Memorandum

MIAMI-DADE COUNTY

Date: June 12, 2007

GOE
Agenda Item No. 2UU

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

From: George M. Burgess, County Manager

Subject: Amendment Number One to the Interim Consumptive Use Authorization and Agreement

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RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) adopt the attached resolution approving Amendment Number One to the Interim Consumptive Use Authorization and Agreement (Agreement) between Miami-Dade County and the South Florida Water Management District (District). Amendment Number One deletes the project completion schedule for the South Miami Heights Reverse Osmosis Water Treatment Plant Project and the Biscayne Bay Coastal Wetlands Pilot Project and adds a project completion schedule for the City of Hialeah Reverse Osmosis Water Treatment Plant Project and the South Miami Heights Water Treatment Plant Groundwater Recharge Project.

In addition, Amendment Number One modifies the way the Biscayne Aquifer baseline is calculated, which is the volume of raw water Miami-Dade County is authorized to withdraw from the Biscayne Aquifer.

SCOPE OF AGENDA ITEM

The impact of Amendment Number One is county-wide as it will allow the County to proceed with the development of two alternative water supply projects which will provide water supply for the entire County's water supply service area.

FISCAL IMPACT/FUNDING SOURCE

Amendment Number One does not have a fiscal impact on Miami-Dade County. The changes specified in Amendment Number One are transparent to Miami-Dade County in fiscal terms as the projects delineated in Amendment Number One are included in the Miami-Dade Water and Sewer Department's (MDWASD) Multi-Year Capital Plan.

TRACK RECORD/MONITOR

MDWASD has developed a web-based application to track and monitor the requirements of the Agreement. MDWASD has complied with all the milestones required in the Agreement and is requesting Amendment Number One to update certain completion schedules in the Agreement.

BACKGROUND

On April 25, 2006, the Board adopted Resolution R-449-06 authorizing the execution of the Agreement with the District. The terms of the Agreement require Miami-Dade County to complete the requirements of a 20-year consumptive use permit application which includes the design and construction of two (2) pilot projects to demonstrate the feasibility of using treated wastewater to re-hydrate coastal wetlands and recharge the Biscayne Aquifer and the construction of a reverse osmosis water treatment plant. The Agreement was approved by the Governing Board of the District on May 10, 2006. Since the effective date of the Agreement, MDWASD has been working diligently to meet the milestones

specified in the Agreement. At this time, certain completion dates in the Agreement need to be revised, Amendment Number One contains those modifications as agreed to between the County and the District. The following is a summary of the scope of Amendment Number One.

1. Paragraph 20 of Amendment Number One revises the timelines in Paragraphs IX a, b, and c (on pages 16 and 17 of the Agreement) to include specific dates regarding the review and approval process for the Alternative Water Supply Plan prepared by MDWASD.

a. The District will review MDWASD's proposed Alternative Water Supply Plan submitted to the District on May 10, 2007 and will provide comments to MDWASD by June 11, 2007.
b. MDWASD will revise the Alternative Water Supply Plan according to the District's comments and will re-submit the Alternative Water Supply Plan to the District by August 10, 2007.
c. The District will approve or reject MDWASD's revised Alternative Water Supply Plan by September 10, 2007.

2. Paragraphs 21, 23, and 27 of Amendment Number One delete Paragraphs IX i. and IX k. (on pages 17 and 18 of the Agreement) which are associated with the construction of the Floridan aquifer reverse osmosis treatment at the new South Miami Heights Water Treatment Plant. Paragraph 21 adds a requirement for the completion of the City of Hialeah Reverse Osmosis Plant by December 23, 2011. It also adds Paragraphs IXl. and IXm. to include the following completion dates.

l. Approval for the Joint Participation Agreement with the City of Hialeah from the Board of County Commissioners by June 26, 2007.
m. Issuance of the "Notice to Proceed" to the consultant to design and build the City of Hialeah Reverse Osmosis Plant by January 31, 2008.

The County has been negotiating with the City of Hialeah on the design, construction, and funding of the reverse osmosis water treatment plant. The Joint Participation Agreement for the reverse osmosis water treatment plant between the County and the City of Hialeah is on the agenda today.

3. Paragraph 22 of Amendment Number One adds the requirement that the County complete the construction of the facilities to provide groundwater recharge using reclaimed water to withdraw 22.5 MGD of Biscayne Aquifer water from the South Miami Heights Water Treatment Plant Wellfields by December 31, 2014. This project consists of upgrading the treatment process at the South District Wastewater Treatment Plant (SDWWTP) to produce reclaimed water to recharge the groundwater which meets regulatory standards and to pipe it to a location upstream outside of the wellfield protection area of the South Miami Heights Water Treatment Plant Wellfields. There is an item on today's agenda which is requesting approval to advertise for design and construction management services for the SDWWTP, it is for the treatment process portion of this project, the design of the pipeline from the SDWWTP to the recharge area will be done by MDWASD Engineering Division.

4. Paragraph 24 of Amendment Number One modifies Paragraph IX (on page 16 of the Agreement) which requires that the County develop "a plan for the development of alternative sources to meet 100% of the County's 20 year increased demand from the Biscayne Aquifer over historic use that occurred when the permit application was filed in 2003".

In April 2007, the District adopted new regulations that established a new method to determine the baseline. The new rule states that "the maximum quantity of water withdrawn by the applicant from the permitted source during any consecutive twelve month period during the five years preceding April 1, 2006". Amendment Number One is modifying the language to state that the allocation will be

determined in accordance with District rules in effect at the time the Governing Board of the District reaches a decision.

5. Paragraph 25 of Amendment Number One updates the Liquidated Damages applicability of Paragraph 36 (on pages 22, 23 and 24 of the Agreement) based on the projects added and deleted in Amendment Number One.

6. Paragraph 26 of Amendment Number One modifies the requirements in Paragraph IXj. (on page 18 of the Agreement) to delete the requirement to advertise for a construction contract for two pilot reuse projects, to rehydrate the coastal wetlands in South Miami-Dade County with reclaimed water and to modify the description of the second pilot project to read "the aquifer recharge pilot reuse project associated with the South Miami Heights Water Treatment Plant".

The first project is a 1 MGD Coastal Wetlands Rehydration Demonstration Plant Project and the second project is a 20,000 gallons per day Aquifer Recharge Pilot. On May 4, 2007, MDWASD completed the 90% design requirements for the Aquifer Recharge Pilot and the treatment plant for the Coastal Wetlands Rehydration Demonstration Plant Project. As part of the design process for the Coastal Wetlands Rehydration Demonstration Plant Project, on February 20 and May 18, 2007, MDWASD held Stakeholders' Workshops to receive public comments on the design of the project. The stakeholders expressed many concerns about the water quality of the reclaimed water, the design of the receiving wetlands portion of the project, and the monitoring plan. Based on the stakeholders input and the Alternative Water Supply Plan that the County submitted on May 10, 2007, the District has determined that although the project would benefit the water resources and may ultimately be required as part of the Comprehensive Everglades Restoration Plan or the District's Acceler8 Program, implementation of the project is not necessary to obtain the requested consumptive use permit.

7. Paragraph 27 of Amendment Number One restates that Paragraph IXk. of the Agreement is deleted.

8. Paragraph 28 of Amendment Number One modifies Paragraph 38 of the Agreement to read that the Agreement will be terminated on the date of final agency action on MDWASD's pending consolidated permit application.

MDWASD continues to closely work with the District to meet the remaining milestones specified in the Agreement, to date, thirty six milestones have been completed and nineteen are remaining, MDWASD will keep the Board apprised accordingly.

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: July 10, 2007

FROM: Murray A. Greenberg
County Attorney

SUBJECT: Agenda Item No.

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.

RESOLUTION NO. _____

RESOLUTION APPROVING EXECUTION OF AMENDMENT NUMBER ONE TO THE INTERIM CONSUMPTIVE USE AUTHORIZATION AND AGREEMENT BETWEEN SOUTH FLORIDA WATER MANAGEMENT DISTRICT AND MIAMI-DADE COUNTY TO MODIFY THE SCHEDULE OF DELIVERABLES REQUIRED BY THE ORIGINAL AGREEMENT

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 execution of Amendment Number One to the Interim Consumptive Use Authorization and Agreement between South Florida Water Management District and Miami-Dade County to modify the schedule of deliverables required by the original agreement, in substantially the form attached hereto and made a part hereof; and authorizes the Mayor or his designee to execute same for and on behalf of Miami-Dade County, subject to execution by South Florida Water Management District and approval by the County Attorney's Office.

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:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Joe A. Martinez	Dennis C. Moss
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairman thereupon declared the resolution duly passed and adopted this . 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

Approved by County Attorney as
to form and legal sufficiency.

By: _____
Deputy Clerk

Dave Murray

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
3301 Gun Club Road
West Palm Beach, FL 33406

ORDER NO. 07-XXX-CO-WU

IN RE: AMENDMENT TO MIAMI-DADE COUNTY
INTERIM CONSUMPTIVE USE
AUTHORIZATION AND AGREEMENT

AMENDMENT TO AGREEMENT

Pursuant to Chapter 373, Florida Statutes, and the rules promulgated there under, this AMENDMENT TO THE MIAMI-DADE COUNTY INTERIM CONSUMPTIVE USE AUTHORIZATION AND AGREEMENT ("Amendment to the Agreement") is entered into between the SOUTH FLORIDA WATER MANAGEMENT DISTRICT (SFWMD) and MIAMI-DADE COUNTY (the County or MDWASD) (both referred to as "the Parties") by mutual agreement make the following Findings of Fact, Ultimate Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The SFWMD is a public corporation of the State of Florida existing by virtue of Chapter 25270, Laws of Florida, 1949, and operating pursuant to Chapter 373, Florida Statutes, and Title 40E, Fla. Admin. Code, as a multipurpose water management with its principal office at P.O. Box 24680, 3301 Gun Club Road, West Palm Beach, FL 33416-4680.
2. Miami-Dade County is a political subdivision of the State of Florida and is a person within the meaning of Section 373.016(15), Florida Statutes.

The County, through the Miami-Dade Water and Sewer Department (MDWASD), is responsible for the operation of public water supply systems.

3. MDWASD has pending before the SFWMD Permit Application # 040511-5 to consolidate authorizations under three existing consumptive use permits ("consolidated permit application"), including Hialeah/Preston application to renew CUP No. 13-00037-W; request for permit modification for the Alexander Orr CUP No. 13-00017-W; and an existing consumptive use permit for the South Dade Water System CUP No. 13-00040-W.

4. In order to resolve several water resource related issues identified by the SFWMD regarding the pending consolidated permit application, on May 10, 2006, the COUNTY and SFWMD entered into an INTERIM CONSUMPTIVE USE AUTHORIZATION AND AGREEMENT ("Agreement"). The Agreement sets forth a process under which the County, acting as the MDWASD, would proceed to complete the permit application process for its pending application. The intent of the Agreement is to provide sufficient information to enable the Governing Board to make a determination whether the proposed consumptive use is permittable. The Agreement requires the County to develop an alternative water supply plan.

5. The goal of the alternative water supply plan is to identify and commit to a reasonable timeline for design, permitting and construction of

alternative water supply projects so that such supplies are available in time to meet projected growth over the next 20 years. As part of the alternative water supply plan, MDWASD's timeline must be consistent with SFWMD rules that provide an initial, one time, five year time limit on temporary increases in Biscayne Aquifer withdrawals over the base condition water use. During this five year period, per limiting conditions in the permit, alternative sources sufficient to replace the accumulated demands from the Biscayne Aquifer during the first 5 years along with additional projected demands for the next 5 years must be brought online. After the 5 year period the temporary allocation will be terminated. If needed alternative sources to meet such demands are not sufficient in terms of operational availability or effectiveness in limiting regional water use to the initial baseline condition, subject to paragraph 36 of the Agreement, the County will be in the position of limiting growth pursuant to Chapter 163, Florida Statutes, and implementing conservation and demand management measures to prevent the need for regional system water over that identified in the base condition water use.

6. MDWASD has completed several action items required by the Agreement including submission of an unaccounted for water plan, metering plan, water conservation plan, wetlands inventory, monitoring network plan, and the long range alternative water supply plan. On May 10, 2007, MDWASD submitted a proposed alternative water

supply plan, pursuant to Table 1 Paragraph IX.a. of the Agreement. The District is in the process of working with MDWASD to finalize the plan to the degree necessary to incorporate the specific approved milestones into the pending water use permit conditions.

7. The purpose of this Amendment to the Agreement is to reflect updated information and submittals and understandings reached between the Parties since the Agreement was first executed in May 2006.

8. Table 1, Paragraph IX of the Agreement provides that MDWASD shall develop a plan for the development of alternative sources to meet 100% of the County's 20 year increased demands from the Biscayne Aquifer over historic use that occurred when the permit application was filed in 2003. In February, 2007, the District governing board adopted revisions to its consumptive use permitting rules specifically addressing the use of regional system water in the Lower East Coast including Miami-Dade County The parties agree that these rules supersede the first sentence in paragraph IX of Table 1.

9. One of the issues not addressed in the previous Agreement is the fact that one or more of MDWASD's existing wholesale customers may discontinue to purchase water from MDWASD. The parties recognize that the disposition of that portion of the allocation from the Biscayne Aquifer will be determined by the District governing board in accordance with District rules at a later time and will not be determined in this Amendment. The direction of the governing board will guide the quantity

of water needed in the alternative water supply plan required by Table 1, paragraph IX of the Agreement.

10. As part of the alternative water supply plan required by Table 1, paragraph IX, the Agreement requires MDWASD to design and construct a reverse osmosis plant at the South Miami Heights Water Treatment Plant. Specifically, the Agreement requires that by May 5, 2007, the 90% design would be completed and the required permits would be applied for.

11. However, MDWASD has now proposed to change the location of the reverse osmosis facility to a location within the City of Hialeah. This change came about when MDWASD, in consultation with the District, decided to pursue a reclaimed water groundwater recharge project at the South Miami Heights Water Treatment Plant instead of a reverse osmosis plant. As a result of the change in location of the reverse osmosis plant, MDWASD has requested an extension of the timeline necessary for the design of the facility.

12. In addition, as part of the required alternative water supply plan required by the Agreement Table 1, MDWASD is required to: 1) implement a reuse pilot project to rehydrate coastal wetlands in South Miami Dade County with reclaimed water and 2) implement a reclaimed water groundwater recharge project associated with the proposed South Miami Heights Water Treatment Plant. The SFWMD has since determined that, although the coastal wetlands recharge

project would provide for a beneficial use of reclaimed water, benefit the water resources, and may ultimately be required as part of the Comprehensive Everglades Restoration Plan or the SFWMD Acceler8 program, implementation of such project may not be necessary to obtain the requested consumptive use permit.

13. The Parties agree that the final alternative water supply plan and consumptive use permit shall provide that, at a minimum, by December 31, 2014, MDWASD will complete construction of facilities necessary to provide groundwater recharge using appropriately treated reclaimed water in a quantity sufficient to allow at least 22.5 million gallons per day of withdrawals from the Biscayne Aquifer associated with the proposed South Miami Heights Water Treatment Plant. Based on a groundwater modeling analysis provided by MDWASD, as required through the consumptive use permitting process, the District must review and approve the quantity, timing and location of such groundwater recharge program that is needed to allow the withdrawal from the Biscayne Aquifer.

14. Based on the new information and understandings reached by the Parties, as described herein, it is also necessary to modify the termination date of the Agreement as set forth in paragraph 25 herein.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. The Governing Board may issue orders pursuant to section 373.171, Florida Statutes: "...to obtain the most beneficial use of water resources of the state and to protect the public health, safety, and welfare and interests of the water users affected...." Such orders may affect the use of water or modify any existing uses, including apportioning, limiting or rotating uses of water or preventing those uses that the governing board determines have ceased to be reasonable or beneficial. S. 373.171(1), F.S. The SFWMD is also authorized to enter into agreements pursuant to Section 373.083, Florida Statutes, to implement or enforce any of the provisions of Chapter 373, Florida Statutes, including Section 373.171, F.S.

16. To resolve outstanding permit application issues in its consolidated permit application, the SFWMD and MDWASD entered into an Agreement on May 10, 2006 which identifies specific actions and timelines for developing alternative supplies to meet its 20 year demands. Such actions and timelines are set forth in Table 1 of the Agreement.

17. Since execution of the Agreement in May 2006, additional information and new understandings have been reached between the Parties, as identified in the Findings of Fact stated herein. As a result,

amendments to Table 1 of the Agreement and the termination date of the Agreement are necessary.

18. The amendments to the Agreement indicated in the ORDER section below are considered necessary to protect the public health, safety, and welfare and interests of the affected water users, consistent with Sections 373.171 and 373.083, Florida Statutes.

19. Miami-Dade County has the authority to enter into the Amendment to the Agreement pursuant to the Charter of Miami-Dade County.

ORDER

THEREFORE, having reached a resolution of this matter, the SFWMD and the MDWASD mutually agree and it is ordered that:

20. The following specific completion dates are added to Table 1 regarding the Alternative Water Supply Plan review and approval process:

Amendment to Table 1 of the Agreement
Alternative Water Supply Plan

IX.	Action Required	Completion Date
IX. a.	District review and comment on the MDWASD proposed Alternative Water Supply Plan submitted on May 10, 2007	June 11, 2007
IX. b.	Revise Plan and Re-submit to District	August 10, 2007
IX. c.	SFWMD Approve or Reject Proposed Alternative Water Supply Plan	September 10, 2007

21. Requirements in the Agreement in Table 1 Section IX. (specifically, regarding the design and construction of a Floridan Aquifer Reverse Osmosis (RO) Plant at the South Miami Heights Water Treatment Plant (Sections., IX.i., and IX.k.) are hereby deleted and the following actions and schedule for design and construction of a Floridan Aquifer Reverse Osmosis Plant at a location within the City of Hialeah are added to Table 1. These deadlines are established to start the process for design construction and operation of the RO facilities based on a project completion date of December 23, 2011. The remaining milestones necessary to meet the completion date extend beyond the terms of the Agreement as amended herein and therefore will be incorporated into the water use permit.

Amendment to Table 1 of the Agreement

MDWASD Hialeah Floridan Aquifer Reverse Osmosis Water Treatment Plant Design and Construction

IX.	Action Required	Completion Date
IX.l.	County Commission approval of Joint Participation Agreement with City of Hialeah	7/26/07
IX.m	Issue Notice to Proceed to Consultant to design and build the RO facility	1/31/08

22. The final alternative water supply plan, which will ultimately be incorporated into the consumptive use permit application pending before the SFWMD, shall provide that, at a minimum, by December 31, 2014, MDWASD will complete construction of facilities necessary to provide groundwater recharge using appropriately treated reclaimed water in a quantity sufficient to allow 22.5 million gallons per day of withdrawals from the Biscayne Aquifer at the South Miami Heights Water Treatment Plant. Based on a groundwater modeling analysis provided by MDWASD, as required through the consumptive use permitting process, the District must review and approve the quantity, timing and location of such groundwater recharge that is needed to allow the proposed withdrawal from the Biscayne Aquifer.

23. Based on the requirements set forth in Paragraphs 1 and 2 of this Section, Paragraph IX. I and k, of Table 1 of the Agreement are deleted, and Paragraph IX. j is modified as described below.

24. The first sentence of paragraph IX in Table 1 of the Agreement is deleted. The allocation including the alternative water supply plan will be determined in accordance with the District rules in effect at the time of the permit decision by the Governing Board.

25. Paragraph 36 of the Agreement is amended to read:

Liquidated Damages—The failure to submit a responsive deliverable identified in Table 1 within the identified timelines is considered a violation of the Agreement and Amendment to the Agreement and shall

invoke a stipulated penalty of $1,000.00 for each day until the deliverable is received by the SFWMD. Deliverables are specifically required in subparagraphs I. a. and c., II a. and c., III a. and c., IV a. and b., V a., b. and d., VI a. and b., VII a., VIII a. and c., IX a. c., e., f., g., h., i., j., l., and m.,, X. a., and XI a., b., and c.

26. Paragraph IX j. is modified to read: "60 days after issuance of all applicable permits: Advertise for construction contract for the aquifer recharge pilot reuse project associated with the South Miami Heights Water Treatment Plant.

27. Paragraph IX k. is deleted.

28. Paragraph 38 of the ORDER Section of the Agreement is amended to read: This Agreement shall terminate on the date of final agency action on MDWASD's pending consolidated permit application. In addition, the Amendment to the Agreement shall terminate when the Agreement is terminated.

29. All of the requirements of the Agreement not specifically amended herein, including, but not limited to, the requirement that the MDWASD shall respond to the pending requests for information on the pending consumptive use permit application including a long term alternative water supply plan acceptable to the SFWMD by November 2007, Compliance Terms and Liquidated Damages, remain in full force and effect. All other provisions and deadlines of the Agreement shall remain in full force and effect. Additional deadlines for milestones for

development of alternative water supply projects will be provided in the final consumptive use permit. This Agreement shall not limit the ability of the County to modify or alter its existing or pending permit request, or to submit a new permit request, as permitted by law, including but not limited to alterations to proposed withdrawals, permit duration, and permit conditions. The County understands that any alteration or modification to such permit applications may require the County to submit additional information beyond the submittals specified herein.

30. In the event MDWASD does not comply with the terms of this Amendment to the Agreement, the SFWMD may pursue its rights to administratively or judicially enforce the terms as provided in the Agreement. The SFWMD may utilize the terms of the Agreement, including the liquidated damages clause and authorities recognized in Chapter 373, Florida Statutes, as a means of proving civil penalty amounts in such a proceeding. The MDWASD may defend such actions to the fullest extent allowed by law, and nothing contained herein shall limit or constitute a waiver of any defense which MDWASD may have or could have to such action.

31. The Amendment to the Agreement is final agency action pursuant to Section 120.69, Florida Statutes, and shall take effect after adoption by and execution on behalf of the Governing Board of the SFWMD, on the date it is filed with the Clerk of the SFWMD unless a petition for administrative hearing is filed, pursuant to Chapter 120, Florida

Statutes, by a third party.

32. Entry of the Amendment to the Agreement does not relieve MDWASD of the need to comply with all applicable federal, state or local laws, rules or ordinances, including the conditions and deadlines in the Permit, except as provided herein.

33. Nothing herein relieves the MDWASD from the legal requirement to prevent harm to the water resources as required by Chapter 373 and the SFWMD's implementing rules in Title 40E, Fla. Admin. Code, or to mitigate for the occurrence of harm to the water resources, resulting from its consumptive use activities under the Amendment to the Agreement. Mitigation for harm to the water resources shall be required pursuant to SFWMD order.

34. This Amendment to the Agreement incorporates, embodies and expresses all agreements and understandings between and among the SFWMD and MDWASD regarding the specific amendments herein, and may not be altered except as authorized herein

35. Persons who are not parties to this Amendment to the Agreement, but whose substantial interests are affected by it, have a right pursuant to Section 120.57, Florida Statutes, to petition for an administrative hearing. The Petition must contain the information set forth in Rule 40E-1.521, Fla. Admin. Code, and be filed with the SFWMD Clerk during normal business hours, at SFWMD headquarters in West Palm Beach, Florida, within 21 days of receipt of this Agreement. Failure to

file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Section 120.57, Florida Statutes The administrative hearing process, initiated by filing a petition, is designed to formulate agency action. Accordingly, the SFWMD's final action taken pursuant to this hearing may be different from the position taken by the SFWMD in the Amendment to the Agreement.

36. MDWASD waives the right to an administrative hearing on the terms of the Amendment to the Agreement under Section 120.57, Florida Statutes, and its right to appeal the Amendment to the Agreement pursuant to Section 120.68, Florida Statutes. However, the MDWASD expressly reserves any and all rights to request an administrative hearing or judicial action involving any attempt by the SFWMD to enforce the Amendment to the Agreement, or with respect to any other final agency action taken by SFWMD relating to the agreement. Additionally, notwithstanding any provision herein, the Amendment to the Agreement specifically does not bind or prohibit in any way either the MDWASD or the SFWMD from raising or arguing their interpretation of requirements of law in any subsequent administrative or judicial proceeding.

37. MDWASD shall, subject to the limitations of Chapter 768.28, Fla. Stat., shall defend, indemnify, save, and hold the SFWMD, its agents, assigns, and employees, harmless from any and all claims or causes

of action, including without limitation, all damages, loses, liabilities, expenses, costs, and attorney's fees related to such claims that may arise in connection with the Amendment to the Agreement. MDWASD further acknowledges that it is solely responsible for ensuring compliance, including the compliance of its subcontractors, agents, assigns, invitees and employees with the terms of the Amendment to the Agreement.

38. There are no intended third party beneficiaries to the Amendment to the Agreement.

39. In the event of change in law, including District Rule, either party may request that the Amendment to the Agreement be modified or terminated, as appropriate. Upon receipt of such request, both parties shall meet and determine the appropriate action, and this Amendment to the Agreement shall be modified or terminated as appropriate. In the event that the parties cannot agree on the appropriate action, the District may issue an order stating the action the District believes is appropriate, which may include no modification or termination, and which order shall constitute final agency action on the request.

40. The terms of the Amendment to the Agreement shall not be construed as and are not intended by the MDWASD to be an admission of any violation of Florida law or Federal Law ore regulations or policies, or of any liability in connection therewith.

ORDERED at West Palm Beach, Palm Beach County, Florida, this _____ day of _____, 2007.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

BY ITS GOVERNING BOARD:

By:_____
Deputy Executive Director

ATTEST:

By:_____
Assistant Secretary

MIAMI-DADE COUNTY:

BY: _____

Its: _____

(Corporate Seal)

FILED WITH THE CLERK OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT

ON:_____

BY:_____