



TOWN OF CUTLER BAY

Mayor Paul S. Vrooman
Vice Mayor Edward P. MacDougall
Councilmember Timothy J. Meerbott
Councilmember Ernest N. Sochin
Councilmember Peggy R. Bell

Town Manager Steven Alexander
Town Attorney Mitchell Bierman
Town Attorney Chad Friedman
Town Clerk Erika Santamaria

This meeting is open to the public. In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation, a sign language interpreter or hearing impaired to participate in this proceeding should contact the Town Clerk at (305) 234-4262 for assistance no later than four days prior to the meeting.

TOWN COUNCIL MEETING AGENDA

Wednesday, August 15, 2007

7:00 PM

South Dade Regional Library
10750 SW 211th Street, 2nd Floor
Cutler Bay, Florida 33189

1. **CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE, MOMENT OF SILENCE**
2. **PROCLAMATIONS, AWARDS, PRESENTATIONS**
 - A. Presentation made by the Cutler Bay Cudas
 - B. Proclamation presentation to Lindsay Lockwood
3. **APPROVAL OF MINUTES**
 - A. Regular Council Meeting – July 18, 2007
4. **REPORTS**
 - A. TOWN MANAGER'S REPORT
 - B. TOWN ATTORNEY'S REPORT
 - C. BOARD AND COMMITTEE REPORTS
5. **CONSENT AGENDA**

ANY ITEMS SHALL BE REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION OR SEPARATE VOTE IF REQUESTED OR PULLED BY A COUNCILMEMBER OR THE TOWN MANAGER.

TAB 1

- A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ESTABLISHING A TOWN AUDIT COMMITTEE AND AUTHORIZING THE ISSUANCE OF A REQUEST FOR PROPOSALS (RFP) FOR PROFESSIONAL AUDITING SERVICES IN ACCORDANCE WITH THE REQUIREMENTS OF FLORIDA STATUTES §218.391; AND PROVIDING FOR AN EFFECTIVE DATE. TAB 2
- B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR POLICE CONFISCATION FUND EXPENDITURES IN THE AMOUNT OF \$4,334.65 TO BE FUNDED BY PROCEEDS OF CONFISCATED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE. TAB 3
- C. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA CREATING A COMMITTEE OF THE WHOLE "COW" FOR THE PURPOSE OF REVIEWING ANY ITEM REQUESTED BY ANY MEMBER OF THE TOWN COUNCIL OR THE TOWN MANAGER; PROVIDING FOR THE SELECTION OF COMMITTEE MEMBERS; PROVIDING FOR MEETING DATES AND PROVIDING FOR AN EFFECTIVE DATE. **(MACDOUGALL)** TAB 4
- D. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA CREATING A CITIZEN ADVISORY COMMITTEE FOR THE PURPOSE OF PROVIDING RECOMMENDATIONS TO THE TOWN COUNCIL ON THE FEASIBILITY OF CREATING A CHARTER HIGH SCHOOL FOR CUTLER BAY, APPOINTING A COUNCIL LIAISON AND PROVIDING FOR THE SELECTION OF COMMITTEE MEMBERS, PROVIDING FOR AUTOMATIC DISSOLUTION AND PROVIDING FOR AN EFFECTIVE DATE. **(SOCHIN)** TAB 5
- E. A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A PARK USE AGREEMENT BETWEEN LOCAL YOUTH SPORTS ORGANIZATIONS AND THE TOWN OF CUTLER BAY FOR THE USE OF TOWN PARKS FOR SPORTS AND RECREATIONAL PROGRAMMING ACTIVITIES; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENTS; AND PROVIDING FOR AN EFFECTIVE DATE. TAB 6
- F. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPOINTING AN APPROPRIATIONS AND INTERGOVERNMENTAL CONSULTING SERVICE TO REPRESENT THE TOWN BEFORE THE EXECUTIVE AND LEGISLATIVE BRANCHES OF THE STATE GOVERNMENT; TAB 7

PROVIDING FOR A RETAINER AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

- G. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE CONTRACT WITH THE CONSULTING GROUP OF SOUTH FLORIDA, INC. FOR FISCAL YEAR 2008 BUDGET PREPARATION AND DEVELOPMENT ASSISTANCE, AUTHORIZING THE TOWN MANAGER TO EXECUTE THE CONTRACT, AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 8

6. QUASI-JUDICIAL HEARINGS (PUBLIC HEARING REQUIRED)

ALL PERSONS ADDRESSING THE TOWN COUNCIL SHALL BE SWORN-IN PRIOR TO GIVING TESTIMONY AND MAY BE SUBJECT TO CROSS EXAMINATION. ALL PERSONS ADDRESSING THE TOWN COUNCIL SHALL STATE THEIR NAME AND ADDRESS FOR THE RECORD.

7. ORDINANCES FOR FIRST READING (PUBLIC HEARING NOT REQUIRED)

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33 "ZONING," ARTICLE VI "SIGNS" TO PROVIDE FOR THE RELOCATION OF NON-CONFORMING OFF-PREMISES OR BILLBOARD SIGNS; CREATING SECTION 33-95.1 "RELOCATION OF NONCONFORMING OFF-PREMISES OR BILLBOARD SIGNS;" PROVIDING FOR OPTING OUT OF THE MIAMI-DADE COUNTY SIGN REGULATIONS RESTRICTING PLACEMENT OF SIGNS IN PROXIMITY TO EXPRESSWAYS; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 9

8. ORDINANCES FOR FIRST READING (PUBLIC HEARING REQUIRED)

9. ORDINANCES FOR SECOND READING (PUBLIC HEARING REQUIRED)

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33 "ZONING," SECTION 33-304 "APPLICATIONS" BY PROVIDING FOR REGULATIONS FOR FILING OF APPLICATIONS; PROVIDING FOR REGULATIONS FOR RE-FILING OF APPLICATIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 10

- B. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR REGULATIONS OF "OPEN HOUSE" SIGNS; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE. (MACDOUGALL)

TAB 11

10. PUBLIC COMMENTS

THE PRESIDING OFFICER SHALL HAVE THE DISCRETION TO LIMIT THE LENGTH OF PUBLIC COMMENTS IN THE INTEREST OF TIME IN ORDER TO ALLOW ALL PERSONS WHO WISH TO SPEAK AN OPPORTUNITY TO DO SO.

11. MAYOR AND COUNCIL COMMENTS

12. OTHER BUSINESS

- A. Discussion – Town Manager and Town Clerk’s Compensation

13. ADJOURNMENT

- A. First Budget Hearing
Monday, September 17, 2007, 7:00 P.M.
South Dade Regional Library
10750 SW 211th ST, 2nd Floor
- B. Regular Town Council Meeting
Wednesday, September 19, 2007, 7:00 P.M.
South Dade Regional Library
10750 SW 211th ST, 2nd Floor
- C. Second Budget Hearing
Monday, September 24, 2007, 7:00 P.M.
South Dade Regional Library
10750 SW 211th ST, 2nd Floor

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

TAB 1

**TOWN OF CUTLER BAY
TOWN COUNCIL MEETING
MINUTES**

Wednesday, July 18, 2007

7:00 PM

South Dade Regional Library
10750 SW 211th Street
Cutler Bay, Florida 33189

1. CALL TO ORDER/ROLL CALL OF MEMBERS: The meeting was called to order by the mayor at 7:10 PM. Present were the following:

Councilmember Peggy R. Bell
Councilmember Timothy J. Meerbott
Councilmember Ernest N. Sochin
Vice Mayor Edward P. MacDougall
Mayor Paul S. Vrooman

Town Manager Steven J. Alexander
Town Attorney Mitchell Bierman
Town Attorney Chad Friedman
Town Clerk Erika Gonzalez-Santamaria

2. PROCLAMATIONS, AWARDS, PRESENTATIONS:

- A. Senator Larcenia Bullard provided a brief presentation about the recent legislative session. The Mayor presented Senator Bullard with a proclamation thanking her for her service to community and to the Town.

The Mayor recessed the Council Meeting at 8:00 p.m. The Council Meeting resumed at 8:10 p.m.

3. APPROVAL OF MINUTES:

- A. Councilmember Sochin made a motion approving the minutes of the meeting of June 20, 2007. The motion was seconded by Vice Mayor MacDougall and adopted by a unanimous 5-0 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

4. REPORTS

A. TOWN MANAGER'S REPORT

The Town Manager reported that the Cutler Bay Public Works staff surveyed all street signs and one hundred and thirteen intersections were identified for signage replacement. The Manager stated that he met with Miami-Dade County Public Works to negotiate the installation of the replacing the street signs, and currently reported that at this point one third of the signs have been replaced by the Town's Public Works team. He informed Council that over thirty-five and a half tons of garbage has been picked up within the Town's limit through the efforts of the Public Works NEAT Team. The Manager discussed the acceptance of five school buses from the School Board and has been successfully negotiated with the assistance of School Board Member Evelyn Greer. The Manager

discussed his meeting along with the Mayor, Commissioner Sorenson and representatives of Palmetto Bay over the allocation of the \$20 million PTP appropriations for Caribbean and Old Cutler Road. The Commissioner felt that the funds should go where it is really needed and voiced her support for the Cutler Bay project for Caribbean and Old Cutler Road. The Manager announced that the County Commission has approved the QNIP and Parks Agreement and later thanked Parks and Recreation Director, Alan Ricke and the Town Attorney for their perseverance. The Manager also stated that six Town Hall directional signs have been placed around the surrounding areas.

B. TOWN ATTORNEY'S REPORT

The Town Attorney discussed the Parks Interlocal Agreement and announced that the Town is a first time property owner. He reminded Council that the budget process will commence soon and budget hearings will take place in two different meetings.

C. BOARD AND COMMITTEE REPORTS

Councilmember Bell reminded that the Town Events Committee is still pending appointments from Council and requested that recommendations be made for next month's Council meeting.

5. CONSENT AGENDA:

- A.** A RESOLUTION OF THE MAYOR AND THE TOWN COUNCIL OF THE TOWN OF CUTLER, BAY, FLORIDA APPROVING THE INTERLOCAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE TOWN OF CUTLER BAY AUTHORIZING PAYMENT TO THE TOWN OF ITS PORTION OF FLORIDA POWER & LIGHT ELECTRIC FRANCHISE FEES ARISING PURSUANT TO COUNTY ORDINANCE NO. 89-91 GRANTING A NON-EXCLUSIVE ELECTRIC FRANCHISE TO FLORIDA POWER & LIGHT; PROVIDING FOR IMPLEMENTATION AND PROVIDING FOR AN EFFECTIVE DATE.

- B.** A RESOLUTION OF THE MAYOR AND THE TOWN COUNCIL OF THE TOWN OF CUTLER, BAY, FLORIDA APPROVING THE SUBGRANT AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE TOWN OF CUTLER BAY PROVIDING FOR PAYMENT TO THE TOWN OF THE BALANCE OF THE SAFE NEIGHBORHOOD PARKS SIXTH BOND SERIES ALLOCATED TO CUTLER RIDGE PARK AND CUTLER RIDGE POOL IN AN AMOUNT NOT TO EXCEED \$640,455; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SUBGRANT AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

- C.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, STATING THAT THE TOWN SHALL COMPLY WITH ALL STATE AND FEDERAL REQUIREMENTS WITH RESPECT TO EMPLOYEES ABSENT FROM WORK FOR SERVICE IN THE UNIFORMED SERVICES; ESTABLISHING THAT THE TOWN SHALL NOT PAY SUPPLEMENTAL PAY FOR EMPLOYEES ABSENT

FROM WORK FOR SERVICE IN THE UNIFORMED SERVICES UNLESS REQUIRED TO DO SO BY LAW OR WHERE TOWN COUNCIL, IN ITS SOLE DISCRETION, DETERMINES THAT CIRCUMSTANCES SO WARRANT; AND PROVIDING AN EFFECTIVE DATE.
(MACDOUGALL)

- D.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, IN SUPPORT OF ADMINISTRATIVE ORDER NO.07-01 "MILITARY LEAVE FOR ACTIVE MILITARY SERVICE"; AND PROVIDING AN EFFECTIVE DATE.
(VROOMAN)
- E.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE ISSUANCE OF A REQUEST FOR PROPOSALS (RFP) FOR BUILDING AND PERMITTING SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.
- F.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA; DETERMINING THE PROPOSED MILLAGE RATE, AND THE DATE, TIME AND PLACE FOR THE FIRST AND SECOND BUDGET HEARINGS AS REQUIRED BY LAW; DIRECTING THE CLERK OR HER DESIGNEE TO FILE SAID RESOLUTION WITH THE PROPERTY APPRAISER AND TAX COLLECTOR OF MIAMI-DADE COUNTY; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilmember Meerbott pulled Items C and D from the Consent Agenda.
Vice Mayor MacDougall pulled Item F from the Consent Agenda.

Councilmember Bell made a motion to approve the Consent Agenda as amended. The motion was seconded by Councilmember Sochin and Resolutions 07-34, 07-35, and 07-37 was adopted by unanimous 5-0 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The town clerk read the following resolution for consideration:

- C.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, STATING THAT THE TOWN SHALL COMPLY WITH ALL STATE AND FEDERAL REQUIREMENTS WITH RESPECT TO EMPLOYEES ABSENT FROM WORK FOR SERVICE IN THE UNIFORMED SERVICES; ESTABLISHING THAT THE TOWN SHALL NOT PAY SUPPLEMENTAL PAY FOR EMPLOYEES ABSENT FROM WORK FOR SERVICE IN THE UNIFORMED SERVICES UNLESS REQUIRED TO DO SO BY LAW OR WHERE TOWN COUNCIL, IN ITS SOLE DISCRETION, DETERMINES THAT CIRCUMSTANCES SO WARRANT; AND PROVIDING AN EFFECTIVE DATE.
(MACDOUGALL)

Vice Mayor MacDougall made a motion to approve the resolution. There was no second. The motion died for lack of a second and no further action was taken on the item.

The town clerk read the following resolution for consideration:

- D. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, IN SUPPORT OF ADMINISTRATIVE ORDER NO.07-01 "MILITARY LEAVE FOR ACTIVE MILITARY SERVICE"; AND PROVIDING AN EFFECTIVE DATE. (VROOMAN)**

Councilmember Sochin made a motion to approve the resolution. The motion was seconded by Councilmember Meerbott and Resolution 07-36 was adopted by unanimous 4-1 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, and Mayor Vrooman voting Yes; Vice Mayor MacDougall voting No.

The town clerk read the following resolution for consideration:

- F. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA; DETERMINING THE PROPOSED MILLAGE RATE, AND THE DATE, TIME AND PLACE FOR THE FIRST AND SECOND BUDGET HEARINGS AS REQUIRED BY LAW; DIRECTING THE CLERK OR HER DESIGNEE TO FILE SAID RESOLUTION WITH THE PROPERTY APPRAISER AND TAX COLLECTOR OF MIAMI-DADE COUNTY; AND PROVIDING FOR AN EFFECTIVE DATE.**

The Town Attorney advised Council that the dates can be changed at this point.

Councilmember Meerbott made a motion to approve the resolution as amended, which was to delete current dates and replace with new dates. The motion was seconded by Councilmember Bell and Resolution 07-38 was adopted by unanimous 5-0 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

- 6. QUASI-JUDICIAL HEARINGS (PUBLIC HEARING REQUIRED)
ALL PERSONS ADDRESSING THE TOWN COUNCIL SHALL BE SWORN-IN PRIOR TO GIVING TESTIMONY AND MAY BE SUBJECT TO CROSS EXAMINATION. ALL PERSONS ADDRESSING THE TOWN COUNCIL SHALL STATE THEIR NAME AND ADDRESS FOR THE RECORD.**

- 7. ORDINANCES FOR FIRST READING (PUBLIC HEARING NOT REQUIRED)**

The clerk read the following ordinance, on first reading, by title:

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33 "ZONING," SECTION 33-304 "APPLICATIONS" BY PROVIDING FOR**

REGULATIONS FOR FILING OF APPLICATIONS; PROVIDING FOR REGULATIONS FOR RE-FILING OF APPLICATIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

The Local Planning Agency submitted a recommendation for adoption of the ordinance.

Councilmember Sochin made a motion to approve the ordinance on first reading. The motion was seconded by Councilmember Meerbott and the ordinance was approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The ordinance will be on second reading August 15, 2007.

The clerk read the following ordinance, on first reading, by title:

- B.** AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR REGULATIONS OF "OPEN HOUSE" SIGNS; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

The Local Planning Agency submitted a recommendation for adoption of the ordinance.

Vice Mayor MacDougall made a motion to approve the ordinance on first reading. The motion was seconded by Councilmember Sochin and the ordinance was approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The ordinance will be on second reading August 15, 2007.

8. ORDINANCES FOR FIRST READING (PUBLIC HEARING REQUIRED)

9. ORDINANCES FOR SECOND READING (PUBLIC HEARING REQUIRED)

The clerk read the following ordinance, on second reading, by title:

- A.** AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR COMPREHENSIVE REGULATIONS RELATING TO GARAGE SALES; PROVIDING FOR PENALTIES; AND PROVIDING FOR AN EFFECTIVE DATE. **(VROOMAN)**

Don O'Donniley, the Planning Director, gave a brief report on the ordinance.

The Mayor opened the public hearing. Stephen Zarzecki, 9640 Martinique Drive addressed Council.

Vice Mayor MacDougall made a motion to approve the ordinance on second reading. The motion was seconded by Councilmember Sochin and Ordinance 07-19 was approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

- B. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, FORMALLY REPEALING CERTAIN PROVISIONS RELATED TO NONRESIDENTIAL SETBACKS WITHIN CHAPTER 33 "ZONING," ARTICLE II "BUILDING CONTENT, SETBACKS AND AREA OF SITES;" AND PROVIDING FOR AN EFFECTIVE DATE.**

Don O'Donniley, the Planning Director, gave a brief report on the ordinance.

The Mayor opened the public hearing. There were no speakers.

Councilmember Bell made a motion to approve the ordinance on second reading. The motion was seconded by Councilmember Meerbott and Ordinance 07-20 was approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

10. PUBLIC COMMENTS

THE PRESIDING OFFICER SHALL HAVE THE DISCRETION TO LIMIT THE LENGTH OF PUBLIC COMMENTS IN THE INTEREST OF TIME IN ORDER TO ALLOW ALL PERSONS WHO WISH TO SPEAK AN OPPORTUNITY TO DO SO.

The following individuals spoke: Pdraig Brousseau, 19791 Southwest 101 Court, Joy Cooper, 9365 Nassau Drive, George Powers, 19110 Franjo Road, and Stephen Zarzecki, 9640 Martinique Drive.

11. MAYOR AND COUNCIL COMMENTS

Councilmember Meerbott discussed that Council supports members of the military. He addressed concerns on DSL service for East Ridge Retirement Village and announced that DSL installation will commence within six months. Member Meerbott thanked and commended Commander Pichardo for all his efforts and the selection of highly qualified officers on his Police team.

Councilmember Bell also thanked Commander Pichardo for all his hard work. She mentioned that when visiting a business, the business owner commended Officer MacLaughlin for his service and assistance.

Councilmember Sochin spoke of the County-wide WiFi service and mentioned that plans to place WiFi within the Town have been delayed until September. He encouraged members of Council and the public to speak to their favorite restaurants in order to provide better restaurant selection in Cutler Bay.

Vice Mayor MacDougall discussed the house on Old Cutler Road that was recently approved for granting fifteen feet of right-of-way and said that it was too close to the Old Cutler Road. The Vice Mayor re-addressed the military issue. He also requested from Council to schedule a meeting before the Council Meeting to discuss the items that will appear in the agenda for that meeting.

Mayor Vrooman responded to the Vice Mayor's request for additional meetings. The Mayor stated that he encourages the type of meetings much like the one of this evening where ideas are publicly discussed and opens a forum for consideration on various matters.

Councilmember Bell also responded to the Vice Mayor's suggestions of having more meetings and encouraged that Town Staff prepare the agenda much more in advance before the council meeting. Member Bell also encouraged more Town Hall Meetings and workshops.

12. OTHER BUSINESS: None at this time.

13. ADJOURNMENT

The next council meeting will be held on August 15, 2007, at South Dade Regional Library.

The meeting was officially adjourned at 10:40 P.M.

Respectfully submitted:

*Erika Gonzalez-Santamaria, CMC
Town Clerk*

*Adopted by the Town Council on
this 15th day of August, 2007.*

Paul S. Vrooman, Mayor

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

TAB 2

RESOLUTION NO. 07-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ESTABLISHING A TOWN AUDIT COMMITTEE AND AUTHORIZING THE ISSUANCE OF A REQUEST FOR PROPOSALS (RFP) FOR PROFESSIONAL AUDITING SERVICES IN ACCORDANCE WITH THE REQUIREMENTS OF FLORIDA STATUTES §218.391; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay, (the “Town”) is required by state law to have an annual financial audit and to select a person or firm to perform said audit as provided in §218.391, Florida Statutes; and

WHEREAS, the Town is required to and desires to establish an audit committee to assist the Town Council in selecting an auditor; and

WHEREAS, a the auditor is to be selected based qualifications submitted in response to an RFP substantially in the form attached hereto; and

WHEREAS, Town Ordinance Number 06-22 requires the Town Manager to obtain authorization from the Town Council to advertise solicitations for bids and proposals prior to advertising the solicitation.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, THAT:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Establishment of Audit Committee. The Audit Committee is hereby established and shall consist of persons listed on attachment A hereto. The Audit Committee shall perform such functions as are provided for in §218.391 Florida Statutes and such other functions as may be requested from time to time by the Town Council or Town Manager or designee. Such services shall include but not be limited to establishing factors for the evaluation of audit services to be provided by a certified public accounting firm and evaluating proposals submitted in response to an RFP for auditing services and making recommendations to the Town Council based on said evaluations.

The Audit Committee shall be a permanent standing committee of the Town. Members shall serve for renewable terms of two years. The Town Council may appoint additional members at any time provided that at all times the Audit Committee shall have no fewer than ____ no more than ____ members. At least one member of the Audit Committee shall be a person with substantial experience in municipal financial issues.

Section 3. Request For Proposals Advertising Approved. The Town Manager is hereby authorized to advertise and issue an RFP for audit services a continuing contract as defined in Florida Statutes §218.390 et seq. in substantially the form attached hereto as Exhibit "B."

Section 4. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this _____ day of _____, 2007.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

REQUEST FOR PROPOSALS
PROFESSIONAL AUDITING SERVICES



The Town of Cutler Bay Council:

Mayor Paul Vrooman
Vice Mayor Edward MacDougall
Councilmember Peggy Bell
Councilmember Timothy Meerbott
Councilmember Ernest Sochin

Steven Alexander, Town Manager
The Town of Cutler Bay
10720 Caribbean Blvd, Suite 105
Cutler Bay, Florida 33189

DATE ISSUED: AUGUST 22, 2007
CLOSING DATE: SEPTEMBER 28, 2007

Town of Cutler Bay, Florida

Request for Proposals No. 07-06

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SECTION 1 – REQUEST FOR PROPOSALS NOTICE

The Town of Cutler Bay (TOWN) issued the following Request for Proposals (RFP) Notice pertaining to Auditing Services within the TOWN. The RFP Notice was advertised in the Miami Daily Business Review on August 22, 2007 and on the TOWN'S web site.

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SECTION 2 – BACKGROUND INFORMATION

2.0 Scope of Services

2.1 General

A. Scope of Work to be Performed

The TOWN desires the AUDITOR to express an opinion on the fair presentation of its general purpose financial statements in conformity with general accepted accounting principles. This is a Financial Audit which shall meet the requirements of Section 218.39, Florida Statutes.

The TOWN also expects to receive grants during the periods covered by this Proposal and the AUDITOR should consider any Federal and/or State Single Audit procedures and reporting that may be necessary when developing its Proposal. Form A, Pricing Information, is provided to the AUDITOR in this Proposal package to enable it to meet the pricing information requirement as discussed in Section 4.1.2.

The AUDITOR shall also prepare required management reports and any other reports as may be required. The AUDITOR shall also perform certain limited procedures involving required supplementary information as may be required by the State Statutes, the Florida Auditor General, the Governmental Accounting Standards Board and the AICPA, as mandated by generally accepted auditing standards.

The selected AUDITOR will be expected to provide technical assistance to help the TOWN conform to the principles and standards of public financial reporting necessary for submission of the TOWN'S Comprehensive Annual Financial Report (CAFR) to the Government Finance Officers Association Certificate of Achievement program.

The TOWN desires the AUDITOR to propose on the audit services for the TOWN for the fiscal years ended September 30, 2007, 2008 and 2009.

There is no expressed or implied obligation for the TOWN to reimburse responding firms for an expenses incurred in preparing proposals in response to this request.

B. Auditing Standards to be Followed

To meet the requirements of this Request for Proposal, the audit shall be performed in accordance with generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants and generally accepted

government auditing standards as promulgated by the General Accounting Office and the Rules of the Auditor General of the State of Florida, the standards for financial audits as provided below:

1. Generally Accepted Auditing Standards as set forth by the American Institute of Certified Public Accountants;
2. The standards for financial audits set forth in the U.S. General Accounting Office's *Government Auditing Standards* (2003 Revisions);
3. The provisions of the Federal Single Audit Act of 1984 (as amended in 1996 and subsequently);
4. The Florida Single Audit Act;
5. The provisions of U.S. Office of Management and Budget (OMB) Circular A-133;
6. Audits of States, Local Government, and Non-Profit Organizations, Audits of State and Local Governments (Revised) – AICPA.
7. Section 11.45, Florida Statutes;
8. State of Florida Department of Banking and Finance Regulations;
9. Rules adopted by the State of Florida Auditor General for form and content of governmental unit audits;
10. Any other applicable Federal, State and local laws or regulations;

Any updates of, or amendments to, these described auditing standards are to be incorporated in future audits performed by the selected AUDITOR performing auditing engagements for the Town of Cutler Bay in future fiscal years.

Note: The AUDITOR shall be responsible for printing 30 copies of the annual financial statements, as well as providing an electronic PDF version copy.

Irregularities and illegal acts: AUDITOR shall be required to make an immediate, written report of all irregularities and illegal acts of which they become aware to the Town Manager, the Finance Director and the Town Council.

Identification of Anticipated Potential Audit Problems:

The Request for Proposal should identify and describe any anticipated potential audit problems, the AUDITOR'S approach to resolving these problems and any special assistance that shall be requested from the Town Manager, the Finance Director and the Town Council.

- C. **Independence:** The AUDITOR should provide an affirmative statement that it is independent of the TOWN as defined by generally accepted auditing standards/the U.S. General Accounting Office's *Government Auditing Standards*.

2.2 Working Paper Retention and Access to Working Papers

All working papers and reports must be retained at the AUDITOR'S office and at the AUDITOR'S expense, for a minimum of five (5) years, unless the firm is notified in writing by the Town Manager of the need to extend the retention period. The AUDITOR will be required to make working papers available upon request by the Town Manager or Finance Director.

2.3 Time Requirements

A. Schedule for the Fiscal Year Audits

1. The TOWN agrees, subject to circumstances beyond its control, to close its books and prepare trial balance reports no later than December 15th of each year.
2. The AUDITOR shall conduct the audit examination so that their fieldwork will be completed sixty (60) days after the TOWN closes its books and prepares the trial balance reports.
3. The AUDITOR agrees to submit copies of adjusting journal entries to the TOWN at the completion of the fieldwork.
4. The AUDITOR agrees to submit a draft of the financial statements to the Finance Director no later than February 15th of each year for review and comment.
5. The AUDITOR agrees, subject to circumstances beyond its control, to deliver completed copies of the financial statements to the TOWN no later than the end of February each year.

2.4 Insurance Requirements

Liability Insurance: AUDITOR shall maintain at its sole cost and expense all times, in addition to any other insurance the TOWN may reasonably require, professional liability insurance, employee dishonesty insurance, employer's liability insurance, comprehensive general liability insurance and automotive liability insurance with minimum policy limits for each coverage in the amount of One Million Dollars (\$1,000,000.00) per occurrence, single limit for property damage and bodily injury, including death. Each policy shall also state that it is not subject to cancellation, modification, or reduction in coverage without thirty (30) days written notice to the TOWN prior to the effective date of cancellation, modification, or reduction in coverage. AUDITOR shall obtain all insurance coverage as specified herein.

- A. The liability insurance shall protect the AUDITOR and TOWN, from claims set forth below that may arise out of or result from the AUDITOR'S operations under the Agreement and for which the AUDITOR may be legally liable, whether such operations be by the AUDITOR or by anybody performing work for the AUDITOR under the Agreement or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
1. claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Services to be performed;
 2. claims for damages because of bodily injury, occupational sickness or disease, or death of the AUDITOR'S employees;
 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than the AUDITOR'S employees;
 4. claims for damages insured by usual personal injury liability coverage that are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the AUDITOR, or (2) by another person;
 5. claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting there from;
 6. claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; and
 7. claims involving contractual liability insurance applicable to the AUDITOR'S obligation.

- B. The insurance required for the Professional Auditing Services shall be written for not less than limits of liability specified in this RFP or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Services until date of final payment and termination of any coverage required to be maintained after final payment.
- C. Certificates of Insurance acceptable to the TOWN shall be filed with the TOWN prior to commencement of the Services. TOWN shall be named as an additional insured on all required insurance coverage. These Certificates and the insurance policies required shall contain a provision that coverages afforded under the policies will not be cancelled or allowed to expire until at least thirty (30) days prior written notice has been given to the TOWN, except that the cancellation notice period for non-payment of premiums for Worker's Compensation policies shall be ten (10) days. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. The AUDITOR shall furnish information concerning reduction of coverage with reasonable promptness in accordance with the AUDITOR'S information and belief.

D. Coverages Required Minimum Limits

1.	Worker's Compensation	Statutory Limits – State of Florida
2.	Employers' Liability	\$500,000 accident/disease \$500,000 policy limit, disease
3.	General Liability, Contractual Liability, Special Form Property Damage Personal Injury Liability, Explosion, Collapse, Underground ● Premises/Operations ● Independent contractor ● Products ● Completed Operations	\$1,000,000 general aggregate, \$500,000 each occurrence
4.	Automobile liability	\$1,000,000 BI & PD, each accident
5.	Owned, hired, nonowned	\$1,000,000 BI & PD, each accident
6.	Professional Liability	\$1,000,000

SECTION 3 – GENERAL CONDITIONS

3.1 RFP Documents

These RFP documents constitute the complete set of Proposal specifications and forms. All forms and documents must be executed, sealed and submitted as provided in Section 4 of this RFP. Proposals not submitted on the prescribed Proposal forms shall be rejected. By submitting a Proposal, the AUDITOR agrees to be subject to all terms and conditions specified herein. Submittal of a response to this RFP constitutes a binding offer by the AUDITOR.

3.2 Taxes

The AUDITOR shall not be entitled to the TOWN'S tax exempt benefits.

3.3 Additional Terms and Conditions/Exceptions

No additional terms and conditions submitted by the AUDITOR with the RFP Proposal shall be evaluated or considered. Any and all such additional terms and conditions shall have no force and effect and are inapplicable to this RFP. No exception to the terms and conditions shall be allowed.

3.4 Interpretations and Inquiries

All AUDITORS shall carefully examine the RFP documents. Any ambiguities or inconsistencies shall be brought to the attention of the TOWN or its agent in writing prior to the Proposal deadline.

Any questions concerning the intent, meaning and interpretation of the RFP documents shall be requested in writing, and received by the TOWN no later than **5:00 PM**, local time, on **Monday, September 10, 2007**. Written inquiries shall be addressed to:

Erika Santamaria, Town Clerk
Town of Cutler Bay
10720 Caribbean Blvd, Suite 105
Cutler Bay, Florida 33189
Fax: (305) 234-4251

Submission of a Proposal shall serve as prima facie evidence that the AUDITOR has examined the RFP and is fully aware of all conditions affecting the provision of services.

No person is authorized to give oral interpretations of, or make oral changes to, the RFP documents. Therefore, oral statements shall not be binding and should not be relied upon. Any interpretation of, or changes to, the RFP documents shall be made in the form of a written addendum to the RFP document and shall be published by the TOWN on its web site. Only

those interpretations of, or changes to, the RFP document that are made in writing may be relied upon.

3.5 Verbal Agreements

No verbal agreement or conversation with any officer, agent, or employee of the TOWN, either before or after submittal of the proposal, shall affect or modify any of the terms or obligations contained in the Request for Proposal. Any such verbal agreement or conversation shall be considered as unofficial information and in no way binding upon the TOWN or the AUDITOR.

3.6 No Contingent Fees

AUDITOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the AUDITOR, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the AUDITOR, any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

3.7 Independence

On the form provided in Section 5 of this RFP, the AUDITOR shall list, and describe any relationships – professional, financial or otherwise – that it may have with the TOWN, its elected or appointed officials, its employees or agents or any of its agencies or component units for the past five (5) years, together with a statement explaining why such relationships do not constitute a conflict of interest relative to performing the services sought in this RFP. Additionally, the AUDITOR shall give the TOWN written notice of any other relationships – professional, financial or otherwise – that it enters into with the TOWN, its elected or appointed officials, its employees or agents or any of its agencies or component units during the period of the Agreement.

3.8 Disqualification of AUDITOR

More than one Proposal from an individual, firm, partnership, corporation or association under the same or different names will not be considered. Reasonable grounds for believing that AUDITOR is involved in more than one Proposal for the same work will be cause for rejection of all Proposals in which such AUDITOR are believed to be involved.

3.9 Assignment; Non-transferability of Proposal

Proposals shall not be assigned or transferred. A AUDITOR who is, or may be, purchased by or merged with any other corporate entity during any stage of the Proposal process, through to and including awarding of and execution of an Agreement, is subject to having its Proposal disqualified as a result of such transaction. The Town Manager shall determine whether a Proposal is to be disqualified in such instances.

If, at any time during the Proposal process, filings, notices or like documents are submitted to any regulatory agency concerning the potential acquisition of AUDITOR, or the sale of a controlling interest in the AUDITOR, or any similar transaction, AUDITOR shall immediately disclose such information to TOWN. Failure to do so may result in the Proposal being disqualified, at the Town Manager's sole discretion.

3.10 Legal Requirements

AUDITORS are required to comply with all provisions of federal, state, county and local laws, ordinances, rules and regulations that are applicable to the services being offered in this RFP. Lack of knowledge of the AUDITOR shall in no way be a cause for relief from responsibility, or constitute a cognizable defense against the legal effects thereof.

3.11 Familiarity with Laws and Ordinances

The submission of a Proposal on the services requested herein shall be considered as a representation that the AUDITOR is familiar with all federal, state and local laws, ordinances, rules and regulations which affect those engaged or employed in the provision of such services, or equipment used in the provision of such services, or which in any way affects the conduct of the provision of such services; and no plea of misunderstanding will be considered on account of ignorance thereof. If the AUDITOR discovers any provisions in the RFP documents that are contrary to or inconsistent with any law, ordinance, or regulation, he shall report it to the Town Manager's in writing without delay.

3.12 Advertising

In submitting a Proposal, AUDITOR agrees not to use the results therefrom as a part of any advertising or AUDITOR sponsored publicity without the express written approval of the Town Manager or designee.

3.13 Execute Agreement

The terms, conditions and provisions in this RFP shall be included and incorporated in the final Agreement between the TOWN and the successful AUDITOR(s). The order of precedence will be the Agreement, the RFP Documents, the AUDITOR'S response and general law. Any and all legal action necessary to interpret or enforce the Agreement will be governed by the laws of Florida. Venue shall lie in Miami-Dade County, Florida.

3.14 Facilities

The Town Manager or designee reserves the right to inspect each AUDITOR'S facilities at any reasonable time, during normal working hours, without prior notice to determine that the AUDITOR has a bona fide place of business, and is a responsible AUDITOR.

3.15 Withdrawal or Revision of Proposal Prior to and After Opening

AUDITOR shall not withdraw, modify or correct a Proposal after the deadline for receipt of Proposals with the TOWN. The withdrawal, modification or correction of a Proposal after the deadline shall constitute a breach by the AUDITOR and the Proposal shall be subject to rejection. No AUDITOR may withdraw its Proposal within one hundred twenty (120) calendar days after the Proposal opening date.

3.16 Town's Exclusive Rights

The TOWN reserves the exclusive rights to:

1. Waive any deficiency or irregularity in the selection process;
2. Accept or reject any or all Proposals in part or in whole;
3. Request additional information as appropriate; and
4. Reject any or all submittals if found by the Town Council not to be in the best interest of the TOWN.

By submitting a Proposal for the services, all AUDITORS acknowledge and agree that no enforceable Agreement arises until the TOWN negotiates and approves an Agreement with the selected AUDITOR.

3.17 Addenda

The TOWN reserves the right to issue addenda. Each AUDITOR shall acknowledge receipt of such addenda on the form provided herein. In the event any AUDITOR fails to acknowledge receipt of such addenda, his/her Proposal shall nevertheless be construed as though the addenda had been received and acknowledged and the submission of his/her Proposal shall constitute acknowledgment of receipt of all addenda, whether or not received by him/her. It is the responsibility of each prospective AUDITOR to verify that he/she has received all addenda issued before depositing the Proposal with the TOWN.

3.18 Review of the RFP Documents

By the submission of a Proposal to do the work, the AUDITOR certifies that a careful review of the RFP documents has taken place and that the AUDITOR is fully informed and understands the requirements of the RFP documents and the quality and quantity of service to be performed.

3.19 Adjustment/Changes/Deviations

No adjustments, changes or deviations to the RFP will be accepted unless the conditions or specifications of the RFP expressly so provide.

3.20 Public Records

Any material submitted in response to this RFP shall be deemed to be a “public record” and shall be subject to public disclosure consistent with Chapter 119, Florida Statutes (Public Record Law).

3.21 Subcontracting

No subcontracting shall be permitted, except with the prior approval of the Town Manager, which shall be in his or her sole and absolute discretion. A list of all proposed subcontractors shall be included in the Proposal. If additional subcontractors are to be used during the term of the Agreement, other than those submitted in the Proposal, a list of such subcontractors shall be provided to the Town Manager, subject to his or her approval.

3.22 Public Entities Crime

A person or affiliate as defined in Section 287.133, Florida Statutes, who or which has been placed on the convicted vendor list maintained by the Florida Department of Management Services following a conviction for a public entity crime, may not submit a proposal on an Agreement to provide any goods or services to the TOWN and may not transact business with the TOWN in an amount set forth in Section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

By submitting a response to this RFP, AUDITOR certifies that it is qualified under Section 287.133, Florida Statutes, to provide the services set forth in this Request for Proposal.

3.23 Non-Collusion Affidavit

The AUDITOR shall include the Non-Collusion Affidavit as set forth in the form provided in Section 5 of this RFP and as described in Section 4 of the RFP. AUDITOR’S failure to include the affidavit shall result in disqualification.

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SECTION 4 – PROPOSAL PROCESS

4.1 Preparation of Proposals

No AUDITOR shall take exception to the specifications herein. Proposals taking exception to the specifications may be rejected as non-responsive.

4.1.1 Number of Proposals

Ten (10) complete copies of the Proposal, and one (1) original Proposal, are required to be submitted to the TOWN by the date and time indicated above. Each copy should contain all mandatory and optional information submitted by the AUDITOR. Additional copies may be requested by the TOWN at its discretion.

4.1.2 Proposal Packaging

Each Proposal shall be submitted in a separate plain sealed parcel, box or other secure packaging, marked as the “Proposal”, in accordance with Section 4.4. The outside of the sealed package shall clearly indicate the submitting RFP No. 07-06, “Professional Auditing Services,” AUDITOR’S name, address and the name and telephone number of the AUDITOR’S specific contact person. **The Proposal shall contain ten (10) complete copies and one (1) original, and is required to be submitted to the TOWN by the date and time indicated in Section 4.2.**

All pricing information shall be submitted in a sealed envelope within the package containing the proposal and shall be clearly marked “Pricing Information” on the outside of the envelope which shall also include the name and address of the proposers. The provided “Form A” shall be used for such purpose.

4.1.3 Signatures

All required signatures shall be manual, in **blue ink**, and be by an authorized representative who has the legal authority to bind the AUDITOR in contractual obligations. The Proposal shall be typed or legibly printed in ink. Use of erasable ink is not permitted. All blank spaces shall be filled in and noted, in ink or typed, with amounts extended and totaled as appropriate. All corrections made by AUDITOR to any part of the Proposal document shall be initialed in ink. Failure to manually sign the appropriate Proposal forms will disqualify the AUDITOR and the Proposal will not be considered.

Proposals by corporations shall be executed in the corporate name by the President or Vice-President (or other corporate officer if accompanied by evidence of authority to sign) and the corporate seal shall be affixed and attested by the Corporate Secretary or an Assistant Secretary. The corporate address and state of incorporation shall be shown below the signature.

Proposals by partnerships shall be executed in the partnership name and signed by a partner. His/her title shall appear under his/her signature and the official address of the partnership shall be shown below the signature.

4.1.4 Proposal Format

The Proposal shall be typewritten on 8 ½ x 11 inch white paper. Pages shall be secured by staple, cerlox binding or similar closures. Proposals shall be organized in chapters according to Table 4.1.4. Chapters shall be separated by a tab indicating the chapter number.

All pages are to be consecutively numbered. If a form is provided and there is insufficient space for a response on a form, the response may be continued on a blank page immediately following the form. The additional pages are to be numbered the same as the form with the addition of the letter “a” “b” “c” etc. If a form is provided and additional forms are needed, the form may be copied. The copied pages are to be numbered the same as the form with the addition of the letter “a” “b” “c” etc.

Responses shall be complete and unequivocal. In instances where a response is not required, or is not applicable or material to the Proposal, a response such as “no response is required” or “not applicable” is acceptable.

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Table 4.1.4 – Proposal Format

Proposal

Chapter 1	Letter of Intent
Chapter 2	AUDITOR’S Statement of Organization
Chapter 3	Personnel
Chapter 4	Experience
Chapter 5	Financial Stability
Chapter 6	Financial Statement
Chapter 7	Transition Plan
Chapter 8	Litigation History
Chapter 9	Insurance Requirement
Chapter 10	Criminal Convictions
Chapter 11	AUDITOR’S Non-Collusion Certification
Chapter 12	Independence Affidavit
Chapter 13	Drug-free Workplace
Chapter 14	Addendums
Chapter 15	Certification to Accuracy of Proposal
Form A	Pricing Information Sheet

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4.2 Submittal, Receipt and Opening of Proposals

All Proposals shall be submitted on or before **10:00 AM**, local time, on **Friday, September 28, 2007** to:

Office of the Town Clerk
Town of Cutler Bay
10720 Caribbean Blvd, Suite 105
Cutler Bay, Florida 33189

All AUDITORS are reminded that it is the sole responsibility of the AUDITOR to ensure that their Proposal is time stamped in the OFFICE OF THE TOWN CLERK prior to **10:00 AM**, local time, on **Friday, September 28, 2007**. Failure of an AUDITOR to submit their Proposal and ensure that their Proposal is time stamped prior to the time stated above shall render an AUDITOR to be deemed non-responsive and the Proposal shall not be considered for award.

Proposals submitted and time stamped on or before **10:00 AM, local time, on Friday, September 28, 2007** shall be opened publicly in accordance with Section 4.4.

4.3 Selection Committee

Proposals submitted will be evaluated by an Audit Committee, who will review submissions and provide a recommendation to the Town Manager who shall provide a recommendation to the Town Council.

4.4 Sealed Proposal

The Sealed Proposals will be publicly opened at 10720 Caribbean Blvd, Suite 105, Cutler Bay, Florida 33189, at **10:15 AM, local time, Friday, September 28, 2007**. The Selection Committee shall meet to initially examine the documentation submitted in the Proposal to determine the responsiveness and responsibility of each AUDITOR.

AUDITORS shall provide the following information in the Proposal:

4.4.1 Letter of Intent

The Letter of Intent is to be signed by an officer of the company authorized to bind the submitter to its provisions. The Letter of Intent is to contain a statement indicating the period during which the Proposal will remain valid. A period of not less than one hundred twenty (120) calendar days is required.

4.4.2 AUDITOR'S Statement of Organization

AUDITORS shall complete Form 1. AUDITORS are permitted to supply additional information that will assist the TOWN in understanding the AUDITOR'S organization.

4.4.3 Personnel

AUDITORS shall demonstrate significant personnel experience. All personnel performing services under this Agreement shall have at least three (3) years experience in their respective disciplines. AUDITORS shall carefully provide, in the format requested, all of the information requested in Form 2.

4.4.4 Experience

AUDITOR shall have a minimum of three (3) years of successful experience in providing Professional Auditing Services to other governmental entities. A summary of all of the most recently awarded and serviced comparable jobs, for the past three (3) years shall be provided. This record shall show the name of the governmental entity, address, description of services, dates of service, rates and fees and a contact/reference person with phone number. AUDITORS shall provide references for all jobs summarized using Form 3 provided in Section 5.

4.4.5 Financial Stability

AUDITORS shall demonstrate financial stability. AUDITORS shall provide a statement of the AUDITORS' financial stability, including information as to current or prior bankruptcy proceedings. Proposals shall include a copy of the most recent annual financial report/annual audit/10K and the most recent 10Q, if appropriate. Financial reports provided shall include, at a minimum, a Balance Sheet, an Income Statement and a Statement of Cash Flows.

4.4.6 Financial Statement

AUDITORS shall include a copy of their latest audited financial statements. If the AUDITOR is a corporation, it shall submit a copy of the latest audited financial statements of the corporation. In the event the AUDITOR does not have audited financial statements, they may substitute non-audited financial statements and complete federal tax returns for the last two years.

4.4.7 Transition Plan

Ensuring a smooth, seamless transition is of critical importance to the TOWN. AUDITORS shall provide a detailed description of how services will be transitioned under the Agreement from the TOWN'S prior auditor to the potentially new AUDITOR.

4.4.8 Litigation History

AUDITORS shall provide a summary of any litigation or arbitration that the AUDITOR, its parent company or its subsidiaries have been engaged in during the past three (3) years against or involving (1) any public entity for any amount, or (2) any private entity for an amount greater than One Hundred Thousand Dollars (\$100,000.00). The summary shall state the nature of the litigation or arbitration, a brief description of the case, the outcome or projected outcome, and the monetary amounts involved. The TOWN may disqualify any AUDITOR it determines to be excessively litigious.

4.4.9 Insurance Requirement

AUDITOR shall provide proof in the form of a certificate of insurance complying with the requirements specified in this RFP or evidence of insurability in the form of a letter from its insurance carrier indicating that AUDITOR is able to obtain the required insurance.

4.4.10 Criminal Convictions

AUDITORS shall provide a summary of any criminal convictions of the company, owners, officers and anybody performing work under this Agreement, related to the services being proposed bid. The TOWN may disqualify an AUDITOR on the basis of past criminal convictions when those convictions relate to dishonesty, antitrust violations, or unfair competition.

4.4.11 AUDITOR'S Non-Collusion Certification

Any AUDITOR submitting a Proposal to this RFP shall complete and execute the Non-Collusion Affidavit of AUDITOR (Form 4) included in Section 5 of these RFP documents.

4.4.12 Drug-Free Workplace

AUDITOR shall certify that it has implemented a drug-free workplace program in accordance with Section 287.087, Florida Statutes. In order to receive consideration, a signed certification of compliance (Form 5), shall be submitted with the RFP response.

4.4.13 Addenda

The AUDITOR shall complete and sign the Acknowledgment of Addenda Form 6 in Section 5 and include it in the Proposal in order to have the Proposal considered. In the event any AUDITOR fails to acknowledge receipt of such addenda, his/her Proposal shall nevertheless be construed as though the addenda had been received and acknowledged and the submission of his/her Proposal shall constitute acknowledgment of receipt of all addenda, whether or not received by him/her.

4.4.14 Independence Affidavit

AUDITORS shall list and describe their relationships with the TOWN in accordance with Section 3.7 of the RFP (Form 7).

4.4.15 Certification to Accuracy of Proposal

AUDITOR shall certify and attest, by executing Form 8 of Section 5 of these RFP documents, that all Forms, Affidavits and documents related thereto that it has enclosed in the Proposal in support of its Proposal are true and accurate. Failure by the AUDITOR to attest to the truth and accuracy of such Forms, Affidavits and documents shall result in the Proposal being deemed non-responsive and such Proposal will not be considered.

4.5 Qualification Evaluation

The Selection Committee shall examine the documentation submitted in the Proposal to determine the responsiveness of each AUDITOR. Failure to provide the required information shall disqualify any such Proposal as non-responsive, and such Proposal will not be considered. The Selection Committee shall disqualify any AUDITORS that make exaggerated or false statements.

The evaluation of Proposals and the determination of conformity and acceptability shall be the sole responsibility of the Selection Committee. Such determination shall be based on information furnished by the AUDITOR, as well as other information reasonably available to the TOWN.

The Selection Committee may make such investigations as it deems necessary to determine the ability of the AUDITOR to perform the services and the AUDITOR shall furnish the TOWN all such information as the selection committee or Town Manager may request before and during the Proposal period. The Selection Committee reserves the right to make additional inquiries, interview some or all AUDITORS, make site visits, obtain credit reports, or take any other action it deems necessary to fairly evaluate all AUDITORS. The Selection Committee may at its sole discretion reject an AUDITOR or qualify an AUDITOR.

The AUDITOR'S expertise and experience in local governmental auditing and performance on comparable government engagements including recognized CAFR awards of their clients.

The quality and experience of the AUDITOR'S professional personnel assigned to the Town's audit engagement and the quality of the AUDITOR'S management support personnel to be available for technical consultation.

The AUDITOR'S comparable fee structure for the Town's annual financial audit and related reports for the fiscal years ended September 30, 2007, 2008 and 2009 and the comparable hourly rates for other services that may be requested by the Town.

4.6 Evaluation

4.6.1 Each member of the Audit Committee shall evaluate and rank each Proposal. The full Committee will then convene to interview, review and discuss these evaluations and rank the firms as a group.

4.6.2 Proposals shall be evaluated and ranked based on, among additional factors, the following:

Technical Quality (Maximum Points – 100)

- a. Expertise and Experience (Maximum Points 50)
 - (i) The firm's expertise and experience in local government auditing and performance on comparable government engagements. 25 Points
 - (ii) The quality and experience of the firm's professional personnel assigned to the TOWN'S audit engagement and the quality of the firm's management support personnel to be available for technical consultation. 25 Points

- b. Audit Approach (Maximum Points 40)
 - (i) Adequacy of proposed audit plan for various segments of the engagement. 20 Points
 - (ii) Adequacy of sampling techniques 5 Points
 - (iii) Adequacy of analytical procedures 5 Points
 - (iv) Assessment of firm's ability to meet prescribed report publication dates 10 Points

- c. Pricing (Maximum Points 10)
 - (i) The firm's comparable fee structure for the TOWN'S annual financial audits and related reports and the comparable hourly rates for other services that may be requested by the TOWN

The AUDITOR Selection committee shall evaluate all responsive Request for Proposals in accordance with the considerations listed above. Additional information may be requested.

The Proposal ranked one (1), will be recommended by the Selection Committee to the Town Manager. The Town Manager shall review and make a recommendation to the Town Council for award of the Agreement.

The Town Council will consider the selection of a firm based upon the recommendation of the Town Manager. Should the Town Manager not be able to negotiate a suitable Agreement with the audit firm ranked one (1), the Town Manager shall then commence negotiations with the firm and two (2), and so on until a successful Agreement has been negotiated.

4.7 Specific Audit Approach

The Proposal should set forth a work plan, including an explanation of the audit methodology to be followed, to perform the services required in Section III of this Request for Proposal. In developing the work plan, reference should be made to such sources of information as the TOWN'S budget and related materials, organization charts, manuals and programs and financial and other management information systems.

AUDITORS will be required to provide the following information on their audit approach:

- A. Proposed segmentation of the engagement.
- B. Extent of use of EDP software in the engagement.
- C. Type and extent of analytical procedures to be used in the engagement.
- D. Approach to be taken to gain and document an understanding of the TOWN'S internal control structure.
- E. Approach to be taken in determining laws and regulations that will be subject to audit test work.
- F. Approach to be taken in drawing audit samples for purposes of tests of compliance.

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4.8 Estimated Schedule

The TOWN anticipates that RFP activities will take place at the dates and times (as applicable) listed below. However, these times and dates are subject to change at the discretion of the TOWN.

Request for Proposals Legal Advertisement	August 22, 2007
RFP Release	August 22, 2007
Last Date for Submittal of Written Questions	September 10, 2007 5:00 PM
Proposals Due	September 28, 2007 10:00 AM
Selection Committee Ranking and Recommendation to Town Manager	October 9, 2007 5:00 PM
Town Council Award of Agreement	October 17, 2007 Scheduled Council Meeting
Commence Audit Services	Subject to Agreement Negotiation

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CONE OF SILENCE

I. Notwithstanding any other provision in the specifications, the provisions of Section 2-11.1 Conflict of Interest and Code of Ethics Ordinance, as set forth in subsection (t) "Cone of Silence," of the Miami-Dade County Code are applicable to this transaction. The "Cone of Silence" prohibits the following activities:

A. Any communication regarding this RFP, RFQ or Bid between a potential vendor, service provider, bidder, lobbyist or AUDITOR and the TOWN'S professional staff, including, but not limited to, the Town Manager and his or her staff;

B. Any communication regarding this RFP, RFQ or Bid between the Mayor, Town Council members and any member of the TOWN'S professional staff, including but not limited to, the Town Manager and his or her staff;

C. Any communication regarding this RFP, RFQ or Bid between potential vendor, service provider, bidder, lobbyist or AUDITOR and any member of a selection committee;

Any communication regarding this RFP, RFQ or Bid between the Mayor, Town Council members and any member of the audit committee therefore;

Any communication regarding a particular RFP, RFQ or bid between any member of the TOWN'S professional staff and any member of the audit committee; and

Any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist or AUDITOR and the Mayor or Town Council.

II. These prohibitions do not apply to communications with the Town Attorney and his or her staff.

III. The "Cone of Silence" is imposed upon this RFP, RFQ or Bid after advertisement of said RFP, RFQ or Bid. The "Cone of Silence" shall terminate at the time that the Town Manager makes his or her recommendation to the Town Council, unless the Council refers the Manager's recommendation back to the Manager or staff for further review.

IV. The "Cone of Silence" shall NOT apply to:

A. Oral communications at pre-bid conferences;

B. Oral presentations during publicly noticed selection committee meetings;
Contract negotiations during any duly noticed public meeting;

Duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the Town Manager makes his or her written recommendation;

Emergency procurement of goods or services;

Communications regarding a particular RFP, RFQ or bid between any person and the Town's procurement agent or contracting officer responsible for administering the procurement process for such RFP, RFQ or bid, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document; or

Communications regarding a particular RFP, RFQ or bid between the Town's procurement agent or contracting officer responsible for administering the procurement process for such RFP, RFQ or bid and a member of the selection committee provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.

Communications in writing at any time with any Town employee, official or member of the Town Council unless specifically prohibited by the RFP, RFQ or Bid.

Communications between the Town Manager and the Chairperson of the selection committee about a particular selection committee recommendation, only after the selection committee has submitted an award recommendation to the Town Manager and provided that should any change occur in the committee recommendation, the content of the communication and of the corresponding change shall be described in writing and filed by the Town Manager with the Town Clerk and be included in any recommendation memorandum submitted by the Town Manager to the Town Council.

V. Any questions, explanations or other requests desired by a bidder regarding this RFP must be requested in writing to the Town Clerk, 10720 Caribbean Blvd, Suite 105, Cutler Bay, Florida, 33189 or via facsimile at 305-234-4251. Bidders must file copies of all written communications with the Town Clerk's Office.

VI. Please contact the Town Attorney with any questions concerning the "Cone of Silence" compliance.

VII. Upon imposition of the Cone of Silence for a particular RFP, RFQ or Bid, the Town Manager shall:

- A. issue a written notice to affected Town departments;
- B. file a copy of the Notice required by subsection (1) with the Town Clerk with a copy to the Mayor and Town Council; and
- C. include in the public solicitation for goods and services a statement disclosing the requirements of the Cone of Silence as follows:

Pursuant to subsection (t) "Cone of Silence" of Section 2-11.1 "Conflict of Interest and Code of Ethics Ordinance" of Miami-Dade County, public notice is hereby given that a "Cone of

Silence” is imposed concerning this purchase. The “Cone of Silence” prohibits communications concerning RFP’s, RFQ’s or Bids, until such time as the Town Manager makes a written recommendation to the Town Council concerning the transaction. Procedures regarding the Cone of Silence can be found in the Request for Proposal, or Request for Qualifications.

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SECTION 5 – QUALIFICATION FORMS

The forms located in this section of the RFP shall be included in the Sealed Proposal. Forms not completed in full may result in disqualification.

[THIS SPACE INTENTIONALLY LEFT BLANK]

FORM 1
AUDITOR'S STATEMENT OF ORGANIZATION

1. Full Name of Business Concern (AUDITOR):

Principal Business Address:

2. Principal Contact Person(s):

3. Form of Business Concern (Corporation, Partnership, Joint Venture, Other):

4. Provide names of partners or officers as appropriate and indicate if the individual has the authority to sign in name of AUDITOR. Provide proof of the ability of the individuals so named to legally bind the AUDITOR.

Name	Address	Title
------	---------	-------

If a corporation, in what state incorporated: _____

Date Incorporated: _____

Month

Day

Year

If a Joint Venture or Partnership, date of Agreement: _____

5. List all firms participating in this project (including subcontractors, etc.):

Name	Address	Title
------	---------	-------

1. _____

2. _____

3. _____

4. _____

FORM 1
AUDITOR'S STATEMENT OF ORGANIZATION
(CONTINUED)

6. Outline specific areas of responsibility for each firm listed in Question 5.

- 1. _____
- 2. _____
- 3. _____
- 4. _____

7. Licenses:

a. County or Municipal Occupational License No.

(Attach Copy)

b. Occupational License Classification:

c. Occupational License Expiration Date:

d. Social Security or Federal I.D. No:

[THIS SPACE INTENTIONALLY LEFT BLANK]

**FORM 2
PERSONNEL**

For each person providing services sought in the RFP, provide a detailed resume indicating that individual's areas of expertise and experience. Resumes must be provided in the following format, however, additional information may be provided at the option of the AUDITOR.

- A. Name & Title
- B. Years Experience with:
 - This Firm:
 - With Other Similar Firms:
- C. Education:
 - Degree(s)
 - Year/Specialization
- D. Professional References: (List a minimum of 3)
- E. Other Relevant Experience and Qualifications
- F. Attach applicable licenses for each individual performing services pursuant to this Agreement.

[THIS SPACE INTENTIONALLY LEFT BLANK]

**FORM 3
REFERENCES**

The AUDITOR shall provide a minimum of three (3) references of public agencies presently being served by the AUDITOR with similar services to those being proposed in this Proposal.

1. Name of Public Agency: _____
Address: _____

Phone Number: _____
Principal Contact Person(s): _____

Year Contract Initiated: _____

2. Name of Public Agency: _____
Address: _____

Phone Number: _____
Principal Contact Person(s): _____

Year Contract Initiated: _____

3. Name of Public Agency: _____
Address: _____

Phone Number: _____
Principal Contact Person(s): _____

Year Contract Initiated: _____

4. Name of Public Agency: _____
Address: _____

Phone Number: _____
Principal Contact Person(s): _____

Year Contract Initiated: _____

**FORM 3
REFERENCES
(CONTINUED)**

5. Name of Public Agency: _____
Address: _____

Phone Number: _____
Principal Contact Person(s): _____

Year Contract Initiated: _____

6. Name of Public Agency: _____
Address: _____

Phone Number: _____
Principal Contact Person(s): _____

Year Contract Initiated: _____

[THIS SPACE INTENTIONALLY LEFT BLANK]

FORM 4
NON-COLLUSION AFFIDAVIT

The undersigned individual, being duly sworn, deposes and says that:

1. He/She is _____ of _____, the AUDITOR that has submitted the attached Proposal;
2. He/She is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;
3. Such Proposal is genuine and is not a collusive or sham Proposal;
4. Neither said AUDITOR nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affiant, has in any way colluded, connived, or agreed, directly or indirectly, with any other AUDITOR, firm or person to submit a collusive or sham proposal in connection with the Agreement for which the attached Proposal has been submitted or to refrain from proposing in connection with such Agreement, or has in any manner, directly or indirectly, sought by agreement of collusion or communication of conference with any other AUDITOR, firm, or person to fix the price or prices in the attached RFP, or of any other AUDITOR, or to fix any overhead, profit or cost element of the Proposal or the response of any other AUDITOR, or to secure through any collusion, connivance, or unlawful agreement any advantage against the Town of Miami Lakes, Florida, or any person interested in the proposed Agreement; and

[THIS SPACE INTENTIONALLY LEFT BLANK]

FORM 4
NON-COLLUSION AFFIDAVIT
(CONTINUED)

5. The response to the attached RFP is fair and proper and is not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the AUDITOR or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Signature (Blue ink only)

Print Name

Title

Date

Witness my hand and official notary seal/stamp at _____ the day
and year written above

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____ as _____, of _____, an organization authorized to do business in the State of Florida, and acknowledged executing the foregoing Affidavit as the proper official of _____ for the use and purposes mentioned in the Affidavit and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation. He/She is personally known to me or has produced _____ as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this _____ day of _____, 200__.

NOTARY PUBLIC

My Commission Expires:

FORM 5
DRUG-FREE WORKPLACE

The undersigned vendor (firm) in accordance with Chapter 287.087, Florida Statutes, hereby certifies that _____ does:
(Name of Company)

1. Publish a statement notifying employees that the unlawful manufacturing, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the work place, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the contractual services that are under consideration a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employee that, as a condition of working on the contractual services that are under consideration, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.

[THIS SPACE INTENTIONALLY LEFT BLANK]

**FORM 5
DRUG-FREE WORKPLACE
(CONTINUED)**

6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Signature (Blue ink only)

Print Name

Title

Date

Witness my hand and official notary seal/stamp at _____ the day and year written above

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____ as _____, of _____, an organization authorized to do business in the State of Florida, and acknowledged executing the foregoing Form as the proper official of _____ for the use and purposes mentioned in the Form and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation. He/She is personally known to me or has produced _____ as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this _____ day of _____, 200__.

NOTARY PUBLIC

My Commission Expires:

FORM 6
ACKNOWLEDGMENT OF ADDENDA

The AUDITOR hereby acknowledges the receipt of the following addenda issued by the TOWN and incorporated into and made part of this RFP. In the event the AUDITOR fails to include any such addenda in the table below, submission of this form shall constitute acknowledgment of receipt of all addenda, whether or not received by him/her.

ADDENDUM NUMBER	DATE RECEIVED	PRINT NAME	TITLE	SIGNATURE (BLUE INK ONLY)

[THIS SPACE INTENTIONALLY LEFT BLANK]

**FORM 7
INDEPENDENCE AFFIDAVIT**

The undersigned individual, being duly sworn, deposes and says that:

1. He/She is _____ of _____, the AUDITOR that has submitted the attached Proposal;

2. (a) Below is a list and description of any relationships, professional, financial or otherwise that AUDITOR may have with the TOWN, its elected or appointed officials, its employees or agents or any of its agencies or component units for the past five (5) years.

(b) Additionally, the AUDITOR agrees and understands that AUDITOR shall give the TOWN written notice of any other relationships professional, financial or otherwise that AUDITOR enters into with the TOWN, its elected or appointed officials, its employees or agents or any of its agencies or component units during the period of this Agreement.

(If paragraph 2(a) above does not apply, please indicate by stating, “not applicable” in the space below.)

[THIS SPACE INTENTIONALLY LEFT BLANK]

**FORM 7
INDEPENDENCE AFFIDAVIT
(CONTINUED)**

2. I have attached an additional page to this form explaining why such relationships do not constitute a conflict of interest relative to performing the services sought in the RFP.

Signature (Blue ink only)

Print Name

Title

Date

Witness my hand and official notary seal/stamp at _____ the day
and year written above

STATE OF FLORIDA)
) SS:
COUNTY OF MIAMI-DADE)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____ as _____, of _____, an organization authorized to do business in the State of Florida, and acknowledged executing the foregoing Affidavit as the proper official of _____ for the use and purposes mentioned in the Affidavit and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation. He/She is personally known to me or has produced _____ as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this _____ day of _____, 200__.

NOTARY PUBLIC

My Commission Expires:

FORM 8
CERTIFICATION TO ACCURACY OF PROPOSAL

AUDITOR, by executing this Form, hereby certifies and attests that all Forms, Affidavits and documents related thereto that it has enclosed in the Proposal in support of its Proposal are true and accurate. Failure by the AUDITOR to attest to the truth and accuracy of such Forms, Affidavits and documents shall result in the Proposal being deemed non-responsive and such Proposal will not be considered.

The undersigned individual, being duly sworn, deposes and says that:

1. He/She is _____ of _____, the AUDITOR that has submitted the attached Proposal;
2. He/She is fully informed respecting the preparation and contents of the attached Proposal and of all Forms, Affidavits and documents submitted in support of such Proposal;
3. All Forms, Affidavits and documents submitted in support of this Proposal and included in this Proposal are true and accurate;
4. No information that should have been included in such Forms, Affidavits and documents has been omitted; and

[THIS SPACE INTENTIONALLY LEFT BLANK]

**FORM 8
 CERTIFICATION TO ACCURACY OF PROPOSAL
 (CONTINUED)**

5. No information that is included in such Forms, Affidavits or documents is false or misleading.

 Signature (Blue ink only)

 Print Name

 Title

 Date

Witness my hand and official notary seal/stamp at _____ the day
 and year written above

STATE OF FLORIDA)
) SS:
 COUNTY OF MIAMI-DADE)

BEFORE ME, an officer duly authorized by law to administer oaths and take
 acknowledgments, personally appeared _____ as
 _____, of _____,
 an organization authorized to do business in the State of Florida, and acknowledged
 executing the foregoing Form as the proper official of _____ for the
 use and purposes mentioned in the Form and affixed the official seal of the corporation, and
 that the instrument is the act and deed of that corporation. He/She is personally known to me
 or has produced _____ as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and
 County aforesaid on this _____ day of _____, 200__.

 NOTARY PUBLIC

My Commission Expires:

SECTION 6 – AGREEMENT

The agreement located in this Section of the RFP for Auditing Services for the TOWN is substantially the form that will be utilized, subject to negotiation with the successful AUDITOR. The TOWN reserves the right to award or not to award the Agreement in the best interests of the TOWN.

[THIS SPACE INTENTIONALLY LEFT BLANK]

AGREEMENT BETWEEN
THE TOWN OF CUTLER BAY
AND
FOR AUDITING SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2007, by and between the Town of Cutler Bay, a Florida municipal corporation (the "TOWN"), and _____ ("AUDITOR").

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

PURPOSE/AUTHORIZATION

- 1.1 The purpose of this Agreement is to provide for the TOWN'S retention of AUDITOR to perform all Auditing Services for the TOWN as described in Section 2 below.

SCOPE OF SERVICES

AUDITOR shall provide the following Auditing Services to the TOWN:

- 2.1 **Scope of Work to be Performed**

The TOWN desires the AUDITOR to express an opinion on the fair presentation of its general purpose financial statements in conformity with general accepted principles. This is a Financial Audit which shall meet the requirements of Section 218.39, Florida Statutes.

The AUDITOR shall also prepare required management reports and any other reports as may be required. The AUDITOR shall also perform certain limited procedures involving required supplementary information as may be required by the State Statutes, the Florida AUDITOR General, the Governmental Accounting Standards Board and the AICPA, as mandated by generally accepted auditing standards.

- 2.2 **Additional Services**

AUDITOR shall provide additional services to the TOWN as determined by the Town Manager or his designee.

- 2.3 **Auditing Standards to be Followed**

The audit shall be performed in accordance with generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants

and generally accepted government auditing standards as promulgated by the General Accounting Office and the Rules of the Auditor General of the State of Florida, the standards for financial audits as provided below:

1. Generally Accepted Auditing Standards as set forth by the American Institute of Certified Public Accountants;
2. The standards for financial audits set forth in the U.S. General Accounting Office's *Government Auditing Standards* (2003 Revisions);
3. The provisions of the Federal Single Audit Act of 1984 (as amended in 1996 and subsequently);
4. The Florida Single Audit Act;
5. The provisions of U.S. Office of Management and Budget (OMB) Circular A-133;
6. Audits of States, Local Government, and Non-Profit Organizations, Audits of State and Local Governments (Revised) – AICPA.
7. Section 11.45, Florida Statutes;
8. State of Florida Department of Banking and Finance Regulations;
9. Rules adopted by the State of Florida AUDITOR General for form and content of governmental unit audits;
10. Any other applicable Federal, State and local laws or regulations;

Any updates of, or amendments to, these described auditing standards are to be incorporated in future audits performed by the selected AUDITOR performing auditing engagements for the Town of Miami Lakes in future fiscal years.

Note: The AUDITOR shall prepare the financial statements and footnotes. The AUDITOR shall be responsible for printing 30 copies of the annual financial statements, as well as providing an electronic, PDF version.

3. COMPENSATION

- 3.1 For all Auditing Services provided by AUDITOR as described in Sections 2.1 through 2.3 of this Agreement, AUDITOR shall be compensated _____ [to be completed].

- 3.2 The AUDITOR shall provide any such backup documentation, including staff time records, requested by the TOWN to support the amounts invoiced to the TOWN for the audit services contemplated herein. The TOWN shall pay the AUDITOR for all approved invoices, no later than 30 calendar days from the date of approval by the Town Manager of the invoice.
- 3.3 For all Additional Services as described in Sections 2.2 of this Agreement, the TOWN shall pay AUDITOR a fee mutually agreed to by the Town Manager and AUDITOR.

4. **RECORDS/RIGHT TO INSPECT AND AUDIT**

- 4.1. All records, books, documents, papers and financial information (the "Records") that result from AUDITOR providing services to the TOWN under this Agreement shall be the property of the TOWN.
- 4.2. Upon termination or expiration of this Agreement, or at any time during the term of this Agreement, and upon the written request of the Town Manager, any and all such Records shall be delivered to the TOWN by AUDITOR within 15 calendar days of the date of such request. Any compensation due to AUDITOR shall be withheld until such Records are received by the TOWN.
- 4.3. The AUDITOR shall maintain all Records for the time periods specified in the State of Florida Record Retention laws, and such other books, documents, papers and financial information pertaining to work performed under this Agreement during the term of this Agreement and for a period of three (3) years following termination or expiration of this Agreement.
- 4.4. The Town Manager or his designee shall, during the term of this Agreement and for a period of five (5) years from the date of termination or expiration of this Agreement, have access to and the right to examine and audit any Records of AUDITOR involving transactions related to this Agreement.
- 4.5. The TOWN may cancel this Agreement for refusal by AUDITOR to allow access by the Town Manager to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

5. **INDEMNIFICATION**

- 5.1. AUDITOR shall defend, indemnify, and hold harmless the TOWN, its officers, attorneys, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or in any way connected with AUDITOR, its officers, agents or employees acts or omissions, negligence, recklessness, misconduct, performance or non-performance of any provision of this Agreement including, but not limited

to, liabilities arising from contracts between AUDITOR and third parties made pursuant to this Agreement. AUDITOR shall reimburse the TOWN for all its expenses including reasonable attorney fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with AUDITOR'S performance or non-performance of this Agreement.

5.2. AUDITOR shall defend, indemnify, and hold harmless the TOWN, its officers, attorneys, agents and employees, from all losses, injuries, damages, wages or overtime compensation due AUDITOR'S agents or employees in rendering services pursuant to this Agreement, including payment of TOWN's reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act or any employment related litigation or claims under federal or state law.

5.3. The provisions of this section shall survive termination of this Agreement.

6. INSURANCE

6.1. AUDITOR shall maintain at its sole cost and expense at all times, in addition to any other insurance the TOWN may reasonably require, professional liability insurance, employee dishonesty insurance, employer's liability insurance, comprehensive general liability insurance and automotive liability insurance with minimum policy limits for each coverage in the amount of One Million Dollars (\$1,000,000.00) per occurrence, single limit for property damage and bodily injury, including death. The TOWN shall be named as an additional insured on each of the above policies, unless prohibited by law, and AUDITOR shall provide TOWN with a certificate evidencing same. Each policy shall also state that it is not subject to cancellation, modification, or reduction in coverage without 30 calendar days written notice to the TOWN prior to the effective date of cancellation, modification, or reduction in coverage.

6.2. AUDITOR shall maintain worker's compensation insurance at the statutory minimums required by Chapter 440, Florida Statutes.

6.3. AUDITOR shall maintain each of above insurance policies/coverages throughout the term of this Agreement and any extensions of this Agreement.

6.4. AUDITOR shall provide the TOWN with a current copy of each of the above insurance policies, and any renewals.

7. TERM AND RENEWAL

7.1 This Agreement shall become effective upon execution by both parties and shall continue through _____ [to be completed] unless earlier terminated as provided in Section 8 (the "Term").

- 7.2. The TOWN shall have the option to renew this Agreement upon the same terms and conditions for up to two (2) additional one (1) year extensions (the "Option"). The Option may be exercised at the sole discretion of the Town Manager. Such extension shall be effective upon written notice from the Town Manager to the AUDITOR no later than 30 days prior to the date of termination of the Term or any renewal term.

8. TERMINATION

- 8.1 The TOWN may elect to terminate all or a portion of the Agenda Management Services provided by AUDITOR in this Agreement by giving AUDITOR written notice at least 90 calendar days prior to the effective date of termination. Upon receipt of written notice of termination, AUDITOR shall not enter into any third party agreements and shall incur only those expenses specifically approved or directed in writing by the Town Manager. Upon written notice of termination, the Town Manager may elect not to use the services of AUDITOR.
- 8.2 AUDITOR may terminate the Agreement at any time by giving the TOWN written notice at least 180 calendar days prior to the effective date of termination.
- 8.3 In the event of termination or expiration of this Agreement, AUDITOR and the TOWN shall cooperate in good faith in order to effectuate a smooth and harmonious transition from AUDITOR to the TOWN, or to any other person or entity the TOWN may designate, and to maintain during such period of transition the same services provided to the TOWN pursuant to the terms of this Agreement.
- 8.4 AUDITOR will take all reasonable and necessary actions to transfer all books, records and data of the TOWN in its possession in an orderly fashion to either the TOWN or its designee in a hard copy and computer format.
- 8.5 Subsequent to the termination of this Agreement, the TOWN may contract with AUDITOR at a mutually agreed upon amount to perform specified services on an as needed basis.
- 8.6 In the event that this Agreement is terminated for convenience, the AUDITOR shall be paid for any Auditing Services performed up to the date of termination. Upon receipt of a notice of termination, the AUDITOR shall perform only those services specified by the TOWN Manager and shall not incur additional expenses without the Town Manager's prior written approval.
- 8.7 Upon termination or expiration, any compensation payable by TOWN to AUDITOR shall be withheld until all Records and documents are provided to TOWN pursuant to Section 4.2 of this Agreement.
- 8.8 Upon termination or expiration, the TOWN shall not be liable to AUDITOR for any additional compensation, consequential or incidental damages, lost profits, or any other compensation, beyond the compensation structure specifically provided for in this Agreement.

9. **ENTIRE AGREEMENT/MODIFICATION/AMENDMENT**

- 9.1. This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.
- 9.2. No agent, employee, or other representative of either party is empowered to modify and amend the terms of this Agreement, unless executed with the same formality as this document.

10. **SEVERABILITY**

- 10.1. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

11. **GOVERNING LAW**

- 11.1. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation shall be in Miami-Dade County, Florida.

12. **WAIVER**

- 12.1. The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

13. **NOTICES/AUTHORIZED REPRESENTATIVES**

- 13.1. Any notices required or permitted by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by private postal service, addressed to the parties at the following addresses:

For the Town:

Town of Cutler Bay
Attention: Steven Alexander, Town Manager
10720 Caribbean Blvd, Suite 105
Cutler Bay, Florida 33189
Telephone: (305) 234-4262
Facsimile: (305) 234-4251

With a copy to:

Weiss Serota Helfman Pastoriza Cole &
Boniske, P.A., Town Attorneys
Attention: Mitchell Bierman, Esq.
2525 Ponce de Leon Blvd
Suite 700
Coral Gables, FL 33134
Phone: (305) 854-0800
Facsimile: (305) 854-2323

For AUDITOR:

Either party shall have the right to change its address for notice purposes by sending written notice of such change of address to the other party in accordance with the provisions hereof.

14. **INDEPENDENT AUDITOR**

14.1. AUDITOR is and shall remain an independent contractor and is not an employee or agent of the TOWN. Services provided by AUDITOR shall be by employees of AUDITOR working under the supervision and direction of AUDITOR and nothing in this Agreement shall in any way be interpreted or construed to deem said employees to be agents, employees, or representatives of the TOWN. AUDITOR agrees that it is a separate and independent enterprise from the TOWN.

14.2. AUDITOR shall be responsible for all compensation, tax responsibilities, insurance benefits, other employee benefits, and any other status or rights of its employees during the course of their employment with AUDITOR. This Agreement shall not be construed as creating any joint employment relationship between AUDITOR and the TOWN, and the TOWN will not be liable for any obligation incurred by AUDITOR, including but not limited to unpaid minimum wages and/or overtime payments.

15. **STAFFING/REMOVAL**

15.1 If at any time during the term of this Agreement the Town Manager becomes dissatisfied with the performance of any of AUDITOR'S staff assigned to provide services under this Agreement, the Town Manager may request that the particular employee be removed from servicing this account. Representatives of AUDITOR and the Town Manager shall meet to discuss appropriate remedial action to

alleviate the performance deficiencies experienced by the TOWN. If the proposed resolution is unsatisfactory to the Town Manager, AUDITOR shall reassign said personnel out of the TOWN within 3 calendar days of notification by the Town Manager.

15.2 AUDITOR agrees to act in good faith and to use its best efforts to resolve any problems experienced by the TOWN.

15.3 AUDITOR shall be responsible for maintaining current background checks on all employees and agents assigned to work in the TOWN. Background checks for each individual must be performed prior to providing any services to the TOWN. Written verification of any background checks must be provided to the TOWN if requested by the Town Manager.

16. **WAIVER OF JURY TRIAL**

16.1. In the event of any litigation arising out of this Agreement, each party hereby knowingly, irrevocably, voluntarily and intentionally waives its right to a trial by jury.

17. **ASSIGNMENT/SUBCONTRACTS**

17.1. This Agreement shall not be assignable by AUDITOR without the prior approval of the Town Council, at the TOWN'S sole discretion.

17.2 AUDITOR shall not subcontract any portion of the work required by this Agreement, except with the prior approval of the Town Manager, which shall be on his or her sole and absolute discretion.

18. **PROHIBITION AGAINST CONTINGENT FEES/CONFLICTS**

18.1. AUDITOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for AUDITOR, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for AUDITOR, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

18.2 Neither AUDITOR nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with AUDITOR'S loyal and conscientious exercise of judgment related to its performance under this Agreement.

18.3 AUDITOR agrees that none of its officers or employees shall, during the Term or any renewal term of this Agreement, serve as an expert witness against TOWN in

any legal or administrative proceeding in which he or she is not a party, unless compelled by court process.

19. **WARRANTIES OF AUDITOR**

- 19.1 AUDITOR warrants and represents that at all times during the Term or any renewal term of this Agreement that it shall maintain in good standing with the State of Florida, that all required licenses and certificates of AUDITOR and its employees and agents required to perform services hereunder under federal, state and local laws necessary to perform the Scope of Services specified in this Agreement shall remain current and active.
- 19.2 AUDITOR warrants and represents that its employees have received sexual harassment training and that AUDITOR maintains appropriate sexual harassment and anti-discrimination policies.
- 19.3 AUDITOR warrants and represents that its employees will abide by the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes and the applicable provisions of the Conflict of Interest and Code of Ethics ordinances sets forth in Section 2-11.1 of the Town Code and Section 2-11.1 of the Miami-Dade County Code, as these codes may be amended from time to time.
- 19.4 AUDITOR shall not discriminate against any person in its operations, activities or delivery of services under this Agreement. AUDITOR shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.
- 19.5 AUDITOR represents that all persons delivering the Auditing Services as required by this Agreement have the requisite knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in this Agreement and agrees to provide and perform such Auditing Services to TOWN'S satisfaction for the agreed compensation.
- 19.6 AUDITOR shall maintain a Drug-Free workplace as that term is defined in Florida Statutes.
- 19.7 AUDITOR shall comply with all applicable federal, state, county and Town laws, rules and regulations in the performance of Auditing Services.
- 19.8 The audit firm's professional personnel have received adequate continuing professional education with the proceeding two (2) years in accordance with the requirements of the Florida State Board of Accountancy and Government Auditing Standards.

20. **ATTORNEYS' FEES**

20.1 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels.

[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the undersigned parties have executed this Agreement on the date indicated above.

WITNESSES:

Print Name: _____

Print Name: _____

ATTEST:

Town Clerk

Approved as to form and legality
for use of and reliance by the Town
of Cutler Bay only:

Town Attorney

AUDITOR

By: _____

Date: _____

TOWN OF CUTLER BAY

By: _____

Date: _____

[END OF DOCUMENT]

**FORM A - PRICING INFORMATION SHEET
RFP #07-06
PROFESSIONAL AUDITING SERVICES**

Proposer Firm: _____

By: _____
Print Name and Title

Authorized Signature: _____
Sign in Blue Ink

Date: _____

AUDIT SERVICES FEE ESTIMATE:						
Fiscal Year Ended		Financial Statement Audit Services Estimate		Single Audit Services Estimate (if applicable to Town)		Total Estimated Annual Fees
September 30, 2007						
September 30, 2008						
September 30, 2008						

FORM A - PRICING INFORMATION SHEET
RFP #07-06
PROFESSIONAL AUDITING SERVICES

HOURLY RATES FOR OTHER SERVICES (IF APPLICABLE):		
STAFF LEVEL		HOURLY RATE
PARTNER		
MANAGER		
OTHER STAFF (LIST):		

FORM R - PROPOSAL RANKING FORM
RFP #07-06
PROFESSIONAL AUDITING SERVICES

Criteria	Maximum Points	Scored Points
<u>1. Expertise and Experience (maximum 50 points):</u>		
(i) The firm's expertise and experience in local government auditing and performance on comparable government engagements	25	_____
(ii) The quality and experience of the firm's professional personnel assigned to the Town's audit engagement and the quality of the firm's management support personnel to be available for technical consultation	25	_____
<u>2. Audit Approach (maximum 40 points):</u>		
(i) Adequacy of proposed audit plan for various segments of the engagement	20	_____
(ii) Adequacy of sampling techniques	5	_____
(iii) Adequacy of analytical procedures	5	_____
(iv) Assessment of firm's ability to meet prescribed report publication dates	10	_____
<u>3. Pricing (maximum 10 points):</u>		
(i) The firm's comparable fee structure for the Town's annual financial audits and related reports and the comparable hourly rates for other services that may be requested by the Town	10	_____
TOTAL POINTS	100	_____

Evaluated By: _____
Name & Title

Signature: _____

Date: _____

TAB 3

RESOLUTION NO. 07-___

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR POLICE CONFISCATION FUND EXPENDITURES IN THE AMOUNT OF \$4,334.65 TO BE FUNDED BY PROCEEDS OF CONFISCATED FUNDS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Florida Statute Section 932.7055, Florida Statutes, defines the purposes and procedures to be utilized for the appropriation and expenditure of the Police Confiscation Fund; and

WHEREAS, Police Commander of the Town of Cutler Bay (the "Town") has determined that such needs exist as required by and in compliance with Section 932.7055, Florida Statutes; and

WHEREAS, such funds are available in the Police Confiscation Fund.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** The above Recitals are true and correct and are incorporated herein by this reference.

Section 2. **Confiscation Fund Expenditures.** Based on the attached certificate of the Police Commander, the Police Confiscation Fund expenditures which are set forth in Exhibit A, are hereby approved.

Section 3. **Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED and ADOPTED this ____ day of _____, 2007.

PAUL S. VROOMAN
Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk
APPROVED AS TO FORM AND

LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved by:
Seconded by:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman	_____
Vice Mayor Edward P. MacDougall	_____
Councilmember Peggy R. Bell	_____
Councilmember Timothy J. Meerbott	_____
Councilmember Ernest N. Sochin	_____

AFFIDAVIT

I, Richard Pichardo, Police Commander of the Town of Cutler Bay, do hereby certify that the attached proposed request for expenditures from the Town of Cutler Bay Police Confiscation Fund, complies with provisions of Section 932.7055, Florida Statutes.

Dated: _____, 2007.

RICHARD PICHARDO, Police Commander

Mitchell A. Bierman, Town Attorney

LOU'S POLICE & SECURITY EQUIPMENT, INC.

4149 PALM AVENUE

HALEAH, FL 33012

TEL : 305-822-5362 • FAX: 305-822-9603

EMAIL: RAY@LOUSPOLICE.COM
□**Quotation****TO:****Ship To:**

MIAMI DADE POLICE	
TOWN OF CUTLER BAY	
ATTN: ELISA TORRES	
PH: 786-573-5505	
FAX: 305-224-4251 / 305-234-4251	

Quotation #

042707RM

Date

April 27, 2007

Required	Ship Via	FOB	Dept / Req #	Terms
Item #	Quantity	Description	Price	Ext
SMI811000	5	SMITH AND WESSON M&P 15 .223CAL CARBINE	\$ 729.00	\$ 3,645.00
		DETACILABLE CARRY HANDLE, RETRACTABLE STOCK		
		1 30 ROUND MAGAZINE		
GGG1048	5	GG&G RECEIVER END PLATE LOOPED (AMBI)	\$ 29.98	\$ 149.90
	5	NORTHEAST TACTICAL BUNGEE SLING BLACK	\$ 40.00	\$ 200.00
8448670	10	BUSHMASTER 30 ROUND MAGAZINE	\$ 18.98	\$ 189.80
BD-422	5	BULL DOG RIFLE CASE 35" BLACK	\$ 29.99	\$ 149.95
		QUOTED BY:	Freight	
		RAY MARTINEZ / L.E. SALES		
Lou's Police & Security Equipment, Inc.			Total	\$ 4,334.65

FAXED

TAB 4

RESOLUTION NO. 07-___

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA CREATING A COMMITTEE OF THE WHOLE "COW" FOR THE PURPOSE OF REVIEWING ANY ITEM REQUESTED BY ANY MEMBER OF THE TOWN COUNCIL OR THE TOWN MANAGER; PROVIDING FOR THE SELECTION OF COMMITTEE MEMBERS; PROVIDING FOR MEETING DATES AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the "Town") desires to have a committee of the whole "COW" for the purpose of reviewing any item requested by any member of the Town Council or the Town Manager.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** The above Recitals are true and correct and are incorporated herein by this reference.

Section 2. **Committee of the Whole "COW" Created.** The Town Council hereby creates a Committee of the Whole "COW" (the "Committee") for the purpose of reviewing any item requested by any member of the Town Council or the Town Manager. The Committee's structure shall be that of an open workshop without public input. The Committee shall not be considered as a regular Council meeting and the Council shall take no action at such meetings other than open discussion of items requested by the Council and the Manager.

Section 3. **Composition of Committee.** The Committee shall consist of the Town Council who shall be assisted by the Town Manager, Town Attorney and appropriate Town staff.

Section 4. **Meeting Dates.** The Committee shall meet, as necessary, on the first Wednesday of each month commencing in October 2007. No meeting shall be held if no items are requested by the Town Council or Town Manager. Additional meetings may be held and the meeting date may be rescheduled at the discretion of the Committee.

Section 5. **Effective Date.** This Resolution shall become effective immediately upon its adoption.

PASSED and ADOPTED this ___ day of _____, 2007.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

TAB 5

RESOLUTION NO. 07-___

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA CREATING A CITIZEN ADVISORY COMMITTEE FOR THE PURPOSE OF PROVIDING RECOMMENDATIONS TO THE TOWN COUNCIL ON THE FEASIBILITY OF CREATING A CHARTER HIGH SCHOOL FOR CUTLER BAY, APPOINTING A COUNCIL LIAISON AND PROVIDING FOR THE SELECTION OF COMMITTEE MEMBERS, PROVIDING FOR AUTOMATIC DISSOLUTION AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the "Town") desires to have a citizen committee of citizens with relevant knowledge and experience advise the Council as to the possible creation of charter high school, for the benefit of citizens in the Town; and

WHEREAS, Councilman Ernest Sochin has volunteered to serve as the Council liaison to the Committee due to his particular interest in the development of a charter school, and has begun studying the potential of establishing a charter school for the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** The above Recitals are true and correct and are incorporated herein by this reference.

Section 2. **Charter School Committee Created.** The Town Council hereby creates a citizen committee, to be known as the Charter School Committee to study, advise and make recommendations to the Town Council regarding the possible creation of a charter high school in the Town. Councilman Ernest Sochin is hereby appointed Council liaison to the Committee and shall report to the Council as to the Committee's activities on a regular basis. The Council liaison shall not be considered a member of the Committee.

Section 3. **Composition of Committee.** The Committee shall consist initially of five (5) citizens of the Town who shall be chosen by the Council with each Council member selecting one Committee member from a list of persons who volunteer by advising the Town Manager of their interest in serving on said Committee. The members shall serve until the Committee's work is deemed complete and the Committee automatically dissolves pursuant to section 4 below.

Section 4. Dissolution of the Committee. The Committee shall be automatically dissolved at such time as the Council accepts its recommendations and advises the Committee that its services are no longer required.

Section 5. Effective Date. This Resolution shall become effective immediately upon its adoption.

PASSED and ADOPTED this ____ day of _____, 2007.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

TAB 6



Steven J. Alexander
Town Manager

MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council
From: Steven J. Alexander, Town Manager
Date: August 15, 2007
Re: **Park Use Agreement For Youth Sports Organizations**

REQUEST

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A PARK USE AGREEMENT BETWEEN LOCAL YOUTH SPORTS ORGANIZATIONS AND THE TOWN OF CUTLER BAY FOR THE USE OF TOWN PARKS FOR SPORTS AND RECREATIONAL PROGRAMMING ACTIVITIES; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

For many years, municipalities throughout Miami-Dade County and the State of Florida have relied upon outside organizations to conduct a variety of youth sports leagues and other recreational activities. Outside organizations such as Optimist Clubs, Booster Clubs and volunteer associations are able to provide the resources necessary to conduct all phases of a well-run program from registration and fund raising to scheduling and officiating games, while the municipality provides for facilities and maintenance.

There are currently four such groups operating programs within the Town of Cutler Bay – the Cutler Ridge Soccer Club at Cutler Ridge Park, the Perrine Baseball and Softball Association at Franjo Park, the Palmetto Raider Youth Development Club at Bel Aire Park and the Riptides Swim and Water Polo Team at Cutler Ridge Pool. Each group has operated successful programs at their respective park for many years, providing children in the community with an outlet for their sports activity needs. Most have had an agreement in place with Miami-Dade County allowing them to continue to operate their programs from year to year.

The Parks and Recreation Department has researched park use agreements that are in place between youth leagues and other municipalities in Miami-Dade County, and with the assistance of the Town attorney's office has produced the attached park use agreement to be used for the four organizations noted above. The general agreement will be the same for each program with only the park location and annual fee changing from group to group. The use agreement has been discussed with each of the organizations so that they would be aware of the Town's obligations and the organization's obligations going forward.

The use agreement provides for the following:

- A three year term, renewable for an additional three years subject to mutual written agreement of both parties.
- Each organization must be maintained as a non-profit organization.
- Each organization must comply with Town Ordinance 06-33 – the “Shannon Melendi Act of Miami-Dade County”.
- Each organization must provide an insurance certificate naming the Town as an additional insured.
- Each organization will be permitted to conduct concession operations at their respective facility.
- Each organization will be responsible for providing security during its use of the licensed facility.
- Each organization will be responsible for litter and debris removal following each day of activities.
- The Town will provide for all routine maintenance necessary for the upkeep of the parks.
- The Town will pay for all electrical and water use at each of the parks.
- Each organization will make an annual payment to the Town to help offset a portion of the Town’s direct costs for the operation of the park (each organization’s fee will differ depending on the amount of Town resources directed toward the organization’s programs).

We believe that the attached agreement will allow the four current users (and potential future users) to provide quality sports programs for Town residents, while providing for reasonable assurance that the programs do not cause an undue burden on the Town.

RECOMMENDATION

We recommend that the attached resolution be adopted, allowing the Town Manager to execute the park use agreements with the local youth sports organizations.

RESOLUTION NO. 07-____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A PARK USE AGREEMENT BETWEEN LOCAL YOUTH SPORTS ORGANIZATIONS AND THE TOWN OF CUTLER BAY FOR THE USE OF TOWN PARKS FOR SPORTS AND RECREATIONAL PROGRAMMING ACTIVITIES; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, various youth sports clubs and organizations (the "Clubs") wish to utilize certain real property for general recreation programs, sports activities and events for the use and benefit of the residents of the Town of Cutler Bay (the "Town"); and

WHEREAS, the Town finds that approval of an Agreement between the Town and the Clubs is in the best interest of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, THAT:

Section 1. Recitals. The foregoing Recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Agreement. The Agreement for use between the Town of Cutler Bay and local youth sports organizations, attached as Exhibit "A", is approved together with such non-substantial changes as may be acceptable to the Town Manager and approved as to form and legality by the Town Attorney.

Section 3. Execution of Agreement. The Town Manager is authorized to execute and deliver the Agreements on behalf of the Town.

Section 4. Authorization of Town Officials. The Town Manager and Town Attorney are authorized to execute and deliver any additional documents pertaining to the Agreement and to take all action necessary to implement the terms and conditions of the Agreement.

Section 5. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this ____ day of _____, 2007.

PAUL S. VROOMAN
Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

AGREEMENT

This Agreement (the "Agreement") is made and entered into this ____ day of _____ 2007, by and between the Town of Cutler Bay, a Florida Municipal Corporation (the "Town") whose address is 10720 Caribbean Boulevard, Suite 105, Cutler Bay, Florida 33189 and _____ Club, Inc., a Florida Non-Profit Corporation (the "Club") whose address is _____.

RECITALS

WHEREAS, the Town is the owner of that certain property located in Miami-Dade County, Florida, described on **Exhibit "A"** attached hereto and made a part hereof; (the "Property");

WHEREAS, the Club desires to use a certain portion of the Property for the recreational programs, activities and events described on **Exhibit "A"** ("Recreational Uses") for the benefit of the Town's residents;

WHEREAS, the Town has agreed to authorize the Club to use a certain portion of the Property for Recreational Uses during specified periods and times, subject to the terms outlined below; and,

NOW THEREFORE, in consideration of the mutual covenants of the parties set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

1. **Recitals.** The above recitals are true and correct.
2. **Licensed Area.** The Town agrees to grant the Club a non-exclusive license to use the portion of the Property shown on Exhibit "A" ("Licensed Area") during Scheduled Use Periods (defined below).
3. **Term.** The term of this Agreement shall be for a period of three (3) years commencing on _____ ("Commencement Date") and ending on _____ ("Term"). Subject to the Club's compliance with the Agreement terms, this Agreement may be renewed for another three (3) year term, subject to (a) the Club's submitting a request for renewal no later than (180) days prior to the Agreement expiration date and (b) subject to mutual written agreement of the parties ("Renewal Term").
4. **Uses Authorized and Related Costs.** The Club is authorized to use the Licensed Area for the recreational uses shown on Exhibit "A" only ("Recreational Uses") and for no other purposes, unless mutually agreed to in writing by the parties. The Club's use of the Licensed Area shall be non-

exclusive or shared. The Town and other persons or entities designated by the Town may be authorized to use the Licensed Area on the terms outlined in this Agreement. The Club shall be solely responsible for any and all costs incurred in providing the Recreational Uses on the Licensed Area. This shall include, but not be limited to, any and all costs for creating and providing programs and staging events.

5. **Scheduled Use Periods.** At least thirty (30) days prior to: (a) the commencement date of this Agreement and (b) the beginning of each one-year anniversary thereafter, the Club shall submit a proposed schedule setting forth the dates and times it would like to reserve the Licensed Area for the Recreational Uses (“Scheduled Use Periods”) for the Town’s review and approval. The Club shall provide the Town with at least thirty (30) days prior written notice of any proposed changes to the schedule. The Scheduled Use Periods shall be attached to this Agreement as Exhibit “A” and shall be updated annually.

Notwithstanding the provisions herein, the parties acknowledge and agree that the Town has reserved the right for itself and third-parties, in its sole discretion, to schedule activities, events and/or programs on the Licensed Area during the Agreement Term or any renewal thereof. The Town shall have first priority with respect to such uses even if it conflicts with the Club’s Scheduled Use Periods. However, in the event any conflicts arise, the Town shall use every effort to provide the Club with alternative locations and/or dates and times for use by the Club. The Town and the Club shall cooperate to insure that appropriate recovery time is included in the proposed schedule. The Town reserves the right, in its sole discretion, to cancel or postpone Club Recreational Uses when such cancellation or postponement would be in the best interest of the Town, its Property, or its residents.

6. **License Fee.** The Club shall pay the Town an annual license fee of Two-Thousand Five Hundred Dollars (\$2,500.00) which shall be due and payable in advance on the first day of each year (“Annual License Fee”). The Annual License Fee shall offset a portion of the Town’s cost for providing services to the Club above and beyond the normal and customary use of the Licensed Area, including but not limited to, field preparation and additional utilities consumed by the Club. The Annual License Fee shall be reviewed annually by the Parties each year to determine whether the Annual License fee is commensurate with the additional services being provided.
7. **Participant Fees.** Within ten (10) days after the Commencement Date of this Agreement and prior to commencing any Recreational Uses on the Licensed Area, the Club shall submit a proposed fee schedule setting forth amounts required to be paid by participants for the Club’s Recreational Uses which must be reviewed and approved by the Town in writing. The Club shall use its best

efforts to maintain fees in line with fees associated with other similar programs in Miami-Dade County.

8. **Concession Operations.** The Club is authorized to operate temporary concessions in conjunction with its Recreational Uses on a non-exclusive basis (“Concessions”), subject to the following conditions:
- (a) All Concession Operations shall be temporary only and may only be operated simultaneously with a Recreational Use, if so desired;
 - (b) No Alcoholic Beverages may be sold or consumed on the Town Property and/or the Licensed Area;
 - (c) All Food and Beverages to be sold by the Club shall be at prices comparable with other similar concessions in the area;
 - (d) All Food and Beverages shall be sold and/or distributed in safe containers. No items may be sold or consumed in glass containers;
 - (e) The Club must furnish all equipment, materials and/or supplies required to operate its concessions at its sole expense;
 - (f) The Club shall remove all Concession equipment, materials and supplies at the conclusion of each applicable Recreational Use and shall return the Licensed Area to its original condition, including but not limited to removing any litter and debris.

The sale of the Concessions operated by the Club shall not compete with any sales or concessions of other users of the Property. The granting of these concession rights to the Club is to help the Club raise funds for the payment to the Town for use of the Licensed Area. Due to such reasons, all proceeds generated from the Concessions shall be retained by the Club. The failure of the Club to retain all proceeds generated from Concessions shall constitute a material breach of this Agreement. The Club shall be responsible for any and all costs associated with the maintenance and operation of the Concessions. The Club must comply with all applicable Laws (defined below) governing operations of the Concessions, and shall provide the Town with any certifications of compliance. The cost of any inspections, repairs and/or modifications necessary for the Club’s use of the Concessions shall be solely borne by the Club. In the event the Club chooses not to operate the Concessions, the Town shall be allowed to contract with other organizations to provide the Concessions. Additionally, the Club shall police the use areas (concessions, walkways, bleachers, dugouts, etc) during and/or at the end of daily play, and properly bag and dispose of waste accordingly.

9. **Utilities: Office Services.** All existing water and electrical services within the Licensed Area shall be made available for the Club's use. The Club shall be responsible for payment of all costs and fees for telephone lines, if any, installed by the Club in the Clubhouse. Also, upon termination or expiration of this Agreement, the Club shall be responsible for timely terminating the telephone service and removing the telephone lines.
10. **Governmental Approvals: Permits and Licenses.** Prior to commencing any Recreational Uses and/or related activities, including but not limited to temporary Concessions, the Club, at its own costs and expense, must obtain all required governmental approvals, including but not limited to permits and licenses. To the extent any Town permits or licenses are required, the Town shall use best efforts to expedite the issuance on any such permits.
11. **No Liens or Encumbrances.** The Club shall not allow any liens or any other encumbrances of any type to be filed against the Town's Property, including the Licensed Area, during its use of the Licensed Area. If any such liens or encumbrances are filed against the Town Property or the Licensed Area as a result of the Club's or its officers, employees, agents, representatives, invitees or other affiliated persons or entities use or activities on the Licensed Area, the Club shall, with seven (7) days after notice of the filing thereof, cause the same to be discharged of record by payment, deposit, bond or other order of a court of competent jurisdiction.
12. **Security.** The Club shall be responsible for providing for all security during the Term necessary to protect the Licensed Area and persons therein. At no time will any private security officer be permitted to carry or possess a firearm in conjunction with their assigned duties while at the Licensed Area or on other Property owned by Town. The Club shall pay all fees associated with the provision of all security officers during the Term, including all fees associated with the use of the Town of Cutler Bay off-duty police officers.
13. **Organizational Status and Regulations Governing the Club.** During the Agreement Term, the Club agrees to the following mandates within their respective organizational structure:
 - a. The Club shall be maintained as a non-profit organization with the State of Florida and comply with any regulations as may be required.
 - b. The Club shall not use the Licensed Area to conduct any profit making activities. Notwithstanding this provision, the Club is authorized to operate Concessions on the terms provided in this Agreement.
 - c. The Club agrees to monitor and control all program participants, including, but not limited to players, coaches, umpires, volunteers, spectators, guests and invitees while at the Licensed Area. Further, the

Club agrees to maintain standards of conduct and disciplinary penalties and/or action as may be necessary to ensure a safe and amicable environment for participants, spectators, guests, invitees and other patrons. Such safety standards shall, pursuant to the agreement of both parties, be incorporated as a part of this Agreement, and the Club's overall program shall also include guidelines for the conduct of league officials in interfacing with the general public and Town officials. Specifically, abusive language and/or profanity is unacceptable and will not be tolerated, and nothing less than a professional demeanor will be expected.

d. The Club shall submit to the Town, prior to the beginning of the league season, a schedule of registration dates, try-out dates, games and subsequent make-up games for the entire season.

e. At least fifteen (15) days prior to the Commencement Date, the Club shall provide the Town with a list of all Club Members and/or Club Volunteers or other representatives that shall be participating in the Recreational Uses on the Licensed Area during the Agreement Term. The Club shall keep the Town continuously apprised of any changes to this list.

f. The Club shall comply with the Town Volunteer Program Policy, Ordinance No. 06-33, the "Shannon Melendi Act of Miami-Dade County" attached hereto as Exhibit "B" and made a part hereof, ("Volunteer Program Policy") for the purpose of conducting background investigations for all coaches, managers, officials, umpires, members, employees, and/or volunteers or participants ("Volunteers") associated with the operation of programs and/or activities for the Club. Required background investigations shall be completed in accordance with the Volunteer Program Policy.

14. **Alterations and Improvements.** The Club shall not make any permanent or temporary alterations, improvements or additions to the Licensed Area without the prior written consent of Town, which consent may be withheld within the Town's sole discretion. Any alteration, improvement or addition to the Licensed Area approved by Town shall be designed, constructed, installed, and maintained in a good, safe and workmanlike manner, and shall be paid for in full by Club. The Club must provide the Town with any and all documentation requested, including but not limited to plans and specifications, for the approval process. Unless otherwise agreed in writing by Town, any alteration, improvement or addition to the Licensed Area made by Club shall be removed by Club at the expiration or earlier termination of the Agreement without damage to the Licensed Area. If the Town desires to retain any alteration, Town shall notify Club in writing of its intent within thirty (30) days of the expiration or earlier termination of this Agreement.

15. **Insurance.**

a. **Liability Insurance.** Commencing upon its execution of this Agreement and all times during the Term, the Club shall carry commercial general liability insurance against bodily injury and property damage arising from occurrences in and about the Licensed Area (including parking lots). The insurance to be provided must be broad form coverage in the amount of One Million and No/100 Dollars (\$1,000,000.00) per occurrence combined, single limit for bodily injury and property damage. The liability policy to be provided by Club must be written by a carrier rated A+ or better by A.M. Best Insurance Reports. The required insurance policies must name the Town as an additional insured and loss payee, and must provide that the policy cannot be materially altered or canceled without thirty (30) days written notice to Town. Evidence of the Club's liability insurance reasonably satisfactory to Town must be provided to Town prior to execution of the Agreement.

b. **Participant Insurance.** The Club shall require that all program participants provide proof of medial insurance to cover injuries that may occur as a result of participation in Club Recreational Uses on the Licensed Area. Proof may be by either group coverage (provided by the organization for all program participants) or individual coverage (in the form of a list of all participants with their insurance information).

c. **Insurance Expiration.** In the event that any of the insurance coverage's required herein expire prior to the expiration of this Agreement, copies of renewal policies shall be furnished to the Town no later than sixty (60) days prior to the date of their expiration.

16. **Maintenance.**

a. **Routine Maintenance** - Except as otherwise provided in this Agreement, Town shall be responsible for reasonable routine maintenance of the Licensed Area during the Term; provided, however, the Club shall be responsible for any maintenance or repairs resulting from damages caused by Club or its employees, agents, guests, invitees, participants and spectators.

b. **Clean-Up After Recreational Uses** – Immediately following each Recreational Use, the Club shall be responsible for returning the Licensed Area to its original condition. This shall include the requirement that the Club remove all trash, litter, and debris from the Licensed Area after each activity and dispose of same in the on-site receptacles provided. If the Town, in its sole discretion deems that the Club has not returned the Licensed Area to its original condition after each Recreational Use in accordance with the requirements of this provision, the Town may provide the required services and shall bill the Club at a rate of \$25.00 per staff person hours (minimum of one-staff person for 2 hours) for the clean-up. The Town may also exercise its rights to terminate this Agreement.

17. **Taxes.**

a. **Ad Valorem Taxes.** Town and Club acknowledge that the Licensed Area is currently exempt from ad valorem taxes. If ad valorem taxes are assessed against the Licensed Area or Club's interest in this Agreement or any part thereof, the Club is responsible for such taxes and any interest or penalties with respect to such taxes relative to the portions of the Licensed Area utilized by Club hereunder less any amounts shown on the tax bill as allocated to the Town of Cutler Bay, which amounts shall be the responsibility of the Town. If requested by either party, the parties shall reasonably cooperate with one another to challenge the imposition of any ad valorem taxes against the Licensed Area in connection with this Agreement.

b. **Non-Ad Valorem Taxes and Assessments.** The Club is solely responsible for the payment of all taxes (other than ad valorem taxes which may be mandated above) and assessments on the Licensed Area and this Agreement, arising from or related to, the Club's operation, maintenance, and repair of the Licensed Area, including, without limitation, tangible personal property taxes on property owned by Club, intangible personal property taxes, sales taxes, use taxes, assessments, and documentary stamp taxes.

The Club must pay any and all required taxes and assessments prior to delinquency and must present proof of payment to Town prior to delinquency.

18. **Rules And Regulations.** The Town reserves the right to promulgate rules and regulations from time to time throughout the Agreement Term and shall give notice to the Club of such rules and regulations. The Club shall abide by such rules and regulations, provided that no such rules and regulations shall frustrate the intent of this Agreement. In the event that no timeframes are indicated as a part of said rules and regulations, the effective date of implementation shall be immediate. The Town will entertain timely objections to such rules and regulations, however, upon consideration and/or evaluation of such objections, the Town's sole judgment shall be final.

19. **Third Party Users.** The Club acknowledges that this Agreement does not give Club an exclusive right to use the Licensed Area. The Club agrees that it shall cooperate with the Town and any third party users of the Licensed Area. Additionally, the Club shall not at any time for any reason assign its authorized Licensed Area usage to a third party without express written consent of the Town.

20. **Town's Right To Inspect/Supervise.**

Town shall have the right, but not the obligation, at all times to have one or more of its representatives present at the Licensed Area to inspect and/or supervise

Club's use of the Licensed Area, at the Town's expense, provided that Town's representatives shall not interfere with Club's activities at the Licensed Area. The purpose of such supervision is to ensure the compliance with use restrictions and for the purpose of ensuring compatibility for all users of the Licensed Area.

21. **Condition of Licensed Area.** The Town makes no representation, warranty, or guaranty of any nature whatsoever concerning the physical condition of the Licensed Area and the Club hereby accepts the Licensed Area in its "as-is" condition. The Club acknowledges and agrees that the Licensed Area shall be in the same condition on the Expiration Date as it is on the Effective Date normal wear and tear excepted, subject to Club's obligation to perform all maintenance, repairs and replacements prior to the Expiration Date.

22. **Loss and Damage.** The Town shall not be liable for any loss, damage, or injury of any kind to any person or property (a) caused by any defect in any building, structure, or other improvements on the Property, the Licensed Area, or in any equipment or facility located thereon; (b) caused by or arising from any act or omission of the Club, or any of its employees, agents, representatives, guests, or invitees; (c) arising from any accident on the property, or any fire or other casualty thereon; or (d) arising from any other cause; unless caused solely by the Town's gross negligence or willful acts or omissions.

23. **Club's Representations.** The Club represents and warrants to Town that as of the date of this Agreement and at all times during the Term:

a. **Enforceability.** All required action has been taken by or on behalf of the Club to authorize the execution and delivery by the Club of this Agreement and the performance by the Club of its obligations under this Agreement. This Agreement is a valid and binding obligation of Club, enforceable in accordance with its terms.

b. **Other Agreements.** The execution and delivery by Club of this Agreement and the performance by Club of its obligations under this Agreement do not conflict with or violate any provisions of any other agreement or any law to which Club is subject.

24. **Indemnification; Liability.**

a. **General Indemnification.** The Club will indemnify the Town, its representatives, employees, and agents, against all loss, expense and liability of any kind, including attorney's fees arising out of this Agreement or out of any event or action occurring in or about the Licensed Area when the Club or the Club's agents, representatives, employees, independent contractors, patrons, or invitees are using the Licensed Area. Without limiting the foregoing, the Club will indemnify Town against liability resulting from any physical injury,

including death, any discriminatory acts, or any property damage which occurs inside the Licensed Area, in the Licensed Area parking areas, or in the Licensed Area entryways.

- b. **Participant Indemnification.** The Club shall require all program participants to sign an indemnification form indemnifying and holding harmless the Town of Cutler Bay and its Council members, employees, agents or other representatives from any and all liability arising out of the participant's participation in Club activities and or use of any of the Town's facilities and/or equipment.
- c. **Town Negligence.** The Club will not indemnify Town against the gross negligence or willful misconduct of Town, its employees or agents.
- d. **Liability.** The Club hereby assumes all financial, administrative, and legal responsibility in connection with, related to, or arising out of its use of the Licensed Area under this Agreement. Except as otherwise set forth in this Agreement, Town shall have no liability to Club, or its employees, contractors, agents, and invitees in connection with this Agreement and Club hereby releases the Town with respect to the foregoing. Nothing in this Agreement will be construed to affect in any way the Town's rights, privileges, and immunities, including the monetary limitations of liability set forth therein, under the doctrine of "sovereign immunity" and as set forth in Section 768.28 of the Florida Statutes.
- e. **Survival.** The provisions of this Section shall survive the termination or expiration of this Agreement.

25. **Compliance with Law.** The Club shall not commit nor permit any violations of applicable federal, state, county and municipal laws, ordinances, resolutions and governmental rules, regulations and orders, as may be in effect now or at any time during the term of this Agreement, all as may be amended, which are applicable to Town, Club, the Licensed Area or the operations conducted at the Licensed Area ("Laws"). The Club shall, at its sole expense, execute, file and obtain, as applicable, punctually when due, all forms, reports, licenses, permits and returns required by law in connection with its use of the Licensed Area. A violation of any such laws, ordinances, resolutions, rules, regulations or orders, as amended, or failure to obtain the necessary licenses and permits shall constitute a material breach of this Agreement, and in such event, Town shall be entitled to exercise any and all rights and remedies hereunder and at law and in equity.

26. **Non-Discrimination.** The Club, and its employees, agents, representatives, volunteers, and any other parties under the direction or control of the Club may not discriminate against any person on the basis of sex, age, race, color, religion, ancestry, national origin, physical handicap, or sexual orientation by refusing to furnish to such

person any accommodation, facility, services, or privilege offered to or enjoyed by the general public. The Club and its employees, agents, representatives, volunteers, and any other parties under the direction or control of the Club, shall not, during the performance of this Agreement, discriminate against any employee or applicant for employment on the basis of sex, age, race, color, religion, ancestry, national origin, physical handicap or sexual orientation. The Club, its employees, agents, volunteers, and all parties under the direction or control of the Club must take affirmative action to assure that applicants are employed, and that employees are treated during employment, without regard to their sex, age, race, color, religion, ancestry, national origin, physical handicap or sexual orientation.

27. **Drug Free Workplace Certification.** The Club hereby covenants and agrees to implement a policy consistent with applicable Laws with respect to maintaining a drug-free workplace and otherwise to provide and maintain a drug-free workplace at the Licensed Area during the Agreement Term.

28. **Non-Assignment.** The Club shall not assign this Agreement or its right to use any part of the Licensed Area or enter into any sublease or subuse agreements.

29. **Termination of Agreement.** Either party may, at its sole discretion terminate this Agreement for any reason whatsoever, or no reason at all, upon thirty (30) days prior written notice to the other party (the "Termination Date"). In the event of such termination, all fees and/or costs due and owing to the Town shall be prorated up to the date of termination.

30. **Default.** Except as otherwise provided herein, Town shall provide the Club with written notice of any failure to perform or comply with the terms and conditions contained herein to be performed by the Club (the "Default Notice"). If the Club fails to cure said default within ten (10) days with respect to monetary obligations, twenty (20) days with respect to non-monetary obligations, of receipt of the Default Notice, the Town shall have the right to terminate this Agreement, without penalty, cost or obligation, upon five (5) days additional written notice to the Club. Upon the occurrence of a default by the Club which remains uncured after the applicable cure period, the Town may immediately or at any time thereafter refuse the Club and anyone claiming by, through or under the Club, access to the Licensed Area, and Town may remove the Club and anyone claiming by, through or under the Club, from the Licensed Area. In the event of default by Club, Town shall be entitled to retain all payments paid it by the Club. In addition to the foregoing, upon the event of a default which remains uncured after the applicable cure period, Town shall, in addition to its rights and remedies hereunder, be entitled to avail itself of all other rights and remedies available at law or in equity.

31. **Inventory.** The Club may use the following equipment belonging to the Town located at the Licensed Area in connection with the Recreational Uses hereunder: goals, benches, and designated fields (collectively, the "Inventory"). The Club shall not remove the Inventory or any portion thereof from the Licensed Area, without receiving prior written permission from the Town. The Club shall be responsible for the

maintenance and upkeep of any and all Inventory, and shall be responsible for repair or replacement of the Inventory upon expiration or earlier termination of this Agreement

32. **Notices.** All notices, demands, requests and other communications required under this Agreement shall be given in writing and may be delivered by hand, or certified mail, return receipt requested, or by a nationally recognized overnight delivery service such as Federal Express, shall be deemed to have been given upon receipt or also be sent by facsimile provided that such is followed up by notice pursuant to one (1) of the three (3) methods in the preceding sentence. Any party may designate a change of address by written notice to the other party, received by such other party at least ten (10) days before such change of address is to become effective.

If to Town: Steven J. Alexander
Town Manager
Town of Cutler Bay
10720 Caribbean Boulevard
Suite 105
Cutler Bay, Florida 33189
Telephone: (305) 234-4262
Facsimile: (305) 234-4251

With a copy to: Mitchell A. Bierman, Esq.
Town Attorney
Weiss Serota Helfman Pastoriza
Cole & Boniske, P.L.
2525 Ponce De Leon Boulevard, Suite 700
Coral Gables, Florida 33134
Telephone: (305) 854-0800
Facsimile: (305) 854-2323

If to Club: _____

Telephone: ____
Facsimile: ____

With copy to: _____

Telephone: ____
Facsimile: ____

33. **Attorney's Fees.** In the event of any litigation arising out of this Agreement, the Town shall be entitled to recover its attorneys' fees and costs, including the fees and expenses of any paralegal, law clerks, and legal assistants, and including fees

and expenses charged for representation at the trial level, in all appeals, and in any bankruptcy proceedings.

34. **Headings.** The headings of the sections of this Agreement are for convenience only and shall not affect or be deemed to affect the meaning of any provisions hereof.

35. **Entire Agreement.** This Agreement, including the attached exhibits, contains all of the terms, covenants, conditions and agreements between the Town and the Club relating in any manner to the use and occupancy of the Licensed Area by Club. No prior agreement or understanding pertaining to the same shall be valid or of any force or effect, and the terms, covenants, conditions and provisions of the Agreement shall not be altered, changed, modified or amended, except in writing signed by Town and Club.

36. **No Waiver.** The failure by any party to insist in any one or more instances upon the strict performance of any covenant, agreement, term, provision or condition of this Agreement shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, or condition, but the same shall continue and remain in full force and effect. No waiver by the Town or the Club of any condition shall be deemed to have been made unless expressed in writing and signed by the waiving party.

37. **No Joint Ventures.** Nothing herein contained shall be deemed in any way to construe the Town or the Club a partner of the other in its business or otherwise, or a joint venturer or a member of a joint enterprise with the other. For all intents and purposes hereunder, the Club shall be considered an independent contractor.

38. **No Recording of Agreement.** Neither this Agreement nor any memorandum of same shall be recorded in the Public Records of Miami-Dade County.

39. **Americans with Disability Act (The “ADA”).** The Club shall be responsible for accommodating all ADA-related requests arising out of Club’s use of the Licensed Area.

40. **Casualty.** In the event that any casualty causes damage to the Licensed Area rendering the Licensed Area unusable by the Club, the Club shall pay all Club Fees due to the Town up to the date of the casualty, and thereafter this Agreement shall automatically terminate, and neither the Town nor the Club shall have any further rights or obligations hereunder.

41. **Condemnation.** In the event there is a taking of all or any part of the Licensed Area resulting from an exercise of the power of eminent domain, whether by a condemnation proceeding, inverse condemnation or otherwise, or if a transfer, conveyance, or sale of all or any part of the Licensed Area is made in lieu of an exercise of the power of eminent domain (all of the foregoing being hereafter referred to as a

“Condemnation”) prior to or during the Agreement Term, either party may terminate this agreement by providing the other party with thirty (30) days prior written notice.

42. **Force Majeure.** In the event that either party is prevented from fulfilling its material obligations hereunder or said obligations are materially interfered with by reason of events of war, fire, flood, earthquake, explosion, or other natural disaster, industrial action or any other reason beyond the reasonable control of that party, such obligation shall be delayed until it can be performed. The party claiming excusable delay must promptly notify the other party of such delay. If the delay continues for more than forty-five (45) days, the other party may terminate this Agreement by providing fifteen (15) days prior written notice of termination to the delaying party.

43. **Hurricane/Emergency Procedures.** The Club shall be required to adhere to the Town’s emergency operation procedures if a declaration of a “State of Emergency” by the Governor of the State of Florida or by the Town. At a minimum, these procedures shall require preparations and notifications as outlined in the Town’s Hurricane Preparedness Manuel.

The Club shall be required to contact the proper authorities (Cutler Bay Police Department, Miami-Dade Fire Rescue, etc.) in the event of an emergency arising during the Club’s use of the Licensed Area.

44. **No Third Party Beneficiaries.** Neither the Club nor the Town intends to directly or indirectly benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

45. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which constitutes the agreement of the parties and each of which will be treated as an original

46. **Severability.** If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be invalid or unenforceable to any extent, the remaining terms, covenants, conditions and provisions of this Agreement shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of the agreement between the parties.

47. **Regulatory Approval.** The Town cannot, and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to regulations of general applicability which may govern the Licensed Area or any operations at the Licensed Area. Nothing herein shall be deemed to create an affirmative duty of Town to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in

accordance with its ordinances, rules and regulations, federal laws and regulations and state laws and regulations.

48. **Authority to Execute.** The Town and the Club each warrant and represent to the other that the individuals signing this Agreement on behalf of the Town and the Club, respectively, have full power and authority to execute and deliver the Agreement and to bind the respective parties hereto.

49. **No Lease.** The Club acknowledges and agrees that its use of the Licensed Area does not in any way constitute or establish any form of tenancy under Florida law. The Club hereby waives any claims that its use of the Licensed Area constitutes a tenancy under Florida law.

50. **Governing Laws/Venue.** This Agreement shall be governed by the laws of the State of Florida and the venue of any action arising under this Agreement shall be in Miami-Dade County, Florida.

IN WITNESS WHEREOF, the Town and the Club have executed this Agreement as of the dates set forth above.

TOWN:

Witnesses:

TOWN OF CUTLER BAY, a
Florida municipal corporation:

Print Name: _____

By: _____
Title: Town Manager
Date: _____

Print Name: _____

Attest: _____
_____ Town Clerk

(MUNICIPAL SEAL)

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Town Attorney

USER:

CLUB
By: _____

Title: _____
Date: _____

Witnesses:

Print Name: _____

Print Name: _____

EXHIBIT "A" TO LICENSE AGREEMENT

I. TOWN PARK PROPERTY:

a. Name: _____

b. Address: _____

II. LICENSED AREA TO BE USED BY THE CLUB:

Description: _____

III. SCHEDULED USE PERIODS BY THE CLUB:

Field

Dates and Times

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

IV. RECREATIONAL USES AUTHORIZED:

Description: _____

EXHIBIT "B"

ORDINANCE NO. 06-33

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA , AMENDING SECTION 26-33 "THE SHANNON MELENDI ACT" OF THE MIAMI DADE COUNTY CODE TO THE EXTENT IT IS DEEMED APPLICABLE TO THE TOWN; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the "Town") will own certain parks in the Town in the near future; and

WHEREAS, the Town Council finds it is in the best interest of the Town to adopt an amended Shannon Melendi Act.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above Recitals are true and correct and are incorporated herein by this reference.

Section 2. Shannon Melendi Act Amended. Miami Dade County Code Chapter 26, "Park and Recreation Department Rules and Regulations," Article II, "Programming Partners Program," Section 26-33 "The Shannon Melendi Act", to the extent it is deemed to be applicable to the Town, is hereby amended as follows:

Sec. 26-33. The Shannon Melendi Act.

A. All Programming Partner staff and volunteers who will have direct contact with program participants, at their expense, must show proof of official statewide background checks (either through the Florida Department of Law Enforcement or the Miami-Dade Police) for family violence and crimes of moral turpitude. The Department will seek a cooperative agreement with the Miami-Dade Police Department to provide such services at a discount for Partners. All Programming Partner staff must show proof of legal immigrant status in the United States. The Programming Partner shall keep records of all background checks and proof of legal immigrant status.

B. All Programming Partner staff and permanent volunteer coaches shall wear a picture identification at all times while on Town property, any park owned by the Town and at all times when in direct contact with program participants.

C. All fair and carnival employees or agents who will have direct contact with children under the age of 18 in any park owned by the Town, shall, at their expense, show proof of official statewide background checks (either through the Florida Department of Law Enforcement or the Miami-Dade Police) for family violence and crimes of moral

turpitude. All fair and carnival employees or agents working in any park owned by the Town must show either proof of U.S. citizenship or legal immigrant status in the United States. The employer of any fair or carnival employee serving in any park owned by the Town shall keep records of all background checks and proof of legal immigrant status.

D. All fair and carnival employees or agents who will have direct contact with children under the age of 18 in any park owned by the Town shall wear a picture identification at all times while on Town property and at all times when in direct contact with program participants.

E. Should any background check, as required by this section, report that a person subject to the background check: 1) Are registered sex offenders or sexual predators; 2) Have a history of domestic violence; or 3) Have a criminal record for a crime of moral turpitude, then that person shall be precluded from acting as a programming partner staff, volunteer, fair or carnival employee or agent in any park, owned by the Town of Cutler Bay.

F. Programming partner staff, volunteers, and fair and carnival employees or agents who do not have proof of legal immigrant status may, upon request, appear before the Town Council and request that the requirement be waived. The Council may waive said requirement upon a majority vote of those members present.

Section 3. Severability. The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.


Section 4. Inclusion In The Code. It is the intention of the Town Council that the provisions of this Ordinance shall become and made a part of the Town of Cutler Bay Code; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 5. Conflicts. Any and all Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Section 6. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED on first reading this 15th day of November, 2006.

PASSED AND ADOPTED on second reading this 20th day of December, 2006.



PAUL S. VROOMAN, Mayor

Attest:


ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk



APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:


WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.A.
Interim Town Attorney

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman	<u>YES</u>
Vice Mayor Edwards P. MacDougall	<u>YES</u>
Councilmember Peggy R. Bell	<u>YES</u>
Councilmember Timothy J. Meerbott	<u>YES</u>
Councilmember Ernest N. Sochin	<u>YES</u>

TAB 7

RESOLUTION NO. 07-___

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPOINTING AN APPROPRIATIONS AND INTERGOVERNMENTAL CONSULTING SERVICE TO REPRESENT THE TOWN BEFORE THE EXECUTIVE AND LEGISLATIVE BRANCHES OF THE STATE GOVERNMENT; PROVIDING FOR A RETAINER AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is necessary for the Town to maintain a presence at the state level of government in order to ensure that the Town is fully advised with the respect to legislation affecting the Town and to ensure that its adopted policies are brought to the attention of the applicable legislative and executive branches of state government; and

WHEREAS, the Town issued a Request For Proposals seeking proposals from entities wishing to represent the Town on the state level; and

WHEREAS, the Town received responses from four (4) firms seeking to provide appropriations and intergovernmental consulting services to the Town; and

WHEREAS, an evaluation committee consisting of the Town Council has heard and received presentations from all firms, has evaluated the responses to the RFP and has determined that it would like to retain the services of _____ to represent the Town as an appropriations and intergovernmental consultant before the executive and legislative branches of the state government and other governmental branches as may be agreed upon by the parties.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above Recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of the Appropriations and Intergovernmental Consultant.
_____ is hereby approved by the Town Council to provide appropriations and intergovernmental consulting services to the Town before the executive and legislative branches of the state government.

Section 3. Town Manager Authorized. The Town Manager is hereby authorized to execute the retainer agreement between the Town and the _____, with said agreement being reviewed and approved by the Town Attorney on behalf of the Town.

Section 4. **Effective Date.** This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this _____ day of _____, 2007.

PAUL S. VROOMAN
Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved by:
Seconded by:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

TAB 8



Office of the Town Manager

Steven J. Alexander
Town Manager

MEMORANDUM

To: Honorable Mayor and Town Council
From: Steven J. Alexander, Town Manager
Date: August 8, 2007
Re: Approval of contract for FY08 budget consultants

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE CONTRACT WITH THE CONSULTING GROUP OF SOUTH FLORIDA, INC. FOR FISCAL YEAR 2008 BUDGET PREPARATION AND DEVELOPMENT ASSISTANCE, AUTHORIZING THE TOWN MANAGER TO EXECUTE THE CONTRACT, AND PROVIDING FOR AN EFFECTIVE DATE.

RECOMMENDATION

We recommend that the attached resolution be adopted, and that the Town Manager be authorized to take all steps necessary to execute the agreement with TCG for fiscal year 2008 budget preparation consulting services.

BACKGROUND AND ANALYSIS

The Consulting Group of South Florida, Inc. (TCG) is a Miami based boutique firm that works with public sector entities on a variety of issues such as budget process assistance, capital improvement plans, etc. The principal consultants of TCG, which include Dr. David Morris and Dianne Wright, were instrumental in the development of the Town of Cutler Bay's transition interim budget and its first full fiscal year budget. TCG has the resources and specialized personnel, in-house or through strategic alliance with other sub-consultants, to effectively perform the services the Town requires for the preparation of its fiscal year 2008 budget. The consultants will compliment the Town's staff to ensure that the budget preparation process is accurately and timely completed, as well as be able to assist the development of the budget documents and assist in addressing any questions that Council may have during the process.

The Town has solicited quotes from other consultants/consultant groups and the Town Manager has determined through review of such quotes and the qualifications of the bidders, that the proposal by TCG is in the best interest of the Town of Cutler Bay.

RESOLUTION NO. 07-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE CONTRACT WITH THE CONSULTING GROUP OF SOUTH FLORIDA, INC. FOR FISCAL YEAR 2008 BUDGET PREPARATION AND DEVELOPMENT ASSISTANCE, AUTHORIZING THE TOWN MANAGER TO EXECUTE THE CONTRACT, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the "Town") requires the services of a budgeting consultant to assist the Town in managing its finances; and

WHEREAS, the Town Council finds that it is both necessary and appropriate to retain the services of The Consulting Group of South Florida, Inc. (the "Consultant"); and

WHEREAS, in accordance with the provisions of Town Charter section 3.10, the Town Manager has stated in writing and the Town Council has determined that it is impracticable to solicit competitive bids or proposals for such services.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above Recitals are true and correct and are incorporated herein by this reference.

Section 2. The Town Manager is authorized to execute an agreement, substantially in the form of the agreement attached as Exhibit "A" on behalf of the Town, with the Consultant and the competitive bidding requirements of Section 3.10 of the Town Charter are hereby waived to the extent they would require a competitive process for the selection of a firm for Infrastructure Capital Assessment Services consulting.

Section 3. This resolution shall become effective immediately upon its adoption.

PASSED and ADOPTED this _____ day of _____, 2007.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

CONSULTING AGREEMENT

This Agreement, dated _____, is entered into between The Consulting Group of South Florida (the "CONSULTANT") and the Town of Cutler Bay (the "TOWN").

Engagement. THE TOWN OF CUTLER BAY (TOWN) engages CONSULTANT, and CONSULTANT agrees to use its best efforts in connection with the scope of services, being, performing consulting services with reference to ongoing revenue and expenditure analysis, assistance in budget document preparation, assistance in capital budget document preparation, other consulting advice and assistance in matters concerning interface with the County, economic development, and capital improvement and development issues. The attached proposal is annexed as part of this Agreement.

1. **Term.** The term of this Agreement shall be for an initial period of two months after the date of execution of this Agreement starting July 1, 2007 and ending August 30, 2007. The parties hereto can agree to extend this term as set forth below. Given the nature of the public process entailed in securing governmental approvals, both TOWN and CONSULTANT acknowledge and commit to acting in good faith with each other. The Parties agree to not willfully take advantage of the nature of the public review process to manipulate the success of any particular project to the financial or business detriment of the other Party. CONSULTANT will not act to deprive TOWN of the business benefit of any of the projects for which they negotiate on behalf of TOWN. TOWN will not act to deprive CONSULTANT of the business benefit of any of the projects for which they negotiate on behalf of TOWN. TOWN will not act to discharge and/or terminate the Contract at any point in time in order to avoid paying any fee payable to CONSULTANT hereunder.

2. **Compensation.**
 - (A) In consideration of the services to be rendered by CONSULTANT during the initial term of this Agreement, CONSULTANT shall receive not to exceed Four Thousand Five Hundred Dollars, (\$4,500.00).

 - (B) Subsequently, TOWN shall pay CONSULTANT the amount of one hundred and twenty five dollars (\$125.00) per hour. Such fee shall be for providing the consulting services to be performed as described in Paragraph 1.

 - (C) CONSULTANT will provide estimates of the hours needed to complete specific tasks.

 - (D) The CONSULTANT agrees that no portion of the fee received hereunder shall be illegally paid, directly or indirectly, to any public official and the CONSULTANT further agrees that it shall comply with all applicable laws governing the entertainment of and gifts to federal, state and local public officials and contributions to political campaigns.

3. **Confidentiality.** TOWN recognizes and acknowledges that during the course of rendering the services hereunder, CONSULTANT may obtain access to certain confidential information relating to the project and its developers and principals. TOWN expressly represents and warrants that all such confidential information obtained may not be released to any third parties without the express written consent of TOWN and the same shall be held in strict confidence with CONSULTANT having a fiduciary relationship of trust expressly owed to TOWN. The representations of

CONSULTANT as set forth herein shall be determined to be material representations relied upon by TOWN in entering into this agreement, which shall itself remain confidential.

CONSULTANT recognizes and acknowledges that during the course of rendering services hereunder TOWN may obtain access to certain confidential information relating to CONSULTANT, its associates and others. CONSULTANT expressly represents and warrants that all such confidential information obtained may not be released to any third parties without the express written consent of CONSULTANT and same shall be held in strict confidence with TOWN having a fiduciary relationship of trust expressly owed to CONSULTANT. The representations of TOWN as set forth herein shall be determined to be material representations relied upon by CONSULTANT in entering into this agreement, which shall in itself remain confidential.

4. **Termination.** This agreement shall be self extending and terminable by either Party upon one-month notice to the other Party. As previously stated, CONSULTANT will not act to deprive TOWN of the business benefit of any of the projects for which they negotiate on behalf of TOWN. TOWN will not act to discharge and/or terminate the Contract at any point in time in order to avoid paying any fee payable to CONSULTANT hereunder.

5. **Venue.** Venue in any proceeding instituted under this Agreement shall be Miami-Dade County, Florida. This agreement shall be governed by and interpreted in compliance with the laws of the State of Florida.

6. **Construction.** The language in all parts of this Agreement will be construed as a whole according to its fair meaning and not strictly for or against any party. Each party has reviewed this Agreement with their respective counsel. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendments to it.

8. **Severability.** In the event a court of competent jurisdiction declares any term or provision of this Agreement to be invalid or unenforceable for any reason, this Agreement will remain in full force and effect, and either: (A) the invalid or unenforceable provision will be modified to the minimum extent necessary to make it valid and enforceable; or (B) if such a modification is not possible, this Agreement will be interpreted as if that invalid or unenforceable provision were not a part of this Agreement.

9. **Attorneys' Fees.** If any action in law or equity is instituted in connection with any controversy arising out of this Agreement or in enforcement of any rights under this Agreement, the substantially prevailing party shall be entitled to recover, in addition to any other relief to which such party may be entitled, reasonable attorneys' fees, expert witness fees, costs and necessary disbursements both in connection with the litigation and in enforcing a judgment in its favor.

10. **Miscellaneous.** This Agreement (a) shall be governed by and construed in accordance with the laws of the State of Florida; (b) may not be assigned by either party without the consent of the other party; (c) constitutes the entire understanding of the parties and supersedes any and all prior discussions, negotiations, agreements and understandings, whether oral or written, with respect to its subject matter; (d) may be modified only by a written instrument properly executed by TOWN

and CONSULTANT; and may be executed in any number of counterparts, each and all of which shall be deemed for all purposes to be one agreement.

In witness whereof, the parties have executed this Agreement on the above referenced date.

Diana M. Gonzalez, President
The Consulting Group of South Florida, Inc.

Steven J. Alexander, Town Manager
Town of Cutler Bay
10720 Caribbean Blvd., Suite 105
Cutler Bay, FL 33189

TAB 9



M E M O R A N D U M

To: Steven Alexander, Town Manager

From: R. Don O'Donniley, AICP, Planning Director

Date: August 8, 2007

Re: Proposed revisions to Chapter 33, "Zoning"; Article VI, "Signs" to permit existing non-conforming of premises signs to re-locate and opting out of Miami-Dade restrictions limiting placement along expressways.

REQUEST :

The proposed revisions to the sign code establish a potential incentive to relocate existing non-conforming off premises signs (billboards) to better locations within the Town. The current prohibition against adding any new off premises signs (billboards) will stay in effect. In order to create a limited area that may be more appropriate for off premises signs along the Expressway, the Town of Cutler Bay would opt out of current Miami-Dade County restrictions regulating the placement of billboards along the Expressway.

BACKGROUND AND ANALYSIS

On June 7, 2006, the Town of Cutler Bay adopted Ordinance 06-13; prohibiting the erection of any additional off premises billboards. The existing four sites were assigned non-conforming use status. All four locations may continue as off premises billboard sites until such time as the sites are abandoned. Three sites exist on the west side of US-1 (South Dixie Highway) and the fourth location is on SW 211th Street.

The continuation of the current billboard locations poses a deterrent to redevelopment more in keeping with the vision of the Town. The intent of this ordinance is to create a narrowly defined area along the Expressway where owners of current billboard signs can be encouraged to voluntarily re-locate.

Given the rate of return for their leases, current locations are not very likely to surrender their non-conforming site locations unless there is a viable alternative. The Council should weigh if the proposed incentive of locating next to the Expressway will result in voluntary relocation.



Planning & Zoning Department

If the proposed revisions are enacted, the voluntary nature of the revisions allows billboards to continue in current locations but also offers an incentive to re-locate while continuing the ban on any additional off premises signs.

RECOMMENDATION

Staff recommends approval.

ORDINANCE NO. 07-__

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33 “ZONING,” ARTICLE VI “SIGNS” TO PROVIDE FOR THE RELOCATION OF NON-CONFORMING OFF-PREMISES OR BILLBOARD SIGNS; CREATING SECTION 33-95.1 “RELOCATION OF NONCONFORMING OFF-PREMISES OR BILLBOARD SIGNS;” PROVIDING FOR OPTING OUT OF THE MIAMI-DADE COUNTY SIGN REGULATIONS RESTRICTING PLACEMENT OF SIGNS IN PROXIMITY TO EXPRESSWAYS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Cutler Bay (the “Town”) adopted Ordinance 06-13, which prohibited and capped off-premises or billboard signs within the Town; and

WHEREAS, it is the intent of the Town Council to permit legally established non-conforming off-premises or billboard signs that existed prior to the adoption of Ordinance 06-13 to relocate to specific areas of the Town in order to maintain and improve the aesthetics, quality of life, and safety within Town; and

WHEREAS, Miami-Dade County (the “County”) has recently amended Section 33-121.11 of the County Code of Ordinances to permit municipalities to opt out of the County regulations restricting placement of signs in proximity to expressways; and

WHEREAS, it is the intent of the Town Council to opt out of such County regulations in order to permit the relocation of off-premises signs within the Town; and

WHEREAS, the Town Council finds these changes to be in the best interest and welfare of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS:

Section 1. Findings. The foregoing “Whereas” clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.

Section 2. Opt-out of Miami Dade County Regulations. Pursuant to Section 33-121.11 of the Miami-Dade County Code of Ordinances, the Town Council hereby opts out of the Miami-Dade County sign regulations restricting placement of signs in proximity to expressways.

Section 3. Amendment to Chapter 33 of the Town Code. The Town Council hereby amends Chapter 33 “Zoning,” Article VI “Signs” as follows:

Section 33-95. Prohibited signs.

(k) Except for non-conforming signs, off-premises signs or billboard signs are prohibited in the town. Any off-premises sign or billboard sign, except as provided in Section 33-95.1, erected after the effective date of this article as amended shall be removed at the sole expense of the sign owner and shall be subject to code enforcement proceedings as provided in the town code.

Section 33-95.1 Relocation of Nonconforming Off-premises or Billboard Signs.

(A) Relocation Application.

Pursuant to Ordinance Number 06-13, the maximum number of off-premises or billboard signs shall be those existing on June 7, 2006 (four sign locations). The owner of one of the four legally established existing nonconforming off-premises or billboard signs may submit an application to the planning department for the relocation of an existing non-conforming off-premises or billboard sign in accordance with the provisions of this section.

(B) Relocation Procedures.

(1) A certificate to relocate an existing nonconforming off-premises or billboard sign shall be issued by the planning director to the owner of that sign upon documentation of the following:

(a) A site inspection by Town staff, which shall be maintained on file in the planning department, demonstrating the removal of an existing nonconforming off-premises or billboard sign with its supporting structure. In the event that there is a double faced nonconforming off-premises or billboard sign, both sign faces shall be removed; and

(b) Evidence demonstrating that the owner has entered into an agreement with a nonprofit corporation to assure that a minimum of five (5) percent of the gross revenues from advertising on the relocated sign, which under no circumstances shall be less than eight thousand dollars (\$8,000.00) per year per sign, is directed to that nonprofit corporation to assist in funding its projects exclusively serving the residents of the Town.

(2) The sign owner may hold the certificate, or redeem it for a building permit to construct a new off-premises or billboard sign at the relocated site.

(3) A building permit for the construction of a relocated off-premises or billboard sign shall be issued to the owner of an existing nonconforming off-premises or billboard sign only after:

(a) A certificate for the relocation of the sign has been issued by the planning director;

(b) The planning department has confirmed that the proposed sign meets the requirements of this section; and

(c) The Florida Department of Transportation (FDOT) has issued a written approval permitting the relocation of the sign, if required by state law.

(C) Relocation Area.

After obtaining a building permit as provided above, a nonconforming off-premises or billboard sign may be relocated to the area within 660 feet of the western edge of the right-of-way of the Homestead Extension of the Florida Turnpike (HEFT), subject to the approval of the Florida Department of Transportation (FDOT), if required by state law. Such signs shall be erected, operated, used, or maintained in accordance with the provisions of Chapter 479, Florida Statutes, as amended, unless otherwise provided for in this section.

(D) Sign Surface Area.

The sign surface area, per face, for a relocated nonconforming off-premises or billboard sign shall be no larger than 672 square feet (including any embellishments). The number of sign faces on the relocated sign shall not exceed the number of sign faces on the nonconforming off-premises or billboard sign for which the certificate was issued. In the event there is a double faced sign, such sign faces shall be of the same size and shall be placed at an angle to form a single “V” or placed back-to-back and not placed in a straight line.

Section 4. Transmittal to Miami-Dade County. The Town Clerk is hereby authorized to transmit this Ordinance to the Miami-Dade County Director of Planning and Zoning within 15 days of adoption in accordance with the provisions in Section 33-121.11 of the Miami-Dade County Code.

Section 5. Severability. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 6. Conflict. All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 7. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this _____ day of _____, 2007.

PASSED AND ADOPTED on second reading this _____ day of _____, 2007.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman	_____
Vice Mayor Edward P. MacDougall	_____
Councilmember Peggy R. Bell	_____
Councilmember Timothy J. Meerbott	_____
Councilmember Ernest N. Sochin	_____

TAB 10



Planning & Zoning Department

R. Don O'Donniley, AICP
Planning Director

MEMORANDUM

To: Steven Alexander, Town manager

From: R. Don O'Donniley, AICP, Planning Director

Date: August 15, 2007

Re: Proposed revisions to Section 33- 304(a) "Applications" of the Town Code

REQUEST:

Amendment to Chapter 33-304(a) "Applications"; relating to the filing and re-filing of applications.

BACKGROUND AND ANALYSIS:

BACKGROUND

Currently, the Town Code provides for certain types of applications to be filed on certain days of the week. In addition, the Code provides certain time limitations on the re-filing of applications if denied by the Town Council.

On July 18th, 2007, the Town Council adopted the revisions to "filing and re-filing applications" on first reading.

ANALYSIS

The Town Code currently provides for the acceptance of certain types of applications on specific days of the week. This limitation on filing applications may have been needed in the County given the County's time frames for review and the public hearing process but does not seem to be necessary for the Town of Cutler Bay. Town staff believes that such timeframes for filing are not necessary in the Town and removal of such timeframes would further streamline the development review process.

In addition, the current Town Code provides certain limitations on the re-filing of applications if denied by the Town Council. Town staff believes that these re-filing limitations should be shortened from one (1) year to six (6) months for all applications, with the exception of district boundary changes (re-zonings), which should continue to have the one (1) year limitation.

The remaining amendments made by the proposed Ordinance are a continued effort by Town staff to tailor the County's Code to the Town Code.

RECOMENDATION

Town staff recommends approval.

10720 Caribbean Boulevard, Suite 110, Cutler Bay, FL 33189
(305) 234-4262 Office (305) 234-4251 Fax
www.cutlerbay-fl.gov

ORDINANCE NO. 07-___

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33 “ZONING,” SECTION 33-304 “APPLICATIONS” BY PROVIDING FOR REGULATIONS FOR FILING OF APPLICATIONS; PROVIDING FOR REGULATIONS FOR RE-FILING OF APPLICATIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, currently the Town of Cutler Bay (the “Town”) Code of Ordinances (the “Code”) provides for certain limitations on the filing as well as re-filing of applications; and

WHEREAS, Town staff recommends that these limitations be amended in order to better streamline the development review process; and

WHEREAS, the Town Council finds these changes to be in the best interest and welfare of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS¹:

Section 1. Findings. The foregoing “Whereas” clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.

Section 2. Amendment to Chapter 33 of the Town Code of Ordinances. Chapter 33 “Zoning,” Section 33-304 “Applications” of the Town Code of Ordinances is hereby amended as follows:

Sec. 33-304. Applications.

(a) All requests for a district boundary change, changes in the zoning regulations, appeals of administrative decisions, site plan approval, special exceptions or unusual uses, new uses, variances, approvals of or modifications to developments of regional impact (“DRI”), including substantial deviation determinations, and determinations that a DRI is essentially built out, shall be made by filing an application therefor with the Director on application forms prescribed by the Director ~~or by rule and regulation of the Developmental Impact Committee~~. Forms shall include, but not be limited to, disclosure forms for corporations, trusts, and partnerships, and disclosure of information regarding contract purchasers and their percentage(s) of interest. Disclosure shall not be required of: 1) any entity, the equity interests in which are regularly traded on an established securities market in the United States or another country; or ii) pension funds or pension trusts of more than five thousand (5,000) ownership interests; or iii) any entity where ownership interests are held in a partnership, corporation or trust consisting of more than five thousand (5,000) separate interests, including all interests at every level of ownership, and where no one (1) person or entity holds more than a total of five (5) percent of the ownership

¹ Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text, **shaded** text reflects changes made from First Reading.

interest in the partnership, corporation or trust. Entities whose ownership interests are held in a partnership, corporation, or trust consisting of more than five thousand (5,000) separate interests, including all interests at every level of ownership, shall only be required to disclose those ownership interest which exceed five (5) percent of the ownership interest in the partnership, corporation, or trust. ~~Disclosure forms shall be established by administrative order to be approved by the Board of County Commissioners. Such disclosure forms shall be included in the agendas distributed in connection with the public hearing on the application. Where applicable, requests shall specify whether, and the extent to which, the requested change in land use or proposed development conforms to the Comprehensive Development Master Plan for Miami-Dade County, Florida.~~

All requests ~~for which authorizes or permits~~ development filed pursuant to this section shall include a boundary survey of the property which is the subject of the application performed in accordance with Chapter 61G17-6.0031, Florida Administrative Code as may be amended from time to time in the event any portion of the property is contiguous to or across the street from a municipal boundary. It is further provided that such survey shall depict the location of any municipal boundary on or across the property being surveyed. The boundary survey submitted shall have been updated within one year proceeding the date of an application filed pursuant to this section.

In the event that the Town Council denies any application filed pursuant to this section, except for a district boundary change, a period of six (6) months must run prior to the filing of the same type of application on the same property. In the event that the Town Council denies an application for a district boundary change, a period of one (1) year must run prior to the filing of a subsequent district boundary change on the same property. Notwithstanding the foregoing, the Town Council, upon a showing of good cause by the applicant, may provide for a different waiting period for the re-filing of an application on the same property.

~~Upon the approval of a zoning application in whole or in part, a period of six (6) months must run prior to the filing of any subsequent application on the same property; provided that the appropriate board upon approving the application may provide for a different waiting period upon a showing of good cause. Applications approved for withdrawal without prejudice must wait a period of six (6) months prior to the filing of any subsequent application on the same property; provided that the appropriate board upon approving the withdrawal without prejudice may provide for a different waiting period upon a showing of good cause. Upon the final denial of a zoning application without prejudice, a period of one (1) year must run prior to the filing of a subsequent application on the same property; provided that the appropriate board upon denying the application without prejudice may provide for a different waiting period upon a showing of good cause. Upon the withdrawal or final denial of a zoning application with prejudice in whole or in part, a period of eighteen (18) months must run prior to the filing of a subsequent application. In the event an application in whole or in part has been twice or more denied or withdrawn, a period of two (2) years must run prior to the filing of any subsequent application. Such periods of limitation shall not commence to run until the decision has been rendered by the last Board to consider the application. Further, such periods of limitation shall not apply to applications filed by the Director or the Zoning Official.~~

~~Notwithstanding the provisions in the foregoing paragraph, it is expressly provided that, except for applications that have been twice or more denied or withdrawn, there shall be no period of limitation for either (1) a subsequent application that proposes a lesser total density or a less~~

~~intense use than the preceding application, as determined by the Director at the time of filing; (2) a subsequent application that proposes five (5) or fewer residential units; or (3) a subsequent application that proposes development in the "urban infill area," as that area is defined in the Comprehensive Development Master Plan.~~

~~An application may be withdrawn without prejudice by the applicant as a matter of right, provided the request for withdrawal is in writing and executed in the same manner as provided by Section 33-309 for the executing of application, and filed with the Department prior to the mailing of final notices, as provided by Section 33-310(c)(2); otherwise all such requests for withdrawal shall be with prejudice save and except that the Community Zoning Appeals Boards or the Board of County Commissioners may permit withdrawals without prejudice at the time the matter is considered by the Town Council such Boards; provided, further, no application may be withdrawn after final action has been taken.~~

~~(b) All zoning hearing applications delineated in this chapter may only be filed and accepted for filing (i) on the first Monday of each month and the following Tuesday and Wednesday of that week; or (ii) on the third Monday of each month followed by the Tuesday and Wednesday of that week. It is provided however that no zoning application will be accepted on a day set forth above which occurs on a legal holiday. Administrative variances may be filed at any time.~~

~~(c) At the end of each said time period set forth in subpart (b) the Director shall promptly identify and group those applications for district boundary changes, use special exceptions, unusual and new uses and use variances which relate to or affect any particular or immediate neighborhood or area as determined by the Director, and, to the extent possible, shall notice public hearings thereon, in accordance with Section 33-310 of the Code of Miami Dade County, so as to allow the appropriate board to consider and determine the effect of the said applications on the said neighborhood or area as a whole and their relation to and conformity with the Comprehensive Development Master Plan.~~

~~(d) All applications for zoning action which would permit, if granted, development activity that meets one (1) of the following criteria are hereby declared "developments of county impact":~~

- ~~(1) Residential apartment developments involving in excess of eight hundred (800) units;~~
- ~~(2) All planned developments (provided by article XXXIIB) or cluster developments (provided by article XXXIIIA) involving in excess of eight hundred (800) units;~~
- ~~(3) Business uses involving in excess of thirty (30) acres or one hundred fifty thousand (150,000) square feet of retail floor area, or one thousand five hundred (1,500) vehicle off street parking space capacity;~~
- ~~(4) Mobile home parks involving in excess of eight hundred (800) mobile home units;~~
- ~~(5) Townhouse developments involving in excess of one hundred (100) acres or eight hundred (800) units;~~
- ~~(6) Recreational, cultural, or entertainment facilities, exclusive of golf courses, involving in excess of one thousand five hundred (1,500) vehicle off street parking space capacity for single performances of fifty (50) acres;~~
- ~~(7) Office buildings or office complexes involving two hundred fifty thousand (250,000) square feet of floor space, or one thousand five hundred (1,500) vehicle off street parking space capacity;~~
- ~~(8) Industrial, processing or manufacturing activity involving in excess of one hundred (100) acres, or one thousand (1,000) vehicle off street parking space capacity;~~
- ~~(9) Hotel and/or motel developments involving in excess of five hundred (500) units;~~
- ~~(10) Detached single family development involving in excess of eight hundred (800) units.~~

~~If any applicant is in doubt as to whether his proposed development would be a development of County impact, he may request a determination from the Developmental Impact Committee. Within thirty (30) days of the receipt of such request, the Chairman, on behalf of the Developmental Impact Committee, shall issue a letter of interpretation with respect to the proposed development. Where an application seeks only a special exception for site or plot use plan approval, the Developmental Impact Committee may require completion of a site plan application on a form prescribed by rule and regulation.~~

~~(e) Amendments to an application shall be permitted; provided that, unless otherwise requested, suggested or concurred in by the Developmental Impact Committee, no substantial amendment shall be accepted by the Director within thirty (30) days prior to the first scheduled hearing on the application by the appropriate board or once the application has been heard and determined by the Community Zoning Appeals Board; provided further that an applicant may petition the appropriate board to permit such amendment at the time of hearing on the application and such amendment shall be accepted if approved by majority vote of those present upon good cause shown and provided it falls within the scope of the legal advertisement. In determining good cause, the appropriate board shall consider, among other factors, the timeliness of the amendment and the degree of inconvenience or surprise to objectors to the application.~~

~~(f) All planned area development applications shall adhere to the following procedures which shall be deemed exclusive notwithstanding any other section herein: The Department shall submit the required exhibits for the total development plan to the Developmental Impact Committee for review in accordance with standards and review procedures of the Developmental Impact Committee. At a public hearing held by the Community Zoning Appeals Board, the developer shall present the proposal. The Community Zoning Appeals Board shall have the recommendations of the Developmental Impact Committee. The Community Zoning Appeals Board shall consider the information presented by the applicant, the recommendations of the Developmental Impact Committee and viewpoints of the public expressed at the hearing. The Community Zoning Appeals Board shall take formal action either approving the plan as presented, approving it subject to certain specified modifications, or disapproving it. Upon approval, plans, documents and recordable development agreements shall be filed with the Department and recorded in the official records and shall thereby constitute the planned area development district. If the planned area development is approved with specific modifications, as incorporated in the Community Zoning Appeals Board resolution, those modifications shall be made by the applicant prior to filing documents and plans with the Department. Such filing shall be completed within sixty (60) working days from the date the action of the Community Zoning Appeals Board becomes final including all appeals. Failure to do so shall nullify the Community Zoning Appeals Board's action unless waived by the Community Zoning Appeals Board or if appealed, by the County Commission. The Director shall review all modifications in accordance with the Community Zoning Appeals Board's resolution. The approved planned area development shall be indicated on the zoning map as would any other district boundary change. Review at the development tract level may then be initiated pursuant to the provisions of the planned area development districts.~~

~~***~~

Section 3. Severability. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 4. Conflict. All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 5. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this 18th day of July, 2007.

PASSED AND ADOPTED on second reading this _____ day of _____, 2007.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.L.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____
Vice Mayor Edward P. MacDougall _____
Councilmember Peggy R. Bell _____
Councilmember Timothy J. Meerbott _____
Councilmember Ernest N. Sochin _____

TAB 11



Planning & Zoning Department

R. Don O'Donniley, AICP
Planning Director

MEMORANDUM

To: Steven Alexander, Town manager

From: R. Don O'Donniley, AICP, Planning Director

Date: August 15, 2007

Re: Proposed revisions to the Town Code relating to Open House signs

REQUEST:

Staff has been requested by several members of the Town Council to review the standards for "Open House" signs. Following the review, staff was to make recommendations for standards for the Town of Cutler Bay.

BACKGROUND AND ANALYSIS:

BACKGROUND

Town staff from the Code Compliance Division had found a number of companies and individuals selling property in Cutler Bay were confused as to the standards for "Open house" signs. As voluntary compliance was implemented, the confusion as to standards resulted in a number of inquires to Council members. Staff was requested to review County standards and research adjoining jurisdictions to consider current standards for "Open House" signs.

On July 18, 2007, the Town Council approved the Ordinance revising the standards for "Open house" signs on first reading.

ANALYSIS

County standards consist of general regulations and administrative policies. Several jurisdictions have either adopted revised standard or are in the process of considering new standards. Generally the type of regulations being adopted continues the prohibition against placing signs within rights of way due to safety and liability concerns. In addition, these new standards permit signage at the location of the property for sale and at other locations to guide potential buyers to the open house.

Staff has developed a number of proposed standards that are designed to permit adequate signage to support open house events. These include:

- (a) The ability to place a sign on the property for sale and with permission from an owner, up to three off site signs guiding potential clients to the site.
- (b) The ability to place signage announcing an open house one day prior to the open house on the site and off site.
- (c) Clarifying that placement of an "Open House" sign does not require a permit but also providing for penalties if signs are not placed correctly, within the designated time frame, or within right of ways..

RECOMENDATION

Staff recommends adoption of the revised standards for "Open House" signs.

10720 Caribbean Boulevard, Suite 110
Cutler Bay, FL 33189
(305) 234-4262 Office
(305) 234-4251 Fax
www.cutlerbay-fl.gov

ORDINANCE NO. 07-__

**AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL
OF THE TOWN OF CUTLER BAY, FLORIDA,
PROVIDING FOR REGULATIONS OF “OPEN HOUSE”
SIGNS; PROVIDING FOR PENALTIES; PROVIDING FOR
SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE
DATE.**

WHEREAS, it is the intent of the Town Council of the Town of Cutler Bay (the “Town”) to permit the display and use of “Open House” signs to direct individuals to residential property for sale or lease; and

WHEREAS, by regulating “Open House” signs, the Town will encourage fair competition and uniform business practices while minimizing the secondary impacts of such signs on residential neighborhoods, endangering the public safety, or otherwise destroy or impair aesthetic or visual qualities of the Town; and

WHEREAS, the Town Council finds the regulations contained herein to be in the best interest and welfare of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS:

Section 1. Findings. The foregoing “Whereas” clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.

Section 2. Open House Signs.

(A) Definition.

An “Open House sign” shall mean a sign directing individuals toward a house that is open for inspection for the purpose of selling said property. The wording on the Open House sign shall be limited to the words “Open House,” the name of the residential property owner or the name of the real estate agent, and the residential property address.

(B) Number and Location.

1. On-premises.

One (1) Open House sign may be located on the premises of the residential property that is open for inspection. Open House signs shall not be permitted in the public right of way or swale. Such signs shall be located no less than five (5) feet from the edge of the public right-of-way or swale.

2. Off-premises.

A maximum of three (3) Open House signs may be located on private property off-premises from the residential property that is open for inspection. However, no more than one (1) off-premises Open House sign shall be permitted along the frontage of a private property. Open House signs shall not be permitted in the public right-of-way or swale. Such signs shall be located no less than five (5) feet from the edge of the public right-of-way or swale.

(C) Size.

1. On-premises.

An Open House sign located on-premises shall not be larger than four (4) square feet. The maximum height of an Open House sign on-premises shall not exceed five (5) feet measured from grade to top of sign.

2. Off-premises.

An Open House sign located off-premises shall not be larger than 22 inches by 28 inches. The maximum height of an Open House sign off-premises shall not exceed three (3) feet measured from grade to top of sign.

(D) Permit not required.

No permit shall be required from or fee paid to the Town prior to displaying an Open House sign in any residential district. However, written consent from the property owner shall be required if the Open House sign is located off-premises on private property. A copy of said consent shall be available upon demand for inspection by Town staff.

(E) Time.

Open House signs may be displayed on Saturdays or Sundays during the hours of 9:00 AM to 6:00 PM. If an open house is to occur on a Saturday or Sunday, Open House signs may be displayed on the day preceding the open house from 9:00 AM to 6:00 PM. The display times shall be extended to 7:00 PM during daylight savings time. All Open House signs shall be removed immediately following the end of these designated display times.

(F) Balloons, streamers, flags, or illumination or other attention attracting devices.

Balloons, streamers, flags, illumination or other attention attracting devices shall be not permitted to be used in conjunction with an Open House sign.

(G) Penalties.

Failure to comply with the provisions of this Ordinance shall subject the violator to the provisions of Chapter 8CC of the Code. In the event that a violation of the Ordinance is not provided for in Chapter 8CC of the Code, the failure to comply with the provisions in this Ordinance shall result in a fine of fifty dollars (\$50.00) for the first offense; one hundred dollars

(\$100.00) for the second offense; and one hundred and fifty dollars (\$150.00) for the third offense.

Section 3. Severability. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 4. Conflict. All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 5. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this 18th day of July, 2007.

PASSED AND ADOPTED on second reading this _____ day of _____, 2007.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
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