

AGREEMENT FOR THE BILLING OF
STORMWATER CHARGES
BETWEEN
MIAMI-DADE COUNTY
AND
TOWN OF CUTLER BAY

THIS AGREEMENT is entered into this ____ day of _____, 2018 (the "Effective Date"), by and between the TOWN OF CUTLER BAY, FLORIDA, a municipal corporation of the State of Florida (the "TOWN"), and MIAMI-DADE COUNTY, a political subdivision of the State of Florida (the "COUNTY"), and collectively, the "Parties."

WITNESSETH:

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

WHEREAS, since July 1, 2008, the TOWN has been exclusively responsible for operating and maintaining the stormwater utility system within the TOWN boundaries; and

WHEREAS, on June 20, 2008, the COUNTY and the TOWN entered into an agreement providing for the billing of stormwater charges by the COUNTY for the TOWN, and the COUNTY has 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 TOWN desires the COUNTY to continue to administer, bill and collect the stormwater utility service charge on behalf of the TOWN; and

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

WHEREAS, the TOWN acknowledges that there are several customers within the TOWN boundaries who are not provided water and sewer service by the Department and stormwater billing services for such customers are not a part of this agreement, and

WHEREAS, the TOWN needs to retain, from the stormwater utility service charges it collects for the TOWN, on a monthly basis, the TOWN's pro-rata share of debt service on the Stormwater Utility Revenue Bonds, Series 1999 and Series 2004 (the "Stormwater Bonds") outstanding on the Exemption Date of the Town from the Miami-Dade County Stormwater Utility;

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

Section 1. The TOWN, 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 TOWN, shall be billed for stormwater utility service charges. The TOWN 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 TOWN. The TOWN 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 TOWN 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 Chief Financial Officer a certified copy of the ordinance or other action of the TOWN 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 TOWN 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 TOWN. The TOWN authorizes and empowers the COUNTY to render such billing for the TOWN'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 TOWN, the TOWN shall at its sole cost and expense and independent of this Agreement, advise such user of the method and arrangement between the TOWN and the COUNTY for the billing and collection of said charge by the COUNTY for and on behalf of the TOWN as the TOWN'S agent. Furthermore, the TOWN 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 \$100, 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 TOWN.

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 TOWN a monthly statement in writing, showing the net amount owed the TOWN by the COUNTY for the month covered by such statement. The COUNTY shall provide this statement and the remittance due the TOWN within sixty (60) days of the end of each monthly period. Based on such statement, the COUNTY shall make payment to the TOWN of 100% of the billed 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, 9 and 10 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 TOWN 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 TOWN, the COUNTY shall make available for inspection or audit by the TOWN and its representatives at any reasonable time all of its records pertaining to the COUNTY's actions under this Agreement as agent for the TOWN and shall also furnish to the TOWN such information concerning the administration of this Agreement as the TOWN may reasonably request, including information as to delinquent stormwater utility charges and accounts not currently being billed. Should the TOWN, in any audit of the COUNTY's records, find a discrepancy between the amount of funds remitted to the TOWN and the actual billing and collection by the COUNTY, the COUNTY shall within thirty (30) days of receipt of written notification from the TOWN, remit to the TOWN the sums owed.

Section 8. Both the TOWN 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 TOWN 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 TOWN 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. However, the COUNTY shall advise the TOWN of all adjustments to TOWN accounts as part of the monthly statements provided pursuant to Section 5. Except as otherwise specified in this Section, any adjustments to accounts assessed a stormwater utility service charge shall be initiated solely by the TOWN and provided to the COUNTY in writing.

Section 9. The TOWN agrees to pay to the COUNTY, and the COUNTY shall receive from the TOWN, 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 11 hereinafter, a charge in the amount of ninety-seven cents (\$0.97) per bill for all accounts to be charged the TOWN'S stormwater utility service charge; and
- B. For all 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 TOWN, involving billing or collection of stormwater utility service charges on behalf of the TOWN, or involving the COUNTY's administration of the terms and conditions of this Agreement.

The COUNTY shall notify the TOWN in writing of any legal claims filed against the COUNTY pertaining to the COUNTY's billing and collection of the TOWN'S stormwater fees within thirty (30) working days of receipt of any claim. The TOWN shall have the option to defend the COUNTY on any such claims and settle or compromise the same unless such a claim involves employee dishonesty or theft.

Section 10. The TOWN agrees to pay to the COUNTY, and the COUNTY shall receive from the TOWN, by means of deduction from payments for monthly billings of stormwater utility service charges collected by the COUNTY for the TOWN, the TOWN'S pro-rata share of debt service on (i) the Stormwater Bonds until they are paid in full or provision made for the payment pursuant to Article IX of Ordinance No. 98-187, enacted by the Board on December 15, 1998 in accordance with the debt service schedule set forth in Exhibit "A" to this Agreement and (ii) any obligations associated with cost sharing Stormwater Management Projects that may include, but not be limited to, canal dredging, canal maintenance and drainage projects that may be agreed to subsequent to the date of this Agreement for which payment will be based on a mutually agreed fraction. For any payments pursuant to (ii) above, the COUNTY, through its Department of Regulatory and Economic Resources, with a copy to be sent to the Department, will inform the TOWN thirty (30) calendar days prior to the beginning of each Fiscal Year, of the amount of stormwater utility service charges the County will retain each month in addition to those retained pursuant to Exhibit "A" to this Agreement. Upon agreement by both the TOWN and COUNTY, Exhibit "A" to this Agreement may be modified to include any TOWN share of debt service due to the TOWN's future annexations.

Section 11. The COUNTY reserves the right to review and revise the charges provided for in Section 9 (A) hereinabove, and the TOWN agrees to be bound thereby, provided the COUNTY provides thirty (30) days' notice to the TOWN of said proposed revised charges.

Section 12. All telephone calls and correspondence from customers regarding the stormwater utility shall be the responsibility of the TOWN. The COUNTY shall cause the telephone number for the TOWN, as provided by the TOWN, to be printed on the COUNTY's regular bill stock.

Section 13. The TOWN agrees that the COUNTY shall not be held liable for any damage, delay or other loss that the TOWN 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 14. It is understood and agreed between the TOWN 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 15. The TOWN 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 TOWN agrees to use its best efforts to detect and lawfully disconnect all stormwater connections to the COUNTY's sanitary sewer system within the TOWN'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 16. This Agreement shall be binding upon the respective successors and assigns of both the TOWN and the COUNTY.

Section 17. All references to the TOWN under this Agreement that require direction to the COUNTY shall mean the TOWN Manager or his designee. Whenever written notice to the TOWN is required, it shall be sent by Certified Mail, Return Receipt Requested, to:

Town of Cutler Bay
10720 Caribbean Boulevard, Suite #105
Cutler Bay, Florida, 33189
(Attention: Town 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: Chief Financial Officer)

Section 18. 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 TOWN 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 TOWN 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 TOWN'S customers in accordance with the agreed upon billing cycles and rates or fail to remit payment to the TOWN in the timeframes specified in Section 5, the TOWN may terminate this Agreement on thirty (30) days' written notice to the COUNTY.

Section 19. The COUNTY shall maintain adequate records to justify all charges, expenses, and costs relating to the County's administration of billing and collection of Stormwater Utility charges for properties within the TOWN for at least three years after termination of expiration of this agreement.

The TOWN shall have access to all books, records, and documents as required in this Section for the purpose of inspection or auditing during normal business hours.

Section 20. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The COUNTY and the TOWN agree to submit to service of process and jurisdiction of the State of Florida for any controversy or claim arising out of or relating to this Agreement or a breach of this Agreement. Venue for any court action between the parties for any such controversy arising from or related to this Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

Section 21. Entirety of Agreement: This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understanding applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.

Section 22. Headings: Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.

Section 23. Rights of Others: Nothing in this Agreement expressed or implied is intended to confer upon any person other than the parties any rights or remedies or by reason of this Agreement.

Section 24. Representation of Town: The TOWN represents that this Agreement has been duly authorized, executed and delivered by the Town Council of the Town of Cutler Bay, as the governing body of the TOWN, and it has the required power and authority to perform this Agreement and has granted the Town Manager the required power and authority to perform this Agreement.

Section 25. Waiver: There shall be no waiver of any right related to this Agreement unless in writing and signed by the Party waiving such right. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time or of any other right under this Agreement.

Section 26. Invalidity of Provisions, Severability: Wherever possible, each provision of the Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Agreement, provided that the material purposes of this Agreement can be determined and effectuated.

Section 27. The COUNTY shall perform all work and services desired herein as an independent contractor and not as an officer, agent, servant, or employee of the TOWN. The COUNTY shall have control of the work performed in accordance with the terms of this Agreement and of all persons performing the same, and the COUNTY shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any.

Section 28. Indemnification: To the extent permitted by law, the TOWN shall indemnify and hold harmless the COUNTY and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the COUNTY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the TOWN or its employees, agents, servants, partners, principals, subconsultants or subcontractors. The TOWN shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the COUNTY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Provided, however, this indemnification shall only be to the extent and within the limitations of Section 768.28, Fla. Statutes, subject to the provisions of that statute whereby the TOWN shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim or judgment or portions thereof, which when totaled with all other claims or judgment paid by the TOWN arising out of the same incident or occurrence, exceed the sum of \$300,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the negligence of the TOWN.

To the extent permitted by law the COUNTY shall indemnify and hold harmless the TOWN and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the TOWN or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the COUNTY or its employees, agents, servants, partners, principals, subconsultants or subcontractors. The COUNTY shall pay all claims, suits or actions of any kind or nature in the name of the TOWN, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Provided, however, this indemnification shall only be to the extent and within the limitations of Section 768.28, Fla. Statutes, subject to the provisions of that statute whereby the COUNTY shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$200,000, or any claim of judgment or portions thereof, which when totaled with all other claims or judgment paid by the COUNTY arising out of the same incident or occurrence, exceed the sum of \$300,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the negligence of the COUNTY.

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

BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

ATTEST:

BY: _____
Clerk of the Board

BY: _____
County Mayor

ATTEST:

TOWN OF CUTLER BAY

BY: _____
Town Clerk

BY: _____
Town Manager

Town Resolution # _____

Approved as to form and legal
sufficiency:

Approved as to form and legal
sufficiency:

Assistant County Attorney

Attorney for Town of Cutler Bay