

ATTACHMENT B

MIAMI-DADE COUNTY DEPARTMENT OF REGULATORY
AND ECONOMIC RESOURCES, DIVISION OF ENVIRONMENTAL
RESOURCES MANAGEMENT

Complainant,

Vs.

City of Miami Beach

Respondent

CONSENT AGREEMENT

This Agreement entered into by and between the MIAMI-DADE COUNTY DEPARTMENT OF REGULATORY AND ECONOMIC RESOURCES, DIVISION OF ENVIRONMENTAL RESOURCES MANAGEMENT (hereinafter referred to as "DERM"), and the City of Miami Beach (hereinafter referred to as "Respondent") pursuant to Section 24-7(15)(c), Miami-Dade County Environmental Protection Ordinance, shall serve to redress violations of Chapter 24 of the Code of Miami-Dade County, Florida (hereinafter "the Code") at the site located at the City of Miami Beach, Fleet Maintenance facility located in the vicinity of 140 MacArthur Causeway, Miami Beach, Miami-Dade County, Florida (hereinafter the "Subject Property"); (UT-2689/File-3527/DEP # 13-9201879).

DERM finds and Respondent admits the following:

FINDINGS OF FACT

1. DERM is an agency of Miami-Dade County, a political subdivision of the State of Florida which is empowered to control and prohibit pollution and protect the environment within Miami-Dade County pursuant to Article VIII, Section 6 of the Florida Constitution, the Miami-Dade County Home Rule Charter and Section 403.182 of the Florida Statutes (F.S.).
2. DERM's investigations at the subject facility have revealed hydrocarbons discharged to the ground and/or groundwater of Miami-Dade County in violation of Chapter 24 of the Code of Miami-Dade County, Florida and therefore, a Site Assessment Report (SAR) Addendum prepared in accordance with Chapter 62-780, Florida Administrative Code (FAC) is required. On April 19, 2010, DERM issued a Limited Closure Summary Report Addendum (LCSRA) approval letter and required submittal of additional assessment information to address the documented onsite contamination. The required additional information has not been submitted to the Department.
3. Respondent is seeking to delay the pending on-site contamination remediation for approximately thirty (30) months from the effective date of this Agreement in order to include the required remedial activities in a planned site redevelopment project.
4. Respondent hereby consents to the terms of this Agreement without either admitting or denying the allegations made by DERM.
5. In an effort to insure continued protection of the health and safety of the public and the environment of Miami-Dade County and to insure compliance with Chapter 24 of the Code of Miami-Dade County, Florida and to avoid time-consuming and costly litigation, the parties hereto agree to the following and it is hereby ORDERED:

SUBMITTAL AND REPORTING REQUIREMENTS

6. Within thirty (30) days of the effective date of this Agreement Respondent shall submit to DERM an interim ground water monitoring plan as required in the DERM letter to the City of Miami Beach dated July 7, 2014. The groundwater monitoring plan shall provide for groundwater sampling to determine whether the contaminant plume is migrating towards off-site. Respondent shall implement said plan in accordance with DERM approval and provide to DERM groundwater monitoring reports within the time periods specified by DERM. If DERM requires submittal of additional information, Respondent shall submit the required additional information within the specified timeframes.
7. Additional sampling events and interim remedial activities may be required based on the results of the interim groundwater monitoring. If upon review of Respondent's groundwater monitoring reports, DERM requires submittal of additional information or a proposed plan of action if data indicates migration of the contaminant plume off-site, Respondent shall submit the required information within the timeframes specified by DERM.
8. Within ninety (90) days of the effective date of this Agreement and on a quarterly basis thereafter, Respondent shall submit a Status Report to DERM which shall include details of completed activities and an update on the status of remaining activities regarding property development and contamination assessment and remediation at the subject site.
9. Within thirty (30) months of the effective date of this Agreement, Respondent shall submit to DERM two (2) copies of an Addendum to the Site Assessment Report (SAR). Respondent shall implement the SAR in accordance with the DERM approval. If DERM requires submittal of additional information, Respondent shall submit the required additional information within the specified timeframes, including information regarding any required contamination remedial activities.
10. Respondent's failure to submit the required additional information within DERM specified timeframes may result in additional enforcement action by the Department.
11. Respondent shall provide DERM at least three (3) working days notice prior to any assessment, sampling or remedial activities conducted at the facility in order to allow DERM representatives to be present while evaluation and remediation activities are performed.

SAFETY PRECAUTION

12. Respondent shall maintain the subject site, during the pendency of this Agreement, in a manner which shall not pose a hazard or threat to the public at large or the environment and shall not cause a nuisance or sanitary nuisance as set forth in Chapter 24 of the Code of Miami-Dade County, Florida.

SETTLEMENT COSTS

13. The Respondent hereby certifies that it has the financial ability to comply with the terms and conditions set forth herein and to comply with the payments specified in this Agreement.
14. The Respondent shall, within thirty (30) days of the effective date of this Agreement, submit to DERM \$3,645.00 in a certified check, made payable to Miami-Dade County, which shall serve to reimburse DERM for its administrative costs incurred in bringing this facility into compliance and the administration and follow-up required pursuant to this Agreement. The Check shall be made payable to Miami-Dade County and sent to DERM, c/o Sharon Crabtree, 701 NW 1st Court, 6th Floor, Miami-Dade County, Florida 33136.

15. In the event Respondent fails to submit, implement, complete, continue or otherwise comply with those items listed in paragraph 6, 7, 8 and 9, herein, the Respondent may be subject to further enforcement action for such failure pursuant to the provisions set forth in Chapter 24 of the Code of Miami-Dade County, Florida.

GENERAL CONDITIONS

16. This Agreement constitutes a lawful order of the Director of the Division of Environmental Resources Management, Department of Regulatory and Economic Resources and is enforceable in a civil or criminal court of competent jurisdiction. Violation of any requirement of this Agreement may result in enforcement action by DERM. Each violation of any of the terms and conditions of this Agreement by the Respondent shall constitute a separate offense.
17. Respondent shall allow authorized representatives of DERM access to the property at reasonable times for purposes of determining compliance with this Consent Agreement and the rules and regulations set forth in Chapter 24, Miami-Dade County Environmental Protection Ordinance.
18. The DERM expressly reserves the right to initiate appropriate legal action to prevent or prohibit the future violation of applicable statutes or the rules promulgated thereunder.
19. Entry into this Consent Agreement does not relieve Respondent of the responsibility to comply with applicable federal, state or local law, regulations and ordinances.
20. Where timetables or conditions cannot be met by Respondent due to circumstances beyond Respondent's control, Respondent shall provide written documentation to DERM, which shall substantiate that the cause(s) for the delay or non-compliance was not reasonably within the control of the Respondent. A determination of the reasonableness of the delay shall be made by DERM for the purpose of continued enforcement pursuant to paragraphs 15 and 16 of this Agreement.
21. This Agreement shall neither be evidence of a prior violation of this Chapter nor shall it be deemed to impose any limitation upon any investigation or action by DERM in the enforcement of Chapter 24, Miami-Dade County Environmental Protection Ordinance.
22. In consideration of the complete and timely performance by the Respondent of the obligations contained in this Agreement, DERM waives its right to seek judicial imposition of damages or criminal or civil penalties for the matters alleged in this Agreement.
23. This Agreement shall become effective upon the date of execution by the Director of the Division of Environmental Resources Management, or his designee.

Date 1/15/15

City of Miami Beach

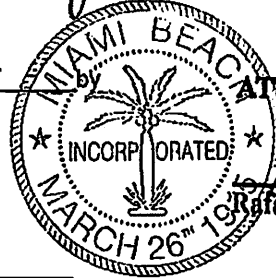
Before me, the undersigned authority, personally appeared Jimmy L. Morales, who after being duly sworn, deposes and says that he had read the foregoing.

Subscribed and sworn to before me this 8 day of January, 2015

Jimmy L. Morales
(Name of affiant)

Personally Known ☒ or Produced Identification ☐
(Check One)

Type of Identification Produced: _____

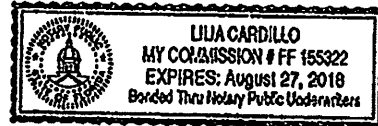


ATTEST:

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

Lilia Cardillo
Notary Public



2nd Cont 9/29/14
City Attorney Date

DO NOT WRITE BELOW THIS LINE OFFICE USE ONLY

Date 1/30/2015

Lee N. Hefty
Lee N. Hefty, Director

Division of Environmental Resources Management
Department of Regulatory and Economic Resources

Witness 1/30/15

J. Perez
Witness