

RESOLUTION NO. 05-34

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA; APPROVING AN INTERLOCAL AGREEMENT WITH MIAMI-DADE COUNTY FOR A BAYSIDE PARK LIBRARY; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE AGREEMENT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Village, which is part of the Miami-Dade Public Library taxing district, desire to have a library within the Village's corporate limits; and

WHEREAS, the Miami-Dade Public Library and Miami-Dade County also desire to operate a library within the Village; and

WHEREAS, the Village and the County have developed an Interlocal Agreement that is beneficial to both parties and most importantly provides a needed service to the residents of Palmetto Bay and Miami-Dade County for the construction of a 5,000 square foot Bayside Library at 17641 Old Cutler Road; and

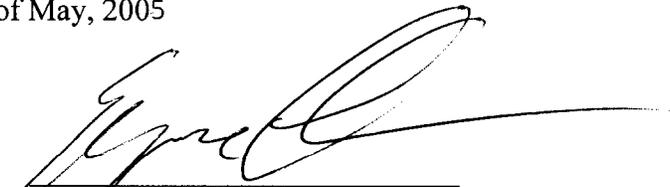
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1. The Library Interlocal Agreement between Miami-Dade County and the Village of Palmetto Bay for the Bayside Library is approved substantially in the form attached, and the Village Manager is authorized to execute the Agreement.

Section 2. This resolution shall take effect immediately upon approval.

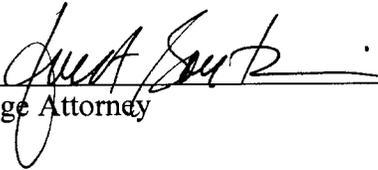
PASSED and ADOPTED this 2nd day of May, 2005

Attest:
Meighan Pier
Village Clerk



Eugene P. Flinn, Jr.
Mayor

APPROVED AS TO FORM:



Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Ed Feller	<u>YES</u>
Council Member Paul Neidhart	<u>YES</u>
Council Member John Breder	<u>YES</u>
Vice-Mayor Linda Robinson	<u>YES</u>
Mayor Eugene P. Flinn, Jr.	<u>YES</u>

LIBRARY INTERLOCAL AGREEMENT

This is a Library Interlocal Agreement by and between the Village of Palmetto Bay, a municipal corporation of the State of Florida (the "Village") and Miami-Dade County, a political subdivision of the State of Florida (the "County" or the "Library"), entered into this _____ day of May, 2005 (the "Agreement").

WITNESSETH

WHEREAS, the Village, which is part of the Miami-Dade Public Library taxing district, intends to construct a Library Building to be located on 17641 Old Cutler Road, Palmetto Bay, Florida 33156; and

WHEREAS, the Mayor and Commission of the Village desire to have a library within the Village's corporate limits; and

WHEREAS, the adjacent landowner, Palmetto Bay Village Center, has committed to provide the County with a \$10, 000 donation each year for the first ten years of this Interlocal Agreement, which funds are to be utilized for programs, including environmental or conservation programs, earmarked for the Library at 17641 Old Cutler Road; and

WHEREAS, the adjacent landowner, Palmetto Bay Village Center, has committed to provide the Village and County with a conditional access and parking easement which may satisfy the Library's and the Village's bayfront park needs. The conditional easement would expire should the Library use terminate and the Village's park use terminate.

WHEREAS, the Village desires to fully construct a 5,000 square foot one story stand alone Library Building (the "Library Building") adjacent to its new park, located at 17641 Old Cutler Road, Palmetto Bay, Florida 33156,

In consideration of mutual covenants contained herein the parties agree as follows:

1. **Construction of the Library Building.**

- a. The Village shall construct for the County and the County shall operate the improvements and equipment more particularly set forth in

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Section 2 below, an elevated contiguous space (anticipated to be one story above ground) approximately, but no more than, 5,000 contiguous square feet for use as a branch library of the Miami-Dade Public Library System as indicated in the attached Exhibit A (the "Library Building").

b. The term of this Interlocal Agreement shall be for a period of twenty-eight (28) years commencing on the first day of the month following receipt by the Village of a certificate of occupancy for the Library Building, as herein defined, and ending twenty-eight (28) years from that date. At the expiration of the twenty-eight (28) year period, title to the Library Building set forth in Exhibit A and the footprint of the land on which the Library Building sits shall vest in the County subject to the County's continued use of the Library Building primarily for library and library-related purposes as is more fully set forth in this Agreement.

2. **Obligations of the Village.**

a. Construction. The Village shall construct a one story, elevated stand alone Library Building, as further described in this Section, of approximately, but not greater than 5,000 contiguous square feet within which the Miami-Dade Public Library System shall operate a branch library, subject to the conditions set forth herein. The exterior of the Library Building shall be of the vernaculars of other Village public buildings and structures in the adjacent Village of Palmetto Bay Bayfront Park. The Village shall not commence construction of the Library Building without first obtaining the County's written approval of the site plan and exterior plan of the elevated Library Building, which approval shall not be unreasonably withheld. The Village agrees to construct the elevated Library Building consistent with the requirements of federal, state, and local law, including but not limited to the requirements contained in the Florida Building Code and the Americans with Disabilities Act.

b. Parking. The Village shall be solely responsible to provide the Library Building with sufficient parking in the adjacent parking facility shown on Exhibit B or at such alternate parking site as mutually agreed upon by the parties, which parking is required under applicable federal, state and local law and at no cost to Library patrons or County. The Village's obligation to provide parking shall survive the term of this

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Agreement and shall continue until such time as the County ceases to operate a Library facility in the Library Building.

c. Interior. The Village agrees to fully construct, partition, and prepare the Library Building in accordance with the plans and specifications prepared by the Village architect and approved by the County, which approval shall not be unreasonably withheld. The Village further agrees to turn over to the County the Library Building ready for immediate occupancy, as is more fully set out in this Section. Consistent with the County's Interior Design Plan, the Village shall:

1. fully partition, and paint the interior of the Library Building;
2. furnish and install all interior doors and interior finishes;
3. furnish and install a finished ceiling, including all overhead lighting fixtures;
4. furnish and install an independent fully functional HVAC air conditioning system for the Library Building;
5. furnish and install all safety devices required by the Florida Building Code or other applicable laws, rules, or regulations, including but not limited to: all fire alarms, sprinkler systems, fire extinguishers, and exit signs;
6. furnish and install wiring needed by the Library Building for electric, data communication and connectivity to the Library's Wide Area Network, telephone, and cable service;
7. furnish and install a separate electric and water use meters for the Library Building; and
8. furnish and install a burglar alarm system at the Library Building; and
9. allow for the installation of an exterior freestanding book drop at a location that is mutually agreeable to the parties.

d. The Village shall submit construction documents for County review and approval at 25%, 50% and 100% completion for compliance with applicable codes and Library Maintenance Standards. County shall review and provide relevant comments on the plans within 10 business days of each submittal (25%, 50% and 100%). The Village shall undertake the interior improvements described in Section 2(c) only upon submission by the County, in writing, of its design plan for the interior space (the "Interior Design Plan"). Any and all interior construction undertaken by the Village and described in this Section shall be in strict compliance with the Interior

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Design Plan. It is expressly understood that any interior construction required for the operation of the Library Building contained in the Interior Design Plan but not specifically identified in this Section or Section 3 below shall be the sole responsibility of the Village.

3. **County's Obligations.**

Design Plan. In order to minimize unnecessary costs of construction, the County agrees to submit an Interior Design Plan, as described in Section 2 above, no later than 30 days upon receipt of 25% construction documents for the Library Building. Any additional costs relating to the County's failure to submit the complete interior design plan contemplated by section 2 and 3 of this Agreement shall be borne by the County. The Library Building Plan should have sufficient detail on the layout and location of the Library space to allow the County's architects to execute the Interior Design Plan. The Interior Design Plan shall include the following:

1. The location of furniture and fixtures, electrical, telephone, data cable drops, and outlets; and
2. Specifications of interior finishes (including wall treatments); and
3. Dimensioned floor patterns and tile patterns(Including floor treatments), as required.

[need to add language regarding reasonable approval of village as to the materials, interim finishings, etc.

4. **Furniture, Supplies & Equipment.**

The County shall provide all furniture, shelving, books, window treatments, supplies, and equipment, including computer equipment, for the Library Building, and shall have full discretion in the selection and approval thereof.

5. **Maintenance.**

The County shall be responsible for full maintenance and repair of the interior of the Library Building, including the maintenance and repair of all flooring, wiring, or other interior construction furnished and/or installed by the Village under Section 2 after the warranty period on the interior construction has expired. The County shall be responsible for maintaining the HVAC unit(s) after

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the warranty period on the HVAC unit(s) has expired. The County shall be responsible for payment of its electric and water services, as measured by the separate meters furnished and installed by the Village under Section 2. The County shall be responsible for any other utilities consumed by the County. The County shall provide its own janitorial and custodial services to serve the needs of the Library Building.

The Village shall be responsible for maintaining the Library's parking facility, all exterior electricity and lighting fixtures, all landscaping, and all exterior maintenance, any structural maintenance including the roof, of the Library Building. The Library's exterior electricity and lighting fixtures shall be separately metered from the remainder of the Village park land and be part of the County's utility responsibility. Additionally, the Village's maintenance obligation shall cease upon transfer of ownership to the County. For as long as a Library facility use continues after transfer of title to the County, the County shall pay a pro rata share of maintenance costs associated with the parking lot.

6. **Purchase Terms.**

A. In consideration for the construction and use of the Library Building, the County will provide an annual payment toward the purchase of the Library Building property in the amount of \$108,980.70 during the twenty-eight (28) year term of this Interlocal Agreement. **[CAM And reconciliation of CAM, if applicable]**

1. Minimum Rental Guarantee. County, in consideration of the use and occupancy of the Library, does hereby covenant and agree with the Village to pay to the Village without deduction or set off of any kind the sum of \$108,980.70 per annum during the 28 year term of this Agreement as Minimum Rental Guarantee in monthly installments of \$9,081.73 on the first day of each month without billing.

2. Late Payment Charge. In the event that the County fails to make any payments on time, as required to be paid under the provisions of this Agreement, a penalty at the rate of 1.5% per month or any portion of a month shall accrue from the due date, against the delinquent payment(s) until same are paid. The right of the Village to require payment of such late payment charge and the obligation of the County to pay same shall be in addition to and not in lieu of the rights of the obligation of the County to

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pay same shall be in addition to and not in lieu of the rights of the Village to enforce other provisions herein, including termination of this Agreement, or to pursue other remedies provided by law.

3. Application of Payments. Payments are applied to any unpaid balance in the following manner. Any accrued late fees are first deducted from the payment. The remaining payment balance is then applied proportionately to the lease payment (minimum and percentage) and the associated sales and use tax. Any remaining balance in the payment will be applied to any other balance due.

B. A breach by the County of any of the terms, covenants or conditions contained in this Agreement and the failure of the County to remedy such breach for a period of 90 calendar days after receipt of written notice sent by registered or certified mail, return receipt requested, from the County, of the existence of such breach. If the Village fails to comply with the material terms of this Agreement, the Village shall forfeit all rights to payment. The yearly payment to the Village is contingent upon final inspection, presentation of "as-built" drawings by the Village, and approval by the Village Building Department, the Library Department, the General Services Administration and any other agencies that may be responsible to provide approval upon completion of the agreed-upon scope of work and the presentation of a Certificate of Occupancy. The County's sole remedy for breach of section 5 "Maintenance," shall be to complete maintenance and seek reimbursement from the Village.

C. At the expiration of this twenty-eight (28) year Agreement, title in the Library Building, all its fixtures, appurtenances, equipment, materials, and the land which is more fully described in Exhibit D, shall vest in the County. After the expiration of this Agreement, should the County fail to use the Library Building for library and library-relates purposes with the exception of use for elections, the Village shall provide the County with written notice of the alleged violations including a statement that "The Village will exercise its reversionary interest in the property if the violation is not cured." Within sixty (60) days of receipt of the notice, the County shall cure the violation. If the violation is of a type that cannot be cured within this time period, the County shall notify the Village in writing specifying the reason and the additional time required to cure the violation. However, in no event shall the time to cure exceed one-hundred twenty (120) days, unless such time period is extended by action of the Village.

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Failure of the County to cure the violation within the specified time period shall result in the subject Library Building automatically reverting to the Village.

7. **Operation.**

Miami-Dade County Public Library System will operate the library and will pay the full yearly operating costs. The Library and the Village agree that the Library will commence operations ninety days after a certificate of occupancy is issued for the Library Building and acceptance of the Library Building by the County. During said ninety-day period, the Library will hire staff, install shelving, and purchase library materials and equipment. The Library is not precluded from expanding its operation hours. After the expiration of the 90-day period, the library will be open five (5) days a week from Monday through Saturday according to the following schedule:

Monday, Tuesday, Thursday, and Saturday 09:30 a.m. to 6:00 p.m.

Wednesday 11:30 a.m. to 8:00 p.m..

The library branch will be operated in accordance with all rules and regulations of the Miami-Dade Public Library System. In addition, the Miami-Dade Public Library System will have control of all operation and programming with regards to this library branch. The Village shall ensure the County's quiet enjoyment of the Library Building. The Village's use of the park shall not impede or impair the County's use of the Library Building. The Library reserves the right to change the operating hours of the branch Library as needed, and may be changed at the sole option of the County without formal amendment of this Interlocal Agreement.

8. **Right to Cancel.**

The terms of this Interlocal Agreement shall continue unless notice is given by either party to the other at least twelve (12) months in advance of October 1 of the year to be closed. At the conclusion of this Interlocal Agreement, the contents of the Library Building shall remain the property of the County. The County Manager and the Village Manager shall have the authority to cancel this Agreement in the name of the County and the Village respectively. In the event the Village terminates this Interlocal Agreement before the original 28 year term expires, it shall provide the County at no additional cost to the County and with no

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interruption except reasonable time for relocation, a space comparable in size and amenities to the Library Building and acceptable to the Department Director, and this Interlocal Agreement shall remain in full force and effect. The Village shall be responsible for the full cost of such relocation. In the event the County terminates this Interlocal Agreement before the original 28 year term expires, the County shall provide the Village with a balloon payment equal to the balance needed to pay-off the Village's construction cost debt.

9. **Indemnification.**

The County shall indemnify and hold harmless the Village to the extent and within the limitations of Section 768.28, Fla. Stat., subject to the provisions of the Statute whereby the County shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$100,000, or any claim or judgments or portions thereof, which, when totaled with all other occurrences, exceeds the sum of \$200,000, from any and all personal injury or property damage claims, liabilities, losses, and causes of action which may arise solely as a result of the negligence of the County.

The Village shall indemnify and hold harmless the County to the extent and within the limitations of Section 768.28, Fla. Stat., subject to the provisions of the Statute whereby the Village shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$100,000, or any claim or judgments or portions thereof, which, when totaled with all other occurrences, exceeds the sum of \$200,000, from any and all personal injury or property damage claims, liabilities, losses, and causes of action which may arise solely as a result of the negligence of the Village.

The Village shall add the County as an additional insured under its insurance policy for the Library Building, and the County shall be responsible for maintaining its self-insurance.

10. **Library Access.**

It is agreed that the completed Library Building shall be open to use by all County residents, regardless of residency within the Village.

11. **Naming and Signage.**

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Upon completion, the Library Building shall be named "Miami-Dade Public Library System Palmetto Bay Branch." The County shall provide and the Village shall allow signage that is in accordance with County branding standards for signage at Library facilities

12. **Prohibited Use of Funds.**

The Village shall not utilize funds provided under this Agreement to retain legal counsel for any action or proceeding against the County or any of its agents, instrumentalities, employees or officials.

13. **Compliance with Laws.**

The Village agrees to abide by and be governed by Miami-Dade County Ordinance No. 72-82 (Conflict of Interest Ordinance codified at Section 2-11.1 et al. of the Code of Miami-Dade County), as amended, which is incorporated herein by reference as if fully set forth herein, in connection with its contract obligations hereunder.

The Village agrees to abide by and be governed by all applicable federal, state, and local laws, including but not limited to the Americans with Disabilities Act and the contracting requirements set forth in section 2-8 *et seq.* of the Code of Miami-Dade County. The Village shall set aside appropriate funding for the Art in Public Places Program, as set forth in section 2-11.15 of the Code of Miami-Dade County.

14. **Notices.**

It is expressly understood that the Library Director and the Village Manager have the authority to make submissions and provide approvals as required under this Agreement. It is understood and agreed between the parties that written notice addressed to the following parties and addresses shall constitute sufficient notice under this Agreement:

To the Library Department:

Raymond Santiago, Director
c/o Miami-Dade County
Library Department
101 W. Flagler Street
Miami, Florida 33130

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To Village:

Charles Scurr,
Village Manager

Village of Palmetto Bay
8950 S.W. 152nd Street
Palmetto Bay, Florida 33157

15. **Autonomy.**

Both parties agree that this Agreement recognizes the autonomy of, and stipulates or implies no affiliation between, the contracting parties. It is expressly understood that the Village is not an agent or instrumentality of the County. Furthermore, the Village's agents and employees are not agents or employees of the County as a result of this Agreement.

16. **Entirety of Agreement.**

The parties agree that this Agreement and Exhibits hereto set forth the entire agreement between the parties, with respect to the use and acquisition of the Library Building by the County from the Village, and in that regard there are no promises or understandings other than those stated in this Agreement. None of the provisions, terms and conditions contained in this Interlocal Agreement may be added to, modified, superseded or otherwise altered, except by the County Manager and Village Manager, or where appropriate the Board of County Commissioners and the Village Council.

17. **Force Majeure.**

Neither party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

18. **Attorney's Fees.**

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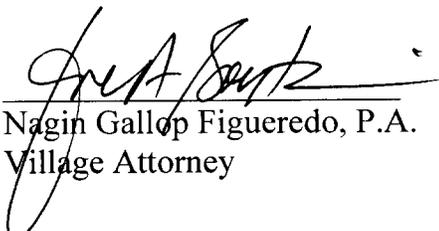
Neither party shall be entitled to an award of prejudgment interest. In any action arising out of or to enforce this contract, the prevailing party shall be entitled to its reasonable attorney's fees and costs.

IN WITNESS WHEREOF, the parties hereto have set their hands and affixed their respective seals the day and year first above written.

Village of Palmetto Bay

Approved as to form and legal sufficiency:

Charles D. Scurr,
Village Manager



Nagin Gallop Figueredo, P.A.
Village Attorney

Miami-Dade County

Approved as to form and legal sufficiency:

George M. Burgess
County Manager

Murray Greenberg
Assistant County Attorney

Village

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