

ITEM #44₍₂₎

ADDITIONAL MATERIAL

10:00 A.M.

PUBLIC HEARING

MAY 22, 2018

SUBMITTED AT THE REQUEST OF

ENVIRONMENTAL PROTECTION and

GROWTH MANAGEMENT

DEPARTMENT



Environmental Protection and Growth Management Department
115 S. Andrews Avenue, Room 329 • Fort Lauderdale, Florida 33301 • 954-357-6612 • FAX 954-357-8655

DATE: May 21, 2018

TO: Broward County Board of County Commissioners

THRU: Bertha W. Henry, County Administrator

FROM: Henry Sniezek, Director
Environmental Protection and Growth Management Department

RE: Public Hearing Item 44 - ADDITIONAL AGENDA MATERIAL – ALTERNATE ILA DATED MAY 21, 2018 - Evacuation Shelter Staff - Pompano Beach Land Use Plan Amendment PC 18-5

Please find attached an alternate draft Interlocal Agreement (ILA), dated May 21, 2018, intended to reflect modifications and additions sought by City staff. In summary, the alternate draft ILA includes the following modifications from the draft ILA distributed to the Board on May 18, 2018, and **highlighted** in the attached May 21 Draft:

1. Section 4. Commits shelter staff provided by the City will be deployed only to evacuation shelters in the City.
2. Section 5. Clarifies the terms of the County's offer to compensate the City for 12.5% of total compensation cost to the City for evacuation shelter staff. The Section was also modified by County staff to clarify that proper documentation from the City will be necessary to support compensation.
3. Section 7. Clarifies the circumstances under which the City may terminate the Agreement (i.e. failure to provide training as per Section 3, or failure to provide materials and supplies consistent with other deployed evacuation shelter staff), and other clarifying provisions concerning notice and compensation which may be owed.
4. Section 9. Provision added to indemnify the City for claims caused or alleged to be caused by the subject matter of the Agreement.
5. Section 14. Provisions added regarding payments of interest.
6. Section 19. Clarifies that the Agreement shall not constitute a partnership or joint venture.

Also note that my memorandum of May 18 incorrectly reported a commitment from the City to provide 5 shelter managers and 14 support shelter staff. The correct commitment, accurately reflected in the draft ILA, is 4 shelter managers and 15 shelter support staff.

City staff has indicated approval, via email (also attached), of the alternate ILA.

Please feel free to contact me at your convenience at 954-357-6670, or hsniezek@broward.org, if you or your staff have any questions.

Page 2

Attachment

**cc: Andrew Meyers, Esq., County Attorney
Robert Melton, County Auditor
Monica Cepero, Deputy County Administrator
Alphonso Jefferson, Assistant County Administrator
Barbara Blake Boy, Executive Director, Broward County Planning Council**

Return recorded document to:
Henry Sniezek, Director
Broward County Environmental Protection and
Growth Management Department
Governmental Center, Room 329
115 South Andrews Avenue
Fort Lauderdale, FL 33301

DRAFT 5/21/18

Document prepared by:
Maite Azcoitia, Deputy County Attorney
Broward County Attorney's Office
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, FL 33301

AGREEMENT BETWEEN BROWARD COUNTY AND
CITY OF POMPANO BEACH
FOR EVACUATION SHELTER STAFFING

This is an Agreement, made and entered into by and between: Broward County, a political subdivision of the State of Florida, hereinafter referred to as "County,"

AND

City of Pompano Beach, a municipal corporation existing under the laws of the State of Florida, hereinafter referred to as "City," collectively referred to as the "Parties."

A. Applications have been filed with County for amendments to the Broward County Land Use Plan and Land Use Plan text related to property located in City, said applications being identified as PC 18-5 and PCT 18-3, respectively ("Applications").

B. The property subject of the Applications is approximately 9.6 acres in size and is generally located on the east side of Federal Highway/U.S. 1, between Northeast 14 Street and Northeast 17 Street ("Property").

C. The Applications seek to redesignate the Property from 6.0 acres of Commerce; 3.2 acres of Medium-High (25) Residential; and 0.4 acres of Low-Medium (10) Residential to Activity Center consisting of three hundred forty-three (343) multi-family dwelling units; 510,000 square feet of commercial use, including but not limited to boat sales, offices, showrooms and related uses; and 75,000 square feet of marina use, including boat storage, boat repair and a maximum of fifteen (15) wet slips.

D. Approval and development in accordance with the applications will result in the addition of two hundred fifty-nine (259) dwelling units, as eight-four (84) dwelling units are currently permitted by the Broward County Land Use Plan.

E. The residential units on the Property would be subject to an evacuation order in the event that a Broward County "Zone B" storm evacuation is issued.

F. Policy 2.12.8 of the Broward County Land Use Plan provides that Broward County shall discourage land use plan amendments which negatively impact hurricane evacuation clearance time and/or emergency shelter capacities.

G. In order to address Policy 2.12.8 of the Broward County Land Use Plan, City has agreed to provide City employees as staff to assist with emergency evacuation shelters, subject to County's assignment, deployment, and supervision.

H. County is relying on representations of City contained in this Agreement in consideration the consistency of the Applications with Policy 2.12.8 of the Broward County Land Use Plan.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations herein, the Parties agree as follows:

1. Recitals. The above recitals are true and correct and incorporated herein by reference.

2. Shelter Staffing. In the event a "Zone B" storm evacuation is ordered, City shall provide City employees to provide services at an emergency shelter(s). Said staffing shall consist of four (4) evacuation shelter managers and fifteen (15) evacuation shelter support staff.

3. Training. All City employees providing service under this Agreement shall meet the appropriate eligibility and training requirements. City shall make all reasonable efforts to ensure that City employees providing services under this Agreement receive training provided by County by June 1 or within one (1) month after such training is first made available by County, whichever is later.

4. Staff Assignment. Evacuation shelter staff provided by City shall be assigned by County and deployed to evacuation shelters in City. City employees providing services at an evacuation shelter pursuant to this Agreement shall be utilized and have access to materials and supplies consistent with all deployed non-City employee evacuation shelter staff.

5. Compensation. City staff compensation for time upon and to the conclusion of deployment and service as evacuation shelter staff shall be reimbursable by County at twelve and one half percent (12.5%) of the total compensation cost to City. All documentation submitted is subject to County's review and approval prior to payment. The documentation shall be submitted in electronic format acceptable to County. County may require that City furnish such additional materials and information as the County believes relevant to support the request for payment. Funds shall be processed for disbursement

within thirty (30) days after completion of County's review and approval of the complete documentation.

6. Term. This Agreement shall become effective upon recordation in the public records of Broward County, Florida, and shall remain in full force and effect until terminated as provided in Section 7.

7. Termination.

7.1 This Agreement may be terminated for cause by either party if the party in breach has not corrected the breach within ten (10) calendar days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board of County Commissioners. Termination for convenience by the Board of County Commissioners shall be effective on the termination date stated in written notice provided by County, which termination date shall be not less than thirty (30) calendar days after the date of such written notice. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health, safety, or welfare. If County erroneously, improperly, or unjustifiably terminates for cause, such termination shall, at County's sole election, be deemed a termination for convenience, which shall be effective thirty (30) calendar days after such notice of termination for cause is provided.

7.2 City's ability to terminate this Agreement shall be limited to County's default of a specific obligation(s) under this Agreement; i.e., failure of County to provide the training to qualified City employees as set forth in Section 3 or to provide City employees with access to materials and supplies consistent with all deployed non-City employee evacuation shelter staff.

7.3 Notice of termination shall be provided in accordance with the "Notices" section of this Agreement, except that notice of termination by the Broward County Administrator, which the County Administrator deems necessary to protect the public health, safety, or welfare, may be verbal notice that shall be promptly confirmed in writing in accordance with the "Notices" section of this Agreement.

7.4 In the event this Agreement is terminated for convenience by Broward County, City shall be paid pursuant to Section 5 herein for any services properly performed under this Agreement through the termination date specified in the written notice of termination.

8. Modification; Amendment. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

9. Governmental Immunity. To the extent permitted by law, County shall indemnify, hold harmless, and defend City, its officials and employees from and against any and all causes of action, demands, and claims of any kind ("Claim"), raised or asserted by any person or entity not a party to this Agreement, which Claim is caused or alleged to be caused by the subject matter of this Agreement. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this Agreement or any other contract.

10. Insurance. County and City are self-insured in accordance with provisions set forth within Section 768.28, Florida Statutes.

11. Notices. Any and all notices given or required under this Agreement shall be in writing and may be delivered in person or by United States mail, postage prepaid, first class and certified, return receipt requested, addressed as follows:

To County:
Director, Environmental Protection and Growth Management Department
Governmental Center, Room 329
115 South Andrews Avenue
Fort Lauderdale, Florida 33301

With copy to:
County Administrator
115 South Andrews Avenue, Suite 409
Fort Lauderdale, Florida 33301

To City:

With copy to:

12. Assignment. Neither party shall have the right to assign this Agreement.

13. Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. Either party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

14. Payable Interest.

14.1 Payment of Interest. County shall not be liable to pay any interest to City for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof County waives, rejects, disclaims, and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This paragraph shall not apply to any claim for interest, including post-judgment interest, if such application would be contrary to applicable law.

14.2 Rate of Interest. If, for whatever reason, the preceding subsection is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, 0.25% (one quarter of one percent) simple interest (uncompounded).

15. Severability. In the event any part of this Agreement is found to be unenforceable in any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

16. Entire Agreement. It is understood and agreed that this Agreement incorporates and includes all prior negotiations, agreements or understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms

hereof shall be predicated upon any prior representations or agreements, whether oral or written.

17. Joint Preparation. This Agreement has been jointly prepared by the Parties and shall not be construed more strictly against either party.

18. No Third Party Beneficiaries. This Agreement is not intended to create, nor shall it any way be interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless expressly provided for herein.

19. No Joint Venture; Partnership. This Agreement shall not constitute or make the parties a partnership or joint venture. In providing Services under this Agreement, neither City nor its employees shall act as officers, employees, or agents of County. City shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

20. Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, CITY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

21. Compliance with Laws. City shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

22. Drafting. This Agreement has been negotiated and drafted by all parties hereto and shall not be more strictly construed against any party because of such party's preparation of this Agreement.

23. Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There

is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

24. Recording. This Agreement shall not become effective and shall not be recorded in the public records of Broward County, Florida, until after approval of the Applications by County and the expiration of all appeals periods or, if an appeal is filed, the conclusion of such appeal in a manner that does not affect County's approval of the Applications.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement Between County and City for Evacuation Shelter Staffing: Broward County, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, _____, and the City, signing by and through its _____, duly authorized to execute same by Commission action on the ____ day of _____, 20____.

County

ATTEST:

Broward County, by and through
its Board of County Commissioners

Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor
____ day of _____, 20____

Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By _____
Maite Azcoitia (Date)
Deputy County Attorney

AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF POMPANO BEACH FOR EVACUATION SHELTER STAFFING

City

Witnesses:

City of Pompano Beach

By _____
LAMAR FISHER, MAYOR

By _____
GREGORY P. HARRISON, CITY MANAGER

Attest:

(SEAL)

ASCELETA HAMMOND
CITY CLERK

Approved As To Form:

MARK E. BERMAN
CITY ATTORNEY

STATE OF FLORIDA)
COUNTY OF BROWARD)

The foregoing instruments were acknowledged before me this _____ day of _____, 2018, by **LAMAR FISHER** as Mayor, **GREGORY P. HARRISON** as City Manager and **ASCELETA HAMMOND** as City Clerk of the City of Pompano Beach, Florida, a municipal corporation, on behalf of the municipal corporation, who are personally known to me.

NOTARY'S SEAL:

NOTARY PUBLIC, STATE OF FLORIDA

(Name of Acknowledger Typed, Printed or Stamped)

Commission Number

Snizek, Henry

Subject: FW: STATUS: Draft ILA - Pompano Beach PC 18-5 ILA Emergency Evacuation Staff

From: Azcoitia, Maite

Sent: Monday, May 21, 2018 4:39 PM

To: Jefferson, Alphonso <AJEFFERSON@broward.org>; Snizek, Henry <HSNIEZEK@broward.org>

Subject: FW: STATUS: Draft ILA - Pompano Beach PC 18-5 ILA Emergency Evacuation Staff

From: Mark Berman [<mailto:Mark.Berman@copbfl.com>]

Sent: Monday, May 21, 2018 4:38 PM

To: Azcoitia, Maite <MAZCOITIA@broward.org>

Subject: RE: STATUS: Draft ILA - Pompano Beach PC 18-5 ILA Emergency Evacuation Staff

I had already just received approval from all departments and sent down the Agreement with a resolution for the June 12th City Commission Meeting to keep it moving.

I have no issue with the payment provision and will sub out that version.

Mark E. Berman

City Attorney

City of Pompano Beach, Florida

Board Certified- City, County & Local Government Law

(954) 786-4614