SMALL QUANTITY GENERATOR PROGRAM INTERLOCAL AGREEMENT BETWEEN LEON COUNTY AND CITY OF TALLAHASSEE

THIS INTERLOCAL AGREEMENT is made and entered into this _____ day of _____ 2009, by and between **LEON COUNTY FLORIDA**, a charter county and political subdivision of the State of Florida, hereinafter referred to as the "County," and the **CITY OF TALLAHASSEE**, a Florida municipal corporation, hereinafter referred to as the "City".

WHEREAS, the County currently utilizes the services of City Water Quality Division employees for assistance in implementing the local component of the Florida Department of Environmental Protection ("FDEP") Small Quantity Generator Notification and Verification Program ("SQG Program"), in accordance with Sections 403.7225, 403.7234, and 403.7236 of the Florida Statutes; and,

WHEREAS, the County desires to continue utilizing the services of the City to provide such assistance; and,

WHEREAS, the County and the City have determined that it is in their best interests to cooperate for their mutual benefits by entering into this Interlocal Agreement;

NOW THEREFORE, in consideration of the premises and the mutual covenants and obligations herein contained, and subject to the terms and conditions hereinafter stated, the Parties hereby agree as follows:

ARTICLE I
STATEMENT OF WORK, TERM, CONTRACT PRICE, AND PAYMENT PROVISIONS

A. Statement of Work

The City shall perform in accordance with reasonable professional standards and carry out in a satisfactory and proper manner, as reasonably determined by the County and subject to the funding provided pursuant to this Interlocal Agreement, certain technical and professional services and obligations relating to the SQG Program as set forth in the Scope of Services (Exhibit 1), which is attached hereto and by reference incorporated herein.

B. Delivery Schedule

The term of this Interlocal Agreement shall be four (4) years commencing October 1, 2009, and ending September 30, 2013. Such term may be extended upon the mutual written agreement of the parties.

C. Contract Price and Payment Provisions

The Parties agree that the total annual compensation to be paid by the County shall be a fixed fee of $30,000. This sum shall be paid, throughout the term of this Interlocal Agreement, upon receipt of an invoice from the City for services rendered during the current fiscal quarter pursuant to the following schedule:

December 15th	$7,500
March 15th	$7,500
June 15th	$7,500
September 15th	$7,500

If the term begins or ends, respectively, on other than the first or last day of a fiscal quarter, the payment(s) for such quarter(s) shall be pro-rated.

ARTICLE II
TERMINATION

A. Termination for Cause

If, through any cause, either the City or the County shall fail to fulfill in timely and proper manner its obligations under this Interlocal Agreement, or shall violate any of the covenants or stipulations of this Interlocal Agreement, the party not in such violation shall thereupon have the right to terminate this Interlocal Agreement at the end of any fiscal quarter by giving written notice to the party in such violation of such termination or suspension of payment at least thirty (30) days before the effective date of such termination; provided, however, that such termination shall be the sole remedy of the party giving notice thereof with respect to any such failure or violation by the other party.

B. Termination for Convenience

Either the City or the County may terminate this Interlocal Agreement at any time by giving at least ninety (90) days notice in writing to the other party.

C. Result of Termination

In the event that this Interlocal Agreement is terminated as set forth above, the City shall be paid for all properly rendered services provided prior to the effective date of such termination. Payments shall be pro-rated in accordance with Section I.C of this Interlocal Agreement, if applicable.

ARTICLE III
ACCESS TO RECORDS

The City agrees that the County or any of its duly authorized representatives shall have access to and the right to examine, audit, excerpt and transcribe any directly pertinent books, documents, papers and records of the City, involving transactions relating to this Interlocal Agreement.

ARTICLE IV
ADMINISTRATION

A. Contract Administrator

The County Administrator, or his designee, shall be the contract administrator for the purpose of acting as the County's representative with respect to questions regarding this Interlocal Agreement. The County Administrator, or his designee, shall have authority to transmit instructions, receive information and communicate the County's policies to the City. The County Administrator, or his designee, shall also examine all reports and documents presented by the City and render in writing any decision pertaining thereto within a reasonable time so as not to delay the City. The County Administrator, or his designee, shall provide the City ready access to all data, files, reports or other information in possession of the County or readily available to it in order to fulfill the purpose of this Interlocal Agreement.

B. Changes.

The County may require changes in the scope of services to be performed hereunder. Such changes which are mutually agreed upon by and between the County and the City shall be incorporated by written amendment(s) to this Interlocal Agreement. In the event such changes do not result in increased payments, the County Administrator is authorized to execute the written amendment(s) on behalf of the County.

ARTICLE V
LIMITATION OF LIABILITY

Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts or omissions of its employees in accordance with Florida law; however, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the limitations of liability set forth in Florida law, including Section 768.28, Florida Statutes.

ARTICLE VI
DISPUTE RESOLUTION

Any disputes between the City and the County in respect to this Interlocal Agreement shall be resolved in accordance with the process set forth in Exhibit II, which is attached hereto and incorporated herein.

ARTICLE VII
GENERAL PROVISIONS

A. Governing Law and Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any action to enforce any of the provisions of this Agreement must be maintained in Tallahassee, Leon County, Florida.

B. Waiver.

Failure to insist upon strict compliance with any term, covenant or condition of this Agreement shall not be deemed a waiver of it. No waiver or relinquishment of a right or power under this Agreement shall be deemed a waiver of that right or power at any other time.

C. Modification.

This Agreement shall not be extended, changed or modified, except in writing duly executed by the Parties hereto.

D. Binding Effect.

This Agreement shall be binding upon the successors and, subject to below, assigns of the Parties hereto.

E. Assignment.

Because of the unique nature of the relationship between the Parties and the terms of this Agreement, neither Party hereto shall have the right to assign this Agreement or any of its rights or responsibilities hereunder to any third Party without the express written consent of the other Party to this Agreement, which consent shall not unreasonably be withheld.

F. Entire Agreement.

This Agreement constitutes the entire agreement between the Parties with respect to the matters contained herein, and all prior agreements or arrangements between them with respect to such matters are superceded by this Agreement.

G. Headings.

Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

H. Ambiguity.

This Agreement has been negotiated by the Parties with the advise of counsel and, in the event of an ambiguity herein, such ambiguity shall not be construed against any Party as the author hereof.

I. Public Bodies.

It is expressly understood between the Parties that the City is a duly incorporated municipal corporation of the State of Florida and that the County is a political subdivision of the State of Florida. Nothing contained herein shall be construed as a waiver or relinquishment by either of the Parties to claim such exemptions, privileges or immunities as may be provided to that Party by law.

J. Force Majeure.

A Party shall be excused from performance of an obligation under this Agreement to the extent, and only to the extent, that such performance is affected by a "Force Majeure Event" which term shall mean any cause beyond the reasonable control of the Party affected, except where such Party could have reasonably foreseen and reasonably avoided the occurrence, which materially and adversely affects the performance by such Party of its obligation under this Agreement. Such events shall include, but not be limited to, an act of God, disturbance, hostility, war, or revolution; strike or lockout; epidemic; accident; fire; storm, flood, or other unusually severe weather or act of nature; or any requirements of law.

K. Cost(s) and Attorney Fees.

In the event of litigation between the Parties to construe or enforce the terms of this Agreement or otherwise arising out of this Agreement, the prevailing Party in such litigation shall be entitled to recover from the other Party its reasonable costs and attorneys fees incurred in maintaining or defending subject litigation. The term litigation shall include appellate proceedings.

L. Severability.

It is intended that each Section of this Agreement shall be viewed as separate and divisible, and in the event that any Section, or Party thereof, shall be held to be invalid, the remaining Sections and parts shall continue to be in full force and effect.

M. Subject to Appropriation.

All payment obligations of the Parties as set forth herein shall be subject to appropriation of funding therefore by the applicable legislative bodies; however, failure to appropriate funding adequate to meet such payment obligations shall be deemed a default under this Agreement.

IN WITNESS WHEREOF, the parties have executed this Interlocal Agreement as of the date written above.

LEON COUNTY, FLORIDA

Attest:
Bob Inzer, Clerk of the Court
By:_____

By:_____
Parwez Alam, County Administrator

Approved as to form:
County Attorney's Office
Leon County, Florida

By:_____

CITY OF TALLAHASSEE

Attest:

By:_____
Gary Herndon, City Treasurer-Clerk

By:_____
John Marks, Mayor

Approved as to form:

By:_____
City Attorney

Exhibit I

Scope of Services

The Leon County Hazardous Waste Manager is responsible for implementing the SQG Program, which requires an inventory of potential SQGs, notification of those generators, verification of the quantities of waste generated, identification of disposal methods, and reporting of the collected information to FDEP.

To improve service to the private sector, enhance intergovernmental cooperation, and reduce duplication of effort, the City, under its Aquifer Protection Program, and the County, under the SQG Program, propose to combine compatible program tasks. The County shall provide funding to the City in the annual amount of $30,000, paid by equal quarterly installments of $7,500 for performance of the following services in relation to the SQG Program:

1. Update the assessment role of SQGs and Conditionally Exempt Small Quantity Generators ("CESQGs") in Leon County. The role shall be updated through on-site inspections, telephone calls, review of the list of facilities with U.S. Environmental Protection Agency identification numbers, review of occupational and business licenses, review of building permits, and completion of at least one complete survey of the business pages of the local county telephone systems.

2. Conduct on-site verification inspections of SQG and CESQG facilities. A minimum of 20% of the facilities which are listed on the assessment role as active or potential generators must be verified each year. For example, if the 2009--2010 assessment role identifies 1026 potential and active generators, the City would conduct on-site inspections of at least 206 of those generators during the program year beginning July 1, 2009 and ending June 30, 2010.

3. Enter data from on-site verification inspections into the electronic database (currently CHAZ-SQG) required for reporting to the FDEP. Data entry for each program year must be completed, and an Annual Program Activity Report filed, by June 30 of that program year. Provide a copy of the Annual Program Activity Report and FDEP Annual Report to the Leon County Hazardous Waste Manager.

4. Distribute educational information and technical assistance documents, as agreed by the parties and approved by the Leon County Hazardous Waste Manager, to SQGs and CESQGs. A vital part of both programs is providing facility operators in Leon County with pertinent information about proper material management and waste disposal requirements.

5. Refer CESQG facility operators to the Leon County Hazardous Waste Center as an outlet for selected waste streams. Provide SQGs with a list of vendors providing appropriate collection and disposal service in Leon County. The City shall prepare and shall update that list, as needed.

6. Provide training, workshops and symposia which are reasonably necessary to establish and maintain the proficiency of inspectors providing services under this Interlocal Agreement. Funds for training, workshops and symposia are included in the County's payment of fees for the implementation of this Interlocal Agreement.

7. Conduct notification mailing using SQG Program assessment role. This notification shall include materials familiarizing the facility operators with the SQG Program and their related obligations under current regulation. This notification may include information supplied by the Leon County Hazardous Waste Manager about the Leon County Hazardous Waste Program. Funds for this notification mailing are included in the County's payment of fees for the implementation of this Interlocal Agreement.

Exhibit II

Dispute Resolution Procedure

1.0 The parties shall attempt to resolve any disputes that arise under this Interlocal Agreement in good faith and in accordance with this Section. The provisions of the "Florida Governmental Conflict Resolution Act" shall not apply to disputes under this Interlocal Agreement, as an alternative dispute resolution process, is hereby encompassed within this procedure. The aggrieved Party shall give written notice to the other Party setting forth the nature of the dispute, date of occurrence (if known), and proposed resolution, hereinafter referred to as the "Dispute Notice".

2.0 The appropriate City and County department heads shall meet at the earliest opportunity, but in any event within 10 days from the date the Dispute Notice is received, to discuss and resolve the dispute. If the dispute is resolved to the mutual satisfaction of both, the department heads shall report their decision, in writing, to the City Manager and the County Administrator.

3.0 If the department heads are unable to reconcile the dispute, they shall report their impasse to the City Manager and the County Administrator who shall then convene a meeting at their earliest opportunity, but in any event within 20 days following receipt of the Dispute Notice, to attempt to reconcile the dispute.

4.0 If a dispute is not resolved by the foregoing steps within thirty (30) days after receipt of the Dispute Notice, unless such time is extended by mutual agreement of the parties, then either Party may require the dispute to be submitted to mediation by delivering written notice thereof (the "Mediation Notice") to the other Party. The mediator shall meet the qualifications set forth in Rule 10.010(c), Florida Rules for Mediators, and shall be selected by the parties within 10 days following receipt of the Mediation Notice. If agreement on a mediator cannot be reached in that 10-day period, then either Party can request that a mediator be selected by an independent conflict resolution organization, and such selection shall be binding on the parties. The costs of the mediator shall be borne equally by the parties.

5.0 If an amicable resolution of a dispute has not been reached within 60 calendar days following selection of the mediator, or by such later date as may be mutually agreed upon by the parties, then such dispute may be referred to binding arbitration by either party. Such arbitration shall be conducted in accordance with the Florida Arbitration Code (Chapter 682, Florida Statutes).

5.1 Such arbitration shall be initiated by delivery, from one party (the "Claimant") to the other (the "Respondent"), of a written demand therefor containing a statement of the nature of the dispute and the amount, if any, involved. The Respondent, within ten (10) days following its receipt of such demand, shall deliver an answering statement to the Claimant. After the delivery of such statements, either party may make new or different claims by providing the other with written notice thereof specifying the nature of such claims and the amount, if any, involved.

5.2 Within ten (10) days following the delivery of such demand, each party shall select an arbitrator and shall deliver written notice of that selection to the other. If either party fails to select an arbitrator within such time, the other party may make application to the court for such appointment in accordance with the Florida Arbitration Code. Within ten (10) days following delivery of the last of such written notices, the two arbitrators so selected shall confer and shall select a third arbitrator. Each of the arbitrators so appointed shall have experience in local government solid waste issues.

5.3 The arbitration hearing shall be commenced in Leon County, Florida within sixty (60) days following selection of the third arbitrator. Except as may be specifically provided herein, the arbitration shall be conducted in accordance with Rules R-23 – R-48, of the Commercial Arbitration Rules of the American Arbitration Association.