



Prepared by:

Michael C. Owens, Sr. Ass't. County Attorney
115 S. Andrews Ave, Room 423
Ft. Lauderdale, FL 33301

**Return original or certified
recorded document to:**

Ashok Raichoudhury, P.E., Licensed Engineer
Environmental Protection and
Growth Management Department
Environmental Engineering & Permitting Div.
1 North University Drive, Mailbox 201
Plantation, FL 33324-2038

**INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND THE CITY OF FORT LAUDERDALE
AUTHORIZING BROWARD COUNTY TO CONDUCT WATER QUALITY MONITORING ACTIVITIES
REQUIRED BY NPDES MS4 PERMIT NO. FLS00017-004**

This is an Agreement ("Agreement"), made and entered into by and between Broward County, a political subdivision of the state of Florida ("County") and City of Fort Lauderdale, a municipal corporation existing under the laws of the state of Florida ("City") (collectively referred to as the "Parties").

WHEREAS, this Agreement is entered into pursuant to Section 163.01, Florida Statutes (2011) ("F.S."), also known as the "Florida Interlocal Cooperation Act of 1969," and other Florida law; and

WHEREAS, the United States Environmental Protection Agency ("EPA"), by way of the Water Quality Act of 1987, 33 U.S.C. 1251, and 40 C.F.R. 122.42(c), requires County and City to comply with the applicable conditions of the National Pollutant Discharge Elimination System ("NPDES") Municipal Separate Storm Sewer System ("MS4") Permit Program ("NPDES MS4 Program" or "Program"); and

WHEREAS, the state of Florida, pursuant to Section 403.0885, F.S. (2011), is empowered to establish a state NPDES MS4 Program in accordance with Section 402 of the "Federal Water Pollution Control Act," as amended, and also known as the "Clean Water Act," and

WHEREAS, the Florida Department of Environmental Protection ("FDEP") has the power and authority to assume the NPDES MS4 Program from the United States Environmental Protection Agency, to implement and administer the permitting requirements of the Program, and has adopted Rule 62-624, Florida Administrative Code ("F.A.C."), to administer the delegation of the NPDES MS4 Permit Program from EPA; and

WHEREAS, FDEP issued NPDES MS4 Permit Number FLS000016-004 to County on January 5, 2017, ("County NPDES MS4 Permit") and County, by and through its Environmental Protection and Growth Management Department ("EPGMD"), carries out the relevant monitoring to ensure compliance with Part V of the County NPDES MS4 Permit; and

WHEREAS, FDEP issued NPDES MS4 Permit Number FLS000017-004 to City on January 5, 2017 ("City NPDES MS4 Permit"), which requires substantially the same monitoring to ensure compliance with Part V of the City NPDES MS4 Permit; and

WHEREAS, City is desirous of procuring the services of County to manage and/or perform certain technical tasks necessary to comply with the applicable portions of Part V of the City NPDES MS4 Permit pursuant to the NPDES MS4 Program; and

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1 **Board**. The Board of County Commissioners of Broward County, Florida.
- 1.2 **Contract Administrator**. The Director of the Environmental Engineering and Permitting Division.
- 1.3 **County Administrator**. The administrative head of County appointed by the Board.
- 1.4 **County Attorney**. The chief legal counsel for County appointed by the Board.
- 1.5 **Services**. All work required by County under this Agreement as specified in Article 2.

ARTICLE 2. SCOPE OF SERVICES

2.1 The goal of the City NPDES MS4 Permit monitoring is to show the effectiveness of their stormwater management program within the primary receiving waters of a drainage basin. County submitted a modified water quality monitoring plan to FDEP to fulfill the requirements of the City NPDES MS4 Permit as part of its permit reapplication on August 2, 2007. The monitoring plan was approved by FDEP for permit Cycle 3. Pursuant to the approved plan, County agrees to perform monitoring at New River under Andrews Avenue bridge and at Middle River near Sunrise Boulevard bridge in Fort Lauderdale.

2.2 As per PART V. A.1 and PART V.A.2 of the permit requirements, the County will calculate the estimates of the average annual pollutant loading for the constituents listed in Table V.A.1 for each major outfall. This calculation shall be based on outfall data to be provided by City. If the outfall data is not provided by City, the annual pollutant loading will not be calculated by County.

2.3 County, by and through its Environmental Protection and Growth Management Department, or "EPGMD", will perform the Services on behalf of City. The Services may be performed by any successor Department to the EPGMD as may be designated by the County Administrator.

2.4 It shall continue to be the responsibility of City to perform all requirements of the City NPDES MS4 Permit not listed as Services in this Interlocal Agreement.

2.5 The Parties acknowledge that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement except as expressly set forth in this Agreement.

ARTICLE 3. TERM AND TIME OF PERFORMANCE

3.1 The term of this Agreement shall begin on the date it is recorded pursuant to Section 9.23 ("effective date") and shall continue in force and effect for the duration of the City NPDES MS4 Permit term and any extension or continuation of the effectiveness thereof pursuant to Section 3.2, unless terminated earlier by either Party's written notice of termination provided pursuant to Section 7.2. The continuation of this Agreement beyond the end of any fiscal year of the Parties is subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes.

3.2 If the City NPDES MS4 Permit expires before FDEP issues a permit renewal and the term and conditions of the City NPDES MS4 Permit are still in effect under Rule 62-4.090, F.A.C., then County and City agree to continue to provide the services and compensation indicated in this Agreement. City agrees to continue to provide the financial contribution in proportion to the number of days between the expiration of the City NPDES MS4 Permit and the issuance date of a renewed or new NPDES MS4 Permit, as indicated in Article 4 of this Agreement, with an escalation factor of an additional two and one half percent (2½%) each year or portion thereof.

ARTICLE 4. COMPENSATION

City will pay County as follows:

Payment Dates:	Service Period	Amount
01/04/2018	January 4, 2017 – January 3, 2018	\$44,309
01/04/2019	January 4, 2018 – January 3, 2019	\$45,417
01/04/2020	January 4, 2019 – January 3, 2020	\$46,552
01/04/2021	January 4, 2020 – January 3, 2021	\$47,716
01/04/2022	January 4, 2021 – January 3, 2022	\$48,909
Total		\$232,903

Invoices shall be sent by October 31st each year except for the first year of this Agreement. Payment for 2017 shall be due on January 4, 2018, or the effective date of execution of this Agreement, whichever is later. Payments for 2018-2021 Service Periods shall be due on or before each January 4th thereafter during the duration of this Agreement, including during any extension of the Parties' services as provided for in Section 3.2. All payments shall be made to County at the address designated for Notices under Section 9.7.

ARTICLE 5. GOVERNMENTAL IMMUNITY

Nothing herein is intended to serve as a waiver of sovereign immunity by either Party nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. Parties are state agencies or subdivisions as defined in Section 768.28, Florida Statutes, and shall be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law.

ARTICLE 6. GOVERNMENTAL POWERS, FUNCTIONS, AND DUTIES NOT TRANSFERRED

It is specifically understood and agreed that all of the governmental powers, functions, and duties as may be vested in City pursuant to Florida Law, or any other law, ordinance, or Charter provision of City not specifically transferred to or being carried out by County hereunder shall be and are retained by City.

ARTICLE 7. TERMINATION

7.1 This Agreement may be terminated for cause by the aggrieved Party if the Party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved Party identifying the breach. This Agreement may also be terminated for convenience by either Party. Termination for convenience by either Party shall be effective on the termination date stated in written notice provided to the other Party, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health, safety, or welfare. If County erroneously, improperly, or unjustifiably terminates for cause, such termination shall, at County's sole election, be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

7.2 Notice of termination shall be provided in accordance with the "NOTICES" Section of this Agreement except that notice of termination by the County Administrator, which the County Administrator deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" Section of this Agreement.

7.3 In the event this Agreement is terminated for convenience by any Party, County shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. The Parties acknowledge that each have received good, valuable, and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, for the right to terminate this Agreement for convenience.

ARTICLE 8. EEO COMPLIANCE

8.1 No Party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement.

8.2 By execution of this Agreement, County represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. The Parties hereby materially rely on such representation in entering into this Agreement.

ARTICLE 9. MISCELLANEOUS

9.1 Rights in Documents and Work. Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the joint property of County and Municipalities, and, if a copyright is claimed, County grants to Municipalities a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by County, whether finished or unfinished, shall be the joint property of County and the Municipalities.

9.2 Public Records. To the extent County is acting on behalf of the Parties as stated in Section 119.0701, Florida Statutes, County shall:

- a. Keep and maintain public records required were the Municipalities performing the services under this Agreement;
- b. Upon request from any Municipality, provide that Municipality with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- c. Ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of the Agreement and following completion of the Agreement if the records are not transferred to the Municipalities; and
- d. Upon completion of the Agreement, maintain at County, at no cost to the

Municipalities, all public records in possession of County upon termination of this Agreement or keep and maintain public records required were the Municipalities performing the service. If County transfers the records to the Municipalities, County shall destroy any duplicate public records that are exempt or confidential and exempt. If the County keeps and maintains public records upon completion of the Agreement, County shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Municipalities upon request in a format that is compatible with the information technology systems of County.

A request for public records regarding this Agreement may be made directly to any Party, who will be responsible for responding to any such public records requests.

IF CITY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CITY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE BROWARD COUNTY CUSTODIAN OF PUBLIC RECORDS, ASHOK RAICHOUDHURY AT (954)519-1490, araichoudhury@broward.org, 1 N. University Drive, #201, Plantation, FL 33324.

9.3 Truth-In-Negotiation Representation. County's compensation under this Agreement is based upon representations supplied to Municipalities by County, and County certifies that the information supplied, including without limitation in the negotiation of this Agreement, is accurate, complete, and current at the time of contracting. County shall be entitled to recover any damages it incurs to the extent such representation is untrue.

9.4 Public Entity Crime Act. The Parties represent that each is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. In addition to the foregoing, each Party further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether it has been placed on the convicted vendor list. Notwithstanding any provision in this Agreement to the contrary, if any representation stated in this paragraph is false, County shall have the right to immediately terminate this Agreement and be paid for all Services delivered through the date of termination.

9.5 Independent Contractor. County is an independent contractor under this Agreement. In providing Services under this Agreement, neither County nor its agents shall act as officers, employees, or agents of Municipalities. County shall not have the right to bind Municipalities to any obligation not expressly undertaken by County under this Agreement.

9.6 Third Party Beneficiaries. The Parties do not intend to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party

beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against any Party based upon this Agreement.

9.7 Notices. In order for a notice to a Party to be effective under this Agreement, notice must be sent via U.S. first-class mail with a contemporaneous copy via e-mail to the addresses listed below and shall be effective upon mailing. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this Section.

For County:

Broward County Environmental Protection and Growth Management Department
Attn: Ashok Raichoudhury
1 North University Drive
Mailbox 201
Plantation, FL 33324-2038
Email address: araichoudhury@broward.org

For City:

Lee R. Feldman, City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida 33301
Email address: LFeldman@fortlauderdale.gov

and

Larry Teich, Environmental Resources Supervisor
City of Fort Lauderdale
949 NW 38 Street
Fort Lauderdale, FL 33309
Email address: lteich@fortlauderdale.gov

9.8 Assignment and Performance. Neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by any Party without the prior written consent of the Parties. If any Party violates this provision, County shall have the right to immediately terminate this Agreement. County represents that each person and entity that will provide services under this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render services. County agrees that all services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such services shall equal or exceed prevailing industry standards for the provision of such services.

9.9 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof. Any Party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

9.10 Compliance with Laws. The Parties shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing the duties, responsibilities, and obligations pursuant to this Agreement.

9.11 Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

9.12 Joint Preparation. This Agreement has been jointly prepared by the Parties hereto, and shall not be construed more strictly against either Party.

9.13 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

9.14 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached hereto or referenced or incorporated herein and any provision of Articles 1 through 9 of this Agreement, the provisions contained in Articles 1 through 9 shall prevail and be given effect.

9.15 Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the Parties agree that the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida.

BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EACH PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY ANY OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTIES IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

9.16 Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Parties or others delegated authority or otherwise authorized to execute same on their behalf.

9.17 Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

9.18 Payable Interest

9.22.1 Payment of Interest. The Parties waive, reject, disclaim and surrender any and all entitlement each has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This paragraph shall not apply to any claim for interest if such application would be contrary to applicable law.

9.22.2 Rate of Interest. If, for whatever reason, the preceding subsection is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by any Party under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, 0.25% (one quarter of one percent) simple interest (uncompounded).

9.19 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference. The attached Exhibits are incorporated into and made a part of this Agreement.

9.20 Representation of Authority. Each individual executing this Agreement on behalf of a Party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such Party and does so with full legal authority.

9.21 Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

9.22 Use of County Logo. Municipalities shall not use County's name, logo, or otherwise refer to this Agreement in any marketing or publicity materials without the prior written consent of County.

9.23 Recording. This Agreement shall be recorded in accordance with the Florida Interlocal Cooperation Act of 1969. County shall record this instrument at its own expense.

(Remainder of page intentionally blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: County through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 20__, and City of Fort Lauderdale, signing by and through their officials as reflected below, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

By: _____
_____ day of _____, 20__

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By: Michael C. Owens 2/14/18
Michael C. Owens (Date)
Senior Assistant County Attorney


By: Maite Azcoitia 2/14/18
Maite Azcoitia (Date)
Deputy County Attorney

MCO/gmb
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INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND THE CITY OF FORT LAUDERDALE
AUTHORIZING BROWARD COUNTY TO CONDUCT WATER QUALITY MONITORING ACTIVITIES
REQUIRED BY NPDES MS4 PERMIT NO. FLS00017-004

CITY OF FORT LAUDERDALE

Attest:



Clerk

By 

Mayor-Commissioner

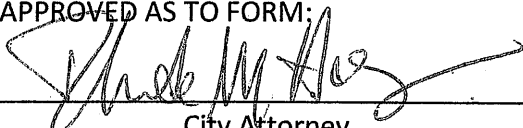
th day of January, 20 18

By 

Manager

th day of Dec., 20 17

APPROVED AS TO FORM:



City Attorney