

FOURTH AMENDMENT TO INTERLOCAL AGREEMENT

THIS FOURTH AMENDMENT TO INTERLOCAL AGREEMENT (the "Fourth Amendment") is made and entered into this 16th day of November, 2015, by and between the CITY OF HALLANDALE BEACH, FLORIDA, a Florida municipal corporation (the "City") and the HALLANDALE BEACH COMMUNITY REDEVELOPMENT AGENCY, a public body corporate and politic (the "CRA") (the City and CRA are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties").

RECITALS

1. The Parties entered into that certain Interlocal Agreement dated September 22, 2012 (as amended, the "Interlocal Agreement") regarding the implementation of capital improvements projects funded by the CRA.
2. On May 19, 2014, the City and CRA entered into a First Amendment to Interlocal Agreement ("First Amendment") to provide for Project Management Services regarding the Parks Master Plan.
3. On August 5, 2015, the City and CRA entered into a Second Amendment to Interlocal Agreement ("Second Amendment") which set forth the provisions by which the CRA will secure all necessary financing for implementation of the O.B. Johnson Park project (the "Project"), and the City will utilize General Fund dollars in an amount not to exceed \$933,000 for interim financing of the Project.
4. On October 19, 2015, the City and CRA entered into a Third Amendment to Interlocal Agreement ("Third Amendment") pursuant to which the CRA shall secure financing for implementation of the Project and the City will utilize General Fund dollars in an amount not to exceed an aggregate of \$2,952,740 for interim financing of the Project.
5. The CRA received a proposal from STI Institutional & Government, Inc. (together with its successors and assigns, the "Lender") pursuant to which the Lender has agreed to purchase the Hallandale Beach Community Redevelopment Agency Redevelopment Revenue Note, Series 2015 in a principal amount not exceeding \$15,400,000 (the "Note") at an interest rate of 2.72% per annum, to provide financing for the Project.
6. As a condition to the Lender's purchase of the Note, the Lender requires that the City pledge its revenues levied and collected by the City on the public service tax levied on the sale of water service, under the authority of Section 166.231, Florida Statutes and Ordinance No. 89-28 ("Ordinance No. 89-28") duly enacted by the City Commission of the City on September 29, 1989 (the "Water Public Service Tax Revenues") to payment of the Note.

7. City Ordinance No. 2015-15 enacted on November 4, 2015, authorizes the pledge of the Water Public Service Tax Revenues to payment of the Note and execution of this Fourth Amendment providing the terms and conditions of such pledge.

8. By adoption of CRA Resolution No. 2015-29 CRA on November 16, 2015, (the "Note Resolution"), the CRA authorized issuance of the Note and execution of this Fourth Amendment.

9. The City and CRA agree and acknowledge that the interest rate to be borne by the Note is highly favorable and that obtaining such interest rate is in the best interests of the CRA, the City and its citizenry.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the Parties hereby agree as follows:

Section 1: **Incorporation of Recitals.** The above set forth recitals are hereby incorporated into the terms of this Fourth Amendment.

Section 2: **Definitions.** Capitalized terms not otherwise defined herein shall have the meaning as set forth in the Note Resolution.

Section 3: **Pledge of Water Public Service Tax Revenues.**

(A) Interest and principal payments on the Note are due on February 1 of each year, commencing February 1, 2016.

(B) On or before January 1 of each year, commencing on January 1, 2016, or on the date the payment of the Note shall be declared immediately due and payable in accordance with the Note Resolution (the "Notice Date"), the CRA shall determine whether the Increment Revenues on deposit in the Debt Service Fund are sufficient to pay the interest and principal due on the Note on the immediately following February 1 payment date (or the date such accelerated payment shall be due) and all other amounts then due and owing, including, without limitation, the outstanding principal and accrued interest thereon if the Note shall have been declared immediately due and payable (collectively, the "Payment Obligation"). By no later than the Notice Date, the CRA shall notify the City and the Lender in writing if there is not a sufficient amount of Increment Revenues on deposit in the Debt Service Fund to pay the Payment Obligation and the amount of such Deficiency (as hereinafter defined). Deficiency shall mean for purposes of this Interlocal Agreement the difference between the amount on deposit in the Debt Service Fund and the Payment Obligation. After receipt of such notice, not later than ten (10) Business Days, the City shall provide the CRA with Water Public Service Tax Revenues in an amount equal to the Deficiency; provided, however, if by January 15 the City shall not have deposited into the Debt Service Fund Water Public Service Tax Revenues in the amount of the Deficiency, the City shall on the first day of each month thereafter deposit Water Public Service

Tax Revenues into the Debt Service Fund until the amount on deposit in the Debt Service Fund shall equal the Payment Obligation. A failure of the CRA to provide the notice required in this Section to the City shall not relieve the City of its obligations hereunder to fund the amounts provided for herein. The CRA shall immediately upon receipt deposit the Water Public Service Tax Revenues to the Debt Service Fund.

(C) Moneys on deposit in the Debt Service Fund shall be withdrawn solely for the purpose of paying principal and interest on the Note and any other payments required by the Note Resolution.

(E) The City hereby pledges the Water Public Service Tax Revenues to the payment of the Note. Such obligation and pledge shall continue for so long as any amounts remain due and owing under the Note and the Note Resolution.

(F) The City shall not pledge the Water Public Service Tax Revenues to the payment of any debt obligation other than the Note without the prior written consent of the Lender of the Note.

(G) The pledging of the Water Public Service Tax Revenues in the manner provided herein shall not be subject to repeal, modification or impairment by any subsequent ordinance, resolution or other proceedings of the City and the City shall not modify Ordinance No. 89-28, to decrease the rate of the taxes imposed thereby or to amend or modify in a manner that would materially adversely affect the amount of the Water Public Service Tax Revenues without the prior consent of the Lender. The City shall exercise all legally available remedies to enforce such collections now or hereafter available under Florida law. The City will not take any action which will impair or adversely affect its right to receive Water Public Service Tax Revenues, as herein pledged, or impair or adversely affect in any manner the pledge of the Water Public Service Tax Revenues made herein.

(H) No other indebtedness of the City is secured by a pledge of the Water Public Service Tax Revenues.

Section 4: No General Obligation or Pledge of Full Faith and Credit. The parties hereto acknowledge that neither the Note nor the obligation to deposit Water Public Service Tax Revenues into the Debt Service Account as contemplated hereunder constitute a general obligation of the City or the CRA within the meaning of any constitutional, statutory, or charter provision or limitation or a pledge of the City's or CRA's full faith and credit, but that the Note shall be payable solely from Increment Revenues and Water Public Service Tax Revenues.

Section 5: Conflicts. Except as expressly modified herein by this Fourth Amendment, the provisions of the Interlocal Agreement, First Amendment, Second Amendment and Third Amendment to the Interlocal Agreement remain unmodified and in full force and effect and are hereby ratified by the Parties. In the event of any conflict between the terms and

provisions of this Fourth Amendment and the terms and provisions of the Interlocal Agreement, the terms and provisions of this Fourth Amendment shall control.

Section 6: **Modification.** No modification or amendment of the terms hereof shall be valid unless in writing, and executed by the parties hereto and consented in writing by the Lender.

Section 7: **Counterparts.** This Fourth Amendment may be executed in counterparts, each of which shall be valid and regarded as an original and all of which shall constitute one and the same document.

Section 8: **No Third Party Beneficiaries.** This Fourth Amendment is for the sole benefit of the parties hereto and the Lender; and there are no other third party beneficiaries of this Fourth Amendment. This Interlocal Agreement shall inure to the benefit of and shall be binding upon the City and the CRA and their respective successors and assigns. In consideration of the purchase and acceptance of any or all of the Note by those who shall hold the same from time to time, the provisions of this Interlocal Agreement shall be deemed to be and shall constitute a contract between the City and the Holders from time to time of the Note. The provisions, covenants and agreements herein set forth to be performed by or on behalf of the City shall be for the equal benefit, protection and security of the Lender.

Section 9: **Filing.** A copy of this Fourth Amendment shall be filed for record with the Clerk of the Circuit Court in Broward County, Florida.

Section 10: **Effective date.** It is agreed that this Agreement shall be filed by the City with the Clerk of the Circuit Court of Broward County, Florida all in accordance with the Interlocal Act, and that this Agreement shall not become effective until so filed.

Section 11: **Obligation Absolute.** The obligation of the City to make the payments due hereunder and to perform and observe the other covenants and agreements contained herein shall be absolute and unconditional in all events except as otherwise expressly provided in this Interlocal Agreement and applicable provisions of law. Notwithstanding any dispute between the CRA and the City but subject to the foregoing, the City shall make all payments due hereunder when due and shall not withhold any such payments or any other amounts pending final resolution of such dispute nor shall the City assert any right of setoff or counterclaim against its obligation to make such payments required under Interlocal Agreement, including, without limitation for payments owed the City under Section 3.2 of the Interlocal Agreement. The City hereby subordinates its right to receive payment under Section 3.2 of the Interlocal Agreement to the CRA's payment obligations under the Note and the Note Resolution.

Section 12: **Events of Default Defined.** The following shall be "Events of Default" under this Fourth Amendment and the terms "Event of Default" and "Default" shall mean (except where the context clearly indicates otherwise), whenever they are used in this Fourth Amendment, any one or more of the following events:

(a) Failure by the City to timely pay any payment to be paid under this Fourth Amendment on the date on which it is due and payable;

(b) Failure by the City to observe and perform any material covenant, condition or agreement on its part to be observed or performed under this Fourth Amendment;

(c) Any provision of this Fourth Amendment material to the performance of the obligations of the City under this Fourth Amendment shall at any time for any reason cease to be valid and binding on the City or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by the City or the City shall deny that it has any or further liability or obligation under this Fourth Amendment; and

(d) Any act of bankruptcy is filed against the City and is not dismissed within 60 days of such filing.

Section 13: Notice of Default. The City agrees to give the CRA prompt written notice if any petition, assignment, appointment or possession referred to in Sections 12(c) and 12(d) hereof is filed by or against the City or of the occurrence of any other event or condition which constitutes a Default or an Event of Default, or with the passage of time or the giving of notice would constitute an Event of Default, immediately upon becoming aware of the existence thereof.

Section 14: Remedies on Default. Whenever any Event of Default referred to in Section 12 hereof shall have happened and be continuing, the Lender may take whatever action at law or in equity, by mandamus or otherwise, may appear necessary or desirable to collect amounts then due hereunder or to enforce any other of its or their rights hereunder, including, without limitation, requiring the deposit of the Water Public Service Tax Revenues into a fund or account established or to be established under the Note Resolution.

Section 15: Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by first class mail, registered or certified mail, postage prepaid, to the parties at the following address:

City: City of Halladale Beach
400 S. Federal Highway
Hallandale Beach, FL 33009

CRA: City of Hallandale Beach
Community Redevelopment Agency
400 S. Federal Highway
Hallandale Beach, FL 33009

Lender: STI Institutional & Government, Inc.
515 E. Las Olas Boulevard 7th Floor
Mail Code FL-Fort Lauderdale-1073
Fort Lauderdale, FL 33301

Section 16: Non-Business Day. If the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Interlocal Agreement, shall be other than on a Business Day such payments shall be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Interlocal Agreement.

Section 17: Public Agencies. At all times prior to and during the term of this Interlocal Agreement, the City and CRA shall constitute "public agencies" as that term is defined in section 163.01 (3)(b), Florida Statutes (the "Interlocal Act"), and each of the City and this CRA have in common the power and authority to separately issue obligations like the Note in order to provide financing of the Project.

Section 18: Waiver of Jury Trial. The City and the CRA hereby knowingly, voluntarily, intentionally, and irrevocably waive, to the fullest extent permitted by applicable law, the right either of them may have to a trial by jury in respect to any litigation, whether in contract or tort, at law or in equity, based hereon or arising out of, under or in connection with this Fourth Amendment, the Note and any other document or instrument contemplated to be executed in conjunction herewith, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party hereto.

Section 19: Applicable Law. The Interlocal Agreement shall be governed by the laws of the State of Florida.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the City and the CRA hereto have caused this Fourth Amendment to be executed as of the date first above written.

CITY:

CRA:

CITY OF HALLANDALE BEACH

HALLANDALE BEACH COMMUNITY
REDEVELOPMENT AGENCY

By: 

Renee C. Miller
City Manager

By: 

Renee C. Miller
Executive Director

ATTEST:

By: 

Mario Bataille
City Clerk

ATTEST:

By: 

Mario Bataille
HBCRA Clerk

Approved as to form and legal sufficiency:

Approved as to form and legal sufficiency:

By: 

V. Lynn Whitfield, City Attorney

By: 

Gray Robinson, P.A.
HBCRA Attorney