

# Memorandum

MIAMI-DADE  
COUNTY

**Date:** November 3, 2009

Agenda Item No. 8(D)(1)(D)

**To:** Honorable Chairman Dennis C. Moss and Members,  
Board of County Commissioners

**From:** George M. Burgess  
County Manager

**Subject:** Resolution Authorizing the Execution of an Agreement between Miami-Dade County and the South Florida Water Management District for Delegation of Environmental Resource Permitting Authority to Miami-Dade County

## Recommendation

It is recommended that the Board of County Commissioners approve the attached resolution authorizing the execution of an agreement between Miami-Dade County and the South Florida Water Management District for delegation of Environmental Resource Permitting authority to Miami-Dade County (MDC).

## Scope

This agreement will involve countywide environmental permitting.

## Fiscal Impact/Funding Source

Permit fees otherwise due to the South Florida Water Management District (SFWMD) will be collected by MDC and these permit fees will cover the costs of the administrative tasks required to implement the agreement.

## Track Record/Monitor

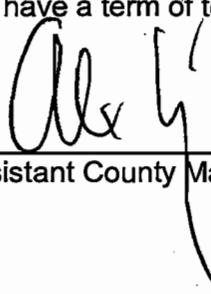
The Director of the Department of Environmental Resources Management will monitor this agreement.

## Background

Section 373.441 of the Florida Statutes authorized and encouraged the Florida Department of Environmental Protection (FDEP) and the SFWMD to enter into delegation agreements with local governments in which local governments would administer all or portions of the Environmental Resource Permitting (ERP) program within their jurisdictions, thereby providing for a more efficient and streamlined permitting process. Additionally, the County has identified the benefits of obtaining delegations to streamline regulation through Policy CON-7H of the Comprehensive Development Master Plan.

The proposed Agreement for Delegation (Attachment A) delineates the responsibilities of the SFWMD and MDC for the partial delegation of the ERP program from the SFWMD to MDC within the geographic boundaries of MDC, as set forth in the agreement. The delegation from the SFWMD grants MDC the authority to review and take agency action, including modifications, compliance, and enforcement, and to issue permits on behalf of the SFWMD relating to surface water management systems in uplands. Miami-Dade County, through its Department of Environmental Resources Management (DERM), has successfully administered a similar program on behalf of the SFWMD since 1995.

Accepting this delegation of the SFWMD's ERP program will significantly increase the overall permitting efficiency of MDC and will offer applicants a more local and accessible service. The proposed agreement will have a term of ten (10) years with an option to extend for two (2) additional ten (10) year terms.

  
Assistant County Manager



**MEMORANDUM**  
(Revised)

**TO:** Honorable Chairman Dennis C. Moss  
and Members, Board of County Commissioners

**DATE:** November 3, 2009

**FROM:** R. A. Cuevas, Jr.  
County Attorney

**SUBJECT:** Agenda Item No. 8(D)(1)(D)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_, 3/5's \_\_\_\_, unanimous \_\_\_\_ ) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor

Veto \_\_\_\_\_

Override \_\_\_\_\_

Agenda Item No. 8(D)(1)(D)

11-3-09

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT FOR DELEGATION OF ENVIRONMENTAL RESOURCE PERMITTING AUTHORITY TO MIAMI-DADE COUNTY

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA**, that this Board hereby approves the Agreement between Miami-Dade County and the South Florida Water Management District for delegation of Environmental Resource Permitting authority to Miami-Dade County, in substantially the form of the Agreement attached hereto and made a part hereof; authorizes the County Mayor or County Mayor's designee to execute this Agreement for and on behalf of Miami-Dade County; and authorizes the County Mayor or County Mayor's designee to execute amendments to this Agreement for extensions of time and to exercise the cancellation and renewal provisions contained herein.

The foregoing resolution was offered by Commissioner  
who moved its adoption. The motion was seconded by Commissioner  
and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman	
Jose "Pepe" Diaz, Vice-Chairman	
Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 3<sup>rd</sup> day of November, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

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

Approved by County Attorney as  
to form and legal sufficiency.

ANS

Abbie N. Schwaderer

# ATTACHMENT A

## AGREEMENT FOR DELEGATION OF A PORTION OF THE ENVIRONMENTAL RESOURCE PERMITTING PROGRAM BETWEEN THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT AND MIAMI-DADE COUNTY

### TABLE OF CONTENTS

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#### **PART I ADMINISTRATION OF AGREEMENT**

- SECTION 1: INTRODUCTION, PARTIES, AND PURPOSE
- SECTION 2: DEFINITIONS
- SECTION 3: EFFECTIVE DATE
- SECTION 4: TERM OF AGREEMENT
- SECTION 5: AMENDMENT OF AGREEMENT
- SECTION 6: CONFLICT BETWEEN AGREEMENTS
- SECTION 7: SEVERABILITY
- SECTION 8: TERMINATION OF AGREEMENT

#### **PART II PROGRAM RESPONSIBILITIES**

- SECTION 9: SCOPE OF DELEGATION
- SECTION 10: CRITERIA AND STANDARDS
- SECTION 11: PERMIT APPLICATION PROCESSING
- SECTION 12: COMPLIANCE AND ENFORCEMENT
- SECTION 13: SPECIAL CASE AGREEMENTS
- SECTION 14: EMERGENCIES AND ABNORMAL OCCURRENCES
- SECTION 15: NOTICES TO PARTIES

#### **PART III PROGRAM MANAGEMENT**

- SECTION 16: BUDGET
- SECTION 17: PERSONNEL
- SECTION 18: COMPUTER, SOFTWARE, DATA ENTRY SYSTEMS AND OTHER  
EQUIPMENT
- SECTION 19: STAFF TRAINING
- SECTION 20: RECORDS MANAGEMENT

- SECTION 21: PUBLICATION OF PRECEDENTIAL ORDERS  
SECTION 22: REPORTING REQUIREMENTS TO THE DISTRICT  
SECTION 23: AUDITS AND PERFORMANCE EVALUATIONS  
SECTION 24: PERMIT APPLICATION AND FEES

**PART IV  
MISCELLANEOUS PROVISIONS**

- SECTION 25: RIGHTS OF OTHERS

**EXHIBITS**

- EXHIBIT A: (1) MAP OF ERP DELEGATION AREA  
(2) MAP OF MICCOSUKÉE INDIAN RESERVATION AREA
- EXHIBIT B: OPERATING AGREEMENT BETWEEN THE U.S. ARMY CORPS OF ENGINEERS, THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT, THE ST. JOHN'S RIVER WATER MANAGEMENT DISTRICT, THE SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT, AND THE SUWANNEE RIVER WATER MANAGEMENT DISTRICT CONCERNING REGULATORY PROGRAMS FOR ACTIVITIES IN WETLANDS AND OTHER SURFACE WATERS (EFFECTIVE NOVEMBER 30, 1998)
- EXHIBIT C: OPERATING AGREEMENT CONCERNING REGULATION UNDER PART IV, CHAPTER 373, F.S., BETWEEN SOUTH FLORIDA WATER MANAGEMENT DISTRICT AND DEPARTMENT OF ENVIRONMENTAL PROTECTION (EFFECTIVE JULY 1, 2007).
- EXHIBIT D: STRICTER LOCAL STANDARDS

## **PART I ADMINISTRATION OF AGREEMENT**

### **SECTION 1 INTRODUCTION, PARTIES AND PURPOSE**

- A. Pursuant to Section 373.103(8), F.S., the SOUTH FLORIDA WATER MANAGEMENT DISTRICT (the "DISTRICT"), a multipurpose water management agency existing by virtue of Chapter 25270, Laws of Florida, 1949 and operating pursuant to Chapter 373, F.S., and MIAMI-DADE COUNTY, FLORIDA ("MDC"), a political subdivision of the State of Florida, hereby enter into this Environmental Resource Permitting Program Delegation Agreement ("DA").
- B. The Governing Board of the DISTRICT or the Governing Board's designee, and the County Mayor or the County Mayor's designee on behalf of MDC, are empowered to execute this DA and carry out the responsibilities set forth herein.
- C. The lands within the geographic boundaries of MDC are within the geographic boundaries and jurisdiction of the DISTRICT, and are therefore, subject to the rules, regulations, authority, and orders of the DISTRICT under Part IV, Chapter 373, F.S.
- D. The purpose of this DA is to delegate to MDC under authority contained in Sections 373.103(8) and 373.441, F.S., certain permitting, compliance, inspection, and enforcement responsibilities, within the geographic boundaries of MDC, associated with implementation of the State of Florida Environmental Resource Permit (ERP) program under Part IV, Chapter 373, F.S. This DA also sets forth the guidance and oversight responsibilities of the DISTRICT with respect to the delegated program. Further, this DA establishes the responsibilities of MDC regarding the maintenance of adequate levels of administrative, technical and financial capabilities to implement the ERP requirements which are delegated to MDC pursuant to this DA.
- E. The DISTRICT, under Sections 373.103(8) and 373.441, F.S., is authorized to delegate the authority and responsibility to implement portions of the ERP program; and to act, subject to the restrictions herein, on petitions for variances under Sections 373.414(17) and 403.201, F.S., to a county, municipality, or local pollution control program which has the financial, technical, and administrative capabilities and desire to implement and enforce the ERP program. The FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (the "DEPARTMENT"), under Section 373.441, F.S., has adopted Chapter 62-344 of the Florida Administrative Code (F.A.C.), which guides the participation of counties, municipalities, and local pollution control programs in an efficient streamlined permitting system by setting forth procedures and requirements for the delegation of parts of the environmental resource permitting program from water management districts in accordance with the provisions of Sections 373.103(8) and 373.441, F.S. In order to streamline the regulatory process with respect to State ERPs, the DISTRICT does hereby delegate a portion of its environmental resource permitting responsibilities to MDC.

## **SECTION 2 DEFINITIONS**

For purposes of implementing the delegated program, the definitions set forth in Sections 373.019, 373.403, 373.414, 373.4149(3), 403.031, 403.803, F.S., Chapters 62-4, 62-160, 62-302, 62-312, 62-330, 62-340, 62-341, 62-343, 62-344, 62-345, 62-520, 62-522, 62-550, 40E-1, 40E-4, 40E-40, 40E-41, and 40E-400, F.A.C., the South Florida Water Management District Basis of Review for Environmental Resource Permits (November 1, 2009 as may be amended from time to time), the Miami-Dade Home Rule Charter, and Chapter 24 of the Code of Miami-Dade County, Florida shall apply. Should a conflict exist under this Agreement between definitions in the MDC Code or the Home Rule Charter and the definitions in any of the above statutes or rules when MDC is acting under the authority of this DA the definitions in the above noted statutes and rules shall apply.

## **SECTION 3 EFFECTIVE DATE**

Provided it has been fully executed by all parties, this DA shall become effective upon the effective date of the Rule in which the DISTRICT adopts this DA by reference.

## **SECTION 4 TERM OF AGREEMENT**

This DA shall remain in effect for a period of ten (10) years from the effective date of the DA unless terminated by either party in accordance with Section 8 of this Agreement. Thereafter, this DA shall be automatically extended for two (2) successive ten (10) year terms unless terminated by the parties.

## **SECTION 5 AMENDMENT OF AGREEMENT**

This DA, including its referenced Exhibits, may be modified in writing at any time by mutual written agreement of both parties. Any amendment may be made in whole, by part, or by section, upon being fully executed by MDC and the DISTRICT. Upon adoption by the DISTRICT by rule, the amended agreement shall supersede the corresponding provisions of previous versions of this DA.

## **SECTION 6 CONFLICT BETWEEN AGREEMENTS**

This DA shall supersede any prior understanding, agreement, memorandum, letter, or other written or oral agreement between MDC and the DISTRICT regarding the delegation of authority to issue, enforce, and process any requirements relating to Environmental Resource Permits under Part IV, Chapter 373, F.S., or any other statutes or state rules with respect to ERP including, but not limited to, the Operating Agreement between South Florida Water Management District and Metropolitan Dade County (Department of Environmental Resources Management) dated March, 1995.

Notwithstanding the above, this DA does not supersede or affect in any way the Order of Delegation and Operating Agreement Between the Florida Department of Environmental Protection and Metropolitan Dade County Regarding the Regulation of Mangroves entered into November 21, 1995; and, the Memorandum of Agreement (MA-13-114 – Board of Trustees, DEP and Metropolitan Dade County) dated December 12, 1995 titled “Regarding Proprietary Authorization of Minor Projects on Sovereign Submerged Lands.”

## **SECTION 7 SEVERABILITY**

If any part of this DA is judicially, administratively or otherwise determined to be invalid or unenforceable, the other provisions of this DA shall remain in full force and effect provided both parties agree in writing that the material purposes of this DA can be implemented.

## **SECTION 8 TERMINATION OF AGREEMENT**

- A. Except as provided below, either party may terminate this DA without cause upon 90 days prior written notice to the other party. Within 30 days of a notice of termination of this DA, both parties shall make good faith efforts to preserve the DA through a negotiated resolution. If after such negotiations, one or more of the parties still wish to terminate this Agreement, except as otherwise agreed upon by the parties, before termination MDC shall complete processing of any pending applications submitted to MDC in accordance with this DA and refer all new applications to the DISTRICT. Notwithstanding the other provisions of this paragraph, upon the issuance of notice to terminate the DA, the DISTRICT may require transfer to the DISTRICT any one or more pending ERP permit applications and the original files on prior applications being reviewed or processed by MDC pursuant to this DA. The DISTRICT may intervene and assume the role of lead agency on pending enforcement actions which have been undertaken by MDC pursuant to this DA.
- B. Any notice to terminate this DA by either party shall be delivered by certified mail.

## **PART II PROGRAM RESPONSIBILITIES**

### **SECTION 9 SCOPE OF DELEGATION**

- A. **Activities for which Authority is Delegated to MDC**
1. MDC shall only be delegated the authority to review and take agency action, including modifications, compliance, and enforcement for the following activities and work located entirely within the geographic areas shown in Exhibit A(1):
    - a. Proposed activities which are not located within the landward extent of wetlands or other surface waters as delineated by Chapter 62-340, F.A.C.;
    - b. Activities which propose less than 40 acres total land area with positive stormwater outfall or the proposed activities are less than 320 acres total land area and less than 160 acres of impervious area with no positive stormwater outfall; and
    - c. Any surface water management system design plans which must be signed and sealed and dated by a registered professional<sup>1</sup>;

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<sup>1</sup> "Registered Professional" means a professional registered or licensed by and in the State of Florida and who possesses the expertise and experience necessary for the competent preparation, submittal and certification of documents and materials, and performing other services required in support of permitting, constructing, altering, inspecting, and operating a proposed or existing activity regulated under Part IV of Chapter 373, F.S. Examples of

- d. Any surface water management system which must meet the criteria specified in Rules 40E-4.301 and 40E-4.302, F.A.C.;
  - e. For any activity listed in a. through d. above that involves connecting with, placing structures in, or otherwise making use of Works of the District, the permittee must obtain a Works of the District permit from the DISTRICT pursuant to Chapter 40E-6, F.A.C., before any work authorized by MDC can occur. All permits or other authorizations issued or verified by MDC under this DA shall be so conditioned unless the Chapter 40E-6, F.A.C., permit has already been issued by the DISTRICT, in which case MDC shall ensure any permits they issue under this Agreement conform with any requirements of the Works of the District permit. Any permits that are issued by MDC before issuance of the Works of the District permit also shall be modified as needed to conform with any requirements of the Works of the District permit issued by the DISTRICT.
2. If a petition for variance is received by MDC, MDC shall publish, or shall require the petitioner for a variance to publish notice, in the Florida Administrative Weekly and in a newspaper of general circulation in the area affected, of proposed agency action; and MDC shall afford interested persons an opportunity for a hearing under Sections 120.569 and 120.57, F.S., on each petition for a variance. If no request for hearing is filed with MDC within 14 days of published notice, MDC may proceed to final agency action without a hearing;
  3. Issuing, waiving, or denying state water quality certification for those activities over which permitting responsibility has been delegated under this DA;
  4. Performing the duties and obligations of the DISTRICT in association with applications requiring review and final agency action by MDC under this DA for the following:
    - a. Providing concurrence with coastal zone consistency determinations in accordance with the procedures established by the Department under Florida's federally-approved Coastal Zone Management Program;
    - b. Distributing copies of Notices of Receipt of Applications to the U.S. Army Corps of Engineers, the State of Florida Fish and Wildlife Conservation Commission, the State of Florida Department of State, the State of Florida Department of Community Affairs, and other persons who have specifically requested a copy of the application in accordance with Rule 40E-1.6058, F.A.C.

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registered professionals, authorized pursuant to Chapter 455, F.S., and the respective practice acts by which they are regulated, are professional engineers licensed under Chapter 471, F.S., professional landscape architects licensed under Chapter 481, F.S., professional surveyors and mappers under Chapter 472, F.S., and professional geologists licensed under Chapter 492, F.S. Registered professionals may sign and seal only those drawings, documents, and calculations commensurate with their skills, background, knowledge, education, and experience, and in accordance with their respective practice acts.

5. MDC shall review and take final agency action on ERP permit applications for electrical distribution lines, communication cables and lines and gas distribution lines to the extent those lines and cables are serving or within a larger plan of development for which the DISTRICT does not review and take final agency action on under any other paragraph in Section 9.B. of this DA;

**B. ERP Program activities over which the DISTRICT shall retain authority.**

The DISTRICT, as determined in accordance with the Operating Agreement Concerning Regulation Under Part IV, Chapter 373, F.S., between South Florida Water Management District and Department of Environmental Protection (effective July 1, 2007) (DEP/District Operating Agreement) shall retain authority for the review and agency action for applications and petitions for, including modifications, compliance, and enforcement for the following activities under Part IV, Chapter 373, F.S.:

1. Activities or work located in whole or in part outside the geographic limits covered by this DA as shown in Exhibits A(1) and A(2). This includes:
  - a. Activities or work located within the Miccosukee Indian Reservation Area shown on Exhibit A(2), to the extent that the DISTRICT has jurisdiction over such activities or work;
  - b. Activities or work located in whole or in part in, on, or over state-owned, sovereignty submerged land, except as otherwise provided in the existing delegations--the "Order of Delegation and Operating Agreement Between the Florida Department of Environmental Protection and Metropolitan Dade County Regarding the Regulation of Mangroves" entered into November 21, 1995; and, the Memorandum of Agreement (MA-13-114 – Board of Trustees, DEP and Metropolitan Dade County dated December 12, 1995, titled "Regarding Proprietary Authorization of Minor Projects on Sovereign Submerged Lands.";
  - c. Activities or work located in whole or in part in, on, or over tidal waters of Biscayne Bay, its tidal tributaries, or its tidal wetlands, including activities or work located in whole or in part on the parcels recorded in the Public Records of MDC on the effective date of the DA that directly border Biscayne Bay, its tidal tributaries, or tidal wetlands, to the landward extent of such tidal waters, tributaries or wetlands, except as otherwise provided in the delegation agreements noted in Section 9.B.1.b of this DA. Notwithstanding the above, an MDC class I permit may be required for these activities; and
  - d. Activities or work located in whole or in part seaward of the Erosion Control Line of the Atlantic Ocean, or in areas where an Erosion Control Line does not exist, the mean high water line of the Atlantic Ocean.
2. Activities for which an application for an Environmental Resource Permit under Part IV, Chapter 373, F.S., was received by the DISTRICT prior to the effective date of this DA;

3. Activities or projects owned or operated by MDC;
4. Activities that include stormwater outfalls that directly discharge to tidal surface waters or tidally connected wetlands;
5. Mitigation banks;
6. Activities proposed by the State of Florida Department of Transportation;
7. Activities proposed by the U.S. Coast Guard or the United States Department of Defense or the United States Department of Homeland Security;
8. Activities proposed by or projects owned and operated by the DISTRICT;
9. Except as provided in Section 9.A. of this DA, petitions to process waivers and variances under Sections 120.542, and 373.414(17), F.S.;
10. Review any agency action on petitions for declaratory statements under Section 120.565, F.S., except such declaratory statements shall not address the applicability of any stricter local standards that are not part of this DA;
11. Aquaculture activities in accordance with Subsection 597.0015(1) which are not exempt pursuant to Subsection 373.406(8), F.S.;
12. Activities that require a Wetland Resource Management permit or a Management and Storage of Surface Waters permit under Subsections 373.414(11) through (16), F.S.;
13. All other permitting, compliance, and enforcement responsibilities associated with implementation of the regulatory and proprietary programs under Part IV, Chapter 373, F.S., and Chapters 253 and 258, F.S., not specifically delegated to MDC in Section 9.A. of this DA, including responsibilities for rulemaking and establishing state water quality standards.

## **SECTION 10 CRITERIA AND STANDARDS**

- A. When acting under this DA, MDC shall apply the provisions of Chapter 373, F.S. and the following rules and the DISTRICT's Basis of Review for Environmental Resource Permits: 40E-1; 40E-4; 40E-40; 40E-41, 40E-400; 62-4; 62-160; 62-302; 62-312; 62-330; 62-340; 62-341; 62-342; 62-343; 62-344; 62-345; 62-520; 62-522; and 62-550, F.A.C.
- B. When acting under this DA, MDC shall apply stricter local standards, within the meaning of Subsection 62-344.200(9), F.A.C., provided such standards: (1) have been identified by MDC in Exhibit D, (2) have been adopted in the Code of Miami-Dade County, Florida, as amended, and (3) are not in conflict with provisions of Part IV, Chapter 373, F.S., or the Environmental Resource Permit rules adopted thereunder, relating to water quality, water quantity and water resource related environmental criteria.
- C. Permit processing and final agency action by MDC regarding the issuance or denial of permits and compliance and enforcement of the conditions of permits issued by MDC

pursuant to the authority delegated in this DA, shall be governed by the provisions of Sections 120.569, 120.57(1) and (2), 120.573, 120.574, 120.595, 120.60, 120.62, 120.66, 120.665, 120.68, and 120.69, F.S.

- D. No ERP shall be issued by MDC until the proposed activity has been determined by MDC to be consistent with the adopted 2015-2025 Comprehensive Development Master Plan Land Use map.
- E. Except as provided in Section 11.A. of this DA, the power, ability, and authority of MDC to issue or deny a local permit or take other regulatory or enforcement action under MDC's own authority pursuant to the Code of Miami-Dade County, Florida, shall remain in full force and effect and shall not be limited, modified, or affected in any respect by this DA.

## **SECTION 11 PERMIT APPLICATION PROCESSING**

- A. When the ERP applications are complete within Section 120.60, F.S., timeframes, both the ERP and local permit can be approved pursuant to applicable laws. Permits issued pursuant to this DA shall be set forth in a single document which shall consist of: the permit conditions under Part IV, Chapter 373, F.S., and the rules adopted thereunder; and the local permit required pursuant to Chapter 24 of the Code of Miami-Dade County, Florida. In order for the ERP application to be deemed complete, the permit applicant must have documented that the proposed activity is consistent with the land use designation or classification contained in MDC's approved Comprehensive Development Master Plan land use map. However, if the ERP is complete but the local permit application is not complete, or does not meet all the conditions for issuance of the local permit, MDC shall take agency action on the ERP application within Section 120.60, F.S. timeframes unless the applicant has waived such timeframes. The issuance of an ERP does not relieve the permittee from obtaining the local permit required pursuant to Chapter 24 of the Code of Miami-Dade County, Florida.
- B. Applications for activities under Part IV, Chapter 373, F.S., submitted to the DISTRICT prior to the effective date of this DA and which are within the scope of delegation described herein shall continue to be reviewed and processed by the DISTRICT staff until issued, denied or withdrawn. Compliance and enforcement for activities approved by the DISTRICT pursuant to this Section shall also remain the responsibility of the DISTRICT unless specifically delegated in this DA or through a Special Case Agreement as provided below.
- C. Permit applications, petitions for variances or waivers, and petitions for formal determinations submitted to the incorrect agency pursuant to the terms of this DA shall be forwarded to the correct agency for further processing within 10 days of receipt, except where the agencies mutually agree that the application may be retained by the incorrect agency, in which case a Special Case Agreement shall be executed in accordance with Section 13 of this DA. However, any applicable permitting timeframes under Chapter 120, F.S. shall commence on the date the application was submitted to the first agency. A refund of any fee submitted to the incorrect agency that does not retain processing of the application shall be made to the applicant. Prior to transferring the application, the incorrect receiving agency shall coordinate with the proper reviewing agency and the applicant in order to inform all parties that the application has been submitted incorrectly

and is being forwarded.

- D. In the event MDC receives an ERP application for an activity located in whole or in part in, on, or over sovereign submerged lands, MDC shall forward the application to the DEPARTMENT or the DISTRICT, as appropriate in accordance with the DEP/District Operating Agreement. In the event MDC receives an ERP application where the applicant is unsure if the activity is located on sovereign submerged lands, or if MDC has reason to believe any portion of the work proposed in the application may be located on sovereign submerged lands, MDC shall immediately request a title determination from the DEPARTMENT's Division of State Lands and shall begin processing the ERP application. In the event the proposed activity is subsequently determined to be located on sovereign submerged lands, MDC shall forward the ERP application within three (3) business days to the appropriate agency and refund the application processing fee to the applicant. In the event no portion of the proposed activity is determined to be located on sovereign submerged lands, MDC shall process the ERP application.
- E. When MDC receives an application for an ERP which seeks approval for a project which would also require a permit pursuant to Chapter 24 of the Code of Miami-Dade County, Florida, and the Director of the Miami-Dade County Department of Environmental Resources Management, or the Director's designee, determines that a variance pursuant to Chapter 24 of the Code of Miami-Dade County, Florida, would be required to approve the local permit, then MDC shall not process the application pursuant to this DA. MDC shall forward the application to the DEPARTMENT or the DISTRICT within ten (10) days of receipt for processing by the appropriate agency in accordance with the DEP/District Operating Agreement.
- F. All timely filed petitions for formal administrative hearings on delegated ERP permitting applications processed by MDC shall be processed subject to the provisions of Chapter 28, F.A.C., Chapters 120 and 373, F.S. At the time of receipt of a petition, a copy of the notice of the petition and MDC action in response thereto, shall be mailed to the DISTRICT as set forth in paragraph 16 with a copy to the DISTRICT's Office of Counsel ("OC"). The DISTRICT shall provide assistance to MDC, as requested. The DISTRICT retains the right to be a party to any hearing or to intervene in any DOAH proceeding. Legal interpretation of DISTRICT rules shall be made by the DISTRICT. Legal interpretation of MDC ordinances shall be made by MDC. In the event that there is litigation concerning the interpretation of the DISTRICT's rules, then the DISTRICT shall provide testimony concerning the interpretation of those rules. To the extent that litigation involves interpretation of MDC ordinances, MDC shall provide testimony concerning the interpretation of those ordinances.
- G. For all petitions challenging agency action on delegated ERP permits or applications, MDC shall be responsible for preparation for the hearings, appearance at the hearings, and preparation and submittal of the proposed recommended orders to the assigned administrative law judge and the preparation of exceptions and responses to exceptions. Prior to all final hearings, MDC attorneys shall consult with DISTRICT attorneys regarding significant issues. All proposed recommended orders shall be provided to the DISTRICT's OC for review at least ten (10) days before the proposed recommended order is due. Upon mutual agreement of the parties to this DA, alternate time periods for the submittal and review of the proposed recommended orders may be adopted on a case

by case basis. DISTRICT comments shall be incorporated prior to filing the proposed recommended order. Upon receipt of the proposed recommended order, a copy shall be provided to the DISTRICT's OC and MDC shall confer with the DISTRICT's OC on the necessity for exceptions. MDC shall provide the proposed exceptions and responses to exceptions to the DISTRICT's OC with adequate time for comments to be provided by the DISTRICT's OC.

- H. The DISTRICT, at its discretion, may assume responsibility for appeals of final orders. If the DISTRICT determines that the DISTRICT will assume responsibility for the appeal, the DISTRICT shall notify MDC within ten (10) days of an appeal of a final order.

## **SECTION 12 COMPLIANCE AND ENFORCEMENT**

- A. MDC shall be responsible for conducting compliance inspections, and taking appropriate enforcement actions, on all permits issued by MDC pursuant to this DA. MDC shall also be responsible for inspections necessary to investigate complaints, sites of potential unauthorized activities which may be subject to permitting by MDC pursuant to this DA, and for referrals to the DISTRICT for follow-up of unauthorized activities not within the authority or jurisdiction of MDC. However, the DEPARTMENT's Bureau of Beaches and Coastal Systems shall have exclusive responsibility for compliance and enforcement of permit conditions that are contained in both a Coastal Construction Control Line (CCCL) permit and the corresponding ERP permit issued by MDC for the life of the CCCL permit. Upon expiration of such CCCL permit, MDC shall have lead agency compliance and enforcement responsibilities for such conditions for the life of the system authorized by the ERP permit issued by MDC.
- B. MDC shall be responsible for implementation of this DA and any ordinance adopted by MDC in order to fulfill its responsibilities under this DA as described herein. Under Sections 373.103(8), 373.129, and 373.441, F.S., MDC has all rights, power and authority to enforce the provisions of Chapter 373, F.S., and any rules and regulations adopted thereunder which are delegated under this DA in addition to all local ordinances. Notwithstanding Section 12(A) above, the DISTRICT shall retain the right to initiate enforcement action as described in Rule 62-344.700(2)(p), F.A.C. However, the DISTRICT shall not file a separate enforcement action after MDC has resolved a violation of the ERP program pursuant to this DA under its delegated authority through a final order, judgment, consent agreement, or other resolution acceptable to MDC.
- C. The DISTRICT and MDC shall coordinate their enforcement activities pursuant to this DA so as to maximize the staff resources available to each governmental unit. The DISTRICT shall notify MDC prior to initiating any enforcement action described in Sections 12(A) and 12(B) above. Except as otherwise provided herein, MDC shall be the lead agency with respect to enforcement actions initiated pursuant to the provisions of this DA.
- D. Pursuant to Section 373.430(7), F.S., all monies recovered under this section by MDC shall be used to enhance surface water improvement or pollution control activities. MDC has established a separate Trust Fund pursuant to Section 24-35 of the Code of Miami-Dade County, in which monies recovered in enforcement actions pursuant to this DA shall be deposited. Additionally, where appropriate, monetary penalties shall be deposited into either the Wetlands Trust Fund or the Biscayne Bay Environmental Enhancement

Trust Fund in accordance with the provisions of Chapter 24 of the Code of Miami-Dade County, Florida for purposes of environmental restoration, enhancement or protection including acquisition of lands for environmental protection purposes.

- E. In the event this DA is terminated, the responsibilities of the parties for compliance and enforcement of permits issued by MDC shall be MDC.

### **SECTION 13 SPECIAL CASE AGREEMENTS**

MDC and the DISTRICT may, by written agreement, enter into Special Case Agreements which would allow responsibilities for specific cases, such as permitting, compliance and enforcement, to deviate from the responsibilities outlined above. Such written Special Case Agreements under this Section shall be executed by the Director of the Miami-Dade County Department of Environmental Resources Management and the Executive Director of the DISTRICT or the Executive Director's designee. These Special Case Agreements may be entered into for one or more of the following five reasons:

1. Simplification of the regulation of a project that involves activities that cross the geographic boundaries established under this agreement;
2. An extensive regulatory history by the MDC or the DISTRICT, with a particular project that would make a deviation result in more efficient and effective regulation;
3. The incorrect agency has begun processing an application or petition and transfer of the application or petition would be inefficient; or
4. A conflict of interest, or the appearance thereof, exists which could be resolved by deviating from this Agreement; or
5. Significant efficiencies in the management of particular permits or specific cases may be achieved, in such a way that the deviation would better serve the statutory goals of Section 373 of the Florida Statutes.

### **SECTION 14 EMERGENCIES AND ABNORMAL OCCURRENCES**

DISTRICT and MDC agree to cooperate with each other and with other agencies as appropriate during emergencies as defined in Section 252.34(3), F.S., relating to delegated ERP sites. MDC's response actions shall be conducted in accordance with procedures established in the most current editions of the "Miami-Dade County Peacetime Emergency Plan", Chapter 24 of the Code of Miami-Dade County, and the State of Florida "Natural Disaster Emergency Contingency Plan". DISTRICT and MDC shall have the authority to take all actions authorized under an Executive Order of the Governor of the State of Florida, state law, and rules to effectuate appropriate responses to emergencies to protect the public health, safety and welfare, and to protect natural resources. Therefore, notwithstanding the divisions of responsibilities specified in this agreement, where the Governor has issued an Executive Order which declares an emergency and the DEPARTMENT or the DISTRICT has issued an emergency order to implement the Executive Order, any party to this agreement can review and take agency action on any activities regulated under Part IV, Chapter 373, F.S., in accordance with the provisions of the emergency orders.

## **SECTION 15 NOTICES TO PARTIES**

All notices required to be provided to the parties pursuant to this DA shall be in writing and addressed as follows:

*To the DISTRICT:*

Director, Environmental Resource Regulation Dept.  
SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
PO Box 24680  
West Palm Beach, Florida 33416-4680

*To the COUNTY:*

Director  
DEPARTMENT OF ENVIRONMENTAL RESOURCES MANAGEMENT  
Miami-Dade County  
701 N.W. 1st Court; 4th Floor  
Miami, Florida 33136

Or to such other addresses as may hereafter be provided by the parties in writing.

## **PART III PROGRAM MANAGEMENT**

### **SECTION 16 BUDGET**

MDC shall provide to the DISTRICT, upon request, a summary of its approved budget outlining funding and staffing relevant to the delegated program. MDC shall maintain adequate program funding, staffing, and equipment to comply with all the statutes, rules, and policies pertaining to the delegated programs and to implement the provisions of this DA.

### **SECTION 17 PERSONNEL**

MDC shall maintain a staff capable of performing the duties specified in this DA. A Table of Organization and descriptions of positions provided as part of the DA petition shall be updated at least annually or more frequently as appropriate and be provided to the DISTRICT within 30 days of modification.

### **SECTION 18 COMPUTER SOFTWARE, DATA ENTRY SYSTEMS, AND OTHER EQUIPMENT**

MDC shall maintain all computer hardware and software necessary to enter data into the DISTRICT's permit and compliance/enforcement tracking systems. The DISTRICT agrees to provide the necessary access and training in the use of those systems. MDC shall enter ERP permit application data into the DISTRICT'S permit application tracking system.

### **SECTION 19 STAFF TRAINING**

The DISTRICT shall timely invite MDC representatives to attend appropriate training sessions or workshops held by the DISTRICT. MDC staff responsible for implementing the terms of this

DA shall regularly attend training session and workshops related to the ERP program, including wetland delineation training, at the expense of MDC, to maintain and improve their knowledge and competence for the implementation of the programs delegated pursuant to this DA. The DISTRICT and MDC shall conduct periodic meetings to coordinate program implementation and resolve issues of mutual interest to the parties, with particular emphasis during the initial implementation of this DA. MDC shall be responsible for distributing copies of rules, agreements and materials referenced in this document or provided in training sessions and their subsequent updates to MDC staff.

## **SECTION 20 RECORDS MANAGEMENT**

MDC shall maintain organized files of all public records and materials prepared or received in connection with any official business taken pursuant to this DA in accordance with Chapter 119, F.S.

## **SECTION 21 PUBLICATION OF PRECEDENTIAL ORDERS**

Orders entered by the MDC pursuant to administrative hearings shall be published in the Florida Administrative Law Reporter, or on the Miami-Dade County internet site in a manner that is searchable in conformance with Subsection 120.53(1)(a)2.b, F.S., if they have precedential significance, as determined by the DISTRICT.

## **SECTION 22 REPORTING REQUIREMENTS TO THE DISTRICT**

MDC shall submit a written annual report to the DISTRICT which describes MDC's permitting and enforcement activities for the previous year under its responsibilities outlined in this DA. The report shall include:

1. Applications received by MDC for activities described in Section 9.A of this DA;
2. Petitions for Formal Administrative Hearings and the status or result;
3. A listing of all MDC enforcement and compliance activities as described in Section 12.A of this DA;
4. A summary of all formal wetlands determinations performed and de minimus impacts under Subsection 373.406(6), F.S. ; and
5. Petitions for Variances and Waivers, including their status.

## **SECTION 23 AUDITS AND PERFORMANCE EVALUATIONS**

- A. DISTRICT shall periodically conduct financial audits and program performance evaluations of MDC's implementation of the delegated ERP permitting program. MDC shall have adequate time (at least 20 working days) to complete pre-audit surveys and at least twenty (20) working days to comment on draft audit findings.
- B. The purpose of the financial audits is to determine if all fees for DISTRICT ERP permits, moneys for enforcement actions, and other state funds received by MDC for delegated

ERP activities have been properly accounted for and distributed. For the purpose of this DA, appropriate records of all monetary transactions shall be maintained on file for at least the previous three (3) years, or the period of delegation, whichever is less.

- C. The purpose of the performance evaluations is to determine if permit applications, monitoring programs, compliance efforts, and enforcement actions are being managed in accordance with applicable requirements and policies, and that appropriate files are being maintained for all delegated DISTRICT permitting actions taken, monitoring programs, enforcement actions, and other responsibilities assumed by MDC. Permitting files shall be retained permanently. Other files shall be maintained for the previous ten (10) years, or the period of delegation, whichever is less. DISTRICT will perform MDC performance evaluations semi-annually for the first two (2) years, and annually thereafter, or more frequently if warranted. Oversight of reports and data entry shall be performed on a continuous basis.

#### **SECTION 24 PERMIT APPLICATION AND FEES**

- A. The fees shall be the amounts established in Rule 40E-1.607, F.A.C., or as otherwise specifically established in DISTRICT rules as all or some may be amended from time to time. MDC may charge additional or separate local fees for any required MDC permits in addition to state fees charged for state ERP permit applications and notices. Within ninety (90) days of the execution of this DA, MDC shall seek to amend its fee schedule and incorporate fees equivalent to the DISTRICT fees to be charged to applicants seeking to obtain a delegated ERP permit.
- B. Beginning on the effective date of this DA, MDC shall retain one hundred percent (100%) of the permit application fees from delegated ERP permits.
- C. All permit application and notice fees and refunds of fees shall be processed in accordance with generally accepted accounting principles.

#### **PART IV MISCELLANEOUS PROVISIONS**

##### **SECTION 25 RIGHTS OF OTHERS**

Nothing in this DA expressed or implied is intended to confer upon any person other than the parties hereto any rights or remedies under or by reason of this DA.

IN WITNESS THEREOF, the parties hereto have caused this DA to be executed by their duly authorized representative(s) on the latest day and year noted below:

**MIAMI-DADE COUNTY, FLORIDA**  
**A political subdivision of State of Florida**

\_\_\_\_\_  
Carlos Alvarez  
Mayor  
Miami-Dade County  
111 Northwest 1st Street  
Suite 2910  
Miami, Florida 33128-1994

DATE: \_\_\_\_\_

Approved by MDC Attorney  
as to legal form and sufficiency. \_\_\_\_\_

**SOUTH FLORIDA WATER  
MANAGEMENT DISTRICT**

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Carol Wehle  
Executive Director  
South Florida Water Management District  
3301 Gun Club Road  
West Palm Beach, Florida 33406

DATE: \_\_\_\_\_

Approved by SFWMD Attorney  
as to legal form and sufficiency. \_\_\_\_\_