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**Attachments:** 1. 130635\_Mod Beazer Tolling Agreement\_20140116.pdf, 2. 130635\_Beazer Tolling Agreement\_20140501.pdf, 3. 130635\_Beazer Tolling Agreement 2nd Amd\_20140717.pdf, 4. 130635\_Beazer Tolling Agreement 3rd Amd\_20140918.pdf, 5. 130635\_Beazer Settlement Agreement\_20141120.pdf, 6. 130635\_Beazer agreement\_20141120.pdf

Date	Ver.	Action By	Action	Result
11/20/2014	6	City Commission	Approved as Recommended	Pass
9/18/2014	5	City Commission	Approved as Recommended	
7/17/2014	4	City Commission	Approved as Recommended	
5/1/2014	3	City Commission	Approved as Recommended	
1/16/2014	2	City Commission	Approved as Recommended	Pass

Settlement of City's claims against Beazer East, Inc. for cost recovery under Florida and Federal Law (B)

On March 4, 2013, the City placed Beazer East, Inc. ("Beazer") on notice of the City's cost recovery claims arising from the approximately \$1.8 million dollars that the City expended from 2001 to present to ensure that the remedy selected by the United States Environmental Protection Agency for the Koppers Superfund Site is adequately protective of the City's primary source of drinking water for the Gainesville community, the Murphree Wellfield, which is located downgradient of the Koppers Site.

Since March 2013, City staff (from Public Works, Legal and GRU) and outside counsel have been working with Beazer staff to negotiate a settlement of the cost recovery claims without resort to litigation, as it is anticipated that such litigation will be time and cost-intensive for both parties.

On January 16, 2014, the City and Beazer entered into a Tolling Agreement that preserved and tolled the applicable Statute of Limitations period (a statutory timeframe within which legal action must be filed). The parties have continued to extend the Tolling Agreement through November 20, 2014.

City staff negotiated in good faith with Beazer staff to finalize a draft settlement that staff would recommend for approval. The draft settlement agreement has been approved and executed by the authorized official of Beazer. City staff recommends the City Commission likewise approve the settlement and authorize the Mayor to sign the settlement agreement. The settlement agreement with all exhibits is included in the back-up for this agenda item, the key terms of the settlement are as follows:

- 1) Beazer pays the City \$674,500 within 30 days after Commission approval of the Settlement;

- 2) Beazer completes certain stormwater improvements within the public right-of-way on NW 28th Avenue;
- 3) Beazer removes certain stockpile materials (soil and debris) from the City's Municipal Storage Yard ("MSY"), removes 1 foot of surface soil within a certain area on the MSY and restores the site with clean fill and re-seeding of grass;
- 4) Beazer remediates certain soil within certain public right-of-way on NW 21st Avenue;
- 5) Beazer grants at option to purchase for \$0 a 16 foot wide strip of land for a bike/ped trail to connect NW 23rd Avenue to the MSY site either along the east side of the Beazer property or along the railway corridor on the west side of the Beazer property; and
- 6) The City releases Beazer from claims for recovery of costs incurred by the City related to contamination at the Superfund site, excepting certain claims (namely claims for breach of the settlement agreement; injunctive relief for investigation and cleanup; relating to the Northeast Lagoon site; and the actual presence of contaminants in the Murphree Well Field.)

The City Commission: Authorize the Mayor to execute the Settlement Agreement, subject to approval by the City Attorney as to form and legality.