



Public Works Department
SOLID WASTE AND RECYCLING SERVICES / Administration
1 N. University Drive, Suite 400 • Plantation, Florida 33324 • 954-765-4202 • FAX 954-577-2391

August 6, 2012

Dominic F. Orlando, P.E.
Public Services Director
City of Dania Beach
100 W. Dania Beach Blvd.
Dania Beach, FL 33004

Re: Approval of Joint Participation Agreement (JPA) between Broward County and City of Dania Beach for Keep Broward Beautiful Program

Dear Mr. Orlando:

Please find attached for execution by the City of Dania Beach (3) three original JPA between the City of Dania Beach and Broward County. Please return the executed agreements to me at the above address before August 29, 2012, to facilitate the County's process to have the documents executed before September 30, 2012.

Should you have any questions or need further information, please do not hesitate to contact me.

Respectfully,

A handwritten signature in cursive script that reads "Marjorie Roberts".

Marjorie Roberts
Contracts/Grants Administrator

Attachments: Three (3) Original Agreements

cc. Donna Lane, Program Manager, SWRS

JOINT PARTICIPATION AGREEMENT

between

BROWARD COUNTY

and

CITY OF DANIA BEACH

for

KEEP BROWARD BEAUTIFUL PROGRAM



JOINT PARTICIPATION AGREEMENT

between

BROWARD COUNTY

and

CITY OF DANIA BEACH

for

KEEP BROWARD BEAUTIFUL PROGRAM

This Joint Participation Agreement for the Keep Broward Beautiful Program, hereinafter referred to as the "Agreement," made and entered into by and between: **BROWARD COUNTY**, a political subdivision of the state of Florida, hereinafter referred to as "COUNTY,"

AND

The **CITY OF DANIA BEACH**, a municipal corporation of the state of Florida, hereinafter referred to as "CITY."

WITNESSETH:

WHEREAS, COUNTY's Keep Broward Beautiful Program provides assistance with various litter prevention, educational, and clean-up efforts; and

WHEREAS, CITY desires to participate in the Keep Broward Beautiful Program; and

WHEREAS, it is the desire of both COUNTY and CITY to have a Joint Participation Agreement embodying the joint understanding between the parties; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, COUNTY and CITY agree as follows:

ARTICLE 1
DEFINITIONS AND IDENTIFICATIONS

- 1.1 **Activities** - means all Keep Broward Beautiful events including, but not limited to, Adopt-a-Street actions, Great American Clean-ups, Beach Sweeps, and various other outreach and litter awareness events that may take place from time to time.
- 1.2 **Agreement** - means this document, Articles 1 through 10, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.3 **Board** - The Broward County Board of County Commissioners.
- 1.4 **Contract Administrator** - The Broward County Administrator or the Director of Solid Waste and Recycling Services. The primary responsibilities of the Contract Administrator are to coordinate and communicate with CITY and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator as permitted in this agreement.
- 1.5 **County Administrator** - the administration head of COUNTY pursuant to Sections 3.02 and 3.03 of the Broward County Charter.
- 1.6 **County Attorney** - The chief legal counsel for COUNTY who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.
- 1.7 **Program** - The Program shall consist of the services described in Article 2 and Exhibit "A" attached hereto and made a part hereof.

ARTICLE 2
SCOPE OF SERVICES

- 2.1 CITY and COUNTY shall perform all work identified in this Agreement and Exhibit "A" attached hereto and made a part hereof. The parties agree that the scope of services is a description of CITY's and COUNTY's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by both CITY and COUNTY impractical, illogical, or unconscionable.

- 2.2 CITY acknowledges and agrees that Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the scope of services to be provided under this Agreement; provided, however, that Contract Administrator retains the authority to make changes to Exhibit "A," in order to meet operating requirements, increase the operational efficiency of the program and/or to address health and safety concerns as he/she deems necessary, so long as any such modifications do not increase the cost to either party of providing the original scope of services, or result in encumbrances on either party's performance hereunder.
- 2.3 CITY in performing its obligations under this Agreement shall comply with applicable regulatory requirements including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards.

ARTICLE 3
PAYMENT TERMS

- 3.1 CITY shall pay COUNTY CITY's percentage share of the Program cost as provided herein. The percentage share for CITY shall be determined as follows:

Total number of Activities conducted within or on behalf of CITY during the applicable quarter divided by total number of Activities conducted within Broward County during the applicable quarter.

- 3.2 COUNTY will submit a detailed list of CITY Activities on a quarterly basis and CITY will have ten (10) days to review the list and resolve any discrepancy. If there is no discrepancy regarding the list, or CITY fails to review and resolve the list within the ten (10) day period, the reconciled list will be deemed accepted by CITY and COUNTY to represent the number of Activities to be counted toward CITY's percentage share. COUNTY shall invoice CITY quarterly for its proportionate share and payment shall be due within thirty (30) days. Payment shall be made to COUNTY at:

Broward County Board of County Commissioners
Solid Waste and Recycling Services
1 North University Dr., Ste 400
Plantation, FL 33324

- 3.3 Overall operating costs of the Program shall be the expenditures documented in COUNTY financial records. CITY shall have access to such records during normal business hours. Copies of records will be provided pursuant to COUNTY policy.

- 3.4 Exhibit "B" provides an initial estimate of CITY's annual cost for Fiscal Year 2013 (beginning October 1, 2012), based on historical data, as well as the budget forecast for the Fiscal Year. In subsequent years, COUNTY shall provide an initial estimate of CITY's annual cost by April 1, and a final estimate by June 1, based on historical data, as well as the budget forecast for the forthcoming Fiscal Year.
- 3.5 CITY acknowledges and agrees that the initial estimates and final estimates as provided in this paragraph are approximations. The quarterly billing process as described above will utilize actual expenditures and Activities. CITY shall be responsible to pay the actual expenditures as set forth in Section 3.1.

ARTICLE 4
TERM OF AGREEMENT

- 4.1 The term of this Agreement shall begin on October 1, 2012, and shall end on September 30, 2013, unless terminated earlier pursuant to Article 7. The term may be extended for up to two (2) additional one (1) year periods upon written approval of the Contract Administrator, 30 days prior to the expiration of the then current term, and the consent of CITY. The continuation of this Agreement beyond the end of any fiscal year shall be subject to the availability of funds from COUNTY and CITY in accordance with Chapter 129 and 166, Florida Statutes.

ARTICLE 5
GOVERNMENTAL IMMUNITY

- 5.1 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. CITY 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 its agents or employees to the extent permitted by law.

ARTICLE 6
INSURANCE

- 6.1 The parties hereto acknowledge that CITY and COUNTY are self-insured governmental entities subject to the limitations of Section 768.28, Florida Statutes. CITY and COUNTY shall institute and maintain a fiscally sound and prudent risk management program with regard to its respective obligations under this Agreement in accordance with the provisions of Section 768.28, Florida Statutes. Nothing here is intended to serve as a waiver of sovereign immunity by any party which sovereign immunity may be applicable. The parties will

exchange written verification of liability protection in accordance with state law prior to final execution of this Agreement.

ARTICLE 7 TERMINATION

- 7.1 This Agreement may be terminated for cause by action of the Board or by CITY if the party in breach has not corrected the breach within thirty (30) days after written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board or CITY. This Agreement may also be terminated by County Administrator or CITY upon such notice as County Administrator or CITY deems appropriate under the circumstances in the event termination is necessary to protect the public health, safety, or welfare. The parties also agree that if COUNTY erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.
- 7.2 This Agreement may be terminated for cause for reasons including, but not limited to CITY's repeated (whether negligent or intentional) failure to timely render payment as set forth in this Agreement, failure to suitably perform the work, failure to continuously perform the work in a timely manner calculated to meet or accomplish the objectives of COUNTY or CITY as set forth in this Agreement.
- 7.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by County Administrator or CITY which is deemed necessary to protect the public health, safety, or welfare may be verbal notice which 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 prior to the conclusion of the term set forth herein, both parties acknowledge and agree that Ten Dollars (\$10.00) of the compensation to be paid hereunder, the adequacy of which is hereby acknowledged by both parties, is given as specific consideration to either party's right to terminate this Agreement for convenience.

ARTICLE 8 NOTICES

- 8.1 Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of

acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

COUNTY:

Director, Solid Waste and Recycling Services
1 North University Drive
Bldg. 3, Suite 400
Plantation, Florida 33324

CITY:

Public Services Director
City of Dania Beach
100 W. Dania Beach Boulevard
Dania Beach, Florida 33004

ARTICLE 9
EEO COMPLIANCE

9.1 EEO COMPLIANCE

CITY shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, familial status, disability, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement, the solicitation for or purchase of goods or services relating to this Agreement, or in subcontracting work in the performance of this Agreement and shall not otherwise unlawfully discriminate in violation of the Broward County Code, Chapter 16½, as may be amended from time to time. CITY shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as COUNTY deems appropriate.

CITY shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. CITY shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services

funded by COUNTY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, CITY shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

By execution of this Agreement, CITY represents that it has not been placed on the discriminatory vendor list (as provided in Section 287.134, Florida Statutes, as may be amended from time to time). COUNTY hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle COUNTY to terminate this Agreement and recover from CITY all monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

ARTICLE 10 MISCELLANEOUS

10.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of COUNTY; and, if a copyright is claimed, CITY grants to COUNTY a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by CITY, whether finished or unfinished, shall become the property of COUNTY and shall be delivered by CITY to the Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to CITY shall be withheld until all documents are received as provided herein.

10.2 AUDIT RIGHT AND RETENTION OF RECORDS

COUNTY shall have the right to audit the books, records, and accounts of CITY that are related to this Agreement. CITY shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Agreement.

CITY and COUNTY shall preserve and make available, at reasonable times for examination and audit by the other party, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this

Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by one party to be applicable to the other party's records, the other party shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated. Any incomplete or incorrect entry in CITY's books, records, and accounts shall be a basis for COUNTY's disallowance and recovery of any payment upon such entry.

10.3 INDEPENDENT CONTRACTOR

CITY is an independent contractor under this Agreement. Services provided by CITY pursuant to this Agreement shall be subject to the supervision of CITY. In providing such services, neither CITY nor its agents shall act as officers, employees, or agents of COUNTY. No partnership, joint venture, or other joint relationship is created hereby. COUNTY does not extend to CITY or CITY's agents any authority of any kind to bind COUNTY in any respect whatsoever.

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 CITY. No partnership, joint venture, or other joint relationship is created hereby. CITY does not extend to COUNTY or COUNTY's agents any authority of any kind to bind CITY in any respect whatsoever.

10.4 THIRD PARTY BENEFICIARIES

Neither CITY nor COUNTY 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 right or claim against either of them based upon this Agreement.

10.5 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered by either party. In addition, CITY shall not subcontract any portion of the work required by this Agreement except as authorized herein.

CITY represents that all each person who will render services pursuant to this Agreement is duly qualified to perform such service by all appropriate

governmental authorities where required of that each such person is reasonably experimental and skilled in the area(s) for which he or she will render his or her services.

CITY shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CITY's performance and all interim and final product(s) provided to or on behalf of COUNTY shall be comparable to the best local and national standards.

10.6 CONFLICTS

Neither CITY nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CITY's loyal and conscientious exercise of judgment related to its performance under this Agreement.

CITY further agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against COUNTY in any legal or administrative proceeding, related to performance under this Agreement, in which he or she is not a party, unless compelled by court process. Further, CITY agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of COUNTY in connection with any such pending or threatened legal or administrative proceeding related to the performance under this Agreement unless compelled by court process. The limitations of this section shall not preclude CITY or any other persons from representing themselves in any action or in any administrative or legal proceeding related to the performance under this Agreement.

In the event CITY is permitted to utilize subcontractors to perform any services required by this Agreement, CITY agrees to prohibit such subcontractors, by written contract, from having any conflicts within the meaning of this section.

10.7 MATERIALITY AND WAIVER OF BREACH

COUNTY and CITY agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

COUNTY'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.

10.8 COMPLIANCE WITH LAWS

Both 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.

10.9 SEVERANCE

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or CITY elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

10.10 JOINT PREPARATION

Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

10.11 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 Articles 1 through 10 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 10 shall prevail and be given effect.

10.12 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. All parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial

Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, SECOND PARTY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

10.13 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and CITY or others delegated authority to or otherwise authorized to execute same on their behalf.

10.14 PRIOR AGREEMENTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

10.15 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties. The attached Exhibits "A" and "B" are incorporated into and made a part of this Agreement.

10.16 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 legal authority.

10.17 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have made and executed this Joint Participation Agreement: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 20____, and CITY, signing by and through its _____, duly authorized to execute same.

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__

Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-6968

By _____
Signature (Date)

By _____
Purvi A. Bhogaita (Date)
Assistant County Attorney

Print Name and Title above

Noel M. Pfeffer (Date)
Deputy County Attorney

JOINT PARTICIPATION AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF DANIA BEACH FOR KEEP BROWARD BEAUTIFUL PROGRAM

CITY:

ATTEST:

City Clerk

By _____, Mayor

This ____ day of _____, 20__

APPROVED AS TO LEGAL FORM:

, City Attorney

Dated: _____

PAB:slw
07/26/12
daniabeach-kbb.jpa.doc
12-083

EXHIBIT A
PROGRAM PLAN

COUNTY responsibilities:

- Contact interested groups and provide information on the various Keep Broward Beautiful ("KBB") programs.
- Provide Adopt-a-Street ("AAS") support services including, but not limited to, obtaining group and street approval from the appropriate municipality; obtaining letters of agreement from interested groups; providing signage that recognizes municipality and group; conducting safety meetings; monitoring group events; and releasing non-performing groups.
- Provide AAS materials: signs; gloves, safety vests, first aid kits, and road barricades.
- Coordinate annual Great American Clean-up campaign, including providing bags, gloves and other materials, as available.
- Coordinate KBB-related litter prevention events, such as America Recycles Day activities, Municipal Event Community Outreach, and annual Litter Index review.
- Conduct educational sessions at schools and oversee on-site clean-up efforts.
- Create annual AAS newsletter and Great American Clean-up summary.
- Maintain event statistics for groups within each city and countywide.
- Supply CITY with quarterly Events Reports.
- Provide future budget and proportionate CITY share information by June 1st.

CITY responsibilities:

- Designate a CITY Coordinator who will be CITY's point of contact responsible for distributing information on KBB programs; forwarding information on interested groups; approving streets for adoption; supplying CITY logo for artwork on signs and manuals; attending tri-annual meetings; assisting with CITY event permits; and coordinating sign installation and maintenance as required.
- Approve participating groups such as: homeowners' associations, schools, businesses, local residents groups, and other civic groups.
- Remove and dispose of trash bags when necessary.