

**RESOLUTION NO. 2020-065**

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA APPROVING AN AGREEMENT BETWEEN FDG COUNTYLINE LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND THE CITY OF HIALEAH, IN SUBSTANTIAL CONFORMITY WITH AGREEMENT ATTACHED AND MADE A PART OF THIS RESOLUTION AS "EXHIBIT A", FOR THE TRANSFER OF FRESHWATER PALUSTRINE EMERGENT CREDITS TO MITIGATE THE IMPACT ON WETLANDS BY THE ROADWAY CONSTRUCTION PROJECT OF N.W. 97 AVENUE IN AN AMOUNT NOT TO EXCEED \$191,395.00 FOR A MAXIMUM OF FIFTEEN (15) STATE ACRE CREDITS AT THE UNIT COST OF \$12,759.61, OR THE EQUIVALENT FEDERAL CREDITS AT THE CONVERSION RATION OF 1:2.5471; AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY TO EXECUTE THE MITIGATION TRANSFER AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, N.W. 97 Avenue is a County road; and;

**WHEREAS**, pursuant to the terms of a Joint Participation Agreement, the City has agreed to design and construct improvements to N.W. 97 Avenue from N.W. 154 Street to N.W. 170 Street; and

**WHEREAS**, the costs of design and construction of the roadway improvements are County funded on a reimbursement basis; and

**WHEREAS**, construction of the roadway improvements will impact wetlands in the project area;

**WHEREAS**, in order to mitigate the impacts to wetlands from the roadway improvement project, the City is required to pay the federal and/or state mitigation banks established to aid in preservation, enhancement or restoration of ecosystems; and

**WHEREAS**, there are no mitigation credits available at this time through the HID Wetlands Restoration and Mitigation Project at Everglades National Park, without which the project cannot be constructed;

**WHEREAS**, the last available information on the HID website, the approximate cost of one state acre credit is \$27,089 and a federal credit is \$69,000 at which price the City would pay approximately \$406,335.00 for fifteen state acre credits;

**WHEREAS**, FDG Countyline, LLC owns approximately 500 acres in the annexation area and has available mitigation credits it is willing to transfer to the City at cost in order to enable the City to complete the roadway improvements and save approximately \$214,941.00; and

**WHEREAS**, delay in completing the roadway improvements to N.W. 97 Avenue will adversely impact to traffic circulation and continued development of the annexation area, entering into the mitigation credits transfer agreement advances the public's interest.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

**Section 1:** The Mayor and the City Council of the City of Hialeah, Florida hereby approve and accept the transfer of mitigation credits not exceeding fifteen (15) state acre credits from FDG Countyline, LLC, a Delaware limited liability company, in exchange for payment at a unit cost of \$12,759.61 per state acre credit or the equivalent federal credit at a conversion rate of 1:2.5471, for a total amount not exceeding \$191,395.00 to mitigate adverse impacts to wetlands within the N.W. 97 Avenue roadway improvements project area.

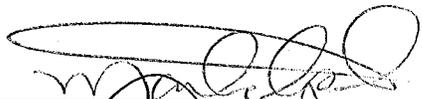
**Section 2:** The Mayor and the City Clerk, as attesting witness, on behalf of the City, are authorized to execute a mitigation transfer agreement, in substantial conformity with the agreement attached and made a part of this resolution as "Exhibit A".

**Section 3:** This resolution shall become effective upon signature of the Mayor of the City of Hialeah, Florida or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED AND ADOPTED this 9 day of June, 2020.

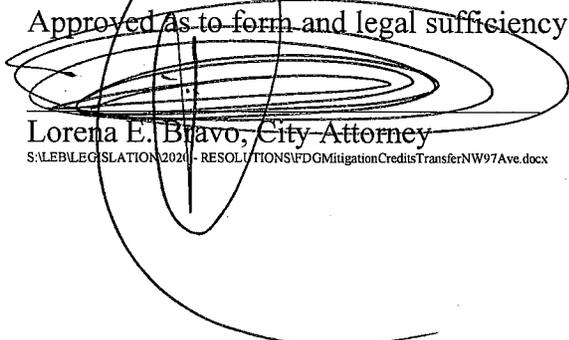
  
\_\_\_\_\_  
Paul B. Hernandez  
Council President

Attest: Approved on this 18 day of June, 2020.

  
\_\_\_\_\_  
Marbelys Fatjo, City Clerk

  
\_\_\_\_\_  
Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

  
\_\_\_\_\_  
Lorena E. Bravo, City Attorney

Resolution was adopted by a 6-0-1 vote with Councilmembers, Cue-Fuente, Garcia-Roves, Hernandez, Perez, Tundidor and Zogby, voting "Yes" and with Council Vice President De la Rosa not present during roll call.

**MITIGATION CREDIT TRANSFER AGREEMENT FOR NW 97 AVENUE  
BETWEEN NW 162nd STREET AND NW 170th STREET**

This Mitigation Credit Transfer Agreement for NW 97 Avenue between NW 162<sup>nd</sup> Street and NW 170<sup>th</sup> Street is made and entered into on this \_\_\_\_ day of June, 2020 (“Effective Date”), between the **City of Hialeah**, a Florida municipal corporation (the “City”), and **FDG Countyline LLC**, a Delaware limited liability company (“FDG” and, with the City, referenced collectively as the “Parties,” and each of the Parties referenced individually as a “Party” hereunder).

**RECITALS**

WHEREAS, the City has taken steps to expedite the design and construction of a roadway improvement project along NW 97 Avenue from NW 162<sup>nd</sup> Street to NW 170<sup>th</sup> Street (“Project”);

WHEREAS, the construction of the Project would facilitate and improve vehicular access to the area;

WHEREAS, Miami-Dade County (the “County”) will own, operate, and maintain the Project upon completion;

WHEREAS, the City will acquire the necessary right-of-way, including any necessary subordination of utilities, for the Project;

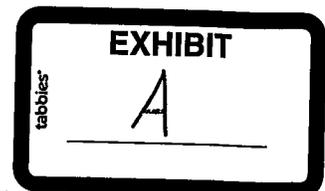
WHEREAS, the County allocated road impact fee funds towards the Project's development, design and construction, which shall be completed at the sole cost and expense of the County;

WHEREAS, FDG and its affiliates own properties alongside the Project and have together paid more than \$15,500,000.00 in road impact fees to the County in order to facilitate the improvement of roads in the area of the Project, including the road that is the subject of the Project;

WHEREAS, the City and the County have entered into a Joint Participation Agreement (the “JPA”) to facilitate the completion of the Project, and selected SRS Engineering Inc. (“SRS”) to design and permit the Project;

WHEREAS, the City has acknowledged that wetlands will be impacted by the development of the Project and the City is responsible for mitigating such impacts;

WHEREAS, the City will obtain all necessary permits for the completion of the Project, but desires the assignment of certain freshwater palustrine emergent credits (the “Mitigation Credits”) to satisfy state and/or federal mitigation requirements applicable to the Project on account of wetland impacts, which credits are not currently available from other sources;



WHEREAS, FDG is interested in the timely completion of the Project;

WHEREAS, FDG owns a surplus of Mitigation Credits that FDG is willing to assign to the City to help expedite the completion of the Project;

WHEREAS, to induce FDG to provide that assistance to the City without charging a fee, the City has agreed to work diligently and in good faith to: (a) submit all applications for the City's Permits (as defined below) within thirty (30) calendar days from the Effective Date; (b) respond in a timely manner to all reasonable requests for information from the Agencies (as defined below), with the goal of obtaining the City's Permits within one-hundred and twenty (120) calendar days from the Effective Date (the "Permit Goal"); and (c) complete the Project on an expedited basis, with the goal of completing the Project within two hundred seventy (270) calendar days after the issuance of the City's Permits for the Project (the "Completion Goal");

WHEREAS, the City agrees to work diligently and in good faith to issue solicitations to bidders for the construction of the Project, and the City agrees that the construction contract awarded to the selected contractor shall contain a requirement for the selected contractor to complete the Project on or before the Completion Goal, as well as an obligation for the selected contractor to pay liquidated damages to the City for any unexcused failure to achieve the Completion Goal;

WHEREAS, in light of the foregoing and acting in reliance on the City's agreement to work diligently and in good faith to achieve the Permit Goal and the Completion Goal and to require its selected contractor to achieve the Completion Goal, FDG is willing to assign Mitigation Credits to the City pursuant to this Agreement at cost and without markup or multiplier to FDG, provided that the City pays FDG in full and in a timely manner for the cost that FDG paid for the Mitigation Credits, all pursuant to the terms and conditions of this Agreement; and

WHEREAS, to memorialize the Parties' understanding about the foregoing, the Parties desire to enter into this Agreement.

NOW, THEREFORE, the City and FDG, in consideration of the promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. **Incorporation of Recitals.** The City and FDG hereby agree that the above recitals (the "Recitals") are true, correct, and incorporated into this Agreement and made a part hereof as though fully set forth herein.
2. **Project Permitting.** The City shall be responsible for obtaining all necessary permits for the Project in accordance with applicable state, federal and local laws. Specifically, the City is responsible for obtaining the appropriate permits (collectively "City's Permits") from the following agencies because each of these

agencies has regulatory jurisdiction over wetlands and it is anticipated that each of these agencies may require the City to provide mitigation for the wetland impacts caused by the Project: (a) the U. S. Army Corps of Engineers (“ACOE”); (b) the South Florida Water Management District (“SFWMD”); and (c) the Miami-Dade City Department of Regulatory and Economic Resources, Division of Environmental Resources Management (“DERM” and, with ACOE and SFWMD, the “Agencies” or, individually, the “Agency”). FDG hereby agrees to cooperate with the City and with the Agencies and other applicable regulatory agencies in the efforts to obtain the City’s Permits, including the process of assigning the Mitigation Credits to the Project pursuant to this Agreement, provided that FDG incurs no cost, expense or liability in doing so. For example, if required, FDG shall join into permit applications executed by the City as a co-applicant to confirm FDG’s willingness to assign such Mitigation Credits, so long as FDG does not incur any liability or responsibility with respect to the City’s Permits or the Project by such joinder. Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, it shall be the responsibility of the City through SRS to determine the number of Mitigation Credits necessary to obtain all of the City’s Permits for the Project. It is also understood and agreed that the City shall work diligently and in good faith to obtain all of the City’s Permits and complete the Project on an expedited basis, as set forth in the Recitals to this Agreement.

3. **Limitations on City’s Liability.** Notwithstanding anything to the contrary in this Agreement, the City shall have no liability to FDG for any damages, delays, or injuries of any kind that are caused by, arise from, or related in any way to delays that occur in the issuance of any permits for the Project or delays in the completion of the Project. ~~The City and FDG agree that the Permit Goal and the Completion Goal are purely aspirational. Therefore, the Permit Goal and the Completion Goal cannot be enforced against the City and the failure to achieve the goals within the timelines provided and, notwithstanding the cause for the failure, cannot provide a basis for claims of any kind by FDG against the City.~~ Without limiting the generality of the foregoing, the City also shall not have any liability to FDG for any damages, delays, or injuries of any kind caused by, arising from, or related in any way to a force majeure event (uncontrollable circumstance). For example, the City shall have no liability for any delay or failure to perform under this Agreement that results from the actions or inactions of any Agency, or any occurrence or circumstances of any kind or nature that are not within the City’s control, such as a hurricane or the current health pandemic. Furthermore, FDG shall have no right to control or interfere with the City’s discretion concerning any aspect of permitting, constructing, or otherwise managing the Project, or the enforcement of any contractual obligation owed the City by the selected contractor. This Section 3 shall survive the termination of this Agreement.

4. **Liens.** It is expressly understood and agreed that the City shall not permit any lien to be filed pursuant to Chapter 713, Florida Statutes, against the property owned by FDG and/or any affiliate of FDG or any other owner at Countyline Corporate Park with respect to the work to be completed by or through the City in connection with the Project. In the event any such lien attaches to a parcel at Countyline Corporate Park in connection with the Project because the City failed to pay for the cost of its consultants

and/or contractors, the City, at its sole cost and expense, shall have such lien bonded over, pursuant to Section 713.23, Florida Statutes, or released to the reasonable satisfaction of FDG within sixty (60) days after the City receives written notice of the existence thereof. In the event any such liens are not satisfied, discharged or bonded off within such sixty-day period, the party subject to such lien shall have the right, in addition to any other remedy at law or in equity, to settle, satisfy, discharge or bond off such lien, at its sole discretion, and the City shall pay all reasonable costs thereof, including legal fees and costs, within thirty (30) days following receipt of written demand therefor (which shall include copies of the invoices or supporting documentation evidencing such costs). NOTICE IS HEREBY GIVEN THAT FDG AND ALL OWNERS OF LAND IN COUNTYLINE CORPORATE PARK WILL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIAL FURNISHED OR TO BE FURNISHED TO OR FOR THE PROJECT OR TO ANYONE PROVIDING LABOR, SERVICES, MATERIALS OR EQUIPMENT THROUGH OR UNDER THE CITY FOR THE PROJECT AND THAT NO MECHANICS' OR OTHER LIENS FOR ANY SUCH LABOR, SERVICES, MATERIALS OR EQUIPMENT WILL ATTACH TO OR AFFECT THE INTERESTS OF FDG OR ANY OWNER AT COUNTYLINE CORPORATE PARK. THE CITY WILL DISCLOSE THE FOREGOING PROVISIONS TO ANY AND ALL CONTRACTORS ENGAGED BY OR THROUGH THE CITY TO PROVIDE LABOR, SERVICES, MATERIALS AND/OR EQUIPMENT TO OR ABOUT THE AREA OF THE PROJECT. FDG, at its sole cost and expense, may record in the public records for Miami-Dade County, Florida, a memorandum of agreement that contains the capitalized language in this Section 4. The City will reasonably cooperate with FDG in the execution of such memorandum of agreement. The City's obligations pursuant to this Section 4 shall survive the termination of this Agreement.

5. **Mitigation Credits.** FDG purchased Mitigation Credits from the Hole-in-the-Donut Wetland Restoration and Mitigation Project ("HID") at Everglades National Park. The HID was established under Section 404 of the Clean Water Act in 1996 through the issuance of ACOE's Permit #SAJ-1993-01691 and under the Florida Department of Environmental Protection's Mitigation Banking Statute (F.S. 373.4135) through the issuance of Florida Department of Environmental Protection ("FDEP") Permit #132416479 in 1995. FDG paid \$12,759.61 per restored state acre, for a total of \$2,551,922.00, which was paid to the National Park Foundation. FDG hereby agrees to allocate a maximum of fifteen (15) state acre credits to the City at the same cost of \$12,759.61 per credit, to partially or totally fulfill the mitigation requirements of the City's Project, in consideration of a total sum of \$191,394.15 ("Purchase Price"), payable in U.S. dollars in cash or immediately available funds, subject to the terms and conditions of this Agreement. This valuation is based on FDG's cost per restored state acre for state credits that were established pursuant to a ratio assessment method (acre credits). If the City needs one or more federal Mitigation Credits to satisfy the requirements of the ACOE, the value of the federal Mitigation Credits shall be \$32,500.00 each, because one federal credit is equal to 2.5471 state credits. In any event, the maximum amount to be paid by the City for fifteen (15) state acre credits or the equivalent number of federal Mitigation Credits based on the foregoing ratio shall not

exceed \$191,394.15 whether the City uses only state credits, federal credits or a combination of both, calculated based on the per credit cost for each state acre ~~as to state credits,~~ provided herein and the conversion ratio of 1:2.5471 subject to a maximum limit, in all events, to the equivalent of fifteen (15) state credits, ~~as to federal acre credits.~~

6. **Payment of Purchase Price.** Purchase of the Mitigation Credits under this Agreement is conditioned on the City obtaining the approval of each Agency for the use of the Mitigation Credits to fulfill the mitigation requirements of the City's Permits. The City shall keep FDG informed with regard to the City's progress in obtaining such approvals from the Agencies and, upon FDG's request, the City will provide copies of correspondence to and from the Agencies concerning the City's efforts. If one or more of the Agencies determine that the City needs less than fifteen (15) state Mitigation Credits to satisfy that Agency's requirements, the City shall notify FDG in writing concerning that Agency's determination. On or before October 31, 2020 (the "Determination Date"), the City shall send written notice to FDG to confirm the final number and type (i.e., state or federal) of Mitigation Credits that the City requires, subject to a limit of fifteen (15) state credits or its equivalent and inform FDG of the Purchase Price to be paid by the City based on a price of \$12,759.61 per restored state acre or \$32,500.00 per federal credit, whichever is applicable ("Determination Notice"). Upon final confirmation of the number and type of Mitigation Credits required by the City, FDG shall cooperate diligently and in good faith with the City, the Agencies and the HID to obtain and complete the transfer documentation reasonably required by the Agencies with respect to the Mitigation Credits. Within ten (10) business days after the issuance of all of the City's Permits for the Project from the Agencies, the City shall pay FDG the Purchase Price, in full, by electronic wire transfer of immediately available funds to an account designated by FDG following its receipt of the Determination Notice. Such funds shall be deemed to be "received by FDG" at the point in time when FDG's bank to which the funds are sent receives such funds, as subsequently confirmed in writing by such bank. ~~Notwithstanding the foregoing, FDG shall refund the Purchase Price to the City within thirty (30) calendar days after receiving the City's request for a refund if: (a) the City is unable to construct the Project for any reason, including but not limited to the invalidation of one or more of the City's Permits on appeal; and (b) the Mitigation Credits are returned to FDG.~~ The Parties' obligations pursuant to this Section 6 shall survive the expiration and/or termination of this Agreement.

7. **Brokers.** The City and FDG represent to each other that neither they nor anyone on their behalf has dealt with or consulted with any broker, agent, or other person in connection with this matter, and that no commission or finder's fee will be payable as a result of the execution of this Agreement or the consummation of the transaction contemplated hereby. In the event a broker, agent, or other person claims to have dealt with one of the parties contrary to the foregoing representation, the Party with whom the broker, agent, or other person claims to have dealt or consulted agrees to indemnify and hold the other Party harmless against any such claims or demands, including reasonable attorneys' fees and costs incurred by such other Party. The obligations of the Parties pursuant to this Section 6 shall survive the termination of this Agreement.

8. **Termination of Agreement.** This Agreement, and all obligations of FDG and City hereunder, shall terminate on the later of the following dates: the date that (a) the City shall have paid all amounts due and owing to FDG on account of the Mitigation Credits; (b) FDG has provided and executed all of the documentation reasonably required by the Agencies to complete the transfer of the Mitigation Credits; (c) the Mitigation Credits purchased by the City have been transferred successfully to the appropriate Agency or entity; (d) the City's Permits have been issued by the Agencies for the Project; and (e) all of the City's Permits are final and non-appealable. Notwithstanding the foregoing, it is understood and agreed that if the City fails to pay any amount(s) due hereunder and fails to cure such default within five (5) business days of its receipt of a written notice thereof from FDG, FDG may terminate this Agreement by providing a termination notice to the City, whereupon FDG's obligations to the City shall be null and void, but the City shall remain obligated hereunder, including the City's obligation to pay for the Mitigation Credits, so long as the City's Permits for the Project have been issued and are final and non-appealable. Further, if the City is unable or unwilling to provide the Determination Notice to FDG on or before December 31, 2020 (the "Outside Date"), then, from and after the Outside Date, either the City or FDG may terminate this Agreement by issuing a written notice to the other Party, whereupon FDG's obligation to transfer the Mitigation Credits to the City shall be null and void, FDG shall retain all Mitigation Credits referenced in this Agreement, and all other obligations of the Parties shall be null and void, with the exception of any terms, conditions or obligations of this Agreement that are expressly stated to survive the termination hereof. The terms of this Section 8 shall survive the termination of this Agreement.

9. **FDG's Responsibility.** The City hereby acknowledges that FDG is not itself preparing any architectural or engineering plans, designs, specifications or performing any design or permitting services required for the permitting, development or completion of the Project; that FDG is not a design professional; and that FDG is not a guarantor or insurer of any work to be performed by any other party. The terms of this Section shall survive the termination of this Agreement.

10. **Independent Contractor; Third Party Rights.** In the performance of its duties hereunder, FDG shall act solely as an independent contractor. Neither FDG nor any person contracted or employed by FDG shall be an employee of the City. FDG shall not be deemed to be a partner or a joint venturer with City. This Agreement is not intended to provide or create any agency relationship between City and FDG, and neither Party shall have any right or authority, express or implied, to commit or otherwise obligate the other Party in any manner whatsoever, and each Party agrees that it shall not hold itself out as having authority to act on behalf of the other Party in any manner. With respect thereto, the provisions of this Agreement are for the exclusive benefit of the Parties to this Agreement, and their respective successors and assigns, and no other person or party shall have any right or claim against FDG or City by reason of the provisions of this Agreement or be entitled to enforce any of the provisions hereof. The terms of this Section shall survive the termination of this Agreement.

11. **Assignment.** Neither FDG nor the City shall have the right to assign this Agreement without the prior written consent of the other Party, which consent may be withheld in such Party's sole discretion; provided, however, FDG shall be permitted to assign its obligations under this Agreement to any affiliate of FDG without the City's consent but upon written notice to City. The terms of this Section shall survive the termination of this Agreement.

12. **Effective Date.** This Agreement shall become effective on the Effective Date (i.e., the date when this Agreement is duly executed by the City, which shall occur after FDG executes the Agreement).

13. **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement. This Agreement may be executed by facsimile or e-mail signature, which shall for all purposes serve as an original executed counterpart of this Agreement.

14. **Severability.** The provisions of this Agreement are independent of and separable from each other. No provision shall be affected or rendered invalid or unenforceable by virtue of the fact that any other provision or provisions may be invalid or unenforceable in whole or in part, except to the extent that such invalidity or unenforceability causes the Agreement to fail of its essential purpose, in which case either Party shall have the right to terminate the Agreement upon written notice to the other.

15. **Amendment of Agreement.** This Agreement may only be amended by mutual agreement of the Parties, which shall be expressed in writing and executed and delivered by each.

16. **Format.** All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

17. **Notices.** All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given and received when delivered personally or by courier service or upon actual receipt of registered or certified mail, addressed as set forth below:

To City: Mayor Carlos Hernandez  
City of Hialeah  
501 Palm Avenue, 4th Floor, Law Dept.  
Hialeah, FL 33010

With a copy to: Lorena E. Bravo, Esq., City Attorney  
City of Hialeah  
501 Palm Avenue, 4th Floor, Law Dept.  
Hialeah, FL 33010

Jose Sanchez, Director of Streets  
City of Hialeah  
Streets Department  
900 E 56th St, BLDG #4  
Hialeah, Fl 33013

To FDG Christopher J. Sutton, President  
FDG Countyline LLC  
700 NW 1<sup>st</sup> Avenue, Suite 1620  
Miami, Florida 33136

With a copy to: Margarita Martinez, General Counsel  
FDG Countyline LLC  
700 NW 1<sup>st</sup> Avenue, Suite 1620  
Miami, Florida 33136

Either Party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this Section to the other Party.

18. **No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to: (a) confer upon any entity or person other than the Parties and their successors or permitted assigns any rights or remedies as a third party beneficiary or otherwise; (b) authorize anyone not a Party to this Agreement to maintain an action pursuant to or based upon this Agreement; or (c) be construed as a waiver of the City's sovereign immunity that is expressly established in Florida Statutes, Section 768.28, which provides limits on the City's liability in negligence. The terms of this Section 18 shall survive the termination of this Agreement.

19. **Entire Agreement.** This Agreement, including the exhibits to this Agreement, contains the sole and entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all other prior written or oral agreements between them with respect to such subject matter. The City shall execute and return this Agreement to FDG within thirty (30) days after FDG executes and delivers the original Agreement to the City. If the City fails to execute and return this Agreement to FDG within thirty (30) days, then FDG may withdraw its offer to enter into this Agreement with the City by written notice to the City terminating this Agreement.

20. **Binding Effect.** This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.

21. **Waiver.** Waiver by either Party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

22. **Captions.** The captions contained in this Agreement are inserted only as a matter of convenience or reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions.

23. **Other Documents.** The Parties will take all such actions and execute all such documents that may be reasonably necessary to carry out the purposes of this Agreement whether or not specifically provided for herein.

24. **Governing Law; Venue; Prevailing Party's Fees; Jury Trial Waiver.** This Agreement and the interpretation of its terms shall be governed by the laws of the State of Florida, without application of conflicts of law principles. Venue for any judicial, administrative or other action to enforce or construe any term of this Agreement or arising from or related to this Agreement shall lie exclusively in Miami-Dade County, Florida. In the event of any litigation arising out of this Agreement, each Party shall pay its own costs and attorneys' fees incurred at all tribunals, including appeals; and, in any such litigation, the court or tribunal shall not award fees to the prevailing party. THE CITY AND FDG, AFTER CONSULTING OR HAVING HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN ANY ACTION BROUGHT WITH RESPECT TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY COURSE OF CONDUCT, DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY TO THIS AGREEMENT. The terms of this Section shall survive the termination of this Agreement.

25. **Joint Preparation.** The language agreed to herein expresses the mutual intent and agreement of the Parties and shall not, as a matter of judicial construction, be construed more severely against one of the Parties over the other. The terms of this Section shall survive the termination of this Agreement.

26. **Time of the Essence.** Time is of the essence with respect to the payment obligation contained in this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY BLANK;  
SIGNATURES APPEAR ON FOLLOWING PAGE.]**

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement as of the day and year first above written.

Signed and delivered  
in the presence of:

**FDG:**

**FDG COUNTYLINE LLC**

\_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

As its: \_\_\_\_\_ President

Date: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

Witnesses as to FDG

**CITY:**

**ATTEST:**

**CITY OF HIALEAH, FLORIDA**

\_\_\_\_\_  
Marbelys Fatjo, City Clerk

By: \_\_\_\_\_

Carlos Hernandez, Mayor

\_\_\_\_\_ day of \_\_\_\_\_, 2020

Approved as to form and legality  
By the office of City Attorney for  
City of Hialeah, Florida

\_\_\_\_\_  
Lorena E. Bravo, City Attorney