

**PROPOSED**

Exhibit 1

RESOLUTION NO. 2014-

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF BROWARD COUNTY, FLORIDA, PERTAINING TO THE DISTRIBUTION OF ASSETS AND LIABILITIES RESULTING FROM SOLID WASTE DISPOSAL SYSTEM OPERATIONS DURING THE TERM OF THE 1987 INTERLOCAL AGREEMENT ADDRESSING SOLID WASTE DISPOSAL; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, beginning in 1987, Broward County (the "County") and twenty-six (26) municipalities within the County entered into an Interlocal Agreement (the "ILA") for the creation, development, and operation of a regional solid waste disposal and resource recovery system (the "System") designed to offer a long-term solution to the community's increasing need for safe and efficient solid waste disposal facilities; and

WHEREAS, consistent with the ILA's provisions, the County established, by County Ordinance, the Broward Solid Waste Disposal District (the "District"), a dependent district of the County, to manage and operate the System; and

WHEREAS, during the term of the ILA, the District was governed by the nine-member Resource Recovery Board (the "RRB"),<sup>1</sup> an entity created by County Ordinance. RRB membership was initially equally divided between municipal ILA participants and the County.<sup>2</sup> A 2006 ILA amendment modified the composition of the RRB such that the RRB was thereafter comprised of eight (8) municipal representatives and one (1) County representative. Upon expiration of the ILA in 2013, the Board of

<sup>1</sup> The limited powers of the RRB were specified in the ILA and applicable ordinances. These powers did not include the power to appropriate. Appropriation power has at all times remained with the Board of County Commissioners.

<sup>2</sup> The ILA municipalities and County each had four (4) members, with the ninth (9<sup>th</sup>) member alternating annually between a County official and a municipal official.

1 County Commissioners (the "Board"), by Ordinance, became the governing body of the  
2 District; and

3 WHEREAS, prior to its expiration, the ILA required that solid waste generated by  
4 residents and businesses within the participating municipalities and within  
5 unincorporated Broward County be disposed of through the System, with tipping fees  
6 for such disposal set in an amount sufficient to fund the operations of the District.  
7 These tipping fees were paid by the residents and businesses that utilized the System;  
8 and

9 WHEREAS, prior to entry into the ILA, the County had acquired certain real  
10 property intended to subsequently be used for solid waste disposal and resource  
11 recovery purposes. This real property, which has at all material times been owned by  
12 the County, is comprised of:

13 a. The Broward Interim Contingency Landfill, also known as the Southwest  
14 Regional Landfill (the "Contingency Landfill");

15 b. The Ash Monofill Landfill and site of the South Resource Recovery Plant  
16 (collectively, the "Ash Monofill"), which is operated by Wheelabrator Environmental  
17 Systems, Inc. ("Wheelabrator") under a lease with the County created during the term of  
18 the ILA, with current annual rent of approximately \$1.16 million payable to the County;  
19 and

20 c. Alpha 250, comprised of approximately twenty-five (25) acres of vacant  
21 land originally intended to be used as the site of the County's North Resource Recovery  
22 Plant and held for use as a potential solid waste transfer station; and

23 WHEREAS, in order to develop the above-described landfills, the County was  
24 required to acquire and maintain certain wetland mitigation sites, and the County's

1 financial obligation regarding these sites continues notwithstanding the expiration of the  
2 ILA; and

3 WHEREAS, for years after its commencement, the ILA did not provide for any  
4 interim distribution of any System revenue to the ILA participants. However, the ILA  
5 was amended in 2004 to allow for interim distributions of certain reserves and, as a  
6 result, more than \$129 million in what was then believed to be excess funds was  
7 distributed during the term of the ILA to the ILA participants, with more than \$125 million  
8 going to the municipal participants and the balance to the County in its capacity as the  
9 solid waste disposal service provider to residents of unincorporated Broward County;  
10 and

11 WHEREAS, no interim distribution was given to the County as the regional  
12 governmental entity empowered by Section 403.706, Florida Statutes, to create and  
13 maintain a system to meet countywide needs for solid waste disposal and recycling; and

14 WHEREAS, upon expiration of the ILA,<sup>3</sup> the County held approximately \$68.7  
15 million, which the County finds, as detailed below, is substantially less than the amount  
16 required to satisfy the liabilities resulting from operations under the ILA; and

17 WHEREAS, Section 15.2 of the ILA states that the "[RRB] shall provide for the  
18 equitable distribution of the Broward Solid Waste Disposal District's assets and liabilities  
19 to the Contract Communities, unincorporated County and County at the end of the term  
20 of [the ILA]. The [RRB] shall consider any perpetual maintenance responsibilities of the  
21 County in making such distributions"; and

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24 <sup>3</sup> While the ILA expired in July 2013, the parties agreed to continue the  
performance of certain elements thereof through September 30, 2013, the end of the  
County fiscal year.

1 WHEREAS, on June 3, 2013, the RRB directed that:

2 a. All funds held by the County, except for funds reserved for already-  
3 accrued landfill closure and thirty-year post-closure costs, should be distributed to the  
4 ILA participants in the same percentages as the most recent interim distribution; and

5 b. The landfills and Alpha 250 should be appraised, and the value thereof  
6 paid to the ILA participants in the same percentages as the most recent interim  
7 distribution; and

8 WHEREAS, notwithstanding the express terms of the ILA, the RRB (i) did not  
9 distribute any liabilities resulting from operations under the ILA (whether known or  
10 contingent, including, without limitation, reserves necessary for potential environmental  
11 contamination); (ii) did not consider the County's perpetual maintenance obligations in  
12 determining its distribution; (iii) did not distribute any assets to the County as the  
13 regional governing body; and (iv) otherwise acted contrary to the express terms of the  
14 ILA; and

15 WHEREAS, in directing its distribution, the RRB also failed to conduct an  
16 independent analysis of the value of distributable assets and liabilities, and failed to  
17 analyze how the assets and liabilities should be distributed to best serve the District and  
18 the residents and businesses that funded the District's operation. The Board further  
19 finds that the RRB was improperly influenced to focus on maximizing the distribution of  
20 assets exclusively to the municipal ILA participants (and to the small unincorporated  
21 area of the County) rather than on meeting its fiduciary obligations to the District and to  
22 the residents and businesses that paid substantial tipping fees for solid waste disposal  
23 during the term of the ILA; and  
24

1 WHEREAS, for all of the aforementioned reasons, the Board finds that the RRB's  
2 putative distribution was improper, was contrary to the terms and spirit of the ILA, and  
3 would harm the residents and businesses of Broward County; and

4 WHEREAS, in July 2013, eighteen (18) of the twenty-six (26) municipal ILA  
5 participants filed a lawsuit against the County in circuit court (*City of Sunrise, et al. v.*  
6 *Broward County*, Case No. 13-015660(19)), seeking to compel the County to distribute  
7 assets (and, implicitly, to retain responsibility for all liabilities), consistent with the RRB's  
8 directive; and

9 WHEREAS, the Plaintiff municipalities sought injunctive relief, claiming that an  
10 emergency existed that also excused their failure to exhaust the intergovernmental  
11 dispute resolution process required by Chapter 164, Florida Statutes; and

12 WHEREAS, the circuit court did not find that any emergency existed in that the  
13 County had already acted to protect and preserve the assets<sup>4</sup> and, accordingly, on  
14 September 10, 2013, the circuit court abated the lawsuit and ordered the parties to  
15 complete the Chapter 164 process; and

16 WHEREAS, since that time, the parties have been engaged in the Chapter 164  
17 process, including extended mediation, seeking to achieve a mutually-acceptable  
18 resolution of this dispute; and

19 WHEREAS, on June 20, 2014, the Plaintiff municipalities declared an impasse in  
20 the mediation; and

21 \_\_\_\_\_  
22 <sup>4</sup> The Board acted on June 4, 2013, and again on August 13, 2013, including  
23 through the imposition of restrictive covenants and the requirement of a public hearing  
24 to modify those covenants, to restrict all property and funds in dispute to use for solid  
waste disposal purposes, the use for which all of such property and funds were  
acquired and maintained during the pendency of the ILA. The action taken pursuant to  
this Resolution reiterates and otherwise consistently builds upon those prior actions.

1 WHEREAS, the County strongly desires to achieve a collaborative resolution of  
2 this dispute that would leave intact these essential assets. To the extent a collaborative  
3 resolution would require terms other than as stated in this Resolution, the Board will  
4 consider any such terms provided the Board determines that the proposed terms would  
5 not prejudice the interests of affected residents and businesses; and

6 WHEREAS, because the Board is on recess from June 25, 2014, through  
7 August 11, 2014, and active litigation could resume during this recess, the Board must  
8 act now to protect the interests and expectations of the residents and businesses that  
9 contributed so substantially to the System, and must also act to protect all County  
10 residents and businesses from any ruling or other action that could dissipate these vital  
11 community assets and funds reserved to satisfy liabilities resulting from operations  
12 under the ILA, NOW, THEREFORE,

13 BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF  
14 BROWARD COUNTY, FLORIDA, acting independently as the governing body of its  
15 dependent District, and also acting independently as the governing body of the County,  
16 and in furtherance of the health, safety, and welfare of the residents and businesses of  
17 Broward County:

18 Section 1. The above-stated recitals and findings are true and correct and are  
19 incorporated herein by reference.

20 Section 2. The Board finds, acknowledges, and resolves that:

21 a. For the reasons stated above, the RRB's June 3, 2013, distribution  
22 violated the terms of the ILA and, if effectuated, would substantially harm the health,  
23 safety, and welfare of the residents and businesses of Broward County by leaving  
24 insufficient resources to meet their solid waste disposal needs and to satisfy the

1 liabilities (including perpetual maintenance obligations) resulting from operations under  
2 the ILA. Accordingly, the Board hereby finds that such action was *void ab initio* and, to  
3 the extent it might at any time have been effective, the Board hereby rescinds and voids  
4 the RRB's purported distribution. The System's assets<sup>5</sup> and liabilities are hereby  
5 allocated as stated below.

6       b. Based on advice received from internal and external experts, the Board  
7 finds that retaining public ownership and control over the Contingency Landfill is  
8 necessary to protect the health, safety, and welfare of the County's residents and  
9 businesses, and that if the Contingency Landfill were sold, the benefits and value  
10 thereof could not be replicated. The Board further finds that the Contingency Landfill,  
11 by its very existence, exerts downward pressure on solid waste disposal fees paid by  
12 County residents and businesses, ensures County residents and businesses that safe  
13 and efficient solid waste disposal capacity will be available to them at a reasonable cost  
14 for decades, and provides necessary space and resources for the management and  
15 potential disposal of storm debris. Additionally, the Board finds that the residents and  
16 businesses that paid tipping fees to enable development and public ownership of this  
17 essential asset are entitled to continued public ownership and the protections afforded  
18 thereby. Accordingly, the County will continue to own the Contingency Landfill in trust  
19 for the benefit of the County's residents and businesses, and will not voluntarily sell the  
20 Contingency Landfill to any private entity. The County remains willing to discuss with  
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23 <sup>5</sup> The municipal Plaintiffs have taken the position that the landfills and Alpha 250  
24 property are distributable assets under the terms of the ILA. While the County  
disagrees with that position, those properties are addressed in this Resolution.

1 the municipal ILA participants a collaborative, common public ownership structure,  
2 including a sharing of expenses and revenues.

3 c. The Ash Monofill will also continue to be owned by the County, together  
4 with the income resulting from the Wheelabrator lease. The Board finds that the income  
5 generated by the Wheelabrator lease is necessary to pay operating costs, to fund  
6 legally-mandated costs related to landfill closure, and to provide reserves against known  
7 and contingent liabilities resulting from operations under the ILA. The Board resolves  
8 that this income will be dedicated exclusively to these purposes, with reserves  
9 maintained for liabilities resulting from operations under the ILA as more fully described  
10 below. The County also remains willing to discuss with the municipal ILA participants a  
11 collaborative, common public ownership structure for the Ash Monofill, including a  
12 sharing of expenses and revenues.

13 d. The Alpha 250 property will be retained by the County either for use as a  
14 future solid waste transfer station or, if deemed necessary by the County, to be sold  
15 with the sales proceeds being used to help satisfy liabilities resulting from operations  
16 under the ILA.

17 e. As stated above, the County has reserved approximately \$68.7 million  
18 from System revenues. More than \$21 million of this amount is funding for already  
19 accrued landfill closure and thirty-year post-closure costs.<sup>6</sup> Because, based on expert  
20 advice, total liabilities resulting from operations under the ILA exceed the value of all

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22 <sup>6</sup> Pursuant to Rule 62-701.630, Florida Administrative Code, governments are  
23 required to either escrow funds or provide other financial assurances to ensure the  
24 availability of financial resources for the proper closing and thirty-year post-closure care  
of landfills. Broward County has chosen to escrow the appropriate amount to cover  
these costs.



1 distributable assets, the balance of the reserved funds will be held to help satisfy those  
2 liabilities including:

3 i. The remaining, ongoing, accruing closure and thirty-year post-  
4 closure costs of the existing cell at the Ash Monofill (currently estimated at \$9.7  
5 million);<sup>7</sup>

6 ii. The remaining, ongoing, accruing closure and thirty-year post-  
7 closure costs of the existing cell at the Contingency Landfill (currently estimated at \$9.8  
8 million);

9 iii. The cost of perpetual maintenance<sup>8</sup> of existing cells at the Ash  
10 Monofill, currently estimated at \$25,176,900 - \$49,821,600;<sup>9</sup>

11  
12  
13 <sup>7</sup> Part of this amount had previously been reserved by the County because of  
14 uncertainty regarding closure of the existing cell. The current remaining term on the  
15 Wheelabrator lease is approximately two (2) years. Wheelabrator also has five (5) five-  
16 year renewal options. Thus, the Wheelabrator lease may end in as little as two (2)  
17 years or in as many as twenty-seven (27) years. This arrangement creates significant  
18 financial uncertainty. If Wheelabrator does not renew its lease in 2016, it is possible  
19 that the remaining closure and post-closure costs for the cell it is operating will be  
20 required to be paid in full at that time. If, on the other hand, Wheelabrator exercises one  
21 or more renewal options, it is likely that the current landfill cell will reach capacity and  
22 that another cell will be opened, which would substantially increase the County's escrow  
23 obligations. Additionally, whenever Wheelabrator vacates the property, more than  
24 \$13.4 million (in current dollars) will need to be expended to remove the waste-to-  
energy plant.

<sup>8</sup> Landfill perpetual maintenance costs begin upon conclusion of the thirty-year  
post-closure period. Perpetual maintenance costs for the wetland mitigation sites are  
already being incurred.

<sup>9</sup> Based on expert advice, all perpetuity estimates are based on annual cost  
multiplied by 100.

1           iv.     The cost of perpetual maintenance of the existing cell at the  
2 Contingency Landfill, currently estimated at \$16,006,400 - \$32,841,900;

3           v.     The cost of perpetual maintenance of the wetland mitigation sites  
4 required to be acquired and maintained to develop the landfills, currently estimated at  
5 \$5,000,000; and

6           vi.    Prudent reserves for other costs and contingencies, including  
7 reserves for potential environmental contamination events and expected increases in  
8 the cost of landfill closure, in the amount of \$15,000,000.<sup>10</sup>

9           f.     Based on the advice of in-house professionals and independent experts,  
10 the Board projects that currently-reserved funds and future System revenue will be  
11 insufficient to fully satisfy the liabilities resulting from the ILA operations. The Board  
12 directs the County Administrator and the County Attorney to continue to discuss these  
13 excess liabilities with the ILA participants to seek an agreement as to how the excess  
14 liabilities will be satisfied and ultimately allocated among the ILA participants. If the  
15 Board is advised that no such agreement can be reached, the Board may amend this  
16 Resolution to equitably allocate the excess liabilities as provided under the terms of the  
17 ILA.

18           Section 3.   SEVERABILITY.

19           If any portion of this Resolution is determined by any Court to be invalid, the  
20 invalid portion shall be stricken, and such striking shall not affect the validity of any other  
21 portion of this Resolution. If any Court determines that this Resolution, or any portion  
22 hereof, cannot be legally applied to any individual(s), group(s), entity(ies), property(ies),  
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24 <sup>10</sup>     The amount of required reserves may change as the County continues to  
quantify or realize other contingent liabilities resulting from the ILA.

1 or circumstance(s), such determination shall not affect the applicability hereof to any  
2 other individual, group, entity, property, or circumstance.

3 Section 4. EFFECTIVE DATE.

4 This Resolution shall become effective upon adoption.

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6 ADOPTED this 24<sup>th</sup> day of June, 2014.

7  
8 Approved as to form and legal sufficiency:  
9 Joni Armstrong Coffey, County Attorney

10  
11 By /s/ Andrew J. Meyers 06/23/14  
12 Andrew J. Meyers (date)  
13 Chief Appellate Counsel  
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**PROPOSED**

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