

**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 BY MIAMI-DADE COUNTY,
AND ALSO BETWEEN ALL CO-PERMITTEES PROVIDING
FOR IDENTIFICATION AND CONTROL OF POLLUTANT
DISCHARGES IN SHARED MUNICIPAL SEPARATE STORM
SEWER SYSTEMS**

This Interlocal Agreement ("Agreement") is made and entered into by, and between, all **CO-PERMITTEES** named in Florida Department of Environmental Protection Permit Number FLS000003, Authorization to Discharge under the National Pollutant Discharge Elimination System. This Agreement provides for identification and control of discharges from any and all Municipal Separate Storm Sewer Systems (MS4s) 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 DEP) pursuant to Section 403.0885, Florida Statutes, and DEP 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 by Miami-Dade County on behalf of both the **CO-PERMITTEES** and **MIAMI-DADE 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**: City of Aventura, Bal Harbour Village, Town of Bay Harbor Islands, City of Coral Gables, Town of Cutler Bay, City of Doral, Village of El Portal, Town of Golden Beach, City of Hialeah Gardens, City of Homestead, Indian Creek Village, Village of Key Biscayne, Town of Medley, City of Miami Beach, City of Miami Gardens, Town of Miami Lakes, Village of Miami Shores, City of Miami Springs, City of North Bay Village, City of North Miami, City of North Miami Beach, City of Opa-locka, Village of Palmetto Bay, Village of Pinecrest, City of South Miami, City of Sunny Isles Beach, Town of Surfside, Village of Virginia Gardens, City of West Miami, Florida Department of Transportation (FDOT) District Six, Florida Department of Transportation (FDOT) Turnpike Enterprise, Miami-Dade Expressway Authority (MDX), and Miami-Dade County.

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

This Agreement shall become effective, and supersede the current interlocal agreement, on October 1, 2017. This Agreement shall expire on September 30, 2022, or until a replacement interlocal agreement is executed, whichever is later.

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 historical water monitoring annual costs (Activity 1) and the Impaired Waters Rule monitoring and analyses costs (Activity 2) attributable to this operating permit shall be shared by all **CO-PERMITTEES**, and the costs 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**.

The parties further agree that the optional sampling station costs (Activity 3) attributable to this operating permit shall be borne one hundred percent (100%) by those **CO-PERMITTEES** who elect to participate in this Activity. These costs are included in Attachment "A" of this Agreement.

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, on an annual basis, 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** Each CO-PERMITTEE will reimburse the COUNTY for costs of activities performed over the preceding fiscal year in accordance with Attachment "A", and as specified in the Execution in Counterparts form for that fiscal year. The COUNTY will bill each CO-PERMITTEE annually, within six (6) months after the end of the fiscal year, for actual amounts expended during the prior fiscal year. Payment by the CO-PERMITTEE is to be made not later than forty-five (45) days after the bill presentation. Failure to pay the agreed-upon costs to the COUNTY in accordance with this Agreement shall be deemed default by the CO-PERMITTEE that fails to pay pursuant to this Agreement. The expenditures for the final fiscal year that this Agreement is valid will be invoiced by the COUNTY and paid by the CO-PERMITTEES during the following fiscal year.
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

Each 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. Each 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 of and within the limitations of Section 768.28 Fla Stat., and 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 judgment by any one person which exceeds the sum of \$200,000, 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 \$300,000 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. Provided further that any **CO-PERMITTEE**'s liability hereunder shall be based on that **CO-PERMITTEE**'s performance of this Agreement only, and no **CO-PERMITTEE** shall be liable for indemnification based on another **CO-PERMITTEE**'s performance of this Agreement.

Nothing herein shall constitute a waiver of Section 768.28 of the Florida Statutes or shall be construed as impacting or modifying the protections set forth therein.

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** Each CO-PERMITTEE hereby authorizes the COUNTY to act on its behalf only with respect to: the activities under this Agreement; and compliance with requirements of those monitoring, sampling, BMP, and BMAP portions under the NPDES MS4 Operating Permit.
2. **Attendance at COUNTY Permit Review Meetings.** The CO-PERMITTEES may, but are 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 a NPDES CO-PERMITTEE as the source of a pollutant discharge, then 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 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.

In the event of termination by a CO-PERMITTEE, that CO-PERMITTEE shall owe the COUNTY for all services rendered or performed by the COUNTY, including those which had not yet been invoiced or billed to the CO-PERMITTEE. Upon receiving invoice from the COUNTY for such services, the CO-PERMITTEE shall promptly pay the COUNTY in full, no later than thirty (30) days from receipt of invoice.

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 listed in Section I of this Agreement.
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.
17. **Number of Outfalls** If requested, the **COUNTY** will review and adjust on an annual basis the number of outfalls of each **CO-PERMITTEE** during the month of March for each fiscal year the Agreement is in effect. Adjustments made, if any, will be in effect for the upcoming fiscal year, to recalculate each **CO-PERMITTEE'S** share of the total annual costs. **CO-PERMITTEES** may submit relevant outfall information to be included in the review during a two month period, from January 1st to February 28th of the year immediately preceding the start of the fiscal year of the intended changes. In the event of a change, an updated Attachment "A" shall be provided to **CO-PERMITTEES** annually by March 31st for budgetary purposes.
18. **Maximum Annual Costs** Each **CO-PERMITTEE'S** maximum (not to exceed) financial commitment under this Agreement is shown in Attachment "A". It should be noted that the **CO-PERMITTEE'S** cost share may change (+/-) based on any changes made to the Number of Outfalls during the annual reviews. Such changes shall be reflected in an updated Attachment "A". Actual annual expenditures invoiced by the **COUNTY** for water quality monitoring and related activities, IWR, and Optional Sampling Station activities performed, will not exceed the **CO-PERMITTEE'S** total annual cost shown in Attachment "A" for that fiscal year.

Execution in Counterparts

This Agreement shall be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. The FDOT District Six and FDOT Turnpike Enterprise are both co-permittees but will execute separate agreements with Miami-Dade County, which are similar in scope and intent to this Agreement, due to requirements of the respective FDOT entities.

IN WITNESS WHEREOF, _____ "*enter municipality's name*" _____,
FLORIDA,

by its Commission / Council attest, that this Agreement be executed in its name by the Manager / Mayor or his designee, attested by the Clerk or Legal Representative.

Co-Permittee selection of Activities detailed in Attachment "A":

Activity 1 and 2 (Water Monitoring and Impaired Waters Rule)

- ☐ Yes, we wish to participate
☐ No, but we reserve the right to request participation in subsequent fiscal years

Activity 3 (Additional Sampling Station)

- ☐ Yes, we wish to participate
☐ No, but we reserve the right to request participation in subsequent fiscal years

The Co-Permittee selections shown above remain in effect for the duration of the Agreement unless otherwise modified by the Co-Permittee. Each Co-Permittee may elect to modify their selections shown above every fiscal year the Agreement remains in place. These modifications must be formally requested between January 1 and February 28 in order to become effective for the following fiscal year and for the duration of the Agreement unless further modifications are made by executing a new "Execution in Counterparts" form.

Name of Manager / Mayor (print)

Signature

Date

Name of Clerk / Legal Representative (print)

Signature

Date

Execution in Counterparts

This Agreement shall 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 Mayor 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.

MIAMI-DADE COUNTY
Stephen P. Clark Center
111 N.W. 1 Street
Miami, FL 33128

Mayor or Mayor's Designee

Date

HARVEY RUVIN, CLERK
Attest:

Deputy Clerk

Date

ATTACHMENT "A" - NPDES Interlocal Agreement Water Monitoring Costs
Fiscal Year 2017/18 to 2021/22

	Municipality/Agency	Number of Outfalls	Percent of Total Outfalls	Activity 1	Activity 2	Activity 1+2	Activity 3	Activity 1+2+3
				Historical Monitoring and Analyses	IWR Monitoring and Analyses	Water Monitoring Annual Cost (not-to-exceed)	Optional Sampling Station	Co-Permittee's Total Annual Cost (not to exceed)
1	Aventura, City of	168	2.1	\$10,287	\$2,290	\$12,577	\$6,000	\$18,577
2	Bal Harbour Village	10	0.1	\$612	\$136	\$749		\$749
3	Bay Harbor Islands, Town of	54	0.7	\$3,307	\$736	\$4,043	\$6,000	\$10,043
4	Coral Gables, City of	109	1.4	\$6,675	\$1,486	\$8,160		\$8,160
5	Cutler Bay, Town of	157	2.0	\$9,614	\$2,140	\$11,754	\$6,000	\$17,754
6	Doral, City of	352	4.4	\$21,555	\$4,797	\$26,352	\$6,000	\$32,352
7	El Portal, Village of	6	0.1	\$367	\$82	\$449		\$449
8	Golden Beach, Town of	8	0.1	\$490	\$109	\$599	\$6,000	\$6,599
9	Hialeah Gardens, City of	7	0.1	\$429	\$95	\$524	\$6,000	\$6,524
10	Homestead, City of	168	2.1	\$10,287	\$2,290	\$12,577		\$12,577
11	Indian Creek Village	16	0.2	\$980	\$218	\$1,198	\$6,000	\$7,198
12	Key Biscayne, Village of	33	0.4	\$2,021	\$450	\$2,470	\$6,000	\$8,470
13	Medley, Town of	44	0.5	\$2,694	\$600	\$3,294	\$6,000	\$9,294
14	Miami Beach, City of	306	3.8	\$18,738	\$4,170	\$22,908	\$6,000	\$28,908
15	Miami Gardens, City of	298	3.7	\$18,248	\$4,061	\$22,309	\$6,000	\$28,309
16	Miami Lakes, Town of	221	2.8	\$13,533	\$3,012	\$16,545		\$16,545
17	Miami Shores, Village of	32	0.4	\$1,960	\$436	\$2,396		\$2,396
18	Miami Springs, City of	23	0.3	\$1,408	\$313	\$1,722		\$1,722
19	North Bay Village, City of	65	0.8	\$3,980	\$886	\$4,866	\$6,000	\$10,866
20	North Miami Beach, City of	204	2.5	\$12,492	\$2,780	\$15,272		\$15,272
21	North Miami, City of	115	1.4	\$7,042	\$1,567	\$8,609		\$8,609
22	Opa-locka, City of	18	0.2	\$1,102	\$245	\$1,348	\$6,000	\$7,348
23	Palmetto Bay, Village of	98	1.2	\$6,001	\$1,336	\$7,337		\$7,337
24	Pinecrest, Village of	58	0.7	\$3,552	\$790	\$4,342		\$4,342
25	South Miami, City of	31	0.4	\$1,898	\$422	\$2,321	\$6,000	\$8,321
26	Sunny Isles Beach, City of	66	0.8	\$4,041	\$900	\$4,941		\$4,941
27	Surfside, Town of	5	0.1	\$306	\$68	\$374	\$6,000	\$6,374
28	Virginia Gardens, Village of	1	0.0	\$61	\$14	\$75	\$6,000	\$6,075
29	West Miami, City of	1	0.0	\$61	\$14	\$75	\$6,000	\$6,075
30	FDOT District VI	1,469	18.4	\$89,954	\$0	\$89,954		\$89,954
31	FDOT Turnpike Enterprise	574	7.2	\$35,149	\$0	\$35,149		\$35,149
32	MDX	456	5.7	\$27,923	\$0	\$27,923		\$27,923
33	Unin. Miami-Dade County	2,829	35.4	\$173,233	\$38,556	\$211,789		\$211,789
ANNUAL TOTALS (Not to Exceed)		8,002	100.0	\$490,000	\$75,000	\$565,000	\$102,000	\$667,000
Excluding FDOT VI, FTE, & MDX		5,503						

¹ Municipalities with no outfalls have been assigned a value of one outfall

Activity 1 - Historical sampling, monitoring, lab analyses, and annual results analyses report

Activity 2 - Fecal Impaired Waters Source Reduction Plan: 10 additional stations, lab analyses, data review, QA/QC. Excludes FDOT VI, FTE, & MDX

Activity 3 - Optional: Co-Permittees with no monitoring station

