RESOLUTION NO. 2015-R-87

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE A NON-EXCLUSIVE AGREEMENT, IN SUBSTANTIALLY THE ATTACHED FORM, BETWEEN THE CITY OF NORTH MIAMI AND MIAMI-DADE COUNTY, AUTHORIZING THE CITY TO SELL AND DISPENSE DIESEL, UNLEADED FUEL AND COMPRESSED NATURAL GAS FOR SERVICE-VEHICLES OWNED BY MIAMI-DADE COUNTY, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

WHEREAS, the City of North Miami ("City") has a fueling facility located at 1855 NE 142nd Street, North Miami ("Motorpool"), capable of dispensing diesel and unleaded fuel as well as compressed natural gas ("CNG") for the operation of City owned vehicles; and

WHEREAS, Miami-Dade County through its Public Works and Waste Management Department ("County"), desires to purchase CNG and other fuels from the City's Motorpool, for the operation of County owned service-vehicles; and

WHEREAS, the City administration respectfully requests that the Mayor and City Council authorize the execution of a non-exclusive agreement, in substantially the attached form, authorizing vehicle fueling services to the County.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. **Authority to execute non-exclusive agreement.** The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager to execute a non-exclusive agreement, in substantially the attached form, between the City of North Miami and Miami-Dade County, as well as authorizing the City to sell and dispense diesel, unleaded fuel and compressed natural gas for service-vehicles owned by Miami-Dade County, Florida.

Section 2. **Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a 5-0 vote of the Mayor and City Council of the City of North Miami, Florida, this 8th day of September, 2015.

DR. SMITH JOSEPH
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

ROLAND C. GALDOS, ESQ.
INTERIM CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: Galvin

Seconded by: Desulme

Vote:

Mayor Smith Joseph, D.O., Pharm. D.	X (Yes)	____ (No)
Vice Mayor Carol Keys, Esq.	X (Yes)	____ (No)
Councilman Scott Galvin	X (Yes)	____ (No)
Councilman Philippe Bien-Aime	X (Yes)	____ (No)
Councilman Alix Desulme	X (Yes)	____ (No)

CITY OF NORTH MIAMI
NON-EXCLUSIVE VEHICLE FUELING SERVICES AGREEMENT

THIS NON-EXCLUSIVE VEHICLE FUELING SERVICES AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2015, between the City of North Miami, a Florida municipal corporation, located at 776 NE 125th Street, North Miami, FL 33161("City") and Miami-Dade County, through its Public Works and Waste Management Department, having its principal office at 2525 NW 62nd Street, 5th Floor, Miami, FL 33147 ("Miami-Dade County"). The City and Miami-Dade County shall collectively be referred to as the "Parties", and each may individually be referred to as a "Party".

RECITALS

WHEREAS, the City has a fueling facility located at 1855 NE 142nd Street, North Miami, capable of dispensing diesel and unleaded fuel as well as compressed natural gas ("CNG") for City owned vehicles ("Motor pool"); and

WHEREAS, Miami-Dade County desires to purchase on an as needed basis, CNG from the City, in the amount of up to Two Hundred Seventy Five Thousand Dollars ($275,000.00), without any obligations of having to spend the entire amount. This Agreement will only cover a number of service vehicles owned by Miami-Dade County.

NOW THEREFORE, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

1. SCOPE OF AGREEMENT

1.1 Upon request by Miami-Dade County, the City shall allow Miami-Dade County service vehicles to enter the Motor pool fueling facility and allow Miami-Dade County employees to fuel Miami-Dade County service vehicles. Fueling shall be permitted according to an agreed schedule approved by the City.

1.2 Miami-Dade County and the City shall each designate a representative to carry out the responsibilities for the direction and administration of this Agreement.

1.3 The City shall provide Miami-Dade County with fueling receipts/tickets on a quarterly basis that include, at a minimum: date of service, time of service, and amount of fuel dispensed.

2. TERM OF THE AGREEMENT

2.1 This Agreement shall become effective upon execution by both Parties and shall remain in effect for twelve (12) months after execution, unless sooner terminated pursuant to Section 3 below. The Parties shall have three (3) options to renew this Agreement in writing, each option to last twelve (12) months, on a year-by-year basis.

3. TERMINATION

3.1 Either Party may terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to the other Party.

4. BILLING/METHOD OF PAYMENT

4.1 The City shall bill Miami-Dade County the actual costs incurred by the City per British Thermal Units (BTUs) of CNG, plus a ten (10) percent administrative fee and a twenty (20) percent fee for additional operating expenses. In addition, the City reserves the right to pass through to Miami-Dade County the apportioned amount of any emergency surcharges for fuels dispensed to Miami-Dade County, which are charged to the City by third parties, suppliers or governmental entities. Miami-Dade County shall pay all invoices in accordance with the Local Government Prompt Payment Act under Chapter 218, Part VII, Florida Statues (2015).

Commented [j1]: Subject to confirmation from City Manager.

Commented [j2]: Danny questioned how do we prior notification of this? We should have it prior to fueling.

5. NOTICES

5.1 All notices, requests, demands, consents, approvals and other communications which are required to be served or given, shall be in writing and shall be sent by registered mail or certified U.S. mail, return receipt requested, and addressed to the Party to receive such notices, as follows:

To Miami-Dade County:	Director of the Department of Public Works and Waste Management 2525 NW 62nd St., 5th Floor Miami, FL 33147
With a copy to:	County Attorney Miami-Dade County 111 NW 1st Street Miami, FL 33128
To the City:	City Manager City of North Miami 776 N.E. 125th Street North Miami, FL 33161
With a copy to:	City Attorney City of North Miami 776 North East 125th Street North Miami, FL 33161
With a copy to:	Capital Project Manager City of North Miami 776 North East 125th Street North Miami, FL 33161

6. FORCE MAJEURE

6.1 A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation pursuant to or required by the Agreement by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

7. MISCELLANEOUS PROVISIONS

7.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

7.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, shall survive final payment, completion and acceptance of the fueling services and termination or completion of this Agreement.

7.3 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, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

7.4 This Agreement constitutes the sole and entire agreement between the Parties. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.

7.5 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

7.6 This Agreement shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

7.7 In the event of any dispute arising under or related to this Agreement, the prevailing party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

7.8 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes (2015).

7.9 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

7.10 This Agreement contains the entire Agreement between the Parties. The Parties represent that in entering into this Agreement, they have not relied on any previous oral or implied representation, inducements or understandings of any kind or nature. No modifications shall be effective unless in writing and signed by both Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:

By: _____
Miami-Dade County Attorney

Print Name: _____

Date: _____

Miami-Dade County, Florida: "**Miami-Dade County**"

By: _____
Miami-Dade County Mayor

Print Name: _____

Date: _____

ATTEST:

By: _____
Michael A. Etienne
City Clerk

City of North Miami, a Florida municipal Corporation: "**City**"

By: _____
Aleem A. Ghany
City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Roland C. Galdos
Interim City Attorney