OFFICIAL FILE COPY
CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: December 2, 2008

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

To: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

From: George M. Burgess, County Manager

Resolution No. R-1315-08

Subject: Resolution Authorizing the Execution of an Interlocal Agreement between the City of Opa-locka and the Miami-Dade County Stormwater Utility for Stormwater Management

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Recommendation

It is recommended that the Board of County Commissioners approve the attached resolution authorizing the execution of an interlocal agreement with the City of Opa-locka for stormwater management. This agreement commences on October 1, 2008 and will remain in effect up to September 30, 2010. The agreement establishes relationships and responsibilities for operation and maintenance of stormwater systems shared by the City of Opa-locka and the Miami-Dade County Stormwater Utility.

Scope

The City of Opa-locka is in Miami-Dade County Commission Districts 1 and 2 (Comm. Jordan and Comm. Rolle).

Fiscal Impact/Funding Source

The City of Opa-locka shall be responsible for an estimated annual total of $261,343 in shared costs, and the annual shared costs to the Miami-Dade County Stormwater Utility will be $80,827. Therefore, the City of Opa-locka's two-year total will be approximately $522,686, and the Miami-Dade County Stormwater Utility's two-year total will be approximately $161,654. Without the proposed interlocal agreement, the County would be responsible for all costs.

Track Record/Monitor

The Director of DERM will monitor this agreement.

Background

On June 18, 1991, the Board of County Commissioners adopted Ordinance No. 91-66, creating the Miami-Dade County Stormwater Utility and establishing a uniform approach to stormwater management in Miami-Dade County. The municipalities were subsequently given the option to become part of the Miami-Dade County Stormwater Utility or to create their own local stormwater utility that provides a dedicated source of stormwater funding in accordance with Section 403, Florida Statutes.

On June 9, 1993, the City of Opa-locka adopted Ordinance No. 93-06, creating stormwater management regulations within their municipal code with their own stormwater utility as the funding source. On September 10, 2008, the City of Opa-locka passed and adopted Ordinance No. 08-11 (Attachment B), approving a two (2) year interlocal agreement for stormwater management between the City of Opa-locka and the Miami-Dade County Stormwater Utility (Attachment C). The proposed interlocal agreement establishes relationships and responsibilities for the operation and maintenance of stormwater systems shared by the City of Opa-locka and Miami-Dade County.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: December 2, 2008

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

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

Please note any items checked.

_____ "4-Day Rule" ("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

_____ Bid waiver requiring County Manager's written recommendation

_____ Ordinance creating a new board requires detailed County Manager's report for public hearing

_____ Housekeeping item (no policy decision required)

_____ No committee review

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(D)(1)(K)
12-2-08

RESOLUTION NO. **R-1315-08**

RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF OPA-LOCKA AND THE MIAMI-DADE COUNTY STORMWATER UTILITY FOR STORMWATER MANAGEMENT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE THE TERMINATION PROVISIONS THEREIN

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 interlocal agreement between the City of Opa-locka and the Miami-Dade County Stormwater Utility for stormwater management responsibilities and the use of applicable funds for stormwater management work by the City of Opa-locka and the Miami-Dade County Stormwater Utility in shared stormwater drainage systems near or within the boundaries of the City of Opa-locka, commencing on October 1, 2008, and expiring on September 30, 2010, in substantially the form attached hereto, and made a part hereof; and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of the Miami-Dade County Stormwater Utility; and to exercise the termination provisions contained therein.

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd day of December, 2008. 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: Kay Sullivan
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Peter S. Tell

ATTACHMENT A

1st Reading: JULY 23, 2008
2nd Reading/Public Hearing: SEPTEMBER 10, 2008
Adopted: SEPTEMBER 10, 2008
Effective Date: SEPTEMBER 10, 2008
Sponsored by: Vice-Mayor Johnson

ORDINANCE NO. 08-11

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OPA-LOCKA, FLORIDA; AUTHORIZING THE CITY MANAGER TO ENTER INTO AND EXECUTE A TWO-YEAR AGREEMENT WITH THE MIAMI-DADE COUNTY STORMWATER UTILITY FOR CONTRACT SERVICES PERTAINING TO STORMWATER MANAGEMENT AND MAINTENANCE OF SHARED STORMWATER DRAINAGE SYSTEMS IN AN AMOUNT NOT TO EXCEED TWO HUNDRED AND SIXTY ONE THOUSAND THREE HUNDRED AND FORTY THREE DOLLARS AND NO CENTS ($261,343.00) ANNUALLY; PAYABLE FROM ACCOUNT NO. 43-538340; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Water Resources Act of 1972, as set forth in Chapter 373, Florida Statutes, established and authorized local water management districts to manage Florida's rivers, lakes and canals; and

WHEREAS, Section 24-51 of the Miami-Dade County Code, implements the provisions of Section 403.0893(1), Florida Statutes, by creating a county-wide stormwater utility; and

WHEREAS, the Miami-Dade County Stormwater Utility, is responsible for the operation, maintenance and governance of the county-wide stormwater utility plan; and

WHEREAS, the utility is further responsible for the construction, operation and maintenance of stormwater management systems; and

WHEREAS, it is the intent of Miami-Dade County Stormwater Utility ("County") and the City of Opa-locka ("City") to establish responsibilities for the maintenance of shared stormwater systems by the City; and

WHEREAS, the County and the City both recognize that there are operating costs, as well as benefits, associated with maintaining shared stormwater drainage systems and a desire to share these costs in proportion to the drainage area, the services provided and the benefits received by each part; and

WHEREAS, the City Commission of the City of Opa-locka ("City Commission") desires to enter into a Two (2) Year Interlocal Agreement with the County which outlines the respective responsibilities for the maintenance of shared stormwater systems by the City and the County; and

WHEREAS, the City Commission has determined that it is in the best interest of the citizens and residents of the City to approve the authorization and execution of the Interlocal Agreement between the City and County for stormwater management.

THE COMMISSION OF THE CITY OF OPA-LOCKA HEREBY ORDAINS:

Section 1. Incorporation of Recitals: The foregoing recitals are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

Section 2. Authority of City Manager: The City Commission of the City of Opa-locka hereby authorizes the City Manager to enter into the Two (2) Year Interlocal Agreement between the City of Opa-locka and the Miami-Dade County Stormwater Utility for stormwater management and maintenance of shared stormwater systems in an amount not to exceed Two Hundred Sixty-One Thousand Three Hundred Forty Three Dollars and no cents ($261,343.00) as set forth in Exhibit "A", together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney.

Section 3. Conflict: All ordinances or Code provisions in conflict herewith are hereby repealed.

Ordinance No. 08-11

Section 4. Severability: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 5. Effective Date: This Ordinance shall, upon adoption, be codified in the City of Opa-locka Code of Ordinances and shall become effective as specified by the City of Opa-locka Code of Ordinances.

PASSED AND ADOPTED this 10 day of SEPTEMBER, 2008.

JOSEPH L. KELLEY
MAYOR

Attest:

Deborah S. Irby
City Clerk

Approved as to form and legal sufficiency:

Burnadette Norris-Weeks, Esq.
City Attorney

DATE

Moved by:	JOHNSON
Seconded by:	TYDUS
Commission Vote:	4-1
Commissioner Tydus:	YES
Commissioner Holmes:	NO
Commissioner Miller:	YES
Vice-Mayor Johnson:	YES
Mayor Kelley:	YES

MIAMI-DADE COUNTY, FLORIDA

ATTACHMENT B

TWO (2) YEAR INTERLOCAL AGREEMENT

between

THE CITY OF OPA-LOCKA
AND
THE MIAMI-DADE COUNTY STORMWATER UTILITY
FOR
STORMWATER MANAGEMENT

MIAMI-DADE COUNTY
STORMWATER UTILITY (305) 372-6656
DEPARTMENT OF ENVIRONMENTAL RESOURCES MANAGEMENT
701 NORTHWEST FIRST COURT, SUITE 400
MIAMI, FL 33136

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TWO (2) YEAR
INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF OPA-LOCKA (CITY)
AND
THE MIAMI-DADE COUNTY STORMWATER UTILITY (UTILITY)
FOR STORMWATER MANAGEMENT

THIS TWO (2) YEAR INTERLOCAL AGREEMENT, [the "Agreement"] by and between the Miami-Dade County Stormwater Utility, a public body corporate and politic, through its governing body, the Board of County Commissioners of Miami-Dade County, Florida [hereinafter sometimes referred to as "UTILITY",] and the City of Opa-locka a Florida Municipal Corporation, through its governing body, the Opa-locka City Council of the City of Opa-locka, Florida [hereinafter sometimes referred to as "CITY",] is entered into as follows:

WITNESSETH

WHEREAS, Section 403.0893, Florida Statutes, authorizes the establishment of stormwater utilities to plan, construct, operate, and maintain stormwater management systems; and

WHEREAS, the Board of County Commissioners of Miami-Dade County, did, by adoption of Miami-Dade County Ordinances No. 91-66 and Ordinance No. 91-120, as amended by Ordinance Nos. 92-44 and 92-86, create a stormwater utility [hereinafter referred to as the "UTILITY",] and which UTILITY may, operate within a municipality or municipalities; and

WHEREAS, it is the intent of the UTILITY and the CITY, through this Agreement, to establish relationships and responsibilities for the maintenance of shared stormwater systems by the CITY and the UTILITY; and

WHEREAS, the UTILITY and the CITY recognize that there are operating costs, as well as benefits, associated with maintaining shared stormwater drainage systems; and

WHEREAS, the UTILITY and the CITY want to share these costs in proportion to the drainage area the service provided and the benefits received,

Now, therefore, in consideration of the mutual promises and covenants contained herein and the mutual benefits to be derived from this Agreement, the parties hereto agree as follows:

ARTICLE I
PURPOSES

The UTILITY and the CITY enter into this Agreement to further the following purposes:

(1) to protect and promote the public health, safety, and general welfare through the management of stormwater run-off;

(2) to maintain and improve water quality and preserve and enhance the environmental quality of the receiving waters;

(3) to control flooding that results from rainfall events;

(4) to deter unmanaged rainwater from eroding sandy soils and causing sedimentation;

(5) to deter the disruption of the habitat of aquatic plants and animals;

(6) to promote intergovernmental cooperation in effectively and efficiently managing stormwater run-off;

(7) to maintain and repair shared stormwater systems located within the limits of the drainage service areas in accordance with the approved plans. These include maintaining canals, and any required maintenance of flow control structures and stormwater pump stations and their mechanical and electrical components; maintaining stormwater systems as determined by conditions of the system, prevailing environmental conditions, and the level of service established.

(8) to provide a mechanism for the UTILITY and the CITY to share and allocate the cost of maintaining and repairing shared stormwater drainage systems as stated in (7), above.

ARTICLE II
DEFINITIONS

Agreement shall mean this document, including any written amendments, attachments, and other written documents, which are expressly incorporated by reference.

Stormwater Management Plans shall mean stormwater management plans developed by both the CITY and by the UTILITY, to meet the required level of service as established in their respective stormwater management programs or master plan pursuant to Florida Statute 403.0891.

City Stormwater Utility Budget shall mean the CITY's developed and approved fiscal year budget which includes a component for stormwater management of its drainage system, including capital and operating outlays necessary to maintain the level of service established in the CITY's Stormwater Management Plans.

/C

Utility Stormwater Budget shall mean the UTILITY's developed and approved fiscal year budget for stormwater management of its drainage system, including capital and operating outlays necessary to maintain the level of service established in the Utility's Approved Plans.

Shared Stormwater Drainage System shall mean that portion of the drainage system owned by either the CITY or the UTILITY to which both the CITY and the UTILITY contribute stormwater runoff and which is further identified in Attachment "A".

Costs allocable to the City shall mean those portions of the actual maintenance and operating outlays budgeted by the UTILITY in its yearly budget process, which are allocated to the CITY based on the CITY's relative stormwater runoff contribution to the shared portion of the stormwater drainage system of the UTILITY.

Costs allocable to the Utility shall mean those portions of the actual maintenance and operating outlays budgeted by the CITY in its yearly budget process, which are allocated to the UTILITY based on the UTILITY's relative stormwater runoff contribution to the shared portion of the stormwater drainage system of the CITY.

Operating Outlays shall mean expenses budgeted by the CITY and the UTILITY which are actual expenses incurred in each fiscal year, which due to their nature are considered reoccurring expenses to sustain yearly stormwater drainage operations.

Capital Outlays shall mean expenses budgeted by the CITY and the UTILITY which are actual expenses incurred in each fiscal year, which due to their nature are considered non-reoccurring and producing a long term benefit to the users. The yearly charges allocable to the CITY or to the UTILITY shall be that amount prorated, plus interest charges and administrative fees, for no longer than the calculated useful life of the capitalized item in no case exceeding 20 years. A separate Interlocal Agreement is required for any approved Capital Outlays that may be amortized beyond the life of this Agreement.

Fiscal Year shall mean the period beginning on October 1 and ending on September 30 of the following year.

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, and which, by the exercise of due diligence, such parties shall not have been able to avoid. Such acts or events DO NOT INCLUDE inclement weather (except as noted above) or the acts or omissions of subcontractors, third-party contractors, material men, suppliers, or their subcontractors, unless such acts or omissions are otherwise encompassed by the definition set forth above.

Maintenance is defined by, and limited to, the tasks listed in the Attachment "B" or other related stormwater drainage tasks agreed to by both parties' Project Managers.

Project Manager shall mean the persons designated by the CITY and by the UTILITY to serve as the representative of each for the purposes of exchanging communications and to issue and receive directives pursuant to and within the powers provided under this Agreement.

Written notice shall mean written communication to and from the Project Managers.

ARTICLE III
STATEMENT OF WORK

The CITY AND the UTILITY shall fully and timely perform all work tasks described in this Statement of Work:

The CITY shall maintain and repair shared stormwater systems located within the limits of the drainage service areas in accordance with this Agreement and the CITY's stormwater management plan. The CITY shall be responsible for maintaining aesthetic conditions on the canals by providing for litter and minor debris removal as needed.

The UTILITY shall maintain, repair and enhance shared stormwater management systems located within the limits of the drainage service areas in accordance with the Attachment "A" and Attachment "B".

The CITY's relative stormwater runoff contribution to the UTILITY's shared drainage system and the UTILITY's relative stormwater runoff contribution to the shared drainage system is depicted in Attachment "A".

ARTICLE IV
TERM OF THE AGREEMENT

The term of this Agreement shall be for a period of up to two (2) years commencing on October 1, 2008 and ending on September 30, 2010, provided, however, either party may terminate this Agreement without cause prior to the expiration date upon one (1) year's advance written notice to the other party of its decision to terminate this Agreement. Maintenance costs incurred by the UTILITY, prior to the Board of County Commissioners' approval of this Agreement, shall not be reimbursed to the UTILITY by the CITY.

ARTICLE V
CITY AND UTILITY RESPONSIBILITIES

A. Upon the request of either the CITY or the UTILITY, each shall share information in matters related to operations, maintenance, design and construction costs and cost allocation determinations associated with shared drainage systems.

B. The CITY and the UTILITY shall provide notice to each other, as provided, in this Agreement designating their respective Project Manager. Each shall promptly notify each

other of any change in the Project Manager designation by written notice as specified in this Agreement.

C. Prior to each fiscal year, the CITY will provide the UTILITY and the UTILITY will provide the CITY with a summary of shared maintenance costs on shared drainage systems. For ensuing fiscal years the CITY's and the UTILITY's estimated costs showing the shared costs allocation shall be available and transmitted to each other by March 1 of each year.

D. Commencing with fiscal year 2008-2009, and after approval of the Agreement, the costs allocable to the CITY and the costs allocable to the UTILITY based on the relative stormwater runoff contribution to each other's shared portion of the stormwater drainage systems are included in this Agreement and presented as described in Attachment "B". Estimated total expenditures for the two (2) year term of this Agreement is also included and shall not be exceeded.

E. All shared costs are subject to review during the CITY's and UTILITY's preliminary budget process and may be accepted by the CITY and the UTILITY and are to be finalized by April 1 of each year.

These costs shall be the minimum estimated costs necessary to accomplish the functions of the CITY and the UTILITY pertaining to the shared stormwater drainage systems.

F. Upon mutual written agreement of the parties' respective Project Managers, the tasks and levels of service set forth in Attachment "B" may be adjusted due to prevailing environmental conditions, maintenance needs, or ownership, provided that the total annual estimated expenditures are not exceeded.

G. Payments by the CITY are to be made within 30 days after the bill presentation. In the event of a dispute on the paid amount, the CITY may notify the UTILITY of the nature of the dispute and the UTILITY shall make arrangements for the pertinent records to be made available for inspection by the CITY, as indicated under Article V (H) of this Agreement. The UTILITY shall reimburse the CITY for any amounts determined to have been overpaid by the CITY within 30 days after verification of the overpayment.

H. The CITY and the UTILITY shall maintain financial records for 5 years pertaining to this Agreement, and shall make them available within reasonable time after requesting them for inspection and copying by either the CITY or the UTILITY, at the place where the records are maintained.

I. The CITY and the UTILITY shall each be responsible for procuring independently all necessary permits in the performance of their respective work under this Agreement.

J. The CITY and the UTILITY shall each comply with all applicable regulations, ordinances and laws in effect in the performance of this Agreement.

ARTICLE VI
COMPENSATION/CONSIDERATION

A. It is the intent and understanding of the parties that this Agreement is solely for the CITY and the UTILITY. No person or entity other than the CITY or the UTILITY shall have any rights or privileges under this Agreement in any capacity whatsoever, either as a third-party beneficiary or otherwise.

ARTICLE VII
DEFAULT

CITY Event of Default

Without limitation, the failure by the CITY to substantially fulfill any of its material obligations in accordance with this Agreement, unless such failures are justified by Force Majeure, shall constitute a "CITY event of default". The UTILITY will not be required to provide one year prior notice as required under Article IV before terminating for default. The UTILITY may terminate immediately after issuing written notice of default.

If a CITY event of default should occur, the UTILITY shall have all of the following cumulative and independent rights and remedies:

1. The right to declare that this Agreement together with all rights granted to CITY are terminated, effective upon such date as is designated by the UTILITY.

2. Any and all rights and remedies provided under federal laws and the laws of the State of Florida.

UTILITY Event of Default

Without limitation, the failure by the UTILITY to substantially fulfill any of its material obligations in accordance with this Agreement, unless such failures are justified by Force Majeure, shall constitute a "UTILITY event of default". The CITY will not be required to provide one year prior notice as required under Article IV before terminating for default. The CITY may terminate immediately after written notice of default.

If a UTILITY event of default should occur, the CITY shall have all of the following cumulative and independent rights and remedies:

1. The right to declare that this Agreement together with all rights granted to UTILITY are terminated, effective upon such date as is designated by the CITY.

2. Any and all rights and remedies provided under federal laws and the laws of the State of Florida.

ARTICLE VIII
GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The UTILITY and the CITY agree to submit to service of process and jurisdiction of the State of Florida for any controversy or claim arising out of or relating to this Agreement or a breach of this Agreement. Venue for any court action between the parties for any such controversy arising from or related to this Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, or in the United States District Court for the Southern District of Florida, in Miami-Dade County, Florida.

ARTICLE IX
ENTIRETY OF AGREEMENT

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. 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 all 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 both parties hereto or their authorized representatives.

ARTICLE X
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.

ARTICLE XI
RIGHTS OF OTHERS

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

ARTICLE XII
REPRESENTATION OF CITY

The CITY represents that this Agreement has been duly authorized, executed and delivered by the City Council of the City of Opa-locka, as the governing body of the CITY and it has the required power and authority to perform this Agreement and has granted the City Mayor or his Designee the required power and authority to perform this Agreement.

ARTICLE XIII
REPRESENTATION OF UTILITY

The UTILITY represents that this Agreement has been duly approved, executed and delivered by the Board of County Commissioners, as the governing body of the UTILITY, and it has granted the Miami-Dade County Mayor or his Designee the required power and authority to perform this Agreement.

ARTICLE XIV
WAIVER

There shall be no waiver of any right related to this Agreement unless in writing and 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.

ARTICLE XV
INVALIDITY OF PROVISIONS, SEVERABILITY

Wherever possible, each provision of the Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, provided that the material purposes of this Agreement can be determined and effectuated.

ARTICLE XVI
INDEPENDENT CONTRACTOR

The CITY shall perform all work and services described as an independent contractor and not as an officer, agent, servant, or employee of the UTILITY. CITY shall have control of the work performed in accordance with the terms of this Agreement and of all persons performing the same, and CITY shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any.

The UTILITY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of the CITY. UTILITY shall have control of the work performed in accordance with the terms of this Agreement and of all persons performing the same, and UTILITY shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any.

Nothing in this agreement shall be construed as creating a partnership or joint venture between the UTILITY and the CITY.

ARTICLE XVII
INDEMNIFICATION

The CITY shall indemnify and hold harmless the UTILITY and its officers, employees, agents and instrumentalities to the extent and within the limitations of Section 768.28, Fla. Stat., subject to the provisions of that Statute from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the UTILITY 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 Contract by the CITY or its employees, agents, servants, partners, principals or subcontractors. The CITY 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 UTILITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The CITY expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the CITY shall in no way limit the responsibility to indemnify, keep and save harmless and defend the UTILITY or its officers, employees, agents and instrumentalities as herein provided.

The UTILITY does hereby agree to indemnify and hold harmless the CITY to the extent and within the limitations of Section 768.28, Fla. Stat., subject to the provisions of that Statute whereby the UTILITY shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of $100,000, or any claim or judgments or portions thereof, which, when totaled with all other occurrences, exceeds the sum of $200,000, from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise solely as a result of the negligence of the UTILITY. However, nothing herein shall be deemed to indemnify the CITY from any liability or claim arising out of the negligent performance or failure of performance of the CITY or any unrelated third party.

IN WITNESS THEREOF, the parties through their duly authorized representatives hereby execute this Agreement with a commencement date of October 1, 2008.

Attest:

CITY OF OPA-LOCKA, FLORIDA
780 Fisherman Street, Ste. #335
Opa-locka, FL 33054
Attn: Jannie Beverly, City Manager
(305) 953-2823

_____ _____
City Clerk Date

Authorized signature on behalf
of the City of Opa-locka, Florida.

By: _____ _____
City Manager Date

MIAMI-DADE COUNTY, FLORIDA

By: _____ _____
County Manager Date

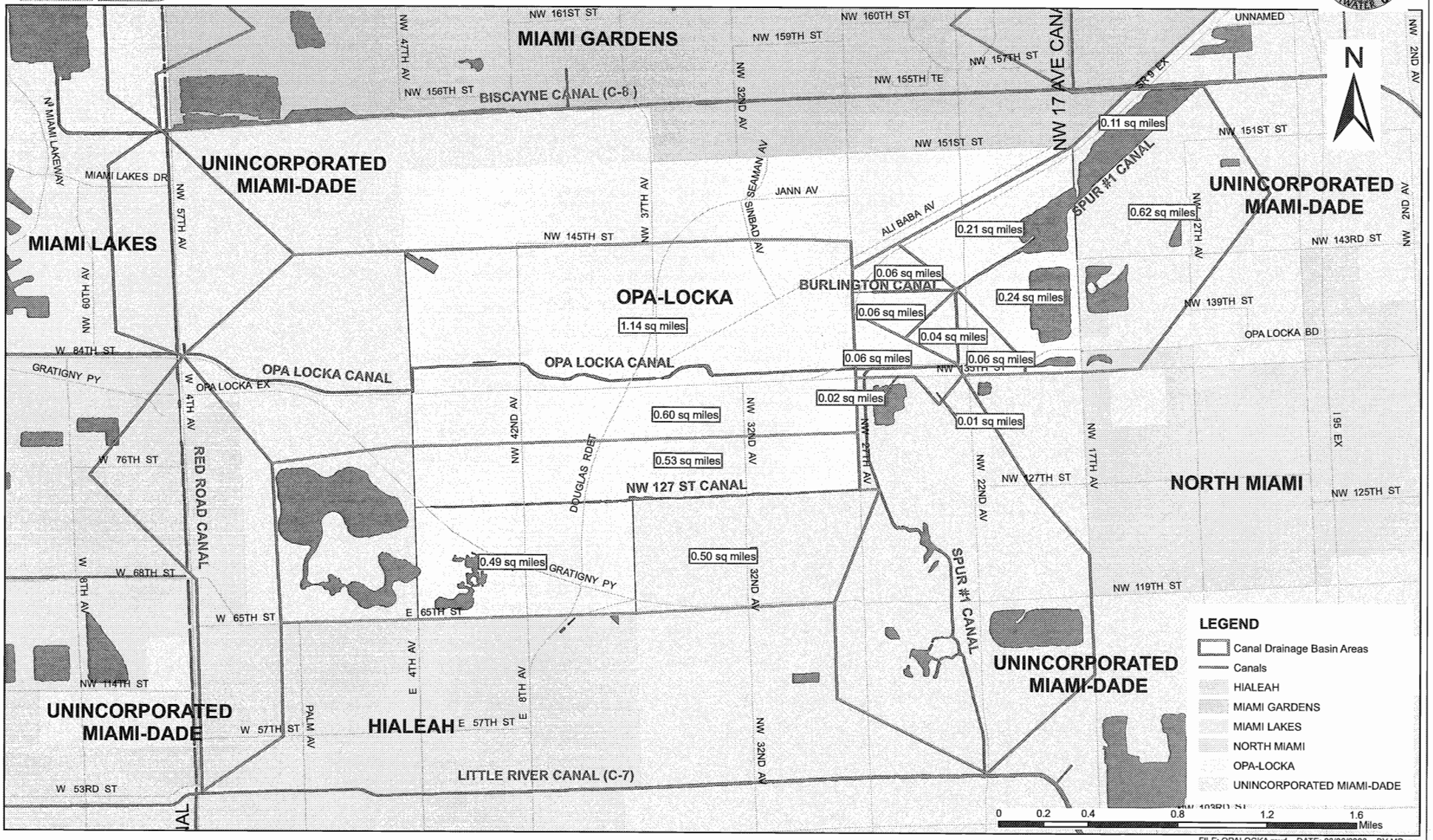
For the Board of County Commissioners, Miami-Dade County, Florida, as Governing Body of the Miami-Dade County Stormwater Utility.

Stephen P. Clark Center
111 N.W. 1 Street
Miami, Florida 33128

HARVEY RUVIN, CLERK
Attest:

By: _____ _____
Deputy Clerk Date

CITY OF OPA-LOCKA
CANAL DRAINAGE BASIN AREAS



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ATTACHMENT "A"

CITY OF OPA-LOCKA
CANAL DRAINAGE AREAS and % SHARE

CANAL	TOTAL AREA (SQ MILES)	SUB-AREAS	% SHARE
BURLINGTON CANAL (NW 22 Ave. to NW 26 Ave.)			
1. Opa-locka	0.12	(0.06+0.06)	100%
2. Miami-Dade County	0.00	0	0%
SPUR #1 CANAL (Biscayne Canal to NW 27 Ave.)			
1. Opa-locka	0.63	(0.21+0.24+0.04+0.06+0.06+0.02)	46%
2. Miami-Dade County	0.74	(0.11+0.62+0.01)	54%
OPA-LOCKA CANAL (NW 27 Ave. to NW 47 Ave.)			
1. Opa-locka	1.74	(1.14+0.60)	100%
2. Miami-Dade County	0.00	0	0%
NW 127 STREET CANAL (NW 27 Ave. to NW 47 Ave.)			
1. Opa-locka	1.02	(0.53+0.49)	67%
2. Miami-Dade County	0.50	(0.50)	33%

ATTACHMENT "B"
City of Opa Locka FY 2008/09 to FY 2009/10

Canal Maintenance Estimated Costs

Selected Level of Service Shown Shaded

Culvert Cleaning - Above Water

		Cycles per Year					
Culverts	Canal	1	2	3	4	% Share	Cost
1.0	Burlington from N.W. 22 Ave. to 26 Ave.	$200	$400	$600	$800	100	$800
3.0	Spur #1 from Biscayne to NW 27 Ave.	$600	$1,200	$1,800	$2,400	46	$1,104
5.0	Opa-locka from N.W. 27 Ave. to 47 Ave.	$1,000	$2,000	$3,000	$4,000	100	$4,000
4.0	127 Street from N.W. 27 Ave. to 45 Ave.	$800	$1,600	$2,400	$3,200	67	$2,144
	sub-total	$2,600	$5,200	$7,800	$10,400		$8,048

City Cost at Current Level of Service **$8,048**

Culvert Cleaning - Below Water

		Cycles per Year					
Culverts	Canal	1	2	3	4	% Share	Cost
1.0	Burlington from N.W. 22 Ave. to 26 Ave.	$480	$960	$1,440	$1,920	100	$480
3.0	Spur #1 from Biscayne to NW 27 Ave.	$1,440	$2,880	$4,320	$5,760	46	$662
5.0	Opa-locka from N.W. 27 Ave. to 47 Ave.	$2,400	$4,800	$7,200	$9,600	100	$2,400
4.0	127 Street from N.W. 27 Ave. to 45 Ave.	$1,920	$3,840	$5,760	$7,680	67	$1,286
	sub-total	$6,240	$12,480	$18,720	$24,960		$4,829

City Cost at Current Level of Service **$4,829**

Mechanical Harvesting (submerged, emergent, and bank acres treated) - 2 Cycles proposed for first 2-yrs.

		Cycles per Year					
Acres	Canal	1	2	3	4	% Share	Cost
2.3	Burlington from N.W. 22 Ave. to 26 Ave.	$5,592	$11,185	$16,777	$22,369	100	$11,185
9.9	Spur #1 from Biscayne to NW 27 Ave.	$23,760	$47,520	$71,280	$95,040	46	$21,859
17.0	Opa-locka from N.W. 27 Ave. to 47 Ave.	$40,800	$81,600	$122,400	$163,200	100	$81,600
17.2	127 Street from N.W. 27 Ave. to 45 Ave.	$41,280	$82,560	$123,840	$165,120	67	$55,315
	sub-total	$111,432	$222,865	$334,297	$445,729		$169,959

City Cost at Current Level of Service **$169,959**

Chemical/Herbicide Treatment (submerged, emergent, and bank acres treated)

		Cycles per Year					
Acres	Canal	1	2	3	4	% Share	Cost
2.8	Burlington from N.W. 22 Ave. to 26 Ave.	$1,118	$2,237	$3,355	$4,474	100	$4,474
11.6	Spur #1 from Biscayne to NW 27 Ave.	$4,640	$9,280	$13,920	$18,560	46	$8,538
19.5	Opa-locka from N.W. 27 Ave. to 47 Ave.	$7,800	$15,600	$23,400	$31,200	100	$31,200
19.4	127 Street from N.W. 27 Ave. to 45 Ave.	$7,760	$15,520	$23,280	$31,040	67	$20,797
	sub-total	$21,318	$42,637	$63,955	$85,274		$65,008

City Cost at Current Level of Service **$65,008**

ATTACHMENT "B"
City of Opa Locka FY 2008/09 to FY 2009/10

Mowing - Flat

Acres	Canal	Cycles per Year 1	2	3	4	% Share	Cost
0.0	Burlington from N.W. 22 Ave. to 26 Ave.	$0	$0	$0	$0	100	$0
0.0	Spur #1 from Biscayne to NW 27 Ave.	$0	$0	$0	$0	48	$0
2.4	Opa-locka from N.W. 27 Ave. to 47 Ave.	$624	$1,248	$1,872	$2,496	100	$2,496
4.4	127 Street from N.W. 27 Ave. to 45 Ave.	$1,144	$2,288	$3,432	$4,576	67	$3,066
	sub-total	$1,768	$3,536	$5,304	$7,072		$5,562

City Cost at Current Level of Service **$5,562**

Mowing - Slope

Acres	Canal	Cycles per Year 1	2	3	4	% Share	Cost
0.0	Burlington from N.W. 22 Ave. to 26 Ave.	$0	$0	$0	$0	100	$0
0.0	Spur #1 from Biscayne to NW 27 Ave.	$0	$0	$0	$0	46	$0
1.2	Opa-locka from N.W. 27 Ave. to 47 Ave.	$600	$1,200	$1,800	$2,400	100	$2,400
1.4	127 Street from N.W. 27 Ave. to 45 Ave.	$700	$1,400	$2,100	$2,800	67	$1,876
	sub-total	$1,300	$2,600	$3,900	$5,200		$4,276

City Cost at Current Level of Service **$4,276**

Obstruction Removal (contingency)

4 hours	Canal	Cycles per Year 1	2	3	4	% Share	Cost
1.0	Burlington from N.W. 22 Ave. to 26 Ave.	$640	$1,280	$1,920	$2,560	100	$640
3.0	Spur #1 from Biscayne to NW 27 Ave.	$1,920	$3,840	$5,760	$7,680	46	$883
2.0	Opa-locka from N.W. 27 Ave. to 47 Ave.	$1,280	$2,560	$3,840	$5,120	100	$1,280
2.0	127 Street from N.W. 27 Ave. to 45 Ave.	$1,280	$2,560	$3,840	$5,120	67	$858
	sub-total	$5,120	$10,240	$15,360	$20,480		$3,661

City Cost at Current Level of Service **$3,661**

TOTAL ANNUAL COST	**$342,170**	
UTILITY SHARE ANNUAL COST	**$80,827**	
Municipality SHARE ANNUAL COST	**$261,343**	Annual
Municipality TOTAL 2 YEAR COST	**$522,686**	2 Year

Level of Service and Cost Estimates Provided by Miami-Dade County Public Works Department

Does not include aesthetic cleaning such as debris or litter removal

Costs are not to exceed the total annual amounts and are subject to change based on environmental conditions and COLA