

## 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

Monday, April 28, 2008, 7:00 PM South Dade Regional Library 10750 SW 211<sup>th</sup> Street, 2<sup>nd</sup> Floor Cutler Bay, Florida 33189

- 1. CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE, MOMENT OF SILENCE
- 2. PROCLAMATIONS, AWARDS, PRESENTATIONS
  - **A.** Presentation by Miami-Dade County Water & Sewer Department
- 3. APPROVAL OF MINUTES
  - **A.** Regular Council Meeting March 19, 2008

TAB 1

- 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.

**A.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ACCEPTING A GRANT AWARD

IN THE AMOUNT OF TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) TO REDUCE THE INCIDENCE OF AGGRESSIVE DRIVING IN THE TOWN; PROVIDING FOR UTILIZATION OF THE GRANT FUNDS TO PURCHASE FOUR RADAR DEVICES AND ONE ELECTRONIC MESSAGE BOARD; APPROVING THE GRANT AGREEMENT AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE GRANT AGREEMENT BETWEEN THE TOWN AND THE FLORIDA DEPARTMENT OF TRANSPORTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

В. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA CREATING COMMUNICATIONS ADVISORY COMMITTEE FOR THE PURPOSE OF PROVIDING RECOMMENDATIONS TO THE TOWN COUNCIL AS TO MEASURES THAT MAY BE IMPLEMENTED TO BETTER INFORM THE RESIDENTS OF THE TOWN OF ITEMS OF PUBLIC INTEREST; APPOINTING A COUNCIL LIAISON AND PROVIDING FOR THE SELECTION OF COMMITTEE MEMBERS; PROVIDING FOR AUTOMATIC DISSOLUTION; AND PROVIDING EFFECTIVE DATE. (MACDOUGALL)

**TAB 3** 

C. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING AMENDMENT #001 TO THE CONTRACT BETWEEN THE CHILDREN'S TRUST AND THE TOWN OF CUTLER BAY FOR THE PROVISION OF AN AFTER SCHOOL PROGRAM AT CUTLER RIDGE PARK; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SAME AND PROVIDING FOR AN EFFECTIVE DATE.

**TAB 4** 

D. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA DESIGNATING ONE (1) MEMBER OF THE TOWN COUNCIL TO BE THE TOWN'S REPRESENTATIVE TO THE ECONOMINC DEVELOPMENT COUNCIL AND THE COUNCIL LIAISON TO THE RETAIL LEASING INDUSTRY; PROVIDING FOR A TERM OF APPOINTMENT; AND PROVIDING FOR AN EFFECTIVE DATE. (MEERBOTT)

**TAB 5** 

**TAB 6** 

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF E. CUTLER BAY, FLORIDA, CONCERNING CERTAIN CHARTER PROPOSED **PURSUANT** AMENDMENTS TO THF COMPREHENSIVE REVIEW AND RECOMMENDATIONS OF THE REVISION COMMISSION, AS CHARTER **SUBSEQUENTLY** REVIEWED, REVISED AND APPROVED FOR SUBMITTAL BY THE TOWN COUNCIL, PROVIDING FOR THE SUBMISSION TO THE ELECTORS OF A PROPOSED AMENDMENT TO THE TOWN CHARTER IN ACCORDANCE WITH SECTION 6.1 AND 6.2 OF THE TOWN CHARTER AND SECTION 6.03 OF THE HOME RULE CHARTER OF MIAMI-DADE COUNTY: SUBMITTING PROPOSED CHARTER AMENDMENTS, INCLUDING **AMENDMENTS** PERTAINING TO: SECTION 2.4 "QUALIFICATIONS" CONCERNING **QUALIFYING FOR** ELECTED TOWN OFFICE AND MAKING PROVISIONS FOR CONIGENCIES WHICH MAY ARISE SHOULD A CANDIDATE DIE, WITHDRAW, OR BE REMOVED; A PROPOSED AMENDMENT CONCERNING **SECTION** "ELECTIONS"; PROVIDING FOR AN AMENDMENT OF SECTION 5.1 TO MOVE THE ELECTION DATE FROM MARCH TO NOVEMBER TO CORRESPOND WITH THE COUNTY-WIDE ELECTIONS AND ALLOWING FOR THE AUTOMATIC CHANGE OF THE ELECTION DATE PROSPECTIVELY IF THE COUNTY-WIDE ELECTION DATE CHANGES; Α PROPOSED AMENDMENT CONCERNING SECTION 9.2 "COUNTY SERVICES"; PROVIDING FOR AN AMENDMENT OF SECTION 9.2 TO PROVIDE THAT PRIVATE TRASH COLLECTION IN PLACE ON THE DATE OF INCORPORATION WILL CONTINUE UNTIL THE TOWN ADOPTS A SOLID WASTE FRANCHISE RESOLUTION; PROVIDING REQUISITE BALLOT LANGUAGE FOR SUBMISSION TO THE ELECTORATE; CALLING A SPECIAL ELECTION ON THE PROPOSED AMENDMENTS TO THE TOWN CHARTER TO BE HELD IN CONJUNCTION WITH THE GENERAL ELECTION ON TUESDAY. THE 4TH DAY OF NOVEMBER, 2008; PROVIDING NOTICE OF ELECTION; PROVIDING FOR APPROVAL BY A TWO-THIRDS VOTE OF THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY; PROVIDING FOR BALLOTING AND ELECTION PROCEDURES; PROVIDING FOR INCLUSION IN THE CHARTER; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE. (VERSION 1)

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CONCERNING CERTAIN CHARTER PROPOSED **AMENDMENTS PURSUANT** TO COMPREHENSIVE REVIEW AND RECOMMENDATIONS OF THE REVISION COMMISSION, CHARTER AS SUBSEQUENTLY REVIEWED, REVISED AND APPROVED FOR SUBMITTAL BY THE TOWN COUNCIL, PROVIDING FOR THE SUBMISSION TO THE ELECTORS OF A PROPOSED AMENDMENT TO THE TOWN CHARTER IN ACCORDANCE WITH SECTION 6.1 AND 6.2 OF THE TOWN CHARTER AND SECTION 6.03 OF THE HOME RULE CHARTER OF MIAMI-DADE COUNTY; SUBMITTING PROPOSED AMENDMENTS, INCLUDING CHARTER **AMENDMENTS** 

PERTAINING TO: SECTION 2.4 "QUALIFICATIONS" CONCERNING **QUALIFYING FOR** ELECTED TOWN OFFICE; A PROPOSED CHARTER AMENDMENT CONCERNING **SECTION** "ELECTIONS": PROVIDING FOR AN AMENDMENT OF SECTION 5.1 TO MOVE THE ELECTION DATE FROM MARCH TO NOVEMBER TO CORRESPOND WITH THE COUNTY-WIDE ELECTIONS AND ALLOWING FOR THE AUTOMATIC CHANGE OF THE ELECTION DATE PROSPECTIVELY IF THE COUNTY-WIDE ELECTION DATE **CHANGES:** Α PROPOSED CHARTER AMENDMENT CONCERNING SECTION 9.2 "COUNTY SERVICES"; PROVIDING FOR AN AMENDMENT OF SECTION 9.2 TO PROVIDE THAT PRIVATE TRASH COLLECTION IN PLACE ON THE DATE OF INCORPORATION WILL CONTINUE UNTIL THE TOWN ADOPTS A SOLID WASTE FRANCHISE RESOLUTION: PROVIDING REQUISITE BALLOT LANGUAGE FOR SUBMISSION TO THE ELECTORATE; CALLING A SPECIAL ELECTION ON THE PROPOSED AMENDMENTS TO THE TOWN CHARTER TO BE HELD IN CONJUNCTION WITH THE GENERAL ELECTION ON TUESDAY, THE 4TH DAY OF NOVEMBER, 2008; PROVIDING NOTICE OF ELECTION: PROVIDING FOR APPROVAL BY A TWO-THIRDS VOTE OF THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY; PROVIDING FOR BALLOTING AND ELECTION PROCEDURES; PROVIDING FOR INCLUSION IN THE CHARTER; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE. (VERSION 2)

F. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE RECOMMENDATIONS OF THE CHARTER REVISION COMMISSION; DIRECTING THE TOWN ATTORNEY TO PREPARE THE RECOMMENDATIONS FOR A TOWN WIDE ELECTION; AND PROVIDING FOR 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 33-49 OF THE TOWN CODE OF ORDINANCES RELATING TO LOT COVERAGE FOR PROPERTY LOCATED AT 8863 S.W. 206 LANE (36-6009-030-2200); AND PROVIDING FOR AN EFFECTIVE DATE.

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

A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING SECTION 33-18 OF TOWN CODE RELATING TO RELIGIOUS FACILITIES AND MISSIONS; PROVIDING FOR CONFLICT, PROVIDING FOR SEVERABILITY, PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

**TAB 9** 

B. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA REPEALING AND REPLACING CHAPTER 8AA, ARTICLE I, II AND III OF THE TOWN CODE OF ORDINANCES TO PROVIDE TERMS AND CONDITIONS FOR THE PLACEMENT AND MAINTENANCE OF COMMUNICATIONS FACILITIES OR SYSTEMS, ANTENNAS, EQUIPMENT FACILITIES, AND OTHER VERTICAL STRUCTURES IN THE TOWNS PUBLIC RIGHTS-OF-WAY FOR THE PROVISION OF COMMUNICATIONS, CABLE AND VIDEO SERVICES; PROVIDING FOR RESERVATION OF RIGHTS; PROVIDING FOR CONFLICTS; PROVIDING FOR SAVINGS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

**TAB 10** 

C. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA AMENDING THE ZONING WORKSHOP REQUIREMENTS AND PROCEDURES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

**TAB 11** 

D. AN ORDINANCE OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCE 07-24 WHICH ORDINANCE ADOPTED AN OPERATING AND CAPITAL OUTLAY BUDGET FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008 BY REVISING SAID BUDGET TO APPROPRIATE \$125,000 FROM CONTINGENCY RESERVES AND PROVIDE SUCH FUNDS BE ALLOCATED TO THE PUBLIC WORKS DEPARTMENT FOR THE PURCHASE OF ELECTRONIC SIGNS AND AUTHORIZING THE TOWN MANAGER TO MAKE EXPENDITURES CONSISTENT THEREWITH AND DO ALL THINGS NECESSARY TO CARRY OUT THE INTENT OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE. (BELL)

**TAB 12** 

E. AN ORDINANCE OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCE 07-24 WHICH ORDINANCE ADOPTED AN OPERATING AND CAPITAL OUTLAY BUDGET FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2007 THROUGH

SEPTEMBER 30, 2008 BY REVISING SAID BUDGET TO APPROPRIATE \$2,500 DESIGNATED AS CONTINGENCY RESERVES AND PROVIDE SUCH FUNDS BE ALLOCATED TO THE COMMUNITIES IN SCHOOLS PROGRAM AT WHISPERING PINES ELEMENTARY SCHOOL AND AUTHORIZING THE TOWN MANAGER TO MAKE EXPENDITURES CONSISTENT THEREWITH AND DO ALL THINGS NECESSARY TO CARRY OUT THE INTENT OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE. (SOCHIN)

F. AN ORDINANCE OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING AND CLARIFYING ORDINANCE 07-32 RELATING TO HOMEOWNER ASSOCIATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE. (BELL)

### 8. ORDINANCES FOR FIRST READING (PUBLIC HEARING REQUIRED)

A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR A MORATORIUM ON THE ISSUANCE OF SITE PLANS THAT INCLUDE NON RESIDENTIAL OR MIXED USE BUILDINGS THAT EXCEED 50,000 GROSS SQUARE FEET; EXEMPTING SITE PLANS THAT COMMIT TO RECEIVING LEED CERTIFICATION; PROVIDING FOR WAIVERS; PROVIDING FOR SEVERABILITY; PROVIDING PROCEDURES FOR VESTED RIGHTS AND JUDICIAL REVIEW FOR THE SPECIFIC MATTERS ADDRESSED HEREIN; PROVIDING FOR A TERM; PROVIDING FOR A REPEALER; PROVIDING FOR ORDINANCES IN CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

**TAB 14** 

### 9. ORDINANCES FOR SECOND READING (PUBLIC HEARING REQUIRED)

A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA CREATING THE PLANNED UNIT DEVELOPMENT DISTRICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

**TAB 15** 

B. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING THE INITIAL COMPREHENSIVE PLAN (GROWTH MANAGEMENT PLAN) FOR THE TOWN IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 163, FLORIDA STATUTES; PROVIDING FOR THE ADOPTION OF THE FUTURE LAND USE MAP; AND PROVIDING FOR 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, May 21, 2008, 7:00 P.M.
South Dade Regional Library, 2<sup>nd</sup> Floor
10750 SW 211<sup>th</sup> 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 PROCEECING 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.

### TOWN OF CUTLER BAY TOWN COUNCIL MEETING MINUTES

Wednesday, March 19, 2008, 7:00 PM South Dade Regional Library 10750 SW 211<sup>th</sup> Street, 2<sup>nd</sup> Floor Cutler Bay, Florida 33189

**1. CALL TO ORDER/ROLL CALL OF MEMBERS:** The meeting was called to order by the mayor at 7:05PM. Present were the following:

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

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

### 2. PROCLAMATIONS, AWARDS, PRESENTATIONS:

- **A.** Swearing-in Ceremony: The town clerk swore in Edward MacDougall as Vice Mayor and Ernest Sochin as Councilmember for Seat 2.
- **B.** School Board Member Evelyn Greer gave a brief presentation on upcoming ten new schools in South Dade will be opening. She reported that a magnet high school is planned for Centennial Middle School.

### 3. APPROVAL OF MINUTES:

**A.** Councilmember Bell made a motion approving the minutes of the meeting of February 20, 2008. The motion was seconded by Vice Mayor MacDougall and adopted by a unanimous voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

### 4. REPORTS

#### A. TOWN MANAGER'S REPORT

The Town Manager extended his congratulations to the recently re-elected Vice Mayor and Councilmember Sochin. The Town Manager stated that Town Staff will be attending CPR/First Aid training in April. He also reported that shortly the tree planting project will commence with phase one. He reported that the Charter Review Committee has completed its work and has recommended amendments to the charter for the Council's review. The Manager also pulled Item A from the Consent Agenda and added Item G to the Consent Agenda. The Manager referred to the Vice Mayor MacDougall who served as Council Liaison to the Charter Review Committee. The Vice Mayor further discussed the purpose and the progress of the committee, and then referred to the Charter

Review consultant Mr. Merrett Stierheim. Mr. Stierheim provided a brief report on the conclusion of the Charter Review Commission and provided hand-outs to Council which included a copy of the original charter and his memo on the recommended changes made by the committee to Council. The manager also mentioned that there is a new addition to the planning and zoning department, Kathryn Lyon was recently hired as planner. The manager also discussed that he is recommending that Capt. Miller permanently replace Major Pichardo, which he has drafted a recommendation letter for her promotion to Major.

#### **B.** TOWN ATTORNEY'S REPORT

The town attorney indicated that there is an addition to the Consent Agenda, Item G, for Council's consideration.

### C. BOARD AND COMMITTEE REPORTS, COUNCIL ANNOUNCEMENTS

Councilmember Bell expressed her gratitude to the Parks Committee for all of their hard work on many accomplishments. She also thanked staff for all their efforts on the Springtime Bicycle event. Member Bell reported that lighting will be placed along Southwest 216<sup>th</sup> Street and thanked Rafael Casals, Public Works Department, for his hard work on this project.

Vice Mayor MacDougall thanked Alan Ricke, Parks Director, for his continuing efforts to improve the Towns parks, facilities, and programs. The Vice Mayor requested an update on the sidewalk in front of Cutler Ridge Elementary School that was once maintained by Miami-Dade County Parks Department. He also mentioned that during his campaigning that there is a lack of communication between the Town and residents. He suggested that there are simple technologies such as email updates and phone trees that can be utilized by the Town.

Mayor Vrooman reminded the public to continue voting for Cutler Ridge Park on the Staples Dream Park Challenge. The mayor also discussed the placement of Cutler Bay designation signs along the Florida Turnpike. Mayor Vrooman encouraged the public to participate in the first ever "Be Green" event April 21st at South Dade Regional Library.

Councilmember Sochin asked the Council on their opinion in reference to the process in the hiring of a public relations firm. He felt that there should have been presentations made to Council by potential firms and have Council weigh in on the final decision on selecting a firm. He would like to add a "FAQ's" webpage on the website and also add a rumor control webpage. Member Sochin also requested that there should be a feedback night, where residents can express their concerns to Council on certain issues.

Councilmember Meerbott reported on his field trip to the landfill on Southwest 242<sup>nd</sup> Street. He learned that the Solid Waste Department makes great efforts to conserve resources and save energy. He mentioned they do a great job protecting the surrounding area. Member Meerbott mentioned that the Police Department has done an exceptional job on response time.

#### 5. CONSENT AGENDA:

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.

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.

Councilmember Bell pulled Items B and E. Councilmember Sochin pulled Item C.

Councilmember Meerbott made a motion to approve the Consent Agenda as amended with pulled Items B, C, and E. The motion was seconded by Councilmember Sochin and Resolutions 08-14 and 08-16 was adopted by unanimous voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The town clerk read the following resolution by title:

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)

Councilmember Meerbott made a motion to approve the resolution. The motion was seconded by Vice Mayor MacDougall and Resolution 08-12 was approved by unanimous voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The town clerk read the following resolution by title:

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.

Councilmember Sochin made a motion to approve the resolution. The motion was seconded by Councilmember Bell and Resolution 08-13 was approved by unanimous voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The town clerk read the following resolution by title:

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)

Councilmember Sochin made a motion to approve the resolution. The motion was seconded by Councilmember Bell and Resolution 08-15 was approved by unanimous voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The town clerk read the following resolution by title:

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE G. CUTLER BAY, FLORIDA, APPROVING PARTICIPATION AGREEMENTS BETWEEN MIAMI-DADE COUNTY AND THE TOWN OF CUTLER BAY RELATING TO ROAD IMPROVEMENT PROJECTS WITHIN THE TOWN; PROVIDING FOR CARIBBEAN BOULEVARD IOINT APPROVAL OF THE PARTICIPATION AGREEMENT IN SUBSTANTIALLY THE FORM ATTACHED HERETO AS EXHIBIT "A;" PROVIDING FOR THE APPROVAL OF THE OLD CUTLER ROAD JOINT PARTICIPATION AGREEMENT IN SUBSTANTIALLY THE FORM ATTACHED HERETO AS EXHIBIT "B;" PROVIDING FOR THE AUTHORIZATION OF THE TOWN MANAGER TO ENTER INTO BOTH AGREEMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilmember Meerbott made a motion to approve the resolution. The motion was seconded by Councilmember Sochin and Resolution 08-17 was approved by unanimous voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

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

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 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.

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 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.
- 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).

Edward Ashley, 18100 Southwest 97 Avenue, representing the applicant, addressed the Council.

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

Councilmember Bell made a motion to approve the resolution. The motion was seconded by Councilmember Sochin and Resolution 08-18 was adopted by unanimous roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

- 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):

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

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF A. 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 PROVIDING SHOPPING CARTS, FOR A **PROCEDURE** 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 SHOPPING CARTS ON PRIVATE PROPERTY, PROVIDING FOR **GENERAL PENALTIES** FOR VIOLATIONS; **AMENDING** SCHEDULE OF VIOLATIONS AND CIVIL PENALTIES SECTION OF THE CODE TO INCLUDE PENALTIES FOR VIOLATION OF THESE SECTIONS; **REPEALING** ALL **ORDINANCES** IN CONFLICT; **PROVIDING** SEVERABILITY CLAUSE: **PROVIDING FOR** INCLUSION IN THE CODE; PROVIDING AN EFFECTIVE DATE.

The town attorney gave a brief report on the ordinance.

The mayor opened the public hearing. Steve Zarzecki, 9640 Martinique Drive and Louise Lockwood, 9071 Ridgeland Drive addressed the Council.

Councilmember Bell offered the following amendment:

• In Section 2 (C) (1) Within 90 days of the effective date hereof or of the opening of the business or the initial use of shopping carts by the business, which ever is later, Install electric

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

Councilmember Bell offered the following amendment:

• In Section 4 (4) A fee of \$25 per cart plus any additional costs of retrieval incurred by the town, shall be imposed to the owner of the cart.

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

Councilmember Sochin made a motion to approve the ordinance on second reading with the offered foregoing amendment. The motion was seconded by Councilmember Meerbott and Ordinance 08-05 was adopted by unanimous roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

### 10. PUBLIC COMMENTS

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

The following individuals spoke: Marybeth Pearson, 18851 Southwest 89 Road, Bill Meiklejohn, 9311 Sterling Road, Louise Lockwood, 9071 Ridgeland Drive, Joy Cooper, 9665 Nassau Drive, Steve Zarzecki, 9640 Martinique Drive, John Jessup 9621 Caribbean Boulevard, and Tom Condon, 19641 Holiday Road.

### 11. MAYOR AND COUNCIL COMMENTS

Mayor Vrooman stated that he will be starting an email circulator so that members of the public

Councilmember Bell spoke in reference to purchasing electric signs to notify the public when there are town meetings and events in order to increase communication with residents.

Councilmember Sochin congratulated the town clerk for her great work on the past election.

Vice Mayor MacDougall lack of low voter turn-out that everyone is satisfied with their local government.

### 12. OTHER BUSINESS:

The mayor introduced Mr. Dan Weinbach of The Weinbach Group, the new Public Relations group for the Town. Mr. Weinbach gave a presentation on upcoming public relations projects. It was the general consensus of the Council to discuss options for communications in a workshop at a later date.

### 13. ADJOURNMENT

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 <u>28<sup>th</sup></u> day of <u>April</u> , 2008.				

Paul S. Vrooman, Mayor

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HERBY 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 PROCEECING 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.

### RESOLUTION NO. 08-\_\_\_\_

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL **TOWN** THE OF CUTLER BAY, FLORIDA, ACCEPTING A GRANT AWARD IN THE AMOUNT OF TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) TO REDUCE THE INCIDENCE OF AGGRESSIVE DRIVING IN THE TOWN; PROVIDING FOR UTILIZATION OF THE GRANT FUNDS TO PURCHASE FOUR RADAR DEVICES AND ONE ELECTRONIC MESSAGE BOARD; **GRANT** APPROVING THE **AGREEMENT** AUTHORIZING THE TOWN MANAGER TO EXECUTE THE GRANT AGREEMENT BETWEEN THE TOWN AND THE FLORIDA DEPARTMENT OF TRANSPORTATION: AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the Town applied for a grant from the Florida Department of Transportation ("FDOT") to help reduce the incidence of aggressive driving in the Town; and

**WHEREAS,** FDOT has awarded the Town a grant (the "Grant") in the amount of twenty-five thousand dollars (\$25,000.00); and

**WHEREAS,** the FDOT Grant funds will be utilized to purchase four radar detection devices and an electronic message board (the "Equipment") which will be used to deter aggressive driving; and

**WHEREAS,** the Florida Department of Transportation has made the Grant award contingent on matching funds in the amount of twenty-six thousand dollars (\$26,000.00) from the Town; and

**WHEREAS**, the Town may meet the matching fund requirement of the grant by utilizing the salaries of the already-hired officers designated to operate the Equipment and does not require an additional cash match; and

WHEREAS, the Town Council desires to accept the Grant award.

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

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

**Section 2. Grant Accepted.** That the Grant award of twenty-five thousand dollars (\$25,000.00) from the Florida Department of Transportation to help reduce the incidence of aggressive driving in the Town, is hereby accepted, and the matching expenditure is hereby authorized in the manner described above.

The Town Manager is authorized to execute the Grant Agreement on behalf of the Town and to take all actions necessary to implement the Grant. **Effective Date.** That this resolution shall take effect immediately upon Section 4. adoption. PASSED and ADOPTED this \_\_\_\_\_\_ day of \_\_\_\_\_\_, 2008. PAUL S. VROOMAN, Mayor Attest: ERIKA GONZALEZ-SANTAMARIA, CMC Town Clerk APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF THE TOWN OF CUTLER BAY ONLY: 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

**Approval and Authorization.** That the Grant agreement in

substantially the form attached as Exhibit "A" (the "Grant Agreement") is hereby approved .

Section 3.

Councilmember Ernest N. Sochin

### RESOLUTION NO. 08-\_\_\_\_

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA CREATING THE COMMUNICATIONS ADVISORY COMMITTEE FOR THE PURPOSE OF PROVIDING RECOMMENDATIONS TO THE TOWN COUNCIL AS TO MEASURES THAT MAY IMPLEMENTED TO BETTER INFORM THE BE RESIDENTS OF THE TOWN OF ITEMS OF PUBLIC INTEREST: APPOINTING A COUNCIL LIAISON AND PROVIDING FOR THE SELECTION OF COMMITTEE **MEMBERS**: **PROVIDING FOR AUTOMATIC** DISSOLUTION: AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS,** the Town of Cutler Bay (the "Town") desires to have a committee comprised of citizens with relevant knowledge and experience to advise the Town Council as to measures that may be implemented by the Town to better inform the residents of the Town of items of public interest for the benefit of citizens in the Town; and

**WHEREAS,** this Committee would be known as the Communications Advisory Committee (the "Committee"); and

WHEREAS, Council member \_\_\_\_\_ has volunteered to serve as the Town Council liaison to the Committee due to his particular interest in the ways that the Town might better inform the residents of the Town of items of public interest for the benefit 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.** That the above Recitals are true and correct and are incorporated herein by this reference.

Section 2. Communications Advisory Committee Created. That the Town Council hereby creates a citizen committee, to be known as the Communications Advisory Committee to study, advise and make recommendations to the Town Council regarding measures that may be implemented by the Town to better inform the residents of the Town of items of public interest. Council member \_\_\_\_\_\_ is hereby appointed Council liaison to the Committee and shall report to the Council as to the Committee's activities on a regular basis. The Council liaison shall not be considered a member of the Committee.

**Section 3.** Composition of Committee. That the Committee shall consist initially of five (5) citizens of the Town who shall be chosen by the Council with each Council member selecting one Committee member from a list of persons who volunteer by advising the Town Manager of their interest in serving on said Committee. The members shall serve until the

Committee's work is deemed complete and the Committee automatically dissolves pursuant to section 4 below.

<u>Section 4.</u> <u>Dissolution of the Committee.</u> That the Committee shall be dissolved at such time as the Council accepts its recommendations and/or advises the Committee that its services are no longer required.

Section 5. Effective Date. That the upon its adoption.	is Resolution shall become	ome effective immediately
PASSED and ADOPTED this _	day of	, 2008.
	PAUL S. VROOM	MAN, Mayor
Attest:		
ERIKA GONZALEZ-SANTAMARIA, CMC Town Clerk		
APPROVED AS TO FORM AND LEGALITY AND BENEFIT OF THE TOWN OF CUTLE		
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		



Steven J. Alexander Town Manager

## MEMORANDUM

**To:** Honorable Mayor, Vice Mayor and Town Council

From: Steven J. Alexander, Town Manager

**Date:** April 28, 2008

Re: THE CHILDREN'S TRUST GRANT AGREEMENT AMENDMENT #001

### **REQUEST**

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING AMENDMENT #001 TO THE CONTRACT BETWEEN THE CHILDREN'S TRUST AND THE TOWN OF CUTLER BAY FOR THE PROVISION OF AN AFTER SCHOOL PROGRAM AT CUTLER RIDGE PARK; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SAME AND PROVIDING FOR AN EFFECTIVE DATE.

### **BACKGROUND AND ANALYSIS**

On October 17, 2007, resolution #07-49 was adopted by the Town Council, approving a contract between the Town of Cutler Bay and The Children's Trust (TCT) for the After School Program at Cutler Ridge Park. During the course of the year, Town staff and staff from TCT have been working together to refine and improve upon the program being offered at Cutler Ridge Park. The Parks and Recreation Department has asked to amend the scope of services to allow for the purchase of computers to be used as a "computer lab" by the children in the After School Program. The Children's Trust has agreed to the change of scope, and the resultant budget amendment. Funds will merely be re-allocated within the original award from TCT, and the total amount of the award will remain at \$111,258.00.

A total of eight computers with applicable word processing, internet and security software will be purchased using TCT grant funding. In addition, funding will be available for a contractual computer instructor to provide computer skills instruction for the children in the After School Program.

#### RECOMMENDATION

We recommend that the attached resolution be adopted authorizing the Town Manager to execute amendment #001 to the agreement between the Town and TCT.

### RESOLUTION NO. 08-\_\_\_\_

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING AMENDMENT #001 TO THE CONTRACT BETWEEN THE CHILDREN'S TRUST AND THE TOWN OF CUTLER BAY FOR THE PROVISION OF AN AFTER SCHOOL PROGRAM AT CUTLER RIDGE PARK; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SAME AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS,** on October 17, 2007 Resolution # 07-49 was adopted approving an agreement between the Children's Trust (the "Trust") the Town of Cutler Bay (the "Town") for an After School Program at Cutler Ridge Park; and

**WHEREAS**, during the course of the year, Town staff and Trust staff have worked together to improve upon the program; and

**WHEREAS,** the Town has requested a change of scope for the provision of computers for a "computer lab" for use by the After School Program at Cutler Ridge Park, and the Trust has agreed to the change in scope; and

**WHEREAS**, the attached amendment #001 incorporates the requested change in scope into the agreement approved by Resolution # 07-49.

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. Amendment Approved.** Amendment # 001 to the contract between The Children's Trust and the Town of Cutler Bay for out-of-school programs attached hereto as Exhibit "A" is hereby approved.
- **Section 3. Town Manager Authorized.** The Town Manager is authorized to execute the amendment on behalf of the Town.

Section 4.	<b>Effective Date</b> .	This Resolution shall be effect		ective immediately upon adoption	
PASSED and	d ADOPTED this	day of _	, 2	2008.	

PAUL S. VROOMAN, Mayor

Attest:	
ERIKA GONZALEZ-SANTAMARIA, CN Town Clerk	ЛC
APPROVED AS TO FORM AND LEGAL AND BENEFIT OF THE TOWN OF CUT	
WEISS, SEROTA, HELFMAN, PASTORI COLE & BONISKE, P.L. Town Attorney	ĪZA,
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	

#### **AMENDMENT # 001**

THIS AMENDMENT, <u>Amendment #001</u>, is entered into between **The Children's Trust**, hereinafter referred to as the "The Trust" and **Town of Cutler Bay**, hereinafter referred to as the "Provider", and amends the Out-of-School contract #710-401 originally executed on November 2, 2007.

The purpose of this Amendment is to amend the computer activities mentioned in both the scope and budget. The following modification(s) are hereby incorporated into the current contract:

- 1. Attachment A: Scope of Services is revised and replaced with Attachment A-1: Scope of Services.
- 2. Attachment B: Budget is revised and replaced with Attachment B-1: Budget.

All provisions in the contract and any attachments thereto in conflict with this Amendment shall be and are hereby changed to conform with this Amendment.

All provisions not in conflict with this Amendment are still in effect and are to be performed at the level specified in the contract.

This Amendment and all its attachments are hereby made a part of the contract.

IN WITNESS THEREOF, the parties hereto have caused the above referenced Amendments to be executed by their officials thereunto duly authorized.

TOWN OF CUTLER BAY	THE CHILDREN'S TRUST		
SIGNED BY:	SIGNED BY:		
NAME:	NAME:		
TITLE:	TITLE:		
DATE:	DATE:		
This Amendment is not valid	until it has been signed by both parties.		
Approved as to form and	legal sufficiency by County Attorney		
	DATE:		

DDOMED.

## Attachment A OUT-OF-SCHOOL SCOPE OF SERVICES

The Unit Table (Appendix 1) is hereby incorporated as part of this contract.

### 1. Program Summary (Limit to 100 words):

The Town of Cutler Bay will provide an out-of-school program. Programming will include a wide range of optional activities that builds character and provides alternative activities to self-defeating behavior in addition to reading, physical fitness, and social skills. The program will fulfill the participants' curiosity and love of learning to focus on their strengths, develop their personal and interpersonal social skills and provide recreational and physical activities to develop physical skills. Participants will also have computer access for homework and learning.

## 2. Target Population (Include the ages and characteristics, such as disabilities):

The out-of-school program will serve 50 participants daily who live in zip code 33157. General population participants are boys and girls ages 6-13 from low to moderate income families and/or underserved communities. Participants will be referred from DCF with allegations of abuse or neglect in the home, from the Cutler Bay Police Department generated from calls of family violence or youth encountered who are at risk of criminal activity and from neighboring schools for children in need of academic assistance for reading improvement.

### 3. Service Delivery:

# of Slots General Population and Disability		and		Site or Group Comment/ Variance	Frequency, Intensity
Innovative Summer Camp	Summer	School Year	Activities/Service Name & Description	(Specify Site, age, and disability differences)	and Duration
		GP 50	Educational Activities:  Students in the After School Program will be required to complete a minimum of one hour of educational activities each day prior to participating in scheduled recreational activities. The educational activities will include tutoring with an emphasis towards completion of school-assigned homework assignments, concentrating on recognized deficiencies in subject areas and reading literacy. Monthly field trips will be incorporated into this element of the program where participants can learn through practical experience. The curriculum utilized will be Child Plus. Participants will also be able to use computers in completing their homework assignments and projects. This activity will be provided under the direction of the Tutor.		5 times a week for 1 hour x 40 weeks

# of Slots General Population and Disability		and	Astivities/Complex Name & Description	Site or Group Comment/ Variance	Frequency, Intensity
Innovative Summer Camp	Summer	School Year	Activities/Service Name & Description	(Specify Site, age, and disability differences)	and Duration
		GP 50	Fitness Activities: Fitness activities including stretching, low- impact aerobics, martial arts and use of free- weights will encourage the students in the After School Program to develop healthy habits and improve over-all fitness. Information on healthy eating habits will also be provided. Monthly field trips will be incorporated into this element of the program where participants can learn through practical experience. The curriculum utilized will be provided by the American Council on Exercise, Operation FitKids. This activity will be provided under the direction of the Fitness Instructor. All activities will be age appropriate, ages 6 –13.		2 times a week for 2 hours x 40 weeks
		GP 50	FETCH Computer/Web Development: Through the FETCH (Family Enrichment Through Computing and Hope) Computer/Web Development Training students will receive instruction in age-appropriate computer skills related to graphic and web design. They will also receive guidance and instruction in creating and maintaining a web page. As a result of this activity, the participants will create a web page for the park and afterschool program. Participants will also use the computers for homework assignments and projects. This activity will be under the direction of the Computer Instructor.		1 time a week for 1.5 hours x 16 weeks
		GP 50	Social Skills:  Participants will be introduced to literature and activities that address family violence, abuse and neglect at home, this literature will be provided by guest speakers such as local police, government officials, athletes, etc. In addition, the curriculum to be utilized is the Future Aspirations, from the Center for Urban Affairs. Monthly field trips will be incorporated into this element of the program where participants can learn through practical experience. This will be coordinated by the Tutor assisted by Park Service Aides.		3 times per week for 1 hour x 40 weeks
		GP 50	<b>Recreational:</b> Upon completion of all activities (i.e. tutoring, social skills, entrepreneurship and fitness activities), enrollees will participate in organized sporting events such as soccer, basketball, swimming, etc.		5 days a week x 1 hour per day x 40 weeks

Provider will ensure that all children and youth have a lunch and snack, at a minimum, during summer and full-day program days and a snack during after-school and partial day program days.

#### 4. Performance Measure:

Provider shall measure outcome achievement and report on a basis as outlined in Attachment C of this contract.

School-Year Outcomes				
Outcomes	Outcome Indicators	Measurement Tool	Data Collection & Comments (Specify who is doing what. Also, specify site, age, and disability differences)	
Improve academic skills	85% of the GP will improve oral reading skills	1 Minute Oral Reading Fluency Test	Program Director will administer and enter data in Data Tracker	
Improve physical health and fitness	85% of the GP participants will improve fitness performance	Shuttle Run	Recreation Programmer will conduct and is responsible for data	
Improve social, emotional and behavioral functioning	85% of the GP participants will improve social skills	Future Aspirations- Peer Leader Survey.	Tutor will be responsible administering and collecting data	

During the school-year program, all children will be pre-tested within one week of enrollment in the program. Post-tests from summer may serve as pre-tests for returning children. Mid-tests for reading will be conducted in December before the winter break. Post-tests will be conducted in May before the end of the program. Data will be reported as outlined in Attachment C. It is expected that all participants will complete a pre-test; all participants in attendance in December will complete a mid-point reading test; and all participants in attendance in May will complete a post-test.

### 5. Staff Qualifications:

Staffing Plan must EXACTLY match the staff, volunteers and Sub-contractors listed in the Budget

# & Status(FT/PT)		Position (Specify Staff, Volunteer or	Qualifications  Required Education	Duties
Summer	School		& Experience	
	FT 1	Parks and Recreational Director (In kind)	BS in Recreation and 12 years experience	Oversees and administrates all programs related to the park
	PT 1	Recreational Programmer (In kind)	BS in Sports Administration with 5 years experience	Develops and executes recreational programs
	PT 4	Park Service Aide (In kind)	High School Diploma or GED equivalent.	Responsible for the safety and supervision of participants

# Status(		Position	Qualifications Required Education	Duties	
Summer	School Year	(Specify Staff, Volunteer or Subcontractor)  Required Education & Experience			
	FT 1	Outreach Worker	Bachelors' Degree	Recruits youth, assists with daily tutorial activities, physical fitness and reading comprehensive testing. Recruits additional resources/partners from within the community. Maintain forms and reports on program activities to the Director. Participates in all aspects of the program. Attends monthly meetings and TCT trainings.	
	PT 1	Fitness Instructor (sub-contractor)	2 years of college or 2 years experience providing youth with recreation instruction. Current CPR certification.	Coordinates, conducts and evaluates youth fitness program including working directly with program participants in developing fitness plans.	
	PT 1	Computer Instructor FETCH (sub-contractor)	2 years College or Technical Experience in Computer Graphics and Web Design. Experience working with youth and/or after school programs.	Implements, organizes and coordinates the FETCH computer /web development training	
	PT 1	Tutor	Bachelor Degree in early education, with a minimum of five years experience working with youth.	To implement Project Rise and to evaluate the youths progress. In addition, the tutor will work with students on their homework assignments and will meet with school staff if needed. The tutor will promote improved reading skills by offering a wide range of literature that interest youth.	
	PT 1	Data Entry Clerk (In-kind)	High school diploma or equivalent with a minimum of three years experience.	To collect and input client data, to assist with the scheduling of youth oriented (park) events, to ensure all enrollment forms and permission slips are signed and that each child has a file reflecting all documents.	

### 6. Ratios:

Summer for General Population:

Summer for Children with Disabilities:

Summer – Innovative:

School Year for General Population:

School Year for Children with Disabilities:

Children per 1 Direct Service Staff

Period:	June 1, 2007 throu	th May 31, 2008	12	months	Areas in Blue to be completed by the Agency
			C.R. Park After School		
				sted Funding	Justification
SALARIES:	e Employees		%	Amount	
<u>Position</u>	- ample year	Annual Salary (12 mths)			To recruit youth, additional resources/partners and to work on
					community-based projects for youth. \$14.00 per hour x 40
Outreach Wor	ker	22,400.00	100%	22,400.00	hours/week x 40 weeks at 100%. Began in November.
.: n <del></del> .	Full-Time Total		1.00	22,400.00	
List Part - i in	ne/Seasonal Emplo	yees		0.00	
	Part-Time Total		0.00	0.00	
		TOTAL FTE:/SALARIES	1.00	\$22,400.00	
FRINGE BEN	EFITS				
Fica/Mica		Rate: 7.65%			Standard FICA for all Town Employees
W-Comp's		Rate: 11.51%			Town Issued rate for Workman's Comp
Unemploy Health Ins.	Cost per Staff	Rate: \$700.00		0.00	Town issued rate for Health Insurance (\$700.00 X 7 months)
Life Ins.	Cost per Staff	\$700.00		0.00	
Retirement	•	Rate: 9.85%			Town issued retirement rate.
Other	Specify & provide		) 1	1	
		Rate: Rate:		0.00 0.00	
	TOTAL FRINGE BE			\$11,398.24	
OPERATING	EXPENSES:			Cost	
Travel (other	r than participants	)			
Travel (parti Meals (partic Space (rent,	•	ice, etc.)		10,000.00	Educational and fun field trips for students that are enrolled in the After School Program. Entrance fees \$8.00 pp x 50 children x 1 trip per month. 9 months = \$3,600.00; lease of two each 15 passenger vans @ \$700.00 per month x 10 months = \$14,000.00; Bus Rental for field trips @ \$240.00 per trip x 1 trip per month x 9 months x 2 Buses = \$4,300.00; Insurance for leased vehicles @ \$200.00 per month x 10 months x 2 vans = \$4,000.00.  Snacks provided to students in the Aftern School Program and Teacher's Workday Program - one snack per child per day @ \$1.00/child x 50 children x 200 days=\$10,000.00.  Paper, pens, pencils, general office supplies. Reading literature, nutritional fact sheets, program manuals, posters, etc. Printing flyers, announcements, etc. \$56.00 per participant x 50 participants per program year.  Additional supplies related to computer lab, such as paper, printer
Supplies				4,757.00	toner, cds, etc. \$1957
Non-Capital	Equipment (less th	an \$1,000) (List each	)		
Fitness Equip	ment			,	Aerobics mats & steps, weights, barbells, benches.  Equipment necessary to complete set-up of computer lab.  Includes table/cart, security devices, printer, cables, etc. (no item
1	Set-up Equipment			2,642.47	to exceed \$1000)
Capital Equip	oment (greater tha	n \$1,000) (List each)			Laptop computers including software and configuration for newly
l antono				10 000 00	established computer lab. 8 laptops x \$1700 = \$13,600 (laptops
Laptops	Carriage (List and	<b>L</b> 1		13,600.00	are required due to space usage)
Fitness Instru	Services (List eac	n,		4,000.00	To implement safe and fun recreational fitness programming for After School Program participants. \$25.00 per hour x 4 hours/week x 40 weeks.
Computer Ins	tructor				Responsible for the implementation, organization and coordination of the FETCH computer program \$250.00 week x 16 weeks.
Other (List e	each)			•	
Background s	-			420.00	\$60.00 per new staff x 7 staff
	ATING EXPENSES:			\$67,339.47	
	ve/Indirect Costs				
(Can not exce	ea 10%)	TOTAL 2012	9%	10,120.29	
I		TOTAL BUDGET		\$111,258.00	

### **RESOLUTION NO. 08-**

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL THE **TOWN OF** CUTLER BAY, FLORIDA DESIGNATING ONE (1) MEMBER OF THE TOWN COUNCIL TO BE THE TOWN'S REPRESENTATIVE TO THE ECONOMINC DEVELOPMENT COUNCIL AND THE COUNCIL LIAISON TO THE RETAIL LEASING **INDUSTRY**; **PROVIDING** FOR **TERM** A APPOINTMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS,** the Town of Cutler Bay (the "Town") desires to appoint a member (the "Appointee") of the Town Council with relevant knowledge and experience to serve as the representative of the Town on the Economic Development Council and as the council liaison to the retail leasing industry; and

**WHEREAS,** the Appointee would advocate on behalf of interests of the Town's residents and businesses as a part of the Economic Development Council, and work diligently to address the needs of the retail community as the liaison to the retail leasing industry; and

**WHEREAS**, Council member \_\_\_\_\_\_ has volunteered to serve as the Appointee to these entities due to their particular interest in promoting the economic growth and vitality of the Town for the benefit of its businesses and residents.

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

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

- Section 2. Town Council Member Appointed. That the Town Council acknowledges the importance of designating a member of the Town Council to advocate on behalf of interests of the Town's residents and businesses as a part of the Economic Development Council, and work diligently to address the needs of the retail community as the liaison to the retail leasing industry. Council member \_\_\_\_\_\_ (the "Appointee") is hereby appointed to serve as the representative of the Town on the Economic Development Council and as the council liaison to the retail leasing industry.
- **Section 3. Term of Appointment.** That the Appointee shall serve for a term of one (1) year from the date of this Resolution.
- **Section 4. Effective Date.** That this Resolution shall become effective immediately upon its adoption.

DACCED A	ND ADOPTED this	day of	. 2008.
しついいじし ひ	ND ADOLLED IIIS	uay 01	. 2000

	PAUL S. VROOMAN, Mayor
Attest:	
ERIKA GONZALEZ-SANTAMARIA, C Town Clerk	MC
APPROVED AS TO FORM AND LEGA AND BENEFIT OF THE TOWN OF CU	
WEISS, SEROTA, HELFMAN, PASTOR COLE & BONISKE, P.L. Town Attorney	RIZA,
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	



### Office of the Town Attorney

Mitchell A. Bierman Town Attorney

> Chad S. Friedman Town Attorney

### MEMORANDUM

TO: Steve Alexander, Town Manager

FROM: Mitch Bierman, Esq.

DATE: March 22, 2008

RE: Overview of Two Alternative Amendments for Consideration

The attached resolutions are for the three recommended charter revisions that require county approval. As you know, the charter review commission recommended moving the elections to November. We have adjusted the qualifying dates to comply with state and county requirements.

The commission also recommended a provision to allow for a reopening of the qualifying period in case of vacancy which leaves a single candidate. Because the supervisor of elections needs to prepare a final ballot at least 60 days before the election, the reopening of the qualifying period would necessarily require a special election. Because of the additional expense this would involve, we have provided two alternative versions. The second version does not include the provision to reopen the qualifying period but is otherwise the same.

A RESOLUTION OF THE TOWN COUNCIL OF THE **TOWN** OF CUTLER BAY, FLORIDA, CONCERNING **CERTAIN CHARTER AMENDMENTS PROPOSED** PURSUANT TO THE COMPREHENSIVE REVIEW AND RECOMMENDATIONS OF THE CHARTER REVISION AS **SUBSEQUENTLY** COMMISSION, REVIEWED, REVISED AND APPROVED FOR SUBMITTAL BY THE TOWN COUNCIL, PROVIDING FOR THE SUBMISSION TO THE ELECTORS OF A PROPOSED AMENDMENT TO TOWN CHARTER IN ACCORDANCE WITH SECTION 6.1 AND 6.2 OF THE TOWN CHARTER AND SECTION 6.03 OF THE HOME RULE CHARTER OF MIAMI-DADE COUNTY: SUBMITTING PROPOSED CHARTER AMENDMENTS, INCLUDING AMENDMENTS PERTAINING TO: SECTION 2.4 "OUALIFICATIONS" CONCERNING TIME PERIODS FOR OUALIFYING FOR ELECTED TOWN OFFICE AND MAKING PROVISIONS FOR CONTIGENCIES WHICH MAY ARISE SHOULD A CANDIDATE DIE, WITHDRAW, OR BE REMOVED; A PROPOSED CHARTER AMENDMENT CONCERNING SECTION 5.1 "ELECTIONS"; PROVIDING FOR AN SECTION 5.1 TO MOVE THE AMENDMENT OF ELECTION DATE FROM MARCH TO NOVEMBER TO CORRESPOND WITH THE COUNTY-WIDE ELECTIONS AND ALLOWING FOR THE AUTOMATIC CHANGE OF THE ELECTION DATE PROSPECTIVELY IF THE **COUNTY-WIDE ELECTION** DATE **CHANGES:** PROPOSED CHARTER AMENDMENT CONCERNING SECTION 9.2 "COUNTY SERVICES": PROVIDING FOR AN AMENDMENT OF SECTION 9.2 TO PROVIDE THAT PRIVATE TRASH COLLECTION IN PLACE ON THE DATE OF INCORPORATION WILL CONTINUE UNTIL THE TOWN ADOPTS A SOLID WASTE FRANCHISE **RESOLUTION: PROVIDING** REOUISITE LANGUAGE FOR SUBMISSION TO THE ELECTORATE: CALLING A SPECIAL ELECTION ON THE PROPOSED AMENDMENTS TO THE TOWN CHARTER TO BE HELD IN CONJUNCTION WITH THE GENERAL ELECTION ON TUESDAY, THE 4TH DAY OF NOVEMBER, 2008; PROVIDING NOTICE OF ELECTION: PROVIDING FOR APPROVAL BY A TWO-THIRDS VOTE OF THE BOARD **COMMISSIONERS OF MIAMI-DADE** OF COUNTY **COUNTY: PROVIDING** FOR BALLOTING **AND** PROCEDURES: **PROVIDING FOR ELECTION** 

# INCLUSION IN THE CHARTER; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS,** when the Town of Cutler Bay (the "Town") was incorporated in 2005, the Town adopted certain Charter provisions with the expectation that they would be revisited shortly after incorporation by the Town of Cutler Bay Charter Revision Commission (the "Charter Revision Commission"); and

WHEREAS, pursuant to the comprehensive review and recommendations of the Charter Revision Commission and subsequent Town Council review, the Town Council has determined that certain amendments (the "Charter Amendments") are needed to the Town Charter in order to create a new and up to date Town Charter document and to provide for certain additional amendments as provided herein; and

**WHEREAS**, pursuant to Sections 6.1 and 6.2 of the Town Charter and Section 6.03 of the Home Rule Charter of Miami-Dade, as applicable, the Town Council is required to submit the Charter Amendments to the electors of the Town for approval or rejection; and

**WHEREAS**, pursuant to the Town Charter., these amendments require approval by a two-thirds vote of the Board of County Commissioners of Miami-Dade County prior to being submitted to the electors of the Town of Cutler Bay for approval.

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

**Section 1. Recitals Adopted.** That each of the recitals stated above is hereby adopted and confirmed.

Section 2. Charter Amendments. That pursuant to Section 6.1 of the Town Charter and Section 6.03 of the Home Rule Charter of Miami-Dade County, the Town Charter of the

Town of Cutler Bay, Florida, is hereby amended as described below in Part A, B, and C to read as follows:<sup>1</sup>

**Part A.** That Section 2.4 "Qualifications" of the Town Charter is amended to read as follows:

### Section 2.4 Qualifications

Candidates for Mayor, Vice-Mayor or Council member shall qualify for election by the filing of a written notice of candidacy with the Town Clerk no earlier than noon on the first workday in January and no later than noon on the 14th day following the first weekday in January of the calendar year in which the election is to be held or if said 14th day is a holiday then by noon of the last workday prior to the said 14<sup>th</sup> day ("Qualifying Date")75 days prior to the election date scheduled by the Miami-Dade County Supervisor of Elections for the first Tuesday following the First Monday in November (the "Election Date"), and no later than 60 days prior to the Election Date (the "Qualifying Date"), and paying to the Town Clerk a qualifying fee of \$100.00, in addition to any fees required by Florida Statutes. In the event the election date is changed to a date other than the first Tuesday following the first Monday in November pursuant to section 5.1C of this Charter, then the qualifying period shall also be adjusted and shall commence no more than 75 days before the election date and end 14 days thereafter. Provided however, that the qualifying period shall always begin and end on a weekday that is not a legal holiday. A person may not be a candidate for more than one office in the same election. Only electors of the Town, as defined by Section 5.1(a), who have resided continuously in the Town for at least two years preceding their Qualifying Date shall be eligible to hold the Office of Mayor, Vice-Mayor or District Council member. In addition, a person may not be a candidate for a Residential Council member Seat unless that person has resided in the Residential Area s/he seeks to represent continuously for a period of one year preceding his/her Qualifying Date. If at the conclusion of the qualifying period no elector has filed or qualified for a Seat, then the qualifying period for that Seat shall be reopened for a period of five business days and any qualified elector who resides in the relevant Residential Area and has resided continuously in the Town for at least two years may file a written notice of candidacy for the Seat in accordance with the provisions of this Section.

A vacancy in a candidacy for the office of Mayor, Vice Mayor or District Council member shall occur upon the death, withdrawal or removal of a candidate. If any qualified candidate dies, withdraws or is removed from the ballot following the end of the qualifying period, and in the event such action leaves fewer than two (2) candidates for that office, then the qualifying period for that particular office shall commence at noon on the day following the day that the vacancy in candidacy occurred, and additional qualification papers shall be available for that particular office in the office of the Town Clerk until noon, fourteen (14) days subsequent to the death,

Proposed additions to existing Town Charter text are indicated by <u>underline</u>; proposed deletions from existing Town Charter text are indicated by <u>strikethrough</u>.

withdrawal or removal from the ballot of the original candidate. A candidate who was a qualifying candidate at the beginning of the supplemental qualified period shall not be required to re-qualify during such period. The Town Council shall hold a special meeting within seven (7) days of such additional qualifying period for the purpose of announcing a vacancy in the candidacy, announcing the additional qualifying period, and taking any action that may be necessary to reschedule the election for that particular office.

Should the additional qualifying period be necessitated, the Town Council shall schedule a special election for that particular office, which election shall be held at least sixty (60) days, but no more than seventy-five (75) days subsequent to the last day of the additional qualifying period. This procedure shall apply only in the event of the death, withdrawal or removal from the ballot of any candidate who qualified during the original qualifying period for such office and any subsequent deaths, withdrawals or removal from the ballot of a candidate's name, which provides for fewer than two (2) candidates for an office, shall result in the remaining candidate being duly elected pursuant to Section 5.1(h).

**Part B.** That Section 5.1 "Elections" of the Town Charter is amended to read as follows:

\*\*\*

Election Dates. A general election shall be held on the second Tuesday in March of evennumbered years. A runoff election, if necessary, shall be held on the second Tuesday in April of even-numbered years.in even numbered years on the first Tuesday following the first Monday in November, provided however that it is the intent of this Charter that the Town election always be scheduled to coincide with a Countywide election. Accordingly, if the date of the Countywide general election changes for any reason, either permanently or temporarily, the date of the Town election shall automatically be changed to the same date as the County-wide election and all dates in this Charter that are dependent on the date of the Town election, including but not limited to the lengths of the terms of office for the Mayor, Vice Mayor and Council Members in section 2.3 and the qualifying dates for candidates in section 2.4, shall also be automatically amended and adjusted to coincide with the change of election date. In the case of the terms of office in section 2.3, such change may result in the shortening or lengthening of the terms of office of the elected officials. This paragraph complies with the conditions of incorporation approval detailed in Section 20-27(A) of the Miami-Dade County Code, which may be amended from time to time. Pursuant to Article V of the Miami-Dade County Home Rule Charter, any modifications to this paragraph will require all approvals normally required by the municipal charter, and approval by an affirmative vote of 2/3rds of the members of the Board of County Commissioners then in office, prior to a vote of qualified municipal electors.

<u>Part C.</u> That Section 9.2 "County Services" of the Town Charter is amended to read

as follows:

Section 9.2 County Services.

The Town shall remain a part of and receive services at least equal to the service level as of the date of approval of this Charter by the electors of the Town, in perpetuity, from the:

- (1) Miami-Dade Fire Rescue District,
- (2) Miami-Dade Library System, and
- (3) Miami-Dade Solid Waste Collection Service Area.

Private trash collection in place on the date of incorporation within the residential and commercial areas of the Town will continue until the Town adopts a solid waste franchise Resolution. The County's Department of Solid Waste Management will provide services to all new residential customers and continue serving existing customers.

Except as otherwise provided in this Article the County shall not have the right or ability to impair or infringe upon the functions and powers assumed by the town upon incorporation.

Section 3. Election Called. That a special election is hereby called, to be held on Tuesday, the 4<sup>th</sup> day of November, 2008, to present to the qualified electors of the Town of Cutler Bay, the ballot questions provided in Section 4 of this Resolution.

### Section 4. Form of Ballot.

A. That the form of ballot for the Charter Amendments provided for in Section 2 of this Resolution shall be substantially, as follows:

### 1. Candidate Qualifying and Replacing Candidates

The Town Charter does not provide for qualifying candidates for a November election rather than January, nor allow qualifying to change when Town elections are changed, nor give provisions to extend qualifying if a candidate dies, withdraws, or is removed. It is proposed that the Charter be amended to tie qualifying to the proposed new election in November and future election dates, and create guidelines for candidate replacement.

Shall	the above-described Charter Amendment be adopted?
[]	Yes
ſ 1	No

#### 2. Moving the Town Elections to Coincide with County-Wide Elections

3.

B.

Resolution

The Town Charter currently provides for Town elections to be held in March rather than November, separate from county-wide elections. It is proposed that the Charter be amended to move the Town elections from March to November to coincide with county-wide elections, and that

	Town elections be tied to any future date changes to the county-wide elections.
	Shall the above-described Charter Amendment be adopted?
	[ ] Yes
	[ ] No
3.	Enable Town to Adopt a Non-Residential Solid Waste Franchise Ordinance
	The Town Charter does not currently give the Town Council the authority to adopt a solid waste franchise ordinance which would affect non-residential solid waste services provided in the Town prior to incorporation. It is proposed that the Charter be amended to allow the Town Council to adopt an ordinance that would regulate private trash collection within the Town in place prior to incorporation.
	Shall the above-described Charter Amendment be adopted?
	[ ] Yes
	[ ] No
B.	That the Town Council may revise the ballot form which is set forth above by
tion .	
<u>Sectio</u>	on 5. Balloting.
A.	That balloting shall be conducted on Tuesday, November 4, 2008, between the
	hours of 7:00A.M. and 7:00 P.M. at the regular polling places provided for
	Town elections. Absentee balloting shall be available as authorized by law.

Early voting pursuant to Sec. 101.657, F.S. shall be provided. All qualified

Town electors who are timely registered in accordance with law shall be entitled to vote.

- B. That the Town Clerk is authorized to obtain any necessary election administration services from the Miami-Dade County Supervisor of Elections. The County registration books shall remain open at the Office of the County Supervisor of Elections until October 6, 2008, at which date the registration books shall close in accordance with the provisions of the general election laws. The Town Clerk and the County Supervisor of Elections are hereby authorized to take all appropriate action necessary to carry into effect and accomplish the electoral provisions of this Resolution. This special election shall be canvassed pursuant to Town Charter Section 5.4.
- C. That the Town Clerk is hereby authorized to take any action which is necessary or expedient to implement this section or to comply with any applicable law.

Section 6. Notice of Election. That notice of said election shall be published in accordance with Section 100.342, Fla. Stat., in a newspaper of general circulation within the Town at least 30 days prior to said election, the first publication to be in the fifth week prior to the election (to-wit: during the week commencing Sunday, September 28, 2008), and the second publication to be in the third week prior to the election (to-wit: during the week commencing Sunday, October 12, 2008), and shall be in substantially the following form:

# "NOTICE OF SPECIAL ELECTION PUBLIC NOTICE IS HEREBY GIVEN THAT PURSUANT TO

RESOLUTION NO. \_\_\_\_\_ ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA (THE "TOWN") A SPECIAL ELECTION HAS BEEN CALLED AND ORDERED TO BE HELD WITHIN THE TOWN ON TUESDAY, THE 4TH DAY OF NOVEMBER, 2008, BETWEEN THE HOURS OF 7:00 A.M. AND 7:00 P.M., AT WHICH TIME THE FOLLOWING CHARTER AMENDMENT PROPOSALS SHALL BE SUBMITTED TO THE QUALIFIED ELECTORS OF THE CITY FOR APPROVAL OR REJECTION.

### 1. Candidate Qualifying and Replacing Candidates

The Town Charter does not provide for qualifying candidates for a November election rather than January, nor allow qualifying to change when Town elections are changed, nor give provisions to extend qualifying if a candidate dies, withdraws, or is removed. It is proposed that the Charter be amended to tie qualifying to the proposed new election in November and future election dates, and create guidelines for candidate replacement.

replac	ement.
Shall t	the above-described Charter Amendment be adopted?
[]	Yes
[]	No
2.	Moving the Town Elections to Coincide with County-Wide Elections

The Town Charter currently provides for Town elections to be held in March rather than November, separate from county-wide elections. It is proposed that the Charter be amended to move the Town elections from March to November to coincide with county-wide elections, and that Town elections be tied to any future date changes to the county-wide elections.

Shall the above-described Charter Amendment be adopted?

[	]	Yes
Γ	1	No

## 3. Enable Town to Adopt a Non-Residential Solid Waste Franchise Ordinance

The Town Charter does not currently give the Town Council the authority to adopt a solid waste franchise ordinance which would affect non-residential solid waste services provided in the Town prior to incorporation. It is proposed that the Charter be amended to allow the Town Council to adopt an ordinance that would regulate private trash collection within the Town in place prior to incorporation.

Shall the above-described Charter Amendment be adopted?

[ ] Yes
[ ] No

The full text of the proposed Town Charter Amendment is available at the office of the Town Clerk located at 10720 Caribbean Blvd., Suite 105, Cutler Bay, FL 33189.

Town Clerk

Section 7. Miami-Dade County Commission Approval. That the Resolution must be approved by a two-thirds vote of the Board of County Commissioners of Miami-Dade County pursuant to the Town Charter. Accordingly, this Resolution shall authorize the Town Manager to request such approval and shall be conditioned on the Board of County Commissioners of Miami-Dade County granting such approval.

Section 8. Copies. That copies of this Resolution proposing the Charter Amendments are on file at the offices of the Town Clerk located at Town of Cutler Bay 10720 Caribbean Blvd., Suite 105, Cutler Bay, FL 33189, and are available for public inspection during regular business hours.

Section 9. Effectiveness. That the Charter Amendments provided for in Section 2 above shall become effective if the majority of the qualified electors voting on the Charter Amendments vote for its adoption, and they shall be considered adopted and effective upon certification of the election results. Following adoption of the Charter Amendments, the Town Clerk shall file the adopted Charter Amendment with the Clerk of the Circuit Court of Miami-Dade County, Florida.

<u>Section 10.</u> <u>Inclusion In The Charter.</u> Subject to the requirements of Section 8 above, it is the intention of the Town Council and it is hereby provided that the Charter Amendment shall become and be made a part of the Charter of the Town of Cutler Bay; that the Sections of this Resolution may be renumbered or relettered to accomplish such intention.

Section 11. Severability. That the provisions of this Resolution are declared to be severable, and if any section, sentence, clause or phrase of this Resolution 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 Resolution but they shall remain in effect, it being the legislative intent that this Resolution shall stand notwithstanding the invalidity of any part.

<u>Section 12. Conflicts</u>. That in the event that the provisions of this Resolution conflict with any other Town Resolution, the provisions of this Resolution shall prevail to the extent of any such conflict.

	Section 13.	<b>Effective Date.</b>	That this	Resolution	shall	take effect	immediately	upor
adoptio	on.							
	PASSED and	ADOPTED this _		day of _		, 2008.		

PAUL S. VROOMAN, Mayor

Attest:	
ERIKA GONZALEZ-SANTAMARIA, CI Town Clerk	MC
APPROVED AS TO FORM AND LEGAL AND BENEFIT OF THE TOWN OF CUT	
WEISS, SEROTA, HELFMAN, PASTOR COLE & BONISKE, P.L. Town Attorney	IIZA,
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	

A RESOLUTION OF THE TOWN COUNCIL OF THE **TOWN** OF CUTLER BAY, FLORIDA, CONCERNING **CERTAIN CHARTER AMENDMENTS PROPOSED** PURSUANT TO THE COMPREHENSIVE REVIEW AND RECOMMENDATIONS OF THE CHARTER REVISION **SUBSEQUENTLY** COMMISSION, AS REVIEWED, REVISED AND APPROVED FOR SUBMITTAL BY THE TOWN COUNCIL, PROVIDING FOR THE SUBMISSION TO THE ELECTORS OF A PROPOSED AMENDMENT TO TOWN CHARTER IN ACCORDANCE WITH SECTION 6.1 AND 6.2 OF THE TOWN CHARTER AND SECTION 6.03 OF THE HOME RULE CHARTER OF MIAMI-DADE COUNTY: SUBMITTING PROPOSED CHARTER AMENDMENTS, INCLUDING AMENDMENTS PERTAINING TO: SECTION 2.4 "OUALIFICATIONS" CONCERNING TIME PERIODS FOR OUALIFYING FOR ELECTED TOWN OFFICE; A PROPOSED CHARTER **AMENDMENT CONCERNING SECTION** "ELECTIONS": PROVIDING FOR AN AMENDMENT OF SECTION 5.1 TO MOVE THE ELECTION DATE FROM MARCH TO NOVEMBER TO CORRESPOND WITH THE COUNTY-WIDE ELECTIONS AND ALLOWING FOR THE AUTOMATIC CHANGE OF THE ELECTION DATE PROSPECTIVELY IF THE COUNTY-WIDE ELECTION **CHANGES: PROPOSED** DATE Α AMENDMENT CONCERNING SECTION 9.2 "COUNTY SERVICES"; PROVIDING FOR AN AMENDMENT OF SECTION 9.2 TO PROVIDE THAT PRIVATE TRASH COLLECTION IN ON THE PLACE DATE INCORPORATION WILL CONTINUE UNTIL THE TOWN ADOPTS A SOLID WASTE FRANCHISE RESOLUTION; PROVIDING REOUISITE BALLOT LANGUAGE FOR SUBMISSION TO THE ELECTORATE; CALLING A **ELECTION** ON THE AMENDMENTS TO THE TOWN CHARTER TO BE HELD IN CONJUNCTION WITH THE GENERAL ELECTION ON TUESDAY, THE 4TH DAY OF NOVEMBER, 2008; PROVIDING NOTICE OF ELECTION: PROVIDING FOR APPROVAL BY A TWO-THIRDS VOTE OF THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE **COUNTY: PROVIDING FOR BALLOTING AND ELECTION PROCEDURES: PROVIDING FOR** INCLUSION IN THE CHARTER; PROVIDING FOR

### SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS,** when the Town of Cutler Bay (the "Town") was incorporated in 2005, the Town adopted certain Charter provisions with the expectation that they would be revisited shortly after incorporation by the Town of Cutler Bay Charter Revision Commission (the "Charter Revision Commission"); and

WHEREAS, pursuant to the comprehensive review and recommendations of the Charter Revision Commission and subsequent Town Council review, the Town Council has determined that certain amendments (the "Charter Amendments") are needed to the Town Charter in order to create a new and up to date Town Charter document and to provide for certain additional amendments as provided herein; and

**WHEREAS**, pursuant to Sections 6.1 and 6.2 of the Town Charter and Section 6.03 of the Home Rule Charter of Miami-Dade, as applicable, the Town Council is required to submit the Charter Amendments to the electors of the Town for approval or rejection; and

**WHEREAS**, pursuant to the Town Charter., these amendments require approval by a two-thirds vote of the Board of County Commissioners of Miami-Dade County prior to being submitted to the electors of the Town of Cutler Bay for approval.

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

**Section 1. Recitals Adopted.** That each of the recitals stated above is hereby adopted and confirmed.

Section 2. Charter Amendments. That pursuant to Section 6.1 of the Town Charter and Section 6.03 of the Home Rule Charter of Miami-Dade County, the Town Charter of the

Town of Cutler Bay, Florida, is hereby amended as described below in Part A, B, and C to read as follows:<sup>1</sup>

**Part A.** That Section 2.4 "Qualifications" of the Town Charter is amended to read as follows:

### Section 2.4 Qualifications

Candidates for Mayor, Vice-Mayor or Council member shall qualify for election by the filing of a written notice of candidacy with the Town Clerk no earlier than noon on the first workday in January and no later than noon on the 14th day following the first weekday in January of the calendar year in which the election is to be held or if said 14th day is a holiday then by noon of the last workday prior to the said 14<sup>th</sup> day ("Qualifying Date")75 days prior to the election date scheduled by the Miami-Dade County Supervisor of Elections for the first Tuesday following the First Monday in November (the "Election Date"), and no later than 60 days prior to the Election Date (the "Qualifying Date"), and paying to the Town Clerk a qualifying fee of \$100.00, in addition to any fees required by Florida Statutes. In the event the election date is changed to a date other than the first Tuesday following the first Monday in November pursuant to section 5.1C of this Charter, then the qualifying period shall also be adjusted and shall commence no more than 75 days before the election date and end 14 days thereafter. Provided however, that the qualifying period shall always begin and end on a weekday that is not a legal holiday. A person may not be a candidate for more than one office in the same election. Only electors of the Town, as defined by Section 5.1(a), who have resided continuously in the Town for at least two years preceding their Qualifying Date shall be eligible to hold the Office of Mayor, Vice-Mayor or District Council member. In addition, a person may not be a candidate for a Residential Council member Seat unless that person has resided in the Residential Area s/he seeks to represent continuously for a period of one year preceding his/her Qualifying Date. If at the conclusion of the qualifying period no elector has filed or qualified for a Seat, then the qualifying period for that Seat shall be reopened for a period of five business days and any qualified elector who resides in the relevant Residential Area and has resided continuously in the Town for at least two years may file a written notice of candidacy for the Seat in accordance with the provisions of this Section.

**Part B.** That Section 5.1 "Elections" of the Town Charter is amended to read as follows:

\*\*\*

Proposed additions to existing Town Charter text are indicated by <u>underline</u>; proposed deletions from existing Town Charter text are indicated by <u>strikethrough</u>.

Election Dates. A general election shall be held on the second Tuesday in March of evennumbered years. A runoff election, if necessary, shall be held on the second Tuesday in April of even numbered years.in even numbered years on the first Tuesday following the first Monday in November, provided however that it is the intent of this Charter that the Town election always be scheduled to coincide with a Countywide election. Accordingly, if the date of the Countywide general election changes for any reason, either permanently or temporarily, the date of the Town election shall automatically be changed to the same date as the County-wide election and all dates in this Charter that are dependent on the date of the Town election, including but not limited to the lengths of the terms of office for the Mayor, Vice Mayor and Council Members in section 2.3 and the qualifying dates for candidates in section 2.4, shall also be automatically amended and adjusted to coincide with the change of election date. In the case of the terms of office in section 2.3, such change may result in the shortening or lengthening of the terms of office of the elected officials. This paragraph complies with the conditions of incorporation approval detailed in Section 20-27(A) of the Miami-Dade County Code, which may be amended from time to time. Pursuant to Article V of the Miami-Dade County Home Rule Charter, any modifications to this paragraph will require all approvals normally required by the municipal charter, and approval by an affirmative vote of 2/3rds of the members of the Board of County Commissioners then in office, prior to a vote of qualified municipal electors.

<u>Part C.</u> That Section 9.2 "County Services" of the Town Charter is amended to read

as follows:

Section 9.2 County Services.

The Town shall remain a part of and receive services at least equal to the service level as of the date of approval of this Charter by the electors of the Town, in perpetuity, from the:

- (1) Miami-Dade Fire Rescue District,
- (2) Miami-Dade Library System, and
- (3) Miami-Dade Solid Waste Collection Service Area.

Private trash collection in place on the date of incorporation within the residential and commercial areas of the Town will continue until the Town adopts a solid waste franchise Resolution. The County's Department of Solid Waste Management will provide services to all new residential customers and continue serving existing customers.

Except as otherwise provided in this Article the County shall not have the right or ability to impair or infringe upon the functions and powers assumed by the town upon incorporation.

Section 3. Election Called. That a special election is hereby called, to be held on Tuesday, the 4<sup>th</sup> day of November, 2008, to present to the qualified electors of the Town of Cutler Bay, the ballot questions provided in Section 4 of this Resolution.

### Section 4. Form of Ballot.

2.

A. That the form of ballot for the Charter Amendments provided for in Section 2 of this Resolution shall be substantially, as follows:

### 1. Candidate Qualifying and Replacing Candidates

The Town Charter does not provide for qualifying candidates for a November election rather than January, nor allow qualifying to change when Town elections are changed. It is proposed that the Charter be amended to tie qualifying to the proposed new election in November and future election dates.

Shall the above-described Charter Amendment be adopted?

[]	Yes
[]	No
Movi	ng the Town Elections to Coincide with County-Wide Elections
March propos March	Fown Charter currently provides for Town elections to be held in rather than November, separate from county-wide elections. It is seed that the Charter be amended to move the Town elections from to November to coincide with county-wide elections, and that elections be tied to any future date changes to the county-wide ons.
Shall	the above-described Charter Amendment be adopted?
[]	Yes
[]	No

The Town Charter does not currently give the Town Council the authority to adopt a solid waste franchise ordinance which would affect non-residential solid waste services provided in the Town prior to incorporation. It is proposed that the Charter be amended to allow the Town Council to adopt an ordinance that would regulate private trash collection within the Town in place prior to incorporation.

Shall the above-described Charter Amendment be adopted?

[] Yes

[ ] No

B. That the Town Council may revise the ballot form which is set forth above by Resolution .

### **Section 5. Balloting.**

- A. That balloting shall be conducted on Tuesday, November 4, 2008, between the hours of 7:00A.M. and 7:00 P.M. at the regular polling places provided for Town elections. Absentee balloting shall be available as authorized by law. Early voting pursuant to Sec. 101.657, F.S. shall be provided. All qualified Town electors who are timely registered in accordance with law shall be entitled to vote.
- B. That the Town Clerk is authorized to obtain any necessary election administration services from the Miami-Dade County Supervisor of Elections. The County registration books shall remain open at the Office of the County Supervisor of Elections until October 6, 2008, at which date the registration books shall close in accordance with the provisions of the general election laws. The Town Clerk and the County Supervisor of Elections are hereby authorized to take all appropriate action necessary to carry into effect and

accomplish the electoral provisions of this Resolution. This special election shall be canvassed pursuant to Town Charter Section 5.4.

C. That the Town Clerk is hereby authorized to take any action which is necessary or expedient to implement this section or to comply with any applicable law.

Section 6. Notice of Election. That notice of said election shall be published in accordance with Section 100.342, Fla. Stat., in a newspaper of general circulation within the Town at least 30 days prior to said election, the first publication to be in the fifth week prior to the election (to-wit: during the week commencing Sunday, September 28, 2008), and the second publication to be in the third week prior to the election (to-wit: during the week commencing Sunday, October 12, 2008), and shall be in substantially the following form:

### "NOTICE OF SPECIAL ELECTION

PUBLIC NOTICE IS HEREBY GIVEN THAT PURSUANT TO RESOLUTION NO. \_\_\_\_ ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA (THE "TOWN") A SPECIAL ELECTION HAS BEEN CALLED AND ORDERED TO BE HELD WITHIN THE TOWN ON TUESDAY, THE 4TH DAY OF NOVEMBER, 2008, BETWEEN THE HOURS OF 7:00 A.M. AND 7:00 P.M., AT WHICH TIME THE FOLLOWING CHARTER AMENDMENT PROPOSALS SHALL BE SUBMITTED TO THE QUALIFIED ELECTORS OF THE CITY FOR APPROVAL OR REJECTION.

### 1. Candidate Qualifying and Replacing Candidates

The Town Charter does not provide for qualifying candidates for a November election rather than January, nor allow qualifying to change when Town elections are changed. It is proposed that the Charter be amended to tie qualifying to the proposed new election in November and future election dates.

Snail	the above-described Charter Amendment be adopted?
[]	Yes
[]	No
2.	Moving the Town Elections to Coincide with County-Wide Elections
March propos March	Fown Charter currently provides for Town elections to be held in a rather than November, separate from county-wide elections. It is seed that the Charter be amended to move the Town elections from a to November to coincide with county-wide elections, and that elections be tied to any future date changes to the county-wide ons.
Shall t	the above-described Charter Amendment be adopted?
[]	Yes
[]	No
3.	Enable Town to Adopt a Non-Residential Solid Waste Franchise Ordinance
to add resider incorp Town	own Charter does not currently give the Town Council the authority opt a solid waste franchise ordinance which would affect non-ntial solid waste services provided in the Town prior to oration. It is proposed that the Charter be amended to allow the Council to adopt an ordinance that would regulate private trash tion within the Town in place prior to incorporation.
Shall t	the above-described Charter Amendment be adopted?
[]	Yes
[]	No

The full text of the proposed Town Charter Amendment is available at the office of the Town Clerk located at 10720 Caribbean Blvd., Suite 105, Cutler Bay, FL 33189.

### **Town Clerk**

Section 7. Miami-Dade County Commission Approval. That the Resolution must be approved by a two-thirds vote of the Board of County Commissioners of Miami-Dade County pursuant to the Town Charter. Accordingly, this Resolution shall authorize the Town Manager to request such approval and shall be conditioned on the Board of County Commissioners of Miami-Dade County granting such approval.

Section 8. Copies. That copies of this Resolution proposing the Charter Amendments are on file at the offices of the Town Clerk located at Town of Cutler Bay 10720 Caribbean Blvd., Suite 105, Cutler Bay, FL 33189, and are available for public inspection during regular business hours.

Section 9. Effectiveness. That the Charter Amendments provided for in Section 2 above shall become effective if the majority of the qualified electors voting on the Charter Amendments vote for its adoption, and they shall be considered adopted and effective upon certification of the election results. Following adoption of the Charter Amendments, the Town Clerk shall file the adopted Charter Amendment with the Clerk of the Circuit Court of Miami-Dade County, Florida.

Section 10. Inclusion In The Charter. Subject to the requirements of Section 8 above, it is the intention of the Town Council and it is hereby provided that the Charter Amendment shall become and be made a part of the Charter of the Town of Cutler Bay; that the Sections of this Resolution may be renumbered or relettered to accomplish such intention.

Section 11. Severability. That the provisions of this Resolution are declared to be severable, and if any section, sentence, clause or phrase of this Resolution 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 Resolution but they shall remain in effect, it being the legislative intent that this Resolution shall stand notwithstanding the invalidity of any part.

Section 12. Conflicts. That in the event that the provisions of this Resolution conflict with any other Town Resolution, the provisions of this Resolution shall prevail to the extent of any such conflict.

confli	et.					
adopti	Section 13.	<b>Effective Date.</b>	That this F	Resolution sha	all take effect immediately	upoi
	PASSED and	ADOPTED this _		_ day of	, 2008.	
				PAUL S. VI	ROOMAN, Mayor	
Attest	:					
ERIK	A GONZALEZ	Z-SANTAMARIA	, CMC			

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF THE TOWN OF CUTLER BAY ONLY:

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

Moved By: Seconded By:

Town Clerk

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 7

### RESOLUTION NO. 08-\_\_\_\_

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, **APPROVING** FLORIDA, THE RECOMMENDATIONS OF THE **CHARTER** REVISION COMMISSION; DIRECTING THE TOWN **ATTORNEY PREPARE** TO THE RECOMMENDATIONS FOR A TOWN WIDE ELECTION; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, pursuant to Sections 6.1 and 6.2 of the Town Charter of the Town of Cutler Bay Florida, (the "Town") and Section 6.03 of the Home Rule Charter of Miami-Dade, as applicable, the Town Council is required to appoint a Charter Revision Commission (the "Commission") that shall be charged with reviewing each and every section of the Town Charter and make recommendations for change; and

**WHEREAS**, should the Commission determine that an amendment or revision is needed to the Charter, pursuant to Section 6.2 of the Town Charter it is required to submit the same to the Council no later than July 1<sup>st</sup> of the year following its appointment; and

**WHEREAS**, consistent with its charge the Commission has diligently and thoroughly completed its work, submitting proposed charter amendments to the Town Council per the requirement of Section 6.2 of the Town Charter; and

**WHEREAS**, the Town Council has discussed the proposed amendments to the Town Charter over the course of several workshops, making only minor changes to the recommendations of the Commission; and

**WHEREAS**, the Town Council desires to place these proposed amendments and revisions to the Town Charter as described in substantial form attached hereto ("Attachment A") on the ballot for elector approval or rejection at the November general election; and

**WHEREAS**, the Town Council desires the Town Attorney to prepare ballot questions for the amendments described in Attachment A for the November general election ballot.

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

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

Section 2. Acceptance of Proposed Charter Amendments and Direction to the Town Attorney. The Town Council hereby accepts the proposed charter amendments with the revisions made during the workshop process, which amendments and revisions are shown in Attachment A hereto, and hereby directs the Town Attorney to prepare ballot questions for the proposed amendments to the Town Charter and a resolution calling for an election to place the proposed amendments before the Town electorate for approval or rejection in the November general election.

Section 3. Effective Date. This Resolution.	ution shall take	effect immediately upon
PASSED and ADOPTED this	day of	, 2008.
	PAUL S. VE	ROOMAN, Mayor
Attest:		
ERIKA GONZALEZ-SANTAMARIA, CMC Town Clerk		
APPROVED AS TO FORM AND LEGALITY FOR AND BENEFIT OF THE TOWN OF CUTLER B		
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		

# 4/17/08-version TOWN OF CUTLER BAY TOWN CHARTER

	TOWN CHARTER —	Page
Preamble		1
Citizens'	Bill of Rights	1
Article I.	Corporate Existence, Form of Government, Boundary and Powers	
Sec. 1.1	Corporate Existence	4
Sec. 1.2	Form of Government	4
Sec. 1.3	Corporate Boundary	4
Sec. 1.4	Powers	6
Sec. 1.5	Construction	6
Article II.	. Mayor, Vice-Mayor and Town Council	
Sec. 2.1	Mayor and Vice-Mayor	6
Sec. 2.2	Town Council	7
Sec. 2.3	Election, Term of Office and Term Limits	7
Sec. 2.4	Qualifications	10
	Vacancies; Forfeiture of Office; Filling of Vacancies	11
Sec. 2.6	Compensation; Reimbursement for Expenses	13
Sec. 2.7	Recall	13
Article II	I. Administrative	
	Town Manager	14
Sec. 3.2	Town Manager: Appointment, Qualifications and Removal	14
Sec. 3.3	Powers and Duties of the Town Manager	14
	Acting Town Manager	15
	Bond of Town Manager	15
	Town Clerk	15
	Town Attorney	16
	Expenditure of Town Funds	16
	Town Boards, Agencies and/or Committees	16
	Competitive Bid Requirement/Purchasing	16
	Technology	16
Sec. 3.12		17
	3 Ordinance on Sexual Predators	17
	/. Legislative	
	Council Meeting Procedure	17
	Prohibitions	18
	Ordinances	18
	Emergency Ordinances	19
	Annual Budget Adoption	20
	Fiscal Year	20
	Appropriation Amendments during the Fiscal Year	20
	Authentication, Recording and Disposition of Ordinances, Resolutions and	o :
	amendments	21
	Tax Levy, Assessments and Fees	21
	Independent Audit	21
Sec. 4.11	Borrowing	22

	/. Elections	
Sec. 5.1	Elections	23
	Initiative and Referendum	24
Sec. 5.3	Form of Ballots	28
Sec. 5.4	County Canvassing Board	28
Article \	/I. Charter Amendments and Abolishment of Municipality	
Sec. 6.1	Procedure to Amend or Revoke or to Abolish Municipality	28
	Charter Revision	29
	/II. General Provisions	
	Severability and Conflict within the Charter	29
	Conflicts of Interest; Ethical Standards	30
Sec. 7.3	Town Personnel System	30
Sec. 7.4	Variation of Pronouns	30
Sec. 7.5	No Discrimination	31
Sec. 7.6	Lobbyist, Principals and Vendors	31
Sec. 7.7	Precedence over Related Laws	32
Article \	/III. Transition Provisions	
Sec. 8.1	Temporary Nature of Article	32
Sec. 8.2	Interim Governing Body	32
Sec. 8.3	Interim Adoption of Codes and Ordinances	32
Sec. 8.4	Taxes and Fees	33
Sec. 8.5	Initial Election of Town Council and Mayor	33
Sec. 8.6	Initial Expenditures	34
Sec. 8.7	First Fiscal Year and Budget	34
Sec. 8.8	Transitional Ordinances and Resolutions	35
Sec. 8.9	Town Name	35
Sec. 8.1	0 Interim Personnel	36
Sec. 8.1	1 Code Enforcement Amnesty	36
Article I	X. Special Conditions	
Sec. 9.1	Interlocal Agreement	36
Sec. 9.2	County Services	36
Sec. 9.3	Specialized Law Enforcement Services	37
Sec. 9.4	Local Police Patrol Services	37
Sec. 9.5	Regulatory Control	38
	Continuing Obligations as to County Bonds	39
	Favored Nation Status	40
Sec. 9.8	Rights of the Town	40
	Modifications	41
	0 Community Redevelopment	41
	1 In remembrance of those who lost their lives.	41
	2 Dedications, Conveyances, Covenants and Commitments	42

### **TOWN OF CUTLER BAY**

### MUNICIPAL CHARTER

**Charter Commission Note -** The following is the Charter of the Town, as adopted by referendum on November 8, 2005, and effective on November 9, 2005.

On March 1, 2005, the Miami-Dade County Board of County Commissioners appointed the following residents as members of the Cutler Bay Charter Commission: Edward P. MacDougall, as Chair, Alfonsina Sergio, as Vice-Chair, Delleperche Joseph, as Secretary, Sandra K. Reyes-Nanni, and Eduardo Wolmers. The Charter Commission was represented by Edward P. Ludovici, Esq. as legal Counsel during the drafting of this charter. The Charter Commission met during the months of March, April, May, June, July and August 2005 to draft the Charter for the Town.

### **PREAMBLE**

We, the people of the Town of Cutler Bay, in order to secure for ourselves the benefits and responsibilities of home rule, in order to provide a municipal government to serve our present and future needs, do hereby adopt this Charter.

### CITIZENS' BILL OF RIGHTS

- (A) This government has been created to protect the governed, not the governing. In order to provide the public with full and accurate information, to promote efficient administration management, to make government more accountable, and to insure to all persons fair and equitable treatment, the following rights are guaranteed:
  - (1) Convenient Access. Every person has the right to transact Town business with a minimum of personal inconvenience. It shall be the duty of the Mayor, the Town Council and the Town Manager to provide, within budget limitations, reasonably convenient times and places for registration and voting, for required inspections, and for transacting business with the Town.
  - (2) Truth in Government. No municipal official or employee shall knowingly furnish false information on any public matter, nor knowingly omit significant facts when giving requested information to members of the public.
  - (3) Public Records. All audits, reports, minutes, documents and other public records of the Town and its boards, agencies, departments and

authorities shall be open for inspection at reasonable times and places convenient to the public.

- (4) Minutes and Ordinance Register. The Town Clerk shall maintain and make available for public inspection an ordinance register separate from the minutes showing the votes of each member on all ordinances and resolutions listed by descriptive title. Written minutes of all meetings and the ordinance register shall be available for public inspection not later than 30 days after the conclusion of the meeting.
- (5) Right to be Heard. So far as the orderly conduct of public business permits, any interested person has the right to appear before the Town Council or Town agency, board or department for the presentation, adjustment or determination of an issue, request, or controversy within the jurisdiction of the Town. Matters shall be scheduled for the convenience of the public. The Town Council shall adopt agenda procedure and schedule hearings in a manner that will enhance the opportunity for public participation. Nothing herein shall prohibit any governmental entity or agency from imposing reasonable time limits and procedures for the presentation of a matter.
- (6) Right to Notice. Persons entitled to notice of a Town hearing shall be timely informed as to the time, place and nature of the hearing and the legal authority pursuant to which the hearing is to be held. Failure by an individual to receive such notice shall not constitute mandatory grounds for canceling the hearing or rendering invalid any determination made at such hearing. Copies of proposed ordinances or resolutions shall be made available at a reasonable time prior to the hearing, unless the matter involves an emergency ordinance or resolution.
- (7) No Unreasonable Postponements. No matter, once having been placed on a formal agenda by the Town, shall be postponed to another day except for good cause shown in the opinion of the Mayor, Town Council, board or agency conducting such meeting, and then only on condition that the affected person shall, upon written request, receive mailed notice of the new date of any postponed meeting. Failure by an individual to receive such notice shall not constitute mandatory grounds for canceling the hearing or rendering invalid any determination made at such hearing.
- (8) Right to Public Hearing. Upon a timely written request from any interested party, and after presentation of the facts to and approval by the Council, a public hearing shall be held by any Town agency, board, department or authority upon any significant policy decision to be issued by it which is not subject to subsequent administrative or legislative review and hearing. This provision shall not apply to the Law Department of the

Town nor to any person whose duties and responsibilities are solely advisory.

At any zoning or other hearing in which review is exclusively by certiorari, a party or his/her counsel shall be entitled to present his/her case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts. The decision of such agency, board, department or authority must be based upon the facts in the record. Procedural rules establishing reasonable time and other limitations may be promulgated and amended from time to time.

- (9) Notice of Action and Reasons. Prompt notice shall be given of the denial in whole or in part of a request of an interested person made in connection with any Town administrative decision or proceeding when the decision is reserved at the conclusion of the hearing. The notice shall be accompanied by a statement of the grounds for denial.
- (10) *Managers' and Attorneys' Reports.* The Town Manager and Town Attorney shall periodically make a public status report on all major matters pending or concluded within their respective areas of concern.
- (11) Budgeting. In addition to any budget required by state statute, the Town Manager shall prepare a budget showing the cost of each department for each budget year. Prior to the Town Council's first public hearing on the proposed budget required by state law, the Town Manager shall make public a budget summary setting forth the proposed cost of each individual department and reflecting the personnel for each department, the purposes therefore, the estimated millage cost of each department and the amount of any contingency and carryover funds for each department.
- (12) Quarterly Budget Comparisons. The Town Manager shall make public a quarterly report showing the actual expenditures during the quarter just ended against one quarter of the proposed annual expenditures set forth in the budget. Such report shall also reflect the same cumulative information for whatever portion of the fiscal year that has elapsed.
- (13) Representation of Public. The Mayor shall endeavor to designate one or more individuals to represent the Town at all proceedings before County, State and Federal regulatory bodies, significantly affecting the Town and its residents.
- (B) The foregoing enumeration of citizens' rights vests large and pervasive powers in the citizenry of the Town. Such power necessarily carries with it responsibility of equal magnitude for the successful operation of government in

the Town. The orderly, efficient and fair operation of government requires the participation of individual citizens exercising their rights with dignity and restraint so as to avoid any sweeping acceleration in the cost of government because of the exercise of individual prerogatives, and for individual citizens to grant respect for the dignity of public office.

(C) All provisions of this Bill of Rights shall be construed to be supplementary to and not in conflict with the general laws of Florida. If any part of this Bill of Rights shall be declared invalid, it shall not affect the validity of the remaining provisions.

## ARTICLE I. CORPORATE EXISTENCE, FORM OF GOVERNMENT, BOUNDARY AND POWERS

### **Section 1.1 Corporate Existence.**

A municipal corporation resulting from the election authorized by Resolution R-1318-04 adopted on November 30, 2004 by the Miami-Dade County Board of County Commissioners, which permitted the continuing process of incorporation of the area described in Section 1.3 below, originally known as Cutler Ridge and which shall hereafter be known as the Town of Cutler Bay (the "Town"), is hereby created pursuant to the Constitution of the State of Florida (the "State") and the Home Rule Charter of Miami-Dade County (the "County"). The corporate existence of the Town shall commence November 9, 2005 or such other date as this charter is approved by election.

### Section 1.2 Form of Government.

The Town shall have a "Council-Manager" form of government.

### Section 1.3 Corporate Boundary.

The corporate boundaries of the Town are generally described as follows bounded on the North by S.W. 184th Street (the South boundary of the Village of Palmetto Bay), bounded on the South by S.W. 232 Street, bounded on the East by Biscayne National Park and bounded on the West by the South Miami-Dade Transit Corridor (Bus Way) and SW 112 Avenue (Allapattah Road)., as shown on the map on page 5. The Legal Description for the Town is on Appendix "A" attached hereto. In case of a conflict between the Legal Description and the Map, the Legal Description shall govern.

### Section 1.4 Powers.

(A) The Town shall have all available governmental, corporate and proprietary powers and may exercise them except when prohibited by law. Through the adoption of this Charter, it is the intent of the electors of the Town to grant to the municipal government established by this Charter the broadest exercise of home

rule powers permitted under the Constitution and laws of the State of Florida, and the Miami-Dade County Charter as amended from time to time, including the ability to exercise such powers within and without its corporate boundaries to the extent constitutionally permitted. -

(B) The only limitation concerning alienability of Town owned property is that there shall be no sale, exchange or lease in excess of five (5) years of any park property while it is being used for public purpose unless such sale, exchange or lease is approved by a majority vote at the next regularly scheduled election of the voters of the Town. This provision shall not apply to any valid written contractual obligations entered into prior to the effective incorporation date of this Town nor shall it apply to any Town owned educational facility, library property or parking facility not located in a park or any utility or access easements or rights-of-way. This provision is intended to restrict sales, exchanges or leases and shall not be applicable to any operating, management or other agreements.

### Section 1.5 Construction.

This Charter and the powers of the Town shall be construed liberally in favor of the Town.

### ARTICLE II. MAYOR, VICE-MAYOR AND TOWN COUNCIL

### Section 2.1 Mayor and Vice-Mayor.

- (A) Powers of the Mayor. The Mayor shall preside at meetings of the Council and be a voting member of the Council. In addition, the Mayor shall have the following specific responsibilities:
  - (1) The Mayor shall present a State of the Town address annually.
  - (2) The Mayor shall be recognized as head of the Town government for all ceremonial purposes, for purposes of military law, and for service of process.
  - (3) The Mayor shall be the official designated to represent the Town in all dealings with other governmental entities.
  - (4) The Mayor shall execute contracts, deeds and other documents on behalf of the Town as authorized by the Council.
- (B) *Vice-Mayor.* During the absence or incapacity of the Mayor, the Vice-Mayor shall have all the powers, authority, duties and responsibilities of the Mayor.

### Section 2.2 Town Council.

There shall be a Town Council (the "Council") vested with all legislative powers of the Town. The Council shall consist of the Mayor, Vice-Mayor, and three Residential Council members ("Council members"). The Town Council shall have the power to pass all such ordinances and resolutions which are not contrary to this charter, the Home Rule Charter of Miami-Dade County, the Constitution and laws of the State of Florida or the United States of America its laws. The Council shall not enact any ordinance or resolution that in any way infringes on the rights of its citizens as outlined in the Citizens' Bill of Rights in this charter. References in this Charter to the Council and/or Council members shall include the Mayor and Vice-Mayor unless the context dictates otherwise. The Council may create and appoint committees of the Council, which may include non-Council members. The members of each committee shall select a chair.

### Section 2.3 Election, Term of Office and Term Limits.

- (A) *Election and Term of Office*. Except for the initial election and terms of office specified in Article IX, the Mayor, Vice-Mayor and each Council member shall be elected at-large for four year terms by the electors of the Town in the manner provided in Article V of this Charter <u>and shall represent all areas of the Town</u>. Said term shall end upon the swearing in of his/her successor.
- (B) Seats. Council members shall serve in seats numbered 1-3 described below, collectively "Seats." Individually each is a "Seat." One Council member shall be elected to each Seat.
- (C) Residential Areas. Seats 1-3. The Town shall be divided into three residential areas. Individually each is a "Residential Area" collectively "Residential Areas." One Council member shall be elected to a Seat from each Residential Area and shall represent all areas of the Town. Council members from Residential Areas are collectively the "Residential Area Council members" or "District Council members." Individually each is a "Residential Area Council member." The Residential Areas corresponding to each Seat are formally set forth below:

### Seat 1

BEGIN at the intersection of the centerline of State Road 5 (US1) and the centerline of SW 184 Street; thence run Easterly along the centerline of said SW 184 Street, said centerline being the South boundary of the Village of Palmetto Bay and the North boundary of the Town, to the centerline of SW 97 Avenue; thence South along the centerline of said SW 97 Avenue to the centerline of Franjo Road; thence Southeasterly along said centerline of Franjo Road to the centerline of Old Cutler Road (Ingraham Highway); thence southwesterly along said centerline of Old Cutler Road (Ingraham Highway) to the South line of Section 8, Township 56 South, Range 40 East; thence Westerly along the South line of said Section 8 (SW 216 Street) to the intersection with the Southerly

extension of the East line of Tract "E" of CUTLER CANAL APARTMENTS III according to the plat thereof as recorded in Plat Book 139, page 79 of the Public Records of Miami-Dade County, Florida; thence Northerly along said Southerly extension of the East line of Tract "E" to the Southeast corner of said Tract "E"; the following 5 courses being along the Easterly line of said Tract "E": (1) thence Northerly for 160.00 feet; (2) thence Westerly for 16.07 feet; (3) thence Northerly for 705.00 feet; (4) thence Easterly for 23.21 feet; (5) thence Northerly for 250.00 feet to the Northeast corner of said Tract "E", thence Northerly along the Northerly extension of the East line of Tract "E" to the centerline of SW 212th Street; thence Westerly along said centerline of SW 212 Street to the intersection with the centerline of the canal right-of-way described in Official Record Book 1631, Page 643 and Official Record Book 1373, Page 613 of the Public Records of Miami-Dade County, Florida; thence Northerly along a line 25.00 feet East of and parallel with the West line of the Southwest one-quarter of the Northeast one-quarter of the Southwest one-quarter of the above mentioned Section 8 (said line being the centerline of said canal right-of-way) for 170.00 feet; thence Westerly along a line 135.00 feet North of and parallel with the South line of the Southeast one-quarter of the Northwest one-quarter of the Southwest oneguarter of said Section 8 (said line also being the centerline of said canal right-ofway) to the intersection with the center line of Canal C-1-N; thence Northerly and Northeasterly along said centerline of Canal C-1-N to the intersection with the Southerly extension of the East line of the Miami-Dade County Parks and Recreation Department property described in Official Record Book 19682, Page 4787 of the Public Records of Miami-Dade County, Florida; thence Northerly along the Southerly extension of the East line and the East line of said Miami-Dade County Parks and Recreation Department property to the Northeast corner of said Miami-Dade County Parks and Recreation Department property; thence westerly along the North line and the Westerly extension of the North line of said Miami-Dade County Parks and Recreation Department property, across State Road 821 (Homestead Extension of the Florida Turnpike) as shown on the Florida State Department of Transportation Right-of-way Map, Section 87005-2502, to the intersection with the Westerly Limited Access Right-of-Way line of said State Road 821 (Homestead Extension of the Florida Turnpike); thence Southerly along said Westerly Limited Access Right-of-Way line of said State Road 821 (Homestead Extension of the Florida Turnpike) to the intersection with the centerline of Canal C-1 (Black Creek Canal); thence Westerly following said centerline of Canal C-1 (Black Creek Canal) to the intersection with the West line of the Southeast one-quarter of Section 7, Township 56 South, Range 40 East, Miami-Dade County, Florida, lying in SW 112th Avenue (Allapattah Road); thence Northerly along said West line of the Southeast one-quarter and the West line of the Northeast one-quarter of said Section 7 (SW 112th Avenue and its Northerly extension) to the intersection with the Southeasterly right-of-way line of the South Miami-Dade Transit Corridor (Busway) as recorded in Official record Book 20119, page 0538 of the Public Records of Miami-Dade County, Florida; Thence Northeasterly along said Southeasterly right-of-way line of the South Miami-Dade Transit Corridor (Busway), across Sections 7, 6 and 5, Township 56 South, Range 40 East Miami-Dade County, Florida, to the centerline of SW 186th Street; thence Easterly along said centerline of SW 186th Street to the centerline of State Road 5 (U.S. 1) according to the Florida Department of Transportation Right-of-Way Map recorded in Plat Book 124, Page 56 of the Public Records of Miami-Dade County, Florida; thence Northeasterly along said centerline of State Road 5 (U.S. 1) to the centerline of SW 184th Street and the POINT OF BEGINNING.

### Seat 2

BEGIN at the intersection of the centerline of SW 184 Street (Eureka Drive) and the centerline of SW 97 Avenue; thence run East along the centerline of said SW 184 Street, said centerline being the South boundary of the Village of Palmetto Bay and the North boundary of the Town, to the Western Boundary line of Biscayne National Park, thence run Southerly, Westerly and Southerly along the Western Boundary line of Biscayne National Park to the centerline of S W 208 Street, thence run West along the centerline of SW 208 Street and its Westerly extension to the intersection with the Southerly extension with the centerline of SW 78 Avenue; thence Northerly along the Southerly extension of the centerline of SW 78 Avenue to the centerline of SW 207 Street; thence Westerly along the centerline of SW 207 Street to the centerline of SW 87 Avenue, thence run Northerly along the centerline of SW 87 Avenue to the centerline of Old Cutler Road (Ingraham Highway); thence run Southwesterly along the centerline of said Old Cutler Road (Ingraham Highway) to the centerline of Franjo Road, thence run Northwesterly along the centerline of Franjo Road to the centerline of SW 97 Avenue; thence Northerly along the centerline of SW 97 Avenue to the centerline of SW 184 Street and the POINT OF BEGINNING.

### Seat 3

BEGIN at the Southeast corner of Section 17, Township 56 South, Range 40 East, Miami-Dade County, Florida (the intersection of SW 97 Avenue and theoretical SW 232nd Street); thence Northerly along the East line of the Southeast one-quarter of said Section 17 (SW 97 Avenue) to the intersection with the North line of the South three-quarters of the Southeast one-quarter of the Southeast one-quarter of said Section 17; thence Westerly along said North line of the South three-quarters of the Southeast one-quarter of the Southeast one-quarter of Section 17 (theoretical SW 228 Street) to the intersection with the Southerly extension of the East line of SUNSET APARTMENTS according to the plat thereof as recorded in Plat Book 156, Page 89 of the Public Records of Miami-Dade County, Florida; thence Northerly along said Southerly extension of the East line of SUNSET APARTMENTS, the East line of SUNSET APARTMENTS and the Northerly extension of the East line of said SUNSET APARTMENTS to the centerline of SW 224 Street as shown on said SUNSET APARTMENTS; thence Westerly and Northwesterly along the centerline of said SW 224 Street to the centerline of Old Cutler Road (Ingraham Highway) as described in Official Record Book 3097, page 272 of the Public Records of Miami-Dade County, Florida; thence Northeasterly along said centerline of Old Cutler Road (Ingraham Highway) to the centerline of SW 87 Avenue. Thence South along the centerline of said SW 87 Avenue to the centerline of SW 207 Street. Thence east along the centerline of said SW 207 Street to the centerline of SW 78 Avenue; thence Southerly along the Southerly extension of SW 78 Avenue to the intersection with the westerly extension of the centerline of SW 208 Street; thence easterly along said westerly extension and along the centerline of SW 208 Street to the western boundary of Biscayne National Park; thence Southerly and Southwesterly along said Western boundary of Biscayne National Park to theoretical centerline of SW 232 Street. Thence west along said centerline of SW 232 Street to the Southeast corner of said Section 17; and the POINT OF BEGINNING.

- (D) Affiliations. Each person running for elected office shall run independently.
- (E) Term Limits. No person shall serve as Mayor or Vice-Mayor for more than twelve eight (128) consecutive years. No person may serve as a Residential District Seat on the Council member for more than twelve eight (128) consecutive years. No person may serve as a combination of Mayor, Vice-Mayor and District Seat Residential Council Member for more than Sixteen Twelve (162) consecutive years. Notwithstanding the above the seat 1 Council member, the seat 3 District Seat Residential Council member and the Mayor elected in the 2005 election may serve for a maximum of twelve eight (128) years and eight (8) months (until the 2018 4 election), the seat 2 District SeatResidential Council member and the Vice-Mayor elected in the 2005 election may serve for a maximum of ten six (106) years and eight (8) months (until the 2016 2 election).

#### Section 2.4 Qualifications.

Candidates for Mayor, Vice-Mayor or Council member shall qualify for election by the filing of a written notice of candidacy with the Town Clerk no earlier than noon on the first workday in January September and no later than noon on the 14th day following the first weekday in January September of the calendar year in which the election is to be held or if said 14<sup>th</sup> day is a holiday then by noon of the last workday prior to the said 14<sup>th</sup> day ("Qualifying Date") and paying to the Town Clerk a qualifying fee of \$100.00, in addition to any fees required by Florida Statutes. In the event the election date is changed to a date other than the first Tuesday following the first Monday in November pursuant to section 5.1C of this Charter, then the qualifying period shall also be adjusted and shall commence no more than 60 days before the election date and end 14 days thereafter. Provided however, that the qualifying period shall always begin and end on a weekday that is not a legal holiday. A person may not be a candidate for more than one office in the same election. Only electors of the Town, as defined by Section 5.1(a), who have resided continuously in the Town for at least two years preceding their Qualifying Date shall be eligible to hold the Office of Mayor, ViceMayor or District Seat District Residential Council member. In addition, a person may not be a candidate for a Residential Council member Seat unless that person has resided in the Residential Area s/he seeks to represent continuously for a period of one year preceding his/her Qualifying Date. If at the conclusion of the qualifying period no elector has filed or qualified for a Seat, then the qualifying period for that Seat shall be reopened for a period of five business days and any qualified elector who resides in the relevant Residential Area and has resided continuously in the Town for at least two years may file a written notice of candidacy for the Seat in accordance with the provisions of this Section.

A vacancy in a candidacy for the office of Mayor, Vice Mayor or District Council member shall occur upon the death, withdrawal or removal of a candidate. If any qualified candidate dies, withdraws or is removed from the ballot following the end of the qualifying period, and in the event such action leaves fewer than two (2) candidates for that office, then the qualifying period for that particular office shall commence at noon on the day following the day that the vacancy in candidacy occurred, and additional qualification papers shall be available for that particular office in the office of the Town Clerk until noon, fourteen (14) days subsequent to the death, withdrawal or removal from the ballot of the original candidate. A candidate who was a qualifying candidate at the beginning of the supplemental qualified period shall not be required to re-qualify during such period. The Town Council shall hold a special meeting within seven (7) days of such additional qualifying period for the purpose of announcing a vacancy in the candidacy, announcing the additional qualifying period, and taking any action that may be necessary to reschedule the election for that particular office. If the closing date of the additional qualifying period is less than twenty (20) days before the date of the scheduled election, the Town Council shall schedule a special election for that particular office, which election shall be held at least twenty (20) days, but no more than thirty-five (35) days subsequent to the last day of the additional qualifying period. This procedure shall apply only in the event of the death, withdrawal or removal from the ballot of any candidate who qualified during the original qualifying period for such office and any subsequent deaths, withdrawals or removal from the ballot of a candidate's name, which provides for fewer than two (2) candidates for an office, shall result in the remaining candidate being duly elected pursuant to Section 5.1(h).

This Section complies with the conditions of incorporation approval detailed in Section 20-27(B) of the Miami-Dade County Code, which may be amended from time to time. Pursuant to Article V of the Miami-Dade County Home Rule Charter, any modifications to this Section will require all approvals normally required by the municipal charter, and approval by an affirmative vote of 2/3rds of the members of the Board of County Commissioners then in office, prior to a vote of qualified municipal electors.

Section 2.5 Vacancies; Forfeiture of Office; Filling of Vacancies.

(A) Vacancies. The office of a Council member shall become vacant upon his/her death, resignation, disability, suspension or removal from office in any manner authorized by law or by forfeiture of his/her office.

## (B) Forfeiture of Office

- (1) Forfeiture by disqualification. The Mayor, Vice-Mayor or Council member, shall forfeit his/her office if at any time during his/her term s/he:
  - (a) ceases to maintain his/her permanent residence in the Town.
  - (b) in the case of a Residential Area Council member, upon his/her ceasing to reside in his/her respective Residential Area; a Residential Area Council member shall not forfeit his/her office under this paragraph if, in the process of relocating within a Residential Area, s/he lives outside of his/her Residential Area but within the Town for a period of no more than 90 days.
  - (c) intentionally commits any prohibited act pursuant to this charter as determined by a court of law.
  - (d) otherwise ceases to be a qualified elector of the Town.
- (2) Forfeiture by absence. Any Member of the Town Council who fails to attend meetings without good cause for a period of six four (4) consecutive months, shall immediately forfeit his or her office.
- (3) *Procedures.* The Council shall be the sole judge of the qualifications of its members and shall hear all questions relating to forfeiture of a Council member's office, including whether or not good cause for absence has been or may be established. The burden of establishing good cause shall be on the Council member in question; provided, however, that any Council member may at any time during any duly held meeting move to establish good cause for the absence of him/herself or the absence of any other Council member, from any past, present or future meeting(s), which motion, if carried, shall be conclusive. A Council member whose qualifications are in question, subject to due process or who is otherwise subject to forfeiture of his/her office, shall not vote on any such matters. The Council member in question shall be entitled to a public hearing upon request regarding an alleged forfeiture of office. If a public hearing is requested, notice thereof shall be published in one or more newspapers of general circulation in the Town at least one week in advance of the hearing. Any final determination by the Council that a Council member has forfeited his/her office shall be made by a

minimum of three majority of the Council members by resolution. All votes and other acts of the Council member in question prior to the effective date of such resolution shall be valid regardless of the grounds of forfeiture.

- (C) Filling of vacancies. A vacancy on the Council shall be filled as follows:
  - (1) If less than six months remain in the unexpired term, the vacancy shall be filled by resolution of the Council, at its next regularly scheduled meeting.
  - (2) If six months or more remain in the unexpired term, the vacancy shall be filled by resolution of the Council, at its next regularly scheduled meeting or a special meeting to be held no later than 30 days after the vacancy occurs. The nominee shall fill the vacancy until the next scheduled countywide election in Miami-Dade County at which time an election shall be held to fill the vacancy for the balance of the term. However, if the Council is unable to confirm a nominee, a special election to fill that vacancy shall be held no later than 90 days following the occurrence of the vacancy.
    - (3) If the Mayor's position becomes vacant, the Vice-Mayor shall complete the term of Mayor, even if said complete term shall cause the Vice-Mayor to exceed the term limits as specified in Section 2.3 (E). The vacancy of Vice-Mayor thus created shall be filled in the manner that the vacancy of a Council member is generally filled under this Article. If the elected Mayor shall be returned to office, s/he shall automatically resume the duties of the office for the remainder of the term for which elected, and the Vice-Mayor shall be returned to complete the balance of his/her term. The appointment of the person to complete the term of the Vice-Mayor shall be automatically rescinded.
    - (4) A vacancy in Seats 1-3 shall be filled by a qualified elector residing in the respective Residential Area. A vacancy for Vice-Mayor shall be filled by any qualified elector of the Town.
    - (5) Persons filling vacancies shall meet the qualifications specified in this Article.
    - (6) If no candidate for a vacancy meets the qualifications under this Article for that vacancy, the Council shall appoint a person qualified under this Article to fill the vacancy.
    - (7) In the event that the number of Council Members to make a quorum are removed by death, disability, recall, forfeiture of office and/or

resignation, the Governor of the State of Florida shall appoint additional interim Council members to fill vacancies who shall call a special election within not less than 45 days or more than 60 days after such appointment. Such election shall be held in the same manner as the first elections under this Charter; provided, however, that if there are less than six months remaining in any of the unexpired terms, such interim Council appointee(s) by the Governor shall serve out the unexpired terms. Appointees must meet all requirements for candidates provided for in this Article.

## Section 2.6 Compensation; Reimbursement for Expenses.

District Seat District Residential Council members and the Vice-Mayor shall receive compensation in the amount of (See Section 8.10) \$500.00 per month and the Mayor shall receive compensation in the amount of (See Section 8.10) \$1,000.00 per month. Notwithstanding the foregoing, the District Council members and the Vice-Mayor shall receive compensation in the amount of \$1,000.00 per month and the Mayor shall receive compensation in the amount of 2,000.00, per month which shall take effect subsequent to the 2012 election. These payments All compensation shall be increased, but not decreased, by CPI annually. Furthermore eElected officials and authorized employees of the Town shall receive reimbursement in accordance with applicable law, or as may be otherwise provided by action of the Town Council or Administrative Order ordinance, for authorized expenses incurred in the performance of their official duties.

#### Section 2.7 Recall

The electors of the Town shall have the power to recall and to remove from office any elected official of the Town to the extent permitted by the Constitution and the laws of the State of Florida. The minimum number of electors of the Town which shall be required to initiate a recall petition shall be ten percent (10%) of the total number of electors registered to vote, as certified by the County Supervisor of Elections, at the last regular in Town elections as of the date an affidavit is filed pursuant to section 5.2 of this Charter. The petition shall be handled in the same manner as all petitions as outlined in Section 5.2.

#### **ARTICLE III. ADMINISTRATIVE**

## **Section 3.1 Town Manager.**

There shall be a Town Manager (the "Town Manager") who shall be the chief administrative officer of the Town. The Town Manager shall be responsible to the Council for the administration of all Town affairs and for carrying out policies

adopted by the Council. The term, conditions, method of evaluation, and compensation of the Town Manager shall be established by the Council.

## Section 3.2 Town Manager: Appointment, Qualifications and Removal.

The Town Manager shall be appointed by a majority vote of the Council. The Town Manager shall be appointed on the basis of education and professional experience in the accepted competencies and practices of local government management. The Town Manager shall be removed by a majority vote of the Council. Any Council Member may nominate or move the hiring or firing of the Town Manager.

## Section 3.3 Powers and Duties of the Town Manager.

The Manager shall:

- (1) Be responsible for the appointing, hiring, promoting, supervising and removing of all Town employees, except the Town Attorney and Town Clerk and all of their employees.
- (2) Direct and supervise the administration of all departments and offices but not Town boards or committees, unless so directed by the Council from time to time;
- (3) Attend Council meetings and have the right to take part in discussion but not the right to vote;
- (4) Ensure that all laws, provisions of this Charter and directives of the Council, subject to enforcement and/or administration by him/her or by employees subject to his/her direction and supervision, are faithfully executed;
- (5) Prepare and submit to the Council a proposed annual budget and capital program;
- (6) Submit to the Council and make available to the public an annual report on the finances and administrative activities of the Town as of the end of each fiscal year;
- (7) Prepare such other reports as the Council may require concerning the operations of Town departments, offices, boards and agencies;
- (8) Keep the Council fully advised as to the financial condition and future needs of the Town and make such recommendations to the Council concerning the affairs of the Town as s/he deems to be in the best interests of the Town:
- (9) Execute contracts and other documents on behalf of the Town as authorized by the Council;

- (10) Perform such other duties as are specified in this Charter or as may be required by the Council; and
- (11) Pursue the collection of all allowable fees and taxes and maximize financial reserves as is necessary to sustain the Town and the service levels requested by the citizenry. Periodically compare fee structure to similarly sized municipalities to ensure fair and appropriate pricing.

## Section 3.4 Acting Town Manager.

To perform his/her duties during his/her temporary absence or disability, the Town Manager may designate by letter filed with the Council, a qualified employee of the Town to serve as acting Town Manager. In the event of failure of the Town Manager to make such designation or should the Council be dissatisfied with performance of the person designated, the Council may appoint another employee to serve as Acting Town Manager.

## Section 3.5 Bond of Town Manager.

The Town Manager shall furnish a surety bond to be approved by the Council, and in such amount as the Council may fix, said bond to be conditioned on the faithful performance of his/her duties. The premium of the bond shall be paid by the Town.

#### Section 3.6 Town Clerk.

The Town Council shall appoint the Town Clerk (the "Town Clerk"). The Town Clerk shall give notice of all Council meetings and all other Town meetings required to be publicly noticed to its Council members and the public, and shall keep minutes of the Council's proceedings. The Town Clerk shall perform such other duties as the Town Council may prescribe from time to time. The Town Clerk shall report to the Town Council. The Town Clerk may be removed by the Town Council. The Town Clerk shall maintain the seal of the Town and attest the Mayor's or Manager's signature, as the case may be, on all documents if needed. The Town Clerk shall be responsible for the appointing, hiring, promoting, supervising and removing of all employees of the office of the Town Clerk as authorized by the Town Council in the annual budget or as otherwise provided by resolution or ordinance.

## **Section 3.7 Town Attorney.**

The Council shall hire an individual attorney or law firm to act as the Town Attorney under such terms, conditions, and compensation as may be established

by the Council. The Town Attorney shall report to the Council and may be removed by majority vote of the Council.

## **Section 3.8 Expenditure of Town Funds.**

No funds of the Town shall be expended except pursuant to duly approved appropriations.

## Section 3.9 Town Boards, Agencies and/or Committees.

The Council may establish or terminate such boards, agencies and/or committees as it deems advisable from time to time. The Council shall establish procedures for appointing Town residents to boards, agencies and/or committees provided however that all appointments shall be for residents at large and shall not be restricted to appointees from particular residential districts; provided however, that no citizen may serve on more than two such boards, agencies or committees simultaneously. The boards, agencies and/or committees shall report to the Council.

## Section 3.10 Competitive Bid Requirements/Purchasing.

- (A) Except as otherwise provided by law, contracts for public improvements and purchases of supplies, materials or services shall be awarded or made on the basis of clearly drawn specifications and competitive bids, except in cases where the Council, based on the written recommendation of the Town Manager, specifically determines by affirmative vote of a majority plus one of the four Council members present at the meeting that it is impracticable or not advantageous to the Town to do so. The Town Council shall have the power to reject all bids and advertise again. The Town Manager, by an ordinance approved by a super majority (four or more votes) of the council may be granted purchasing power up to an amount established by said ordinance without competitive bidding or as otherwise mandated by law.
- (B) No contract or order shall be issued to any vendor unless or until the Town Manager or his/her designee certifies that there is to the credit of such office, department or agency a sufficient unencumbered budget appropriation to pay for the supplies, materials, equipment or contractual services for which the contract or order is to be issued.

## **Section 3.11 Technology**

The Town Manager shall recommend, in his/her proposed annual budget, and the Town Council shall, subject to budgetary limitations, appropriate sufficient funds to make the proficient use of cost effective information technology designed to make the administration of the Town's government accessible and transparent; reduces the use of paper and the Town's "carbon footprint"; and other technologies that save energy, reduce space requirements, improves

communication and makes the internal administration and financial reporting of the Town more efficient.

The Town Council shall instruct the Town Manager, within the constraints of the budget and meeting generally accepted industry standards for municipalities of similar size, to create an information technology services department. The Manager may hire a person(s) or outsource the above responsibilities as s/he deems advisable. All efforts should be made to use technology for the dissemination of information to its citizens and to produce the most effective and efficient government for its citizens.

#### **Section 3.12 Grants**

The Town Council shall instruct the Town Manager to engage a grant writer, either as an employee or as an independent <u>contractor or consultant out sourced</u>, whose duty it will be, to secure all applicable grants for the Town. All grants are to be approved by the Town Manager or the <u>appropriate d</u>-peartment head, prior to submission.

#### Section 3.13 Ordinance on Sexual Predators

The Town Council within ninety (90) days shall have of the County adoption of a an ordinance dealing with Sexual Predators shall adopt an ordinance of the Town addressing sexual predators consistent with or more stringent than the ordinance passed by the Miami Dade County Commission. Alternatively, the Town shall continue to be governed by the Miami Dade County ordinance.

#### ARTICLE IV. LEGISLATIVE

#### **Section 4.1 Council Meeting Procedure.**

- (A) *Meetings*. The Council shall hold at least 11 regular monthly meetings in each calendar year, at such times and places as the Council may prescribe. Special meetings may be held on the call of the Mayor or upon the call of three Council members upon no less than 48 hours notice to the public or such shorter time as a majority of the Council deems necessary in case of an emergency affecting life, health, property or the public peace.
- (B) Rules and Minutes. The Council shall determine its own rules of procedure and order of business and shall keep minutes open for public inspection.
- (C) Quorum and Voting. A majority of the Council shall constitute a quorum but a smaller number may adjourn from time to time and may compel the attendance of absent members in the manner and subject to the penalties prescribed by the rules of the Council. Voting on ordinances shall be by roll call on final reading.

Voting on all other matters shall be by voice vote unless a Council member or the Town Clerk requests otherwise. In the event that three or more Council members are unavailable to vote on a particular matter due to required abstention pursuant to State law, then the remaining members of the Council may vote and approve such matter by unanimous vote.

(D) Meeting Time Limits. No meeting of the Council shall extend later than 11:00 pm except upon the affirmative vote of a majority of Council members present at the meeting.

#### Section 4.2 Prohibitions.

- (A) Appointment and Removals. Neither the Council nor any of its members shall in any manner dictate the appointment or removal of any Town employees, whom the Town Manager or any of his/her subordinates are empowered to appoint. The Council may express its views and fully and freely discuss with the Town Manager anything pertaining to appointment and removal of such officers and employees.
- (B) Interference with Administration.
- (1) Except for the purpose of inquiries and investigations made in good faith and in accordance with a resolution adopted by the Council, the Council and any of its individual members shall deal with Town employees who are subject to the direction and supervision of the Town Manager solely through the Town Manager, and neither the Council nor its members shall give orders to any such employee, except the Town Manager, the Town Attorney and/or the Town Clerk, either publicly or privately. It is the express intent of this Charter that recommendations for improvement in Town government operations by individual Council members are made solely to and through the Town Manager. Council members may discuss with the Town Manager any matter of Town business; however, no individual Council member shall give orders to the Town Manager.
- (2) Any willful violation of this Section by the Mayor, <u>Vice Mayor</u> or any Residential District Seat <u>District</u> Council member shall be grounds for his/her removal from office by an action brought in the Circuit Court by the State Attorney of Miami-Dade County.
- (C) *Holding Other Office*. No elected Town official shall hold any appointed Town office or Town employment while in office. No former elected Town official shall hold any compensated appointive Town office or Town employment until <u>two</u> one (24) year after the expiration of his/her term.

#### Section 4.3 Ordinances.

- (A) Actions Requiring an Ordinance. In addition to other acts required by Florida law or by specific provision of this Charter to be effected or authorized by ordinance, those acts of the Town Council shall be by ordinance which:
  - (1) Adopt or amend an administrative regulation or establish, alter or abolish any Town office, department, board or agency;
  - (2) Establish a rule or regulation the violation of which carries a penalty;
- (3) Levy taxes or appropriate funds except pursuant to the adoption of the annual budget, which may be adopted or amended by resolution of the Council subsequent to a public hearing;
  - (4) Grant, renew, modify or extend a franchise;
  - (5) Set service or user charges for municipal services or grant administrative authority to set such charges;
- (6) Authorize the borrowing of money in accordance with section 4.11, except where the Council authorizes a general obligation bond issue to be approved by the electorate, which may be done by appropriate resolution;
  - (7) Convey or lease or authorize by administrative action the conveyance or lease of any lands of the Town;
  - (8) Regulate land use and development; or
  - (9) Amend or repeal any ordinance previously adopted, except as otherwise provided in this Charter.

## **Section 4.4 Emergency Ordinances.**

To meet a public emergency affecting life, health, property or the public peace, the Council may adopt, in the manner provided in this Section, one or more emergency ordinances, but emergency ordinances may not: levy taxes, grant, renew or extend any municipal franchise; set service or user charges for any municipal services; or authorize the borrowing of money except as provided under the emergency appropriations provisions of this Charter if applicable.

(1) Form. An emergency ordinance shall be introduced in the form and manner prescribed for ordinances generally, except that it shall be plainly designated in a preamble as an emergency ordinance and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing it in clear and specific terms.

- (2) *Procedure.* An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced and shall be enacted by the Council. After its adoption, the ordinance shall be published and printed as prescribed for other ordinances.
- (3) Effective Date. An emergency ordinance shall become effective upon adoption or at such other date as may be specified in the ordinance.
- (4) Repeal. Every emergency ordinance except emergency appropriation ordinances shall automatically be repealed as of the 91 61<sup>st</sup> day following its effective date, but this shall not prevent reenactment of the ordinance under regular procedures, or if the emergency still exists, in the manner specified in this Section. An emergency ordinance may also be repealed by adoption of a repealing ordinance in the same manner specified in this Section for adoption of emergency ordinances.
- (5) Emergency Appropriations. The Council may make emergency appropriations in the manner provided in this Section. Notwithstanding the provisions of Section 4.11 to the extent that there are no available unappropriated revenues to meet such appropriations, the Council may authorize the issuance of emergency notes, which may be renewed from time to time, but the emergency notes, including renewals thereof, shall be payable no later than the last day of the fiscal year next succeeding the fiscal year in which the emergency appropriation ordinance was originally adopted.

## Section 4.5 Annual Budget Adoption.

- (A) Balanced Budget. Each annual budget adopted by the Council shall be a balanced budget and adopted in accordance with Florida law.
- (B) Budget Adoption. The Council shall by ordinance resolution adopt the annual budget within the time prescribed by general law on or before the thirtieth (30th) day of September of each year, after having had Two (2) public hearings. If it fails to adopt the annual budget by this date, the Council may by resolution direct that the amounts appropriated for current operations for the current fiscal year shall be deemed adopted for the ensuing fiscal year for a period of fifteen (15) days and renewed by resolution each fifteen (15) days, with all items in it prorated accordingly, until such time as the Council adopts an annual budget for the ensuing fiscal year. A resolution An ordinance adopting an annual budget shall constitute appropriation of the amounts specified therein.
- (C) Specific Appropriation. The budget shall be specific as to the nature of each category of appropriations therein. The Town Manager may recommend for approval by the Council one or more contingency accounts to be used for unanticipated items of expense which were not included in the budget as original items of expenditure. The Town Manager may recommend for approval by the

Council one or more reserve accounts to be used for items of expense which might require multiple years of budgeting in order to fulfill the original designation of funds.

(D) Notice and Hearing. The Council shall publish the general summary of the budget and a notice of public hearing as prescribed by general law. two weeks before adoption.

#### Section 4.6 Fiscal Year.

The fiscal year of the Town government shall begin on the first day of October and shall end on the last day of September of the following calendar year. Such fiscal year shall also constitute the annual budget and accounting year.

## Section 4.7 Appropriation Amendments During the Fiscal Year.

- (A) Supplemental Appropriations. If, during any fiscal year, revenues in excess of those estimated in the annual budget are available for appropriation, the Council may by <u>resolution after a public hearing</u> ordinance make supplemental appropriations for the fiscal year up to the amount of such excess.
- (B) Reduction of Appropriations. If, at any time during the fiscal year, it appears probable to the Town Manager that the revenues available will be insufficient to meet the amount appropriated, s/he shall report in writing to the Council immediately upon discovery, indicating the estimated amount of the deficit, and his/her recommendations as to the remedial action to be taken. The Council shall then take such action as it deems appropriate to prevent any deficit spending.

## Section 4.8 Authentication, Recording and Disposition of Ordinances, Resolutions and Charter Amendments.

- (A) Authentication. The Mayor and the Town Clerk shall authenticate by their signature all ordinances and resolutions adopted by the Council. In addition, when Charter amendments have been approved by the electors, the Mayor and the Town Clerk shall authenticate by their signatures the Charter amendment, such authentication to reflect the approval of the Charter amendment by the electorate.
- (B) Recording. The Town Clerk shall keep properly indexed books in which shall be recorded, in full, all ordinances and resolutions passed by the Council. Ordinances shall, at the direction of the Council, be periodically codified, but at least annually after the third year of the Town's existence. The Town Clerk shall also maintain the Charter in current form including all Charter amendments.

(C) Availability of Enactments. The Council shall establish procedures for making all resolutions, ordinances, technical codes adopted by reference, and this Charter available for public inspection and copying as required by general law.

## Section 4.9 Tax Levy, Assessments and Fees.

The Town, by majority <u>vote</u> of the Council, shall have the right to levy, assess and collect all such taxes, assessments and fees as are permitted by law, including without limitation, fines, ad valorem taxes, special assessments and fees, excise, franchise or privilege taxes and taxes on services and utilities.

## Section 4.10 Independent Audit.

The Council shall provide for an annual independent audit of all Town accounts and may provide more frequent audits as it deems necessary. Audits shall be made in accordance with generally accepted auditing standards by a certified public accountant or firm of such accountants who have no personal interest direct or indirect in the fiscal affairs of the Town government, its employees or officers. Residency, per se, shall not constitute a direct or indirect interest. A summary of the results, including any deficiencies found, shall be made public at the next regularly scheduled Council meeting. A written response to any noted deficiencies shall be the responsibility of the Town Manager. The response shall be made public no later than 30 days from delivery of the independent auditor's report.

## Section 4.11 Borrowing.

- (A) *Debt Approval.* The Town shall incur no debt unless the incurrence of such debt is approved by a majority of the council.
- (B) Limits. Except as approved by the electorate of the Town pursuant to a duly held election to approve a pledge of Town revenues to secure an indebtedness where such election is required by general law, the total Debt of the Town, including amounts authorized but still not drawn down under existing loan agreements and other contractual arrangements with banks and other financial institutions, underwriters, brokers and/or intermediaries, shall not exceed the greater of:
  - i. three percent (3%) of the total assessed value of all property within the Town, as certified by the Miami-Dade County Property Appraiser for the current fiscal year; or
  - ii. that amount which would cause annual Debt Service to equal fifteen percent (15%) of General Fund expenditures for the previous fiscal year.

- (C) *Definitions.* As used in this Section 4.11 the following terms shall have the meanings ascribed to them in this subsection.
  - i. "Debt" means any obligation of the Town to repay borrowed money however evidenced since the date of its incorporation regardless of tenor or term for which it was originally contracted or subsequently converted through refinancing or novation, except (a) any obligation required to be repaid in less than a year and which was incurred solely for emergency relief of natural disasters, or (b) that portion of any obligation for operations which are financed and operated in an independent, self-liquidating manner and recovered entirely through currently collected user fees and charges.
  - ii. "Debt Service" shall include, without limitation thereto, scheduled interest payments, repayments of principal and all financial fees arising from Debt or from the underlying contractual obligations, whether as originally incurred or subsequently deferred or otherwise renegotiated.
  - iii. "General Fund" shall mean any and all revenues of the Town, from whatever source derived, except those revenues derived from special assessments, user fees and charges and designated as a separate fund to finance goods and services to the public.

#### **ARTICLE V. ELECTIONS**

#### Section 5.1 Elections.

- (A) Electors. Any person who is a resident of the Town, has qualified as an elector of the State and registers to vote in the manner prescribed by law shall be an elector of the Town.
- (B) Nonpartisan Elections. All elections for the Town Council and Mayor shall be conducted on a nonpartisan basis and no ballot shall show the party designation of any candidate.
- (C) Election Dates. A general election shall be held in even numbered years on the first Tuesday following the first Monday in November, provided however that it is the intent of this Charter that the Town election always be scheduled to coincide with a Countywide election. Accordingly, if the date of the Countywide general election changes for any reason, either permanently or temporarily, the date of the Town election shall automatically be changed to the same date as the County-wide election and all dates in this Charter that are dependent on the date of the Town election, including but not limited to the lengths of the terms of office for the Mayor, Vice Mayor and Council Members in section 2.3 and the qualifying dates for candidates in section 2.4, shall also be automatically amended and adjusted to coincide with the change of election date. In the case of the terms of

office in section 2.3, such change may result in the shortening or lengthening of the terms of office of the elected officials. This paragraph complies with the conditions of incorporation approval detailed in Section 20- 27(A) of the Miami-Dade County Code, which may be amended from time to time. Pursuant to Article V of the Miami-Dade County Home Rule Charter, any modifications to this paragraph will require all approvals normally required by the municipal charter, and approval by an affirmative vote of 2/3rds of the members of the Board of County Commissioners then in office, prior to a vote of qualified municipal electors.

- General Election. The ballot for the general election shall contain the (D) names of all qualified candidates for Mayor or Vice-Mayor, if the Mayor's or Vice-Mayor's term is expiring, and for each of the Residential Areas seats which are to be filled as a result of members' terms expiring. The ballot shall instruct electors to cast one vote for Mayor or Vice-Mayor, if applicable, and one vote for each Residential Area Council Seat, with a maximum of one vote per candidate. If any candidate for Mayor receives a number of votes greater than 50% of the total number of votes cast, such candidate shall be the duly elected Mayor and no run-off election for Mayor shall be required. If any candidate for Vice-Mayor receives a number of votes greater than 50% of the total number of votes cast, such candidate shall be the duly elected Vice-Mayor and no run-off election for Vice-Mayor shall be required. If any candidate for a Council Seat receives a number of votes greater than 50% of the total number of votes cast, such candidate(s) shall be duly elected to the Residential Area Council seat and no run-off election for that Seat(s) shall be required.
- (E) Run-off Election. If necessary, the ballot for the runoff election shall contain the names of the two candidates for Mayor, the two candidates for Vice-Mayor, and the names of the two candidates for each Council Seat, who received the most votes in the general election. The ballot shall instruct electors to cast one vote for Mayor, one vote for Vice-Mayor, and one vote for each Council Seat, with a maximum of one vote per candidate. The candidate for Mayor receiving the most votes shall be duly elected Mayor. The candidate for Vice-Mayor receiving the most votes shall be duly elected Vice-Mayor. The candidate for each Council Seat receiving the most votes shall be duly elected to that Council Seat. Run-off elections shall, whenever possible, be held at the same time as County-wide or state-wide elections, but in no event less than 14 days nor more than 35 days after the general or special election giving rise to the run-off.
- (F) Ties. In the event that there is a tie in the regular election and it is necessary to break the tie in order to determine the two (2) names to be placed on the ballot at the runoff election, or in the event that there is a tie in the runoff election, then the winner or winners shall be determined by the drawing of straws, with the person or persons drawing the longest straw being declared the winner.

- (G) Special Elections. Special elections, when required, shall be scheduled by the Council at such times and in such manner as shall be consistent with this Charter and State law.
- (H) Single Candidates. No election for Mayor or Vice-Mayor or any Council Seat shall be required in any election if there is only one duly qualified candidate for Mayor, Vice-Mayor or for any Council Seat. That candidate shall be considered elected by operation of law.
- (I) Absentee Voting. Absentee voting will be permitted as provided by the laws of the State of Florida and under such conditions as may be prescribed by ordinance from time to time; provided, however, that no ordinance shall limit the right to vote by absentee ballot available under State law.
- (J) Early Voting. Early voting will be permitted as provided by the laws of the State of Florida and Miami Dade County, in the case of any Town election held in conjunction with a County-wide election, and under such conditions as may be prescribed by ordinance from time to time.; provided, however, that no ordinance shall permit early voting for more than three (3) days prior to an election unless required by State law.
- (K) Commencement of Terms. The term of office of any elected official will commence at 12 o'clock noon, on the day following the day that the Canvassing Board of Miami-Dade County certifies the results of the general or runoff election in which he/she is elected, and will end at the <u>time that the term of his or her successor commences</u>. end of the day on which regular elections are held in the year in which his/her term expires.

The Council shall hold no meetings between the general election or the runoff election and the swearing in of those newly elected or re-elected Council members except in the case of an emergency affecting life, health, property or the public peace.

This section is consistent with the conditions of incorporation detailed in Section 20-27 of the Miami-Dade County Code, which may be amended from time to time. Any modifications to the relevant provisions of this section will require:

- (A) All approvals normally required by the municipal charter, and
- (B) Approval by 2/3rds of the total membership of the Miami-Dade County Board of County Commissioners.

## Section 5.2 Initiative and Referendum.

- (A) Power to Initiate and Reconsider Ordinances.
  - (1) *Initiative.* The electors of the Town shall have the power to propose ordinances to the Council and, if the Council fails to adopt an

- ordinance so proposed without any change in substance, to adopt or reject it at a Town election, provided that such power shall not extend to the annual budget or capital program or any ordinance appropriating money, levying taxes or setting salaries of Town officers or employees.
- (2) Referendum. The electors of the Town shall have power to require reconsideration by the Council of any adopted ordinance and, if the Council fails to repeal an ordinance so reconsidered, to approve or reject it at a Town election, provided that such power shall not extend to the annual budget or capital program or any ordinance appropriating money, levying taxes or setting salaries of Town officers or employees.
- (B) Commencement of Proceedings. A minimum of ten electors may commence initiative or referendum proceedings by filing with the Town Clerk an affidavit (the "Affidavit") stating they will constitute the petitioners' committee (the "Committee") and be responsible for circulating the petition (the "Petition") and filing it in proper form, stating their names and addresses and specifying the address to which all notices to the Committee are to be sent, and setting out in full the proposed initiative ordinance or citing the ordinance sought to be reconsidered. Promptly after the Affidavit of the Committee is filed, the Town Clerk shall, at the Committee's request, issue the appropriate Petition blanks to the Committee at the Committee's expense. Petitioners' proposed ordinance shall be approved as to legal sufficiency by the Town Attorney prior to circulation.

## (C) Petitions.

- (1) Number of Signatures. Initiative and referendum petitions must be signed by at least ten (10) percent of the total number of electors registered to vote at the last regular Town election.
- (2) Form and Content. All pages of a Petition shall be assembled as one instrument of filing. Each signature shall be executed in ink and shall be followed by the printed name and residence address (or precinct number) of the person signing as well as the date signed. Petitions shall contain or have attached throughout their circulation the full text of the ordinance proposed or sought to be reconsidered, as well as an advisory noting that any individual who knowingly signs more than one petition or who attempts to sign another person's name, or a fictitious name shall be deemed to have violated F.S. § 104.185, and in addition shall be guilty of a misdemeanor in the second degree.

Affidavit of Circulator. Each page of a Petition shall have attached to it when filed an affidavit executed by the circulator stating that s/he personally circulated the page, the number of signatures contained, that all the signatures were affixed in his/her presence, that s/he believes them to be the genuine signatures of the persons whose

names they purport to be and that each signer had an opportunity before signing to read the full text of the ordinance proposed or sought to be reconsidered. This affidavit shall include a sworn statement signed by the circulator certifying to its truthfulness and correctness; stating that it is being given under penalty of perjury under the laws of the State of Florida; and setting forth the date and the place of execution of the certification.

(3) Filing Deadline. All Petitions must be filed within 60 days of the date a proper Affidavit is filed pursuant to subsection (B) of this section.

## (D) Procedure for Filing.

- (1) Certificate of Clerk; Amendment. Within Twenty (20) days after an initiative Petition is filed or within five business days after a referendum Petition is filed, the Town Clerk shall complete a certificate as to its sufficiency ("the Certificate"). If insufficient the Certificate shall specify the particulars of the deficiency. A copy of the Certificate shall be promptly sent to the Committee by registered mail. Grounds for insufficiency are only those specified in subsection (c) of this Section. A Petition certified insufficient for lack of the required number of valid signatures may be amended once if the Committee files a notice of intention to amend it with the Town Clerk within two (2) workdays days after receiving the copy of the Certificate and files a Supplementary Petition ("Supplementary Petition") with the Town Clerk with additional valid signatures within ten (10) days after receiving the copy of such Certificate. Such Supplementary Petition shall comply with the requirements of subsection (c) of this Section. Within five business days after a Supplementary Petition is filed the Town Clerk shall complete a Certificate as to the sufficiency of the Petition as amended ("Amended Petition") and promptly send a copy of such Certificate to the Committee by registered mail. If a Petition or Amended Petition is certified sufficient, or if a Petition or Amended Petition is certified insufficient and the Committee does not elect to amend or request Council review under paragraph (2) of this subsection within the time required, the Town Clerk shall promptly present his/her certificate to the Council and such Certificate shall then be a final determination as to the sufficiency of the petition.
- (2) Council Review. If a Petition has been certified insufficient and the Committee does not file notice of intention to amend it or if an Amended Petition has been certified <u>as</u> insufficient, the Committee may, within two (2) workdays after receiving the copy of such Certificate, file a request with the Town Clerk that it be reviewed by the Council. The Council shall review the Certificate at its next regularly scheduled meeting following the filing of such request and approve or

disapprove it. The Council's determination shall then be a final determination as to the sufficiency of the Petition.

## (E) Action on Petitions.

- (1) Action by Council. When an initiative or referendum Petition has been finally determined sufficient, the Council shall promptly consider the proposed initiative ordinance or reconsider the referred ordinance by voting its repeal. If the Council fails to adopt a proposed initiative ordinance without any change in substance within 45 days or fails to repeal the referred ordinance within 30 days, it shall submit the proposed or referred ordinance to the electors of the Town. If the Council fails to act on a proposed initiative ordinance or a referred ordinance within the time period contained in this paragraph, the Council shall be deemed to have failed to adopt the proposed initiative ordinance or failed to repeal the referred ordinance on the last day that the Council was authorized to act on such matter.
- (2) Submission to Electors. The vote of the Town on a proposed or referred ordinance shall be held not less than 45 days nor more than 75 days from the date the Council acted or was deemed to have acted pursuant to paragraph (1) of this subsection. If no regular election is to be held within the period described in this paragraph, the Council shall provide for a special election. Copies of the proposed or referred ordinance shall be made available at the polls.
- (3) Withdrawal of Petitions. An initiative or referendum Petition may be withdrawn at any time prior to the 15<sup>th</sup> day preceding the day scheduled for a vote by the Town by filing with the Town Clerk a request for withdrawal signed by at least eight/tenths of the Committee. Upon the filing of such a request, the Petition shall have no further force or effect and all proceedings shall be terminated.

### (F) Results of Election.

- (1) Initiative. If a majority of the qualified electors voting on a proposed initiative ordinance vote in its favor, it shall be considered adopted upon certification of the election results. If conflicting ordinances are approved at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict. If the proposed initiative ordinance fails, it or any ordinance that is substantially similar may not be submitted in accordance with this Article for at least one year from the date of the election.
- (2) Referendum. If a majority of the qualified electors voting on a referred ordinance vote for repeal, the repealed ordinance shall be considered repealed upon certification of the election results.

#### Section 5.3 Form of Ballots

A charter amendment, ordinance or other ballot issue to be voted on by the electors shall be presented for voting by ballot title. The ballot title of a measure may differ from its legal title and shall be a clear, concise statement describing the substance of the measure without argument or prejudice in accordance with state law.

## **Section 5.4 County Canvassing Board**

As a condition of incorporation approval pursuant to Article V of the Miami-Dade County Home Rule Charter, each new municipality shall provide for all of its elections to be canvassed by a County Canvassing Board as provided under the election laws of this state and Section 20-27(C) of the Miami-Dade County Code. Any modifications to this Section will require all approvals normally required by the municipal charter, and approval by an affirmative vote of 2/3rds of the members of the Board of County Commissioners then in office, prior to a vote of qualified municipal electors.

## ARTICLE VI. CHARTER AMENDMENTS AND ABOLISHMENT OF MUNICIPALITY

# Section 6.1 Procedure to Amend or Revoke Charter or to Abolish Municipality.

(A) The Charter may be amended or revoked, or the Town abolished, in accordance with the provisions of Section 5.03 of the Home Rule Charter of Miami-Dade County, which states: "Except as provided in Section 5.04, any municipality in the county may adopt, amend, or revoke a charter for its own government or abolish its existence in the following manner. Its governing body shall, within 120 days after adopting a resolution or after the certification of a petition of ten percent of the qualified electors of the municipality, draft or have drafted by a method determined by municipal ordinance a proposed charter amendment, revocation, or abolition which shall be submitted to the electors of the municipalities. Unless an election occurs not less than 60 nor more than 120 days after the draft is submitted, the proposal shall be submitted at a special election within that time. The governing body shall make copies of the proposal available to the electors not less than 30 days before the election. Alternative proposals may be submitted. Each proposal approved by a majority of the electors voting on such proposal shall become effective at the time fixed in the proposal." This provision is a special condition of incorporation pursuant to Article V of the Miami-Dade County Home Rule Charter. Any modifications to this paragraph will require all approvals normally required by the municipal charter, and approval by an affirmative vote of 2/3rds of the members of the Board of County Commissioners then in office, prior to a vote of qualified municipal electors. The Town shall enact an ordinance to implement this Article.

(B) If conflicting amendments are adopted at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

#### Section 6.2 Charter Revision.

- (A) At its first regular meeting in December 2007, and in December 2011 and thereafter every sixth year, the Council shall appoint and fund a Charter Revision Commission (the "Commission").
- (B) The Commission shall consist of five persons including one from each of the three Residential Areas. One appointment shall be made by the Mayor, Vice-Mayor and each <u>District</u> Council member. <u>Each District Council member shall appoint one (1) person from his or her Council district</u>. In addition, the Mayor shall appoint one person to the Commission who is the Vice-Mayor or Council member who is serving a second consecutive term, who shall serve as a non-voting Commission member. In the event a second term Vice-Mayor or Council member is not serving, the Mayor may appoint a sitting Vice Mayor or Council member. The Mayor shall not be eligible for appointment to the Commission. The Commission shall commence its proceedings within 45 days after appointment by the Council.
- (C) The Commission shall be charged with reviewing each and every section of this charter and make recommendations for change. If the Commission determines that an amendment or revision is needed, it shall submit the same to the Council no later than July 1<sup>st</sup> of the year following its appointment. Alternative proposals may be submitted by the Charter Revision Commission and/or by Citizen's initiative. The Council after its review and approval shall submit suggested amendments and revisions to the electors of the Town in accordance with the provisions of Section 6.1, at the next regularly scheduled election.

#### **ARTICLE VII. GENERAL PROVISIONS**

## Section 7.1 Severability and Conflict within the Charter.

Severability. If any article, section or part of a section of this Charter shall be held invalid by a court of competent jurisdiction, such holding shall not affect the remainder of this Charter or the context in which such article, section or part of section so held invalid may appear, except to the extent that an entire article, section or part of section may be inseparably connected in meaning and effect with the section or part of section to which such holding shall directly apply.

Conflict within the Charter. Should there be a conflict or apparent conflict in the provisions of any one section of this Charter, or between two or more sections thereof, then the Town Attorney shall resolve such conflict or apparent conflict by a written ruling which shall be legal and binding unless invalidated by a court of competent jurisdiction.

## Section 7.2 Conflicts of Interest; Ethical Standards.

- (A) All Council members, officials and employees of the Town shall be subject to the standards of conduct for public officers and employees set by State law and the Miami-Dade County Code of Ethics. The Council may, by ordinance, adopt additional standards of conduct and Code of ethics, but in no case inconsistent with law. If the Town Council wishes to opt out of the Cone of Silence Provision of the Miami-Dade County Code of Ethics, then they must do so by ordinance.
- (B) All elected officials, employees and appointed board or committee members shall disclose any interest in real estate or other business(es) upon entering office or being hired and shall re-disclose annually thereafter, except as otherwise provided by law.
- (C) Without in any way limiting the generality of the foregoing, no Council member, Town Manager, Town Attorney, Town Clerk, Department Director, or member of a selection committee for a procurement, shall have a financial interest, direct or indirect, or by reason of ownership of stock or other equity ownership in any corporation or entity, in any contract or in the sale to the Town or to a contractor supplying the Town of any land or rights or interests in any land, materials, supplies, or services unless, after full disclosure to the Council of the nature and extent of such interest, the same is authorized by the Council before the event or accepted and ratified by the Council after the event. No member of the Council, Town Manager, Town Clerk, Staff or a member or employee of the Town Attorney's office who possesses such a financial interest shall vote on, or participate in the Council deliberations concerning, any such contract or sale. Any violation of this Section with the knowledge of the person or entity contracting with the Town shall render the contract voidable by the Council.

## Section 7.3 Town Personnel System.

All new employment, appointments and promotions of Town employees shall be made pursuant to written personnel procedures to be established by the Manager from time to time.

#### Section 7.4 Variation of Pronouns.

All pronouns and any variation thereof used in this Charter shall be deemed to refer to masculine, feminine, neutral, singular or plural as the identity of the

person or persons shall require and are not intended to describe, interpret, define or limit the scope, extent, or intent of this Charter.

#### Section 7.5 No Discrimination.

The Town shall not adopt any ordinance or policy that discriminates against any person due to race, religion, color, national origin, physical or mental disability, creed, age, sexual orientation or gender.

## Section 7.6 Lobbyists, Principals and Vendors

- (A) The Town Council shall pass, maintain and enforce an ordinance, which requires all paid lobbyists (as may be defined by the Miami-Dade County Code and/or as may be made more stringent by the Town Council) to:
  - (1) Register and pay annual fees as required by ordinance with the Town Clerk prior to lobbying any Town government official ie: Town Council member, employee, board or committee member;
  - (2) Disclose in writing all persons and/or entities the lobbyist is representing upon registering and shall update this list within ten (10) days of being retained by a new principal or for a new project of an existing principal; and
  - (3) Disclose in writing all Town government officials directly contacted by the lobbyist and any expenditures involved as defined by State law, before the public hearing.

The ordinance shall also direct the Town Clerk to make available to the Town Council, prior to any public hearing, on the event or matter for which a registered lobbyist may appear all disclosures required herein or as otherwise required by State or County law.

(B) Principals in all items requiring a public hearing must disclose in writing to the Town Clerk all moneys paid to a person(s) or entity to support or not object to a matter which is set for a public hearing.

Any violation of subsections (A) or (B) above shall render the issue being lobbied for or sought by the principal voidable.

(C) Any vendor of products or services who directly or through a member of the person's immediate family or through a political action committee or through any other person makes a campaign contribution to a candidate who is elected Mayor, Vice-Mayor or Council member, shall be required to disclose said contribution and if said Vendor fails to disclose he/she/it shall be barred from selling any product or service to the Town for a period of two years following the swearing in of the subject elected official.

#### Section 7.7 Precedence over Related Laws.

In case of a conflict between the provisions of this Charter and the provisions of the Code to be adopted pursuant thereto, the Charter terms shall control. Moreover, nothing in this Charter shall be construed to alter, abolish, affect or amend the general laws of this State, now in force, or which hereinafter may be enacted relative to or affecting this Town, except where such laws are in direct conflict in which case the provisions of this Charter or Code adopted pursuant thereto shall supersede and be in full force and effect.

#### ARTICLE VIII. TRANSITION PROVISIONS

### Section 8.1 Temporary Nature of Article.

The following sections of this Article are inserted solely for the purpose of effecting the incorporation of the Town and the transition to a new municipal government. Each section of this Article shall automatically, and without further vote or act of the electors of the Town, become ineffective and no longer a part of this Charter at such time as the implementation of such section has been accomplished. In cases of a conflict between this Article and the remainder of the Charter the provisions of this Article shall govern.

#### Section 8.2 Interim Governing Body.

After adoption of this Charter but prior to the election and acceptance of office of the first elected Town Council, the governing body for the Town shall be the Miami-Dade County Board of County Commissioners (the "County Commission"). In acting as the governing body for the Town during this interim period, the County Commission shall provide all municipal services to the Town but shall not make decisions, which could reasonably be postponed until the election of the Town Council or which would materially alter or affect the status quo within the Town boundaries. Once the Town Council is seated, notwithstanding the delivery of any services provided by virtue of Article IX of this Charter or any Interlocal Agreement(s) with Miami-Dade County, it is understood that the Town Council shall make all decisions for the Town, unless specifically provided otherwise ein.

#### Section 8.3 Interim Adoption of Codes and Ordinances.

Until otherwise modified or replaced by this Charter or the Town Council, all Codes, ordinances and resolutions in effect on the date of adoption of this Charter shall, to the extent applicable to the Town, remain in full force and effect

as municipal Codes, ordinances and resolutions of the <u>Town until modified</u>, replaced or repealed by the Town.

#### Section 8.4 Taxes and Fees.

Unless otherwise modified by the Town Council, all municipal taxes and fees imposed within Town boundaries by Miami-Dade County as the municipal government for unincorporated Miami-Dade County, which taxes and fees are in effect on the date of adoption of this Charter, shall continue at the same rate and on the same conditions as if those taxes and fees had been adopted and assessed by the Town.

## Section 8.5 Initial Election of Town Council and Mayor.

- (A) Transition. This Section shall apply to the initial general and runoff elections for Council, Vice-Mayor and Mayor. Any conflicting provisions of this Charter shall not apply to such elections.
  - (1) The general election shall be held on January 10, 2006. The first Town run-off election, if necessary, shall be held on January 31, 2006.
  - (2) The general and run-off elections in 2006 shall be held pursuant to the general election procedures set forth in this Charter except as follows:
    - (a) Only those candidates will qualify for election who have filed written notice of candidacy for Council member, Vice-Mayor or Mayor (but not more than one) with the Miami-Dade County Elections Department, which notice is received between 8:00 a.m. on November 9, 2005 and 5:00 p.m. on December 1, 2005, and which notice shall:
      - (i) indicate whether the candidate seeks the office of Council member, Vice-Mayor, or Mayor; if for Council member, a particular seat 1,2 or 3 shall be designated;
        - (ii) contain the candidate's certification that s/he is a qualified elector of the State, is registered to vote in the Town and that the person has resided continuously within the area comprising the Town since November 9, 2003;
        - (iii) if applicable, a certification that the candidate has resided continuously in the Residential Area they are seeking to represent since November 9, 2004;

- (iv) contain or be accompanied by such other information or statement, if any, as may be required by the applicable laws of the State;
  - (v) be signed by the candidate and duly notarized; and
- (vi) be accompanied by a check payable to the Board of County Commissioners in the amount of \$100.00 in addition to any fees required by Florida Statutes, as a qualifying fee.
- (3) There will be one Mayor, one Vice-Mayor, and three Council seats to be filled.
- (4) The Mayor will be elected to a term expiring in March 2010 or election of his/her successor.
- (5) The Vice-Mayor will be elected to a term expiring in March 2008 or election of his/her successor.
- (6) The odd numbered seats for Council members shall be elected to terms expiring in March 2010 or election of his/her successor.
- (7) The even numbered seat for Council members shall be elected to terms expiring in March 2008 or election of his/her successor.
- (B) Induction into Office. Those candidates who are elected at the first regular election shall take office at the initial Council meeting, which shall be held at 7 p.m. on January 12, 2006 or if a run-off election is necessary for any Seat at 7 p.m. on February 2, 2006, at a place to be determined.

## Section 8.6 Initial Expenditures.

Upon receipt by the Town of its first revenues, the Town Council shall consider all reasonable and appropriate invoices for utilities and for expenses, if any, incurred in the drafting and production of this Charter, including but not limited to invoices for legal services, secretarial services, photocopies, mailing and other services—authorized—by—the—Charter—Commission.—Said—reasonable—and appropriate bills shall be publicly noticed for action by the Town Council and voted thereon.

### Section 8.7 First Fiscal Year and Budget.

(A) First Fiscal Year. The first fiscal year of the Town shall commence on the effective date of this Charter and shall end on September 30, 2006. The budget and ad valorem tax millage rate for the Town shall be those adopted by Miami-

Dade County for the unincorporated municipal services area at its final budget hearing on September 20, 2005.

- (B) First Full Fiscal Year. The first full fiscal year of the Town shall commence on October 1, 2006 and end on September 30, 2007. The first full fiscal year budget shall be adopted pursuant to State law.
- (C) Conflict of provisions. The provisions of this Section shall prevail over any conflicting provisions of this Charter concerning the levy of taxes or appropriation of funds.
- (D) Conflict with State law. In the event that any of the procedures provided by this section conflict with the Florida Statutes, the Council is authorized to replace such conflicting procedures by ordinance.

#### Section 8.8 Transitional Ordinances and Resolutions.

The Council shall adopt ordinances and resolutions required to effect the transition. Ordinances adopted within 60 days after the first Council meeting may be passed as emergency ordinances. These transitional ordinances shall be effective for a period of no longer than 180 days and thereafter may be readopted, renewed or otherwise continued only in the manner normally prescribed for ordinances.

#### Section 8.9 Town Name

The Supervisor of Elections for Miami-Dade County ("Supervisor") shall, at the election approving or disapproving of this charter, place the following questions on the ballot in substantially the following form, provided however, that while the substance of the questions shall remain substantively as set forth herein, the Supervisor in his discretion and in accordance with applicable law may revise such language to conform to the law:

## Title: Shall the Town be named "Town of Cutler Ridge"?

Shall the Town be named "Town of Cutler Ridge"?	
Yes —	
No -	
Title: Shall the Town be named "Town of Cutler Bay"	?
Shall the Town be named "Town of Cutler Bay"?	
Yes —	



In the event that both questions regarding the name of the proposed municipality prevail, the name receiving the most "Yes" votes shall be declared the winner and shall constitute the name of the proposed municipality and all references herein to "The Town" shall hereafter mean and include the name as selected pursuant to the election procedure as set forth above. In the event that both names prevail and receive an equal number of "Yes" votes, the name shall be deemed defeated. In the event that any ballot question receives an equal number of "Yes" and "No" votes, the question shall be deemed defeated. In the event that both questions regarding the name of the proposed municipality are defeated by the voters, then the Town Council within ninety (90) days of being sworn into office shall pass an ordinance naming the Town. The codifier of this charter shall substitute the name selected pursuant to this section in every reference throughout the Charter where a reference to the "Town" is made.

#### Section 8.10 Interim Personnel.

The Council may appoint an interim Town Manager, interim Town Attorney, interim Town Clerk and interim Town Staff for a period not to exceed 180 days or to serve until such time as a permanent Town Manager is selected and can appoint his/ her own Staff.

## Section 8.11 Code Enforcement Amnesty

The initial Town Council is directed to consider adopting a partial or full amnesty ordinance for code enforcement that allows citizens time to achieve compliance, waives fines or other penalties and seeks enforcement as the objective for the health, safety and welfare of the community.

#### ARTICLE IX. SPECIAL CONDITIONS



Within one hundred eighty (180) days after the election of a municipal council, the Town will enter into an interlocal agreement ("Interlocal Agreement") with Miami-Dade County to set forth contractual provisions establishing the municipality's relationship with Miami-Dade County to the extent required by the Charter.

## Section 9.2 County Services.

The Town shall remain a part of and receive services at least equal to the service level as of the date of approval of this Charter by the electors of the Town, in perpetuity, from the:

- (1) Miami-Dade Fire Rescue District,
- (2) Miami-Dade Library System, and
- (3) Miami-Dade Solid Waste Collection Service Area.

Private trash collection in place on the date of incorporation within the residential and commercial areas of the Town will continue <u>until the Town adopts a solid waste franchise ordinance.</u> The County's Department of Solid Waste Management will provide services to all new residential customers and continue serving existing customers.

Except as otherwise provided in this Article the County shall not have the right or ability to impair or infringe upon the functions and powers assumed by the town upon incorporation.

## Section 9.3 Specialized Law Enforcement Services.

The Town shall pay from its municipal funds, for specialized law enforcement services to be exclusively provided by the Miami-Dade Police Department in perpetuity. Payment amounts and other pertinent terms relating to the provision of specialized police services shall be set forth in a contract between the Town and Miami-Dade County. These specialized police services include, but are not limited to, tactical services, such as special response team, canine, helicopter, bomb squad investigations and central investigations, such as narcotics, criminal intelligence, economic crimes, homicide, robbery, sexual crimes, domestic violence, crime scene investigations and property and evidence. Specialized law enforcement services do not include police activities of a countywide nature such as warrants, crime lab, public corruption unit, communications, jail, court services, and all Sheriff's services as defined by State law. For as long as Miami-Dade County continues to fund specialized police services from the countywide budget, the Town shall receive a credit equivalent to the payment made by Town property owners through the countywide millage.

#### Section 9.4 Local Patrol Police Services.

The Town shall exclusively utilize the Miami-Dade Police Department for a specific level of patrol staffing for an initial period of three years. The utilization of the Miami-Dade Police Department for local patrol services may only be terminated for cause during this initial three (3) year period. Payment amounts and other pertinent items relating to the provision of local patrol services shall be set forth in a contract between the Town and Miami-Dade County. Such contract shall also provide that "the initial three-year period" shall commence upon the execution of the Local Patrol Contract by all parties. At the end of the three (3) year period the Town may elect not to renew the Local Patrol Contract at which point a transition period of no less than twelve (12) months will begin.

## **Section 9.5 Regulatory Control.**

The local government comprehensive plan adopted by the Town of Cutler Bay pursuant to Chapter 163, Part II, Florida Statutes, shall be consistent with the adopted Miami-Dade County Comprehensive Development Master Plan (the CDMP) as it may be amended from time to time, as applied to the sites listed below:

DEPARTMENT/FACILITY	LOCATION
MIAMI-DADE POLICE DEPARTMENT	
Cutler Ridge Station (District 4)	10800 SW 211 Street
MIAMI-DADE FIRE DEPARTMENT	
Cutler Ridge Station	10850 SW 211 Street
Saga Bay/Lakes by the Bay Station	21501 SW 87 Avenue
WATER and SEWER DEPARTMENT	
Water & Sewer Pump Station	10350 Puerto Rico Drive

The Miami-Dade County Board of County Commissioners may revise this list of facilities from time to time.

Any use or activity allowed by the CDMP may not be limited or impeded in any way by the local government comprehensive plan adopted by the Town of Cutler Bay. Jurisdiction over the listed sites for purposes of comprehensive planning, zoning and building approvals (including but not limited to site plan approvals, issuance of building permits, building inspections, compliance with the Florida Building Code or other applicable building code, issuance of certificates of occupancy, zoning applications, special exceptions, variances, building and/or zoning moratoria, and all other types of functions typically performed by Building and/or Zoning Departments) water and sewer installations, compliance with environmental regulations, street maintenance (including sidewalks, if applicable) and utility regulation shall be and is hereby vested in Miami-Dade County regardless of any Town of Cutler Bay code, charter, or ordinance provision to the contrary. So long as Miami-Dade County maintains jurisdiction over the matters set forth in this paragraph, Miami-Dade County shall pay the costs of providing the services described herein.

This provision shall not alter or affect the legal rights of any person residing or owning real property within the Town. The Town shall not institute, intervene or otherwise participate in, in opposition to Miami-Dade County, any judicial or formal administrative proceeding regarding land use or development of the listed sites, or Miami-Dade County's planning or regulatory requirements for any listed facility of countywide significance.

These Charter provisions shall be deemed self-executing.

## **Section 9.6 Continuing Obligations as to County Bonds**

The County has previously issued its \$41,580,000 Stormwater Utility Revenue Bonds, Series 1999 (the "Series 1999 Stormwater Bonds") of which \$35,400,000 remains outstanding as of May 1, 2005 and its \$75,000,000 Stormwater Utility Revenue Bonds, Series 2004 (the "Series 2004 Stormwater Bonds") of which \$71,485,000 remains outstanding as of May 1, 2005. The County, in its capacity as a stormwater utility (the "Stormwater Utility") pursuant to Sections 24-61 through 24-61.5 of the County Code, as amended from time to time and Section 403.0893, Florida Statutes, as amended from time to time, assesses and collects fees (the "Stormwater Utility Fees") in the unincorporated area of the County and within those municipalities that have not been exempted from the Stormwater Utility (the "Stormwater Utility Service Area"). The Series 1999 Stormwater Bonds and the Series 2004 Stormwater Bonds (collectively the "Stormwater Bonds") are payable from the Stormwater Utility Fees collected in the Stormwater Utility Service Area.

The County has issued its \$77,640,000 Public Service Tax Revenue Bonds (UMSA Public Improvements) Series 1999 (the "Series 1999 Public Service Bonds") of which \$65,190,000 remains outstanding as of May 1, 2005 and its \$55,275,000 Public Service Tax Revenue Bonds (UMSA Public Improvements) Series 2002 (the "Series 2002 Public Service Bonds") of which \$52,515,000 remains outstanding as of May 1, 2005 (collectively the Public Service Bonds) prior to the Town's incorporation payable from Public Service Taxes (defined below) collected in the unincorporated area of the County. The County receives a public service tax pursuant to Section 166.231, Florida Statutes, as amended from time to time, and as of October 1, 2001, from a discretionary communications tax assessed pursuant to Chapter 202, Florida Statutes and Section 29 of the County Code (collectively, "The Public Service Tax"). Within 180 days of the adoption of this Charter, the Town shall enact an ordinance, pursuant to Section 202.19, Florida Statues, authorizing the levy of the discretionary services tax at a rate no less than the rate established by the County for communications services prior to the incorporation of the Town.

The Stormwater Bonds, the Public Service Bonds, and any additional bonds issued in the future secured by the Stormwater Utility Fees (while the Town is part of the Stormwater Utility) are referred to collectively in this Section as the "Bonds". The Stormwater Utility Fees and Public Service Taxes securing these Bonds are referred to collectively in this Section as "Fees and Taxes".

The Town agrees that until the Bonds are retired the County shall have the right to receive and apply to debt service on the Bonds all of the Fees and Taxes collected within the unincorporated area and within the boundaries of the Town. The County shall continue to collect the Stormwater Utility Fees until the

Stormwater Bonds are retired even if the Town elects to seek exemption from the Stormwater Utility after incorporation. After the County has paid or satisfied the monthly debt service requirements on the Bonds, the County shall make a payment to the Town, equal to its share of the remaining Fees and Taxes on deposit with the County, provided, however, the Town will not be entitled to any Stormwater Utility Fees while it remains a part of the Stormwater Utility.

The Town's share shall be all Fees and Taxes collected within the Town annually minus its pro-rata share of debt service (the "Debt Service Share") on the Bonds. The Town's Debt Service Share for the Public Service Bonds is determined by expressing the Public Service Taxes collected within the Town at the time of incorporation as a percentage of the total Public Service Taxes collected within the unincorporated area of the County at the time of incorporation applying that percentage to the total annual debt service on the Public Service Bonds. The Town's Debt Service Share for the Stormwater Bonds (and any additional stormwater bonds issued while the Town is part of the Stormwater Utility) is determined by expressing the Stormwater Utility Fees collected within the Town during the County's Fiscal Year in which the Town is exempted by the County from the Stormwater Utility as a percentage of the total Stormwater Utility Fees collected within the Stormwater Utility Service Area during the County's Fiscal Year in which the Town is exempted by the County from the Stormwater Utility and applying that percentage to the total annual debt service on the Stormwater Bonds (and any additional stormwater bonds issued while the Town is part of the Stormwater Utility). The Town may prepay its proportionate share of the Bonds, including accrued interest, at any time during the life of the Bonds with out penalty.

The intent of this section is to ensure that (i) the County will be in compliance with the Bond covenants regarding the collection of the Fees and Taxes; (ii) the Town continues to pay its Debt Service Share until the Bonds are retired.

## **Section 9.7 Favored Nation Status**

If a subsequent incorporation is approved without the newly incorporated area being required to remain in the Miami-Dade Fire Rescue District, Miami-Dade Library System, Miami-Dade Solid Waste collection service area, or without contracting with the Miami-Dade Police Department for local patrol and specialized police services, the Town will be entitled to modify its relationship with the County, so that the Town will not be required to receive that particular service from the County. The provisions of this section, only apply to the service or services modified, and in no way alter the agreement regarding the remaining services.

## Section 9.8 Rights of the Town.

The town will be granted all rights powers and privileges afforded to all municipalities and provided under the general laws of the State of Florida subject only to the restrictions placed upon it by this Charter and Miami-Dade County's Home Rule Charter. The town will receive all other municipal revenue sources such as utility taxes including those that the County by right or may otherwise retain, such as the franchise fees, (which the County shall have exclusive authority to determine the Town's proportionate share) and will continue to receive all services that are provided to cities under the countywide budget.

#### Section 9.9 Modifications.

Any modifications to Article IX will require:

- (A) All approvals normally required by the municipal charter, and
- (B) Approval by an affirmative vote of 2/3rds of the total membership of the Miami-Dade County Board of County Commissioners then in office, prior to a vote of qualified municipal electors.

## **Section 9.10 Community Redevelopment.**

Pursuant to Chapter 163, Part III, Florida Statutes ("Act"), Miami-Dade County ("County"), as a home rule charter county, has the authority to create a community redevelopment district ("District") anywhere within its boundaries.

The County is in the process of creating such a District which includes a portion of the Town, this portion being generally described as the area bounded on the South by Canal C-1 (Black Creek Canal), on the West by SW 112 Avenue, on the North by State Road 5 (U.S. 1), including the area to the west of State Road 5 and east of the Busway between SW 112 Avenue and Caribbean Boulevard, and on the East by State Road 821 (Homestead Extension of the Florida Turnpike). The Town, acting through the governing body of the Town, shall adopt a resolution approving the community redevelopment plan or plans for the District ("Plan") in accordance with the Agreement Between Cutler Ridge and Goulds Representatives Regarding Incorporation Boundaries and Related Issues dated July 13, 2004, pursuant to Section 163.356(1) of the Act within forty-five (45) days from the date it receives the Plan from the County. The Plan shall include programs to remove blighting conditions, further the economic development of, and further the creation of affordable housing and jobs within the Goulds/(See Sec. 8.9) redevelopment area. The Plan shall conform to the requirements of Section 163.360, Florida Statutes.

#### Section 9.11 In remembrance of those who lost their lives.

The Electors of the Town of Cutler Bay wish to recognize and remember those who died in New York City, at the Pentagon and in Pennsylvania on September 11, 2001. A date which will always be referred to as 9/11.

## Section 9.12 Dedications, Conveyances, Covenants and Commitments.

The creation of the municipality shall in no way release, eliminate or modify the obligation of any person or party to convey or provide to Miami-Dade County, or the right of Miami-Dade County to obtain and enforce, any benefit, payment, conveyance, right, title or interest of any type or nature, which has been committed, promised or otherwise obligated to Miami-Dade County as of the effective date of this charter, whether by contract, agreement, development order, declaration of restrictive covenants, dedication, requirement of law, ordinance or other regulation, or any other means.

The County may at its sole discretion, however, assign, convey or otherwise transfer by appropriate legal instrument to the Town such benefits, payments, conveyances, rights, titles or interests as may be of a municipal nature.

The municipality shall not release, modify or eliminate any such obligation imposed by development order, declaration of restrictive covenants, law, regulation or ordinance without the prior written consent of Miami-Dade County.

## **Appendix A**

Legal Description of the Town of Cutler Bay Proposed Municipal Boundaries

A portion of Miami-Dade County, Florida generally bounded on the North by S.W. 184th Street (the South boundary of the Village of Palmetto Bay), bounded on the South by S.W. 232 Street, bounded on the East by Biscayne National Park and bounded on the West by the South Miami-Dade Transit Corridor (Bus Way) and SW 112 Avenue (Allapattah Road), said portion being more particularly described as follows:

BEGIN at the Southeast corner of Section 17, Township 56 South, Range 40 East, Miami-Dade County, Florida (the intersection of SW 97 Avenue and theoretical S.W. 232nd Street); thence Northerly along the East line of the Southeast one-quarter of said Section 17 to the intersection with the North line of the South three-quarters of the Southeast one-quarter of the Southeast onequarter of said Section 17; thence Westerly along said North line of the South three-quarters of the Southeast one-quarter of the Southeast one-quarter of Section 17 (theoretical SW 228 Street) to the intersection with the Southerly extension of the East line of SUNSET APARTMENTS according to the plat thereof as recorded in Plat Book 156, Page 89 of the Public Records of Miami-Dade County, Florida; thence Northerly along said Southerly extension of the East line of SUNSET APARTMENTS, the East line of SUNSET APARTMENTS and the Northerly extension of the East line of said SUNSET APARTMENTS to the intersection with the centerline of SW 224 Street as shown on said SUNSET APARTMENTS: thence Westerly and Northwesterly along the centerline of said SW 224 Street to the intersection with the centerline of Old Cutler Road (Ingraham Highway) as described in Official Record Book 3097, page 272 of the Public Records of Miami-Dade County, Florida; thence Northeasterly along said centerline of Old Cutler Road (Ingraham Highway) to the intersection with the South line of Section 8, Township 56 South, Range 40 East; thence Westerly along the South line of said Section 8 (SW 216 Street) to the intersection with the Southerly extension of the East line of Tract "E" of CUTLER CANAL APARTMENTS III according to the plat thereof as recorded in Plat Book 139, page 79 of the Public Records of Miami-Dade County, Florida; thence Northerly along said Southerly extension of the East line of Tract "E" to the Southeast corner of said Tract "E"; the following 5 courses being along the Easterly line of said Tract "E"; (1) thence Northerly for 160.00 feet; (2) thence Westerly for 16.07 feet; (3) thence Northerly for 705.00 feet; (4) thence Easterly for 23.21 feet; (5) thence Northerly for 250.00 feet to the Northeast corner of said Tract "E", thence Northerly along the Northerly extension of the East line of Tract "E" to the intersection with the centerline of S.W. 212th Street; thence Westerly along said centerline of S.W. 212 Street to the intersection with the centerline of the canal right-of-way described in Official Record Book 1631, Page 643 and Official

Record Book 1373, Page 613 of the Public Records of Miami-Dade County, Florida; thence northerly along a line 25.00 feet East of and parallel with the West line of the Southwest one-quarter of the Northeast one-quarter of the Southwest one-quarter of the above mentioned Section 8 (said line being the centerline of said canal right-of-way) for 170.00 feet; thence Westerly along a line 135.00 feet North of and parallel with the South line of the Southeast one-quarter of the Northwest one-quarter of the Southwest one-quarter of said Section 8 (said line also being the centerline of said canal right-of-way) to the intersection with the center line of Canal C-1-N; thence Northerly and Northeasterly along said centerline of Canal C-1-N to the intersection with the Southerly prolongation of the East line of the Miami-Dade County Parks and Recreation Department property described in Official Record Book 19682, Page 4787 of the Public Records of Miami-Dade County, Florida; thence Northerly along the Southerly prolongation of the East line and the East line of said Miami-Dade County Parks and Recreation Department property to the Northeast corner of said Miami-Dade County Parks and Recreation Department property; thence westerly along the North line and the Westerly prolongation of the North line of said Miami-Dade County Parks and Recreation Department property, across State Road 821 (Homestead Extension of the Florida Turnpike) as shown on the Florida State Department of Transportation Right-of-way Map, Section 87005-2502, to the intersection with the Westerly Limited Access Right-of-Way line of said State Road 821 (Homestead Extension of the Florida Turnpike); thence Southerly along said Westerly Limited Access Right-of-Way line of said State Road 821 (Homestead Extension of the Florida Turnpike) to the intersection with the centerline of Canal C-1 (Black Creek Canal); thence Westerly following said centerline of Canal C-1 (Black Creek Canal) to the intersection with the West line of the Southeast one-quarter of Section 7, Township 56 South, Range 40 East, Miami-Dade County, Florida, lying in S.W. 112th Avenue (Allapattah Road): thence Northerly along said West line of the Southeast one-quarter and the West line of the Northeast one-quarter of said Section 7 (S.W. 112th Avenue and its Northerly extension) to the intersection with the Southeasterly right-of-way line of the South Miami-Dade Transit Corridor as recorded in Official record Book 20119, page 0538 of the Public Records of Miami-Dade County, Florida; Thence Northeasterly along said Southeasterly right-of-way line of the South Miami-Dade Transit Corridor, across Sections 7, 6 and 5, Township 56 South, Range 40 East Miami-Dade County, Florida, to the intersection with the centerline of S.W. 186th Street; thence Easterly along said centerline of S.W. 186th Street to the intersection with the centerline of State Road 5 (U.S. 1) according to the Florida Department of Transportation Right-of-Way Map recorded in Plat Book 124, Page 56 of the Public Records of Miami-Dade County, Florida; thence Northeasterly along said centerline of State Road 5 (U.S. 1) to the intersection with the North line of Section 5, Township 56 South, Range 40 East, lying in S.W. 184th Street said line also being the South boundary of the Village of Palmetto Bay; thence Easterly along the South boundary of the Village of Palmetto Bay and the North line of Sections 5, 4, 3, and 2, Township 56 South, Range 40 East, (S.W. 184th Street) to the intersection with the Mean High Water Line on the

Western shore of Biscayne Bay and the Western boundary of Biscayne National Park, the following 12 courses being on the Western boundary of Biscayne National Park: (1) Thence Southerly along said Mean High Water Line to the intersection with the South line of the North one-half of Lots 7 and 8, in the North one-half of Section 2, PERRINE GRANT according to the plat thereof as recorded in Plat Book 4, page 9 of the Public Records of Miami-Dade County, Florida; (2)thence Westerly along said South line of the North one-half of Lots 8 and 7 of said PERRINE GRANT to a point 1570 feet, more or less, East of the West line of Lot 5 of said PERRINE GRANT; (3) thence Southerly to a point 425 feet, more or less, North of the South line of Lot 7, in the South one-half of Section 2, PERRINE GRANT; (4) thence Southeasterly to the Southwest corner of Lot 8 in the South one-half of Section 2, PERRINE GRANT; (5) thence Southerly to the Northwest corner of Lot 7, in Section 2, TENALLA OCEAN FARMS according to the plat thereof as recorded in Plat Book 8, page 124 of the Public Records of Miami-Dade County, Florida; (6) thence Southerly to the Southwest corner of said Lot 7 in Section 2, TENALLA OCEAN FARMS; (7) thence Southeasterly to the Northeast corner of Lot 40, in Section 11, TENALLA OCEAN FARMS; (8) thence Southerly along the East line of said Lot 40, Lot 57 and Lot 72 of said TENALLA OCEAN FARMS to the Southeast corner of said Lot 72; (9) thence Southwesterly to a point on the North line of Section 14, Township 56 South, Range 40 East, which lies 1600 feet, more or less Easterly of (as measured along said North line) of the Northwest corner of said Section 14; (10) thence Southwesterly to a point on the North line of the South one-half of the North one-half of said Section 14 which lies 1550 feet, more or less, East of the West line of said Section 14; (11) thence Southwesterly to a point on the North line of the South one-half of Section 14 which lies 1320 feet, more or less. East of the West line of Section 14: (12) thence Southwesterly to a point on the South line of said Section 14 which lies 430 feet, more or less, East of the West line of said Section 14; thence Westerly, leaving said Western boundary of Biscayne National Park, along the South line of Section 14, Section 15 and Section 16, Township 56 South, Range 40 East (S.W. 232nd Street and the Easterly extension thereof) to the Southeast corner of Section 17, Township 56 South, Range 40 East and the POINT OF BEGINNING.

## TAB 8



R. Don O'Donniley, AICP Planning Director

### MEMORANDUM

Date: April 24, 2008

To: Don O'Donniley, AICP, Planning Director

Re: Application No. 08-02-06-V

Oscar and Lizette Arroyo Variance of Lot Coverage Located at 8863 SW 206 Lane (Folio: 36-6009-030-2200)

### **REQUEST**

A Variance of Lot Coverage to allow lot coverage of 54% where 45% is permitted.

### **Parcel Information and Legal Description:**

The property is located at 8863 SW 206 Lane, Cutler Bay, Florida

Legal Description: Lot 14, Block 10 of "Cantamar", according to the plat thereof, as recorded in Plat Book 161, at Page 27 of the public records of Dade County, Florida.

### BACKGROUND AND ANALYSIS

### **Background**

### 1. Application

The house at 8863 SW 206 Lane was originally constructed in 2006. As constructed the house covered 37% of the lot, and the driveway covered 14%. However, based on the zoning code, the driveway was not counted in the overall lot coverage. If the driveway were to count as an impervious surface, the lot coverage would have been 51%.

The property has had several upgrades in the rear yard since 2006. The first upgrade was the addition of a backyard terrace which measures approximately 400 square feet and brought the total lot coverage to 43% (not including the driveway).

Recently the home owner received a permit to construct a pool, grotto, slide and associated decking around the pool.

During the routine site inspection, the town's planner discovered that the pool and slide were not built to the specification of the approved drawings and the Planning Director immediately issued a stop work order on the project. The inspection revealed that the pool was larger than approved and the steps associated with the slide were wider, causing the entire slide structure to be located too close to the side property line.

The Planning Director informed the applicant that his permit was no longer valid, and that the Town Council had changed the zoning code as it relates to lot coverage and now includes pools and decks. The applicant was now required to apply for a variance to exceed 45% lot coverage.

Based on this, the application has been submitted for a Variance of Lot Coverage to allow lot coverage of 54% where 45% is permitted.

### **Analysis**

### 1. Consistency with the Comprehensive Development Master Plan

The Adopted 2005 and 2015 Land Use Plan designates the subject properties as **Low Density Residential**. This density range is typically characterized by detached single family residential units. Clustering, and a variety of housing types may, however, be authorized. The residential densities allowed in this category shall range from a minimum of 2.5 to a maximum of 6.0 dwelling units per gross acre.

This application is **consistent** with the Town Comprehensive Development Master Plan and the Land Use designation of the surrounding properties.

### 2. Zoning

The following Sections of the Town Zoning Code are relevant to this request.

**Chapter 33 Zoning Code of the Town of Cutler Bay** 

Article XIVB. RU-1M(a), MODIFIED SINGLE-FAMILY RESIDENTIAL DISTRICT

### Section 200.3. Uses permitted.

No land, body of water and/or structure shall be used or permitted to be used and no structure shall be hereafter erected, constructed, moved, reconstructed or structurally altered for any purpose in an RU-1M(a) District which is designed, arranged, or intended to be used or occupied for any purpose other than those uses specifically provided in the RU-1 District.

Other provisions of this zoning district would not change but the request is consistent with the RU-1 Single-Family District.

**Section 49.** Table of minimum widths, area of lots; maximum lot coverage, and minimum building sizes.

The minimum width and area of lots, the maximum lot coverage, and minimum building sizes shall be in effect for the districts enumerated in the following table:

### Lot Coverage Table:

District	Families	Min. Width	Min. Lot Area (Sq. Ft.)	Max. Lot Coverage (% of Lot Area)	Min. Bldg. Size (Cu. Ft.)
RU- 1M(a)	1	50'	5,000	40% for subdivisions platted on or before March 8, 2002; 45% for subdivisions platted after March 8, 2002	8,500

### The requirements of this Code Section are the subject of the Variance request.

### Lot Coverage Analysis:

The applicants are requesting a Variance of Lot Coverage to allow a lot coverage of 54% where 45% is permitted (plat was recorded on January 14, 2004). The current lot coverage is 43% which includes the house and terrace. This lot, which is 6,300 square feet in size, would be allowed a maximum lot coverage of 2,835 square feet (45%). The proposed pool, spa, rockslide, rock waterfall and decking are substantially in compliance, however, didn't meet the site plans as approved and total an additional 687 square feet.

House 2,318 s.f.
Terrace 371 s.f.
Pool 497 s.f.
Slide/Grotto 190 s.f.

Total 3,376 s.f.

Total lot area 6,300 s.f.
Lot coverage 54%
Admin Variance limit 50%
% over Admin limit 4%

\* \* \*

(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:**

Staff would support the applicant removing 135 s.f. of the pervious surfaces in the front or rear yards in order to off-set the increase of impervious area in the rear yard and bringing the total lot coverage to a maximum of 50%. Lot coverage of 50% can be handled at an administrative level. Staff is not in support of the slide being located within the side yard setback, and it should be noted that this is not a part of this application. Compliance with the side yard setback will result in reduced lot coverage.

Approval, subject to the following condition.

### **CONDITIONS:**

1. The applicants shall mitigate the impacts of the rear yard lot coverage by utilizing either pervious concrete, grasscrete or turf block for a portion of the

driveway or by removing a portion of the driveway or other pervious surfaces on the lot so that the total lot coverage doesn't exceed 50%.

### **Attachments**

### **RESOLUTION NO. 08-**

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 8863 S.W. 206 LANE (36-6009-030-2200); AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS,** Oscar and Lizette Arroyo (the "Applicant") has submitted a variance application, pursuant to Section 33-311(4)(b) of the Town of Cutler Bay (the "Town") Code of Ordinances (the "Town Code") for property located at 8863 S.W. 206 Lane; and

**WHEREAS,** the Applicant seeks to vary Section 33-49 of the Town Code relating to the lot coverage, to permit a lot coverage of 54% where 45 % is permitted; and

**WHEREAS**, on March 12, 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 April 21, 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.

<u>Section 2.</u> <u>Approval of Lot Coverage Variance</u>. The Town Council hereby approves the request by the Applicant, subject to the conditions below, to vary the provisions of Section 33-49 of the Town Code relating to the lot coverage, to permit a lot coverage of 54% where 45 % is permitted for property located at 8863 S.W. 206 Lane (36-6009-030-2200).

- **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. The Applicant shall mitigate the impacts of the rear yard lot coverage by utilizing either pervious concrete, grasscrete or turf block for a portion of the driveway or

by removing a portion of the driveway or other pervious surfaces on the lot so that the total lot coverage doesn't exceed 50%.

Section 4. Effective Date. This Resonadoption.	olution shall take effect immediately upon
PASSED and ADOPTED this	day of, 2008.
	PAUL S. VROOMAN, Mayor
Attest:	TAOL S. VROOMAN, Mayor
ERIKA GONZALEZ-SANTAMARIA, CMC Town Clerk	
APPROVED AS TO FORM AND LEGALITY I AND BENEFIT OF THE TOWN OF CUTLER I	
WEISS, SEROTA, HELFMAN, PASTORIZA, COLE & BONISKE, P.L. Town Attorney	
Moved By: Seconded By:	
FINAL VOTE AT ADOPTION:	
Mayor Paul S. Vrooman	<u></u>
Vice Mayor Edward P. MacDougall	<u> </u>
Councilmember Peggy R. Bell	<u> </u>
Councilmember Timothy J. Meerbott	
Councilmember Ernest N. Sochin	<u> </u>

## TAB 9

### ORDINANCE NO. 08-\_\_\_\_

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING SECTION 33-18 OF TOWN CODE RELATING TO RELIGIOUS FACILITIES AND MISSIONS; PROVIDING FOR CONFLICT, PROVIDING FOR SEVERABILITY, PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS,** shortly after its incorporation, the Town of Cutler Bay (the "Town") adopted Chapter 33 of the Miami-Dade County Code of Ordinances, as applicable to the Town (the "Town's Land Development Code"); and

**WHEREAS,** since the time of the adoption of Chapter 33 as the Town's Land Development Code, Miami-Dade County has faced two lawsuits from religious organizations alleging that Section 33-18 of the Miami-Dade County Code violated the Religious Land Use and Institutionalized Persons Act ("RLUIPA"); and

**WHEREAS**, Section 33-18 prohibits a religious facility or mission to use any site that is less than 2.5 acres in size or a site that has frontage less than 150 feet; and

**WHEREAS**, to avoid potential similar litigation, the Town desires to eliminate the acreage and frontage requirements for religious facilities and missions from its Land Development Code; and

**WHEREAS**, the Town Council finds this Ordinance to be in the best interest and welfare of the residents of the Town.

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

**Section 1.** Section 33-18 of the Town Land Development Code is hereby amended to read as follows:

### Sec. 33-18. Same--Religious facilities and schools in certain districts.

- (a) Buildings used for public assemblage as defined in Section 33-1, where located in BU or IU Districts may be permitted with the same yard requirements and setbacks as required of the business or industrial buildings legally allowed in these districts; provided that no such building shall be placed closer than twenty-five (25) feet to a side or rear lot line or closer than fifty (50) feet to another building in the district unless separated by an unpierced wall constructed so as to offer at least three (3) hour fire resistance, in which case the setbacks prescribed for any other building in said district shall apply.
  - (b) With the exception of religious facilities no building for public assemblage

shall be permitted in IU-2 and IU-3 Districts unless directly connected with legally established industrial use.

- (c) Churches in RU-1, RU-2, EU-M, EU-1, EU-1C, EU-2, AU and GU Districts will be permitted only upon approval after public hearing; schools in AU, GU, EU-2, EU-1C, EU-1, EU-S, EU-M, RU-1, RU-2, RU-TH, RU-5, RU-5A, IU-1, IU-2, IU-3 and IU-C will be permitted only upon approval after public hearing.
- (d) No church shall be constructed, operated or permitted upon any site that does not contain a minimum of two and one half (2 1/2) acres of land area, including street dedications, and having a minimum contiguous frontage of at least one hundred fifty (150) feet abutting on a public street right of way. Off street parking facilities shall be provided and maintained within the land area of every church site in conformity with the requirements of Sections 33-122 through 33-132.\*
- (e) (d) Duly constituted "missions" may be are permitted to operate under the same conditions and in the same zoning districts that churches are permitted. upon sites containing less than the minimum land area hereinabove prescribed only upon approval after public hearing. For the purposes of this section a "missions" shall mean any body, association, or organization for doing religious and charitable work, devoted entirely to the moral, religious and social improvement of those in need of such missionary work and assistance, which does not constitute a church but is sponsored by a duly constituted church.
- **Section 2. Conflicts.** All ordinances or Code provisions in conflict herewith are hereby repealed.
- <u>Section 3.</u> <u>Severability.</u> 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.
- <u>Section 4.</u> <u>Inclusion in the Code.</u> 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 renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

		Effective Date. option on second read		this	Ordinance	shall	be	effective
PASS	ED on f	irst reading this		_ day	of,	2008.		
PASS	ED ANI	O ADOPTED on seco	ond read	ing thi	s day of _	,	2008	

Attest:	
ERIKA GONZALEZ-SANTAMARIA, CM Town Clerk	ĪC
APPROVED AS TO FORM AND LEGALS AND BENEFIT OF THE TOWN OF CUTI	
WEISS, SEROTA, HELFMAN, PASTORIZ COLE & BONISKE, P.L. Town Attorney	ZA,
Moved By: Seconded By:	
FINAL VOTE AT ADOPTION:	
Mayor Paul S. Vrooman	
Vice Mayor Edward P. MacDougall	
Councilmember Peggy R. Bell	
Councilmember Timothy J. Meerbott	
Councilmember Ernest N. Sochin	

# **TAB 10**





Steven J. Alexander Town Manager

### MEMORANDUM

**To:** Honorable Mayor, Vice Mayor and Town Council

From: Steven J. Alexander, Town Manager

**Date:** April 28, 2008

**Re:** Communications Rights-of-Way Ordinance

### **Background**

I recommend the adoption of a Communications Rights-of-Way Ordinance, which provides terms and conditions and registration requirements for placement of communications facilities in the Town rights-of-way. It is applicable to cable, telephone and video service providers in accordance with the new state franchising laws that passed the Legislature last year. It will help compensate us for any maintenance that needs to be done in the Towns right of ways.

### ORDINANCE NO. 08-\_\_\_\_

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA REPEALING AND REPLACING CHAPTER 8AA, ARTICLE I, II AND III OF THE TOWN CODE OF ORDINANCES TO PROVIDE TERMS AND CONDITIONS FOR THE PLACEMENT AND MAINTENANCE OF COMMUNICATIONS FACILITIES OR SYSTEMS, ANTENNAS, EQUIPMENT FACILITIES, AND OTHER VERTICAL STRUCTURES IN THE TOWNS PUBLIC RIGHTS-OF-WAY FOR THE PROVISION OF COMMUNICATIONS, CABLE AND VIDEO SERVICES; **PROVIDING** RESERVATION **FOR** OF **RIGHTS:** PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SAVINGS; PROVIDING SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, it is the intent of the Town of Cutler Bay ("Town") to repeal and replace Chapter 8AA, Article I, II, and III of the Town of Cutler Bay Code of Ordinances ("Town Code") to enact an ordinance governing requirements for placement of communications systems or facilities, antennas, equipment facilities, utility, electricity, telephone, power and light poles and other vertical structures within the Town's public rights-of-way, applicable fees, and underground installations and relocations, and establishing requirements for communications services providers, cable and video service providers, and certificateholders that take into consideration the developments in the industry, in technology, and in the regulatory environment to the fullest extent allowed by federal and state law; and

**WHEREAS**, the Town encourages competition and treatment of providers of communications services, cable or video services, and certificateholders in a competitively neutral and nondiscriminatory basis by granting non-exclusive access to use the Town's public rights-of-way in accordance with the provisions of §337.401, F.S.; and

**WHEREAS**, the Town Council of the Town of Cutler Bay has determined it is in the public interest to authorize the placement and maintenance of one or more communications systems or facilities, antennas, equipment facilities, utility, electricity, telephone, power and light poles and other vertical structures in the Town's public rights-of-way; and

**WHEREAS,** the Town Council, in its capacity as the local planning agency, has reviewed this Ordinance and recommends approval; and

**WHEREAS**, the Town finds that these changes are consistent with the Miami-Dade County's Comprehensive Development Master Plan, which now functions as the Town's Comprehensive Plan; and

**WHEREAS**, the Town finds it is in the best interest of the Town to amend the communications provisions and procedures contained in the Miami-Dade County Code as made applicable to the Town by Section 8.3 of the Town Charter.

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

**Section 1. Findings**. The foregoing WHEREAS clauses are hereby adopted and incorporated herein as if fully set forth in this Section.

Section 2. Repeal of Sections 8AA, Article I, II and III of the Town Code of Ordinances "Cable and Communications Services Providers," "Communications Services Regulations," and "Public rights-of-Way Regulations for Communications Service Providers" of the Town Code of Ordinances are hereby repealed in their entirety.

<u>Section 3.</u> Creation of the Town Communications Rights-of-Way Ordinance. The Town's Communications Rights-of-Way Ordinance is hereby created as follows:

#### ARTICLE I. COMMUNICATIONS RIGHTS-OF-WAY

### Sec. 1. Intent and Purpose.

It is the intent of the Town to promote the public health, safety and general welfare by: providing for the placement and maintenance of communications facilities in the public rights-of-way within the Town; adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including §337.401, F.S., and §§610.102-610.117, F.S., as they may be amended, the Town's home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996 and other federal and state law; establishing reasonable rules and regulations necessary to manage the placement and maintenance of communications facilities in the public rights-of-way by all communications services providers, cable and video service providers, and certificateholders, after the effective date of this article; and minimizing disruption to the public rights-of-way. In regulating its public rights-of-way, the Town shall be governed by and shall comply with all applicable federal and state laws.

### Sec. 2. Definitions.

For the purposes of this article, the following terms, phrases, words and derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined in this section or in any permit that may be granted pursuant to this article shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. § 151 et seq., as amended (collectively the "Communications Act"), and if not defined in the Communications Act, as defined by Florida Statutes; and, if not defined by Florida Statutes, shall be construed to mean the common and ordinary meaning.

Abandonment shall mean the permanent cessation of all uses of a communications facility; provided that this term shall not include cessation of all use of a facility within a physical structure where the physical structure continues to be used. By way of example, and not limitation, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be "abandonment" of a facility in public rights-of-way.

Access channel means any channel on a cable or video system set aside without charge by the cable or video service provider for non-commercial public, educational and/or governmental use.

Attachment(s) shall mean the physical attachment(s) of a cable system, as defined by Town Code, to a legally maintained utility, electricity, telephone, power or light pole consisting of cables, wires, and supporting hardware required to support the provision of cable television services, as defined by Town Code.

Cable Service(s) means: (a) the one-way transmission to subscribers of video programming or any other programming service. (b) subscriber interaction, if any, that is required for the selection or use of such video programming or other programming service.

Cable service provider means a person that provides cable service over a cable system.

Cable system means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community, but such term does not include:

- (a) A facility that serves only to retransmit the television signals of one or more television broadcast stations;
- (b) A facility that serves only subscribers in one or more multiple-unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right-of-way;
- (c) A facility that serves subscribers without using any public right-of-way;
- (d) A facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the federal Communications Act of 1934 except that such facility shall be considered a cable system other than for purposes of 47 U.S.C. §541(c) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services;
- (e) Any facilities of any electric utility used solely for operating its electric utility systems; or
- (f) An open video system that complies with 47 U.S.C. §573.

*Certificateholder* means a cable or video service provider that has been issued and holds a certificate of franchise authority from the Department.

Communications services shall mean the transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. Personal Wireless Services, as defined under federal law, 47 U.S.C. §332(c)(7)(C), or as this definition may be amended from time to time, and includes but is not limited to, cellular, personal communication services, specialized mobile radio, enhanced specialized mobile radio, and paging service, and personal wireless service providers, to the extent allowed by applicable law, may be subject to other ordinances of the Town and may require separate authorization from the Town for placement of facilities within the Town.

Communications services provider shall mean any person making available or providing communications services through the placement or maintenance of a communications facility in public rights-of-way, including, but not limited to, cable service and video service providers and certificateholders.

Communications facility or facility or system shall mean any permanent or temporary plant, equipment and property, including but not limited to cables, wires, conduits, ducts, fiber optics, antennae, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, and other equipment or pathway placed or maintained or to be placed or maintained in the public rights-of-way of the Town and used or capable of being used to transmit, convey, route, receive, distribute, provide or offer communications services.

Department means the Florida Department of State.

FCC shall mean the Federal Communications Commission or any successor governmental entity thereto.

*Franchise* means an initial authorization or renewal of an authorization, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, to construct and operate a cable system or video service provider network facilities in the public right-of-way.

Franchise authority means any governmental entity empowered by federal, state, or local law to grant a franchise.

*Incumbent cable service provider* means a cable or video service provider providing cable or video service in the Town on or before July 1, 2007.

In public rights-of-way or in the public rights-of-way shall mean in, on, over, under or across the public rights-of-way.

Normal business hours means those hours during which most similar businesses in the

community are open to serve customers. In all cases, "normal business hours" must include some evening hours at least one night per week and/or some weekend hours.

Normal operating conditions means those service conditions which are within the control of the cable or video service provider and certificateholder. Those conditions which are not within their control include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within their control include, but are not limited to, special promotions, payper-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the system.

Ordinance shall mean this article.

Overlash or Overlashing shall mean to place an additional antenna, cable, wire or communication facility onto an Attachment by a Registrant or Communications Services Provider.

*Person* shall include any individual, children, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, and but shall not include the Town to the extent permitted by applicable law.

Place or maintain or placement or maintenance or placing or maintaining shall mean to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A communications services provider that owns or exercises physical control over communications facilities in public rights-of-way, such as the physical control to maintain and repair, is "placing or maintaining" the facilities. A party providing service only through resale or only through use of a third party's unbundled network elements is not "placing or maintaining" the communications facilities through which such service is provided. the transmission and receipt of radio frequency signals through the airspace of the public rights-of-way is not placing or maintaining facilities in the public rights-of-way.

Public rights-of-way shall mean a public right-of-way, public utility easement, highway, street, sidewalk, alley, bridge, tunnel, pier, waterway, dock, wharf, court, lane, or path, or any other property for which the Town is the authority that has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface to the extent the Town holds a property interest therein. "Public rights-of-way" shall not include private property. "Public rights-of-way" shall not include any real or personal Town property except as described above and shall not include Town buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the public rights-of-way.

Registrant or facility owner shall mean a communications services provider, cable or video service provider or other person that has registered with the Town in accordance with the provisions of this article.

*Registration* and *register* shall mean the process described in this article whereby a communications services provider, cable or video service provider provides certain information to the Town.

*Town* shall mean Cutler Bay, Florida, an incorporated municipality of the State of Florida, in its present form or in any later reorganized, consolidated, or enlarged form.

*Service interruption* means the loss of picture or sound on one or more cable or video service provider channels.

Subscriber means any person who lawfully receives cable or video services delivered over the cable or video system.

*Video programming* means programming provided by, or generally considered comparable to programming provided by, a television broadcast station as set forth in 47 U.S.C. §522(20).

Video service means video programming services, including cable services, provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider as defined in 47 U.S.C.§ 332(d), video programming provided as part of, and via a service that enables end users to access content, information, electronic mail, or other services offered over the public Internet.

Video service provider means an entity providing video service.

## Sec. 3. Registration for Placing or Maintaining Communications Facilities in Public Rights-of-Way.

- (a) A Communications Services Provider, Cable or Video Service Provider or Certificateholder that desires to place or maintain a Communications Facility in Public Rights-of-Way in the Town shall first register with the Town in accordance with this article. Subject to the terms and conditions prescribed in this article, a Registrant may place or maintain a Communications Facility in Public Rights-of-Way. A Communications Services Provider, Cable or Video Service Provider with an existing communications facility in the public rights-of-way of the Town as of the effective date of this article has sixty (60) days from the effective date of this article to comply with the terms of this article, including, but not limited to, registration, or be in violation thereof.
- (b) A Registration shall not convey any title, equitable or legal, in the Public Rights-of-Way. Registration under this article governs only the placement or maintenance of Communications Facilities in Public Rights-of-Way. Registration does not excuse a Communications Services Provider, Cable or Video Service Provider from obtaining appropriate access or pole attachment agreements before locating its facilities on the Town's or another person's facilities. Registration does not excuse a Communications Services Provider, Cable or

Video Service Provider from complying with all applicable law, including Town ordinances, codes or regulations, including this article.

- (c) Each Communications Services Provider, Cable or Video Service Provider that desires to place or maintain a Communications Facility in Public Rights-of-Way in the Town shall file a single Registration with the Town that shall include the following information:
  - (1) Name of the applicant;
  - (2) Name, address and telephone number of the applicant's primary contact person in connection with the registration and of the person to contact in case of an emergency;
  - (3) Evidence of the insurance coverage required under this article and acknowledgment that registrant has received and reviewed a copy of this article, and
  - (4) A copy of federal or state certification authorizing the applicant to provide Communications, Cable or Video Services, if any;
  - (5) If the applicant is a Communications Service Provider, Cable or Video Service Provider, proof that the applicant has provided an address database of potential Subscribers to the Department;
  - (6) If the applicant is a corporation, proof of authority to do business in the State of Florida, which may be satisfied by the number of the corporate certification or by other means;
  - (7) Acknowledgment that applicant has reviewed the current Communications Services tax rate established by the Town in accordance with state law, as amended; and
  - (8) A security fund in accordance with this article.
- (d) The Town manager or designee shall review the information submitted by the applicant. If the applicant submits information in accordance with subsection (c) above, the Registration shall be effective and the Town shall notify the applicant of the effectiveness of Registration in writing. The effectiveness of a Registration shall not relieve the applicant of the obligation to obtain any and all necessary permits before any work is commenced If the Town determines that the information has not been submitted in accordance with subsection (c) above, the Town shall notify the applicant in writing of the non-effectiveness of Registration, and reasons for the non-effectiveness. The Town shall so notify an applicant within thirty (30) days after receipt of Registration information from the applicant.
- (e) A Registrant may cancel a Registration upon written notice to the Town that the Registrant will no longer place or maintain any Communications facilities in public rights-of-way and will no longer need to obtain permits to perform work in the Public Rights-of-Way. A Registrant cannot cancel a Registration if the Registrant continues to place or maintain any Communications Facilities in Public Rights-of-Way.
- (f) Registration shall be nonexclusive. Registration shall not establish any right or priority to place or maintain a Communications Facility in any particular area in Public Rights-of-Way within the Town. Registrations are expressly subject to any future amendment to or replacement of this article and further subject to any additional Town ordinances, as well as any state or federal laws that may be enacted.

- (g) By April 1 of even numbered years, a Registrant shall renew its Registration in accordance with the Registration requirements in this article, and, when applicable, provide evidence that it has exercised due diligence and used one of several methods to update its customer database of Town residents with the Florida Department of Revenue by implementing periodic updates to the Registrant's database at least once every six (6) months, as required by state law, as amended, so the Town may receive the appropriate payments. Within thirty (30) days of any change in the information required to be submitted pursuant to subsection (c) and this subsection (g), a Registrant shall provide updated information to the Town. If no information in the then-existing Registration has changed, the renewal may state that no information has changed. Failure to renew a Registration may result in the Town restricting the issuance of additional permits until the Registrant has complied with the Registration requirements of this article.
- (h) In accordance with applicable Town ordinances, codes or regulations and this article, a permit shall be required of a Communications Services Provider, Cable or Video Service Provider that desires to place or maintain a Communications Facility in Public Rights-of-Way. An effective Registration shall be a condition of obtaining a permit. Notwithstanding an effective registration, permitting requirements shall continue to apply. A permit may be obtained by or on behalf of a Registrant having an effective Registration if all permitting requirements are met.

### Sec. 4. Placement or Maintenance of a Communications Facility in Public Rights-of-Way.

- (a) Registrant agrees at all times to comply with and abide by all applicable provisions of the state statutes and Town ordinances, codes and regulations in placing or maintaining a Communications Facility in Public Rights-of-Way. A Registrant shall at all times be subject to all lawful exercise of the police power of the Town.
- (b) A Registrant shall not commence to place or maintain a Communications Facility in Public Rights-of-Way until all applicable permits have been issued by the Town and Registrant has complied with all applicable processes required by Town or other appropriate authority, except in the case of an emergency. The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service. Registrant shall provide prompt notice to the Town of the placement or maintenance of a Communications Facility in Public Rights-of-Way in the event of an emergency. Registrant acknowledges that as a condition of granting such permits, the Town may impose reasonable rules or regulations governing the placement or maintenance of a Communications Facility in Public Rights-of-Way. Permits shall apply only to the areas of Public Rights-of-Way specifically identified in the permit. The Town may issue a blanket permit to cover certain activities, such as routine maintenance and repair activities, that may otherwise require individual permits or may impose lesser requirements.
- (c) As part of any permit application to place a new or replace an existing Communications Facility in Public Rights-of-Way, the Registrant shall provide a proposal for construction of the Communications Facility that sets forth at least the following:

- (1) An engineering plan signed and sealed by a Florida Registered Professional Engineer, or prepared by a person who is exempt from such registration requirements as provided in §471.003, F.S., identifying the location of the proposed facility, including a description of the facilities to be installed, where it is to be located, and the approximate size of facilities and equipment that will be located in public rights-of-way;
- (2) A description of the manner in which the facility will be installed (i.e. anticipated construction methods and/or techniques);
- (3) A traffic maintenance plan for any disruption or obstruction of the Public Rights-of-Way;
- (4) Information on the ability of the Public Rights-of-Way to accommodate the proposed facility, if available (such information shall be provided without certification as to correctness, to the extent obtained from other persons with facilities in the Public Rights-of-Way);
- (5) If appropriate given the facility proposed, an estimate of the cost of restoration to the Public Rights-of-Way;
- (6) The timetable for construction of the project or each phase thereof, and the areas of the Town which will be affected; and
- (7) A disaster recovery plan that provides what efforts it shall undertake in the event of a disaster including, but not limited to, allocating employees and equipment from other areas, having employees work overtime, and hiring contractors, to restore service as promptly as possible to affected customers or Subscribers. In no event shall such recovery take longer than a reasonable time after electric service is restored to affected area.
- (8) Such additional information requested by the Town that the Town finds reasonably necessary to review the permit application.
- (d) The Town shall have the power to prohibit or limit the placement of new or additional Communications Facilities within the Public Rights-of-Way if there is insufficient space to accommodate all of the requests to place and maintain facilities in that area of the Public Rights-of-Way, for the protection of existing facilities in the Public Rights-of-Way or to accommodate Town plans for public improvements or projects that the Town determines are in the public interest and to the extent not prohibited by applicable law.
- (e) All Communications Facilities shall be placed and maintained so as not to interfere unreasonably with the use of the Public Rights-of-Way by the public and so as not to cause unreasonable interference with the rights and convenience of property owners who adjoin any of the Public Rights-of-Way. The Registrant shall endeavor to install all Communications Facilities underground. To the extent not inconsistent with public service commission regulations, the Town may require the use of trenchless technology (i.e., directional bore

method) for the installation of facilities in the Public Rights-of-Way as well as joint trenching or the co-location of facilities in existing conduit. In making such requests, the Town shall take into consideration several factors including inconvenience to the public and other users of rights-of-way and the economic and technical feasibility of such requests. The Registrant shall be liable for the displacement, damage or destruction of any property, irrigation system or landscaping as a result of the placement or maintenance of its facility within the Public Rights-of-Way. The appropriate Town official may issue such rules and regulations concerning the placement or maintenance of a Communications Facility in Public Rights-of-Way as may be consistent with this article and other applicable law.

- (f) Prior to the commencement of any work by the Registrant pertaining to the placement and maintenance of Communication Facilities within the Public Rights-of-Way, the Town Manager or designee may require the Registrant to issue notice of the work to property owners who adjoin such rights-of-way (the "notification area"). The notification area may be expanded at the Town's discretion and notice shall be effected in a manner deemed appropriate by the Town Manager or designee.
- (g) All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of Communications Facilities. A Registrant's system shall comply with the FCC's rules and regulations of the Emergency Alert System when applicable.
- (h) A Registrant shall, at its own expense, restore the Public Rights-of-Way to at least its original condition before such work in Public Rights-of-Way, subject to the Town's satisfaction upon inspection. Registrant shall warrant its restoration for a period of twelve (12) months after completion of such restoration. If the Registrant fails to make such restoration within ten (10) calendar days after completion of construction, or such other time as may be required by the Town, the Town may after written notice to the Registrant, perform such restoration using Town employees, agents or contractors, and charge all costs of the restoration against the Registrant in accordance with §337.402, F.S., as it may be amended, and require reimbursement within thirty (30) days after the submission of the bill by the Town to the Registrant.
- (i) Removal or relocation at the direction of the Town of a Registrant's Communications Facility in Public Rights-of-Way shall be governed by the provisions of.§§ 337.403 and 337.404, F.S., as they may be amended.
- (j) A permit from the Town constitutes authorization to undertake only certain activities on Public Rights-of-Way in accordance with this article, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the Public Rights-of-Way.
- (k) A Registrant shall maintain its Communications Facility in Public Rightsof-Way in a manner consistent with accepted industry practice, standards and applicable law, as amended or adopted and perform, at its expense, any tests designed to demonstrate compliance

with the requirements of this article and applicable law, and shall provide, upon request, a copy of the test results promptly to the Town.

- (l) All construction, installation and maintenance of a Registrant's Communications Facilities in the Public Rights-of-Way shall comply with the National Electrical Safety Code, the National Electric Code, the Florida Building Code and all laws and accepted industry practices or standards, and as hereinafter may be amended or changed.
- (m) In connection with excavation in the Public Rights-of-Way, a registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in F.S. Ch. 556, as it may be amended.
- (n) Registrant shall place or maintain a Communications Facility in Public Rights-of-Way in compliance with all applicable standards as established by all local, state or federal law and in conformance with the Town ordinances, codes and regulations. Registrant shall use and exercise due caution, care and skill in performing work in the Public Rights-of-Way and shall take all reasonable steps to safeguard work site areas.
- (o) In the interest of the public's health, safety and welfare, upon request of the Town, a Registrant shall coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable timeframe in the subject Public Rights-of-Way. The Town may require a Registrant to alter reasonably its placement or maintenance schedule for permitted work as necessary so as to minimize disruptions and disturbance in the Public Rights-of-Way. The Town may provide a more definite time frame based on specific Town construction or maintenance schedules.
- (p) A Registrant shall cause all its field employees and field contract workers to wear a picture identification badge indicating that they work for the provider. This badge shall be clearly visible to the public. Upon request, employees must provide a supervisor's name and telephone number for Town employees and Subscribers to contact. A Registrant shall also require all company vehicles to prominently display the name under which the Registrant is doing business, and logo, if any, in a manner clearly visible to the public. Contractor vehicles shall prominently display the contractor name, contractor license number, if applicable, and the Registrant's name. There must be a listed local telephone or toll free number for the names displayed. The phone must connect to Persons trained to receive and respond to calls regarding employees, construction and problems (including repair problems) associated with construction.
- (q) A Registrant shall not place or maintain its communications facilities so as to interfere, displace, damage or destroy any facilities, including but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the Town or any other person's facilities lawfully occupying the public rights-of-way of the Town.
- (r) Town makes no warranties or representations regarding the fitness, suitability or availability of public rights-of-way for the registrant's communications facilities and any performance of work or costs incurred by registrant or provision of services shall be at registrant's sole risk. Nothing in this article shall affect the Town's authority to add, vacate or

abandon public rights-of-way and Town makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for communications facilities.

- (s) The Town shall have the right to make such inspections of facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this article. In the event the Town determines that a violation exists with respect to registrant's placement or maintenance of facilities in the public rights-of-way that is not considered to be an emergency or danger to the public health, safety or welfare, the Town will provide registrant no less than three (3) days written notice setting forth the violation and requesting correction.
- (t) A permit application to place a new or replace an existing communications facility in public rights-of-way shall include plans showing the location of the proposed installation of facilities in the public rights-of-way. If the plans so provided require revision based upon actual installation, the registrant shall promptly provide revised plans or "as-builts" upon completion of any installation or construction. The plans shall be in a digitized format showing the two-dimensional location of the facilities based on the Town's geographical database, or other format acceptable to the Town. The registrant shall provide such plans at no cost to the Town. The Town shall maintain the confidentiality of such plans and any other information provided in accordance with F.S. § 202.195, as it may be amended.
- (u) The Town reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the Town in public rights-of-way occupied by the registrant. Registrant may allow Town facilities to be co-located within Town's public rights-of-way through the use of a joint trench during registrant's construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between registrant and Town and may be subjected to other Town rights-of-way requirements. The Town further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation or width of the public rights-of-way within the limits of the Town and within said limits as same may from time to time be altered.
- (v) Subject to applicable law, a registrant shall, on the request of any person holding a permit issued by the Town, temporarily support, protect, raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary support, protection, raising or lowering of facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than thirty (30) days advance written notice to arrange for such temporary relocation. If the Town requests the temporary support, protection, raising or lowering of a facility for a public purpose, the Town shall not be charged for the temporary support, protection, raising or lowering of the facility.
- (w) Installation of Telecommunications Towers, Antennas and Equipment Facilities in the Public Rights-of-Way. For the purposes of this subsection (w), the standards contained herein apply prospectively for all new Antennas and Equipment Facilities, to the extent not

expressly prohibited by federal law, state law, the Town Code or applicable Florida Public Service Commission rules and regulations, and a legally maintained light pole and/or utility pole in the Public Rights-of-Way shall be referred to as a ("Vertical Structure(s)"). An Antenna and/or Equipment Facility placed in the Public Rights-of-Way shall be subject to the following criteria:

- (i) No Telecommunications Towers may be installed or placed in the Public Rights-of-Way;
- (ii) No Equipment Facility may be installed or placed in the Public Rights-of-Way, with the exception of existing Equipment Facilities installed to support an Antenna that has been placed on a Vertical Structure, with the consent of its owner, subject to the standards contained in this subsection (w) herein;
- (iii) Any Antenna or Equipment Facility installed in the Public Rights-of-Way shall be subject to all site plan review and approval and permitting requirements of the Town. No more than one Antenna and Equipment Facility may be placed on a Vertical Structure;
- (iv) No Communications Provider or Registrant may Overlash an Antenna onto an Attachment in the Public Rights-of-Way;
- (v) No Equipment Facility shall be placed on the ground in the Public Rights-of-Way;
- (vi) An Equipment Facility used in association with an Antenna mounted on a Vertical Structure shall be placed in any of the following areas:
  - (a) Underground in the Public Rights-of-Way;
  - (b) On an adjacent property in accordance with Section 33-63.14 of the Town Code, with the consent of the property owner, provided that all the wiring is underground; or
  - (c) Mounted on the Vertical Structure itself.
- (vii) A provider of Communications Services that wants to mount an Antenna on a Vertical Structure must submit an application required by Section 33-63.5 of the Town's Wireless Telecommunications Facilities Ordinance, register with the Town pursuant to Section 3 herein, and comply with all indemnification and insurance requirements contained herein. An Application pursuant to this section shall not be deemed a Co-location application;
- (viii) An Antenna may be mounted on an existing Vertical Structure, with the consent of its owner, provided the height of the Antenna does not extend more than ten (10) feet above the top of the Vertical Structure. An existing Vertical Structure may be modified, replaced or rebuilt to accommodate an Antenna or Equipment Facility so long as the height of the Vertical Structure is not increased by more than ten (10) feet;

- (ix) An Antenna or Equipment Facility may not extend more than ten (10) feet above the highest point of the Vertical Structure;
- (x) An Antenna or Equipment Facility that is mounted to a Vertical Structure located adjacent to real property used as a single family residence shall be flush mounted to the Vertical Structure:
- (xi) An Antenna or Equipment Facility that is mounted to a Vertical Structure shall not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, state, or local rule, regulation or law including, but not limited to, the Wireless Ordinance;
- (xii) An Antenna or Equipment Facility that is mounted to a Vertical Structure shall comply with any applicable FCC Emissions Standards;
- (xiii) The design, construction, and installation of an Antenna and Equipment Facility mounted to a Vertical Structure shall comply with applicable law including, but not limited to, the Florida Building Code and the Town's Wireless Telecommunications Facilities Ordinance;
- (xiv) No commercial advertising shall be allowed on an Antenna or Equipment Facility mounted to a Vertical Structure;
- (xv) Any accessory equipment and related housing in the Public Rights-of-Way that is used in conjunction with an Antenna or Equipment Facility mounted to a Vertical Structure shall comply with any applicable local rules, regulations, ordinances, or laws governing the placement and design of such equipment;
- (xvi) An owner of an Antenna or Equipment which places an Antenna or Equipment Facility underground in the Public Rights-of-Way shall maintain appropriate membership in the one-call notification system or participate in any other applicable notification center for subsurface installations as provided by Florida Statutes, as amended; and
- (xvii) An owner of an Antenna or Equipment Facility which places an Antenna or Equipment Facility in the Public Rights-of-Way pursuant to this subsection (v) is subject to any applicable provisions governing placement, maintenance or enforcement contained in this article as determined by the Town Manager.

### Sec. 5. Compensation for Use of Rights-of-Way

- (a) A Registrant that places or maintains Communications Facilities in the Public Rights-of-Way shall be required to pay compensation to the Town as required by applicable law and ordinances of the Town.
- (b) A registrant that places or maintains Communications Facilities in the Public Rights-of-Way, other than a Registrant that provides local services as defined in §203.012(3),

F.S., within the Town, shall pay to the Town the fees required to be paid by providers of toll service within the Town.

- (c) A Registrant, that makes physical use of the Public Rights-of-Way and who is not providing Communications Services as defined in \$203.012(3), F.S., or a Registrant that makes physical use of the Public Rights-of-Way and who is not serving a Communications Service customer at retail within the jurisdictional limits of the Town at the time the Registrant begins to make physical use of the Public Right-of-Way, shall pay to the Town annually no less than Five Hundred Dollars (\$500) per linear mile of any cable, fiber optic, or other pathway that makes physical use of the Public Rights-of-Way. The Town may adopt additional fees or other consideration, provided that any fee or other consideration imposed by the Town in excess of Five Hundred Dollars (\$500) per linear mile shall be applied in a nondiscriminatory manner and shall not exceed the sum of:
  - (1) Costs directly related to the inconvenience or impairment solely caused by the disturbance of the Public Rights-of-Way;
  - (2) The reasonable cost of the regulatory activity of the Town; and
  - (3) The proportionate share of cost of land for such street, alley or other public way attributable to utilization of the Public Rights-of-Way by a Communications Service Provider.
- (4) The fee or other consideration imposed pursuant to this subsection shall not apply in any manner to any communications company which provides Communications Services as defined in §203.012(3), F.S., for any services provided by such communications company. Notwithstanding anything herein to the contrary, the Town shall at all times hereby require the maximum compensation allowed under applicable law.
  - (d) Except to the extent prohibited by applicable law:
    - (1) The fee payments to be made pursuant to this Section shall not be deemed to be in the nature of a tax;
    - (2) Such fee payments shall be in addition to any and all taxes of a general applicability;
    - (3) A Registrant shall not have or make any claim for any deduction or other credit of all or any part of the amount of said fee payments from or against any of said Town taxes or other fees or charges of general applicability which Registrant is required to pay to the Town, except as required by law; and
- (e) The fee specified herein is the minimum consideration for use of the Public Rights-of-Way, including all public easements, for the purpose of installing and maintaining a Communications Facility.

### Sec. 6. Suspension of Permits.

- (a) Subject to section 7 below and to providing reasonable notice and an opportunity to cure, the Town manager or designee may suspend a permit issued or deny an application for a subsequent permit to a registrant for work in the public rights-of-way for one or more of the following:
- (1) Failure to satisfy permit conditions, or conditions set forth in this article or other applicable Town ordinances, codes or regulations governing placement or maintenance of communications facilities in public rights-of-way, including without limitation, failure to take reasonable safety precautions to alert the public of work at the work site, or to restore any public rights-of-way;
- (2) Misrepresentation or fraud by registrant in a registration or permit application to the Town;
  - (3) Failure to properly renew or ineffectiveness of registration; or
- (4) Failure to relocate or to remove facilities as may be lawfully required by the Town.
- (b) After the suspension or denial of a permit pursuant to this section, the Town shall provide written notice of the reason to the registrant.

### Sec. 7. Appeals.

- (a) Final, written decisions of the Town manager or designee suspending or denying a permit, denying an application for a Registration or denying an application for renewal of a Registration are subject to appeal. An appeal must be filed with the Town within thirty (30) days of the date of the final, written decision to be appealed. Any appeal not timely filed as set forth above shall be waived. The Town shall hear or appoint a hearing officer to consider the appeal. The hearing shall occur within thirty (30) days of the receipt of the appeal, unless waived by the registrant, and a written decision shall be rendered within twenty (20) days of the hearing. Upon correction of any grounds that gave rise to a suspension or denial, the suspension or denial shall be lifted.
- (b) Nothing in this article shall affect or limit the remedies the Town has available under applicable law.

### Sec. 8. Conditional Use of Public Rights-of-Way.

(a) In the event Registrant desires to use its existing facilities or to construct new facilities for the purpose of providing other utility or non-utility services to existing or potential consumers or resellers, by providing any other services other than the provision of communications service, or for providing any other use to existing or potential consumers, a

Registrant shall seek such additional and separate authorization from Town for such activities as may be required by applicable law.

(b) To the extent that any person or registrant leases or otherwise uses the facilities of a person that is duly registered or otherwise authorized to place or maintain facilities in the public rights-of-way of the Town, such person or registrant shall make no claim, nor assert any right, which will impede the lawful exercise of the Town's rights, including requiring the removal of such facilities from the public rights-of-way of the Town, regardless of the effect on registrant's ability to place or maintain its own communications facilities in public rights-of-way of the Town.

### Sec. 9. Termination of Registration.

- (a) The involuntary termination of a previously effective registration may only be accomplished by an action of the Town commission. The Town may declare the registration terminated and revoke and cancel all privileges granted under that registration if: (a) a federal or Florida authority suspends, denies, or revokes a registrant's certification or license to provide communications service, (b) the registrant's placement and maintenance in the public rights-of-way presents an extraordinary danger to the general public or other users of the public rights-of-way, or (c) the registrant abandons all of its communications facilities in the public rights-of-way.
- (b) Prior to such termination for any of the reasons set forth in this section, the Town manager or his designee shall notify the registrant in writing setting forth the matters pertinent to such reasons and describing the proposed action of the Town with respect thereto. The registrant shall have sixty (60) days after receipt of such notice within which to cure the violation, or within which to present a plan, satisfactory to the Town commission, to accomplish the same.
- In the event of a vote by the Town commission to terminate the registration, the registrant shall, within a reasonable time following such termination, provide an acceptable plan for transferring ownership of the communications facilities to another person in accordance with this article or shall remove or abandon the facilities and take such steps as are necessary to render every portion of the facilities remaining in the public rights-of-way of the Town safe. If the registrant has either abandoned its facilities or chooses to abandon its facilities, the Town may either (a) require the registrant or the registrant's bonding company to remove some or all of the facilities from the public rights-of-way and restore the public rights-of-way to its condition immediately prior to the removal; (b) the Town may require that some or all of the facilities be removed and the public rights-of-way restored to its such condition at the registrant's expense, using Town employees, agents or contractors, and charge any and all costs to the registrant and require reimbursement, or (c) utilize or allow other persons to utilize the registrant's abandoned facilities. The obligations of the registrant hereunder shall survive the termination of a registration. In the event of a declaration of termination of registration, this provision does not permit the Town to cause the removal of any facilities that are used to provide another service for which the registrant holds a valid certification or license with the governing federal or state agency, where required, and is properly registered with the Town, for such certificated service, where required.

(d) A final order of the Town imposed pursuant to Florida Statutes, and applicable provisions of this Article and the Town Code, if any, shall constitute a lien on any property of the owner and may be enforced as provided therein.

### Sec. 10. Transfer of Control, Sale or Assignment of Assets.

- (a) If a Registrant transfers, sells or assigns its Registration or its facilities in the public rights-of-way, incident to a transfer, sale or assignment of the registrant's assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this article. To the extent allowed by applicable law, written notice of any such transfer, sale or assignment or transfer of ownership or control of a Registrant's business shall be provided to the Town within fourteen (14) business days of the effective date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current registrant, then the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant, then the transferee, buyer or assignee shall register as provided in section 3 within sixty (60) days of the transferee, buyer or assignment. If permit applications are pending in the Registrant's name, the transferee, buyer or assignee shall notify the appropriate Town officials that the transferee, buyer or assignee is the new applicant.
- (b) Any mortgage, pledge, lease or other encumbrance on the Communications Facilities shall be subject and subordinate to the rights of the Town under this article and applicable law.

### Sec. 11. Insurance.

- (a) A Registrant shall provide, pay for and maintain satisfactory to the Town the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the State of Florida and having a rating in Best's Key Rating Guide of at least A VII and be licensed to do business in Florida. All policies shall be Occurrence and not Claims Made Forms. Registrant's insurance policies shall be primary to any liability insurance policies carried by the Town. The registrant shall be responsible for all deductibles and self-insured retentions on Registrant's liability insurance policies. All liability policies shall provide that the Town is an additional insured in the endorsement. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the Town annually. Thirty (30) days advance written notice by registered or certified mail must be given to the Town of any cancellation, intent not to renew or reduction in the policy coverages. The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the Town.
  - (b) The limits of coverage of insurance required shall be not less than the following:
    - (1) Worker's compensation and employer's liability insurance.

*Employer's liability* --Five hundred thousand dollar (\$500,000.00)limit each accident five hundred thousand dollars (\$500,000.00) limit per each employee.

- (2) Comprehensive general liability.

  Bodily injury and property damage --Three million dollars (\$3,000,000.00) combined single limit each occurrence. Said coverage shall not exclude contractual liability, products/completed operations or independent contractors.
- (3) Business automobile liability.

  Bodily injury and property damage --Three million dollars (\$3,000,000.00) combined single limit each accident.
- (c) Umbrella or excess liability. Registrant may satisfy the minimum limits required above for either commercial general liability, business auto liability and employer's liability coverage under umbrella or excess liability. The umbrella or excess liability shall have an aggregate limit not less than the highest "each occurrence" limit for commercial general liability, business auto liability or employer's liability. The Town shall be specifically endorsed as an "additional insured" on the umbrella or excess liability, unless the certificate of insurance states the umbrella or excess liability provides coverage on a "follow-form" basis.
- (d) Self-insurance. Registrant may satisfy the insurance requirements and conditions of this section under a self-insurance plan and/or retention. Registrant agrees to notify the Town, and/or indicate on the certificate(s) of insurance, when self-insurance is relied upon or when a self-insured retention exceeds one hundred thousand dollars (\$100,000.00). The Town reserves the right, but not the obligation, to request and review a copy of the registrant's most recent annual report or audited financial statement, which the registrant agrees to furnish for the purpose of determining the registrant's financial capacity to self-insure.
- (e) Right to review. Town, by and through its risk management department, reserves the right to review, modify, reject or accept any required policies of insurance or self-insurance, including limits, coverages, or endorsements, herein from time to time throughout the life of this section. Town reserves the right, but not the obligation, to review and reject any insurer or self-insurer providing coverage because of its poor financial condition or failure to operate legally.
- (f) This section shall not be construed to affect in any way the Town's rights, privileges and immunities as set forth in §768.28, F.S. Insurance under this section shall run continuously with the presence of the registrant's facilities in the public right-of-way and any termination or lapse of such insurance shall be a violation of this section and subject to the remedies as set forth herein. Notwithstanding the foregoing, the Town may, in its sole discretion, require increased or decreased levels of insurance for any other object placed in the Town's rights-of-way by way of individual license agreements.

#### Sec. 12. Indemnification.

A Registrant shall, at its sole cost and expense, indemnify, hold harmless and defend the Town, its officials, boards, members, agents and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the Town arising out of the placement or maintenance of its communications system or facilities in public rights-of-way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this article, provided, however, that a registrant's obligation hereunder shall not extend to any damages caused solely by the negligence, gross negligence or wanton or willful acts of the Town. This provision includes, but is not limited to, the Town's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. Town agrees to notify the registrant, in writing, within a reasonable time of Town receiving notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the Town from participating in the defense of any litigation by its own counsel and at its own cost if in the Town's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this section shall be construed or interpreted: (1) as denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) as consent by the Town to be sued; or (3) as a waiver of sovereign immunity beyond the waiver provided in F.S. §768.28, as it may be amended.

#### Sec. 13. Construction Bond.

- (a) Prior to performing any permitted work in the Public Rights-of-Way, the Town may require the Registrant to establish in the Town's favor a construction bond to secure the restoration of the Public Rights-of-Way and to ensure the registrant's faithful performance of the construction or other work in the public rights-of-way, in accordance with applicable sections of the Town Code. Notwithstanding the foregoing, a construction bond hereunder shall only be required to the extent that the cost of the restoration exceeds the amount recoverable against the security fund as provided in section 14.
- (b) In the event a Registrant subject to such a construction bond fails to complete the work in accordance with the provisions of the permit and this article, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the Town as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the Registrant, or the cost of completing the work, plus a reasonable allowance for attorney's fees, up to the full amount of the bond.
- (c) No less than twelve (12) months after completion of the construction and satisfaction of all obligations in accordance with the bond, the Registrant may request the public works/utilities director or designee to remove the requirement to continue the construction bond and the Town shall release the bond within ten (10) days. Notwithstanding, the Town may require a new bond for any subsequent work performed in the Public Rights-of-Way.
- (d) The construction bond shall be issued by a surety having a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the Town Attorney; and shall provide that:

"Unless released by the Town, this bond may not be canceled, or allowed to lapse, until sixty (60) days after receipt by the Town, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."

(e) The rights reserved by the Town with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the Town may have under this section, or at law or equity, and no action, proceeding or exercise of a right with respect to the construction bond will affect any other right the Town may have.

## Sec. 14. Security Fund.

At the time of Registration and as a condition of receiving its first permit to place or maintain a Communications Facility in Public Rights-of-Way after the effective date of this article, the Registrant shall be required to file with the Town, for Town approval, an annual bond, cash deposit or irrevocable letter of credit in the sum of fifty thousand dollars (\$50,000.00) having as a surety a company qualified to do business in the State of Florida, and acceptable to the Town Manager or designee, which shall be referred to as the "security fund." The security fund shall be conditioned on the full and faithful performance by the Registrant of all requirements, duties and obligations imposed upon registrant by the provisions of this article. The bond or guarantee shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the registrant's full and faithful performance at all times. In the event a Registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this article, subject to section 24 of this article, there shall be recoverable, jointly and severally from the security fund and/or from the principal and surety of the bond, any damages or loss suffered by the Town as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund. The Town may in its reasonable discretion accept a corporate guarantee of the registrant or its parent company.

### Sec. 15. Reports and Records; Inspections.

- (a) A Registrant shall provide the following documents to the Town as received or filed:
- (1) Upon reasonable request, any pleadings, petitions, notices, and documents, which may directly impact the obligations under this article and which are reasonably necessary for the Town to protect its interests under this article.
- (2) Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.
- (b) Nothing in this subsection shall affect the remedies Registrant has available under applicable law.

- (c) In addition, the Town may, at its option, and upon reasonable notice to the registrant, inspect the facilities in the Public Rights-of-Way and schematics indicating the location of its facilities for a specific site to ensure the safety of its residents.
- (d) The Town shall keep any documentation, books and records of the Registrant confidential to the extent required under Florida Statutes.

## Sec. 16. Abandonment of a Communications Facility.

- (a) Upon abandonment of a Communications Facility owned by a Registrant in the Public Rights-of-Way, the Registrant shall notify the Town of such abandonment within ninety (90) days.
- (b) The Town may direct the Registrant by written notice to remove all or any portion of such abandoned facility at the Registrant's sole expense if the Town determines that the abandoned facility's presence interferes with the public health, safety or welfare, which shall include, but shall not be limited to, a determination that such facility:
  - (1) Compromises safety at any time for any Public Rights-of-Way user or during construction or maintenance in Public Rights-of-Way;
  - (2) Prevents another person from locating facilities in the area of Public Rights-of-Way where the abandoned facility is located when other alternative locations are not reasonably available; or
  - (3) Creates a maintenance condition that is disruptive to the Public Rights-of-Way's use.

In the event of (2), the Town may require the third person to coordinate with the Registrant that owns the existing facility for joint removal and placement, where agreed to by the Registrant.

- (c) In the event that the Town does not direct the removal of the abandoned facility, the Registrant, by its notice of abandonment to the Town shall be deemed to consent to the alteration or removal of all or any portion of the facility by the Town or another person at such third party's cost.
- (d) If the Registrant fails to remove all or any portion of an abandoned facility as directed by the Town within a reasonable time period as may be required by the Town under the circumstances, the Town may perform such removal and charge the cost of the removal against the Registrant.

### Sec 17. Authorization to Provide Cable or Video Services in Town.

(a) An entity or Person seeking to provide Cable or Video services in the Town, shall file an application for a state-issued certificate of franchise authority with the Department and update

the information contained in the original application as required by §610.104, F.S., as amended.

- (b) Upon receipt of a certificate of franchise authority from the Department, a Certificateholder shall provide:
  - (1) Written notice to the Town that it agrees to comply with this article and all other state laws and rules and regulations regarding the placement and maintenance of communications facilities in the public rights-of-way that are generally applicable to providers of Communications Services in accordance with §337.401, F.S.;
  - (2) A description of the service area, on a municipal or countywide basis, for which the provider seeks to provide Cable or Video services. The description may be provided in a manner that does not disclose competitively sensitive information. Notwithstanding the foregoing:
  - (i) For Incumbent Cable or Video Service Providers that have existing local franchise agreements with Miami-Dade County, the service area shall be coextensive with the provider's service area description in the existing local franchise.
  - (ii) For Certificateholders using telecommunications facilities to provide Video Services, the service area shall be described in terms of entire wire centers that may or may not be consistent with the Town or Miami-Dade County boundaries except any portion of a specific wire center which will remain subject to an existing cable or video franchise agreement until the earlier of the agreement's expiration or termination.
  - (iii) A Certificateholder that seeks to provide service in additional service areas shall provide notice to the Town that includes the new service area or areas to be served within five (5) business days after first providing service in each additional area.

### Sec.18 Cable or Video Services for Public Facilities.

- (a) Upon ninety (90) days after receipt of request by the Town, a Certificateholder shall provide one active basic Cable or Video Service outlet to K-12 public schools, public libraries, or local government administrative buildings, to the extent such buildings are located within 200 feet of the Certificateholder's activated video distribution plant.
- (b) At the Town's request, the Certificateholder shall extend its distribution plant to serve such buildings located more than 200 feet from the Certificateholder's activated video distribution plant. In such circumstances, the Town or other governmental entity owning or occupying the building is responsible for the time and material costs incurred in extending the Certificateholder's activated video distribution plant to within 200 feet adjacent to the building.

The Cable or Video Services provided under this section shall not be available in an area viewed by the general public and may not be used for any commercial purpose.

(c) If controlling law changes to require the Registrant, or to authorize the Town to require the Registrant, to provide Communications Services or facilities to schools, hospitals, government or other public facilities, the Town reserves the right to require such service or facilities.

### Sec. 19. Public, Educational, and Governmental Access Channels

- (a) A Certificateholder, not later than 180 days following a request by the Town, shall designate a sufficient amount of capacity on its network to allow the provision of up to two (2) public, educational, and governmental Access Channels or their functional equivalent for noncommercial programming as set forth in this section. The usage of the channels or their functional equivalent shall be determined by a majority of all the Video Service provider's subscribers in the jurisdiction in order of preference of all Video Service subscribers. Cable or video service subscribers must be provided with clear, plain language informing them that public access is unfiltered programming and contains adult content.
- (b) A Cable or Video Service Provider may locate any public, educational, or governmental Access Channel on its lowest digital tier of service offered to the provider's Subscribers. A Cable or Video Service Provider must notify its customers and the Town at least 120 days prior to relocating the applicable educational or governmental Access Channel.
- (c) The operation of any public, educational, or governmental Access Channel or its functional equivalent provided under this section shall be the responsibility of the Town, and a Certificateholder bears only the responsibility for the transmission of such channel content. A Certificateholder shall be responsible for the cost of providing the connectivity to one origination point for each public, educational, or governmental Access Channel up to 200 feet from the Certificateholder's activated video service distribution plant.
- (d) The Town shall ensure that all transmissions, content, or programming to be transmitted over a channel or facility by a Certificateholder are provided or submitted to the Cable or Video Service Provider in a manner or form that is capable of being accepted and transmitted by a provider without any requirement for additional alteration or change in the content by the provider, over the particular network of the Cable or Video Service Provider, which is compatible with the technology or protocol used by the Cable or Video Service Provider to deliver services. To the extent that a public, educational, or governmental Access Channel content provider has authority, the delivery of public, educational, or governmental content to a Certificateholder constitutes authorization for the Certificateholder to carry such content, including, at the provider's option, authorization to carry the content beyond the jurisdictional boundaries of the Town.
- (e) Where technically feasible, a Certificateholder and an incumbent cable service provider shall use reasonable efforts to interconnect their networks for the purpose of providing public, educational, and governmental programming. Interconnection may be accomplished by

direct cable, microwave link, satellite, or other reasonable method of connection. Certificateholders and incumbent cable service providers shall negotiate in good faith and incumbent cable service providers may not withhold interconnection of public, educational, and governmental Access Channels. The requesting party shall bear the cost of such interconnection.

- (f) A Certificateholder is not required to interconnect for, or otherwise to transmit, public, educational, and governmental content that is branded with the logo, name, or other identifying marks of another Cable or Video Service Provider, and the Town may require a Cable or Video Service Provider to remove its logo, name, or other identifying marks from public, educational, and governmental content that is to be made available to another provider. This subsection does not apply to the logo, name, or other identifying marks of the public, educational, or governmental programmer or producer.
- (h) A court of competent jurisdiction in Miami-Dade County shall have exclusive jurisdiction to enforce any requirement under this section 19.

#### Section 20. Customer Service Standards

All Cable and Video Service Providers, and Certificateholders shall comply with the following customer service standards and requirements of 47 C.F.R. §76.309(c), as amended, and any other applicable federal, state, county or municipal law concerning customer service standards, consumer protection, and unfair trade practices. For the purposes of this section 20, a Cable and Video Service Provider, or Certificateholder shall be referred to as "Operator."

- (a) Office hours and telephone availability-
- (1) The Operator will maintain a local, toll-free or collect call telephone access line which will be available to its Subscribers 24 hours a day, seven days a week.
  - (i) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.
  - (ii) After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained company representative on the next business day.
- (2) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis.
- (3) The Operator will not be required to acquire equipment or perform surveys to measure compliance with the telephone answering standards above unless an historical record of complaints indicates a clear failure to comply.

- (4) Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.
- (5) Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.
- (b) Installations, outages and service calls. Under normal operating conditions, each of the following four standards will be met no less than ninety five (95) percent of the time measured on a quarterly basis:
- (1) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.
- (2) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The Operator must begin actions to correct other service problems the next business day after notification of the service problem.
- (3) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The Operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)
- (4) An Operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.
- (5) If an Operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.
- (c) Communications between Operators and subscribers--
  - (1) Refunds--Refund checks will be issued promptly, but no later than either--
    - (i) The customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
    - (ii) The return of the equipment supplied by the Operator if service is terminated.
- (2) Credits--Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

(3) To the extent allowed by applicable law, the Town may respond to all Operator customer complaints.

#### Sec. 21. Discrimination Prohibited

A Registrant may not deny access to service to any individual or group of potential residential Subscribers because of the race or income of the residents in the area in which the individual or group resides in the Town. Enforcement of this section shall be in accordance with §501.2079, F.S., and this article.

#### Sec. 22. Rates.

- (a) At such time as federal and state law permit rate regulation, the Town reserves all rights to implement and impose such regulation, and may do so by amendment to this Chapter, by separate ordinance or in any other lawful manner.
- (b) Nothing in this Chapter shall prohibit the Town from regulating rates for Cable or Video Services to the full extent permitted by law.

### Sec. 23. Municipal Communications System Ownership Authorized.

- (a) To the full extent permitted by law, the Town may acquire, construct, own, and/or operate a communications system.
- (b) Nothing in this article shall be construed to limit in any way the ability or authority of the Town to acquire, construct, own, and/or operate a communications system to the full extent permitted by law.

### Sec. 24. Enforcement Remedies.

- (a) In addition to any other remedies available at law, including but not limited to §166.0415, F.S., and Ch. 162, F.S., or equity or provided in this article, the Town may apply any one or combination of the following remedies in the event a registrant violates this article, or applicable local law or order related to the public rights-of-way:
- (1) Failure to comply with the provisions of the article or other law applicable to occupants of the public rights-of-way, may result in imposition of penalties to be paid by the registrant to the Town in an amount of not less than two hundred fifty dollars (\$250.00) per day or part thereof that the violation continues.
- (2) In addition to or instead of any other remedy, the Town may seek legal or equitable relief from any court of competent jurisdiction.
- (b) Before imposing a fine pursuant to subsection (a)(1) of this section, the Town shall give written notice of the violation and its intention to assess such penalties, which notice

shall contain a description of the alleged violation. Following receipt of such notice, the registrant shall have thirty (30) days to either: (a) cure the violation to the Town's satisfaction and the Town shall make good faith reasonable efforts to assist in resolving the violation; or (b) file an appeal with the Town to contest the alleged violation. Section 7 shall govern such appeal. If no appeal is filed and if the violation is not cured within the thirty-day period, the Town may collect all fines owed, beginning with the first day of the violation, through any means allowed by law.

- (c) In determining which remedy or remedies are appropriate, the Town shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the Town determines are appropriate to the public interest.
- (d) Failure of the Town to enforce any requirements of this article shall not constitute a waiver of the Town's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.
- (e) In any proceeding before the Town where there exists an issue with respect to a registrant's performance of its obligations pursuant to this article, the registrant shall be given the opportunity to provide such information as it may have concerning its compliance with the terms and conditions of this article. The Town may find a registrant that does not demonstrate compliance with the terms and conditions of this article in default and apply any one or combination of the remedies otherwise authorized by this article.
- (f) The Town manager or designee shall be responsible for administration and enforcement of this article, and is authorized to give any notice required by law.
- (g) If a Certificateholder is found by a court of competent jurisdiction not to be in compliance with the requirements of this article, the Certificateholder shall have a reasonable period of time, as specified by the court, to cure such noncompliance.

### Sec. 25. Administration.

- (a) The Town Manager, either directly or through a duly appointed designee, shall have the responsibility for overseeing the day-to-day administration of this Chapter and Franchise Agreements. The Town Manager shall be empowered to take all administrative actions on behalf of the Town, except for those actions specified in this Chapter that are reserved to the Town Council. The Town Manager may recommend that the Council take certain actions with respect to the Franchise. The Town Manager shall keep the Council apprised of developments in cable and provide the Council with assistance, advice and recommendations as appropriate.
- (b) The Town Council shall have the sole authority to regulate rates for Cable or Video Services.

### Sec. 26. Force Majeure.

In the event a Registrant's performance of or compliance with any of the provisions of this article is prevented by a cause or event not within the registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result, provided, however, that such registrant uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this article, causes or events not within a registrant's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within Registrant's control, and thus not falling within this section, shall include, without limitation, registrant's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of Registrant's directors, officers, employees, contractors or agents.

# Sec. 27. Reservation of rights.

- (a) The Town reserves the right to amend this article as it shall find necessary in the lawful exercise of its police powers.
- (b) This article shall be applicable to all communications facilities placed in the public rights-of-way on or after the effective date of this article and shall apply to all existing communications facilities placed in the public rights-of-way prior to the effective date of this article, to the full extent permitted by state and federal law.
- <u>Section 4.</u> <u>Severability</u>. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.
- <u>Section 5.</u> <u>Conflict.</u> All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.
- **Section 6. Effective Date.** This Ordinance shall be effective immediately upon adoption on second reading.

PASSED AND ADOPTED on second rec			2008
PASSED AND ADOPTED on second rea	ading this	day of	, 2008.
	PA	UL S. VROOMA	N, Mayor
Attest:			

ERIKA GONZALEZ-SANTAMARIA, CMC Town Clerk

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF THE TOWN OF CUTLER BAY ONLY:

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

# **TAB 11**

### ORDINANCE NO. <u>08-</u>

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA AMENDING THE ZONING WORKSHOP REQUIREMENTS AND PROCEDURES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS,** on July 19th, 2006, the Town Council of the Town of Cutler Bay (the "Town") adopted a public zoning workshop process (the "Zoning Workshop Ordinance"), which afforded the public and the Town Council the opportunity to ask questions and to provide feedback to developers about proposed developments in an open forum; and

**WHEREAS,** the zoning workshop process has allowed the public to become more involved in the development review process, though the Town staff recommends amending the list of applications that are required to go to the zoning workshop in order to further streamline the development review process and to increase public involvement; and

**WHEREAS,** the Town Council finds that limiting the scope of applications that are required to go before a zoning workshop is in the best interest and welfare of the residents of the Town.

# NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS<sup>1</sup>:

<u>Section 1.</u> <u>Findings.</u> The foregoing "Whereas" clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.

<u>Section 2.</u> <u>Amendment to the Zoning Workshop Ordinance</u>. The Town Council hereby amends the zoning workshop ordinance as follows:

### **Section 1. Zoning Workshops.**

A. <u>Intent</u>. It is the intent of the zoning workshop process to provide an open and public forum for members of the public, as well as the Town Council, to comment on proposed developments within the Town. It is further the intent that any communications between members of the Town Council and the applicant during a zoning workshop shall not be considered an ex parte communication, and shall not create a presumption of bias in relation to any future quasi-judicial decision on the applicant's application. The zoning workshop shall not be considered part of the quasi-judicial hearing. Each application shall be evaluated based upon the record presented at the Town Council hearing(s) on the application.

<sup>&</sup>lt;sup>1</sup> Coding: <u>underlined</u> words are additions to existing text, <del>struck through</del> words are deletions from existing text, <del>shaded</del> text reflects changes made from First Reading.

- B. <u>Applicability.</u> A pre-application conference with the Town's planning and zoning staff shall be held prior to an application being presented at a zoning workshop. A zoning workshop shall be held no fewer than thirty (30) days prior to the first Town Council meeting at which the application will be heard. A zoning workshop shall be required for the following types of applications:
  - 1. Rezonings;
  - <u>12</u>. Site plan approval;
  - 23. Site plan amendments that seek to develop additional square footage;
  - 4. Variances
  - 35. Special exceptions;
  - 6. Unusual uses; and
  - <u>47</u>. Any <u>zoning</u> application <u>submitted pursuant to the Town Zoning Code</u>, <u>which the Planning Director finds may substantially impact the adjacent property owners. deemed necessary by the town manager or his or her designee.</u>
- C. <u>Exemptions</u>. The following applications shall be exempt from the zoning workshop requirement:

Any applications related to the approval a of one (1) single family residence.

- D. <u>Advertisement</u>—and Mailed Notice. At least 5 days prior to a zoning workshop, an advertisement shall be published in a local newspaper and a courtesy notice shall be mailed to properties within a 1,000 foot radius of the property. For purposes of this section, mailed courtesy notice shall only be required for those projects consisting of property greater than or equal to 21,780 square feet in size. The advertisement and courtesy notice shall state the date, time, and place of the zoning workshop. In addition, the advertisement and courtesy notice shall provide a description and the location of the proposed development. The cost of publishing an advertisement and mailing of the courtesy notices for a zoning workshop shall be paid by the applicant. Failure to receive the courtesy mailed notice shall not require the application to go before another zoning workshop. For purposes of this section, mailed courtesy notice shall only be required for those projects consisting of property greater than or equal to 21,780 square feet in size.
- E. <u>Agenda</u>. The zoning workshop agenda shall be set by the town manager and prepared by the town clerk. A zoning workshop shall not be held more than once per calendar month. However, the town manager, at his or her discretion, may schedule a second zoning workshop to be held during the same calendar month.
- F. <u>Meeting Procedure.</u> A zoning workshop shall consist of two sessions which are described below:
- 1. <u>First Session.</u> The first session of a zoning workshop shall provide a forum for members of the public to learn about proposed developments within the Town. Developments may be presented to the public simultaneously, in several locations within the meeting site.

During this session, members of the public are encouraged to ask questions and to provide feedback to the applicant about the proposed development. The applicant shall provide visual depictions, such as renderings, drawings, pictures, and the location of the proposed development. In addition, representatives of the applicant shall be available to answer questions that members of the public may have about the proposed development. The members of the Town Council shall not be present during the first session of the zoning workshop.

- 2. <u>Second Session.</u> The second session of a zoning workshop shall provide a forum for the Town Council to learn about the proposed developments discussed at the first session of the zoning workshop. No quorum requirement shall apply. Developments shall be presented by the applicants sequentially, one at a time, for the Town Council's review and comment. The applicant shall again present visual depictions of the proposed development. In addition, the applicant shall be available to answer any questions that members of the Town Council may have about the proposed development.
- G. <u>Police officer in attendance</u>. <u>Upon the request of the Town Manager, Fit shall be</u> the duty of the chief of police or a police officer assigned by him, who shall have the grade of lieutenant or higher, to be present and on official duty at all zoning workshops within the Town.
- <u>Section 3.</u> <u>Severability.</u> If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.
- <u>Section 4.</u> <u>Conflict.</u> All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.
- <u>Section 5.</u> <u>Effective Date.</u> This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this	day of, 2008.
PASSED AND ADOPTED on second reading	g this day of, 2008.
	PAUL S. VROOMAN, Mayor
	,

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC Town Clerk

APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF THE TOWN OF CUTLER BAY ONLY:

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 12

### ORDINANCE NO. 08-\_\_\_\_

AN ORDINANCE OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCE 07-24 WHICH ORDINANCE ADOPTED AN OPERATING AND CAPITAL OUTLAY BUDGET FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008 BY REVISING SAID BUDGET TO APPROPRIATE \$125,000 FROM CONTINGENCY RESERVES AND PROVIDE SUCH FUNDS BE ALLOCATED TO THE PUBLIC WORKS DEPARTMENT FOR THE PURCHASE OF ELECTRONIC SIGNS AND AUTHORIZING THE TOWN MANAGER TO MAKE EXPENDITURES CONSISTENT THEREWITH AND DO ALL THINGS NECESSARY TO CARRY OUT THE INTENT OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, upon periodic review and analysis of current budgetary commitments and obligations and based on the projected needs and requirements of the Town of Cutler Bay (the "Town") and with the concurrence of the Town Manager and his Finance Director, it is deemed necessary to adjust, amend and implement the Operating and Capital Outlay Budget for the fiscal year commencing October 1, 2007 to appropriate \$125,000 designated as Contingency Reserves and allocate such funds to the Public Works Department for use on purchasing electronic signs to be placed in strategic areas in the Town, designing and constructing monument bases for such signs including electrical supply and email bulk mailing services.

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

**Section 1.** That the above recitals are true and correct and are incorporated herein by this reference.

Section 2. That the Town Council hereby authorizes the amendment of Ordinance No. 07-24 which ordinance adopted the Operating and Capital Outlay Budget for the fiscal year commencing October 1, 2007 through September 30, 2008, by revising said budget to appropriate \$125,000 from Contingency Reserves and allocate such funds to the Public Works Department to be used for purchasing electronic signs to be placed in strategic areas in the Town, designing and constructing monument bases for such signs including electrical supply and email bulk mailing services.

	e Town Manager is hereby a		ch expenditures and to
do all things necessary to o	carry out the intent of this or	dinance.	
PASSED on first re	reading this day of	, 2008.	

PASSED AND ADOPTED on second reading this \_\_\_\_\_\_ day of \_\_\_\_\_\_, 2008.

	PAUL S. VROOMAN, Mayor
Attest:	
ERIKA GONZALEZ-SANTAMARIA, C Town Clerk	<del>CMC</del>
APPROVED AS TO FORM AND LEGA AND BENEFIT OF THE TOWN OF CU	
WEISS, SEROTA, HELFMAN, PASTOR COLE & BONISKE, P.L. Town Attorney	RIZA,
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 13**

AN ORDINANCE OF THE TOWN OF CUTLER BAY, FLORIDA. **AMENDING ORDINANCE** 07-24 WHICH ORDINANCE ADOPTED AN OPERATING AND CAPITAL OUTLAY BUDGET FOR THE FISCAL YEAR COMMENCING OCTOBER 1, 2007 THROUGH SEPTEMBER 30, 2008 BY REVISING SAID BUDGET TO **APPROPRIATE** \$2,500 DESIGNATED AS CONTINGENCY RESERVES AND PROVIDE SUCH FUNDS BE ALLOCATED TO THE COMMUNITIES IN SCHOOLS PROGRAM AT WHISPERING PINES ELEMENTARY SCHOOL AND AUTHORIZING THE TOWN MANAGER TO **EXPENDITURES** CONSISTENT THEREWITH AND DO ALL THINGS NECESSARY THE INTENT TO CARRY OUT OF THIS **ORDINANCE**; **AND PROVIDING FOR** AN EFFECTIVE DATE.

**WHEREAS**, upon periodic review and analysis of current budgetary commitments and obligations and based on the projected needs and requirements of the Town of Cutler Bay (the "Town") and with the concurrence of the Town Manager and his Finance Director, it is deemed necessary to adjust, amend and implement the Operating and Capital Outlay Budget.

**WHEREAS**, for the fiscal year commencing October 1, 2007, the Council has deemed it necessary to appropriate \$2,500 designated as contingency reserves and allocate such funds to the Town Manager to provide to the Communities in Schools program at Whispering Pines Elementary School in the form of a grant.

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

**Section 1.** That the above recitals are true and correct and are incorporated herein by this reference.

Section 2. That the Town Council hereby authorizes the amendment of Ordinance No. 07-24 which ordinance adopted the Operating and Capital Outlay Budget for the fiscal year commencing October 1, 2007 through September 30, 2008, by revising said budget to appropriate \$2,500 from contingency reserves and allocate such funds to the Town Manager to provide to the Communities in Schools program at Whispering Pines Elementary School in the form of a grant to be used in support of their programs aimed at assisting at-risk children and their families.

Section 3. The Town Manager is hereby authorized to make such expenditures and to do all things necessary to carry out the intent of this ordinance.
PASSED on first reading this day of, 2008.
PASSED AND ADOPTED on second reading this day of, 2008.
PAUL S. VROOMAN, Mayor
Attest:
ERIKA GONZALEZ-SANTAMARIA, CMC Fown Clerk APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF THE TOWN OF CUTLER BAY ONLY:
WEISS, SEROTA, HELFMAN, PASTORIZA, COLE & BONISKE, P.L. Γown 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

# **TAB 14**

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL **TOWN** OF THE OF **CUTLER** BAY, FLORIDA, PROVIDING FOR A MORATORIUM ON THE ISSUANCE OF SITE PLANS THAT INCLUDE NON RESIDENTIAL OR MIXED USE BUILDINGS THAT EXCEED 50,000 GROSS SQUARE FEET; EXEMPTING SITE PLANS THAT COMMIT TO RECEIVING LEED CERTIFICATION; **PROVIDING FOR WAIVERS**; **PROVIDING FOR SEVERABILITY**; **PROVIDING PROCEDURES FOR** VESTED RIGHTS AND JUDICIAL REVIEW FOR THE SPECIFIC MATTERS ADDRESSED HEREIN; PROVIDING FOR A TERM; PROVIDING FOR A **REPEALER**; **PROVIDING** FOR **ORDINANCES** IN CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE.

**WHEREAS,** the Town of Cutler Bay (the "Town") recognizes the importance of environmental stewardship in a variety of media, which include, but are not limited to, water, energy, air, and waste; and

**WHEREAS**, the State of Florida also recognizes the importance of environmental stewardship through Executive Order 07-126, which provides that all new state buildings shall be Leadership In Energy and Environmental Design (LEED) certified and such buildings shall strive for a Platinum level of certification; and

WHEREAS, the Town is committed to providing a sustainable community for its residents and has applied to the Florida Green Building Coalition, Inc. to become a certified Green Local Government; and

**WHEREAS,** in furtherance of this commitment, the Town has earmarked \$200,000 for green building initiatives, which include, but are not limited to, the creation of a Green Plan; and

**WHEREAS,** the Town is presently working to select a qualified consultant or consulting firm to prepare a Green Plan which, upon completion, when coupled with any necessary amendments to the Town's Comprehensive Plan and Land Development Regulations, shall serve to further guide land use and development, so that development within the Town will further the Town's goal of creating a sustainable environment; and

**WHEREAS,** the Town Council adopted Ordinance 07-07, which provided that large nonresidential or mix use buildings are those buildings that exceed 50,000 gross square feet; and

**WHEREAS,** the Town Council believes that such large buildings may substantially impact the adequacy and sustainability of public facilities and natural resources within the Town; and

**WHEREAS**, as such, the Town Council finds its necessary to adopt a moratorium on the issuance of site plans approving non residential or mixed use buildings in excess of 50,000 gross square feet, in order to afford the Town the opportunity to create its Green Plan and implement related regulations, which will help to ensure a sustainable environment; and

**WHEREAS**, the Town Council, in its capacity as the Local Planning Agency, has reviewed this Ordinance and has recommended approval; and

**WHEREAS,** after due notice and hearing, the Town Council finds that this Ordinance is consistent with the Town's Comprehensive Plan and Code of Ordinances.

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

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

**Section 2. Moratorium Imposed**. During the time that this Ordinance is in effect as specified in Section 7 below, there shall be a moratorium on the issuance of site plans that include buildings in excess 50,000 gross square feet within the Town. The following categories of development shall be exempt from this moratorium:

(a) Any site plan that commits to obtaining a Leadership In Energy and Environmental Design (LEED) Certification of Platinum. A LEED Certified Platinum development shall mean a development that obtains at least 52-69 points or >75% of the maximum points on the LEED project checklist. The applicant's commitment shall be demonstrated as follows:

Prior to the issuance of the first principal building permit, the applicant shall post a performance bond of 4% of the total cost of the building in order to secure performance and fulfillment of the of the applicant's obligation to obtain a LEED Platinum Certification. The Town shall release the bond after: (i) project completion and certificate of occupancy has been issued by the Town; and (ii) the applicant has certified the project with the United States Green Building Council (USGBC) and provides the certification letter to the Town.

If the project fails to meet the criteria required for Platinum Certification by the United States Green Building Council (USGBC) within two (2) years after receiving the Town's certificate of occupancy, the applicant shall forfeit one hundred percent (100%) of the bond. Funds that become available to the Town from the forfeiture of the performance bonds shall be deposited in a Green Building Fund established by the Town. These funds shall be utilized for improvements such as landscape, open space improvements, traffic calming, pollution mitigation, drainage and sanitary sewer improvements, sustainability

improvements to public facilities, or similar improvements as deemed appropriate by the Town Council.

In lieu of the bond required by this section, the Town may accept an irrevocable letter of credit from a financial institution authorized to do business in Florida or provide evidence of cash deposited in an escrow account in a financial institution in the State of Florida in the name of the applicant and the Town. The letter of credit or escrow shall be in the same amount of the bond if it were posted; and

(b) Any development that has received site plan approval from the Town prior to the enactment of this Ordinance.

Section 3. Waivers. Any property owner seeking a waiver under this Section 3 must file an application with the Town Council, for a determination within 30 days after the effective date of this Ordinance. The Town Council, after a public hearing, may grant a waiver to the moratorium provided above and permit development to proceed on a specific parcel where the Town Council determines, based upon substantial competent evidence, that the proposed site plan requested by the waiver application will not detrimentally affect or be inconsistent with the regulations that will be created and adopted in relation to the Green Plan, will be compatible with surrounding land uses, and will not impair the public health, safety or welfare. The public hearing shall be advertised at least seven days prior to the hearing in a local newspaper. The grant of waiver, if any, shall be by resolution. The applicant shall be responsible for the waiver application fee and any other standard fees and requirements for a public hearing.

# **Section 4. Determination of Vested Rights or Denial of All Economic Use.**

- (A) Nothing in this Ordinance shall be construed or applied to abrogate the vested right of a property owner to complete development of a parcel where the property owner can demonstrate by substantial competent evidence each of the following:
  - (1) A governmental act of development approval was obtained prior to the effective date of this Ordinance; and
  - (2) Upon which the property owner has detrimentally relied, in good faith, by making substantial expenditures; and
  - (3) That it would be highly inequitable to deny the property owner the right to complete the development.
- (B) Nothing in this Ordinance shall be construed or applied to prevent development of a particular parcel where the property owner can demonstrate by substantial competent evidence that, because of the moratorium, no economic use can be made of the parcel.
- (C) Any property owner claiming vested rights or denial of all use under this Section 3 must file an application with the Town Council for a determination within 30 days after the effective date of this Ordinance. The application shall be accompanied by an application fee of

\$1,500.00 and contain a sworn statement as to the basis upon which the vested rights or denial of all use are asserted, together with documentation required by the Town and other documentary evidence supporting the claim. The Town Council shall hold a public hearing on the application and, based upon the competent substantial evidence submitted, shall make a determination as to whether the property owner has established vested rights or a lack of economic use for the parcel.

Judicial Review. Judicial review of final decisions by the Town Council Section 5. under Section 3 or Section 4 of this Ordinance shall be by the filing of a Petition for Certiorari in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County in accordance with the Florida Rules of Appellate Procedure for the review of the quasi-judicial decisions of municipalities.

Section 6. Exhaustion of Administrative Remedies. No property owner claiming that this Ordinance, as applied, constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights may pursue such claim in court, unless he or she has first exhausted the applicable administrative remedies provided in Sections 3 and 4 of this Ordinance.

Section 7. Conflicts. All Sections or parts of Sections of the Code of Ordinances, all Ordinances or parts of Ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

**Term.** The moratorium imposed by this Ordinance is temporary and shall be effective for a period of nine (9) months from the effective date of this Ordinance, unless dissolved earlier by the Town Council. Further, the moratorium shall automatically dissolve upon the adoption of the Green Plan and implementing land development regulations. The moratorium may be reasonably extended, if necessary, by Ordinance of the Town Council.

Effective Date. This Ordinance shall be effective immediately upon Section 9. adoption on second reading.

PASSED on first reading this	day of, 2008.
PASSED AND ADOPTED on second rea	ding this day of, 2008.
Attest:	PAUL S. VROOMAN, Mayor
ERIKA GONZALEZ-SANTAMARIA, CMC	
Town Clerk	

# APPROVED AS TO FORM AND LEGALITY FOR THE USE AND BENEFIT OF THE TOWN OF CUTLER BAY ONLY:

WEISS, SEROTA, HELFMAN, PASTOR COLE & BONISKE, P.L.	RIZA,
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 15**

### ORDINANCE NO. <u>08-</u>

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA CREATING THE PLANNED UNIT DEVELOPMENT DISTRICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the Town of Cutler Bay (the "Town") Town Council desires that there be high quality aesthetically pleasing well planned developments within the Town that encourage more efficient use of land as well as greater opportunities for housing, employment, and adequate open space; and

**WHEREAS**, the Town Council finds that it is necessary to adopt a Planned Unit Development district to achieve this goal and to promote flexibility of design and planned diversification and integration of uses and structures; and

**WHEREAS**, the Town Council finds this Ordinance to be in the best interest and welfare of the residents of the Town.

# NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS<sup>1</sup>:

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

**Section 2. Planned Unit Development District**. The Town Council hereby creates the Planned Unit Development District as follows:

#### A. Purpose

- 1. The purpose of this article is to promote the public health, safety, comfort, order, appearance, convenience and general welfare of the Town.
- 2. In order to insure that the Growth Management Plan is not frustrated by disorganized, unplanned and uncoordinated development, which would create an undue burden and hardship on the ability of the community to translate this plan into reality, the following objectives are established as the purpose for creating a Planned Unit Development District:
- a. To protect the environment and retain natural landscaping; to answer the growing demand for housing of all types and designs; to encourage innovations in residential, retail and

<sup>&</sup>lt;sup>1</sup> Coding: <u>underlined</u> words are additions to existing text, <del>struck through</del> words are deletions from existing text, <del>shaded</del> text reflects changes made from First Reading.

mixed use development, with greater variety in type, design and layout of buildings than is generally possible under conventional zoning regulations;

- b. To provide greater opportunities for housing, employment and recreation;
- c. To encourage more efficient use of land and public services;
- d. To provide adequate transportation circulation patterns and prevent the over burdening of existing streets;
- e. To provide for adequate and suitable located open space and recreation areas of a size and type commensurate with the projected population density and nature of the development;
  - f. To conserve land values;
- g. To preserve to the greatest extent possible existing landscape and amenities, such as trees, natural terrain, agricultural areas, marshes, mangrove areas, water and beach areas, and other outstanding topographical and geological features.

### B. <u>Definitions</u>.

For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

- 1. <u>BUFFER AREA</u>. An open and unobstructed ground area of the plot in addition to any required yards or road widening around the perimeter. Off-street parking is not allowed in a buffer area.
- 2. <u>GROWTH MANAGEMENT PLAN</u>. The official comprehensive plan, as adopted by the Town Council.
- 3. <u>GROSS AREA</u>. All of the property within the subject development, including all water area but excluding peripheral strips where dedication will be clearly necessary for the minimum public rights-of-way.
- 4. <u>MULTI-FAMILY RESIDENTIAL</u>. Structure consisting of three or more residential units.
  - 5. <u>NET AREA</u>. All of the land within the subject development which is buildable for residential units, as diminished by land to be set aside for schools, churches, water areas, retail or office use and public roadways.
  - 6. <u>NODE</u>. Any area of development within the Master Development Plan defined by physical features or natural features.

- 7. <u>NONRESIDENTIAL USES</u>. Retail and office uses, in accordance with the uses and special uses permitted in subsection C, "Uses", insofar at they do not conflict with the provisions of this section. Public and quasi-public uses which are an integral part of and logically oriented to and coordinated with the total PUD shall also be permitted.
- 8. <u>OPEN SPACE</u>. A generally unobstructed parcel or area of land permanently dedicated or reserved for the use and enjoyment of owners and occupants of the land within the PUD. Required open space shall be of a pervious nature and shall not be used for private roadways open to vehicular circulation, off-street parking or loading berths. Lakes or other bodies of water areas shall not be counted as required open space.
- 9. <u>PERMITTED USES</u>. No structure or other uses, except those residential, nonresidential, and accessory and service-oriented uses, as defined in this section, and as approved on the final site plan, shall be erected or maintained in the PUD.
- 10. <u>PLANNED UNIT DEVELOPMENT (PUD)</u>. Generally, an area to be developed as a single entity according to a plan, containing one or more residential clusters and one or more public, quasi-public, commercial or office areas in such ranges of nonresidential uses to residential uses as shall be specified in this section.
- 11. <u>RESIDENTIAL USES</u>. Dwelling units in detached, semi-detached, attached, duplex, townhouse, garden apartment, and other dwelling unit arrangements.

### 12. SCREENING.

- a. A strip at least 10 feet wide, densely planted (or having equivalent natural growth) with shrubs or trees at least 8½ feet high at the time of planting, of a type that will form a year-round dense screen.
- b. An opaque wall or barrier or uniformly-painted fence at least 6 feet high, supplemented with planting on outside when on perimeter.
- c. Any other islands, barriers, emplacements, walls, fences, trees, plantings, shrubbery, or other artificial or natural divider strip may be required and/or approved by the Commission in the final site plan.
- d. Such screening shall be maintained in good condition at all times, and may have normal entrances and exits, but shall have no signs affixed to or hung in relation to the outside thereof except for the following: For each entrance, one directional arrow with the name of the establishment or development, which shall be non-illuminated.
- 13. <u>SINGLE-FAMILY RESIDENTIAL</u>. A detached dwelling containing one dwelling unit.
  - 14. SHALL. A mandatory requirement.

15. <u>TOWNHOUSE</u>. Three or more attached units in individual ownership which are independently serviced by separate utility services.

### C. <u>Uses</u>

No single use shall exceed 40% of a node except as provided within Miami Dade Chapter 33 zoning regulations.

- 1. Permitted. The following uses may be approved in mixed use nodes:
  - a. Banks, and savings and loan associations.
  - b. Private clubs, and community service organizations.
  - c. Professional and governmental offices.
  - d. Personal service shops.
  - e. Retail stores of not more than 10,000 square feet each of floor area, except that 1 supermarket not to exceed 50,000 square feet and a drugstore.
  - f. General business offices
  - g. Package stores primarily selling alcoholic beverages.
  - h. Living quarters for an owner or operator.
  - i. Laundry and dry cleaning establishments which:
    - (1) Use only equipment which complies with all applicable state and federal standards;
    - (2) Utilize a total of not more than 5 full or part-time employees;
    - (3) Do not exceed 2,000 square feet in gross floor area;
    - (4) Provide retail, noncommercial service only; and
    - (5) Do not process garments delivered from other laundry or dry cleaning pick-up shops.
  - j. Restaurants.
  - k. Child care and adult care centers as approved in a site plan.

- 1. Bars and cocktails lounges without live entertainment.
- m. Uses similar to the above if not specifically prohibited.
- n. Uses accessory to any of the above uses.
- 2. Conditional uses. The following uses may be conditionally approved in mixed nodes.
  - a. Bars and cocktail lounges conditional with live entertainment.
  - b. Outdoor displays.
- 3. <u>Uses prohibited</u>. The following non-residential uses are prohibited in mixed use nodes:
  - a. Gas Stations.
  - b. Sale of secondhand merchandise.
  - c. Eating establishments having curb service.
  - d. Drive-thru service

## D. Location of PUD Districts

A PUD shall be permitted only in the:

- a. Old Cutler Charrette Area
- b. Mixed use areas
- c. Town Center District

### **E.** Site Development Standards

Unless otherwise indicated, in addition to the requirements of the subdivision regulations, compliance with the following standards shall be required:

All site improvements required by this article shall be constructed or installed by the applicant at the applicants expense and be accepted by the relevant utility or town prior to final Certificate of Occupancy.

1. <u>Minimum site area</u>. The required minimum site area for any PUD development shall be five net acres.

- 2. <u>Height of buildings</u>. No building or structure shall be erected in excess of 45 feet in height except adjacent to residential areas height shall not exceed 35 feet for OCR. Height for mixed use areas and Town Center shall be generated by GMP.
- 3. Required perimeter building setback. No building shall be located closer than 5 feet to any perimeter property line of a PUD. The perimeter building setback shall be landscaped. In determining the specific perimeter setback requirement for each PUD, the compatibility of adjacent land uses, building heights and any parking structures shall be considered and the required perimeter building setback may be adjusted accordingly.
- 4. <u>Modified building setbacks</u>. Subject to final PUD site plan approval, building setbacks may be modified. Modified building setbacks shall be set forth on the final PUD or an accompanying recorded document and shall be enforced by the Town. Building setbacks may be modified only in accordance with the following criteria:
- a. The modified building setback in residential and mixed-use developments shall comply with any adopted charrette and/or the non-residential design overlay ordinance.
  - b. The modified building setback shall provide adequate light and air.
- c. The location of a modified setback and the compatibility of adjacent uses shall be a factor in granting approval of setback modifications.
- d. Building configuration and the relationship between building configuration and privacy, light, air and the compatibility of modified building setback uses shall be factors in granting approval of setback modifications.
- e. Fire exposure of proposed PUD buildings, ground floor area of buildings, height of buildings, occupancy usage, type of construction, availability of water for fire flow, and spacing of fire hydrants shall be factors in granting approval of setback modifications.

#### 5. Access

- a. All lots shall have access to a public or private street, except dwellings, which need not front on a street but must have access thereto via a court, driveway, or other area maintained for use in common. All streets and driveways shall be improved to Town standards.
- b. All structures, regardless of use, shall be readily and easily accessible to police, fire, ambulance or other emergency vehicles, as well as normal delivery and public service requirements.
- 6. <u>Pedestrian ways</u>. Pedestrian ways or sidewalks, constructed of concrete, tile, paving brick, or other acceptable material, shall provide access from all multi-family structures to require off-street parking.

- 7. Off-street parking and loading requirements. The off-street parking and loading requirements shall be as contained in the applicable town regulation with regard to off-street parking, landscaping and vehicular use areas.
- 8. <u>Land coverage</u>. The maximum amount of impervious ground coverage shall not exceed the following limitations:

Residential areas of the PUD — 50%

Office areas of the PUD — 75%

Mixed Use areas of the PUD — 75%

### 9. Landscaping.

- a. All pervious areas shall be landscaped. A minimum of 35 trees per acre of total site area shall be provided prior to the issuance of the certificate of occupancy. Landscaping shall be well maintained and a sprinkler system for the irrigation of trees and other landscaped features shall be provided.
- b. A buffer area with screening shall be included on the perimeter of a nonresidential area whenever it adjoins residential land around the perimeter of the PUD.

### 10. Land dedication requirements.

- a. The PUD applicant for a residential and/or mixed-use development shall dedicate land or pay a fee in lieu of land dedication to the Town for park purposes. The land dedication or fee in lieu thereof shall be determined pursuant to the provisions of LOS standards within the GMP. Land dedicated within the PUD shall qualify as required open space.
- b. The PUD applicant shall dedicate land or pay a fee in lieu of land dedication, as may be required by the Town Council, for Administrative Facilities. Administrative Facilities include but are not limited to fire stations, police stations, libraries, community centers, government offices or public utilities. Land dedicated for Administrative Facilities shall, whenever possible, be strategically located and consolidated. Land dedicated for community facilities shall not be included as part of the required open space. Land dedication for community facilities which otherwise qualifies shall be included in the calculation of gross area for purposes of maximum density. The amount and location of land to be dedicated shall be determined by the Town Council as part of the final PUD plat approval or site phasing plan approval. The determination shall be based on the need for community facilities resulting from the size, location and impact of the proposed PUD, including projected PUD phases. Community facilities shall be architecturally compatible with the surrounding structures and shall be heavily buffered with landscaping.

## 11. Location requirements.

- a. Relation to transportation facilities. A PUD shall be located with respect to arterial streets, local roads or other transportation facilities so as to provide direct access there from to the PUD without creating additional traffic along minor local streets not within the PUD.
- b. Relation to utilities. A PUD shall be located in relation to existing sanitary sewers, waterlines, storm and surface drainage systems and other utilities systems such that neither extension nor enlargement of such systems will be required in degree or time that will result in net public cost higher than or the incurrence of public cost earlier than would development of the area as otherwise permitted.
- c. Relation to public facilities. A PUD shall be located with respect to schools, parks, playgrounds and other public facilities so as to have access in the same degree as would development of the area as otherwise permitted.
- d. Locational deficiencies. An applicant may cure locational deficiencies by either providing street, sewer, water, utility drainage or other improvements at its own cost or by agreeing with the Town to fund all or part of the cost of such improvements, the effect of either of which shall be to offset fairly and equitably any higher net public cost resulting from the impact of the PUD or to cure the locational deficiencies. In any computations of additional net public costs, the differences between otherwise anticipated public costs and PUD impact costs, and otherwise anticipated public revenue and PUD impact revenues shall be considered, among other factors. The Town Council may require expert determination and analysis of public cost and revenues and PUD impact thereon. The experts shall be selected by the Town and may be Town staff, and the cost of the determination and analysis shall be paid by the applicant.
- e. Non-progressive development. The proposed PUD shall not be located in relation to other developed areas of the Town such that leapfrog or non-progressive development results.

## 12. Perimeter requirements.

- a. The perimeter of the PUD shall combine uses and buffer techniques to create a transitional separation between surrounding existing uses and the proposed development.
- b Whenever a PUD adjoins an existing single-family use or district, the buffer should include an open space area or section of single-family uses in the section of the PUD perimeter which adjoins the single-family district, in addition to the setback requirements above.
- c. Whenever a PUD adjoins an existing residential use or district, and the perimeter uses of the PUD are other than single-family dwelling units, the PUD perimeter should include appropriate buffer or screening where it adjoins the off-site residential use or district.
- d. Whenever a PUD adjoins an existing nonresidential use or district, the perimeter should be designed in such a manner as to shield adjacent residential sections of the PUD from such uses through appropriate screening.

- e. Within a PUD, compatibly designed buffer and screening methods should be used, wherever appropriate.
- 13. <u>Open space requirements</u>. A PUD shall permanently provide open space for its residents, and such open space shall be not less than 40 percent of the gross area of the PUD. Open space.
- a. Open space shall comprise at least 40%, 30% of which must be consolidated open space within the PUD. The minimum acreage in open space shall be determined by multiplying the gross area of the proposed PUD by 40%.
- b. Areas considered to be of, or have a significant natural character or quality, such as mangroves, wooded areas, or other significant natural features shall be specifically identified and included in required open space areas, to the fullest extent possible.
- c. Open space not required to be contiguous shall be distributed as proportionately as possible throughout the PUD, except those previously-identified natural areas, giving consideration to the relation of the open space to the dwelling units of the residents the open space is intended to serve. Large open spaces should be enhanced or linked by walkways or greenway systems.
- (1) Inclusions. The following types of facilities for uses may be considered as open space for the purposes of fulfilling the open space requirement, provided that these inclusions do not alter or affect the definition of maximum allowable density:
  - a. Recreation facilities, swimming pools, tennis courts and similar facilities.
  - b. Streams, fountains and other surface water areas located within the PUD which:
    - Are designed in an environmentally acceptable manner and do not adversely affect existing native vegetation and valuable natural ecosystems;
    - ii. Do not result in inadequate recreational opportunities in terms of the PUD as a whole; and
    - iii. Are determined to be of substantive benefit to the residential portion of development of the PUD.
  - c. Mangrove areas and other areas of environmental sensitivity which are reserved in perpetuity against future development.
  - d. Common areas and parks.
  - e. Private yards assigned to a particular dwelling.

- f. Areas or facilities similar in purpose and effect to the above-listed areas and facilities.
- (2) Exclusions. Areas that shall not be considered as open space include but are not limited to parking areas or structures, rights-of-way, streets, swales, non-recreational buildings, and recreational facilities operated primarily as commercial enterprises open to the general public.
- (3) Maintenance. All open space shall be maintained in a neat and orderly appearance, and kept free of refuse and debris. Open space may be maintained in a natural condition when so designated and approved by city council.

# 14. Encroachments on or in street rights-of-way.

- a. Facilities for utilities, including but not limited to power and light, cable television, telephone and telegraph, water, sewer and gas utilities, shall be constructed and installed beneath the surface of the ground.
- b. The applicant shall make the necessary cost and other arrangements for such underground installation with the appropriate utility provider.
- c. The Town Council may modify any of the provisions of this section on its own initiative or upon application from a utility or the applicant whenever the property to be platted hereunder is of such size or shape or is affected by such geographical location, subsurface or topographical conditions that it is impractical or economically unfeasible to conform to the strict application of the requirements of this section.
- d. Facilities for utilities shall be constructed in appropriate easements except water and sewer utilities which shall be constructed in the right-of-way, whenever possible.

# 15. Drainage.

- a. Permits. No applicant or other person shall construct, deepen, widen, fill, reroute or alter any existing drainage way, ditch, drain or canal within or serving the PUD without first obtaining a permit from the Town and all other governmental bodies requiring permits.
- b. Rights-of-way and easements. Whenever any drainage way, stream, surface drainage course or retention basin is located or planned to be located within a PUD, the applicant shall dedicate all necessary easements and rights-of-way and provide for the perpetual maintenance of the drainage improvements.
- c. Stormwater. Stormwater shall be drained from the PUD by methods employing engineering practices acceptable to the Town. No net increase or runoff from conditions prior to construction shall be allowed to flow from the site.

- d. Contour map and drainage of adjacent areas. A contour map shall be prepared and submitted by a state-registered land surveyor or engineer for the area within the PUD and such additional areas as may be required by the city necessary to include all watersheds which drain into or through the property to be developed. The design for drainage of the PUD must be adequate to provide for drainage of adjacent watershed areas after complete development of the total area. The applicant shall dedicate all necessary easements and rights-of-way for watershed drainage and provide for the perpetual maintenance of the watershed drainage improvements.
- e. Drainage. The applicant shall coordinate all drainage both on and off the site with the Town's Public Works Director and all other agencies having jurisdiction.

# 16. Circulation and parking.

- a. Clearly define vehicular circulation system which allows free movement within the proposed PUD, while discouraging excessive speed.
  - b. Separate pedestrian and vehicular circulation systems
- c. Streets must comply with all applicable codes and ordinances and ensure pavement widths and access points to peripheral streets are adequate to serve the proposed PUD and compatible and functional with circulation systems outside the PUD.
  - d. Provide adequate lighting to serve public use.
- e. Dwelling units should be located on residential streets or courts which are designed to discourage non-local through traffic, wherever possible.
- f. Off-street parking areas should be adequate to accommodate maximum vehicle storage demands for the proposed PUD, and located and designed to create compatible visual relationships.
- g. Provide safe and efficient access to all areas of the proposed PUD for emergency and service vehicles.

# F. Design standards

- 1. A PUD shall be consistent with the Growth Management Plan.
- 2. A PUD shall be consistent with the Overlay District, i.e. Old Cutler Overlay District, Non-residential design standards.
- a. Generally. The width, grade and general location of all streets shall conform with the Growth Management Plan, existing and planned streets, topographical conditions, public convenience, safety, and the proposed uses of the land to be served by the streets.

- b. Adjoining street systems. The arrangement of streets in a PUD shall provide for the continuation of existing streets in adjoining areas as necessary.
- c. Rights-of-way: Rights-of-way shall be as shown on the PUD Site Plan and shall be not less in width than the following:
  - (1) Arterial, 100 feet.
  - (2) Collector, 60 feet.
  - (3) All other streets, 50 feet with on street parking to 40 feet with out on street parking.
- 3. Alleys. New alleys shall be permitted to provide additional means of service access, or for off-street loading, unloading and parking for the uses proposed. Within 24 foot right of way, with a minimum improved travel lane of 10 feet per lane.
- 4. Easements shall be provided for utilities where necessary and shall be at least 12 feet wide across lots and, where possible, shall be centered on lot lines. Easements 6 feet wide may be provided for underground utilities across that portion of the lot adjacent to a street. To the extent feasible service connections shall be made from easements located along rear property lines.

# **G.** Special conditions

The development parameters set forth in this division may be reasonably modified where the conditions and designs are such that modification is necessary in the determination of the Town Council, after receiving a recommendation from the Planning Director. Any modification shall require evidence of the necessity for the modification and the resulting impact of the modification.

# H. Planned unit development General Provisions

<u>Mixed-Use nodes</u>. All mixed use node uses must be approved in accordance with special standards set forth in this article.

- 1. <u>Design requirements</u>. Mixed Use nodes shall conform to the following requirements:
  - a. Development of mixed use nodes shall be phased so that Non-residential development shall be limited to 25 percent of the total. 10 percent of the residential units in the PUD must be constructed before final building approval for an additional increment of Non residential development shall be permitted.
  - b. The area which is proposed for the mixed node shall contain sufficient width and depth to adequately accommodate the proposed uses and shall be conducive to the clustering of the buildings.

- c. No building or structure with a floor area of less than 2,000 square feet is permitted.
- d. Structures in a mixed use node shall not exceed 45 feet in height except adjacent to residential areas height shall not exceed 35 feet.
- 2. <u>Approval of proposed development</u>. The proposed development of the mixed use node; the size, nature and type of buildings; the architectural design, landscaping and appointments; the business sign to be adopted and the exterior lighting to be utilized shall be subject to the approval of the Planning Director.
- 3. <u>Buffering of residential</u>, open space area. The surrounding residential or open space areas shall be buffered from the mixed use node.

# I. Site Plan Approval Process

Contents, processing of application:

- 1. A PUD Site plan application, including a phased development plan, shall follow the same requirements and procedures for site plan approval as provided in Ordinance No. 07-04.
- <u>Section 3.</u> <u>Severability</u>. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.
- <u>Section 4.</u> <u>Conflict.</u> All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.
- <u>Section 5.</u> <u>Effective Date.</u> This Ordinance shall be effective immediately upon adoption on second reading.

DAGGED AND ADOPTED 1	
PASSED AND ADOPTED on second read	ding this day of, 2008.
	PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA,	CMC
Town Clerk	

APPROVED AS TO FORM AND LEGAL AND BENEFIT OF THE TOWN OF CUT	
WEISS, SEROTA, HELFMAN, PASTORI COLE & BONISKE, P.L. Town Attorney	ĪZA,
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 16**





R. Don O'Donniley, AICP Planning Director

# MEMORANDUM

April 28, 2008

To: Steve Alexander, Town Manager

From: Don O'Donniley, Planning Director

Re: Town of Cutler Bay 2007 Growth Management Plan

On November 14, 2007 the Town Council voted to transmit the 2007 Growth Management Plan to the Florida Department of Community Affairs (DCA) for their review and comment. Based on that review, on March 7, 2008, the Town has received a review from the Department of Community Affairs referred as the Objections, Recommendations and Comments (ORC) report from DCA. The ORC report consisted of 10 objections. The Town is required to prepare a written response to each objection.

The attached document contains the Objections and the Town's responses. The response letter has been prepared in a format which includes the Objections and Recommendations, as they were written by DCA, with the Town's response in *italics* directly below.

The changes to the Growth Management Plan that will be made in response to the ORC report are summarized as follows:

- Provided additional information on population projection methodology
- Provided a review of density and intensities standards and percentage of the mix of uses
- Adopted map series (move from volume 2 to volume 1)
- Provide a review of LOS standards and concurrency language in the plan to comply with the latest updates to state legislation.
- Updated the Educational Facilities Element after the adoption of the County's School Interlocal Agreement
- Adopted policies to address Water Supply Plan issues
- Updated the Future Land Use Map provide added the date 2020 to the title.
- Created a map showing the core, center and edge of the Town Center

Staff's recommendation is to approve the 2007 Growth Management plan with changes as outlined in the attached response letter to DCA.

# ORDINANCE NO. 08-\_\_\_

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING THE INITIAL COMPREHENSIVE PLAN (GROWTH MANAGEMENT PLAN) FOR THE TOWN IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 163, FLORIDA STATUTES; PROVIDING FOR THE ADOPTION OF THE FUTURE LAND USE MAP; AND PROVIDING FOR AN EFFECTIVE DATE.

- **WHEREAS**, on November 9, 2005, the Town of Cutler Bay (the "Town") incorporated and became the newest municipality within Miami-Dade County; and
- **WHEREAS,** pursuant to Section 163.3167(4), Florida Statutes, Miami-Dade County's Comprehensive Development Master Plan is deemed controlling until the Town adopts its own Comprehensive Plan (the "Growth Management Plan"); and
- **WHEREAS**, the Town's staff along with the Town's planning and zoning consultants have been preparing the Town's Growth Management Plan, attached as Exhibit "A," since March 2007; and
- **WHEREAS,** over the last six (6) months, several public workshops with Town residents and business owners have been held in order to discuss and receive input on the proposed Growth Management Plan and vision for the Town; and
- **WHEREAS,** on September 19, 2007, the Town Council, in its capacity as the Local Planning Agency, reviewed the proposed Growth Management Plan and recommended approval; and
- **WHEREAS**, public notice and advertisement of the proposed Growth Management Plan has been provided in accordance with applicable law; and
- **WHEREAS**, the Town Council finds adoption of this Growth Management Plan to be in the best interest and welfare of the Town.
- NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS:
- <u>Section 1.</u> <u>Findings.</u> The foregoing "Whereas" clauses are hereby ratified and incorporated as the legislative intent of this Ordinance.
- Section 2. Adoption of the Comprehensive Plan (Growth Management Plan). Pursuant to Chapter 163, Florida Statutes, the Town Council of the Town of Cutler Bay hereby adopts the Town's initial Comprehensive Plan (Growth Management Plan), attached as Exhibit "A" to this Ordinance.

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

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

Section 5. Effective Date. This Ordinance shall be effective immediately upon passage by the Town Council on second reading, except that the effective date of the Comprehensive Plan (the "Growth Management Plan") approved by this Ordinance shall be the date a final order is issued by the Department of Community Affairs or Administration Commission finding the Growth Management Plan in compliance in accordance with Section 163.3184, Florida Statutes, whichever occurs earlier. The Department of Community Affairs notice of intent to find the Growth Management Plan in compliance shall be deemed to be a final order if no timely petition challenging the Growth Management Plan is filed.

PASSED on first reading this 14 <sup>th</sup> day of November, 2007.				
PASSED AND ADOPTED on second readi	ng this, 2007.			
	PAUL S. VROOMAN, Mayor			
Attest:				
ERIKA GONZALEZ-SANTAMARIA, CMC Town Clerk				
APPROVED AS TO FORM AND LEGALITY FO AND BENEFIT OF THE TOWN OF CUTLER BA				
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	

# Objections, Recommendations, and Comments Report

#### for

# Town of Cutler Bay Comprehensive Plan March 7, 2008

# I. CONSISTENCY WITH CHAPTER 163, F.S., AND RULE 9J-5, F.A.C.

The Department has completed its review of the proposed Town of Cutler Bay Comprehensive Plan and has the following objections and comments.

#### **OBJECTIONS**

## **Objection 1: Planning periods**

The proposed comprehensive plan does not meet the requirement in s. 163.3177(5)(a), F.S., that each local government comprehensive plan must include at least two planning periods, one covering at least the first 5-year period occurring after the plan's adoption and one covering at least a 10-year period.

#### **Citations**

Florida Statutes: Section 163.3177(5)(a)

Florida Administrative Code: Rule 9J-5.005(4)

# Recommendation

Revise the comprehensive plan and the data and analysis, as necessary, to establish at least two planning periods, a short-range planning period covering at least the first 5 years after the plan's adoption and a long-range planning period covering at least 10 years.

#### Response

Planning periods have been established in the Comprehensive Plan as a 5-year horizon for short term and as 2020 for long range planning. Revisions will be made to Policy FLU-1A to reference the planning horizons. These planning horizons have been established to match the population projections which help estimate the needs for infrastructure and services in the Comprehensive Plan.

Revised Policy FLU-1A states the following:

FLU-1A: The Town's short term planning horizon shall be 5 years and the long term shall be 2020. The Future Land Use Map shall contain an adequate supply of land in each district to meet the demands of the existing and future population up to the projected 2020 population of 60,000, and the Town shall ensure that infrastructure and services are or will be made available to meet the needs of this projected population. In the event that the Town's land area increases or decreases, the projected 2020 population will be adjusted accordingly.

# **Objection 2: Evaluation of changes in the proposed Future Land Use Map**

Pursuant to s. 163.3177(6)(a), F.S., the Town's future land use plan shall be based upon surveys, studies, and data regarding the area of the Town, including the amount of land required to accommodate projected growth, the projected population of the Town, and the availability of water supplies, public facilities, and services. Thus the Town must analyze the need for, and plan for availability of, the public facilities and services required by growth.

This analysis must include population projections. The Town's population projections, as set forth on page FLU-14 of the supporting data and analysis, indicate the Town will make up a varying percentage of Minor Statistical Area 7.1 for the years 2010, 2015, and 2020. Pursuant to Rule 9J-5.005(2)(e), F.A.C., if a local government chooses to prepare its own population estimates and projections, as Cutler Bay has done, it shall submit estimates and projections and a description of the methodologies utilized to generate the projections and estimates to the Department with its plan for compliance review unless it has submitted them for advance review. These methodologies have not been submitted to the Department for review; this must occur before the plan can be found in compliance. In addition, the population projections need to include the horizon years for the short-range and long-range planning periods.

The population projections along with the area and distribution of uses on the FLUM must be compared with the available and planned capacity of the Town's public facilities and services, to determine if there will be adequate capacity to meet the expected demand over the short- and long-range planning periods. The Town's data and analysis of expected impacts from growth is not appropriately based on the allowable densities and intensities of development set forth in the Future Land Use Element for the FLUM categories. Certain density and intensity standards for the Town's proposed new mixed-use FLUM categories, Mixed-Use and Town Center, are not adequately defined in the Future Land Use Element. The Department has identified the following errors in the data and analysis:

⇒ The Mixed-Use – U.S. 1 Corridor subdistrict allows residential, but the definition in Table FLU-1 in the Future Land Use Element does not provide a meaningful density standard; it only states that up to 80 percent of a vertical mixed-use building can be

residential. Without knowing how this 80 percent criterion relates to the total area of the property, this criterion alone is not a meaningful density standard.

- ⇒ The Mixed-Use Old Cutler Road Corridor subdistrict allows 15 units an acre, or up to 30 units an acre where the Town Council authorizes such an increase based on criteria in the land development regulations. It is not possible to determine from the comprehensive plan what density is allowed in this subdistrict. If the Town does not intend to allow 30 units per acre everywhere in the Old Cutler Road Corridor subdistrict, it must set limits in the comprehensive plan and the FLUM. Unless such limits are set in the adopted comprehensive plan, the Town must analyze impacts on public facilities and services from development of lands with this designation at the full 30 dwelling units per acre density.
- ⇒ According to Table FLU-4 in the data and analysis, the Mixed-Use district comprises 204.8 acres and could accommodate up to 9,800 residential dwelling units. This is an average residential density of 47.9 units per acre. It is not readily apparent how this number was derived. It exceeds the density allowed in the Old Cutler Road Corridor subdistrict, and the U.S. 1 Corridor subdistrict, as mentioned, and does not have a density standard. Note that the existing residential potential under the existing Miami-Dade County Business and Office designation for this area is 2,652 dwelling units. The analysis should describe the areas occupied by these two Mixed-Use subdistricts and the density allowed in each.
- ⇒ The proposed Town Center FLUM district, which also allows residential use, comprises 180.33 acres of lands currently designated in the County comprehensive plan for Business and Office and Metropolitan Center, according to the data and analysis (see Table FLU-4 on page FLU-22). The Town Center FLUM district allows 200 units per acre in the Core subdistrict, 150 units per acre in the Center subdistrict, and 50 units per acre in the Fringe subdistrict. These areas are not, however, distinguished on the FLUM or in the Future Land Use Element, making it impossible to calculate the density potential within the Town Center district. Despite this, the data and analysis provides on page FLU-22 a maximum residential development potential of the 180-acre Town Center area of 9,105 dwelling units. This figure is probably larger than is currently allowed under the Miami-Dade County FLUM applicable to this area; however, the data and analysis does not estimate the residential development potential allowed under the County FLUM for the Town Center area.
- ⇒ The data and analysis does not provide a comparison of the allowable intensity of development in the nonresidential components of its new mixed-use land use districts, apparently because the County's nonresidential intensity standard for the same areas was not described or used in the analysis.

The new mixed-use FLUM categories appear to allow greater maximum development potential than do the Miami-Dade County FLUM designations for the same areas, and, in fact, the Infrastructure Element data and analysis states that the new Cutler Bay growth management plan will increase the demand on public services at a greater rate than was projected by the County in its comprehensive plan. Thus it is important that the differences between the development potential of the two future land use plans be accurately estimated by appropriate data and analysis.

Because of the flaws in analysis identified above, the Cutler Bay comprehensive plan data and analysis does not accurately estimate the development potential of the proposed Town comprehensive plan or the difference in growth potential between the Town plan and the County plan. The Town's data and analysis does not adequately support the proposed comprehensive plan. The future land use plan is not based, as is required, on the availability of public facilities and services.

#### **Citations**

Florida Statutes: Sections 163.3161(3); 163.3177(2), (3)(a), (6)(a, c, j), (8), and (10)(e); and 163.3180(2)

Florida Administrative Code: Rules 9J-5.005(2), (2)(e), and (6); 9J-5.006(2), (3)(b)1 and (c)3; 9J-5.011(1) (a, d, and f), (2)(b)2 and (2)(c)1; 9J-5.016(1)(a), (2)(b, c, f), (3)(b)1, 3, and 5, and (3)(c)1; 9J-5.019(3)(b), (f), and (h) and (4)(b)2; 9J-11.006(1)(b)

#### Recommendations

Submit the population estimates and projections and a description of the methodologies utilized to generate the projections and estimates of the Town's population to the Department for approval. The projections should include the short-range and long-range planning periods. Submission of the methodology to the Department should be done before plan adoption.

Provide adequate data and analysis supporting the estimate of future demand for public facilities and services over the short-range (5 years) and long-range planning periods. This data and analysis must include assignment of density and intensity standards in the new mixed-use land use districts, and delineation of the geographic extent of the mixed-use subdistricts.

Based on this corrected analysis of demand, identify and include in the 5-year schedule of capital improvements in the Capital Improvements Element those capital improvement projects needed to maintain or achieve LOS standards for affected public facilities and services over the next 5 years (short-range planning period). For the remaining increment of the long-range planning period, infrastructure needs should be identified in the same manner as with the short-range analysis, using projected population and future land use distributions and any available surplus capacity identified in the initial five-year incremental capacity analysis.

# Response

The population projections for Cutler Bay were made by projecting the Town's share of the Miami-Dade County population projected for Minor Statistical Area 7.1, a statistical area that encompasses the Town. The County did not have projections limited to the incorporated area within the Town. The Town is home to about three of every four housing units in the Area 7.1.

There were no existing projections for this recently incorporated municipality. The Town has developed projections for the incorporated area. Census 2000 base line data are not available but were developed from Census tract and block data. Linking the Town's projections to the County's helps to ensure that the projections are not inconsistent. Further, it was important to incorporate the County's capacity figures for the Cutler Ridge Urban Center, an important component of the County's plan and an important part of the future of Cutler Bay. The Urban Center has been classified by the County as a **Metropolitan** Urban Center. These Centers are typically high-density, mixed-use developments served by transit and are usually found at important transportation nodes. The Town has designated this area as the "Town Center" future land use category on the FLUM.

The County's projections for the Minor Statistical Areas have been the official population projections for the County for the past 25 years. The methodology has been approved by DCA and has worked well throughout that time period. The initial BEBR estimates for the Town were developed using data on new construction in the Town provided to BEBR by the County Department of Planning and Zoning.

Note that projections are not predictions of the future. The future is essentially unknown, and more so in these difficult years following the housing boom of the early 2000s. These projections are based on the best available data, an analysis of recent trends, and an understanding of local government growth management goals and policies. The County projections were adopted prior to the recent surge in residential construction in the Area and will be revised later in 2008 to reflect the recent surge and subsequent slowing of new residential construction. Future revisions of the County's projections will be reviewed to ensure consistency with the Town's projections.

The Cutler Bay **population projections** are based on **housing projections** for the Town as a percentage of the projected housing for the Minor Statistical Area 7.1. Varying persons-per-unit ratios are applied to the units within the Town, which generally reflect the anticipated densities within the Town Center (Urban Center) as it begins to be developed. How quickly this will happen depends greatly on the severity and length of the current real estate downturn and how

quickly the large inventory of new units is absorbed. The Cutler Bay housing estimate for 2007 is based on adding the 2000-2006 numbers of new units in the Town reported on the County Property Appraiser files (3,394 units) to the Census 2000 figure (10,718 units)<sup>1</sup>.

For the purpose of making population estimates the Property Appraiser count of new units built in 2006 (957 units) was reduced by 25 percent to reflect the higher vacancy rates found in newly built units in the past year. The result is an estimate of 13,873 units in 2007, (10,718 in 2000+3,155 built in the 2000-2006 period). At 2.82 persons per unit, the population estimate for planning purposes is 39,121 persons. The corresponding BEBR estimate was 40,468 persons (3 percent higher).

For 2010 the Town was projected to account for about 85 percent of the currently **projected housing** in Area 7.1. This increased percentage was based on a projected increase of about 500 units a year, mainly in some large, higher density, residential developments currently under way within the Town and slower growth in the Area outside the Town At a lower 2.82 persons per unit (smaller household size and higher vacancy rates associated with the higher density) this translates into a population increase of just over 1,400 persons a year in the 2007 to 2010 period and results in a projected 2010 population of 43,500 persons, or 83 percent of the Area's **projected population**. The current slow down in the residential housing market may result in slower sales in the next two years and a lower rate of population growth through 2010.

For 2015 and 2020, the Town was projected to account for about 87 percent of the currently **projected housing** in Area 7.1 for both years. The projected persons-per-unit figure is slightly lower (2.80 persons per unit) to reflect the increasing proportion of multi-family units. This translates into a 2015 population figure of 50,200, about 84 percent of the Area's **projected population**. The average annual increase is about 1,300 persons a year.

In the 2015 to 2020 period, the County projections show a more rapid increase of population in the Area as it becomes the gateway to an expanding south Miami-Dade County and the Cutler Ridge Urban Center begins to mature. The 2020 projected population for the Town is about 60,000 persons with lower persons-per-unit ratios. It accounts for a lower 80 percent of Area population, an increase of about 2,000 persons a year. Note that the persons-per-unit figure was lowered to 2.6 persons per unit in 2020 to reflect the lower household size expected in the increasing proportion of multi-family units being built in the high-density urban

<sup>&</sup>lt;sup>1</sup> The Town of Cutler Bay did not exist in 2000. The housing and population estimates for 2000 were derived by selecting Census 2000 tracts and blocks within the Town's boundaries.

center and the higher vacancy rates found in higher density, multi-family developments.

Objection 3: Absence of required density and intensity standards and percentage mix of uses

The new Mixed-Use – U.S. 1 Corridor subdistrict allows residential, but does not set a density standard; it only states that up to 80 percent of a vertical mixed-use building could be residential. Without knowing how this 80 percent criterion relates to the total area of the property, this does not constitute a density standard.

The Mixed-Use U.S. 1 Corridor FLUM subdistrict, which also allows nonresidential uses, lacks intensity standards for those uses, as required by Rule 9J-5.006(4)(c).

The Mixed-Use Old Cutler Road FLUM subdistrict allows residential use at 15 dwelling units an acre, or up to 30 units an acre where the Town Council authorizes such an increase based on criteria in the land development regulations. If the Town does not intend to allow 30 units per acre everywhere in the Old Cutler Road Corridor subdistrict, it must set limits in the comprehensive plan and the FLUM. Unless such limits are set in the adopted comprehensive plan, the Town must estimate impacts on public facilities and services from development of lands with this designation at the full 30 dwelling units per acre density.

The definitions of the Town Center land use district and the Mixed-Use Lakes-by-the-Bay Site land use subdistrict, which are mixed-use future land use designations, do not include a percentage distribution among the mix of uses, or other objective measurement, as required pursuant to Rule 9J-5.006(4)(c), F.A.C.

The Future Land Use Element also does not establish an intensity standard for the Parks and Recreation future land use designation. If this land use designation allows nonresidential structural development, it will need an intensity standard defined in the Future Land Use Element.

#### **Citations**

Florida Statutes: Section 163.3177(6)(a), F.S.

Florida Administrative Code: Rules 9J-5.005(6), 9J-5.006(3)(c)7 and (4)(c)

#### Recommendations

Include an intensity standard, such as floor area ratio, for nonresidential development in the definition of the Mixed-Use U.S. 1 Corridor subdistrict in the Future Land Use Element

Unless the data and analysis for the Future Land Use Element is based upon the Mixed-Use Old Cutler Road Corridor allowing 30 dwelling units an acre, revise the comprehensive plan to indicate on the Future Land Use Map the geographic extent and acreage of the Mixed-Use Old Cutler Road Corridor subdistrict which allows 15 units an acre and the extent and acreage of the Mixed-Use Old Cutler Road Corridor subdistrict which allows 30 units an acre. Revise as necessary the data and analysis, based on the mapping and areal extent.

Revise the definitions of the Town Center land use district and the Mixed-Use Lakes-bythe-Bay Site land use subdistrict in the Future Land Use Element to specify a percentage mix of uses.

Include an intensity standard for the Parks and Recreation land use district.

## Response

# Residential Density

As noted, the proposed residential FLUM districts carry the same names as Miami-Dade County FLUM designations: Estate-Density Residential, Low-Density Residential, and Medium-Density Residential. There are, however, some differences in the densities allowed, between the Cutler Bay and Miami-Dade County Low-Density Residential and Medium-Density Residential designations. The Town's Low-Density Residential allows up to 5.0 units per acre, except in Low-Density Residential Conservation, a sub-district, whereas the County Low-Density Residential designation allows up to 6.0 units per acre (this extra unit per acre may be an error within the County Plan because the required minimum lot size in the zone district yields five units per acre). The Town's Medium-Density Residential allows 5 to 13 units per acre, whereas the County's Medium-Density Residential allows 13 to 25 units per acre. The Town's Medium-Density Residential matches up more closely with the County's Low-Medium Density Residential, which allows 6 to 13 units per acre.

All residential districts on the Town's Future Land Use Map correspond to the residential districts on the County Future Land Use Plan Map. The County's "Low-Medium Density Residential" district is renamed "Medium Density Residential" on the

Town's Future Land Use Map. The boundaries of and parcels within each of these districts on the Town's Map correspond to the boundaries of and parcels within the County's corresponding district, and vice versa. Table FLU-4 in the Future Land Use component of the Data, Inventory and Analysis should be revised as follows to correctly reference the County's Low-Medium Density District.

Table FLU-4. Comparison to County Future Land Use Map

Future Land Use Category  - Town	Future Land Use Category - County	Vacant Land Acreage	
Town Center	Business and Office/Metropolitan Center	180.33 acres	
Mixed Use	Business and Office/Low Density Residential	305.30 acres	
Medium Density Residential	Low-Medium Density Residential	322.6 acres	
Low Density Residential	Low Density Residential	2,298.5 acres	
Estate Density Residential	Estate Density Residential	793.7 acres	
Conservation	Environmental Protection/	1,579.7	
	Environmentally Protected Parks		

The supporting data and analysis does not analyze the difference in development potential between the Town's residential FLUM designations and the County's current FLUM designations for the residential area of the Town. It does provide an estimate of the maximum redevelopment potential – note that the Town's residential areas are said to be mostly built out – under the Town's proposed residential FLUM designations, of all the areas designated for a residential land use: 17,670 dwelling units. However, there is no corresponding evaluation of the redevelopment potential under the current County residential land use designations and thus no comparison between the potential residential development allowed by the County and Town FLUMs for these areas. The data and analysis also contains an estimate of the residential development potential, under the Town's proposed residential FLUM designations, of the remaining vacant and developable land (410 acres) in the Town: 2,232 dwelling units. Again, however, there is no comparison with the development potential under the existing County FLUM designations for the same vacant and developable areas.

Please see the following Table providing further detail on the difference between the County's CDMP and the City's CDMP. This Table can be included or incorporated into Table FLU-4 prior to adoption. With regards to the comparison of vacant land development potential, build-out of these lands in accordance with the Town's Future Land Use Map (2,332 units) would result in twelve units less than build-out in

accordance with the County's Future Land Use Map (2,344 units). That statement will be included in the revised Support Data and Analysis.

# Comparison of Town Future Land Use Map to County Future Land Use Map

Future Land Use	Future Land Use Category	Key Differences in Development	
Category - Town - County		Potential	
Town Center	Business and Office/Metropolitan Center	<u>Residential</u>	
		250 units per acre changed back to 250	
		units per acre in the core, 150 units per	
		acre in the center and 50 units per acre	
		in the edge.	
		Non-residential	
		Floor Area Ratio changed to (3.8) in the core 3.0 and is reduced from 3.0 to 1.0 in the edge.	
		<u>Height</u>	
		Reduced from 25 to 18 stories in the "Core".	
		Increase from a maximum of 10 stories to 15 stories in the "Center".	
Mixed Use	Business and Office/Low Density Residential	<u>Residential</u>	
		Residential at up to 13 units per acre increased to 75 units per acre along US-1 and 30 units per acre along Old Cutler Road. Approximately 7,418 additional units could be accommodated.	
		<u>Non-residential</u>	
		No FAR limitation in County CDMP changed to maximum FAR of 2.5 in US-1 corridor and 2.0 in Old Cutler Road corridor.	
		<u>Height</u>	
		No height limitation in County CDMP	

		changed to maximum height of 72 feet along US-1 corridor and 45 feet for Old Cutler Road corridor and 35 feet adjoining residential.		
Medium Density Residential	Medium Density Residential	No change in development potential.		
Low Density Residential	Low Density Residential	Reduced from 6 units per acre to 5 units per acre. A reduction of 2,295 potential units could result. (Note required lot size under County zoning limited this to 5 units per acre.)		
Estate Density Residential	Estate Density Residential	No change in development potential.		
Conservation	Environmental Protection/ Environmentally Protected Parks	Area designated increased by approximately 40%		

The new Mixed-Use and Town Center FLUM districts also allow residential use. The Mixed-Use – U.S. 1 Corridor subdistrict allows residential, but does not set a density standard; it only states that up to 80 percent of a vertical mixed-use building could be residential. Without knowing how this 80 percent criterion relates to the total area of the property, this does not constitute a density standard. The Mixed-Use – Old Cutler Road Corridor subdistrict allows 15 units an acre, or up to 30 units an acre where the Town Council authorizes such an increase based on criteria in the land development regulations. If the Town does not intend to allow 30 units per acre everywhere in the Old Cutler Road Corridor subdistrict, it must set limits in the comprehensive plan and the FLUM. Unless such limits are set in the adopted comprehensive plan, the Town must estimate impacts on public facilities and services from development of lands with this designation at the full 30 dwelling units per acre density.

Policy LU-1C will be revised to include density and intensity standards for the US-1 corridor (see as follows). The impact analysis assumed build-out of the Old Cutler Road corridor at 30 units per acre, even though such build-out would not likely be allowed.

# Amendment to Table FLU-1

<u>District</u>	<u>Uses</u>	Density and Intensity		
Mixed Use	Sales and service activities,	<u>US-1 Corridor</u>		
Mixed Use	Sales and service activities, professional and clerical offices, hotels, motels, medical buildings and offices, cultural and entertainment uses, community facilities, institutional, parks and open space, and residential uses in a high quality mixed use environment. Vertical mixed use buildings are allowed in all underlying zoning districts in the Mixed Use districts, with the sales and service components being located on the ground floors and residential and office uses being located on higher floors. Horizontal mixed use development (different uses in different buildings on the same site or block face) is allowed, with specific uses determined by the underlying zoning district. Vertical mixed use buildings shall be encouraged on sites that can accommodate the	Mix of uses, with residential uses comprising no less than 20 percent and no greater than 80 percent of the total floor area of a vertical mixed use building, and no less than 20 percent and no more than 80 percent of the buildings on a development site or block face. Floor Area Ratio (FAR) of 2.5, multi-family residential at up to 75 units per gross acre. Maximum building height of 72 feet, with no more than three stories, 35 feet adjacent to residentially developed areas. Architectural features can exceed maximum height limitations.  Old Cutler Road Corridor  Mix of uses, with residential uses comprising no less than 20 percent and no greater than 80 percent of the total floor area of a vertical mixed use building, and no less than 20 percent and no more than 80 percent of the buildings on a development site or block face. Floor Area Ratio of 2.0, multi-family residential at 30 units per gross acre. Maximum building height of four stories, 45 feet for the frontage and three stories, 35 feet for the remainder. Architectural features can exceed maximum height limitations.  Lakes-by-the-Bay Mixed-Use Site  Commercial, office, community facilities, and recreation open space uses that serve the surrounding residential communities. Floor Area Ratio of .5, maximum building height of two stories, 35 feet.		
	mix of uses under the prescribed parameters, while horizontal mixed use development is encouraged on sites that cannot otherwise accommodate vertical mixed use.	Architectural features can exceed maximum height limitations.  Institutional Uses  Maximum FAR of .5 for Institutional uses in the US-1 and Old Cutler Road corridors, and .4 in the SW 184 Street and Lakes-by-the-Bay Mixed-Use sites.		
District	Uses	Density and Intensity		
Tanus	C-1 1 ' ' ' ' ' '	Densuy and Intensuy		
Town Center	Sales and service activities, professional and clerical offices, hotels, motels, medical buildings and offices, cultural and	Core  A maximum building height, of 18 stories, floor area ratio of 3.8 and density of 250 units per gross acre.  Architectural features can exceed the maximum		

entertainment uses, community facilities, governmental facilities, institutional uses, parks and open space, and residential uses integrated both horizontally and vertically in a high quality, designunified, mixed-use environment. Horizontal and vertical mixed use development is allowed, in accordance with the frontage and use requirements incorporated into the land development regulations.

height limitations.

#### Center

Floor Area Ratio of 3.0, 150 units per gross acre. Maximum building height of 15 stories. Architectural features can exceed the maximum height limitations.

## <u>Edge</u>

Floor Area Ratio of 1.0, 50 units per gross acre. Maximum building height of eight stories. Architectural features can exceed maximum height limitations.

# Institutional Uses

Maximum Floor Area Ratio of .8 for Institutional uses in the Town Center.

Policy FLU-2C will be revised as follows: Building heights in the Town Center shall be regulated through the Land Development Regulations in order to implement a unified design, and provide appropriate densities and intensities. The building heights plan implementing the Town Center as provided in Ordinance 06-21 shall be superseded by the building heights plan provided in Table FLU-1, until such time as the Town adopts new LDRs for the Town Center Future Land Use designation.

According to the data and analysis (see Table FLU-4 on page FLU-22), the Mixed-Use district comprises 204.8 acres and could accommodate up to 9,800 residential dwelling units. This is an average residential density of 47.9 units per acre. It is not readily apparent how this number was derived. It exceeds the density allowed in the Old Cutler Road Corridor subdistrict, and the U.S. 1 Corridor subdistrict does not have a density standard, as mentioned. The existing residential potential under the existing Miami-Dade County Business and Office designation for this area(s) is 2,652 dwelling units, according to the data and analysis. The analysis should describe the areas occupied by these two Mixed-Use subdistricts and the density allowed in each.

The analysis was based on land area and development potential of each subdistrict, assuming 75 units per acre along the US-1 corridor. Additional information explaining how the number was derived will be included in the revised Data and Analysis.

Staff has an issue with this estimate of 2,652 units under the existing FLUM for these areas. The calculations in the data and analysis apparently assume that the entire 204.8 acres proposed to be designated for Mixed-Use, which is designated on the County

FLUM for Business and Office and Low-Density Residential (see Table FLU-4 on page FLU-22) would be developed as though it were all Business and Office, at one density up from the surrounding Low-Density Residential area. Thus the potential increase is 7,148 dwelling units, but there are problems with the data and analysis. The estimate of 2,652 units under the existing FLUM designation for the area(s) appears to ignore the Low-Density Residential component of the 204.8 acres and therefore is probably an overestimate of the existing potential development. Comparing this perhaps flawed estimate of 2,652 dwelling units with the Town's estimate of 9,800 dwelling units permitted under the proposed Mixed-Use designation, which also may be flawed, may underestimate the difference in development potential between the County and Town FLUMs. The Town should supply additional data and analysis to substantiate the difference in residential development potential for the Mixed-Use area, between the existing and proposed FLUMs.

None of the area proposed for "Mixed Use" on the Town's Future Land Use Map is designated "Low Density Residential" on the County's Future Land Use Map. Table LU-4 was misleading, and is being revised as noted herein.

The proposed Town Center FLUM district, which also allows residential use, comprises 180.33 acres of lands currently designated in the County comprehensive plan for Business and Office and Metropolitan Center, according to the data and analysis (see Table FLU-4 on page FLU-22). The Town Center FLUM district allows 200 units per acre in the Core sub-district, 150 units per acre in the Center sub-district, and 50 units per acre in the Fringe sub-district. These areas are not, however, distinguished on the FLUM or in the Future Land Use Element, making it impossible to calculate the density potential within the Town Center district. Despite this, the data and analysis provides (page FLU-22) a maximum residential development potential of the 180-acre Town Center area(s) of 9,105 dwelling units. This figure is not compared with the residential development potential currently allowed under the County FLUM for the Town Center area(s).

As discussed, a Map showing the subareas for the Town Center will be included in the Comprehensive Plan prior to adoption.

The Town projects that this additional population allowed in the Mixed-Use and Town Center areas would not be achieved by 2020, which is identified in the data and analysis (but not in the comprehensive plan) as the end of the planning time frame. The Town projects a 2020 population of approximately 60,000, and in the data and analysis appears to use this figure, rather than the additional population allowed under the proposed FLUM, to calculate necessary public facilities and services (see page FLU-29 of the data and analysis document). The Department normally requires an analysis of the different development potentials between the old and new FLUM designations, with its implications for maintenance of LOS standards addressed, as necessary, in the 5-year schedule of capital improvements in the Capital Improvements Element.

2020 is the Town's long range planning horizon. This date will be included on the revised Future Land Use Plan Map and the planning horizons will be described in a new Policy under Objective FLU-1.

# Nonresidential Intensity

As for the intensity of nonresidential development allowed in the areas proposed to be designated Mixed-Use and Town Center FLUM designations (these are the primary areas where nonresidential development would be allowed), the data and analysis (pages FLU-22 to 23) contains a discussion of the differences in development potential between the County's current FLUM designations and the Town's proposed FLUM designations for these areas. The Town states, erroneously, that the development potential on properties designated Business and Office on the Miami-Dade County FLUM is not controlled by an adopted intensity standard. It is true that the definition of Business and Office in the County's plan does not include a maximum floor area ratio (FAR); however, the section in the adopted Miami-Dade County plan titled "Interpretation of the Land Use Plan Map: Policy of the Land Use Element" does establish the maximum allowable nonresidential development intensity in three different zones of the County: 2.0 FAR inside the Urban Infill Area, 1.25 FAR in the urbanizing area (between the Urban Infill Area and the Urban Development Boundary), and 0.5 FAR outside the Urban Development Boundary. It appears that Cutler Bay is in the urbanizing area and therefore has a maximum 1.25 FAR for nonresidential uses. This intensity standard should have been used in the Town's analysis.

This will be revisited in the revised Support Data and Analysis, and addressed as appropriate.

Because of the assumption that nonresidential intensity is not currently limited under the Miami-Dade County Business and Office FLUM designation for the area proposed to be designated Mixed-Use or Town Center under the Town's comprehensive plan, the data and analysis does not include an analysis of the differing development potentials for the area designated for Business and Office on the Miami-Dade County FLUM under the existing County land use designation and under the Town's proposed Mixed-Use and Town Center FLUM designations. This should be addressed in the data and analysis, and its implications for maintenance of LOS standards addressed, as necessary, in the 5-year schedule of capital improvements in the Capital Improvements Element.

# **Objection 4: Absence of required future map series**

The Future Land Use Map is the only map in the proposed comprehensive plan. The adopted comprehensive plan, however, must contain all of the applicable maps listed in

the Future Map Series, pursuant to Section 163.3177(6)(d), F.S., and Rules 9J-5.005(1)(c)5, 9J-5.006(4), and 9J-5.019(5), F.A.C.: maps showing generalized land uses, natural resources or conditions, and the general location of transportation system proposed features (see recommendations below).

The Future Land Use Map, which is in the proposed comprehensive plan, does not have a date. The long-range planning period is not indicated on the map on anywhere else in the Future Land Use Element, as required pursuant to Section 163.3177(5)(a), F.S., and Rule 9J-5.005(4), F.A.C.

#### Citations

Florida Statutes: Sections 163.3177(5)(a) and 163.3177(6)(d)

Florida Administrative Code: Rules 9J-5.005(1)(c)5, 9J-5.006(4), and 9J-5.019(5)

#### Recommendations

Revise the comprehensive plan to include the required Future Map Series maps. Most, if not all, of the omitted maps are contained in the data and analysis submitted with the proposed comprehensive plan. These should be moved into the adopted portion of the comprehensive plan. Any of the required items in these maps which are absent from the Town of Cutler Bay need not be included in the Future Map Series. Their absence, however, should be explained in the comprehensive plan, preferably in the data and analysis. The Future Land Use Map, which is in the proposed comprehensive plan, should be revised to include the date of the horizon year of the long-range planning period.

The proposed distribution, extent, and location of the following generalized land uses should be depicted, as applicable, on the Future Land Use Map or Map Series:

Residential use

Commercial use

Industrial use

Recreational use

Conservation use

Educational use

Public buildings and grounds and other public facilities

Historic district boundaries and designated historically significant properties meriting protection

Transportation concurrency management area boundaries or transportation concurrency exception area boundaries, if any such areas have been designated

Multimodal transportation district boundaries, if any such areas have been designated

The following natural resources or conditions should be depicted, as applicable, on the Future Land Use Map or Map Series:

Existing and planned public potable water wells and wellhead protection areas

Beaches and shores, including estuarine systems

Rivers, bays, lakes, flood plains, and harbors

Wetlands

Minerals and soils

Coastal high hazard areas

The general location of the following transportation system proposed features should be depicted, as applicable, on the Future Land Use Map or Map Series:

Road System, including collector roads, arterial roads, limited and controlled access facilities, and local roads, if being used to achieve mobility goals, and parking facilities that are required to achieve mobility goals

Public transit system, including public transit routes or service areas, transit terminals and transfer stations, transit rights-of-way and exclusive public transit corridors

Transportation concurrency management areas pursuant to subsection 9J-5.0055(5), F.A.C., if any

Transportation concurrency exception areas pursuant to subsection 9J-5.0055(6), F.A.C., if any

Significant bicycle and pedestrian facilities

The future transportation map or map series shall identify the following:

The functional classification and maintenance responsibility for all roads

The number of proposed through lanes for each roadway

The major public transit trip generators and attractors based upon the future land use map or map series

Projected peak hour levels of service for all transportation facilities for which level of service standards are established

Designated local and regional transportation facilities critical to the evacuation of coastal population prior to an impending natural disaster

# Response

The Comprehensive Plan was revised to include the required Future Map Series into the adopted portion of the Comprehensive Plan pursuant to subsection 9J-5.0055 F.A.C. (Please see Attachment A).

# **Objection 5: Water supply planning**

The Infrastructure Element in the comprehensive plan does not contain policy guidance requiring the Town to prepare its own 10-year water supply facilities work plan, pursuant to s. 163.3177(6)(c), F.S. Neither the goals, objectives, and policies, nor the data and analysis coordinate or reference the Town's efforts to develop the 10-year water supply facilities work plan, as required by s. 163.3177(6)(c), F.S. The comprehensive plan does not include objectives and policies requiring coordination with the South Florida Water Management District's Lower East Coast Water Supply Plan Update.

#### **Citations**

Florida Statutes: Sections 163.3167(13), 163.3177(6)(c) and (d), F.S.

Florida Administrative Code: Rules 9J-5.005(2) and (5); 9J-5.006(3)(b)1; 9J-5.006(3)(c)3; 9J-5.011(1)(a) and (f); 9J-5.011(2)(b)2; 9J-5.011(2)(c)1; 9J-5.016(1)(a); 9J-5.016(2)(b), (c), and (f); 9J-5.016(3)(b)1, 3, and 5; 9J-5.016(3)(c)1.d, e, f, and g; and 9J-5.016(4)(a).

#### Recommendations

Revise the comprehensive plan data and analysis to include an assessment of the Town's current, and projected water needs and sources for at least a 10-year period, considering the South Florida Water Management District's Lower East Coast Water Supply Plan Update.

Revise the Infrastructure Element to include policy guidance requiring the Town to prepare its own 10-year water supply facilities work plan within 18 months after the governing board of the South Florida Water Management District approved its Lower East Coast Water Supply Plan Update (approved on February 15, 2007). Revise the Infrastructure Element and, as necessary, the Intergovernmental Coordination Element, to include objectives and policies requiring coordination with the Lower East Coast Water Supply Plan Update. The Town has completed the Water Supply Work Program sub element but on the specific advice of DCA staff will submit this as a stand alone amendment at a later date.

# Response

The comprehensive plan data and analysis provides an assessment of the Town's current and projected water needs and sources for 2010, 2015 and 2020 in Table INF-2 of the Infrastructure Element located in Volume 2. This Table includes the same LOS of 155 gallons per capita per day as the Lower East Coast Water Supply Plan. The table is included herein for reference:

Year	Cutler Bay Population Served	Gallons/ Capita/Day	Cutler Bay Average Demand (MGD)	Miami- Dade County Average Demand (MGD)	Cutler Bay Demand as % of County	Miami- Dade Alexander Orr Plant Capacity (MGD)
2007	39,000	155	6	348.9	1.7	172
2010	43,000	155	6.7	354.9	1.9	183
2015	50,000	155	7.8	378.0	2	195
2020	60,000	155	9.3	396.8	2.3	205

The Town of Cutler Bay has finalized the 10-year Water Supply Facilities Work Plan in accordance with Chapter 163.3177(6)(c), F.S. The Town will incorporate the water supply plan into the Growth Management Plan prior to the August, 2008 deadline and include a policy in the Infrastructure Element stating that the work plan will be updated every 5 years. The following policies will be added to the Future Land Use, Infrastructure, Conservation, Intergovernmental Coordination and Capital Improvements Elements:

## Future Land Use Element

Policy FLU-7E The Town, through the Land Development Regulations will coordinate the land uses and future land use changes with the availability of water supplies and water supply facilities in accordance with Section 163.3177(6)(a).

#### Infrastructure Element

Objective I1-4 Town of Cutler Bay shall comply with its 10-year Water Supply Facilities Work Plan, as required by section 163.3177(6)(c), F.S. within 18 months after the governing board of the South Florida Water

Management District approves its Lower East Coast Water Supply Plan Update. The Work Plan will be updated, at a minimum, every 5 years. The Town of Cutler Bay Water Supply Facilities Work Plan is designed to: assess current and projected potable water demands; evaluate the sources and capacities of available water supplies; and, identify those water supply projects, using all available technologies, necessary to meet the Town's water demands for a 10-year period.

# Monitoring Measure I1-4

The Work Plan shall remain consistent with the County's 20-Year Supply Facilities Work Plan, which is compatible with the Miami Dade County Water Use Permit renewals and with projects as listed in the South Florida Water Management District's Lower East Coast Regional Water Supply Plan. The Work Plan will be updated, at a minimum, every 5 years and within 18 months after the South Florida Water Management District's approval of an updated Lower East Coast Regional Water Supply Plan.

- Policy I1-4A: Comply with the 10-year Water Supply Facilities Work Plan and incorporate such work plan into the Town of Cutler Bay Growth Management Plan.
- Policy I1-4B: Coordinate appropriate aspects of its comprehensive plan (GMP) with the appropriate water management district's regional water supply plan.

#### Conservation Element

- Policy C-2H: Implementation of the 10-year water supply facilities work plan will ensure the adequate water supplies and public facilities are available to serve the water supply demands of the Town's growing population.
- Policy C-2I: Since the potable water network is an interconnected, Countywide System, the Town's Planning Department will cooperate with Miami-Dade County Water and Sewer Department to jointly develop methodologies and procedures for biannually updating estimates of system demand and capacity, and ensure that sufficient capacity to serve development exists.
- Policy C-2J: If in the future there are issues associated with water supply, conservation or reuse the Town will immediately contact WASD to address the corresponding issue(s). In addition, the Town will follow

adopted communication protocols with WASD to communicate and/or prepare an appropriate action plan to address any relevant issue associated with water supply, conservation or reuse.

Policy C-2K: The Town will enforce Miami-Dade County's Water Use Efficiency Standards Ordinance adopted on February 5, 2008.

Policy C-2L: The Town will require the use of High Efficiency Toilets; High Efficiency Showerheads; High Efficiency Faucets; High Efficiency Clothes Washers; and Dishwashers that are Energy Star rated and WaterSense certified in all new and redeveloped residential projects.

Policy C-2M: The Town will encourage the use of sub-metering for all multi-unit residential development which will include: separate meter and monthly records kept of all major water-using functions such as cooling towers and individual buildings in all new and redeveloped multi-family residential projects.

Policy C-2N: The Town will encourage the use of Florida Friendly Landscapes guidelines and principles; gutter downspouts, roof runoff, and rain harvesting through the use of rain barrels and directing runoff to landscaped areas; drip irrigation or micro-sprinklers; and the use of porous surface materials (bricks, gravel, turf block, mulch, pervious concrete, etc) on walkways, driveways and patios.

Intergovernmental Coordination Element

Revise Policy as follows:

Policy IC-3C: The Town shall coordinate the planning of potable water and sanitary sewer facilities and services and level-of-service standards within the Miami-Dade County Water and Sewer Department, DERM, the South Florida Water Management District, and the Lower East Coast Water Supply Plan Update.

Policy IC-3C strengthens the relationship between the Town of Cutler Bay and the County with regards to water resource planning.

Capital Improvements Element

Policy C11-1M: Appropriate mechanisms will be developed and adopted consistent with Miami-Dade County in order to assure that adequate water supplies are available to all water users. Furthermore, Miami-Dade County Water and Sewer Department will be responsible for monitoring the availability of water supplies for all water users of the Miami-Dade County Water and Sewer Department, which includes the Town of Cutler Bay, and for implementing a system that links water supplies to the permitting of new development.

As per Section 163.3177, (6)(h)1, F.S., the Capital Improvements Element must be financially feasible for the full planning horizon. In the April 2006 Amendment Cycle, the Miami Dade County Board of County Commissioners adopted over \$1.6 billion in water supply and water reuse projects into the County's Capital Improvements Element to fund water supply projects between 2007 and 2028.

The Town of Cutler Bay Water Supply Facilities Work Plan is a 10-year plan, which will be updated on a five year basis, within 18-months of an adopted update to the regional water supply plan, alongside the Miami-Dade County 20-year plan. The Town's CIE will be updated on an annual basis accordingly to include any water supply projects within its jurisdiction.

# **Objection 6: Capital Improvements Element**

The proposed 5-year schedule of capital improvements in the Capital Improvements Element, comprising Tables CI-3, -4, -5, and -6, does not distinguish between committed and planned funding sources.

Tables CI-3, -4, -5, and -6 also do not extend out the required 5 years, pursuant to s. 163.3177(3)(a), F.S. These four tables cover the 2006/2007 to 2010/2011 period. Because the Town is now in fiscal year 2007/2008, the 5-year schedule of capital improvements must extend to fiscal year 2011/2012.

The 5-year schedule of capital improvements does not explicitly link data and analysis indicating existing deficiencies and projected needs (over the next 5 years) in achieving and maintaining adopted level of service standards for public facilities and services (concurrency facilities and services) with a financially feasible strategy or plan, including applicable capital improvements in the 5-year schedule of capital improvements, for achieving and maintaining adopted level of service standards. CIE Objective CI1-1 requires that the Town identify the infrastructure capacities needed to address any existing deficiencies (in meeting LOS standards), accommodate new growth, and replace worn-out facilities, so as to be consistent with LOS standards. However, this linking of existing and projected deficiencies in meeting LOS standards does not appear to be accomplished in the 5-year schedule of capital improvements.

According to page FLU-17 of the data and analysis, the Town needs 6 acres of active public parks to reach its proposed LOS standard. There is no indication of how much active public parks space will be needed by 2013 to maintain the LOS standard. There is a public park acquisition listed in the 5-year schedule of capital improvements in the Capital Improvements Element, but without any indication of whether this or other park acquisition or improvement satisfies the identified need.

#### Citations

Florida Statutes: Sections 163.3164(32) and 163.3177(3)(a).

Florida Administrative Code: Rules 9J-5.016(1)(a) and (b), (2)(b) and (c), and (4)(a)1 and (b).

#### Recommendations

Distinguish committed from planning funding sources in the 5-year schedule of capital improvements.

Provide data and analysis indicating existing deficiencies in achieving and maintaining adopted level of service standards for public facilities and services (concurrency facilities and services).

Provide data and analysis indicating projected needs in achieving and maintaining adopted level of service standards for public facilities and services (concurrency facilities and services) over the next 5 years.

For each identified existing deficiency or projected need the CIE should indicate a financially feasible strategy or plan for reducing deficiencies and meeting projected needs which is linked, as applicable, to needed capital improvements listed in the 5-year schedule of capital improvements. Financially feasible capital improvements are those for which sufficient revenues are currently available or will be available from committed funding sources for the first 3 years, or will be available from committed or planned funding sources for years 4 and 5. Any privately funded projects which are necessary to ensure that adopted level of service standards are achieved and maintained should be included in the 5-year schedule of capital improvements. For privately funded capital improvements, financial feasibility will be demonstrated by being guaranteed in an enforceable development agreement or interlocal agreement or other enforceable agreement.

## Response

Amend Policy CI1-2B:

**Policy CI1-2B:** As part of the annual preparation of the Annual Operating Budget and the 5-Year Schedule of Improvements the Town shall detail existing and potential committed and planned revenue sources and funding mechanisms in order to implement capital improvements. Funding sources may include: ad valorem taxes, utility taxes, local government half cent sales tax, communications service taxes, state revenue sharing, franchise fees, license and permit fees and fines, impact fees, bonds, grants, special purpose authorities, developer proportionate fair share, other private funds, grants and interest earnings.

Tables CI-3, -4, and -5 (included in Attachment CI) will be revised to extend to Fiscal Year 2011/2012.

## **Objection 7: Achieving transportation level of service standards**

According to the data and analysis (page T-11), in 2007 sixteen of the forty-six roadway links where counts are taken were operating below their level of service (LOS) standards. In 2015 twenty of the forty-six links will be failing, and in 2030, twenty-four of the forty-six will be failing. Page T-26 of the Data and Analysis is titled, "How adopted LOS will be maintained." A number of transportation improvements are discussed here, which could help with road capacity on failing road segments; however, there is no analysis demonstrating how these recommended improvements actually will maintain or achieve LOS standards on the identified failing and projected to fail roadway segments. Nor is there any indication in the 5-year schedule of capital improvements in the Capital Improvements Element as to whether the road projects listed there are intended to address the identified road segments. Thus the comprehensive plan does not recommend any actions, linked as necessary to capital improvement road facility projects in the 5-year schedule of capital improvements, which will achieve or maintain the LOS standards on failing and projected to fail roadway links.

The years chosen in the transportation data and analysis years (2015 and 2030) do not correspond to short-range and long-range planning periods established in the comprehensive plan, in part because no planning periods are established in the comprehensive plan.

#### **Citations**

Florida Statutes: Sections 163.3161(3), 163.3177(3)(a)3, 163.3177(6)(a), 163.3177(6)(j)5

Florida Administrative Code: Rules 9J-5.005(3), 9J-5.019(4)(b)2, 9J-5.019(4)(c)1

#### **Recommendations**

Road segments or links identified in the supporting data and analysis as failing or projected to fail to achieve their level of service standards should be targeted in the 5-year schedule of capital improvements in the Capital Improvements Element for the necessary capacity improvements.

For each identified road segment or link identified in the supporting data and analysis as failing or projected to fail to achieve its level of service standard, the Capital Improvements Element should indicate a financially feasible strategy or plan for reducing deficiencies and meeting projected needs which is linked, as applicable, to needed capital improvements listed in the 5-year schedule of capital improvements.

The supporting transportation data and analysis should use projection years corresponding to the planning time periods in the comprehensive plan.

## Response

Roadway Traffic Volumes and Levels of Service (LOS) for Existing and Future Conditions.

Vehicular traffic conditions within the boundaries of the Town of Cutler Bay were analyzed for the current year 2007 and forecasted for the years 2015 and 2030. Specifically traffic volumes were obtained or developed for these years as well as their corresponding Levels of Service (LOS). The years 2015 and 2030 were selected because they conform to the forecasted years from the Miami Dade Metropolitan Planning Organization (MPO) adopted Long Range Transportation Plan (LRTP) and related roadway networks and documents.

LOS are letter values ranging from A to F which reflect different degrees of vehicular traffic congestion on a roadway, as well as the associated delays, operating speeds, degree of comfort in ability to change traffic lanes, etc. LOS A reflect the best traffic conditions with little or no delays with vehicles being able to travel comfortably at the posted speed limits or slightly above for relatively long distances, whereas LOS F represents the worse traffic conditions with excessive delays, long vehicular queues at signalized intersections and forced vehicular flow at very low or "crawling" speeds. LOS A and B are usually not easy to achieve on arterial and main collectors roadways in large urbanized areas like Miami Dade County during typical high volume peak hour traffic periods. LOS D through E is more typically found in large urbanized areas for these types of roadways, and unfortunately with many roadways operating at LOS F.

#### Existing Conditions Analysis – Year 2007

For the existing condition analysis, 72 hours vehicular traffic counts were taken at twenty locations throughout the Town during the months of March and April of 2007 and converted to average annual daily traffic by using the appropriate factors from the Florida Department of Transportation (FDOT) data base. These counts as well as other adjusted traffic volume data available from the MPO highway traffic networks formed the basis for obtaining the traffic volumes and assessing current LOS for both daily and peak hour peak direction of travel on those roadways classified as arterials, collectors and main local roads.

From the above data and the pertinent analyses, tables were developed which depict traffic volumes, LOS as well as other roadway related data such as number of lanes, functional classification, among other. Maps were also developed which reflect the LOS for the selected roadways.

Examination of the tables and maps indicate that most of the selected roadways in Cutler Bay are operating at LOS D or worse in the peak direction during the peak hour. Old Cutler Road operates at LOS F as well as the northern portions of Franjo and western Caribbean Blvd. Most of Marlin is operating at LOS D, same as other portions of Franjo, Caribbean and most of SW 87<sup>th</sup> Avenue.

#### Forecasted Year 2015 and 2030 Conditions Analysis

The year 2007 traffic volumes were projected to the years 2015 and 2030 using growth factors developed from the MPO adopted LRTP years 2000, 2015 and 2030 traffic volume assignment networks. Specifically, growth factors were obtained using the MPO's year 2000 and 2015 networks and applied to the current year 2007 traffic volumes to obtain the year 2015 volumes. Year 2030 forecasted traffic volumes were computed by using growth factors developed from the MPO's year 2015 and 2030 networks and applied to the previously obtained year 2015 traffic volumes.

Examination of the tables and maps indicate that in general roadway LOS will deteriorate throughout Cutler Bay with some exceptions due to programmed roadway widening projects within as well as outside the Town and other major projects such as the expansion of the Busway and other major significant projects throughout the region and the County Roadways were the LOS will get worse in the future is Franjo Road (LOS F) between Caribbean and Old Cutler, portions of Marlin going from the current E and D to future F and E respectively on the same southeasterly links. SW 216 Street LOS will worsen from the current LOS D to F.

Table TE-1 included in Attachment TE presents an analysis of the LOS deficiencies for existing conditions, 2015 and 2030. We have identified a set of feasible types of improvements that will be developed for these segments.

The Town of Cutler Bay is commencing a Transportation Master Plan which will prepare detailed data and analysis for these failing segments and will aid the Town in incorporating these projects into the County's Long Range Transportation Plan.

#### Objection 8: Incorrect level of service standard for FIHS facilities

Table T-1 in the Transportation Element assigns a level of service standard of E to Florida Intra-State Highway System (FIHS) controlled-access highways with exclusive through-lanes. Level of service E is not correct for FIHS controlled-access highways, according to Florida DOT Rule 14-94.003, F.A.C., "Statewide Minimum Level of Service Standards." The LOS standard should be LOS D.

#### Citations

Florida Statutes: Sections 163.3161(3), 163.3180(10)

Florida Administrative Code: Rule 9J-5.019(4)(c)1

#### Recommendation

Revise Table T-1 to specify that the LOS standard for FIHS controlled-access highways with exclusive through-lanes is D.

#### Response

Table T1-1 will be revised accordingly to address all SIS, FIHS, TRIP funded and State facilities (See Attachment TE for revised Table T-1). The LOS Standard table in the report was based on previous information. The LOS tables were revised in 2007 as per Rule Chapter 14-94.003, F.A.C., and includes new and revised definitions, and updated statutory references.

**Table T-1 Adopted Peak Hour Level of Service Standards** 

NON-FIHS ROADWAYS WITHIN, SIS NOR TRIP-FUNDED FACILITIES MINIMUM LEVELS OF SERVICE WITHIN THE TOWN OF CUTLER BAY						
		Transit Availability				
Location	Facility - Town, County and State Roadways	No Transit Availability	20 Min. Headway Transit Service Within 1/2 Mile	Extraordinary Transit (Commuter Rail or Express Bus)		
Outside Miami- Dade Urban Infill Area	Principal Arterials	LOS D	LOS E (100% of Capacity)	(120% of Capacity)		
	Minor Arterials	LOS D	LOS E (100% of Capacity)	(120% of Capacity)		
	Collectors	LOS D	LOS E (100% of Capacity)	(120% of Capacity)		
	Local Roads	LOS D	LOS E (100% of Capacity)	(120% of Capacity)		

FIHS ROADWAYS STATEWIDE MINIMUM LEVEL OF SERVICE STANDARDS FOR THE STATE HIGHWAY SYSTEM, ROADWAYS ON THE STRATEGIC INTERMODAL SYSTEM (SIS), ROADWAYS ON THE FLORIDA INTRASTATE HIGHWAY SYSTEM (FIHS) AND ROADWAY FACILITIES FUNDED IN ACCORDANCE WITH SECTION 339.2819, FLORIDA STATUTES, THE TRANSPORTATION REGIONAL INCENTIVE PROGRAM (TRIP) WITHIN CUTLER BAY (1)

SIS and FIHS	Location				
Facilities – <del>State</del>	Inside Cutler	Roadway Parallel to Exclusive	Constrained or		
Jurisdiction Type	Bay	Transit Facilities	Backlogged Roadways (3)		
Limited Access	i I				
Facilities	LOSD(E)	LOSE	Manage		
Controlled					
Access Facilities	LOS D	LOS E	Manage		
TRIP-funded					
Facilities and					
other State					
<u>Roads (2)</u>	<u>Location</u>				
Other Multilane					
<u>(3)</u>	LOS D	<u>LOS E</u>	<u>Manage</u>		
$\underline{Two-Lane}^{(3)}$	<u>LOS D</u>	<u>LOS E</u>	<u>Manage</u>		

Source: Statewide Minimum Level of Service Standards, Rule 14-94.003

NOTE: Level of service designations are defined in the Department's 2002 Quality/Level of Service Handbook

<sup>(2)</sup> Means the level of service standards for non TRIP facilities may be set by local governments in

accordance with Rule 9J-5.0055 F.A.C.

1 is recognized that certain roadways (i.e. constrained roadways) will not be expanded by the addition of through lanes for physical, environmental, or policy reasons. In such instances, a variance to the level of service may be sought pursuant to Section 120.542, Florida Statutes.

#### **Objection 9: Public Educational Facilities Element**

The proposed educational facilities element does not contain all of the objectives and policies required to be in an educational facilities element, pursuant to Chapter 163, Part II, F.S., and Rule Chapter 9J-5, F.A.C. The shortcomings are detailed below, with the particular statutory and administrative rule citations.

1. The Educational Facilities Element does not meet the requirement in Rule 9J-5.025(3)(b)3, F.A.C., that it contain an objective to ensure the inclusion in the 5-year schedule of capital improvements projects necessary to address existing deficiencies and to meet future needs based upon achieving and maintaining the adopted level of service standards for each year of the 5-year planning period.

#### Citations

Section 163.3177(3)(a), F.S.; Rule 9J-5.025(3)(b)3, F.A.C.

#### Recommendation

Include an objective within the proposed Educational Facilities Element to ensure that the Town continues to include a 5-year schedule of capital improvements for projects necessary to address existing deficiencies and to meet future needs based upon achieving and maintaining the adopted LOS standards by the end of each 5-year planning period.

#### Response

*Amend Objective EDU-2 and add new policies:* 

Objective EDU-2: The Town of Cutler Bay shall coordinate new residential development with the future availability of public school facilities consistent with the adopted level of service standards for public school concurrency, to ensure the inclusion of those projects necessary to address existing deficiencies in the 5-year schedule of capital improvements, and meet future needs based upon achieving and maintaining the adopted level of service standards throughout the planning period.

**EDU-2C:** In the event the adopted LOS standard of a CSA cannot be met as a result of a proposed development's impact, the development may proceed provided at least one of the following conditions is met:

- a) The development's impact can be shifted to one or more contiguous CSAs that have available capacity and is located, either in whole or in part, within the same Educational Impact Fee Benefit District Geographic Areas (Northwest, Northeast, Southeast, or Southwest (See Figure 1 and Figures 1A through 1D)) as the proposed development; or
- b) The development's impact is mitigated, proportionate to the demand for public schools it created, through a combination of one or more appropriate proportionate share mitigation options, as defined in Section 163.3180 (13)(e)1, Florida Statutes. The intent of these options is to provide for the mitigation of residential development impacts on public school facilities, guaranteed by a legal binding agreement, through mechanisms that include, one or more of the following: contribution of land; the construction, expansion, or payment for land acquisition or construction of a permanent public school facility; or, the creation of a mitigation bank based on the construction of a permanent public school facility in exchange for the right to sell capacity credits. The proportionate share mitigation agreement, is subject to approval by Miami-Dade County School Board and Miami-Dade County Board of County Commissioners and must be identified in the Miami-Dade County Public Schools Facilities Work Program.
- c) The development's impacts are phased to occur when sufficient capacity will be available.

If none of the above conditions is met, the development shall not be approved.

EDU-2D: Concurrency Service Areas (CSA) shall be delineated to: 1) maximize capacity utilization of the facility, 2) limit maximum travel times and reduce transportation costs, 3) acknowledge the effect of court-approved desegregation plans, 4) achieve socio-economic, racial, cultural and diversity objectives, and 5) achieve other relevant objectives as determined by the School Board's policy on maximization of capacity. Periodic adjustments to the boundary or area of a CSA may be made by the School Board to achieve the above stated factors. Other potential amendments or updates to the CSAs shall be considered annually at the Staff Working Group meeting to take place each year no later than April 30 or October 31, consistent with Section 9 of the Interlocal Agreement for Public School Facility Planning.

EDU-2E: The County through the implementation of the concurrency management system and Miami-Dade County Public School Facilities Work Program for educational facilities, shall ensure that existing deficiencies are addressed and the capacity of schools is sufficient to support residential development at the adopted level of service (LOS) standards throughout the planning period in the 5-year schedule of capital improvements.

EDU-2F: The Miami-Dade County Public Schools Facilities Work Program dated September 2007, will be evaluated on an annual basis to ensure that the level of service standards will continue to be achieved and maintained throughout the planning period.

EDU-2G: At a minimum, the Town in conjunction with Miami-Dade County Public Schools shall adopt the annual updates, adding a fifth year, to the Miami-Dade County Public Schools Facilities Work Program, update the financially feasible schools capital facilities work program, and coordinate capital facilities with the Work Program. Additionally, the Town shall coordinate its Growth Management Plan with the Plans of other local governments.

EDU-2H: The Town shall adopt as an annual update to the Growth Management Plan updates to the Miami-Dade County Public Schools Facilities Work Program.

2. The Educational Facilities Element does not meet the requirement in Rule 9J-5.025(3)(c)1, F.A.C., that it contain a policy which establishes guidelines and standards for the modification of school concurrency service areas and changes in the use of schools. Although this issue is addressed in the proposed interlocal agreement, a policy is also required in the Educational Facilities Element.

#### Citations

Rules 9J-5.003(90), 9J-5.005(6), and 9J-5.025(3)(c)1, F.A.C.

#### Recommendation

Revise the Education Facilities Element to include the guidelines and standards for modifying school concurrency service areas and changes in the use of schools.

#### Response

See 1. above Policy EDU-2D

3. Proposed Policy EDU-2B establishes a LOS standard of 100 percent utilization of Florida Inventory of School Houses (FISH) capacity with re-locatable classrooms. This is an acceptable LOS standard; however, Policy EDU-2A also prescribes that schools which achieve 100 percent of permanent FISH capacity should no longer utilize re-locatable classrooms to achieve the LOS standard except as an operational solution (during remodeling, replacement or expansion of a school facility). Thus it appears that the City

is establishing a two-part LOS standard which may lead to inequities in the application of the concurrency management system.

#### **Citations**

Section 163.3180, F.S.; Rules 9J-5.0055, 9J-6.025(3)(c)7, F.A.C.

#### Recommendation

Revise the description of the public schools LOS standard in the Educational Facilities Element to make clear that there is only one LOS standard to be applied during concurrency review.

#### Response

Replace EDU-2A and EDU-2B and amend Footnote 1 as follows to reflect changes made to the Amended and Restated Interlocal Agreement. Also, amend Table CI-1 (LEVEL OF SERVICE (LOS) STANDARDS – Public Educational Facilities to reflect new language as restated in Policy EDU-2A:

**Policy EDU-2A:** Upon public school concurrency becoming effective, the adopted level of service (LOS) standard for all Miami-Dade County public school facilities is 100% utilization of Florida Inventory of School Houses (FISH) Capacity (With Relocatable Classrooms). This LOS standard, except for Magnet Schools, shall be applicable in each public school concurrency service area (CSA), defined as the public school attendance boundary established by the Miami-Dade County Public Schools.

All public school facilities should continue to maintain or decrease their percent utilization of FISH capacity (With Relocatable Classrooms). Public school facilities that achieve 100% utilization of Permanent FISH capacity (No Relocatable Classrooms) should no longer utilize relocatable classrooms except as an operational solution<sup>2</sup>.

The adopted LOS standard for Magnet Schools is 100% of FISH (with relocatable classrooms), which shall be calculated on a districtwide basis.

**Policy EDU-2B:** It is the goal of the Town of Cutler Bay, Miami-Dade County Public Schools, Miami-Dade County and the other signatories to the Interlocal Agreement for all public school facilities to achieve 100% utilization of

32

Permanent FISH (No Relocatable Classrooms) capacity by January 1, 2018. To this end, beginning January 1, 2013 Miami Dade County Public Schools should not use relocatable classrooms to provide additional FISH capacity at any school except as an operational solution<sup>2</sup>. Additionally, beginning January 1, 2013 Miami Dade County Public Schools will implement a schedule to eliminate all remaining relocatable classrooms by January 1, 2018. To help achieve the desired 100% utilization of Permanent FISH by 2018, Miami-Dade County Public Schools should continue to decrease the number of relocatable classrooms over time. Public school facilities that achieve 100% utilization of Permanent FISH capacity should, to the extent possible, no longer utilize relocatable classrooms, except as an operational solution<sup>2</sup>. Beginning January 1, 2013, the Miami-Dade County Public Schools will implement a schedule to eliminate all remaining relocatable classrooms by January 1, 2018.

Level of Service standards for public school facilities apply to those traditional educational facilities, owned and operated by Miami-Dade County Public Schools, that are required to serve the residential development within their established Concurrency Service Area. Level of Service standards do not apply to magnet schools, charter schools, and other educational facilities that may have districtwide attendance boundaries; however, their capacity is However, the actual enrollment (October Full Time Equivalent (FTE)) of both charter and magnet schools as a percent of the total district enrollment will be credited against the impact of development. It is provided, however, that no credit against the impact of development shall be given for such districtwide educational facilities if their enrollment is at, or above, 100% FISH capacity (with Relocatable Classrooms).

4. The Educational Facilities Element does not provide a LOS standard for magnet schools, which is required pursuant to Rule 9J-5.0055(2)(b), F.A.C., and s. 163.3180(13)(b)2, F.S.

#### Citations

Section 163.3180(13)(b)2, F.S.; Rule 9J-5.0055(2)(b), 9J-5.025(3)(c)7, F.A.C.

#### Recommendation

Revise the Educational Facilities Element to include a LOS standard for magnet schools.

#### Response

See 3. above Policy EDU-2A

5. The Educational Facilities Element does not meet the requirement in Rule 9J-5.025(3)(c)1, F.A.C., that it contain a policy which includes standards for revision of concurrency service area boundaries to ensure that the utilization of school capacity is maximized to the greatest extent possible, taking into account transportation costs, court approved desegregation plans, as well as other factors. It is addressed in the proposed interlocal agreement, but not in the Educational Facilities Element as required.

#### Citation

Rule 9J-5.025(3)(c)1, F.A.C.

#### Recommendation

Revise the Educational Facilities Element to include a policy which includes standards for revision of concurrency service area boundaries to ensure that the utilization of school capacity is maximized to the greatest extent possible, taking into account transportation costs, court approved desegregation plans, as well as other factors. The required policy guidance is included in the proposed interlocal agreement and could be taken from there.

#### Response

See 1. above Policy EDU-2D

6. The Educational Facilities Element does not meet the requirement in Rule 9J-5.025(3)(c)2, F.A.C., that it contain a policy which requires the adoption of annual plan amendments adding a new fifth year, updating the financially feasible public schools capital facilities program, coordinating the program with the 5-year district facilities work plan, the plans of other local governments, and, as necessary, updates to the concurrency service area map. The requirement for annual plan amendments is intended to help ensure that the capital improvements program continues to be financially feasible and that the LOS standards will continue to be achieved and maintained. Although this issue is addressed in the interlocal agreement, a policy is also required in the Educational Facilities Element.

#### Citations

Section 163.3177(12)(g)(1), F.S.; Rules 9J-5.003(90), 9J-5.005(6), and 9J-5.025(3)(c)2, F.A.C.

#### Recommendation

Revise the Educational Facilities Element to include a policy that requires the adoption of annual plan amendments adding a new fifth year, updating the financially feasible public schools capital facilities program, coordinating the program with the 5-year district facilities work plan, the plans of other local governments, and, as necessary, updates to the concurrency service area map.

#### Response

See 1. above Policies EDU-2D through H

7. Policy EDU-7F in the Educational Facilities Element provides for the annual review of Miami-Dade County School Board's District Facilities Work Plan; however, it does not address coordination of the annual review of the element with the school board, the County, and applicable municipalities, the annual review of school enrollment projections, or procedures for the annual update. These issues are included in the interlocal agreement, but they should be included in the Educational Facilities Element.

#### Citations

Section 163.3177(12)(g)(1), F.S.; Rules 9J-5.003(90), 9J-5.005(6), and 9J-5.025(3)(c)(3) F.A.C.

#### Recommendation

Revise Policy EDU-7F or include additional polices for coordinating the annual review of the element with the school board, the county, and applicable municipalities, coordinating the annual review of school enrollment projections, and include procedures for the annual update process.

#### Response

Amend Policy EDU-7F:

EDU-7F: The Town and Miami-Dade County Public Schools, Miami-Dade County and the other municipalities will annually review the Educational Element and make amendments, if necessary, through the process of updating the Growth Management Plan and will coordinate the annual review of enrollment projections and follow procedures for the annual update process in accordance with the Interlocal Agreement for Public School Facility Planning.

8. Although Policy EDU-2C refers to the proportionate share mitigation options and mechanisms stated in the Interlocal Agreement, these mitigation options and mechanisms are not included in the policy. In addition, the policy does not require that any mitigation funds provided to meet school concurrency are utilized by the school board for appropriate school facilities.

#### Citations

Section 163.3180(13)(e)1, F.S.; Rule 9J-5.025(3)(c)9, F.A.C.

#### Recommendation

Revise Policy EDU-2C to include the proportionate share mitigation options and mechanisms specified in s. 163.3180(13)(e)1, F.S., and the interlocal agreement. Any mitigation funds provided as a result of the school concurrency system are to be directed by the school board toward a school capacity improvement which is identified in a financially feasible 5-year district work plan and which satisfies the demands created by that development in accordance with a binding developer's agreement.

Policies specifying types of mitigation that a school board will allow to meet concurrency, and policies assuring that any mitigation funds provided as a result of the school concurrency system are utilized by the school board for appropriate school facilities.

#### Response

See 1. above Policy EDU-2C

9. The Educational Facilities Element does not meet the requirement in Rule 9J-5.025(4)(b), F.A.C., that it contain a future conditions map or map series which depicts the planned general location of public school facilities by year for the 5-year planning period, and for the end of the long-range planning period of Miami-Dade County.

#### **Citations**

Section 163.3177(12)(h), F.S.; Rule 9J-5.025(4)(b), F.A.C.

#### Recommendation

Revise the Educational Facilities Element to include and adopt a county-wide future conditions map or map series which depicts the planned general location of public school

facilities by year for the 5-year planning period, and for the end of the long-range planning period throughout the County.

#### Response

See attached Map Series.

10. The Educational Facilities Element does not meet the requirement in s. 163.3180(13)(d)(1), F.S., that it shall set forth a financially feasible public school capital facilities program, established in conjunction with the school board, which demonstrates that the adopted LOS standards will be achieved and maintained.

#### Citation

Section 163.3180(13)(d)(1), F.S.

#### Recommendation

The Town should revise the plan to incorporate the school district work plan being adopted by reference to specific date, author, and title. A policy is also required specifying annual updates of the comprehensive plan to include the annual update of the school district work plan.

#### Response

See 1. above Policies EDU-2F through H.

11. The proposed revision of the Intergovernmental Coordination Element does not meet the requirement in s. 163.3177(6)(h)2, F.S., that it must describe joint processes for collaborative planning and decision-making on population projections and public school siting, the location and extension of public facilities subject to concurrency, and siting facilities with countywide significance. Joint processes for collaborative planning and decision-making in the draft interlocal agreement are included in the amendment, but these joint processes also need to be described in the comprehensive plan.

#### Citation

Section 163.3177(6)(h)2, F.S.

#### Recommendation

Revise the Intergovernmental Coordination Element to describe joint processes for collaborative planning and decision-making on population projections and public school siting, the location and extension of public facilities subject to concurrency, and siting facilities with countywide significance.

#### Response

See 12. below.

12. The proposed revision of the Intergovernmental Coordination Element does not meet the requirement in s. 163.3177(6)(h)(4)a, F.S., that the local government must execute an interlocal agreement with the district school board, pursuant to s. 163.31777, F.S. The local government shall amend the Intergovernmental Coordination Element to provide that coordination between the local government and school board is pursuant to the agreement and shall state the obligations of the local government under the agreement. Although Policy IC-4 calls for continued coordination, the procedures are not included in the policy, the policy does not require the adoption of the interlocal agreement, and it does not identify the Town's obligations under the agreement.

#### Citation

Section 163.3177(6)(h)(4)a, F.S.

#### Recommendation

Revise the Intergovernmental Coordination Element and Policy IC-4 to obligate the Town to execute an interlocal agreement with Miami-Dade County Public Schools, pursuant to s. 163.31777, F.S. The policy also must include the procedure to be used to ensure coordination with the school board and identify the Town's obligations under the agreement.

#### Response

Add second paragraph to Objective IC-4:

Furthermore, the Town, other nonexempt cities, Miami-Dade County and Miami-Dade County Public Schools shall execute and follow the procedures established in the adopted "Amended and Restated Interlocal Agreement for Public School Facilities Planning in Miami-Dade County" for coordination and collaborative planning and decision making of land uses, public school facilities, siting, decision making on population projections, location and extension of public facilities subject to concurrency, and siting of facilities with a countywide significance. The Town shall abide by all of its obligations as set forth in the

adopted agreement, Florida Statutes, and the Growth Management Plan's Educational Element, Intergovernmental Coordination Element, and Capital Improvements Element. Coordination of the Interlocal Agreement, and the Town's obligations therein, shall be achieved via participation.

13. The Educational Facilities Element does not include, as part of its data and analysis, the revised interlocal agreement as executed between the City of Cutler Bay and the Miami-Dade County Public Schools, which is required pursuant to Section 163.3177(12)(c), F.S.

#### Citations:

Florida Statutes: Sections 163.3177(12)(c), 163.31777, and 163.3180(13)(f), F.S.

#### Recommendation

Include with the adopted amendment the executed interlocal agreement between the City of Cutler Bay and Miami-Dade County Public Schools. Note that the executed interlocal agreement must be submitted to the Department for review and approval pursuant to s. 163.31777(3), F.S.

#### Response

The executed Interlocal Agreement between the Town of Cutler Bay and Miami-Dade County Public Schools is included with this submission as is a copy of the Notice of Intent for said interlocal and which was published on April 11, 2008.

*Please note that the municipality of Cutler Bay is a Town and not a City.* 

#### **Objection 10: Hurricane evacuation routes**

The Transportation Element is required to be based on appropriate data and analysis, including: (1) a map in the existing transportation map or map series which depicts designated local and regional transportation facilities which are critical to the evacuation of the coastal population prior to an impending natural disaster; and (2) a map in the Future Transportation Map, to be adopted as part of the comprehensive plan, which identifies designated local and regional transportation facilities critical to the evacuation of coastal population prior to an impending natural disaster.

The proposed comprehensive plan includes the maps of existing and future emergency evacuation facilities in the supporting data and analysis, as Exhibits T-10 and T-31. Both maps should be updated to depict County-designated hurricane evacuation routes: the

Homestead Extension of the Florida Turnpike, U.S. Highway 1, and Old Cutler Road. The map of future emergency evacuation facilities must be adopted as part of the comprehensive plan.

#### **Citations**

Florida Statutes: Section 163.3178(2)(d)

Florida Administrative Code: Rules 9J-5.003 (43), 9J-5.012(2)(e)1, 9J-5.012(3)(c)4, 9J-5.012(3)(c)13, 9J-5.019(2)(a)11, 9J-5.019(5)(b)5

#### Recommendation

The maps of existing and future emergency evacuation facilities, as represented by Exhibits T-10 and T-31 in the supporting data and analysis, should be updated to depict these County-designated hurricane evacuation routes: the Homestead Extension of the Florida Turnpike, U.S. Highway 1, and Old Cutler Road. The map of future emergency evacuation facilities must be adopted as part of the comprehensive plan.

#### Response

Revised maps TE-7 and TE-14 (adopted series) have been revised to include the designated routes for evacuation of the coastal population, as follows: the HEFT, US-1 and Old Cutler Road.

#### II. STATE COMPREHENSIVE PLAN

The above cited amendments do not further and are not consistent with the following goals and policies of the State Comprehensive Plan (Chapter 187, Florida Statutes):

187.201(4) Housing Goal and Policies

187.201(7) Water Resources Goal and Policies 1, 5, 9

187.201(8) Coastal and Marine Resources Goal and Policy 3

187.201(9) Natural Systems and Recreational Lands Goal and Policy 11

187.201(15) Land Use Goal and Policy 6

187.201(16) Urban and Downtown Revitalization Goal and Policies 6, 8

187.201(17) Public Facilities Goal and Policies 1, 7, 9

187.201(19) Transportation Goal and Policies 2, 3, 9

187.201(20) Governmental Efficiency Goal and Policy 1

#### Citations

Florida Statutes: Sections 163.3184(1)(b), 187.101, 187.201

Florida Administrative Code: Rules 9J-5.001(1) and 9J-5.006(5)(a)

#### Recommendation

Revise the amendment to be consistent with and further the referenced goals and policies of the State Comprehensive Plan. This may be accomplished by revising the amendment as recommended for the specific objections above.

#### Response

Changes being done accordingly for the specific objections contained herein.

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#### III. COMMENTS

#### **Comment: Building heights**

The definition on the Town Center – Core land use district sets an average building height, but not a maximum. This appears to be an error, because the definition refers to architectural features being allowed to exceed maximum height maximums and because the Town Center – Center and Town – Center Edge land use districts set maximum, not average, building heights.

#### **Response:**

Response to Objection 3 addresses this comment.

#### **Comment: Density ranges**

The Low-Density Residential – Conservation future land use district sets a density range of 2.5 to 6 units per gross acre, which appears to be an error, because the density for Low-Density Residential is defined as 2.5 to 5 units per gross acre.

#### Response:

Response to Objection 3 addresses this comment.

#### **Comment: Update of Housing Element**

The affordable housing analysis in the Housing Element is based largely on the 2000 Census data. This data is now 8 years old and should be updated with the Affordable Housing Needs Assessment information from the Shimberg Center at the University of Florida when it becomes available for Cutler Bay. The Town should also consider inserting a policy in the Housing Element stating that the Town will update its affordable housing analysis within 12 months after the Shimberg Center's Affordable Housing Needs Assessment becomes available.

#### Response:

A policy will be added to the Housing Element where the Town will update the Housing Element within 6 months of the Affordable Housing Needs Assessment being completed by the Shimberg Center.

<u>Policy H1-1F: The Town shall begin the process to update the Housing Element within 6</u> months of the Affordable Housing Needs Assessment being completed by Shimberg.

#### **Comment: Concurrency requirements**

Policy CI2-1D and associated Table CI-2 indicate that concurrency for a development may be met if the transportation facilities needed to serve new development are scheduled to be in place or under actual construction not more than 3 years after issuance of a certificate of occupancy. This is in accord with Rule 9J-5.0055(3)(c); however, the statute, in s. 163.3180(2)(c), requires that the necessary transportation facilities be in place or under actual construction within 3 years after issuance of a building permit or its functional equivalent that results in traffic generation. The Town may wish to revise the policy to match the statutory language, which takes precedence over the earlier administrative rule. However, this is not necessary, in view of the statutory phrase "or its functional equivalent that results in traffic generation." It is the certificate of occupancy which results in traffic generation.

Table CI-2 states that sanitary sewer, solid waste, drainage, and potable water facilities needed to serve new development must be in place upon site plan approval or its functional equivalent. However, s. 163.3180(2)(a), F.S., requires that the necessary facilities be in place and available to serve new development no later than the issuance of a certificate of occupancy or its functional equivalent. Section 163.3180(2)(a) also states that, prior to approval of a building permit or its functional equivalent, the local government shall consult with the applicable water supplier, in this case Miami-Dade County Water and Sewer Department, to determine whether adequate water supplies to serve the new development will be available no later than the anticipated date of issuance by the local government of a certificate of occupancy or its functional equivalent.

#### Response:

Policy C12-1D and associated Table C1-2 will be revised as follows:

Concurrency for a development may be met if the transportation facilities needed to serve new development are scheduled to be in place or under actual construction not more than 3 years after issuance of a certificate of occupancy building permit pursuant to F.S. 163.3180(2)(c).

As a way to further strengthen the concurrency management goal of the Capital Improvement Element, the Town will add the following Objective and accompanying policies:

#### Objective CI2-2

The Town shall ensure the availability of adequate administrative facilities in order to meet the needs of the community and provide municipal functions in a manner that achieves the goals, objectives and policies of this Plan.

Policy CI2-2A: By 2010, the Town will identify a Level of Service Standard for administrative facilities in order to meet the needs of the community and provide municipal functions in a manner that achieves the goals, objectives and policies of this Plan.

Policy CI2-2B: By 2010, the Town will adopt an impact fee ordinance to provide for the acquisition of land and/or facilities and capital building projects and improvements in order to achieve the adopted Level of Service Standard for administrative facilities.

#### **Comment: Potable water level of service standards**

The Department recommends that the Town consider adopting potable water levels of service for nonresidential land uses. Such standards would be helpful in assessing water supply needs for future site-specific nonresidential land use amendments.

#### Response:

Potable water levels of service for non-residential land uses have been included. The included land use categories are as follows: Single Family Estate Density; Single Family and Duplex (min. 7,500 sq. ft. lots); Multi Family, Semiprofessional Offices; Hospital and Schools; and, Business and Industrial.

#### **Comment: Coastal High Hazard Area**

The Coastal Management Element does not define or map the Coastal High-Hazard Area (CHHA), which is required by 1 July 2008, pursuant to s. 163.3178(9)(c), F.S. The Town states that it is waiting for the South Florida Regional Planning Council to prepare the regional map of the CHHA. However, the Town does not need to wait for a definition of the CHHA. Pursuant to s. 163.3178(2)(h), F.S., the CHHA is the area below the elevation of the category 1 storm surge line as established by a Sea, Lake and Overland Surges from Hurricanes (SLOSH) computerized storm surge model. The Coastal Management Element should be revised to include the required definition on the CHHA.

#### Response:

Map CM-1 will be included in the adopted portion of the Comprehensive Plan (See Attachment Maps). A definition of Coastal High Hazard Areas will be added in the Coastal Management Element as follows:

Coastal high hazard areas (also "high hazard coastal areas") means the evacuation zone for a Category 1 hurricane as defined in the regional hurricane evacuation study applicable to the local government.

#### **Comment: Mangrove Protection Area Map**

Coastal Management Element Policy CM-1C states that mangrove and scrub forests adjacent to Biscayne Bay National Park shall be designated as Mangrove Protection Areas. Actually, on the Future Land Use Map the mangrove areas appear to be designated for Conservation. The Department understands that "Mangrove Protection Area" may not be meant as a future land use category, but only as an area requiring special development controls as set forth in Policy CM-1C. However, the plan would be improved if this apparent discrepancy were resolved. Without a map or a more detailed description of the location of the Mangrove Protection Areas, there may be a difficulty in interpreting which areas, exactly, are governed by the special development controls.

#### Response:

The County will be consulted on this matter. A map of Mangrove Protection Areas will be requested from Miami-Dade County.

# Attachment TE Transportation Element Tables

# Attachment EF Educational Facilities Exhibits

### Attachment CIE Capital Improvement Tables

Attachment Maps
Adopted Map Series

## Supplement

#### ORDINANCE NO. 08-\_\_\_\_

AN ORDINANCE OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING AND CLARIFYING ORDINANCE 07-32 RELATING TO HOMEOWNER ASSOCIATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the Town of Cutler Bay (the "Town") adopted Ordinance 07-32 relating to minimum standards for maintenance for homeowner associations; and

**WHEREAS,** as currently written, Ordinance 07-32 is applicable to the majority of homeowner associations within the Town; and

**WHEREAS**, the Town Council's intent in adopting Ordinance 07-32 was to require minimum standards for maintenance for all homeowner associations within the Town; and

**WHEREAS,** the Town Council finds it necessary to amend and clarify Ordinance 07-32 in order to facilitate its desired intent; and

**WHEREAS,** the Town Council finds this Ordinance to be in the best interest and welfare of the residents of the Town.

### NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS:

**Section 1. Recitals Adopted.** That the recitals set forth above are hereby adopted and confirmed.

**Section 2. Homeowners Association Regulations.** That Ordinance 07-32 is hereby amended to read as follows:

#### **Homeowners Association Regulations**

**Sec. 1.** *Intent.* The intent of this section is to insure that existing and future multi-family residential developments meet minimum standards for maintenance. This section shall not be construed so as to delete or decrease existing code requirements regulating maintenance of multi-family residential developments. The intent of this section is to impose additional minimum maintenance standards upon those multi-family residential developments which were constructed prior to the adoption by the £Town of other code provisions requiring maintenance of multi-family residential developments as well as upon those multi-family residential developments to be constructed in the future. The provisions of this section shall apply only to homeowners' association property within multi-family residential developments.

- **Sec. 2.** *Landscaping.* The homeowners' association responsible for a multi-family residential development must maintain all landscaping, in a healthy, living condition. All plant material shall be kept pruned in a neat, tidy, and attractive manner and all turf areas shall be regularly mowed as necessary by weather conditions. Dead and/or diseased plant material shall be removed and replaced with a suitable planting in a prompt manner.
- **Sec. 3.** *Obstructions to visibility.* No obstruction to visibility at street intersections or access easement intersections, or obstruction of traffic control devices, either in the form of landscaping or shrubbery or fence or other structure, shall be permitted at any time.

#### Sec. 4. Parking areas and drives; drainage.

- (a) **Paved areas.** The homeowners' association must maintain all paved areas reserved for parking and driving of motor vehicles, including driveway aprons, in a smooth condition, free from ruts, potholes, loose aggregate, and deterioration.
- (b) *Curbing and wheel stops*. All curbing must be maintained free from cracks and deterioration by the homeowners' association. In those multi-family residential developments in which wheel stops are required by other provisions of the Town code, said wheel stops must be maintained by the owner free from cracks and deterioration. All wheel stops must remain affixed in those locations where such wheel stops were to be placed in accordance with approved site plans for the development's parking area.
- (c) *Striping*. The homeowners' association must stripe all paved areas reserved for vehicular parking and fire zones. Such striping shall be maintained in a manner free from peeling and shall be of sufficient contrast with the surface upon which such striping is placed so as to readily delineate to a person of normal visual ability the location of a parking space or fire zone.
- **Sec. 5.** *Traffic control devices.* Within 60 days of the adoption of this chapter, all homeowners' associations not presently in compliance with the United States Department of Transportation's *Manual on Uniform Traffic Control Devices* (MUTCD) must come into compliance with said *Manual*. The homeowners' association shall also be responsible for the immediate repair and/or replacement of any traffic control device which is damaged.
- **Sec. 6.** *Drainage.* The homeowners' association must maintain all drainage facilities in a manner allowing for the storm flow for which said facilities were designed, free from obstructions. All catch basin grates must be maintained in their original condition and must be replaced immediately, if damaged.
- **Sec. 7.** *General maintenance.* The homeowners' association, on all association property within a multi-family residential development, shall maintain all windows, roofs, fences, sidewalks, and masonry walls in a clean condition free from cracks greater than 1/16 of an inch in width, graffiti, peeling paint, mold, mildew, rust stains and missing materials. All surfaces, including roofs, requiring painting or which are otherwise protected from the elements shall be kept painted or protected. Painted or stained surfaces shall be maintained with uniform colors,

void of any evidence of deterioration. All fences or walls in a continuous line shall be uniform in color.

- **Sec. 8.** *Registration.* Any and every homeowners' association created pursuant to law within the corporate limits of the  $\underline{\mathbf{t}}$ Town shall register annually, on the first workday in April of each year, with the Town Clerk. The following information shall be provided:
- (a) The name, address, and telephone number of the president of the homeowners' association.
- (b) The name, address, and telephone number of the registered agent of said homeowners' association.
- (c) The name, address, telephone number, and appropriate representative of the management company, if any, with which the association has contracted to perform their maintenance responsibilities.
- <u>Section 3</u>. <u>Severability</u>. The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 4. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this \_\_\_\_ day of \_\_\_\_, 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:

SOLE USE OF THE TOWN OF CUTLER B	AI.
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	