

CUSTOMER AGREEMENT
BETWEEN THE CITY OF CORAL GABLES AND
THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA
(WEST LABORATORY ELEMENTARY SCHOOL)

This Agreement made and entered into this ___ day of _____ 2010, by and between THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic existing under the laws of the State of Florida (the "SCHOOL BOARD") and the CITY OF CORAL GABLES, a municipal corporation (the "CITY"), and collectively referred to herein as (the "Parties").

WITNESSETH:

WHEREAS, the SCHOOL BOARD is under a DERM mandate to connect West Laboratory Elementary School (the "School"), located at 5300 Carillo Street, Coral Gables, Florida, to a sewer system and to abandon the existing septic tank; and

WHEREAS, representatives of the SCHOOL BOARD and the CITY met in August 2006 and agreed to enter into a formal agreement permitting the connection of the School to the CITY sewer system's 24-inch cast iron force main located at the intersection of Carillo Street, and Ponce de Leon Boulevard; and

WHEREAS, the SCHOOL BOARD has agreed to install a new valve on the CITY's existing force main that will receive the School's discharge and also deliver a second new valve to the CITY at the SCHOOL BOARD'S cost and expense; and

WHEREAS, the CITY has an Education Element within its adopted Comprehensive Plan which provides the following Vision Statement: "Continue to strengthen the quantity and quality of educational opportunities available to the citizens of the City of Coral Gables and Miami-Dade County, while ensuring that schools are compatible with their surrounding communities;" and

WHEREAS, the Education Element contains numerous Goals, Objectives and Policies that require intergovernmental coordination between the CITY and the SCHOOL BOARD with reference to Public Schools which address the following: expansion of new educational facilities and renovations; capital improvements plans and programming; infrastructure improvements; offsite facility improvements; student capacity and overcrowding (levels of service); and mitigation of potential adverse effects; and

WHEREAS, on December 21, 2007, the CITY entered into an Interlocal Agreement (ILA) with the SCHOOL BOARD for Public School Facility Planning, which established among other things, a process to review and agree on supporting infrastructure at schools where significant expansion is required to accommodate new student populations, in accordance with the "significant expansions" threshold set forth in Section 5 of the ILA; and

WHEREAS, under the ILA, in the event of significant expansions to elementary schools, such as West Lab Elementary School, which expansions are defined in the ILA as construction improvements that result in an increase in student capacity of greater than fifteen percent (15%), then the SCHOOL BOARD and the CITY shall collaborate and enter into a letter of agreement

as to timing, location, and the party or parties responsible for constructing, operating and maintaining the required on-site and off-site infrastructure improvements related to the expansions; and

WHEREAS, as of the October 2009 FTE (Full Time Equivalent), West Lab Elementary School had a total FISH (Florida Inventory of School Houses) capacity of 336 student stations.

NOW, THEREFORE, in the consideration of the Sum of Ten (\$10.00) Dollars and the mutual promises contained herein, the parties agree as follows:

1. The recitals set forth above are true and correct and are incorporated herein in their entirety.
2. The SCHOOL BOARD shall perform all necessary engineering design and construction at the School in order to connect the School to the City's sewer system, but in no event shall there be any cost to the City for any hook up.
3. The CITY shall allow the SCHOOL BOARD to connect the School to the City's sanitary sewer system within ten (10) days after inspection and approval by the CITY and after approval by Miami Dade County Department of Environmental Resources Management of all necessary construction by the SCHOOL BOARD.
4. The SCHOOL BOARD agrees that it will pay to install a new isolation valve on the City's force mains to which the School will connect, which valve is identified as located on the existing 24-inch cast iron pipe at the intersection of Granada Boulevard and Ponce de Leon Boulevard, and also to deliver a new second isolation valve for a 20-inch cast iron pipe to the City's Public Works Department at SCHOOL BOARD's expense and cost.
5. The SCHOOL BOARD shall convey to the CITY title to the force main line constructed in the public right-of-way with the exception of that portion of the force main between the West Laboratory School property line and the main line of the force main (lateral section), through an Absolute Bill of Sale.
6. The SCHOOL BOARD agrees to comply with all applicable conditions set forth under the City Code relating to the construction to connect the School to the City's Sanitary Sewer system, except that the SCHOOL BOARD is exempt from the City's sewer connection, impact or service availability fee, as set forth in Sec. 1013.371(1) (a), Florida Statutes (2009).
7. To comply with all conditions set forth under Chapters 62 and 78 of the City Code, Resolution No. 2008-07, as modified by this Agreement, and any other pertinent ordinances or resolutions or administrative regulations, copies of which the applicant/customer has reviewed and fully acknowledges by agreeing hereto, except that the rate applied to connecting outside the City shall be 25% greater than rates applicable to the same connection within the City. If the connection is outside existing sanitary sewer districts, but inside the City, the 25% additional rate shall not apply. In the event of a conflict between the above-referenced City Code Chapters and Resolution and this Agreement, this Agreement shall control.

8. The SCHOOL BOARD agrees to the billing and collection of sewer service charges as determined by the City of Coral Gables. Other agencies, for example the Miami-Dade Water and Sewer Department, may be designated by the CITY to bill and/or collect sewer service charges. Sewer service charges shall be due within sixty (60) days of receipt of billing by the SCHOOL BOARD.

9. The SCHOOL BOARD agrees to pay the entire cost of whatever facilities are required from the source of the sewage to the point of connection with the City's sewer system, including, but not limited to the force main and all appurtenances.

10. The SCHOOL BOARD shall furnish the City Attorney with a copy of the deed for the School as proof of ownership.

11. The SCHOOL BOARD agrees to install and maintain facilities for such pre-treatment of wastes as may from time to time be found necessary to render the wastes suitable for handling and treatment by the CITY without creation of nuisances. Under operational difficulty, the reasonable determination by the CITY and CITY's Consulting Engineers, after consultation with the SCHOOL BOARD and the SCHOOL BOARD's consultants, shall be binding. The following shall be required in all cases:

- a. Grease separation facilities without exception;
- b. Comminutors, except where flow is directly to a City comminutor;
- c. Screens at the discretion of the CITY in cases of laundries and similar sources of rags, string and lint; and
- d. Pre-chlorination in case of long force mains.

12. The SCHOOL BOARD has already agreed to provide the CITY with plans and specifications in quadruplicate for the School's sanitary sewer facilities as prepared by a Registered Civil Engineer, licensed to practice in the State of Florida and fully experienced and qualified in the design of sanitary sewer systems. Said plans and specifications have been reviewed and approved by the CITY and returned to the SCHOOL BOARD.. A composite plan/profile survey of existing utilities shall be prepared of each Coral Gables right-of-way through which a pipeline run is proposed, showing the exact relationship between and among all existing and proposed facilities.

13. The SCHOOL BOARD has provided a cut-off valve at the point of connection with the Coral Gables sewer system. These cut-off valves are shown and described in the plans and specifications.

14. The SCHOOL BOARD agrees that upon completion of the installation, a licensed and registered engineer will certify in writing that the work has been fully and properly installed, and that infiltration is within allowable limits.

15. The SCHOOL BOARD confirms that the installation shown on the approved plans and specifications were constructed and installed by a fully licensed and qualified

Contractor, who obtained all prerequisite construction permits from each agency having jurisdiction prior in initiating worked in the field.

16. The SCHOOL BOARD agrees to keep the CITY informed of work progress and connections inside and outside the CITY so that the CITY Inspectors may confirm the integrity of the facilities at each key point.

17. The SCHOOL BOARD agrees to be solely responsible for continuing maintenance and operation of all facilities within the property of the School and the School's lateral, as described in Paragraph 5 hereof. The CITY reserves the right to inspect the facilities and to require the SCHOOL BOARD to have timely repairs made, where infiltration or other defects are adversely affecting the cost and operation of the City's sanitary sewer system. Failure of the SCHOOL BOARD to remedy defects may be cause for termination of the agreement and disconnection of the service. The occupants or tenants of the connected property, i.e. the School, shall be informed by the SCHOOL BOARD that the CITY is not responsible for such maintenance and operation.

18. The SCHOOL BOARD agrees to not permit any other connection to the School's connecting lines to the City system except those listed in this Agreement. Any additional connections, if permitted, shall be subject to approval by the CITY as stated herein. Additional connectors shall also furnish the CITY with prior written approval by the original owner of the line and all prior connectors to said line.

19. The SCHOOL BOARD agrees to limit peak sewage flow (as it may have been established at permitting) from the outside sewer connection insofar as the property, zoning, size, type and/or density of the facility herein approved for connection, and any proposed change thereto which would result in significant expansion or generate significant increase in peak sewage discharged into the Coral Gables sanitary sewer system shall require prior approval by the City of Coral Gables for such increased sewage discharge in accordance with the terms of City Code Chapter 78, the agreement between the the CITY and SCHOOL BOARD known as the "Amended and Restated Interlocal Agreement for Public School Facility Planning in Miami-Dade County," dated December 21, 2007, and Section 1013.51, Florida Statutes, as the foregoing may be amended from time to time.

20. The SCHOOL BOARD agrees to provide that the monthly charge computed at the volumetric base rate be multiplied by a value of unity for a monthly average BOD of 250 PPM or under, said value to be increased by a surcharge factor of 0.25% per part per million of monthly average BOD in excess of 250 PPM, as follows and as interpolations thereof.

<u>Monthly BOD</u>	<u>Multiplier</u>
250 PPM or less	1.000
260	1.025
270	1.050
280	1.075
290	1.100
300	1.125
400	1.375
500	1.625
1000	2.875

21. The SCHOOL BOARD agrees to provide for and bear the cost of sampling with suitable sampling facilities, when reasonable cause for sampling exists. The CITY shall give customer or tenant reasonable notice when sampling is necessary, and qualified CITY representatives shall thereafter perform the necessary sampling as efficiently as possible.

22. The SCHOOL BOARD agrees to reconnect to the CITY sewer system at the School Board's expense in a manner acceptable to the City, when the sewer system is extended to a new area in the CITY, and completed, which can more efficiently and effectively serve the customer's outside connection.

23. The SCHOOL BOARD agrees to provide written confirmation of the School Board's on-going Self-Insurance Program for Public Liability, General Liability, Workers' Compensation and Professional Liability covering the School Board's officers, members, employees and agents in accordance with and subject to the limitations of Sec. 768.28, Florida Statutes, (2009) at the time of the signing of this Agreement.

24. The SCHOOL BOARD shall not be liable for any damage or injury which may be sustained by the CITY or any persons or property as a result of this Agreement, other than damage or injury resulting solely from the negligent performance or failure of performance on the part of the SCHOOL BOARD, its agents, representatives or employees (to the limits of Sec. 768.28, F.S.), or failure of the SCHOOL BOARD to perform its covenants under the Agreement. The SCHOOL BOARD shall provide the CITY with proof of self-insurance, and neither party indemnifies the other.

25. The SCHOOL BOARD agrees to bear the expense of recording this Agreement encompassing the above items in the Public Records of Miami-Dade County, Florida, and said Agreement shall be a covenant running with the land which will state that the owner will not convey or cause to be conveyed the title to the above property without requiring the successor in the title to abide by all the terms and conditions of said Agreement.

26. The City Manager is authorized to terminate this Agreement on behalf of the City of Coral Gables. If the SCHOOL BOARD materially breaches this Agreement, or any provision thereof, including paragraph 13, the CITY shall be entitled to any or all of the following remedies:

- a. The CITY may terminate this Agreement by giving written notice to the SCHOOL BOARD of such termination, and specifying the effective date thereof, at least thirty (30) days before the effective date of termination;
- b. The CITY may seek enforcement of this Agreement, including but not limited to filing an action with a court of appropriate jurisdiction;
- c. Any other remedy available at law or equity.

27. If the CITY materially breaches this Agreement, or any provision thereof, the SCHOOL BOARD shall be entitled to any or all of the following remedies:

- a. The SCHOOL BOARD may seek enforcement of this Agreement, including but not limited to filing an action with a court of appropriate jurisdiction;
- b. Any other remedy available at law or equity.

28. The SCHOOL BOARD shall be entitled to repayment from subsequent connectors served by the force main installed by the SCHOOL BOARD, in accordance with Section 1013.51(c)(3), Florida Statutes (2009) and in the manner set forth in City Code, Sec. 78-107.2.

29. This Customer Agreement shall inure to and be binding on the Parties hereto and their respective successors and assigns. Nothing herein shall be deemed a waiver, by either Party, of sovereign immunity.

30. This Customer Agreement shall be governed in accordance with the laws of the State of Florida. In the event of litigation, venue shall be in Miami-Dade County, Florida.

31. In the event of litigation, each party shall be responsible for its own attorney's fees and costs through all trial and appellate levels. The provisions of this subparagraph shall survive any termination or cancellation of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Customer Agreement to be executed by their respective duly authorized representatives, as of the day on which the last of the Parties executes this Customer Agreement.

**THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA**

Witness Signature

By: _____
Alberto M. Carvalho
Superintendent of Schools

Print Witness Name

DATE: _____

CITY OF CORAL GABLES

Witness Signature

By: _____
City Manager

Print Witness Name

Print Name: _____

DATE: _____

Approved as to Form and Legal sufficiency:

Approved as to Form and Legal sufficiency:

Board Attorney's Office

By: _____
City Attorney