



**City Commission Meeting  
SUPPLEMENTAL MATERIAL 1**

**City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive  
June 10, 2015**

Mayor Philip Levine  
Vice-Mayor Jonah Wolfson  
Commissioner Michael Grieco  
Commissioner Joy Malakoff  
Commissioner Micky Steinberg  
Commissioner Edward L. Tobin  
Commissioner Deede Weithorn

City Manager Jimmy L. Morales  
City Attorney Raul J. Aguila  
City Clerk Rafael E. Granado

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**ATTENTION ALL LOBBYISTS**

**Chapter 2, Article VII, Division 3 of the City Code of Miami Beach entitled "Lobbyists" requires the registration of all lobbyists with the City Clerk prior to engaging in any lobbying activity with the City Commission, any City Board or Committee, or any personnel as defined in the subject Code sections. Copies of the City Code sections on lobbyists laws are available in the City Clerk's office. Questions regarding the provisions of the Ordinance should be directed to the Office of the City Attorney.**

**SUPPLEMENTAL AGENDA**

**C7 - Resolutions**

- C7L A Resolution Authorizing The Mayor And The City Commission To Approve The Second Amended And Restated Interlocal Agreement With Miami-Dade County For The City's Use Of The County's Solid Waste Management System.

(Public Works)

**(Memorandum & Resolution)**

**R5 - Ordinances**

- R5J RM-2 Regulations, Parking Regulations And Signage Regulations Within 250 Of North Shore Open Space Park (NSOSP)
1. RM-2 Chapter 142 Regulations Within 250 Feet Of NSOSP  
An Ordinance Amending The City Code Chapter 142, "Zoning Districts And Regulations," Article II, "District Regulations," Division 3 "Residential Multifamily Districts," Subdivision IV, "RM-2 Residential Multifamily, Medium Intensity," At Sections 142-215, "Prohibited Uses," And 142-218, "Setback Requirements," In Order To Permit Outdoor Bar Counters As Accessory Uses In Oceanfront Hotels In The RM-2 District; Allowing For The Modification Of Interior Side Setback Requirements For Drives Or Sidewalks; Providing Access Between Parcels In The RM-2 District; Modifying The Interior Side Tower Setback Requirements For Oceanfront RM-2 Parcels Within 250 Feet Of North Shore Open Space Park; By Amending Chapter 142, "Zoning Districts And Regulations," Article IV, "Supplementary District Regulations," Division 3 "Accessory Uses," At Section 142-902, "Permitted Accessory Uses," To Permit Neighborhood Impact Establishments, As Conditional Uses For Oceanfront Hotels In The RM-2 District, Within 250 Feet Of North Shore Open Space Park; Providing For Codification; Repealer; Severability; And An Effective Date. **5:03 p.m. First Reading Public Hearing**  
(Sponsored by Commissioner Deede Weithorn)  
(Legislative Tracking: Planning)  
(Continued from April 15, 2015 - R5I1)  
**(Memorandum from Commissioner Deede Weithorn Withdrawing the Item)**

**R7 - Resolutions**

- R7P A Resolution Accepting A Utility Easement From Aqua Master Association, Inc., Owner Of The Property Located At 201 Aqua Avenue, For The Construction, Installation, Maintenance, Repair, And Replacement Of Water Mains; And Further Authorizing The Administration And City Attorney's Office To Finalize A Grant Of Easement Agreement, In Substantially The Form As Exhibit "A" Attached Hereto.  
(Public Works)  
**(Memorandum & Resolution)**

**R9 - New Business and Commission Requests**

- R9Q Discussion Of Proposed Ordinance To Make The Misdemeanor Acts Of Possession Of Cannabis (Marijuana) And Drug Paraphenilia Eligible For Civil Violations And Penalties Under The City Code.  
(Sponsored by Mayor Philip Levine)  
**(Ordinance)**

**Condensed Title:**

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida Authorizing The Mayor And The City Commission To Approve The Second Amended And Restated Interlocal Agreement With Miami-Dade County For The City's Use Of The County's Solid Waste Management System.

**Key Intended Outcome Supported:**

Improve Cleanliness

**Supporting Data (Surveys, Environmental Scan, etc.):** N/A

**Item Summary/Recommendation:**

Municipalities that desire to use Miami-Dade County's Solid Waste Management System for their waste disposal needs by entering into a long-term Interlocal Agreement with the County.

On November 21, 1995, the Mayor and City Commission adopted Resolution No. 95-21819 which retroactively approved the Interlocal Agreement with Miami Dade County for the City's use of the County's Solid Waste Management System. The current Interlocal Agreement will expire on October 1, 2015.

On March 5, 2013, the Board of County Commissioners adopted County Resolution No. R-167-13, which approved the Second Amended and Restated Interlocal Agreement between the County and "contract Cities" (which, among others, includes the City of Miami Beach) for use of the County Solid Waste Management System (the Agreement). The term of the new Agreement shall commence upon the date of execution and shall remain in effect up to and including October 1, 2032.

**ANALYSIS**

Based upon Article 3: *Responsibilities of the Contract City Subsection "D" of the Interlocal Agreement; The Contract City shall pay a disposal fee (and a transfer fee, as applicable) for each ton of MSW delivered to the County Solid Waste Management System for disposal.*

Disposal and transfer fees may increase and/or decrease based upon U.S. Government Consumer Price Index for all urban consumers for the southeast region of the United States (CIP) for the prior period of July 1 through June 30.

**THE ADMINISTRATION RECOMMENDS THAT THE MAYOR AND CITY COMMISSION APPROVE THE SECOND AMENDED AND RESTATED INTERLOCAL AGREEMENT, ATTACHED AS EXHIBIT "A" HERETO, AND AUTHORIZE THE MAYOR AND CITY CLERK TO EXECUTE THE AGREEMENT.**

**Advisory Board Recommendation:**

N/A

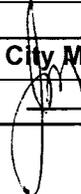
**Financial Information:**

Source of Funds:		Amount	Account
 OBPI	1	\$286,000	435-0430-000355 Miscellaneous Expenditure
	2		
	3		
	<b>Total</b>	\$286,000	

**Financial Impact Summary:** Current FY expenditures are estimated at the approved budgeted amount of \$286,000. Future expenditures will be based on approved budgeted amounts.

**City Clerk's Office Legislative Tracking:**

**Sign-Offs:**

Department Director	Assistant City Manager	City Manager
 ETC	 MT	 JLM

# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

## COMMISSION MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: June 10, 2015

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AUTHORIZING THE MAYOR AND THE CITY COMMISSION TO APPROVE THE SECOND AMENDED AND RESTATED INTERLOCAL AGREEMENT WITH MIAMI-DADE COUNTY FOR THE CITY'S CONTINUED USE OF THE COUNTY'S SOLID WASTE MANAGEMENT SYSTEM.**

### **ADMINISTRATION RECOMMENDATION**

Adopt the resolution.

### **FUNDING**

\$286,000      435-0430-000355 – Miscellaneous Expenditures

Current FY expenditures are estimated at the approved budgeted amount of \$286,000. Future expenditures will be based on approved budgeted amounts.

### **BACKGROUND**

Municipalities that desire to use Miami-Dade County's Solid Waste Management System for their waste disposal needs by entering into a long-term Interlocal Agreement with the County.

On November 21, 1995, the Mayor and City Commission adopted Resolution No. 95-21819 which retroactively approved the Interlocal Agreement with Miami Dade County for the City's use of the County's Solid Waste Management System. The current Interlocal Agreement will expire on October 1, 2015.

On March 5, 2013, the Board of County Commissioners adopted County Resolution No. R-167-13, which approved the Second Amended and Restated Interlocal Agreement between the County and "contract Cities" (which, among others, includes the City of Miami Beach) for use of the County Solid Waste Management System (the Agreement). The term of the new Agreement shall commence upon the date of execution and shall remain in effect up to and including October 1, 2032.

### **ANALYSIS**

Based upon Article 3: *Responsibilities of the Contract City Subsection "D" of the Interlocal Agreement; The Contract City shall pay a disposal fee (and a transfer fee, as applicable) for each ton of MSW delivered to the County Solid Waste Management System for disposal.*

Disposal and transfer fees may increase and/or decrease based upon U.S. Government Consumer Price Index for all urban consumers for the southeast region of the United States (CIP) for the prior period of July 1 through June 30.

**CONCLUSION**

The Administration recommends that the Mayor and City Commission approve the Second Amended and Restated Interlocal Agreement, attached as exhibit "A" hereto, and authorize the Mayor and City Clerk to execute the Agreement.

JM/MT/ETC/JJF/TC

T:\AGENDA\2015\June\PUBLIC WORKS\Interlocal Agreement Commission Memo May 2015.doc

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY COMMISSION TO APPROVE THE SECOND AMENDED AND RESTATED INTERLOCAL AGREEMENT WITH MIAMI-DADE COUNTY FOR THE CITY'S USE OF THE COUNTY'S SOLID WASTE MANAGEMENT SYSTEM.**

**WHEREAS**, municipalities that desire to use Miami-Dade County's Solid Waste Management System for their waste disposal needs by entering into a long-term Interlocal Agreement with the County; and

**WHEREAS**, on November 21, 1995, the Mayor and City Commission adopted Resolution No. 95-21819 which retroactively approved the Interlocal Agreement with Miami Dade County for the City's use of the County's Solid Waste Management System; and

**WHEREAS**, the current Interlocal Agreement will expire on October 1, 2015; and

**WHEREAS**, on March 5, 2013, the Board of County Commissioners adopted County Resolution No. R-167-13, which approved the Second Amended and Restated Interlocal Agreement between the County and "Contract Cities" (which, among others, includes the City of Miami Beach) for use of the County Solid Waste Management System (the Agreement); and

**WHEREAS**, the term of the new Agreement shall commence upon the date of execution and shall remain in effect up to and including October 1, 2032; and

**WHEREAS**, the Administration recommends that the Mayor and City Commission approve the Second Amended and Restated Interlocal Agreement, attached as exhibit "A" hereto, and authorize the Mayor and City Clerk to execute the Agreement.

**NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA**, that the Mayor and City Commission hereby, approve and authorize the Mayor and City Commission to approve the Second Amended and Restated Interlocal Agreement with Miami-Dade County for the City's use of the County's Solid Waste Management System.

**PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_.**

ATTEST:

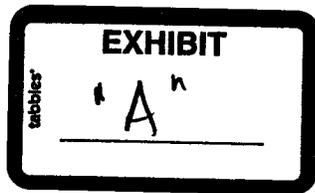
\_\_\_\_\_  
Rafael Granado, City Clerk

\_\_\_\_\_  
Philip Levine, Mayor

\_\_\_\_\_  
City Attorney                      \_\_\_\_\_  
Date

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

*[Signature]*                      6-4-15  
\_\_\_\_\_  
City Attorney                      Date



**SECOND AMENDED AND RESTATED INTERLOCAL AGREEMENT BETWEEN  
MIAMI-DADE COUNTY AND CONTRACT CITIES FOR USE OF THE COUNTY  
SOLID WASTE MANAGEMENT SYSTEM**

This Interlocal Agreement ("**Agreement**") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Miami-Dade County by and through its Board of County Commissioners ("**County**") and Miami Beach by and through its Commission hereinafter referred to as **Contract City**, to provide for use of the County Solid Waste Management System by the **Contract City** for its municipal solid waste disposal and transfer needs.

**BACKGROUND RECITALS**

**Whereas**, the Miami-Dade County Board of **County** Commissioners (the "Board") hereby finds and declares that it is necessary to the health, safety and welfare of the citizens of Miami-Dade County to provide for municipal solid waste disposal and management facilities and services; and

**Whereas**, the **County** desires to maximize the use of its Resources Recovery facility processes and to extend the life of its landfills; and

**Whereas**, the **Contract City** desires to use the County Solid Waste Management System for its municipal solid waste disposal needs (and transfer needs, as applicable), at an agreed-upon disposal fee rate (and transfer fee rate as applicable); and

**Whereas**, the **Contract City** desires to use the County Solid Waste Management System to satisfy Concurrency requirements of the Local Government Comprehensive Planning and Land Development Regulation Act (Chapter 163, Part II, F.S.) only as it applies to disposal capacity for municipal solid waste the **Contract City** collects for disposal and which is committed to the **County** for disposal in the County Solid Waste Management System in accordance with this **Agreement**, and actually disposed of therein; and

**Whereas**, the **County** and the **Contract City** desire to formalize their relationship regarding municipal solid waste disposal responsibilities consistent with the provisions of Section 403.706, Florida Statutes.

**Whereas**, the amended agreement as stated herein shall be available to all municipalities.

**NOW THEREFORE**, in consideration of the foregoing premises, and the mutual considerations contained herein, the parties hereto, intending to be legally bound, do hereby agree as follows:

County Resolution No. R-167-13  
Contract City Resolution No. \_\_\_\_\_

DEFINITIONS

For the purposes of this **Agreement**, the following capitalized words and phrases shall be given the following respective meanings:

**Board** - the Miami-Dade County Board of County Commissioners.

**Change in Law** - after the date of execution of this **Agreement**, (a) the adoption, promulgation, issuance, modification, or change in interpretation of any federal, state or local law, regulation, rule, requirement, ruling or ordinance, of the United States or any state or territory thereof, unless (i) such law, regulation, rule, requirement, ruling or ordinance was on or prior to such date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any governmental entity or official having jurisdiction, (provided, that it shall not constitute a Change in Law if an administrative regulation existed on the date of execution of this **Agreement** in temporary or proposed form and was treated as generally applicable to transactions of the type contemplated hereby), or (ii) compliance with such law, regulation, rule requirement, ruling or ordinance was provided for in the **Agreement**; (b) the issuance of an order and/or judgment of any governmental entity or official having jurisdiction, to the extent such order and/or judgment constitutes a reversal of a prior applicable order and/or judgment, or an overturning of prior administrative policy or judicial precedent; or (c) the suspension, termination, interruption or failure of renewal of any permit, license, consent, authorization or approval essential to the acquisition, design, construction, equipping, start-up, operation, ownership or possession of the County Solid Waste Management System facilities or the facilities sites, to the extent such suspension, termination, interruption or failure of renewal is not caused by any action or inaction of the **County** or its contractors (provided that, for the purposes of determining whether a suspension, termination, interruption or failure of renewal was so caused, any reason or finding set forth in writing by the agency responsible for issuance of such permit, license, consent, authorization or approval shall be accorded the rebuttal presumption of accuracy), provided that no change in tax law, change to the Internal Revenue Code of 1954 effected by the Tax Reform Act of 1986 (to the extent applicable on the date of this **Agreement**), change in foreign law, change in law which adversely affects the **County's** legal rights as a licensee, grantee, owner, or user of any patent or other "know-how" in respect of proprietary technology intended to be utilized by it in performing its obligations under this **Agreement** shall constitute a change in law for any purposes of this **Agreement**.

**Concurrency** - provision of certain public facilities specified in the State of Florida Local Government Comprehensive Planning and Land Development Regulation Act ("the Act") (specifically, Chapter 163, Part II, Section 163.3180 F.S.) by (a) county (ies), or (a) municipality (ies) or a combination thereof, at a specified level-of-service stated in the Capital Improvements Element of the comprehensive plan for the applicable jurisdiction(s), adopted pursuant to the Act.

County Resolution No. R-167-13  
Contract City Resolution No. \_\_\_\_\_

**Contract Cities** – a municipal corporation or corporations existing under the laws of the State of Florida, that enter into this **Agreement** with the **County**. For the purpose of this **Agreement**, the unincorporated areas of Miami-Dade County as geographically configured on February 16, 1996 shall be considered a **Contract City**.

**County** – Miami-Dade County, Florida by and through its Board of County Commissioners.

**County Disposal Fee** - the fee charged to dispose of municipal solid waste or solid waste at County-owned disposal facilities or facilities operated under contract with the **County** for municipal solid waste or solid waste disposal.

**County Solid Waste Management System** - The aggregate of those solid waste management facilities owned by or operated under contract with Miami-Dade County, which shall include the North Dade Landfill (21500 NW 47<sup>th</sup> Avenue), South Dade Landfill (23707 SW 97<sup>th</sup> Avenue), Resources Recovery Facility (6990 NW 97<sup>th</sup> Avenue), Waste Management of Florida, Inc. Landfill in the City of Medley, Florida (9350 NW 89<sup>th</sup> Avenue), Northeast Transfer Station (18701 NE 6<sup>th</sup> Avenue), Central Transfer Station (1150 NW 20<sup>th</sup> Street) and West Transfer Station (2900 SW 72<sup>nd</sup> Avenue), and other such facilities as may be added to or deleted from this listing from time to time, by the County Mayor at his/her sole discretion. Such additions or deletions may be made by use of an attachment hereto without need for formal amendment to this **Agreement**.

**Director** - the Director of the Public Works and Waste Management Department or his/her designee.

**Exclusive Franchise or License** - (a) contract(s) between a **Contract City** and a (limited number of) third party contractor(s) for the right and privilege to collect municipal solid waste or solid waste from either residential units or commercial establishments, or both residential units and commercial establishments, within (a) designated service area(s) under the terms of which the contractor(s) pay(s) the **Contract City** a fee.

**Fiscal Year** - the period beginning October 1 of each year and ending September 30 of the subsequent year.

**Force Majeure** - an act of God, epidemic, lightning, earthquake, fire, explosion, storm, tornado, hurricane, flood or similar occurrence, strike, and act of a public enemy, or blockade, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, which has had or may reasonably be expected to have a material adverse effect on the rights or obligations under this **Agreement**, which by the exercise of due diligence the party relying thereon as justification for not performing any obligation under this **Agreement** shall not have been able to avoid, and which is not the result of a willful or negligent action or omission of such party.

County Resolution No. R-167-13  
Contract City Resolution No. \_\_\_\_\_

**Municipal Solid Waste (MSW)** – all discarded materials or substances, exclusive of source-separated recyclable materials, which the **Contract City** collects for disposal or is collected for it by third parties under contract with the **Contract City** for disposal including, but not limited to, garbage, trash, litter, refuse, rubbish, ashes, incinerator residue, recycling process residue, or other materials allowed by the State Department of Environmental Protection for disposal in a Class I landfill which result from domestic, commercial, industrial, mining, agricultural or governmental activities, but not including sewage or other highly-diluted, water-carried materials or substances, or those in gaseous form. This definition is not intended to include any waste collected by any entity whose sole relationship with the Contract City is a franchise or license and which entity does not collect any waste on behalf of the Contract City. In addition, this definition is not intended to include waste collected at any city owned facility.

**Non-Exclusive Franchise or License** - a regulatory program under which an unlimited number of solid waste haulers are given the right and privilege to collect solid waste from either residential units or commercial establishments, or both residential units and commercial establishments, under the terms of which each hauler pays the **Contract City** a fee.

**Short -Term Disposal** - delivery of solid waste to the County Solid Waste Management System for disposal without having a minimum ten (10) year waste disposal agreement with the **County**.

**Short -Term Disposal Fee(s)** - the higher fee(s) paid by private haulers or municipalities for Short-Term disposal of solid waste in the County Solid Waste Management System.

**Solid Waste** – all discarded materials or substances, exclusive of source-separated recyclable materials, including, but not limited to, garbage, trash, litter, refuse, rubbish, ashes, incinerator residue, recycling process residue, or other materials allowed by the State Department of Environmental Protection for disposal in a Class I landfill which result from domestic, commercial, industrial, mining, agricultural or governmental activities, but not including sewage or other highly-diluted, water-carried materials or substances, or those in gaseous form, which materials or substances are not collected by or on behalf of a **Contract City**.

**Source-Separated Recyclable Materials** - materials separated from municipal solid waste or solid waste at their source of generation which are set-out for collection at their source of generation. Such materials shall be limited to: clean yard trash, aseptic and gable-top containers, corrugated cardboard, magazines, mixed waste paper, newspapers, telephone books, household batteries, glass containers, plastic containers, steel cans and aluminum cans, and other source-separated recyclable materials as may be approved for addition to this listing from time to time by the County Mayor or his/her designee, which approval shall not

County Resolution No. R-167-13  
Contract City Resolution No. \_\_\_\_\_

be unreasonably withheld; such additions may be made by use of an attachment hereto without need for formal amendment to this **Agreement**.

**Transfer Fee** - the fee charged to transfer municipal solid waste or solid waste from County Solid Waste Management System transfer stations to County Solid Waste Management System disposal facilities.

### ARTICLE 1

#### CONSTRUCTION OF INTERLOCAL AGREEMENT

The word "shall" as used in this **Agreement** shall in all cases be construed to be mandatory and to require the action so modified by the word "shall" to be taken without regard to the exercise of discretion.

### ARTICLE 2

#### RESPONSIBILITIES OF THE COUNTY

A. **Provision of Disposal Capacity.** The **County** shall provide MSW disposal capacity (and transfer, as applicable) for the MSW which each **Contract City** collects or is collected for it for disposal and which is committed to the **County** for disposal in the County Solid Waste Management System in accordance with this **Agreement**. The provision of MSW disposal services under this **Agreement** shall comply with all applicable state and federal laws.

B. **Disposal Capacity for Concurrency.** The **County** shall maintain sufficient MSW disposal capacity in the County Solid Waste Management System to comply with Concurrency requirements of the Local Government Comprehensive Planning and Land Development Regulation Act (Chapter 163, Part II, F.S.) only as it applies to MSW disposal capacity for the MSW which the **Contract City** collects or is collected for it for disposal and which is committed to the **County** for disposal in the County Solid Waste Management System in accordance with this **Agreement**, and actually disposed of therein.

C. **Standardization of Agreement.** The terms of this **Agreement** shall be substantially the same for all Contract Cities.

### ARTICLE 3

#### RESPONSIBILITIES OF THE CONTRACT CITY

A. **Delivery of MSW to County.** The **Contract City** shall deliver all the MSW it collects or is collected for it for disposal, to a County Solid Waste Management System facility(ies) at Disposal Fee rates as specified herein. Delivery of MSW by **Contract City** to the Waste Management Inc. of Florida landfill in Medley, Florida shall be permitted for the term of this agreement; provided that, (1) the **County's** agreement with Waste Management Inc. of Florida, dated July 31, 1998, is in effect, (2) the landfill is accepting MSW for disposal, and (3) MSW from (a) **Contract City(ies)** is not needed at the Resources Recovery facility, as determined by the Director, in his/her sole discretion.

County Resolution No. R-167-13

Contract City Resolution No. \_\_\_\_\_

The Director may identify particular facilities to which the **Contract City** shall deliver its MSW subject to the following:

- (i) The **Contract City** may deliver its MSW to a **County** transfer facility(ies) if the applicable transfer fee is paid to the **County**.
- (ii) At no time during the term of this **Agreement** shall a **Contract City** be required to deliver MSW to a **County** transfer facility unless the County Disposal Fee is the same at all County Solid Waste Management System facilities.
- (iii) The **Contract City** shall not be directed to deliver its MSW to a disposal facility which is farther from the **Contract City's** boundaries than the closest county-owned disposal facility.
- (iv) The **Contract City** shall not be directed to deliver its MSW to a transfer facility which is farther from the **Contract City's** boundaries than the closest county-owned transfer facility. In no case shall the **Contract City** be required to deliver its MSW to a County Solid Waste Management System facility which is farther than twenty (20) miles from the **Contract City's** nearest boundary in order to take full advantage of it rights under this **Agreement**.
- (v) Regardless of the operating status of the County's Resources Recovery Facility, the **Contract City** shall be entitled to dispose of MSW at the Facility and to pay the regular disposal rate that applies to **Contract Cities**, which shall be the County's lowest rate for MSW disposal, for the term of this **Agreement**.

**B. Use of Other Facilities Prohibited.** The **Contract City** shall not deliver any MSW it collects or is collected for it for disposal to a solid waste disposal or transfer facility other than a County Solid Waste Management System facility for the term of this **Agreement**. The **Contract City** shall not deliver any MSW it collects or is collected for it, to a materials recovery or recycling facility for the term of this **Agreement**.

Notwithstanding the foregoing, in the event that the **County** approves an operating permit for a solid waste disposal or transfer facility located within Miami-Dade County:

Other than:

- (i) A facility that is a part of the County Solid Waste Management System;
- (ii) A facility that is used exclusively to facilitate the delivery of MSW to County Solid Waste Management System facilities; or

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- (iii) A facility that is subject to a solid waste disposal agreement with the County, which agreement shall not allow acceptance of third party waste either by agreement or regulation;

Then in that case:

the **Contract City** shall have the option to either pursue a permit for operation of a solid waste disposal or transfer facility for all or a portion of its MSW disposal needs or deliver all or a portion of its MSW to the permitted solid waste disposal or transfer facility(ies) that meets the criteria established herein, provided however that any portion of the **Contract City's** MSW that is not so disposed must continue to be delivered to the **County** pursuant to the terms of this **Agreement**.

**C. Hauler Contracts.** The **Contract City** shall include in any MSW collection contracts with Solid Waste haulers, or amendments to such contracts, which it executes, renews or extends after the date of this **Agreement**, a provision that all MSW collected for the **Contract City** shall be delivered to a County Solid Waste Management System facility for disposal. This provision shall apply to exclusive franchise or license agreements with Solid Waste haulers to collect MSW on the **Contract City's** behalf. This provision shall not apply to a non-exclusive franchise or license to haul Solid Waste that is not collected on the **Contract City's** behalf.

**D. Disposal and Transfer Fees.** The **Contract City** shall pay a Disposal Fee (and a Transfer Fee, as applicable) for each ton of MSW delivered to the County Solid Waste Management System for disposal. As of October 1, 2012, the **Contract City** shall pay a Disposal Fee of sixty-three dollars and sixty-five cents (\$63.65) per ton to the **County** for disposal of MSW delivered to County Solid Waste Management System facilities. This Disposal Fee shall be established by separate administrative order, which shall not become effective until approved by the Board. As applicable, as of October 1, 2012 the **Contract City** shall pay a Transfer Fee of twelve dollars and fifty-two cents (\$12.52) per ton to the **County** for transfer of MSW delivered to County Solid Waste Management System transfer facilities. This Transfer Fee shall be established by separate administrative order, which shall not become effective until approved by the Board. The Disposal Fee and Transfer Fee may be increased or decreased for inflation or deflation beginning on October 1, 2013, and on the first day of each Fiscal Year thereafter, relative to increases or decreases in the U.S. Government Consumer Price Index for All Urban Consumers for the Southeast Region of the United States (CPI) for the prior period of July 1 through June 30. Such CPI increases or decreases shall be capped at four percent (4%) per year for the term of this **Agreement**. In the event that the actual CPI increase or decrease exceeds the four percent (4%) cap in a given Fiscal Year, the amount of CPI increase or decrease above or below the four percent (4%) cap shall be applied to CPI increases or decreases in future years when the CPI increase or decrease is less than four percent (4%). The Disposal Fee and Transfer Fee shall not otherwise increase, unless as required by Change in Law, as defined herein, which may occur at any time during the term of this **Agreement**. The **County** shall notify the **Contract**

County Resolution No. R-167-13

Contract City Resolution No. \_\_\_\_\_

**City** of proposed Disposal Fee and Transfer Fee adjustments on the basis of change in law. The disposal fee or Transfer Fee increase based on Change in Law shall fully compensate the **County** for its increased costs. Each **Contract City** shall pay prevailing disposal fees for waste materials for which the **County** charges other than the **County** Disposal Fee for the entire term of this **Agreement**, including, without limitation, tires and asbestos, if provided to the **County** for disposal.

E. **Terms of Payment.** The **County** shall invoice the **Contract City** for Disposal Fees, based on **County** weighing records, by means of First Class U.S. Mail, within five (5) days of the last day of each month, commencing in the first month after the effective date of this **Agreement**, and continuing monthly thereafter for the term of this **Agreement**. In accordance with Section 218.74(2), Florida Statutes, as amended from time to time, payment of Disposal Fees owed to the **County** shall be due from, and payment shall be made by, the **Contract City** forty-five (45) days from the date of receipt of the **County's** monthly invoice.

F. **Dispute on Invoicing.** In the event of a dispute on invoicing, the **Contract City** shall first pay the full amount of the disputed charges when due and shall, within thirty (30) days from the date of receipt of the disputed invoice, give written notice of the disputed invoice to the **County**. The notice of dispute shall identify the disputed invoice, state the amount in dispute and set forth a full statement of grounds on which such dispute is based. The **County** Mayor or his/her designee shall confer with the **Contract City** and the **County** Mayor or his/her designee shall resolve the dispute not later than sixty (60) days after the date upon which the disputed invoice was received. Should the **Contract City** disagree with the determination of the **County** Mayor or his/her designee, it may pursue any remedy at law except withholding payment.

**ARTICLE 4**  
**WEIGHING RECORDS**

The **County** shall cause all **County** Solid Waste Management System facilities to operate and maintain motor truck scales calibrated to the accuracy required by Florida law and to weigh all vehicles delivering MSW. Each vehicle delivering MSW from the **Contract City**, or its contract hauler, shall have its tare weight and cubic yard capacity permanently and conspicuously displayed on the exterior of the vehicle. The **County** or its contractor may, from time to time, require revalidation of the tare weight of any vehicle. The **Contract City** shall provide the **County** with information about each private hauler delivering MSW on its behalf to include: name and address, make, body type and motor vehicle registration number of each vehicle used for such purpose. All such haulers shall have and maintain a valid **County** solid waste hauler permit in accordance with Section 15-17 of the Code of Miami-Dade County, as amended from time to time.

The **County** will supply the **Contract City** with monthly weighing records as may be reasonably required by the **Contract City** to administer its waste collection program. Copies

County Resolution No. R-167-13  
Contract City Resolution No. \_\_\_\_\_

of all transaction tickets will be maintained by the **County** for at least two (2) years. If weighing scales are inoperable or are being tested, the facility operator shall estimate the quantity of MSW delivered using a schedule of estimated waste material weights in accordance with Section 15-25, Subsections (b) and (d) of the Miami-Dade County Code, as amended from time to time. The estimates shall take the place of actual weighing records, when the scales are not operational. The **County** shall use reasonable efforts to maintain the scales in an operable and accurate weighing condition.

#### **ARTICLE 5**

##### **SHORT-TERM DISPOSAL**

The **Contract City** agrees that the County Solid Waste Management System may accept Solid Waste on a Short-Term Disposal basis from private or municipal haulers, so long as the capacity to receive MSW delivered on behalf of the **Contract City** is not impaired, and provided that such haulers shall pay (a) Short-Term Disposal Fee(s) of at least ten percent (10%) above that charged to **Contract Cities**. The (a) Short-Term Disposal Fee(s) shall be established by separate administrative order, which shall not become effective until approved by the Board. All Disposal Fee revenues generated pursuant to this **Agreement** shall be used to pay County Solid Waste Management System costs. This provision shall not inhibit the **County** from entering into agreements with private haulers for delivery of Solid Waste to **County** disposal facilities (with the exception of agreements for delivery of Solid Waste collected by (a) private hauler(s) under contract with any municipality that is not a party to this **Agreement**, which shall be prohibited), the minimum duration of which shall be ten (10) years, provided that the **County** shall not offer (a) Disposal Fee(s) less than that agreed to herein by the **Contract City** to any private hauler for the term of this **Agreement**.

#### **ARTICLE 6**

##### **RELATIONSHIPS OF THE PARTIES**

Nothing in this **Agreement** shall be deemed to constitute any party a partner, agent or local representative of the other party or to create any type of fiduciary responsibility of any kind whatsoever between the parties. The obligations to this **Agreement** are not joint; the obligations are separate and several between the **Contract City** and **County**.

#### **ARTICLE 7**

##### **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.

County Resolution No. R-167-13  
Contract City Resolution No. \_\_\_\_\_

**ARTICLE 8**

**DURATION OF AGREEMENT**

The term of MSW deliveries by the **Contract City** to the **County** under this **Agreement** shall commence with the date of execution and shall remain in effect up to and including October 1, 20\_\_\_. The **Agreement** shall be executed and approved by resolution of the **Contract City's** governing body and shall become effective upon execution by the **County**. A copy of the resolution of approval shall be transmitted to the County Mayor within five (5) days following the date of each **Contract City's** approval.

**ARTICLE 9**

**AGREEMENT GOVERNS; ENTIRE AGREEMENT**

This **Agreement** shall govern and supersede any other Interlocal agreement between the **Contract City** and the **County** with regard to use of the County Solid Waste Management System. This writing embodies the entire **Agreement** and understanding between the parties hereto, and there are no other agreements or understandings, oral or written with reference to the subject matter hereof that are not merged herein and superseded hereby.

**ARTICLE 10**

**REPRESENTATIONS OF THE COUNTY**

The **County** represents that (A) this **Agreement** has been duly authorized, executed and delivered by the Board of County Commissioners as the governing body of the **County**, and (B) it has the required power and authority to perform this **Agreement**.

**ARTICLE 11**

**REPRESENTATIONS OF THE CONTRACT CITY**

The **Contract City** represents that (A) this **Agreement** has been duly authorized, executed and delivered by the Governing Body of the **Contract City**, and (B) it has the required power and authority to perform this **Agreement**.

**ARTICLE 12**

**APPROVALS AND NOTICES**

All notices, consents and other communications required, permitted or otherwise delivered under this **Agreement** shall be in writing and be delivered either by hand with proof of delivery or mailed by first class United States certified or registered mail, with return receipt requested, postage prepaid, and in any case shall be addressed as follows:

To County -  
Miami-Dade County  
Office of the Mayor  
Stephen P. Clark Center  
111 NW 1st Street  
Miami, Florida 33128

County Resolution No. R-167-13  
Contract City Resolution No. \_\_\_\_\_

To Contract City -  
Jimmy Morales  
City Manager  
City of Miami Beach  
1700 Convention Center Drive  
Miami Beach, FL 33139

Changes in the respective addresses above may be made from time to time by either party by notice to the other party. Notices and consents given by mail in accordance with this section shall be deemed to have been given five (5) business days after the day of dispatch, notices and consents given by any other means shall be deemed to have been given when received.

### **ARTICLE 13**

#### AMENDMENT TO AGREEMENT

This **Agreement** may be modified, altered or amended only by a written amendment duly executed by the parties hereto, and approved by the governing body of each party. Any oral representations or modifications concerning this **Agreement** shall be of no force or effect.

### **ARTICLE 14**

#### NON-ASSIGNMENT

In no case shall the **Contract City** assign, transfer, convey or otherwise hypothecate any interest, rights, duties, or obligations hereunder, or any part thereof. In the event the **Contract City** attempts to assign, transfer, convey or otherwise hypothecate this **Agreement** or the **Contract City's** rights, duties or obligations hereunder, or any part thereof, the **County** may at its option, terminate this **Agreement** with respect to the **Contract City**.

### **ARTICLE 15**

#### RIGHTS OF OTHERS

Nothing in this **Agreement**, either express or implied is intended to confer upon any person other than the parties hereto any rights or remedies under or by reason of this **Agreement**.

### **ARTICLE 16**

#### WAIVER

There shall be no waiver of any right related to this **Agreement** unless that such waiver is in writing 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 rights waived and shall not be deemed a waiver of the same right at a later time of any other right under this **Agreement**.

County Resolution No. R-167-13  
Contract City Resolution No. \_\_\_\_\_

**ARTICLE 17**  
FORCE MAJEURE

Neither party hereto shall be liable for its failure to carry out its obligations under this **Agreement** during any period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations, but the obligations of the party relying on such Force Majeure shall be suspended only during the continuance of any inability so caused and for no longer period, and such cause shall, so far as possible, be remedied with all reasonable dispatch. It is further agreed and stipulated that the right of any party hereto to excuse its failure to perform by reason of Force Majeure shall be conditioned upon such party giving, to the other party, written notice of its assertion that a Force Majeure delay has commenced within five (5) working days after such commencement. If there exists good cause for failure to give such notice, such failure shall not prejudice any party's right to justify any non-performance as caused by Force Majeure, unless the failure to give timely notice causes material prejudice to the other party.

**ARTICLE 18**  
COUNTY EVENT OF DEFAULT

The failure by the **County** to substantially fulfill any of its material obligations in accordance with this **Agreement**, unless excuses are justified by Force Majeure, shall constitute a "**County** event of default". If a **County** event of default should occur, the **Contract City** shall have all of the following rights and remedies which each may exercise singly or in combination: 1. the right to declare that this **Agreement**, together with all rights granted to the **County**, hereunder are terminated, effective upon such date as is designated by the **Contract City**; 2. any and all other rights provided under federal laws and the laws of the State of Florida. 3. in any event, the **County** shall maintain responsibility for any debts owed to the **Contract City** for services provided under the terms of this **Agreement**. Notwithstanding any other provision of this article, the **Contract City** shall not terminate this **Agreement** for a "**County** event of default" unless the **Contract City** first give(s) the **County** written notice of intent to terminate specifying the alleged default, and providing the **County** a period of sixty (60) days from receipt of notice within which to cure such default.

**ARTICLE 19**  
CONTRACT CITY EVENT OF DEFAULT

Without limitation, the failure by the **Contract City** to substantially fulfill any of its material obligations in accordance with this **Agreement**, unless excuses are justified by Force Majeure, shall constitute a "**Contract City** event of default". If a **Contract City** event of default should occur, the **County** shall have all of the following rights and remedies which it may exercise singly or in combination: 1. the right to declare that all rights granted to the **Contract City** hereunder are terminated, effective upon such date as is designated by the **County**; 2. any and all rights provided under federal laws and the laws of the State of Florida. 3. in any event, the **Contract City** shall maintain responsibility for any debts owed to the **County** for services provided under the terms of this **Agreement**. Notwithstanding

County Resolution No. R-167-13  
Contract City Resolution No. \_\_\_\_\_

any other provision of this article, the **County** shall not terminate this **Agreement** for a "**City** event of default" unless the **County** first gives the **Contract City** written notice of intent to terminate specifying the alleged default, and providing the **Contract City** a period of sixty (60) days from receipt of notice within which to cure such default.

**ARTICLE 20**

FLORIDA LAW GOVERNS; VENUE IN MIAMI-DADE COUNTY, FLORIDA

This **Agreement**, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida, and venue shall be in Miami-Dade County, Florida.

**ARTICLE 21**

TERMINATION

This **Agreement** may be terminated upon mutual consent, in writing, between the **Contract City** and the **County**.

**ARTICLE 22**

COUNTERPARTS

This **Agreement** may be executed in one or more counterpart(s), each of which shall be deemed an original.

**ARTICLE 23**

INVALIDITY OF PROVISIONS

Should any provision, paragraph, sentence, word or phrase contained in this **Agreement** be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, and this **Agreement** shall remain in full force and effect.

County Resolution No. R-167-13  
Contract City Resolution No. \_\_\_\_\_

IN WITNESS WHEREOF, Miami-Dade County, Florida, has caused this **Agreement** to be executed in its name by the County Mayor or his/her designee, attested by the Clerk of the Board of County Commissioners and has caused the seal of the Board of County Commissioners to be hereto attached; and the **Contract City** has caused this **Agreement** to be executed in its name by the Manager/Mayor of the **Contract City** or his/her designee, attested by the Clerk of the **Contract City's** governing body and has caused the seal of the **Contract City's** governing body to be hereto attached, all on the day and year first written above.

Attest: HARVEY RUVIN,  
Clerk of the Board

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

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
County Mayor  
Miami-Dade County Florida  
111 N.W. 1st Street, 29th Floor  
Miami, FL 33128

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY BY:  
Miami-Dade County Attorney's Office  
111 N.W. 1st Street  
Miami, FL 33128

\_\_\_\_\_  
Assistant County Attorney

County Resolution No. R-167-13  
Contract City Resolution No. \_\_\_\_\_

CONTRACT CITY

\_\_\_\_\_,  
a Florida Municipal Corporation

ATTEST:

By:

\_\_\_\_\_

\_\_\_\_\_

This day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_

[corporate seal]

APPROVED AS TO INSURANCE  
REQUIREMENTS:

APPROVED AS TO FORM AND  
CORRECTNESS:

\_\_\_\_\_

\_\_\_\_\_

County Resolution No. R-167-13  
Contract City Resolution No. \_\_\_\_\_

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OFFICE OF THE MAYOR AND COMMISSION

## MEMORANDUM

TO: Jimmy L. Morales, City Manager  
FROM: Deede Weithorn, Commissioner  
DATE: June 5, 2015  
SUBJECT: R5J RM-2 Regulations, Parking Regulations And Signage Regulations  
Within 250 Of North Shore Open Space Park (NSOSP) – Sub item 1 only

Please withdraw above ordinance from the June 10, 2015 City Commission agenda:

1. RM-2 Chapter 142 Regulations Within 250 Feet Of NSOSP  
An Ordinance Amending The City Code Chapter 142, "Zoning Districts And Regulations," Article II, "District Regulations," Division 3 "Residential Multifamily Districts," Subdivision IV, "RM-2 Residential Multifamily, Medium Intensity," At Sections 142-215, "Prohibited Uses," And 142-218, "Setback Requirements," In Order To Permit Outdoor Bar Counters As Accessory Uses In Oceanfront Hotels In The RM-2 District; Allowing For The Modification Of Interior Side Setback Requirements For Drives Or Sidewalks; Providing Access Between Parcels In The RM-2 District; Modifying The Interior Side Tower Setback Requirements For Oceanfront RM-2 Parcels Within 250 Feet Of North Shore Open Space Park; By Amending Chapter 142, "Zoning Districts And Regulations," Article IV, "Supplementary District Regulations," Division 3 "Accessory Uses," At Section 142-902, "Permitted Accessory Uses," To Permit Neighborhood Impact Establishments, As Conditional Uses For Oceanfront Hotels In The RM-2 District, Within 250 Feet Of North Shore Open Space Park; Providing For Codification; Repealer; Severability; And An Effective Date. 5:03 p.m. First Reading Public Hearing

If you have any questions, please contact me at extension 6528.

Layda Hernandez  
On behalf of Commissioner Weithorn

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**Condensed Title:**

A Resolution Of The Mayor And City Commission Of The City Of Miami Beach, Florida, Accepting A Utility Easement From Aqua Master Association, Inc., Owner Of The Property Located At 201 Aqua Avenue, For The Construction, Installation, Maintenance, Repair, And Replacement Of Water Mains; And Further Authorizing The Administration And City Attorney's Office To Finalize A Grant Of Easement Agreement, In Substantially The Form As Exhibit "A" Attached Hereto.

**Key Intended Outcome Supported:**

Ensure Well Maintained Infrastructure

**Item Summary/Recommendation:**

The City has a 16-inch diameter water main running beneath the water channel separating Allison Island and Indian Creek Drive. The water subaqueous existing pipes have reached their life expectancy of +70 years, and will therefore need to be replaced.

The City has selected a horizontal directional drill method as the most practical method for installing new subaqueous mains. The alignment of the new subaqueous mains will fall outside the State right of way and into property owned by the Aqua Master Association, Inc. Aqua Condominium Association, Inc. has agreed to grant the City a ten (10) foot easement, containing approximately 1,166 sq. feet, to be approximately located at the northeast corner of its property located at 201 Aqua Avenue, for the construction, installation, maintenance, repair and replacement of the water mains (as described as a portion of Tract "I" of "AQUA AT ALLISON ISLAND", according to the Plat thereof, as recorded in Plat Book 162, at Page 53, of the Public Records at Dade County, Florida).

**THE ADMINISTRATION RECOMMENDS ADOPTING THE RESOLUTION.**

**Advisory Board Recommendation:**

**Financial Information:**

Source of Funds:	Amount	Account	Approved
1			
2			
3			
4			
<b>Total</b>			

OBPI

**Financial Impact Summary:**

**City Clerk's Office Legislative Tracking:**

Eric Carpenter, Public Works X6012

**Sign-Offs:**

Department Director	Assistant City Manager	City Manager
ETC	MT	JLM

T:\AGENDA\2015\June\PUBLIC WORKS\Agenda AQUA easement\Aqua at Allison Island Easement Sum rev.doc





# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

## COMMISSION MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: June 10, 2015

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING A UTILITY EASEMENT FROM AQUA MASTER ASSOCIATION, INC., OWNER OF THE PROPERTY LOCATED AT 201 AQUA AVENUE, FOR THE CONSTRUCTION, INSTALLATION, MAINTENANCE, REPAIR, AND REPLACEMENT OF WATER MAINS; AND FURTHER AUTHORIZING THE ADMINISTRATION AND CITY ATTORNEY'S OFFICE TO FINALIZE A GRANT OF EASEMENT AGREEMENT, IN SUBSTANTIALLY THE FORM AS EXHIBIT "A" ATTACHED HERETO.**

### ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

### BACKGROUND

The City has a 16-inch diameter water main running beneath the water channel separating Allison Island and Indian Creek Drive. The water subaqueous existing pipes have reached their life expectancy of +70 years, and will therefore need to be replaced.

The City has selected a horizontal directional drill method as the most practical method for installing new subaqueous mains. The alignment of the new subaqueous mains will fall outside the State right of way and into property owned by the Aqua Master Association, Inc. Aqua Condominium Association, Inc. has agreed to grant the City a ten (10) foot easement, containing approximately 1,166 sq. feet, to be approximately located at the northeast corner of its property located at 201 Aqua Avenue, for the construction, installation, maintenance, repair and replacement of the water mains (as described as a portion of Tract "I" of "AQUA AT ALLISON ISLAND", according to the Plat thereof, as recorded in Plat Book 162, at Page 53, of the Public Records at Dade County, Florida).

### CONCLUSION

The Administration recommends approving the Resolution.

Exhibit A: New Grant of Easement; Sketch and Legal Description of the Proposed Easement; and Location Map.

JLM/MT/ETC/BAM/JR

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING A UTILITY EASEMENT FROM AQUA MASTER ASSOCIATION, INC., OWNER OF THE PROPERTY LOCATED AT 201 AQUA AVENUE, FOR THE CONSTRUCTION, INSTALLATION, MAINTENANCE, REPAIR, AND REPLACEMENT OF WATER MAINS; AND FURTHER AUTHORIZING THE ADMINISTRATION AND CITY ATTORNEY'S OFFICE TO FINALIZE A GRANT OF EASEMENT AGREEMENT, IN SUBSTANTIALLY THE FORM AS EXHIBIT "A" ATTACHED HERETO.**

**WHEREAS**, the City has a 16-inch diameter water main running beneath the water channel separating Allison Island and Indian Creek Drive; and

**WHEREAS**, the water subaqueous existing pipes have reached their life expectancy of +70 years, and will therefore need to be replaced; and

**WHEREAS**, the City has selected a horizontal directional drill method as the most practical method for installing new subaqueous mains; and

**WHEREAS**, the alignment of the new subaqueous mains will fall outside the State right of way and into property owned by the Aqua Master Association, Inc.; and

**WHEREAS**, Aqua Condominium Association, Inc. has agreed to grant the City a ten (10) foot easement, containing approximately 1,166 sq. feet, to be approximately located at the northeast corner of its property located at 201 Aqua Avenue, for the construction, installation, maintenance, repair and replacement of the water mains; and

**WHEREAS**, the proposed grant of easement Agreement (including sketch and legal description of the Easement) is attached as Exhibit "A" hereto.

**NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA**, that the Mayor and City Commission hereby accept a utility easement from Aqua Master Association, Inc., owner of the property located at 201 Aqua Avenue, for the construction, installation, maintenance, repair, and replacement of water mains; and further authorize the Administration and City Attorney's Office to finalize a Grant of Easement Agreement, in substantially the form as Exhibit "A", attached hereto.

**PASSED AND ADOPTED this 10<sup>th</sup> day of June, 2015.**

ATTEST:

\_\_\_\_\_  
Rafael Granado, City Clerk

\_\_\_\_\_  
Phillip Levine, Mayor

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

T:\AGENDA\2015\June\PUBLIC WORKS\Agenda AQUA easement\Aqua at Allison Island Easement Res. rev 6/1/15

*Rafael Granado*  
\_\_\_\_\_  
City Attorney

6/4/15  
\_\_\_\_\_  
Date

This instrument was prepared by:

Name: Eve A. Boutsis  
Address: Office of City Attorney  
1700 Convention Center Drive  
Miami Beach, Florida 33139

(Space reserved for Clerk)

---

**Grant of Easement**

This Grant of Easement entered into this \_\_\_ day of 2015, by AQUA MASTER ASSOCIATION, Inc., with its address at: \_201 Aqua Avenue \_\_\_\_\_ (hereinafter referred to as Grantor) and the City of Miami Beach, Florida, a Municipal Corporation with its address at 1700 Convention Center Drive, Miami Beach, FL 33139 (hereinafter referred to as Grantee) its successors and assigns.

1. Grantor is the owner, in fee simple, of the Real Property legally described as:

Folio: 02-3211-074-0500

A portion of Tract "I" of "AQUA AT ALLISON ISLAND", according to the Plat thereof, as recorded in Plat Book I 62, at Page 53, of the Public Records of Dade County, Florida, being more particularly described as follows:

COMMENCE at the most NE Corner of said Tract "I"; thence S09°36'32"E along the Northeasterly Boundary Line of said Tract "I", for 11.72 feet to a point on a circular curve concave to the Northwest and bearing S07°50'05"E from the center of said curve, said point also being the POINT OF BEGINNING of the centerline of a 10 foot wide water main easement, lying 5.00 feet on each side of the following described centerline (shortening or extending the side lines thereof, so as to create a continuous strip of land); thence Southwesterly along the arc of said curve, having for its elements a radius of 1,000.00 feet, a central angle of 06°44'35" for an arc distance of 117.69 feet to a point on the Southeasterly Right of Way Line of West 63rd Street, as shown on said Plat of "AQUA AT ALLISON ISLAND", said point also being the Point of Termination of the aforementioned centerline.

Containing 1,166 Square Feet, more or less, by calculations

2. In consideration of the sum of ONE and no/100 (\$1.00) DOLLAR and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor hereby grants and conveys to the Grantee, over, under and across the Easement Area, more fully described in Exhibit A, an exclusive Easement for the installation, maintenance, construction and repair of a water main pipes, and appurtenances, the costs

and expenses associated with same to be paid by Grantee. The City of Miami Beach, its employees, contractors, or representatives shall have the permanent right and license for purposes of ingress and egress to and from the Easement for the purposes enumerated herein.

3. Grantee, its successors and assigns, agree to indemnify and hold Grantor, its successors and assigns, harmless from any and all liability, loss and against all claims or actions based upon or arising out of damage or injury (including death) to person(s) or property that Grantor, its successors and assigns may suffer as a result of claims, demands, costs, or judgments against it arising from Grantee's, its successors' and assigns' installation, use and maintenance of the Easement.
4. It is intended that this Easement shall be recorded in the Public Records of Miami-Dade County, Florida, and that this Easement shall be construed and shall be enforced in accordance with the laws of the State of Florida.
5. The easement herein granted shall constitute a covenant running with the parcel of Real Property described herein and shall be binding upon and shall inure to the benefit of the Grantor and the Grantee, and their respective successors and assigns.
6. The rights and benefits of the Grantee under this Easement shall be freely assignable by the Grantee, in whole or in part.
7. To the extent that the Easement granted herein is no longer required by Grantee, Grantee hereby agrees to execute and record in the Public Records of Miami-Dade County, Florida, appropriate documentation to abandon and terminate this Grant of Easement.

Signed, witnessed, executed and acknowledged on this \_\_\_\_\_ day of \_\_\_\_\_, 2015

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

\_\_\_\_\_  
City Attorney                      Date

IN WITNESS WHEREOF, the Seller has caused these presents to be signed in its name by their proper officials.

Signed, sealed and delivered

in the presence of:

AQUA MASTER ASSOCIATION, Inc.  
a Florida corporation

Witness: \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Print Name:  
Title: \_\_\_\_\_

Witness: \_\_\_\_\_  
Print Name:

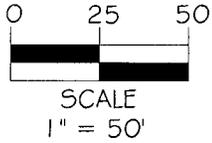
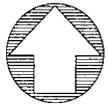
STATE OF FLORIDA        )  
                                  SS:  
COUNTY OF MIAMI-DADE)

**I HEREBY CERTIFY** that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by \_\_\_\_\_, as \_\_\_\_\_ of AQUA MASTER ASSOCIATION, INC, a Florida Corporation, who is personally known to me or who has produced a valid \_\_\_\_\_ driver's license as identification.

**WITNESS** my hand and official seal in the County and State last aforesaid this \_\_\_\_ day of \_\_\_\_\_, 2015.

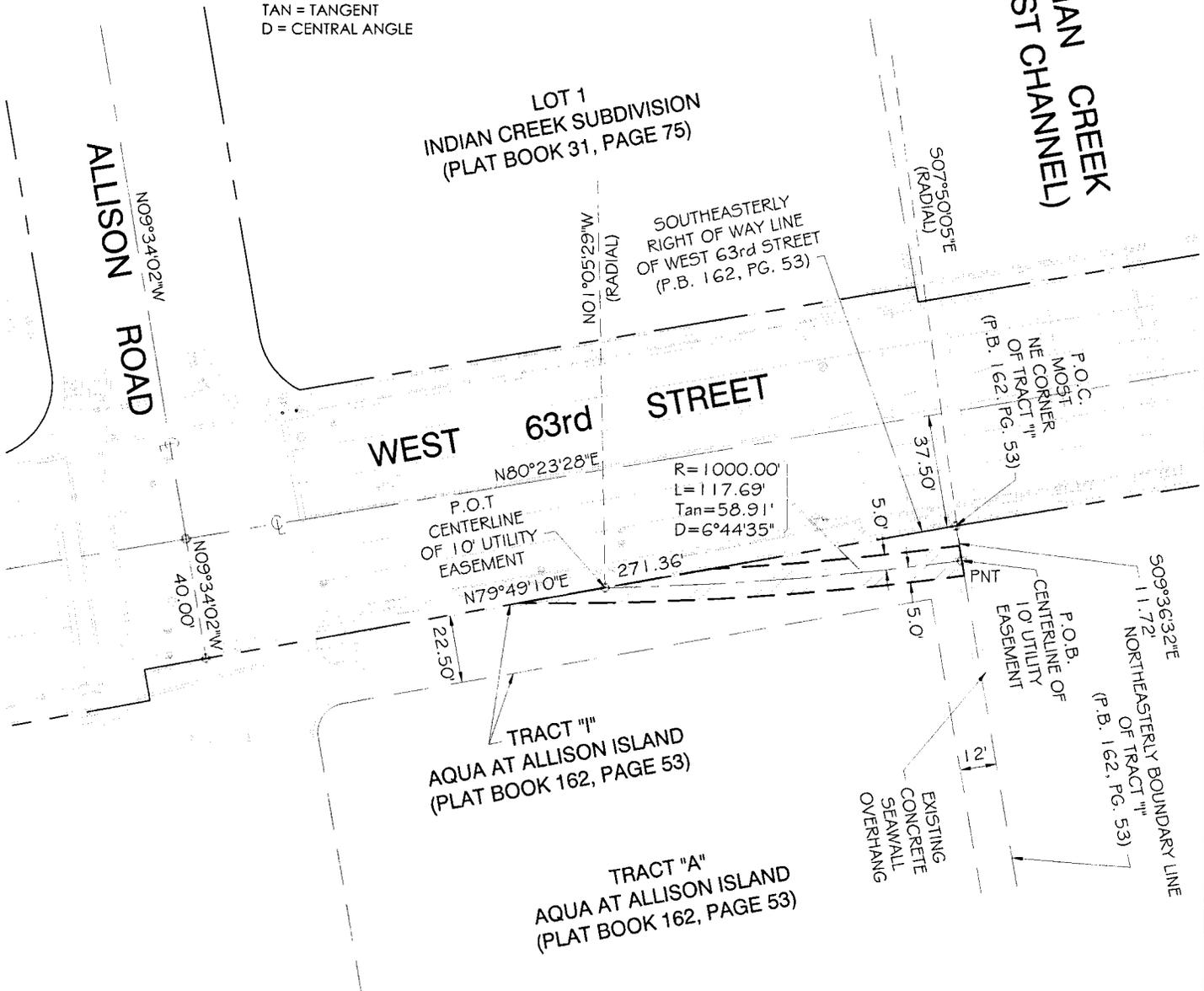
\_\_\_\_\_  
Notary Public, State of Florida  
My Commission Expires:

# SKETCH AND LEGAL DESCRIPTION FOR WATER MAIN EASEMENT



**LEGEND:**

- P.O.C. = POINT OF COMMENCEMENT
- P.O.B. = POINT OF BEGINNING
- P.B. = PLAT BOOK
- PG. = PAGE
- SEC. = SECTION
- PC = POINT OF CURVATURE
- PT = POINT OF TANGENCY
- PNT = POINT OF NON TANGENCY
- R = RADIUS CURVE
- L = ARC LENGTH
- TAN = TANGENT
- D = CENTRAL ANGLE



NOTICE: This document is not valid, full and complete without all pages.

**EXHIBIT "A"**

**LONGITUDE SURVEYORS, LLC**  
 7715 NW 48TH STREET, SUITE 310, DORAL, FLORIDA 33166 \* PHONE: (305) 463-0912 \* FAX: (305) 513-5680 \* WWW.LONGITUDESURVEYORS.COM  
L:\14179 W 63rd Street, Miami Beach, FL\dwg\Sketch and Legals\14179 SL ESMT West 05-11-15.dwg 5/29/2015 5:13:53 PM EDT

## SKETCH AND LEGAL DESCRIPTION FOR WATER MAIN EASEMENT

### LEGAL DESCRIPTION OF WATER MAIN EASEMENT:

A portion of Tract "I" of "AQUA AT ALLISON ISLAND", according to the Plat thereof, as recorded in Plat Book 162, at Page 53, of the Public Records of Miami Dade County, Florida, being more particularly described as follows:

COMMENCE at the most NE Corner of said Tract "I"; thence  $509^{\circ}36'32''$ E along the Northeasterly Boundary Line of said Tract "I", for 11.72 feet to a point on a circular curve concave to the Northwest and bearing  $507^{\circ}50'05''$ E from the center of said curve, said point also being the POINT OF BEGINNING of the centerline of a 10 foot wide water main easement, lying 5.00 feet on each side of the following described centerline (shortening or extending the side lines thereof, so as to create a continuous strip of land); thence Southwesterly along the arc of said curve, having for its elements a radius of 1000.00 feet, a central angle of  $06^{\circ}44'35''$  for an arc distance of 117.69 feet to a point on the Southeasterly Right of Way Line of West 63rd Street, as shown on said Plat of "AQUA AT ALLISON ISLAND", said point also being the Point of Termination of the aforementioned centerline.

Containing 1,166 Square Feet, more or less, by calculations.

NOTICE: This document is not valid, full and complete without all pages.

EXHIBIT "A"

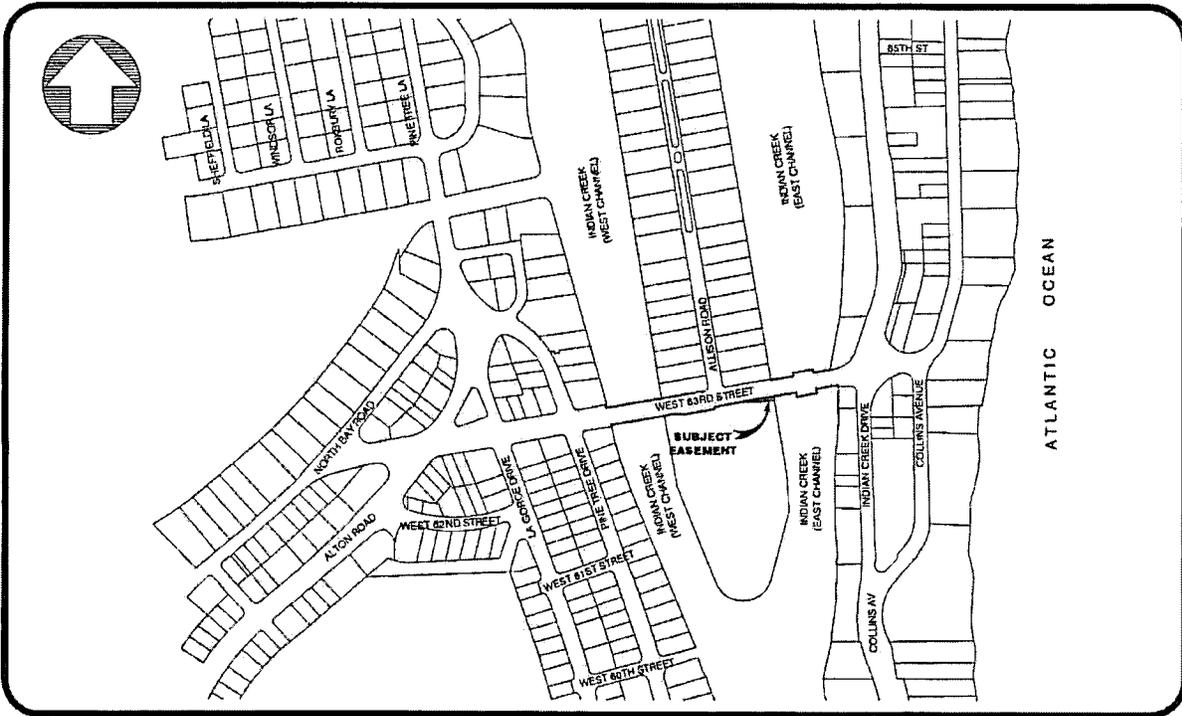
**LONGITUDE** SURVEYORS, LLC

7715 NW 48TH STREET, SUITE 310, DORAL, FLORIDA 33166 \* PHONE: (305) 463-0912 \* FAX: (305) 513-5680 \* WWW.LONGITUDESURVEYORS.COM

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JOB No. 14179 PAGE 2 OF 3

# SKETCH AND LEGAL DESCRIPTION FOR WATER MAIN EASEMENT



**LOCATION MAP**  
NOT TO SCALE

**SOURCES OF DATA:**

1. Plat of "AQUA AT ALLISON ISLAND", Recorded in Plat Book 162, at Page 53 of the Public Records of Miami-Dade County, Florida.
  2. Plat of "AMENDED PLAT OF SECOND OCEAN FRONT SUBDIVISION", Recorded in Plat Book 28, at Page 28 of the Public Records of Miami-Dade County, Florida.
- Bearings as shown hereon are based upon the centerline of West 63rd Street with an assumed bearing of N80°23'28"E, said line to be considered a well established and monumented line.

**EASEMENTS AND ENCUMBRANCES:**

No information was provided as to the existence of any easements other than what appears on the underlying Plat of record. Please refer to the Limitations item with respect to possible restrictions of record and utility services.

**LIMITATIONS:**

Since no other information were furnished other than what is cited in the Sources of Data, the Client is hereby advised that there may be legal restrictions on the subject property that are not shown on the Sketch or contained within this report that may be found in the Public Records of Miami-Dade County, Florida or any other public and private entities as their jurisdictions may appear.

This document does not represent a field boundary survey of the described property, or any part or parcel thereof.

**SURVEYOR'S CERTIFICATE:**

I hereby certify: That this "Sketch to Accompany Legal Description" and the Survey Map resulting therefrom was performed under my direction and is true and correct to the best of my knowledge and belief and further, that said "Sketch to Accompany Legal Description" meets the intent of the applicable provisions of the "Minimum Technical Standards for Land Surveying in the State of Florida", pursuant to Rule 5J-17.051 through 5J-17.052 of the Florida Administrative Code and its implementing law, Chapter 472.027 of the Florida Statutes.

LONGITUDE SURVEYORS LLC., a Florida Limited Liability Company  
Florida Certificate of Authorization Number LB7335

By: Jose Senas Date: 05/29/15  
Jose Senas, PSM, for the Firm  
Registered Surveyor and Mapper L55938  
State of Florida

**NOTICE:** Not valid without the signature and original raised seal of a Florida Licensed Surveyor and Mapper. Additions or deletions to Survey Maps by other than the signing party are prohibited without the written consent of the signing party.

**NOTICE:** This document is not valid, full and complete without all pages.

**EXHIBIT "A"**

**LONGITUDE SURVEYORS, LLC**

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JOB No. 14179 PAGE 3 OF 3



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 70 OF THE CODE OF THE CITY OF MIAMI BEACH, FLORIDA, ENTITLED "MISCELLANEOUS OFFENSES," BY AMENDING ARTICLE I, ENTITLED "IN GENERAL," BY AMENDING SECTION 70-1, ENTITLED "STATE MISDEMEANORS," BY CREATING SUBSECTION (C) WHICH PROVIDES CIVIL PENALTIES FOR THE POSSESSION OF CANNABIS (MARIJUANA) FOR AMOUNTS UNDER 20 GRAMS AND POSSESSION OF DRUG PARAPHERNALIA; AND SETTING FORTH PENALTIES AND ENFORCEMENT RESPONSIBILITIES FOR A VIOLATION OF SUBSECTION 70-1(C)(1) AND (2); PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

**WHEREAS**, the Charter of City of Miami Beach grants the Mayor and City Commission with home rule power to enact an Ordinance that does not conflict with State law; and

**WHEREAS**, the City has adopted section 70-1(a), which makes any act that is or shall be recognized by the laws of the State of Florida as a misdemeanor, thereby being criminally prohibited throughout the City; and

**WHEREAS**, a person convicted for commission of an act defined as a misdemeanor pursuant to section 70-1(a), will be punished by a fine or imprisonment or both, but in no case shall the fine and/or or imprisonment imposed be greater than the maximum fine or penalty for the same offense under the Florida Statutes; and

**WHEREAS**, several states and localities have modified their drug laws to create civil violations for possession of de minimis amounts of marijuana, which is only enforceable by a monetary fine and does not subject that person to arrest or criminal prosecution; and

**WHEREAS**, this ordinance will provide an alternative and additional mechanism under the City's Code to enforce these violations that are based upon the commission of certain enumerated misdemeanors; and

**WHEREAS**, the Mayor and City Commission have an interest in enacting monetary civil penalties for certain violations of section 70-1(a), which civil penalties will act as an additional deterrent to such violations when encountering by the Miami Beach Police Department Officers for a misdemeanant who has committed the offense of possession of 20 grams or less of marijuana or paraphernalia; and

**WHEREAS**, the Miami Beach Police Department will have the discretion to issue a civil citation pursuant to this ordinance, or arrest or not arrest a person for the commission of a misdemeanor under State law.

**NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:**

**SECTION 1.** That Article I, entitled "In General," of Chapter 70, entitled "Miscellaneous Offenses," of the Code of the City of Miami Beach, Florida is hereby amended as follows:

Agenda Item R90  
Date 6-10-15

CHAPTER 70  
MISCELLANEOUS OFFENSES

\* \* \*

ARTICLE I. IN GENERAL

\* \* \*

**Sec. 70-1. State misdemeanors.**

- (a) It shall be unlawful for any person to commit within the city any act that is or shall be recognized by the laws of the state as a misdemeanor, and the commission of such acts is hereby forbidden.
- (b) Whoever shall violate the provisions of this section, upon conviction thereof, shall be punished by the same penalty as is provided by the laws of the state.
- (c) Notwithstanding subsection (a), the following misdemeanor(s) under State law are eligible to receive a civil violation notice, at the discretion of a law enforcement officer, provided that such violations are not charged in conjunction with any charge that is a felony, driving under the influence, incident involving domestic violence, or violent crime, as those terms are defined under State law:

- (1) Possession of Cannabis in an amount of 20 grams or less, as set forth in section 893.13(6)(b) of the Florida Statutes, as such may be amended from time to time; and/or
- (2) Possession of Drug Paraphernalia, as set forth in sections 893.146 and 893.147(1)(b) of the Florida Statutes, as such may be amended from time to time.

An individual issued a civil violation notice for a violation of subsection (c)(1) or (2) will be subject to the fine set forth herein.

(3) Penalties and enforcement.

- (a) A person violating subsection (c)(1) or (2) shall receive a civil fine of \$100.00.
- (b) Enforcement. The Miami Beach police department shall enforce this section. This shall not preclude other law enforcement agencies from any action to assure compliance with this section and all applicable laws. If a police officer finds a violation of (c)(1) or (c)(2), the police officer will be authorized to issue a notice of violation. The notice shall inform the violator of the nature of the violation, amount of fine for which the violator is liable, instructions and due date for paying the fine, that the violation may be appealed by requesting an administrative hearing before a special master within ten (10) days after service of the notice of violation, and that

the failure to appeal the violation within ten (10) days of service shall constitute an admission of the violation and a waiver of the right to a hearing.

(c) Rights of violators; payment of fine; right to appear; failure to pay civil fine or to appeal; appeals from decisions of the special master.

a. A violator who has been served with a notice of violation must elect to either:

i. pay the civil fine in the manner indicated on the notice of violation; or

ii. request an administrative hearing before a special master to appeal the notice of violation, which must be requested within ten (10) days of the service of the notice of violation.

b. The procedures for appeal by administrative hearing of the notice of violation shall be as set forth in sections 30-72 and 30-73 of this Code. Applications for hearings must be accompanied by a fee as approved by a resolution of the city commission, which shall be refunded if the named violator prevails in the appeal.

c. If the named violator, after issuance of the notice of violation, fails to pay the civil fine, or fails to timely request an administrative hearing before a special master, the special master may be informed of such failure by report from the police officer. The failure of the named violator to appeal the decision of the police officer within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing before the special master, and shall be treated as an admission of the violation, for which fines and penalties shall be assessed accordingly.

d. A certified copy of an order imposing a fine may be recorded in the public records, and thereafter shall constitute a lien upon any real or personal property owned by the violator, which may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the violator's real or personal property, but shall not be deemed to be a court judgment except for enforcement purposes. On or after the sixty-first (61st) day following the recording of any such lien that remains unpaid, the City may foreclose or otherwise execute upon the lien.

e. Any party aggrieved by a decision of a special master may appeal that decision to a court of competent jurisdiction.

- f. The special master shall be prohibited from hearing the merits of the notice of violation or considering the timeliness of a request for an administrative hearing if the violator has failed to request an administrative hearing within ten (10) days of the service of the notice of violation.
- g. The special master shall not have discretion to alter the penalties prescribed in subsection (3)(a).

**SECTION 2. REPEALER.**

All ordinances or parts of ordinances in conflict herewith are and the same are hereby repealed.

**SECTION 3. SEVERABILITY.**

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

**SECTION 4. CODIFICATION.**

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this Ordinance shall become and be made part of the Code of the City of Miami Beach, Florida. The sections of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

**SECTION 5. EFFECTIVE DATE.**

This Ordinance shall take effect on the tenth (10<sup>th</sup>) day following its adoption.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

**ATTEST:**

\_\_\_\_\_  
Rafael E. Granado, City Clerk

Underscore denotes new language  
~~Single Strike through~~ denotes stricken language

(Sponsored by Mayor Philip Levine)

\_\_\_\_\_  
Mayor Philip Levine

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

  
\_\_\_\_\_  
City Attorney **AB**      6/4/15  
Date