



## TOWN OF CUTLER BAY

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

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

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

### TOWN COUNCIL MEETING AGENDA

Wednesday, May 21, 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 Fausto Gomez of Gomez Barker - Legislative Session update
3. **APPROVAL OF MINUTES**
  - A. Special Council Meeting – April 4, 2008
  - B. Special Council Meeting – April 18, 2008
  - C. Regular Council Meeting – April 28, 2008
4. **REPORTS**
  - A. TOWN MANAGER'S REPORT
  - B. TOWN ATTORNEY'S REPORT
  - C. BOARD/COMMITTEE REPORTS AND COUNCIL ANNOUNCEMENTS
    - a. Charter High School Committee Appointments
    - b. Business Equity Tax Study Advisory Board Appointments
    - c. Communications Committee Appointments

TAB 1

**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, APPROVING AMENDMENT #002 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 2

B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO EXECUTE AGREEMENT FOR A TRAFFIC CAMERA SAFETY PROGRAM WITH AMERICAN TRAFFIC SOLUTIONS, LLC; PROVIDING FOR A DETERMINATION OF IMPRACTICALITY AS TO COMPETITIVE BIDDING; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 3

C. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING A STANDARD POLICY AND PROCEDURE FOR TOWN COUNCIL TRAVEL PURSUANT TO SECTION 166.021(10)(B) FLORIDA STATUTES; AND PROVIDING AN EFFECTIVE DATE.

TAB 4

D. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING RESOLUTION 06-112 APPOINTING COMMITTEE MEMBERS TO THE TOWN OF CUTLER BAY WIFI COMMITTEE; AND PROVIDING FOR AN EFFECTIVE DATE. (SOCHIN)

TAB 5

**6. QUASI-JUDICIAL HEARINGS (PUBLIC HEARING REQUIRED)**

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

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

A. AN ORDINANCE OF THE 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

TAB 6

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)**

- 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 CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SAVINGS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

**TAB 7**

**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 DEVELOPMENT WITHIN THE TOWN; PROVIDING FOR EXEMPTIONS; 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 8**

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

- A.** AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING 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 AMENDING THE ZONING WORKSHOP REQUIREMENTS AND PROCEDURES; PROVIDING

**TAB 10**

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

C. 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 11

D. 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)**

TAB 12

E. 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 13

**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, June 18, 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 PROCEEDING IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE TOWN FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE OR IRRELEVANT EVIDENCE, NOR DOES IT AUTHORIZE CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

TAB 1

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

Friday, April 4, 2008, 11:00 AM  
Town Hall Conference Room  
10720 Caribbean Boulevard, Suite 105  
Cutler Bay, Florida 33189

**1. CALL TO ORDER/ROLL CALL OF MEMBERS:** The meeting was called to order by the mayor at 11:05 AM. Present were the following:

Councilmember Peggy R. Bell  
Councilmember Timothy J. Meerbott (arrived at 11:20 a.m.)  
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. ACTION ITEM**

The town clerk read the following resolution by title:

- A.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROFESSIONAL SERVICES, AUTHORIZING THE ISSUANCE OF A REQUEST FOR QUALIFICATIONS (RFQ) FOR DESIGN-BUILD SERVICES FOR CUTLER RIDGE PARK IMPROVEMENTS; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AND ENTER INTO AN AGREEMENT WITH THE TOP-RANKED FIRM; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilmember Sochin made a motion to approve the resolution. The motion was seconded by Councilmember Bell and Resolution 08-20 was approved by unanimous voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

**3. ADJOURNMENT**

The meeting was officially adjourned at 11:30 A.M.

*Respectfully submitted:*

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*Erika Gonzalez-Santamaria, CMC  
Town Clerk*

*Adopted by the Town Council on  
this 21<sup>st</sup> day of May, 2008.*

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*Paul S. Vrooman, Mayor*

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



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

Friday, April 18, 2008, 11:00 AM  
Town Hall Conference Room  
10720 Caribbean Boulevard, Suite 105  
Cutler Bay, Florida 33189

**1. CALL TO ORDER/ROLL CALL OF MEMBERS:** The meeting was called to order by the mayor at 11:15 AM. 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. ACTION ITEM ORDINANCE FOR FIRST READING**

The town clerk read the following ordinance by title:

- 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.**

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

**3. ADJOURNMENT**

The meeting was officially adjourned at 11:30 A.M.

*Respectfully submitted:*

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*Erika Gonzalez-Santamaria, CMC  
Town Clerk*

*Adopted by the Town Council on  
this 21<sup>st</sup> day of May, 2008.*

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*Paul S. Vrooman, Mayor*

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

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

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 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 Nina Boniske  
Town Attorney Chad Friedman

**2. PROCLAMATIONS, AWARDS, PRESENTATIONS:**

**A.** Douglas Yoder of Miami-Dade County Water and Sewer gave a brief presentation on upcoming projects in the South Dade Water and Sewer facility.

**3. APPROVAL OF MINUTES:**

**A.** Councilmember Sochin made a motion approving the minutes of the meeting of March 19, 2008. The motion was seconded by Councilmember Meerbott 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 reported that the Earth Day Conference on April 21<sup>st</sup> was extremely success. He stated that his recent trip to Tallahassee for the legislative session was a great victory, where the Town was secured necessary funds for parks and public works stormwater utility project. The manager further discussed the promotion of Captain Julie Miller to Major. He reported that Miami-Dade County have verbally supported the promotion of Captain Miller and will shortly make a formal decision.

**B. TOWN ATTORNEY'S REPORT**

The Town Attorney requested to withdraw Items 7B and 7E from the agenda.

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

**5. CONSENT AGENDA:**

- 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.

Town Staff pulled Item E and Item F, Vice Mayor pulled Item B and Item D, and Councilmember Sochin pulled Item A.

Councilmember Meerbott made a motion to approve the Consent Agenda as amended with pulled Items A, B, D, E, and F. The motion was seconded by Councilmember Bell and Resolution 08-23 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:

- 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.

Councilmember Bell made a motion to approve the resolution. The motion was seconded by Councilmember Meerbott and Resolution 08-21 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:

- B.** 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 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 FOR AN EFFECTIVE DATE. **(MACDOUGALL)**

After some discussion, it was the general consensus of the Council to nominate Mayor Vrooman as Council liaison to the committee and to limit the amount of time to report back to Council with recommendations to six months with the option to dissolve the committee at any point before the six month time frame once recommendations are made to Council.

Councilmember Meerbott made a motion to approve the resolution. The motion was seconded by Councilmember Sochin and Resolution 08-22 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:

- 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 ECONOMIC DEVELOPMENT COUNCIL AND THE COUNCIL LIAISON TO THE RETAIL LEASING INDUSTRY; PROVIDING FOR A TERM OF APPOINTMENT; AND PROVIDING FOR AN EFFECTIVE DATE. **(MEERBOTT)**

After brief discussion, it was the general consensus of the Council to nominate Councilmember Meerbott as Council liaison to the committee.

Councilmember Meerbott made a motion to approve the resolution. The motion was seconded by Vice Mayor MacDougall and Resolution 08-24 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 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 COMMISSION, 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 CHARTER AMENDMENTS, INCLUDING AMENDMENTS PERTAINING TO: SECTION 2.4 "QUALIFICATIONS" CONCERNING TIME PERIODS FOR QUALIFYING FOR ELECTED TOWN OFFICE AND MAKING PROVISIONS FOR CONTINGENCIES WHICH MAY ARISE SHOULD A CANDIDATE DIE, WITHDRAW, OR BE REMOVED; A PROPOSED CHARTER AMENDMENT CONCERNING SECTION 5.1 "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; 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.

The Town Attorney recommended an amendment to the resolution to remove Section 9.2 "County Services" from the ballot question because of earlier discussions with Miami-Dade County agreeing that the Town has within its powers to adopt a non-residential solid waste franchise ordinance.

Councilmember Sochin made a motion to approve the resolution with the recommended amendment from the Town Attorney. The motion was seconded by Councilmember Bell and Resolution 08-25 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:

- 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.

Councilmember Meerbott made a motion to approve the resolution. The motion was seconded by Councilmember Sochin and Resolution 08-26 was approved by 4-1 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall voting Yes; and Mayor Vrooman voting No.

- 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 33-49 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.

Planning Director Don O'Donniley gave an oral report recommending approval of the applicant's request if the applicant will remove 135 square feet 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%. Planning Director O'Donniley also reported that 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. Planning Director O'Donniley also recommended that the applicant's request is subject to the following condition:

- 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%.

Oscar Arroyo, 8863 Southwest 206 Lane, the applicant, addressed the Council.

The Mayor opened the public hearing. Rocio Escavillo, 20609 Southwest 90 Place and Rob Velazquez, 8853 Southwest 206 Lane, addressed the Council.

Councilmember Bell made a motion to defer the resolution to a date certain of July 16, 2008. The motion was seconded by Vice Mayor MacDougall and the resolution was deferred by a 4-1 roll call vote. The vote was as follows: Councilmembers Bell, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes; Councilmember Meerbott voting No.

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

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

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING 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.**

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

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

- 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.**

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

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

- 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)**

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

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

- 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)**

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

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

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

- A.** AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, 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.

The mayor opened the public hearing. Simon Ferro, 1221 Brickell Avenue and Tom Condon 19641 Holiday Road, addressed the Council.



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

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

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

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

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

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

Councilmember Sochin made a motion to approve the ordinance. The motion was seconded by Councilmember Bell and Ordinance 08-06 was approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

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

- 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.

Planning Director Don O'Donniley and Joe Corradino, Planning Consultant gave a report on the ordinance.

The mayor opened the public hearing. Steve Zarzecki, 9640 Martinique Drive and Julie Hill, 444 Brickell Avenue, and Tom Condon, 19641 Holiday Road, addressed the Council.

Councilmember Meerbott offered the following amendments:

- Amend the future Land Use Map for the area known as the "Potato Field" (vacant land on Old Cutler Road between 208th Street and 97<sup>th</sup> Avenue) from low density to mixed use.

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

Councilmember Sochin made a motion to approve the amended ordinance and in addition to approve all maps and exhibits as revised. The motion was seconded by Vice Mayor MacDougall and Ordinance 08-07 was approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

**10. PUBLIC COMMENTS**

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

The following individuals spoke: Barbara Condon, 19641 Holiday Road and Steve Zarzecki, 9640 Martinique Drive.

**11. MAYOR AND COUNCIL COMMENTS**

Councilmember Sochin reminded the public that there is WiFi at Cutler Ridge Park.

Councilmember Meerbott thanked Steve Zarzecki for his boat comments in the Miami Herald.

Councilmember Bell thanked all those who participated in the Lincoln City Park clean-up efforts on Sunday for Earth Day.

Mayor Vrooman announced that the Florida Turnpike has placed signage directing car drivers that Cutler Bay can be accessed by the next three exits starting from SW 184<sup>th</sup> Street/Eureka Drive exit.

**12. OTHER BUSINESS:**

**13. ADJOURNMENT**

The next council meeting will be held on May 21, 2008 at South Dade Regional Library.

The meeting was officially adjourned at 10:30 P.M.

*Respectfully submitted:*

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*Erika Gonzalez-Santamaria, CMC*

*Town Clerk*

*Adopted by the Town Council on  
this 21<sup>st</sup> day of May, 2008.*

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*Paul S. Vrooman, Mayor*

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

TAB 2



Steven J. Alexander  
Town Manager

## MEMORANDUM

**To:** Honorable Mayor, Vice Mayor and Town Council  
**From:** Steven J. Alexander, Town Manager  
**Date:** May 21, 2008  
**Re:** THE CHILDREN'S TRUST GRANT AGREEMENT AMENDMENT #002

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### REQUEST

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING AMENDMENT #002 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. The effective term of the original contract was from June 1, 2007 through May 31, 2008, running concurrent with The Children's Trust fiscal year. Since the After School Program runs through June 6<sup>th</sup>, the agreement must be extended to cover the additional days beyond May 31<sup>st</sup>.

This amendment extends the term of the agreement through July 31, 2008, and The Children's Trust Board has approved continuing the Town's funding through a renewal agreement with a term of August 1, 2008 through July 31, 2009 for next year's After School Program. That agreement will be brought to the Town Council for approval separately.

### RECOMMENDATION

We recommend that the attached resolution be adopted authorizing the Town Manager to execute amendment #002 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 #002 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**, the original term of the agreement ran concurrent with the Trust's fiscal year of June 1 2007 through May 31, 2008; and

**WHEREAS**, the agreement must be extended in order to cover the entire length of the Town's current After School Program that runs through June 6, 2008; and

**WHEREAS**, the attached amendment #002 incorporates the amended change in the term of 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 # 002 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.**     **Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
PAUL S. VROOMAN, Mayor

Attest:

\_\_\_\_\_  
ERIKA GONZALEZ-SANTAMARIA, CMC  
Town Clerk

APPROVED AS TO FORM AND 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 \_\_\_\_\_

**AMENDMENT #002**

THIS AMENDMENT, Amendment #002, entered into between **The Children's Trust and Town of Cutler Bay**, hereinafter referred to as the "Provider", amends Out of School contract #710-401 originally executed on November 2, 2008.

The purpose of this amendment is to:

1. Extend the contract term end date from May 31, 2008 to July 31, 2008; expenses for the month of July will not be allowed.
2. Incorporate a modified Appendix 1 (Unit Table) which includes the additional school year services occurring during the extended term in June 2008.

Included with this Amendment are the new attachments to this contract:

1. Appendix 1-1, a modified Unit Table for 2007/2008 school year services.

This Amendment shall begin on May 31, 2008.

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

PROVIDER: Town of Cutler Bay

THE CHILDREN'S TRUST

SIGNED  
BY: \_\_\_\_\_

SIGNED  
BY: \_\_\_\_\_

NAME: \_\_\_\_\_

NAME: Modesto E. Abety

TITLE: \_\_\_\_\_

TITLE: President/CEO

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

SIGNATURE OF COUNTY ATTORNEY M. Anate - VDJ

DATE: 5/1/08



Service Name	Service Start Date	Service End Date	Specific Dates	Number of days	Hours of Operation	Hours per day	Number of Children		
							General Population	Children with Disabilities	Total
Summer Camp	N/A	N/A	N/A	N/A	N/A	N/A	0	0	0
Summer After-School	N/A	N/A	N/A	N/A	N/A	N/A	0	0	0
Legal Holiday	N/A	N/A	N/A	N/A	N/A	N/A	0	0	0
Teacher Planning	N/A	N/A	N/A	N/A	N/A	N/A	25	0	25
Thanksgiving/Winter/Spring Breaks	N/A	N/A	N/A	N/A	N/A	N/A	50	0	50
After School Days	N/A	N/A	N/A	N/A	N/A	N/A	50	0	50
Saturdays	N/A	N/A	N/A	N/A	N/A	N/A	0	0	0

**SITE LOCATION 1**

Site Name: Cutler Ridge Park Contact Person: Alan Rieke  
 Site Address: 10100 SW 200 Street Phone Number: (305) 238-4166  
 City: Cutler Bay Zip Code: 33189  
 Phone Number: (305) 238-4166 Fax: (305) 233-5457 E-mail: arieke@cutlerbay-fl.gov  
 Days of Operation: Monday through Friday  
 If school-based site, Provide School Name: \_\_\_\_\_

Service Name	Service Start Date	Service End Date	Specific Dates	Number of days	Hours of Operation	Hours per day	Number of Children		
							General Population	Children with Disabilities	Total
Summer Camp	N/A	N/A	N/A						0
Summer After-School	N/A	N/A	N/A						0
Legal Holiday	N/A	N/A	N/A						0
Teacher Planning	N/A	N/A	9/13/07; 10/26/07; 1/18; 3/21; 3/28/08	5	7:30 AM-6:00 PM	10.5	25		25
Thanksgiving/Winter/Spring Breaks	N/A	N/A	12/26/07-1/4/08; 3/31/08-4/4/08	12	7:30 AM-6:00 PM	10.5	50		50
After School Days	08/20/07	06/05/08	N/A	180	3:00 PM-6:00 PM	3	50		50
Saturdays	N/A	N/A	N/A						0

TAB 3



## MEMORANDUM

**To:** Steven J. Alexander, Town Manager  
**From:** Julie A. Miller, Major  
**Date:** May 15, 2008  
**Re:** **INSTALLATION OF TRAFFIC ENFORCEMENT CAMERAS**

### REQUEST

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO EXECUTE AND ENTER INTO AN AGREEMENT WITH AMERICAN TRAFFIC SOLUTIONS (ATS) FOR THE INSTALLATION OF TRAFFIC ENFORCEMENT CAMERAS WITHIN THE TOWN'S MAJOR INTERSECTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.**

### BACKGROUND AND ANALYSIS

Town Law Enforcement Staff have carefully reviewed existing contracts for the purchase and installation of traffic enforcement cameras from other surrounding municipalities. Based on the review, costs, and warranties, staff has determined that the active "red light camera enforcement" contract awarded by the City of Aventura, will expedite the purchase and installation of this code enforcement/law enforcement tool.

The ATS traffic camera system offers solutions and experience that are highly differentiated from other offerings. American Traffic Solutions provide the highest resolution camera with a 12.4 megapixel resolution. In addition, it eliminates the need for separate "lane" cameras as two high-resolution images provide all of the critical information and evidence needed to prosecute the violation.

When addressing traffic enforcement, the safety of our citizens is the main concern. It is therefore asserted that the traffic cameras will assist law enforcement in keeping residents, and visitors to the Town, safe. As an example of this, ATS has installed several camera systems in the state of New York. New York City officials report a decrease in red light running by 73%, a decrease in traffic crashes by 41% and a decrease in traffic crash fatalities by 35% where red light cameras have been installed.

ATS, as well as the other major companies, provide a turn key operation to the Town at no cost for the equipment, installation, maintenance, and support. It is estimated that approximately 50 citations will be issued each day in the Town of Cutler Bay. Uniform officers from the Town will be verifying the data provided by ATS prior to any violations being issued.



## Office of the Town Manager

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After reviewing all the major companies, ATS, by far, fits the needs of the Town. Because the cost for all offered programs is equal, the only issue is the level of service provided. ATS offers the level of service that the Town requires as they have installed the most devices around the country. By approving a "Piggy Back" Resolution, the Town would benefit from a quicker start up and gain an additional three months of generated revenue.

### **RECOMMENDATION**

It is recommended that the Town Council approve the "Piggy Back" Resolution.

**RESOLUTION NO. 08-\_\_\_**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO EXECUTE AGREEMENT FOR A TRAFFIC CAMERA SAFETY PROGRAM WITH AMERICAN TRAFFIC SOLUTIONS, LLC; PROVIDING FOR A DETERMINATION OF IMPRACTIBILITY AS TO COMPETITIVE BIDDING; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Cutler Bay (the “Town”) desires to obtain the services of a firm to provide a traffic camera safety program to the Town; and

**WHEREAS**, the Town Council finds that it is in the best interests of the Town to utilize the contract of another governmental entity, the City of Aventura, to contract with Vendor, pursuant to the Town’s purchasing guidelines as described in Town Ordinance 06-22, which allows that purchases made under state purchasing contracts or contracts of other municipal or governmental entities that were awarded pursuant to competitive bids based on clearly defined specifications shall not require separate competitive bidding by the Town; and

**WHEREAS**, the Town Council wishes to authorize the Town Manager to execute a contract with American Traffic Solutions, LLC, the firm selected by the City of Aventura at under RFQ #08-11-13-2 to provide a Traffic Camera Safety Program for the Town in substantially the form of the City of Aventura contract, attached hereto as Exhibit “A”.

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

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

**Section 2. Authorization to Contract.** The Town Manager is authorized to negotiate and execute a contract with American Traffic Solutions, LLC, the firm selected by the City of Aventura at under RFQ #08-11-13-2, to provide a Traffic Camera Safety Program for the Town in substantially the form of the City of Aventura contract, attached hereto as Exhibit “A”, as permitted under the Town’s purchasing guidelines as described in Town Ordinance 06-22.

**Section 3. Effective Date.** That this Resolution shall become effective immediately upon its adoption.

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

---

PAUL S. VROOMAN, Mayor

Attest:

---

ERIKA GONZALEZ-SANTAMARIA, CMC  
Town Clerk

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

---

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

Moved By:  
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman \_\_\_\_\_

Vice Mayor Edward P. MacDougall \_\_\_\_\_

Councilmember Peggy R. Bell \_\_\_\_\_

Councilmember Timothy J. Meerbott \_\_\_\_\_

Councilmember Ernest N. Sochin \_\_\_\_\_

AGREEMENT BETWEEN THE CITY OF AVENTURA  
AND AMERICAN TRAFFIC SOLUTIONS FOR  
TRAFFIC SAFETY CAMERA PROGRAM

This Agreement (this "Agreement") is made as of this 8<sup>th</sup> day of February, 2008 by and between American Traffic Solutions, LLC., a Delaware Corporation, licensed to do business in Florida, with offices at 14861 N. Scottsdale Rd, Suite 109, Scottsdale, Arizona 85254 ("Vendor"), and The City of Aventura, a Florida municipal corporation, with an address at 19200 West Country Club Drive, Aventura, Florida (the "City").

**RECITALS**

WHEREAS, Vendor has exclusive knowledge, possession and ownership of certain equipment, licenses, applications, and Notice of Infraction processes related to the digital photo red light enforcement systems provided by Vendor pursuant to this Agreement; and

WHEREAS, the City Commission of the City adopted Ordinance 2007-15, which authorizes the City's Traffic Safety Camera Program (TSCP) and provides for the implementation and operation of such; and,

WHEREAS, the City issued RFQ # 08-11-13-2, to which Vendor responded, and City selected Vendor to provide services to implement and carry on the City's TSCP, and City desires to engage the services of Vendor to provide certain equipment, processes and back office services so that Authorized Employees of the City are able to monitor, identify and enforce red light running Infractions;

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

**AGREEMENT**

- 1.0 Definitions. All definitions set forth in Ordinance 2007-15 are incorporated herein. In addition, the following words and phrases shall have the following meanings in this Agreement:
  - 1.1. "Authorized Employee" means the Traffic Control Infraction Review Officer, whose duties and qualifications are set forth in the City Ordinance.
  - 1.2. "Authorized Infraction" means each Potential Infraction in the Infraction Data for which authorization to issue a Notice of Infraction in the form of an Electronic Signature is given by the Authorized Employee by using the Vendor System.
  - 1.3. "City Ordinance" means Ordinance 2007-15, as may be amended from time to time.

- 1.4. “Civil Fee” means the fee assessed for violations of the City Ordinance, as set forth in the Ordinance.
- 1.5. “Confidential or Private Information” means, with respect to any Person, any information, matter or thing of a secret, confidential or private nature, whether or not so labeled, which is connected with such Person’s business or methods of operation or concerning any of such Person’s suppliers, licensors, licensees, City’s or others with whom such Person has a business relationship, and which has current or potential value to such Person or the unauthorized disclosure of which could be detrimental to such Person, including but not limited to:
  - 1.5.1. Matters of a business nature, including but not limited to information relating to development plans, costs, finances, marketing plans, data, procedures, business opportunities, marketing methods, plans and strategies, the costs of construction, installation, materials or components, the prices such Person obtains or has obtained from its clients or City’s, or at which such Person sells or has sold its services; and
  - 1.5.2. Matters of a technical nature, including but not limited to product information, trade secrets, know-how, formulae, innovations, inventions, devices, discoveries, techniques, formats, processes, methods, specifications, designs, patterns, schematics, data, access or security codes, compilations of information, test results and research and development projects. For purposes of this Agreement, the term “trade secrets” shall mean the broadest and most inclusive interpretation of trade secrets.
  - 1.5.3. Notwithstanding the foregoing, Confidential Information will not include information that: (i) is a public record, and not otherwise exempt, pursuant to Florida law; (ii) was generally available to the public or otherwise part of the public domain at the time of its disclosure, (iii) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission by any party hereto in breach of this Agreement, (iv) was subsequently lawfully disclosed to the disclosing party by a person other than a party hereto, (v) was required by a court of competent jurisdiction to be described, or (vi) was required by applicable state law to be described.
- 1.6. “Designated Intersection” means the Intersections, as that term is defined in the City Ordinance, set forth on **Exhibit “A”** attached hereto, and such additional Intersections, as Vendor and the City shall mutually agree from time to time through the parties’ Project Managers.
- 1.7. “Electronic Signature” means the method through which the Authorized Employee indicates his or her approval of the issuance of a Notice of Infraction in respect of a potential Infraction using the Vendor System.



- 1.8. “Enforcement Documentation” means the necessary and appropriate documentation related to the enforcement of Red Zone Infractions, as defined in the City Ordinance, including but not limited to warning letters, Notices of Infraction (using the specifications of the hearing officer ( also known as code enforcement Special Master) and the City, a numbering sequence for use on all notices (in accordance with applicable state statutes and the City’s Ordinance), instructions to accompany each issued Notice of Infraction (including in such instructions a description of basic enforcement procedures, payment options and information regarding the viewing of images and data collected by the Vendor System), chain of custody records, criteria regarding operational policies for processing Notices of Infraction (including with respect to coordinating with the applicable vehicle registry), and technical support documentation for applicable hearing officers .
- 1.9. “Equipment” means any and all cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Vendor Photo Red Light System(s), including but not limited to all camera systems, housings, sensor arrays, severs and poles.
- 1.10. “Governmental Authority” means any domestic or foreign government, governmental authority, court, tribunal, agency or other regulatory, administrative or judicial agency, commission or organization, and any subdivision, branch or department of any of the foregoing.
- 1.11. “Infraction” means any Infraction of the City’s Ordinance.
- 1.12. “Infractions Data” means the images and other Infractions data gathered by the Vendor System at the Designated Intersection .
- 1.13. “Installation Date of the TSCP” means the date on which Vendor completes the construction and installation of at least one (1) Intersection in accordance with the terms of this Agreement so that such Intersection is operational for the purposes of functioning with the TSCP.
- 1.14. “Intellectual Property” means, with respect to any Person, any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, moral rights and mask-works, (b) trademark and trade name rights and similar rights, (c) trade secrets rights, (d) patents, designs, algorithms and other industrial property rights, (e) all other intellectual and industrial property rights (of every kind and nature), whether arising by operation of law, contract, license, or otherwise, and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing), of such Person, consistent with the definition of such terms in Florida Statutes.
- 1.15. “Notice of Infraction” shall mean the Notice of an Infraction, which is mailed or otherwise delivered by Vendor to the alleged violator on the appropriate Enforcement

Documentation in respect of each Authorized Infraction pursuant to the requirements of the City Ordinance.

- 1.16. "Operational Period" means the period of time during the Term, commencing on the Installation Date, during which the TSCP is functional in order to permit the identification and the issuance of Notices of Infraction for approved Infractions using the Vendor System.
- 1.17. "Ordinance" shall mean City of Aventura Ordinance 2007-15, as may be amended from time to time.
- 1.18. "Person" means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.
- 1.19. "Project Manager" means the project manager appointed by the City in accordance with this Agreement, which shall be the City Manager, or his designee and shall be responsible, on behalf of City, for overseeing the installation at the Designated Intersections and the implementation of the TSCP, and which manager shall have the power and authority to make management decisions relating to the City's obligations pursuant to this Agreement, including but not limited to change order authorizations, subject to any limitations set forth in the City's Charter or Ordinance or by the City Commission.
- 1.20. "Potential Infraction" means, with respect to any motor vehicle passing through a Designated Intersection, the data collected by the Vendor System with respect to such motor vehicle, which data shall be processed by the Vendor System for the purposes of allowing the Authorized Employee to review such data and determine whether a Red Zone Infraction has occurred.
- 1.21. "Proprietary Property" means, with respect to any Person, any written or tangible property owned or used by such Person in connection with such Person's business, whether or not such property is copyrightable or also qualifies as Confidential Information, including without limitation products, samples, equipment, files, lists, books, notebooks, records, documents, memoranda, reports, patterns, schematics, compilations, designs, drawings, data, test results, contracts, agreements, literature, correspondence, spread sheets, computer programs and software, computer print outs, other written and graphic records and the like, whether originals, copies, duplicates or summaries thereof, affecting or relating to the business of such Person, financial statements, budgets, projections and invoices.
- 1.22. "Vendor Marks" means all trademarks registered in the name of Vendor or any of its affiliates, such other trademarks as are used by Vendor or any of its affiliates on or in relation to TSCP at any time during the Term this Agreement, service marks, trade names, logos, brands and other marks owned by Vendor, and all modifications or adaptations of any of the foregoing.
- 1.23. "Vendor Project Manager" means the project manager appointed by Vendor in accordance with this Agreement, which project manager shall initially be named by the

- Vendor within 14 days of the execution of this Agreement or such person as Vendor shall designate by providing written notice thereof to the City from time to time, who shall be responsible for overseeing the construction and installation of the Designated Intersections and the implementation the TSCP, and who shall have the power and authority to make management decisions relating to Vendor's obligations pursuant to this Agreement, including but not limited to change-order authorizations.
- 1.24. "Traffic Safety Camera Program" means, collectively, the TSCP provided by Vendor and all of the other equipment, applications, back office processes and digital red light traffic enforcement cameras, sensors, components, products, software and other tangible and intangible property relating thereto.
- 1.25. "Traffic Safety Camera Program" means the process by which the monitoring, identification and enforcement of Infractions of the Red Zone Infractions is facilitated by the use of certain equipment, applications and back office processes of Vendor, including but not limited to cameras, flashes, central processing units, signal controller interfaces and sensor arrays which, collectively, are capable of identifying Infractions and recording such Infraction data in the form of photographic images of motor vehicles.
- 1.26. "Photo Red Light Infraction Criteria" means the standards and criteria by which Potential Infractions will be evaluated by Authorized Employees of the City, which standards and criteria shall include, but are not limited to, the definition of a Red Zone Infraction set forth in the City Ordinance, relying upon the duration of time that a traffic light must remain red prior to a Infraction being deemed to have occurred, and the location(s) in an intersection which a motor vehicle must pass during a red light signal prior to being deemed to have committed a Infraction, all of which shall be in compliance with all applicable laws, rules and regulations of Governmental Authorities.
- 1.27. "Traffic Signal Controller Boxes" means the signal controller interface and detector, including but not limited to the radar or video loop, as the case may be.
- 1.28. "Warning Period" means the period of ninety (90) days after the Installation Date of the first intersection approach, as set by the Ordinance.
- 2.0 Term. The term of this Agreement shall commence as of the date hereof and shall continue for a period of five (5) years after the date of the first paid notice from the first installed System (the "Initial Term"). The City shall have the right, but not the obligation, to extend the term of this Agreement for up to two (2) additional, five (5) year periods following the expiration of the Initial Term (each, a "Renewal Term" and collectively with the Initial Term, the "Term"). The City may exercise the right to extend the term of this Agreement for a Renewal Term by providing written notice to Vendor not less than sixty (60) days prior to the last day of the Initial Term or the Renewal Term, as the case may be.
- 3.0 Services. Vendor shall provide the TSCP to the City, in each case in accordance with the terms and provisions of the Ordinance.

- 3.1. Installation. With respect to the construction and installation of the Designated Intersection and the installation of the Vendor System at such Designated Intersection: the City and Vendor shall have the respective rights and obligations set forth on **Exhibit "B"** attached hereto.
- 3.2. Maintenance. With respect to the maintenance of the Vendor System at the Designated Intersections, the City and Vendor shall have the respective rights and obligations set forth on **Exhibit "C"** attached hereto.
- 3.3. Infraction Processing. During the Operational Period, Infractions shall be processed as set forth on **Exhibit "D"**, attached hereto.
- 3.4. Prosecution. The City shall prosecute Ordinance violations in respect thereof pursuant to the terms, procedures and requirements of the City Ordinance, subject to City's routine law enforcement discretion.
- 3.5. Other Rights and Obligations. During the Term, in addition to all of the other rights and obligations set forth in this Agreement, Vendor and the City shall have the respective rights and obligations set forth on **Exhibit "E"** attached hereto.
- 3.6. Change Orders. The City may from time to time request changes to the work required to be performed or the addition of products or services to those required pursuant to the terms of this Agreement by providing written notice thereof to Vendor, setting forth in reasonable detail the proposed changes (a "Change Order Notice"). Upon Vendor's receipt of a Change Order Notice, Vendor shall deliver a written statement describing the effect, if any, the proposed changes would have on the terms set forth in Exhibit " E " (the "Change Order Proposal"), which Change Order Proposal shall include (i) a detailed breakdown of the charge and schedule effects, (ii) a description of any resulting changes to the specifications and obligations of the parties, (iii) a schedule for the delivery and other performance obligations, and (iv) any other information relating to the proposed changes reasonably requested by the City. Following the City's receipt of the Change Order Proposal, the parties shall negotiate in good faith and agree to a plan and schedule for implementation of the proposed changes, the time, manner and amount of payment or price increases or decreases, as the case may be, and any other matters relating to the proposed changes. Any failure of the parties to reach agreement with respect to any of the foregoing as a result of any proposed changes shall not be deemed to be a breach of this Agreement, and any disagreement shall be resolved in accordance with Section 16.0.
- 4.0 License; Reservation of Rights.
  - 4.1. License. Subject to the terms and conditions of this Agreement, Vendor hereby grants the City, and the City hereby accepts from Vendor upon the terms and conditions herein specified, a non-exclusive, non-transferable license during the Term of this Agreement to: (a) solely within the City, access and use the Vendor System for the sole purpose of reviewing Potential Infractions and authorizing the issuance of Notices of Infraction pursuant to the terms of this Agreement, and to print copies of any content posted on the Vendor System in connection therewith, (b) disclose to the public

(including outside of the City) that Vendor is providing services to the City in connection with TSCP pursuant to the terms of this Agreement, and (c) use and display the Vendor Marks on or in marketing, public awareness or education, or other publications or materials relating to the TSCP, so long as any and all such publications or materials are approved in advance by Vendor.

- 4.2. Reservation of Rights. The City hereby acknowledges and agrees that: (a) Vendor is the sole and exclusive owner of the Vendor System, the Vendor Marks, all Intellectual Property arising from or relating to the Vendor System, and any and all related Equipment provided under this Agreement, (b) the City neither has nor makes any claim to any right, title or interest in any of the foregoing, except as specifically granted or authorized under this Agreement, and (c) by reason of the exercise of any such rights or interests of City pursuant to this Agreement, the City shall gain no additional right, title or interest therein.
- 4.3. Restricted Use. The City hereby covenants and agrees that it shall not (a) make any modifications to the Vendor System, including but not limited to any Equipment, (b) alter, remove or tamper with any Vendor Marks, (c) use any of the Vendor Marks in any way which might prejudice their distinctiveness, validity or the goodwill of Vendor therein, (d) use any trademarks or other marks other than the Vendor Marks in connection with the City's use of the Vendor System pursuant to the terms of this Agreement without first obtaining the prior consent of Vendor, or (e) disassemble, de-compile or otherwise perform any type of reverse engineering to the Vendor System, the Vendor System, including but not limited to any Equipment, or to any, Intellectual Property or Proprietary Property of Vendor, or cause any other Person to do any of the foregoing.
- 4.4. Protection of Rights. Vendor shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of any Intellectual Property of Vendor, including without limitation the filing of applications to register as trademarks in any jurisdiction any of the Vendor Marks, the filing of patent application for any of the Intellectual Property of Vendor, and making any other applications or filings with appropriate Governmental Authorities. The City shall not take any action to remedy or prevent such protective activities, and shall not in its own name make any registrations or filings with respect to any of the Vendor Marks or the Intellectual Property of Vendor without the prior written consent of Vendor.
- 4.5. Infringement. The City shall use its reasonable best efforts to give Vendor prompt notice of any activities or threatened activities of any Person of which it becomes aware that infringes or violates the Vendor Marks or any of Vendor's Intellectual Property or that constitute a misappropriation of trade secrets or act of unfair competition that might dilute, damage or destroy any of the Vendor Marks or any other Intellectual Property of Vendor. Vendor shall have the exclusive right, but not the obligation, to take action to enforce such rights and to make settlements with respect thereto.
- 4.6. Infringing Use. The City shall give Vendor prompt written notice of any action or claim action or claim, whether threatened or pending, against the City alleging that the Vendor Marks, or any other Intellectual Property of Vendor, infringes or violates any

patent, trademark, copyright, trade secret or other Intellectual Property of any other Person, and the City shall render to Vendor such reasonable cooperation and assistance as is reasonably requested by Vendor in the defense thereof; provided, that Vendor shall reimburse the City for any reasonable costs, including without limitation attorneys fees and court costs, as well as City staff costs, incurred in providing such cooperation and assistance. If such a claim is made and Vendor determines in the exercise of its sole discretion, or a court or administrative proceeding of competent jurisdiction determines, that an infringement may exist, Vendor shall have the right, but not the obligation, to procure for the City the right to keep using the allegedly infringing items, modify them to avoid the alleged infringement or replace them with non-infringing items, all at no cost to the City. In addition, in such event, the City has the right, but not the obligation, to terminate this Agreement pursuant to paragraph 6.1.

## 5.0 Representations and Warranties.

### 5.1 Vendor Representations and Warranties.

5.1.1. Authority. Vendor hereby warrants and represents that:

5.1.1.1. it has all right, power and authority to execute and deliver this Agreement and perform its obligations hereunder; and,

5.1.1.2. to the extent legally required, Vendor has all ownership rights, licenses, or other required authority to use the software and hardware it installs to perform the services under this Agreement.

5.1.2. Professional Services. Vendor hereby warrants and represents that any and all services provided by Vendor pursuant to this Agreement shall be performed in a professional and workmanlike manner and, with respect to the installation of the Vendor System, subject to applicable law, in compliance with all specifications provided to Vendor by the City.

### 5.2. City Representations and Warranties.

5.2.1. Authority. The City hereby warrants and represents that it has all right, power and authority to execute and deliver this Agreement and perform its obligations hereunder; provided that Vendor acknowledges that the initial program is premised on being consistent with the requirements and authority of state law, applicable attorney general opinions, and the City's Ordinance, and City cannot and does not warrant the outcome of any judicial or legislative action that may be taken affecting these authorities subsequent to the execution of this Agreement.

5.3. Professional Services. The City hereby warrants and represents that any and all services provided by the City pursuant to this Agreement shall be performed in a professional and workmanlike manner in City's governmental capacity .

## 6.0 Termination.

- 6.1. Termination for Cause: Either party shall have the right to terminate this Agreement immediately by written notice to the other if (i) state or federal statutes are amended, or regulations or policies are adopted by agencies with jurisdiction, to prohibit or materially change the operation of TSCP so as to make it reasonably impractical to operate the red light enforcement program, including without limitation changes that would prohibit the red light enforcement program, or which would impose restrictions on revenues and uses that are contrary to the terms of this Agreement; (ii) any court having jurisdiction over City rules, or declares, that the City's red light enforcement program is invalid or results from the Vendor System of photo red light enforcement are inadmissible in evidence, or otherwise renders a decision that makes it reasonably impractical to operate the red light enforcement program; (iii) a determination by a court of competent jurisdiction or other applicable dispute resolution forum that Vendor has infringed upon a third party's patent, trademark, copyright, trade secret or other intellectual property; (iv) the other party commits any material breach of any of the provisions of this Agreement; (v) Vendor's non-payment of revenues to City as required by this Agreement. In the event of a termination due to this Section, City shall be relieved of any further obligations to Vendor other than as specified herein. Either party shall have the right to remedy the cause for termination within forty-five (45) calendar days (or within such other time period as the City and Vendor shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after written notice from the non-causing party setting forth in reasonable detail the events of the cause for termination.

The rights to terminate this Agreement given in Section 6.1 shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach of this Agreement.

- 6.2 Warning Period. The Ordinance provides for a one time ninety (90) day Warning Period, during which time courtesy notices of infractions, with no civil fees, are used. The parties hereto acknowledge that this Warning Period will be used to verify the reliability of the program and the detection of infractions, as well as to monitor anticipated changes in state law on the subject of camera enforcement of red light infractions. The Warning Period shall commence on the date the initial camera and the Infraction Processing procedures become operational, with the exact date to be confirmed in writing by the parties' Project Managers. At any time up to the conclusion of the initial Warning Period, the City, through a motion adopted by the City Commission, may terminate the TSCP, for any or no cause. The City shall not be liable for any costs or expenses incurred by Vendor during this Warning Period. If the City Commission determines to terminate the program pursuant to this paragraph, this Agreement shall be deemed terminated and the parties shall proceed pursuant to Section 6.3 below. In addition to the City's right to terminate during the Warning Period, for a period of 90 calendar days after the expiration of the Warning Period, either party shall have the right to terminate the Agreement.
- 6.3 Procedures Upon Termination. This section 6.3 shall apply to the expiration of this Agreement and to the early termination of the Agreement. The termination of this Agreement shall not relieve either party of any liability that accrued prior to such

termination. Except as set forth in this Section 6.3, upon the termination of this Agreement, all of the provisions of this Agreement shall terminate and:

- 6.3.1 Vendor shall (i) immediately cease to provide services, including but not limited to work in connection with the construction or installation activities and services in connection with the TSCP, (ii) promptly deliver to the City any and all Proprietary Property of the City provided to Vendor pursuant to this Agreement, (iii) promptly deliver to the City a final report to the City regarding the collection of data and the issuance of Notices of Infraction in such format and for such periods as the City may reasonably request, and which final report Vendor shall update or supplement from time to time when and if additional data or information becomes available, (iv) provide City all data pertaining to outstanding Civil Fee payments due and owing to City and potential payments due to Vendor, (v) provide City with its proposed schedule for the removal of the Vendor's equipment, at no cost to the City, from the City and once such schedule is approved by City Vendor shall remove such pursuant to the schedule; and (vi) provide such assistance as the City may reasonably request from time to time in connection with prosecuting and enforcing Notices of Infraction issued prior to the termination of this Agreement.
- 6.3.2 The City shall (i), except for pending enforcement cases, immediately cease using the TSCP, accessing the Vendor System and using any other Intellectual Property of Vendor, and (ii) promptly deliver to Vendor any and all Proprietary Property of Vendor provided to the City pursuant to this Agreement, other than such equipment installed by Vendor along the roadways for the enforcement program.
- 6.3.3 Unless the City and Vendor have agreed to enter into a new agreement relating to the TSCP or have agreed to extend the Term of this Agreement, Vendor shall remove any and all Equipment or other materials of Vendor installed in connection with Vendor's performance of its obligations under this Agreement, at no cost to City, including but not limited to housings, poles and camera systems, and Vendor shall restore the Designated Intersections to substantially the same condition such Designated Intersections were in immediately prior to this Agreement, except for foundation removal, which shall be left approximately flush with grade and no exposed rebar, steel or other hazards, at no cost to City pursuant to the schedule agreed upon by the parties in section 6.3.1.
- 6.3.4 After the first three (3) years of this Agreement, City may provide for the early termination of this Agreement for City's convenience in the event that the City Commission determines to discontinue having a TSCP. In such event, the remaining provisions of section 6.3 shall apply. City shall have no further liability for any such early termination. The parties recognize that other provisions of this Agreement serve as consideration for this provision.

7.0 Fees to be Paid to Vendor and Payment Processing.

- 7.1. Vendor shall have the right to receive the compensation set forth on, and pursuant to, **Exhibit F** attached hereto.



- 7.2. Vendor shall be responsible for processing payments of the Civil Fees. The Vendor shall provide payment means through mail, telephone and on-line processes. Vendor shall track all payments and handle all applied payments, unapplied payments, overpayments, refunds, adjustments, dismissals and reversals.
- 7.3. Vendor shall pay City all payments received during a calendar month, no later than the 7<sup>th</sup> day of the next following month.
- 7.4. Vendor shall invoice the City for all applicable fees according to the fee schedule delineated on **Exhibit “ F”**. Along with the invoice, Vendor shall provide information to the City, in a format acceptable to the City, supporting the invoice amounts forwarded by Vendor to the City. In addition, City shall have access to the financial reporting functions of Vendor’s system upon City’s request.
- 8.0 Survival. Notwithstanding the foregoing, the parties’ obligations shall survive the termination of the Agreement to the extent necessary to fulfill the parties’ accrued monetary obligations under this Agreement.
- 9.0 Confidentiality. During the term of this Agreement and for a period of three (3) years thereafter, neither party shall disclose to any third person, or use for itself in any way for pecuniary gain, any Confidential Information learned from the other party during the course of the negotiations for this Agreement or during the Term of this Agreement, subject to the obligations and requirements of Florida’s public records laws and public meetings law. Upon termination of this Agreement, each party shall return to the other all tangible Confidential Information of such party. Each party shall retain in confidence and not disclose to any third party any Confidential Information without the other party’s express written consent, except (a) to its employees who are reasonably required to have the Confidential Information, (b) to its agents, representatives, attorneys and other professional advisors that have a need to know such Confidential Information, provided that such parties undertake in writing (or are otherwise bound by rules of professional conduct) to keep such information strictly confidential, and (c) pursuant to, and to the extent of, a request or order by any Governmental Authority, including laws relating to public records.
- 10.0 Indemnification and Liability.
- 10.1. Indemnification – Negligence. The Vendor agrees to defend, indemnify and hold harmless the City, its trustees, elected and appointed officers, agents, servants and employees, from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys’ fees, liabilities, damages, orders, judgments, or decrees (“Losses”), sustained by the City or any third party arising out of, or by reason of, or resulting from the Vendor’s negligent acts, errors, or omissions, except to the extent such Losses arise from the negligence of the City or City’s employees, officers or agents. In the event that a court of competent jurisdiction determines that the provisions of Sec. 725.06, F.S., and / or Sec. 725.08 , F.S., apply to this Agreement, then , in such event, Vendor shall defend, indemnify and hold harmless City and

City's officers, employees and agents only to the fullest extent authorized by said cited statutes .

- 10.2. Indemnification – Infringements. The Vendor shall indemnify City for all loss, damage, expense or liability including, without limitation, court costs and attorneys' fees that may result by reason of any infringement or claim of infringement of any patent, trademark, copyright, trade secret or other proprietary right relating to services furnished pursuant to this Agreement. The Vendor will defend and/or settle at its own expense, with legal counsel reasonably acceptable to the City, any action brought against the City to the extent that it is based on a claim that products or services furnished to City by the Vendor pursuant to this Agreement, or if any portion of the services or goods related to the performance of the service becomes unusable as a result of any such infringement or claim. Any infringement or claim that renders any portion of the services to be performed by this agreement to be unusable, or materially affects the Vendor's Red Light System as functionally described herein, shall be grounds for a default of this Agreement.
- 10.3. The parties recognize that various provisions of this Agreement, including but not necessarily limited to this Section, provide for indemnification to be provided by the Vendor and agree that in the event that the law is construed to require a specific consideration to be given therefore, the parties therefore agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities, and the providing of such indemnities is deemed to be part of the specifications with respect to the services to be provided by Vendor. Furthermore, the parties understand and agree that the covenants and representations relating to this indemnification provision shall survive the term of this Agreement and continue in full force and effect as to the Vendor's responsibility to indemnify for events occurring during the term of this Agreement for a period of not less than five (5) years after expiration or termination of the Agreement.
- 10.4. Legal Challenges. The parties recognize and acknowledge that the TSCP contemplated herein may be subject to legal challenge and/or judicial review as a new or innovative program. It is understood and acknowledged that various aspects of the program may be challenged. In the event of a legal challenge to the Program, City and Vendor shall share in the cost of the defense on a pro-rata basis.
- 10.5. In the event that a court of competent jurisdiction or the State of Florida, including any of its agencies, orders or requires the City to return any payments made for infractions of the City Ordinance , Vendor shall, at no additional charge, assist City to perform all relevant portions of any such order, decree, judgment, etc., required to be performed by the City including, but not limited to, assisting the City to locate each violator so that any ordered reimbursement may be made. Prior to the close of the "Warning Period" established in Section 6.2, Vendor shall provide to the City with adequate security in an acceptable form to the City which is intended to protect City from liability, if any, under this paragraph 10.5. Such security may be in the form of lien on Vendor's equipment or other form of security to be determined by agreement of the parties.

10.6. Change in State Law. The parties recognize and acknowledge that it has been reported that the Florida Legislature is considering various revisions to State Uniform Traffic Laws which, if enacted, would expressly authorize municipalities to issue traffic infractions through the use of Red Light Cameras without the necessity of using the code enforcement system. Should the Florida Legislature enact any law modifying the Uniform Traffic Laws so as to expressly permit the TSCP, sections 10.4 and 10.5 shall automatically become void.

10.7. Notice of Claims. If the City or Vendor receives notice of any claim or circumstances which may give rise to an indemnified loss under this Section 10, the receiving party shall give written notice to the other party within ten (10) days of receipt. The notice must include the following:

- (a) a description of the indemnification event in reasonable detail,
- (b) the basis on which indemnification may be due, and
- (c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the ten (10) day period, it does not waive any right to indemnification except to the extent that Vendor is directly prejudiced, suffers loss, or incurs expense because of the delay.

10.8. Review of Indemnification Provisions. At the conclusion of the Warning Period, and the 2008 session of the Florida Legislature, the City and Vendor will review the indemnification provisions in this Section 10.

11.0 Independent Contractor. This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the Vendor is an independent contractor under this Agreement and not the City's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. The Vendor shall retain sole and absolute discretion in the judgment of the manner and means of carrying out Vendor's activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of Vendor, which policies of Vendor shall not conflict with City, or United States policies, rules or regulations relating to the use of Vendor's funds provided for herein. The Vendor agrees that it is a separate and independent enterprise from the City, that it has full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the Vendor and the City and the City will not be liable for any obligation

incurred by Vendor, including but not limited to unpaid minimum wages and/or overtime premiums.

- 12.0 Assignments; Amendments. This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by either party, including without limitations purchases of controlling interest in Vendor or merger, without the prior written consent of the other party.

It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

- 13.0 No Contingent Fees. Vendor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Vendor to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Vendor any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or Infraction of this provision, the City shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

- 14.0 Notices. Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended , at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. For the present, the VENDOR and the CITY designate the following as the respective places for giving of notice:

City: Eric M. Soroka, City Manager  
City of Aventura  
19200 West Country Club Drive  
Aventura, Florida 33180  
Phone: (305) 466-8910  
Fax: (305) 466-8919

Copies To: David M. Wolpin, City Attorney  
Weiss, Serota, Helfman, Pastoriza, Cole & Boniske, P.L.  
200 East Broward Boulevard, Suite 1900  
Ft. Lauderdale , Florida 33301  
Phone: (954) 763-4242  
Fax: (954) 764-7770

And

Steven Steinberg, Police Chief  
City of Aventura

19200 West Country Club Drive  
Aventura, Florida 33180  
Phone: (305) 466-8066  
Fax: (305) 466-8991

Vendor: American Traffic Solutions, LLC.  
14861 N. Scottsdale Road, Suite 109  
Scottsdale, AZ 85253  
Attention: Chief Operating Officer

And

Alexander P. Heckler, Esq.  
Shutts and Bowen LLP  
200 East Broward Boulevard #2100  
Fort Lauderdale, Florida 33301

- 15.0 Audit Rights. Each of parties hereto shall have the right to audit the books and records of the other party hereto (the "Audited Party") solely for the purpose of verifying the payments, if any, payable pursuant to this Agreement. Any such audit shall be conducted upon not less than forty-eight (48) hours' prior notice to the Audited Party, at mutually convenient times and during the Audited Party's normal business hours. Except as otherwise provided in this Agreement, the cost of any such audit shall be borne by the non-Audited Party. In the event any such audit establishes any underpayment of any payment payable by the Audited Party to the non-Audited Party pursuant to this Agreement, the Audited Party shall promptly pay the amount of the shortfall, and in the event that any such audit establishes that the Audited Party has underpaid any payment by more than ten percent (10%) of the amount actually owing, the cost of such audit shall be borne by the Audited Party. In the event any such audit establishes any overpayment by the Audited Party of any payment made pursuant to this Agreement, non-Audited Party shall promptly refund to the Audited Party the amount of the excess.
- 16.0 Dispute Resolution. Upon the occurrence of any dispute or disagreement between the parties hereto arising out of or in connection with any term or provision of this Agreement, the subject matter hereof, or the interpretation or enforcement hereof (the "Dispute"), the parties shall engage in informal, good faith discussions and attempt to resolve the Dispute. In connection therewith, upon written notice of either party, each of the parties will appoint a designated officer whose task it shall be to meet for the purpose of attempting to resolve such Dispute. The designated officers shall meet as often as the parties shall deem to be reasonably necessary. Such officers will discuss the Dispute. If the parties are unable to resolve the Dispute in accordance with this Section 16.0, and in the event that either of the parties concludes in good faith that amicable resolution through continued negotiation with respect to the Dispute is not reasonably likely, then the parties may mutually agree to submit to binding or nonbinding arbitration or mediation.

- 17.0 Binding Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.
- 18.0 Headings. Headings herein are for the convenience of reference only and shall not be considered on any interpretation of this Agreement.
- 19.0 Exhibits. Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits shall be treated as part of this Agreement and are incorporated herein by reference.
- 20.0 Waiver. Failure of either party to insist upon strict performance of any covenant or condition of this Agreement, or to execute any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right, but the same shall remain in full force and effect.
- 21.0 Legal Representation. It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contributions of both parties.
- 22.0 Severability. If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law, except that this provision shall not be deemed to deprive any party of any legal remedy, including termination.
- 23.0 Insurance.
- 23.1. Throughout the term of this Agreement, the Vendor agrees to maintain in force at their own expense insurance as follows:
- 23.1.1. Comprehensive General Liability insurance to cover liability for bodily injury and property damage. Exposures to be covered are premises, operations, products\completed operations, and contractual liability . Coverage must be written on an occurrence basis, with the following limits of liability
- A. Bodily Injury/Property Damage
- |    |                  |             |
|----|------------------|-------------|
| 1. | Each Occurrence  | \$1,000,000 |
| 2. | Annual Aggregate | \$1,000,000 |
- B. Personal Injury

1. Annual Aggregate \$1,000,000

23.1.2. Worker's Compensation Insurance shall be maintained during the life of this contract to comply with Florida statutory limits for all employees. The following limits must be maintained:

A.	Worker's Compensation	Statutory
B.	Employer's Liability	\$100,000 each accident \$500,000 Disease-policy limit \$100,000 Disease-employee

If Vendor claims to be exempt from this requirement, Vendor shall provide City proof of such exemption along with a written request for City to exempt Vendor, written on Vendor letterhead.

23.1.3. Comprehensive Auto Liability – coverage shall include owned, hired and non-owned vehicles.

A. Bodily Injury and Property Damage combined single limit

1.	Each Occurrence	\$1,000,000
2.	Annual Aggregate	\$1,000,000

23.1.4. Professional Liability - \$1,000,000.

23.1.5. Vendor shall name the City as an additional insured on each of the policies required herein, with the exception of the Vendor's Worker's Compensation policy and Professional Liability.

23.1.6. Certificates of Insurance, reflecting evidence of the required insurance, shall be filed with the City's Risk Manager prior to the commencement of this Agreement. These Certificates shall contain a provision that coverage's afforded under these policies will not be canceled or impaired until at least forty five (45) days prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. Financial Ratings must not be less than "A-VI." Insurance shall be in force until the obligations required to be fulfilled under the terms of the Contract are satisfied. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the period of this contract, then in that event, the Vendor shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the contract and extension thereunder is in effect.

23.1.7. Any insurance required of Vendor pursuant to this Agreement must also be required by any sub-contractor of Vendor in the same limits and with all requirements as provided herein, including naming the City as an additional insured, if any work is subcontracted unless such subcontractor is covered by the protection afforded by the Vendor and provided proof of such coverage is provided to City. The Vendor and any sub-contractor of Vendor shall maintain such policies during the term of this Agreement.

24.0 Governing Law. This Agreement shall be governed by the laws of the State of Florida with venue lying in Miami-Dade County, Florida.

25.0 Extent of Agreement. This Agreement represents the entire and integrated agreement between the City and the Vendor and supersedes all prior negotiations, representations or agreements, either written or oral.

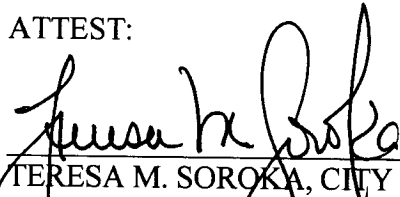
26.0 Waiver of Jury Trial . In the event of any litigation between the parties which in any way arises out of this Agreement, the parties hereby agree to waive any right to trial by jury.

27.0 RFP. Vendor agrees to comply with any provisions of the RFP which are not in conflict with this Agreement, and to comply with and honor any written representations, clarifications and exceptions made by Vendor during the RFP process.

28.0 Compliance with Law. Vendor shall comply with all applicable laws in the performance of its services hereunder, and represents that it possesses all required licenses and certifications to perform the services.

**IN WITNESS OF THE FOREGOING**, the parties have set their hands and seals the day and year first written above.

ATTEST:

  
TERESA M. SOROKA, CITY CLERK

CITY OF AVENTURA

BY:

  
ERIC M. SOROKA, CITY MANAGER

APPROVED AS TO FORM:

  
CITY ATTORNEY



WITNESSES:

[Signature]  
[Signature]

VENDOR

BY:

[Signature]

Print Name: ADAM TUTON

Title: EXEC VP/COO

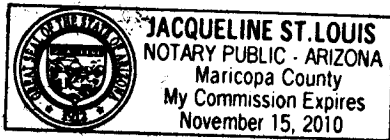
ATTEST:

\_\_\_\_\_  
SECRETARY

STATE OF ARIZONA :  
: SS:  
COUNTY OF MARICOPA :

ON THIS 7<sup>TH</sup> day of FEBRUARY, 2008, before me, the undersigned notary public, personally appeared ADAM TUTON, personally known to me, or who has produced A DRIVER'S LICENSE as identification, and is the person who subscribed to the foregoing instrument and who acknowledged that he executed the same on behalf of said Corporation and that he was duly authorized to do so.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



[Signature]  
NOTARY PUBLIC  
JACQUELINE STLOUIS  
Print or Type Name

My Commission Expires:

EXHIBIT "A"  
Designated Intersection

The contract provides for the implementation of cameras at no less than six (6) intersections, at least three (3) of which shall be installed within forty five days (45) days of receipt of permits for each agreed upon approach.

The proposed six intersections are as follows:

Biscayne Blvd. & N.E. 178 Street	Biscayne Blvd. & N.E. 191 Street
Biscayne Blvd. & N.E. 199 Street	W. Country Club Drive & N.E. 199 Street
Miami Gardens Drive & Biscayne Blvd.	W. Country Club Drive & William Lehman Causeway

Installation of any approach is subject to engineering and video analysis results.

Additional approaches will be selected based on collision history, input and recommendations from the City's Police Department, and an engineering feasibility assessment. Vendor shall apply for a permit within sixty (60) days of the approval of this Agreement by the City Commission.

Vendor will provide the City with video evaluation of candidate sites using the Axis VIMS system to assist the City's Police Department in its recommendations.

The program may be implemented at additional intersections after the conclusion of the Warning Period. The intersections will be designated by the Police Department, which designation will be based upon Police Department staff review and an engineering analysis.

EXHIBIT "B"  
Construction and Installation Obligations

Timeframe for Installation: Traffic Safety Camera Program

Vendor will have each specified intersection installed and activated in phases in accordance with an implementation plan to be mutually agreed to by Vendor Traffic Systems and the City Manager.

Vendor will use reasonable commercial efforts to install the system in accordance with the schedule set forth in the implementation plan that will be formalized upon project commencement.

Vendor will use reasonable commercial efforts to install and activate all specified intersection within forty-five (45) days subsequent to receipt of all permits required by section 1.4 of this Exhibit B.

1. Vendor Obligations. Vendor shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Vendor's sole expense):
  - 1.1. Appoint the Vendor Project Manager and a project implementation team consisting of between one (1) and four (4) people to assist the Vendor Project Manager;
  - 1.2. Request current "as-built" electronic engineering drawings for the Designated Intersections (the "Drawings") from the County traffic engineer;
  - 1.3. Develop and submit to the City for approval construction and installation specifications in reasonable detail for the Designated Intersection, including but not limited to specifications for all radar sensors, pavement loops, electrical connections and traffic controller connections, as required; and
  - 1.4. Seek approval from the relevant Governmental Authorities having authority or jurisdiction over the construction and installation specifications for the Designated Intersection (collectively, the "Approvals"), which will include compliance with City permit applications.
  - 1.5. Seek rights from private property owners, as necessary for the placement of System Equipment at designated intersections where Governmental Authorities have jurisdiction over the designated intersection and adjacent rights of right of way, and such governmental Entity denies authority to Vendor for the installation of its equipment.
  - 1.6. Finalize the acquisition of the Approvals;
  - 1.7. Submit to the City a public awareness strategy for the City's consideration and approval, which strategy shall include media and educational materials for the City's approval or amendment according to the ATS proposal (the "Awareness Strategy");

- 1.8. Develop the Red Light Infraction Criteria in consultation with the City;
- 1.9. Develop the Enforcement Documentation for approval by the City, consistent with the requirements of the City Ordinance;
- 1.10. Complete the installation and testing of all necessary Equipment, including hardware and software, at the Designated Intersections (under the supervision of the City);
- 1.11. Cause an electrical sub-contractor to complete all reasonably necessary electrical work at the Designated Intersections, including but not limited to the installation of all related Equipment and other detection sensors, poles, cabling, telecommunications equipment and wiring, which work shall be performed in compliance with all applicable local, state and federal laws and regulations;
- 1.12. Install and test the functionality of the Designated Intersections with the Vendor System and establish fully operational Infraction processing capability with the Vendor System;
- 1.13. Implement the use of the Vendor System at each of the Designated Intersections;
- 1.14. Deliver the Materials to the City;
- 1.15. Issue Notices of Infraction, and if the civil penalty is unpaid or the alleged violator requests a hearing, issue Notices of Hearing for Authorized Infractions pursuant to City Ordinance;
- 1.16. Obtain access to the records data of the Department of Motor Vehicles in Vendor's capacity as needed for the program; and,
- 1.17. Vendor shall provide training for personnel of the City, including, but not limited to, the persons who City shall appoint as Authorized Employees and other persons involved in the administration of the TSCP, regarding the operation of the Vendor System and the TSCP. This shall include training with respect to the Vendor System and its operations, strategies for presenting Infractions Data in court and judicial proceedings and a review of the Enforcement Documentation;
- 1.18. Interact with court and judicial personnel, including the City's hearing officer to address issues regarding the implementation of the Vendor System, the development of a subpoena processing timeline that will permit the offering of Infractions Data in hearings and judicial proceedings, and coordination between Vendor, the City and the City's Hearing officer; and
- 1.19. Provide reasonable public relations resources and media materials to the City in the event that the City elects to conduct a public launch of the TSCP.
- 1.20. Notice of Infraction processing and Notice of Infraction re-issuance, as well as notice of hearing.

2. CITY OBLIGATIONS. The City shall do or cause to be done each of the following (in each case, unless otherwise stated below, at City's sole expense):
- 2.1.1. Appoint the Project Manager;
  - 2.1.2. Assist Vendor in obtaining the Drawings from the relevant Governmental Authorities;
  - 2.1.3. Notify Vendor of any specific requirements relating to the construction and installation of any Intersection or the implementation of the TSCP;
  - 2.1.4. Assist Vendor in seeking the Approvals
  - 2.1.5. Provide reasonable access to the City's properties and facilities in order to permit Vendor to install and test the functionality of the Designated Intersections and the TSCP;
  - 2.1.6. Provide reasonable access to the personnel of the City and reasonable information about the specific operational requirements of such personnel for the purposes of performing training;
  - 2.1.7. Seek approval or amendment of Awareness Strategy and provide written notice to Vendor with respect to the quantity of media and program materials (the "Materials") that the City will require in order to implement the Awareness Strategy during the period commencing on the date on which Vendor begins the installation of any of the Designated Intersection and ending six (6) months after the Installation Date;
  - 2.1.8. Assist Vendor in developing the Red Light Infraction Criteria; and
  - 2.1.9. Seek approval of the Enforcement Documentation.
  - 2.1.10. The City shall, on a form provided by Vendor, provide verification to the State Department of Motor Vehicles, National Law enforcement Telecommunications System, or appropriate authority indicating that Vendor is acting as an Agent of the Customer for the purposes of accessing vehicle ownership data pursuant to the list of permissible uses delineated in the Drivers Privacy Protection Act 18 U.S.C. § 2721, Section (b) (1) and as may otherwise be provided or required by any provision of applicable state law.
  - 2.1.11. If feasible, and only after all necessary approvals have been obtained from utilities and other governmental entities with jurisdiction, City shall allow Vendor to access power from existing power sources at no cost to City and shall allow or facilitate access to traffic signal phase connections to a pull box, pole base, or controller cabinet nearest to each Camera System within the City's jurisdiction.
  - 2.1.12. The Police Department shall process each potential violation in accordance with State Laws and/or City Ordinances within seven (7) business days of its

appearance in the Police Review Queue, using Axisis™ to determine which violations will be issued as Citations or Notices of Violation or as soon as reasonably practical in the event of technical difficulties, power outages, or other circumstances beyond the City's control, or with the consent or approval of Vendor for extension.

- 2.1.13. City shall provide access to the internet for the purpose of processing violations and adjudications.
- 2.1.14. Vendor shall, at no additional cost to the City , provide Police Department / Adjudication workstation computer monitors for citation review and approval which should provide a resolution of 1280 x 1024, which shall be returned to Vendor in the event the Agreement is terminated.
- 2.1.15. For optimal data throughput, Police Department / Adjudication workstations should be connected to a high-speed internet connection with bandwidth of T-1 or greater. Vendor will coordinate directly with the City's Information Technology (IT) Department on installation and implementation of the computerized aspects of the program.
- 2.1.16. Police Department shall provide signatures of all authorized police users who will review events and approve citations on forms provided by Vendor .
- 2.1.17. In the event that remote access to the ATS Axisis VPS System is blocked by City's network security infrastructure, the City's IT Department and the counterparts at ATS shall coordinate to facilitate appropriate communications access while maintaining required security measures.

## EXHIBIT "C"

### Maintenance

1. All repair and maintenance of Traffic Safety Camera Program systems and related equipment will be the sole responsibility of Vendor, including but not limited to maintaining the casings of the cameras included in the Vendor System and all other Equipment in reasonably clean and graffiti-free condition.
2. Vendor shall not open the Traffic Signal Controller Boxes without a representative of Miami-Dade County Traffic Engineering present.
3. The provision of all necessary communication, broadband and telephone services to the Designated Intersections will be the sole responsibility of the Vendor
4. The provision of all necessary electrical services to the Designated Intersections will be the sole responsibility of the Vendor.
5. In the event that images of a quality suitable for the Authorized Employee to identify Infractions cannot be reasonably obtained without the use of flash units, Vendor shall provide and install such flash units.
6. The Vendor Project Manager (or a reasonable alternate) shall be available to the City's Project Manager each day.

EXHIBIT "D"  
Infraction Processing

1. All Infractions Data shall be stored on the Vendor System;
2. The Vendor System shall process Infractions Data gathered from the Designated Intersection into a format capable of review by the Authorized Employee via the Vendor System;
3. The Vendor shall make the initial determination that the image meets the requirements of the Ordinance and this Agreement, and is otherwise sufficient to enable the City to meet its burden of demonstrating a violation of the Ordinance. If the Vendor determines that the standards are not met, the image shall not be processed any further.
4. The Vendor System shall be accessible by the Authorized Employee through a virtual private network in encrypted format by use of a confidential password on any computer equipped with a high-speed internet connection and a web browser;
5. Vendor shall provide storage capabilities for the City to store infractions identified for prosecution for a period of time of not less than four (4) years after final disposition of a case.
6. Vendor shall provide the Authorized Employee with access to the Vendor System for the purposes of reviewing the pre-processed Infractions Data within seven (7) days of the gathering of the Infraction Data from the applicable Designated Intersections.
7. The City shall cause the Authorized Employee to review the Infractions Data and to determine whether a Notice of Infraction shall be issued with respect to each Potential Infraction captured within such Infraction Data, and transmit each such determination to Vendor using the software or other applications or procedures provided by Vendor on the Vendor System for such purpose. **VENDOR HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A NOTICE OF INFRACTION SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED EMPLOYEE AND SHALL BE MADE IN SUCH AUTHORIZED EMPLOYEE'S SOLE DISCRETION (A "NOTICE OF INFRACTION DECISION"), AND IN NO EVENT SHALL VENDOR HAVE THE ABILITY OR AUTHORIZATION TO MAKE A NOTICE OF INFRACTION DECISION;**
8. With respect to each Authorized Infraction, Vendor shall print and mail a Notice of Infraction within seven (7) days after Vendor's receipt of such authorization from the City's Authorized Employee; provided, however, during the Warning Period, warning Infraction notices shall be issued in respect of all Authorized Infractions;
9. Vendor shall provide a toll-free telephone number, at its sole expense, for the purposes of answering citizen inquiries.
10. Vendor shall permit the Authorized Employee to generate monthly reports using the Vendor Standard Report System.



11. Upon Vendor's receipt of a written request from the City and in addition to the Standard Reports, Vendor shall provide, without cost to the City, reports regarding the processing and issuance of Notices of Infraction, the maintenance and downtime records of the Designated Intersections and the functionality of the Vendor System with respect thereto to the City in such format and for such periods as the City may reasonably request, without cost to the City;
12. Upon Vendor's receipt of a written request from the City at least fourteen (14) calendar days in advance of a hearing, Vendor shall provide expert witnesses for use by the City in prosecuting Infractions, before the City's hearing officer, at no cost to the City;
13. Vendor shall provide such training to City personnel as shall be reasonably necessary in order to allow such personnel to act as expert witnesses on behalf of the City with respect to the Red Light Enforcement Program. However, if a specific case requires testimony on the technical aspects of the equipment, upon City's request Vendor shall provide the City with an expert in the hearing in that case at no cost to the City.
14. During the Warning Period, Vendor shall implement a public relations program, in coordination with the City and upon City's approval, at no cost to the City in accordance with the elements included in Vendor's proposal dated November 13, 2007.
15. Notice of Infraction Form. Vendor shall prepare and provide to City a Notice of Infraction Form that provides, at a minimum, the following information:
  - a. name and address of the owner of the vehicle involved in the infraction;
  - b. the registration number of the vehicle involved in the infraction;
  - c. a citation to the City's Ordinance violated;
  - d. the location of the intersection where the infraction occurred;
  - e. the date and time of the infraction;
  - f. a copy of the recorded image of the infraction;
  - g. the amount of fee and charges imposed and the date by which the fee and charges must be paid or appealed;
  - h. instructions on all methods of payment for the fee;
  - i. a clear statement of the time limit to file an appeal and describing the procedure for appealing the infraction;
  - j. a statement that the City's traffic infraction officer has reviewed and observed the recorded images evidencing the violation of the Ordinance and has found reasonable and probable grounds to believe that an infraction has occurred and can identify the license tag number of the violating vehicle; and,

- k. a conspicuous statement, printed on larger font than the remaining statements on the Notice of Infraction, and bolded, stating that if the owner of the vehicle fails to pay the civil fee within the time allotted, or fails to timely appeal the infraction, the owner shall be deemed to have waived his or her right to contest the infraction, and has admitted to the infraction reflected in the Notice of Infraction.
16. Vendor agrees that the City shall have the right to review and approve the form Notice of Infraction prior to its use, and that in the event City determines additional information should be included in the Notice of Infraction, Vendor shall modify the Notice of Infraction form, at its sole expense, to comply with those requirements.
17. For any city using ATS lockbox or epayment services, Vendor will establish a demand deposit account bearing the title, "American Traffic Solutions, Inc. as agent for Customer" at U.S. Bank. All funds collected on behalf of the Customer will be deposited in this account and transferred by wire the first business day of each week to the Customer's primary deposit bank. The Customer will identify the account to receive funds wired from U.S. Bank. If desired, Customer will sign a W-9 and blocked account agreement, to be completed by the Customer, to ensure the Customer's financial interest in said U.S. Bank account is preserved.
18. Vendor is authorized to charge, collect and retain a convenience fee of \$4.00 each for electronic payments processed. Such fee is paid for by the violator.

Exhibit "E"

Additional Rights and Obligations

Vendor and the City shall respectively have the additional rights and obligations set forth below:

1. Vendor shall assist the City in public information and education efforts, including but not limited to the development of artwork for utility bill inserts, press releases and schedules for any public launch of the TSCP, as offered in the Vendor's proposal.
2. Vendor shall be solely responsible for installing such Signage as required by City Ordinance. The Vendor shall be solely responsible for the fabrication of any signage, notices, or other postings required pursuant to any law, rule, or regulation of any Governmental Authority ("Signage"), including, but not limited to, the City and County Ordinances, State Statutes, and Florida Department of Transportation (FDOT) Regulations and shall assist in determining the placement of such Signage. Vendor shall be responsible for obtaining all necessary approvals from Governmental Authorities.
3. The Vendor Project Manager and the Project Manager shall meet on a weekly basis during the period commencing as of the date of execution hereof and ending on the termination of the Warning Period Date, and on a monthly basis for the remainder of the Term, at such times and places as the Vendor Project Manager and the City Project Manager shall mutually agree.
4. The City shall not access the Vendor System or use the TSCP Program in any manner other than **prescribed** by law and which restricts or inhibits any other Person from using the Vendor System or the Vendor Photo Enforcement Program with respect to any Intersection constructed or maintained by Vendor for such Person, or which could damage, disable, impair or overburden the Vendor System or the Vendor Photo Enforcement Program, and the City shall not attempt to gain unauthorized access to (i) any account of any other Person, (ii) any computer systems or networks connected to the Vendor System, or (iii) any materials or information not intentionally made available by Vendor to the City by means of hacking, password mining or any other method whatsoever, nor shall the City cause any other Person to do any of the foregoing.
5. The City shall maintain the confidentiality of any username, password or other process or device for accessing the Vendor System or using the TSCP.
6. Each of Vendor and the City shall advise each other in writing with respect to any applicable rules or regulations governing the conduct of the other on or with respect to the property of such other party, including but not limited to rules and regulations relating to the safeguarding of confidential or proprietary information, and when so advised, each of Vendor and the City shall reasonably follow any and all such rules and regulations.
7. The City shall promptly reimburse Vendor for the cost of repairing or replacing any portion of the Vendor System, or any property or equipment related thereto, damaged solely and

directly by the City, or any of its employees, contractors or agents. In all other instances, such costs shall be solely the Vendor's costs.

EXHIBIT "F"  
COMPENSATION & PRICING

**Per Paid Fee**

There will be no charge to City during the Warning Period, and Vendor shall not receive any compensation for any notices sent during the Warning Period.

At the conclusion of the Warning Period, and once Notices of Infractions are issued, Vendor shall be compensated as follows:

Per Camera Paid Notices

1<sup>st</sup> Tier Fee: First 2 paid notices per day in a month, per camera (i.e. first 60 paid per month)  
\$47.50

2<sup>nd</sup> Tier Fee: Next 2 paid notices per day in a month, per camera (i.e. 61-149 paid per month)  
\$27.50

3<sup>rd</sup> Tier Fee All other paid notices in a month, per camera (i.e. 150+ paid per month)  
\$17.50

Following the change of State Law as contemplated in Section 10.6, if the average number of paid notices is 2 or fewer per day in a month, per camera the Vendor shall receive all revenues collected for the billing period.

Vendor shall have the right of first refusal to provide collections services for this program, the collection methods and compensation for which shall be determined by the parties in an addendum to this Agreement.

TAB 4

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

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING A STANDARD POLICY AND PROCEDURE FOR TOWN COUNCIL TRAVEL PURSUANT TO SECTION 166.021(10)(B) FLORIDA STATUTES; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Cutler Bay (the “Town”) recognizes the importance of active Town Council participation in events outside of the Town in order to advance those issues important to the Town; and

**WHEREAS**, the Town Council seeks to set forth clear standards and requirements for reimbursements and per diem limits for Town Council travel spending in order to promote fiscal responsibility amongst its members; and

**WHEREAS**, as such, the Town Council finds it appropriate to adopt, pursuant to Section 166.021(10)(b), Florida Statutes, the Town Council Travel Policy and Procedures, which is attached as Exhibit “A” to this Resolution; and

**WHEREAS**, the Town Council finds that this Resolution is in the best interest and welfare of the residents of the Town.

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

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

**Section 2. Town Council Leave Policy Adopted.** The Town Council hereby adopts the Town Council Travel Policy and Procedure, which is attached as Exhibit “A” to this Resolution.

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

PASSED and ADOPTED this \_\_\_day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
PAUL S. VROOMAN, Mayor

Attest:

\_\_\_\_\_  
ERIKA GONZALEZ-SANTAMARIA, CMC  
Town Clerk

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

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

Moved By:  
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman \_\_\_\_\_

Vice Mayor Edward P. MacDougall \_\_\_\_\_

Councilmember Peggy R. Bell \_\_\_\_\_

Councilmember Timothy J. Meerbott \_\_\_\_\_

Councilmember Ernest N. Sochin \_\_\_\_\_



## Exhibit “A”

### TOWN COUNCIL TRAVEL POLICY AND PROCEDURES

Travel related to training and conferences shall be contemplated in the current fiscal year approved budget. All travel methods shall utilize “green or sustainable” sources to the extent possible. Travel not specifically included in the approved budget must be submitted in advance by the requesting Council Member to the Town Council for approval on or prior to the regular Council meeting prior to the booking of travel and registration for such travel. The Mayor is specifically preauthorized for necessary travel to Tallahassee, FL and Washington, D.C. for meetings with elected officials or purposes relating to legislative issues.

Separate check request forms shall be processed for the hotel expense and for the registration fee. Hotel expense checks within the State of Florida shall take advantage of the sales tax exemption, which may require a check made out to the hotel and accompanied by the sales tax exemption form. Conference host hotels are highly recommended to be used unless otherwise approved in advance by the Town Council. Upon return, a travel claim form requesting or verifying any request for reimbursement for per diem, mileage, tolls, etc. shall be submitted to the Town Manager. Receipts are required for all travel expenses except for any applicable per diem. Town funds shall not be spent on alcohol if practicable.

The Town reimburses and/or pays travel expenses at the following rates:

Meals and incidentals	Actual but not more than: \$11 for breakfast \$16 for lunch \$29 for dinner \$3 for incidentals
Lodging	Single occupancy rate. If the employee chooses a double or suite when a single occupancy rate is available, the attendee will pay the difference in cost.
Mileage	\$.445 per mile
Air fare	Actual
Tolls / Parking	Actual
Taxi fare	Actual
Conference/registration fee	Actual
Communication expenses	Actual

It is the Council Member’s responsibility to obtain the lowest and most efficient cost of transportation to the Town after estimating the total cost of all such expenses (i.e. air fare/mileage, parking, taxi service, car rental).

Any claim authorized or required to be made under any per diem and travel expense policy of a municipality or agency thereof must contain a statement that the expenses were actually incurred by the traveler as necessary travel expenses in the performance of official duties and shall be verified by a written declaration that it is true and correct as to every material matter.

Only those expenses that were actually incurred by the employee/town official as necessary travel expenses in the performance of official Town duties shall be qualified for reimbursement from the Town of Cutler Bay. This provision applies even if the Council Member is seeking reimbursement under the per diem allowance rules of the Town travel policy. The Council Member shall be required to file an expense report form with the Town's Finance Department within 7 business days of completing official town travel and, by signing and dating such form, shall certify compliance with this provision.

TAB 5

**RESOLUTION NO. 08-\_\_\_**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING RESOLUTION 06-112 APPOINTING COMMITTEE MEMBERS TO THE TOWN OF CUTLER BAY WIFI COMMITTEE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on September 6, 2006, the Town Council (the “Council”) of the Town of Cutler Bay (the “Town”) adopted Resolution 06-94 creating the WIFI Committee (the “Committee”); and

**WHEREAS**, Resolution 06-94 requires that each Councilmember appoint one member to the Committee; and

**WHEREAS**, pursuant to Resolution 06-112, each Councilmember and the Mayor appointed members to the committee; and

**WHEREAS**, Councilmember Sochin’s appointee is no longer able to serve as a member of the Committee; and

**WHEREAS**, as such, Councilmember Sochin desires to appoint a new member to the Committee, as shown in Exhibit A to this Resolution.

**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 incorporated herein by this reference.

**Section 2. Appointment to Committee.** Councilmember Sochin hereby appoints the Committee member listed in Exhibit “A” to serve as a member of the Committee.

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

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2008

\_\_\_\_\_  
PAUL S. VROOMAN, Mayor

Attest:

\_\_\_\_\_  
ERIKA GONZALEZ-SANTAMARIA, CMC  
Town Clerk

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

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

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman \_\_\_\_\_

Vice Mayor Edward P. MacDougall \_\_\_\_\_

Councilmember Peggy R. Bell \_\_\_\_\_

Councilmember Timothy J. Meerbott \_\_\_\_\_

Councilmember Ernest N. Sochin \_\_\_\_\_

## EXHIBIT "A"

### WiFi Committee

1. ~~Tom Condon~~ Rosi Alvarez – appointed by Councilmember Sochin
2. John Meklejohn – appointed by Councilmember Meerbott
3. Patrick Russo – appointed by Mayor Vrooman
4. Darryl Boyette – appointed by Vice Mayor MacDougall
5. Brian Dreher – appointed by Councilmember Bell

TAB 6

**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 \$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.**

**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 o 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  
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

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



**Office of the Town Attorney**

Mitchell A. Bierman  
*Town Attorney*

Chad S. Friedman  
*Town Attorney*

## MEMORANDUM

**To:** Honorable Mayor and Town Council

**Cc:** Steven J. Alexander, Town Manager  
R. Don O'Donniley, Planning Director

**From:** Mitchell A. Bierman, Town Attorney  
Scott A. Robin, Town Attorney

**Date:** May 15, 2008

**Re:** **CUTLER BAY COMMUNICATIONS SERVICES REGULATIONS ORDINANCE**

The proposed Town of Cutler Bay Communications Services Regulations Ordinance ("Ordinance") amends the Town Code to establish regulations for communications providers, cable and video service providers to place and maintain facilities in the Town's rights-of-way.

Last year, the Florida Legislature passed the "Consumer Choice Act of 2007," (the "Act"). Under the Act, local governments can no longer grant cable franchises or require operators to enter into cable franchise agreements. This function is now handled by the Florida Department of State ("Department"). However, the Act allows an incumbent cable service provider, such as Comcast, to apply for and receive a certificate of franchise authority from the Department that covers a certain service areas within municipalities and counties in Florida.

Under the Act, cable and video service providers are now subject to local government 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. The proposed Ordinance provides conditions for obtaining a permit, construction standards for using the rights-of-way, and requirements for bonds, insurance and indemnification, and enforcement remedies. Further, the proposed Ordinance



## Office of the Town Attorney

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requires cable or video service providers to provide the Town the capability to transmit programming to its residents over an Access Channel and complimentary cable or video services to a number of public buildings in accordance with the Act. The Ordinance also includes the customer service requirements that are the federal minimum standards the Town may enforce until the state takes over this responsibility.

The proposed Ordinance provides certain restrictions regarding placement of telecommunications towers, antennas and equipment facilities in the Town's rights-of-way. The Town is concerned that several wireless companies have plans to install telecommunications towers, antennas and/or equipment facilities in the public rights-of-way or on poles located in public rights-of-ways. These installations create multiple safety issues and concerns for residents of the Town.

If you have any questions regarding this matter, please do not hesitate to contact us.

**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 FOR ENFORCEMENT AND ADMINISTRATION; PROVIDING FOR RESERVATION OF RIGHTS; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; PROVIDING FOR SAVINGS; PROVIDING FOR 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.

**Section 3.** **Creation of the Town Communications Services Regulations Ordinance.** The Town’s Communications Services Regulations Ordinance is hereby created as follows:

**ARTICLE I. PUBLIC RIGHTS-OF-WAY REGULATIONS FOR COMMUNICATIONS SERVICES PROVIDERS**

**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 the 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, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the system.

*Ordinance* shall mean this article.

*Overlash or Overlapping* 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, constitutes "placing or maintaining" the facilities as defined herein. 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.

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

*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) A copy of federal or state certification authorizing the applicant to do business in the State of Florida and to provide service in the Town;
- (4) Acknowledgment that applicant has received and reviewed a copy of this article, and, when applicable, the current Communications Services Tax rate established by the Town;
- (5) Evidence of the insurance coverage and submission of a security fund as required by 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. Registrants 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. Within thirty (30) days of any change in the information required to be submitted pursuant to subsection (c), 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 the 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 the affected area. 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 reasons of traffic conditions, public safety, 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 using door hangers or other means to property owners whose property either adjoins or lays within 200 feet of such rights-of-way (the "Notification Area"). The notification area may be expanded at the Town's discretion and notice shall be affected 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 five (5) 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 Rights-of-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 established by all local, state or federal law and accepted industry practices or standards, and as hereinafter may be amended or changed. 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.

(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) 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.

(o) 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. Knowledgeable, qualified representatives shall be available to respond to telephone inquiries, in, at a minimum, English and Spanish languages.

(p) A Registrant shall not place or maintain its Communications Facilities or equipment 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, landscaped areas and swales, or any other person's facilities lawfully occupying the public rights-of-way of the Town. Further, a Registrant shall not place or maintain its Communications Facilities, company or contractor vehicles, or related equipment so as to interfere with the aesthetics of the Notification Area. In the event Registrant's Communications Facilities, company or contractor vehicles, or related equipment are vandalized, Registrant shall restore them to their original condition within seventy-two (72) hours of receiving notice of such occurrence.

(q) 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.

(r) 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.

(s) 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.

(t) 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.

(u) 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.

(v) Installation of Telecommunications Towers, Antennas and Equipment Facilities in the Public Rights-of-Way. For the purposes of this subsection (v), to the extent not expressly prohibited by federal law, state law, the Town Code or applicable Florida Public Service Commission rules and regulations, the standards contained herein apply prospectively for all new



Antennas and Equipment Facilities, as defined by Town Code, 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 (v) 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;
- (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) No back-up power sources including, but not limited to, generators and fuel storage tanks, may be installed or placed in the Public Rights-of-Way;
- (vii) 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; or
  - (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
- (viii) 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, insurance and security fund requirements contained herein. An Application pursuant to this section shall not be deemed a Co-location application;
- (ix) 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 so long as the height of the Vertical Structure is not increased by more than ten (10) feet;

(x) An Antenna 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 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 that is mounted to a Vertical Structure shall comply with any applicable FCC Emissions Standards;

(xiii) The design, construction, set back, installation and landscaping of an Antenna mounted to a Vertical Structure and an Equipment Facility used in association with an Antenna 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 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 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 §202.11(2), 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 §202.011(2), 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 §202.11(2), 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.

(c) In the event of a vote by the Town Council 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 transfer, sale 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 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 in representation, 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.

**ARTICLE II. CABLE AND VIDEO SERVICE PROVIDERS**

**Sec 1. Authorization to Provide Cable or Video Services in Town.**

All Registrants that provide Cable and Video Services in the Town shall comply with Article I, Article II and Article III of this Chapter and any other applicable federal, state, county or municipal law.

(a) A Registrant 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. 2. 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 in accordance with applicable law.

(c) If controlling law changes to require the Certificateholder, 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. 3. 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 in accordance with applicable law. 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.

#### **Sec. 4. Customer Service Standards**

All Registrants that provide Cable and Video Services in the Town, 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 4, 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. 5. 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. 6. 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 article, by separate ordinance or in any other lawful manner.

(b) Nothing in this article shall prohibit the Town from regulating rates for Cable or Video Services to the full extent permitted by law.

(c) The Town Council shall have the sole authority to regulate rates for Cable or Video Services in accordance with applicable law.

#### **Sec. 7. 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.

### **ARTICLE III - ADMINISTRATION AND ENFORCEMENT**

#### **Sec. 1. Administration.**

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. 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 Registrant. The Town Manager shall provide the Council with assistance, advice and recommendations as appropriate.

## **Sec. 2. 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 in accordance with this article or applicable law.

(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 Registrant is found by a court of competent jurisdiction not to be in compliance with the requirements of this article, the Registrant shall have a reasonable period of time, as specified by the court, to cure such noncompliance.

### **Sec. 3. 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. 4. 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.

**Section 4. Severability.** If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

**Section 5. Conflict.** All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

**Section 6. Savings.** All fees and other dollar amounts owed to the City under any contract, Agreement, or other provisions of the City Code as of the effective date of this Ordinance, whether known or unknown, shall not be affected by the adoption of this Ordinance and the City expressly reserves its rights with respect to such amounts.

**Section 7. Effective Date.** 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 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 8



## Planning & Zoning Department

R. Don O'Donniley, AICP  
*Planning Director*

# MEMORANDUM

**To:** Steve Alexander, Town Manager

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

**Date:** May 21, 2008

**Re:** **Approval of an Ordinance Establishing a Moratorium On Development for Residential, Institutional, Certain Non-residential Buildings and Mixed Use Developments with Exceptions for Certain Sustainable Building Standards.**

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## BACKGROUND

The Town Council has directed staff that the vision for the Council is to implement a wide range of policies and strategies that will result in sustainable buildings. These "green" policies were first addressed by Council in October 2007 as added policies to the Growth Management Plan. In addition, the Council directed \$200,000 dollars be set aside for "green" initiatives, including but not limited to developing a request for consulting services that would develop green strategies, policies for Town operations and sustainable (green) development regulations. A RFP has been issued to accomplish this task.

At the last Town Council meeting, staff was further directed to expand the strategies to encompass certain residential, institutional, certain non-residential buildings and mixed use developments.

## REQUEST

The Town Council is asked to approve a moratorium for residential and institutional developments with an exception for those developments that meet certain sustainable building standards. The building standards that will apply include the Florida Green Building Council standards and the United States Green Building Council's Leadership In Energy and Environmental Design (LEED) standards.

## **ANALYSIS**

As noted for the proposed moratorium for non-residential and mixed use structures over 50,000 square feet, need to improve development practices in order to decrease the environmental impacts of development has been demonstrated. This proposed additional moratorium addresses residential, institutional, mixed use and non-residential structures under 50,000 square feet. The Town has set a vision of greening both its' own operations, developing over all strategies and policies and implementing regulations that result in more sustainable development.

Staff has reviewed responses to a RFP seeking consultant services to further this vision. In order to assure a high standard of sustainable development is ensured during the development of this green program, staff has developed a limited moratorium.

The proposed moratorium exempts construction of a single residential structure and any development that has received final site plan approval. All other residential, mixed use or institutional structures are eligible for an exemption if the proposed development meets sustainable building standards that relate to categories of development based on density and intensity of development. In addition, the proposed ordinance requires the applicant to post a bond or letter of credit to assure completion within the standard selected by the applicant.

The exemption for residential developments proposed to be developed at one to thirteen units per acre is LEED certification or a Florida Green Building Council certification. Residential developments that have a proposed density from 14 to 30 units per acre may obtain an exemption from the moratorium by obtaining a LEED 'Silver' certification of Florida Green Building Council certification. Residential developments that propose a density of 31 units per acre or greater may obtain an exemption by obtaining a LEED "Platinum" certification. Proposed non residential or mixed use buildings that contain less than 50,000 gross feet may be exempted by obtaining a LEED "Silver" certification.

## **RECOMMENDATION**

Staff recommends the Council approve the ordinance establishing a limited Moratorium for residential and institutional developments. The proposed Moratorium allows continued development for residential and institutional developments that meet Florida Green Building Coalition standards for a "green home" or "green development" In addition, a moratorium is established for mixed use buildings less than 50,000 square feet with an exception for green buildings that meet LEED Silver standards,

**ORDINANCE NO. 08- \_\_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING FOR A MORATORIUM ON DEVELOPMENT WITHIN THE TOWN; PROVIDING FOR EXEMPTIONS; 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**, permitting significant amounts of development which are not Leadership In Energy and Environmental Design (LEED) or Florida Green Building Coalition, Inc Certified prior to the establishment of the Green Plan and implementing Land Development Regulations is contrary to providing a sustainable community; 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 development. The following categories of development shall be exempt from this moratorium:

1. One (1) to thirteen (13) residential units per acre. Any residential development that consists of one (1) to thirteen (13) residential units per acre, which commits to obtaining a Leadership In Energy and Environmental Design (LEED) Certification or a Certification from the Florida Green Building Coalition. 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 2% of the total cost of the building(s) in order to secure performance and fulfillment of the of the applicant’s obligation to obtain a 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) or Florida Green Building Coalition and provides the certification letter to the Town.

If the project fails to meet the criteria required for a Certification 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 Sustainability 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

2. Fourteen (14) to thirty (30) residential units per acre. Any residential development that consists of fourteen (14) to thirty (30) residential units per acre, which commits to obtaining a Leadership In Energy and Environmental Design (LEED) Certification of Silver or Certification from the Florida Green Building Coalition. A LEED Certified Silver development shall mean a development that obtains at least 33-38

points 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 3% of the total cost of the building(s) in order to secure performance and fulfillment of the applicant's obligation to obtain a LEED Silver Certification or Certification by the Florida Green Building Coalition. 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) or the Florida Green Building Coalition and provides the certification letter to the Town.

If the project fails to meet the criteria required for Silver Certification by the United States Green Building Council (USGBC) or a certification by the Florida Green Building Coalition 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 Sustainability 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

3. Thirty-One (31) units per acre or greater. Any residential development that consists of thirty-one (31) units per acre or greater, which 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(s) 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 (100) percent of the bond. Funds that become available to the Town from the forfeiture of the performance bonds shall be deposited in a Sustainability 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

4. Institutional Uses. Any Institutional use that commits to obtaining a Leadership In Energy and Environmental Design (LEED) Certification of Silver or Certification from the Florida Green Building Coalition. A LEED Certified Silver development shall mean a development that obtains at least 33-38 points 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 3% of the total cost of the building(s) in order to secure performance and fulfillment of the applicant's obligation to obtain a LEED Silver Certification or certification by the Florida Green Building Coalition. 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) or the Florida Green Building Coalition and provides the certification letter to the Town.

If the project fails to meet the criteria required for Silver Certification by the United States Green Building Council (USGBC) or a Certification by the Florida Green Building Coalition 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 Sustainability 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

5. Nonresidential or mixed use buildings consisting of 50,000 gross square feet or less. Any nonresidential or mixed use building that consists of 50,000 gross square feet or less that commits to obtaining a Leadership In Energy and Environmental Design (LEED) Certification of Silver or Certification from the Florida Green Building Coalition. A LEED Certified Silver development shall mean a development that obtains at least 33-38 points 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 3% of the total cost of the building(s) in order to secure performance and fulfillment of the applicant's obligation to obtain a LEED Silver Certification or Certification by the Florida Green Building Coalition. 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) or the Florida Green Building Coalition and provides the certification letter to the Town.

If the project fails to meet the criteria required for Silver Certification by the United States Green Building Council (USGBC) or a Certification by the Florida Green Building Coalition 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 Sustainability 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

6. The construction of one (1) single family home; and
7. 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.

**Section 5. Judicial Review.** Judicial review of final decisions by the Town Council 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.

**Section 8.**     **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.

**Section 9.**     **Effective Date.** 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 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 9



## Planning & Zoning Department

R. Don O'Donniley, AICP  
*Planning Director*

# MEMORANDUM

**To:** Steve Alexander, Town Manager

**From:** R. Don O'Donniley

**Date:** May 21, 2008

**Re:** **Approval of an Ordinance Amending Criteria for "Religious Facilities and Missions"**

---

## BACKGROUND

The Town Council adopted Miami-Dade zoning regulations at its initial incorporation. Section 33-18 required "Religious Facilities and Missions" to be on a site at of least 2 1/2 acres or a frontage of at least 150 feet. This section of the zoning code was recently repealed by Miami-Dade County due to litigation filed against the County. Based on the recent change in federal law, we need to amend our regulations to eliminate the size or frontage criteria.

## REQUEST

Staff requests that the Town Council amend Section 33-18 to eliminate the 2 1/2 acre or 150 frontage requirement for "Religious Facilities of Missions".

## ANALYSIS

Section 33-18 of the Miami-Dade zoning regulations was adopted several decades prior to the enactment of the RELIGIOUS Land Use and Institutional Persons Act (RLUIPA). RLUIPA is a federal law that prohibits land use regulations that treat religious assemblies or institutions on less than equal terms than non-religious institutions. The act also prohibits land use regulations that unreasonably limit religious assemblies. Dade County had been sued by two parties and agreed to amend its regulations. The proposed amendment will eliminate the size or frontage requirement for religious facilities and missions that are permitted by right. Religious institutions are permitted in several residential districts (RU-3) (RU-3M) (RU-4M)

(RU-4) and RU-4A). Also, Industrial and Business districts permit religious facilities as a matter of right. Special exceptions are required for the other zone districts.

**RECOMMENDATION**

Staff recommends the Council approve the attached amendment to Section 33-18 to eliminate the size and frontage requirement for 'religious Institutions and Missions'.



**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.

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

**Section 4. Inclusion in the Code.** It is the intention of the Town Council, 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.

**Section 5. Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this 28<sup>th</sup> day of April, 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 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 10



## Planning & Zoning Department

---

R. Don O'Donniley, AICP  
*Planning Director*

# MEMORANDUM

**To:** Steve Alexander, Town Manager

**From:** R. Don O'Donniley

**Date:** May 21, 2008

**Re:** **Approval of an Ordinance Amending Criteria for Projects Requiring Compliance with Ordinance 6-20 (Workshop).**

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## BACKGROUND

The Town Council established procedures for proposed developments, variances and zone changes to proceed through a "Workshop" procedure in 2006. During the ensuing period various applications have complied with the Workshop process and the Town Council has found the effectiveness of this process varies according to the type of application reviewed.

## REQUEST

The Town Council directed staff to review the Workshop ordinance and propose changes to the ordinance. Staff presented a proposal and it was considered on first reading at the Council meeting of April 28, 2008.

## ANALYSIS

Staff reviewed the types of applications reviewed by the Workshop process and found that two broad types of applications occur. The first type is where the review is more technical in nature and require two readings before Council. These types of applications include variances, unusual uses, zone changes and special use proposals. Past experience has shown the general public has participated less frequently in these processes. In addition, the Council has found the types of questions directed to the applicant are more appropriate for the deliberation stage in formal hearing.

The second types of applications are site plan approvals and platting. Both these type of applications elicit a broad interest from the public. In addition, applicants and Council have found the Workshop process a useful way to explore future development. Questions and suggestions at the Workshop have led to improved final applications.

In addition, the proposed amendment creates an opportunity for the planning Director to seek Workshop review if a project is judged to be of significant impact or in need of additional input prior to formal hearings.

### **RECOMMENDATION**

Staff recommends the Council approve the ordinance amending the criteria for applications to be reviewed through the Workshop procedure.

**ORDINANCE NO. 08-**

**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>:**

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

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

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

A. **Intent.** 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.

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

B. Applicability. 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;
2. Site plan approval;
3. Site plan amendments that seek to develop additional square footage;
4. Variances
5. Special exceptions;
6. Unusual uses; and
7. Any zoning application submitted pursuant to the Town Zoning Code, which the Planning Director finds may substantially impact the adjacent property owners, deemed necessary by the town manager or his or her designee.

C. Exemptions. The following applications shall be exempt from the zoning workshop requirement:

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

D. Advertisement—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. Agenda. 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. Meeting Procedure. A zoning workshop shall consist of two sessions which are described below:

1. First Session. 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. Second Session. 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. Police officer in attendance. Upon the request of the Town Manager, it shall be 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.

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

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

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

PASSED on first reading this 28<sup>th</sup> day of April, 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 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 11

**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.

**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 28<sup>th</sup> day of April, 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 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 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 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.

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

**Section 4. Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this 28<sup>th</sup> day of April, 2008.

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

\_\_\_\_\_  
PAUL S. VROOMAN, Mayor

Attest:

\_\_\_\_\_  
ERIKA GONZALEZ-SANTAMARIA, CMC  
Town Clerk

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

---

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

Moved By:  
Seconded By:

FINAL VOTE AT ADOPTION:

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

TAB 13



## Planning & Zoning Department

R. Don O'Donniley, AICP  
Planning Director

# MEMORANDUM

**To:** Steve Alexander, Town Manager

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

**Date:** May 21, 2008

**Re:** **Approval of An Ordinance Establishing a Moratorium for Buildings in Excess of 50,000 Square Feet And Creating Exceptions for Sustainable (Green) Buildings**

## BACKGROUND

The Town Council has directed staff that the vision for the Council is to implement a wide range of policies and strategies that will result in sustainable buildings. These "green" policies were first addressed by Council in October 2007 as added policies to the Growth Management Plan. In addition, the Council directed \$200,000 dollars be set aside for "green" initiatives, including but not limited to developing a request for consulting services that would develop green strategies, policies for town operations and sustainable (green) development regulations. A RFP has been issue to accomplish this task. Additionally, the town staff is in the process of developing land development regulations which will need to incorporate "green" policies.

## REQUEST

The Town Council is asked to approve a moratorium for larger non- residential structures that exceed 50,000 square feet unless such structures comply with LEED Platinum standards.

## ANALYSIS

The need to improve development practices in order to decrease the environmental impacts of development has been demonstrated and the council has shown support for this policy direction. The Town has set a vision of greening both its' own operations, developing over all strategies and policies and implementing regulations that result in more sustainable development.

Staff has reviewed responses to a RFP seeking consultant services to further this vision and is set to begin negotiations with the top ranked firm prior to requesting council approval to proceed. In order to assure a high standard of sustainable development is ensured during the development of this green program, staff has developed a limited moratorium. It is anticipated that the development of the land development regulations and green programs will be substantially complete in 9 months time and then the moratorium can be lifted.

The proposed moratorium allows continued development for non-residential structures and mixed use structures in excess of 50,000 square feet if the applicant meets LEED Platinum building standards. In addition, the initial time frame for the moratorium is limited to nine months but can be extended if progress is being made toward accomplishment of the vision. The limitation relating to 50,000 square feet was chosen to tie to the previous size criteria established in the non-residential design standards adopted by Council in 2007.

### **RECOMMENDATION**

Staff recommends the Council approve the ordinance establishing a limited Moratorium for non-residential and mixed use buildings in excess of 50,000 square feet with exceptions for green buildings that meet LEED Platinum standards.

**ORDINANCE NO. 08- \_\_\_\_\_**

**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.**

**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 of 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.

**Section 5. Judicial Review.** Judicial review of final decisions by the Town Council 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.

**Section 8. 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.

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

PASSED on first reading this 28<sup>th</sup> day of April, 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 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 \_\_\_\_\_