

RESOLUTION NO. 03-152

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, APPROVING THE INTERLOCAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE TOWN OF MIAMI LAKES FOR PERFORMANCE OF PROFESSIONAL SERVICES ASSOCIATED WITH THE NPDES OPERATING PERMIT; AUTHORIZING THE TOWN MANAGER AND TOWN ATTORNEY TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 403.0885, Florida Statutes, a permit was issued to Miami-Dade County (the “County”) and its participating municipalities for participation in the National Pollutant Discharge Elimination System (“NPDES”); and

WHEREAS, the Town participation in the stormwater element of the NPDES program is required under the Clean Water Act; and

WHEREAS, the Town’s co-permittee cost includes the County’s monitoring, sampling and analysis of the Town’s outfalls and the preparation of an annual report forwarded to the State of Florida and appropriate federal agencies (the “Co-permittee Services”); and

WHEREAS, the Town’s cost for these Co-permittee Services is included in its stormwater budget; and

WHEREAS, the Town Council finds that it is in the best interest of the Town to approve the agreement between the Town and the County for NPDES services.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above Recitals are true and correct and incorporated herein by this reference.

Section 2. Approval of Agreement. The Agreement between Miami-Dade County and the Town of Miami Lakes, attached as Exhibit "A," together with such non-material changes as may be acceptable to the Town Manager and approved as to form and legality by the Town Attorney, is approved.

Section 3. Authorization of Town Officials. The Town Manager and Town Attorney are authorized to take all steps necessary to implement the terms and conditions of the Amendment.

Section 4. Authorization of Fund Expenditure. The Town Manager is authorized to expend budgeted funds to implement the terms and conditions of the Amendment.

Section 5. Execution of Agreement. The Mayor is authorized to execute the Agreement on behalf of the Town.

Section 6. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 8th day of July, 2003.

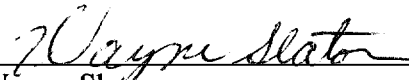
APPROVED ON CONSENT AGENDA

Motion to adopt by Collins second by Simon,

Resolution No. 03-152

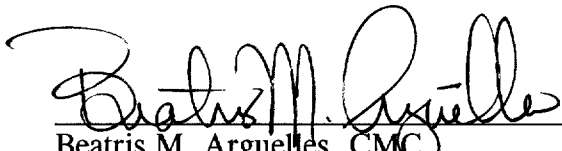
FINAL VOTE AT ADOPTION

Mayor Wayne Slaton	<u>Yes</u>
Vice Mayor Roberto Alonso	<u>Yes</u>
Councilmember Mary Collins	<u>Yes</u>
Councilmember Robert Meador	<u>Yes</u>
Councilmember Michael Pizzi	<u>Yes</u>
Councilmember Nancy Simon	<u>Yes</u>
Councilmember Peter Thomson	<u>Yes</u>



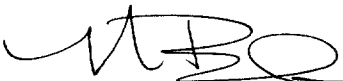
Wayne Slaton
MAYOR

ATTEST:



Beatris M. Arguelles, CMC
TOWN CLERK

Approved as to form and legality for the use
and benefit of the Town of Miami Lakes only:



Weiss, Serota, Helfman, Pastoriza, Guedes,
Cole & Boniske
TOWN ATTORNEY

Resolution No. 03-152

**INTERLOCAL AGREEMENT BETWEEN
THE TOWN OF MIAMI LAKES AND MIAMI-
DADE COUNTY FOR PERFORMANCE OF
PROFESSIONAL SERVICES ASSOCIATED
WITH THE FIVE YEAR NPDES OPERATING
PERMIT**

This Interlocal Agreement ("Agreement") is made and entered into this day of 2003, by and between Miami-Dade County [hereinafter referred to as the "**COUNTY**"] and the Town of Miami Lakes, [hereinafter referred to as the "**TOWN**"], in order that the **TOWN** may be included as a co-permittee as provided under the Environmental Protection Agency [hereinafter referred to as the "EPA"] National Pollutant Discharge Elimination System [hereinafter referred to as "NPDES"] Permit Application Regulations for Storm Water Discharges; Final Rule [hereinafter referred to as "NPDES Final Rule"], and that the professional services required to accomplish the tasks set forth in the NPDES Final Rule and the NPDES MS4 Operating Permit may be initiated and performed on behalf of both the **TOWN** and the **COUNTY** as co-permittees.

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.

TOWN shall mean the Town of Miami Lakes

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.

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 (Attachment "A") , incorporated herein by reference.

Section II
Term of Agreement

The term of this Agreement shall commence with the date of execution, and shall expire on November 16, 2005.

Section III
Scope of Work

The parties hereto stipulate and agree that the EPA is requiring as part of a five year 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 costs attributable to implementation of this operating permit shall be the joint responsibility of all participating municipalities, and shall be based on a percentage rate obtained by dividing the number of outfalls that drain to United States bodies of water existing in each participating municipality by the total number of outfalls existing within the geographic boundaries of all co-permittees.

Section IV
COUNTY's Obligations

Compliance with NPDES MS4 Operating Permit The COUNTY shall perform all analyses and related activities as required in Miami-Dade County's NPDES MS4 Operating Permit.

Permits The COUNTY shall obtain all applicable federal, state and local permits and approvals (with the exception of TOWN permits and approvals, if any, which shall be obtained by the TOWN) which are required in order to conduct activities under the NPDES MS4 Operating Permit.

Report The COUNTY shall provide the TOWN with a report with the results of all monitoring and sampling activities required under the NPDES operating Permit.

Notice of DERM Meeting The COUNTY shall provide the TOWN 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
TOWN's Obligations

Submittal of Outfall Information The TOWN agrees to provide the COUNTY with outfall update information as promptly as any changes in outfalls occur, in order that the data maintained by the COUNTY may be accurate and current.

Prevention of Theft of COUNTY Equipment The TOWN shall take reasonable steps to prevent theft or vandalism of COUNTY equipment located within the TOWN's jurisdiction. The TOWN acknowledges that such equipment may be placed within the TOWN's area of jurisdiction for extended periods of time, as necessary to complete the

sampling and monitoring tasks contemplated by this Agreement and the NPDES MS4 Operating Permit.

Compensation Within ten (10) days from the date of execution of this Agreement, the **TOWN** shall make a lump sum payment to the **COUNTY** of its proportional share of the payment due to the **COUNTY** for associated monitoring activities which are the **TOWN's** financial obligation pursuant to this Agreement. The sum due shall be determined by dividing the total cost for analyses by the relative percentages that each participating municipality contributes towards stormwater drainage to United States bodies of water. It is hereby stipulated and agreed that the total cost for analyses is a yearly stipend. The yearly cost as calculated will be subsequently due on the anniversary date of execution of this Agreement in years two (2), three (3), four (4), and five (5) of the five year NPDES MS4 Operating Permit. Failure to pay the agreed-upon lump sum payment or subsequent payments shall be deemed default by the **TOWN** pursuant to this Agreement, and shall result in a reversion of the **TOWN's** NPDES MS4 Operating Permit status to Individual Permit Holder. The proportional share of each co-permittee has been calculated and is listed on Attachment "B".

Access/Town Permits The **TOWN** shall provide the **COUNTY** with reasonable access at all times as necessary to accomplish the analysis of any storm sewer systems which may be located within the **TOWN's** jurisdiction. The **TOWN** shall obtain any **TOWN** permits and **TOWN** regulatory approvals required in order for the **COUNTY** to accomplish the above activities that may be located within the **TOWN's** jurisdiction.

Section VI Indemnification

The **TOWN** 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 **TOWN** or its employees, agents, servants, partners, principals or subcontractors. The **TOWN** 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 **TOWN** 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 **TOWN** 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 **TOWN**.

The **COUNTY** shall indemnify and hold harmless the **TOWN** 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 **TOWN** 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 **TOWN**, 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 **TOWN** 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 **TOWN**;
2. any and all rights provided under federal laws and the laws of the State of Florida.

Section VIII **Town Event of Default**

In addition to the provisions set forth in Section V, Compensation, and without limitation, the failure by the **TOWN** to substantially fulfill any of its material obligations in accordance with this Agreement, unless justified by Force Majeure, shall constitute a "**TOWN** Event of Default".

If a **TOWN** 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 **TOWN** 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**

Authorization to Represent the TOWN in NPDES MS4 Operating Permit The **TOWN** hereby authorizes the **COUNTY** to act on its behalf with respect to the monitoring and sampling portions of the NPDES MS4 Operating Permit and shall comply with all requirements imposed by EPA with respect thereto as a condition of the NPDES MS4 Operating Permit.

Attendance at COUNTY Permit Review Meetings. The **TOWN** 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.

Termination Either party may terminate this Agreement without cause by providing sixty (60) days prior written notice of intent to terminate to the other party. The **TOWN** shall be entitled to reimbursement of monies paid to the **COUNTY** only in the event of termination for cause by the **TOWN**, or termination without cause by the **COUNTY**, and the **TOWN** 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 either party, the NPDES MS4 Operating Permit status of the **TOWN** shall revert to Individual Permit Holder.

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.

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.

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 Town:

Alex Rey, Town Manager
Town of Miami Lakes
6853 Main Street
Miami Lakes, Florida 33014
Telephone: (305) 558-8244
Facsimile: (305) 558-8511

With a Copy to:

Nina Boniske, Town Attorney
Weiss, Serota, Helfman, Pastoriza,
Guedes, Cole & Boniske, P.A.
2665 S. Bayshore Drive
Suite 420
Miami, Florida 33133
Telephone: (305) 854-0800
Facsimile: (305) 854-2323

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 pending any legal or other similar proceedings to resolve such dispute.

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.

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.

Governing Law This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The **COUNTY** and the **TOWN** 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 Dade County, Florida, or in the United States District Court for the Southern District of Florida, in Dade County, Florida.

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.

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.

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 Town of Miami Lakes, 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.

Clerk of the Board

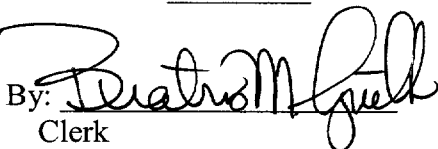
MIAMI-DADE COUNTY,
FLORIDA, BY ITS BOARD OF
COUNTY COMMISSIONERS Attest:

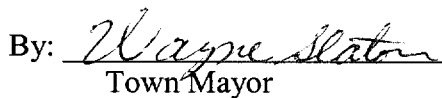
By: _____
Clerk of the Board

By: _____
County Manager

Clerk of the _____

Town of Miami Lakes , FLORIDA
BY ITS COUNCIL attest:

By: 
Clerk

By: 
Town Mayor