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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: July 17, 2008

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

From: George M. Burgess
County Manager

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

Resolution No. R-849-08

Subject: Resolution approving a contract between Miami-Dade County and the City of Miami Beach for the provision of water service

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 Miami Beach 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 Commission on May 14, 2008.

SCOPE OF AGENDA ITEM

The contract requires WASD to provide water service to the City, located in Commission Districts 4 and 5, for a 20-year period.

FISCAL IMPACT/FUNDING SOURCE

The wholesale water revenue received by WASD from the City of Miami Beach in FY 2007 was $8,723,740. The revenue from all wholesale water customers is approximately $27 million annually.

TRACK RECORD/MONITOR

WASD's Intergovernmental Affairs Manager will monitor the agreement.

BACKGROUND

The City of Miami Beach and the County entered into a contract for the provision of water service to the City of Miami Beach on March 21, 1995. The contract was for a five-year term until March 21, 2000. Addendum Number One, approved by the Board on April 26, 2000, extended the contract to January 31, 2004.

Pursuant to the terms and conditions of the Miami-Dade County Interim Consumptive Use Authorization and Agreement established with the District, the County is required to obtain 20-year water service contracts with its wholesale water customers to coincide with the County's request for a 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 customers have entered into contracts with the County except for the Cities of Miami Beach and Hialeah. Both contracts are concurrently before the Board for approval. Several provisions of the contract with the City of Miami Beach differ from the County's other wholesale water contracts because the City of Miami Beach specifically requested clarification or addition of several provisions. After many negotiating sessions, this version of the contract addresses both County and City concerns, and it satisfies the requirements of the 20-Year Water Use Permit issued by the District. These provisions are detailed below:

- If the County should not have sufficient water available to fulfill the 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, the County shall be deemed to have fully performed its duties if it furnishes and delivers the City's pro-rata share based on the percent of the total County water supply consumed by the City. The following language was deleted from this contract: "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."

- The following language was added to this contract: "The County provides water service to 601 N.E. 36th Street after the point of delivery to the City of Miami Beach at N.E. 36 Street. Therefore, the consumption of water that registers on the water meters for that address shall be deducted from the County's invoice to the City and the appropriate billing/consumption data will be provided to the City substantiating the billing amount."

- The County will notify wholesale customers of its ability or inability to meet their water supply needs which is subject to local, state and federal agencies and regulatory bodies having jurisdiction over such matters, in this contract, the County will also notify the County's Department of Environmental Resources in addition to notifying the City of Miami Beach.

- This contract contains language which requires the County to provide 72-hour notification before any planned decrease in pressure which would affect the City's ability to deliver water to any City customer. It also requires the County to maintain the pressure of the daily flows transmitted to the following delivery points: MacArthur Causeway, Venetian Causeway, Julia Tuttle Causeway and the NW 79 Street Causeways within 50-55 pounds per square inch gauge (psig), if it drops to 40 psig, the County commits to immediately notify the City's Police, Public Works and Fire departments of the low pressure condition. Finally, the County agrees to assist with the emergency flow conditions to the extent possible.

- The County requires its wholesale customers to comply with County Ordinance No. 06-177, which requires publicly owned water distribution systems to prepare conservation plans and to submit them to the County, and authorizes the County to impose a surcharge on the use of amounts of water that could be conserved through the implementation of a water conservation plan, provided the surcharge is applied uniformly to all customers of the County. In this contract, the provision also provides for any future surcharges applied to the City to be maintained by the County as a designated Water Conservation Fund, and that those surcharge funds collected from the City to be applied specifically to water conservation efforts and programs in the City up to the amount collected from the City, This is in addition to any other countywide conservation programs being undertaken by the County.

- The Board of County Commissioners has the authority to revise or modify the wholesale rate with six weeks notification. This contract calls for the County to impose any peak flow rate on all County customers, retail and wholesale, and the peak flow rate charged can only be imposed after a review process of the peak flow rate increase is completed in partnership with the City.

- This contract requires the City to notify the County of non-payment within 30 days of receipt of the County's invoice for wholesale water charges.

- The contract for wholesale customers specifies that any and all suits brought by either party shall be instituted and maintained in any court of competent jurisdiction in Miami-Dade County, and in all such suits, the prevailing party will be entitled to receive costs and reasonable attorney's fees. The amount of such costs and fees will be determined by the court in which the actions are brought. The

following language was deleted from this contract: "The amount of such costs and fees shall be determined by the court in which such actions are brought."

- 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. These tests will be performed using flow meters. In this contract, these tests may be performed using flow meters and/or Supervisory Control and Data Acquisition equipment.

- The following language was deleted from this contract: "Additionally, the City shall not impose any zoning changes upon the properties of the Department."

- Any cessation of water services and any consequences caused by Force Majeure shall not constitute a breach of the County's water service contract with wholesale customers. Force Majeure includes federal, state, governmental restrictions, regulations and restraints, or conditions in federal, state, county and local permits. In this contract, the terms "county and local permits" were deleted.

- This contract shall be in effect for a 20-year period to coincide with the 20-Year Water Use Permit. In the event the City is able to develop a feasible source and supply of water, different from those resources available from the County, it is agreed that this contract will be altered to reflect the availability of such sources and supply on terms agreeable to both parties.

- The City of Miami Beach grants the right to the County to provide reuse water if the necessary infrastructure exists within the City. The City currently has no infrastructure to accept reuse water nor has any plans to install such infrastructure.

- In this contract , the following language was deleted: "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 County engaged in lengthy negotiations with the City of Miami Beach 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 and confirms the County's intention to provide water services to the City of Miami Beach 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 the 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)(B)

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)(B)
7-17-08

RESOLUTION NO. **R-849-08**

RESOLUTION APPROVING EXECUTION OF A CONTRACT WITH THE CITY OF MIAMI BEACH 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 Miami Beach 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 **Joe A. Martinez**, who moved its adoption. The motion was seconded by Commissioner **Carlos A. Gimenez** and upon being put to a vote, the vote was as follows:

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

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

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: **Kay Sullivan**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency:

Henry N. Gillman

CONTRACT
BETWEEN
MIAMI-DADE COUNTY
AND
CITY OF MIAMI BEACH, FLORIDA
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 Miami Beach, 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 March 21, 1995, the COUNTY and the CITY entered into a Contract providing for the rendition of water service by the COUNTY to the CITY, and

WHEREAS, on April 26, 2000, the COUNTY and the CITY entered into Addendum Number One to extend the contract, and

WHEREAS, on May 10, 2006, the COUNTY and the South Florida Water Management District(SFWMD) entered into a contract which requires the COUNTY to obtain twenty (20) year water service contracts with its volume water customers to coincide with the request of the COUNTY for twenty (20) year Consumptive Use Permits issued by the South Florida Water Management District, and

WHEREAS, on November 15, 2007, the COUNTY was granted a 20-year Water Use Permit 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 DISTRICT.

WHEREAS, without a twenty (20) year contract with the CITY, the water supply source for the CITY, may be allocated from an alternative more expensive source for the CITY, 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 for a twenty (20)year period, 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 CITY agree as follows:

1. Insofar as it may be lawful to do so in accordance with the terms and conditions of any Consumptive Use Permit issued to the COUNTY by the SFWMD, and pursuant 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 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 the CITY 's pro rata share based on the percent of the total COUNTY water supply consumed by the CITY. 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.

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

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

a. MacArthur Causeway Watson Island
b. Venetian Causeway San Marco Island
c. Julia Tuttle Causeway NE 36 Street
d. Normandy Isle 71 Street West Bay Drive
e. 87 Street Byron Avenue (with approval of all affected cities, future location for bi-directional emergency interconnection)

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 which are subject to approval of the COUNTY, Which approval shall not be unreasonably withheld or delayed In the event an additional point of delivery is outside of the jurisdictional limits of the CITY, the COUNTY agrees to assist with obtaining easements or such other project elements as may be beyond the CITY's ability to secure, such costs to be borne by the CITY. 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 right, 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.

The COUNTY provides water service to 601 N.E. 36th Street after the point of delivery to the CITY at N.E. 36th Street. Therefore, the consumption of water that registers on the water meters for that address shall be deducted from the COUNTY's invoice to the CITY and appropriate billing/consumption data will be provided to the CITY substantiating the billing amount.

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 distribution and transmission system to review and inspect. Said inspections shall be made at reasonable times and upon reasonable notice in such manner as to least disturb the normal operation of the CITY. Such inspection results shall be promptly communicated to the CITY.

6. In order for the COUNTY to adequately plan for future water demands, within 90 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 regulatory bodies, including Department of Environmental Resources Management, 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.

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 thirty (30) days after the meter is checked. Such checking shall be at a reasonable time, mutually agreeable to the Department and the CITY. If found to be in error exceeding two (2) percent of true accuracy, the meter shall be recalibrated to the satisfaction of the parties. If such error of more than two (2) 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 (2) 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 (2) percent 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 and the CITY shall mutually agree upon a method to establish consumption based on historic meter readings when the meter(s) operated properly. 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. The daily flows to be delivered to the City through the water transmissions mains located in the MacArthur, Venetian, Julia Tuttle Causeways and Normandy Isle 71st Street/West Bay Drive shall be at pressures in the range of 50-55 psig. In the event that the pressure on the COUNTY's point of delivery drops to the low pressure telemetry alarm level setting of 40 psig, the COUNTY shall immediately notify the City Police, Public Works and Fire Departments of such low pressure alarm condition. The COUNTY shall provide at least a 72 hour notice before any planned decrease in pressure which would affect the City's ability to deliver water services to any of its customer. The COUNTY agrees to assist with the emergency flow conditions to the extent possible.

11. The CITY shall pay to the COUNTY, as compensation for the treatment and transmission of all water delivered 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 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 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 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 customers of COUNTY. The COUNTY will attempt to provide the CITY with a preliminary surcharge rate a minimum of six (6) weeks prior to the adoption of a surcharge. The

amount of the surcharge is subject to the review and approval of the Board of County Commissioners. Water conservation is necessary to meet the public water supply demands of the COUNTY. Funds collected through a surcharge will be maintained by the COUNTY as a designated Water Conservation Fund and those surcharge funds collected from the CITY will be applied specifically to water conservation efforts and programs in the CITY up to the amount collected from the CITY, in addition to any other Countywide conservation programs being undertaken by the COUNTY.

13. The CITY recognizes that the County intends to implement a peak flow rate structure. If imposed, such rate shall also be equally imposed on all water customers, both retail and wholesale. Such rate shall be imposed only after completion of an analysis and review process that is completed in partnership with the CITY. Any peak flow rate charge imposed shall be identified specifically on all water use bills.

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 such 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, the COUNTY shall make the necessary adjustments, as mutually agreed upon, in subsequent billings to the CITY to correct any identified discrepancies. 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 forty-five (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 reasonable costs and reasonable attorney's fees.

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 December, January, February, March, April and May of each year and at all such other times when the daily quantity of water 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 tests as it shall deem reasonably necessary, and at such times as reasonably deemed to be appropriate, to determine to what extent the maximum 60-minute sustained demand imposed upon the facilities of the COUNTY by the requirements of the CITY 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.

18. In the event that the maximum 60-minute sustained demand between the hours of 6:00 am and 9:00 pm as shown simultaneously on all recording flow meters or SCADA considered collectively—shall exceed one hundred sixty (160) percent of the average daily demand 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 one hundred sixty (160) percent of the average daily demand.

If no such reduction occurs, the COUNTY shall have the right to increase the rate per thousand (1,000) gallons of water, for all water delivered during the month in which such test is made, by one (1) percent of the rate for each four (4) percent or major fraction thereof (2.5) percent by which the maximum 60-minute sustained demand shall exceed one hundred sixty (160) percent of the average daily demand. 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 are not available for service due to reasons beyond the control of the CITY such as water main breaks, major emergencies/scheduled maintenance at the water plant or fires.

19. To the extent no property taxes are charged to the County on other properties of the Regional System located in the CITY, no property taxes shall be levied or collected by the CITY upon the properties of the Department.

20. 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 which 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, governmental restrictions, regulations and restraints, military action, civil disturbances, or conditions in federal, or state 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.

21. In accordance with the provision of County Ordinance No. 89-95, as amended, the CITY shall not render water service, sewer service or both to any new retail user until a written receipt from the Department is provided to the CITY and said connection charges shall be due prior to the issuance of a building permit. In the event that the CITY provides water or sewer service, or both, to any new retail user without first ensuring that connection charges are paid, the CITY shall be liable for damages to the COUNTY in the amount of the connection charges owed by the retail user.

22. In consideration of good and valuable consideration received from the COUNTY and in consideration of the covenants in this Contract, the CITY, to the extent permitted by law, agrees to indemnify and save harmless forever, the COUNTY, its officers, agents and employees from all claims, liability, actions, loss, cost and expense, including attorney's fees, which may be sustained by the COUNTY, it officers, agents, and employees due to, caused by, or arising from the negligence of the CITY , its officers, employees and agents in connection with the performance of this Contract. The CITY agrees to defend against any claims brought or actions filed against the COUNTY, its officers, agents and employees in connection with the subject of the indemnities contained herein.

23. In consideration of good and valuable consideration received from the CITY and in consideration of the covenants in this Contract, the COUNTY, to the extent permitted by law, agrees to indemnify and save harmless forever, the CITY , its officers, agents and employees from all claims, liability, actions, loss, cost and expense, including attorney's fees, which may be sustained by the CITY , it officers, agents, and employees due to, caused by, or arising from the negligence of the COUNTY, its officers, employees and agents in connection with the performance of this Contract. The COUNTY agrees to defend against any claims brought or actions filed against the CITY , its officers, agents and employees in connection with the subject of the indemnities contained herein.

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

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

26. 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. The CITY shall comply with the terms and conditions of the Permit issued by the District on November 15, 2007 and any revisions or modifications to such permit. 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 by the SFWMD 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 is able to develop a feasible source and supply of water, different from those resources available from the COUNTY, it is recognized and agreed that the pursuit of such source and supply inures to the mutual benefit of the CITY and the COUNTY and that this agreement can and would be altered to reflect the availability of such sources and supply to the extent terms can be reached that are agreeable to both parties.

27. 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.

28. 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 Miami Beach
City Manager
1700 Convention Center Drive
Miami Beach, Florida 33139

29. 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.

30. 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.

31. If any Section of this Contract is found to be null and void, the other Sections shall remain in full force and effect unless such remaining Sections are directly impacted by the invalid Section.

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

By: _____ (SEAL) County Mayor

ATTEST:

CITY OF MIAMI BEACH

By: Maria E. Martinez for City Clerk

By: Saul Gross (SEAL) Vice Mayor

Approved as to form and legal sufficiency:

_____ Assistant County Attorney

Approved as to form:

_____ Attorney for City of Miami Beach

APPROVED AS TO FORM & LANGUAGE & FOR EXECUTION

City Attorney 5/29/08 Date

Exhibit "A"

ABSOLUTE BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, That the City of Miami Beach, 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 south of _____ Street and _____ Avenue 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 sewage 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 sewage 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:

_____

City Clerk

CITY OF MIAMI BEACH

_____

Mayor