

RESOLUTION NO. 2013 - 063

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHWEST RANCHES, FLORIDA, JOINING THE CONTRACT COMMUNITIES LITIGATION AGAINST BROWARD COUNTY RELATING TO THE DISTRIBUTION OF ASSETS OF THE BROWARD SOLID WASTE DISPOSAL DISTRICT; AND WAIVING THE CONFLICT RESOLUTION PROCEDURES SET FORTH IN CHAPTER 164, FLORIDA STATUTES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Contract Communities (26 municipalities) and Broward County ("County") are parties to an Interlocal Agreement for Solid Waste Disposal Services, as amended, ("Interlocal Agreement"); and

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

WHEREAS, Section 15.2 of the Interlocal Agreement provides for the equitable distribution of the assets and liabilities of the Broward Solid Waste Disposal District ("District") to the Contract Communities, unincorporated County and County at expiration of the Interlocal Agreement, and further provides that any perpetual maintenance responsibilities of the County should be considered; and

WHEREAS, the Contract Communities and County disagree as to the identification and distribution of the assets; and

WHEREAS, the County has asserted that the District's real property assets are owned by the County; and

WHEREAS, a legal analysis of the District's assets performed by Special Counsel to the Resource Recovery Board ("RRB") concluded that the revenue generating capabilities of the District made the County's acquisition, improvement and maintenance of the real property possible; that the District and its Contract Communities paid for the real property; and that the real property should be subject to equitable distribution; and

WHEREAS, the Interim Report on the Resource Recovery System Audit dated April 11, 2013, based on documentation provided by the County, identified the following among other issues:

- 1) The County's understatement of the unrestricted net assets in the amount of \$23,345,000 (since corrected);
- 2) The County's set aside of \$22,059,072 of the assets for future landfill costs which have not yet been incurred;

3) The County's failure to include over \$26 million of assets from the South Plant/Ash Monofill site;

4) The County's diversion of the \$1,000,000 annual lease payment from Wheelabrator from the RRB to the County; and

5) The County's failure to record the revenue and receivable due from Wheelabrator under the lease terms for the eventual closure of the Ash Monofill site; and

WHEREAS, on June 4, 2013, the County took action to direct that a restrictive covenant be placed on the District's real property that could impair the ability to sell real property at its maximum price before distribution to the Contract Communities; and

WHEREAS, the Town believes that the District's assets to be distributed are substantially in excess of the \$15.4 million in cash that the County has approved to distribute and also includes the value of the real property that the County has not included; and

WHEREAS, based on the County's actions and the RRB audit, most of the Contract Communities joined to file an action against the County to prevent the County from taking other action to dissipate the District's assets; and

WHEREAS, the Town believes that it is in the best interest of the health, safety, and welfare of its residents to join the instant litigation and to pay its pro-rata share to protect its legal rights; and

WHEREAS, Chapter 164, Florida Statutes, requires a local government entity to follow a dispute resolution process unless the governmental entity by three-fourths vote of its governing body waives the provisions of Chapter 164 after determining that significant legal rights will be compromised if a court proceeding does not take place before the provisions of Chapter 164 are complied; and

WHEREAS, since the County has announced that the Board of County Commission will serve as the governing board of the District and since the District may take other action which affects the distribution of assets, the Town Council finds that significant legal rights of the Town, and all of the Contract Communities, will be immediately compromised; and

WHEREAS, because of this danger, the Town determines that no notice or public meeting or other proceeding as provided by Chapter 164 shall be required before it joins the instant court proceeding.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Southwest Ranches, Florida:

Section 1: Recitals. The foregoing recitals contained in the preamble to this Resolution are incorporated by reference herein.

Section 2: Authorization. The Town Council hereby authorizes and directs the Town Attorney to join the Contract Communities' lawsuit against Broward County with regards to identification, valuation and distribution of the District's assets, and authorizes the Town Finance Director and Town Administrator to pay the Town's pro-rata share of such litigation.

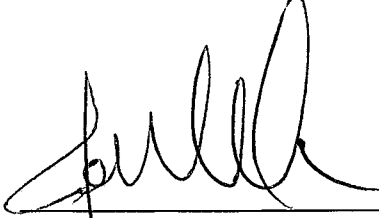
Section 3: The Town Council finds, by no less than a three-fourths vote, that significant legal rights will be compromised if a court proceeding does not take place before the provisions of the Florida Government Conflict Resolution Act are complied with. The Town determines that no notice or public meeting or other proceeding as provided by Chapter 164 shall be required before joining the instant action against the County.

Section 4: The appropriate Town officials are authorized to execute all necessary documents and to take any necessary action to effectuate the intent of this Resolution.

Section 5: Effective Date. This Resolution shall take effect upon its adoption.

PASSED AND ADOPTED by the Town Council of the Town of Southwest Ranches, Florida, this 22nd day of August, on a motion by Council Member McKay and seconded by Vice Mayor Breitzkreuz.

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|-------------|------------|--------|----------|
| Nelson | <u>YES</u> | Ayes | <u>5</u> |
| Breitzkreuz | <u>YES</u> | Nays | <u>0</u> |
| Fisikelli | <u>YES</u> | Absent | <u>0</u> |
| Jablonski | <u>YES</u> | | |
| McKay | <u>YES</u> | | |



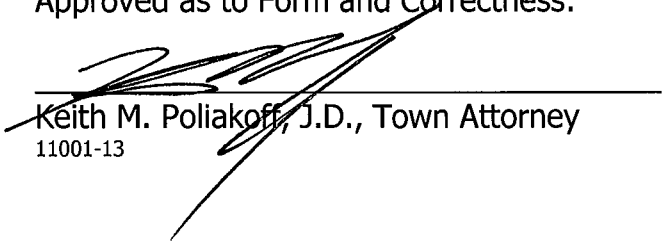
Jeff Nelson, Mayor

ATTEST:



Erika Gonzalez-Santamaria, CMC, Town Clerk

Approved as to Form and Correctness:



Keith M. Poliakoff, J.D., Town Attorney
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