NORTH MIAMI
FLORIDA
776 N.E. 125 Street, North Miami, Florida 33161

# Council Report

To: The Honorable Mayor and City Council

From: Wisler Pierre-Louis, P.E., Public Works Director

Date: July 13, 2015

RE: **A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH OLETA PARTNERS, LLC, IN SUBSTANTIALLY THE ATTACHED FORM, TO AMONG OTHER THINGS, TRANSFER THE GROUND WATER REMEDIATION SYSTEM ASSETS, ALONG WITH THE OBLIGATION AND RESPONSIBILITY TO OPERATE, MAINTAIN, MODIFY AND MONITOR THE GROUNDWATER REMEDIATION SYSTEM FROM THE CITY OF NORTH MIAMI TO OLETA PARTNERS, LLC; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.**

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## RECOMMENDATION

Staff is recommending that the Mayor and City Council of the City of North Miami, Florida, authorize the City Manager to execute an agreement with Oleta Partners, LLC, in substantially the attached form, to among other things, transfer the ground water remediation system assets, along with the obligation and responsibility to operate, maintain, modify and monitor the groundwater remediation system from the City of North Miami to Oleta Partners, LLC; providing for an effective date and for all other purposes.

## BACKGROUND

In May 29, 2012, in accordance with Resolution No. R-2012-67, the City of North Miami ("City") and Oleta Partners, LLC ("Oleta"), entered into a Lease Agreement, as subsequently amended (collectively referred to herein as the "Lease"), for a parcel of land approximately 183.6 acres in size, commonly known as SoLe Mia and generally located on the east-side of Biscayne Boulevard, between N.E. 137th Street and N.E.

151st Street ("Leased Premises"), which Leased Premises is to be developed by Oleta as a mixed use development ("Project").

The Leased Premises, together with that certain approximately 9.7 acres of land located immediately adjacent to the Leased Premises and presently being leased by the City to One Fifty One at Biscayne Landing Condominium Association, Inc. ("Adjacent Land" and, together with the Leased Premises, being hereinafter collectively referred to as the "Development") is subject to the requirements of the Florida Department of Environmental Protection ("FDEP") Landfill Closure Permit No. 0219514-013-SF ("Permit"), as previously amended from time to time.

The Lease sets forth that Oleta, as tenant, must perform all remedial action as defined in the Lease ("Remedial Action") for Landfill Closure, including capping, storm water management system, groundwater monitoring - methane gas control plan, and other requirements set forth in the Comprehensive Landfill Closure Plan ("CLCP"), the Permit, and any approved remedial action plan and related documents, as more fully delineated in the attached, proposed Transfer of Ground Water Remediation Systems Assets Agreement ("Agreement").

The City was assigned all rights, and assumed all obligations under, that certain Munisport Landfill Groundwater Remediation System Design-Build Contract with an effective date of September 10, 2010 ("ERA") entered into between Charles W. De Santi, former Receiver for the Development, and CH2M Hill for the design and construction of the Ground Water Remediation System required under the CLCP. The GWR system has been constructed and is operational. The City desires to continue the progress that has been made in executing the remedial action plan.

The City desires to transfer to Oleta all of the existing and later added Ground Water Remediation System's equipment and components including, but not limited to, all pipes, wells, pumps, electrical equipment, conduits, valves, gauges, control devices, regulators, and any other mechanical, electrical, structural, and plumbing components ("GWR System") in exchange for Oleta's assumption of all responsibility to operate, maintain, modify and monitor the GWR System.

As conditions to Oleta assuming such obligations during the term of the Lease, the City has agreed to assign to Oleta all of the City's warranties and guaranties for work, materials and/or equipment accrued and/or accruing in favor of the City, and to approve and disburse to Oleta all Grant Funds allocable to Landfill Closure, in accordance with the proposed Agreement.

**Attachments**

(1) Resolution
(2) Transfer of Ground Water Remediation System Assets Agreement

**RESOLUTION NO. _____**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH OLETA PARTNERS, LLC, IN SUBSTANTIALLY THE ATTACHED FORM, TO AMONG OTHER THINGS, TRANSFER THE GROUND WATER REMEDIATION SYSTEM ASSETS, ALONG WITH THE OBLIGATION AND RESPONSIBILITY TO OPERATE, MAINTAIN, MODIFY AND MONITOR THE GROUNDWATER REMEDIATION SYSTEM FROM THE CITY OF NORTH MIAMI TO OLETA PARTNERS, LLC; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.**

**WHEREAS**, in May 29, 2012, in accordance with Resolution No. R-2012-67, the City of North Miami ("City") and Oleta Partners, LLC ("Oleta"), entered into a Lease Agreement, as subsequently amended (collectively referred to herein as the "Lease"), for a parcel of land approximately 183.6 acres in size, commonly known as SoLe Mia and generally located on the east-side of Biscayne Boulevard, between N.E. 137th Street and N.E. 151st Street ("Leased Premises"), which Leased Premises is to be developed by Oleta as a mixed use development ("Project"); and

**WHEREAS**, the Leased Premises, together with that certain approximately 9.7 acres of land located immediately adjacent to the Leased Premises and presently being leased by the City to One Fifty One at Biscayne Landing Condominium Association, Inc. ("Adjacent Land" and, together with the Leased Premises, being hereinafter collectively referred to as the "Development") is subject to the requirements of the Florida Department of Environmental Protection ("FDEP") Landfill Closure Permit No. 0219514-013-SF, as previously amended from time to time ("Permit"); and

**WHEREAS**, the Lease sets forth that Oleta, as tenant, must perform all remedial action as defined in the Lease ("Remedial Action") for Landfill Closure, including capping, storm water management system, groundwater monitoring - methane gas control plan, and other requirements set forth in the Comprehensive Landfill Closure Plan, the Permit, and any approved remedial action plan and related documents, as more fully delineated in the attached, proposed Transfer of Ground Water Remediation Systems Assets Agreement ("Agreement"); and

**WHEREAS**, the City desires to transfer to Oleta all of the existing and later added Ground Water Remediation System's equipment and components including, but not limited to, all pipes, wells, pumps, electrical equipment, conduits, valves, gauges, control devices, regulators, and any other mechanical, electrical, structural, and plumbing components ("GWR System") in exchange for Oleta's assumption of all responsibility to operate, maintain, modify and monitor the GWR System; and

**WHEREAS**, as conditions to Oleta assuming such obligations during the term of the Lease, the City has agreed to assign to Oleta all of the City's warranties and guaranties for work, materials and/or equipment accrued and/or accruing in favor of the City, and to approve and disburse to Oleta all Grant Funds allocable to Landfill Closure, in accordance with the proposed Agreement; and

**WHEREAS**, the Mayor and City Council find that entering into the proposed Transfer of Ground Water Remediation Systems Assets Agreement, in substantially the attached form, is in the best interest of the City.

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

**Section 1.** **Authority of City Manager.** The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager to execute an agreement with Oleta Partners, LLC, in substantially the attached form, to among other things, transfer the Ground Water Remediation System Assets, along with the obligation and responsibility to operate, maintain, modify and monitor the Groundwater Remediation System from the City of North Miami to Oleta Partners, LLC.

**Section 2.** **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, 2015.

_____
DR. SMITH JOSEPH
MAYOR

ATTEST:

_____
MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

_____
ROLAND C. GALDOS, ESQ.
INTERIM CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Seconded by: _____

**Vote:**

| | |
|---|---|
| Mayor Smith Joseph, D.O., Pharm. D. | _____ (Yes)_____ (No) |
| Vice Mayor Carol Keys, Esq. | _____ (Yes)_____ (No) |
| Councilman Scott Galvin | _____ (Yes)_____ (No) |
| Councilman Philippe Bien-Aime | _____ (Yes)_____ (No) |
| Councilman Alix Desulme | _____ (Yes)_____ (No) |

**TRANSFER OF GROUND WATER REMEDIATION SYSTEM ASSETS AGREEMENT**

THIS TRANSFER OF GROUND WATER REMEDIATION SYSTEM ASSETS AGREEMENT (this "Agreement") is being made and entered into as of _____, 2015 ("Effective Date") by and between the CITY OF NORTH MIAMI, FLORIDA, a Florida municipal corporation, whose mailing address is 776 N.E. 125th Street, North Miami, Florida 33161 ("City") and OLETA PARTNERS, LLC, a Delaware limited liability company having an office at 15045 Biscayne Boulevard, North Miami, Florida 33181("Oleta"). City and Oleta may be referred to individually as a "Party" and collectively as the "Parties".

RECITALS

**WHEREAS**, the City and Oleta entered into that certain Lease Agreement dated as of May 29, 2012, as amended by that certain First Amendment to Lease dated as of June 21, 2012, and that certain Second Amendment to Lease dated as of July 31, 2012, and that certain Third Amendment to Lease dated as of May 2, 2014 (collectively, the "Lease") ;and that certain Fourth Amendment to Lease dated as of _____ __,201_, pursuant to which Oleta is leasing from the City the real property described in Exhibit "A" attached hereto (the "Leased Premises"), which Lease was approved by the City on May 23, 2012 pursuant to that certain Resolution No. R-2012-67; and

**WHEREAS**, the Leased Premises is approximately 183.6 acres in size, is commonly known as SoLe Mia and is generally located on the east side of Biscayne Boulevard, between N.E. 137th Street and N.E. 151st Street, North Miami, Florida, which Leased Premises is intended to be developed by Oleta as a mixed use development (the "Project"); and

**WHEREAS**, the Leased Premises, together with that certain approximately 9.7 acres of land located immediately adjacent to the Leased Premises and presently being leased by the City to One Fifty One at Biscayne Landing Condominium Association, Inc. (the "Adjacent Land" and, together with the Leased Premises, being hereinafter collectively referred to as the "Development") is subject to the requirements of the Florida Department of Environmental Protection (the "FDEP") Landfill Closure Permit No. 0219514-013-SF, as previously amended from time to time (the "Permit"); and

**WHEREAS**, in order to comply with the requirements of the Permit, the City prepared that certain Comprehensive Landfill Closure Plan (the "CLCP"), dated as of March 2005, as amended subsequent thereto, which has been approved, as amended, by the FDEP and the Miami-Dade County Department of Solid Waste Management ("DSWM" and now known as the Department of Public Works and Waste Management or "PWWM"); and

**WHEREAS**, the Lease sets forth that Oleta, as tenant, must perform all remedial action as defined in Paragraph 1 of the Lease ("Remedial Action") for Landfill Closure, including capping, storm water management system, groundwater monitoring - methane gas control plan, and other requirements set forth in the CLCP, the Permit, any approved remedial action plan and related documents, but excluding: (i) the continued operation and maintenance of the GWR System (as defined herein) until completion, which was obtained on April 30, 2015 as evident by the Certificate of Final Completion issued on March 20, 2015, including the repair and replacement of portions thereof, if and to the extent required; and (ii) the work performed by CH2M Hill Engineers, Inc. ("CH2M Hill") on behalf of the City, pursuant to the ERA (as defined herein), which was satisfactorily performed and accepted, including any groundwater investigation, design and construction of a groundwater remediation system as approved by FDEP and the Miami Dade County Department of Regulatory and Economic Resources ("RER"), containment, removal, remedy, clean-up, response, abatement, operation, testing and/or any other response actions involving groundwater remediation (including on-going monitoring obligations and providing financial assurances); and

**WHEREAS**, the City, pursuant to that certain Letter of Intent dated as of September 10, 2010 and extended until completion of the GWRS under Section 9.3.1 of the Lease, was assigned all rights, and assumed all obligations under, that certain Munisport Landfill Groundwater Remediation System Design-Build Contract with an effective date of September 10, 2010 (the "ERA") entered into between Charles W. De Santi, former Receiver for the Development, and CH2M Hill for the design and construction of the groundwater remediation system (the "GWR System") required under the CLCP, which is attached hereto and made a part hereof as Exhibit "B"; and

**WHEREAS**, pursuant to a certain letter from CH2M Hill to Mr. Stephen Johnson, City Manager, dated the 17th day of April, 2012, CH2M Hill requested certain changes to the ERA to comply with the requirements of the Miami-Dade County Department of Planning, Environmental and Regulatory Affairs (now the RER) which changes were approved by the City Council through the adoption of Resolution No. 2012-60, passed and adopted on the 8th day of May, 2012, a copy of which is attached hereto and made a part hereof as Exhibit "C"; and

**WHEREAS**, the ERA was further amended to extend the dates for CH2M Hill's responsibility to operate and maintain the system through: Change Order #2, dated September 9, 2014 (which extended the O & M period from July 15, 2014 through November 15, 2014); Change Order #3 dated November 12, 2014 (which extended the O & M period through December 31, 2014); and, Change Order #4 dated December 23, 2014 (extending the O & M period through January 31, 2015). Collectively, the above noted amendments and change orders will be referred to as the "Amended ERA"; and

**WHEREAS**, the Amended ERA called for the design, construction, monitoring and operation of a phased groundwater remediation system consisting of a conventional groundwater extraction system utilizing vertical groundwater recovery wells and a Class I injection well to dispose of such groundwater into the boulder zone (approximately 3,300 feet below ground) without any treatment. Phase I of that GWR System has been installed and has been in operation for more than one (1) year. As of even date, construction of Phase II of the system is -complete and operational; and

**WHEREAS**, the GWR System contemplated by the Amended ERA was to be solely and exclusively designed, constructed, modified, monitored and operated by CH2M Hill until its completion and transfer of the asset, as noted in the Amended ERA, on behalf of, and pursuant to the directions of the City, and without Oleta having been afforded, in any way, the right to participate in said design, construction, modifications, monitoring and/or operation until assumption of this asset for the Leased Premises; and

**WHEREAS**, pursuant to the terms of the Lease, the City agreed to diligently pursue completion of the GWR System as provided in the ERA, as amended, and has done so prior to complete transfer of all approvals required along with the asset and according to the terms of the Grant Agreement (as defined herein), the Permit and the CLCP; and

**WHEREAS**, as noted above, Phase II of the GWR System installation is complete and final payment has been rendered, pursuant to the completion of final punch list items, and as of the date hereof, the responsibility to operate, maintain, modify and monitor the GWR System (the "O&M Obligations") will cease from being an obligation of the City,; and

**WHEREAS**, Oleta is willing, to assume all of the O&M Obligations under the CLCP, the Permit, and any other applicable environmental permits and approvals after CH2M Hill's responsibility for the O&M Obligations expires and upon execution of this Agreement subject to the terms and conditions of the Lease; and

**WHEREAS**, the City and Miami-Dade County (the "County") are parties to that certain Second Amended Grant Agreement dated as of March 26, 2004 (the "Grant Agreement"), pursuant to which the County has agreed to provide the City with grant funding ("Grant Funding") for groundwater remediation and landfill closure in the amounts set forth in the Grant Agreement, a copy of which is attached hereto and made a part hereof as Exhibit "D", which Grant Funding will expire on the later of (a) the final certification of completion of the landfill remediation and closure or (b) depletion of the Grant Funding such that no further funds are available for disbursements under the Grant Agreement; and

**WHEREAS**, pursuant to the terms of the Lease, the City has agreed to reasonably cooperate with Oleta in requesting additional Grant Funding from the County, provided that no such request shall cause a delay or other change to the Landfill Closure or any delay in the completion of the GWR System or the Grant Funding for the same; and

**WHEREAS**, the City desires to transfer to Oleta all of the existing and later added GWR System's equipment and components including, but not limited to, all pipes, wells, pumps, electrical equipment, conduits, valves, gauges, control devices, regulators, and any other mechanical, electrical, structural, and plumbing components pursuant to the ERA and/or the Amended ERA (collectively, the "GWRS Assets") in exchange for Oleta's assumption of all O&M Obligations arising and/or accruing from and after the satisfaction of the Transfer Conditions (as defined herein) contained herein (only) and during the term of the Lease; and

**WHEREAS**, as conditions to Oleta assuming such O&M Obligations during the term of the Lease, the City has agreed to assign to Oleta all of the City's warranties and guaranties (for work, materials and/or equipment) accrued and/or accruing in favor of the City pursuant to the ERA and the Amended ERA, together with the right to enforce the same and together with all payment and/or performance bonds posted by CH2M Hill thereunder, it being understood that the Transfer Conditions shall additionally require CH2M Hill and/or the City to cause Oleta and its lender to be named as a co-obligees thereunder (collectively, the "Warranties"); and

**WHEREAS**, as another condition to Oleta assuming such O&M Obligations during the term of the Lease, the City has agreed to approve and disburse to Oleta all Grant Funds allocable to Landfill Closure and the O&M Obligations under the Grant Agreement as the work is completed and approved by the County's Bond Engineer, together with all interest earned to date thereon to be applied to and added to the total Grant Funds remaining to be drawn, and to timely cooperate with Oleta in processing applications for the payment thereof, the City hereby representing and warranting that, as of the Effective Date hereof the amounts to become available to Oleta for each such item is as follows: $_____, Landfill Closure; $_____ O&M; and $_____, along with accrued interest thereon as of even date in the amount of $_____.

**NOW, THEREFORE**, in consideration of the mutual covenants, conditions, and agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The foregoing recitals are true and are incorporated by this reference as if set out in full in the body of this Agreement.

2. Transfer of GWRS Assets. City hereby agrees that, upon the satisfaction of the Transfer Conditions (as defined below), the City shall grant, sell, assign, transfer, convey, and deliver unto Oleta all of its right, title and interest in and to: (i) the Warranties, pursuant to Section 3 below; (ii) the GWRS Assets to be identified by the City after the Effective Date hereof pursuant to this Section 2; and (iii) any such later added GWRS Assets as are noted in this Section 2, (the "Initial Inventory of GWRS Assets") after the

satisfaction of the Transfer Conditions set forth herein. The assignment of the Warranties described herein shall be accomplished by the City's execution and delivery to Oleta of an Assignment of Warranties (the "Assignment") in the form attached hereto as Exhibit E; and the transfer of the Initial Inventory of GWRS Assets (as defined herein) and Additional Inventory of GWRS Assets and such Later Added Assets (as defined herein; collectively the "GWRS Assets") to Oleta as described herein (the "Transfer") shall be accomplished by the execution and delivery by the City of a Bill of Sale in the form attached hereto as Exhibit "F" (the "Bill of Sale"). Upon written notice by Oleta to City that the Transfer Conditions have been satisfied, the City shall cause the Assignment and Bill of Sale to be duly executed and delivered to Oleta within thirty (30) days after the date the written notice from Oleta is received by the City. As a condition to the Transfer of the GWRS Assets as described above, City acknowledges and agrees that the following conditions, together with the Second Transfer Conditions (as herein defined) must be satisfied (collectively, the "Initial Transfer Conditions" and, together with the Second Transfer Conditions, the "Transfer Conditions"): (a) In accordance with the Conestoga Rovers and Associates, Inc. "Remedial System Peer Review – Phase II" dated February 2015 and attached punch list, the City shall cause the repairs, modifications, and/or replacements and Punch List items to be repaired or replaced at the sole cost and expense of the City as soon as is commercially reasonable thereafter. Certain modifications to Initial Inventory of GWRS Assets and Additional Inventory of GWRS Assets may be designed and installed as set forth in the Remedial System Peer Review-Phase II, noted above, with the use of additional Grant Funds sought by the City. These modifications or additions to the GWRS System shall be considered Later Added Assets and once installed shall be turned over to Oleta by a Supplemental Bill of Sale in the same form as Exhibit "F". Once so transferred, said Later Added Assets shall also be considered as part of the GWRS Assets, for all purposes.

(a) The City shall Transfer the Final Inventory (as defined below) of GWRS Assets to be attached to said Bill of Sale.

(b)City has provided an updated "as-built" plan of the GWR System and a final inventory (the "Final Inventory") of all the GWRS Assets included in, and/or constituting a part of, the GWR System as required by the Amended ERA.

(c)Within thirty (30) days after the City's and Oleta's receipt of such "as-built" plans and Final Inventory, the City (and/or its designated engineer), in cooperation with Oleta shall schedule a site inspection of the GWR System and the GWRS Assets to be attended by representatives of the City, Oleta (including its environmental consultants and engineers) and CH2M Hill to determine and document the condition of the GWR System and all of its equipment and components including, but not limited to, the GWRS Assets.

(d) City shall, prior to the Transfer of the assets, shall cause the Phase I portion of the assets to be brought up to the condition of the Phase II assets subject to any available Grant funds. These modifications to the Phase I portion of the assets shall include the work and materials described in Exhibit "__". In making these or other modifications, the City shall utilize either Grant funds made available from the County either out of the existing Grant or from any increase in the Grant as shall be requested by the City and approved by the County.

Subsequent to the Transfer of the Final Inventory, Oleta shall be responsible for the continuing operation, maintenance, monitoring and reporting requirements of the GWR System, subject to the terms and conditions of the Lease.

3. City's Assignment of Warranties and Guarantees; Bonds. Simultaneously with the delivery of the Bill of Sale by the City to Oleta in connection with the Transfer, the City shall assign to Oleta all of CH2M Hill's warranties and guarantees under the ERA and the Amended ERA pursuant to the

form of Assignment Agreement attached hereto as Exhibit "G". The City shall cause any payment and performance bonds required pursuant to the ERA to be amended to add Oleta and its lender as additional co-obligees. Oleta may choose to retain the future services of CH2M Hill and/or its subcontractors or vendors for certain services in relation to the operation, maintenance and monitoring of the GWR System if Oleta chooses to do so, in its sole and exclusive discretion, City will waive any perceived or existing conflict of interest and will allow CH2M Hill to provide such services.

4. Indemnification Provisions. Oleta agrees hereby indemnifies and agrees to defend and hold harmless the City for, from and against any and all Losses (as herein below defined) and arising out of Oleta's operation and maintenance of the GWR System, arising out the acts of omissions of Oleta, its employees, contractors, sub-contractors, officers, successors and assigns

5. Grant Funding from the County.

(a) The obligation for Landfill Closure and the O&M Obligations pertaining to the GWR System are required to be, and are presently being, funded by the Grant Funding as provided for in the Grant Agreement. The City hereby agrees to promptly request such allocated and designated Grant Funds (together will all interest earned and to be earned thereon) from the County as requested by Oleta from time to time and to forthwith pay those funds over to Oleta, or any other appropriate payee, and promptly upon the City's receipt thereof, as well as to take all other actions reasonably necessary for the City to obtain, in a timely manner, all of the Grant Funding that Oleta is entitled to under the Grant Agreement. Oleta shall promptly submit any documentation, proof of compliance with laws and any applicable environmental permits and approvals, inspection reports, lien releases and any other documentation as may be reasonably requested by the City in connection with any work for which the City requests funding (on behalf of Oleta) under the Grant Agreement.

(b) The County agreed to provide the City with Grant Funding in the initial amount of Thirty One Million Twenty Seven Thousand and No/100 Dollars ($31,027,000.00) for construction of the GWR System and for Landfill Closure, which Grant Funding shall expire at the later of the (a) receipt from the FDEP and/or the RER of a final certificate of completion for the Remedial Action, or (b) depletion of the Grant Funding, as may be increased from time to time, so that no further funds are available for disbursements. The Grant Funding presently covers approximately three (3) years of remaining funding for O&M Obligations, as well as amounts to be incurred by Oleta for Landfill Closure.

(c) Oleta is hereby granted the right to request that the City seek an increase(s) in the Grant Funding to offset the future costs of the O&M Obligations, as well as any additional costs to be incurred by Oleta in complying with its Landfill Closure obligations. The City shall cooperate with Oleta in causing any rights to the Grant Funding to continue to be available to Oleta after Transfer to it of the GWRS Assets. To such end, the City, as the owner of fee title to the Development and in its capacity as a municipality, has agreed to reasonably cooperate with Oleta in requesting additional Grant Funding from the County, provided that no such request shall cause a delay or other change to the Landfill Closure or any delay in the completion of the GWR System or the funding for the same. Oleta agrees to reimburse the City for actual third-party costs and expenses incurred in connection with any such request for additional Grant Funding. The City, however, shall not be required to provide any consideration to any party for any such increase in Grant Funding. Moreover, the City assumes no liability whatsoever arising out of such cooperation, and Oleta shall indemnify the City for any loss resulting therefrom. The City, from and after the Effective Date hereof, shall not otherwise approve, permit or agree to supplement, modify, amend or terminate the Grant Agreement, without Oleta's consent, in its sole and absolute discretion.

6. Attorneys' Fees. In any dispute among the Parties related to this Agreement, the Party not substantially prevailing shall pay the reasonable attorneys' fees and costs of the other Party involved in the dispute.

7. Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be hand delivered, or mailed by certified or registered mail, postage prepaid, or by delivered by Federal Express, or similar overnight delivery service, and shall also be delivered electronically, addressed as follows:

If to the City: City of North Miami
c/o City Manager
776 N.E. 125th Street
North Miami, Florida 33161

With a copy to: City of North Miami
c/o City Attorney
776 N.E. 125th Street
North Miami, Florida 33161

If to Oleta: Oleta Partners, LLC
15045 Biscayne Boulevard
North Miami, Florida 33181
Attn.: Eric Cohen
ecohen@turnberry.com.com

With a copy to: Weiss Serota Helfman, et al
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, Florida 33134
Attention: Clifford Schulman, Esq.
cschulman@wsh-law.com

Notice shall be deemed to have been given upon receipt or refusal.

8. Binding; Assignment. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.

9. Calculation of Time Frames. All time frames herein shall be calculated based on calendar days.

10. Waiver; Modification. The waiver of any term, provision or condition of this Agreement shall be effective only if in writing and signed by both of the Parties hereto, and then only in the specific instance and for the particular purpose for which it was given. No failure to exercise and no delay in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof. No modification, amendment, cancellation or rescission hereof shall be valid and binding, unless it is in writing and signed by both Parties hereto.

11. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties as to the subject matter hereof, and shall not be modified in any manner except by an instrument in writing executed by the Parties or their respective successors in interest. Neither of the Parties shall be deemed the drafter of this Agreement for purposes of contractual assumptions.

12. Headings. The headings used in this Agreement are for convenience only, and shall not be used in interpreting or construing any provision of this Agreement.

13. Counterparts; Facsimile Delivery. This Agreement may be executed in any number of counterparts. Each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one Agreement. This Agreement may be executed via facsimile transmission, and facsimile counterparts shall have the same force and effect as original signatures.

14. Time. Time is of the essence of this Agreement.

15. Waiver of Trial by Jury. THE PARTIES HERETO WAIVE TRIAL BY JURY IN ALL MATTERS ARISING OUT OF THIS AGREEMENT. THE PARTIES FURTHER AGREE THAT THE EXCLUSIVE VENUE FOR RESOLUTION OF ANY DISPUTE REGARDING THIS AGREEMENT SHALL BE THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.

**SIGNATURE PAGES FOLLOW**

WITNESS OR ATTEST:

_____
Print Name: _____

_____
Print Name: _____

**TRANSFEREE**:

OLETA PARTNERS, LLC, a
Delaware limited liability company

By: OLETA PARTNERS TENANT OWNER, LLC, a Delaware limited liability company, as Manager

By: _____
Name: _____
Title: _____

WITNESS OR ATTEST:

_____
Print Name:_____

_____
Print Name: _____

**TRANSFEROR**:

CITY OF NORTH MIAMI, FLORIDA, a Florida municipal corporation

By: _____
Name: _____
Title: _____

EXHIBIT "A"

LEGAL DESCRITION OF THE LEASED PREMISES

EXHIBIT "B"

THE ERA

EXHIBIT "C"

THE AMENDED ERA

NOTE: INCLUDE CHM2 HILL CHANGE ORDERS 2 THROUGH 4, EXTENDING O&M PERIOD THROUGH 1/31/15

EXHIBIT "D"

THE GRANT AGREEMENT

EXHIBIT "E"

INVENTORY OF GWRS ASSETS

NOTE: AS FAR AS WE ARE AWARE, THERE IS NOT A SINGLE DOCUMENT THAT LISTS THE GWRS ASSETS, RATHER, THERE ARE A SERIES OF DOCUMENTS PREPARED BY CH2MHILL AND SCS ENGINEERS THAT PROVIDE THE INVENTORY, WHICH HAS BEEN PROVIDED TO OLETA. THIS INLCUDES THE INJECTION WELL O&M MANUAL AND EXTRACTION WELLS O&M MANUAL

EXHIBIT "F"

FORM OF BILL OF SALE

## BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, That the CITY OF NORTH MIAMI, a Florida municipal corporation (the "City"), whose mailing address is 776 N.E. 125th Street, North Miami, Florida 33161, party of the first part, for and in consideration of the sum of TEN ($10.00) DOLLARS, lawful money of the United States, and other good and valuable consideration, to it paid by OLETA PARTNERS, LLC, a Florida limited liability company ("Oleta"), whose mailing address is 15045 Biscayne Boulevard, North Miami, Florida 33181, party of the second part, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold, transferred and delivered, and by these presents does grant, bargain, sell, transfer and deliver unto the said party of the second part, its executors, administrators and assigns, the goods and chattel referred to as **[GWRS Assets / Additional GWRS Assets]** in that certain Transfer of Ground Water Remediation System Assets Agreement executed by the City and Oleta as of the _____ day of_____, 2015, and more specifically described in the attached Exhibit "A", attached hereto and incorporated herein by this reference.

TO HAVE AND TO HOLD the same unto the said party of the second part, its executors, administrators and assigns forever.

AND IT does, for itself and its heirs, executors and administrators, covenant to and with the said party of the second part, its executors, administrators and assigns, that it is the lawful owner of the said goods and chattels; that same are free from all encumbrances; that it has good right to sell the same aforesaid, and that it will warrant and defend the sale of the goods and chattels hereby made, unto the said party of the second part, its executors, administrators and assigns against the lawful claims and demands of all persons whomsoever.

IN WITNESS WHEREOF, _____, as _____ of the CITY OF NORTH MIAMI, has hereunto set his hand and seal this _____ day of October, 2014.

Signed, sealed and delivered in the presence of us:

WITNESSES:

_____

Print Name:

_____

Print Name:

The CITY OF NORTH MIAMI, a Florida municipal corporation

By: _____

Print Name:

State of Florida
County of Miami-Dade

The foregoing instrument was acknowledged before me this ____ day of October, 2014 by_ _____, as _____of the CITY OF NORTH MIAMI, on behalf of the City who is personally known to me or who has produced his/her _____as identification and who did not take an oath.

_____

Notary Public, State of Florida
Print Name: _____
My Commission Expires: _____

**EXHIBIT "A"**

**GWRS Assets / Additional GWRS Assets**

SEE PREVIOUS NOTE REGARDING INVENTORY OF ASSETS

EXHIBIT "G"

FORM OF ASSIGNMENT OF WARRANTIES AGREEMENT

NOTE: NEED EXHIBIT FOR CITY'S FIVE YEAR WARRANTY

## ASSIGNMENT OF WARRANTIES AND GUARANTEES

**THIS ASSIGNMENT OF GROUNDWATER REMEDIATION SYSTEM WARRANTIES AND GUARANTEES** (this "Assignment") is made as of the _____ day of _____, 2015 by and between the City of North Miami, a Florida municipal corporation, whose mailing address is 776 N.E. 125th Street, North Miami, Florida 33161 (the "City") and Oleta Partners, LLC, a Florida limited liability company, whose mailing address is 15045 Biscayne Boulevard, North Miami, Florida 33181 ("Oleta").

**WHEREAS**, the City and Oleta entered into that certain Lease Agreement dated as of May 29, 2012, as amended by that certain First Amendment to Lease dated as of June 21, 2012, and further amended by that certain Second Amendment to Lease dated as of July 31, 2012, (collectively, the "Lease"), pursuant to which Oleta is leasing from the City the real property described in Exhibit "A" attached to the Lease (the "Leased Premises"), which Lease was approved by the City on May 23, 2012 pursuant to that certain Resolution R-2012-67; and

**WHEREAS**, the Leased Premises is commonly known as SoLe Mia located in North Miami, Florida (the "Project"); and

**WHEREAS**, the Project is subject to the requirements of the Florida Department of Environmental Protection (the "FDEP") Landfill Closure Permit No. 0219514-013-SF, as amended from time to time (the "Permit"); and

**WHEREAS**, in order to comply with the requirements of the Permit, the City prepared that certain Comprehensive Landfill Closure Plan (the "CLCP"), dated as of March 2005, as amended by various subsequent amendments thereto, which has been approved, as amended, by the FDEP and the Miami-Dade County Department of Solid Waste Management ("DSWM" and now known as the Department of Public Works and Waste Management or "PWWM"); and

**WHEREAS**, the City, pursuant to that certain Letter of Intent dated as of September 10, 2010, was assigned all rights, and assumed all obligations under, that certain Munisport Landfill Groundwater Remediation System Design-Build Contract with an effective date of September 10, 2010 (the "ERA") entered into between Charles W. De Santi, former Receiver for the Project, and CH2M for the design and construction of the groundwater remediation system (the "GWR System") required under the CLCP, which is attached hereto and made a part hereof as Exhibit "B"; and

**WHEREAS**, pursuant to the terms of the Lease, the City agreed to diligently pursue completion of the GWR System as provided in the ERA and the Amended ERA, and according to the terms of the Grant Agreement (as defined herein), the Permit and the CLCP; and

**WHEREAS**, the City desires to transfer to Oleta all of the existing GWR System equipment, including all pipes, wells, pumps, electrical equipment, etc. and all additional GWR System equipment to be built and/or installed pursuant to the ERA (collectively, the "GWRS Assets); and

WHEREAS, Oleta is willing, to accept the transfer of the GWR System and Assets but subject to the terms of that certain "Transfer Agreement" and subject to the terms and conditions of the Lease between the parties; and

**WHEREAS**, the City also desires to assign to Oleta all of the City's warranties for work, materials and/or equipment that may have been assigned, or will hereinafter be assigned, to the City thereunder.

**NOW, THEREFORE**, in consideration of the mutual covenants, conditions, and agreements set forth below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Recitals. The above recitals are true and correct and are incorporated herein as if set forth in full.

2. Defined Terms. All defined terms used herein shall have the meaning ascribed to such terms in that certain Transfer of Ground Water Remediation System Assets Agreement ("Transfer Agreement") executed by the City and Oleta as of the _____ day of _____, 2014, unless otherwise noted.

3. Copy of Contract. The City represents and warrants to Oleta that a true and correct copy of the ERA, as originally executed and as later amended, is attached hereto as Exhibit "A".

4. Assignment. Pursuant to the terms of the Transfer Agreement, the City does hereby irrevocably assign to Oleta any and all of the warranties or guarantees that are contained in or required by the ERA.

5. Payment and Performance Bonds. At or prior to the execution of this Assignment, the City shall cause any payment or performance bonds required in connection to the ERA to be amended to add Oleta as an additional oblige thereunder.

6. Notices. All notices and other communications required or permitted to be given under this Assignment shall be in writing and shall be hand delivered or mailed by certified or registered mail, postage prepaid, or by Federal Express, or similar overnight delivery service, and shall also be delivered electronically, addressed as follows:

IF TO THE CITY:
City of North Miami
c/o City Manager
776 N.E. 125th Street
North Miami, Florida 33161
Email:_____

WITH A COPY TO:
City of North Miami
c/o City Attorney
776 N.E. 125th Street
North Miami, Florida 33161
Email: cityattorney@northmiamifl.gov

IF TO OLETA:
Oleta Partners, LLC
c/o Eric Cohen
15045 Biscayne Boulevard
North Miami, Florida 33181
Email:ecohen@turnberry.com__

WITH A COPY TO:
Weiss Serota Helfman, et al
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, Florida 33134
Attention: Cliff Schulman, Esq.
cschulman@wsh-law.com

Notice shall be deemed to have been given upon receipt or refusal.

7. No Liens. At or prior to the execution of this Assignment, the City shall pay any unpaid bills owed to any professionals who would be entitled to file a valid and perfected lien against the Leased Premises pursuant to the provisions of Florida Statutes Chapter 713 so that no lien could be validly filed and perfected against the Leased Premises on account thereof.

8. Entire Agreement. This Assignment, and all the Exhibits referenced herein and annexed hereto, contain the final, complete and entire agreement of the parties hereto with respect to the matters contained herein, and no prior agreement or understanding pertaining to any of the matters connected with this transaction shall be effective for any purpose. Except as may be otherwise expressly provided herein, the agreements embodied herein may not be amended except by an agreement in writing signed by the parties hereto.

9. Governing Law. This Assignment shall be governed by and construed under the laws of the State of Florida.

10. Interpretation. The titles, captions and paragraph headings are inserted for convenience only and are in no way intended to interpret, define, limit to expand the scope or content of this Assignment or any provision hereof. This Assignment shall be construed without regard to any presumption or other rule requiring construction against the party causing this Assignment to be drafted. If any words or phrases in this Assignment shall have been stricken out or otherwise eliminated, whether or not any other words of phrases have been added, this Assignment shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Assignment and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated.

11. Counterparts. This Assignment may be executed in separate counterparts. It shall be fully executed when each party whose signature is required has signed at least one counterpart even though no one counterpart contains the signatures of all of the parties of this Assignment. Facsimile copies shall be deemed originals.

12. Non-waiver. No waiver by the City or Oleta of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such party. No delay or omission in the exercise of any right or remedy accruing to the City or Oleta upon any breach under this Assignment shall impair such right to remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by the City or Oleta of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other breach, or of a subsequent breach of the same or any other term, covenant or condition herein contained.

13. Severability. This Assignment is intended to be performed in accordance with and only to the extent permitted by applicable law. If any provisions of this Assignment or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, but the extent of the invalidity or unenforceability does not destroy the basis of the bargain between the parties as contained herein, the remainder of this Assignment and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

14. Exhibits. The Exhibits referred in and attached to this Assignment are incorporated herein in full by this reference.

15. No Third Party Beneficiary. This Assignment is made solely and specifically between and for the benefit of the parties hereof, and their respective successors and permitted assigns, and no other person whatsoever shall have the rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Assignment as a third party beneficiary or otherwise.

16. Business Days. If any date provided for in this Assignment shall fall on a day which is not a business day, the date provided for shall be deemed to refer to the next business day.

17. Waiver of Trial by Jury. THE CITY AND OLETA HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT AND ANY OTHER DOCUMENT OR INSTRUMENT NOW OR HEREAFTER EXECUTED AND DELIVERED IN CONNECTION THEREWITH.

**IN WITNESS WHEREOF**, The City and Oleta have caused this Assignment to be executed as of the day and year first above written.

Witnesses:

_____

Print Name: _____

_____

Print Name: _____

OLETA PARTNERS, LLC, a Florida limited liability company.

By: OLETA PARTNERS TENANT OWNER, LLC, a Delaware limited liability company, as Manager

By: _____
Name: _____
Title: _____

Witnesses:

_____

Print Name: _____

_____

Print Name: _____

CITY OF NORTH MIAMI, a Florida municipal corporation.

By: _____
Name: _____
Title: _____

EXHIBIT "A"

Munisport Landfill Groundwater Remediation System Design-Build Contract.

See attached.