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OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Agenda Item No. 2(C)

TO: Honorable Chairman Anthony Rodriguez and Members, Board of County Commissioners

DATE: April 1, 2025

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving a Tolling Agreement between Miami-Dade County and the City of Hialeah as to all claims either party may have against the other related to: (1) the outstanding unpaid wholesale sewer bills owed by the City to the Miami-Dade Water and Sewer Department, and (2) the ownership, operation and maintenance of the jointly owned Reverse Osmosis Water Treatment Plant; and authorizing the County Mayor to execute such agreement on behalf of Miami-Dade County and to exercise the provisions contained therein

Resolution No. R-690-25

The accompanying resolution was prepared by the Water and Sewer Department and placed on the agenda at the request of Prime Sponsor Senator René García.

Geri Bonzon-Keenan
County Attorney

GBK/uw

Memorandum

Date: April 1, 2025

To: Honorable Chairman Anthony Rodriguez
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor

Subject: Resolution Approving a Tolling Agreement between Miami-Dade County and the City of Hialeah

Executive Summary

The purpose of this item is to seek approval from the Miami-Dade County (the County) Board of County Commissioners (the Board) to enter into a Tolling Agreement (the Agreement) between the County and the City of Hialeah (the City).

On December 12, 2024, the City, via Resolution 2024-398, initiated conflict resolution procedures under the Florida Governmental Conflict Resolution Act, also known as Chapter 164 of the Florida Statutes, regarding an outstanding balance it owes to the Miami-Dade Water and Sewer Department (WASD) for unpaid wholesale sewer services for Fiscal Years (FY) 2020-2021 through FY 2022-2023. On January 22, 2025, the County adopted Resolution No. R-5-25, which initiated the Chapter 164 conflict resolution procedures against the City with regard to the outstanding debt to WASD as well as issues related to the parties' jointly-owned Reverse Osmosis Water Treatment Plant (the RO Plant).

In order to allow for additional time for the resolution of these issues, the County and the City will enter into the Agreement to suspend the statutes of limitations, statutes of repose, and other time-sensitive deadlines related to both the sewer billing dispute and the RO Plant dispute. The Agreement will be in effect until June 30, 2026, unless extended by both parties.

The Agreement does not represent any admission of liability between the parties, and both parties have committed to utilizing this time to resolve the disputes amicably.

Recommendation

It is recommended that the Board approve the Agreement with the City, in substantially the form attached to the accompanying Resolution as Exhibit A, which has already been executed by the City. The Board also authorizes the County Mayor or County Mayor's designee to execute the Agreement on behalf of the County and to exercise the provisions contained therein.

Scope

The City of Hialeah is located within Commission District 6, Commission District 12, and Commission District 13, which are represented by Commissioner Kevin M. Cabrera, Commissioner Juan Carlos Bermudez and Senator Rene Garcia, respectively.

Delegation of Authority

This item authorizes the County Mayor or County Mayor's designee to execute the Agreement and to exercise all provisions contained therein.

Fiscal Impact/Funding Source

There is no immediate fiscal impact associated with the approval of the Agreement itself. The Agreement merely suspends the statutes of limitations, statutes of repose, and other time-related deadlines through June 30, 2026 in order to allow the parties to try to resolve their issues without resorting to litigation.

To the extent a settlement is reached on the parties' disputes as a result of the conflict resolution process, it will be presented to the Board for final approval. Therefore, while there is no direct fiscal impact at this time by approving this Agreement through which the parties have agreed to toll the time to file claims against one another, the ultimate resolution of these disputes could result in significant financial implications for both parties in the future, including the amount of the outstanding debt paid by the City to WASD and the manner in which the parties will manage and operate the RO Plant going forward.

Track Record/Monitor

Water and Sewer Department Interim Director, Amanda Kinnick, will oversee the Agreement.

Background

The County delivers Wholesale Sewer Services to the City based on a Wholesale Sewer Service Agreement. The Wholesale Sewer Service Agreement stipulates that the City must timely pay the monthly invoices for the wastewater processing services it receives from the County.

From FY 2020-2021 through FY 2022-2023, the City failed to pay the County in full for the sewer services rendered, and the current debt owed to WASD for these unpaid services totals approximately $17.8 million. The City alleges that it withheld payment for parts of the bills during this time frame because the sewer meters at Pump Station 200 are not the appropriate technology for this configuration and, therefore, the City has been overbilled.

However, WASD routinely calibrates its wholesale meters and has provided the City with all requested historic maintenance and calibration records. The City has not been able to provide any documentation to substantiate its claim as to the inaccuracy of the County's meters.

In addition to the billing dispute, the City and the County share ownership of the RO Plant. The City has not managed or operated the RO Plant in accordance with the terms of the JPA, which has led to a separate dispute over the RO Plant's management and operations.

To allow sufficient time for these matters to be resolved through the Chapter 164 process, the City and the County have agreed to enter into the Agreement, which will toll the statutes of limitations, statutes of repose, and other time-related deadlines for both the sewer service and RO Plant disputes. The tolling period will remain in effect until June 30, 2026, unless extended by mutual agreement of the parties.

Roy Coley

Roy Coley
Chief Utilities and Regulatory Services Officer

Memorandum

Date: March 27, 2025

To: Honorable Chairman Anthony Rodriguez
Board of County Commissioners

From: Amanda Kinnick, Interim Director
Water and Sewer Department

Subject: Request to Process Late Departmental Agenda Item

I am requesting that the following item be placed on the Special Meeting with Hialeah, which is to occur during the April 1, 2025, Board of County Commissioners meeting.

RESOLUTION APPROVING A TOLLING AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE CITY OF HIALEAH AS TO ALL CLAIMS EITHER PARTY MAY HAVE AGAINST THE OTHER RELATED TO: (1) THE OUTSTANDING UNPAID WHOLESALE SEWER BILLS OWED BY THE CITY TO THE MIAMI-DADE WATER AND SEWER DEPARTMENT, AND (2) THE OWNERSHIP, OPERATION AND MAINTENANCE OF THE JOINTLY OWNED REVERSE OSMOSIS WATER TREATMENT PLANT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SUCH AGREEMENT ON BEHALF OF MIAMI-DADE COUNTY

It is critical that this item proceed within the requested timeline to facilitate a path to a resolution between the County and the City of Hialeah. Without the Tolling Agreement, both parties would face the pressure of time-sensitive legal deadlines, potentially leading to premature litigation and unnecessary legal costs. The Tolling Agreement provides the necessary time for both parties to engage in the conflict resolution process under Chapter 164 of the Florida Statutes, which is designed to promote amicable resolution without resorting to immediate lawsuits.

Therefore, I respectfully request to process the item notwithstanding that the Three-Day Rule may be applicable to it. I am aware that this item is subject to approval for placement on the agenda by the appropriate committee chairperson as well as the BCC Chairman, and review by the Office of the County Attorney.

Roy Coley
Approved by Mayor or Mayor's Designee

Roy Coley
Print Name

Approved by Legislative Director or Designee

Demetria Henderson
Print Name

c: Geri Bonzon-Keenan, County Attorney
CAOagenda@miamidade.gov
Eugene Love, Agenda Coordinator

MEMORANDUM

(Revised)

TO: Honorable Chairman Anthony Rodriguez
and Members, Board of County Commissioners

DATE: April 1, 2025

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 2(C)

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**
_____	**Statement of social equity 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 present ____, 2/3 membership ____, 3/5's ____, unanimous ____, majority plus one ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3) (h) or (4)(c) ____, CDMP 9 vote requirement per 2-116.1(4)(c) (2) ____) 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. 2(C)
4-1-25

RESOLUTION NO. R-690-25

RESOLUTION APPROVING A TOLLING AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE CITY OF HIALEAH AS TO ALL CLAIMS EITHER PARTY MAY HAVE AGAINST THE OTHER RELATED TO: (1) THE OUTSTANDING UNPAID WHOLESALE SEWER BILLS OWED BY THE CITY TO THE MIAMI-DADE WATER AND SEWER DEPARTMENT, AND (2) THE OWNERSHIP, OPERATION AND MAINTENANCE OF THE JOINTLY OWNED REVERSE OSMOSIS WATER TREATMENT PLANT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SUCH AGREEMENT ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE THE PROVISIONS CONTAINED THEREIN

WHEREAS, the County provides wholesale water and sewer services to the City of Hialeah (the "City") pursuant to the Wholesale Water and Wholesale Sewer Service Agreements; and

WHEREAS, under the terms of the Wholesale Sewer Service Agreement, in exchange for the County accepting and processing the City's wastewater, the City is required to pay the County for the bills and/or invoices sent for services rendered on a monthly basis; and

WHEREAS, the City has not paid the County the full amount billed for sewer service for the fiscal year 2020-2021 through fiscal year 2022-2023 time frame because the City alleges that the bills are not accurate and constitute overbilling under the Wholesale Sewer Service Agreement; and

WHEREAS, the amount owed by the City is approximately $17,800,000.00; and

WHEREAS, in addition, the County and the City co-own a Reverse Osmosis Water Treatment Plant (the "RO Plant") pursuant to a Joint Participation Agreement ("JPA"); and

WHEREAS, the County contends that the City has not managed or operated the RO Plant in accordance with the terms of the JPA; and

WHEREAS, the County and the City are currently participating in the dispute resolution processes set forth in Florida Governmental Conflict Resolution Act, chapter 164, Florida Statutes, with regard to the billing issue and the RO Plant issue; and

WHEREAS, because the chapter 164 process may take considerable time in order to complete all steps and because the County and the City hope the chapter 164 process will result in an amicable resolution of their disputes regarding the billing and RO Plant disputes, the County and the City have prepared a tolling agreement, attached hereto as Exhibit A, which tolls the applicable statutes of limitations, statutes of repose and any other deadlines as to the billing and RO Plant disputes; and

WHEREAS, in order to allow the County and the City sufficient time to carry out the chapter 164 process and to attempt to resolve the issues between the jurisdictions amicably, the Board desires to enter into the tolling agreement with the City,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The Board approves the foregoing recitals, which are incorporated herein by reference.

Section 2. The Board approves of the County entering into a Tolling Agreement with the City, in substantially the form attached hereto as Exhibit A, as to the claims either has against the other regarding (1) the outstanding debt owed by the City to the County for unpaid sewage services, and (2) the ownership, operation and maintenance of the RO Plant. The Board also authorizes the County Mayor or County Mayor's designee to execute the Tolling Agreement on behalf of the County and to exercise the provisions contained therein.

The foregoing resolution was offered by Commissioner **Eileen Higgins**, who moved its adoption. The motion was seconded by **Sen. René García** and upon being put to a vote, the vote was as follows:

Anthony Rodriguez, Chairman **aye**
Kionne L. McGhee, Vice Chairman **aye**

Marleine Bastien	**aye**	Juan Carlos Bermudez	**aye**
Kevin Marino Cabrera	**aye**	Sen. René García	**aye**
Oliver G. Gilbert, III	**aye**	Roberto J. Gonzalez	**aye**
Keon Hardemon	**aye**	Danielle Cohen Higgins	**aye**
Eileen Higgins	**aye**	Raquel A. Regalado	**aye**
Micky Steinberg	**aye**		

The Chairperson thereupon declared this resolution duly passed and adopted this 1st day of April, 2025. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

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

JUAN FERNANDEZ-BARQUIN, CLERK

By: **Basia Pruna**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. SED

Sarah E. Davis

EXHIBIT A

TOLLING AGREEMENT

This Tolling Agreement (the "Agreement") is made effective as of the __ day of April, 2025 (the "Effective Date"), by and among the following parties: (i) the City of Hialeah (the "City"), and (ii) Miami-Dade County (the "County"). The City and the County shall collectively be referred to herein as the "Parties," and the City and the County shall be referred to separately as a "Party."

WITNESSETH

WHEREAS, the County provides wholesale water and sewer services to the City pursuant to Wholesale Water and Wholesale Sewer Service Agreements; and

WHEREAS, under the terms of the Parties' Wholesale Sewer Service Agreement, in exchange for the County accepting and processing the City's wastewater, the City is required to pay the County for the bills/invoices sent for services rendered on a monthly basis; and

WHEREAS, the City has not paid the County the full amount billed for sewer service for the FY20-21 through FY22-23 time frame because the City alleges that, based upon its analysis of the quantitative data, the County's sewerage meters for P.S. 200 are the incorrect technology resulting in inaccurate readings and over-billing under the Parties' Wholesale Sewer Service Agreement; and

WHEREAS, the Parties agree that the alleged overbilled and unpaid amount is $17.8 million; and

WHEREAS, the County does not agree with the City's position concerning the City's analysis of the data, and the incorrect technology resulting in inaccurate readings and over-billing for P.S. 200. The County has made multiple demands to the City to pay the full balance the County alleges is owed by the City; and

WHEREAS, in addition, the Parties co-own a Reverse Osmosis Water Treatment Plant (the "RO Plant") pursuant to a Joint Participation Agreement ("JPA"); and

WHEREAS, the County contends that the City has not managed or operated the RO Plant in accordance with the terms of the JPA; and

WHEREAS, the Parties are currently participating in the dispute resolution processes set forth in Florida Governmental Conflict Resolution Act, Chapter 164, Florida Statutes with regard to the billing issue and the RO Plant issue; and

WHEREAS, because the Chapter 164 process may take considerable time in order to complete all steps and because the Parties hope the Chapter 164 process will result in an amicable resolution of the disputes, the Parties agree that the applicable statutes of limitations, statutes of repose and any other deadlines as to the billing and RO Plant disputes should be tolled so that the Chapter 164 process can take place without either Party having to initiate litigation prematurely against the other,

NOW, THEREFORE, in consideration of the mutual covenants, conditions and provisions set forth below, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each Party, and each Party intending to be legally bound by the terms of this Agreement, the Parties stipulate and agree as follows:

1. All statutes of limitations, statutes of repose, and any other deadlines relating to any dispute between the Parties currently proceeding as part of the Chapter 164 processes referenced herein are and shall be tolled and extended from the Effective Date through and including **June 30, 2026** at 11:59 p.m. ET (the "Tolling Period"), unless extended in writing by the Parties.

2. Should either Party initiate a lawsuit within the Tolling Period, such case shall be treated as if it was commenced or filed on the Effective Date for the purpose of any defense based on the failure of the other Party to timely file a claim, counterclaim, cross-claim, lawsuit, objection, or other proceeding in law, equity, or otherwise against the defendant.

3. Both Parties agrees to waive any and all defenses that assert that any cause of action against the other is barred by the running of time during the Tolling Period, if such defense would not have barred the action had it been filed on or before the Parties entered into this Tolling Agreement, including any defense based on any statute of limitations, statute of repose, or other defense based on the passage of time, including but not limited to laches. Both Parties' claims and counterclaims are expressly preserved.

4. Notwithstanding the foregoing, nothing in this Agreement shall revive any causes of action that were time barred prior to the Effective Date. Nor shall this Agreement modify, abridge, effect, or constitute a waiver with respect to any defenses, including, without limitation, contract, notice, statutes of limitations and/or statutes of repose, laches, waiver, or other time-related defenses, to the extent such defenses were viable prior to the Effective Date.

5. By executing this Agreement, neither Party shall be deemed to have (i) waived the application of the relation back doctrine, (ii) agreed to the viability of any defense or that any statute of limitations and/or statute of repose has expired or will expire, or (iii) waived any defenses to any statute of limitations or other defenses based upon the passage of time.

6. Nothing in this Agreement shall constitute an admission of liability or fault on the part of any Party.

7. The Parties agree that their mutual intent in entering into this Agreement is to toll all causes of action against the other and not to shorten any deadline.

8. This Agreement shall become immediately effective and binding upon a Party upon the execution of the Agreement by such Party or such Party's counsel. For the avoidance of doubt, both Parties agree to be immediately bound by the terms of the Agreement upon execution thereof, and without the necessity of a Court order. Both Parties acknowledge that they are represented by counsel and have participated equally in the drafting of this Agreement.

9. Both Parties agree that this Agreement shall also be binding on any of its relatives, estates, heirs, executors, administrators, devisees, trustors, trustees, beneficiaries, predecessors, successors and assigns, members, affiliated and related entities, officers, directors, agents, servants, employees, representatives, attorneys and insurers.

10. Any notice to be provided under this Agreement shall be provided via electronic mail to the email addresses set forth below.

11. This Agreement is the final and entire agreement of the Parties regarding the subject matter herein, and supersedes all previous oral and written understandings, negotiations, term sheets, and agreements with respect to the subject matter addressed herein.

12. This Agreement may be executed by the Parties in separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument. Any executed copy of this Agreement delivered by electronic mail or facsimile shall be deemed to be binding to the same extent as an original executed copy of this Agreement. This Agreement shall be valid and binding on all Parties who execute this Agreement or for whom this Agreement is executed, notwithstanding any failure by any other Parties to execute this Agreement or cause execution of this Agreement on their behalf.

13. This Agreement may be modified or extended only by a writing signed by the Parties for which such modification or extension shall apply.

14. The undersigned represent that they are authorized to execute this Agreement on behalf of the respective Parties for whom they have signed.

15. This Agreement shall be governed by the laws of the State of Florida without reference to its conflict of laws principles.

16. A Court of Competent Jurisdiction in Miami-Dade County shall have exclusive jurisdiction over any disputes concerning this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date stated in the preamble.

CITY OF HIALEAH	MIAMI-DADE COUNTY
By: Rafael E. Suarez-Rivas Its: City Attorney Email: RSuarezRivas@hialeahfl.gov PWBlackett@hialeahfl.gov	By: _____ Its: _____ Email: _____