

OCT 7, 2014 2 NO PROVIDED BY CM-3  
DRAFT CITY ATTORNEY

**INTERLOCAL AGREEMENT BETWEEN BROWARD COUNTY AND CITY OF FORT LAUDERDALE  
REGARDING BROWARD ADDICTION RECOVERY CENTER (BARC)**

This Interlocal Agreement ("Agreement") is entered into between Broward County, a political subdivision of the State of Florida (the "County") and the City of Fort Lauderdale, a Florida municipal corporation (the "City").

A. On or about March 17, 2014, pursuant to Broward County Resolution 2014-201, authorizing initiation of conflict resolution proceedings with the City, the County initiated an intergovernmental dispute resolution process with the City under Chapter 164 of the Florida Statutes relating to the Conditional Use Application filed by the County for certain property located within the boundaries of the City (the "Dispute").

B. The County and the City participated in conflict resolution proceedings in accordance with Chapter 164 of the Florida Statutes, and agree to resolve the Dispute on the terms set forth in this Agreement.

C. The County and the City agree that the resolution of the Dispute on the terms set forth in this Agreement constitutes a fair, reasonable and complete resolution of the pending Dispute.

D. Nothing herein shall be deemed an admission of liability or fault by either party.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1. DEFINITIONS**

- 1.1 BARC Central. The residential treatment facility of Broward Addiction Recovery Center, which provides substance abuse treatment service for the citizens of Broward County.
- 1.2 Existing BARC Central Site. The real property located at 1011 SW 2nd Court, Fort Lauderdale, FL 33312.
- 1.3 Effective Date. The date of signature by the last signing party such that on such date this Agreement will have been executed by authorized representatives of both parties.
- 1.4 NJCC. Nancy J. Cotterman Center, which is the Broward County Children's Advocacy Center and Certified Rape Crisis Center and which provides services for victims and families relating to sexual assault and child abuse.
- 1.5 Property. The property owned by the County located at 355 SW 28<sup>th</sup> Street, Fort Lauderdale, Florida, bounded by SW 3<sup>rd</sup> Avenue on the east, SW 28<sup>th</sup> Street on the South, SW 4<sup>th</sup> Avenue on the west, and SW 27<sup>th</sup> Street on the north, as identified on Exhibits A and B hereto.

- 1.6 "Western Parcel" of the Property is the portion of the Property located on the SW 4<sup>th</sup> Avenue side of the Property as designated on Exhibit A consisting of approximately 1.02 acres and more particularly described as set forth in Exhibit A;
- 1.7 "Eastern Parcel" of the Property is the portion of the Property located on the SW 3<sup>rd</sup> Avenue side of the Property as depicted on Exhibit B consisting of approximately 2.81 acres and more particularly described as set forth in Exhibit B.

## **ARTICLE 2. TERMS OF SETTLEMENT**

In full and fair resolution of the Dispute, the parties agree to indefinitely suspend the Chapter 164 proceedings on the following terms and conditions:

2.1 The County shall withdraw its pending Conditional Use Application, submitted on or about January 30, 2014, to site BARC Central on the Western Parcel of the Property, ("Conditional Use Application"). BARC Central is a Level V Social Service Residential Facility under the City's Unified Land Development Regulations ("ULDRs"). Within sixty (60) days after the Effective Date of this Agreement, the County shall submit a new application for rezoning of the Eastern Parcel of the Property from B-3, Heavy Commercial/Light Industrial Business, to CF, Community Facility, and conditional use of the Eastern Parcel of the Property to allow the County to site BARC Central on the Eastern Parcel of the Property substantially in conformance with the conceptual site plan attached hereto as Exhibit C ("New Application"). The County may, in its sole election, also submit an application to allow for the siting of the NJCC on the Existing BARC Central Site, including rezoning, permit, parking reduction, and use applications ("NJCC Application").

2.2 The City shall timely and fairly process the New Application and, if submitted, the NJCC Application in accordance with its applicable rules and procedures in effect as of the date each application is filed, including the ULDRs, as well as all necessary permit applications filed by the County in connection with the siting of BARC Central on the Eastern Parcel of the Property and NJCC on the Existing BARC Central Site. The County agrees that site plans and permit applications for BARC Central on the Eastern Parcel of the Property shall provide for the front entrance of the facility facing primarily to the South or East and pedestrian and vehicular ingress and egress from SW 28<sup>th</sup> Street with use of SW 27<sup>th</sup> Street as needed for purposes of fire safety access, delivery, and traffic circulation requirements.

2.3 The County agrees that it shall not now or in the future, use, or apply for any required approvals or permits to use the Western Parcel of the Property as a Social Service Facility ("SSF") or Social Service Residential Facility ("SSRF"), as those terms are defined in the ULDRs as of the Effective Date. If the New Application and the NJCC Application (if filed within one (1) year of the full execution of this Agreement) are approved by the City as filed with no modification, amendments, or conditions (except as may be agreed to by the County in writing) ("Final Approval"), and all necessary permits are issued, then the County agrees that shall ~~execute and record in the official public records~~ a restrictive covenant in the form attached

hereto as Exhibit D prohibiting the Western Parcel of the Property from being used as an SSF or SSRF ("Restrictive Covenant") shall be recorded in the public records of Broward County, Florida. The County agrees to execute the Restrictive Covenant simultaneously with execution of this Agreement which Restrictive Covenant shall be held in escrow by an independent third party selected by agreement of the parties ("Escrow Agent"). The County agrees that the City has the right to record the Restrictive Covenant after issuance of Final Approval of the New Application and expiration of all appeals and any and all resulting litigation.- The Escrow Agent shall only release the Restrictive Covenant for recording in accordance with the terms of the escrow agreement, which shall be agreed upon by the parties' respective legal counsel. The fees for the Escrow Agent shall be borne by the City. If the County elects not to file the NJCC Application, then the Restrictive Covenant shall be recorded within one year -from the Effective Date of this Agreement provided the City has issued Final Approval (which does not include issuance of building permits) for the New Application.

2.4 Further, the County shall not convey, transfer, or otherwise dispose of all or a portion of the Western Parcel of the Property unless and until either the Restrictive Covenant has been filed or the Western Parcel of the Property is rezoned to a zoning category that does not permit use as an SSF or SSRF without City approval. The County shall cause this Agreement to be filed in the official public records promptly following full execution.

2.5 The Final Approval(s) of the New Application and the NJCC Application, if filed, including approvals of the site plan(s), conditional use approval(s), and certificate(s) of appropriateness, shall not expire for a period of five (5) years from the date of issuance of the applicable approval.

2.6 If the New Application and, if filed, the NJCC Application are not approved by the City as filed with no modification, amendment, or condition (except as may be agreed to by the County in writing) within 150 days after the submission date of each such application (subject to any extension mutually agreed upon in writing by the parties), then the County may, in its sole discretion, terminate this Agreement upon five (5) days' written notice and may re-commence conflict resolution procedures under Chapter 164 at the mediation stage. Except as set forth in paragraph 3.2, both parties stipulate that the mediation phase is the appropriate forum for continued intergovernmental conflict resolution, and waive any defense of ripeness or failure of a condition precedent, including without limitation failure to exhaust administrative remedies, for any dispute relating to the New Application and this Agreement.

### **ARTICLE 3. MISCELLANEOUS**

3.1 Time is of the Essence. The Agreement shall become effective on the date it is fully executed by the parties. Time is of the essence for all performance required under this Agreement.

3.2 Termination. If the County fails to file and prosecute the New Application in good faith through to completion, then the City shall have the right to seek specific performance or

injunctive relief to enforce the terms herein or to terminate this Agreement for cause. If the City fails to process the New Application and the NJCC Application (if filed) in good faith through to completion, then the County shall have the right to seek specific performance or injunctive relief to enforce the terms herein or to terminate this Agreement for cause.

3.3 Third Party Beneficiaries. The parties acknowledge that there are no third party beneficiaries under this Agreement.

3.4 Notices. In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail with a contemporaneous copy via e-mail to the addresses listed below and shall be effective upon mailing. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change.

NOTICE TO COUNTY:

Broward County Administrator

Attn: Bertha Henry

115 S. Andrews Ave., Suite 409

Ft. Lauderdale, Florida 33301

Email address: bhenry@broward.org (with copy to jacoffey@broward.org)

NOTICE TO CITY

City Manager

Attn: Lee R. Feldman

100 N. Andrews Avenue

Fort Lauderdale, FL 33301

Email address: lfeldman@fortlauderdale.gov

3.5 Joint Preparation. This Agreement has been jointly prepared by the parties hereto, and shall not be construed more strictly against either party.

3.6 Headings and Interpretation. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires.

3.7 Governing Law, Venue and Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with, and governed by, the laws of the state of Florida. The parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. **BY ENTERING INTO THIS AGREEMENT, THE COUNTY AND THE CITY HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CAUSE OF ACTION OR CLAIM ARISING FROM, RELATED TO, OR IN CONNECTION WITH THIS AGREEMENT.**

3.8 Amendments. No modification or amendment to this Agreement shall be effective unless it is in writing and executed by authorized representatives of each party.

3.9 Prior Agreements. This Agreement represents the final and complete understanding of the parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

3.10 Sovereign Immunity. Nothing in this Agreement is intended to serve as a waiver of sovereign immunity by the County or the City to the extent sovereign immunity may be applicable.

3.11 Incorporation By Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference.

3.12 Counterparts. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

3.13 Successors and Assigns. This Agreement is intended to be binding on each party's successors and assigns.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have made and executed this 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 \_\_\_\_\_, 2014, and CITY OF FORT LAUDERDALE, signing by and through its Mayor or Vice-Mayor, 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: \_\_\_\_\_  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_

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) 357-7641

By: \_\_\_\_\_  
Joni Armstrong Coffey (Date)  
County Attorney

MA/RDH  
2014-09-19 Interlocal Agreement – Ft. Lauderdale (BARC)  
09/19/14

**CITY OF FORT LAUDERDALE**

ATTEST:

CITY OF FORT LAUDERDALE

\_\_\_\_\_  
CITY CLERK

By: \_\_\_\_\_  
CITY MAYOR

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
CITY MANAGER

\_\_\_\_\_  
Print Name

\_\_\_\_ day of \_\_\_\_\_, 20\_\_

I HEREBY CERTIFY that I have approved  
this AGREEMENT as to form and legal  
sufficiency subject to execution by the parties:

\_\_\_\_\_  
CITY ATTORNEY

EXHIBIT D

Prepared by and return to:

Name:  
Address: Governmental Center, Suite 423  
115 South Andrews Avenue  
Ft. Lauderdale, FL 33301

SPACE ABOVE THIS LINE FOR PROCESSING DATA

**DECLARATION OF RESTRICTIVE COVENANTS**

This DECLARATION OF RESTRICTIVE COVENANTS ("Declaration") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by BROWARD COUNTY, FLORIDA, a political subdivision of the State of Florida ("County").

**WITNESSETH:**

WHEREAS, County is the fee simple owner of approximately 1.02 acres of land located in the City of Fort Lauderdale ("City") more particularly described in **Exhibit A** attached hereto and made a part hereof ("Property"); and

WHEREAS, County made application to City to locate a Social Service Residential Facility ("SSRF"), as that term is currently defined in City's Land Development Regulations, on a parcel adjacent to the Property; and

WHEREAS, in an effort to address City's concerns with the collocation of Social Service Facilities and SSRFs, County has agreed to place a restriction on the use of the Property as set forth below.

NOW, THEREFORE, in consideration of the promises and covenants herein contained, Declarant hereby declares that the Property shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, and regulations hereinafter set forth, all of which shall run with the Property and any part thereof and which shall be binding upon all parties having any right, title or interest in the Property, or any portion thereof, their heirs, successors and assigns.

1. Recitals. The recitals set forth above are true and correct and are incorporated herein by reference.
2. Use of Property. The Property, or any portion thereof, shall not be used nor shall an application be filed with City for use of the Property as a Social Service Facility ("SSF") or a Social Service Residential Facility ("SSRF"), as those terms are defined in City's Land Development Regulations as of the effective date of this Declaration.
3. Amendments, Modifications, and Releases. This Declaration shall not be amended, modified, or released as to any portion of the Property except by written instrument, executed by the then owner or owners of the portion of the Property affected by such amendment, modification, or release and approved in writing by City. Any amendment, modification, or release of this Declaration shall be recorded in the Public Records of Broward County, Florida.



## EXHIBIT D

4. Recordation and Effective Date. This Declaration shall not become effective and shall not be recorded in the Public Records of Broward County, Florida, until after all necessary permits are issued for the SSRF on the parcel adjacent to the Property. Once recorded, this Declaration shall run with the land for the sole benefit of City and shall bind all successors-in-interest with respect to the Property.
5. Enforcement. This covenant shall not give rise to any other cause of action by any parties other than City, and no parties other than City shall be entitled to enforce this Declaration. Any failure by City to enforce this Declaration shall not be deemed a waiver of the right to do so thereafter.
6. Severability. If any court of competent jurisdiction shall declare any section, paragraph or part of this Declarant invalid or unenforceable, then such judgment or decree shall have no effect on the enforcement or validity of any other section, paragraph, or part hereof, and the same shall remain in full force and effect.
7. Captions, Headings and Titles. Articles and paragraph captions, headings and titles inserted throughout this covenant are intended as a matter of convenience only and in no way shall such caption, heading or titles define, limit or in any way affect the subject matter or any of the terms and provisions thereunder or the terms and provisions of this covenant.
8. Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Florida and venue for any litigation arising hereunder shall lie in the Seventeenth Judicial Circuit in and for Broward County, Florida.
9. Remedies. In the event of a violation of this Agreement, the City shall have the right to exercise any and all legal and equitable remedies available, including, without limitation, the right to sue for specific performance and/or file for injunctive relief.

[Remainder of page intentionally left blank]

EXHIBIT D

IN WITNESS WHEREOF, County has executed this Declaration on the day first above written.

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: \_\_\_\_\_  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_

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) 357-7641

By: \_\_\_\_\_ (Date)  
Joni Armstrong Coffey  
County Attorney

STATE OF FLORIDA )

COUNTY OF BROWARD )

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, as Mayor or Vice-Mayor, who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Typed, printed or stamped name of Notary Public  
My Commission Expires:

**EXHIBIT D**

**EXHIBIT A**  
Property  
(Legal Description)