

INFRASTRUCTURE AGREEMENT
BY AND BETWEEN THE TOWN OF MIAMI LAKES
AND THE SABAH AL-AHMAD CENTER FOR GIFTEDNESS AND CREATIVITY

This Infrastructure Agreement ("Agreement") is made between the Town of Miami Lakes, Florida, 15150 NW 79th Ct., Miami Lakes, FL 33016 US (the "Town") and the Sabah Al-Ahmad Center for Giftedness and Creativity, an initiative of His Highness the Amir of the State of Kuwait, Sheikh Sabah Al-Ahmad, established by the Kuwait Foundation for the Advancement of Sciences, P.O. Box 25263, Safat 13113, Kuwait (the "Center").

WHEREAS, Town is the owner of certain real property which is located within the Town more fully described in **Exhibit "A"** attached hereto and deemed a part hereof (the "Property"); and

WHEREAS, Town and Center have entered into a Memorandum of Understanding (MOU) to work together to test a stormwater infiltration system and said MOU contemplated a future agreement; and

WHEREAS, The Town Council is required to approve any Agreement between the Center and the Town as per the MOU; and

WHEREAS, Dr. Omar Al-Bannai, General Manager of the Center, is authorized to enter into this Agreement for the Center and on behalf of Faisal Abdul Aziz Al-Asfour ("Inventor"). The Inventor, supported by the Center, owns U.S. Patent No. 7,288,188 (the "Patent"); and

WHEREAS, the Town and Center acknowledge that stormwater infiltration can diminish the overall effectiveness of the Town's stormwater system; and

WHEREAS, The Center's pilot infiltration device may work to reduce such impacts; and

WHEREAS, The Center and the Town believe that it is in their mutual best interest to enter into this Agreement, and that the pilot project outlined herein shall benefit the health, safety, and welfare of the residents of the Town.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby stipulated, the parties agree as follows:

- 1. Recital.** The foregoing recitals are true and correct and are incorporated herein by this reference.

- 2. Project.** The Center shall provide to the Town a pilot stormwater catchment system for the purposes of testing one or more full-scale and operational Systems, as described in the Patent. Said System shall be designed to separate soil, sand and debris from the surface water while permitting water to flow through into the Town's Stormwater System.

Said System shall be deployed within a minimum of two (2) locations located within Town owned rights-of-way, identified in the attached **Exhibit "A."**

The design of the System shall work as an overlay to the Town's existing stormwater system. Said System shall be installed as an additional filtration layer and shall not impact, interfere or interact with the existing Town stormwater system, as identified in attached **Exhibit "B."**

Center shall apply for all required approvals from Town. Said approvals shall include the location, design, flows, and other documentation as may be necessary for the Town to review and approve the installation of System. Said review shall be completed on an expedited basis. There shall be no fees charged by the Town for said approval. If any permits are required by an agency other than the Town, the Center shall be responsible for obtaining said approval and any associated permitting fees. The Town shall not require the approval of any other agency (except as provided by law or applicable administrative regulations) before said approval shall be issued.

3. Right to Access. Town shall grant Center the right to access over, across, above and below the Town's rights-of-way for the purposes of this Agreement.

4. Collaborative Relationship. The Town and Center agree to coordinate efforts for the duration of the Project to develop a commercially viable and effective system. This shall include, but not be limited to, sharing of in-field observations, ideas and suggestions on overall system effectiveness, and System constraints and limitations.

Center shall submit a project schedule ("Schedule") to the Town as part of the Project approval. Center and Town shall establish a routine meeting schedule to discuss the status of the Project. The Center, Town, and any contractors shall attend all meetings.

5. Definitions.

Infiltration device. The actual device that is installed into the Stormwater System as part of the System.

Patent. U.S. Patent No. 7,288,188

Project. The temporary project utilizing the Town's stormwater system and the stormwater catchment system to filter out soil, sand, and debris from surface water.

System. The stormwater catchment system designed and patented by Faisal Abdul Aziz Al-Asfour ("Inventor"), supported by the Center.

Stormwater System. The Town of Miami Lakes stormwater system that is permitted by the Department of Environmental Protection.

6. Inspections and Maintenance. As part of the Project, the Town agrees to perform routine maintenance on System. The Town shall also monitor the System and report any problems to Center within two (2) business days of the discovery of such problem(s) to allow Center to address any issues. Town shall also prepare a monthly report to be provided to Center outlining the overall effectiveness of said System.

7. Funding and Compensation. The Center shall pay for the design, permitting, installation, removal and all other hard costs related to the Project. The Center shall also reimburse the Town for

any indirect costs in excess of Five thousand dollars (\$5,000.00). The cost of any consultants utilized to evaluate the effectiveness of the Project shall also be considered hard costs. The Center shall provide the Town with a cash contribution of Five thousand dollars (\$5,000.00) two (2) months after execution of this Agreement to be used to off-set any costs identified above. If the Town decides to retain the system after the completion of the Project, the Center shall allow the Town to retain the existing system at no additional costs upon written request. However, the Town shall be responsible from the point in time when ownership is transferred for all maintenance, repair and removal.

Upon successful completion of the Project resulting in patentable improvements to the System, Town shall be compensated for its role in the success of the Project. Said compensation shall be limited to an annual payment of one percent (1%) of fees received by the Center as a result of commercialization of the System, subject to the System including patentable improvements incorporated as a result of the Project. The Center shall also provide the Town a one time payment of five thousand dollars (\$5,000.00) for the right to utilize the Town's system for this project. Said payment shall be made) two (2) months after execution of this Agreement. Inspections and maintenance identified in Section 6 shall be considered hard costs.

8. Duration of Project. Said System shall remain at the identified locations for a minimum of six (6) months not to exceed twelve (12) months. The length of time shall be determined based upon the needs of the Project and the amount of rainfall necessary to conduct the Project.

The Project shall be completed in one (1) phase. If it is determined that a second phase shall be required, this Agreement shall be amended, as may be necessary.

9. Indemnification and Liability. To the fullest extent of the law, Center shall indemnify, defend and hold harmless the Town and its respective officers, directors and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Center, and other persons employed or utilized by Center in the performance of the Project. These obligations shall survive the term of this Agreement and continue for a period of two (2) years after the installation of the System or the applicable statute of limitations, whichever is longer. Nothing herein shall be deemed in any way to constitute a waiver of sovereign immunity by Town.

10. Bonding and Insurance. The Town shall waive all bonding/letter of credit requirements with respect to the Improvements to the extent permitted by applicable state statute or ordinance.

Without limiting any of the other liabilities or obligations of Center, Center shall furnish or cause to be furnished to Town, prior to the initiation of the Project, copies of all pertinent insurance policies, Certificates of Insurance and endorsements, stating the types of insurance coverage and limits as outlined in **Exhibit "C."**

11. Assignment. This Agreement shall not be assigned by either Party.

12. Termination. Notwithstanding the foregoing, upon Center's completion of construction, testing and monitoring as contemplated in Section 2 and 8, this Agreement shall automatically terminate. Upon the written request of either party, the parties shall execute a written instrument evidencing such termination. This Agreement may be terminated, with or without cause, with thirty (30) days written notice by either party.

13. Default and Remedies. Should the Town or Center determine that a default has occurred with regard to this Agreement, written notice of same shall be provided and the defaulting party shall have 30 days after receipt of the default notice to cure same. In the event of Center's uncured default under this Agreement, the Town shall be entitled to any and all remedies under Florida law. In the event the Town defaults under this Agreement, Center shall have all remedies under Florida law.

14. Force Majeure. Town's and Center's obligations hereunder shall be subject to the concept of force majeure. Accordingly, in the event of Acts of God, riot, weather disturbances, war, terrorism, civil disobedience, geologic subsidence, electrical failure, malfunctions, and events of a similar nature, Town or Center shall be excused from their respective obligations until the cause or causes thereof have been remedied.

15. Attorney's Fees. In the event of any dispute and or litigation arising from this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs through the appellate level.

16. Filing. This Agreement, once approved by Town Council and executed by the parties, shall be filed in the office of the Town Clerk.

17. Entire Agreement. This Agreement, and any exhibits attached hereto, constitute the entire agreement and understanding of all parties to this Agreement with respect to the subject matter of this Agreement, and supersedes all prior discussions, correspondence, oral and written agreements, commitments or understandings, restrictions, representations or warranties among the parties to this Agreement concerning the subject hereof.

18. Notice. The notices sent to any person pursuant to this Agreement shall be in writing and transmitted by personal delivery with a receipt obtained, certified mail, postage prepaid and return receipt requested, or by nationally recognized overnight delivery service (i.e., DHL or Federal Express) and shall be mailed or delivered as follows:

To Town:

Alex Rey, Town Manager of Miami Lakes
15150 NW 79th Ct.
Miami Lakes, FL 33016
Email:
Phone:
Fax:

With Copy to:

Hiram Siaba, Director of Public Works
15150 NW 79th Ct.
Miami Lakes, FL 33016
Email:
Phone:
Fax:

Joseph S. Geller, Greenspoon Marder
Town Attorney
15150 NW 79th Ct.
Miami Lakes, FL 33016

Email:
Phone:
Fax:

To Center:

Dr. Omar Al-Bannai, General Manager of Sabah Al-Ahmad Center for Giftedness and Creativity
P.O. Box 25263
Safat 13113, Kuwait
Email:
Phone:
Fax:

With Copy to:

Richard Littman, Becker and Poliakoff, P.A.
Patent Law Building 8951 Center Street Manassas
Virginia 20110
Email: rlitman@becker-poliakoff.com
Phone:
Fax:

Any of the foregoing parties may, by notice in writing given to the other, designate any further or different addresses to which subsequent notices shall be sent. Any notice shall be deemed given on the date received.

19. Jurisdiction & Venue. The parties to this Agreement expressly consent to the jurisdiction of and agree to suit in any court of general jurisdiction in the State of Florida, whether state, local or federal and further agree that venue shall lie in Miami Dade County, Florida.

20. Amendments & Waivers. No amendment, supplement, modifications or waiver of this Agreement shall be binding unless executed in writing by all of the parties hereto. No waiver of any of these provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided.

21. Party Consultation. In event of any dispute as to interpretation or application of the terms or conditions of this Agreement, Center and the Town Administrator shall meet in good faith to resolve any issues. The meeting may, by mutual agreement, be continued to a date certain in order to include other parties or persons, or to obtain additional information.

22. Severability. If any provision of this Agreement is determined to be unenforceable or invalid by a court of law, then this Agreement shall thereafter be modified by agreement of the parties to implement the intent of the parties as stated herein to the maximum extent allowable under law.

23. No Presumption Against Drafter. This Agreement has been reviewed and revised by legal counsel for all parties and no presumption or rule that ambiguity shall be construed against the party drafting the document shall apply to the interpretation or enforcement of this Agreement.

24. Effective Date. This Agreement shall be effective upon proper execution by both parties hereto.

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement on the respective dates under each signature: THE TOWN OF MIAMI LAKES, through its Town Council, signing by and through the Town Manager , duly authorized to execute this Agreement of Town Council action on ____ and _____.

TOWN OF MIAMI LAKES, a Florida municipal corporation

Attest:

By: _____
Title: _____
Dated: _____

Town Clerk

(seal)

Dated:

APPROVED AS TO FORM:

Town Attorney

EXHIBIT A

Location of pilot program

EXHIBIT B

Project design

EXHIBIT C

Insurance requirements

ACTIVE: 4544025_1