



Broward County

Legislation Details (With Text)

File #: 23-205 **Version:** 1

Status: Agenda Ready

In control: Broward Municipal Services District

On agenda: 2/7/2023 **Final action:** 2/7/2023

Title: MOTION TO AUTHORIZE County Administrator to negotiate, approve, and execute either a Third Amendment to the Facility Site Lease Agreement between Broward County and Wheelabrator South Broward Inc. (“Wheelabrator”), for the property located at 4400 South State Road 7 in the Broward Municipal Services District (“WSB Property”), or a separate stand-alone agreement, addressing Wheelabrator’s removal of an abandoned natural gas or petroleum pipeline from the leased premises and appropriate indemnification and other protections of the County, provided such Third Amendment or separate agreement does not result in any material financial obligations being placed on the County, and subject to review for legal sufficiency by the Office of the County Attorney; and authorize County Administrator to negotiate with, and take any action necessary to resolve objection(s) by, third parties claiming an interest in said abandoned pipeline, provided such action does not result in any material financial obligations being placed on the County, and subject to review for legal sufficiency by the Office of the County Attorney. (Commission District 6)

Sponsors:

Indexes:

Code sections:

Attachments:

Date	Ver.	Action By	Action	Result
------	------	-----------	--------	--------

Broward County Commission Regular Meeting

Director’s Name: Trevor M. A. Fisher

Department: Public Works **Division:** Solid Waste & Recycling

Information

Requested Action

MOTION TO AUTHORIZE County Administrator to negotiate, approve, and execute either a Third Amendment to the Facility Site Lease Agreement between Broward County and Wheelabrator South Broward Inc. (“Wheelabrator”), for the property located at 4400 South State Road 7 in the Broward Municipal Services District (“WSB Property”), or a separate stand-alone agreement, addressing Wheelabrator’s removal of an abandoned natural gas or petroleum pipeline from the leased premises and appropriate indemnification and other protections of the County, provided such Third Amendment or separate agreement does not result in any material financial obligations being placed on the County, and subject to review for legal sufficiency by the Office of the County Attorney; and authorize County Administrator to negotiate with, and take any action necessary to resolve objection(s) by, third parties claiming an interest in said abandoned pipeline, provided such action does not result in any material financial obligations being placed on the County, and subject to review for legal sufficiency by the Office of the County Attorney. **(Commission District 6)**

Why Action is Necessary

Board approval is required to authorize the County Administrator to take the referenced actions.

What Action Accomplishes

Provides required authorization to the County Administrator.

Is this Action Goal Related

No

Previous Action Taken

None.

Summary Explanation/Background

THE PUBLIC WORKS DEPARTMENT/SOLID WASTE AND RECYCLING SERVICES DIVISION RECOMMEND APPROVAL OF THE ABOVE MOTION.

Broward County and Wheelabrator are parties to an Amended and Restated Facility Site Lease Agreement (“Original Lease”), dated February 1, 2001, through which Wheelabrator leases the WSB Property. The Original Lease was subsequently amended by a First Amendment, dated December 14, 2004, a Second Amendment, dated June 28, 2011, and a Global Amendment, dated May 19, 2015 (collectively referred to as the “Lease”).

The WSB Property is currently the site of a waste-to-energy facility and affiliated ash monofil. To allow additional disposal space that may benefit Broward County residents, Wheelabrator is expanding the ash monofil within the footprint of the existing leased premises.

To complete the expansion of the ash monofil, various components of linear infrastructure must be relocated, including an operational natural gas pipeline owned by Florida Gas Transmission Company, LLC (“FGT”). The Board granted FGT an easement to relocate the relevant portions of the pipeline on October 11, 2022 (Item No. 6), and contemporaneously entered into a Temporary Revocable License Agreement and a Use, Perpetual Maintenance, and Repair Agreement with FGT to ensure the continued safe operations at the WSB Property.

During Wheelabrator’s site preparation work for the expansion project, it determined there was an abandoned natural gas or petroleum pipeline under the portion of WSB Property where work must be performed. This natural gas or petroleum pipeline appears to have been placed there almost 60 years ago by Sunniland Pipe Line Company, Inc. This pipeline has not been used for at least two decades and Sunniland Pipe Line Company, Inc., was administratively dissolved by the Florida Division of Corporations in 1999. For the ash monofil expansion project to continue, Wheelabrator will hire a third-party contractor to remove the abandoned pipeline at its own expense.

Contemporaneously, the Office of the County Attorney has been in communication with legal counsel representing a possible successor-in-interest to Sunniland Pipe Line Company. Although this possible successor has not yet objected to the removal of the abandoned pipeline, its legal counsel has reserved the right to do so.

Because of the potential for a successor to Sunniland Pipe Line Company to claim some interest in the abandoned pipeline, and because there is a potential for environmental liability associated with the removal work, before consenting to Wheelabrator removing the pipeline, a Third Amendment to the Lease or a separate agreement between the County and Wheelabrator is recommended to

document Wheelabrator's agreement to be responsible for any potential claims by Sunniland and/or its successor-in-interest to the pipeline, as well as Wheelabrator's obligations to defend, indemnify, and hold the County harmless from such claims and/or liabilities that could arise from the pipeline removal work.

If this item is approved, the County Administrator will be authorized to negotiate, approve, and execute either a Third Amendment to the Lease or a separate standalone agreement between the County and Wheelabrator, addressing such matters, provided the Third Amendment or separate agreement does not place any material financial obligations on the County, and subject to review for legal sufficiency by the Office of the County Attorney.

In addition, this item, if approved, will authorize the County Administrator to negotiate and resolve any required consents from or releases with third parties, including without limitation, possible successors to Sunniland Pipe Line Company, provided such action(s) do not place any material financial obligations on the County, also subject to review for legal sufficiency by the Office of the County Attorney.

Source of Additional Information

Notosha Austin, Interim Director, Solid Waste and Recycling Services (954) 474-1880

Trevor M.A. Fisher, P.E., MBA, Director, Public Works Department, (954) 357-6410

Fiscal Impact

Fiscal Impact/Cost Summary

None.