

Item No. 4

CITY OF RIVIERA BEACH DISTRICT BOARD
AGENDA ITEM SUMMARY

MEETING DATE: September 21, 2011

AGENDA ITEM SUMMARY NO. J11-092-4

- AWARDS / PRESENTATIONS / PETITIONS
- CONSENT
- PUBLIC HEARING
- ORDINANCE ON SECOND READING
- PUBLIC HEARING
- ORDINANCE ON FIRST READING

- REGULAR
- RESOLUTION
- DISCUSSION & DELIBERATION
- BOARD APPOINTMENT
- WORKSHOP

SUBJECT: RESOLUTION AUTHORIZING THE EXECUTION OF AN ESCROW AGREEMENT BY AND AMONG THE CITY OF RIVIERA BEACH, THE RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY, THE RIVIERA BEACH UTILITY SPECIAL DISTRICT, RYBOVICH RIVIERA BEACH, LLC, AND HAYGOOD & HARRIS, LLC, AS ESCROW AGENT, REGARDING THE DISPOSITION OF THAT CERTAIN SUBMERGED AND UPLAND LANDS LEASE.

RECOMMENDATION / MOTION: Approve the agreement.

DEPARTMENTAL APPROVAL REVIEW & DATE

Assistant City Manager <i>[Signature]</i>	Library - N/A
• City Attorney <i>PH Ry</i> 9/16/11	Marina - N/A
• City Clerk	Police - N/A
• Community Development	Public Works - N/A
• Finance <i>RA</i> 9/15/11	Purchasing - N/A
Fire - N/A	Recreation & Parks - N/A
Human Resources - N/A	Water & Sewer - N/A <i>lea</i> 9/14/2011
Information Technology - N/A	Risk Management - N/A

APPROVED BY UTILITY DISTRICT DIRECTOR: *Joan C. Curig* DATE: **SEP 14 2011**

Originating Dept. CITY ATTORNEY'S OFFICE <i>PH Ry</i>	Costs: _____ Current FY: \$ _____ Funding Source: <input type="checkbox"/> Capital Improvement <input checked="" type="checkbox"/> Operating <input type="checkbox"/> Other: Budget Account Number:	District Board Actions: <input type="checkbox"/> Approved <input type="checkbox"/> Approved w/conditions <input type="checkbox"/> Denied _____ <input type="checkbox"/> Tabled to _____ <input type="checkbox"/> Referred to Staff _____
User Dept. UTILITY SPECIAL DISTRICT		
Advertised: Date: Paper: <input checked="" type="checkbox"/> Not Required Affected Parties <input type="checkbox"/> Notified <input checked="" type="checkbox"/> Not Required		Attachments: 1. Resolution 2. Escrow Agreement

BACKGROUND/SUMMARY: The City, the CRA, and the Utility District (Lessors) own certain properties located within the City of Riviera Beach. The Submerged and Upland Lands Lease entered into on September 15, 2010, with Rybovich Riviera Beach, LLC, provides the terms and conditions for the lease of certain uplands and submerged lands owned by the City and the Utility District (the Utility District owns property housing a water tower which is subject to the Lease) and an option to lease certain property owned by the Agency. Rybovich has agreed to terminate its interest in the Lease and move its proposed use of the property to other property it owns, but needs the abandonment of certain road rights-of-way of approximately 450 lineal feet of East 20th Street between Avenue C and Avenue B, and approximately _____ feet of Avenue B starting at E 20th St and proceeding north. Rybovich has agreed to tender a Termination Agreement to be kept in escrow and not delivered to Lessors unless and until the City approves an abandonment application for the rights-of-way.

Staff recommends approval of the Escrow Agreement to be held by Haygood & Harris, LLC.

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (City)	_____	_____	_____	_____	_____
In-Kind Match (City)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

NO. ADDITIONAL FTE POSITIONS (Cumulative) _____

Is Item Included In Current Budget? Yes _____ No X
 Budget Account No.: Fund _____ Dept/Division _____ Org. _____ Object _____ Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review: Louis C. Aurigemma
 Mr. Louis C. Aurigemma, P.E., Executive Director

III. REVIEW COMMENTS

A. Finance Department and/or Purchasing/Intergovernmental Relations/Grants Comments:

Laon He
 Finance Department

 Purchasing and Grants

B. Other Department Review:

 Department Director

RESOLUTION NO. _____

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT, PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE EXECUTION OF AN ESCROW AGREEMENT BY AND AMONG THE CITY OF RIVIERA BEACH, THE RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY, THE RIVIERA BEACH UTILITY SPECIAL DISTRICT, RYBOVICH RIVIERA BEACH LLC, AND HAYGOOD & HARRIS, LLC, AS ESCROW AGENT, REGARDING DISPOSITION OF THAT CERTAIN SUBMERGED AND UPLAND LANDS LEASE ENTERED INTO BY THE PARTIES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Riviera Beach Utility Special District ("District"), the Riviera Beach Community Redevelopment Agency ("Agency"), and the City of Riviera Beach ("City") own certain properties located within the City of Riviera Beach; and

WHEREAS, the District, Agency, and City, as Lessors and Rybovich Riviera Beach LLC ("Rybovich") as Lessee, entered into that certain lease entitled Submerged and Upland Lands Lease dated September 15, 2010 (hereinafter the "Lease"); and

WHEREAS, the Lease provides the terms and conditions for the lease of the certain uplands and submerged lands owned by the District and the City and an option to lease certain property owned by the Agency; and

WHEREAS, Rybovich has agreed to terminate its interest in the Lease and move its proposed use of the property in the lease to other property owned by Rybovich, but needs the abandonment of certain road rights-of-way more particularly described in the Escrow Agreement; and

WHEREAS, Rybovich has agreed to tender a termination agreement to be kept in escrow and not delivered to Lessors unless and until the City approves an abandonment application for certain rights-of-way; and

WHEREAS, staff recommends approval of the Escrow Agreement to be held by Haygood & Harris, LLC.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT, PALM BEACH COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. That the Utility Special District authorizes the Chairperson and District Clerk to execute the Escrow Agreement attached hereto as Attachment 1.

SECTION 2. That this resolution shall take effect immediately upon its passage and approval by District Board.

PASSED AND APPROVED this _____ day of _____, 2011.

UTILITY SPECIAL DISTRICT

APPROVED:

JUDY L. DAVIS
CHAIRPERSON

ATTEST:

CARRIE E. WARD
MASTER MUNICIPAL CLERK
UTILITY SPEICAL DISTRICT CLERK

BILLIE E. BROOKS
VICE CHAIRPERSON

CEDRICK A. THOMAS
BOARD MEMBER

DAWN S. PARDO
BOARD MEMBER

SHELBY L. LOWE
BOARD MEMBER

MOTIONED BY: _____

SECONDED BY: _____

J. DAVIS _____

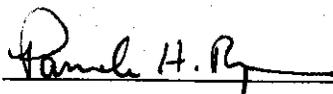
B. BROOKS _____

C. THOMAS _____

D. PARDO _____

S. LOWE _____

REVIEWED AS TO LEGAL SUFFICIENCY



PAMALA H. RYAN, DISTRICT ATTORNEY

DATE: 9/16/11

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Agreement") is made and entered into this _____ day of September, 2011, by and between CITY OF RIVIERA BEACH, a Florida municipal corporation (hereinafter referred to as "City"), CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT (hereinafter referred to as "Utility District"), RIVIERA BEACH COMMUNITY REDEVELOPMENT AGENCY, a body corporate and politic created pursuant to Part III, Chapter 163, Florida Statutes (hereinafter referred to as "Agency"), (the City, Utility District and Agency maybe collectively be referred to as "Lessors"), and RYBOVICH RIVIERA BEACH, LLC, a Florida limited liability company (hereinafter referred to as "Rybovich" or "Lessee") and J. MICHAEL HAYGOOD, P.A. (hereinafter referred to as "Escrow Agent").

WITNESSETH:

WHEREAS, the Lessors own certain property located in the City of Riviera Beach; and

WHEREAS, the Lessors and the Lessee have entered into that certain lease entitled Submerged and Upland Lands Lease dated September 15, 2010 (hereinafter the "Lease"); and

WHEREAS, the Lease provides the terms and conditions for the lease of the certain uplands and submerged lands owned by the City and the Utility District and an option to lease certain property owned by the Agency; and

WHEREAS, Rybovich has agreed to terminate its interest in the Lease and move its proposed use of the property in the lease to other property, but needs the abandonment of certain road rights of way more particularly described herein ("Abandonment Application"); and

WHEREAS, Rybovich has agreed to tender the termination agreement ("Termination Agreement") attached as Exhibit "A" to be kept in escrow and not delivered to the Lessors until the approval of Rybovich's Abandonment Application; and

WHEREAS, the City, Utility District, Agency, Rybovich and Escrow Agent desire to set forth the terms pursuant to which the Termination Agreement is to be held and disbursed.

NOW THEREFORE, in consideration of the mutual covenants, promises and benefits contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Recitals. The parties acknowledge and agree that the recitals set forth above are true and correct and are hereby made a part of this Agreement as if fully set forth herein.
2. Defined Terms. Any capitalized terms which are not separately defined in this Agreement shall have the meaning ascribed thereto in the Lease or Termination Agreement.
3. Delivery of Termination Agreement in Escrow. Upon execution of this Agreement, Rybovich shall deliver the fully executed Termination Agreement to the Escrow Agent which shall be held in trust by the Escrow Agent pursuant to the terms set forth herein.

4. Delivery of Termination Agreement. The Escrow Agent shall hold said Termination Agreement in escrow, and shall release and deliver the Termination Agreement only under the following conditions:

(a) The Termination Agreement shall be held in escrow by Escrow Agent until the City of Riviera Beach approves the Abandonment Application, which proposes the City's abandonment of approximately 450 lineal feet of East 20th Street between Avenue C and Avenue B, and approximately 60 feet of Avenue B starting at E 20th St and proceeding north. Rybovich shall submit a complete Abandonment Application with all required fees to the City of Riviera Beach within 30 days of the execution of this agreement. City staff shall process and review the abandonment request and the City Council shall render a decision within 120 days of the submission of the Abandonment Application. Upon the approval of the Abandonment Application and delivery of an executed ordinance approving the same to Rybovich and the Escrow Agent, the Escrow Agent shall deliver the Termination Agreement to the City, Utility District and the Agency.

(b) In the event that Rybovich has not submitted the Abandonment Application and all fees to the City within 30 days of the execution of this agreement, the Escrow Agent shall deliver the Termination Agreement to the City, Utility District and the Agency. The delivery of the Termination Agreement pursuant to this provision shall not prejudice Rybovich from applying for an abandonment of the specified streets.

(c) This Agreement shall not affect the City's right, duty, obligation, authority and power to act in its governmental police power or regulatory capacity in accordance with applicable laws, ordinances, codes or other building regulations. Notwithstanding any other provision of this Agreement, the consideration of the application for abandonment shall be subject to the established procedures and requirements of the City with respect to review and approval of similar applications. In no event shall the City, due to any provision of this Agreement, be obligated to take any action concerning regulatory approvals except through its established processes and in accordance with applicable provisions of law. In the event, the City does not approve the Abandonment Application, the Termination Agreement shall be returned to Rybovich.

(d) In the event that a party makes a demand or request for delivery of the Termination Agreement, the Escrow Agent shall send a copy of such request or demand to the other parties. In the event that Escrow Agent does not receive a written objection to the disbursement requested or demanded within five (5) business days of the receipt of the demand request by a party, the Escrow Agent shall disburse the Termination Agreement. In the event that Escrow Agent receives a timely objection to any disbursement, the Escrow Agent shall continue to hold the Termination Agreement until either (i) the parties deliver the Escrow Agent joint or mutual written instructions as to the disbursement of the Termination Agreement (ii) until directed to disburse the Termination Agreement by a court of competent jurisdiction.

4. General Conditions of Escrow. Except as specifically modified by written instruction executed by all parties and accepted by Escrow Agent, the following conditions shall apply to this escrow, and the documents received hereunder.

(a) Limitations of Liability: Without limitation, Escrow Agent shall not be liable for any loss or damage resulting from the following:

The financial status or insolvency of any other party, or any misrepresentation made by any other party.

Any legal effect, insufficiency, or undesirability of any instrument deposited with or delivered by or to Escrow Agent or exchanged by the Parties hereunder, whether or not Escrow Agent prepared such instrument.

The default, error, action or omission of any other party to the escrow.

The expiration of any time limit or other consequence of delay, unless a properly executed Closing Instructions, accepted by Escrow Agent has instructed the Escrow Agent to comply with said time limit.

Escrow Agent's compliance with any legal process, subpoena, writ, order, judgment or decree of any court, whether issued with or without jurisdiction and whether or not subsequently vacated, modified, set aside or reversed.

(b) Completion of Duties: Upon completion of the disbursement of the Funds, in accordance with terms and conditions of this Agreement and the Closing Instructions of the Parties, Escrow Agent shall be automatically released and discharged of its escrow obligations hereunder.

(c) Agents: These conditions of escrow shall apply to and be for the benefit of agents of the Escrow Agent employed by it for services in connection with this escrow, as well as for the benefit of Escrow Agent.

(d) Attorney's Fees: In the event that litigation is initiated relating to this escrow, the Parties hereto agree that Escrow Agent shall be held harmless from any reasonable attorney's fees, court costs and expenses relating to that litigation to the extent that litigation does not arise as a result of the Escrow Agent's fault hereunder or under the Closing Instructions of the Parties. In the event that conflicting demands are made on Escrow Agent, or Escrow Agent, in good faith, believes that any demands with regard to the Funds are in conflict or are unclear or ambiguous, Escrow Agent may bring an interpleader action in an appropriate court. Such action shall not be deemed to be the "fault" of Escrow Agent. To that end, the Parties hereto, other than Escrow Agent, agree to indemnify Escrow Agent from all reasonable attorney's fees, court costs and expenses in connection with same, through final appellate review.

(e) Duties of Escrow Agent: Escrow Agent is authorized and agrees by acceptance of this Agreement to hold and deliver the same or the proceeds thereof in accordance with the terms hereof. In the event of doubt as to its liabilities or duties, Escrow Agent may, in his sole discretion (i) continue to hold the Termination Agreement until the Parties mutually agree in writing to the disbursement thereof, or until a judgment of a court of competent jurisdiction shall determine the rights of the Parties thereof. In the event of any suit wherein Escrow Agent is made a party by virtue of acting as agent, or in the event of any suit initiated by

or against Escrow Agent, Escrow Agent may interplead any money held by Escrow Agent. Escrow Agent shall be entitled to recover reasonable attorneys' fees and costs incurred in negotiation, at trial and upon appeal, said fees and costs to be charged and assessed as court costs in favor of Escrow Agent and immediately paid by the non-prevailing party. The Parties agree that Escrow Agent shall not be liable to anyone for misdelivery or monies unless such misdelivery shall be due to willful breach of this Agreement or gross negligence on the part of Escrow Agent. Escrow Agent is held harmless from any and all compliance with its obligations hereunder. Escrow Agent shall not be liable for any loss resulting from any default, error, action or omission, loss or impairment of funds in the course of collection or while on deposit result from failure or suspension of the depository institution or Escrow Agent's compliance with any legal process, order or judgment of any court, whether or not subsequently vacated or modified.

5. Notice. Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly received as of the date and time the same are personally delivered, when actually received pursuant to transmission by facsimile or telecopier, or when delivered by overnight courier, or three (3) business days after deposited with the United States Postal Service, postage prepaid by registered or certified mail and addressed as follows:

If to City: The City of Riviera Beach
600 W. Blue Heron Boulevard
Riviera Beach, Florida 33404
Attention: City Manager and City Attorney

If to Utility District: City of Riviera Beach Utility District
600 W. Blue Heron Boulevard
Riviera Beach, Florida 33404

If to Agency: Riviera Beach Community Redevelopment Agency
2001 Broadway, Suite 300
Riviera Beach, Florida 33404
Attention: Executive Director

With a copy to: J. Michael Haygood, P.A.
1551 Forum Place
Suite 400-B
West Palm Beach, Florida 33401

It to Rybovich: Rybovich Riviera Beach, LLC
450 East Las Olas Boulevard, Suite 1500
Fort Lauderdale, Florida 33301
Attention: Carlos Viduera, Senior VP

With a copy to: Bruce Loren & Associates
2000 Palm Beach Lakes Blvd, Suite 501
West Palm Beach, Florida 33409

If to Escrow Agent: J. Michael Haygood, P.A.
1551 Forum Place, Suite 400-B
West Palm Beach, Florida 33401

6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective devisees, personal representatives, successors and assigns.

7. Waiver; Modification. The failure by any party to insist upon or enforce any of their rights shall not constitute a waiver thereof and nothing shall constitute a waiver of any party's right to insist upon strict compliance with the terms of this Agreement. Any party may waive the benefit of any provision or condition for its benefit which is contained herein. No oral modification of this Agreement shall be binding upon the parties and any modification must be in writing and signed by the parties.

8. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Florida.

9. Capitalized terms. Capitalized terms in this Agreement have the same meanings as defined in the Purchase Agreement.

10. Headings. The paragraph headings set forth in this Agreement are for convenience of reference only and shall not be deemed to vary the content of this Agreement or limit the provisions or scope of any paragraph herein.

11. Attorneys' Fees. In the event that it becomes necessary for any party to bring suit to enforce the terms of this Agreement, then the prevailing party(ies) shall be entitled to recover all costs, including reasonable attorneys' fees incurred in connection with such litigation (including appellate proceedings) against the non-prevailing party.

12. Time. Time is of the essence of this Agreement and of the covenants and provisions hereof.

13. Severability. If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall be affected thereby and shall be enforced to the greatest extent permitted by law.

14. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute one and the same Agreement.

[Signatures to follow]

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

Attest:

By: _____
Carrie E. Ward, MMC, City Clerk

"CITY"

CITY OF RIVIERA BEACH

By: _____
Thomas A. Masters, Mayor

As to Form and Legal Sufficiency

By: Pamela H. Ryan
Pamala H. Ryan, Attorney for City &
Utility District

"UTILITY DISTRICT"

CITY OF RIVIERA BEACH UTILITY
DISTRICT

By: _____
Judy L. Davis, Chairperson

"AGENCY"

CITY OF RIVIERA BEACH
COMMUNITY REDEVELOPMENT
AGENCY

By: _____
Judy L. Davis, Chairperson

"RYBOVICH"

RYBOVICH RIVIERA BEACH, LLC

By: _____
Carlos E. Vidueria, Vice President

"ESCROW AGENT"

Haygood & Harris, LLC

By: _____
J. Michael Haygood, Manager