Memorandum

MIAMI-DADE COUNTY

Date: October 7, 2008

Agenda Item No. 18(A)(2)

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

From: George M. Burgess, County Manager

Subject: Resolution ratifying the execution of a 10-year agreement between Florida City Gas and Miami-Dade County for a Natural Gas Transportation Service Agreement

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RECOMMENDATION

It is recommended that the Board of County Commissioners ratify the attached resolution waiving formal bid procedures and provisions pursuant to Section 2-8.1 of the County Code and Section 5.03(D) of the Home Rule Charter, and ratify the execution of a 10-year agreement in the amount of $1,500,000 between Miami-Dade County through the Miami-Dade Water and Sewer Department (WASD) and Florida City Gas. This 10-year agreement allows WASD to connect to Florida City Gas's pipeline distribution system for the delivery of natural gas fuel.

WASD has been in continued discussions with Florida City Gas to facilitate this 10-year agreement and has now agreed to the terms of this agreement. This 10-year agreement will replace Amendment No. 1 (also on this ratification agenda) contingent on the approval of the Florida Public Service Commission. Amendment No.1 extends the original agreement for an additional 180 days to avoid a gap in service between the expiration date of the original agreement which was June 30, 2008 and this new replacement contract.

SCOPE OF AGENDA ITEM

The impact of this item is county-wide.

FISCAL IMPACT/FUNDING SOURCE

The fiscal impact of this 10-year agreement is $1,500,000, which accounts for the delivery of approximately 7.5 million therms (a unit of measure) over a 10-year time period. WASD will pay an average of $0.019 cents in transportation charges on a per therm basis for the delivery of natural gas which is well below the current published tariff rate of $0.1225 per therm.

TRACK RECORD/MONITOR

WASD's procurement section will monitor the agreement.

BACKGROUND

On October 19, 1999 the Board approved Resolution R-1143-99 waiving formal bid procedures and facilitating a natural gas transportation service agreement between Miami-Dade County and Florida City Gas. WASD projected savings of $4.9 million over a 10-year period, from January 2000 through December 2007. However, WASD had a combined savings on commodity and local transportation of over $10 million. This agreement is a renewal contract for another 10-year period in which WASD will generate even more savings per year. These savings are projected to increase from the previous contract period because as the published tariff rates continue to increase, the increases remain transparent to WASD due to the fixed rates WASD pays. This agreement has been approved by Florida City Gas.

Both this replacement contract and the corresponding amendment were approved due to health and safety activities through Resolution R-867-08, which authorizes the Mayor or Mayor's designee to conduct business during the summer recess period. This 10-year replacement agreement meets the criteria for the ratification agenda as natural gas is the fuel used in the process of producing softened water which is a part of the County's water treatment process. It is also used to power up the high service pumps that pump water through the County's water distribution system.

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: October 7, 2008

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

SUBJECT: Agenda Item No. 18(A)(2)

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. 18(A)(2)
10-7-08

RESOLUTION NO. _____

RESOLUTION RATIFYING THE COUNTY MAYOR'S ACTION OF THE EXECUTION BY THE MAYOR OR HIS DESIGNEE OF A NATURAL GAS TRANSPORTATION SERVICE AGREEMENT BETWEEN FLORIDA CITY GAS AND MIAMI-DADE COUNTY AND TO EXERCISE THE CANCELLATION AND RENEWAL PROVISIONS CONTAINED THEREIN

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

WHEREAS, at the County Commission meeting of July 17, 2008 this Board authorized the County Mayor to administer County business during the period of July 17, 2008 through August 29, 2008 [Agenda Item No. 12A1]; such action(s) taken to be in accordance with the policies and procedures established by the Board of County Commissioners and be submitted to the Board for approval at the County Commission meeting of October 7, 2008,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby ratifies the County Mayor's action of the execution, by the Mayor or his designee, of a Natural Gas Transportation Service Agreement between Florida City Gas and Miami-Dade County and to exercise the cancellation and renewal provisions contained therein, subject to approval by the Public Service Commission.

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 7th day of October, 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. SED

Sarah E. Davis

NATURAL GAS TRANSPORTATION SERVICE AGREEMENT
BETWEEN
FLORIDA CITY GAS
AND
MIAMI-DADE COUNTY

Account Nos. 211-0756225-011, 211-0756239-011,
211-0754412-011, 211-0786676-001

THIS AGREEMENT made and entered into as of this 28th day of Aug., 2008, by and between Pivotal Utility Holdings, Inc. d/b/a Florida City Gas ("FCG"), a New Jersey corporation, hereinafter referred to as "Company", and MIAMI-DADE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "Customer" (collectively, with FCG, the "Parties").

WITNESSETH:

WHEREAS, Company's Natural Gas Tariff ("Tariff") establishes transportation service to be provided pursuant to the Contract Demand Service Rate Schedule having certain specific terms of applicability;

WHEREAS, Customer has requested that Company render natural gas transportation service to Customer in accordance with the terms and conditions of this Agreement and Company has agreed to transport Customer's gas;

WHEREAS, this Agreement is subject to the approval of the Florida Public Service Commission ("Commission"); and

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements set forth herein, the Parties agree as follows:

ARTICLE 1

TERM OF AGREEMENT

1. Subject to all other provisions, conditions, and limitations hereof, this Agreement shall become effective as of the date that the Commission approves and makes this Agreement effective (the "Effective Date"), and shall continue in full force and effect until ten years from the Effective Date, at which time the Agreement shall terminate (hereinafter, the "Term"). Company agrees, upon written request from Customer received by Company not less than ninety (90) days prior to the termination date of this Agreement, to review the terms and conditions of the Agreement for the purpose of renewal for a like term. The renewal is contingent upon the Company and Customer mutually agreeing in writing to the terms and conditions for the renewal term. If this Agreement is not approved and made effective by the Commission subject to terms and conditions satisfactory to the Parties within one hundred eighty (180) days from the date this Agreement is entered into by the Parties, this Agreement shall not become effective, and the parties will continue to negotiate a new agreement, pursuant to the First Amendment to Natural Gas Transportation Service Agreement Between Florida City Gas and Miami-Dade County (the "Amendment"), unless one of the parties elects to terminate the Amendment, as provided in the Amendment, through written notice.

ARTICLE II

APPLICABILITY OF TARIFF

1. Based upon governing applicability provisions, the Parties hereby confirm that Customer qualifies for the Contract Demand Service Rate Schedule.

2. Except to the extent expressly modified by the terms of this Agreement, all service rendered by Company under this Agreement shall be provided pursuant to the terms and

conditions of Company's Tariff, which is incorporated fully herein by reference, as filed with and approved by the Florida Public Service Commission from time to time.

3. The rates for transportation of natural gas to Customer's listed facilities shall be as set forth in Article VII of this Agreement.

ARTICLE III

POINTS OF RECEIPT AND DELIVERY

1. Customer shall arrange for the delivery of all gas to be transported by Company hereunder to take place at those interconnections between Company and Florida Gas Transmission Company ("FGT") heretofore determined [Point(s) of Receipt] in Miami, FL and Hialeah, FL. All such gas received by Company shall be redelivered to Customer at those interconnections between the distribution system of Company and the facilities of Customer heretofore determined [Point(s) of Delivery].

ARTICLE IV

OBLIGATIONS AND REPRESENTATIONS OF CUSTOMER

1. Customer represents that it meets all qualifications for Contract Demand Service.

2. Customer agrees to comply with all terms and conditions of this Agreement and the Company's Tariff, as approved by the Florida Public Service Commission, which terms and conditions are incorporated fully herein by reference and the applicable Rate Schedule as the same may be amended or modified from time to time.

3. Customer warrants that it will, at the time of delivery of gas to Company for transportation hereunder, have good and merchantable title to the gas free and clear of all liens, encumbrances, and adverse claims. Customer agrees to provide Company with any documentation which may be requested in writing by Company to evidence Customer's title to the gas transported. Company reserves the right, without penalty or liability, to refuse

transportation of any gas in the event Customer fails to provide such documentation upon Company's written request.

4. Customer warrants that all gas delivered to Company for transportation hereunder shall be of a merchantable quality and shall conform to the quality requirements set forth in the tariff of FGT as filed with and approved by the Federal Energy Regulatory Commission.

ARTICLE V

QUANTITY

1. Customer and Company agree that as of the Effective Date of this Agreement, the initial maximum annual contract quantity of gas ("MACQ") that Company is obligated to deliver to Customer under this Agreement in any contract year is:

Alexander Orr- Water Treatment Plant
6800 S.W. 87th Avenue
Miami, FL 33173
Account # 211-0756225-011
Account # 211-0756239-011
4,200,000 therms

Hialeah Lime Recalcination Facility
700 W. 2nd Avenue
Hialeah, FL 33010
Account # 211-0754412-011
3,300,000 therms

South District Wastewater Treatment Plant
8950 S.W. 232nd Street
Miami, FL 33170
Account # 211-0786676-001
400,000 therms

2. Company may, from time to time, make deliveries to Customer in excess of the above stated MACQs. However, if Customer desires to increase the MACQ for any facility, Customer will provide Company with a written request. Within ninety (90) days of the date of such request, Company shall provide Customer with proposed terms and conditions under which Company will be willing to increase MACQ. Such terms shall include, but not be limited to,

Customer's willingness to pay, if necessary, an appropriate contribution to the cost of construction of additional facilities.

3. Customer hereby agrees to tender for transportation on Company's systems, during each annual period, a volume of gas equal to or greater than the minimum annual volume of 1,250,000 therms per year.

4. The maximum daily contract quantity of gas ("MDCQ") Customer may have delivered to Company at the Points of Receipt, in the aggregate, for transportation by Company hereunder shall be 24,500 therms. During the Term of this Agreement, Customer may increase the MDCQ and/or the maximum deliveries designated herein for each Point of Receipt only with the prior consent of Company, and only upon such prior notice as Company may require under the circumstances.

ARTICLE VI

PARAMETERS OF SERVICE

1. Company does not warrant that transportation service will be available hereunder at all times and under all conditions.

ARTICLE VII

RATES AND CHARGES FOR SERVICE

1. For the Term of this Agreement, Customer shall pay Company each month the following transportation charges for services rendered under this Agreement. The rates set forth below are subject to the tax and other adjustment terms of Company's Tariff, as applicable to the Customer.

Facility	Rate per Therm	MACQ
Alexander Orr Water Treatment Plant	$ 0.010	4,200,000

Hialeah Water Treatment	$ 0.030	3,300,000
South District Wastewater Treatment Plant	$0.030	400,000

2. There shall be no charge for each therm transported to each facility in excess of MACQ as set forth in Paragraph 1 of this Article in any contract year, provided that any transportation service in excess of the MACQ figures set forth above in any contract year do not require Company to construct additional facilities to provide such service to Customer. The terms and conditions with respect to any increase in the initial MACQ and construction of associated additional facilities are subject to the terms of Paragraph 2 of Article V of this Agreement.

ARTICLE VIII

MEASUREMENT

1. Company agrees to install and maintain facilities necessary to deliver and accurately measure the gas to Customer at the Points of Delivery.

2. Quantities of gas delivered to Company's distribution system at the Points of Receipt for the account of Customer shall be measured by FGT. All charges billed to Customer hereunder shall be based on the measurements made at the Points of Delivery. Measurement shall include temperature-correcting devices installed and maintained by Company to ensure proper billing of gas, corrected to 60 degrees Fahrenheit, at no cost to Customer.

3. Customer may, with the prior written consent of Company, which shall not be unreasonably withheld, and at no cost to Company, install check-measuring devices at the Points of Delivery.

ARTICLE IX

FULL REQUIREMENTS

1. It is understood and agreed that Company's rendering of gas transportation service under the terms and conditions of this Agreement is in consideration of Customer's agreement to utilize exclusively such services for all pipeline-transported natural gas consumed at Customer's facilities as listed in Article V herein, from the Effective Date hereof and during the Term of this Agreement and any renewals thereof. Accordingly, Customer agrees that Customer will not, for the Term of this Agreement, and any renewals thereof, displace any service provided under this Agreement with service from any third party. However, nothing herein shall prohibit Customer from extracting and consuming landfill gas at Customer's facilities.

ARTICLE X

FACILITIES

1. All facilities required to provide service under this Agreement shall be designed, constructed, installed, operated, maintained, and owned by Company.

ARTICLE XI

NOMINATIONS AND NOTICE

1. Customer, or its agent supplier, shall make all nominations of service (advice regarding the next month's anticipated consumption) on Company's system hereunder on the appropriate form provided by Company. Customer, or its agent, shall submit any new nomination for service a minimum of ten (10) working days prior to the commencement of the transportation service and shall submit a request for a change to an existing nomination a minimum of three (3) working days prior to the date the change is to become effective.

2. Customer or its agent, not Company, shall be responsible for making all transportation agreements and nominations to all third parties upstream of Company's Points of

Receipt. Customer may use a broker for this purpose. If Customer utilizes a broker to make such transportation arrangements and nominations on the interstate system upstream of Company's system, Customer shall identify the broker initially and upon a change.

3. All nominations and adjustments to nominations shall be directed to:

Mr. Ernie Brake
Manager of Gas Operations
AGL Resources
10 Peachtree Place NE, Suite 800
Atlanta, GA 30309
Office: 404-584-4161
Cell: 404-379-3929

Any service inquiries or correspondence regarding the administration of nominations shall be directed to:

Mr. Ed C. Delgado, RCGC
Major Accounts Executive
Florida City Gas
955 E. 25th Street
Hialeah, FL 33013
Cell: 786-218-0861
Fax: 305-691-7335

OR

Mr. Joe Hoyt
Senior Accounts Executive
AGL Resources
Ten Peachtree Place
Atlanta, GA 30309
Office: 404-584-3118
Cell: 404-217-8928

4. All payments shall be directed to:

Florida City Gas
Location 1190
P.O. Box 5720
Atlanta, GA 31107-0720

5. To the extent any form of notice, other than notice related to nominations or administration of nominations, must be provided to either Party, notice should be sent to the following persons:

For Miami-Dade Water and Sewer Department:

Mr. Tom Segars, Superintendent
Water Production Division
P. O. Box 110006
Hialeah, FL 33011
Phone: (305) 520-4721
Fax: (305) 889-0156

For Florida City Gas:

Mr. Ed C. Delgado, RCGC
Major Accounts Executive
Florida City Gas
955 E. 25th Street
Hialeah, FL 33013
Cell: 786-218-0861
Fax: 305-691-7335

With a copy to:

General Counsel
AGL Resources
Ten Peachtree Place
Atlanta, GA 30309

ARTICLE XII

FORCE MAJEURE

1. Neither Company, nor Customer or its agents, shall be liable for damages to the other for any act, omission, or circumstance occasioned by or in consequence of any acts of God; strikes; lockouts; acts of the public enemy; wars; blockades; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; storms; floods; washouts; arrests and restraints of rules and people; civil disturbances; explosions; temporary failure of gas supply; temporary failure of

firm transportation arrangements; the binding order of any court or governmental authority, which has been resisted in good faith by all reasonable legal means; acts of third parties; or any other cause, whether of the kind herein enumerated or otherwise, not within the control of the Party, and which by the exercise of due diligence such Party is unable to prevent or overcome.

2. Such cause or contingencies affecting the performance by Company, Third Party Supplier, or Customer, however, shall not relieve Company or Customer of liability in the event of its concurrent negligence, or in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies affecting performance relieve either party from its obligations to make payments of amounts then due hereunder in respect of gas theretofore delivered. In any event, the liability of Customer for damages shall be limited as provided in Section 768.28, Florida Statutes.

ARTICLE XIII

MISCELLANEOUS

1. The captions in this Agreement are for the convenience of the Parties in identification of the provisions hereof and shall not constitute a part of the Agreement, nor be considered interpretive thereof.

2. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties; provided, however, neither Party may make an assignment hereunder without having first obtained the prior written consent of the other Party. Such consent shall not be unreasonably withheld. If either Party does not provide such consent within sixty (60) days after receipt of the other Party's notification of assignment, failure to reply shall be deemed as consent. Any notification of assignment or consent to assignment shall be made by registered mail and provided to the individuals identified in Paragraph 5 of Article XI of this Agreement.

3. The interpretation and performance of this Agreement shall be governed by the laws of the State of Florida. Venue for any civil action arising out of this Agreement shall be Miami-Dade County, Florida, unless otherwise provided by the Tariff.

4. This Agreement shall be subject to all of the rules and regulations of any duly constituted federal or state regulatory authorities having jurisdiction hereof. Company and Customer shall comply at all times with applicable federal, state, municipal, and other laws, ordinances, and regulations.

5. This Agreement contains the entire understanding of the Parties with respect to the matters contained herein and may be modified only in writing duly executed by authorized representatives of the Parties.

6. UNLESS EXPRESSLY SET FORTH HEREIN OR IN THE TARIFF, EXCEPT FOR EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, UNDER NO CIRCUMANCES SHALL EITHER PARTY HERETO BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES FOR LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS (INCLUDING, WITHOUT LIMITATION, COVER), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY OR TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TERMS OF THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

7. This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which taken together will constitute one and the same instrument.

SIGNATURE PAGE FOLLOWS

In witness whereof, MIAMI-DADE COUNTY and PIVOTAL UTILITY HOLDINGS, INC. D/B/A FLORIDA CITY GAS, by and through their duly authorized officers, have executed this Agreement as of the date first written above.

(SEAL)

PIVOTAL UTILITY HOLDINGS, INC.
D/B/A FLORIDA CITY GAS

By: _____

By: _____
Deputy Clerk

ATTEST:

Harvey Ruvin

Clerk of the Board:

By: _____
Deputy Clerk 8/28/08

MIAMI-DADE COUNTY, a political subdivision of the State of Florida

By its Board of County Commissioners

By: _____

Approved as to form and
Legal sufficiency.

By: Sarah Elizabeth Davis
Assistant County Attorney

In witness whereof, MIAMI-DADE COUNTY and PIVOTAL UTILITY HOLDINGS, INC. D/B/A FLORIDA CITY GAS, by and through their duly authorized officers, have executed this Agreement as of the date first written above.

(SEAL)

PIVOTAL UTILITY HOLDINGS, INC.
D/B/A FLORIDA CITY GAS

By: _____
Henry P. Linginfelter
President

By: _____
Deputy Clerk

ATTEST:

Harvey Ruvin

Clerk of the Board:

By: _____
Deputy Clerk

MIAMI-DADE COUNTY, a political subdivision of the State of Florida

By its Board of County Commissioners

By: _____

Approved as to form and
Legal sufficiency.

By: _____
Assistant County Attorney

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