

City of Jacksonville Basin Management Action Plan

Jacksonville Waterways Commission
January 14, 2015


Jim Robinson, P.E., Director
Department of Public Works

LSJR BMAP

- Adopted by Secretarial Order in October 2008
- Reduces 2719.7 MT of Nitrogen in the Lower St Johns River
 - TN - Marine Section - 1076.4 MT per year
 - TN - Fresh Water - 1544.0 MT per year
 - TP - Fresh Water - 99.3 MT per year
- Groups impacted:
 - 36 Point Source dischargers
 - 12 MS4s
 - 13 non-MS4 Stormwater systems
 - Agriculture

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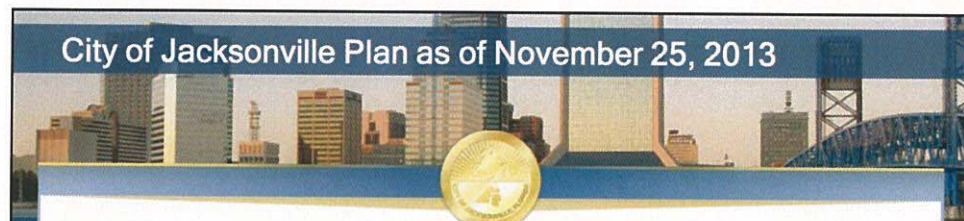
Required City of Jacksonville Nitrogen Reduction



Measure	Total MT TN
COJ/FDOT Total Reduction needs	147.4
Credit for FDOT Projects	14.7
Credit for Seminole Electric Project	6.9
Credit for COJ Projects 1999-2008	18.86
Grand Total Reduction needed 2008-2023	106.9

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City of Jacksonville Plan as of November 25, 2013



Project	Total Reduction by 2015 (MT)	Total Reduction by 2023 (MT)
Stormwater	0.77	4.85
Septic Tank Phase-Out (LOC)	1.66	1.66
Septic Tank Phase-Out Projects	2.93	9.13
Public Education	3.29	3.29
Street Sweeping	5.55	5.55
BMAP Trading	39.25	82.42
TOTAL	53.45	106.9

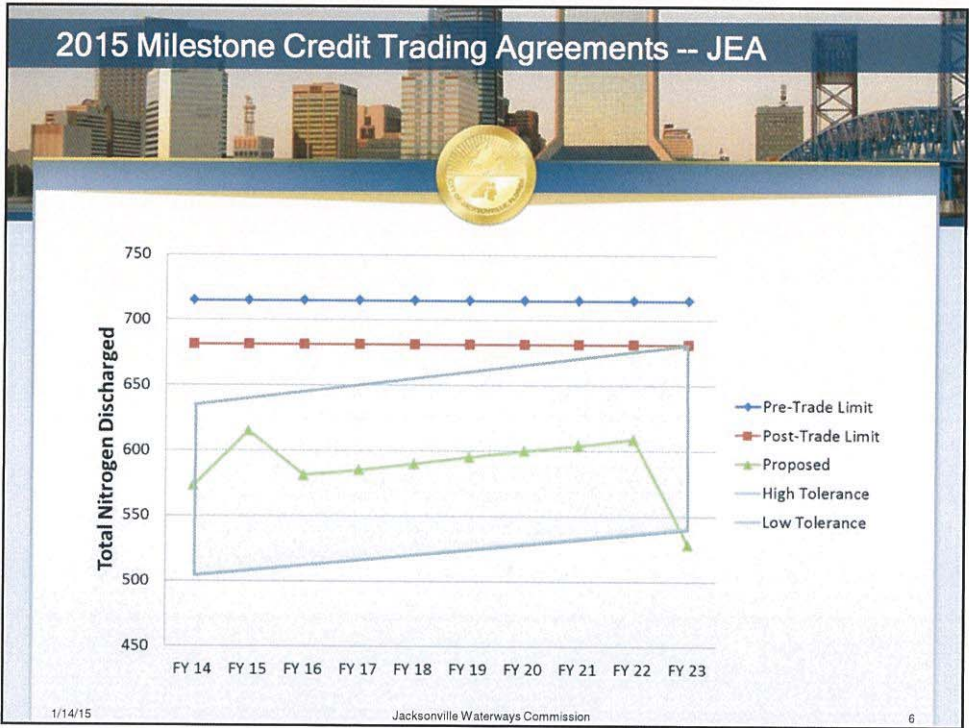
Credit trading value for 2023 = Safe Harbor

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Other LSJR Basin Entities Using Credit Trading

- City of Green Cove Springs MS4 (TN and TP)
- City of Palatka non-MS4 (TN and TP)
- City of Atlantic Beach MS4 (TN)
- City of Jacksonville Beach MS4 (TN)
- City of Neptune Beach MS4 (TN)
- Clay County - Marine
- Clay County - Freshwater
- Town of Orange Park MS4 (TN)
- US Navy MS4 (TN)
- St Johns County MS4 (TN and TP)

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2015 Milestone Credit Trading Agreements -- JEA

- Summary of DRAFT agreement with JEA
 - Credits leased with annual payments for 30.34 MT TN per year
 - Actual amount to be leased will be adjusted prior to agreement execution based on project schedules and credit modeling for septic tanks
 - Initial payment for 5 months to end of CY 15
 - Full annual payments beginning in January 2016 with a final payment for 7 months in January 2023
 - Current value of each MT TN removal is \$68,779 per year based on cost recovery method used by JEA
 - Current total \$2,086,767 per year - will be reviewed by Council and Council Auditor

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2015 Milestone Credit Trading Agreements -- FDOT

- In 2010 FDOT ceased application of fertilizer within their State Roads R/W
- Initial water quality improvement value associated with this effort was 8.4 MT TN per year
- Based upon additional studies by the University of Central Florida, the FDOT effort finally resulted in 18.4 MT TN per year
- The Credit Trading Agreement between COJ and FDOT is based upon 10.57 MT TN per year - concept approved by FDEP
 - Stormwater improvement credits
 - Fertilizer cessation benefits
- In return, COJ increased from 90% to 95% coverage for future allocations

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MEMORANDUM OF UNDERSTANDING

The purpose of this Memorandum of Understanding (MOU) is to outline a collaborative framework for the parties to coordinate their efforts and resources to expedite the restoration of the Ocklawaha River by removing/closing impoundments. The Ocklawaha River was historically the largest tributary to the St. Johns River, and the restoration of its historic flow will help protect the St. Johns River by mitigating some of the potential adverse impacts of the proposed channel deepening of the St. Johns River.

This is a non-binding agreement between the following parties: St. Johns Riverkeeper, a Florida non-profit corporation (ST JOHNS RIVERKEEPER); the Jacksonville Regional Chamber of Commerce, a Florida non-profit corporation (CHAMBER); the Jacksonville Port Authority, an independent authority of the City of Jacksonville (JAXPORT); and the City of Jacksonville, a consolidated municipal and county political subdivision of the State of Florida (CITY), collectively (PARTIES).

The PARTIES agree to the following:

(1) The CHAMBER, CITY and JAXPORT:

Shall in good faith seek and secure funding for the breaching of the Rodman Dam and restoration of the Ocklawaha River and its forested floodplains in Putnam and Marion Counties through the introduction, enactment and funding of St. Johns and Ocklawaha Rivers Restoration Legislation or the introduction and passage of a funding line item in the State of Florida budget, or a comparable action that accomplishes the breaching of the Rodman Dam and restoration of the Ocklawaha River and its forested floodplains.

(2) The ST. JOHNS RIVERKEEPER:

Shall in good faith forgo any litigation challenging the Environmental Impact Statement pertaining to the channel deepening project provided that the St. Johns and Ocklawaha Rivers Restoration Legislation is authorized and funded or if the Ocklawaha River Restoration is accomplished by comparable action. In the event the litigation has already commenced, the ST. JOHNS RIVERKEEPER will dismiss without prejudice its case within ten days (10) after the effective date of the legislation and/or funding authorization.

(3) JOINT ACTIVITIES:

The PARTIES shall together:

i. Advocate for introduction, enactment and funding of St. Johns and Ocklawaha Rivers Restoration Legislation or the introduction and passage of a funding line item in the State of Florida budget, or a comparable action that accomplishes the breaching of the Rodman Dam and restoration of the Ocklawaha River and its forested floodplains including full funding of the same;

ii. Work to enhance both the environmental health and the economic impact of the St. Johns and Ocklawaha Rivers by engaging with key stakeholders, including without limitation, federal, state, county, municipal and academic partners;

iii. Advocate for the positive environmental outcomes of the restoration of both watersheds;

iv. Inform each other of any material changes to this MOU or the outcomes of the described tasks.

(4) TIME PERIOD:

The joint effort described above shall commence upon the full execution of this MOU and end upon the successful completion of the above tasks. In the event that efforts to ensure the passage, funding and implementation of the Ocklawaha River restoration fail, the ST. JOHNS RIVERKEEPER will be under no obligation to dismiss an existing law suit if already filed or to refrain from filing suit. Conversely, the CHAMBER, the CITY and JAXPORT will be under no obligation to refrain from pursuing the deepening of the Jacksonville Harbor Channel.

(5) DISCLAIMERS:

This memorandum does not create a partnership or other legal rights or remedies between the PARTIES. Although the PARTIES agree to proceed in good faith to accomplish the above stated tasks, this is not a contractual agreement and none of the PARTIES hereto shall be eligible to claim a breach, seek remedies or claim any cause of action. This is a non-binding agreement between the PARTIES.

SIGNATURES:

By signing this agreement, each party agrees in good faith to communicate and coordinate efforts to the fullest extent possible.

ATTEST:

CITY OF JACKSONVILLE

By: _____
James R. McCain, Jr.
Corporation Secretary

By: _____
Alvin Brown, Mayor

DATED: _____

FORM APPROVED:

Office of General Counsel

ST. JOHNS RIVERKEEPER

By: _____
Print Name: _____
Its: _____
DATED: _____

JACKSONVILLE REGIONAL CHAMBER OF COMMERCE

By: _____
Print Name: _____
Its: _____
DATED: _____

JACKSONVILLE PORT AUTHORITY

By: _____
Print Name: _____
Its: _____
DATED: _____

- DRAFT -

FDOT

**AGREEMENT FOR TRADE OF TOTAL NITROGEN CREDITS IN THE
MARINE SECTION OF THE LOWER ST. JOHNS RIVER BASIN**

THIS AGREEMENT ("Agreement") made and entered into this _____ day of _____, 2013 by and between the Florida Department of Transportation ("Department") and the City of Jacksonville, Florida ("City"), a municipal corporation existing under the laws of the State of Florida.

- Recitals -

- A. The Department is authorized to enter into this Agreement pursuant to §334.044(7), Florida Statutes (2012), and other applicable law; and
- B. The Department and the City have a National Pollutant Discharge Elimination System ("NPDES") Municipal Separate Storm Sewer System Phase I Permit # FLS000012-003 ("MS4") which is incorporated herein and made part of the Agreement by reference; and
- C. The Florida Department of Environmental Protection ("FDEP") is empowered to establish a Total Maximum Daily Load (TMDL), and their allocation, for waters that have been verified to be impaired by a pollutant pursuant to Chpt. 62-303, F.A.C.; see Chpt. 62-304.100(1).
- D. An "Allocation" is the quantity of a pollutant that may be discharged into a waterbody; and
- E. If a discharger discharges less pollutants than authorized in the Allocation then the discharger meets the TMDL and has a pollutant credit ("Credits") and if the discharger discharges more pollutants than authorized in the Allocation then the discharger exceeds the pollutant discharge and has a pollutant deficit ("Deficit"); and
- F. The FDEP has determined that the waters of the Lower St. Johns River ("LSJR") are impaired by the presence of excessive levels of nutrients including total nitrogen (TN) and adopted a TMDL; and
- G. In October 2008, the LSJR Basin Management Action Plan ("LSJR BMAP") was final adopted by the FDEP; and
- H. The Department and the City are dischargers ("stakeholders") in the LSJR BMAP; and
- I. The LSJR BMAP sets a compliance schedule and mandates the Department and City are responsible for reducing the MS4 TN; and
- J. The LSJR BMAP assessed a combined TN allocation to the Department and City of 147,422 kg/y TN (approximately 147 MT/y TN); and
- K. The Department's completed projects generate a surplus of 10.57 MT/y TN Credits; and
- L. The City currently has a TN Deficit; and
- M. The City has requested the Department trade its 10.57 MT/y TN Credits to assist the City in complying with reducing the City's TN Deficit; and

N. Additionally, the Department and the City are Stakeholders in the LSJR Tributary BMAP and LSJR Tributary BMAP II which were final adopted by FDEP on December 2009 and August 2010, respectively; and

O. The LSJR BMAP Tributary and LSJR Tributary BMAP II are for a reduction of fecal coliforms; and

P. The Department is not a significant source of fecal coliforms; and

Q. Sections 376.021, 376.30, and 403.021, Fla. Stat. (2012) provide that the preservation of surface and groundwaters is a matter of the highest urgency and priority, as these waters provide the primary source for potable water in the state; and

R. The City's undersigned representative is vested with the authority to execute this Agreement on behalf of City by virtue of the City's Resolution, a copy of which is attached hereto as Exhibit "A"; and

S. The Department is amenable to the City's request given their willingness to execute and perform this Agreement; and

NOW THEREFORE, with full knowledge and understanding of the laws governing the subject matter of this Agreement, and in consideration of the foregoing recitals and the mutual covenants and conditions contained in this Agreement, the parties, intending to be legally bound hereby, acknowledge and agree as follows:

1. RECITALS AND EXHIBITS

The recitals set forth above and attached exhibits are incorporated in and made part of this Agreement.

2. EFFECTIVE DATE

The effective date of the Agreement shall be the date the last of the parties to be charged executes the Agreement ("Effective Date").

3. TERM

This Agreement shall begin on effective date and shall remain in full force and effect. This Agreement may be terminated upon specific separate written Amendment executed with the same formality of this Agreement.

4. E-VERIFY

The City shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the City during the term of the Agreement. The City shall expressly require any subcontractors performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of the Agreement.

5. SERVICES

A. The Department and the City shall perform this Agreement in a good and workmanlike manner, with reasonable care, in accordance with the terms and provisions hereof and all applicable federal, state, local, administrative, regulatory, safety and environmental laws, codes, rules, regulations, policies, manuals, procedures, processes, guidelines, standards and permits, as the same may be constituted and amended from time to time, including, without limitation, those of the Department, applicable Water Management District

Florida Department of Environmental Protection, Environmental Protection Agency, Army Corps of Engineers, United States Coast Guard and local governmental entities ("Governmental Law").

6. TOTAL NITROGEN CREDIT TRADE

The Department shall give the City the Department's use of 10.57 MT/y TN Credits.

7. PERCENTAGES OF THE CITY AND DEPARTMENT ALLOCATION

The City shall be responsible for ninety-five percent (95%) of all future Allocations in Duval County. The Department shall be responsible for five percent (5%) of all future Allocations.

8. FECAL COLIFORMS

The Department's current routine maintenance of its roadways fulfills all of the Department's proportional share of all coliform reduction requirements; for reporting purposes, the Department shall provide the City any needed documentation of routine maintenance activities completed that assist in coliform reductions.

9. INDEMNIFICATION

A. The City shall promptly defend, indemnify, hold the Department harmless from and pay all demands, claims, judgments, liabilities, damages, fines, fees, taxes, assessments, costs, losses, penalties, construction delay costs / penalties, expenses, attorneys' fees and suits of any nature or kind whatsoever caused by or resulting from the City's performance or breach of this Agreement ("Liabilities"). The term "Liabilities" shall also specifically include all environmental liability arising, directly or indirectly under any Governmental Law caused by or resulting from the City's performance or breach of this Agreement. The City's obligations under this section include, at the Department's option, to participate and associate with the Department in settlement negotiations, mediation and the defense and trial of any Liabilities. The City's duties under this section of the Agreement specifically do not encompass indemnifying the Department for its negligence, intentional or wrongful acts, omissions or breach of contract.

B. The City shall notify the Department in writing immediately upon becoming aware of any Liabilities. The City's obligations under this section shall be triggered by the Department's written notice of claim for indemnification to the City. The City's inability to evaluate liability, or its evaluation of liability, shall not excuse performance of the provisions of this section of the Agreement.

10. SOVEREIGN IMMUNITY

Nothing in this Agreement shall be deemed or otherwise interpreted as waiving the parties' sovereign immunity protections, or as increasing the limits of liability set forth in §768.28, Florida Statutes (2012). The Department's liability for breach of this Agreement is specifically: (1) limited to actual damages incurred by City as a direct result of the Department's breach; and (2) further limited in amount and shall not, under any circumstances, exceed the limitations of liability for tort actions set forth in §768.28(5), Fla. Stat. (2012).

11. NOTICE

All notices, communications and determinations between the parties hereto and those required by the Agreement, including, without limitation, changes to the notification addresses set forth below, shall be in writing and shall be sufficient if mailed by regular United States Mail, postage prepaid, to the parties at the following addresses:

Department: Attention: District Maintenance Engineer

G:\EN\21\PAPPAS\Engineering Division\Development Drainage Review Group\Stormwater Utility\TMDL\Credit Trading\FDOT-FromKuhn-Water Quality Credit Trade-061814.doc

Florida Department of Transportation
1109 South Marion Ave MS 2010
Lake City, FL 32025

Copy to: Attention: NPDES Administrator
Florida Department of Transportation
1109 South Marion Ave MS 2010
Lake City, FL 32025

Copy to: Attention: Chief Counsel
Florida Department of Transportation
1109 South Marion Ave MS 2009
Lake City, FL 32025

City: Attention: City Engineer
City of Jacksonville
214 N. Hogan Street,
10th Floor
Jacksonville, Florida 32202

12. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

13. VENUE AND JURISDICTION

A. Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance or breach of the Agreement that are not resolved to the mutual satisfaction of the parties by the Department's District Secretary shall lie exclusively in a state court of appropriate jurisdiction in Leon County, Florida.

B. The City and all persons and entities accepting an assignment of this Agreement, in whole or in part, shall be deemed as having consented to personal jurisdiction in the State of Florida and as having forever waived and relinquished all personal jurisdiction defenses with respect to any proceeding related to the interpretation, validity, performance or breach of this Agreement.

14. JURY TRIAL

The parties hereby waive the right to trial by jury of any dispute concerning the interpretation, validity, performance or breach of the Agreement, including, without limitation, damages allegedly flowing from the same.

15. ASSIGNMENT

The parties shall not assign, pledge or transfer any of the rights, duties and obligations provided in this Agreement without the prior written consent of the other party. Any assignment shall comply with all Governmental Law. Nothing herein shall prevent the City from delegating its duties hereunder, but such delegation shall not release the City from its obligation to perform the Agreement.

16. THIRD PARTY BENEFICIARIES

This Agreement shall be binding upon and inure to the benefit of the undersigned parties and their respective successors and assigns. Nothing in this Agreement is intended to confer any rights, privileges, benefits, obligations or remedies upon any other person or entity except as expressly provided for in the Agreement.

17. VOLUNTARY EXECUTION OF AGREEMENT

Each party warrants and represents to the other: (i) that it understands all of the rights and obligations set forth in the Agreement and the Agreement accurately reflects the desires of said party; (ii) each provision of the Agreement has been negotiated fairly at arm's length; (iii) it fully understands the advantages and disadvantages of the Agreement and executes the Agreement freely and voluntarily of its own accord and not as a result of any duress, coercion, or undue influence; and (iv) it had the opportunity to have independent legal advice by counsel of its own choosing in the negotiation and execution of the Agreement.

18. ENTIRE AGREEMENT

This instrument, together with any exhibits and documents made part hereof by reference, contains the entire agreement of the parties and no representations or promises have been made except those that are specifically set out in the Agreement. All prior and contemporaneous interagency agreements, interlocal agreements, joint participation agreements, conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter of the Agreement, and any part hereof, are waived, merged herein and superseded hereby. If there is any conflict between this Agreement and any prior agreement then this Agreement shall supersede.

19. EXECUTION OF DOCUMENTS

The parties agree that they shall promptly execute and deliver to the other all documents necessary to accomplish the intent and purpose of the Agreement and shall do all other acts to effectuate the Agreement.

20. SUFFICIENCY OF CONSIDERATION

By their signature below, the parties hereby acknowledge the receipt, adequacy and sufficiency of consideration provided in the Agreement and forever waive the right to object to or otherwise challenge the same.

21. WAIVER

The failure of either party to insist on the strict performance or compliance with any term or provision of the Agreement on one or more occasions shall not constitute a waiver or relinquishment thereof and all such terms and provisions shall remain in full force and effect unless waived or relinquished in writing.

22. INTERPRETATION

No term or provision of the Agreement shall be interpreted for or against any party because that party or that party's legal representative drafted the provision.

23. CAPTIONS

Paragraph title or captions contained herein are inserted as a matter of convenience and reference and in no way define, limit, extend or describe the scope of the Agreement, or any provision hereof.

24. SEVERANCE

If any section, paragraph, clause or provision of the Agreement is adjudged by a court, agency or authority of competent jurisdiction to be invalid, illegal or otherwise unenforceable, all remaining parts of the Agreement shall remain in full force and effect and the parties shall be bound thereby so long as principle purposes of the Agreement remain enforceable.

25. COMPUTATION OF TIME

In computing any period of time prescribed in the Agreement, the day of the act, event or default from which the designated period of time begins to run, shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday or legal holiday.

26. MODIFICATION OF AGREEMENT

A modification or waiver of any of the provisions of the Agreement shall be effective only if made in writing and executed with the same formality as the Agreement.

27. EFFECT OF AGREEMENT

The parties shall offer this Agreement as evidence in any and all proceedings concerning any subject matter of this Agreement, and, if acceptable to the Court, will cause a copy of the Agreement to be incorporated by reference in the judgment rendered. Notwithstanding incorporation in the judgment, this Agreement shall not be merged in it, but shall survive the judgment and be binding on the parties for all time.

28. RECORDKEEPING

The City shall obtain written approval from the Department prior to the destruction of any documents related to this Agreement throughout the term of this Agreement. The City shall maintain all such records and documents including but not limited to records of costs incurred by the City, general accounting and all other supporting documents for a minimum of five (5) years. Copies of these documents shall be furnished to Department upon request. The City shall provide the Department any and all reports, technical documents, and compliance documents related to this Agreement. After the five (5) years, upon written request by the City, the Department's District Maintenance Engineer may approve in writing the destruction of documents.

29. COMPLIANCE WITH LAWS

A. The City shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the City in conjunction with this Agreement.

B. Specifically, the City shall: (i) keep and maintain public records that ordinarily and necessarily would be required by the Department in order to perform the services being performed by the City; and (ii) provide the public with access to public records on the same terms and conditions that the Department would provide the records and at a cost that does not exceed the cost provided in chapter 119, Florida Statutes, or as otherwise provided by law; and (iii) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; and (iv) meet all requirements for retaining public records and transfer, at no cost, to the Department all public records in possession of the City upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.

C. All records stored electronically must be provided to the Department in a format that is compatible with the information technology systems of the Department.

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties hereby execute this Agreement, consisting of seven (7) pages, excluding content of attached exhibits.

- Signatures on Following Pages -

Florida Department of Transportation

Attest:

By: _____

By: _____

Printed Name: Greg Evans, P.E.

Printed Name: _____

Title: District Two Secretary

Title: _____

Date: _____

Date: _____

**STATE OF FLORIDA
COUNTY OF COLUMBIA**

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by Greg Evans, P.E., District Two Secretary, who is personally known to me.

Legal Review:

By: _____

Office of the General Counsel District 2

City of Jacksonville

Attest:

By: _____

By: _____

Printed Name: Alvin Brown

Printed Name: _____

Title: Mayor

Title: _____

Date: _____

Date: _____

**STATE OF FLORIDA
COUNTY OF DUVAL**

The foregoing instrument was acknowledged before me this _____ day of _____, 2014, by _____, who is personally known to me, or who produced _____ as identification.

Legal Review:

Office of the General Counsel City of Jacksonville

— DRAFT —

JEA

**AGREEMENT BETWEEN
THE CITY OF JACKSONVILLE AND JEA
REGARDING THE TRANSFER OF WATER QUALITY CREDITS**

This Agreement between the City of Jacksonville and JEA Regarding the Transfer of Water Quality Credits (“Agreement”) is made and entered into this ____ day of January, 2015, (“Effective Date”) by and between the **CITY OF JACKSONVILLE**, a Florida municipal corporation (“City”), whose address is c/o Public Works Department, 214 North Hogan Street, Jacksonville, Florida 32202 and **JEA**, a body politic and corporate of the State of Florida, whose address is 21 West Church Street, Jacksonville, Florida 32202.

RECITALS

WHEREAS, the City and JEA have agreed to enter this Agreement to establish the parameters for JEA to transfer to the City Water Quality Credits, as defined below, to meet the City’s Lower St. Johns River Basin Management Action Plan, Total Nitrogen Load Reduction Goals;

WHEREAS, JEA has completed capital improvement projects that provide for the reduction of nutrient loads to the Lower St. Johns River over and above its permitted Total Nitrogen wasteload allocation and that thereby have the ability to create and trade Water Quality Credits;

WHEREAS, after a study concluded that the expected reductions associated with the septic-tank phase out program as presented as part of the original reduction plan of the City would not meet the City’s Total Nitrogen Load Reduction Goals, the City has developed an alternate plan that includes the purchase of Water Quality Credits from JEA;

WHEREAS, to meet the City’s fifty percent reduction allocation for Total Nitrogen within the Lower St. Johns River on or before July 31, 2015, the City shall accept a reservation of the total allocation of Water Quality Credits and pursue the annual purchase and transfer of up to 30.34 Metric Tons per year of Total Nitrogen Water Quality Credit from JEA during the Term of this Agreement;

WHEREAS, JEA has priced each Water Quality Credit to be worth \$61,774 per Metric Ton of Total Nitrogen based upon the costs expended by JEA to achieve the excess Water Quality Credit;

WHEREAS, based upon the availability of legally authorized annual funds, the City shall purchase the Water Quality Credits from JEA over the Term of this Agreement;

WHEREAS, the City and JEA shall comply with the Water Quality Credit Trading provisions of Section 403.067(8), Florida Statutes, and Rule 62-306, Florida Administrative Code;

WHEREAS, JEA has the ability to establish Water Quality Credits in excess of the needs of the City and has agreed to transfer 30.34 Metric Tons per year of Total Nitrogen Water Quality Credit to the City to assist the City in meeting its load reduction goal for the Lower St. Johns River under the terms and conditions of this Agreement;

WHEREAS, this Agreement provides a means for the City to meet a portion of its Total Nitrogen load reduction goals for a period of 9 years and does not foreclose the opportunity for JEA and the City to enter into additional agreements providing for further Water Quality Credit trades to meet future load reduction goals;

WHEREAS, the City and JEA have determined that it is in the best interests of their respective constituency to enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions contained herein, the City and JEA mutually agree to enter into this Agreement as follows:

Section 1 – Recitals

1.1 The City and JEA acknowledge that the recitals contained above are true and accurate, to best of their knowledge, and are hereby incorporated herein by reference.

Section 2 – Definitions

2.1 For purposes of this Agreement, the terms below are defined as follows:

2.1.1 “Point Source” shall mean any source of nitrogen or other constituents that constitutes a discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which constituents are or may be discharged. This term does not include flows from irrigated agriculture or agricultural stormwater runoff.

2.1.2 “Nonpoint Source” shall mean any source of nitrogen or other constituents that is not a Point Source.

2.1.3 "BMAP" shall mean the Basin Management Action Plan for the Lower St. Johns River Basin. The BMAP's purpose is to implement load reductions to achieve the nutrient TMDLs for the Lower St. Johns River Basin.

2.1.4 "EPA" shall mean the United States Environmental Protection Agency.

2.1.5 "FDEP" shall mean the Florida Department of Environmental Protection.

2.1.6 "LSJR" shall mean the Lower St. Johns River.

2.1.7 "Marine Portion of the LSJR" shall mean the portion of the LSJR extending from Black Creek to the mouth of the LSJR.

2.1.8 "PLRG" shall mean the pollution load reduction goal for the City which for this Agreement shall mean the amount of total nitrogen reduction the City must achieve to reach load allocation for the Marine Portion of the LSJR. At this time, the PLRG for the City is 324,328 lb/yr (147,422 kg/yr) of total nitrogen.

2.1.9 "TMDL" shall mean the total maximum daily load of nutrients for a receiving water body, such as the LSJR, which is the sum of the individual wasteload allocations for Point Sources and the load allocations for Nonpoint Sources and natural background. TMDL, when plural, shall be referred to herein as TMDLs.

2.1.10 "TN" shall mean total nitrogen.

2.1.11 "Water Quality Credits" shall mean the point source load reduction or nonpoint source load reduction that is generated when Total Nitrogen loads are reduced below the baseline load allowable under an adopted TMDL or BMAP and may be used or traded in accordance with section 403.067(9), Florida Statutes, and Rule 62-306, Florida Administrative Code. For purposes of calculating the number of Water Quality Credits under this agreement, the base unit shall be measured in metric tons per year (MT/yr).

Section 3 – Water Quality Credit Transfer

3.1 JEA hereby agrees to transfer and/or convey to the City 30.34 MT/yr of TN ("Transfer Amount") for the term provided in this agreement.

3.2 The Parties acknowledge that Water Quality Credits have value and, for purposes of this Agreement, the Parties agree that this Agreement reflects the mutually agreed upon monetary value of the Water Quality Credits based on the capital and operational costs of the JEA environmental projects that generate the Water Quality Credits.

3.3 If due to new science or technologies, laws, rules or regulations that alter the Water Quality Credit needs of the City, the Parties agree to renegotiate in good faith a revised agreement to the terms of this Agreement.

Section 4 – Term

4.1 This Agreement shall become effective on the Effective Date and shall terminate on or before December 31, 2023 (“Term”), subject to the requirements of this section.

4.2 The Parties may, upon mutual written agreement, terminate this Agreement prior to the end of the Term.

4.3 The Water Quality Credit Transfer Amount will be used on an annualized basis by the City immediately after, or within a reasonable time from, the date of transfer.

4.4 The Term of this Agreement exceeds the term of JEA’s current NPDES aggregate Nitrogen permit. In accordance with state law, JEA NPDES permit FL0620564 will be subject to renewal in the year 2019. If the City has fully performed its obligations under this Agreement at the time the permit renewal application is due, including full and timely payment each year, JEA agrees to apply for permit conditions continuing the Water Quality Credit Transfer Amount as part of its application for renewal, and this Agreement shall continue for its Term.

4.5 The Parties acknowledge that the City in accordance with the BMAP implementation schedule has additional nutrient reduction goals to be met on or before December 31, 2023. The Parties agree to engage in discussions regarding potentially providing additional water quality credit transfers as necessary to assist the City in meeting the additional obligations.

Section 5 – Rights and Responsibilities of JEA and the City

5.1 The JEA’s responsibilities with respect to the Transferred Amount of Water Quality Credits shall be:

5.2 To file an application to modify its aggregate National Pollutant Discharge Elimination System (NPDES) permit, number FL0620564, to reflect the Water Quality Credits traded in accordance with this Agreement, within three months of the execution of this Agreement and no later than April 1, 2015. The application shall describe how the activities necessary to achieve the load reductions required to generate the Water Quality Credits will be implemented and monitored in accordance with Rule 62.306.300(1)(c), F.A.C.

5.3 The City's responsibilities with respect to the Transferred Amount of Water Quality Credits shall be:

5.3.1 To compensate JEA as provided in this Agreement.

5.3.2 To request to have the total annual transaction cost included within the City's Capital Improvement Plan and secured through the City's budget and procurement processes.

5.3.3 If required by FDEP, the City shall amend its MS4 permit to reflect the purchase of Water Quality Credit pursuant to this Agreement.

5.4 JEA and the City agree to the following joint responsibilities:

5.4.1 To complete and submit the Water Quality Credit Trading Affidavit (Rule 62-306.900, F.A.C.) and a Letter Agreement in substantially the same form as **Exhibit A**, attached hereto and incorporated herein, to FDEP,.

5.4.2 To cooperate and fully support the modification and renewal of JEA's NPDES permit in accordance with this Agreement, including opposition to any effort to impede or challenge the issuance of an amended permit in response to JEA's application in accordance with this Agreement, including through litigation, if necessary, in administrative, state, and federal court.

Section 6 – Compensation

6.1 Payments for the Transferred Amount of Water Quality Credits by the City to JEA shall be in accordance with the following schedule:

Transaction Date	Transfer Amount (MT-TN)	Annual Transaction
Within 14 days of the issuance of JEA's amended NPDES permit	15.17	\$937,111.58
January 1, 2016	30.34	\$1,874,223.16
January 1, 2017	30.34	\$1,874,223.16
January 1, 2018	30.34	\$1,874,223.16
January 1, 2019	30.34	\$1,874,223.16
January 1, 2020	30.34	\$1,874,223.16
January 1, 2021	30.34	\$1,874,223.16
January 1, 2022	30.34	\$1,874,223.16
January 1, 2023	30.34	\$1,874,223.16

6.2 If the City fails to fund any year within this Agreement, the City shall not be entitled to that year's Transferred Amount of Water Quality Credits, and JEA will be released from providing those Water Quality Credits to the City.

Section 7 – Breach

7.1 If a Party breaches this Agreement, the other Party shall notify the breaching Party of such breach by delivering written notice to the breaching Party as set forth in Section 8.1 of this Agreement. Such notice shall identify the breach complained of and request that the breaching Party cure the breach within thirty days (30) of the written notice. If the breaching Party fails to cure the alleged breach, the other Party may seek remedy by terminating the Agreement.

7.2 In the event that any litigation should arise between the Parties with respect to this Agreement, the prevailing Party shall be entitled to reasonable attorney fees and court costs at all trial and appellate levels, provided however, this provision shall not be interpreted as a pledge of *ad valorem* tax revenues.

7.3 In the event that the City, upon receipt of written notice of default for failure to pay, does not cure the default within thirty days (30) of the written notice, JEA shall be entitled to amend JEA's permit to remove the City allocation of the Traded Amount and may pursue other opportunities to trade any established Water Quality Credits to third parties.

Section 8 – Notice

8.1 Any notice or other document required or allowed to be given pursuant to this Agreement by either Party to the other shall be in writing and shall be delivered personally, or by recognized overnight courier or sent by certified mail, postage prepaid, return receipt requested, or by electronic transmission with written confirmation.

If to JEA, such notice shall be addressed to JEA at:

JEA
Attention: PG Para, Chief Public Affairs Officer
21 West Church Street, T-16
Jacksonville, FL 32202
ParaPG@jea.com

with a copy to:

City of Jacksonville
Office of General Counsel

Attention: Government Operations
117 West Duval Street, Suite 480
Jacksonville, FL 32202
JodyB@coj.net

If to the City, such notice shall be addressed to the City at:

City of Jacksonville
Attention: John Pappas
214 Hogan Street North, Suite 1026
Jacksonville, FL 32202
Pappas@coj.net

with a copy to:

City of Jacksonville
Office of General Counsel
Attention: Government Operations
117 West Duval Street, Suite 480
Jacksonville, FL 32202
JodyB@coj.net

Section 9 - Miscellaneous Provisions

9.1 JEA does not, by entering into this Agreement, make any representation, warranty, or guaranty, or otherwise make or provide any assurance(s) that a transfer of the Water Quality Credits described herein shall permit, allow, or assist the City in meeting its PLRG. JEA does not, by entering into this Agreement, make any representation, warranty, or guaranty, or otherwise make or provide any assurance(s) that a transfer of the Water Quality Credits described herein shall limit or eliminate the necessity for the City to pursue additional stormwater and/or drainage projects to meet its PLRG.

9.2 No cause of action shall be hereby created for the failure of the Water Quality Credits described herein to assist the City in meeting its PLRG. Furthermore, no cause of action shall be created should JEA limit, amend, or change the amount of Water Quality Credits described herein transferred to the City under Section 2 of this Agreement or any other Section of this Agreement that allows or permits JEA to limit, amend, or change, in any manner and for whatever reason, the amount of Water Quality Credits described herein to be transferred to the City per this Agreement.

9.3 Nothing herein shall create in the City a right to any additional or future Water Quality Credits. JEA expressly reserves the right to deny the City, for any reason whatsoever, a conveyance or transfer of (1) any future Water Quality Credits that result from JEA's voluntary load reduction under JEA's various wastewater facilities permits, or (2) any future Water Quality Credits that may accumulate or come into JEA's possession through other means.

9.4. The parties acknowledge that Water Quality Credits may be eliminated, rescinded, reduced, or otherwise affected by the Florida Legislature, FDEP, or EPA. Accordingly, to the extent that the aforementioned governmental entities reduce JEA's Water Quality Credits to a point where JEA can no longer provide Transfer Amount to the City under this Agreement, this Agreement shall become null and void, with no further or continuing rights or obligations of the parties.

9.5 With respect to the reservation and transfer of the Water Quality Credits to the City, JEA shall execute, or cause to be executed, any and all documents necessary to cause the reservation and transfer of the Water Quality Credits from JEA to the City consistent with the terms of this Agreement.

9.6 With respect to the reservation and transfer of the Water Quality Credits by JEA, the City shall utilize the Water Quality Credits in a manner that may allow the City to attain its PLRG and shall execute, or cause to be executed, any and all documents necessary to cause the reservation and transfer of the Water Quality Credits from JEA to the City consistent with the terms of this Agreement.

9.7 This Agreement and any documents referenced herein collectively embody the entire agreement and understanding between the Parties and there are no other agreements or understandings with reference to this Agreement that are not merged into and superseded by the Agreement. This Agreement may be executed in one or more counterparts, each of which shall be considered an original.

9.8 The headings used are for convenience only and they shall be disregarded in the construction and interpretation of this Agreement.

9.9 This Agreement is solely for the benefit of the Parties to this Agreement and no other causes of action shall accrue upon or by reason hereof, to or for the benefit of any third party, who or which is not a formal party to this Agreement.

9.10 If any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or to be construed as deleted, as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

9.11 This Agreement shall be governed by laws of the State of Florida.

IN WITNESS WHEREOF, the City of Jacksonville, Florida has caused this Agreement to be executed on the day and year written below in its name by the Mayor, and JEA has caused this Agreement to be executed on the day and year written below in its have by its duly authorized representative.

[The remainder of this page was left blank by the parties intentionally.]

IN WITNESS WHEREOF, the City of Jacksonville, Florida has caused this Agreement to be executed on the day and year written below in its name by its Mayor, and JEA has caused this Agreement to be executed on the day and year written below in its name by its duly authorized representatives, and, if appropriate, has caused the seal of the corporation to be attached.

CITY OF JACKSONVILLE

_____ Date _____
Alvin Brown, Mayor

ATTEST:

James B. McCain, Corporation Secretary

In accordance with the *Ordinance Code*, of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered, and unimpounded balance in the appropriation sufficient to cover the foregoing agreement; and that provision has been made for the payment of monies provided therein to be paid.

Director of Finance
CITY Contract Number: _____

FORM APPROVED FOR CITY:

By _____
Office of General Counsel

JEA

_____ Date _____
Paul E. McElroy, CEO

_____ ATTEST:

Name: _____

FORM APPROVED FOR JEA:

By: _____
Office of General Counsel