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RESOLUTION NO. R-2016-073

A RESOLUTION OF THE CITY OF OAKLAND PARK, FLORIDA, APPROVING THE FIRST AMENDMENT TO THE SETTLEMENT AGREEMENT WITH BROWARD COUNTY FOR THE LITIGATION STYLED CITY OF SUNRISE ET. AL. V BROWARD COUNTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Broward County (the “County”) and several Broward municipalities entered into a Settlement Agreement to settle the litigation styled *City of Sunrise et. al. v Broward County*, 17th Judicial Circuit Court Case No. CACE-013-015660 (the municipalities defined in the Settlement Agreement as the Settling Municipalities shall be collectively referred to herein as the “Settling Municipalities”); and

WHEREAS, the Settlement Agreement provides for the County and the Settling Municipalities to agree to use their best efforts (and to take all reasonable steps) to sell the parcel of land known as Alpha 250, as further described in the Settlement Agreement (“Alpha 250”); and

WHEREAS, the County and the Settling Municipalities desire to amend the Settlement Agreement to delay the sale of Alpha 250 while a joint independent study is performed regarding the following issues:

- (i) how a 75% County-wide recycling goal may be reached;
- (ii) whether retaining public ownership of Alpha 250 would facilitate the meeting of that recycling goal or would provide other benefits in connection with solid waste disposal within Broward County; and
- (iii) general solid waste disposal issues as determined by the Working Group (as defined in the First Amendment), which may include options regarding flow control and potential governance or contractual structures for collaborative management of solid waste disposal.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF OAKLAND PARK, FLORIDA THAT:

SECTION 1. Legislative Findings/Recitals. The above recitals are hereby adopted by the City of Oakland Park as its legislative findings relative to the subjects and matters set forth in this Resolution.

1 **SECTION 2. Approval of First Amendment to the Settlement Agreement.**

2 The First Amendment to Settlement Agreement, attached as Exhibit “A”, is hereby
3 approved.
4

5 **SECTION 3. Authorization to Execute First Amendment.** The appropriate
6 City officials are authorized to execute the First Amendment to Settlement Agreement,
7 attached as Exhibit “A”, together with such non-substantive changes as are acceptable
8 to the City Manager and approved as to form and legal sufficiency by the City
9 Attorney.

10 **SECTION 4. Implementing Actions.** The City Manager and the City
11 Attorney are hereby authorized to take any actions necessary to implement the aims of
12 this Resolution.
13

14 **SECTION 5. Severability.** If any provision of this Resolution or the
15 application thereof to any person or circumstance is held invalid, it is the intent of
16 the City Commission that such invalidity shall not affect other provisions or
17 applications of the Resolution which can be given effect without the invalid
18 provision or application and, to this end, the provisions of this Resolution are
19 declared severable.
20

21 **SECTION 6. Conflicts.** All resolutions or parts of resolutions in conflict with
22 any of the provisions of this Resolution are hereby repealed.
23

24 **SECTION 7. Effective Date.** This Resolution shall take effect immediately
25 upon adoption.
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1 **ADOPTED** by the City Commission of the City of Oakland Park, Florida this 6th, day
2 of July, 2016.

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CITY OF OAKLAND PARK, FLORIDA


MAYOR TIM LONERGAN

J. ADORNATO III	<u>YES</u>
S. GUEVREKIAN	<u>YES</u>
J. SHANK	<u>YES</u>
M. CARN	<u>YES</u>
T. LONERGAN	<u>YES</u>

ATTEST:


RENEE M. SHROUT, CMC
CITY CLERK

Joni Armstrong Coffey
County Attorney



OFFICE OF THE COUNTY ATTORNEY
115 S. Andrews Avenue, Suite 423
Fort Lauderdale, Florida 33301

954-357-7600 · FAX 954-357-7641

July 18, 2016

Our File: 13-0640

By Electronic Mail

D.J. Doody, City Attorney
City of Oakland Park
Goren Cherof Doody & Ezrol, P.A.
3099 East Commercial Blvd.
Suite 200
Fort Lauderdale, FL 33308
ddoody@cityatty.com

RE: First Amendment to Interlocal Agreement Regarding Distribution of Solid Waste Disposal District Assets

Dear Mr. Doody:

Enclosed is the First Amendment to Interlocal Agreement Regarding Distribution of Solid Waste Disposal District Assets ("First Amendment to Distribution Agreement"). As you know, on or about June 28, 2013, eighteen municipalities ("Litigating Cities") settled the lawsuit they filed against Broward County ("County") in the litigation styled *City of Sunrise et al. v. Broward County*, 17th Judicial Circuit Court Case No. 13-015660 (19) ("Litigation"), which sought a declaration regarding the assets and liabilities subject to equitable distribution pursuant to the 1986 Interlocal Agreement.

The Litigating Cities entered into a Settlement Agreement to resolve the Litigation. The City of Oakland Park, the City of Lauderdale Lakes, the City of West Park, and the Town of Pembroke Park ("Consenting Municipalities") did not enter into the Settlement Agreement but instead each separately signed an Interlocal Agreement for Distribution with the County in order to receive their respective *pro rata* shares of proceeds distributed under the terms of the Settlement Agreement and from any sale of a parcel of land known as Alpha 250.

On June 14, 2016, the County approved the First Amendment to Settlement Agreement ("First Amendment"), essentially postponing any sale of Alpha 250 for a period of approximately one (1) year. In order to be effective, the First Amendment requires the Consenting Municipalities to agree to the delay of the sale, among other things, and to sign the enclosed First Amendment to Distribution Agreement by October 12, 2016.

Broward County Board of County Commissioners
Mark D. Bogen • Beam Furr • Dale V.C. Holness • Marty Kjar • Chip LaMarca • Tim Ryan • Barbara Sharief • Lois Wexler
broward.org/legal

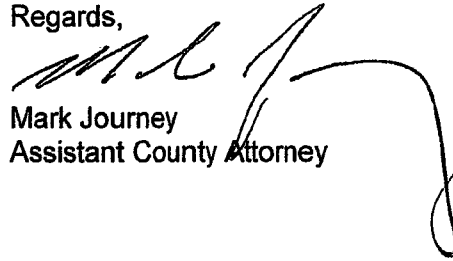
12-2016-073

D.J. Doody, City Attorney
July 18, 2016
Page 2

Please forward the enclosed First Amendment to Distribution Agreement to your governing municipal board for its consideration and, hopefully, approval. If it approves the First Amendment to Distribution Agreement, please have it appropriately executed and return it to me.

Thank you for your consideration. If you have any questions, please give me a call.

Regards,

A handwritten signature in black ink, appearing to read 'Mark Journey', with a long, sweeping horizontal line extending to the right.

Mark Journey
Assistant County Attorney

**FIRST AMENDMENT TO INTERLOCAL AGREEMENT REGARDING
DISTRIBUTION OF SOLID WASTE DISPOSAL DISTRICT ASSETS**

THIS FIRST AMENDMENT (the "Amendment") to INTERLOCAL AGREEMENT REGARDING DISTRIBUTION OF SOLID WASTE DISPOSAL DISTRICT ASSETS (the "Interlocal Agreement for Distribution") is made by and between Broward County, Florida, (the "County") and the City of Oakland Park, a political subdivision of the State of Florida, (a "Consenting Municipality").

RECITALS:

WHEREAS, the City of Lauderdale Lakes, the City of West Park, the City of Oakland Park, and the Town of Pembroke Park (collectively, the "Consenting Municipalities") were among the parties to the November 1986 Interlocal Agreement with Broward County for Solid Waste Disposal Services, as amended, (the "1986 Interlocal Agreement"); and

WHEREAS, the 1986 Interlocal Agreement expired on July 2, 2013; and

WHEREAS, on or about June 28, 2013, eighteen municipalities (the "Litigating Municipalities") filed a lawsuit against the County in the litigation styled *City of Sunrise et al. v. Broward County*, 17th Judicial Circuit Court Case No. 13-015660 (19) (the "Litigation"), which sought a declaration regarding the assets and liabilities subject to equitable distribution pursuant to the 1986 Interlocal Agreement; and

WHEREAS, with the County's appreciation, the Consenting Municipalities did not join the Litigating Municipalities that filed the lawsuit; and

WHEREAS, the County and the Litigating Municipalities entered into a Settlement Agreement to resolve the Litigation; and

WHEREAS, the Consenting Municipalities did not join the Settlement Agreement but instead entered into the Interlocal Agreement for Distribution with the County pursuant to which they have received and will receive their respective *pro rata* shares of proceeds distributed under the terms of the Settlement Agreement, and from any sale of a parcel of land known as Alpha 250; and

WHEREAS, on May 10, 2016, the Broward County Board of County Commissioners (the "Board") approved the First Amendment to Settlement Agreement (the "First Amendment"), attached as Exhibit "A" and fully incorporated herein; and

WHEREAS, the First Amendment provided, contrary to the Settlement Agreement, that the sale of Alpha 250 would be delayed for a period of one (1) year from the Amendment Effective Date; and

WHEREAS, the First Amendment also provided that the sale could be further extended for an additional period of up to one (1) year upon written approval of the County Administrator and six (6) of the mayors representing the Litigating Municipalities; and

WHEREAS, the First Amendment additionally required the County to procure a study not to exceed \$200,000, as described more fully in Exhibit "A," to evaluate and make recommendations regarding whether retaining Alpha 250 would provide certain environmental benefits, among other things; and

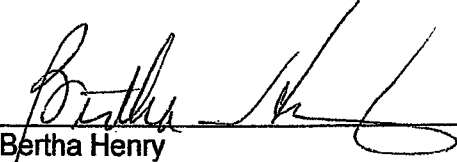
WHEREAS, to be effective, the First Amendment requires the Consenting Municipalities, through a separate written instrument between the County and each of the Consenting Municipalities, agree to the terms of the First Amendment generally, and specifically to the payment of the municipal share for the study as described in paragraph 7 of the First Amendment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The above-stated recitals are true and correct and are incorporated into this Amendment by this reference.
2. Notwithstanding any provision to the contrary in the Interlocal Agreement or the Settlement Agreement, by executing this Amendment, the County and the Consenting Municipality agree to the terms and conditions of the First Amendment attached as Exhibit "A," including to the payment obligations described in paragraph 7 thereof.

IN WITNESS WHEREOF, the parties have made and executed this Agreement on the respective dates under each signature: BROWARD COUNTY through its County Administrator, duly authorized to execute same by Board action on May 10, 2016, and the Consenting Municipality signing by and through its Mayor, duly authorized to execute same.

BROWARD COUNTY

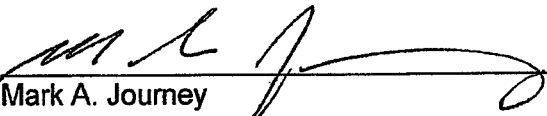


Bertha Henry
County Administrator

14th day of July, 2016

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By:



Mark A. Journey
Assistant County Attorney

14th day of July, 2016

MAJ/mm
Solid Waste First Amendment to Interlocal Agreement Execution Page
07/13/16
#13-0640

MUNICIPALITY

ATTEST:

Renee M. Shrout
Renee M. Shrout, City Clerk

By: Tim Lonergan
Tim Lonergan, Mayor
21 day of September, 2016

Approved as to form and legality:

By: DJ Doody
DJ Doody, City Attorney
21 day of September, 2016

By: David Hebert
David Hebert, City Manager
21 day of September, 2016

WITNESSES

David A. Rafter
SIGNATURE
DAVID A. RAFTER
Print Name

Neyra Herrera Cuervo
SIGNATURE
Neyra Herrera Cuervo
Print Name

STATE OF FLORIDA
COUNTY OF BROWARD

The foregoing instrument was acknowledged before me on 9/21, 2016,
by Tim Lonergan, as Mayor of
City of Oakland Park, Florida, a political subdivision of the state of Florida, who is
personally known to me or who has produced _____, as
identification and did (did not) take an oath.



S. LEBLANC
MY COMMISSION # FF 075862
EXPIRES: February 21, 2018
Bonded Thru Budget Notary Services

My commission expires: 2/21/2018

S. LeBlanc
NOTARY PUBLIC
State of Florida at Large
S. LeBlanc
PRINTED Name of Notary

EXHIBIT A

FIRST AMENDMENT TO SETTLEMENT AGREEMENT

THIS FIRST AMENDMENT (the "Amendment") to the Settlement Agreement (the "Settlement Agreement") by and between Broward County, Florida, a political subdivision of the State of Florida, (the "County") and the City of Sunrise, the City of Weston, the City of Hollywood, the City of Fort Lauderdale, the City of Lauderhill, the Town of Lauderdale-By-The-Sea, the City of Lighthouse Point, the City of Tamarac, the Town of Davie, the City of Plantation, the City of Coconut Creek, the City of Deerfield Beach, the City of Miramar, the City of Margate, the City of Cooper City, the City of North Lauderdale, the City of Coral Springs, the Town of Southwest Ranches, the City of Wilton Manors, the Town of Hillsboro Beach, and the Village of Sea Ranch Lakes, all political subdivisions of the State of Florida, (individually, each is a "Settling Municipality"; collectively, the "Settling Municipalities") is made and entered into as of the Amendment Effective Date (as defined below).

RECITALS

A. The County and the Settling Municipalities entered into a Settlement Agreement to settle the litigation styled *City of Sunrise, et al. v Broward County*, 17th Judicial Circuit Court Case No. CACE-013-015660.

B. The Settlement Agreement provides for the County and the Settling Municipalities to agree to use their best efforts (and to take all reasonable steps) to sell the parcel of land known as Alpha 250, as further described in the Settlement Agreement ("Alpha 250").

C. The County and the Settling Municipalities desire to amend the Settlement Agreement to delay the sale of Alpha 250 under the terms and conditions stated herein.

D. The City of Lauderdale Lakes, the City of West Park, the City of Oakland Park, and the Town of Pembroke Park, all political subdivisions of the State of Florida (individually, each is a "Consenting Municipality"; collectively, the "Consenting Municipalities"), did not join the Settlement Agreement but instead entered into Interlocal Agreements Regarding Distribution of Solid Waste Disposal District Assets with the County pursuant to which they have received and will receive their respective *pro rata* shares of proceeds distributed under the terms of the Settlement Agreement, including their respective shares from any sale of Alpha 250.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The above-stated recitals are true and correct and are incorporated into this Amendment by this reference.
2. Notwithstanding any provision to the contrary in the Settlement Agreement, the County and the Settling Municipalities agree that the sale of Alpha 250 shall be delayed for a period of one year from the Amendment Effective Date (the "Sale Delay Period"). The Sale Delay Period may be further extended for an additional period of up to one year upon written approval of the

County Administrator and the Mayors of Coconut Creek, Fort Lauderdale, Hollywood, Miramar, Sunrise, and Weston (collectively, the "Mayors").

3. During the Sale Delay Period, the County shall procure a study (the "Study") in an amount not to exceed two hundred thousand dollars (\$200,000), which shall be paid for as described in paragraph 7 below. The Study shall evaluate and provide recommendations regarding the following general areas:

- a. How a 75% County-wide recycling goal may be reached;
- b. Whether retaining public ownership of Alpha 250 would facilitate the meeting of that recycling goal or would provide other benefits in connection with solid waste disposal within Broward County; and
- c. General solid waste disposal issues as determined by the Working Group (as defined below), which may include options regarding flow control and potential governance or contractual structures for collaborative management of solid waste disposal.

4. A more detailed scope of the Study will be developed within the above-referenced budgeted amount by a working group (the "Working Group") consisting of:

- a. Three (3) municipal staff members selected by the Mayors; and
- b. Three (3) County staff members selected by the County Administrator.

5. The Working Group and its individual members shall also interact with the consultant during the course of the Study to ensure a balanced and independent study of the stated issues.

6. The Study consultant shall be selected in a manner consistent with the County's Procurement Code. The Mayors, directly and through their Working Group members, shall have input into this procurement process, and shall appoint one person to serve on the County's committee that will evaluate the responses submitted by interested consultants.

7. The County shall pay the up-front cost of the Study, and shall recover fifty percent (50%) of the cost of the Study (the "Municipal Share") as follows if either of the following circumstances occur: (a) if Alpha 250 is sold to a third party with the closing of the sale occurring within five (5) years after the Study completion date, the County shall deduct the Municipal Share from the Alpha 250 sales proceeds before the County deposits the net proceeds of the sale into the trust account described in Section 4D of the Settlement Agreement; or (b) if the County, within five (5) years after the Study completion date, exercises its right under the Settlement Agreement to pay the net sales amount and retain Alpha 250, the County shall deduct the Municipal Share from the net sales amount the County deposits into the trust account described in Section 4D of the Settlement Agreement.

8. Based upon the results of the Study, the parties may agree to further amend the Settlement Agreement.

9. Amendment Approval Process.

- a. Once approved by the County Commission, this Amendment shall be presented for approval at public Commission/Council meetings at each of the Settling Municipalities and the Consenting Municipalities (the County shall communicate this requirement to the Consenting Municipalities).
- b. To be effective, this Amendment must, within one hundred twenty (120) days after approval by the County Commission: (1) be approved and executed by all Settling Municipalities, with notice attaching true copies thereof provided to the County; and (2) be consented to by each of the Consenting Municipalities through a separate written instrument between the County (by and through the County Administrator) and each of the Consenting Municipalities in which each of the Consenting Municipalities agrees to the terms of the Amendment generally, and specifically to the payment for the Municipal Share of the Study as described above in paragraph 7.

10. *Effective Date.* The date of the last approval and execution of this Amendment by a Settling Municipality, or the date of the last execution of a written instrument reflecting the consent of a Consenting Municipality, whichever is last, is the "Amendment Effective Date."

11. Except as otherwise revised in this Amendment, the terms and conditions of the original Settlement Agreement shall remain in full force and effect. The preparation of this Amendment has been a joint effort of the parties hereto and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against any party hereto. In the event a portion of this Amendment is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective and the parties agree to negotiate in good faith to modify that portion of this Amendment in a manner designed to effectuate the original intent of the parties. This Amendment may be executed in counterparts.


CITY OF OAKLAND PARK

COUNTY OF BROWARD

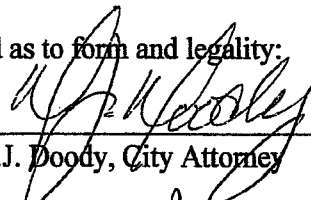
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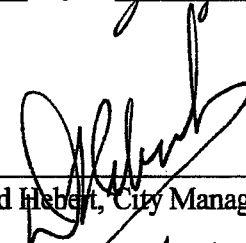


Renee M. Shrout, City Clerk, CMC

BY: 
Tim Loneragan, Mayor
20 day of July, 2016

Approved as to form and legality:

BY: 
D.J. Doody, City Attorney
20 day of July, 2016

BY: 
David Hebert, City Manager
21 day of July, 2016