Memorandum

MIAMI-DADE COUNTY

Date: March 3, 2009

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

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

From: George M. Burgess
County Manager

Subject: Agreement between Miami-Dade County and Florida International University providing for environmental research and analysis services by the Southeast Environmental Research Center

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RECOMMENDATION

It is recommended that the Board of County Commissioners adopt the attached resolution authorizing the execution of an agreement between Miami-Dade County and Florida International University (FIU) providing for environmental research and analysis services by the FIU Southeast Environmental Research Center for the Biscayne Bay Coastal Wetlands Rehydration Demonstration Project as specified in the County's 20-Year Water Use Permit.

SCOPE

This item will have a countywide impact. The Southeast Environmental Research Center is located in Commission District 4.

FISCAL IMPACT/FUNDING SOURCE

There is a fiscal impact to Miami-Dade County. The item provides for the County, through the Miami-Dade Water and Sewer Department (WASD), to provide maximum compensation in the amount of $2.75 million. The funding source is WASD operating revenues.

TRACKING RECORD/MONITOR

WASD's Contracts Processing Section will monitor the agreement.

BACKGROUND

On January 22, 2009, the Board approved a contract award to MWH Americas, Inc. for the engineering services, construction management, operation and evaluation of the Biscayne Bay Coastal Wetlands Rehydration Demonstration Project, an advanced 230,000 gallon per day wastewater treatment pilot plant project. This pilot project will help to determine if reclaimed water can be utilized to rehydrate the Biscayne Bay Coastal Wetlands, and assist the County in meeting the requirements specified in the 20-Year Water Use Permit. In the project description, the Board was advised that a separate agreement with FIU would provide the toxicity tests and environmental fate tests required for the project.

On January 25, 2007, the Board adopted Resolution R-69-07 directing staff to explore opportunities to enter into interlocal agreements with local universities for services required by the County. WASD prepared an agreement with the FIU Southeast Environmental Research Center to provide environmental research and analysis services for the pilot project. These services consist of assessing the use of reclaimed water by performing aquatic toxicity and ecological studies on select animal and plant species.

The agreement provides for a maximum compensation of $2.75 million for a seven year period (the contract period for the pilot project), and includes a 10 percent contingency for possible additional work. The agreement has been approved by FIU.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: March 3, 2009

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 Mayor'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**

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Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(R)(1)(C)
3-3-09

RESOLUTION NO. _____

RESOLUTION APPROVING AGREEMENT BETWEEN MIAMI-DADE COUNTY AND FLORIDA INTERNATIONAL UNIVERSITY FOR THE PROVISION OF ENVIRONMENTAL RESEARCH AND ANALYSIS SERVICES BY THE UNIVERSITY'S SOUTHEAST ENVIRONMENTAL RESEARCH CENTER IN THE AMOUNT OF $2.75 MILLION, INCLUDING A 10% CONTINGENCY FEE; AND AUTHORIZING THE MAYOR TO EXECUTE SAME AND EXERCISE TERMINATION 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,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the agreement with Florida International University for the provision of environmental research and analysis services by the University's Southeast Environmental Research Center in the amount of $2.75 million, including a 10% contingency fee; in substantially the form attached hereto and made a part hereof; and authorizes the Mayor or Mayor's designee to execute same for and on behalf of Miami-Dade County, Florida and to exercise the termination provisions contained therein.

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:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of March, 2009. 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

H

AGREEMENT
BETWEEN
MIAMI-DADE COUNTY
AND
FLORIDA INTERNATIONAL UNIVERSITY
09FIU002

THIS AGREEMENT made and entered into this ____ day of _____ 2009, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY", and the FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES, its successors or assigns, a public body corporate of the State of Florida, hereinafter called the "UNIVERSITY".

For and in consideration of the mutual agreements hereinafter contained, the COUNTY hereby retains the UNIVERSITY and the UNIVERSITY hereby covenants to provide the services described herein in connection with the research and analysis for the COUNTY's proposed Biscayne Bay Coastal Wetlands Rehydration Demonstration Project, hereinafter referred to as the "Project".

WITNESSETH

WHEREAS, the Southeast Environmental Research Center at Florida International University will facilitate and accelerate technology transfer from research to practice; promote collaboration between researchers and the industry; and will serve as a public resource to perform research of significance to the South Florida region; and

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WHEREAS, the COUNTY is promoting entering into partnership with local universities to enhance the educational experience of those students who attend local universities, such relationships will result in the expenditure of COUNTY funds at the local level; and

WHEREAS, the COUNTY recognizes that the UNIVERSITY is fully qualified to render research and analysis services described in this Agreement; and

WHEREAS, the COUNTY desires to obtain the environmental research and analysis services of the UNIVERSITY to assist in assessing the use of reclaimed water for rehydrating the Biscayne Bay Coastal Wetlands and will assist the COUNTY in meeting the South Florida Water Management District's requirements in Limiting Condition Number 43 of the Miami-Dade County Water Use Permit, issued on November 15, 2007, by performing aquatic toxicity and ecological studies on select animal and plant species.

NOW, THEREFORE in consideration of the mutual terms, conditions, covenants and payments hereinafter set forth, the COUNTY and the UNIVERSITY agree as follows:

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1. COUNTY OBLIGATIONS AND AUTHORIZATION TO PROCEED: The COUNTY agrees that its Miami-Dade Water and Sewer Department, hereby referred to as "WASD", shall furnish to the UNIVERSITY any plans or other data available in the COUNTY files pertaining to the work to be performed under this Agreement. Information shown on such plans or data shall be that which has been made available to the COUNTY, and shall be provided to the UNIVERSITY without guarantee regarding its reliability and accuracy; the UNIVERSITY shall be responsible only for exercising reasonable care in independently verifying such information if it shall be used by the UNIVERSITY to accomplish the work undertaken pursuant to this Agreement.

The UNIVERSITY shall submit a proposal upon the request of the Director of WASD, hereinafter referred to as the "Director" prior to the issuance of a task authorization to proceed. No payment shall be made to the UNIVERSITY for time or service in connection with the preparation of any such proposal. The Director or his designee shall confer with the UNIVERSITY before any authorization to proceed is issued to discuss and agree upon the scope, time for completion, and fee for services to be rendered pursuant to the task orders, subject to the conditions of this Agreement. WASD reserves the right to interview the UNIVERSITY staff and/or students who will be providing services on a task.

The Director shall issue written task order authorizations to proceed to the UNIVERSITY for each section of work to be performed hereunder. In case of emergency, the COUNTY, through the Director, reserves the right to issue oral authorizations to the UNIVERSITY with the understanding that written authorization shall follow within ten (10) working days. If no written authorization is issued within that time, the UNIVERSITY shall cease work and submit an invoice for work completed.

2. UNIVERSITY'S SERVICES: FIU will propose a statement of work in order to evaluate and carry out the proposed studies as stated in the Final Aquatic Toxicity and Ecological Testing Plan which will be prepared by a selected consultant through Project No. E08-WASD-02(A).

The studies will include laboratory toxicity testing and outdoor microcosm studies. The toxicity tests will include the evaluation of acute and chronic effects such as development growth and reproduction. The microcosm studies will be conducted to evaluate the potential effects of long term exposure to reclaimed water and the ultimate distribution and fate of specified substances.

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3. UNIVERSITY'S RESPONSIBILITIES: In connection with professional services to be rendered pursuant to this Agreement, the UNIVERSITY agrees to:

A. Use the same degree of care and skill ordinarily exercised by similar professionals in the field under similar conditions.

B. Maintain an adequate staff of qualified personnel at all times to ensure completion of the work within the term specified in the applicable task order authorization to proceed.

C. Comply with the federal, state and local laws or ordinances applicable to the work.

D. Maintain applicable laboratory certification and or accreditation for parameters analyzed throughout the term of the agreement.

E. Cooperate fully with the COUNTY in the scheduling and coordination of all phases of the work.

F. Provide a written report on the status of the work to the Director upon request and hold pertinent data, and other products open to the inspection of the Director or his designee at any reasonable time and during normal business hours.

G. Submit for COUNTY review any data representative of the work's progress at the percentage stages of completion which may be stipulated in the applicable authorization to proceed. Submit for COUNTY approval the final work products upon incorporation of any modifications requested by the COUNTY during any previous review.

H. Confer with the COUNTY at any time during the effective term of the agreement for which the UNIVERSITY has provided research and analysis services. The UNIVERSITY shall not be compensated for the correction of errors and omissions on the part of the UNIVERSITY.

I. Use computer and networking hardware, software and firmware standards as approved by the Management Information System (MIS) Division of the WASD. MIS staff must be involved in the design phase of the application and in developing the testing, training and acceptance criteria of the application before it is placed into production. All applications and/or systems to be transferred to the COUNTY must have adequate end user and systems support documentation and as part of the design process for a project, any system needs should be identified and will require the approval of MIS. All systems developed by the UNIVERSITY pursuant to this Agreement shall become the property of the UNIVERSITY; provided that the UNIVERSITY hereby grants

to the COUNTY a royalty-free paid-up non-exclusive license to use such systems for governmental purposes and the COUNTY will receive the executable codes to those systems.

4. TASK AUTHORIZATION: TIME FOR COMPLETION: The services to be rendered by the UNIVERSITY for each section of work shall commence upon receipt and acceptance by the UNIVERSITY of a written task order authorization to proceed from the Director or his designee subsequent to the execution of this Agreement. The services for each section of the work must be completed within the time stated in the accepted authorization to proceed.

5. DELAY IN PERFORMANCE: No claim for damages or any claim other than for an extension of time shall be made or asserted against the COUNTY by reason of any delays. The UNIVERSITY shall not be entitled to an increase in this Agreement sum or payment or compensation of any kind from the COUNTY or direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency arising because of delay, disruption, interference or hindrance from any cause whatsoever; provided however, that this provision shall not preclude recovery or damages by the UNIVERSITY for hindrances or delays due solely to fraud, bad faith or active interference on the part of the COUNTY or its agents. Otherwise, the UNIVERSITY shall be entitled only to extensions of this Agreement time as the sole and exclusive remedy for such resulting delay, in accordance with and to the extent specifically provided below.

The time to perform this Agreement shall be extended only if the UNIVERSITY is delayed in performing any obligation under this Agreement due to a force majeure or inevitable accident or occurrence. The UNIVERSITY shall request in writing a time extension from the Director within ten (10) business days of said force majeure or inevitable accident or occurrence. Failure to make such written request within the specified time shall be a ban on the ability of the UNIVERSITY to bring any civil action for either compensable or non-compensable time extension. For the purpose of this Paragraph, force majeure shall mean an act of God which includes but is not limited to sudden, unexpected or extraordinary forces of nature such as hurricanes, floods, washouts, storms, fires, earthquakes, landslides, epidemics, explosions or other forces of nature. Inevitable accidents or occurrences shall mean those which are unpreventable by the UNIVERSITY and shall include but not be limited to strikes, lockouts, other industrial disturbances, wars, blockades, acts of public enemies or terrorism, insurrections, riots, federal, state, county and local governmental restraints, military action, civil disturbances, explosions, conditions in federal, state, county and local permits, bid protests, manufacturing and delivery delays, unknown or unanticipated soil, water or ground conditions and cave-ins, and contract default by the COUNTY's consulting and design engineers and contractors. Provision of the above specified notice shall be a condition precedent to maintenance of a claim for delay.

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Such acts or events do not include inclement weather (except as noted above) or the acts or omissions of subconsultants, materialmen, suppliers, or their subcontractors, unless such acts or omissions are otherwise encompassed by the definition set forth above.

6. COMPENSATION: The COUNTY agrees to pay and the UNIVERSITY agrees to accept a fee representing full compensation for the performance of the services specified herein. The UNIVERSITY shall submit monthly invoices for all work in progress using a format and procedure provided by WASD. Invoices shall be submitted within 120 days of the performance of the service being billed. The COUNTY shall not pay invoices that are not properly submitted within that period. Additionally, the COUNTY may withhold payment of any invoices from the UNIVERSITY if the COUNTY determines that the UNIVERSITY submitted and received payment of an inaccurate invoice, without limitation to any other legal or equitable remedies. Fees and other compensation will be computed in accordance with one or a combination of the methods outlined below as specified in a written task authorization:

A. Method of Salary Reimbursement: It is mutually agreed and understood that the following provision shall be applicable to this agreement. The fee for research and analysis services rendered by the UNIVERSITY's faculty and students shall be computed based on the direct salary cost, as reported to the Internal Revenue Service, excluding bonuses or awards if applicable, for the time of said faculty and students engaged directly in the work times a multiplier of 1.45 for expenses incurred for all faculty and students. The UNIVERSITY shall invoice the COUNTY for work performed as detailed in the task authorization in a format acceptable to the COUNTY. This fee shall constitute full compensation to the UNIVERSITY for costs incurred in the performance of the work such as salaries, overhead, fringe benefits, operating margin and all other costs not covered by reimbursable expenses.

B. Lump Sum Fee: The fee for any requested portion of work may, at the option of WASD, be a lump sum mutually agreed upon by the COUNTY and the UNIVERSITY and stated in the written authorization to proceed as approved by WASD's Director.

C. Reimbursable Expenses: The University may be compensated for certain work related expenditures not covered by fees for research and analysis services, provided such expenditures are previously authorized by the Director or his designee in writing. Reimbursable expenses may include, but are not limited to:

Expenses for laboratory task and analyses, permitting fees, printing and reproduction costs, technical supplies, rental or purchase of specialized

equipment and instruments necessary for the efficient performance of the work, provided that such equipment, technical supplies and instruments become the property of the COUNTY upon work completion.

D. Maximum Compensation: The total of all payments to the UNIVERSITY pursuant to this Agreement shall not exceed two million five hundred thousand dollars ($2,500,000). No minimum amount of compensation is guaranteed to the UNIVERSITY.

E. Additional Work/Extra Work: In the event additional work is necessary due to the scope of the project or contingency items, the COUNTY agrees to pay and the UNIVERSITY agrees to accept fees in an amount not to exceed 10% for such additional work provided that before any extra work is begun, a task authorization from the Director shall be given to the UNIVERSITY.

7. DURATION OF AGREEMENT: This Agreement shall remain in full force and effect for a period of seven (7) years after its date of execution or until the research and analysis services are completed. Actual completion of the services may extend beyond such term and shall be subject to the same terms and conditions set forth in this Agreement, including but not limited to indemnification and insurance. This Agreement may be terminated by mutual consent of the parties hereto, or as otherwise provided herein. The performance of specifically and properly authorized services that may extend beyond this Agreement's effective term shall be compensated in accordance with Paragraph 6 hereof.

8. METHODS OF PAYMENT: The UNIVERSITY is responsible to submit invoices that are not more than 120 days old. In the case where disallowed charges are found, the COUNTY may return the entire invoice for correction and resubmittal. The UNIVERSITY agrees to provide all records necessary to substantiate payment requests to the COUNTY. Payments shall be made in accordance with the following methods:

A. Lump Sum Fee

(1) The UNIVERSITY shall submit the invoice in a format provided by WASD. Each invoice shall reference the particular task order authorization to proceed which authorized the services and shall include a status report describing the work completed.

(2) The amount due on the invoice shall be calculated by applying the percentage of the total work completed to date to the authorized lump sum and subtracting any previous billings.

(3) Payments shall be calculated on a percentage of the work completed.

9. SCHEDULE OF WORK: WASD shall have the sole right to determine on which units or sections of the work the UNIVERSITY shall proceed and in what order.

The written task order authorization to proceed issued by the Director shall cover in detail the scope, time for completion and compensation for the UNIVERSITY services requested in connection with each unit or section of work.

10. RIGHTS OF DECISIONS: All services shall be performed by the UNIVERSITY to the satisfaction of the Director who shall decide all questions, difficulties, and disputes of whatever nature which may arise under or by reason of this Agreement, the prosecution and fulfillment of the services hereunder, and the character, quality, amount and value thereof. The Director's decisions upon all claims, questions and disputes shall be final, conclusive and binding upon the parties hereto unless such determination is clearly arbitrary or unreasonable. In the event the UNIVERSITY does not concur with the decisions of the Director, the UNIVERSITY shall present any such objections in writing to the County Mayor. The Director and the UNIVERSITY shall abide by the decisions of the County Mayor. The decision of the County Mayor shall be subject to review de novo by a court of competent jurisdiction.

11. OWNERSHIP OF DOCUMENTS: All notes, correspondence, documents, drawings, renderings, calculations, specification, models, photographs, reports, investigations, and any other documents and copyrights thereto for services performed or produced in the performance of this Agreement, whether in paper or other hard copy medium or in electronic medium, except with respect to copyrighted standard details and designs owned by the UNIVERSITY or owned by a third party and licensed to the UNIVERSITY for use and reproduction, shall become the property of the COUNTY. However, the COUNTY may grant an exclusive license of the copyright to the UNIVERSITY for reusing and reproducing copyrighted materials or portions thereof as authorized by the COUNTY in advance and in writing.

12. NOTICES: Any notices, reports or other written communications from the UNIVERSITY shall be considered delivered when posted by certified mail or delivered in person to the Director. Any notices, reports or other communications from the COUNTY to the UNIVERSITY shall be considered delivered when posted by certified mail to the UNIVERSITY at the last address left on file with the COUNTY or delivered in person to the UNIVERSITY or the UNIVERSITY's authorized representative.

The UNIVERSITY agrees that it shall make no statements, press releases or public releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the confidential data (which is data that is marked "confidential") or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of this Agreement, without first notifying WASD Director or his designee and securing his consent. Nothing in this Agreement shall prevent the UNIVERSITY from complying with the requirements of Chapter 119, or Section 1004.22(2), Florida Statutes, regarding the disclosure of public information.

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13. AUDIT RIGHTS: The COUNTY reserves the right to audit the records of the UNIVERSITY related to this Agreement at any reasonable time and during normal business hours during the performance of the work included herein and for a period of five (5) years after final payment under this Agreement. The UNIVERSITY agrees to provide any records necessary to substantiate payment requests to the COUNTY, including audited financial statements, to the extent such records are maintained by the UNIVERSITY in the normal course of business. In the event an audit undertaken pursuant to this section reveals improper, inadvertent, or mistaken payments to the UNIVERSITY, the UNIVERSITY shall remit such payments to the COUNTY. The COUNTY shall retain all legal and equitable rights with respect to recovery of payments.

14. SECURITY REQUIRMENTS: All University students and staff will comply with all applicable laws and WASD requirements with respect to security, and in particular, access to sites and facilities, visitors, prohibited items such as weapons/illegal drugs/alcohol, and reporting of security breaches to WASD security staff and management.

To the best of the UNIVERSITY's knowledge and belief, no University student or staff will be assigned to work on the project that is the subject of this agreement who has been convicted of a public entity crime, fraud, theft and/or a property damage crime within the preceding thirty-six (36) months.

All University students and staff shall be required to obtain a WASD identification badge in accordance with applicable laws. All University students and staff will sign, release and submit to a background investigation conducted by the Miami Dade Office of Inspector General prior to the issuance of the identification badge. Issued identification badges must be worn and displayed on an outermost garment at all times while at a WASD site. The University will be charged on a per person basis for the issuance of WASD identification badges and background investigations.

All University students and staff must be aware that access to WASD sites is restricted to only those with assigned identification badges. Unescorted access to chemical areas, control areas, electrical generation areas/switching areas and fuel areas will not be allowed unless authorized in advance by WASD Associate Director, Priority Capital Projects.

Issued WASD identification badges must be safeguarded by assigned University student or staff. In the event of a lost or stolen identification badge, University student or staff must immediately notify WASD security staff and pay for badge reimbursement in the amount of $15. Once a University student or staff member has completed his or her assigned work or upon termination of this agreement, the identification badge(s) must be returned to immediate WASD Supervisor.

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University students and staff will safeguard against unauthorized distribution or posting of any and all WASD provided infrastructure information to any individual or organization not authorized in advance by WASD.

Use of camera photography, video or any recording device is prohibited at all WASD sites.

University students and staff shall comply with all WASD vehicle parking regulations.

15. TERMINATION OF AGREEMENT: The Director may terminate this Agreement, in total or in part, without cause or penalty, by ten (10) days prior written notification or by declining to issue the written task order authorization, as provided herein in which event the COUNTY's sole obligation to the UNIVERSITY shall be payment, in accordance with Paragraph 6, for those units or sections of work previously authorized plus any non-cancelable commitments entered into by UNIVERSITY in furtherance of this agreement prior to receipt of notice of termination. Such payment shall be determined on the basis of the hours or percentage of work performed by the UNIVERSITY up to the time of termination. In the event partial payment has been made for professional services not performed, the UNIVERSITY shall return such sums to the COUNTY within ten (10) days after receipt of written notice that said sums are due. Upon such termination, the COUNTY may, without penalty or other obligation to the UNIVERSITY, elect to employ other persons to perform the same or similar services. The UNIVERSITY may terminate this Agreement upon written notice to the COUNTY if the Principal Investigator is no longer employed by the UNIVERISTY or the Principal Investigator is unable to continue work pursuant to this Agreement or the task order authorization issued hereunder and no other UNIVERSITY employee is available to perform such work.

16. DEFAULT: If the UNIVERSITY fails to comply with the provisions of this Agreement, the Director may declare the UNIVERSITY in default by ten (10) days prior written notification. In such event, the UNIVERSITY shall only be compensated for any professional services completed as of the date written notice of default is served. In the event partial payment has been made for incomplete professional services, the UNIVERSITY shall return such sums to the COUNTY within ten (10) days after receipt of written notice that said sums are due. In the event the COUNTY prevails in litigation to enforce or defend the provisions of this or any other Paragraph of this Agreement, the COUNTY shall be compensated by the UNIVERSITY for reasonable attorney's fees and court costs to the extent permitted by Section 768.28, Florida Statutes.

17. INDEMNIFICATION AND INSURANCE: The UNIVERSITY shall, to the extent permitted by Section 768.28, Florida Statutes, at all times hereinafter, indemnify and hold harmless the COUNTY, and its officers, agents, employees, and instrumentalities from any and all liability, claims, losses, and causes of

action, including attorney's fee and costs of defense which the COUNTY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, or relating to or resulting from the negligence of the UNIVERSITY and/or its officers, employees, agents or instrumentalities, during the term of this Agreement. The UNIVERSITY shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the COUNTY, where applicable, including appellate proceedings, and shall pay all costs, judgments and reasonable attorney's fees which may issue thereon. The UNIVERSITY expressly understands and agrees that any insurance protection required by this Agreement or otherwise by the UNIVERSITY shall in no way limit the responsibility to indemnify, keep and save harmless and defend the COUNTY or its offices, employees, agents or instrumentalities as herein provided. Nothing herein shall be deemed to indemnify the COUNTY from any liability or claim arising out of the negligence performance or failure of performance of the COUNTY, its officers, employees, agents or instrumentalities or any other related third party. This paragraph is subject to the limitation of Section 768.28, Florida Statutes.

The COUNTY shall, to the extent permitted by law at all times hereinafter, indemnify and hold harmless the UNIVERSITY, and its officers, agents, employees and instrumentalities from any and all liability, claims, losses, and causes of action, including attorney's fees and costs of defense which the UNIVERSITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, or relating to or resulting from the negligence of the COUNTY and/or its officers, employees, agents or instrumentalities, during the term of this Agreement. The COUNTY shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the UNIVERSITY, where applicable, including appellate proceedings, and shall pay all costs, judgments and reasonable attorney's fees which may issue thereon. The COUNTY expressly understands and agrees that any insurance protection required by this Agreement or otherwise by the COUNTY shall in no way limit the responsibility to indemnify, keep and save harmless and defend the UNIVERSITY or its offices, employees, agents or instrumentalities as herein provided. Nothing herein shall be deemed to indemnify the UNIVERSITY from any liability or claim arising out of the negligence performance or failure of performance of the UNIVERSITY, its officers, employees, agents or instrumentalities or any other related third party. This paragraph is subject to the limitation of Section 768.28, Florida Statutes.

The UNIVERSITY, a State of Florida agency, will provide proof of general liability insurance coverage under the State of Florida Risk Management Trust Fund, established pursuant to Section 284.30, Florida Statutes, and administered by the State of Florida, Department of Insurance, and will provide workers' compensation insurance as required by statute.

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18. ENTIRETY OF AGREEMENT: This writing embodies the entire Agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written with reference to the subject matter hereof that are not merged herein and superseded hereby.

19. TRAVEL: Travel out of Miami-Dade County by UNIVERSITY staff must be approved in advance by the WASD Director or his designee. Travel expenses incurred within the County are not reimbursable. When travel costs are incurred, they will be subject to either the provisions of Miami-Dade County Administrative Order 6-1 or Section 1004.22, Florida Statutes, whichever is more restrictive.

20. MODIFICATION: No alteration, change, or modification of the terms of this Agreement shall be valid unless made in writing, signed by all parties hereto, and approved by the COUNTY.

    All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

21. GOVERNING LAW: This Agreement, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida, and venue shall be in Miami-Dade County, Florida.

22. SEVERABILITY: If any Section of this Agreement is found to be null and void the other Section shall remain in full force and effect.

(This section was intentionally left blank)

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IN WITNESS WHEREOF the parties hereto have executed this Agreement by their duly authorized officers on the date first written above.

ATTEST:

By:_____
Clerk

FOR THE COUNTY:

MIAMI-DADE COUNTY

By: _____
County Mayor

Approved as to Form and Legal Sufficiency

By:_____
Assistant County Attorney

ATTEST:

By:_____
Witness (1)

_____
Witness (2)

THE FLORIDA INTERNATIONAL UNIVERSITY BOARD OF TRUSTEES:

By:_____
Joseph Barabino
Associate Vice President for Research

By:_____
Roberto M. Gutierrez
Director, Pre-Award
Office of Sponsored Research Admin.

Read and Acknowledged:

_____
Dr. Rudolf Jaffe, Director
Southeast Environmental Research Center

_____
Dr. Gary Rand, Principal Investigator