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RESOLUTION 2018-28

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A RESOLUTION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AUTHORIZING AND DIRECTING THE APPROPRIATE TOWN OFFICIALS TO EXECUTE AN INTERLOCAL AGREEMENT WITH BROWARD COUNTY FOR REPRESENTATION AT HEARINGS BY THE BROWARD COUNTY MINIMUM HOUSING/UNSAFE STRUCTURES BOARD; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Broward County maintains a Minimum Housing/Unsafe Structures Board (“Board”) that hears and disposes of cases brought by building officials in accordance with the Florida Building Code; and

WHEREAS, the Town entered into a five year agreement with Broward County on April 9, 2013 to authorize the Minimum Housing/Unsafe Structures Board to hear and dispose of cases brought by the Town Building Official; and

WHEREAS, the Town would like to continue this arrangement by entering into a new Interlocal Agreement with Broward County for an additional five years.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA:

Section 1. Recitals. Each “**WHEREAS**” clause set forth is true and correct and incorporated herein by this reference.

Section 2. Authorization of Agreement. The Mayor and Town Manager are hereby authorized to execute the Interlocal Agreement between Broward County and the Town in substantially the form attached hereto as Exhibit “A”, with such non-material changes as may be approved by the Town Manager and Town Attorney, and such other documents necessary to implement the terms of the Agreement and to take any actions necessary to implement the terms of this Agreement.

Section 3. Conflict. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. Severability. If any clause, section or other part of this resolution shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such

37 unconstitutional or invalid part shall be considered as eliminated and in no way affecting the
38 validity of the other provisions of this resolution.

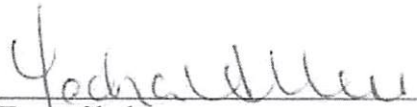
39 **Section 5. Effective Date.** This resolution shall become effective immediately upon
40 its passage.

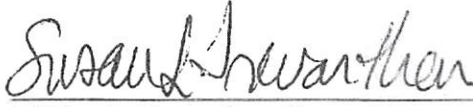
41 **PASSED AND ADOPTED** this 9th day of October, 2018.

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43 
44 _____
45 Mayor Chris Vincent

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47
48 Attest:

APPROVED AS TO FORM:

49
50 
51 _____
52 Town Clerk


53 _____
54 Susan L. Trevarthen, Town Attorney

55 (CORPORATE SEAL)

CERTIFICATION

I certify this to be a true and correct copy of the record in my office.

WITNESSED by my hand and official seal of the Town of Lauderdale-By-The-Sea, Florida

9th day of November, 20 18
Yochana Miller Town clerk

Exhibit "A"

Return recorded document to:
Hipolito Cruz, Jr., Director
Broward County Building Code Services Division
1 North University Drive, Bldg B, #302
Plantation, FL 33324

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

**INTERLOCAL AGREEMENT FOR
BROWARD COUNTY STAFF SERVICES
IN CONNECTION WITH HEARINGS BEFORE THE
UNSAFE STRUCTURES BOARD**

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

and

Town of Lauderdale-by-the-Sea, a municipal corporation existing under the laws of the state of Florida, hereinafter referred to as "Town," collectively referred to as the "Parties."

A. This Agreement is entered into pursuant to Section 163.01, Florida Statutes, also known as the "Florida Interlocal Cooperation Act of 1969."

B. County maintains an Unsafe Structures Board ("Board") that hears and disposes of cases brought by Building Officials to enforce minimum standards of maintenance in accordance with the Florida Building Code.

C. Pursuant to Chapter 5 of the Broward County Code of Ordinances, the Board is authorized to hear and dispose of cases brought by Building Officials.

D. Town is desirous of utilizing the Board to hear and dispose of cases brought by the Town Building Official.

E. Pursuant to Chapter 5 of the Broward County Code of Ordinances and Section 116 of the Florida Building Code, the Board has the authority to hear and dispose of cases brought by the Town Building Official.

F. County is willing to prepare and present cases brought by the Town Building Official ("Services") on the terms and conditions hereinafter set forth.

Exhibit "A"

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

ARTICLE 1 - SCOPE OF SERVICES

1.1. County agrees to make the Board available to hear and dispose of cases brought by the Town Building Official for violations of the Florida Building Code.

1.2. Once Town Building Official determines that a violation exists, County shall be responsible for:

- (a) filing a case with the Board on behalf of Town; and
- (b) noticing and conducting the hearings in accordance with laws, rules, and regulations governing hearings before the Board.

1.3. County shall perform the above-described functions through the Building Code Services Division, or any successor entity.

1.4. Town shall be responsible for ensuring that the appropriate witnesses attend the hearing(s) to provide the relevant testimony and evidence and for implementing the orders and directives of the Board to cause the violation(s) to be corrected. The Parties acknowledge that County is merely performing processing functions and providing access to the Board as a vehicle for Town to enforce the provisions of the Florida Building Code. Accordingly, consistent with Article 5, Town retains the responsibility for filing or defending any appeal(s) of Board orders or defending legal actions arising from enforcement actions taken by Town pursuant to a Board order.

ARTICLE 2 - FUNCTIONS AND DUTIES NOT TRANSFERRED TO COUNTY

It is specifically understood and agreed that all rights and powers as may be vested in Town pursuant to Chapter 166, Florida Statutes, or any other law, ordinance, or Charter provision of Town not specifically addressed by this Agreement shall be retained by Town.

ARTICLE 3 - COMPENSATION

3.1. County shall provide Services at the rate of Eighty-three and 17/100 Dollars (\$83.17) per hour for the Code Enforcement Officer and Thirty-seven and 70/100 Dollars (\$37.70) per hour for clerical support. Included in said costs are charges for mailings, publication, photos, posting of property, and other ancillary costs. Overtime, when approved by the Town prior to the overtime Services being provided, shall be at one and one half the normal hourly rate. All hourly charges shall be billed in increments of thirty (30) minutes. The County shall not exceed a total cost, per case, of Five Hundred and 00/100 (\$500.00) without written authorization from the Town. All costs shall be properly documented and such documentation provided to the Town with the monthly invoices.

Exhibit "A"

3.2. County shall invoice Town on a monthly basis for actual services provided during the preceding month. Town shall reimburse County within thirty (30) days after the date of the invoice.

3.3. Fines and liens recorded against property shall run in favor of the Town.

3.4. The amounts set forth in Section 3.1 shall be adjusted annually by the County by an amount not to exceed five percent (5%) to address increases in operating and labor costs. Notwithstanding the foregoing, County may also adjust the amounts set forth above by amounts exceeding five percent (5%) in order to address natural disasters and other unforeseen events and circumstances. No later than May 1st of each year, County shall provide Town with notice of anticipated increases, if any. Any increases shall take effect on October 1st, following the May 1st notification.

3.5. Town shall be responsible for the actual costs of the services delineated necessary to implement orders and directives of the Board to cause the violation(s) to be corrected. Such costs shall include, but are not be limited to, boarding up property and demolition necessary to remove the violation(s).

ARTICLE 4 - TERM OF AGREEMENT

4.1. This Agreement shall commence on October 10, 2018, and shall continue in full force and effect until midnight October 9, 2023.

4.2. This Agreement shall continue in full force and effect unless written notice of termination by County or Town is provided pursuant to Article 8, Notices. Unless terminated as provided in Article 7, Termination, this Agreement may be renewed for successive five (5) year periods upon request of Town and upon acceptance by the County Administrator.

ARTICLE 5 – GOVERNMENTAL IMMUNITY; INDEMNIFICATION

Nothing herein is intended to serve as a waiver of sovereign immunity by any party nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. Town and County are state agencies or political subdivisions as defined in Chapter 768.28, Florida Statutes, and agree to be fully responsible for the acts and omissions of their agents or employees to the extent permitted by law.

ARTICLE 6 - INSURANCE

County is self-insured in accordance with provisions set forth within Section 768.28, Florida Statutes.

Exhibit "A"

ARTICLE 7 - TERMINATION

This Agreement may be terminated by either party upon thirty (30) days notice to the other party of such termination pursuant to Article 8, Notices. Within sixty (60) days of termination of this Agreement, County shall forward to Town all documentation related to cases previously heard or being prepared to be heard by the Board.

ARTICLE 8 – NOTICES

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

To County:

Director, Broward County Building Code Services Division
1 North University Drive
Building B, Box 302
Plantation, Florida 33324

With copy to:

County Administrator
115 South Andrews Avenue, Suite 409
Fort Lauderdale, FL 33301

To Town:

Town Manager
4501 N. Ocean Drive
Lauderdale-By-The-Sea, FL 33308

ARTICLE 9 - MISCELLANEOUS PROVISIONS

- 9.1 Public Records. The Parties shall comply with all public records requirements of Chapter 119, Florida Statutes, as may be required by law.

IF EITHER PARTY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO A PARTY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE BROWARD COUNTY CUSTODIAN OF PUBLIC RECORDS AT (954) 765-4400, ext. 9670, EPGMDCitizenInquires@broward.org, ONE NORTH UNIVERSITY DRIVE, PLANTATION, FLORIDA 33324, OR THE TOWN'S CLERK.

Exhibit "A"

9.2 ASSIGNMENT: County shall perform the selected Services provided for in this Agreement exclusively and solely for the Town which is a party to this Agreement. Neither party shall have the right to assign this Agreement.

9.3 WAIVER: The waiver by either party of any failure on the part of the other party to perform in accordance with any of the terms or conditions of this Agreement shall not be construed as a waiver of any future or continuing similar or dissimilar failure.

9.4 SEVERABILITY: In the event any part of this Agreement is found to be unenforceable by 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.

9.5 ENTIRE AGREEMENT: This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and 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.

9.6 INDEPENDENT CONTRACTOR: County is an independent contractor under this Agreement. Services provided by County pursuant to this Agreement shall be subject to the supervision of County. In providing such Services, neither County nor its agents shall act as officers, employees, or agents of the Town. This Agreement shall not constitute or make the parties a partnership or joint venture.

9.7 MODIFICATION: It is further agreed that no modifications, amendments or alterations 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. Amendments extending the term of this Agreement pursuant to Article 4.2 or adding or deleting services to the Scope of Services under Article 1 may be approved by the County Administrator.

9.8 THIRD PARTY BENEFICIARIES: Neither County or Town intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

9.9 COMPLIANCE WITH LAWS: The Parties 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.

9.10 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 Parties agree that the exclusive venue for any lawsuit arising from,

Exhibit "A"

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 Parties agree that 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, TOWN AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

9.11 **PRIORITY OF PROVISIONS.** If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 of this Agreement shall prevail and be given effect.

9.12 **DRAFTING:** This Agreement has been negotiated and drafted by the Parties and shall not be more strictly construed against any party because of such party's preparation of this Agreement.

9.13 **INTERPRETATION.** The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article.

9.14 **INCORPORATION BY REFERENCE.** Any and all Recital clauses stated above are true and correct and are incorporated herein by reference.

9.15 **REPRESENTATION OF AUTHORITY.** Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full and legal authority.

9.16 **RECORDING:** This Agreement shall be recorded in the Public Records of Broward County, in accordance with the Florida Interlocal Cooperation Act of 1969.

9.17 **NO CONTINGENT FEES.** County warrants that it has not employed or retained any company or person, other than bona fide employees working solely for County, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person,

Exhibit "A"

company, corporation, individual, or firm, other than bona fide employees working solely for County, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Interlocal Agreement between County and Town for presentation at hearings before the Broward County Unsafe Structures Board to be performed by the Broward County Building Code Services Division of the Environmental Protection and Growth Management Department on the respective dates under each signature: Broward County, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the _____ day of _____, 20____, and Town, signing by and through its Mayor, duly authorized to execute same by Commission action on the 9 day of October, 2018.

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* 11/16/18
Maite Azcoitia (Date)
Deputy County Attorney

Exhibit "A"

INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND TOWN OF LAUDERDALE-BY-THE-SEA FOR BROWARD COUNTY STAFF SERVICES IN CONNECTION WITH HEARINGS BEFORE THE BROWARD COUNTY UNSAFE STRUCTURES BOARD

Town

Town of Lauderdale-by-the-Sea

Attest:

By _____
MAYOR CHRIS VINCENT

Tedra Allen, Town Clerk

_____ day of _____, 20____

By _____
Bud Bentley, Town Manager

_____ day of October, 2018

APPROVED AS TO FORM:

By _____
Susan L. Trevarthen, Town Attorney

MA/
#18-49
BCSDunsafe_LBTS-a01
File: T:\0 Agenda\10-9-18 Commission\Dev Services\Unsafe Structures Board\ExA of Ex1 ILA BC_LBTS_Unsafe.doc