CITY OF BOYNTON BEACH  
AND  
THE CITY OF DELRAY BEACH  
(Lake Ida Water Quality Sampling)**

THIS AGREEMENT ("Agreement" or "Interlocal Agreement"), is made and entered into \_\_\_\_\_, 20\_\_\_\_, by and between the City of Boynton Beach, a Florida municipal corporation (hereinafter "Boynton Beach"), and the City of Delray Beach, a Florida municipal corporation (hereinafter "Delray Beach") collectively referred to as the "Parties" or individually referred to as a "Party".

**WITNESSETH:**

**WHEREAS**, the Parties are authorized pursuant to the Florida Interlocal Cooperation Act of 1969 as set forth in Section 163.01, et seq., Florida Statutes (hereinafter the "Act") to make efficient use of their respective powers, resources, authority and capabilities by enabling them to cooperate on the basis of mutual advantage and thereby provide the facilities and efforts identified herein in the manner that will best utilize existing resources, powers and authority available to each of them; and

**WHEREAS**, it is the purpose of the Act to provide a means by which the Parties may exercise their respective powers, privileges and authority which they may separately, but which pursuant to this Interlocal Agreement and the Act they may exercise collectively; and

**WHEREAS**, the Parties have common interests in the Lake Ida water quality sampling for Total Maximum Daily Load (TMDL) compliance; and

**WHEREAS**, pursuant to the Palm Beach County Municipal Separate Storm Sewer System (MS4) National Pollutant Discharge Elimination System (NPDES) Permit No. FLS000018-004, the cities of Boynton Beach and Delray Beach must implement a Water Quality Monitoring Plan for Lake Ida, Water Boundary Identification (WBID) # 3262A for compliance with the Environmental Protection Agency (EPA) TMDL; and

**WHEREAS**, Boynton Beach and Delray Beach conducted quarterly targeted water quality monitoring at five locations on Lake Ida during 2018 and 2019. Consequently, in their 2020 annual MS4 reports, the Parties recommended to conduct two additional years of sampling and include two additional water quality sites to better understand the lake water quality seasonal and spatial processes; and

**WHEREAS**, there are cost savings and efficiencies gained by the Parties collaborating on the MS4 reporting which serves both a municipal and public purpose; and

**NOW, THEREFORE**, the Parties express their mutual understandings and commitments as follows:

## Section 1. STATEMENT OF PURPOSE

The purpose of this Interlocal Agreement is to establish an agreement between the Parties in order to allocate each Party's share of expenses for the proposed two-year water quality monthly sampling at the seven locations depicted in Figure 1. These MS4 data collection, testing, analysis, reports, and meetings for Lake Ida EPA TMDL are referred to as the "Project". This Agreement solely pertains to the Project's sampling and water quality monitoring expenses ("Consulting Expenses").

## Section 2. COST SHARING AND PROCUREMENT OF THE PROJECT

2.1 In consideration of Boynton Beach contracting for the professional services with a consulting company for the report sampling of the Project and entering into a contract with the selected consultant for the Project ("Selected Consultant"), Delray Beach shall pay to Boynton Beach its share of data collection, testing, analysis, reports, meetings, and consulting expenses, which shall consist of half the Project's Consulting Expenses.

2.2 The Project Consulting Expenses shall be shared equally between the Parties, however, the elements of the report sampling/monitoring to each Party's property, if any, shall be paid for by the respective Party.

2.3 Each Party's share of Consulting Expenses, as provided herein, shall not exceed Thirty- Thousand and 00/100 Dollars (\$30,000.00) for two years of monitoring.

2.4 Delray Beach shall make payments to Boynton Beach within 30 days of receipt of an invoice related to Delray Beach's share of the Project's Consultant Expenses.

2.5 The Parties shall work together to conduct two annual meetings with the Consultant, which will allow the staff of both Boynton Beach and Delray Beach to express any concerns related to the Project.

2.6 Once Boynton Beach enters into a contract with the Selected Consultant for the Project, Delray Beach shall not be able to withdraw payment of its share of Consultant Expenses to be payable to Boynton Beach, as provided herein.

### Section 3. PUBLIC RECORDS

The Parties are public agencies subject to Chapter 119, Fla. Stat. The Parties shall comply with all public records laws in accordance with Chapter 119, Fla. Stat. In accordance with state law, the Parties agrees to:

3.1 Keep and maintain all records that ordinarily and necessarily would be required by the Parties.

3.2 Provide the public with access to public records on the same terms and conditions that the Parties would provide for the records and at a cost that does not exceed the costs provided in Chapter 119, Fla. Stat. or as otherwise provided by law.

3.3 Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.

3.4 Meet all requirements for retaining public records and transfer, at no cost, to the Parties all records in possession of the Parties at the termination of this Agreement and destroy any public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Parties in a format that is compatible with the information technology systems of the Parties. All records shall be transferred to the Parties prior to final payment being made to the Parties.

3.5 If either Party does not comply with this section, the non-breaching Party shall enforce the Agreement provisions in accordance with this Agreement and may unilaterally cancel this Agreement in accordance with state law.

### Section 4. REMEDIES

Both Parties shall have any and all remedies as permitted by law. The Parties agree, however, to provide for positive dialogue and communications if disputes or disagreements arise as to the application or interpretation of the Interlocal Agreement provisions.

## Section 5. DURATION AND TERMINATION

5.1 This Interlocal Agreement shall become effective upon being executed by both Parties.

5.2 This Interlocal Agreement shall remain in effect until the Project is completed and Delray Beach pays Boynton Beach for the final invoice related to the Project. This Agreement may be terminated by written mutual consent executed by both Parties.

## Section 6. GOVERNING LAW/ VENUE / WAIVER OF JURY TRIAL

This Agreement shall be governed by the laws of the State of Florida. Any legal action to enforce the Agreement will be filed in Palm Beach County. In any litigation brought to enforce the terms of this Interlocal Agreement, the Parties shall bear their own costs and attorney's fees incurred in connection therewith. **BY ENTERING INTO THIS AGREEMENT, THE PARTIES EXPRESSLY WAIVE ANY RIGHT THE PARTIES MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION OR ANY CLAIM RELATED TO THIS AGREEMENT.**

## Section 7. LIABILITY AND INDEMNITY

7.1. Each Party shall be liable for its own actions and negligence and, to the extent permitted by law, the Parties and their respective officers and employees shall not be deemed to assume any liability for the acts, omissions and negligence of the other. Nothing herein shall constitute, or be construed as, a waiver of sovereign immunity beyond the limits set forth in Florida Statute, Section 768.28, or of any defense available to the Parties as set forth in Florida Statutes, Section 768.28 or any other provisions of Florida law.

7.2 This section shall survive the termination or expiration of this Agreement.

## Section 8. AMENDMENT OF THIS AGREEMENT

Amendments to this Interlocal Agreement shall be made by written consent of both Parties.

## Section 9. EXECUTION OF AGREEMENT

This Agreement shall be executed by the Parties' authorized representatives pursuant to an appropriate resolution of the respective local governmental unit. Each Party shall be bound to the terms of this Interlocal Agreement as of the date it is signed by both Parties.

## Section 10. SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Interlocal Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void or voidable, shall in no way affect the validity or enforceability of any other portion or provision of the Interlocal Agreement. Any void or voidable provision shall be deemed severed from the Interlocal Agreement and the balance of the Interlocal Agreement shall be construed and enforced as if the Interlocal Agreement did not contain the particular portion or provision held to be void. The Parties further agree to reform the Interlocal Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent the entire Interlocal Agreement from being held void should a provision which is of the essence of the Interlocal Agreement be determined to be void by a court of competent jurisdiction.

## Section 11. NOTICES

11.1 Any notice given pursuant to the terms of this Agreement shall be in writing and done by Certified Mail, Return Receipt Requested. The effective date of such notice shall be the date of receipt, as evidenced by the Return Receipt. All notices shall be addressed to the following:

As to City of Boynton Beach:	Attn: City Manager City of Boynton Beach PO Box 310 Boynton Beach, FL 33425
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As to City of Delray Beach:	Attn: City Manager City of Delray Beach 100 NW 1 <sup>st</sup> Avenue Delray Beach, FL 33444
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11.2 Notices shall be effective when delivered to the address specified above. Changes in the respective addresses to which such notice may be directed may be made from time to time by any Party by written notice to the other Party. Facsimile and email are acceptable notice effective when received, however, facsimiles and emails received (i.e. printed) after 5:00 p.m. or on weekends or holidays, will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

## Section 12: FILING

A copy of this Agreement shall be filed with the Clerk of the Circuit Court in and for Palm Beach County.

### Section 13: FORCE MAJEURE

Any Party delayed by a Force Majeure Event, as defined herein, in performing under this Interlocal Agreement shall use reasonable efforts to remedy the cause or causes of such Force Majeure Event. A delay due to a Force Majeure Event shall serve to toll the time to perform under this Agreement. "Force Majeure Event" shall mean any act of God, fire, flood, earthquake, explosion, hurricane, riot, sabotage, terrorist attack, windstorm, failure of utility service, or labor dispute.

### Section 14: CONSTRUCTION

No Party shall be considered the author of this Interlocal Agreement since the Parties hereto have participated in negotiations and drafting and redrafting of this document to arrive at a final agreement. Thus, the terms of this Agreement shall not be strictly construed against one Party as opposed to the other Party based upon who drafted it. In the event that any section, paragraph, sentence, clause, or provision hereof is held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect.

### Section 15: NO THIRD PARTY BENEFICIARY

No provision of this Interlocal Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of any Party.

### Section 16: NON-DISCRIMINATION

The Parties shall not discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, or gender identity and expression in the performance of this Agreement.

### Section 17: ASSIGNMENT

The Parties may not assign this Agreement in whole or in part, without prior written consent of the other, which may be granted or withheld at the such Parties' absolute discretion.

Section 18: COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

Section 19: EFFECTIVE DATE

This Agreement is expressly contingent upon the approval by the Parties and shall become effective only when signed by the Parties. The effective date shall be the last date that it is executed by the Parties.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed on the date and year first written above.

**ATTEST:**

**CITY OF BOYNTON BEACH**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Steven B. Grant  
Title: Mayor

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY**

By: \_\_\_\_\_  
City Attorney

**ATTEST:**

**CITY OF DELRAY BEACH**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Shelly Petrolia  
Title: Mayor

**APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:**

By: \_\_\_\_\_  
City Attorney