

**RESOLUTION NO. 05-40**

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PROGRAM; AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO AN INTERLOCAL AGREEMENT WITH MUNICIPALITIES AND AGENCIES NAMED AS CO-PERMITTEES IN NPDES PERMIT NO.FLS000003. THIS AGREEMENT PROVIDES FOR PERFORMANCE OF PROFESSIONAL ENGINEERING AND INSPECTION SERVICES BETWEEN ALL CO-PERMITTEES FOR CONTROL OF POLLUTANT DISCHARGES BETWEEN SHARED MUNICIPAL STORM SEWER SYSTEMS; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, this agreement provides for control of discharges from all municipal separate storm sewer systems that may be shared by any of the co-permittees to this agreement; and

**WHEREAS**, this agreement provides for professional services required to accomplish task identified in the NPDES Final Rule and the NPDES MS4 Operating Permit initiated and performed on behalf of the Co-Permittees and Miami-Dade County; and

**WHEREAS**, the monitoring costs attributed to the NPDES MS4 Operating permit shall be the joint responsibility of all per Attachment "A" of the Interlocal Agreement for NPDES activities; and

**WHEREAS**, 40 CFR 122.26(d)(2)(i)(D) requires control of pollutants through interlocal agreements; and

**WHEREAS**, the Mayor and Village Council desire to approve the attached Agreement of the Co-Permittees and the County and between all of the Co-Permittees with respect to shared responsibilities in the identification and control of discharges from one MS4 to another; and

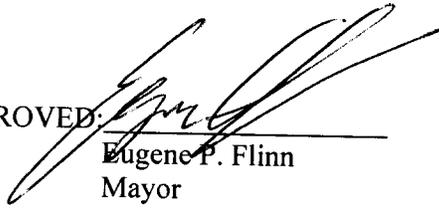
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

**Section 1:** Village Manager is authorized to enter into and execute an Interlocal Agreement between all Co-Permittees named in Permit No. FLS000003, Authorization to Discharge under the National Pollutant Discharge Elimination System.

**Section 2:** This Resolution shall take effect immediately upon approval.

PASSED and ADOPTED this 6<sup>th</sup> day of June, 2005.

ATTEST:   
Meighan Pier  
City Clerk

APPROVED:   
Eugene P. Flinn  
Mayor

READ AND APPROVED AS TO FORM:

  
Eve Boutsis  
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	<u>YES</u>

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**INTERLOCAL AGREEMENT BETWEEN CO-PERMITTEES  
NAMED IN NATIONAL POLLUTANT DISCHARGE  
ELIMINATION SYSTEM PERMIT NO. FLS000003 AND  
MIAMI-DADE COUNTY PROVIDING FOR PERFORMANCE  
OF PROFESSIONAL SERVICES AND BETWEEN ALL CO-  
PERMITTEES PROVIDING FOR CONTROL OF POLLUTANT  
DISCHARGES BETWEEN SHARED MUNICIPAL SEPARATE  
STORM SEWER SYSTEMS**

This Interlocal Agreement ("Agreement") is made and entered into this day of November \_\_\_\_, 2005, by and between all **CO-PERMITTEES** named in Permit No. FLS000003, Authorization to Discharge under the National Pollutant Discharge Elimination System. This Agreement provides for control of discharges from any and all municipal separate storm sewer systems that may be shared by any of the parties to this Agreement, as required by the State of Florida Department of Environmental Protection (hereinafter referred to as FDEP) pursuant to Section 403.0885, Florida Statutes, and Rule 62-624, Florida Administrative Code, and the Environmental Protection Agency (hereinafter referred to as the "EPA") National Pollutant Discharge Elimination System (hereinafter referred to as "NPDES") Permit Regulations for Storm Water Discharges Final Rule [hereinafter referred to as ("NPDES Final Rule")]. This Agreement further provides for the professional services required to accomplish the tasks set forth in the NPDES Final Rule and the NPDES MS4 Operating Permit that may be initiated and performed on behalf of both the **CO-PERMITTEES** and the **COUNTY**.

**Section I**  
**Definitions**

For purposes of this Agreement, the following terms shall apply:

**AGREEMENT** shall mean this document, including any written amendments thereto, and other written documents or parts thereof which are expressly incorporated herein by reference.

**CO-PERMITTEE or CO-PERMITTEES** shall mean the following municipalities and agencies named in NPDES Permit No. FLS000003 as Co-Permittees: Miami-Dade County, Town of Bay Harbor Islands, Bal Harbour Village, City of Coral Gables, Indian Creek Village, City of North Bay Village, City of Miami Beach, City of North Miami Beach, Miami Shores Village, City of North Miami, Town of Golden Beach, Village of El Portal, City of Aventura, City of Sunny Isles Beach, Town of Surfside, City of West Miami, City of South Miami, City of Homestead, City of Opa-Locka, Village of Pinecrest, Town of Medley, City of Miami Springs, Village of Key Biscayne, City of Hialeah Gardens, Town of Miami Lakes, Florida Department of Transportation District VI, Florida Department of Transportation Turnpike District, the Miami-Dade County Expressway Authority, the Village of Palmetto Bay, the City of Doral, and the City of Miami Gardens.

**COUNTY** shall mean Miami-Dade County

**FORCE MAJEURE** shall mean an act of God, epidemic, lightning, earthquake, fire, explosion, hurricane, flood or similar occurrence, strike, an act of a public enemy, or blockade, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, which has had or may reasonably be expected to have a material adverse effect on the rights or obligations under this Agreement.

**MS4** shall mean municipal separate storm sewer system, as set forth in 40C.F.R.122.26.

In all other instances, terms used in this Agreement shall have the definitions contained in the EPA NPDES Final Rule 40 CFR Parts 122, 123 and 124.

**Section II**  
**Term of Agreement**

The term of this Agreement shall commence upon the final date of execution by all **CO-PERMITTEES**, and shall expire on November 16, 2012.

**Section III**  
**Scope of Work**

The parties hereto agree that the EPA is requiring as part of the NPDES MS4 Operating Permit the sampling, monitoring, and analysis of a variety of storm sewer systems throughout Miami-Dade County. The parties hereby agree that the monitoring costs attributable to this operating permit shall be the joint responsibility of all parties hereto, and shall be based on a percentage rate obtained by dividing the number of outfalls which drain to United States bodies of water existing in the geographical boundaries of each **CO-PERMITTEE** by the total number of outfalls existing within the geographic boundaries of all **CO-PERMITTEES**.

Furthermore, 40 CFR 122.26(d)(2)(i)(D) requires control of pollutants through interlocal agreements, making each NPDES **CO-PERMITTEE** responsible for discharges from their MS4 to the MS4 of another NPDES **CO-PERMITTEE** or to the waters of the United States. This Agreement sets forth the agreement of the **CO-PERMITTEES** and the **COUNTY** and between all of the **CO-PERMITTEES** with respect to shared responsibilities in the identification and control of discharges from one MS4 to another.

**Section IV**  
**COUNTY's Obligations**

1. **Compliance with NPDES MS4 Operating Permit** The **COUNTY** shall perform monitoring and sampling activities as required in Miami-Dade County's NPDES MS4 Operating Permit.
2. **Permits** The **COUNTY** shall obtain all applicable federal, state and local permits and approvals (with the exception of permits and approvals required by **CO-PERMITTEES**, if any, which shall be obtained by the respective **CO-PERMITTEE**), which are required to perform activities under the NPDES MS4 Operating Permit.
3. **Report** The **COUNTY** shall provide the **CO-PERMITTEES** with a report with the results of the monitoring and sampling activities required under the NPDES Operating Permit.
4. **Notice of COUNTY Meeting** The **COUNTY** shall provide the **CO-PERMITTEES** with oral or written notice of all regular meetings held by **COUNTY** staff for the purpose of reviewing the compliance status with the NPDES MS4 Operating Permit.

**Section V**  
**CO-PERMITTEES' Obligations**

1. **Prevention of Theft of COUNTY Equipment** The **CO-PERMITTEES** shall take reasonable steps to prevent theft or vandalism of **COUNTY** equipment located within the **CO-PERMITTEE'S** geographic boundary. The **CO-PERMITTEES** agree that such equipment may be placed within each **CO-PERMITTEE'S** geographic boundary for extended periods of time, as necessary to complete the sampling and monitoring tasks contemplated by this Agreement and the NPDES MS4 Operating Permit.
2. **Compensation** Not later than ten (10) days after the date of execution of this Agreement by all **CO-PERMITTEES**, each Co-Permittee shall pay to the **COUNTY** its proportional share of the payment due for monitoring activities set forth in this Agreement and as set forth in Attachment "A" herein. The annual cost, in accordance with the schedule of payments set forth in Attachment "A" herein, shall be due on the anniversary date of execution of this Agreement for each year the NPDES MS4 Operating Permit is in force and effect. Failure to pay the agreed-upon costs to **COUNTY** in accordance with this Agreement shall be deemed default by the **CO-PERMITTEE** that fails to pay pursuant to this Agreement.
3. **Access** The **CO-PERMITTEES** shall provide the **COUNTY** with reasonable access at all times as necessary to perform the sampling and monitoring required by this Agreement of any storm sewer systems which may be located within the **CO-PERMITTEE'S** geographic boundary.

**Section VI**  
**Indemnification**

The **CO-PERMITTEE** shall indemnify and hold harmless the **COUNTY** and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the **COUNTY** or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the **CO-PERMITTEE** or its employees, agents, servants, partners, principals or subcontractors. The **CO-PERMITTEE** shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the **COUNTY**, where applicable, including appellate proceedings, and shall pay all costs, judgements and attorney's fees which may issue thereon. Provided, however, this indemnification shall only be to the extent and within the limitations of Section 768.28 Fla Stat., subject to the provisions of that Statute whereby the **CO-PERMITTEE** shall not be held liable to pay a personal injury or property damage claim or judgement by any one person which exceeds the sum of \$100,000, or any claim or judgement or portions thereof, which, when totaled with all other claims or judgement paid by the **CO-PERMITTEE** arising out of the same incident or occurrence, exceed the sum of \$200,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the negligence of the **CO-PERMITTEE**.

The **COUNTY** shall indemnify and hold harmless the **CO-PERMITTEE** and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the **CO-PERMITTEE** or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the **COUNTY** or its employees, agents, servants, partners, principals or subcontractors. The **COUNTY** shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the **CO-**

**PERMITTEE**, where applicable, including appellate proceedings, and shall pay all costs, judgements and attorney's fees which may issue thereon. Provided, however, this indemnification shall only be to the extent and within the limitations of Section 768.28 Fla Stat., subject to the provisions of that Statute whereby the **COUNTY** shall not be held liable to pay a personal injury or property damage claim or judgement by any one person which exceeds the sum of \$100,000, or any claim or judgement or portions thereof, which, when totaled with all other claims or judgement paid by the **COUNTY** arising out of the same incident or occurrence, exceed the sum of \$200,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the negligence of the **COUNTY**.

**Section VII**  
**County Event of Default**

Without limitation, the failure by the **COUNTY** to substantially fulfill any of its material obligations in accordance with this Agreement, unless justified by Force Majeure, shall constitute a "**COUNTY** event of Default".

If a **COUNTY** event of default should occur, the **CO-PERMITTEE** shall have all of the following rights and remedies which it may exercise singly or in combination:

1. The right to declare that this Agreement together with all rights granted to **COUNTY** hereunder are terminated, effective upon such date as is designated by the **CO-PERMITTEE**;
2. Any and all rights provided under federal laws and the laws of the State of Florida.

**Section VIII**  
**Co-Permittee Event of Default**

Without limitation, the failure by the **CO-PERMITTEE** to substantially fulfill any of its material obligations in accordance with this Agreement, unless justified by Force Majeure, shall constitute a "**CO-PERMITTEE** Event of Default".

If a **CO-PERMITTEE** Event of Default should occur, the **COUNTY** shall have all of the following rights and remedies which it may exercise singularly or in combination:

1. The right to declare that this Agreement together with all rights granted to **CO-PERMITTEE** hereunder are terminated, effective upon such date as is designated by the **COUNTY**;
2. Any and all rights provided under federal laws and the laws of the State of Florida.

**Section IX**  
**General Provisions**

1. **Authorization to Represent the CO-PERMITTEE in NPDES MS4 Operating Permit** The CO-PERMITTEE hereby authorizes the COUNTY to act on its behalf only with respect to: monitoring and sampling portions of the NPDES MS4 Operating Permit; and compliance with requirements of those monitoring and sampling portions under the NPDES MS4 Operating Permit.
2. **Attendance at COUNTY Permit Review Meetings.** The CO-PERMITTEE may, but is not required to, attend any or all regular meetings held by COUNTY staff for the purpose of reviewing the status of the NPDES MS4 Operating Permit.
3. **Responsibility for Discharges** The CO-PERMITTEES shall each be responsible for the control, investigation of and remedial activities relating to discharges of pollutants from within their respective MS4 or boundaries to the municipal separate storm sewer system of another NPDES MS4 CO-PERMITTEE, pursuant to the requirements of 40CFR 122.26(d)(2)(i)(D).
4. **Identification of Discharges** Both the CO-PERMITTEE whose stormwater system generates a pollutant discharge that impacts another CO-PERMITTEE'S system and the impacted CO-PERMITTEE agree to cooperate by providing the staff and equipment necessary to identify the source of pollutant discharges emanating from the separate storm sewer system of one CO-PERMITTEE to the separate storm sewer system of another CO-PERMITTEE.
5. **Notification** When pollutant discharges to a shared separate storm sewer system are discovered, the CO-PERMITTEES, or COUNTY, or any of the foregoing, as applicable, which are the source of the discharge(s) agree to report said discharges to the other affected parties sharing the particular MS4. The COUNTY shall assist, as needed, in any investigation and identification of a source of the discharge. If the COUNTY discovers a discharge in the separate storm sewer system of a CO-PERMITTEE or the COUNTY, the COUNTY will investigate the source of the discharge and report its findings to the affected NPDES CO-PERMITTEES. When an investigation specifically identifies an NPDES CO-PERMITTEE as the source of a pollutant discharge, that CO-PERMITTEE shall be responsible for ceasing the discharge and remediating the effects of the discharge by restoring the affected MS4 in accordance with applicable standards.
6. **Dispute Resolution** when the parties sharing a MS4 cannot agree on the source of a discharge to their shared MS4, the State of Florida Department of Environmental Protection, Bureau of Watershed Management, shall be the final arbiter in determining jurisdiction and responsibility for cessation of discharge, remediation, and final resolution.
7. **Termination** Each party may terminate that particular party's participation in this Agreement without cause by providing sixty (60) days prior written notice of termination to the other parties to this Agreement. CO-PERMITTEES shall be entitled to reimbursement of monies paid to the COUNTY only in the event of termination for cause by the CO-PERMITTEE, or termination without cause by the COUNTY, and the CO-PERMITTEE shall then be entitled to such reimbursement only to the

extent that services providing information useful to the NPDES MS4 Permit have not been rendered by the COUNTY. Upon termination by any party, the NPDES MS4 Operating Permit status of that party shall be the sole responsibility of that party.

8. **Entire Agreement; Prior Agreements Superseded; Amendment to Agreement** This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by the parties hereto or their representatives.
9. **Headings** Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.
10. **Notices and Approval** Notices and approvals required or contemplated by this Agreement shall be written and personally served or mailed, registered or certified United States mail, with return receipt requested, addressed to the parties as follows:

To County:

Miami-Dade County Department of Environmental  
Resources Management  
33 S.W. 2 Ave, Suite 1200 Miami, Florida 33130  
Attn: Department Director 305/372-6789

To Co-Permittee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

305/ \_\_\_\_\_

11. **Performance by Parties** Except as otherwise provided in this Agreement, in the event of any dispute arising over the provisions of this Agreement, the parties shall proceed with the timely performance of their obligations during the pendency of any legal or other similar proceedings to resolve such dispute.

12. **Rights of Others** Nothing in the Agreement express or implied is intended to confer upon any person other than the parties hereto any rights or remedies under or by reason of this Agreement.
13. **Time is of Essence** It is mutually agreed that time is of the essence in the performance of all terms and conditions to be met and performed pursuant to this Agreement.
14. **Governing Law** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida and the United States. The COUNTY and the CO-PERMITTEE agree to submit to service of process and jurisdiction of the State of Florida for any controversy or claim arising out of or relating to this Agreement or a breach of this Agreement. Venue for any court action between the parties for any such controversy arising from or related to this Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, or in the United States District Court for the Southern District of Florida, in Miami-Dade County, Florida.
15. **Severability** The invalidity of one or more of the phrases, sentences, clauses, or Sections contained in this Agreement shall not affect the validity of the remaining portion of the Agreement, provided the material purposes of this Agreement can be determined and effectuated.
16. **Waiver** There shall be no waiver of any right related to this Agreement unless in writing signed by the party waiving such right. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof . Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time, or of any other right under this Agreement.

**Section X**  
**Execution in Counterparts**

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

IN WITNESS WHEREOF, Miami-Dade County, Florida, has caused this Agreement to be executed in its name by the County manager or his designee, attested by the Clerk of the Board of County Commissioners and has caused the seal of the Board of County Commissioners to be hereto attached; and the City of \_\_\_\_\_, Florida has caused this Agreement to be executed in its name by the Town Mayor or his designee, attested by the Clerk of the Town Council and has caused the seal of the Council to be hereto attached, all on the day and year first written above.

MIAMI-DADE COUNTY,  
FLORIDA, BY ITS BOARD OF  
COUNTY COMMISSIONERS Attest:

By: \_\_\_\_\_  
Clerk of the Board

By: \_\_\_\_\_  
County Manager

Clerk of the \_\_\_\_\_

City of \_\_\_\_\_, FLORIDA

BY ITS COUNCIL attest:

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

By: \_\_\_\_\_  
City Mayor

**ATTACHMENT "A"**

**ANNUAL MONITORING COSTS FOR MIAMI-DADE COUNTY AND  
CO-PERMITTEES**

<b>Municipality/Agency</b>	<b>Number of Outfalls</b>	<b>Percent of Total Outfalls</b>	<b>Dollar Contribution for NPDES Co-Permittees</b>
1 City of Aventura	138	3.2	\$14,400
2 Bal Harbour Village	11	0.3	1,350
3 Town of Bay Harbor Islands	57	1.3	5,850
4 City of Coral Gables	110	2.5	11,250
5 City of Doral	262	6.0	27,000
6 Village of El Portal	9	0.2	900
7 Town of Golden Beach	40	0.9	4,050
8 City of Hialeah Gardens	5	0.1	450
9 City of Homestead	47	1.1	4,950
10 Indian Creek Village	16	0.4	1,800
11 Village of Key Biscayne	24	0.6	2,700
12 Town of Medley	1	0.1	450
13 City of Miami Beach	228	5.2	23,400
14 City of Miami Gardens	243	5.6	25,200
15 Miami Shores Village	36	0.8	3,600
16 City of Miami Springs	4	0.1	450
17 City of North Bay Village	54	1.2	5,400
18 City of North Miami	165	3.8	17,100
19 City of North Miami Beach	230	5.3	23,850
20 City of Opa-locka	10	0.2	900
21 Village of Palmetto Bay	89	2.0	9,000
22 Village of Pinecrest	63	1.4	6,300
23 City of South Miami	12	0.3	1,350
24 City of Sunny Isles Beach	90	2.1	9,450
25 Town of Surfside	12	0.3	1,350
26 City of West Miami	5	0.1	450
27 Uninc. Miami-Dade County	1,392	31.8	143,100
28 FDOT District VI	590	13.5	60,750
29 FDOT Turnpike	65	1.5	6,750
30 Town of Miami Lakes	229	5.3	23,850
31 MDX	124	2.8	12,600
<b>Totals</b>	<b>4,361</b>	<b>100.0</b>	<b>\$450,000 <sup>1</sup></b>

<sup>1</sup> Total Annual Cost of County and Co-Permittees' NPDES Requirements