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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: October 6, 2015

To: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

Agenda Item No. 8(L)(12)

From: Carlos A. Gimenez
Mayor

Subject: Resolution Approving Interlocal Agreement for Remediation, Closure, and Post-Closure of the Taylor Park Landfill

Resolution No. R-864-15

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the attached resolution authorizing execution of an interlocal agreement between Miami-Dade County and the City of North Miami Beach for remediation, closure, and post-closure of Taylor Park, a former landfill site located in the City (Agreement). The proposed Agreement is consistent with the Miami-Dade County Comprehensive Landfill Closure Plan. The closure and remediation cost estimate for the Taylor Park site is $3 million.

SCOPE

The Miami-Dade County Comprehensive Landfill Closure Plan (CLCP) identifies Taylor Park within Commissioner Jean Monestime's District 2, and four (4) County-owned sites as eligible for remediation and closure funding, subject to conditions. In addition, five (5) contaminated park sites located in the City of Miami were identified as eligible for remediation and closure using any remaining funds allocated to the Virginia Key Landfill closure project.

FISCAL IMPACT

The County will bear all costs for the remediation and closure of the Taylor Park site. The current estimated cost of the site's remediation and closure is $3 million. The Taylor Park project will be funded with a portion of Utility Service Fee (USF) revenues collected on County water bills that are allocated to the Public Works and Waste Management Department (PWWM) or other funding sources determined by the Board's annual appropriation.

The County will also bear the cost for the post-closure of the Taylor Park site if the park is used for a public purpose. The post-closure groundwater remediation and monitoring will cost up to $100,000 per year for as long as the City maintains an active waste disposal interlocal agreement with the County. If the City does not maintain an active waste disposal agreement with the County, this proposed Agreement, along with any cost bore by the County, will terminate on October 1, 2035, but may be renewed. The post-closure remediation and monitoring of the site will be funded from USF funds or other funding sources subject to annual appropriation by the Board. This provision is consistent with the proposed CLCP funding guidelines and the agreement that was approved with the City of Miami for Virginia Key, dated April 4, 2013.

TRACK RECORD/MONITOR

Asok Ganguli, Assistant Director for Technical Services, with the PWWM will oversee the Taylor Park project for the County. He will be assisted in this effort by the PWWM Bond Engineer. The Bond Engineer is responsible for determining whether specific remediation and closure expenses are eligible for funding from USF revenues, pursuant to Section 24-34 of the Code of Miami-Dade County.

BACKGROUND

Taylor Park is approximately 27 acres in size and is located at 15458 West Dixie Highway in the City of North Miami Beach. The property was deeded from the County to the City in 1953 for development of recreation facilities and other public uses. In the event that the site is not used for a public purpose, ownership reverts to the County. A ball field, former daycare center, and parking facilities are located on the site. The site is currently secured pending completion closure and remediation activities, which are estimated to cost $3 million.

The site has documented groundwater contamination including arsenic, polyaromatic hydrocarbons (PAHs), ammonia and iron. Soil borings indicate that landfilling activities were conducted at the site. Based on use of the site as a former landfill, the PWWM Bond Engineer has determined that the site meets the County's criteria for USF funding and the park is identified as an eligible site in the CLCP. The PWWM and RER will be the co-project managers for the closure and remediation work at Taylor Park. The project is anticipated to start in late 2016 and be completed in late 2018. As was the case with the Virginia Key Landfill project, this agreement includes funding for post-closure groundwater remediation and monitoring costs, based on the use of the facility as a public purpose park. The proposed funding commitment for post-closure activities is $100,000 per year from the PWWM's USF revenues or other funding source, subject to annual appropriation by the Board. Payment for post-closure costs shall continue for as long as the City maintains an active waste disposal interlocal agreement with the County. If the City does not maintain an active waste disposal agreement with the County, the proposed Agreement will terminate on October 1, 2035, but may be renewed.

Consistent with the CLCP, the City of North Miami Beach, as a prerequisite for USF funding, has entered into a 20-year interlocal agreement with the County for solid waste disposal. The agreement expires on October 1, 2035.

The CLCP is being presented for Board approval as a companion item.

ATH.

Alina T. Hudak
Deputy Mayor

MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: October 6, 2015

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(L)(12)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(L)(12)
10-6-15

RESOLUTION NO. R-864-15

RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN MIAMI-DADE COUNTY, FLORIDA AND THE CITY OF NORTH MIAMI BEACH, FLORIDA FOR REMEDIATION, CLOSURE, AND POST-CLOSURE OF TAYLOR PARK, WITH THE COUNTY BEARING ALL COSTS FOR REMEDIATION AND CLOSURE, CURRENTLY ANTICIPATED TO COST $3 MILLION, AND IF CERTAIN CONDITIONS ARE MET, ADDITIONAL POST-CLOSURE COSTS OF UP TO $100,000.00 PER YEAR; AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE SAID INTERLOCAL AGREEMENT AND EXERCISE ALL PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference; and

WHEREAS, on April 2, 2013, the Board of County Commissioners approved Resolution R-254-13 directing the County Mayor to include North Miami Beach's Taylor Park as a site to be cleaned up/closed through the Comprehensive Landfill Clean-up [Closure] Plan; and

WHEREAS, the former landfill site located in the City of North Miami Beach, commonly referred to as "Taylor Park," has been identified as eligible for remediation, closure, post-closure funding in the Miami-Dade County Comprehensive Landfill Closure Plan and the City has extended its waste disposal interlocal agreement with the County until October 1, 2035, consistent with the Miami-Dade County Comprehensive Landfill Closure Plan requirements,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that the Interlocal Agreement between Miami-Dade County, Florida and the City of North Miami Beach, Florida

for remediation, closure, and post-closure of Taylor Park is approved and the Mayor or Mayor's designee is authorized to execute the Agreement in substantially the form attached hereto after review and approval by the County Attorney. The Mayor or designee is authorized to exercise any and all powers and options within the Agreement including termination.

The foregoing resolution was offered by Commissioner **Dennis C. Moss** , who moved its adoption. The motion was seconded by Commissioner **Rebeca Sosa** and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman	**aye**		
Esteban L. Bovo, Jr., Vice Chairman	**aye**		
Bruno A. Barreiro	**aye**	Daniella Levine Cava	**aye**
Jose "Pepe" Diaz	**aye**	Audrey M. Edmonson	**aye**
Sally A. Heyman	**absent**	Barbara J. Jordan	**aye**
Dennis C. Moss	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**aye**	Xavier L. Suarez	**aye**
Juan C. Zapata	**absent**		

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of October, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

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

HARVEY RUVIN, CLERK

By: Christopher Agrippa

Deputy Clerk

Approved by County Attorney as
To form and legal sufficiency. APP

Altanese Phenelus

INTERLOCAL AGREEMENT BETWEEN
MIAMI-DADE COUNTY, FLORIDA
AND
CITY OF NORTH MIAMI BEACH, FLORIDA FOR REMEDIATION AND CLOSURE OF TAYLOR PARK

This Interlocal Agreement, made and entered this _____ day of _____, 2015, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida (hereafter "COUNTY") and the CITY OF NORTH MIAMI BEACH, FLORIDA, a Florida municipal corporation (hereafter "CITY").

W I T N E S S E T H

WHEREAS, on April 2, 2013, the Board of County Commissioners approved Resolution R-254-13 directing the County Mayor to include North Miami Beach's Taylor Park as a site to be cleaned up/closed through the Comprehensive Landfill Clean-up [Closure] Plan; and

WHEREAS, the former landfill site located in the CITY, commonly referred to as "Taylor Park" (Landfill), has been identified as eligible for remediation and closure funding in the Miami-Dade County Comprehensive Landfill Closure Plan (CLCP) and the CITY has extended its waste disposal interlocal agreement with the COUNTY until October 1, 2035, consistent with CLCP requirements; and,

WHEREAS, the parties agree that it is in their mutual best interests and the best interests of the citizens of Miami-Dade County to have the COUNTY conduct the Landfill remediation and closure, including without limitation, completion of studies, reports, plans, design plans and construction required by the Regulatory and Economic

Resources Department (RER) [formerly Department of Environmental Resources Management (DERM)]; and,

WHEREAS, taking into account the CITY's proposed use of the Landfill as a public purpose park the COUNTY agrees to fund a portion of any RER required post-closure groundwater remediation costs.

NOW, THEREFORE, IN CONSIDERATION of the mutual benefits derived herefrom, the parties covenant and agree as follows:

I. SOURCE OF FUNDING

The source of funding for the Landfill remediation, closure and post closure costs shall be exclusively from the Utility Service Fee (USF) or other funding source, subject to annual appropriation by the Board of County Commissioners. USF revenues have been and may in the future be used to secure the issuance of tax exempt bonds. The current remediation and closure cost estimate for the Landfill is $3 million.

II. LANDFILL REMEDIATION AND CLOSURE

The COUNTY shall be solely responsible for the complete remediation and closure of the Landfill by performing all necessary studies, plans, reports, design plans, permitting activities, agency coordination, construction and waste removal as may be necessary to comply with all Federal, State, County and local environmental regulations and requirements including but not limited to: (1) preparation of the Site Assessment Report (SAR), (2) preparation of the Remedial Action Plan (RAP), (3) construction and implementation of the RER approved remedial system design, (4) Landfill closure construction, and (5) securing Landfill closure certification (collectively, the "Landfill

Closure Work"). The Landfill Closure Work performed by the COUNTY shall be specifically limited to those minimum activities, such as construction of monitoring wells, soil probes and remedial system components required as part of the remediation and closure of the Landfill without regard to any future planned use by the CITY. In no instance, will funds be used for construction of facilities which are not required as part of the minimum required remediation and Landfill closure, as set forth in the RER approved remediation and Landfill closure plans.

In addition, the COUNTY shall bear the cost of any modifications to the Landfill remediation and closure that may be required by regulatory agencies subsequent to closure certification resulting from failure to meet any requirements in effect at the time of closure certification.

Notwithstanding the above and to the extent feasible without affecting the cost to the COUNTY of effecting a minimum safe closure of the Landfill, the Landfill Closure Work will attempt to complement the future recreational land use envisioned for the Landfill. During implementation of the Landfill Closure Work and in the event that the CITY desires to construct utility corridors, foundations or other similar facilities for the future recreational use of the Landfill, the COUNTY will coordinate with the CITY on this work, provided that the CITY pays the incremental cost for such facilities, including hard and soft costs such as consulting fees.

Again, notwithstanding the above, the soil used as part of the COUNTY's remediation must meet, as a minimum, the COUNTY's Soil Re-Use guidelines and requirements for Residential Soil. All soil must be tested off-site and the appropriate

environmental agencies must provide the City with the necessary clearances prior to the soil being transported to the Landfill.

The CITY shall fully cooperate in the preparation of all plans and reports required by this Agreement and shall provide any and all Owner approvals required by any regulatory agency or contractor working for the County pursuant to this Agreement. The CITY shall fully cooperate in any construction or work required to complete the closure of the Landfill.

The Department's Bond Engineer will provide oversight for the Landfill Closure Work to ensure that the use of USF funds is limited to eligible costs.

III. TERM OF AGREEMENT

This Agreement shall be in full force and effect from the date hereof and shall continue until the final certification of completion of the Landfill closure is obtained from the appropriate regulatory agency and the POST CLOSURE MAINTENANCE AND MONITORING funding terms prescribed in Section V are fulfilled. Notwithstanding the above, the parties desire that the COUNTY's initiation of the Landfill closure and remediation activities begin no later than December 31, 2016, with completion no later than December 31, 2018.

IV. COUNTY ACCESS TO LANDFILL

The COUNTY shall have unrestricted access to the Landfill for the purposes of this Agreement.

V. POST CLOSURE MAINTENANCE AND MONITORING

The CITY shall be responsible to provide, at its sole cost, for any and all post-closure maintenance and monitoring for the Landfill, including operation, maintenance

and monitoring of any groundwater remediation system, until such time as this activity is no longer required by RER, FDEP or EPA. The CITY shall also be obligated to provide post-closure maintenance of the approved Landfill closure cover material.

Notwithstanding the above paragraph, and taking into consideration that the future use of the Landfill is for a public purpose (park and associated facilities), the COUNTY agrees to pay all costs approved by the Bond Engineer up to $100,000 per year for the CITY's post-closure ground water remediation and monitoring costs. The COUNTY agrees to provide these funds on an annual basis beginning on the date that the CITY begins to incur any post-closure expenses for as long a period of time as the CITY maintains an active waste disposal interlocal agreement with the COUNTY. If the CITY does not maintain an active waste disposal interlocal agreement with the COUNTY, this Agreement, along with any costs bore by the County, shall terminate on October 1, 2035, but may be renewed by the parties hereto.

VI. CITY INDEMNIFICATION

Subject to the limitations set forth in Section 768.28, F.S., and all applicable laws, the CITY shall indemnify and hold harmless the COUNTY from and for any losses, claims, causes of action or damages of any nature whatsoever, arising from the act, omission or performance or failure of performance of the CITY or the CITY's agents, contractors, servants and employees hereunder relative to the performance on any work on the Landfill. The CITY shall defend the COUNTY in any action including any action in the name of the COUNTY. In addition, subject to the limitations set forth in Section 768.28, F.S., and all applicable laws, the CITY shall indemnify and hold harmless the COUNTY for any existing or future environmental conditions or violations

at the Landfill except for conditions or violations related to or directly caused by the COUNTY's landfill remediation and closure work or directly caused by the County's prior ownership or operation of the Landfill. The duty to defend set out above shall be equally applicable here.

VII. COUNTY INDEMNIFICATION

Subject to the limitations set forth in Section 768.28, F.S., and all applicable laws, the COUNTY shall indemnify and hold harmless the CITY from and for any losses, claims, causes of action, or damages of any nature whatsoever arising from the act, omission, performance, or failure of performance of the COUNTY or the COUNTY's agents, contractors, servants and employees of any Landfill Closure Work. The COUNTY shall defend the CITY in any action including any action in the name of the CITY. The duty to defend set out above shall be equally applicable here.

VIII. FORCE MAJEURE

Neither party hereto shall be liable for its failure to carry out its obligations under the 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 of said unexpected or uncontrollable event, 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 ten (10) working days after such commencement, unless there

exists good cause for failure to give such notice, in which event, failure to give such notice 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. It is further agreed and stipulated that each party hereto shall make all reasonable efforts 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.

Force Majeure shall be defined as an act of God, epidemic, lightning, earthquake, fire, explosion, storm, hurricane, flood or similar occurrence, strike, and acts 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 be reasonably 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 willful or negligent action or omission of such party.

IX. DEFAULT

A. Without limitation, the failure by the CITY to substantially fulfill any of its material obligations in accordance with this Agreement, unless such failures are justified by Force Majeure, shall constitute a "CITY event of default". If a 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 this Agreement together with all rights granted to the CITY thereunder are terminated, effective upon such date as is designated by the COUNTY. Provided, however, an event of default shall be defined to consist of a default that shall occur by the default in performance of any of the covenants and conditions required herein to be kept and performed by the CITY and provided that such default continues for a period of thirty (30) days after receipt of written notice from the COUNTY of said default. Notwithstanding the above, if the nature of the default is such that it cannot be cured in a period of thirty (30) days from the date of the default, and the CITY commences reasonable efforts to cure such default no later than thirty (30) days after such notice, and such efforts are prosecuted to completion, to the COUNTY's reasonable satisfaction, then it shall be deemed that no event of default shall have occurred under the provisions of this paragraph.

2. Any and all rights provided under the laws of the State of Florida.

B. Without limitation, the failure by the COUNTY to substantially fulfill any of its material obligations in accordance with this Agreement, unless such failures are justified by Force Majeure, shall constitute a "COUNTY event of default." If a COUNTY event of default should occur, the CITY shall have all of the following rights and remedies which it may exercise singly or in combination:

1. The right to declare that this Agreement together with all rights granted to the COUNTY thereunder are terminated, effective upon such date as is

designated by the CITY; provided, however, that an event of default shall be defined to consist of default that shall occur by the default of performance of any of the covenants and conditions required herein to be kept and performed by the COUNTY and provided that such default continues for a period of thirty (30) days after receipt of written notice from the CITY of said default. Notwithstanding the above, if the nature of the default is such that it cannot be cured in a period of thirty (30) days from the date of the default, and the COUNTY shall commence reasonable efforts to cure such default, no later than thirty (30) days after such notice, and such efforts are diligently prosecuted to completion to the CITY's reasonable satisfaction, then it shall be deemed that no event of default shall have occurred under the provisions of this subsection.

2. Any and all rights provided under the laws of the State of Florida.

X. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The COUNTY and the CITY agree to submit to service of process and jurisdiction of the State of Florida for any controversy or claim arising out of or relating to this Agreement or a breach of this Agreement. Venue for any court action between the parties for any such controversy arising from or related to this Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

XI. ENTIRETY OF AGREEMENT

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto and their authorized representatives.

XII. 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.

XIII. RIGHTS OF OTHERS

Nothing in this Agreement expressed 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.

XIV. REPRESENTATION OF CITY

The CITY represents that (I) this Agreement has been duty authorized, executed and delivered by the CITY, and (II) it has the required power and authority to perform this Agreement.

XV. REPRESENTATION OF COUNTY

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

XVI. WAIVER

There shall be no waiver of any right related to this Agreement unless 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 right so waived and shall not be deemed a waiver of the same right at a later time, or of any other right under this Agreement.

XVII. INVALIDITY OF PROVISIONS, SEVERABILITY

Wherever possible, each provision of the Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, provided that the material purposes of this Agreement can be determined and effectuated.

XVIII. INTERGOVERNMENTAL COOPERATION

The CITY agrees that the CITY shall not pursue a landfill remediation cost recovery action pursuant to CERCLA or RCRA or other Federal or State law against the COUNTY.

XIX. NOTICE

Notices to CITY provided for herein shall be sufficient if sent by Federal Express or certified mail, return receipt requested, postage prepaid, addressed to:

City Manager
City of North Miami Beach
City Manager's Office
17011 NE 19th Avenue
North Miami Beach, Florida 33162

with copy to:

City Attorney
City of North Miami Beach
City Attorney's Office
17011 NE 19th Avenue
North Miami Beach, Florida 33162

and notices to COUNTY, if sent by Federal Express or certified mail, return receipt requested, postage prepaid addressed to:

County Mayor
Miami-Dade County
Stephen P. Clark Center
111 N.W. 1st Street, 29th Floor
Miami, FL 33128

with copy to:

County Attorney

Miami-Dade County
Stephen P. Clark Center
111 N.W. 1st Street, 28th Floor
Miami, FL 33128

Or such other respective address as the parties may designate to each other in writing from time to time.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

ATTEST:

HARVEY RUVIN, CLERK

By:_____
DEPUTY CLERK

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

By:_____
Carlos A. Gimenez
County Mayor

Approved as to form and legal sufficiency:

_____
David Sherman
Assistant County Attorney

ATTEST:

CITY OF NORTH MIAMI BEACH, a Florida Municipal Corporation

By:_____
Pamela Latimore
City Clerk

By:_____
Ana M. Garcia
City Manager

Approved as to form and legal sufficiency:

_____
Jose Smith
City Attorney