

Appendix F

**Draft Interlocal Agreement related to Permit responsibilities and
duties**

Note:

The attached DRAFT Interlocal Agreement is intended to meet the Joint Control of Pollutants between co-permittees as well as Permit related Storm Water Management Plan Responsibilities for the NPDES Permit FLS00035.

**INTERLOCAL AGREEMENT PROVIDING JOINT CONTROL
OF POLLUTANTS AND RELATED STORM WATER
MANAGEMENT PLAN RESPONSIBILITIES**

BETWEEN

THE CITIES OF FORT MYERS,
BONITA SPRINGS AND CAPE CORAL; TOWN OF
FORT MYERS BEACH; BAYSIDE IMPROVEMENT/BAY CREEK
COMMUNITY DEVELOPMENT DISTRICT(S);
THE BROOKS OF BONITA SPRINGS COMMUNITY DEVELOPMENT DISTRICT; CATALINA
AT WINKLER PRESERVE COMMUNITY DEVELOPMENT DISTRICT; CFM COMMUNITY
DEVELOPMENT DISTRICT; COLONIAL COUNTRY CLUB COMMUNITY DEVELOPMENT
DISTRICT, EAST COUNTY WATER CONTROL DISTRICT; EAST MULLOCH
WATER CONTROL DISTRICT; GATEWAY SERVICES DISTRICT; HERITAGE PALMS
COMMUNITY DEVELOPMENT DISTRICT; LUCAYA COMMUNITY DEVELOPMENT
DISTRICT; MIROMAR LAKES COMMUNITY DEVELOPMENT DISTRICT; RIVER HALL
COMMUNITY DEVELOPMENT DISTRICT; RIVER RIDGE COMMUNITY DEVELOPMENT
DISTRICT; SAN CARLOS ESTATES DRAINAGE DISTRICT;
THE FLORIDA DEPARTMENT OF TRANSPORTATION; AND LEE COUNTY.

THIS INTERLOCAL AGREEMENT, by and between the Cities of Bonita Springs, Fort Myers, Cape Coral, and Town of Fort Myers Beach, municipal corporations of the State of Florida, hereinafter referred to collectively as the **MUNICIPALITIES**, the East County Water Control District, East Mulloch Water Control District, Gateway Services District, Bayside Improvement/Bay Creek Community Development District(s); Catalina at Winkler Preserve Community Development District, CFM Community Development District; Colonial Country Club Community Development District, Heritage Palms Community Development District, Lucaya Community Development District, Miromar Lakes Community Development District, River Hall Community Development District, River Ridge Community Development District and San Carlos Estates Drainage District, special districts of the State of Florida, created pursuant to their respective Florida Statutes, hereinafter referred to collectively as the **DISTRICT(S)**, the Florida Department of Transportation, an agency of the State of Florida, hereinafter referred to as **FDOT**, and the County of Lee, a political subdivision of the State of Florida, hereinafter referred to as **COUNTY**, is entered into this _____

WITNESSETH:

WHEREAS, the **MUNICIPALITIES, DISTRICTS, FDOT** and **COUNTY** desire to protect and promote the public health, safety and general welfare through the management of stormwater runoff; and

WHEREAS, the **MUNICIPALITIES, DISTRICTS, FDOT** and **COUNTY** desire to maintain and assist in the improvement of water quality and to preserve and enhance the environmental quality of streams and receiving waters; and

WHEREAS, pursuant to the Federal Clean Water Act (CWA), Section 402(p)(2), certain political entities are required to implement stormwater management programs within certain time frames; and

WHEREAS, pursuant to the Clean Water Act requirements, the United States Environmental Protection Agency (EPA) has developed regulations under the National Pollutant Discharge Elimination System (NPDES) permit program published as Part 40 of the Code of Federal Regulations (C.F.R.) Section 122.26 on November 16, 1990, 55 F.R. 47990; and

WHEREAS, Section 402(p)(2) of the CWA provides that storm water permits be required for large and medium municipal separate storm sewer systems, as determined from the 1990 census, and Appendix I to Section 122 listed the **COUNTY** as a medium municipal separate storm sewer system; and

WHEREAS, the EPA, Region IV, notified the **COUNTY** on December 16, 1995 of the action they were taking pursuant to the authority at Section 402(p) of the CWA and in an attempt to apply the regulations, has determined that the **MUNICIPALITIES** within the **COUNTY** are designated as part of the **COUNTY** municipal separate storm sewer system for the purposes of NPDES permitting; and

WHEREAS, 40 C.F.R. 122.26(d)(2)(i)(D) requires control through interagency agreement the contribution of pollutants from one portion of the municipal system to another portion of the municipal system; and

WHEREAS, the **MUNICIPALITIES, COUNTY** and **FDOT** are accountable for their separate storm sewers which outfall to the **DISTRICTS'** municipal separate storm sewer systems or to Waters of the United States; and

WHEREAS, each **DISTRICT** is accountable for its municipal separate storm sewer system where it outfalls to the **MUNICIPALITIES', FDOT's** or **COUNTY's** separate storm sewer systems or to Waters of the United States; and

WHEREAS, the **MUNICIPALITIES, DISTRICTS, FDOT** and **COUNTY** have approved the concept of intergovernmental cooperation to effectively manage and control discharge into separate storm sewer systems; and

WHEREAS, it is the mutual desire of the **MUNICIPALITIES, DISTRICTS, FDOT** and **COUNTY** to establish relationships and responsibilities for control of discharges to separate storm sewer systems as outlined in 40 C.F.R. Section 122.26;

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the parties hereto mutually agree as follows:

SECTION ONE: PURPOSE

The purpose of this Agreement is to set forth the relationships of the **MUNICIPALITIES, DISTRICTS, FDOT**, and **COUNTY** with respect to the general responsibilities of each entity to control the contribution of pollutants from one identified **MUNICIPALITY'S, DISTRICT'S**,

FDOT'S or **COUNTY'S** separate storm sewer system to another identified entity's separate storm sewer system.

The parties anticipate that the above named **MUNICIPALITIES, DISTRICTS, FDOT,** and **COUNTY** will enter into this Interlocal Agreement. This Interlocal Agreement shall be binding only upon parties that execute this Interlocal Agreement. No party that executes this Agreement shall be bound to its terms to a named party who has not entered into this Interlocal Agreement.

SECTION TWO: GENERAL RESPONSIBILITIES

- A. The **MUNICIPALITIES, DISTRICTS, FDOT** and **COUNTY**, as co-applicants, recognize that unless otherwise established through a separate agreement, each co-applicant is responsible for the discharges from within its own boundaries, unless the discharge occurs from an entity's separate storm sewer system that is located in another entity's jurisdictional boundary. The **MUNICIPALITIES, DISTRICTS, FDOT** and **COUNTY** shall be independently responsible for controlling the contribution of pollutants, as necessary to meet the requirement of 40 C.F.R. 122.26, from their respective separate storm sewer system to another **MUNICIPALITY, DISTRICT, FDOT** or **COUNTY** separate storm sewer system.
- B. **MUNICIPALITIES, DISTRICTS, FDOT** and **COUNTY** as Co-permittees must develop their site specific Spill Prevention and Response Program.
- C. **MUNICIPALITIES, DISTRICTS, FDOT** and **COUNTY** as co-permittees may use the Lee County Monitoring Plan to fulfill their monitoring obligations (if acceptable to the permitting agency, **FDEP**).

SECTION THREE: COPIES

Upon final execution of this Agreement, two (2) copies certified by the Lee County Clerk of Courts will be provided to each of the **MUNICIPALITIES, DISTRICTS, FDOT** and **COUNTY**.

SECTION FOUR: PERMIT IMPLEMENTATION

Unless otherwise established under separate agreement, each party shall be solely responsible for implementation of the NPDES Permit conditions and reporting requirements within the boundaries of its respective jurisdiction. The representative from the **MUNICIPALITIES, DISTRICTS, COUNTY** and **FDOT**, as specified in Section Seven of this Agreement, shall be responsible for assuring the terms of the Permit are acceptable to their entity. It is the intent of this Interlocal Agreement that the **MUNICIPALITIES, DISTRICTS, FDOT** and **COUNTY** agree, subject to budgetary constraints and other financial considerations, to complete implementation according to the schedule as approved by the **FDEP**.

SECTION FIVE: LEGAL AUTHORITY

The **MUNICIPALITIES, DISTRICTS, FDOT** and **COUNTY** agree that the co-applicants will consider, and if the **MUNICIPALITIES, DISTRICTS, FDOT** and **COUNTY** determine that such action is in the best interest of the **MUNICIPALITIES, DISTRICTS, FDOT** and **COUNTY**, will adopt, modify or amend any ordinances, resolutions, rules, regulations or policies which will tend to enforce the content of this Agreement all in accordance with 40 C.F.R. 122.26.

This Agreement shall be construed according to the laws of the State of Florida and any action regarding this Agreement shall be filed in the Twentieth Judicial Circuit in and for Lee County.

If any part of this Agreement or any application thereof to any person or circumstance is declared invalid for any reason, then such part, section, subsection, or other portion, or the prescribed application thereof, shall be severable and the remaining provisions of this Agreement, and all applications thereof not having been declared invalid, shall remain in effect.

SECTION SIX: BUDGET

The co-applicants hereto recognize that under their respective legal powers they are unable to obligate themselves legally to spend funds in excess of one (1) budget year; however, the co-applicants do hereby bind themselves to complete the term of this Agreement as they may be able to under the laws of the State of Florida, and agree to appropriate funds subject to budgetary constraints and other financial considerations.

SECTION SEVEN: COMMUNITY DEVELOPMENT DISTRICTS

Notwithstanding any other provision of this Agreement and unless otherwise agreed:

A. The **COUNTY** shall be responsible to provide within those portions of the boundaries of any **DISTRICT** lying within the unincorporated area of the **COUNTY**, the same inspection, surveillance and monitoring services as is provided to other unincorporated areas of Lee County in order to comply with the NPDES permit;

1. **DISTRICTS** shall be responsible for initial inspections and investigations of illicit discharges, connections, dumping or other related violations within their respective **DISTRICT**. Illicit discharges, connections, dumping or other related violations, shall first be reported to **DISTRICTS**. If necessary the District may request **COUNTY** assistance. In such cases, where the **COUNTY** becomes involved, either the corrective action report is copied to both the **DISTRICT** and the complainant or the written summary is provided the **DISTRICT** and a verbal report made to the complainant.
2. Public Education and outreach activities regarding illicit discharge identification and reporting will be facilitated by the **COUNTY** as part of the on-going illicit discharge identification course(s) or through notices published by the **DISTRICTS** using their community notice mechanism (news letters, bulletin boards, etc.).
3. Management and disposal of hazardous and toxic materials is handled thru the **COUNTY** Division of Solid Waste. Public Notices are made both through the media and direct mailing. These services are provided to **COUNTY** residents as part of the solid waste assessment.
4. **District** staff is encouraged to complete the Certified Stormwater Inspector's curriculum to promote the proper installation and maintenance of stormwater BMPs on construction sites. State permitted construction activity greater than 5 acres is inspected by **COUNTY** staff. Building permit applicants going through the

COUNTY permitting process will be afforded the same county-wide notifications as permit applicants for the remainder of unincorporated Lee County of the State's Generic Permit for Construction Activities for activities greater than one acre.

B. Each Municipality shall be responsible to provide within those portions of the boundaries of any **DISTRICT** lying within the boundaries of said **MUNICIPALITY**, the same inspection, surveillance and monitoring services as is provided to the other areas within the boundaries of said **MUNICIPALITY** in order to comply with the NPDES permit.

SECTION EIGHT: DISCLAIMER OF THIRD PARTY BENEFICIARIES

This Agreement is solely for the benefit of the parties hereto and no right or cause of action shall accrue to, by reason hereof, of for the benefit of any third party not a party hereto.

SECTION NINE: IDENTIFICATION OF DISCHARGES

The **MUNICIPALITIES, DISTRICTS, FDOT and COUNTY** agree to cooperate by the provisions of staff and equipment to identify the location of the source of pollutants if discharges are identified by the parties as coming from the outside of their respective systems.

SECTION TEN: NOTICES

All written notices to the **MUNICIPALITIES, DISTRICTS, FDOT and COUNTY** under this agreement shall be directed to the following addresses:

LISTINGS BELOW ARE TO BE UPDATED as NECESSARY and will be current at the time of signing:

LEE COUNTY

Mr. Tony Pellicer
Division of Natural Resources Management
1500 Monroe Street
Post Office Box 398
Fort Myers, FL 33902
(941)479-8129 - 479-8108 Fax.

CITY OF FORT MYERS

Mr. Roger P. Robinson, P.E.
Design Engineer
City of Fort Myers Engineering Department
Post Office Drawer 2217
Fort Myers, FL 33902
(941)332-6830 - 3326604 Fax.

CITY OF CAPE CORAL

Ms. Connie Jarvis, Biologist
City of Cape Coral Engineering Department
Post Office Box 150027
Cape Coral, FL 339150027
(941)574-0745 0 574-0861 Fax.

TOWN OF FORT MYERS BEACH

Ms. Marsha Segal-George
City Manager
City of Fort Myers Beach
Post Office Box 3077
Fort Myers Beach, Florida 33932

EAST COUNTY WATER CONTROL DISTRICT

David Lindsay
District Manager
101 Construction Lane
Lehigh Acres, FL 33936
941-368-0044 - 3683412 Fax

EAST MULLOCH WATER CONTROL DISTRICT

Mr. Alan Freeman
19091 Tamiami Trail, S.E.
Fort Myers, FL 33908
(941)267-8888 - 267-7622

GATEWAY SERVICES DISTRICT

Mr. Willard E. "Gene" Decker
Executive Administrator
Gateway Services District
13240 Commerce Lakes Drive
Fort Myers, FL 33913
(941)561-1313 - 561-1350 Fax.

and

Mr. Anthony P. Pires
Woodward, Pires & Lombardo, P.A.
801 Laurel Oak Dr.
Naples, FL 34108

RIVER RIDGE COMMUNITY DEVELOPMENT DISTRICT

Mr. James P. Ward, Assistant District Manager
10300 Northwest Eleventh Manor
Coral Springs, FL 33071
954-753-0380 - 954-755-6701 Fax.

and

Mr. Anthony P. Pires
Woodward, Pires & Anderson, P.A.
801 Laurel Oak Dr.

Naples, FL 33963
SAN CARLOS ESTATES DRAINAGE DISTRICT
Ms. Donna Szilagy
Post Office Box 728
Bonita Springs, FL 33959
BAYSIDE IMPROVEMENT COMMUNITY
DEVELOPMENT DISTRICT
Mr. James P. Ward, Assistant District Manager
10300 Northwest Eleventh Manor
Coral Springs, FL 33071
954-753-0380 - 954-755-6701 Fax.
and
Mr. Bruce Anderson, Esq., Attorney
Young, van Assenderp, Varnadoe & Benton
801 Laurel Oak Drive, Suite 300
Naples, FL 33963
941-597-2814 941-597-1 060 Fax
BAY CREEK COMMUNITY DEVELOPMENT
DISTRICT
Mr. James P. Ward, Assistant District Manager
10300 Northwest Eleventh Manor
Coral Springs, FL 33071
954-753-0380 - 954-755-6701 Fax.
and
Mr. Bruce Anderson, Esq., Attorney
Young, van Assenderp, Varnadoe & Benton
801 Laurel Oak Drive, Suite 300
Naples, FL 33963
941-597-2814 941-597-1 060 Fax
FLORIDA DEPT. OF TRANSPORTATION
Maintenance
Environmental Manager
Post Office Box 1249
Bartow, FL 33831
941-519-2560 - 941-534-7045 Fax.

SECTION ELEVEN: EFFECTIVE DATE: TERM

This Agreement shall become effective on the date a fully executed copy is filed with the Clerk of the Circuit Court for Lee County unless otherwise terminated by agreement of the parties, this Agreement shall remain in effect for so long as the party remains a co-permittee on the NPDES permit, and shall automatically be extended with NPDES permit renewals, as long as the parties continue as Co-Applicants.

This writing constitutes the entire Agreement between the parties and has been entered into voluntarily and with independent advice and legal counsel and has been executed by the authorized representative of each party on the date written below. Modifications to and waivers of the provisions herein shall be made only in writing by the parties hereto.

IN WITNESS WHEREOF, the lawful representatives of the co-applicants hereto have executed and affixed their official seals to this Agreement this _____ day of _____, 2010.

ATTEST: BOARD
CHARLIE GREEN, CLERK OF LEE
OF COUNTY COMMISSIONERS
COUNTY, FLORIDA
<-_ APPROVED AS TO FORM