RESOLUTION NO. 2014-111

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO AN INTERLOCAL AGREEMENT, ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1", BETWEEN MIAMI-DADE COUNTY AND THE CITY OF HIALEAH FOR THE PURPOSE OF ESTABLISHING THE TERMS, CONDITIONS AND RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO THE CARE AND CUSTODY OF THE PHASE 1 BIOWATCH SAMPLING KIT PROVIDED TO THE CITY OF HIALEAH BY THE U.S. FEDERAL GOVERNMENT.

WHEREAS, it is in the best interest of the health, safety and welfare of the City of Hialeah and its residents to enter into an Interlocal Agreement between Miami-Dade County and the City of Hialeah for the transfer of Phase I Sampling Kit.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this resolution are hereby adopted and incorporated by reference as if fully set forth herein.

Section 2: The Mayor and the City Council of the City of Hialeah, Florida hereby enter into an Interlocal Agreement, attached hereto and made a part hereof as Exhibit "1", between Miami-Dade County and the City of Hialeah for the purpose of

establishing the terms, conditions and responsibilities of the parties with respect to the care and custody of the Phase I BioWatch Sampling Kit provided to the City of Hialeah by the U.S. Federal Government.

PASSED AND ADOPTED this 23 day of September, 2014.

Isis Garcia-Martinez
Council President

Attest:

Approved on this 25 day of September, 2014.

Marbelys Fatjo, Acting City Clerk

Mayor Carlos Hernandez

Approved as to legal sufficiency and as to form:

Lorena Bravo, Acting City Attorney

Resolution was adopted by a unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".

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INTERLOCAL AGREEMENT
BETWEEN MIAMI-DADE COUNTY AND THE CITY OF HIALEAH

THIS INTERLOCAL AGREEMENT, (the "Agreement") by and between the Miami-Dade County, a public body corporate and politic, through its governing body, the Board of County Commissioners of Miami-Dade County, Florida (the "COUNTY"), and the City of Hialeah, a public body corporate and politic, through its governing body, the Hialeah City Council of the City of Hialeah, Florida (the "CITY") is entered into this _____ day of _____, 2014 for the purpose of establishing the terms, conditions and responsibilities of the parties with respect to the care and custody of the air quality related "Phase 1 Sampling Kit" provided by the federal government and its agents that is intended to be maintained by the CITY.

I. RESPONSIBILITIES OF THE COUNTY

The COUNTY agrees to the following:

1. The COUNTY, through the County's Department of Regulatory and Economic Resources Division of Environmental Resources Management ("RER DERM"), shall inventory and deliver the Phase 1 Sampling Kit to the CITY, through the City of Hialeah Fire Department.

2. The COUNTY, through RER DERM, shall initiate requests to the federal government and/or its agents for replacement items for the Phase I Sampling Kit upon notification from the CITY, through the City of Hialeah Department Fire Department, that replacement items are needed.

II. RESPONSIBILITIES OF THE CITY

The CITY agrees to the following:

1. The CITY, through its Fire Department, shall identify and assign a responsible individual to track and maintain the condition of the Phase 1 Sampling Kit, ensuring its continued use.

2. The CITY, through its Fire Department, shall ensure that the assigned responsible individual performs an initial inventory upon receipt of the Phase 1 Sampling Kit, ensure that the Phase I Sampling Kit is checked periodically on at least a monthly basis and ensure that the COUNTY, through RER DERM, is notified in writing in a timely manner of any items that require replacement, due either to consumption or passed expiration date.

3. The CITY, through its Fire Department, shall properly store the Phase I Sampling Kit to ensure its efficacy and inform the COUNTY, through RER DERM, of the current location of the Phase I Sampling Kit, including any relocations.

EXHIBIT
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4. The CITY, through its Fire Department, shall be responsible for transporting the Phase I Sampling Kit to and from the location(s) designated by the COUNTY, through RER DERM, upon notification of a BioWatch Actionable Result (BAR), and the CITY, through its Fire Department, shall perform the Phase I sampling as required.

5. The CITY, through its Fire Department, shall ensure that no contents of the Kit are utilized for training purposes, unless such training uses only the expired components of the Phase I Sampling Kit and such training has been approved in writing by the County, through RER DERM.

6. In the event that this AGREEMENT is terminated at any time, the custody and ownership of any and all Phase 1 Sampling Kits and their contents will revert to the COUNTY, through RER DERM, and the CITY, through its Fire Department, shall arrange to have any and all Phase I Sampling Kits and their contents delivered to the COUNTY, through RER DERM, immediately.

III. TERMINATION

The parties agree that this AGREEMENT shall continue in effect until terminated. This AGREEMENT may be terminated by either party upon written notice to the other party, without cause. Said notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. For the COUNTY, such written notice shall be delivered to: Patrick Wong, Chief, Air Quality Management Division, 701 NW 1st Court, Miami, Florida 33136. For the CITY, such written notice shall be delivered to: Chief Daniel C. Fernandez, 83 E. 5th Street, Hialeah, Florida 33010. Termination of this AGREEMENT shall be effective when both of the following conditions are met: (1) the receipt of written notice, as provided above, and (2) the CITY, through its Fire Department, has delivered any and all Phase I Sampling Kits back to the County, through RER DERM.

IV. MODIFICATION

Modifications of provisions of this AGREEMENT shall only be valid when they have been reduced to writing and duly signed by both parties.

V. BENEFIT/ASSIGNMENT

Subject to provisions herein to the contrary, this AGREEMENT shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and permitted assigns. No party may assign this AGREEMENT without the prior consent of the other party, the consent of which shall be given at that party's sole discretion.

VI. INDEMNIFICATION

City shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by City or its

employees, agents, servants, partners, principals or subcontractors. 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 County, where applicable, including appellate proceedings, and shall pay all costs, judgments and attorney's fees which may issue thereon. Provided, however, this indemnification shall only be to the extent and within the limitations of Section 768.28 Fla. Stat., subject to the provisions of that Statute whereby City shall not be held liable to pay a personal injury or property damage claim or judgment or portions thereof, which, when totaled with all other claims or judgment by any one person which exceeds the sum of $200,000, or any claim or judgment by any one person which, when totaled with all other claims or judgment paid by City arising out of the same incident or occurrence, exceed the sum of $300,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the negligence of City.

VII. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The County 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.

VIII. NO PAYMENT OF FUNDS BETWEEN THE PARTIES

This AGREEMENT is an inter-cooperation agreement between the COUNTY and the CITY, and no payments will be made or due from the COUNTY to the CITY or from the CITY to the COUNTY in exchange for or with respect to the actions and responsibilities outlined in this agreement.

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.

X. 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.

XI. 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.

XII. 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.

XIII. EFFECTIVE DATE AND TERM OF AGREEMENT

This AGREEMENT shall be effective on the date of execution by both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Interlocal Agreement to be executed by their officials thereunto duly authorized.

Miami-Dade County

By: _____
Jack Osterholt, Deputy Mayor

Date: _____

City of Hialeah

By: _____

Date: _____