

## INTERLOCAL AGREEMENT TO PROVIDE SERVICES

THIS Interlocal Agreement to Provide Services ("ILA") is made and entered into this \_\_\_\_\_ day of FEBRUARY, 2020, by and between the **East Mulloch Water Control District** (hereinafter referred to as the "*District*"), a dependent taxing district created by an Act of the Florida State Legislature in 2018, acting by and through its Board of Supervisors, being the governing body thereof, and **Lee County**, a political subdivision and Charter County of the State of Florida, acting by and through its Board of County Commissioners, being the governing body thereof (hereinafter referred to as the "*County*"); collectively, the District and the County are referred to as the "*Parties*" hereto.

### RECITALS

**WHEREAS**, the Board of Supervisors is the governing body of the District, a Florida Statutes Chapter 189 Dependent Special District, the successor in interest to the East Mulloch Drainage District; and

**WHEREAS**, the Board of County Commissioners is the governing body in and for Lee County, an unincorporated municipality of the State of Florida; and

**WHEREAS**, the District is comprised of approximately 2,441 acres, with approximately 8,117 parcels; and

**WHEREAS**, within the District there also exists creeks, canals, ditches, ponds, and drainage structures intended for effective surface water management and drainage; and

**WHEREAS**, there is a current need for improved surface water drainage and management within the District, including such items as updated surveys and title work, along with increased and improved operation and maintenance activities of clearing and grubbing, herbicide treatment, debris removal, culvert replacement and related water control facility and structure repair, replacement and maintenance; and

**WHEREAS**, the District seeks to contract for assistance from the County to oversee and manage necessary projects and tasks to facilitate minimum levels of functional drainage within the District; and

**WHEREAS**, both the District and the County are duly empowered pursuant to Florida Statutes, in particular, §163.01, Florida Statutes, to enter into Interlocal Agreements for the sharing of certain governmental powers and obligations; and

**WHEREAS**, the District finds it serves a public purpose to engage the services of the County and will compensate the County for providing such services on behalf of the District; and

**WHEREAS**, the Parties hereto find that entering into this ILA serves a public purpose and is for the public's benefit of both the District and the County.

**NOW, THEREFORE,** the Parties, intending to be legally bound, do hereby mutually agree to the following terms and conditions as hereinafter set forth:

### **SECTION I - RECITALS AND PURPOSE**

The Recitals set forth above are all acknowledged to be true and are incorporated herein for all purposes.

It is the purpose and intent of this ILA to define the terms and conditions under which the District will contract with the County for services to manage and oversee vegetative debris removal, to repair, replace and maintain existing drainage facilities and structures, and as determined to be necessary, construct or install new drainage facilities and structures for the benefit of the District, for which the District agrees to reimburse the County for such costs.

All terms and conditions of this ILA are to be interpreted in a manner consistent with, and in furtherance of, the purposes as set forth above.

### **SECTION II - AUTHORITY FOR AGREEMENT**

The District represents to the County this ILA has been duly authorized by all appropriate action of the governing body of the District, executed and delivered by an authorized officer of the District, and constitutes a legal, valid, and binding obligation of the District.

The County represents to the District this ILA has been duly authorized by all appropriate action of the governing body of the County, executed and delivered by an authorized officer of the County, and constitutes a legal, valid, and binding obligation of the County.

### **SECTION III - SCOPE OF SERVICES**

The County and District have met to develop project goals and objectives for the initial one-year period consisting of the following generalized tasks and costs:

#### **2019 – 2020**

Survey existing canals/easements	\$ 75,000.00
Maintain/improve canals	\$200,000.00
County Administrative Costs	<u>\$ 25,000.00</u>

Year 1 – Total Budgeted Cost      \$300,000.00

At least annually thereafter, the County and District will meet to develop or revise objectives and associated costs for the upcoming fiscal year.



Maintenance of canals will include all canals, drainage swales, and water control structure maintenance in the system, including but not limited to aquatic weed control and treatment, mechanical work, manual clearing and vegetation removal, and other necessary tasks to maintain/improve drainage of the system. The County also agrees as part of the Administrative Cost function to be the primary point of contact for receiving and responding to requests for service from the public. The County will not be responsible for any permit fees, annual governmental reporting fees, property appraiser fees, tax collector fees, professional fees such as legal and audit costs, meeting advertising and facility costs, insurance, and other typical administrative costs currently being paid as requirements of operating the District.

The District will, within the limits of its assessment authority, annually levy assessments upon those properties within the District to cover the District's intended costs under the terms of this ILA. The District's obligation to proceed with the Task List of this ILA will be subject to collection of annual assessments, and the foregoing may be adjusted, as necessary, based upon actual benefit collections from properties within the District.

Commencing upon execution and approval of the ILA by the Parties, the County and District will meet to develop, review, and approve project goals and objectives for improvement and maintenance of surface water management facilities within the District. Thereafter, at a minimum, the Parties will meet annually, to review and, as necessary, revise and update the project goals and objectives for improvement and maintenance of surface water management facilities within the District.

Subsequent to consultation with the District, the County will be primarily responsible for determining the method and manner to construct, improve, or repair drainage structures within the District. This ILA represents the District's authorization for the County to proceed on behalf of the District.

The County will obtain consultant and contractor services pursuant to the applicable County, state and federal procurement rules and regulations. The District will cooperate in permit applications and other needed authorizations.

During the term of this ILA, the District will coordinate its management activities with the County prior to engaging in any District-planned activity affecting existing or contemplated drainage facilities or structures.

The County will be responsible for contracting with and overseeing County-approved consultants and/or contractors to make repairs to drainage structures within the District to facilitate activities to obtain or improve minimum functional levels of drainage.

The District will be responsible for providing the County with access necessary to complete vegetative debris removal and, where necessary, the repair of drainage structures and projects approved under the terms of this ILA.

#### **SECTION IV - INSURANCE AND LIABILITY**

The County is self-insured for services performed by County Staff.

The County will utilize licensed and insured consultants and contractors for all other work performed for the benefit of the District under the terms of this ILA.

The Parties agree that by execution of this ILA, no Party will be deemed to have waived its statutory defense of sovereign immunity, or increased its limits of liability as provided for by Section 768.28, Florida Statutes.

#### **SECTION V – INVOICING AND PAYMENT**

As often as quarterly, the County will invoice the District for payment for work approved under the terms of this ILA.

Each invoice will detail the work performed. The District agrees to make payment within twenty (20) calendar days from receipt of invoice. In the event that District disputes any invoice for services or work performed, whether with or without cause, the District will pay the disputed costs to the County. The County and the District will then work together in good faith to resolve any question or dispute for reimbursement. In all events, the District agrees to be responsible for all costs expended on behalf of the District. During any period of cost or billing dispute the County may halt work or activity on any project.

Invoices for County administrative services and for contractor repairs made to drainage facilities and structures within the District to achieve minimum levels of functional drainage will include documentation identifying the work performed. The District agrees to make payment within twenty (20) calendar days from receipt of invoice.

The District may submit for grant assistance from any other governmental agency for work performed by the County under the terms of the ILA, but in all events, District will remain fully responsible to reimburse the County for all costs of repairs incurred for the benefit of District drainage facilities and structures.

Invoices for cost(s) in obtaining and/or providing services for debris removal services and repairs to drainage structures, as well as for projects intended to be covered by this Agreement, will also include billing for County Staff time and appurtenant costs incurred by the County under the terms of this ILA.

Any other agreement or arrangement for reimbursement must otherwise be approved in writing by the County.

#### **SECTION VI - TERM OF AGREEMENT AND TERMINATION**

This ILA for debris removal services and repairs and improvements to drainage facilities and structures is for an initial term or period of three years, starting March 01,



2020, unless renewed or amended by the Parties hereto with the same formalities as this ILA.

This ILA may be terminated by either Party, with or without cause, upon 90 days written notice to the other Party as provided herein. Upon such notice of termination, all activity under the ILA will be concluded and billing for final services will be submitted for payment.

The obligation of District to reimburse the County for the cost of any vegetative debris removal and/or the cost of any repairs to drainage structures within the District to facilitate minimum levels of functional drainage will continue beyond the expiration of this ILA until paid.

Unless provided otherwise, all physical improvements to drainage structures and facilities become the property of the District without further or separate action by the Parties.

## **SECTION VII - NOTICES**

Any notices or other documents permitted or required to be delivered pursuant to the terms of this ILA, will be delivered to the County and to the District as follows:

### **To the County:**

Lee County Manager  
P.O. Box 398  
Fort Myers, Florida 33901

Director  
Lee County Division of Natural Resources  
P.O. Box 398  
Fort Myers, Florida 33901

Office of the Lee County Attorney  
P.O. Box 398  
Fort Myers, Florida 33901

### **To the District:**

East Mulloch Water Control District  
Chair, Board of Supervisors  
P. O. Box 511  
Estero, Florida 33929

## **SECTION VIII - AMENDMENT**

This ILA may only be amended in writing and duly executed by the District and the County with the same formalities as this Agreement.

## **SECTION IX - CONSTRUCTION**

This ILA will be governed by and construed in accordance with the laws of the State of Florida.

## **SECTION X - RECORD KEEPING**

The County will keep records of all activities performed and costs expended on behalf of the District pursuant to this ILA. All such records will be deemed to be public records subject to the provisions of Chapter 119, Florida Statutes.

## **SECTION XI - FORCE MAJEURE**

Neither Party will be liable to the other for any failure to perform under the terms of this ILA to the extent such performance is prevented by an act of God, war, riots, natural catastrophe, or other event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence, provided that the party claiming the excuse from performance has (a) promptly notified the other party of the occurrence and its estimated duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent reasonably possible and (c) resumed performance as soon as possible.

## **SECTION XII - SEVERABILITY**

If any provision of this ILA is held invalid, the remainder of the ILA will not be affected thereby and all other parts of this ILA will nevertheless remain in full force and effect.

## **SECTION XIII - FILING**

This ILA and any subsequent amendments hereto will be filed with the Lee County Clerk of the Circuit Court, Minutes Department.

(End of provisions.)

**IN WITNESS WHEREOF**, the District and the County have executed this ILA intending to be bound as of the day and year first above written.

**EAST MULLOCH WATER CONTROL DISTRICT**

BY:   
[Signature]

PATRICK HAYES  
[Type or print name]  
Chair, Board of Supervisors

ATTEST:  
LINDA DOGGETT, CLERK

**BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA**

BY: \_\_\_\_\_  
[Signature]

BY: \_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Type or Print Name]  
Deputy Clerk

Brian Hamman  
Chair

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY:

By: \_\_\_\_\_  
Office of the County Attorney

(081319/0930)