

CONTRACT
BETWEEN
MIAMI-DADE COUNTY
AND
CITY OF CORAL GABLES, 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 Coral Gables, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter designated as the "CITY";

WITNESSETH:

WHEREAS, on May 3, 1979, the Miami-Dade Water and Sewer Authority (Authority) entered into a contract with the City of Coral Gables, to provide sewage disposal services, and;

WHEREAS, the COUNTY is legal successor in interest to the Authority, and has assumed all rights, duties and obligations of the Authority, and;

WHEREAS, the COUNTY and CITY desire to enter into this Contract so the COUNTY can continue to render sewage disposal service 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 extent capacity is available, to the CITY by allowing the connection of the CITY'S sewage collection systems to the COUNTY's sewage transmission facilities at the following point of connection:

S.W. 37th Avenue and 28th Street

Additional points of connection may be established at such times and places as shall be mutually agreed upon by the Director of the Department and the CITY. The CITY shall bear the entire cost and expense of establishing each such additional point of connection, 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. The CITY will supply and install meter(s) and transfer ownership to the COUNTY. The CITY shall convey to the COUNTY, by appropriate Bill of Sale all of the CITY's right, title and interest in and to the tees or crosses in the feeder mains, meters, meter vaults and all piping, valves and appurtenances between and including the aforesaid

tees or crosses and the valve immediately on the discharge side of the meters. The COUNTY shall thenceforth own, control, operate and maintain such facilities. Readings of each meter at all points of delivery shall be taken by the COUNTY on or about the 28th day of each month and shall be used for monthly billing purposes under the provisions of Section 12 below.

2. The operation and maintenance of all facilities on the CITY's side of the master meter connections shall be the sole responsibility of the CITY, except as otherwise provided herein. The CITY acknowledges that the responsibility of the COUNTY to provide sewage disposal service under this Contract shall be limited to the CITY'S existing sewer service area or future sewer service area, which the CITY is legally authorized to serve. The CITY acknowledges that it provides sewer service outside of its existing CITY limits and as its service area is expanded, said sewer service areas shall be included and be pursuant to the terms and conditions of this Contract.
3. The CITY hereby acknowledges and agrees that any right to connect the CITY to the COUNTY'S sewage system 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) vs. 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.
4. 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. The operation and maintenance of all facilities on the CITY's side of the force main shall be the sole responsibility of the CITY.
5. 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 installations. Notwithstanding the foregoing, the COUNTY has provided, and based on the availability of WASD's personnel at the time the request is received, will continue to provide emergency repair service as may be required by the CITY, subject to the limitations in Section 2-8.1 of the Miami-Dade County Code to that portion of the CITY's 36-inch force main within the CITY to assure continuous operation of the system. Said 36-inch force main is located approximately between the intersections of Bird Road and Granada Boulevard and S.W. 28th Street and S.W. 38th Avenue. This service will be provided by the COUNTY, and billed to the CITY, at the Department's actual cost of labor, materials, and overhead.

6. 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.
7. 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.
8. The CITY shall not allow or permit construction or installation of any connections of stormwater mains, which allow stormwater to enter the CITY'S 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.
9. The CITY recognizes that the COUNTY'S standards for 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.
10. 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 pretreatment facilities are necessary for a retail customer of the CITY, prior to construction, the CITY shall cause the retail customer to submit plans and specifications for the proposed design of the facilities to the COUNTY, which shall be subject to the COUNTY'S approval.
11. In accordance with the provisions of County Ordinance No. 89-95, as amended, the CITY shall not render water, sewer service or both to any new retail user until 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 sewer service, or both, to any new retail user without first ensuring that connection charges are paid, the CITY shall be liable for damages to the COUNTY in the amount of the connection charges owed by the retail

user. The COUNTY reserves the right to audit existing records for a period not to exceed applicable statutory limits for payments of said connection charges.

12. As compensation for the transmission, treatment, including reclamation, and any method of disposal of all sewage received from the CITY, the CITY shall pay to the COUNTY a monthly charge for such service based on a uniform rate for the COUNTY's wholesale customers. The rate shall be calculated for each fiscal year based on projections from the Department's prior fiscal year and shall be the sum of subsections a. – h. below. An annual wholesale wastewater true-up adjustment amount, debit or credit, will be imposed in the following fiscal year after completion of the Department's audited financial report. The true-up adjustment will be determined based on the variances in the Department's projected wholesale wastewater expenses (rates) and the actual audited wholesale wastewater expenditures (rates).

- 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/annual annual operating and maintenance expenses, including taxes assessed, if any, incurred by the COUNTY in connection with its regional sewage pumping stations, divided by the projected total amount of flow used to bill all the COUNTY'S sewage disposal customers over the same time period.
- c. That portion of the projected/annual annual operating and maintenance expenses, including taxes assessed, if any, incurred by the COUNTY in connection with its regional sewage treatment plants, reclamation facilities and disposal, including 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 sewage disposal customers over the same time period.
- d. That portion of the projected/annual renewal and replacement expenses for all the COUNTY'S regional capital wastewater 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 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 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.
- 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 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 sewage disposal customers over the same time period.

- g. That portion of the COUNTY'S projected/budgeted annual administration and general expenses incurred by the COUNTY in connection with its regional sewage system that is not covered by the minimum charge divided by the total projected amount of flow used to bill all the COUNTY'S sewage disposal customers over the same time period.
- h. That portion of the charge for the COUNTY'S debt service coverage requirement for loans, lines of credit and bond issues for the COUNTY'S regional 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.

13. 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 12 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 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 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.

14. 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 which shall be limited to the amount necessary to defray the Department's costs of processing the City's late payment and a per annum interest charge on the past due charges at the maximum legal rate provided by Florida law for contracts in which no interest rate is specified, for each day, including Saturdays, Sundays and holidays, from the past due date until the date of receipt 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.

15. 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. Such meters

shall be tested and certified by the COUNTY every ninety (90) days, and copies of the certification will be provided to the CITY upon request. 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.

16. 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 paid by the CITY. 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.
17. In the event of complete or partial failure of the meter to register the CITY'S sewage disposal flow, the COUNTY shall determine the estimated daily 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 they shall use another method agreed to by both the County and the City if twelve full months of readings are not available.
18. 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.
19. 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.

20. 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.
21. Any cessation of sewage disposal or other service interruptions resulting from 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.
22. 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. Terminate this Contract if a corrective action plan is not submitted to the COUNTY for approval in accordance with Chapter 24 of the Miami-Dade County Code.
 - b. Require pretreatment to any acceptable condition as determined by the local, state or federal agency prior to discharge into the COUNTY'S Wastewater System;
 - c. Require control over the quantities and rates of discharge; and/or
 - d. 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.
23. The CITY shall comply with the requirements for peak flows including the terms of Section 32-83 (B) of the Miami-Dade County Code 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 shall take appropriate action to remedy the violation which may include termination after reasonable notice if a corrective action plan is not submitted to the COUNTY for approval in accordance with Chapter 24 of the Miami-Dade County Code.

- a. Require control over the quantities and rate of flow from the CITY; and/or
- b. Impose a peak flow surcharge to the CITY

24. 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. 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 Coral Gables
Attention: City Manager
405 Biltmore Way
Coral Gables, Florida 33134

25. 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 COUNTY agrees that no later than six (6) months prior to the expiration of this contract it will notify the CITY, in writing, of the approaching termination date, and further agrees to renegotiate the contract for an additional term.

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

27. 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.

28. 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.

29. 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:

MIAMI-DADE COUNTY

By: _____
Deputy Clerk

By: _____
County Mayor

ATTEST:

THE CITY OF CORAL GABLES

By: _____
City Clerk

By: _____
City Manager

Approved as to legal form
and Sufficiency

Approved as to legal form
and Sufficiency

Assistant County Attorney

Attorney for the City of Coral Gables