Memorandum

MIAMI-DADE COUNTY

Date: July 24, 2007

Agenda Item No. 8(R)(1)(A)

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

From: George M. Burgess
County Manager

Subject: Joint Participation Agreement for the Reverse Osmosis Water Treatment Plant with the City of Hialeah

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RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve this Joint Participation Agreement (JPA) with the City of Hialeah (City) for the construction of a 17.5 million gallon per day (mgd) reverse osmosis water treatment plant to serve future water supply needs in the City's annexation area and the Miami-Dade Water and Sewer Department's (MDWASD) service area, including future needs of wholesale customers. The JPA specifies that the City and County will be equal partners in funding the project. The project is part of the alternative water supply plan submitted to the South Florida Water Management District (SFWMD) and has already been included in the Capital Improvements Element of the Comprehensive Development Master Plan (CDMP).

SCOPE OF AGENDA ITEM

The agenda item has an impact to all of MDWASD's service area and the service areas of MDWASD's wholesale customers.

FISCAL IMPACT/FUNDING SOURCE

This agenda item provides for cost sharing for the planning, design, and construction of the reverse osmosis water treatment plant. The County's share of these costs is currently estimated to be about $80 million. Of this amount, $10 million will come from General Obligation Bonds and the balance will come from revenue bonds. Grants that may be received to support the project will decrease equally the revenues to be contributed by both parties. Operational costs will come from operating revenues based upon the actual costs of operation.

TRACK RECORD/MONITOR

MDWASD's Assistant Director Finance will monitor the Joint Participation Agreement.

BACKGROUND

In June of 2006 the City and the County entered into an interlocal agreement to provide water supply for the City of Hialeah's annexation area that was approved as part of the CDMP applications approved in the April, 2005, application cycle. This agreement called for a subsequent agreement to specify construction arrangements. As MDWASD continued to work with the SFWMD to develop an alternative water supply plan, it became apparent that the construction of a single facility to meet future water

supply needs in northern Miami-Dade County would be more efficient than constructing a separate facility just to serve the City's annexation area. The City proposed a partnership under which the City would take the lead in procuring a design/build/operate contractor for a facility with sufficient capacity to treat Floridan aquifer water using reverse osmosis technology to meet the needs of the City's annexation area as well as growth in MDWASD's service area and wholesale customer needs. These demands are expected to total 17.5 mgd by the year 2029, and a three-phase development program is contemplated. The first phase would include 10 mgd of capacity to be completed by the end of 2011. An additional 5 mgd would be added by 2019, and the final phase of 2.5 mgd would be completed in 2029. The total cost of design and construction is expected to be about $160 million, with each partner providing half the cost.

An Oversight Board to review annual budgets for operations and maintenance would have two members appointed by the City and two members appointed by the County and a fifth member appointed by the four appointed members. The County will participate in the selection of a design/build/operate contractor and will review and approve the contract for these services that will be entered into by the City and the contractor. Paragraph 26 of the JPA provides a 90 day period during which the County will prepare an ordinance exempting the City from compliance with various code requirements governing County contracts and enabling the City to void the agreement if such waivers are not approved by the Board of County Commissioners. In such a case the City and County could pursue the construction of separate facilities to meet their growth needs or the City could agree to include all of its future needs in its wholesale water purchase contract whereby the County would construct and operate the facility. The term of this agreement is the later date of either the expiration of City project bonds or County project bonds, but no earlier than February 1, 2029, when the final phase of construction is to be complete.

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: July 24, 2007

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

SUBJECT: Agenda Item No. 8(R)(1)(A)

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(R)(1)(A)

07-24-07

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO EXECUTE A JOINT PROJECT AGREEMENT WITH THE CITY OF HIALEAH TO JOINTLY DESIGN, CONSTRUCT AND OPERATE A WATER TREATMENT PLANT, AUTHORIZING THE COUNTY MAYOR OR HIS DESIGNEE TO EXERCISE ALL TERMS OF THE AGREEMENT, AND WAIVING APPLICATION OF SECTION 2-11.15 OF THE MIAMI-DADE COUNTY CODE WITH RESPECT TO SUCH CONSTRUCTION

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

WHEREAS, this Board finds that application of Art in Public Places is not appropriate for the construction of the proposed Water Treatment Plant,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves execution of the Joint Participation Agreement between the City of Hialeah and the County, in substantially the form attached hereto; authorizes the Mayor or his designee to execute same and exercise all terms thereof for and on behalf of Miami-Dade County, subject to approval by the County Attorney's Office; and waives the application of Section 2-11.15 of the Miami-Dade County

Code as relates to the construction contemplated by the Joint Participation Agreement.

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 Chairperson thereupon declared the resolution duly passed and adopted this 24th day of July, 2007. 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. DM

By: _____
Deputy Clerk

Dave Murray

JOINT PARTICIPATION AGREEMENT
FOR THE REVERSE OSMOSIS WATER TREATMENT PLANT

THIS AGREEMENT made and entered into this ___ day of June, 2007, by and between: Miami-Dade County, Florida, a political subdivision of the State of Florida, the ("County"), and the City of Hialeah, Florida, a Florida municipal corporation organized and existing by virtue of and under the laws of the State of Florida (the "City").

WITNESSETH:

WHEREAS, on or about March 29, 2004, the City annexed approximately three square miles of land (the "Annexation Area"), having a northern boundary of NW 170 Street, a southern boundary of NW 138 Street, a western boundary of NW 107 Avenue and an eastern boundary of the eastern edge of the I-75 highway; and

WHEREAS, on or about January 5, 2005, the City and the County entered into an Interlocal Agreement to provide water distribution, wastewater collection, treatment and disposal services and fire protection for the Annexation Area, understanding that such service will be provided in phases or developmental increments over an extended period of time with a guarantee to supply potable water up to an amount not to exceed 2 million gallons per day at discounted wholesale water rates and water and sewer connection charges as provided in the Interlocal Agreement for three years with a one year extension; and

WHEREAS, the South Florida Water Management District has informed the City and the County that future water demands countywide from the Biscayne Aquifer will not be permitted unless an alternative source of water (such as treated wastewater) is used to recharge the Biscayne Aquifer and "off-set" expected increases in water demand from the regional system; and

WHEREAS, the construction and operation of a water treatment plant using high pressure reverse osmosis technology to treat source water from a deeper alternative source known as the Floridan Aquifer is consistent with the existing and developing policies of the South Florida Water Management District; and

WHEREAS, on December 19, 2006, the Board of County Commissioners adopted Resolution R-1467-06 that affirms its commitment to develop alternative water supply options to augment the County's water supply while, at the same time, increase significantly the amount of wastewater it reuses to rehydrate and recharge wetlands and the Biscayne Aquifer; and

WHEREAS, on or about June 21, 2006, the City and the County entered into an Interlocal Agreement to constructed a 4.2 MGD, expandable to 8.2 MGD, reverse osmosis water treatment plant to serve the Annexation Area of the City, which will be supplemented and superseded by the expanded provisions of this Agreement; and

WHEREAS, the proposed design, construction and operation of a 17.5 MGD reverse osmosis water treatment plant, though phased development, to be situated in the Annexation Area of the City benefits the residents of the County and the City by sharing land and other common elements associated in building a consolidated plant and by controlling future water supply costs; and

WHEREAS, the City and the County desire to facilitate the planning, design, construction and future operation of a 17.5 MGD reverse osmosis water treatment plant ("WTP"), in phased development, through joint funding and through the utilization of the City resources to design, construct and operate the Project subject to the terms and conditions of this Agreement; and

WHEREAS, the City intends to contract with a single entity (the "Contractor") to design, construct, operate and maintain the WTP; and

WHEREAS, the parties desire to use their good faith efforts in carrying out the terms of this Agreement and fully cooperate to accomplish the goals and objectives of this Agreement; and

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, the parties hereby agree as follows:

1. The above recitals are true and correct and incorporated herein.

2. The City and the County shall have equal 50% ownership of a Reverse Osmosis Water Treatment Plant, exclusive of land but inclusive of structures, facilities and appurtenances to be situated in the Annexation Area of the City, having a capacity of 17.5 MGD ("WTP"). The construction of the WTP building structure shall be in one phase, while the water production and related appurtenances shall be in three phases, with the final phase at full production or capacity. The WTP shall operate to supply potable water to the Annexation Area of the City and upon agreement of the City and the County, to supply potable water to adjacent areas of unincorporated Miami-Dade County, to any other current or future wholesale or retail customers of the County, or to future customers of unincorporated Miami-Dade County in adjacent areas and outside City's service areas.

The City and County shall demarcate a point where the WTP terminates upon connection with the County's and City's respective systems. If necessary, the City shall provide easements and/or permits to the County such that the County can connect to the WTP and shall coordinate installation of such facilities with the City.

Construction of the WTP shall occur on the following schedule:

a. In Phase I, the City shall construct or cause to be constructed the WTP, having a potential capacity of 17.5 MGD; however, the actual water production capacity at the end of Phase I shall be 10 MGD. The WTP shall be permitted and operational by

February 1, 2011, with an option to extend for an additional year, with the consent of the South Florida Water Management District.

b. In Phase II, the actual water production of the WTP shall be increased to 15 MGD by February 1, 2019.

c. In Phase III, the actual water production of the WTP shall be increased to 17.5 MGD by February 1, 2029.

At all times during the operation of the WTP, the County and City shall each receive 50% of the water production produced by the WTP. However, if either party desires to purchase a portion of the other party's 50% share, the price of such water sold from one party to the other party shall be equal to the operation/maintenance cost per thousand gallons.

3. *Term.* The term of this Agreement shall coincide with the later of two dates: (1) The expiration date of the original issuance of any bond related to the WTP issued by the County; and (2) The expiration date of the original issuance of any bond related to the WTP issued on behalf of the City. In no event shall the agreement expire before February 1, 2029. Upon termination, each party shall maintain a fifty percent interest in the WTP.

4. The County shall contribute and pay for 50% of the planning, design and construction and construction management (the "design and construction") costs for the WTP, in an amount not less than $80 million, and the City shall contribute and pay for 50% of the design and construction costs of the WTP, in an amount not less than $80 million based on an estimate. If the design and construction is accomplished for less than $160 million, the County and the City shall bear half of such actual costs, and shall not be required to contribute amounts in excess of its share of the actual costs. However, in the event that the design and construction of the WTP costs less than $160 million, the City shall retain funds not expended to pay for expanded appurtenances for Phases II and III, and City and the County shall share equally in those additional expenses, even if such expenses exceed the amount of the retained funds plus accrued interest.

The City shall receive a credit towards its contribution for the fair market value of the land that will be provided for the location of the WTP and the fair market value of the land for the well-fields as part of the City contribution to the design and construction costs. The City shall also receive a credit towards its contribution for administrative costs and financing costs as part of the City contribution to the design and construction costs. Additional funds that exceed the total design and construction estimate of $160 million and cost overruns shall be shared equally by the City and the County. If the City determines that design and construction of the WTP will or will likely require a County contribution in excess of $80 million, the City shall advise the County of same in writing, within 30 calendar days of such determination. The City and the County acknowledge that the $160 million estimate for the design and construction of the WTP does not include additional capital costs for the procurement of land for and the construction of

additional well-fields for Phase II and III, if necessary. The City and the County shall share equally in these additional expenses, if necessary. In the event that either the City or the County secure grant to design or construct the WTP, said grants shall be applied to the overall construction of the WTP, and the contribution required from each party shall be accordingly equally adjusted.

The City shall provide the County with copies of design drawings at thirty percent completion. The County shall have 30 calendar days in which to recommend changes in such drawings. The County acknowledges that the 30-day time period is of the essence and that if the County does not submit to the City its recommended changes within the 30-day period, then the City can proceed as if the County has no recommended changes. If the County disagrees with the proposed design, the County and the City shall jointly, and in good faith, negotiate to resolve this disagreement.

5. The County shall provide $10 million within 60 days of the execution of this Agreement. The County shall provide an additional sum at the time of permitting and incremental payments as set forth in the Operating Agreement with the Contractor, and shall provide the balance of the $80 million contribution at time of the commencement of operation of the WTP at Phase I. All money contributed by the City and the County shall be maintained by separate interest bearing accounts, and shall be used only for the purposes contemplated by this agreement. All interest that accrues in the account in which the County funds are deposited shall be credited towards the County required contribution. All interest that accrues in the account in which the City funds are deposited shall be credited towards the City required contribution. The City shall secure bond financing by June 2009 for its contribution to the design and construction costs.

6. The County and the City shall pay equally, each contributing its 50% share, to the operational and maintenance costs of the WTP.

7. A volunteer Oversight Board shall be established consisting of five members who will serve without compensation for staggered two-year terms. The Oversight Board shall manage operations of the WTP after completion of Phase I, subject to the Operating Agreement with the Contractor. The Oversight Board shall review and approve the annual operating budget of the WTP, and shall provide overall financial oversight and financial management of the activities of the WTP within the physical perimeter of the WTP and well-fields. The budget shall be binding on the operation and maintenance of the WTP after the City and County has the opportunity to review and make suggestions to change, or object to, the budget within 30 calendar days of submittal of the proposed budget. If the City or County object to, or make suggestions to change, the proposed budget, then the Oversight Board, City and County shall in good faith negotiate and resolve any disagreements. If the City does not provide any suggested changes or objections to the proposed budget to the Oversight Board within the 30-day time period, then the City will have deemed to have given its consent to the proposed budget. Likewise, if the County does not provide any suggested changes or objections to the proposed budget to the Oversight Board within the 30-day time period, then the County will have deemed to have given its consent to the proposed budget. The Oversight

Board shall not have any management or oversight of the water distribution system of the Hialeah Utility System. The Oversight Board shall not establish water rates and connection fees and other charges. The City shall appoint two members to the Oversight Board and fill vacancies of its appointed members due to resignation, expiration of terms of service, ill health or death and other reasons. The County shall appoint two members to the Oversight Board and fill vacancies of its appointed members due to resignation, expiration of terms of service, ill heath or death or other reasons. The four appointed members, by a majority vote, shall appoint the fifth member of the Oversight Board. The Chair of the Board shall be selected by majority vote of the entire membership. The City and the County shall appoint a new Board member within 30 days of the vacancy. The City shall supply the professional staff serving the Oversight Board. The Board shall be bound by all Sunshine Act requirements, and all records produced by the Board shall be considered as public records. The City and the County will jointly prepare documents reflecting the duties and responsibilities of the Oversight Board.

8. The County and/or the City shall apply for a 20-year consumptive use permit from the South Florida Water Management District for the operation of the WTP, and also apply as necessary to the Florida Department of Environmental Protection and/or the Miami-Dade County Department of Environmental Resource Management for a permit or permits to dispose of concentrate, process water, and other WTP byproducts. The City shall be responsible for the preparation of the documents for permits as part of the design and construction of the WTP.

9. The City shall be responsible for the planning, design and construction of the WTP. After Phase I is completed, the operation of the WTP shall be managed by the Oversight Board, subject to the limitations and provisions of paragraph 7 herein. The County shall have access to all documents, plans, specifications and work areas during construction and may further have a representative/observer on site during construction. The City shall reasonably consider technical suggestions involving the planning, design and construction offered by the County. The City shall select the designer/contractor/operator through a competitive process that fully complies with Sections 287.055 and 255.20, Florida Statutes, as applicable. The City shall issue a Request for Qualifications (RFQ) in order to shortlist qualified companies. Then, the City shall issue a Request for Proposal (RFP) to select the designer/contractor/operator (the "Contractor"). County representatives may be present at all meetings of the Selection Committee to provide advice in the selection of the Contractor. The Contractor must keep all records generated by the Contractor pursuant to the contract as public records, according to Chapter 119, Florida Statutes. The City must fully comply with state law requirements related to retainage of funds due a contractor and shall include appropriate language in its subcontracts.

The City shall use best efforts to ensure that the WTP is operational at all times, capable of producing the amount of water specified herein, is at all times in a state of reasonable repair, and complies with all applicable laws, permits and regulations, as well as all bond covenants and conditions as may be applicable pursuant to any bonds sold by the City or County. The City will allow the County's Bond Engineer and City's Bond

Engineer, with proper and reasonable written notice, free access to the WTP. The City and the County's Bond Engineer shall yearly prepare a report on the operation and maintenance of the WTP. If the City Bond Engineer and the County Bond Engineer suggest operational or maintenance changes, such changes shall be presented to the staff of the Oversight Board, who will review, consider and make recommendations to the Oversight Board; such recommendations shall not be unreasonably be denied.

The County retains the right to review and approve the Operating Agreement with the Contractor; such approval shall not be unreasonably withheld.

The City shall not permit any lien to accrue against the WTP, or any facilities or appurtenances thereof, or pledge same as collateral for any transaction. Likewise, the County shall not permit any lien to accrue against the WTP, or any facilities or appurtenances thereof, or pledge same as collateral for any transaction.

10. *Audit.* The City agrees to permit the County auditors to inspect the books, records and accounts of the Project for five years after completion of the Project. The City agrees to permit the County engineers and consultants to inspect plans, designs and drawings related to the WTP for five years after completion of the Project. These records shall be made available to the County for inspection within 10 working days upon written receipt of a written request from the County. Audits shall be conducted at the County's cost and expense.

11. *Compliance with laws.* The parties shall comply with applicable federal, state and local laws, codes, ordinances, rules and regulations in performing their respective duties, responsibilities and obligations pursuant to this Agreement and with all applicable laws relating to the WTP. The parties shall not unlawfully discriminate in the performance of their respective duties under this Agreement.

12. *City Indemnity for Negligence.* In consideration of the good and valuable consideration received from the County and in consideration of the covenants in this Agreement, the City agrees to indemnity and save harmless the County, its officers, agents, instrumentalities and employees to the extent and with the limitations of Section 768.28, Florida Statutes, from any and all claims, liability, actions, losses, damages, cost and expense, including attorney's fees and the cost of defense incurred at the trial, administrative or appellate level, which the County, its officers, agents, instrumentalities or employees may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of or relating to or resulting from the performance of this Agreement, including, but not limited to the negligence of the City, its officers, employees and agents in connection with the performance of this Agreement. The City shall pay all claims, costs, damages 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, judgment and attorney's fees that may issue thereon. However, nothing herein shall be deemed to indemnity the County from any liability or claim arising out of the negligent

performance or failure of performance of the County. This indemnity provision shall not be construed as a waiver of sovereign immunity.

13. *County Indemnity for Negligence.* In consideration of the good and valuable consideration received from the City and in consideration of the covenants in this Agreement, the County agrees to indemnity and save harmless the City, its officers, agents, instrumentalities and employees to the extent and with the limitations of Section 768.28, Florida Statutes, from any and all claims, liability, actions, losses, damages, cost and expense, including attorney's fees and the cost of defense incurred at the trial, administrative or appellate level, which the City, its officers, agents, instrumentalities or employees may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of or relating to or resulting from the performance of this Agreement, including, but not limited to the negligence of the County, its officers, employees and agents in connection with the performance of this Agreement. The County shall pay all claims, costs, damages 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 City, where applicable, including appellate proceedings, and shall pay all costs, judgment and attorney's fees that may issue thereon. However, nothing herein shall be deemed to indemnity the City from any liability or claim arising out of the negligent performance or failure of performance of the City. This indemnity provision shall not be construed as a waiver of sovereign immunity.

14. *Enforceability of Agreement.* This Agreement shall be enforced through specific performance in addition to any other remedies in law and in equity.

15. *Prior agreement superseded.* This Agreement supersedes the Interlocal Agreement between the City of Hialeah and the County dated June 21, 2006.

16. *Reaffirmation of Water Supply Guarantees and Modification of 2005 Interlocal Agreement.* The County shall supply potable water up to an amount not to exceed 2 million gallons per day for the Annexation Area of the City for the period that ends when the WTP commences operation upon completion of Phase I. The County shall charge the City for service within the Annexation Area the same wholesale rates (discounted rates) charged to the City under the 20-year water agreement that is applicable at the time. The 2005 Interlocal Agreement shall be modified in the following manner: Paragraph 4 of the Interlocal Agreement shall read as follows:

> *Water Services.* The City shall temporarily connect to the County's water distribution system at NW 134 Street/West 80 Street and NW 87 Avenue during the Interim Period and shall install a pressure-sustaining valve and a new water meter to be conveyed to the County. Such connection must be in service prior to water service from the County to the Annexation Area. During the Interim Period and until the City's completion of the Project described hereinafter, the County will supply potable water up to an amount not to exceed 2 million gallons per day. During the Interim Period, the City shall design and construct a 17.5 MGD reverse osmosis

water treatment plant ("Project") to provide water from the water treatment plant to the Annexation Area. During the Interim Period, in consideration of the benefits provided herein, the County shall charge the City for service within the annexation Area the same wholesale rates (discounted rates) charged to the City under the 1977 Interlocal Agreement, as amended or replaced by a 2007 Interlocal Agreement.

17. *Incorporation of this Agreement into the 2007 Water Agreement between the City and the County.* The parties agree to incorporate the provisions of this Joint Participation Agreement into the 2007 Water Agreement between the City and the County.

18. *City bond financing.* The County acknowledges that the City will issue debt in the most cost effective way possible, which may require complying with bond covenants required by credit enhancers.

19. The City shall ensure that access to the WTP is restricted, in accordance with Section 32-170 of the Code of Miami-Dade County. The City shall administer a security program that complies with that Section on behalf of the County, including by conducting background checks and issuance of identification; however, such identification shall provide access only to the WTP, and not access to any other facility of the County.

20. *Notice.* Whenever one of the parties to this Agreement desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, return receipt requested, postage prepaid, addressed to the party for whom it is indented at the place last specified' the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following at their respective places for giving notice.

For the County:

George M. Burgess, County Manager
Office of County Manager
Stephen P. Clark Center
111 N.W. 1st Street, Suite 2910
Miami, Florida 33128
Telephone: (305) 375-5311
Facsimile: (305) 375-4658

With copy to:

John Renfrow, P.E., Director
Miami-Dade Water and Sewer Department
3071 SW 38 Avenue
Miami, Florida 33146
Telephone: (786) 552-8086

Facsimile: (786) 552-8647

For the City:

Julio Robaina
Mayor
City of Hialeah
Raul L. Martinez Government Center
501 Palm Avenue
Hialeah, Florida 33010
Telephone: (305) 883-5800
Facsimile: (305) 883-5992

With a copy to:

Armando Vidal, P.E., Director
Department of Water and Sewers
3700 West 4 Avenue
Hialeah, Florida 33012-4298
Telephone: (305) 556-3800
Facsimile: (305) 827-0811

21. *Entire Agreement.* The City and the County agree that this is the entire Agreement between the parties. This Agreement supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein and there are no commitments, agreements or understanding concerning the subject matter of this Agreement that are not contained in this document. This Agreement cannot be modified or amended without the express written consent of the parties. Accordingly, no modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity therewith. If there are changes in the rules of the South Florida Water Management District or FDEP, or changes in pertinent state law, such that this Agreement requires modification to accomplish the purposes contemplated by both parties, the County and the City jointly agree to negotiate such modifications and to present same to the City and the Board of County Commissioners for approval.

22. *Severability.* If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected and each term and provision of this Agreement shall be valid and not be enforced to the fullest extent permitted by law.

23. *Waiver.* The failure of either party to insist upon strict performance of any terms of this Agreement shall not be considered a waiver of any provisions set forth herein and shall not prevent enforcement of this Agreement.

24. *Assignment.* Neither this Agreement nor any term or provision hereof or right hereunder shall be assignable by any parties. Any attempt to make such assignment shall be void.

25. *Governing law.* This Agreement shall be construed in accordance with the laws of the State of Florida and any proceedings arising in any matter pertaining to this Agreement shall, to the extent permitted by law, be held in Miami-Dade County, Florida.

26. *Code Compliance.* The City agrees that it shall fully comply with all requirements of Miami-Dade County Ordinances 2-8.2.10., 10-33.02, 2-10.4.01, 2-11.16 , 2-11.15 and all other ordinances or resolutions governing use of County funds, and shall ensure that all contracts entered into by the City shall comply with such requirements. The County represents that it intends to propose an ordinance which would exempt the City from compliance with such requirements, but cannot guarantee that such ordinance will be adopted. In the event such ordinance is not adopted by the County within ninety days of execution of this agreement, the City may void this agreement by providing the County with written notice of its intent to terminate. In the event of such termination, the City shall return to the County any money previously provided under this agreement by the County.

IN WITNESS WHEREOF, the parties hereto by their duly authorized officials have made and executed this Agreement as of the day and year first written above.

CITY OF HIALEAH, FLORIDA
501 Palm Avenue
Hialeah, Florida 33010

Attest:

Authorized signature on behalf of the City of Hialeah, Florida

By: _____

Rafael E. Granado
City Clerk

Julio Robaina Date
Mayor

(SEAL)

Approved as to form and legal sufficiency:

_____
William M. Grodnick, City Attorney

ATTEST:

HARVEY RUVIN,
CLERK OF THE BOARD

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

15

By: _____ By: _____
Deputy Clerk County Mayor

(SEAL)

Approved as to form and legal sufficiency:

_____
David M. Murray, Assistant County Attorney

S:wmg/assgn/contr/jointparticipationagreementwatertreatmentplantREV2.doc