ADD-ON AGENDA
NORTH MIAMI CITY COUNCIL

Regular Meeting

Tuesday, March 25, 2014
7:00 P.M.

ADDITION(s) TO MARCH 25, 2014 COUNCIL AGENDA:

Honorable Mayor Lucie M. Tondreau and City Council Members, I respectfully request that the item(s) below be added UNDER:

SECTION 10.A. RESOLUTIONS

[TAB F-1]

PROPOSED RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, APPROVING A STIPULATION AND AGREEMENT TO RESOLVE THE LITIGATION STYLED AS THE CITY OF NORTH MIAMI V. MIAMI-DADE COUNTY ENVIRONMENTAL QUALITY CONTROL BOARD AND OLETA PARTNERS, LLC, CASE NO. 13-432 AP; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

Sponsored by: City Administration

Thank you.

Stephen E. Johnson
City Manager

c: Regine M. Monestime, Esq., City Attorney
Michael A. Etienne, Esq., City Clerk

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, APPROVING A STIPULATION AND AGREEMENT TO RESOLVE THE LITIGATION STYLED AS THE CITY OF NORTH MIAMI V. MIAMI-DADE COUNTY ENVIRONMENTAL QUALITY CONTROL BOARD AND OLETA PARTNERS, LLC, CASE NO. 13-432 AP; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

WHEREAS, the City of North Miami ("City'), and Oleta Partners, LLC., ("Oleta"), are parties to a certain Lease Agreement dated May 29, 2012, between the City, as landlord, and Oleta, as tenant for property commonly referred to as Biscayne Landing ("Premises"); and

WHEREAS, Oleta obtained approximately one hundred ninety-four thousand (194,000) cubic yards of fill (the "Fill") from the "Brickell City Centre" site, which is currently stockpiled upon the Premises; and

WHEREAS, the Fill material violates Miami-Dade County environmental standards, specifically sections 24-5, 24-42(1), and 24-42(3) of the County code; and

WHEREAS, because of the composition of the Fill material, Oleta sought a variance, inaccurately naming itself owner of the Premises, from the Miami Dade County Environmental Quality Control Board (the "Board"), seeking to use the material for lake fill; and

WHEREAS, on November 1, 2014 the Board issued an order granting the variance as requested; compelling the City to seek a reversal of the Order by filing a Petition for Writ of Certiorari in the Circuit Court of Miami-Dade County, Florida (Case No. 13-432 AP); and

WHEREAS, the Circuit Court disagreed with the City's position and improperly dismissed the City's Petition for lack of standing; and

WHEREAS, to avoid the expense and inconvenience of litigation, City has agreed not to seek further review of the Circuit Court order in exchange for Oleta's stipulation that it will not use the material as lake fill on the Premises (See Exhibit "A"); and

WHEREAS, the Mayor and Council believe it is in the best interest of the City to resolve this matter as outlined herein.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. **Recitals.** The recitals in the whereas clauses are true and correct and incorporated into this Resolution.

Section 2. **Approval.** The Mayor and City Council of the City of North Miami, Florida, hereby approve the Stipulation attached as Exhibit "A" in exchange for not pursuing the appeal.

Section 3. **Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, this _____ day of March 2014.

_____
LUCIE M. TONDREAU
MAYOR

ATTEST:

_____
MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

_____
REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Seconded by: _____

Vote:

Mayor Lucie M. Tondreau	_____ (Yes)	_____ (No)
Vice Mayor Philippe Bien-Aime	_____ (Yes)	_____ (No)
Councilperson Scott Galvin	_____ (Yes)	_____ (No)
Councilperson Carol Keys, Esq.	_____ (Yes)	_____ (No)
Councilperson Marie Erlande Steril	_____ (Yes)	_____ (No)

OLETA
PARTNERS, LLC

March 26, 2014

VIA E-MAIL and FACSIMILE

Mr. Stephen Johnson
City Manager
City of North Miami
776 NE 125th Street –4th Floor
North Miami, Florida 33161
Attention: City Manager

Re: **Stipulation On Use of Brickell Citi-Centre Fill Material at Biscayne Landing**

Dear Mr. Johnson:

On behalf of Oleta Partners, LLC ("Oleta" or "Tenant"), this letter shall serve as Oleta's stipulation concerning the use of the existing stockpiled fill material on the Premises.

On February 5, 2013, March 1, 2013, and March 11, 2013, Miami-Dade County Department of Regulatory and Economic Resources ("RER", previously referred to as DERM) issued authorizations approving a request by Oleta to reuse approximately 194,000 cubic yards of fill material (the "Material") from the Brickell Citi-Centre site (the "Reuse Authorizations") as Lake Fill at its Biscayne Landing site (the "Premises"). In reliance on the County's Reuse Authorizations, Oleta transported the Material from Brickell Citi-Centre to the Premises for use as lake fill.

On May 31, 2013, RER rescinded the Reuse Authorizations. RER subsequently performed independent testing and determined that use of the Material for lake fill required obtaining a variance from the Miami-Dade Environmental Quality Control Board (EQCB), which Oleta subsequently obtained. In its Order of November 1, 2013, granting the variance, the EQCB specifically found that the proposed use of the Material as lake fill at the Premises will not be detrimental to the public health, welfare and safety, will not create a nuisance, and will not materially increase the level of pollution in this County.

Notwithstanding the EQCB's Order finding that the Material can be safely used as lake fill at the Premises, on December 2, 2013, the City filed a petition for a writ of certiorari with the

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Circuit Court of the Eleventh Judicial Circuit seeking to quash the EQCB Order. Oleta subsequently moved to dismiss the City's petition and, on February 26, 2014, the Miami-Dade County Circuit Court issued an order granting Oleta's motion to dismiss.

As Oleta has indicated in the past and continues to maintain, it has operated in complete conformity with the regulations of the environmental authorities governing the use of the Material, which are RER and EQCB. Even though the appropriate regulatory authorities have independently confirmed that the Material can be safely used as lake fill, Oleta respects the concerns of the community, its residents and neighbors, and Oleta hereby stipulates that it will not use the Material as lake fill on the Premises. Oleta is dedicated to the development of a premier project on the Premises and looks forward to delivering the pre-eminent work-play-live community in Miami-Dade County to the City of North Miami.

We hope that the City will work with us to move the project forward, but please be advised that Oleta hereby reserves all rights and remedies available to it in any pending or future proceeding, and under the Lease, in law or in equity.

Very truly yours,

Michael Tillman,
Vice President, Oleta Partners

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cc: Regine Monestime, Esq., City of North Miami City Attorney
Alfred Malefatto, Esq.
Richard LeFrak, LeFrak Organization, Inc.
Michael Swerdlow, Oleta Partners, LLC
Kimberly LeCompte, Esq.
Kerri L. Barsh, Esq.

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