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

Memorandum

MIAMI-DADE COUNTY

Date: September 10, 2010

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

From: George M. Burgess
County Manager

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

Resolution No. R-897-10

Subject: Resolution Approving a Contract Between the City of North Bay Village and Miami-Dade County for Wholesale Sewage Disposal Services

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RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the attached resolution approving the 20-year contract between the City of North Bay Village (City) and Miami-Dade County for wholesale sewage disposal services. Under the contract, Miami-Dade Water and Sewer Department (WASD) will provide disposal services and will lease a 16-inch force main from the City that will connect the City's sewage system to the County's system.

SCOPE OF AGENDA ITEM

This contract impacts the City of North Bay Village in Commission District 4, the City of Miami in Commission District 3, and the City of Miami Beach in Commission District 5.

FISCAL IMPACT/FUNDING SOURCE

There will be no fiscal impact on the County's current budget.

The County will pay the City $10 per year over the life of the contract to lease the City's new 16-inch sewer main once it is constructed, connected to the County's system and placed in service. WASD will receive revenues (billed monthly) directly from the City for treating the City's sewage.

Revenue from all wholesale sewage disposal customers for FY 2009 was $39,137,000.

TRACK RECORD/MONITOR

WASD's Chief of Intergovernmental Affairs will monitor this contract.

BACKGROUND

Currently, the City's sewage flows to the County's Central District Wastewater Treatment Plant through the City of Miami Beach's sewer system. The City desires to send its sewage directly to the County's system which requires the City to design and construct a 16-inch sewer force main to connect to the County's sewer system at N.E. 80 Street and N.E. 7 Avenue. The City will bear the entire cost of the interconnection, including the meter. Leasing the line to the County is a condition for the City to receive financing through the State of Florida's State Revolving Fund Loan Program for constructing the pipeline. Once the City has paid the loan in full, the lease terminates and the City will convey the pipeline to WASD.

The City agrees that it shall operate its facilities in accordance with all state, federal and local laws, and maintain its sanitary sewage facilities in accordance with the law. The County reserves the right to inspect the City's facilities and to take samples at reasonable times and with reasonable notice to the

City. The City shall pay to the County a monthly charge for sewage disposal service based on a uniform rate for all the County's wholesale customers. The County reserves the right to revise the rate and method of calculation from time-to-time as may be approved by the Board.

The City of North Bay Village approved the contract on May 11, 2010.

Assistant County Manager

MEMORANDUM

(Revised)

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

DATE: September 10, 2010

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

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

Please note any items checked.

_____ **"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**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous_____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(R)(1)(A)
9-10-10

RESOLUTION NO. R-897-10

RESOLUTION APPROVING EXECUTION OF A CONTRACT WITH THE CITY OF NORTH BAY VILLAGE FOR THE COUNTY TO PROVIDE SANITARY SEWAGE DISPOSAL SERVICE TO THE CITY OF NORTH BAY VILLAGE AND TO LEASE A FORCE MAIN FROM THE CITY OF NORTH BAY VILLAGE; AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED 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 execution of a contract with the City of North Bay Village for the County to provide sanitary sewage disposal service to the City of North Bay Village, and the execution of a lease agreement to lease a force main from the City of North Bay Village, in substantially the form attached hereto and made a part hereof; and authorizes the County Mayor or Mayor's designee to exercise any and all other rights conferred therein for and on behalf of Miami-Dade County, Florida.

The foregoing resolution was offered by Commissioner **Dorrin D. Rolle**, who moved its adoption. The motion was seconded by Commissioner **Sally A. Heyman** and upon being put to a vote, the vote was as follows:

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

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

The Chairperson thereupon declared the resolution duly passed and adopted this 10th day of September, 2010. 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: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Henry N. Gillman

CONTRACT
BETWEEN
MIAMI-DADE COUNTY
AND
CITY OF NORTH BAY VILLAGE, FLORIDA
PROVIDING FOR SEWAGE DISPOSAL SERVICE

THIS CONTRACT, made and entered into this _____ day of _____, 2010, by and between Miami-Dade County, a political subdivision of the State of Florida, hereinafter designated as the "COUNTY", and the City of North Bay Village, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter designated as the "CITY."

W I T N E S S E T H:

WHEREAS, the CITY's sewage disposal service is currently transmitted to the City of Miami Beach and included in the flow received from the City of Miami Beach at the COUNTY's Central District Wastewater Treatment Plant, and

WHEREAS, the CITY has requested to dispose of its sanitary sewage flow into the COUNTY's sewage disposal system via a new 16-inch sanitary sewage force main to be designed and constructed along the Kennedy Causeway and the Intracoastal Waterway by the CITY as shown on Exhibit "A", and

WHEREAS, the COUNTY concurs with the CITY's request to connect directly to the COUNTY's sanitary sewage system, and

WHEREAS, the proposed 16-inch sanitary sewage force main shall be interconnected to the COUNTY's sewage disposal system at N.E. 80th Street and N.E. 7th Avenue, or as permitted, and

WHEREAS, the CITY shall install a sanitary sewage flow meter in an easement provided by the COUNTY through its Park and Recreation Department in the northeastern area of Pelican Harbor Park, which shall be the demarcation between the CITY's and the COUNTY's sanitary sewage systems, and

WHEREAS, the sanitary sewage facilities installed between the demarcation site and the location of the interconnection to the COUNTY's sanitary sewage system shall be conveyed to the COUNTY upon completion of the construction for the COUNTY to own, maintain and operate, and

WHEREAS, the COUNTY and CITY agree to enter into this Contract so the COUNTY can render sewage disposal service directly to the CITY, and

WHEREAS, the Miami-Dade Water and Sewer Department, hereinafter referred to as the "Department", operates and maintains the COUNTY's sewage disposal system, and;

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

1. The COUNTY shall provide sewage disposal service to the CITY subject to the terms and conditions contained herein. The CITY, at its own cost and expense, shall be responsible for the design and construction of a 16-inch interior diameter sanitary sewage force main from the CITY's western city boundary and extending it across the Kennedy Causeway and Intracoastal Waterway and interconnecting said 16-inch sanitary sewage force main with the COUNTY's 24-inch sanitary sewage force main located at N.E. 80th Street and N.E. 7th Avenue, or as permitted. The CITY shall install a sanitary sewage flow meter within an easement provided by the COUNTY through its Park and Recreation Department in the northeastern area of Pelican Harbor Park which shall be the demarcation between the CITY's and the COUNTY's sanitary sewage systems. The Director has the authority to approve another demarcation facility.

    a. The design and construction of all sanitary sewage facilities to be designed and constructed by the CITY must conform to the Department's General Standards and shall be approved by the Department. The COUNTY shall have the right but not the obligation to make engineering inspections of all the construction work performed by the CITY's contractors. Such inspections shall not constitute any guarantee on the part of the COUNTY as to the quality and condition of materials and workmanship. Any inspections by the COUNTY shall not relieve the CITY of any responsibility for proper construction of said facilities in accordance with approved plans and specifications or for the quality and condition of materials and workmanship.

    b. During construction and at the time when various tests are required, the COUNTY's engineer or its authorized representative, together with the CITY's engineer and contractor, shall jointly be present to witness tests for determination of conformance with approved plans and specifications. The CITY shall notify the COUNTY a minimum of twenty-four (24) hours in advance of the tests.

    c. The COUNTY reserves the right to schedule construction meetings with the CITY's representatives at a place designated by the COUNTY with respect to project related matters upon twenty-four (24) hours notice.

    d. The CITY shall be fully responsible for obtaining all required approvals from all appropriate governmental and regulatory agencies and all necessary permits for the facilities contemplated to be constructed pursuant to this Contract. Certain federal, state and county agencies, including but not limited to the State of Florida Department of Transportation, the South Florida Water Management District and the U.S. Army Corps of Engineers may require that the COUNTY be named as permittee for certain construction activities even though the CITY's contractor will actually perform the work. To ensure that the COUNTY will incur no costs or liability as a result of being named permittee on such permits, the CITY shall provide sufficient security as acceptable to the

COUNTY which shall indemnify and protect the COUNTY from all claims, actions, judgments, liability, loss, cost and expense, including reasonable attorney's fees, related to work performed by the CITY pursuant to such permits. The security shall be furnished prior to the start of construction and shall be in an amount equal to the COUNTY's cost estimate for the permitted work. The CITY shall have sixty (60) days to resolve any claims by a permittor. Otherwise, the COUNTY, after fifteen (15) days written notice to the CITY, shall be entitled to pay said claims from the security. The CITY shall be liable for all costs in excess of the security.

e. The CITY shall bear the entire cost and expense of this Project, including obtaining such easements as may be needed and furnishing all necessary labor and materials required to connect with the COUNTY's force mains or gravity interceptors, all in accordance with plans and specifications to be approved by the COUNTY, which approval shall not be unreasonably withheld or delayed. If the facilities contemplated herein or any portion thereof are installed within private property outside of public right-of-way, the facilities shall be installed in a fifteen (15) foot wide easement and a ten (10) foot easement within the Intracoastal Waterway and require a twenty-five (25) foot minimum vertical clearance above the finished grade.

f. Upon construction and completion of the proposed sanitary sewer force main by the CITY, pursuant to the terms and conditions contained herein, including all necessary permitting, testing, certification, conveyance documents and execution of the lease agreement, the new force main will be connected to the County's sanitary sewage system and placed into immediate operation.

2. The CITY will supply and install the sanitary sewage flow meter and transfer ownership of all proposed sanitary sewage facilities from the inlet side of the meter to the point of connection to the COUNTY's sanitary sewage system. The CITY shall convey to the COUNTY, by appropriate Bill of Sale, as shown on Exhibit "B" attached hereto, Grants of Easements, One-year Maintenance Bond, Warranty, Contractor's Waiver and Release of Lien, a breakdown of actual Project costs, one (1) set of Mylar as-built drawings of all facilities showing specific locations and depths among other things as located by a licensed surveyor, along with four (4) prints of the as-built drawings which have been sealed by a surveyor and certified by the engineer of record. The documents shall convey all of the CITY's right, title and interest in and to the tees or crosses in the feeder mains, meter, meter vault and all piping, valves and appurtenances between and including the aforesaid tees or crosses and the valve immediately on the inlet side of the meter. All conveyance documents, in proper form acceptable to the COUNTY, shall be provided by the COUNTY for execution by the CITY, CITY's contractor and any property owners, as applicable.

The CITY, directly through the CITY's contractor, shall deliver to the COUNTY an executed maintenance bond, or other assurance acceptable to the COUNTY, which guarantees the warranty described in this Section. If it becomes necessary to repair and/or replace any of the facilities during the initial one (1) year period,

then the warranty as to those items repaired and replaced shall continue to remain in effect for an additional period of one (1) year from the date of final acceptance by the COUNTY of those repairs and/or replacements. The bond or other assurance shall be in the amount equal to twenty-five percent (25%) of the actual construction cost, including labor and materials, of said facilities. The bond shall have as the surety thereon only such surety company as is acceptable to the COUNTY and which is authorized to write bonds of such character and amount under the laws of the State of Florida. A surety company must have a Best's Key Rating Guide General Policyholder's Rating of "A" or better and a Financial Category of Class "V" or better. The attorney-in-fact or other officer who signs a bond must file with such bond a certified copy of his power-of-attorney authorizing him to do so. The maintenance bond may be written with the CITY's contractor as "Principal" and the CITY and the COUNTY as "Co-obligee" or the COUNTY as sole "Obligee", whichever is preferred by the CITY. In the alternative, at the CITY's option, the CITY may be named as "Principal" and the COUNTY as "Obligee", if authorized by law. The maintenance bond shall remain in force for one (1) year following the date of acceptance by the COUNTY of the Project to protect the COUNTY against losses resulting from any and all defects in materials or improper performance. Upon demand by the COUNTY, the CITY shall cause to be corrected all such defects which are discovered, or the COUNTY, after sixty (60) days written notice to the CITY, may make such repairs and replacements of defective work and materials and the CITY and its surety or the CITY's contractor and its surety, as applicable, shall be liable to the COUNTY for all costs arising therefrom. The CITY also warrants that it shall be fully responsible to the COUNTY for the repair of any damages to said facilities which are caused by persons in its employment. This shall not relieve any contractor or other person of its responsibilities.

The CITY is required to lease the sanitary sewage facilities to the COUNTY as a condition for receiving financing from the State of Florida's State Revolving Fund (SRF) loan program. Therefore, the CITY shall be the owner of the sanitary sewage facilities during the period of said lease, but the sanitary sewage facilities shall be under the exclusive control, operation and maintenance of the COUNTY pursuant to the lease. The lease shall be in substantially the form attached hereto as Exhibit "C" (the Lease). The Lease shall commence on the date the Department provides its final approval of the completed Project and receives all properly executed conveyance documents, other than the Bill of Sale. On the date that the Lease terminates and the CITY completes all applicable loan repayments or financing obligations for the Project or such earlier date that the CITY is lawfully able to do so, the CITY shall convey to the COUNTY the sanitary sewage facilities by Bill of Sale. When conveyed to the COUNTY by Bill of Sale, the sanitary sewage facilities shall then be under the sole, complete, and exclusive ownership, control and operation of the COUNTY.

3. The operation and maintenance of all facilities on the CITY's side of the sanitary sewage flow meter shall be the sole responsibility of the CITY, except as otherwise provided herein. The CITY acknowledges that the responsibility of the COUNTY to provide sanitary sewage disposal service under this Contract shall be limited to the CITY's existing sanitary sewage service area or future sewage service area(s) the CITY is legally authorized to serve.

4. The CITY hereby acknowledges and agrees that the right to connect the CITY to the COUNTY's sanitary sewage system granted hereby is subject to the terms, covenants and conditions set forth in the Settlement Contract between the State of Florida Department of Environmental Protection, hereinafter designated as the "DEP", and the COUNTY dated July 27, 1993; the First Amendment to the Settlement Contract between DEP and the COUNTY dated December 21, 1995; the First Partial Consent Decree and the Second and Final Partial Consent Decree entered in United States of America Environmental Protection Agency (EPA) v. Metropolitan Dade County (Case Number 93-1109 CIV-Moreno), as currently in effect or as amended or modified in future contracts and all other current, subsequent or future contracts; the consent order between DEP and the COUNTY filed on April 29, 2004; and court orders, judgments, consent orders, consent decrees and the like entered into between the COUNTY and the United States, the State of Florida and/or any other governmental entity, and all other current, subsequent or future enforcement and regulatory actions and proceedings.

   If the COUNTY should have an insufficient capacity 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 Section 23 below, the COUNTY shall be deemed to have fully performed its duties and to have discharged its obligations if the CITY receives its pro-rata share of such capacity as determined by the COUNTY. The COUNTY shall give expeditious notice to the CITY whenever the COUNTY becomes aware of conditions which could reasonably lead to a reduction in capacity.

5. The CITY agrees and warrants that its sewage collection and transmission system and any extension thereof shall be operated and maintained in accordance with the requirements of all applicable federal, state and county laws, rules, regulations and permit conditions.

6. The CITY, at its sole cost and expense, shall operate and maintain in a diligent manner all CITY structures, force mains, pumps, equipment and other facilities required for the collection of sewage and transmission to the points of connection with the COUNTY'S facilities, but excluding the master meter installation. The CITY is also responsible for costs to improve its sewage system in the future due to modifications to the COUNTY's facilities that affect pressures encountered in the CITY's sewage system.

7. The COUNTY reserves the right to inspect the CITY'S collection and transmission system and take samples of the sewage composition at no cost to the CITY to ascertain that said system is being properly maintained. 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. The CITY hereby agrees to pursue and maintain diligent efforts on a regular and timely basis to reduce infiltration and inflow and to comply with all local, state and/or federal ordinances, laws and

regulations regarding infiltration and inflow correction or reduction as now in effect or as enacted in the future.

8. In order for the COUNTY to adequately plan for future capacity demands, within ninety (90) days following the execution of this Contract and on or before each January 1 thereafter, the CITY shall submit to the COUNTY the CITY's projected annual capacity demands for the next five years. Within one hundred twenty (120) days of the COUNTY's receipt of the CITY's projected annual capacity demands for the next five years, the COUNTY shall notify the CITY of the COUNTY's ability or inability to meet said demands, which is subject to local, state and federal agencies and other regulatory bodies having jurisdiction over such matters. The CITY agrees that the COUNTY shall not be liable or in any way responsible for any costs, claims or losses incurred by the CITY as a result of actions by such regulatory bodies.

9. The CITY shall not allow or permit construction or installation of any connections of stormwater mains which allow stormwater to enter the CITY's sanitary sewage system. Upon notice or discovery of such interconnections, the CITY shall immediately effectuate the lawful disconnection of such interconnections in accordance with local, state and federal laws.

10. The CITY recognizes that the COUNTY's standards for sanitary sewage disposal service are subject to future modifications as a result of future COUNTY, state and federal laws and regulations. Accordingly, the CITY agrees that it will abide by and be bound by all present and future local, state and federal laws, standards, rules, regulations, permit conditions and other requirements related to sewage disposal service.

11. The wastewater from all retail customers of the CITY discharged into the CITY's sewer system shall conform to the requirements of all applicable local, state and federal regulatory agencies pertaining to wastewater discharges. If the COUNTY determines that pretreatment facilities are necessary for a retail customer of the CITY to meet such requirements, the CITY shall ensure the COUNTY has approved the pretreatment facility prior to issuing a Certificate of Use or Certificate of Occupancy for the retail customer.

12. In accordance with the provisions of County Ordinance No. 89-95, as amended, the CITY shall not render water, sanitary sewage service or both to any new retail user until either the COUNTY's connection charges are paid to the COUNTY by the CITY's retail customer and proof of payment is provided to the CITY or the CITY collects the COUNTY's connection charges from the retail user and pays the COUNTY. Said connection charges shall be due prior to the issuance of a building permit. In the event that the CITY provides water or sanitary sewage service, or both, to any new retail user without first ensuring that the COUNTY's 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. The COUNTY reserves the right to audit existing records for a period not to exceed applicable statutory limits for payments of said connection charges.

13. The CITY shall pay the COUNTY as compensation for the transmission, treatment, including reclamation, and any method of disposal of all sanitary sewage received from the CITY, a monthly charge for such service based on a uniform rate for the COUNTY's volume customers. That rate shall be calculated for each fiscal year based on projections from the Department's prior fiscal year and shall be the sum of the following:

    a. That portion of the projected/budgeted annual operating and maintenance expenses, including taxes assessed, if any, incurred by the COUNTY in connection with its regional force main and regional gravity interceptor sewage system divided by the projected total amount of flow used to bill all the COUNTY'S sewage disposal customers over the same time period.

    b. That portion of the projected/budgeted annual operating and maintenance expenses, including taxes assessed, if any, incurred by the COUNTY in connection with its regional sanitary sewage pumping stations, divided by the projected total amount of flow used to bill all the COUNTY's sewage disposal service customers over the same time period.

    c. That portion of the projected/budgeted annual operating and maintenance expenses, including taxes assessed, if any, incurred by the COUNTY in connection with its regional sanitary sewage treatment plants, reclamation facilities and disposal, including sanitary sewage effluent outfalls, deep disposal wells and/or any other effluent disposal process, divided by the projected total amount of flow used to bill all the COUNTY's sanitary sewage disposal customers over the same time period.

    d. That portion of the projected/budgeted renewal and replacement expenses for all the COUNTY's regional capital sanitary sewage facilities, according to the COUNTY's policy in effect at the time for determining a rate consistent with good municipal utility accounting practices and the budgeted renewal and replacement projects for the ensuing fiscal year divided by the projected total amount of flow used to bill all the COUNTY's sanitary sewage disposal customers over the same time period.

    e. That portion of the COUNTY's projected/budgeted annual interest obligations of outstanding loans, lines of credit, notes and bonds for its regional sanitary sewage system, divided by the projected total amount of flow used to bill all the COUNTY's sanitary sewage disposal customers over the same time period.

    f. That portion of the projected/budgeted annual charge for the amortization of the COUNTY's outstanding loans, lines of credit, notes and bonds for its regional sanitary sewage system, to be consistent with the requirements under law, divided by the total projected amount of flow used to bill all the COUNTY's sanitary sewage disposal customers over the same time period.

g. That portion of the projected/budgeted annual administration and general expenses that is not covered by the minimum charge divided by the total projected amount of flow used to bill all the COUNTY's sanitary sewage disposal customers over the same time period.

h. That portion of the charge for debt service coverage requirement for loans, lines of credit and bond issues for the COUNTY'S regional sanitary sewage system divided by the total projected amount of flow used to bill all the COUNTY's sewage disposal customers over the same time period.

14. No costs associated with storm sewer systems or local collection systems shall be included in the computation of said charge. However, the County reserves the right to revise or modify the service rate and method of calculation included in Section 13 from time to time as may be approved by the Board of County Commissioners in accordance with applicable law, and the CITY agrees to be bound thereby. The COUNTY will attempt to provide the CITY with the preliminary rate a minimum of six (6) weeks in advance of said rate's effective date. The CITY recognizes and agrees that the adopted rate may differ from the preliminary rate. The CITY recognizes and agrees that the COUNTY intends to implement in the future such charges or rate structures, including but not limited to peak flow surcharges, as it deems necessary to fairly recover its costs for any needed infrastructure improvements and the CITY agrees to be bound to the rates related to peak flow surcharges when approved by the Board of County Commissioners. The CITY further recognizes and agrees that the COUNTY's right to revise or modify the rate or methods of calculation under this section is not limited solely to revisions or modifications allowing the COUNTY to recover costs for infrastructure improvements.

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. 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 may be subject to a late charge to be determined by the COUNTY, such charge to defray Department costs in processing and otherwise administering late payments. In addition, per annum interest charge on the past due charges at the 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 of payment by the Department. For purposes of this section, date of receipt of payment shall be the date of physical receipt of the payment by the Department if hand-delivered or mailed, or date of transfer to the Department's bank, if electronic funds transfer is used.

16. It is hereby agreed that a legally accurate meter shall register not greater than 102% of actual consumption and not less than 98% of actual consumption. If a meter is determined by certified test not to be legally accurate, the meter shall be recalibrated at the COUNTY'S expense. Bills for the period following the prior meter accuracy check shall be adjusted to reflect the percentage of inaccuracy. In

calculating such billing adjustment it will be assumed that the meter inaccuracy existed for the entire time interval between meter accuracy checks. The billing adjustment shall be made at the same rate established herein, but the volume used in the billing calculations shall be adjusted as described above. Either the COUNTY or the CITY may check the accuracy of the meters at a time mutually agreeable to the CITY and the COUNTY but not more often than once every three months unless there is a disagreement between parties hereto regarding such accuracy. If the CITY requests such a check and the meter is found to be legally accurate, the cost of the meter check shall be borne by the CITY. Otherwise, the cost of the meter check shall be borne by the COUNTY.

17. The COUNTY hereby grants the CITY the right to audit all Department records related to the computation of the wholesale sewage disposal rates for each fiscal year. Upon written notice, the COUNTY shall make available to the CITY said records at the offices of the Department. 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 those rates determined as a result of the audit, and following the COUNTY's acceptance of the audit findings, the COUNTY shall make an adjustment, for that fiscal year, in service charges previously paid by the CITY. Except for audits of the Department's prior fiscal year true-up, said audits 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 except when pertaining to the prior fiscal year true-up.

18. In the event of complete or partial failure of the meter to register the CITY's sewage disposal flow, the COUNTY may determine the estimated sewage disposal flow based on the most recent twelve (12) full months of sewage disposal measured by the meter when it was operating properly or another method determined by the Department.

19. 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, liabilities, actions, losses, costs and expenses, including attorney's fees, which may be sustained by the COUNTY, its 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.

20. 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, liabilities, actions, losses, costs and expenses, including attorney's fees, which may be sustained by the CITY, its 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.

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

22. Any cessation of sewage disposal or other service interruptions and any consequences caused by force majeure, inevitable accident or occurrence or cause beyond the reasonable control of the COUNTY shall not constitute a breach of this Contract on the part of the COUNTY and the COUNTY shall not be liable to the CITY or its inhabitants or customers for any damage resulting from such cessation or interruption of sewage disposal 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, hurricanes, fires, earthquakes, landslides, epidemics, explosions or other forces of nature. Inevitable accidents or occurrences shall mean those which are unpreventable by the COUNTY and shall include but not be limited to: strikes; lockouts; other industrial disturbances; wars; blockades; acts of terrorism; insurrections; riots; federal, state, county and local governmental restrictions, regulations and restraints; military action; civil disturbances; explosions; and conditions in federal, state, county and local permits.

23. The CITY agrees that if any waters or waste are discharged by the CITY, either directly or by one of the CITY's retail customers, into the COUNTY's wastewater system which are prohibited by this Contract or which contain substances or possess characteristics contrary to the requirements of the COUNTY's rules and regulations or is in violation of any local, state or federal law or regulation, or which otherwise create a hazard to health or property, or constitute a public nuisance, the COUNTY may upon reasonable notice to the CITY:

    a. Require pretreatment to any acceptable condition as determined by the local, state or federal agency prior to discharge into the COUNTY's Wastewater System;

    b. Require control over the quantities and rate of flow from the CITY;

    c. Require payment to cover the cost of handling and treating such waste, including any applicable fines or penalties as provided under the COUNTY's rules and regulations or state or federal law as the same may be amended from time to time; and/or

    d. Require the CITY to immediately take all actions necessary to stop any prohibited discharges by the CITY or its retail customers.

24. The CITY shall comply with the terms of Section 32-83 of the Miami-Dade County Code regarding peak flow in as expeditious a manner as possible. The CITY shall take all steps necessary to ensure that peak flows conveyed to the COUNTY do not exceed the peak flow limit established for the CITY's sewer system. In addition to any remedy provided by law or provided elsewhere in this Contract, in the event that the CITY does not comply with the terms of Section 32-83 of the

Miami-Dade County Code, or does not ensure that peak flows are within the peak flow limit, the CITY shall be in default of this Contract, and the COUNTY may upon reasonable notice to the CITY:

a. Require control over the quantities and rate of flow from the CITY; and/or

b. Impose a peak flow surcharge to the CITY

25. This Contract shall be governed by and construed in accordance with the laws of the State of Florida, and venue for any court proceeding shall be in Miami-Dade County, Florida.

26. 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 given at the following respective addresses:

Miami-Dade County
c/o The Director
Miami-Dade Water and Sewer Department
3071 S.W. 38th Avenue
Miami, Florida 33146

City of North Bay Village
c/o City Manager
1666 Kennedy Causeway, Suite 700
North Bay Village, Florida 33141-4169

27. This Contract shall be and remain in full force and effect for a period of twenty (20) years from the effective date of this Contract, provided, however, that this Contract may be terminated at any time by mutual consent and agreement of the parties hereto. The CITY agrees that it will notify the COUNTY in writing no later than six (6) months prior to the expiration of this Contract if it intends to request negotiations of an additional Contract term.

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

29. No amendment, alteration, change, or modification of the terms of this Contract shall be valid unless made in writing, signed by all parties hereto, and approved by the COUNTY.

30. This Contract contains the entire Contract between the COUNTY and the CITY 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. However, this Contract does not affect the Contract for the provision of water service to the CITY dated June 14, 2007.

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

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective officials thereunto duly authorized, all as of the day and year written above.

ATTEST:

By: _____
Deputy Clerk

MIAMI-DADE COUNTY

By: _____
County Mayor

ATTEST:

By: _____
City Clerk

CITY OF NORTH BAY VILLAGE

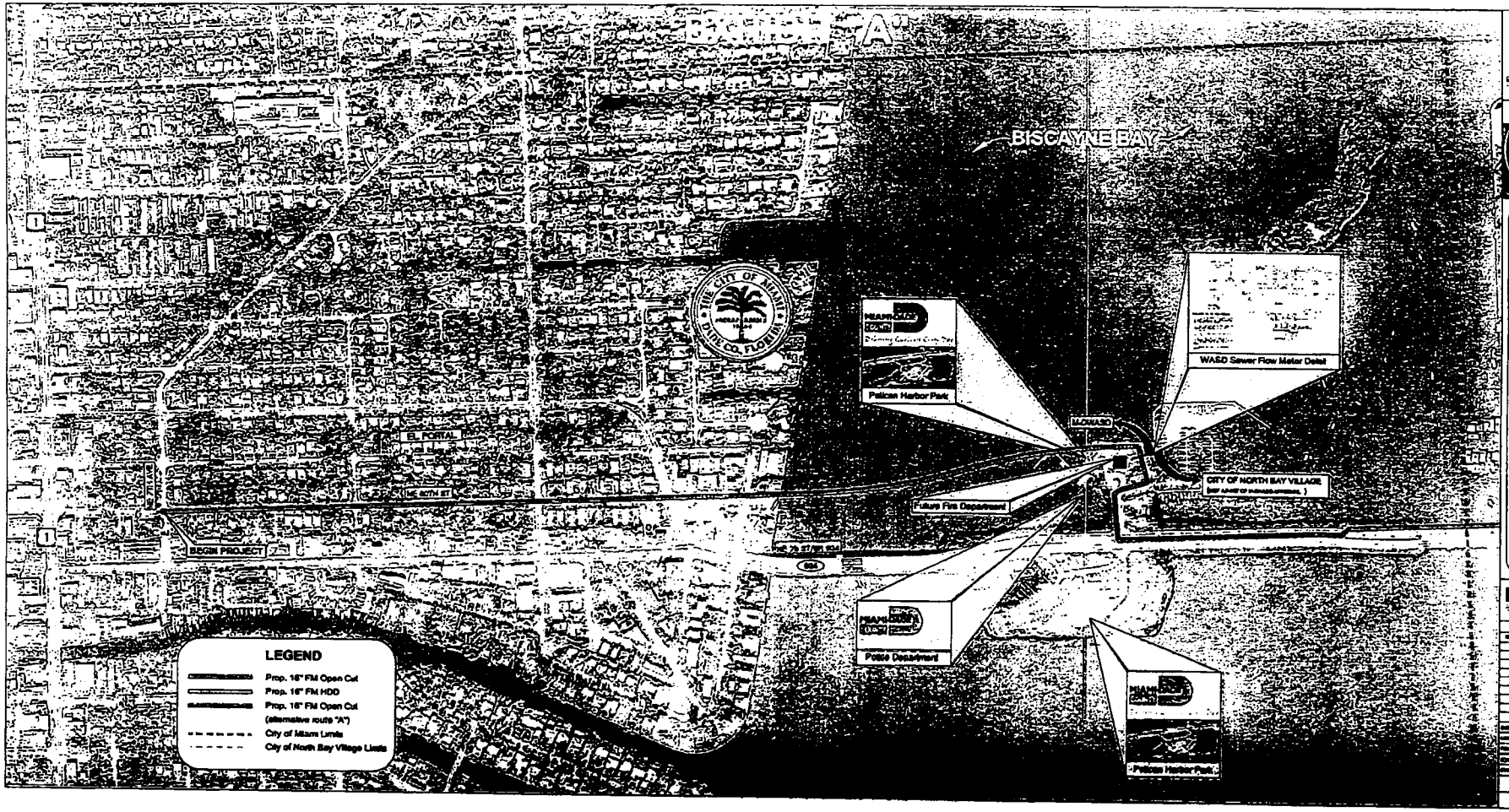
By: _____
City Manager

Approved as to legal form
and Sufficiency

Sarah E Saavedra Davis
Assistant County Attorney

Approved as to legal form
and Sufficiency

Attorney for City of North Bay Village



"A"
BISCAYNE BAY
THE CITY OF MIAMI
DADE CO. FLORIDA
Pelican Harbor Park
WASD Sewer Flow Meter Detail
M-DWASD
EL PORTAL
CITY OF NORTH BAY VILLAGE
Future Fire Department
BEGIN PROJECT
Police Department
Pelican Harbor Park
LEGEND
Prop. 16" FM Open Cut
Prop. 16" FM HDD
Prop. 16" FM Open Cut
(alternative route "A")
City of Miami Limits
City of North Bay Village Limits
PROPOSED ROUTE
EXHIBIT "A"
16" FORCE MAIN REHABILITATION
DESIGN-BUILD PROJECT
RFP #2008-03
May 2010

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Exhibit "B"

ABSOLUTE BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, That the City of North Bay Village, 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 sewage facilities installed to provide sanitary sewage service directly to the GRANTOR by the COUNTY through facilities installed between the inlet side of the master sewer meter connection located on the northeastern portion of Pelican Harbor and the interconnection to the COUNTY's sewer system located at N.E. 80th Street and N.E. 7th 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 Protection 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 17th day of May, 2010.

ATTEST:

City Clerk

CITY OF NORTH BAY VILLAGE

City Manager

Exhibit "C"

LEASE AGREEMENT
FOR
SANITARY SEWAGE FACILITIES
BETWEEN
MIAMI- DADE COUNTY, FLORIDA
AND
THE CITY OF NORTH BAY VILLAGE, FLORIDA

THIS AGREEMENT, made and entered into this _____ day of _____, 2010, by and between MIAMI-DADE COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY", and the CITY OF NORTH BAY VILLAGE, a municipal corporation of the State of Florida, hereinafter referred to as the "CITY";

W I T N E S S E T H:

WHEREAS, this Lease is entered into in accordance with that certain Contract between Miami-Dade County and the City of North Bay Village, dated _____, 2010, hereinafter referred to as the "Contract"; and

WHEREAS, the COUNTY desires to lease from the CITY, and the CITY desires to lease to the COUNTY, certain sanitary sewage facilities in accordance with the terms and conditions hereinafter stated;

NOW THEREFORE, in consideration of the mutual promises herein contained and other valuable considerations, receipt of which is hereby acknowledged, the COUNTY and the CITY agree as follows:

1. Lease of Demised Premises. The CITY leases to the COUNTY, and the COUNTY leases and accepts from CITY, the certain sanitary sewerage facilities, with all appurtenances thereto, hereinafter called the "Demised Premises", more particularly described on Exhibit "A" attached hereto and made a part hereof.

2. Term. This Lease shall commence on the date this lease agreement is fully executed and end on the date that the CITY has completed all State of Florida Revolving Fund (SRF) loan repayments as specified in Section 2 of the above stated Contract and the VILLAGE has executed a Bill of Sale in favor of the COUNTY. The SRF loan agreement is for a twenty year period which expires on _____, 2029, but can be paid earlier if the CITY so decides.

3. Agreement to Convey Title. On or before expiration of this Lease, unless otherwise notified by the COUNTY, the CITY shall convey to the COUNTY good and sufficient legal title to the Demised Premises as required in the Contract.

4. Rent. The rent for the term of this Lease shall be $10.00 per year, in advance, due and payable on each anniversary date of the date hereof.

5. Use and Maintenance of Demised Premises. The COUNTY shall have the sole unrestricted use and benefit of, and responsibility for, the Demised Premises. The COUNTY shall be responsible during the term of this Lease for the complete and total operation, maintenance, replacement and/or repair of the Demised Premises and the improvements thereto, subject to the warranty provided by the CITY pursuant to Section 2 of the Contract.

6. General Provisions.

a. Entire Agreement. This Lease contains the entire agreement between the CITY and the COUNTY. Any changes, modifications, or termination hereof shall not be effective unless in writing and signed by the party against whom enforcement is sought.

b. Notices. All notices required pursuant to this Lease 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 Miami-Dade Water and Sewer Department
3071 S.W. 38th Avenue, Suite 502
Miami, Florida 33146
Attention: Director

North Bay Village
c/o City Manager
1666 Kennedy Causeway
North Bay Village, Florida 33141-4169
Attention: Village Manager

c. Partial Invalidity or Unenforceability. If any term, covenant, or condition of this Lease shall be invalid or unenforceable to any extent, the remainder of the terms, covenants, and conditions of this Lease shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

d. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, and venue for any court proceeding shall be in Miami-Dade County, Florida.

(The rest of this page is intentionally left blank)

IN WITNESS WHEREOF, the COUNTY and the CITY have executed this Lease the day and year written above.

ATTEST:

By: _____
Deputy Clerk

MIAMI-DADE COUNTY

By: _____
County Mayor

ATTEST:

By: _____
City Clerk

CITY OF NORTH BAY VILLAGE

By: _____
City Manager

Approved as to legal form
and Sufficiency

Sarah Elizabeth Davis
Assistant County Attorney

Approved as to legal form
and Sufficiency

_____
Attorney for City of North Bay Village