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

Memorandum

MIAMI-DADE COUNTY

Agenda Item No. 8(O)(4)

Date: April 2, 2013

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Agreement between the City of South Miami and Miami-Dade County for the provision of stormwater billing charges by the Miami-Dade Water and Sewer Department

Resolution No. R-247-13

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the attached resolution authorizing the execution of an agreement between Miami-Dade County and the City of South Miami providing for the billing of the City's stormwater charges by the Miami-Dade Water and Sewer Department (WASD).

SCOPE OF AGENDA ITEM

The agenda item is for stormwater billing services for the City of South Miami in Commission District 7.

FISCAL IMPACT/FUNDING SOURCE

This agreement has a positive fiscal impact. WASD will receive $.81 per bill from the City of South Miami for the stormwater billing service provided. The total revenue received from the City for this billing service in Fiscal Year 2011-12 was $12,101.49, the total revenue received by WASD in Fiscal Year 2011-12 for the provision of identical services to other participating municipalities was $555,004.43. A funding source is not required as the County is the recipient of the revenue.

TRACK RECORD/MONITOR

WASD's Assistant Director of Finance, Frances G. Morris, will monitor this agreement.

BACKGROUND

On January 18, 2008, Miami-Dade County and the City of South Miami entered into a five (5) year agreement providing for the billing of stormwater charges by WASD for the City. WASD has been billing a stormwater utility service charge simultaneously with the issuance of WASD's bills for water and sewer service. This new agreement has a ten (10) year term and may be extended by mutual consent of WASD and the City. The terms of this new agreement provide that WASD will continue to bill, collect and remit the stormwater utility charges to the City, in accordance with rates established and approved by the City for a fee of $.81 per bill. WASD's water and sewer bills will continue to identify the stormwater charges as those of the City of South Miami and will provide a City telephone number for customers to call if they have questions.

WASD currently performs similar billing services for the Cities of Aventura, Coral Gables, Doral, Miami, Miami Springs, Sweetwater and Towns of Cutler Bay, Miami Gardens, Miami Lakes and Villages of El Portal, Key Biscayne and Palmetto Bay. This new agreement was approved by the City of South Miami in January 2013.

Alina T. Hudak
Deputy Mayor

MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: April 2, 2013

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

SUBJECT: Agenda Item No. 8(O)(4)

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 Mayor'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(O)(4)
4-2-13

RESOLUTION NO. R-247-13

RESOLUTION APPROVING A STORMWATER BILLING AGREEMENT WITH THE CITY OF SOUTH MIAMI FOR THE BILLING OF STORMWATER UTILITY CHARGES BY THE MIAMI-DADE WATER AND SEWER DEPARTMENT; AND AUTHORIZING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXECUTE SAME AND TO EXERCISE THE 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 a stormwater billing agreement with the City of South Miami for the billing of stormwater utility charges by the Miami-Dade Water and Sewer Department, in substantially the form attached hereto and made a part hereof; and authorizes the County Mayor or Mayor's designee to execute same for and on behalf of Miami-Dade County, Florida and to exercise the provisions contained therein.

The foregoing resolution was offered by Commissioner **José "Pepe" Diaz**, 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:

Rebeca Sosa, Chairwoman	**aye**		
Lynda Bell, Vice Chair	**aye**		
Bruno A. Barreiro	**absent**	Esteban L. Bovo, Jr.	**aye**
Jose "Pepe" Diaz	**aye**	Audrey M. Edmonson	**aye**
Sally A. Heyman	**aye**	Barbara J. Jordan	**aye**
Jean Monestime	**aye**	Dennis C. Moss	**aye**
Sen. Javier D. Souto	**aye**	Xavier L. Suarez	**aye**
Juan C. Zapata	**aye**		

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd day of April, 2013. 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: Christopher Agrippa
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Henry N. Gillman

AGREEMENT FOR THE BILLING OF
STORMWATER CHARGES
BETWEEN
MIAMI-DADE COUNTY
AND
CITY OF SOUTH MIAMI

THIS AGREEMENT, entered into this __ day of _____, 2013, by and between the CITY OF SOUTH MIAMI, FLORIDA, a municipal corporation of the State of Florida (the "CITY"), and MIAMI-DADE COUNTY, a political subdivision of the State of Florida (the "COUNTY").

W I T N E S S E T H:

WHEREAS, the COUNTY, through its Miami-Dade Water and Sewer Department (the "Department"), operates the water and sewer utility systems within the CITY; and

WHEREAS, since October 1, 2000, the CITY has been exclusively responsible for operating and maintaining the stormwater utility system within the CITY's boundaries; and

WHEREAS, on January 18, 2008, the COUNTY and the CITY entered into an agreement providing for the billing of stormwater charges by the COUNTY for the CITY, and the COUNTY has since been administering, billing and collecting a stormwater utility service charge simultaneously with the issuance of the COUNTY's bills for water and sewer service; and

WHEREAS, the CITY desires the COUNTY to continue to administer, bill and collect the stormwater utility service charge on behalf of the CITY; and

WHEREAS, the COUNTY has agreed to continue to administer, bill and collect the stormwater utility service charge on behalf of the CITY,

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements set forth herein, it is agreed:

Section 1. The CITY, jointly with the COUNTY, will designate and cause to be identified from time to time the water and sewer service accounts of the Department which thereafter, under the rules and regulations of the CITY, shall be billed for stormwater utility service charges. The CITY shall designate the rate classifications applicable thereto in writing in a format acceptable to the COUNTY. The COUNTY shall act thereon until such designations and classifications are changed in writing by the CITY. The CITY understands and accepts that the COUNTY shall consider the person or persons whose names appear on the COUNTY's water and sewer service account as the persons responsible for the stormwater utility service charges at the location involved.

Section 2. The CITY shall deliver to the COUNTY, a minimum of thirty (30) calendar days in advance of the effective date, its schedule of rates and any revisions of such schedule of rates by furnishing to the Department's Assistant Director of Finance a certified copy of the ordinance or other action of the CITY promulgating said revised schedule of rates. Until the COUNTY is so furnished with a revised schedule, the COUNTY shall act upon the prior delivered

schedule. The stormwater utility service charge shall be prorated in accordance with the revised schedule of rates. No security deposits shall be collected by the COUNTY nor shall delinquent penalty charges be imposed by the COUNTY on the stormwater utility charge.

Section 3. The COUNTY agrees, during the COUNTY's regular and periodic billing procedures, to cause to be billed and collected from each water and sewer customer under said accounts, as an added and designated separate item on the bill, the stormwater utility service charge, according to the schedule of rates established by the CITY for such customer. During the term of this Agreement, this shall be the exclusive method for billing stormwater utility service charges by the County; no separate bills shall be issued, except for those bills that may be generated by the CITY. The CITY authorizes and empowers the COUNTY to render such billing for the CITY'S account and on the payment thereof to give receipt and acquittance therefore, either by endorsement of payment upon such billings or by separate receipt. Upon the initial billing by the COUNTY to each user of stormwater utility service and at any time during the term of this Agreement, as deemed necessary by the COUNTY or the CITY, the CITY shall at its sole cost and expense and independent of this Agreement, advise such user of the method and arrangement between the CITY and the COUNTY for the billing and collection of said charge by the COUNTY for and on behalf of the CITY as the CITY'S agent. Furthermore, the CITY shall notify its stormwater utility users of future rate increases. The COUNTY shall not be responsible for the notification of new owners, occupants or tenants that there is a stormwater utility service charge.

Section 4. The COUNTY agrees to observe the same diligence, policy and procedure in the billing and collection of stormwater utility service accounts as is used by the COUNTY in billing and collecting its water service accounts, except that the COUNTY shall not terminate water and/or sewer service for non-payment of stormwater utility service charges, except when account balances exceed an amount to be determined by the Department, nor shall it institute or maintain suits at law for collection of stormwater utility service charges. The COUNTY may provide water and sewer service to customers irrespective of said customer's failure to pay the applicable stormwater utility charge. The COUNTY shall not be responsible for the billing of accounts that are inactive. The COUNTY shall not file any liens on property for the collection of the stormwater utility charges. Legal actions for non-payment of stormwater utility charges shall be the sole responsibility of the CITY.

Section 5. The COUNTY will keep correct and proper books of accounts, showing monthly gross billings of stormwater utility service charges, and shall provide to the CITY a monthly statement in writing, showing the net amount owed the CITY by the COUNTY for the month covered by such statement. The COUNTY shall provide this statement and the remittance due the CITY within sixty (60) days of the end of each monthly period. Based on such statement, the COUNTY shall make payment to the CITY of the amount due, less the COUNTY's compensation for the billing and collection of said charges and less any other payments or deductions as hereinafter specifically provided in Sections 6 and 9 of this Agreement. Furthermore, the COUNTY'S billing system may also be capable of monthly billing to all water and sewer customers in the future.

The CITY agrees that the COUNTY shall remit monthly payments based on the collection of stormwater utility service charges, when the COUNTY's billings system is capable of this method of remittance on all accounts.

Section 6. Adjustments for uncollected stormwater billings shall be made on a regular basis, at least annually or when write-offs occur, as a deduction provided in Section 5.

Section 7. Upon written request from the CITY, the COUNTY shall make available for inspection or audit by the CITY and its representatives at any reasonable time all of its records pertaining to the COUNTY's actions under this Agreement as agent for the CITY and shall also furnish to the CITY such information concerning the administration of this Agreement as the CITY may reasonably request, including information as to delinquent stormwater utility charges and accounts not currently being billed. Should the CITY, in any audit of the COUNTY's records, find a discrepancy between the amount of funds remitted to the CITY and the actual billing and collection by the COUNTY, the COUNTY shall within 30 days of receipt of written notification from the CITY, remit to the CITY the sums owed.

Section 8. Both the CITY and the COUNTY recognize that in the billing and collection of stormwater utility service charges involving thousands of customers, numerous situations arise that require discretion. The CITY agrees with the COUNTY that the COUNTY may use its best judgment in such instances. The COUNTY's method or manner of handling such situations shall not be considered as negligence under or independent of the terms and conditions of this Agreement or as a breach thereof, and the COUNTY shall not be liable or responsible to the CITY for any loss in stormwater utility service charge revenues by reason of the COUNTY's discretionary handling of such situations. Specifically, the COUNTY shall have the right to remove or adjust the stormwater utility service charge from a customer's bill if the customer provides proof acceptable to the COUNTY that he or she was not the owner, occupant or tenant of the property on the date that the stormwater utility service charge was applied. Except as otherwise specified in this Section, any adjustments to accounts assessed a stormwater utility service charge shall be initiated solely by the CITY and provided to the COUNTY in writing.

Section 9. The CITY agrees to pay to the COUNTY, and the COUNTY shall receive from the CITY, by means of deduction from payments for monthly billings, compensation determined as follows:

A. For the period from the effective date of this Agreement, until the Agreement is modified pursuant to Section 10 hereinafter, a charge in the amount of eighty-one cents ($0.81) per bill for all accounts to be charged the CITY'S stormwater utility service charge; and

B. The costs and expenses incurred and paid by the COUNTY during the preceding month in defending legal actions brought against the COUNTY by any person, firm or corporation, excluding the CITY, involving billing or collection of stormwater utility service charges on behalf of the CITY, or involving the COUNTY's administration of the terms and conditions of this Agreement.

The COUNTY shall notify the CITY in writing of any legal claims filed against the COUNTY pertaining to the COUNTY's billing and collection of the CITY'S stormwater utility service charges within thirty (30) working days of receipt of any claim. The CITY shall defend and indemnify the COUNTY on any such claims. However, the CITY is not required to indemnify the COUNTY on a claim to the extent that such damages are solely due to the negligence of the COUNTY or any claim involving dishonesty or theft by a COUNTY employee.

Section 10. The COUNTY reserves the right to review and revise the charges provided for in Section 9 (A) hereinabove, and the CITY agrees to be bound thereby, provided the COUNTY

provides ninety (90) days notice to the CITY of said proposed revised charges.

Section 11. All telephone calls and correspondence from customers regarding the stormwater utility service charge shall be the responsibility of the CITY. The COUNTY shall cause the telephone number for the CITY, as provided by the CITY, to be printed on the COUNTY's regular bill stock.

Section 12. The CITY agrees that the COUNTY shall not be held liable for any damage, delay or other loss that the CITY may experience as a result of the COUNTY's practices in administering this Agreement, unless such loss arises solely as a result of negligence by the COUNTY, its employees or agents.

Section 13. It is understood and agreed between the CITY and the COUNTY that the COUNTY's obligation is limited to billing and collection of stormwater utility service charges as specifically provided for in this Agreement.

Section 14. The CITY shall not allow or permit construction or installation of any connections of stormwater mains that allow stormwater to enter the COUNTY's sanitary sewer system. The CITY agrees to use its best efforts to detect and lawfully disconnect all stormwater connections to the COUNTY's sanitary sewer system within the CITY'S jurisdiction and submit, within ninety (90) days of the execution of this Agreement, a timetable for the elimination of such stormwater connections which is reasonably acceptable to the COUNTY.

Section 15. This Agreement shall be binding upon the respective successors and assigns of both the CITY and the COUNTY.

Section 16. All references to the CITY under this Agreement that require direction to the CITY shall mean the City Manager or his designee. Whenever written notice to the CITY is required, it shall be sent by Certified Mail, Return Receipt Requested, to:

CITY of South Miami
6130 Sunset Drive
South Miami, Florida, 33143
(Attention: CITY Manager)

Whenever written notice to the COUNTY is required, it shall be sent by Certified Mail, Return Receipt Requested, to:

Miami-Dade County
Miami-Dade Water and Sewer Department
3071 S. W. 38th Avenue
Miami, Florida 33146
(Attention: Assistant Director-Finance)

Section 17. This Agreement shall remain in full force and effect for a period of ten (10) years after its date of execution. This Agreement may be extended at that time by written request from the City Manager to the Department's Director and mutual agreement by the Department, without which it shall terminate. Notwithstanding the above provisions, this Agreement shall terminate and be cancelled without further writings between the CITY and the COUNTY upon either

party providing ninety (90) days notice in writing to the other party so advising the other party.

Notwithstanding the provisions of this Paragraph, should the COUNTY fail to timely bill the CITY'S customers in accordance with the agreed upon billing cycles and rates or fail to remit payment to the CITY in the timeframes specified in Section 5, the CITY may terminate this Agreement on thirty (30) days written notice to the COUNTY.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

ATTEST:

HARVEY RUVIN,
CLERK OF THE BOARD

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

BY:_____
Deputy Clerk

BY: _____
County Mayor

ATTEST:

CITY OF SOUTH MIAMI

BY:_____
City Clerk

BY:_____
City Manager

Approved as to form and legal sufficiency:

_____
Assistant County Attorney

Approved as to form and legal sufficiency:

_____
Attorney for City of South Miami