Memorandum

MIAMI-DADE COUNTY

Date: July 17, 2008

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

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

From: George M. Burgess
County Manager

Subject: Resolution authorizing the execution of a contract between Miami-Dade County and the City of Hialeah for the provision of water service

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RECOMMENDATION

It is recommended that the Board of County Commissioners adopt the attached resolution authorizing the execution of a contract between Miami-Dade County and the City of Hialeah for the provision of water service by the Miami-Dade Water and Sewer Department (WASD) to the City for a 20-year period to coincide with the County's 20-Year Water Use Permit issued by the South Florida Water Management District. This contract was approved by the City Council on June 24, 2008.

SCOPE OF AGENDA ITEM

The contract requires WASD to provide water service to the City, located in Commission Districts 6, 12 and 13, for a 20-year period.

FISCAL IMPACT/FUNDING SOURCE

The wholesale water revenue received by WASD from the City in Fiscal Year 2007 was $8,008,789. The revenue from all wholesale water customers is approximately $27 million annually.

TRACK RECORD/MONITOR

WASD's Intergovernmental Affairs Manager will monitor this agreement.

BACKGROUND

The City and Miami-Dade Water and Sewer Authority (now WASD) entered into a contract for the provision of water service on September 7, 1977. The contract, which included Addendum Number 1, was for a 30-year term until September 7, 2007. Pursuant to the terms and conditions of the Miami-Dade County Interim Consumptive Use Authorization and Agreement established with District, the County is required to obtain 20-year water service contracts with all its wholesale water customers to coincide with the County's 20-Year Water Use Permit issued on November 15, 2007. In order to comply with the conditions of the permit, the County has committed to a capital program which entails the design and construction of additional water facilities, alternative water supplies, reclaimed water projects and conservation projects to meet the future demands of the County and its wholesale customers for the next twenty years.

To date, the other 13 wholesale water customers have entered into contracts with the County except for the Cities of Hialeah and Miami Beach. Both contracts are concurrently before the Board for approval. Several provisions of the contract with the City of Hialeah differ from the County's other wholesale water contracts because the City of Hialeah requested clarification or addition of several provisions, such as the Joint Participation Agreement between the City and the County to fund, design and construct a reverse osmosis water treatment plant in the City of Hialeah that was executed on December 27, 2008. After much discussion with the City, this contract addresses both County and City concerns and satisfies the requirements of the 20-Year Water Use Permit issued by the District. These provisions are detailed below:

- Under the Joint Participation Agreement with the City one-half of the water produced at the reverse osmosis water treatment plant belongs to the City of Hialeah.
- In this contract, the City has access to the County's applicable distribution and transmission system to ensure compliance with applicable county, state and federal laws upon reasonable notice that the County is in violation of the contract.
- The County will comply with the County's allocation of potable water as it relates to the City as stipulated in the 20-Year Water Use Permit.
- Pursuant to Ordinance 06-177, wholesale customers must prepare a water conservation plan for its distribution system. The County may impose a surcharge on the use of amounts of water that could be conserved by its wholesale customers, provided that the surcharge is applied uniformly when applicable. In this contract, the surcharge may be imposed when the City's average consumption rate exceeds the consumption rate stipulated in the 20-Year Water Use Permit.
- Wholesale customers accept the delivery of water transmitted at a flow rate as nearly uniform as practical throughout each 24 hour period. The County has the right to test the extent to which 60 minutes of sustained demand imposed on the County's water facilities exceeds the average daily demand. In this contract, the City has the right to review, comment and object to the test results prior to the County accepting the results.
- In case water flow exceeds the 160 percent of the average daily demand for the same month, the County will notify the wholesale customer in writing to reduce demand. In this contract, the water produced at the reverse osmosis water treatment plant in the City is excluded from this provision.
- In this contract, the City will be responsible for notifying its own customers of rate changes.
- This contract shall be in effect for a 20-year period to coincide with the 20-Year Water Use Permit. If the City completes the design and construction of the reverse osmosis water treatment plant with capacity to fully supply water to all properties within its service area, the City may terminate this contract.

The County engaged in lengthy negotiations with the City of Hialeah to reach mutually acceptable contract terms and conditions as the execution of this contract is a condition of the County's 20-Year Water Use Permit with the District. This contract is consistent with the requirements of the 20-Year Water Use Permit which includes the design and construction of the reverse osmosis water treatment plant in the City of Hialeah. It also confirms the County's intention to provide water services to the City of Hialeah and the City's intention to compensate the County for the full cost of those services. The contract supports the County's position in terms of securing the funds needed to implement WASD's 20-year capital plan.

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: July 17, 2008

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

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

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)(C)
7-17-08

RESOLUTION NO. _____

RESOLUTION APPROVING EXECUTION OF A CONTRACT WITH THE CITY OF HIALEAH FOR THE PROVISION OF WATER SERVICE BY THE COUNTY TO THE CITY

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 execution of the contract between the County and the City of Hialeah for the provision of water service by the County to the City in substantially the form attached hereto and made a part hereof; and authorizes the County Mayor or his designee to execute same for and on behalf of Miami-Dade County, Florida.

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

The Chairperson thereupon declared the resolution duly passed and adopted this 17th day of July, 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:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency

Henry N. Gillman

CONTRACT
BETWEEN
MIAMI-DADE COUNTY
AND
THE CITY OF HIALEAH
PROVIDING FOR THE RENDITION OF WATER SERVICE

THIS CONTRACT, made and entered into this _____ day of _____, 2008, between Miami-Dade County, a political subdivision of the State of Florida, referred to as the "COUNTY" and the City of Hialeah, a municipal corporation organized and existing under the laws of the State of Florida, referred to as the "CITY".

W I T N E S S E T H:

WHEREAS, on September 7, 1977 the Department of Water and Sewers of HIALEAH and Miami Dade Water and Sewer Authority entered into a contract providing for the rendition of water service by the AUTHORITY to the CITY until September 7, 2007, and

WHEREAS, on July 22, 1997, the Authority and the CITY entered into Amendment Number One to revise the language regarding the exclusion of transmission expenses from the CITY's rates, and

WHEREAS, the COUNTY is the legal successor in interest to the Miami-Dade Water and Sewer Authority and has assumed all rights, duties and obligations of the Authority, and

WHEREAS, on May 10, 2006, the COUNTY and the South Florida Water Management District (SFWMD) entered into a contract which required the COUNTY to obtain twenty year water service contracts with its volume water customers to coincide with the COUNTY's request for a twenty year Consumptive Use Permit ("CUP") issued by the SFWMD, and the Department's application for a 20 year CUP included an allocation for Hialeah, and

WHEREAS, on November 15, 2007, the COUNTY was granted a 20-year CUP which requires that within six months, the COUNTY and the CITY execute a contract for water and sewer services which must be submitted to the SFWMD, and

WHEREAS, the COUNTY and The CITY desire to enter into this Contract so the COUNTY can continue to render water service to the CITY, and

WHEREAS, the Miami-Dade Water and Sewer Department,

referred to as the "Department", operates and maintains the COUNTY's water system.

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth, the COUNTY and the CITY agree as follows:

1. Insofar as it may be lawful to do so in accordance with the terms and conditions of the Consumptive Use Permit issued to the COUNTY by the SFWMD, and subsequent to the terms herein the COUNTY shall sell and deliver to the CITY, and the CITY shall purchase and receive from the COUNTY potable water necessary to fulfill a portion of the water requirements of the CITY during the effective period of this Contract. Potable water obtained by the CITY from the COUNTY may be utilized to serve the CITY's customers in its existing water service area or future water service area(s) that the CITY is legally authorized to serve.

2. Notwithstanding the obligations of Paragraph 1 above, if the COUNTY should have an insufficient supply of water available to fulfill the total requirements of all customers of the COUNTY due to prohibitions, restrictions, limitations or requirements of local, state or federal governments having jurisdiction over such matters or due to any other cause beyond the COUNTY's control including but not limited to those specifically set forth in Paragraph 21 below, the COUNTY shall be deemed to have fully performed its duties and to have discharged its obligations if it furnishes and delivers to the CITY its pro rata share of such supply as determined by the COUNTY. The COUNTY will not be discriminatory in its delivery of water service. The COUNTY shall give expeditious notice to the CITY whenever the COUNTY becomes aware of conditions which could reasonably lead to an outage or shortage of such potable water supply or which may bring about such condition. Notwithstanding the preceding, the COUNTY shall not be obligated to take or omit any action to ensure current or future water supply to the CITY.

3. The CITY agrees to be bound by existing and future standards, laws, rules and regulations which may be enacted by the COUNTY as approved by the Board of County Commissioners or as may be necessary to ensure continued compliance with local, state and federal laws and regulations and permit conditions.

4. The water furnished to the CITY will be delivered by the COUNTY and will be accepted and received by the CITY at the following points of delivery:

a. West 2 Avenue and West 7 Street at the Hialeah Plant
b. West 4 Avenue (Red Road) and West 60 Street

c. West 13th Street and West 2 Avenue at the Hialeah Preston Plant.

Additional points of delivery may be established at such times and places as shall be mutually agreed by the Director of the Department and The CITY. The CITY shall bear the entire cost and expense of establishing each such additional point of delivery, obtaining such easements as may be needed and furnishing all necessary labor and materials required to connect with the COUNTY's main, all in accordance with plans and specifications that are subject to approval of the COUNTY. The CITY will supply and install meter(s) and transfer ownership to the COUNTY. The CITY shall convey to the COUNTY, by appropriate bill of sale, as shown on Exhibit "A" attached hereto, and Grants of Easements, all of the CITY's rights, title and interest in and to the tees or crosses in the feeder mains, meters, meter vaults and all piping, valves and appurtenances between and including the aforesaid tees or crosses and the valve immediately on the discharge side of the meters. The COUNTY shall thenceforth own, control, operate and maintain such facilities. Readings of each meter at all points of delivery shall be taken by the COUNTY on or about the 28th day of each month and shall be used for monthly billing purposes under the provisions of Paragraph 11 below.

5. The Parties agree and warrant that their respective water distribution and transmission system and any extensions shall be constructed, operated and maintained in accordance with the requirements of all applicable federal, state, county and other local laws, rules and regulations. The operation and maintenance of all facilities on the CITY side of the meters shall be the responsibility of the CITY. Upon reasonable notice that the CITY is in violation of this Agreement, the CITY shall provide the COUNTY with access to the CITY's applicable distribution and transmission system. Such inspections shall be made at reasonable times and upon reasonable notice in such manner as to least disturb the normal operation of the CITY. Likewise, the operation of all facilities on the COUNTY side of the meters shall be the responsibility of the COUNTY. Upon reasonable notice that the COUNTY is in violation of this Agreement, the COUNTY shall provide the CITY with access to the COUNTY'S applicable distribution and transmission system. Such inspections shall be made at reasonable times and upon reasonable notice in such manner as to least disturb the normal operation of the COUNTY.

6. In order for the COUNTY to adequately plan for future water demands, within ninety days following execution of this contract and on or before each January 1 thereafter, the CITY shall submit to the COUNTY the CITY's projected annual water needs for the next five years. Within 120 days of the

COUNTY's receipt of the CITY's projected annual water needs for the next five years, the COUNTY will notify the CITY of the COUNTY's ability or inability to meet such needs, which is subject to local, state and federal agencies and other regulatory bodies having jurisdiction over such matters. The CITY agrees that the COUNTY shall not be liable or in any way responsible for any cost, claims or losses incurred by the CITY as a result of actions by regulatory bodies. Notwithstanding the preceding, nothing contained herein shall require the COUNTY to take or omit any action to ensure that the expected demand is satisfied. Any representation as to the COUNTY's ability to satisfy expected demands is conditional, and shall not obligate the COUNTY to deliver any specific amount of water. The County agrees to comply with the requirements of the WUP, which includes the CITY's current allocation of potable water, unless such amount is altered or changed by the applicable regulatory agencies.

7. The COUNTY shall own, operate and maintain metering stations at the points of delivery listed above which will measure all potable water delivered by the COUNTY to the CITY. The metering stations shall be of standard make and type installed in a readily accessible location with checking or calibration devices. The installation shall indicate flow with an error not to exceed plus or minus two percent of full scale reading (true accuracy). The Department, at its sole expense, shall check the accuracy of each metering installation once every six months, or at such other time intervals as it may deem appropriate. The Department shall provide the results of the checking to the CITY's Public Works Director no later than 30 days after the meter is checked. Such checking shall be at a reasonable time, mutually agreeable to the Department and the CITY. If the CITY desires to be present for such meter checks, it shall be the City's responsibility to contact the Department and make arrangements to be present. If found to be in error exceeding two percent (2%)of true accuracy, the meter shall be recalibrated to the satisfaction of the parties. If such error of more than two percent is discovered, bills for the periods following the prior meter accuracy check shall be adjusted to reflect the quantity of over-read or under-read exceeding two percent. In calculating such billing adjustment it will be assumed that the meter inaccuracy existed for the entire time interval between meter accuracy tests. The billing adjustment shall be made at the same rate in effect during the period of meter inaccuracy.

8. The CITY may request and the COUNTY agrees to perform a meter accuracy test at any reasonable time acceptable to both parties. If the meter is found to be in error exceeding two percent true accuracy, it shall be

recalibrated as described above and the entire cost for such testing and recalibration shall be paid for by the COUNTY. If the meter is found performing within two percent (2%) true accuracy, the meter accuracy test shall be paid for by the CITY within thirty (30) days of receiving the COUNTY's invoice.

9. In the event of complete or partial failure of any meters to register the CITY's water consumption, the COUNTY may determine the estimated water consumption based on the most recent twelve (12) full months of consumption measured by the meters when they were operating properly or another method mutually agreed upon by the Department and the CITY. To the extent possible, the COUNTY shall repair all failed meters within thirty (30) days of the determination that the meter has completely or partially failed.

10. It shall be the obligation and duty of the CITY to transmit the water at its own expense from each point of delivery to the place or places of ultimate use and, in so doing, to supply and impart to the water such adequate pressure and flow as may be necessary to provide adequate pressure at all points beyond such points of delivery. Accordingly, the COUNTY shall not be responsible for insufficient pressure, for either domestic or fire flow service, nor be required to correct any fluctuation in pressure occurring beyond any point of delivery. The COUNTY acknowledges that the COUNTY is responsible for the water pressure and flow at the point of delivery. The COUNTY shall provide at least 24-hour notice before any planned decrease in pressure that would affect the CITY's ability to deliver services to any CITY customer, is implemented by the COUNTY.

11. The CITY shall pay to the COUNTY, as compensation for the treatment and delivery of all water provided to the CITY, a monthly charge for such service based on a uniform rate for the COUNTY's volume customers. The rate shall be calculated for each Department fiscal year based on projections from the prior Department fiscal year and based on the sum of the following:

(a) That portion of all budgeted annual operating and maintenance expenses, including taxes assessed, if any, for the COUNTY's regional water system, divided by the projected total amount of flow used to bill all the COUNTY's water customers over the same time period.

(b) That portion of the budgeted annual renewal and replacement expenses for the COUNTY's regional water system, divided by the total projected amount of flow

used to bill all the COUNTY water customers over the same time period.

(c) That portion of the COUNTY's budgeted annual interest obligations of outstanding notes and bonds for the COUNTY's regional water system, divided by the projected total amount of flow used to bill all the COUNTY water customers over the same time period.

(d) That portion of the budgeted annual charge for the amortization of the COUNTY's outstanding notes and bonds for the COUNTY's regional water system, to be consistent with the requirements under law, divided by divided by the total projected amount of flow used to bill all the COUNTY's water customers over the same time period.

(e) That portion of the budgeted annual charge for customer accounting and service, for the COUNTY's regional water system, divided by divided by the total projected amount of flow used to bill all the COUNTY's water customers over the same time period.

(f) That portion of projected annual administration and general expenses, for the COUNTY's regional water system, divided by the total projected amount of flow used to bill all the COUNTY's water customers over the same time period.

(g) That portion of the charge for debt service coverage requirement for bond issues for the COUNTY's regional water system, divided by the total projected amount of flow used to bill all the COUNTY's water customers over the same time period.

12. The City shall comply with COUNTY Ordinance No. 06-177. The CITY shall prepare a water conservation plan for its distribution system, to the satisfaction of the COUNTY, and shall implement the tenets of such plan. This plan shall comply with applicable local, state and federal conservation rules and guidance, as appropriate. The COUNTY may impose a surcharge on the use of such amounts of water by the CITY as could be conserved by the CITY through the implementation of a conservation plan, provided that the surcharge is applied uniformly to all volume water customers of COUNTY when applicable. The amount of the surcharge is subject to the review and approval of the Board of County Commissioners. The surcharge shall be imposed on the CITY when the CITY's average consumption in gallons per capita for each day exceeds the per capita consumption to be established by the SFWMD in accordance with the CUP. Water conservation is necessary to

meet the public water supply demands of the COUNTY.

13. The COUNTY reserves the right to revise or modify the rate and the method of calculation included in Paragraph 11 as may be approved by the Board of County Commissioners in accordance with applicable law and upon the Board's approval the CITY agrees to be bound thereby. The COUNTY will attempt to provide the CITY with a preliminary rate and shall attempt to provide such rate a minimum of six (6) weeks in advance of any rate increase effective date. The CITY recognizes and agrees that the adopted rate may differ from the preliminary rate. The CITY recognizes and agrees that the COUNTY intends to implement in the future such charges or rate structures, including but not limited to peak flow surcharges, as it deems necessary to fairly recover its costs.

14. The COUNTY grants the CITY the right to audit all Department records related to the computation of the rates for each fiscal year. Upon written notice, the COUNTY shall make available for the CITY records at the offices of the Department on an annual basis. In the event that such audit indicates any discrepancy between the rates used by the COUNTY in computing the monthly service charges to the CITY and the amount paid by the CITY determined as a result of the audit, and following the COUNTY's acceptance of the audit findings, the COUNTY shall make an adjustment, for that fiscal year, in the service charges previously paid by the CITY. The audit must be completed on or before the end of each fiscal year for which the rates apply. Adjustments shall not be made for prior fiscal years.

15. Billings for services provided in accordance with this contract shall be rendered monthly. Invoices will be mailed by the tenth day of the month following the month for which service has been provided, based on meter readings taken by Department employees on or about the 28th day of each month. Amounts billed on such invoices are due when rendered. In the event the CITY disputes a bill, the CITY shall provide the COUNTY with notice of the reasons for non-payment within thirty (30) days of receipt of the bill and shall escrow such portion of the bill that is disputed in an interest-bearing account. The parties shall promptly meet and use good faith efforts to resolve the dispute within 45 days of the notice. Except for any portion of a bill disputed by the CITY, payments not received by the Department on or before twenty-five (25) days after the postmark date of the bill shall be considered past due. All past due invoices shall be subject to a late charge as established by the COUNTY, such charge to reimburse the Department for costs in processing and otherwise administering late payments. In addition, per annum interest shall accrue on the past due charges including the late

charges at the maximum legal rate provided by Florida law for contracts in which no interest rate is specified, for each day, including Saturdays, Sundays and holidays, from the past due date until the date of receipt by the Department. For purposes of this paragraph, date of receipt shall be the date of actual receipt by the Department if hand delivered or mailed, or date of transfer to the Department's bank, if electronic funds transfer is used.

16. Any and all suits brought by either party shall be instituted and maintained in any court of competent jurisdiction in Miami-Dade County, Florida. In all such suits, the prevailing party shall be entitled to receive costs and reasonable attorney's fees. The amount of such taxable court costs and fees shall be determined by the court in which such actions are brought.

17. The CITY shall accept delivery of water transmitted at a flow rate as nearly uniform as practical throughout each daily 24-hour period during November, December, January, February, March and April of each year and at all such other times when the daily quantity delivered shall exceed the average daily quantity delivered during the preceding six (6) months set forth above. The COUNTY shall have the right to make such tests as it shall deem necessary, and at such times as it shall deem to be appropriate, to determine to what extent the maximum 60-minutes sustained demand imposed upon the facilities of the COUNTY by the requirements of the CITY between the hours of 6:00 A.M. and 9:00 P.M. is exceeding the average daily demand for the same month. For the purpose of making each such test and of ascertaining and utilizing the result to give effect to the provisions of this Paragraph, the COUNTY shall use a recording flow meter or Supervisory Control and Data Acquisition (SCADA) installed at each of the points of delivery provided for in Paragraph 4 above at the COUNTY'S sole expense. The CITY shall have the right to review, comment and object to the test results prior to COUNTY acceptance of such results. If the CITY objects to the test results, the CITY, at its sole expense, shall have an opportunity to submit its own test results to the COUNTY for review and consideration.

18. If the maximum 60-minute sustained demand between the hours of 6:00 A.M. and 9:00 P.M. as shown simultaneously on all recording flow devices or SCADA considered collectively shall increase by sixty percent (60%) of the average daily demand (ADD) excluding water production at the Reverse Osmosis Plant allocated to the CITY for the same month, the COUNTY shall notify the CITY in writing providing the CITY with ten (10) days to reduce the demand to less than sixty percent 60% of the ADD. If no such reduction occurs, the COUNTY shall

have the right to collect a peak flow charge by increasing the rate per thousand (1,000) gallons of water, for all water delivered during the month in which such test is made, by one percent (1) percent of the rate for each four percent (4) percent or major fraction thereof (2.5 percent) by which the maximum 60-minute sustained demand shall increase by sixty percent (60%) of the ADD. No increase in rate provided for in this paragraph shall be applied during any period of time when any of the transmission, storage or pumping facilities of the CITY is not available for service due to reasons beyond the control of the CITY such as water main breaks, major emergency/scheduled maintenance at the water plant or fires.

19. The CITY shall establish, impose, maintain and collect, or shall cause to be established, imposed, maintained and collected at all times throughout the effective period such rates and charges for water distributed as will enable it to pay in full all amounts to which the COUNTY shall be entitled. The CITY shall be responsible to notify its customers of its rate changes.

20. No property taxes shall be levied or collected by the CITY upon the properties of the Department. Additionally, the CITY shall not impose any zoning changes upon the properties of the Department that will impede, unduly restrict or interfere with the use of the existing properties.

21. Any cessation of water services and any consequences caused by force majeure, inevitable accident or occurrence or cause beyond the reasonable control of either Party, shall not constitute a breach of this Contract and neither party shall be liable to the other or its inhabitants or customers for any damage resulting from such cessation or interruption of water service. Force majeure shall mean an act of God that includes but is not limited to sudden, unexpected or extraordinary forces of nature such as floods, washouts, storms, fires, earthquakes, landslides, hurricanes, epidemics, explosions or other forces of nature, strikes, lockouts, other industrial disturbances, wars, blockades, acts of terrorism, insurrections, riots, federal, state, COUNTY and local governmental restrictions, regulations and restraints, military action, civil disturbances, or conditions in federal, state, COUNTY and local permits.

Neither party shall be liable for its failure to carry out its obligations under the contract during a period when such party is rendered unable, in whole or in part, by force majeure or inevitable accidents or occurrences to carry out such obligations, but the obligations of the party or parties relying on such force majeure shall be suspended only during the continuance of any inability so caused and for no longer

period of an unexpected or uncontrollable event, and such cause shall, so far as possible, be remedied with all reasonable dispatch. It is further agreed and stipulated that the right of any party to excuse its failure to perform by reason of force majeure shall be conditioned upon such party giving, to the other party , written notice of its assertion that a force majeure delay has commenced within ten (10) working days after such commencement, unless there exists good cause for failure to give such notice, in which event, failure to give such notice shall not prejudice any party's right to justify any non-performance as caused by force majeure unless the failure to give timely notice causes material prejudice to the other party .

22. In accordance with the provision of COUNTY Ordinance No. 89-95 as currently in effect and as may be amended or revised in the future, the CITY shall require all new retail users, as defined in the Ordinance, to pay the COUNTY's water and sewer connection charges. The CITY shall not render water service to any new retail user until a written receipt from the Department is provided to the CITY. Pursuant to Ordinance No. 05-167, the provision of water service to new retail users by the CITY who did not pay the appropriate charges, shall render the CITY liable to the COUNTY for the payment of such charges.

23. In consideration of good and valuable consideration received from the COUNTY and in consideration of the covenants in this Contract, the CITY agrees to indemnify and save harmless forever, the COUNTY, its officers, agents and employees to the extent and within the limitations of Section 768.28, Florida Statutes, from 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 may be incurred by the COUNTY, its officers, agents, or employees 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 Contract, including but not limited to the negligence of the CITY, its officers, employees and agents in connection with the performance of this Contract. 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 indemnify 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.

24. In consideration of good and valuable consideration received from the CITY and in consideration of the covenants in this Contract, the COUNTY agrees to indemnify and save harmless forever, the CITY, its officers, agents and employees to the extent and within the limitations of Section 768.28, Florida Statutes, from 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 may be incurred by the CITY, its officers, agents, or employees 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 Contract, including but not limited to the negligence of the COUNTY, its officers, employees and agents in connection with the performance of this Contract. 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 indemnify 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.

25. Notwithstanding the above, nothing shall create any liability of the COUNTY or the CITY beyond the scope of Section 768.28 Florida Statutes, as currently in effect or as lawfully amended in the future.

26. No rights pursuant to this contract shall be assignable by the CITY unless the COUNTY agrees in writing.

27. This Contract shall be and remain in full force and effect for a period of twenty (20) years from the date of execution of this Contract, subject to the provisions in the two paragraphs below. The CITY shall comply with the terms and conditions of the Permit issued by the SFWMD and any revisions or modifications to such permit applicable to the CITY. Where the Permit requires reporting of various measures to the SFWMD, or requires actions be taken to the satisfaction of the SFWMD, the CITY shall make such reports or take such actions to the satisfaction of the COUNTY. The COUNTY may enforce any Permit term imposed on the COUNTY against the CITY without need for prior legal or administrative action against the COUNTY by the SFWMD.

In the event that the CITY builds a water treatment or production facility with sufficient capacity to fully supply

water to all properties within its service area, the CITY may terminate this agreement. Prior to such termination, however, the following additional conditions must be met: 1) the CITY must give the COUNTY written notice of the approximate date on which it proposes to terminate this agreement two years prior to such date, though subsequent postponements or extensions of this date shall require only thirty days written notice to the COUNTY; and, (2) the water production facilities must have received all permits and licenses necessary for operation.

The CITY acknowledges that the COUNTY has constructed various facilities for the production and delivery of water to serve the CITY. The CITY acknowledges and agrees that, in the event of termination of this agreement under this section, the COUNTY may use such facilities to serve other customers, including direct COUNTY customers. In the event that the COUNTY is not able, due to system distribution issues or regulatory constraints, unable to serve other customers using these facilities as these facilities exist as of the date of termination of this agreement, the COUNTY shall notify CITY of such inability, and, 180 days after receipt of such notice by the CITY, the CITY shall compensate the COUNTY for one half of the present value, net of depreciation, of such facilities as of the date of termination of this agreement. Where facilities served both the CITY and other customers, the amount owed by the CITY shall be one half the present value, net of depreciation, of such facilities multiplied by the percentage of that facility used by the CITY as opposed to other customers. The parties shall enter into good faith negotiations as to the exact amount of what is present value, net of depreciation, immediately after the COUNTY notifies the CITY of the inability to use the production facilities. In the event the parties cannot reach agreement on the value of the subject facilities, the parties shall submit the dispute to nonbinding arbitration which shall be completed within 30 days of notice of an impasse. The three-person nonbinding arbitration panel shall consist of a representative of each party and an independent person mutually agreed to by both parties.

This Section shall survive termination of this agreement.

28. The CITY grants to the COUNTY the right to provide reuse water for non-drinking purposes, when and only if necessary infrastructure exists within the CITY, subject to federal, state and local laws and regulations in effect and as may be amended in the future, subject to the issuance of construction permits by The CITY and upon the City's engineer giving approval in writing which shall not be unreasonably withheld. The CITY agrees to accept and utilize re-use water in lieu of potable water, if such water is provided by the

COUNTY, to the extent the use for which the COUNTY is offering such re-use water is permitted by law. Notwithstanding the foregoing, the CITY currently has no infrastructure to accept reuse water nor has any plans to install such infrastructure.

29. All notices required pursuant to this Contract shall be properly given if mailed by United States registered or certified-mail addressed to the party to which notice is to be given at the following respective addresses:

Miami-Dade County
c/o The Director
Miami-Dade Water and Sewer Department
3071 SW 38 Avenue
Miami, Florida 33146

CITY OF HIALEAH
c/o The Director
Department of Water and Sewers
3700 West 4th Avenue
Hialeah, Florida 33012

30. This contract shall be governed by and construed according to the laws of the State of Florida, and venue shall be in Miami-Dade COUNTY, Florida.

31. This CONTRACT contains the entire contract of the parties with respect to the subject matter and replaces and supersedes all prior contracts or understandings, oral or written, with respect to such subject matter, and such contracts or understandings are now void and no longer in effect.

32. If any Section of this Contract is found to be null and void, the other Sections shall remain in full force and effect.

(THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties have caused this instrument to be executed in their names and their corporate seals affixed and to all duplicates by their respective officers all as of the day and year above.

MIAMI-DADE COUNTY

ATTEST:

By:_____
Clerk (Seal)

By:_____
County Mayor

ATTEST:

THE CITY OF HIALEAH, FLORIDA

By: _____
Rafael E. Grando (SEAL)
City Clerk

By: _____
Julio Robaina
Mayor

Approved as to form and legal sufficiency:

_____
Henry N. Gillman
Assistant County Attorney

Approved as to form:

_____
William M. Grodnick
City Attorney

Exhibit "A"

ABSOLUTE BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, That the City of Hialeah, Florida, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter called GRANTOR, for and in consideration of the sum of Ten Dollars ($10.00)) and other good and valuable consideration, paid and delivered by Miami-Dade County, a political subdivision of the State of Florida, hereinafter called GRANTEE, the receipt whereof is hereby acknowledged, has granted, bargained, sold, transferred and delivered, and by these presents does grant, bargain, sell, transfer and deliver unto the GRANTEE, its successors and assigns, that portion of the GRANTOR's water facilities installed to provide an additional point of connection at _____ [location] in Miami-Dade County.

The GRANTOR hereby assigns and transfers to the GRANTEE all of its rights, title and interest to the following:

a. Any and all rights, licenses and permits from the Department of the Army Corps of Engineers and State of Florida, Department of Environmental Regulation issued to the CITY in connection with the construction of the water facilities.

b. Any and all other rights, interest, easements, licenses and permits issued or granted by any other governmental authority, person, firm or corporation in connection with the water facilities conveyed to the GRANTEE hereunder.

TO HAVE AND TO HOLD the same unto the GRANTEE, its successors and assigns forever. GRANTOR does covenant to and with the GRANTEE, its successors and assigns, that GRANTOR is the lawful owner of the above described; that said property is free from all encumbrances; that GRANTOR has good right to sell the same aforesaid; that GRANTOR will warrant and defend the sale of the said property unto the GRANTEE, its successors and assigns, against the lawful claims and demands of all persons whomsoever.

IN WITHNESS WHEREOF, the GRANTOR has hereunto set its hand and seal this _____ day of _____, 2008.

ATTEST:

_____	_____
Rafael E. Granado	Julio Robaina
City Clerk	Mayor

Approved as to form and legal sufficiency:

_____

William M. Grodnick
City Attorney

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