



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, March 19, 2008, 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 School Board Member Evelyn Greer
 - B. Proclamation – Water Conservation Month
3. **APPROVAL OF MINUTES**
 - A. Regular Council Meeting – February 20, 2008
4. **REPORTS**
 - A. TOWN MANAGER'S REPORT
 - B. TOWN ATTORNEY'S REPORT
 - C. BOARD/COMMITTEE REPORTS AND COUNCIL ANNOUNCEMENTS
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, REQUESTING CHANGING THE NAME OF THE MIAMI-DADE POLICE DEPARTMENT DISTRICT 4 FROM THE "CUTLER RIDGE DISTRICT" TO THE "SOUTH MIAMI-DADE DISTRICT"; AND PROVIDING AN EFFECTIVE DATE. **(VROOMAN)**

TAB 2

B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RECOGNIZING MARCH 22, 2008 AS WORLD WATER DAY, AUTHORIZING THE TOWN CLERK TO FORWARD CERTIFIED COPY OF RESOLUTION TO THE UNITED NATIONS, AND PROVIDING FOR AN EFFECTIVE DATE. **(BELL)**

TAB 3

C. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, REPEALING RESOLUTION 07-21 RELATING TO THE CREATION OF THE TOWN EVENTS COMMITTEE; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 4

D. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROFESSIONAL SERVICES, AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH MARLIN ENGINEERING, INC. FOR THE COMPLETION OF A COMPREHENSIVE STREET TREE MASTER PLAN; AND PROVIDING AN EFFECTIVE DATE.

TAB 5

E. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, IN SUPPORT OF LEGISLATION TO REENACT THE FEDERAL ASSAULT WEAPONS BAN INTRODUCED BY UNITED STATES REPRESENTATIVE CAROLYN MCCARTHY OF NEW YORK AND URGING CONGRESS TO SUPPORT THE REENACTMENT OF THE BAN; AND PROVIDING AN EFFECTIVE DATE. **(BELL)**

TAB 6

F. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE FIVE (5) YEAR INTERLOCAL AGREEMENT BETWEEN THE TOWN OF CUTLER BAY AND THE MIAMI-DADE COUNTY STORMWATER UTILITY FOR STORMWATER MANAGEMENT; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

TAB 7

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.

- A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, GRANTING A VARIANCE FROM SECTION 33-50 OF THE TOWN CODE OF ORDINANCES RELATING TO THE REAR SETBACK, FOR PROPERTY LOCATED AT 9105 S.W. 202 TERRACE (36-6009-011-0720); AND PROVIDING FOR AN EFFECTIVE DATE.

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

- A. AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, REPEALING SECTIONS 8A-76 & 8A-76.1 OF THE CODE OF MIAMI-DADE COUNTY AS ADOPTED BY SECTION 8.3 OF THE CHARTER OF THE TOWN OF CUTLER BAY, ENTITLED "NOTICE OF PENALTIES FOR REMOVAL OF SHOPPING CARTS" & "SHOPPING CARTS" RESPECTIVELY; CREATING REGULATIONS RELATED TO SHOPPING CARTS, PROVIDING FOR DEFINITIONS, PROVIDING FOR POSTING OF NOTICE OF PENALTIES FOR REMOVAL OF SHOPPING CARTS, REQUIRING IDENTIFICATION OF SHOPPING CARTS, PROVIDING FOR A PROCEDURE FOR HANDLING IDENTIFIABLE SHOPPING CARTS FOUND ON PUBLIC PROPERTY, PROVIDING FOR A PROCEDURE FOR HANDLING UNIDENTIFIABLE SHOPPING CARTS FOUND ON PUBLIC PROPERTY, PROVIDING FOR REGUALTIONS RELATED TO SHOPPING CARTS ON PRIVATE PROPERTY, PROVIDING FOR GENERAL PENALTIES FOR VIOLATIONS; AMENDING THE SCHEDULE OF VIOLATIONS AND CIVIL PENALTIES SECTION OF THE CODE TO INCLUDE PENALTIES FOR VIOLATION OF THESE SECTIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING AN EFFECTIVE DATE.

- 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**
- 13. **ADJOURNMENT**

A. Regular Council Meeting
Wednesday, April 16, 2008, 7:00 P.M.
South Dade Regional Library, 2nd Floor
10750 SW 211th ST

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, February 20, 2008, 7:00 PM
South Dade Government Center
10720 SW 211th Street, Room 203
Cutler Bay, Florida 33189

1. CALL TO ORDER/ROLL CALL OF MEMBERS: The meeting was called to order by the mayor at 7:00 PM. Present were the following:

Councilmember Peggy R. Bell
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 Santamaria

Councilmember Timothy J. Meerbott was absent.

2. PROCLAMATIONS, AWARDS, PRESENTATIONS: None at this time.

3. APPROVAL OF MINUTES:

A. Councilmember Bell made a motion approving the minutes of the meeting of January 16, 2008. The motion was seconded by Vice Mayor MacDougall and adopted by a unanimous voice vote. The vote was as follows: Councilmembers Bell, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

4. REPORTS

A. TOWN MANAGER'S REPORT

The Town Manager started his report by introducing the Town's auditor, Nestor Caballero from Albarni, Caballero, and Castellanos, LLP, who proceeded to report that Finance Department has done a great job recordkeeping and are working together to produce the first Comprehensive Financial Report. The manager then introduced Rafael Casals, Public Works Director, who discussed that the Town was just awarded a \$50,000.00 grant from the MPO that will go to fund the Town's Transportation Plan. He further discussed that the SW 211th St and 107th Avenue intersection and has been approved by the Department of Transportation to install a traffic light at the intersection. The manager introduced Don O'Donniley, Planning Director, who discussed that an organized Town visit to the US1 Discount Mall off of South Dixie Highway was done earlier in the month to inform businesses that local business tax licenses issued by the Town were needed and to ensure that life and safety was preserved. The manager introduced Alan Ricke, Parks Director, who discussed that Cutler Ridge Park was nominated to participate in the Staples Dream Park Challenge. If the park wins the challenge then the park will be rewarded \$25,000.00 for improvements and a chance to meet Dwayne Wade of the Miami Heat. He also reminded the Council and the public that the Second

Annual Celebration will be Saturday, February 23rd at 11:00 a.m. The manager presented Lee S. Casey, Sr. Division Manager (Technical Services & Environmental Affairs Division) of the Miami-Dade County Solid Waste Department and German Hernandez, Manager (Environmental Affairs) also of the Miami-Dade County Solid Waste Department. Mr. Casey continued to discuss the functions of the landfill located at 24000 Southwest 97 Avenue. Mr. Casey invited the Council and any members of the public to tour the landfill at any time. The manager reported that the as of March 3rd the police department will be fully staffed. He also reported that code compliance will be adding a fourth person to staff. He mentioned that he has added the road transfer agreement to the consent agenda.

B. TOWN ATTORNEY'S REPORT

The town attorney indicated that he is preparing legislation referring to signage for business frontage and monument signs.

C. BOARD AND COMMITTEE REPORTS, COUNCIL ANNOUNCEMENTS

Councilmember Bell introduced Ralph Geronimo, Chairperson of the Town Events Committee, and spoke of the proposed Town events that was discussed by the committee. It was also requested by Councilmember Bell to dissolve the committee. Councilmember Sochin made a motion to dissolve the Town Events Committee. The motion was seconded by Councilmember Bell and was approved by unanimous voice vote. The vote was as follows: Councilmembers Bell, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

Member Bell introduced Louise Lockwood, who then spoke of the Relay for Life for the American Cancer Society, and requested that the Town participate and support this great cause.

Mayor Vrooman spoke of a proposed magnet high school in Cutler Bay located at Centennial Middle School. He mentioned that the news came from School Board Member Evelyn Greer.

Councilmember Sochin also spoke of the need for a new high school in the Town. He further discussed the great work that Code Compliance is providing for the Town. Member Sochin then discussed the monument sign that was vandalized recently.

Vice Mayor MacDougall wanted to make sure that signs will go up at the Library for Early Voting. He questioned the reason for changing the Founders' Day to the Second Annual Celebration. He discussed the Earth Hour cause that calls for shutting off the lights for one hour, from 8:00 p.m. to 9:00 on March 29th. He stated that this is to symbolically demonstrate the support for a green earth.

5. CONSENT AGENDA:

- A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO CONTRACTS; AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT FOR PUBLIC INFORMATION OFFICER SERVICES WITH THE WEINBACH GROUP; WAIVING THE REQUIREMENT FOR BIDDING OF THE CONTRACT IN ACCORDANCE WITH SECTION 3.10 OF THE TOWN CHARTER; AND PROVIDING FOR AN EFFECTIVE DATE.**

- C.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO CONTRACTS, AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH SHADE SYSTEMS, INC. FOR THE INSTALLATION OF A SHADE STRUCTURE OVER THE PLAYGROUND AT CUTLER RIDGE PARK; AND PROVIDING AN EFFECTIVE DATE.

- D.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROFESSIONAL SERVICES, AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR THE COMPLETION OF A COMPREHENSIVE PARKS MASTER PLAN; AND PROVIDING AN EFFECTIVE DATE.

- G.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE ISSUANCE OF A REQUEST FOR QUALIFICATIONS (RFQ) FOR A GREEN BUILDING AND SUSTAINABILITY CONSULTANT; AND PROVIDING FOR AN EFFECTIVE DATE.

- H.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE ROAD TRANSFER AGREEMENT BETWEEN MIAMI-DADE COUNTY, FLORIDA AND TOWN OF CUTLER BAY; PROVIDING FOR THE AUTHORIZATION OF THE TOWN MANAGER TO ENTER INTO THIS AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilmember Bell pulled Items B and F.

Councilmember Bell made a motion to approve the Consent Agenda as amended with pulled Items B and F. The motion was seconded by Vice Mayor MacDougall and Resolutions 08-04 through 08-07 and 08-10 was adopted by unanimous voice vote. The vote was as follows: Councilmembers Bell, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The town clerk read the following resolution by title:

- B.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO EXECUTE AND ENTER INTO AN AGREEMENT WITH GROUNDKEEPERS, INC. FOR THE PURCHASE AND INSTALLATION OF LIVE OAK TREES WITHIN THE TOWN'S DESIGNATED RIGHT-OF-WAYS FOR AN AMOUNT NOT TO EXCEED \$150,000; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilmember Bell made a motion to approve the resolution. The motion was seconded by Vice Mayor MacDougall and Resolution 08-01 was approved by unanimous voice vote. The vote was as follows: Councilmembers Bell, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

Vice Mayor MacDougall made a motion to reconsider Item E as a pulled item for discussion and consideration. The motion seconded by Councilmember Bell and was approved by unanimous voice vote. The vote was as follows: Councilmembers Bell, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The town clerk read the following resolution by title:

- E. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING RESOLUTION 07-65 RELATING TO THE CHARTER REVIEW COMMISSION; PROVIDING FOR AN EFFECTIVE DATE.**

Vice Mayor MacDougall made a motion to amend the resolution to move the Charter Review Committee's deadline to April 7th. The motion was seconded by Councilmember Sochin and Resolution 08-08 was approved by unanimous voice vote. The vote was as follows: Councilmembers Bell, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The town clerk read the following resolution by title:

- F. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE ENTRY AND TESTING AGREEMENT BETWEEN THE TOWN AND WIALAN TECHNOLOGIES, INC., TO CONDUCT TESTS TO DETERMINE FEASIBILITY OF PROVIDING WIRELESS BROADBAND INTERNET AND SURVEILLANCE SERVICES; WAIVING THE REQUIREMENT FOR BIDDING OF THE AGREEMENT IN ACCORDANCE WITH ARTICLE 3.10 OF THE TOWN CHARTER; PROVIDING FOR THE AUTHORIZATION OF THE TOWN MANAGER TO ENTER INTO THIS AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

Councilmember Sochin made a motion to approve the resolution. The motion was seconded by Councilmember Bell and Resolution 08-09 was approved by unanimous voice vote. The vote was as follows: Councilmembers Bell, 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.

All witnesses giving testimony were sworn-in by the clerk.

- A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, GRANTING SITE PLAN APPROVAL FOR A 3,276.2 SQUARE FOOT RESTAURANT WITH A DRIVE THRU, ON APPROXIMATELY A .5 ACRE PARCEL, LOCATED AT 18660 SOUTH DIXIE HIGHWAY (36-6005-001-0460); AND PROVIDING FOR AN EFFECTIVE DATE.**

Planning Director Don O'Donniley gave an oral report recommending approval of the applicant's request subject to the following conditions:

- Prior to this issuance of a Certificate of Occupancy, the Applicant shall provide documentation from FDOT that the required drainage improvements along the parcel frontage (US-1) have been completed.
- The development shall be consistent with the following plans as revised and all other building plans and elevations on file in the Town Planning Department
 - Site, construction and building elevation plans for "Pollo Campero Restaurant" (Sheets SD-1, C-1 and A-1, 2 and 3), prepared by CKE Group, and signed, dated and sealed 01/31/08.
 - Landscape Plans for "Pollo Campero Restaurant" (Sheets L-1, 2 and 3), prepared by CKE Group and R. Bartlett Landscape; dated revised 1/25/08.
 - Signage Plans for "Pollo Campero Restaurant" (SG-1 and 2), as revised pursuant to Town comments.
 - Lighting Plan, sheet CE-1
- Prior to the issuance of the Certificate of Occupancy, the Applicant shall resurface the easement serving the site from the rear, subject to permission from the underlying fee simple property owner.
- Site Plan approval shall become final approval by Miami-Dade Fire and Rescue Department.
- Provision of a mountable island directing and limiting egress to the rear easement to north bound (right turn) only and provision of an appropriate traffic control sign.
- Two final plan sets shall be submitted to the Town as revised to become part of the Town record.

Craig McDonald, 1239 East Center Drive, representing the applicant, addressed the Council.

The Mayor opened the public hearing. Bill Meiklejohn, 9731 Sterling Drive, Glen Rozansky 7300 North Kendall Drive, Sandra Wong, 19630 Southwest 87 Avenue, addressed the Council.

Vice Mayor MacDougall offered the following amendment:

- Prior to the issuance of the Certificate of Occupancy, the Applicant shall resurface the easement serving the site from the rear, ~~subject to permission from the underlying fee simple property owner.~~
- Accepting the amended sign plans submitted on 2/20/2008 at the Council Meeting.

After some discussion it was the general consensus to proceed with the amendment.

Vice Mayor made a motion to approve the resolution with the offered foregoing amendment. The motion was seconded by Councilmember Bell and the resolution was adopted by unanimous voice vote. The vote was as follows: Councilmembers Bell, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

- B.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, GRANTING A VARIANCE FROM SECTION 33-49 OF THE TOWN CODE OF ORDINANCES RELATING TO LOT COVERAGE, FOR PROPERTY LOCATED AT 9930 MARLIN ROAD (36-6005-011-0080); AND PROVIDING FOR AN EFFECTIVE DATE.

Planning Director Don O'Donniley gave an oral report recommending approval of the applicant's request subject to the following conditions:

- The applicants shall mitigate the impacts of the expansion to the driveway by utilizing either pervious concrete, "Grass Crete" or "Turf Block" in said area. Grass Crete does not need pesticides to maintain its self as the scuffing over the hard surface essentially trims the vegetation.

The applicant was not present at this time.

The Mayor opened the public hearing. Stephen Zarzecki, 9640 Martinique Drive, Tom Condon, 19641 Holiday Road, and George Ruehle, 9935 Marlin Road, addressed the Council.

Vice Mayor made a motion to deny the resolution. The motion was seconded by Councilmember Bell and the resolution was denied by unanimous voice vote. The vote was as follows: Councilmembers Bell, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

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 TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, REPEALING SECTIONS 8A-76 & 8A-76.1 OF THE CODE OF MIAMI-DADE COUNTY AS ADOPTED BY SECTION 8.3 OF THE CHARTER OF THE TOWN OF CUTLER BAY, ENTITLED "NOTICE OF PENALTIES FOR REMOVAL OF SHOPPING CARTS" & "SHOPPING CARTS" RESPECTIVELY; CREATING REGULATIONS RELATED TO SHOPPING CARTS, PROVIDING FOR DEFINITIONS, PROVIDING FOR POSTING OF NOTICE OF PENALTIES FOR REMOVAL OF SHOPPING CARTS, REQUIRING IDENTIFICATION OF SHOPPING CARTS, PROVIDING FOR A PROCEDURE FOR HANDLING IDENTIFIABLE SHOPPING CARTS FOUND ON PUBLIC PROPERTY, PROVIDING FOR A PROCEDURE FOR HANDLING UNIDENTIFIABLE SHOPPING CARTS FOUND ON PUBLIC PROPERTY, PROVIDING FOR REGULATIONS RELATED TO SHOPPING CARTS ON PRIVATE PROPERTY, PROVIDING FOR GENERAL PENALTIES FOR VIOLATIONS; AMENDING THE SCHEDULE OF VIOLATIONS AND CIVIL PENALTIES SECTION OF THE CODE TO INCLUDE PENALTIES FOR VIOLATION OF THESE SECTIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING AN EFFECTIVE DATE.

Rafael Casals, Public Works Director, addressed the Council.

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

This item will be heard on second reading on March 19, 2008.

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.** A ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ESTABLISHING THE CUTLER BAY BUSINESS TAX EQUITY STUDY ADVISORY BOARD, WHICH SHALL SERVE AS THE EQUITY STUDY COMMISSION, AND ESTABLISHING PROCEDURES FOR APPOINTMENT OF MEMBERS, A TIMETABLE AND RULES OF PROCEDURE; PROVIDING FOR SUNSET PROVISION , AND PROVIDING FOR AN EFFECTIVE DATE

The town attorney gave a brief report on the ordinance.

The mayor opened the public hearing. There were no speakers at this time.

Councilmember Sochin made a motion to approve the ordinance on second reading. The motion was seconded by Councilmember Bell and Ordinance 08-04 was adopted by unanimous roll call vote. The vote was as follows: Councilmembers Bell, 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: Bill Meiklejohn, 9731 Sterling Drive, Louise Lockwood, 9071 Ridgeland Drive, and Tom Condon, 19641 Holiday Road.

11. MAYOR AND COUNCIL COMMENTS

Mayor Vrooman addressed the elections issue and stated that he has addressed the Charter Review Committee about considering moving the elections to coincide with county-wide elections. He stated that this would avoid stand-alone elections for the Town.

Councilmember Bell spoke to Mr. Herb Parlato of the Economic Development Council about brining in new restaurants to the area, specifically at the developing shopping center at SW 216th Street. Member Bell discussed that she attended the Cutler Bay Business Association meeting recently and the guest speaker, Mayor Carlos Alvarez gave a State of the County Address to all those who attended.

Councilmember Sochin addressed the US1 Discount Mall and encourage staffed to work with the owners of the mall to improve the appearance of that building.

Vice Mayor MacDougall urged the public to spread the word of Earth Hour which is turning of all the lights for one hour to conserve energy and promote greening the community.

12. OTHER BUSINESS: None at this time.

13. ADJOURNMENT

The next council meeting will be held on March 19, 2008 at South Dade Government Center.

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

Respectfully submitted:

*Erika Gonzalez-Santamaria, CMC
Town Clerk*

*Adopted by the Town Council on
this 19th day of March, 2008.*

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. 08-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, REQUESTING CHANGING THE NAME OF THE MIAMI-DADE POLICE DEPARTMENT DISTRICT 4 FROM THE “CUTLER RIDGE DISTRICT” TO THE “SOUTH MIAMI-DADE DISTRICT”; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the recent incorporation of the Town of Cutler Bay (“Town”) has led to confusion in the community and media as to the difference between the Town itself and the general geographic area once referred to as Cutler Ridge; and

WHEREAS, the Town is trying to forge its own identity distinct from that of the area formerly called Cutler Ridge; and

WHEREAS, the current name of the Miami-Dade Police Department District 4 is the “Cutler Ridge District,” and their station as the “Cutler Ridge District station,” despite the fact that the “Cutler Ridge District” does not include the Town of Cutler Bay but includes the Village of Palmetto Bay and much of unincorporated South Miami-Dade County, and that the “Cutler Ridge District station” services all of those areas as well; and

WHEREAS, any police-related incident which occurs in the “Cutler Ridge District” is unfairly associated with the Town because of the similarity in their names, undermining the Town’s reputation in its formative stages, despite the fact that many of those incidents take place outside of the Town elsewhere in Miami-Dade Police Department District 4; and

WHEREAS, the “Cutler Ridge District” was formerly known as the South Dade District, which is much more accurate and descriptive of the geographic area it represents.

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. Requests. The Town hereby requests that the Miami-Dade County Commission and the Miami-Dade Police Department to change the name of Miami-Dade Police Department District 4 from the “Cutler Ridge District” to the more accurate “South Miami-Dade District”.

Section 3. Effective Date. This resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this ___day of _____, 2008.

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 3

RESOLUTION NO. 08-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RECOGNIZING MARCH 22, 2008 AS WORLD WATER DAY, AUTHORIZING THE TOWN CLERK TO FORWARD CERTIFIED COPY OF RESOLUTION TO THE UNITED NATIONS, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (“Town”) whereby determines that clean drinking water is a vital commodity throughout the United States of America and developing countries throughout the World; and

WHEREAS, the Town recognizes the importance of environmental stewardship; and

WHEREAS, clean drinking water is a basic requirement for all life, yet water resources are facing increasing demands from and competition of end users; and

WHEREAS, the United Nations General Assembly designated March 22nd of each year as the World Water Day via Resolutions (A/RES/47/193 of February 22, 1993; and

WHEREAS, World Water Day is an international day of observance and action to draw attention to the plight of more than 1 billion people world wide that lack access to clean, safe drinking water.

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. Authorization. The Town Clerk is hereby authorized to mail a certified copy of the adopted resolution to the World Water Day Organization and the United Nations.

Section 3. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this ____ day of _____, 2008.

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 4

RESOLUTION NO. 08-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, REPEALING RESOLUTION 07-21 RELATING TO THE CREATION OF THE TOWN EVENTS COMMITTEE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on May 16th, 2007, the Town of Cutler Bay (the “Town”) Town Council created the Town Events Committee in order to assist the Town Council in creating a variety of events and community programs for the residents within the Town; and

WHEREAS, since its creation, the Town Events Committee has provided the Town Council with several great ideas for events and community programs within the Town; and

WHEREAS, the Town Council finds that the Town Events Committee has completed its job and it is no longer necessary to have such a Town appointed Committee; and

WHEREAS, as such, the Town Council finds it necessary to repeal Resolution 07-21 creating the Town Events Committee; and

WHEREAS, the Town Council finds that this Resolution is in the best interest and welfare of the residents of 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. Repeal of Resolution 07-21. The Town Council hereby repeals Resolution 07-21 relating to the Town Events Committee.

Section 3. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this _____ day of _____, 2008.

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



MEMORANDUM

To: Honorable Mayor and Town Council

From: Steven J. Alexander, Town Manager

Date: March 14, 2008

Re: **EXECUTION OF AGREEMENT FOR COMPREHENSIVE STREET TREE MASTER PLAN**

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROFESSIONAL SERVICES, AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH MARLIN ENGINEERING, INC. FOR THE COMPLETION OF A COMPREHENSIVE STREET TREE MASTER PLAN; AND PROVIDING AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

At the November 17, 2007 Town Council meeting, Resolution No. 07-03 was adopted approving the execution of non-exclusive professional services agreements with firms to provide various engineering and architectural services for the Town, including Landscape Architectural Services.

Following a thorough evaluation by the Town's Selection Committee which included previous experience with similar projects, the proposed scope of services, project deliverables and over-all cost, the Public Works Department has selected Marlin Engineering, Inc. to complete the Town's Street Tree Master Plan. The Master Plan is expected to take approximately five (5) months to complete at a cost of \$43,350.00 which is budgeted in the Public Works Department's 2007-08 fiscal year budget. One of the key components for developing the Street Tree Master Plan is community dialogue and input. The attached "Scope of Work" includes four (4) public meetings with the following stakeholders: Homeowner's Associations, neighborhood groups, and the business community.

RECOMMENDATION

We recommend that the attached resolution be adopted, authorizing the Town Manager to execute an agreement with Marlin Engineering, Inc. for the completion of the Comprehensive Street Tree Master Plan.

RESOLUTION NO. 08-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROFESSIONAL SERVICES, AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH MARLIN ENGINEERING, INC. FOR THE COMPLETION OF A COMPREHENSIVE STREET TREE MASTER PLAN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on November 14, 2007 the Town of Cutler Bay (the "Town") adopted Resolution No. 07-52 approving the execution of non-exclusive professional services agreements to provide various engineering and architectural services for the Town; and

WHEREAS, the Town's Public Works Department has budgeted funds in the 2007-08 fiscal year budget for the completion of a Comprehensive Street Tree Master Plan to guide the future development and use of the Town's parks; and

WHEREAS, in accordance with the stipulations of the professional services agreements, the Public Works Department solicited a proposal from Marlin Engineering which has an executed agreement with the Town; and

WHEREAS, a thorough review of the proposal has resulted in the selection of Marlin Engineering, Inc. to complete the Town's Comprehensive Street Tree Master Plan.

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. Authorization. The Town Manager is authorized to execute an agreement with Marlin Engineering, Inc. in the amount of \$43,350.00 for the completion of a Comprehensive Street Tree Master Plan.

Section 3. Effective Date. This resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this _____ day of _____, 2008.

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.
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 _____



February 27, 2008

Rafael Casals
Public Works Director
Town of Cutler Bay
10720 Caribbean Boulevard, Suite 105
Cutler Bay, FL 33189

Re: Street Tree Master Plan

Dear Mr. Casals,

Attached you will find the scope of service and sub consultant proposals for the Street Tree Master Plan.

Total cost for Street Tree Master Plan is \$43,350.00

Thank you for the opportunity to service the Town of Cutler Bay. If you should have any questions please call me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ramon Soria", is written over a horizontal line. The signature is stylized and somewhat cursive.

Ramon Soria, P.E.
President



TOWN OF CUTLER BAY STREET TREE MASTER PLAN OUTLINE

Acknowledgements - groups and individuals in planning process.

List of Figures (maps, sketches, photos)

Executive Summary

- Summation of needs for street tree plantings, goals of the plan, guidelines for proper selection and placement of trees.

Benefits of Street Tree Plantings

- Environmental, economic, aesthetic factors.

Inventory and Quality Assessment of Existing Street Tree Plantings

- Includes rating of percentage of street canopies on a street by street basis, general quality of existing street trees, shown on a Town-wide map.

Community Dialogue

- Up to four (4) meetings with neighborhood groups, Homeowner's Association, and Business Community to present existing conditions, determine types of plantings desired, etc.

Projected Planting Requirements

- Based on a review of existing street tree plantings, and the results of community's dialogue, determine approximate number of new trees, replacement trees needed to provide the desired tree canopy throughout the Town. This will be shown on various maps and CD.

Budgeting for the Future/Phasing of Planting

- Estimated costs for initial plantings, and costs for on-going pruning, storm replacement; establish hierarchy of streets (i.e. major collector, secondary collector local street as a means of determining priority streets.)

Guidelines for Selecting and Placing Street Trees

- Plan illustrations showing general spacing of trees along typical streets, setbacks from street edges and sidewalks, proper distances between trees, and setbacks from driveways, utilities, street lights and sight line safety need.

ROSENBERG
GARDNER
DESIGN



LAND PLANNING
LANDSCAPE ARCHITECTURE
LC-0000266

MEMBER
AMERICAN SOCIETY OF
LANDSCAPE ARCHITECTS

Protection of Trees

- Define challenges to the maintenance of healthy trees, and steps that can be taken to protect trees. Recommend ordinances aimed at protecting trees and controlling the selection and placement of trees by residents and developers.

Recommended Street Tree Species

- Lists of trees and palms and photographs suitable for use along different types of street ROW's.

Resident and Business Outreach Material

- Based on Community needs, develop/recommend outreach materials to be published in Town's newsletter and distributed through KIOSKS.

The Master Plan shall incorporate elements of the Miami-Dade County Street Tree Master Plan, to be consistent with its basic requirements.

RESOLUTION NO. 07-52

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROFESSIONAL SERVICES; APPROVING THE QUALIFICATION OF FIRMS TO PROVIDE GENERAL CIVIL ENGINEERING, TRANSPORTATION PLANNING AND ENGINEERING, AND LANDSCAPE ARCHITECTURE SERVICES TO THE TOWN; AUTHORIZING THE TOWN MANAGER TO A NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, THE CORRADINO GROUP, MARLIN ENGINEERING, INC., CRAIG A. SMITH AND ASSOCIATES, INC., AND CORZO, CASTELLA, CARBALLO, THOMPSON, SALMON (C3TS); PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay desires to improve the structure and environment of the Town, and determines that contracting for professional services is in the best interest of the Town; and

WHEREAS, the Town Council adopted Resolution # 07-03 Authorizing the issuance of a Request for Qualification (RFQ) Number 2007-02; and

WHEREAS, the RFQ was prepared to identify the best available consultants to provide Professional Services: General Civil Engineering, Landscape Architecture, and Transportation Planning and Engineering Services; and

WHEREAS, the Town of Cutler Bay desires to select firms recommended by the selection committee.

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 1. Firms Selected. The following firms as noted are recommended to provide professional services for the Town of Cutler Bay in following categories:

General Civil Engineering:

Kimley-Horn & Associates, Inc.
The Corradino Group
C3TS

Transportation Planning and
Engineering Services:

Kimley-Horn & Associates, Inc.
The Corradino Group
Marlin Engineering, Inc.

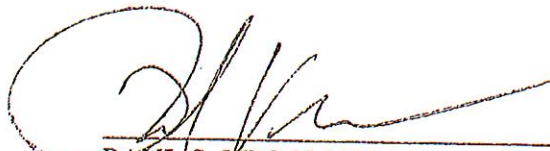
Landscape Architecture Services:

Kimley-Horn & Associates, Inc.
Craig A. Smith & Associates, Inc.
Marlin Engineering, Inc.

Section 3. Authorization of Town Officials. The Town Manager is authorized to negotiate and execute a Continuing Professional Services Contract (Exhibit "A") for Professional Services with the qualified firms in each category.

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

PASSED and ADOPTED this 14th day of November, 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: Councilmember Meerbott
Seconded By: Councilmember Bell

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman	<u>YES</u>
Vice Mayor Edward 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>



**NON-EXCLUSIVE PROFESSIONAL SERVICES AGREEMENT
CONTINUING PROFESSIONAL SERVICES**

THIS AGREEMENT, made and entered into this 17 day of JANUARY, 2008 between the Town of Cutler Bay, hereinafter referred to as "the Town," and, Marlin Engineering, Inc. hereinafter referred to as Consultant;

RECITALS:

Whereas, this shall constitute a continuing contract pursuant to Section 287.055, F.S.

Now therefore, in consideration of the promises and the mutual covenants herein contained, the parties agree as follows:

1. The specific nature of the services to be provided by Consultant are outlined in Exhibit "A" attached hereto and incorporated herein, and are further outlined in the text of Town's RFQ # 2007-02.
2. For services performed in accordance with the provisions of paragraph one above and Section II below, the Town shall pay Consultant in accordance with the terms and conditions more fully set out in Sections V and VI.

SECTION I — TOWN OBLIGATIONS

The Town agrees that the Town Manager or his authorized designee shall furnish to the Consultant any plans and other data readily available in the Town files pertaining to the work to be performed under this Agreement. Information shown on such plans or data shall be that which has been made available to the Town, and shall be provided to the Consultant. Such information is furnished by the Town without guarantee regarding its reliability and accuracy. The Consultant shall be responsible for independently verifying such information if it shall be used by the Consultant to accomplish the work undertaken pursuant to this Agreement. The Consultant may be compensated for any necessary verification work requested by Town, subject to the express written authorization of the Town.

The Town reserves the right to certify the accuracy of information provided by the Town to the Consultant. When such certification is provided in writing, the Consultant shall not be compensated for independent verification of said information.

SECTION II — PROFESSIONAL SERVICES

- (a) Consultant shall perform professional services for the benefit of the Town in connection with and as envisioned in the Town's RFQ # 2007-02 Landscape Architecture, and Transportation Planning and Engineering Services. The consultant shall be issued Purchase Orders by the Town as the need for services arises, covering in detail the scope, time for completion and compensation for the work to be accomplished. In case of emergency, the Town reserves the right to issue oral authorization to the Consultant with the understanding that written confirmation shall follow immediately thereafter. The Consultant shall submit a proposal upon the Project Manager's request prior to the issuance of a Notice to Proceed. No payment shall be made for the Consultant's time or services in connection with the preparation of any such proposal. The Town shall confer with the Consultant before any Notice to

Proceed is issued to discuss and agree upon the scope, time for completion, and fee for services to be rendered pursuant to this Agreement.

(b) In connection with professional services to be rendered pursuant to this Agreement, the Consultant further agrees to:

1. Maintain an adequate staff of qualified personnel on the work at all times to ensure its completion within the term specified in the applicable Notice to Proceed.
2. Comply with any Federal, State and local government laws, ordinances, processes, standards, rules, orders, etc. applicable to the work.
3. Cooperate fully with the Town in the scheduling and coordination of all tasks and phases of the work.
4. Prepare necessary documents, as required or requested, for all applicable agencies including regulatory requirements and permits.
5. Report the status of the work to the Town upon request and hold pertinent data, calculations, field notes, records, sketches, procedures, proposals, records, and other work products open to inspection of the Town.
6. Submit for Town review computations, sketches, and other data representative of the work's progress at the percentage stages of completion which may be stipulated in the applicable Notice to Proceed. Submit for Town approval the final work products upon incorporation of any modifications requested by the Town during any previous review.
7. Be available at all reasonable times for general consultation and advice through the effective term of this Agreement.
8. Confer with the Town at any time during the further development and implementation of improvements for which the Consultant has provided professional services as to interpretation of plans and other documents, correction of errors and omissions and preparation of any necessary plan thereof. The Consultant shall not be compensated for the correction of errors and omissions to the extent that those errors and omissions are the responsibility of the Consultant.
9. Perform all services in a competent and skilled manner.

SECTION III — SCHEDULE OF WORK AND TIME FOR COMPLETION

- (a) The Town shall have the sole right to determine assignment of work and on which units or sections of the work the Consultant shall proceed and in what order. Written Purchase Orders issued by the Town shall cover in detail the scope, time for completion and intent of requested services and shall serve to authorize the assignment of work outlined in Exhibit "A" or referenced in paragraph 1 of the Recitals to this Agreement.
- (b) The services to be rendered by the Consultant for each section of the work or upon the assignment, shall commence upon receipt of a written executed Purchase Order and/or a notice to proceed (the "NTP") from the Town subsequent to the execution of the Agreement, and shall be completed within the time stated in the Purchase Order or the NTP.

- (c) A reasonable extension of time shall be granted in the event there is a delay on the part of the Town in fulfilling its part of the Agreement or should a Force Majeure, as defined in Section IV hereof, render performance of the Consultant's duties impossible. Such extension of time shall not be cause for any claim by the Consultant for extra compensation.

SECTION IV — FORCE MAJEURE

- (a) Force Majeure shall mean an act of God, epidemic, lightning, earthquake, fire, explosion, hurricane, flood or similar occurrence, strike, an act of public enemy, or blockade, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, which has had or may reasonably be expected to have a material adverse effect on the rights and obligations under this Agreement, and which, by the exercise of due diligence, such parties shall not have been able to avoid. Such acts or events **DO NOT INCLUDE** inclement weather (except as noted above) or the acts or omissions of subconsultants/subcontractors, third-party consultants/contractors, materialmen, suppliers, or their subcontractors, unless such acts or omissions are otherwise encompassed by the definition set forth above.
- (b) No party hereto shall be liable for its failure to carry out its obligations under the Agreement during a period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations, but the obligation of the party or parties relying on such Force Majeure shall be suspended only during the continuance of any inability so caused and for no longer period of said unexpected or uncontrollable event, and such cause shall, so far as possible, be remedied with all reasonable dispatch.
- (c) It is further agreed and stipulated that the right of any party hereto to excuse its failure to perform by reason of Force Majeure shall be conditioned upon such party giving, to the other party or parties, written notice of its assertion that a Force Majeure delay has commenced within ten (10) working days after such commencement, unless there exists good cause for failure to give such notice, in which event failure to give such notice shall not prejudice any party's right to justify any non-performance as caused by Force Majeure unless the failure to give timely notice causes material prejudice to the other party or parties.

SECTION V — COMPENSATION

- (a) The Town agrees to pay and the Consultant agrees to accept, for satisfactory performance, as determined solely by the Town of services rendered pursuant to this Agreement, including work as stipulated by Section II - Professional Services, and all preliminary and/or incidental work thereto, fees computed in accordance with Exhibit "B" the negotiated schedule of rates, a copy of which is attached hereto, or as otherwise set forth in the Purchase Order for the specific work.
- (b) Reimbursement for the reasonable and necessary expenses of the Consultant for postage, copying, long distance telephone calls, document reproduction, and authorized travel may be provided in accordance with the Purchase Order.

SECTION VI — PAYMENTS

Unless negotiated and otherwise agreed to, the Town shall make monthly fee payments to the Consultant, computed in accordance with Section V, for all work performed during the previous calendar month for work which has been assigned by Town to Consultant. The Consultant shall submit duly certified monthly invoices to the Town in the amount due for services performed to date and including any previously authorized reimbursable expenses incurred during the month. For lump sum assignments,

invoices shall be based upon the percentage of work completed at invoice date. Invoices shall be processed pursuant to Section 218.70, Florida Statutes.

SECTION VII — SUBCONTRACTING

The Consultant shall not subcontract, assign or transfer any work under this Agreement without the prior written consent of the Town. When applicable and upon receipt of such consent in writing, the Consultant shall cause the names of the firms responsible for the major portions of each separate specialty of the work to be inserted in the pertinent documents or data. Any sub-consultant shall be subject to all terms and conditions of this Agreement. All insurance certificates pertaining to such subconsultants shall be provided to the Town upon issuance of a Purchase Order or NTP.

SECTION VIII — EXTRA WORK

In the event extra work and/or expenses are necessary due to changes requested after the applicable portion of the work is approved by the Town, such extra work shall be the subject of an additional Purchase Order or a modification of the original Purchase Order.

SECTION IX — APPROVAL

The Town agrees, within thirty (30) days after delivery, to approve, reject, or return with indicated suggested revisions or recommendations, all schedules, submittals or other written communications submitted by the Consultant to the Town for approval. Such approval, revisions, or recommendations by the Town shall not relieve the Consultant of responsibility for the completeness or correctness of the work.

SECTION X — RIGHT OF DECISIONS

- (a) All services shall be performed by the Consultant to the satisfaction of the Town's Project Manager who shall decide all questions, difficulties, and disputes of whatever nature, which may arise under or by reason of this Agreement. The monitoring of the prosecution and fulfillment by the Consultant of the services hereunder, and the character, quality, amount and value thereof, are within the Project Manager's authority. The Project Manager's decision upon all claims, questions, and disputes shall be final, conclusive, and binding upon the parties hereto unless such determination is arbitrary or unreasonable.
- (b) Adjustments of compensation and time for completion of services hereunder because of any major changes in the work that might become necessary or be deemed desirable, as the work progresses shall be left to the absolute discretion of the Project Manager. In the event that the Consultant does not concur with the decisions of the Project Manager, the Consultant shall present any such objections in writing to the Town Manager. The Project Manager and the Consultant shall abide by the decisions of the Town Manager unless arbitrary or unreasonable. This paragraph does not constitute a waiver of either party's right to proceed in a court of competent jurisdiction, subject to the standards set forth above.

SECTION XI — OWNERSHIP OF DOCUMENTS

All reports, tracings, plans, specifications, maps, contract documents, designs, and/or other data (the "Documents") developed by the Consultant pursuant to this Agreement shall become the property of the Town without restrictions or limitations upon their use and shall be made available by the Consultant at any time upon request by the Town. Reuse of such Documents by the Town for any purpose other than that for which prepared shall be at the Town's sole risk. When each individual section or assignment of

work requested pursuant to this Agreement is complete, all of the above Documents shall be delivered to the Town. The level of information required to be provided at the completion of an assigned task shall be specified within the Purchase Order authorizing the work.

SECTION XII — REUSE OF DOCUMENTS

The Consultant may reuse data from other sections of the work included in this Agreement provided irrelevant material is deleted. The Town shall not accept any reused data containing an excess of irrelevant material which has no substantial connection with the applicable portion of the work.

SECTION XIII — NOTICES

Any notices, reports or other written communications from the Consultant to the Town shall be considered delivered when posted by certified mail or delivered in person to the Project Manager. Any notices, reports or other communications from the Town to the Consultant shall be considered delivered when posted by certified mail to the Consultant at the last address left on file with the Town or delivered in person to said Consultant or the Consultant's authorized representative.

SECTION XIV — AUDIT RIGHTS, RETENTION OF RECORDS

The Town, the Florida Department of Community Affairs, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, and any of their duly authorized representatives reserves the right to audit the records of the Consultant related to this Agreement at any time during the prosecution of the work included herein and for a period of three years after final payment is made. The Consultant agrees to provide copies of any records necessary to substantiate payment requests to the Town.

The Consultant shall retain all records relating to this Contract for four (4) years after the Town makes final payment and all other pending matters are closed.

SECTION XV — PROHIBITION AGAINST CONTINGENT FEES

The Consultant warrants that no companies or persons, other than bona fide employees working solely for the Consultant have been retained or employed to solicit or secure this Agreement or have been paid or guaranteed payment of any fees, commissions, percentage fees, gifts or any other considerations contingent upon or resulting from the award or making of this Agreement. The Consultant also warrants that no Town personnel, whether full-time or part-time employees, or officers, has or shall be retained or employed in any capacity, by the Consultant or the Town authorized subconsultants, to accomplish the work contemplated under the terms of this Agreement. For breach or violation of this warranty, the Town shall have the right to annul this Agreement without liability.

SECTION XVI — TERMINATION OF THIS AGREEMENT

- (a) This Agreement may be terminated, in whole or in part, in writing, by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given: (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate; and (2) an opportunity for consultation with the terminating party prior to termination. If termination for default of the Consultant is effected by the Town pursuant to paragraph (a), Consultant shall be paid only

for all work satisfactorily completed prior to the notice of termination. Consultant shall remain liable for the damages, if any, caused by its default.

- (b) This Agreement may be terminated, in whole or in part, in writing, by the Town for its convenience, provided that the Consultant is afforded the same notice and consultation opportunity specified in paragraph (a) above. Only Town has the unilateral right to terminate for its convenience. Consultant recognizes that other covenants of the Agreement serve as consideration for and support this unilateral right of Town.

If termination for convenience is effected by the Town, an equitable adjustment in compensation payable to Consultant shall be made, which equitable adjustment shall include a reasonable profit for services or other work already properly performed prior to the notice of intent to terminate for which profit has not been already included in an invoice. For any such termination for convenience, the equitable adjustment shall provide for payment to the Consultant for services rendered and expenses incurred prior to receipt of the notice of intent to terminate, in addition to termination settlement costs directly and reasonably incurred by the Consultant relating to commitments (e.g., suppliers, subcontractors) which had become irrevocable prior to receipt of the notice of intent to terminate. Except as expressly stated above in this paragraph (b), Town shall have no further liability to compensate or pay Consultant.

- (c) Upon receipt of termination action under paragraphs (a) or (b) above, the Consultant shall (1) promptly discontinue all affected work (unless the notice directs otherwise) and (2) deliver or otherwise make available to the Town all data, drawings, reports specifications, summaries and other such information, as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process.
- (d) Prior to termination, the Town may take over the work and may award another party an Agreement to complete the work described in this Agreement.
- (e) If, after termination for failure of the Consultant to fulfill contractual obligations, under paragraph (a) above, it is determined that the Consultant had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the Town. In such event, adjustment of the contracted price shall be made as provided in paragraph (b) above.
- (f) The parties may also terminate this Agreement by mutual written agreement.

SECTION XVII — DURATION OF AGREEMENT

This Agreement shall remain in full force and effect from execution and for an uncertain term thereafter with no time limitation and as a continuing contract, subject to termination under Section XVI.

SECTION XVIII — CLEAN AIR ACT

If any work order issued under this contract exceeds \$100,000, the Consultant shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and U.S. Environmental Protection Agency regulations (40 C.F.R. Part 15). The Consultant shall include this clause in any subcontracts over \$100,000.

SECTION XIX — ENERGY POLICY AND CONSERVATION ACT

The Consultant shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

SECTION XX — TRUTH-IN-NEGOTIATION

Consultant certifies that the wage rates and other factual unit costs, supporting the compensation are accurate, complete and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the Town determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one year following the end of the contract.

SECTION XXI — DRUG FREE WORK PLACE

The Consultant shall comply with all mandatory standards and policies relating to the Federal Drug-Free Workplace Act's Requirements.

SECTION XXII — SPECIAL PROVISIONS

- (a) The Consultant agrees to comply with Title VI of the Civil Right Act of 1964, the Davis-Bacon Act, the Copeland Anti-Kickback Act, the Contract Work Hours Standard Act, the Health and Safety Standards Act, Section 109 of the Housing and Community Development Act of 1974, Section 3 compliance in the Provision of Training, Employment and Business Opportunities, and the Consultant further agrees not to maintain or provide for its employees any facilities that are segregated on a basis of race, color, creed, national origin, handicap, religion, ancestry, sex or age.
- (b) No officer or employee of the Town or its designees or agents, no member of the governing body, and no other public official of the Town who exercises any function or responsibility with respect to this contract, during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds. Consultant shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (c) The Consultant shall perform the work herein above set out as an independent contractor free from direct control or supervision by the Town as to the means and methods of performing the work and all persons engaged in the performance of the work shall be solely the servants or employees of the Consultant or its subcontractors, as the case may be.

- (d) The Consultant agrees to comply with Executive Order 11246, which prohibits discrimination in employment regarding race, color, creed, national origin, handicap, religion, ancestry, sex, or age. An excerpt of such Executive Order being attached hereto and made a part hereto by reference. The Consultant further agrees to comply with the filing of any and all information and reports required by the Executive Order and by the rules, regulations, and orders of the Secretary of Labor.

SECTION XXIII— INSURANCE AND INDEMNIFICATION

- (a) Consultant shall indemnify and hold harmless the Town, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentional wrongful conduct of the Consultant and persons employed or utilized by the Consultant in the performance of the Agreement.
- (b) The Consultant shall not commence any work pursuant to this Agreement until all insurance required under this Section has been obtained. Consultant must have and provide to Town a Certificate of Insurance showing the Town of Cutler Bay as additional insured. The Consultant shall maintain during the term of this Agreement the following insurance coverage for services to be performed for Town Departments:

Workmen's Compensation Insurance — as required by law.

Employer's Liability Insurance — \$1,000,000.

Professional Liability Insurance — \$1,000,000.

Comprehensive General Liability Insurance — This coverage must be written on the comprehensive form of policy. The basic policy form is not acceptable. The policy must contain minimum limits of liability as follows or \$1,000,000 Single Limit.

Bodily Injury: \$1,000,000;

Property Damage: \$1,000,000 each occurrence.

Comprehensive Automobile Liability Insurance — This coverage must be written on the comprehensive form of policy. The basic form is not acceptable. The policy must contain minimum limits of liability as follows or \$1,000,000 Single Limit.

\$1,000,000 each person;

\$1,000,000 each occurrence bodily injury;

\$1,000,000 each occurrence property damage;

The policy must provide coverage for any automobiles.

- (c) All insurance policies must be issued by companies authorized to do business under the laws of the State of Florida. The companies must be rated no less than "B" as to management and no less than "Class V" as to strength by the latest edition of Best's Insurance guide, published by A.M. Best Company, Olwick, New Jersey, or its equivalent, or, at Town's discretion, the companies must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance

Companies Authorized or Approved to do Business in Florida," issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

- (d) The Consultant shall furnish certificates of insurance to the Public Works Department: 10720 Caribbean Blvd., Suite 105, Cutler Bay, Florida 33189, prior to the commencement of operations, which certificates shall clearly indicate that the Consultant has obtained insurance in the type, amount, and classification as required for strict compliance with this Section and that no material change or cancellation of this insurance shall be effective without thirty (30) days prior written notice to the Town.
- (e) Compliance with the foregoing requirements shall not relieve the Consultant of the liabilities and obligations under this Section or under any other portion of this Agreement, and the Town shall have the right to inspect the original insurance policies in the event that submitted certificates of insurance are inadequate to ascertain compliance with required coverage.

SECTION XIV— ENTIRETY OF AGREEMENT; VENUE; NO JURY-TRIAL

- (a) This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing, signed by both parties hereto, and approved by the Town. The Town Manager shall act for Town hereunder.
- (b) This Agreement, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida, and venue for any litigation hereunder shall be made in Miami-Dade County, Florida.
- (c) **Each party hereby expressly waives any right to trial by jury in any litigation hereunder or which is in any way related to the conduct or course of dealing between the parties.**

IN WITNESS WHEREOF the parties hereto have executed these presents this 17 day of JANUARY 2008.

Consultant
Marlin Engineering, Inc.

By: [Signature]
Signed Roman Sorcia / President
Name/Title

Attest: [Signature]

Town of Cutler Bay
10720 Caribbean Blvd., Suite 105
Cutler Bay, Florida 33189

By: [Signature]
Steven J. Alexander
Town Manager

Attest: [Signature]
Town Clerk

or

Approved as to form and legal sufficiency:

Witnessed:

By: Rafael Casals

Name: RAFAEL G. CASALS

By: Lexi Savoureux

Name: LEXI SAVOUREUX

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

[Space left intentionally blank]

EXHIBIT "A"

Landscape Architecture:

Landscape, hardscape, and irrigation design; park facility master planning; park and recreational facilities design, bicycle and pedestrian path design; integration of parks, landscaped and open spaces and recreational facilities with the Town's residential and commercial districts and other miscellaneous professional services that the Town may desire.

Transportation Planning and Engineering Services:

Transportation planning and traffic engineering, traffic-impact and safety studies, parking studies; neighborhood traffic management; multi-modal traffic planning and design, Roadways/Transportation planning and design, bicycle and pedestrian paths design and integrated mobility options; traffic calming; collection of traffic counts and reports; signal timing analysis and warrant studies; signs and pavement markings and other miscellaneous professional services that the Town may desire.

EXHIBIT "B"

Town of Cutler Bay

Marlin Engineering, Inc.

HOURLY RATES

	2008	2009	2010
Principal	209.48	219.95	230.95
Project Manager	163.12	171.28	179.84
Chief Engineer	184.22	193.43	203.10
Project Engineer	149.63	157.11	164.97
Designer	114.38	120.10	126.11
CADD Technician	91.39	95.96	100.76
Technician	67.13	70.49	74.01
Construction Project Administrator	151.06	158.61	166.54
Construction Project Engineer	87.98	92.38	97.00
Construction Inspector	63.02	66.17	69.48
Project Traffic Engineer	132.77	139.41	146.38
Traffic Engineer	93.51	98.19	103.10
Utility Coordinator	77	80.85	84.89
Surveyor	136.67	143.50	150.68
Survey Technician	77.98	81.88	85.97
3-Man Survey Crew	1244.88	1307.12	1372.48
4-Man Survey Crew	1508.22	1583.631	1662.81
Clerical	57.55	60.43	63.45

Rosenberg Gardner Design

Senior Landscape Architect	125.00	131.25	137.81
Project Manager	85.00	89.25	93.71
Landscape Designer	65.00	68.25	71.66
Clerical	45.00	47.25	49.61

Tierra, Inc.

Principal Engineer	180.94	189.99	199.49
Senior Project Engineer	137.50	144.38	151.60
Project Engineer	123.05	129.20	135.66
CADD/Technician	94.08	98.78	103.72
Clerical	62.23	65.34	68.61

TAB 6

RESOLUTION NO. 08-_____

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL
OF THE TOWN OF CUTLER BAY, FLORIDA, IN
SUPPORT OF LEGISLATION TO REENACT THE
FEDERAL ASSAULT WEAPONS BAN INTRODUCED BY
UNITED STATES REPRESENTATIVE CAROLYN
MCCARTHY OF NEW YORK AND URGING CONGRESS
TO SUPPORT THE REENACTMENT OF THE BAN; AND
PROVIDING AN EFFECTIVE DATE.**

WHEREAS, assault weapons are semi-automatic firearms designed with military features to allow rapid and accurate spray firing and are not designed for “sport,” but are designed to kill humans quickly and efficiently; and

WHEREAS, assault weapons are increasingly being used by criminals in our community, endangering the lives of our law enforcement officers and citizens; and

WHEREAS, assault weapons have been used in many mass shootings, including but not limited to:

The July 18, 1984 massacre at a McDonald’s restaurant in San Ysidro, California, which left 21 dead and 19 wounded;

The January 17, 1989 rampage at an elementary school in Stockton, California, which left 5 children dead and 29 children and one teacher wounded;

The July 1, 1993 shooting at a San Francisco law firm and other offices located at 101 California Street, which left 8 dead and 6 wounded (1 of whom subsequently died);

The April 20, 1999 massacre at Columbine High School in Colorado, which left 13 dead and 23 wounded;

The October, 2002 sniper attacks in the Washington, D.C. area, which left 10 dead and 3 wounded; and

WHEREAS, in just the past six months assault weapons have been used the following mass shootings and killings of law enforcement personnel:

The October 7, 2007 shooting at a house party in Crandon, WI that killed 6 people, leaving just 1 wounded survivor;

The September 13, 2007 shooting of Miami-Dade police Sgt. Jose Somohano and three other officers, killing Sgt. Somohano, by an assailant armed with an AK-47, three years to the day after the expiration of the Federal Assault Weapons ban;

The December 5, 2007 shooting at an Omaha, Nebraska mall that left 8 dead and another 4 wounded;

The December 9, 2007 shooting at two locations in Colorado that killed 4 people and wounded 2 more;

The January 8, 2008, shooting of Miami Detective James Walker, who was killed by bullets from an AK-47; and

WHEREAS, studies conducted by the National Institute of Justice during the initial ban – from 1994 to 2004 – provided evidence that the ban was successful in helping to reduce violent crime; and

WHEREAS, assault weapons are disproportionately used in the commission of homicides in South Florida – nearly one in five homicides in the City of Miami during 2006 and 2007 were committed with the help of an assault weapon;

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. Support. The Town hereby supports and urges the members of the United States Congress to support the re-enactment of the Federal Assault Weapons Ban as proposed in House Resolution 1022 sponsored by Representative Carolyn McCarthy of New York (Assault Weapons Ban and Law Enforcement Protection Act of 2007).

Section 3. Support. The Town hereby requests that the Florida Legislature consider enacting its own Assault Weapons Ban in the alternative as the states of California, New York, Connecticut, New Jersey, and Massachusetts have done.

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

PASSED and ADOPTED this ___ day of _____, 2008.

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 _____



City of Miami

Legislation

Resolution

RE.6

Miami, FL 33133
www.miamigov.com

File Number: 08-00118A

Final Action Date:

A RESOLUTION OF THE MIAMI CITY COMMISSION URGING THE MEMBERS OF THE UNITED STATES CONGRESS TO SUPPORT THE RE-ENACTMENT OF THE FEDERAL ASSAULT WEAPONS BAN AS PROPOSED IN HOUSE RESOLUTION 1022 SPONSORED BY REPRESENTATIVE CAROLYN MCCARTHY OF NEW YORK (ASSAULT WEAPONS BAN AND LAW ENFORCEMENT PROTECTION ACT OF 2007); DIRECTING THE CITY CLERK TO TRANSMIT A COPY OF THIS RESOLUTION TO THE OFFICIALS DESIGNATED HEREIN.

WHEREAS, assault weapons are semi-automatic firearms designed with military features to allow rapid and accurate spray firing and are not designed for "sport," but are designed to kill humans quickly and efficiently; and

WHEREAS, assault weapons have been used in many mass shootings, including:

- The July 18, 1984 massacre at a McDonald's restaurant in San Ysidro, California, which left 21 dead and 19 wounded;
- The January 17, 1989 rampage at an elementary school in Stockton, California, which left 5 children dead and 29 children and one teacher wounded;
- The July 1, 1993 shooting at a San Francisco law firm and other offices located at 101 California Street, which left 8 dead and 6 wounded (1 of whom subsequently died);
- The April 20, 1999 massacre at Columbine High School in Colorado, which left 13 dead and 23 wounded;
- The October, 2002 sniper attacks in the Washington, D.C. area, which left 10 dead and 3 wounded;
- The September 13, 2007 shooting of Miami-Dade police Sgt. Jose Somohano who died and 3 other officers that were injured by an assailant armed with an AK-47, three years to the day after the expiration of the Federal Assault Weapons ban;
- The January 8, 2008, shooting of Miami Detective James Walker who was shot dead by an AK-47;

NOW, THEREFORE, BE IT RESOLVED, BY THE COMMISSION OF THE CITY OF MIAMI, FLORIDA:

Section 1. The recitals and findings contained in the Preamble to this Resolution are adopted by reference and incorporated as if fully set forth in this Section.

Section 2. The Miami City Commission urges the members of the United States Congress to support the re-enactment of the Federal Assault Weapons Ban as proposed in House Resolution 1022 sponsored by Representative Carolyn McCarthy of New York (Assault Weapons Ban and Law Enforcement Protection Act of 2007).

Section 3. The City Clerk is directed to transmit a copy of this Resolution to the members of the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the Senate and to each Senator and Representative from Florida in the Congress of the United States.

Section 4. This Resolution shall become effective immediately upon its adoption and signature of the Mayor.{1}

APPROVED AS TO FORM AND CORRECTNESS:



JORGE L. FERNANDEZ
CITY ATTORNEY

Footnotes:

{1} If the Mayor does not sign this Resolution, it shall become effective at the end of ten calendar days from the date it was passed and adopted. If the Mayor vetoes this Resolution, it shall become effective immediately upon override of the veto by the City Commission

TAB 7



MEMORANDUM

To: Honorable Mayor and Councilmembers

From: Steven J. Alexander, Town Manager

Date: March 19, 2008

Re: Resolution Authorizing the Execution of an Interlocal Agreement Between the Town and Miami-Dade Stormwater Utility for Canal Maintenance Services

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE FIVE (5) YEAR INTERLOCAL AGREEMENT BETWEEN THE TOWN OF CUTLER BAY AND THE MIAMI-DADE COUNTY STORMWATER UTILITY FOR STORMWATER MANAGEMENT; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

The Miami-Dade County Board of Commissioners via Ordinance No. 91-66, created Article V of Chapter 24 of the Miami-Dade county Code. This ordinance established a "countywide" utility which sets a uniform approach to Stormwater Management. The attached Interlocal Agreement establishes specific canal maintenance responsibilities between the Town and the Miami-Dade County Stormwater Utility.

The Town Council has adopted the following Resolutions and Ordinance:

Resolution No. 07-18: "Town exercises its option to exempt from the inclusion in the County's Stormwater Utility."

Ordinance No. 07-29: "Town established a Stormwater Utility Fee".

Resolution No. 07-63: "Town approved Agreement for Billing of Stormwater Charges with Miami-Dade County".

The drainage canals illustrated in Exhibit "A" are owned and maintained by Miami-Dade County. The identified canals are considered "shared" systems within the countywide utility. The following routine maintenance activities will be performed by the County's Utility:

Culvert cleaning both above and below water, mechanical treatment, chemical treatment, obstruction remove "as needed", and mowing canal banks. The Town shall be responsible for an estimated annual cost of \$107,386 (5-year total: \$536,929). The funding for the canal maintenance activities will be paid from the Town's Stormwater Utility's Maintenance Account.

Similar agreements have been executed by recently incorporated municipalities: City of Doral, City of Miami Gardens, and Village of Palmetto Bay.

RECOMMENDATION

It is recommended that the Town Council approve the attached Resolution Authorizing the Town Manager to Execute the Interlocal Agreement with the Miami-Dade County Stormwater Utility.

RESOLUTION NO. 08-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE FIVE (5) YEAR INTERLOCAL AGREEMENT BETWEEN THE TOWN OF CUTLER BAY AND THE MIAMI-DADE COUNTY STORMWATER UTILITY FOR STORMWATER MANAGEMENT; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 403.0893, Florida Statutes, authorizes the establishment of stormwater utilities to plan, construct, operate and maintain stormwater management systems; and

WHEREAS, the Board of County Commissioners of Miami-Dade County, did, by adoption of Miami-Dade County Ordinances No. 91-66 and Ordinance No. 91-120, as amended by Ordinance Nos. 92-44 and 92-86, create a stormwater utility (hereinafter referred to as the “Utility”), and which Utility may operate within a municipality or municipalities; and

WHEREAS, it is the intent of the Utility and the Town through this Agreement attached as Exhibit “A”, to establish relationships and responsibilities for the maintenance of shared stormwater systems by the Town and the Utility; and

WHEREAS, the Utility and the Town recognize that there are operating costs, as well as benefits, associated with maintaining shared stormwater drainage systems; and

WHEREAS, the Utility and the Town want to share these costs in proportion to the drainage area the service provided and the benefits received.

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. Authorization. The Town Manager is hereby authorized to execute the Five (5) Year Interlocal Agreement between the Town of Cutler Bay and the Miami-Dade County Stormwater Utility for Stormwater Management, in substantially the form attached hereto in Exhibit “A”.

Section 3. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this ____ day of _____, 2008.

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 _____



Carlos Alvarez, Mayor

Department of Environmental Resources Management

Water Management Division
701 NW 1st Court, Ste-400
Miami, Florida 33136-3912
T 305-372-6529 F 305-372-6425

miamidade.gov

February 27, 2008

Mr. Rafael Casals, Director of Public Works
Town of Cutler Bay
10720 Caribbean Boulevard, Suite 105
Cutler Bay, Florida 33189

Re: Town of Cutler Bay, Stormwater Management Interlocal Agreement

Dear Mr. Casals:

The Department of Environmental Resources Management (DERM) hereby acknowledges receipt of your letter dated February 5, 2008, requesting exemption from the County's Stormwater Utility. Copies of Resolutions Number 07-18, 07-29, and 07-63 recently adopted by your Town Council were enclosed. Also enclosed and signed by your Town Mayor was the WASD Agreement for the Billing of Stormwater Charges.

To continue the process of exemption, please find enclosed for review and approval by the Town of Cutler Bay, the following document:

Five (5) Year Interlocal Agreement between the Town of Cutler Bay and the Miami-Dade County Stormwater Utility for Stormwater Management. Please note that costs included in Attachment "B" of the Agreement are maximum estimated costs based on the proposed Level of Service within the Agreement.

Please return to us as soon as possible for presentation to the GOEC and BCC for approval.

If you have any questions regarding the above, please contact me at (305) 372-6656.

Sincerely,

[Handwritten signature]

Curt L.A. Williams, Manager
Stormwater Utility Section

Enclosures

Pc: Marina Blanco-Pape, P.E., Chief, Water Management Division, DERM
Randall White, Project Supervisor, Stormwater Utility Section, DERM

Delivering Excellence Every Day

- ADA Coordination
Agenda Coordination
Art in Public Places
Audit and Management Services
Aviation
Building Code Compliance
Building
Business Development
Capital Improvements
Citizen's Independent Transportation Trust
Communications
Community Action Agency
Community & Economic Development
Community Relations
Consumer Services
Corrections & Rehabilitation
Countywide Healthcare Planning
Cultural Affairs
Elections
Emergency Management
Employee Relations
Enterprise Technology Services
Environmental Resources Management
Fair Employment Practices
Finance
Fire Rescue
General Services Administration
Historic Preservation
Homeless Trust
Housing Agency
Housing Finance Authority
Human Services
Independent Review Panel
International Trade Consortium
Juvenile Assessment Center
Medical Examiner
Metropolitan Planning Organization
Park and Recreation
Planning and Zoning
Police
Procurement Management
Property Appraiser
Public Library System
Public Works
Safe Neighborhood Parks
Seaport
Solid Waste Management
Strategic Business Management
Team Metro
Transit
Urban Revitalization Task Force
Vizcaya Museum and Gardens
Water and Sewer

MIAMI-DADE COUNTY, FLORIDA



**FIVE (5) YEAR
INTERLOCAL AGREEMENT**

between

**THE TOWN OF CUTLER BAY
AND
THE MIAMI-DADE COUNTY STORMWATER UTILITY
FOR
STORMWATER MANAGEMENT**

MIAMI-DADE COUNTY
STORMWATER UTILITY (305) 372-6656
DEPARTMENT OF ENVIRONMENTAL RESOURCES MANAGEMENT
701 NORTHWEST FIRST COURT, SUITE 400
MIAMI, FL 33136



**FIVE (5) YEAR
INTERLOCAL AGREEMENT
BETWEEN
THE TOWN OF CUTLER BAY (TOWN)
AND
THE MIAMI-DADE COUNTY STORMWATER UTILITY (UTILITY)
FOR STORMWATER MANAGEMENT**

THIS FIVE (5) YEAR INTERLOCAL AGREEMENT, [the "Agreement"] by and between the Miami-Dade County Stormwater Utility, a public body corporate and politic, through its governing body, the Board of County Commissioners of Miami-Dade County, Florida [hereinafter sometimes referred to as "UTILITY",] and the Town of Cutler Bay a Florida Municipal Corporation, through its governing body, the Cutler Bay Town Council of the Town of Cutler Bay, Florida [hereinafter sometimes referred to as "TOWN",] is entered into as follows:

WITNESSETH

WHEREAS, Section 403.0893, Florida Statutes, authorizes the establishment of stormwater utilities to plan, construct, operate, and maintain stormwater management systems; and

WHEREAS, the Board of County Commissioners of Miami-Dade County, did, by adoption of Miami-Dade County Ordinances No. 91-66 and Ordinance No. 91-120, as amended by Ordinance Nos. 92-44 and 92-86, create a stormwater utility [hereinafter referred to as the "UTILITY",] and which UTILITY may, operate within a municipality or municipalities; and

WHEREAS, it is the intent of the UTILITY and the TOWN, through this Agreement, to establish relationships and responsibilities for the maintenance of shared stormwater systems by the TOWN and the UTILITY; and

WHEREAS, the UTILITY and the TOWN recognize that there are operating costs, as well as benefits, associated with maintaining shared stormwater drainage systems; and

WHEREAS, the UTILITY and the TOWN want to share these costs in proportion to the drainage area the service provided and the benefits received,

Now, therefore, in consideration of the mutual promises and covenants contained herein and the mutual benefits to be derived from this Agreement, the parties hereto agree as follows:

ARTICLE I PURPOSES

The UTILITY and the TOWN enter into this Agreement to further the following purposes:

- (1) to protect and promote the public health, safety, and general welfare through the management of stormwater run-off;
- (2) to maintain and improve water quality and preserve and enhance the environmental quality of the receiving waters;
- (3) to control flooding that results from rainfall events;
- (4) to deter unmanaged rainwater from eroding sandy soils and causing sedimentation;
- (5) to deter the disruption of the habitat of aquatic plants and animals;
- (6) to promote intergovernmental cooperation in effectively and efficiently managing stormwater run-off;
- (7) to maintain and repair shared stormwater systems located within the limits of the drainage service areas in accordance with the approved plans. These include maintaining canals, and any required maintenance of flow control structures and stormwater pump stations and their mechanical and electrical components; maintaining stormwater systems as determined by conditions of the system, prevailing environmental conditions, and the level of service established.
- (8) to provide a mechanism for the UTILITY and the TOWN to share and allocate the cost of maintaining and repairing shared stormwater drainage systems as stated in (7), above.

ARTICLE II DEFINITIONS

Agreement shall mean this document, including any written amendments, attachments, and other written documents, which are expressly incorporated by reference.

Stormwater Management Plans shall mean stormwater management plans developed by both the TOWN and by the UTILITY, to meet the required level of service as established in their respective stormwater management programs or master plan pursuant to Florida Statute 403.0891.

Town Stormwater Utility Budget shall mean the TOWN's developed and approved fiscal year budget which includes a component for stormwater management of its drainage system, including capital and operating outlays necessary to maintain the level of service established in the TOWN's Stormwater Management Plans.

Utility Stormwater Budget shall mean the UTILITY's developed and approved fiscal year budget for stormwater management of its drainage system, including capital and operating outlays necessary to maintain the level of service established in the Utility's Approved Plans.

Shared Stormwater Drainage System shall mean that portion of the drainage system owned by either the TOWN or the UTILITY to which both the TOWN and the UTILITY contribute stormwater runoff and which is further identified in Attachment A.

Costs allocable to the Town shall mean those portions of the actual maintenance and operating outlays budgeted by the UTILITY in its yearly budget process, which are allocated to the TOWN based on the TOWN's relative stormwater runoff contribution to the shared portion of the stormwater drainage system of the UTILITY.

Costs allocable to the Utility shall mean those portions of the actual maintenance and operating outlays budgeted by the TOWN in its yearly budget process, which are allocated to the UTILITY based on the UTILITY's relative stormwater runoff contribution to the shared portion of the stormwater drainage system of the TOWN.

Operating Outlays shall mean expenses budgeted by the TOWN and the UTILITY which are actual expenses incurred in each fiscal year, which due to their nature are considered reoccurring expenses to sustain yearly stormwater drainage operations.

Capital Outlays shall mean expenses budgeted by the TOWN and the UTILITY which are actual expenses incurred in each fiscal year, which due to their nature are considered non-reoccurring and producing a long term benefit to the users. The yearly charges allocable to the TOWN or to the UTILITY shall be that amount prorated, plus interest charges and administrative fees, for no longer than the calculated useful life of the capitalized item in no case exceeding 20 years. A separate Interlocal Agreement is required for any approved Capital Outlays that may be amortized beyond the life of this Agreement.

Fiscal Year shall mean the period beginning on October 1 and ending on September 30 of the following year.

Force Majeure shall mean an act of God, epidemic, lightning, earthquake, fire, explosion, hurricane, flood or similar occurrence, strike, an act of a public enemy, or blockade, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, which has had or may reasonably be expected to have a material adverse effect on the rights or obligations under this Agreement, and which, by the exercise of due diligence, such parties shall not have been able to avoid. Such acts or events DO NOT INCLUDE inclement weather (except as noted above) or the acts or omissions of subcontractors, third-party contractors, material men, suppliers, or their subcontractors, unless such acts or omissions are otherwise encompassed by the definition set forth above.

Maintenance is defined by, and limited to, the tasks listed in the Attachment "B" or other related stormwater drainage tasks agreed to by both parties' Project Managers.

Project Manager shall mean the persons designated by the TOWN and by the UTILITY to serve as the representative of each for the purposes of exchanging communications and to issue and receive directives pursuant to and within the powers provided under this Agreement.

Written notice shall mean written communication to and from the Project Managers.

ARTICLE III STATEMENT OF WORK

The TOWN AND the UTILITY shall fully and timely perform all work tasks described in this Statement of Work:

The TOWN shall maintain and repair shared stormwater systems located within the limits of the drainage service areas in accordance with this Agreement and the TOWN's stormwater management plan. The TOWN shall be responsible for maintaining aesthetic conditions on the canals by providing for litter and minor debris removal as needed.

The UTILITY shall maintain, repair and enhance shared stormwater management systems located within the limits of the drainage service areas in accordance with the Attachment "A" and Attachment "B".

The TOWN's relative stormwater runoff contribution to the UTILITY's shared drainage system and the UTILITY's relative stormwater runoff contribution to the shared drainage system is depicted in Attachment "A".

ARTICLE IV TERM OF THE AGREEMENT

The term of this Agreement shall be for a period of up to five (5) years commencing on the date of exemption of the TOWN from the UTILITY, and ending on September 30, 2012, provided, however, either party may terminate this Agreement without cause prior to the expiration date upon one (1) year's advance written notice to the other party of its decision to terminate this Agreement. Costs incurred by the UTILITY, prior to TOWN exemption from the Miami-Dade County Stormwater Utility, shall not be reimbursed to the UTILITY by the TOWN.

ARTICLE V TOWN AND UTILITY RESPONSIBILITIES

A. Upon the request of either the TOWN or the UTILITY, each shall share information in matters related to operations, maintenance, design and construction costs and cost allocation determinations associated with shared drainage systems.

B. The TOWN and the UTILITY shall provide notice to each other, as provided, in this Agreement designating their respective Project Manager. Each shall promptly notify each

other of any change in the Project Manager designation by written notice as specified in this Agreement.

C. Prior to each fiscal year, the TOWN will provide the UTILITY and the UTILITY will provide the TOWN with a summary of shared maintenance costs on shared drainage systems. For ensuing fiscal years the TOWN's and the UTILITY's estimated costs showing the shared costs allocation shall be available and transmitted to each other by March 1 of each year.

D. Commencing with fiscal year 2007-2008, the costs allocable to the TOWN and the costs allocable to the UTILITY based on the relative stormwater runoff contribution to each other's shared portion of the stormwater drainage systems are included in this Agreement and presented as described in Attachment "B". Estimated total expenditures for the five (5) year term of this Agreement is also included and shall not be exceeded.

E. All shared costs are subject to review during the TOWN's and UTILITY's preliminary budget process and may be accepted by the TOWN and the UTILITY and are to be finalized by April 1 of each year.

These costs shall be the minimum estimated costs necessary to accomplish the functions of the TOWN and the UTILITY pertaining to the shared stormwater drainage systems.

F. Upon mutual written agreement of the parties' respective Project Managers, the tasks and levels of service set forth in Attachment "B" may be adjusted due to prevailing environmental conditions, maintenance needs, or ownership, provided that the total annual estimated expenditures are not exceeded.

G. Payments by the TOWN are to be made within 30 days after the bill presentation. In the event of a dispute on the paid amount, the TOWN may notify the UTILITY of the nature of the dispute and the UTILITY shall make arrangements for the pertinent records to be made available for inspection by the TOWN, as indicated under Article V (H) of this Agreement. The UTILITY shall reimburse the TOWN for any amounts determined to have been overpaid by the TOWN within 30 days after verification of the overpayment.

H. The TOWN and the UTILITY shall maintain financial records for 5 years pertaining to this Agreement, and shall make them available within reasonable time after requesting them for inspection and copying by either the TOWN or the UTILITY, at the place where the records are maintained.

I. The TOWN and the UTILITY shall each be responsible for procuring independently all necessary permits in the performance of their respective work under this Agreement.

J. The TOWN and the UTILITY shall each comply with all applicable regulations, ordinances and laws in effect in the performance of this Agreement.

**ARTICLE VI
COMPENSATION/CONSIDERATION**

A. It is the intent and understanding of the parties that this Agreement is solely for the TOWN and the UTILITY. No person or entity other than the TOWN or the UTILITY shall have any rights or privileges under this Agreement in any capacity whatsoever, either as a third-party beneficiary or otherwise.

**ARTICLE VII
DEFAULT**

TOWN Event of Default

Without limitation, the failure by the TOWN to substantially fulfill any of its material obligations in accordance with this Agreement, unless such failures are justified by Force Majeure, shall constitute a "TOWN event of default". The UTILITY will not be required to provide one year prior notice as required under Article IV before terminating for default. The UTILITY may terminate immediately after issuing written notice of default.

If a TOWN event of default should occur, the UTILITY shall have all of the following cumulative and independent rights and remedies:

1. The right to declare that this Agreement together with all rights granted to TOWN are terminated, effective upon such date as is designated by the UTILITY.
2. Any and all rights and remedies provided under federal laws and the laws of the State of Florida.

UTILITY Event of Default

Without limitation, the failure by the UTILITY to substantially fulfill any of its material obligations in accordance with this Agreement, unless such failures are justified by Force Majeure, shall constitute a "UTILITY event of default". The TOWN will not be required to provide one year prior notice as required under Article IV before terminating for default. The TOWN may terminate immediately after written notice of default.

If a UTILITY event of default should occur, the TOWN shall have all of the following cumulative and independent rights and remedies:

1. The right to declare that this Agreement together with all rights granted to UTILITY are terminated, effective upon such date as is designated by the TOWN.
2. Any and all rights and remedies provided under federal laws and the laws of the State of Florida.

**ARTICLE VIII
GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The UTILITY and the TOWN agree to submit to service of process and jurisdiction of the State of Florida for any controversy or claim arising out of or relating to this Agreement or a breach of this Agreement. Venue for any court action between the parties for any such controversy arising from or related to this Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, or in the United States District Court for the Southern District of Florida, in Miami-Dade County, Florida.

**ARTICLE IX
ENTIRETY OF AGREEMENT**

This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.

**ARTICLE X
HEADINGS**

Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.

**ARTICLE XI
RIGHTS OF OTHERS**

Nothing in this Agreement expressed or implied is intended to confer upon any person other than the parties any rights or remedies under or by reasons of this Agreement.

**ARTICLE XII
REPRESENTATION OF TOWN**

The TOWN represents that this Agreement has been duly authorized, executed and delivered by the Town Council of the Town of Cutler Bay, as the governing body of the TOWN and it has the required power and authority to perform this Agreement and has granted the Town Mayor or his Designee the required power and authority to perform this Agreement.

**ARTICLE XIII
REPRESENTATION OF UTILITY**

The UTILITY represents that this Agreement has been duly approved, executed and delivered by the Board of County Commissioners, as the governing body of the UTILITY, and it has granted the Miami-Dade County Mayor or his Designee the required power and authority to perform this Agreement.

**ARTICLE XIV
WAIVER**

There shall be no waiver of any right related to this Agreement unless in writing and signed by the party waiving such right. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time or of any other right under this Agreement.

**ARTICLE XV
INVALIDITY OF PROVISIONS, SEVERABILITY**

Wherever possible, each provision of the Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, provided that the material purposes of this Agreement can be determined and effectuated.

**ARTICLE XVI
INDEPENDENT CONTRACTOR**

The TOWN shall perform all work and services described as an independent contractor and not as an officer, agent, servant, or employee of the UTILITY. TOWN shall have control of the work performed in accordance with the terms of this Agreement and of all persons performing the same, and TOWN shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any.

The UTILITY shall perform all work and services described herein as an independent contractor and not as an officer, agent, servant, or employee of the TOWN. UTILITY shall have control of the work performed in accordance with the terms of this Agreement and of all persons performing the same, and UTILITY shall be responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any.

Nothing in this agreement shall be construed as creating a partnership or joint venture between the UTILITY and the TOWN.

ARTICLE XVII INDEMNIFICATION

The TOWN shall indemnify and hold harmless the UTILITY and its officers, employees, agents and instrumentalities to the extent and within the limitations of Section 768.28, Fla. Stat., subject to the provisions of that Statute from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the UTILITY or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Contract by the TOWN or its employees, agents, servants, partners, principals or subcontractors. The TOWN shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the UTILITY, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The TOWN expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the TOWN shall in no way limit the responsibility to indemnify, keep and save harmless and defend the UTILITY or its officers, employees, agents and instrumentalities as herein provided.

The UTILITY does hereby agree to indemnify and hold harmless the TOWN to the extent and within the limitations of Section 768.28, Fla. Stat., subject to the provisions of that Statute whereby the UTILITY shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$100,000, or any claim or judgments or portions thereof, which, when totaled with all other occurrences, exceeds the sum of \$200,000, from any and all personal injury or property damage claims, liabilities, losses and causes of action which may arise solely as a result of the negligence of the UTILITY. However, nothing herein shall be deemed to indemnify the TOWN from any liability or claim arising out of the negligent performance or failure of performance of the TOWN or any unrelated third party.

IN WITNESS THEREOF, the parties through their duly authorized representatives hereby execute this Agreement with commencement on the date of exemption.

Attest:

TOWN OF CUTLER BAY, FLORIDA
10720 Caribbean Boulevard, Ste. #105
Cutler Bay, FL 33189
Attn: Paul Vrooman, Town Mayor
(305) 234-4262

Town Clerk Date

Authorized signature on behalf
of the Town of Cutler Bay, Florida.

By: _____
Town Mayor Date

MIAMI-DADE COUNTY, FLORIDA

By: _____
County Mayor Date

For the Board of County Commissioners, Miami-
Dade County, Florida, as Governing Body of
the Miami-Dade County Stormwater Utility.

Stephen P. Clark Center
111 N.W. 1st. Street
Miami, Florida 33128

HARVEY RUVIN, CLERK
Attest:

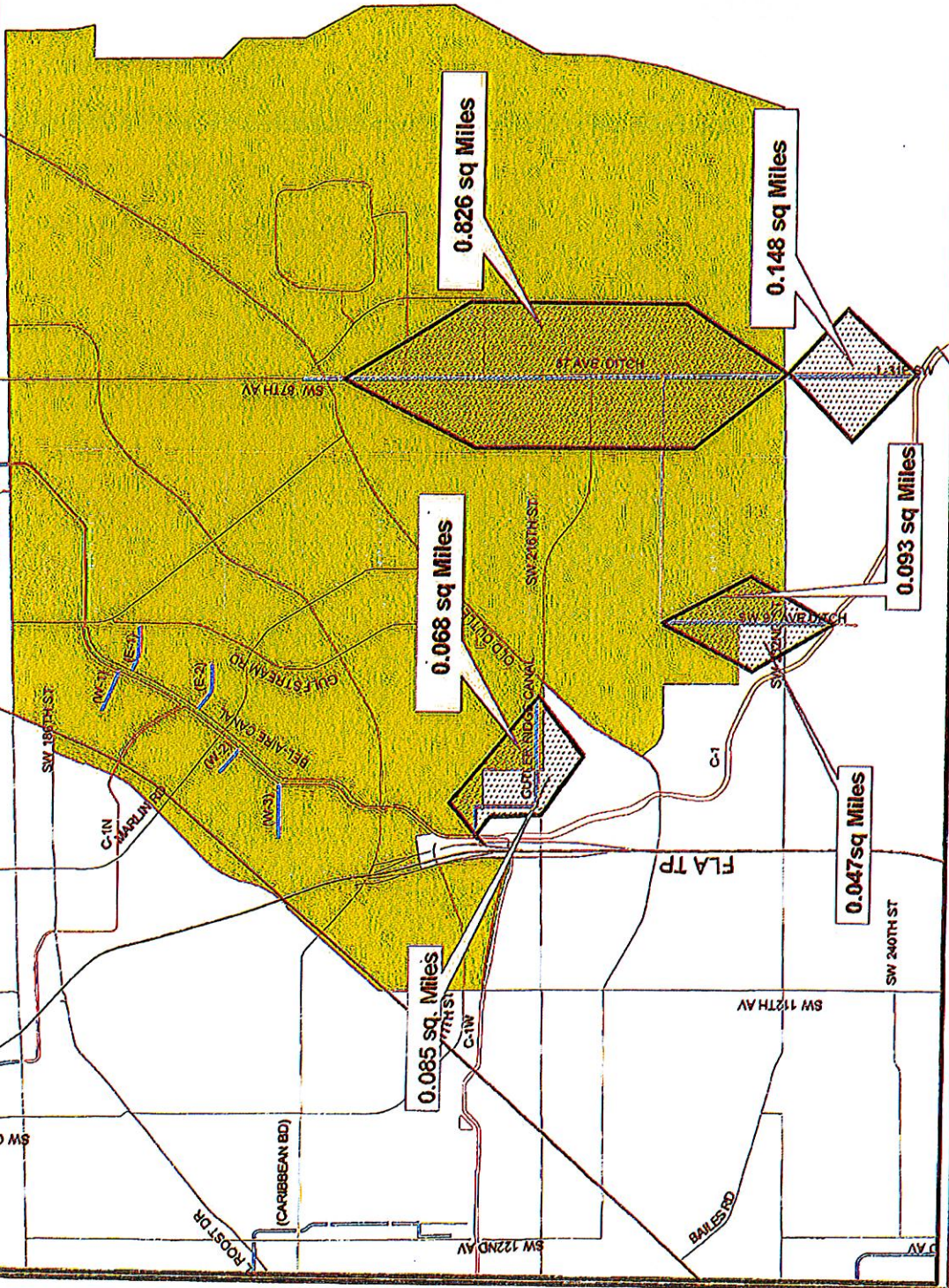
By: _____
Deputy Clerk Date

ATTACHMENT “A”

**Canals and Drainage Areas Map
% Share Calculation Table**

(see attached exhibit)

TOWN OF CUTLER BAY CANALS AND DRAINAGE AREAS



LEGEND

- Drainage Basins
- Canals
- Primary Canal

ATTACHMENT “B”

Five (5) Year Cost Sharing Table

(see attached exhibit)

ATTACHMENT "B"

**Town Of Cutler Bay
Canal Maintenance Proposed Cost Estimates FY 2007/08 - 2011/12**

Note: Proposed Levels of Service Shown Shaded

Culvert Cleaning - Above Water

Culverts	Canal	Cycles per Year				% Share	TOTAL
		1	2	3	4		
0	Bel Aire W-1	\$0	\$0	\$0	\$0	100%	\$0
1	Bel Aire W-2	\$190	\$380	\$570	\$760	100%	\$380
0	Bel Aire W-3	\$0	\$0	\$0	\$0	100%	\$0
0	Bel Aire E-1	\$0	\$0	\$0	\$0	100%	\$0
0	Bel Aire E-2	\$0	\$0	\$0	\$0	100%	\$0
5	Cutler Ridge Canal	\$950	\$1,900	\$2,850	\$3,800	44%	\$836
0	S.W. 97 Ave. Ditch	\$0	\$0	\$0	\$0	66%	\$0
15	S.W. 87 Ave. Ditch	\$2,850	\$5,700	\$8,550	\$11,400	85%	\$4,845
sub-total		\$3,990	\$7,980	\$11,970	\$15,960		\$6,061

Town Cost at Proposed Level of Service

\$6,061

Culvert Cleaning - Below Water

Culverts	Canal	Cycles per Year				% Share	TOTAL
		1	2	3	4		
0	Bel Aire W-1	\$0	\$0	\$0	\$0	100%	\$0
0	Bel Aire W-2	\$0	\$0	\$0	\$0	100%	\$0
0	Bel Aire W-3	\$0	\$0	\$0	\$0	100%	\$0
0	Bel Aire E-1	\$0	\$0	\$0	\$0	100%	\$0
0	Bel Aire E-2	\$0	\$0	\$0	\$0	100%	\$0
2	Cutler Ridge Canal	\$924	\$1,848	\$2,772	\$3,696	44%	\$407
2	S.W. 97 Ave. Ditch	\$924	\$1,848	\$2,772	\$3,696	66%	\$610
14	S.W. 87 Ave. Ditch	\$6,468	\$12,936	\$19,404	\$25,872	85%	\$5,498
sub-total		\$8,316	\$16,632	\$24,948	\$33,264		\$6,514

Town Cost at Proposed Level of Service

\$6,514

Mechanical Treatment/Harvesting (submerged, emergent, and bank acres treated)

Acres	Canal	Cycles per Year				% Share	TOTAL
		1	2	3	4		
1.3	Bel Aire W-1	\$2,984	\$5,967	\$8,951	\$11,934	100%	\$11,934
0.9	Bel Aire W-2	\$2,066	\$4,131	\$6,197	\$8,262	100%	\$8,262
1.7	Bel Aire W-3	\$3,902	\$7,803	\$11,705	\$15,606	100%	\$15,606
1.4	Bel Aire E-1	\$3,213	\$6,426	\$9,639	\$12,852	100%	\$12,852
1.5	Bel Aire E-2	\$3,443	\$6,885	\$10,328	\$13,770	100%	\$13,770
4.3	Cutler Ridge Canal	\$0	\$0	\$0	\$0	44%	\$0
1.5	S.W. 97 Ave. Ditch	\$0	\$0	\$0	\$0	66%	\$0
6.5	S.W. 87 Ave. Ditch	\$0	\$0	\$0	\$0	85%	\$0
sub-total		\$15,606	\$31,212	\$46,818	\$62,424		\$62,424

Town Cost at Proposed Level of Service

\$62,424

ATTACHMENT "B"

**Town Of Cutler Bay
Canal Maintenance Proposed Cost Estimates FY 2007/08 - 2011/12**

Chemical Treatment (submerged, emergent, and bank acres treated)

Acres	Canal	Cycles per Year				% Share	TOTAL
		1	2	3	4		
1.75	Bel Aire W-1	\$709	\$1,418	\$2,126	\$2,835	100%	\$2,835
1.35	Bel Aire W-2	\$547	\$1,094	\$1,640	\$2,187	100%	\$2,187
2.15	Bel Aire W-3	\$871	\$1,742	\$2,612	\$3,483	100%	\$3,483
1.85	Bel Aire E-1	\$749	\$1,499	\$2,248	\$2,997	100%	\$2,997
1.95	Bel Aire E-2	\$790	\$1,580	\$2,369	\$3,159	100%	\$3,159
4.95	Cutler Ridge Canal	\$2,005	\$4,010	\$6,014	\$8,019	44%	\$3,528
1.5	S.W. 97 Ave. Ditch	\$608	\$1,215	\$1,823	\$2,430	66%	\$1,604
6.5	S.W. 87 Ave. Ditch	\$2,633	\$5,265	\$7,898	\$10,530	85%	\$8,951
sub-total		\$8,910	\$17,820	\$26,730	\$35,640		\$28,744

Includes partial canal bank treatment

Town Cost at Proposed Level of Service

\$28,744

Obstruction Removal (contingency)

Events	Canal	Cycles per Year				% Share	TOTAL
		1	2	3	4		
1	Bel Aire W-1	\$206	\$412	\$618	\$824	100%	\$206
1	Bel Aire W-2	\$206	\$412	\$618	\$824	100%	\$206
1	Bel Aire W-3	\$206	\$412	\$618	\$824	100%	\$206
1	Bel Aire E-1	\$206	\$412	\$618	\$824	100%	\$206
1	Bel Aire E-2	\$206	\$412	\$618	\$824	100%	\$206
1	Cutler Ridge Canal	\$206	\$412	\$618	\$824	44%	\$91
1	S.W. 97 Ave. Ditch	\$206	\$412	\$618	\$824	66%	\$136
1	S.W. 87 Ave. Ditch	\$206	\$412	\$618	\$824	85%	\$175
sub-total		\$1,648	\$3,296	\$4,944	\$6,592		\$1,432

Town Cost at Proposed Level of Service

\$1,432

Mowing - Flat

Acres	Canal	Cycles per Year				% Share	TOTAL
		1	2	3	4		
0	Bel Aire W-1	\$0	\$0	\$0	\$0	100%	\$0
0	Bel Aire W-2	\$0	\$0	\$0	\$0	100%	\$0
0	Bel Aire W-3	\$0	\$0	\$0	\$0	100%	\$0
0	Bel Aire E-1	\$0	\$0	\$0	\$0	100%	\$0
0	Bel Aire E-2	\$0	\$0	\$0	\$0	100%	\$0
1.6	Cutler Ridge Canal	\$413	\$826	\$1,238	\$1,651	44%	\$727
0	S.W. 97 Ave. Ditch	\$0	\$0	\$0	\$0	66%	\$0
0	S.W. 87 Ave. Ditch	\$0	\$0	\$0	\$0	85%	\$0
sub-total		\$413	\$826	\$1,238	\$1,651		\$727

Town Cost at Proposed Level of Service

\$727

ATTACHMENT "B"

**Town Of Cutler Bay
Canal Maintenance Proposed Cost Estimates FY 2007/08 - 2011/12**

Mowing - Slope

Acres	Canal	Cycles per Year				% Share	TOTAL
		1	2	3	4		
0	Bel Aire W-1	\$0	\$0	\$0	\$0	100%	\$0
0	Bel Aire W-2	\$0	\$0	\$0	\$0	100%	\$0
0	Bel Aire W-3	\$0	\$0	\$0	\$0	100%	\$0
0	Bel Aire E-1	\$0	\$0	\$0	\$0	100%	\$0
0	Bel Aire E-2	\$0	\$0	\$0	\$0	100%	\$0
0.55	Cutler Ridge Canal	\$244	\$488	\$733	\$977	44%	\$430
0.9	S.W. 97 Ave. Ditch	\$400	\$799	\$1,199	\$1,598	66%	\$1,055
0	S.W. 87 Ave. Ditch	\$0	\$0	\$0	\$0	85%	\$0
sub-total		\$644	\$1,288	\$1,931	\$2,575		\$1,485

Town Cost at Proposed Level of Service

\$1,485

TOTAL ANNUAL COST **\$120,234**

CUTLER BAY ANNUAL COST **\$107,386** Annual

CUTLER BAY 5-YEAR COST **\$536,929** 5-Year

NOTE: Does not include aesthetic cleaning such as debris or litter removal
 Cost Estimates provided by the MDC Public Works Department
 Costs are not to exceed the total annual amounts and are subject to change
 based on environmental conditions and COLA

TAB 8



Planning & Zoning Department

R. Don O'Donniley, AICP
Planning Director

MEMORANDUM

To: Steven J. Alexander, Town Manager

From: Don O'Donniley, AICP, Planning Director

Date: March 19, 2008

Re: Application No. 08-01-04-V
Francisco J. and Tania H. Alvarado
(Folio No. 36-6009-011-0720)

APPLICANT REQUEST:

The applicant, **Francisco J. and Tania H. Alvarado**, is requesting a variance of the rear setback to allow a screen enclosed porch that added an addition room to the house. The continued use of an addition was built by the previous owner without permits. The variance is to allow a rear setback of 12.7' where 25' is required.

LOCATION:

The property is located at 9105 SW 202 Terrace.

Legal: Lot 26, Block 5, of Old Cutler Grove, According to the Plat thereof as Recorded in Plat Book 97, Page 33, of the Public Records of Miami-Dade County, Florida.

Section 9, Township 56 Range 40, Miami-Dade County, Florida

Lot Size: Approximately 7,900 square feet

BACKGROUND:

This parcel is located at the end of a cul-de-sac and is zoned RU-1 (Single-Family Residential) and has a current land use designation of Low Density Residential. The surrounding uses are all single-family residential. As stated previously, the 25'9" by 12' addition was constructed without permits by the previous owners of the

residence. The current owners are before the Town seeking to legalize said addition.

Town staff has reviewed this application, which was submitted to the Town on January 22, 2008, and met with the applicant on numerous occasions.

Additionally, a zoning workshop was held for this project on February 13, 2008 where the public and Council reviewed and commented on this application.

A review of the proposal was completed by Town staff for conformance with the Town's Land Development Regulations. This application was found to be inconsistent with the Code with respect to rear setbacks for a single-family home.

Sec. 33-50. Table of setback lines in residential and estate districts.

The minimum setback distances and spacing requirements in residential and estate districts shall be as follows:

<i>District/Families</i>	<i>Front (Ft.)</i>	<i>Rear (Ft.)</i>	<i>Between Buildings (Ft.)</i>	<i>Interior Side (Ft.)</i>	<i>Side Street (Ft.)</i>
RU-1: One	25 for subdivisions platted on or before March 8, 2002; for subdivisions platted after March 8, 2002, 15 for 50% of the lineal footage of the width of the house and 25 for balance; except 20 for attached garages	25 for subdivisions platted on or before March 8, 2002; for subdivisions platted after March 8, 2002, 15 for 50% of the lineal footage of the width of the house and 25 for balance	--	10% lot width min.-- 5' max.--7 1/2'	15
Acc. bldg.	75	5	10	same as RU-1 res.	equal to front setback requirements for principal structure on key lot, plus 5'; 20' where there is no key lot.

The Town Code allows variances as provided in **Section 33-311**.

* * *

(4)(b) *Non-use variances from other than airport regulations.* Upon appeal or direct application in specific cases to hear and grant applications for non-use variances from the terms of the zoning and subdivision regulations, the Board (following a public hearing) **may grant a non-use variance upon a showing by the applicant that the non-use variance maintains the basic intent and purpose of the zoning, subdivision and other land use regulations, which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community and provided that the non-use variance will be otherwise compatible with the surrounding land uses and would not be detrimental to the community.** No showing of unnecessary hardship to the land is required. For the purpose of this subsection, the term "non-use variances" involves matters such as setback lines, frontage requirements, subdivision regulations, height limitations, lot size restrictions, yard requirements and other variances which have no relation to change of use of the property in question.

RECOMMENDATION:

Approval with conditions as listed below.

CONDITIONS:

1. Prior to this issuance of the after the fact permit for the addition, the Applicant shall provide documentation from the appropriate utility providers that there are no violations concerning the front and rear utility easements.
2. That prior to the issuance of the after the fact permit the shed be relocated to provide for the minimum side setback for a shed of 5' (Section 33-50, Town Code).

RESOLUTION NO. 08-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, GRANTING A VARIANCE FROM SECTION 33-50 OF THE TOWN CODE OF ORDINANCES RELATING TO THE REAR SETBACK, FOR PROPERTY LOCATED AT 9105 S.W. 202 TERRACE (36-6009-011-0720); AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Francisco J. and Tania H. Alvarado (the “Applicant”) has submitted an application, pursuant to Section 33-311(4)(b) of the Town of Cutler Bay (the “Town”) Code of Ordinances (the “Town Code”), to vary Section 33-50 of the Town Code relating to the rear setback, to permit a rear setback of 12.7 feet where 25 feet is permitted on property located at 9105 S.W. 202 Terrace; and

WHEREAS, on February 13, 2008, the Applicant presented the proposed variance during a public zoning workshop to receive input and feedback from the public and the Town Council; and

WHEREAS, staff recommended approval of the requested variance, in its report dated March 19, 2008, as conditioned herein; and

WHEREAS, public notice was provided in accordance with law; and

WHEREAS, the Town Council finds that this Resolution is in the best interest and welfare of the residents of 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. Approval of Variance. The Town Council hereby approves the request by the Applicant, subject to the conditions below, to vary the provisions of Section 33-50 of the Town Code to permit a rear setback of 12.7 feet where 25 feet is permitted for property located at 9105 S.W. 202 Terrace (Folio# 36-6009-011-0720).

Section 3. Conditions. The approvals granted by this Resolution are subject to the Applicant’s compliance with the following conditions, to which the Applicant stipulated at the public hearing:

1. Prior to this issuance of the after the fact permit for the addition, the Applicant shall provide documentation from the appropriate utility providers that there are no violations concerning the front and rear utility easements.
2. That prior to the issuance of the after the fact permit, the shed shall be relocated to provide for the minimum side setback for a shed of 5' (Section 33-50, Town Code).

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

PASSED and ADOPTED this _____ day of _____, 2008.

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 9

ORDINANCE NO. 08-_____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, REPEALING SECTIONS 8A-76 & 8A-76.1 OF THE CODE OF MIAMI-DADE COUNTY AS ADOPTED BY SECTION 8.3 OF THE CHARTER OF THE TOWN OF CUTLER BAY, ENTITLED “NOTICE OF PENALTIES FOR REMOVAL OF SHOPPING CARTS” & “SHOPPING CARTS” RESPECTIVELY; CREATING REGULATIONS RELATED TO SHOPPING CARTS, PROVIDING FOR DEFINITIONS, PROVIDING FOR POSTING OF NOTICE OF PENALTIES FOR REMOVAL OF SHOPPING CARTS, REQUIRING IDENTIFICATION OF SHOPPING CARTS, PROVIDING FOR A PROCEDURE FOR HANDLING IDENTIFIABLE SHOPPING CARTS FOUND ON PUBLIC PROPERTY, PROVIDING FOR A PROCEDURE FOR HANDLING UNIDENTIFIABLE SHOPPING CARTS FOUND ON PUBLIC PROPERTY, PROVIDING FOR REGULATIONS RELATED TO SHOPPING CARTS ON PRIVATE PROPERTY, PROVIDING FOR GENERAL PENALTIES FOR VIOLATIONS; AMENDING THE SCHEDULE OF VIOLATIONS AND CIVIL PENALTIES SECTION OF THE CODE TO INCLUDE PENALTIES FOR VIOLATION OF THESE SECTIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (“Town”) deems it to be in the best interest of the health, safety, and welfare of its citizens to provide for regulations of shopping carts to enhance the aesthetic appearance of the Town, prevent any potential traffic and/or pedestrian hazards; and

WHEREAS, local retail establishments need to be held more accountable for the retrieval and maintenance of their shopping carts.

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

Section 1. Recitals Adopted. That the recitals set forth above are true and correct and incorporated herein by this reference.

Section 2. Shopping Carts. Sections 8A-76 and 8A-76.1 of the Miami-Dade County Code of Ordinances, as made applicable to the Town of Cutler Bay, are hereby repealed and replaced with the following regulations:

Section 1. Definitions.

Shopping Carts shall be defined as found in section 506.502 of the Florida Statutes, as may be amended from time to time.

Section 2. Notice penalties for removal of shopping carts and required preventative measures.

(a) Every business and/or entity that utilizes shopping carts in its operation shall affix the following notice to all such carts, **the building, or the property**, and such notice shall be clearly legible in the English, Spanish, and Creole languages and shall state:

WARNING

Any person who removes a shopping cart from premises without the written consent of the owner of the shopping cart or the retailer, shall be presumed to be in possession of stolen property and is guilty of a misdemeanor of the first degree, punishable by a term of imprisonment of up to one (1) year as provided by Sections 506.509 and 506.513 of the Florida Statutes.

(b) Failure to abide by the provisions of subsection (a) above shall constitute a violation and result in a civil penalty as set forth in this code.

(c) Additionally, any business and/or entity providing shopping carts for the use of their patrons or employees shall:

(1) ~~Construct~~ **Install electric** barriers to prevent the removal of shopping carts from the business premise **and** ; ~~or~~ (2) ~~Attach~~ alarm mechanisms to shopping carts to prevent their removal; ~~or~~ (3) ~~Implement~~ a policy of not allowing the customer to exit the **premises store** with shopping carts; ~~and/or~~ (4) Provide an employee to carry or wheel the customers' merchandise to the customers' vehicle; and

(25) Implement a program of collection (three times per week) of their carts that are illegally removed. An affidavit from the affected business owner detailing the specific days of collection shall be submitted to the Town.

(d) Failure to abide by the provisions of subsection (c) above shall constitute a violation and result in a civil penalty in the amount of proscribed by this code.

Section 3. Identification of shopping carts required.

Any establishment that utilizes shopping carts shall place readily identifiable markings on the carts which include the address or location of the particular store.

Section 4. Procedure for handling identifiable shopping carts found on public property.

- (1) Employees and officers of the Town of Cutler Bay shall be deemed agents of the Town and any shopping carts found by them on public property during the course of their official duties shall be reported to the Town Code Enforcement Department.
- (2) The owner's failure to retrieve any shopping carts from the Town right-of-way shall cause the shopping carts to be removed by the Town. The Town Public Works Department shall remove the shopping cart(s) from the public right-of-way.
- (3) The Town Public Works Department shall collect the shopping carts and secure the shopping carts.
- (4) The Town shall notify the owner of the shopping cart(s), in writing, that the Town has secured the shopping carts and the fees, costs and fines associated with the collection and storage of the carts.
- (5) If the shopping carts are not picked up by the owner within seven days the carts shall be disposed of in accordance with state law.
- (6) Fees, costs and fines shall be assessed and paid by the owner prior to the return of carts. The owner shall consider the receipt of a special notice from the Town of such a violation as proper notice of such potential Fees, costs and fines. No fees, costs or fines shall be assessed which would violate Section 506.5131 of the Florida Statutes, as may be amended, or any other Law.

Section 5. Procedure for handling unidentifiable shopping carts found on public property.

All unidentifiable shopping carts found on public property shall be considered abandoned and shall be disposed of in accordance with state law.

Section 6. Shopping Carts on Private Property.

- (1) No shopping cart shall be placed on any property where it can be readily seen from the right of way unless the shopping cart is located on a **commercially nonresidential** zoned property and is owned by the business legally operating on the same property.
- (2) Upon a finding of a violation of this section the Town may impose a fine as providing for by this code of ordinances.
- (3) In addition to any other remedies the Special Master, may upon finding a violation, authorize the **Town City** to remove the shopping cart.
- (4) Upon removal the shopping cart shall be disposed of in accordance with the provisions set forth in Section 4 for shopping carts found on public property.
- (5) The fees and costs for removal may be imposed upon the owner of the property. In addition fees and costs may be imposed on the owner pursuant to and within the limitations set forth in Section 4 above.

Section 7. General Penalties for Violation.

Any person who violates any section of this code shall be subject to the issuance of a civil penalty in the amount provided for in this code.

Section 3. Schedule of violations and civil penalties amended. That the Town Code of the Town of Cutler Bay is hereby amended by amending Ordinance 07-09, Section 10 “Schedule of civil penalties”, to read as follows:¹

Sec. 10. Schedule of civil penalties.

TABLE INSET:

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
***	***	***
	<u>Failure to affix removal warning notice on a shopping cart, on the building, or on the premises.</u>	\$25.00 per cart per occurrence
	<u>Violation of the Shopping Cart Ordinance</u>	\$250.00 per occurrence
***	****	***

¹ / Proposed additions to text of Town Code are indicated by underline; proposed deletions from text of Town Code are indicated by ~~strike through~~. **Highlighted** text indicates changes between 1st and 2nd reading.

Section 4. Conflicts. All ordinances or Code provisions in conflict herewith are hereby repealed.

Section 5. 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 6. Inclusion in the Code. It is the intention of the Town Commission, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town ~~of Cutler Bay~~; that the sections of this Ordinance may be re-numbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

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

PASSED on first reading this 20th day of February, 2008.

PASSED and ADOPTED on second reading this ____ day of _____, 2008.

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 _____