



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, June 18, 2008, 7:00 PM
South Dade Regional Library
10750 SW 211th Street, 2nd Floor
Cutler Bay, Florida 33189

1. **CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE, MOMENT OF SILENCE**
2. **PROCLAMATIONS, AWARDS, PRESENTATIONS**
 - A. Proclamation presentation for:
Honorable Senator Larcenia Bullard,
Honorable Representative Julio Robaina,
Honorable Representative JC Planas
 - B. Proclamation presentation to Luciane Barroca – Citizens Crime Watch
 - C. Nicholas Grossi - Student Essay Contest Winner – Whispering Pines Elementary
3. **APPROVAL OF MINUTES**
 - A. Council Meeting – May 21, 2008
4. **REPORTS**
 - A. TOWN MANAGER'S REPORT
 - B. TOWN ATTORNEY'S REPORT

TAB 1

C. BOARD/COMMITTEE REPORTS AND COUNCIL ANNOUNCEMENTS

5. **CONSENT AGENDA**

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

A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE JOINT USE AGREEMENT BETWEEN MIAMI-DADE COUNTY PUBLIC SCHOOLS AND THE TOWN OF CUTLER BAY RELATING TO THE USE OF CUTLER RIDGE PARK BY THE SCHOOL AND THE RECREATION FIELD AT CUTLER RIDGE ELEMENTARY SCHOOL BY THE TOWN; PROVIDING FOR THE APPROVAL OF THE JOINT USE AGREEMENT IN SUBSTANTIALLY THE FORM ATTACHED HERETO AS EXHIBIT "A;" PROVIDING FOR THE AUTHORIZATION OF THE TOWN MANAGER TO ENTER INTO THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 2

B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO CONTRACTS, AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH BUXTON COMMUNITY ID TO DEVELOP A JOINT RETAIL ECONOMIC DEVELOPMENT STRATEGY FOR THE TOWN OF CUTLER BAY AND THE VILLAGE OF PALMETTO BAY AND WAIVING THE REQUIREMENT FOR BIDDING OF THE CONTRACT IN ACCORDANCE WITH SECTION 3.10 OF THE TOWN CHARTER; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 3

C. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE MIAMI-DADE METROPOLITAN PLANNING ORGANIZATION (MPO) AND THE TOWN OF CUTLER BAY FOR THE CUTLER BAY TRANSPORTATION MASTER PLAN; PROVIDING FOR THE AUTHORIZATION OF THE TOWN MANAGER TO ENTER INTO THIS AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 4

D. A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA APPROVING THE PROJECT AGREEMENT BETWEEN THE CORRADINO GROUP, INC. AND THE TOWN CUTLER BAY FOR PREPARATION OF THE TRANSPORTATION MASTER PLAN; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 5

E. A RESOLUTION OF THE TOWN OF CUTLER BAY, FLORIDA, ESTABLISHING CUTLER BAY TOWN FOUNDATION, INC.; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING TOWN OFFICIALS TO TAKE ALL NECESSARY STEPS TO CREATE CUTLER BAY TOWN FOUNDATION, INC.; AUTHORIZING THE MAYOR AND APPROPRIATE TOWN PERSONNEL TO EXECUTE REQUIRED DOCUMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 6

F. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROFESSIONAL SERVICES, APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH CORZO, CASTELLA, CABALLO, THOMPSON, AND SALMAN (C3TS), INC. FOR THE COMPLETION OF A COMPREHENSIVE ROADWAY & SIDEWALK ASSESSMENT REPORT AND DEVELOPMENT OF A CAPITAL IMPROVEMENT PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

TAB 7

G. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROFESSIONAL SERVICES, AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR ENGINEERING SERVICES FOR CUTLER RIDGE ELEMENTARY SCHOOL AREA PAVING AND DRAINAGE IMPROVEMENTS; AND PROVIDING AN EFFECTIVE DATE.

TAB 8

6. QUASI-JUDICIAL HEARINGS (PUBLIC HEARING REQUIRED)

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

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

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

TAB 9

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

8. ORDINANCES FOR FIRST READING (PUBLIC HEARING REQUIRED)

- A.** AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33 "ZONING" ARTICLE VI "SIGNS" IN ORDER TO REVISE THE PROCEDURAL AND SUBSTANTIVE REGULATIONS OF SIGNS IN THE TOWN AND PROVIDE FOR AMORTIZATION OF CERTAIN TYPES OF NONCONFORMING OR PROHIBITED SIGNS; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE. **(BELL)**

TAB 10

9. ORDINANCES FOR SECOND READING (PUBLIC HEARING 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 \$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

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

TAB 12

- C. 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.

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, July 16, 2008, 7:00 P.M.
 South Dade Regional Library, 2nd Floor
 10750 SW 211th ST

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

TAB 1

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

Monday, May 21, 2008, 7:00 PM
South Dade Regional Library
10750 SW 211th Street, 2nd 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 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

Councilmember Timothy J. Meerbott was absent.

2. PROCLAMATIONS, AWARDS, PRESENTATIONS:

A. Fausto Gomez gave a brief update on the recent legislative session in Tallahassee.

B. The mayor presented proclamations to Bay Community Church and to Starbucks located in Old Cutler Town Center.

C. Scott Lewis, botanist of Fairchild Tropical Botanic Garden, gave a brief presentation on the Pine Rockland Corridor Project and the clean-up efforts set for June 7th.

3. APPROVAL OF MINUTES:

A. Vice Mayor MacDougall made a motion approving the minutes of the special council meetings of April 4, 2008 and April 18, 2008 and the regular council meeting on April 28, 2008. The motion was seconded by Councilmember Sochin and adopted by a unanimous voice vote. The vote was as follows: Councilmembers Bell, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

4. REPORTS

A. TOWN MANAGER'S REPORT

The Town Manager reported that he recently attended the ICLEI Conference on April 21st which he explained was for local governments exploring green sustainability and would like the Council to explore the many ideas presented to him at the conference. He also stated that right after the ICLEI conference he attended a second conference called the ICSC, International Conference of Shopping Centers, along with Councilmember Sochin and reported that it was extremely success. The manager

informed Council that the "Going Green" banners have gone up on light poles. He reported that the school buses purchased from the County School Board have been painted and Town logos have been placed on each bus. The manager also stated that very shortly he will be presenting Council with recommendations on a RFP/RFQ items that include Building & Permitting Services, Green Sustainability, and Design-Build for Cutler Ridge Park Improvements.

B. TOWN ATTORNEY'S REPORT

The Town Attorney requested to withdraw Items 7B and 9C from the agenda until the June council meeting. He also reported that the County's ordinance on ethics has changed to clarify the applicability of the ethics code to advisory boards and it is concluded that without exception that it applies to advisory boards.

C. BOARD AND COMMITTEE REPORTS, COUNCIL ANNOUNCEMENTS

Vice Mayor MacDougall introduced his appointments to the Communications Committee and the Charter High School Committee.

Councilmember Bell introduced her appointments to the Business Tax Advisory Boards and the Charter High School Committee.

Councilmember Sochin discussed his recent trip to the ICSC conference hoping to bring more businesses to the Town.

Councilmember Bell reported that the Parks Master Plan meetings were quite successful. She mentioned that she would like to see a Youth Commission established to involve local youths in the local government.

5. CONSENT AGENDA:

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.

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.

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)

Town Staff pulled Item C.

Councilmember Sochin made a motion to approve the Consent Agenda as amended with pulled Item C. The motion was seconded by Councilmember Bell and Resolutions 08-27 through 08-28 and 08-30 was adopted by unanimous voice vote. The vote was as follows: Councilmembers Bell, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The town clerk read the following resolution by title:

- 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.

After some discussion, Councilmember Sochin made a motion to approve the resolution. The motion was seconded by Vice Mayor MacDougall and Resolution 08-29 was approved by unanimous voice vote. The vote was as follows: Councilmembers Bell, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

- 6. **QUASI-JUDICIAL HEARINGS (PUBLIC HEARING REQUIRED)**
ALL PERSONS ADDRESSING THE TOWN COUNCIL SHALL BE SWORN-IN PRIOR TO GIVING TESTIMONY AND MAY BE SUBJECT TO CROSS EXAMINATION. ALL PERSONS ADDRESSING THE TOWN COUNCIL SHALL STATE THEIR NAME AND ADDRESS FOR THE RECORD.
- 7. **ORDINANCES FOR FIRST READING (PUBLIC HEARING NOT REQUIRED)**

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

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

Councilmember Sochin made a motion to approve the ordinance. The motion was seconded by Vice Mayor MacDougall and the ordinance was approved by unanimous 4-0 roll call vote. The vote was as follows: Councilmembers Bell, 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 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.

The mayor opened the public hearing. Jaime Reyes, 9750 Southwest 215 Lane, Simon Ferro, 1221 Brickell Avenue, John Herin, 150 West Flagler Street and Tom Condon 19641 Holiday Road, addressed the Council.

Vice Mayor MacDougall made a motion to approve the ordinance. The motion was seconded by Councilmember Sochin and the ordinance was approved by unanimous 4-0 roll call vote. The vote was as follows: Councilmembers Bell, 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, 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.

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

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

Councilmember Bell made a motion to approve the ordinance. The motion was seconded by Councilmember Bell and Ordinance 08-08 was approved by unanimous 4-0 roll call vote. The vote was as follows: Councilmembers Bell, 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 AMENDING THE ZONING WORKSHOP REQUIREMENTS AND PROCEDURES; PROVIDING FOR CONFLICTS; 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.

Vice Mayor MacDougall made a motion to approve the ordinance. The motion was seconded by Councilmember Bell and Ordinance 08-09 was approved by unanimous 4-0 roll call vote. The vote was as follows: Councilmembers Bell, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

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

- 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)**

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

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

Vice Mayor MacDougall made a motion to approve the ordinance. The motion was seconded by Councilmember Sochin and Ordinance 08-10 was approved by unanimous 4-0 roll call vote. The vote was as follows: Councilmembers Bell, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

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

- 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.

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

The mayor opened the public hearing. John Herin, 150 West Flagler Street, addressed the Council.

Councilmember Bell made a motion to approve the ordinance. The motion was seconded by Councilmember Sochin and Ordinance 08-11 was approved by unanimous 4-0 roll call vote. The vote was as follows: Councilmembers Bell, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

10. PUBLIC COMMENTS

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

The following individuals spoke: Bill Meiklejohn, 9311 Sterling Drive and Steve Zarzecki, 9640 Martinique Drive.

11. MAYOR AND COUNCIL COMMENTS

Councilmember Bell mentioned that along with Member Sochin they toured the Water and Sewer Facility in South Dade. She also discussed that she and the Vice Mayor attended the Whispering Pines fifth grade graduation recently.

Vice Mayor MacDougall addressed Mr. Zarzecki's comments on the purchase of the "Potato Field" located in the Town. The Vice Mayor indicated the importance on the conservation of water and water consumption.

Mayor Vrooman also commented on Mr. Zarzecki's remarks on the "Potato Field." He also announced that we have received check for \$10,000 from the Staples Dream Park Challenge. In addition, Staples has donated an additional \$1,500 for supplies to local Cutler Bay schools with the Mayor matching funds in the amount of \$1,000 for local Town schools.

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:

*Erika Gonzalez-Santamaria, CMC
Town Clerk*

*Adopted by the Town Council on
this 18th day of June, 2008.*

Paul S. Vrooman, Mayor

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

TAB 2



Steven J. Alexander
Town Manager

MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council
From: Steven J. Alexander, Town Manager
Date: June 18, 2008
Re: **JOINT USE AGREEMENT FOR CUTLER RIDGE ELEMENTARY SCHOOL**

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE JOINT USE AGREEMENT BETWEEN MIAMI-DADE COUNTY PUBLIC SCHOOLS AND THE TOWN OF CUTLER BAY RELATING TO THE USE OF CUTLER RIDGE PARK BY THE SCHOOL AND THE RECREATION FIELD AT CUTLER RIDGE ELEMENTARY SCHOOL BY THE TOWN; PROVIDING FOR THE APPROVAL OF THE JOINT USE AGREEMENT IN SUBSTANTIALLY THE FORM ATTACHED HERETO AS EXHIBIT "A;" PROVIDING FOR THE AUTHORIZATION OF THE TOWN MANAGER TO ENTER INTO THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

In July 2007, the Parks and Recreation Department began discussions with the Miami-Dade County Public School (MDCPS) Facilities Planning Division concerning the Town's use of a portion of Cutler Ridge Elementary School. These discussions resulted in a budget line item in the current fiscal year budget for the installation of a lighted soccer field on the school site (see attached July 24, 2007 memorandum). The Town has asked MDCPS for an agreement similar in scope to their agreement with the Village of Pinecrest for Pinecrest's use of Palmetto Elementary and Palmetto Middle Schools (see attached July 8, 1998 School Board item H-31).

At their April 16, 2008 meeting, the School Board authorized the Superintendent of Schools to finalize negotiations and execute the joint use agreement with the Town (see attached April 16, 2008 School Board item F-6).

Some of the more significant conditions included in the agreement are as follows:

- The term of the agreement will be for an initial 25 years, with one 10-year option period, at the mutual option of the Parties.

- The Town can make certain improvements to the school field including, but not limited to, a multipurpose/soccer field, irrigation system, lighting and jogging path, with all work reviewed and approved by MDCPS prior to construction.
- The Town will be responsible for maintenance and repairs of the improvements made on school property.
- The school will have exclusive use of the school field and parking lot during regular school hours on regular school days and at all other times required for the operation of school activities. The Town will have use of the school field and parking lot at all other times, or as otherwise agreed to by the Principal and the Parks and Recreation Director.

It is very important to notice that the agreement provides a 180 day cancellation period by the by MDCPS which could result in a premature shortening of depreciation period for any improvements that we place on by MDCPS property during the lease period.

RECOMMENDATION

We recommend that the attached resolution be adopted approving a joint use agreement with MDCPS for the use of a portion of Cutler Ridge Elementary School, and authorizing the Town Manager to negotiate and execute the joint use agreement.

RESOLUTION NO. 08-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE JOINT USE AGREEMENT BETWEEN MIAMI-DADE COUNTY PUBLIC SCHOOLS AND THE TOWN OF CUTLER BAY RELATING TO THE USE OF CUTLER RIDGE PARK BY THE SCHOOL AND THE RECREATION FIELD AT CUTLER RIDGE ELEMENTARY SCHOOL BY THE TOWN; PROVIDING FOR THE APPROVAL OF THE JOINT USE AGREEMENT IN SUBSTANTIALLY THE FORM ATTACHED HERETO AS EXHIBIT "A;" PROVIDING FOR THE AUTHORIZATION OF THE TOWN MANAGER TO ENTER INTO THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the School Board of Miami-Dade County (the "Board") and the Town of Cutler Bay (the "Town") are mutually interested in and concerned with providing and making available recreational programs, activities and facilities for the use and benefit of Miami-Dade County Public Schools (the "School District") and the Town; and

WHEREAS, the Board owns and has under its jurisdiction certain facilities on the campus of Cutler Ridge Elementary School ("School"), located at 20210 Coral Sea Road, which are utilized for educational purposes but which may be utilized for suitable community and recreational activities by the Town; and

WHEREAS, the Town has certain recreational facilities at Cutler Ridge Park ("Park"), located at 10100 SW 200 Street, which may be utilized for recreational and educational purposes by the Board; and

WHEREAS, these objectives may be the best achieved through joint and coordinated action of the Board and the Town in making certain of each party's property available for use by the other in the most cost effective manner; and

WHEREAS, the Town has secured grants from several entities including the U.S. Soccer Federation and Miami-Dade County to create a soccer field for the community that will be built on the land secured by this agreement at the School; and

WHEREAS, the Town agrees to enter into the Joint Use Agreement Between the Town of Cutler Bay and the School Board of Miami-Dade County, Florida, in substantially the form attached hereto as Exhibit "A"; and

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

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

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

Section 2. **Approval of the Agreement.** The Town Council hereby approves the Joint Use Agreement Between the Town of Cutler Bay and the School Board of Miami-Dade County, Florida, in substantially the form attached hereto as Exhibit "A".

Section 3. **Authorization of the Town Manager.** The Town Manager is authorized to take all action necessary to enter into the Joint Use Agreement Between the Town of Cutler Bay and the School Board of Miami-Dade County, Florida, in substantially the form attached hereto as Exhibit "A".

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

PASSED and ADOPTED this _____ day of _____, 2008.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

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

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

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

JOINT USE AGREEMENT BETWEEN THE TOWN OF CUTLER BAY
AND
THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

This Joint Use Agreement (this "Agreement"), made and entered into this _____ day of _____, 2008, by and between THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter called the "BOARD"), and the TOWN OF CUTLER BAY, a municipal corporation of the State of Florida (hereinafter called the "TOWN").

WITNESSETH:

WHEREAS, the BOARD and TOWN are mutually interested in and concerned with providing and making available recreational programs, activities and facilities for the use and benefit of Miami-Dade County Public Schools (the "School District") and the TOWN; and

WHEREAS, the BOARD owns and has under its jurisdiction certain facilities on the campus of Cutler Ridge Elementary School ("School"), located at 20210 Coral Sea Road, which are utilized for educational purposes but which may be utilized for suitable community and recreational activities by the TOWN; and

WHEREAS, the TOWN has certain recreational facilities at Cutler Ridge Park ("Park"), located at 10100 SW 200 Street, which may be utilized for recreational and educational purposes by the BOARD; and

WHEREAS, these objectives may be the best achieved through joint and coordinated action of the BOARD and the TOWN in making certain of each

Party's property available for use by the other in the most cost effective manner;
and

WHEREAS, the Town of Cutler Bay has authorized the joint use of said lands in accordance with Town Resolution No. _____, at its meeting of _____, 2008; and

WHEREAS, the School Board has authorized the joint use of said lands in accordance with Board Item No. F-6, at its meeting of April 16, 2008.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the parties hereto agree as follows:

I.

PREMISES TO BE JOINTLY USED

The BOARD does hereby agree to allow the TOWN to use the following described parcel of land lying and being in the County of Miami-Dade, State of Florida, to wit:

That portion of the playfield area and parking lot at Cutler Ridge Elementary School, located at 20210 Coral Sea Road, Cutler Bay, Florida, as further described and limited by the boundaries indicated on Exhibit "A" (hereinafter called the "School Site"), attached hereto and made a part hereof.

The TOWN does hereby agree to allow the BOARD to use the following described parcel of land lying and being in the County of Miami-Dade, State of Florida, to wit:

That portion of the recreational facilities at Cutler Ridge Park, located at 10100 Coral Sea Road, Cutler Bay, Florida, as further described and limited by the

boundaries indicated on Exhibit "A" (hereinafter called the "Park Site"), attached hereto and made a part hereof.

The Parties agree that in the event the TOWN constructs a parking lot on the Park Site in close proximity to the School, Exhibit "A" shall be modified to include the parking lot for use by School staff during regular school hours.

II.

TERM OF AGREEMENT

The term of this Agreement shall be twenty-five (25) years, effective with the execution of the Agreement by both parties ("Commencement Date"). The Commencement Date shall be confirmed in writing, which document shall become a part of this Agreement by reference. Said term may be extended at the mutual option of the Parties for one (1) additional term of ten (10) years, upon the same terms and conditions and at the same consideration as provided herein, provided the TOWN gives written notice to the BOARD of its desire to extend the Agreement no later than ninety (90) days prior to the expiration of the initial term hereof.

III.

USE OF PROPERTY

The specific areas of use by the TOWN and BOARD shall be limited to the premises identified in Exhibit "A", including all recreational facilities therein.

A. SCHOOL SITE

The BOARD reserves full control, custody, right and use of the School Site during regular school hours on regular school days, during summer school (if applicable), during before and after school programs (if applicable) and at all

other time required by the BOARD for the operation of school activities (“BOARD’S period of use”). The TOWN shall have full control, custody, right and use of the School Site for the public at all other times, or as otherwise agreed to by the School administrator and Park administrator (“TOWN’S period of use”). Prior to the beginning of each school year, or as soon thereafter as possible, the School administrator and Park administrator shall establish a schedule for the BOARD’S period of use.

The TOWN shall maintain and provide evidence of Public Liability Insurance or an ongoing Self-Insurance program covering the TOWN, its officers and employees for any activities related to this Agreement during which time the TOWN has full control, custody and right and use of any portion of the School Site.

In the event the BOARD has a critical need requiring immediate use of the School Site during the TOWN’S period of use, the TOWN shall vacate the School Site during such period of critical need.

Subsequent to establishment of the BOARD’S annual schedule for its period of use, should the BOARD require continued use of a portion of the School Site for its educational or recreational program during the TOWN’S period of use, the BOARD, or its designee, shall provide the TOWN with written notice of same and shall allow the TOWN to complete any seasonal athletic league programs then in progress.

The TOWN may, in addition to its own utilization of the School Site, designate a not-for-profit entity to utilize the School Site during the TOWN’S

period of use, without securing additional permission from the BOARD. In this eventuality, the TOWN shall be responsible for all use, maintenance, risk management and other terms and conditions as outlined in this Agreement as if the School Site were being utilized by the TOWN as outlined in this Agreement. In the event the TOWN requires the not-for-profit entity to provide it with liability insurance, the TOWN shall also require that THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, be named as an additional insured, and that a Certificate of Insurance be provided to the BOARD.

The TOWN stipulates that neither the TOWN or its designees shall use the School Site, under any circumstances, in a profit making arrangement.

The use of the School Site for carnivals, fairs, exhibits, mechanical rides, midways, or the same or similar kinds of activities is expressly prohibited. The sale or consumption of alcoholic beverages is expressly prohibited. The sale of food, drink or other merchandise on the School Site is permitted only with the prior written approval of the School administrator; said approval not to be unreasonably withheld.

B. PARK SITE

The School will have use of the Park during regular school hours on regular school days. The Park amenities to be used by the School will be as mutually agreed to by the School administrator and Park administrator. The School may have additional use of the Park, after normal school hours, by reserving such use with the Park administrator.

The BOARD shall maintain and provide evidence of Public Liability

Insurance or an ongoing Self-Insurance program covering the BOARD, its officers and employees for any activities related to this Agreement during which time the BOARD has full control, custody and right and use of any portion of the Park Site.

In the event the TOWN has a critical need requiring immediate use of the Park Site during the BOARD'S period of use, the BOARD shall vacate the Park Site during such period of critical need.

Should the TOWN require continued use of a portion of the Park Site for its educational or recreational program during the BOARD'S period of use, the TOWN, or its designee, shall provide the BOARD with written notice of same and shall allow the School to complete the current grading period then in progress.

C. MISCELLANEOUS PROVISIONS

Both Parties stipulate that they shall secure and lock the other Party's parking lot gates at the completion of their respective period of use, and shall remove all unauthorized vehicles from the parking lot prior to the beginning of the other Party's period of use. The Parties shall remove said vehicles from the other Party's parking lots using all lawful means, and may post signs as required to facilitate same, at its sole cost and expense, after securing approval from the School administrator or Park administrator, as applicable, as to size and placement.

The BOARD and TOWN shall be entitled to make application to the other Party for use of the School Site or Park Site during the period of use normally associated with the other Party. In that event, the requesting Party will provide

the other Party with a request to use the premises a minimum of seventy-two (72) hours prior to the need.

On a periodic basis, the Parties, through their respective designees, may modify the exact areas of use and periods of use of the School Site and Park Site, as mutually agreed to.

The BOARD and TOWN may promulgate and enforce reasonable rules and regulations governing their use of the Park Site and School Site respectively, and shall provide adequate supervision of the School Site and Park Site at all times that they conduct or sanction activities thereon. Any such additional rules and regulations will be agreed upon by the School administrator and the Park administrator, and may not be contrary to the BOARD'S Board Rules or policies, or TOWN Rules or policies.

In the event use of School or Park facilities by the other Party creates a cost to the property owner, beyond that which would normally be borne by that entity (e.g. paper goods, janitorial services, staff time, etc.), the requestor agrees to reimburse the other Party for same.

Neither Party shall commit nor permit any violations of applicable laws, rules and regulations of the BOARD, TOWN, COUNTY, STATE, or FEDERAL GOVERNMENT upon the other Party's property.

IV.

IMPROVEMENTS

The TOWN agrees, as a condition of this Agreement and at its sole cost and expense, to construct certain improvements on the School Site including, but

not limited to, a multipurpose/soccer field, irrigation system, lighting and jogging path, as further defined in Exhibit "B" (the "Improvements"). The scope and placement of the Improvements shall be reviewed and approved by the BOARD'S designee prior to the initiation of any construction activities on the School Site. The TOWN shall be responsible for the issuance of permits, inspections and final sign-off of the work. Construction of the Improvements shall conform to the School District's Design Criteria, and be in compliance with all applicable laws, rules and regulations.

The TOWN may, with the prior written approval of the BOARD, or its designee, construct additional recreational facilities on the School Site at such time as the TOWN determines it to be in the best interest of the community ("additional improvements"). Such additional improvements are to be at the sole cost and expense of the TOWN. Notwithstanding the foregoing, nothing contained herein shall obligate the TOWN to construct any improvements upon the School Site, other than those itemized on Exhibit "B".

The TOWN agrees that no construction, major repairs, alterations or improvements may be undertaken by it upon the School Site unless the plans:

- (1) be first submitted to and approved by the BOARD, or its designee;
and
- (2) be in compliance with all applicable State, County, BOARD, Department of Education and TOWN rules and regulations.

The TOWN covenants and agrees that it shall indemnify, hold harmless and defend the BOARD from and against any and all claims, liens, suits, actions

or causes of action arising out of or in connection with the construction and all costs and expenses of said Improvements or additional improvements.

Except as specified in Article XI, upon the termination, cancellation or expiration of this Agreement or any extension thereof, all permanent improvements, in their then existing conditions, shall become the property of the BOARD without compensation due the TOWN. The TOWN agrees that should said improvements conflict with the BOARD'S ability to construct educational or recreational improvements at the School, or create unusual safety or maintenance concerns for the School, as determined solely by the BOARD, the TOWN shall remove any improvements or facilities constructed by the TOWN, and shall restore the School Site to the same or better condition as existed before the effective date of this Agreement, within ninety (90) days of the termination, cancellation or expiration of this Agreement.

The BOARD reserves the right to construct recreational facilities, and maintain equipment related to the construction of said facilities, on the School Site at such time as it shall be in the best interest of the School District to do so. The BOARD, or its designee, shall provide the TOWN with prior written notice of its intent to construct such facilities on the School Site.

The BOARD reserves the right to place portable classrooms, and maintain equipment related to the installation of said classrooms, on the School Site at such time as it shall be in the best interest of the School District to do so. At such time as the portable classrooms are installed, they, along with the area immediately surrounding same, may be excluded from this Agreement upon

mutual accord of both the BOARD and TOWN, through the execution of an amendment.

V.

CONSIDERATION

The TOWN does hereby covenant and agree to pay the BOARD as consideration for the use and occupancy of the School Site throughout the term of this Agreement and any renewal thereof, the sum of one dollar (\$1.00) per year in advance, beginning on the Commencement Date hereof, and on the anniversary date of each and every year thereafter.

The BOARD does hereby covenant and agree to pay the TOWN as consideration for the use and occupancy of the Park Site throughout the term of this Agreement and any renewal thereof, the sum of one dollar (\$1.00) per year in advance, beginning on the Commencement Date hereof, and on the anniversary date of each and every year thereafter.

VI.

LIABILITY FOR PERSONAL PROPERTY

The BOARD and TOWN agree to insure or self insure their respective interests in personal property to the extent each deems necessary or appropriate, and hereby mutually waive all rights to recovery for loss or damage by any means, and waive all rights to recovery for loss and damage to such property by any cause whatsoever. The BOARD and TOWN hereby waive all rights of subrogation against each other under any policy or policies they may carry or on property placed or moved on the School Site or Park Site.

VII.

LIABILITY FOR DAMAGE OR INJURY

Subject to the limitations included within Section 768.28, Florida Statutes, The BOARD shall not be liable for any damage or injury which may be sustained by the TOWN or any persons on the School Site during the TOWN'S period of use, other than damage or injury resulting from the negligence or improper conduct on the part of BOARD, its agents, representatives or employees, or failure of the BOARD to perform its covenants under this Agreement.

Subject to the limitations included within Section 768.28, Florida Statutes, The TOWN shall not be liable for any damage or injury which may be sustained by the BOARD or any persons on the Park Site during the BOARD'S period of use, other than damage or injury resulting from the negligence or improper conduct on the part of the TOWN, its agents, representatives or employees, or failure of the TOWN to perform its covenants under this Agreement.

VIII.

INDEMNIFICATION

The TOWN does hereby agree to indemnify, defend and hold harmless the BOARD to the extent of the limitations included within Florida Statutes, Section 768.28, from any and all personal injury or damage claims, liability, losses and causes of action which may arise as a result of TOWN'S construction activities and use of the School Site. However, nothing herein shall be deemed to indemnify the BOARD for any liability or claim arising out of the negligence,

performance or failure of performance of the BOARD or as a result of the negligence of any unrelated third party.

The BOARD does hereby agree to indemnify, defend and hold harmless the TOWN to the extent of the limitations included within Florida Statutes, Section 768.28, from any and all personal injury or damage claims, liability, losses and causes of action which may arise as a result of BOARD'S use of the Park Site. However, nothing herein shall be deemed to indemnify the TOWN for any liability or claim arising out of the negligence, performance or failure of performance of the TOWN or as a result of the negligence of any unrelated third party.

Nothing in this Agreement is intended to operate as a waiver of the sovereign immunity of either Party.

IX.

UTILITIES AND PERMITS

The TOWN shall be responsible for securing any permits, zoning variances, regulatory or governmental approvals, license and/or use approvals which may be required for the construction of the Improvements or additional improvements installed by the TOWN within the School site. The TOWN shall be responsible for the installation all electrical service or other utilities serving the Improvements or additional improvements, and for the ongoing payment of all such utility accounts, which utility accounts shall be separately metered and placed in the name of the TOWN.

X.

MAINTENANCE OF PREMISES

Notwithstanding the provision of Article XI, responsibility for maintenance of the School Site and Park Site shall be as follows:

A. BOARD'S RESPONSIBILITIES

1. routine maintenance and repair of the School Site, other than as stipulated elsewhere in this Article;
2. removal of trash or litter from School Site and Park Site generated by the BOARD during the BOARD'S period of use;
3. School Site perimeter fence repair, unless damages by the TOWN'S actions;
4. turf irrigation system if damaged by the BOARD'S actions;
5. trim, maintain and replaces trees and shrubs within the School Site; and
6. mowing, edging and trimming of School Site playfield according to the School District's standard maintenance schedule.

B. TOWN'S RESPONSIBILITIES

1. routine maintenance and repair of the Park Site, other than as stipulated elsewhere in this Article;
2. removal of trash or litter from School Site and Park Site generated by the TOWN during the TOWN'S period of use. This activity is to take place prior to 7:30 a.m. on school days.
3. School Site perimeter fence repair, if damaged by TOWN'S actions

4. turf irrigation system, unless damaged by the BOARD'S actions.

The TOWN will irrigate turf on a schedule as mutually agreed to between the Park administrator and School administrator; and

5. the Town, at its sole cost and expense, shall be responsible for the ongoing maintenance and repair of the Improvements and any additional improvements constructed by the TOWN on the School Site.

The TOWN may apply certain herbicides and pesticides to the School Site during the TOWN'S period of use, using a certified technician, after first submitting specifications and environmental information to the BOARD, or its designee, and securing written approval from same to utilize the product. The TOWN must coordinate and schedule use of the herbicide or pesticide with the School administration prior to its application.

Notwithstanding the above, the TOWN may mow the playfield and make repairs to the irrigation system, at its sole cost and expense, as it deems it necessary, after first coordinating and scheduling same with the School administrator. The BOARD reserves the right to promulgate and enforce reasonable rules and regulations regarding the responsibility for the maintenance of the School Site.

In compliance with the December 1999 version of the State Requirements for Educational Facilities, or its successor document, the TOWN shall conduct annual inspections of any bleachers it has placed on the School site, to assure they are in a safe condition and free from hazard, and shall secure a certificate

from a structural engineer on a biennial basis attesting to same. A copy of the biennial certificate shall be provided to the BOARD without demand.

XI.

DAMAGE OR DESTRUCTION

In the event the School Site should be destroyed or so damaged by fire, windstorm or other casualty or acts of God to the extent that the School Site is rendered untenable or unfit for the purpose of the BOARD (as defined solely by the School District's Department of Safety) or TOWN, either party may cancel this Agreement by giving written notice to the other. However, if neither party shall exercise the foregoing right of cancellation within forty-five (45) days after the date of such destruction or damage, the TOWN shall cause those Improvements or additional improvements constructed by the TOWN upon the School Site, as provided for under Article IV, to be placed in a safe, secure and functional condition and compatible for use for school, recreational and community purposes within one hundred twenty (120) days after the date of such destruction or damage, unless an extension of this period is agreed to in writing by the BOARD or its designee. Should the TOWN fail to repair the Improvements or additional improvements within the aforementioned one hundred twenty (120) days from the date of destruction or damage, the BOARD shall have the right to place the TOWN in Default, as provided for in Article XXVI of this Agreement.

Except as specified in Article XIX, in the event of cancellation of this Agreement by either party due to damage or destruction, the TOWN shall cause

the School Site to be surrendered to the BOARD in a clean and safe condition within forty-five (45) days of said election to cancel.

Any damage sustained to the School Site as a result of the TOWN'S actions shall be repaired by the TOWN at the TOWN'S sole cost and expense.

XII.

ASSIGNMENT AND SUBLETTING OF PREMISES

The BOARD and TOWN shall not, at any time during the term of this Agreement, sublet in part or whole the School Site and Park Site, respectively, or assign this Agreement or any portion or part thereof.

XIII.

SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon the parties herein, their heirs, executors, legal representatives, successors and assigns.

XIV.

EXAMINATION OF PREMISES

After first providing reasonable notice to the Park administrator, the TOWN agrees to permit the BOARD'S designee to enter upon the School Site during the TOWN'S period of use for any purpose the BOARD deems necessary, provided the BOARD does not unreasonably interfere with or unduly burden the TOWN'S operations.

Subject to the provisions of Article XXIV, and after first providing reasonable notice to the School administrator, the BOARD agrees to permit the TOWN'S designee to enter upon the Park Site during the BOARD'S period of use

for any purpose the TOWN deems necessary, provided the TOWN does not unreasonably interfere with or unduly burden the BOARD'S operations.

XV.

ADVERTISING

The TOWN shall not place or permit any signs or advertising matter to be placed on any portion of the School Site except with the prior written approval of the School administrator; said approval not to be unreasonably withheld. Notwithstanding the above, the TOWN may place a Park informational sign within the School Site of the type and nature typically used by the TOWN at other of its park facilities. Placement of the sign shall be coordinated with the School administrator, and the TOWN shall assume all responsibilities for ongoing maintenance of the sign.

XVI.

CANCELLATION

The BOARD acknowledges that the TOWN will be funding construction of the Improvements using grants and other such restrictive sources. As such, the BOARD will use every reasonable effort to not preclude the Town's use of the School Site for the intended purpose during the term of this Agreement. Notwithstanding the above, in addition to the provisions of Articles XI and XXVI, either party shall have the right to cancel this Agreement by giving the other party written notice a minimum of one hundred eighty (180) days prior to the effective date of such cancellation.

XVII.

NOTICE AND GENERAL CONDITIONS

A. All notices or other communications which shall or may be given pursuant to this Agreement shall be in writing, delivered by personal service or by certified mail to the Parties at their respective addresses indicated below or as the same may be changed in writing from time to time. Such notice shall be deemed given on the day on which personally served, or if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier. Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. "Day" as used in this Agreement shall be defined as calendar day. Counsel for the BOARD and counsel for the TOWN may deliver Notice on behalf of the BOARD and TOWN, respectively. Any Party or other person to whom Notices are to be sent or copied may notify the other Parties and addresses of any change in name or address to which Notices shall be sent by providing the same pursuant to this provision.

In the case of notice or communication to the TOWN:

The Town of Cutler Bay
Attention: Town Manager
10100 SW 200 Street
Cutler Bay, Florida 33189

With a copy to:

Mitchell Bierman
Weiss Serota Helfman
Pastoriza Cole & Boniske, P.A.
2525 Ponce De Leon Blvd
Suite 700
Coral Gables, FL 33134

In the case of notice or communication to the BOARD:

The School Board of Miami-Dade County, Florida
c/o Superintendent of Schools
School Board Administration Building
1450 N.E. 2nd Avenue, Room 912
Miami, Florida 33132

With a copy to:

Miami-Dade County Public Schools
Facilities Planning
Attention: Executive Director
1450 N.E. 2nd Avenue, Room 525
Miami, Florida 33132

School Board of Miami-Dade County, Florida
Attorney's Office
Attention: School Board Attorney
1450 N.E. 2nd Avenue, Room 400
Miami, Florida 33132

B. Title and Paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the parties to this Agreement.

C. For purposes of this Agreement, the Superintendent of Schools or his designee shall provide all coordination and approvals related to the installation of the Improvements or additional improvements by the TOWN, and the Superintendent of Schools shall be the Party designated by the Board to

grant or deny all approvals required by this Agreement, or to cancel this Agreement.

XVIII.

SPECIAL ASSESSMENTS OR TAXING DISTRICT

Should the School Site become subject to ad valorem taxation or other assessments as the result of construction of the Improvements or additional improvements, the TOWN shall pay all such taxes or assessments.

XIX.

SURRENDER OF PREMISES

The TOWN and BOARD agree to accept the School Site and Park Site, respectively, in the condition they are in at the beginning of the term of this Agreement. Except as stipulated in Article XI, the TOWN further agrees to surrender to the BOARD, upon the termination, cancellation or expiration of this Agreement or any extension thereof, said School Site in as good condition as said premises were at the beginning of the term of this Agreement, ordinary wear and tear and damage by fire, windstorm or other Acts of God, excepted. All permanent improvements constructed by the TOWN shall become the property of the BOARD or, at the BOARD'S sole option, the TOWN agrees to remove any permanent improvements or facilities constructed by the TOWN after the effective date of this Agreement, and to restore the School Site as stipulated in Article IV.

XX.

NON-DISCRIMINATION

The TOWN and BOARD agree that there will be no discrimination against any person based upon race, color, sex, religious creed, ancestry, national origin, mental or physical handicap, in the use of the School Site or Park Site and any improvements constructed thereon. It is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of the other Party, effective the date of the Court Order.

XXI.

AMENDMENTS

The BOARD and TOWN, by mutual agreement, shall have the right, but not the obligation, to amend this Agreement. Such amendments shall be effective only when in writing and signed by both the BOARD and TOWN, and shall be incorporated as a part of this Agreement.

XXII.

CONSTRUCTION OF AGREEMENT

This Agreement shall be construed and enforced according to the laws of the State of Florida, and the venue for any disputes shall be in Miami-Dade County, Florida

XXIII.

SEVERABILITY

In the event any paragraph, clause or sentence of this Agreement or any future amendment is declared invalid by a court of competent jurisdiction, such paragraph, clause or sentence shall be stricken from the subject Agreement, and

the balance of the Agreement shall not be affected by the deletion thereof, provided to do so would not render interpretation of the Agreement provision ambiguous or a nullity.

XXIV.

COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

Both Parties hereby agree that they shall comply with all applicable laws, rules, regulations, ordinances and codes of Federal, State and Local Governments, including, but not limited to, the Americans with Disabilities Act, as they may be amended from time to time, and as they apply to this Agreement.

XXV.

ENVIRONMENTAL WARRANTIES AND REPRESENTATIONS

Neither Party shall use, handle, generate, manufacture, produce, store, discharge, treat, remove, transport or dispose of Hazardous Substances at, in, upon, under, to or from the other Party's property. "Hazardous Substances" shall include, but not be limited to, flammable substances, explosives, radioactive materials, asbestos, polychlorinated biphenyls, chemicals known to cause cancer, reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic by Federal, State or Local Environmental Laws.

Either Party shall immediately deliver to the other complete copies of all notices, demands, or other communications received from any governmental or quasi-governmental authority or any insurance company or board of fire

underwriters or like or similar entities regarding in any way alleged violations or potential violation of any environmental law or otherwise asserting the existence or potential existence of any condition or activity on the other Party's property which is or could be dangerous to life, limb, property or the environment.

XXVI.

WAIVER

No waiver of any provision hereof shall be deemed to have been made unless such waiver be in writing and signed by the BOARD or TOWN. The failure of either party to insist upon strict performance of any of the provisions or conditions of this Agreement shall not be construed as waiving or relinquishing in the future any such covenant or conditions, but the same shall continue and remain in full force and effect.

XXVII.

DEFAULT PROVISION

The BOARD shall provide the TOWN with written notice of any failure to perform or comply with the terms and conditions contained herein to be performed by the TOWN. If the TOWN fails to cure said default within thirty (30) days of receipt of written notice, or does not provide the BOARD with a written response within thirty (30) days after receiving notification, indicating the status of the TOWN'S resolution of the violations and providing for a schedule to correct all deficiencies, the BOARD shall have the right to immediately terminate this Agreement.

The TOWN shall provide the BOARD with written notice of any failure to perform or comply with the terms and conditions contained herein to be performed by the BOARD. If the BOARD fails to cure said default within thirty (30) days of receipt of written notice, or does not provide the TOWN with a written response within thirty (30) days after receiving notification, indicating the status of the BOARD'S resolution of the violations and providing for a schedule to correct all deficiencies, the TOWN shall have the right to immediately terminate this Agreement.

XXVIII.

ATTORNEY FEES

In the event of any litigation between the Parties under this Agreement, each party shall be responsible for its own attorney's fees and court costs through trials and appellate levels. The provisions of this paragraph shall survive the termination or cancellation of this Agreement

XXIX.

PEACEFUL POSSESSION

Subject to the terms, conditions, and covenants of this Agreement, both Parties agree that the other Party shall and may peaceably have, hold and enjoy the above described Park Site and School Site, without hindrance or molestation by the other Party.

XXX.

ENTIRE AGREEMENT

This Agreement represents the total agreement between the Parties.

IN WITNESS WHEREOF, the parties hereto have individually, through their proper officials, executed this Agreement the day and year first hereinabove written.

THE TOWN OF CUTLER BAY

**THE SCHOOL BOARD OF MIAMI-
DADE COUNTY, FLORIDA**

BY: _____
Steven J. Alexander
Town Manager

BY: _____
Rudolph F. Crew, Ed.D.
Superintendent of Schools

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

Town Attorney

School Board Attorney

EXHIBIT "A"

EXHIBIT "B"

Bermuda turf multipurpose field (70 yards X 120 yards)

Automatic irrigation system

Sports field lighting

Soft-surface jogging path around perimeter of field



Alan Ricke
Parks & Recreation Director

MEMORANDUM

To: Steven J. Alexander
Town Manager

From: Alan Ricke
Parks and Recreation Director

Date: July 24, 2007

Re: **PROPOSED PARK/SCHOOL AGREEMENT FOR SOCCER FIELD INSTALLATION**

Please accept this memorandum as clarification of the Parks and Recreation Department's proposal to enter into a park/school agreement for the Town's use of a portion of Cutler Ridge Elementary School for recreational activities.

In order to provide the optimal conditions for athletic programs at Cutler Ridge Park, it is imperative that additional fields are made available and/or additional time on the fields is made available. The construction of a lighted field addresses both needs. The only option for the construction of an additional field at Cutler Ridge Park is through the use of a portion of the Elementary School field. The Miami-Dade County Parks and Recreation Department had committed funds from the Safe Neighborhood Parks (SNP) bond program for the purpose of constructing a lighted soccer field on the school site, and had conducted several community meetings to discuss the project prior to the Town's incorporation. The Town's Parks and Recreation Advisory Committee unanimously approved moving forward with the County's plan to construct a lighted field on the school property utilizing SNP funding that the County is turning over to the Town.

The additional lighted field and additional parking area will alleviate several ongoing problems on game days such as an overcrowded park and parking issues that continually disrupt the residents near the park. The lighted field will allow the athletic programs that utilize the park to schedule practices and games during the week, resulting in a more manageable weekend schedule with less people at the park at any given time. An additional field also provides more options for setting up fields to allow for field recuperation during the season. The proposed parking area will be constructed on park property adjacent to the parking lot at the school, and will allow many of the cars that now park on the swales to park in a paved lot.

In order for the Town to utilize remaining SNP funds for the project, a lease agreement (minimum 25 years) must be in place with Miami-Dade County Public Schools (MDCPS). Several meetings have taken place that included the Elementary School Principal as well as a Planner from MDCPS Facilities Planning Department. Both individuals have indicated strong support for the proposed lease agreement and field project. We would propose an agreement similar to the one in place between the Village of Pinecrest and MDCPS for Pinecrest's use of portions of Palmetto Elementary and Palmetto Middle Schools (see attached). We are preparing a letter to send to the MDCPS Facility Planning Department expressing our interest in pursuing a lease agreement (this is their

trigger to move forward). The current thinking is that a lease agreement could be in place as early as October 2007. This would allow us to move forward with the planning and construction to have the project completed by December 2008 as required by the SNP.

Our most current estimates and funding sources for the project are as follows:

- | | | |
|--|---------------|-----------|
| • Install Bermuda turf multi-use field | Due From SNP | \$75,000 |
| • Install athletic field lighting | Due From SNP | \$150,000 |
| • Construct parking lot | Due From QNIP | \$188,000 |

Please feel free to contact me if you need any additional information.

Office of School Facilities
Jaime G. Torrens, Chief Facilities Officer

SUBJECT: AUTHORIZATION FOR THE SUPERINTENDENT TO FINALIZE NEGOTIATIONS AND EXECUTE A JOINT USE AGREEMENT WITH THE TOWN OF CUTLER BAY FOR THE USE BY THE DISTRICT OF CUTLER RIDGE PARK, LOCATED AT 10100 SW 200 STREET, AND BY THE TOWN OF THE PLAYFIELD AND PARKING LOT AT CUTLER RIDGE ELEMENTARY SCHOOL, LOCATED AT 20210 CORAL SEA ROAD

COMMITTEE: FACILITIES AND CONSTRUCTION REFORM

LINK TO STRATEGIC PLAN: IMPROVE CONSTRUCTION SERVICES

Background

Cutler Ridge Park (Park), is located adjacent to Cutler Ridge Elementary School (School), at 10100 SW 200 Street. Due to limited available park land and an increasing need to provide public recreational facilities, the Town of Cutler Bay (Town) approached the District with a request to utilize the playfield area and parking lot at the School, located at 20210 Coral Sea Road, for public park purposes during non-school hours (see location map). The Town intends to provide certain improvements to the playfield area (multipurpose/soccer field, irrigation system, lighting, jogging path, etc.), at its sole cost and expense. The School parking lot will be used by the Town to accommodate its anticipated parking needs. **The Town has requested an initial lease term of 25 years, since Safe Neighborhood Parks Grant Program funds will be used to construct the improvements, which requires a minimum lease term of 25 years.** The School will have use of certain of the Park recreational amenities to augment its Physical Education program. Approval of the proposed Joint Use Agreement (Agreement) will allow use of the School and Park recreational amenities to best serve community and School needs.

Proposed Joint Use Agreement

No physical improvements requiring the use of District funds are necessary as a result of the proposed Board action. Terms of the proposed Agreement are, substantially, as follows:

- **a 25 year term, with one successive 10 year option period, at the mutual option of the Parties;**
- rent at \$1 per year;

F-6

- the Town, at its sole cost and expense, shall construct certain improvements on the School playfield including, but not limited to, a multipurpose/soccer field, irrigation system, lighting and jogging path (Improvements). The scope and placement of all such work shall be reviewed and approved by the District prior to the initiation of any construction. The Town shall be responsible for the issuance of permits, inspections and final sign-off of the work, and all work shall conform to the District's Design Criteria, and be in compliance with all applicable laws, rules and regulations;
- the Town, at its sole cost and expense, shall be responsible for the ongoing maintenance and repair of the Improvements;
- the School will have use of the Park during regular school hours on regular school days. The Park amenities to be used by the School will be as mutually agreed to by the School Administrator and Park Supervisor. The School may have additional use of the Park, after normal school hours, by reserving such use with the Park Supervisor;
- the District shall have exclusive use of the School playfield and parking lot during regular school hours on regular school days, including summer school and during before and after school programs, if applicable, and at all other times required for the operation of School activities. The Town shall have use of the School playfield and parking lot at all other times, or as otherwise agreed to by the School Administrator and Park Supervisor;
- on a periodic basis, the Parties, through their respective designees, may modify the exact areas of use and periods of use;
- all utilities serving the Improvements will be separately metered and paid for by the Town;
- both Parties will be responsible for removal of trash and litter from the Park or School generated during their respective period of use. In addition, the District shall retain responsibility for the ongoing routine maintenance of the School playfield, other than the Improvements constructed by the Town, and the Town shall retain responsibility for the ongoing routine maintenance of the Park;
- in the event the Town constructs a parking lot on the Park in close proximity to the School, the parking lot will be made available to the School for staff parking during regular school hours;
- the Parties shall each indemnify and hold the other harmless to the extent and within the limitations of Florida Statutes;

- either Party may cancel the Agreement at anytime with 180 days prior written notice to the other;
- the Parties shall comply with all applicable laws, rules, regulations, ordinances and codes of Federal, State and Local Governments, including, but not limited to, the Americans with Disabilities Act, as they apply to this Agreement; and
- the Superintendent of Schools shall be the party designated by the Board to grant or deny all approvals required by this Agreement, or to cancel this Agreement.

The Principal and Regional Center VI Superintendent recommend approval of the Agreement. The proposed Agreement will be reviewed by the School Board Attorney's Office and the Office of Risk and Benefits Management prior to execution.

RECOMMENDED:

That The School Board of Miami-Dade County, Florida, authorize the Superintendent to finalize negotiations and execute a Joint Use Agreement with the Town of Cutler Bay for the use by the District of Cutler Ridge Park, located at 10100 SW 200 Street, and by the Town of the playfield and parking lot at Cutler Ridge Elementary School, located at 20210 Coral Sea Road, under substantially the terms and conditions noted above.

RL

District Office Operations
Henry C. Fraind, Deputy Superintendent

**SUBJECT: LEASE AGREEMENT WITH THE VILLAGE OF PINECREST FOR THE
USE OF PLAYFIELD AND PARKING LOTS AT THE PALMETTO MIDDLE
SCHOOL/PALMETTO ELEMENTARY SCHOOL CAMPUS**

Due to limited available park land and an increasing need to provide public recreational facilities, the Village of Pinecrest (Village) approached the District with a request to utilize the playfield area at the Palmetto Middle School/Palmetto Elementary School campus during non-school hours (see location map). The Village intends to provide certain improvements to the premises, at its sole cost and expense, during the summer recess. The staff parking lots will also be used by the Village to accommodate its anticipated parking needs.

Staff has negotiated a lease agreement with the Village with the following terms and conditions:

- a ten year term with one ten-year option period, subject to the Board's approval;
- the District shall have exclusive use of the premises during regular school hours on regular school days, including summer school and during before and after school programs, if applicable, and at all other times required by the District for the operation of school activities;
- the Village shall, at its sole cost and expense, provide certain improvements, including two softball fields, one soccer field, new sod throughout the premises and irrigation system modification/upgrade. All work shall conform to the State Requirements For Educational Facilities and the District's Design Criteria and Master Specifications;
- rent shall be \$1.00 per year;
- the Village shall indemnify and hold the Board harmless to the extent of the limitations within Florida Statutes, Section 768.28;
- the Village shall be responsible for securing any permits, zoning variances, regulatory or governmental approval, license and/or use approvals which may be required for the construction of its improvements;

- the Village shall be responsible for removal of trash or litter from the playfield and parking lots generated during its period of use, the repair of parking lots and playfield equipment damaged by its actions and for the repair, upkeep and maintenance of the improvements installed by it;
- either party may cancel the lease agreement at any time with 90 days advance written notice to the other; and
- the authority to approve the installation of additional improvements by the Village and to cancel the lease agreement shall be delegated to the Superintendent or his designee.

The proposed lease agreement has been reviewed by the School Board Attorney's Office and by the Office of Risk and Benefits Management. The principals of Palmetto Middle School and Palmetto Elementary School, the Region Superintendent of Region V and the Deputy Superintendent of School Operations, recommend approval of this agreement. No physical improvements requiring the use of District funds are necessary as a result of the proposed Board action.

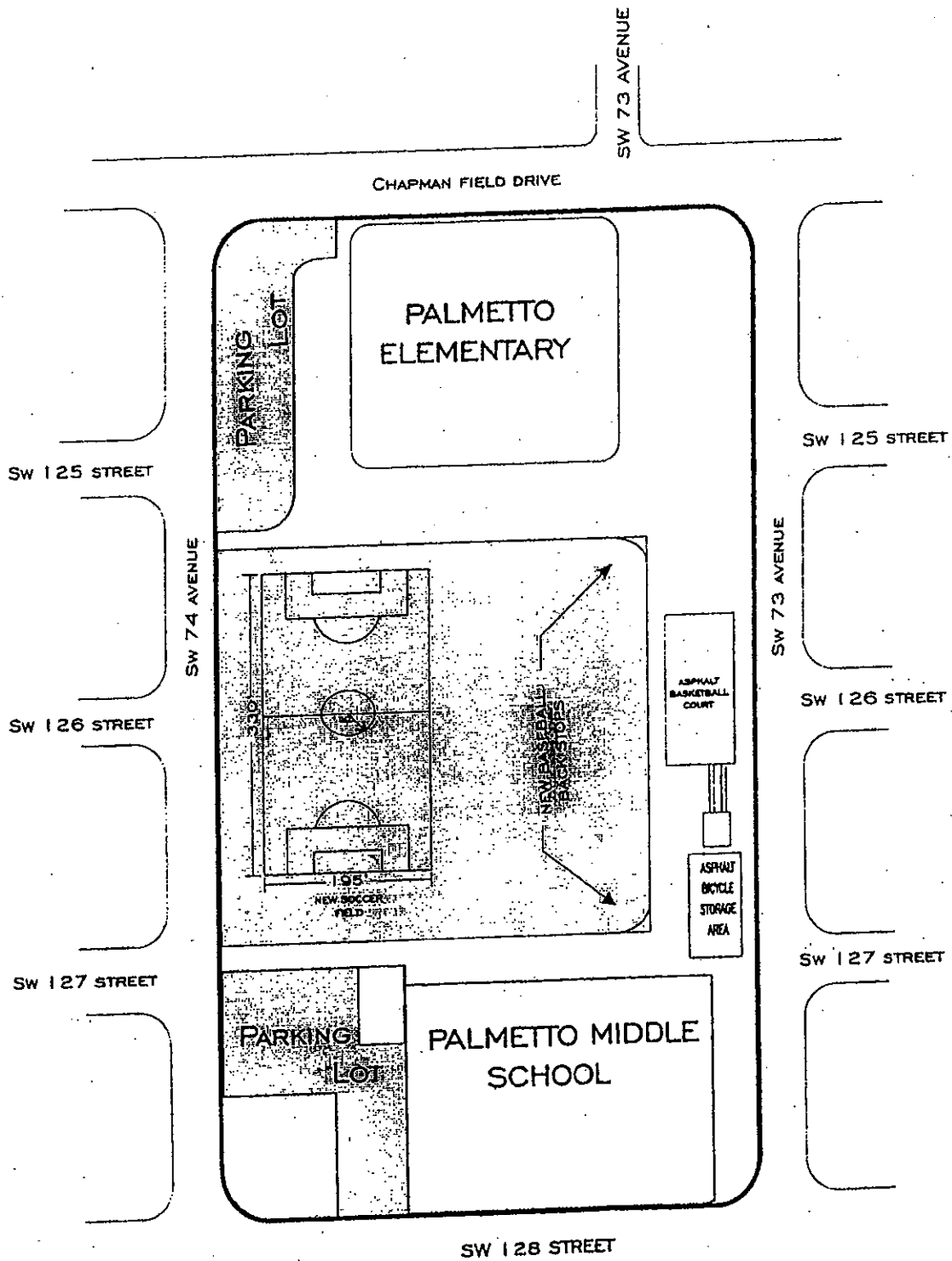
A copy of the proposed agreement has been placed on file in the Citizen Information Center and the Recording Secretary's Office.

RECOMMENDED:

That The School Board of Miami-Dade County, Florida, authorize the Superintendent or his designee to execute a lease agreement with the Village of Pinecrest, for the use of playfield and parking lots at the Palmetto Middle School/Palmetto Elementary School campus, under terms and conditions set forth above.

MAL:dr

LOCATION MAP



LEGEND



AREAS TO BE USED BY
VILLAGE OF PINECREST

LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into this 12th day of August, 1998, by and between THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter called the "LESSOR"), and the VILLAGE OF PINECREST, a municipal corporation of the State of Florida (hereinafter called the "LESSEE").

WITNESSETH:

WHEREAS, the LESSOR and LESSEE are mutually interested in and concerned with providing and making available recreational programs, activities and facilities for the use and benefit of the people of Miami-Dade County and the Village of Pinecrest; and

WHEREAS, the LESSOR owns and has under its jurisdiction certain facilities which are utilized for educational purposes but which may be utilized for suitable community and recreational activities by LESSEE; and

WHEREAS, it has become desirable and necessary for the LESSEE to utilize LESSOR'S property as a playground, athletic field and recreational area in connection with the LESSEE'S recreational objectives; and

WHEREAS, these objectives may be the best achieved through joint and coordinated action of the LESSOR and the LESSEE in making the LESSOR'S property available for such purposes in the most cost effective manner; and

WHEREAS, the Village of Pinecrest has authorized the lease of said lands by the

adoption of Resolution 98-24, at its meeting of June 9, 1998; and

WHEREAS, the School Board has authorized the lease of said lands in accordance with Board Item No. H-31, at its meeting of July 8, 1998.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the parties hereto agree as follows:

I.

PREMISES TO BE LEASED

LESSOR does hereby lease to LESSEE and LESSEE does hereby lease from LESSOR the following described parcel of land (hereinafter called the "DEMISED PREMISES") lying and being in the County of Dade, State of Florida, to wit:

That certain parking lot and portion of the playfield area at Palmetto Middle School, located at 7351 S.W. 128 Street, Pinecrest, Florida, and that certain parking lot at Palmetto Elementary School, located at 12401 S.W. 74 Avenue, Pinecrest, Florida, as further described and limited by the boundaries indicated on Exhibit "A", attached hereto and made a part hereof.

II.

TERM OF LEASE AGREEMENT

The term of this Lease Agreement shall be ten (10) years commencing on the date hereof. Said term may be extended at the option of the LESSOR for one (1) additional term

of ten (10) years, upon the same terms and conditions and at the same consideration as provided herein, provided LESSEE gives written notice to the LESSOR of LESSEE'S desire to extend the Lease Agreement no later than ninety (90) days prior to the expiration of the initial term hereof.

III.

USE OF PROPERTY

The specific area of use by LESSEE shall be limited to the DEMISED PREMISES as identified in Exhibit "A", including all recreational facilities therein. LESSOR reserves full control, custody, right and use of the DEMISED PREMISES during regular school hours on regular school days, during summer school (if applicable), during before and after school programs (if applicable) and at all other times required by LESSOR for the operation of school activities ("LESSOR'S period of use"). Prior to the beginning of each school year, the school site administrator shall establish a schedule for LESSOR'S period of use, and shall provide same to LESSEE. LESSEE shall have full control, custody, right and use of the DEMISED PREMISES for the public at all other times ("LESSEE'S period of use"), and shall provide the school site administrator with a schedule of its use on a periodic basis.

In the event of a school site or school district critical need requiring immediate use of the DEMISED PREMISES by LESSOR during the LESSEE'S period of use, LESSEE shall vacate the DEMISED PREMISES during the period of critical need.

Subsequent to the establishment of LESSOR'S annual schedule for LESSOR'S period

of use, should LESSOR require continued use of the DEMISED PREMISES for its educational or recreational program during the LESSEE'S period of use, LESSOR, or its designee, shall provide LESSEE with written notice of same and shall allow LESSEE to complete any seasonal athletic league programs then in process.

As a condition of use of the parking lots, LESSEE stipulates that it shall secure and lock the parking lot gates at the completion of its period of use, and shall remove all unauthorized vehicles from the parking lots prior to the beginning of the LESSOR'S period of use. LESSEE shall remove said vehicles from the parking lots using all lawful means, and may post signs on the DEMISED PREMISES as required to facilitate same, and at its sole cost and expense, after securing approval from the school site administrator as to size and placement.

LESSEE may, in addition to its own utilization of the DEMISED PREMISES, allow its designees to utilize the DEMISED PREMISES without securing additional permission from the LESSOR. In this eventuality, LESSEE shall be responsible for all use, maintenance, risk management and other terms and conditions as outlined in this Lease Agreement as if the DEMISED PREMISES were being utilized by LESSEE as outlined in this Lease Agreement.

Notwithstanding LESSEE'S right to use the DEMISED PREMISES without LESSOR'S permission, LESSEE stipulates that neither LESSEE or its designees shall use the DEMISED PREMISES, under any circumstance, in a profit making arrangement.

LESSEE shall provide adequate supervision of the parking lots and recreational facilities at all times that LESSEE conducts activities sponsored, controlled or sanctioned by the VILLAGE OF PINECREST. LESSEE may promulgate and enforce reasonable rules and regulations governing the aforementioned use of the DEMISED PREMISES during its period of use. However, LESSEE may not sanction or conduct any activities contrary to LESSOR'S Board Rules or policies.

The DEMISED PREMISES shall be utilized for playground, athletic and recreation purposes, as well as for any related activities sanctioned in writing by the LESSOR or its designee, and for no other purpose.

The use of the DEMISED PREMISES for carnivals, fairs, exhibits, mechanical rides, midways, or the same or similar kinds of activities is expressly prohibited. The sale or consumption of alcoholic beverages is expressly prohibited. The sale of food, drink or other merchandise on the DEMISED PREMISES is permitted only with the prior written approval of the LESSOR, or its designee; said approval not to be unreasonably withheld.

LESSOR and LESSEE shall be entitled to make application to the other party for use of the DEMISED PREMISES during the period of use normally associated with the other party. In that event, the requesting party will provide the other party with a request to use the DEMISED PREMISES a minimum of seventy two (72) hours prior to the need.

IV.

IMPROVEMENTS

LESSEE agrees, as a condition of this Lease Agreement and at its sole cost and expense, to construct certain improvements, in conformance with those itemized on Exhibit "B", attached hereto and made a part hereof. Said improvements shall conform to the State Requirements For Educational Facilities dated April 28, 1997, and the school district's Design Criteria and Master Specifications.

LESSEE may, with the prior written approval of LESSOR, or its designee, construct additional recreational facilities on the DEMISED PREMISES at such time as the LESSEE determines it to be in the best interest of the community. Such improvements are to be at the sole cost and expense of LESSEE. Notwithstanding the foregoing, nothing contained herein shall obligate LESSEE to construct any improvements upon the DEMISED PREMISES, other than those itemized on Exhibit "B".

LESSEE agrees that no construction, major repairs, alterations or improvements may be undertaken by it upon the DEMISED PREMISES unless the plans:

- (1) be first submitted to and approved by the LESSOR, or its designee; and
- (2) be in compliance with all applicable State, County, School Board, Department of Education and Village rules and regulations.

The LESSEE covenants and agrees that it shall indemnify, hold harmless and defend LESSOR from and against any and all claims, liens, suits, actions or causes of action arising

out of or in connection with the construction and all costs and expenses of said improvements.

Except as specified in Article XI, upon the termination, cancellation or expiration of this Lease Agreement or any extension thereof, all permanent improvements, in their then existing conditions, shall become the property of LESSOR without compensation due LESSEE. LESSEE agrees that should said improvements conflict with LESSOR'S ability to construct educational or recreational improvements to the school, or create unusual safety or maintenance concerns for the school, as determined solely by LESSOR, LESSEE shall remove any new improvements or facilities constructed by LESSEE and shall restore the DEMISED PREMISES to the same or better condition as existed before the effective date of this Lease Agreement within ninety (90) days of the termination, cancellation or expiration of this Lease Agreement.

The LESSOR reserves the right to construct recreational facilities, and maintain equipment related to the construction of said facilities, on the DEMISED PREMISES at such time as it shall be in the best interest of the school district to do so. LESSOR, or its designee, shall provide LESSEE with prior written notice of its intent to construct facilities on the DEMISED PREMISES.

The LESSOR reserves the right to place portable classrooms, and maintain equipment related to the installation of said classrooms, on the DEMISED PREMISES at such time as it shall be in the best interest of the school district to do so. At such time as the portable

classrooms are installed, they, along with the area immediately surrounding same, may be excluded from this Lease Agreement upon mutual accord of both LESSOR and LESSEE, through the execution of a lease amendment.

V.

CONSIDERATION

The LESSEE does hereby covenant and agree to pay LESSOR as consideration for the use and occupancy of the DEMISED PREMISES throughout the term of this Lease Agreement and any renewal thereof, the sum of one dollar (\$1.00) per year in advance, beginning on the date hereof and on the anniversary date of each and every year thereafter.

VI.

LIABILITY FOR PERSONAL PROPERTY

LESSOR and LESSEE agree to insure or self insure their respective interests in personal property to the extent each deems necessary or appropriate and hereby mutually waive all rights to recovery for loss or damage by any means and waive all rights to recovery for loss and damage to such property by any cause whatsoever. LESSOR and LESSEE hereby waive all rights of subrogation against each other under any policy or policies they may carry or on property placed or moved on the DEMISED PREMISES.

VII.

LIABILITY FOR DAMAGE OR INJURY

LESSOR shall not be liable for any damage or injury which may be sustained by

LESSEE or any persons on the DEMISED PREMISES during the LESSEE'S period of use, other than damage or injury resulting from the negligence or improper conduct on the part of LESSOR, its agents, representatives or employees, or failure of LESSOR to perform its covenants under this Lease Agreement.

LESSEE shall not be liable for any damage or injury which may be sustained by LESSOR or any persons on the DEMISED PREMISES during the LESSOR'S period of use, other than damage or injury resulting from the negligence or improper conduct on the part of LESSEE, its agents, representatives or employees, or failure of LESSEE to perform its covenants under this Lease Agreement.

VIII.

INDEMNIFICATION

LESSEE does hereby agree to indemnify, defend and hold harmless LESSOR to the extent of the limitations included within Florida Statutes, Section 768.28, from any and all personal injury or damage claims, liability, losses and causes of action which may arise solely as a result of LESSEE'S construction activities and use of the DEMISED PREMISES. However, nothing herein shall be deemed to indemnify LESSOR for any liability or claim arising out of the negligence, performance or failure of performance of LESSOR or as a result of the negligence of any unrelated third party.

IX.

UTILITIES AND PERMITS

LESSOR shall pay only for the water and electricity consumed on the playfield for the purpose of irrigating the grounds, and for the security lighting within the parking lots.

LESSEE shall be responsible for securing any permits, zoning variances, regulatory or governmental approvals, license and/or use approvals which may be required for the construction of field lighting or any other improvement of any nature installed by the LESSEE. LESSEE shall be responsible for the installation and payment of all electric or other utility consumption for said improvements, which accounts shall be separately metered and placed in the name of LESSEE.

X.

MAINTENANCE OF DEMISED PREMISES

LESSEE shall keep all recreational facilities and equipment now in place or to be constructed by it or LESSOR on the playfield, as well as the parking lots, in a safe and clean condition during its period of use. Notwithstanding the provisions of Article XI, responsibility for the maintenance of the DEMISED PREMISES shall be as follows:

A. LESSOR'S RESPONSIBILITIES

1. removal of trash or litter from playfield and parking lot generated by LESSOR during the period of LESSOR'S use
2. perimeter fence repair, unless damaged by LESSEE'S actions

3. maintain and repair irrigation system, unless damaged by LESSEE'S actions.
LESSOR will irrigate turf area on a schedule as mutually agreed to between LESSEE and school site administrator.
4. trim, maintain and replace trees and shrubs
5. mowing, edging and trimming of field according to Miami-Dade County Public Schools routine maintenance schedule

B. LESSEE'S RESPONSIBILITIES

1. removal of trash or litter from playfield and parking lots generated during the period of LESSEE'S use. This activity is to take place prior to 7:30 a.m. on school days.
2. repair of parking lots and playfield equipment or facilities damaged by LESSEE'S actions
3. repair irrigation system if damaged by LESSEE'S actions
4. all repair, upkeep and maintenance of any nature for improvements installed by LESSEE, other than field mowing and repair and maintenance of irrigation system, as provided for above
5. perimeter fence repair, if damaged by LESSEE'S actions

LESSEE may apply certain herbicides and pesticides to the DEMISED PREMISES during the LESSEE'S period of use, using a certified technician, after first submitting specifications and environmental information to LESSOR, or its designee, and securing

written approval from same to utilize the product. LESSEE must coordinate and schedule use of the herbicide or pesticide with the school site administrator prior to its application.

Notwithstanding the above, LESSEE may mow the field and make repairs to the irrigation system, at its sole cost and expense, after first coordinating and scheduling same with the school site administrator. Further, LESSOR reserves the right to promulgate and enforce reasonable rules and regulations regarding the responsibility for the maintenance of the DEMISED PREMISES.

XI.

DAMAGE OR DESTRUCTION

In the event the DEMISED PREMISES should be destroyed or so damaged by fire, windstorm or other casualty or acts of God to the extent that the DEMISED PREMISES are rendered untenable or unfit for the purpose of LESSOR (as defined solely by the school district's Department of Safety) or LESSEE, either party may cancel this Lease Agreement by giving written notice to the other. However, if neither party shall exercise the foregoing right of cancellation within forty five (45) days after the date of such destruction or damage, LESSEE shall cause those improvements constructed by LESSEE upon the DEMISED PREMISES, as provided for under Article IV, to be placed in a safe, secure and functional condition and compatible for use for school, recreational and community purposes within one hundred and twenty (120) days after the date of such destruction or damage, unless an extension of this period is agreed to in writing by LESSOR. Should LESSEE fail to repair

the improvements within the aforementioned one hundred and twenty (120) days from the date of destruction or damage, then LESSOR shall have the sole right to cancel this Lease Agreement with no additional advance notice to LESSEE.

Except as specified in Article XIX, in the event of cancellation of the Lease Agreement by either party due to damage or destruction, LESSEE shall cause the DEMISED PREMISES to be surrendered to LESSOR in a clean and safe condition within forty five (45) days of said election to cancel.

Any damage sustained to the DEMISED PREMISES as a result of LESSEE'S actions shall be repaired by LESSEE at LESSEE'S sole cost and expense.

XII.

ASSIGNMENT AND SUBLETTING OF PREMISES

LESSEE shall not, at any time during the term of this Lease Agreement, sublet in part or whole the DEMISED PREMISES, or assign this Lease Agreement or any portion or part thereof.

XIII.

SUCCESSORS AND ASSIGNS

This Lease Agreement shall be binding upon the parties herein, their heirs, executors, legal representatives, successors and assigns.

XIV.

EXAMINATION OF PREMISES

LESSEE agrees to permit the LESSOR'S designee to enter upon the DEMISED PREMISES during periods the DEMISED PREMISES are under LESSEE'S control for any purpose LESSOR deems necessary, provided LESSOR does not unreasonably interfere with or unduly burden LESSEE'S operations.

XV.

ADVERTISING

LESSEE shall not permit any signs or advertising matter to be placed on any portion of the DEMISED PREMISES except with prior written approval of the LESSOR, or its designee; said approval not to be unreasonably withheld.

XVI.

CANCELLATION

In addition to the provisions of Articles XI and XXVI, either party shall have the right to cancel this Lease Agreement by giving the other party written notice at least ninety (90) days prior to the effective date of such cancellation.

XVII.

NOTICE AND GENERAL CONDITIONS

A. All notices or other communications which shall or may be given pursuant to this Lease Agreement shall be in writing and shall be delivered by personal service or by

certified mail addressed to the parties at their respective addresses indicated below or as the same may be changed in writing from time to time. Such notice shall be deemed given on the day on which personally served, or if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

1. In the case of notice or communication to LESSEE:

The Village of Pinecrest
Attention: Village Manager
11551 South Dixie Highway
Pinecrest, Florida 33156

2. In the case of notice or communication to LESSOR:

The School Board of Miami-Dade County, Florida
c/o Superintendent of Schools
School Board Administration Building
1450 N.E. 2nd Avenue, Room 912
Miami, Florida 33132

With a copy to:

Miami-Dade County Public Schools
Governmental Affairs and Land Use Policy and Acquisition
Attention: Executive Director
1450 N.E. 2nd Avenue, Room 525
Miami, Florida 33132

B. Title and Paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the parties to this Lease Agreement.

C. For purposes of this Lease Agreement, the Superintendent of Schools shall have the authority to cancel this Lease Agreement as provided for elsewhere in this Lease

Agreement.

XVIII.

SPECIAL ASSESSMENTS OR TAXING DISTRICT

Should the DEMISED PREMISES become subject to ad valorem taxation as the result of an act beyond the control of LESSOR, the LESSEE shall pay one-half of the taxes and the LESSOR one-half.

XIX.

SURRENDER OF PREMISES

LESSEE agrees to accept the DEMISED PREMISES in the condition they are in at the beginning of the term of this Lease Agreement. Except as stipulated in Article XI, LESSEE further agrees to surrender to LESSOR, upon the termination, cancellation or expiration of this Lease Agreement or any extension thereof, said DEMISED PREMISES in as good conditions as said premises were at the beginning of the term of this Lease Agreement, ordinary wear and tear and damage by fire, windstorm or other Acts of God, excepted. All permanent improvements constructed by LESSEE shall become the property of LESSOR or, at LESSOR'S sole option, LESSEE agrees to remove any new permanent improvements or facilities constructed by LESSEE after the effective date of this Lease Agreement and to restore the DEMISED PREMISES as stipulated in Article III.

XX.

NON-DISCRIMINATION

LESSEE agrees that there will be no discrimination against any person based upon race, color, sex, religious creed, ancestry, national origin, mental or physical handicap, in the use of the DEMISED PREMISES and improvements thereof. It is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Lease Agreement automatically terminates without any further action on the part of LESSOR, effective the date of the Court Order.

XXI.

AMENDMENTS

LESSOR and LESSEE, by mutual agreement, shall have the right, but not the obligation, to amend this Lease Agreement. Such amendments shall be effective only when in writing and signed by both LESSOR and LESSEE and shall be incorporated as part of this Lease Agreement.

XXII.

CONSTRUCTION OF AGREEMENT

This Lease Agreement shall be construed and enforced according to the laws of the State of Florida, and the venue for any disputes shall be in Dade County, Florida .

XXIII.

SEVERABILITY

In the event any paragraph, clause or sentence of this Lease Agreement or any future amendment is declared invalid by a court of competent jurisdiction, such paragraph, clause or sentence shall be stricken from the subject Lease Agreement and the balance of the Lease Agreement shall not be affected by the deletion thereof, provided to do so would not render interpretation of the lease provision ambiguous or a nullity.

XXIV.

COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

Both parties hereby agree that they shall comply with all applicable laws, ordinances and codes of Federal, State and Local Governments, including the Americans with Disabilities Act, as they apply to this Lease Agreement.

XXV.

WAIVER

No waiver of any provision hereof shall be deemed to have been made unless such waiver be in writing and signed by LESSOR or LESSEE. The failure of either party to insist upon strict performance of any of the provisions or conditions of this Lease Agreement shall not be construed as waiving or relinquishing in the future any such covenants or conditions, but the same shall continue and remain in full force and effect.

XXVI.

DEFAULT PROVISION

LESSOR shall provide LESSEE with written notice of any failure to perform or comply with the terms and conditions contained herein to be performed by LESSEE. If LESSEE fails to cure said default within thirty (30) days of receipt of written notice, or does not provide LESSOR with a written response within thirty (30) days after receiving notification, indicating the status of the LESSEE'S resolution of the violations and providing for a schedule to correct all deficiencies, LESSOR shall have the right to immediately terminate this Lease Agreement.

LESSEE shall provide LESSOR with written notice of any failure to perform or comply with the terms and conditions contained herein to be performed by LESSOR. If LESSOR fails to cure said default within thirty (30) days of receipt of written notice, or does not provide LESSEE with a written response within thirty (30) days after receiving notification, indicating the status of the LESSOR'S resolution of the violations and providing for a schedule to correct all deficiencies, LESSEE shall have the right to immediately terminate this Lease Agreement.

XXVII.

ENTIRE AGREEMENT

This Lease Agreement represents the total agreement between the parties.

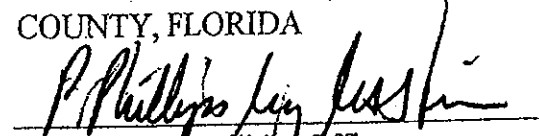
IN WITNESS WHEREOF, the parties hereto have individually, through their proper officials, executed this Lease Agreement the day and year first hereinabove written.

THE VILLAGE OF PINECREST

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA




Mayor



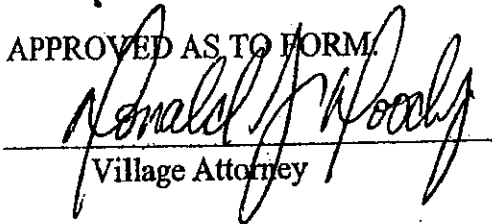
Chief Facilities Officer
Facilities Planning and Construction

ATTEST:



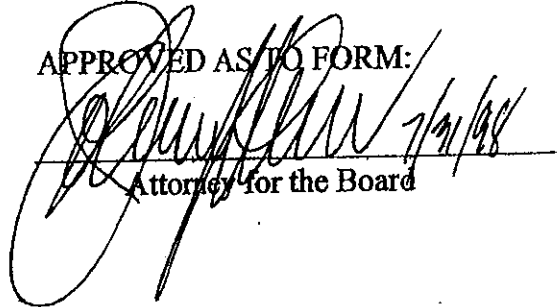
Village Clerk

APPROVED AS TO FORM:



Village Attorney

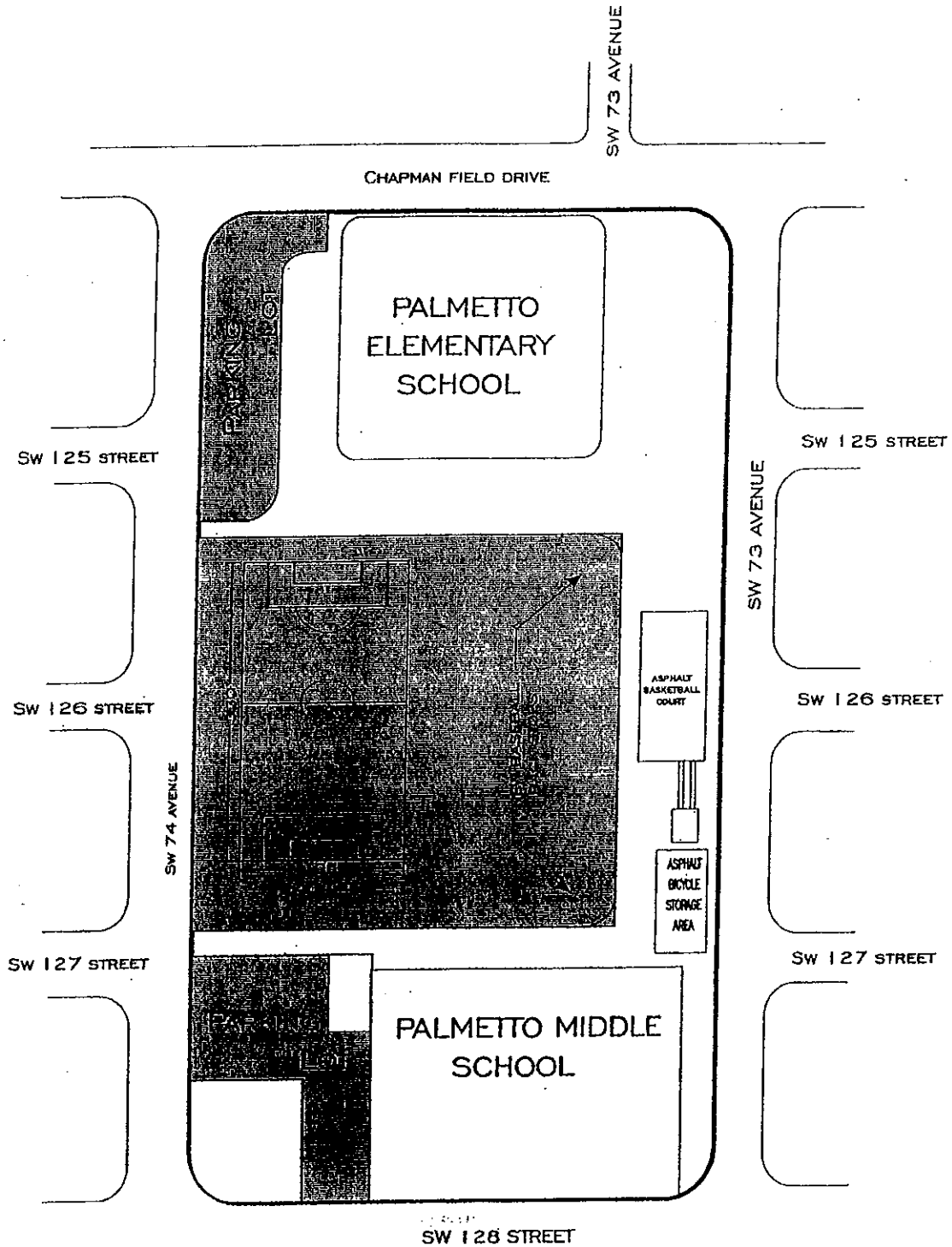
APPROVED AS TO FORM:



Attorney for the Board

A:\Pinecrest\dr

EXHIBIT "A"



LEGEND



DEMISED PREMISES

EXHIBIT "B"

LESSEE agrees to construct, in accordance with the provisions of Article IV, the following

improvements to the DEMISED PREMISES:

- one soccer field with goal posts
- two baseball fields with backstops
- resodding of 400' x 500' area
- irrigation system modifications/installation as required
- sidewalk, curb and fence modifications as necessary to provide vehicular access to DEMISED PREMISES at approximately S.W. 73 Avenue and S.W. 125 Street

AMENDMENT TO LEASE AGREEMENT

THIS AMENDMENT TO LEASE AGREEMENT (the "Amendment") is made and entered into this 3rd day of OCTOBER, 2006, by and between THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, a body corporate and politic (hereinafter called the "LESSOR"), and the VILLAGE OF PINECREST, a municipal corporation of the State of Florida (hereinafter called the "LESSEE").

WITNESSETH:

WHEREAS, LESSOR and LESSEE entered into that certain Lease Agreement dated August 1, 1998 (the "Lease"); and

WHEREAS, LESSOR and LESSEE are desirous of amending certain terms and conditions of the Lease, as more specifically set forth below; and

WHEREAS, the School Board of Miami-Dade County, Florida, has authorized the execution of this Amendment in accordance with Board Action No. 108,943, at its meeting of May 10, 2006; and

WHEREAS, the Village of Pinecrest, Florida, has authorized the execution of this Amendment at its meeting of April 11, 2006.

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

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. Article II of the Lease is hereby amended to read as follows:

"The term of this Lease shall be thirty (30) years commencing on August 1, 1998 and ending on July 30, 2028. Said term may be extended at the option of LESSOR for one (1) additional term of ten (10) years, upon the same terms and conditions and at the same consideration as provided herein, provided LESSEE gives written notice to LESSOR of LESSEE'S desire to extend the Lease no later than ninety (90) days prior to the expiration of the initial term hereof."

3. Article IV of the Lease is hereby amended to add the following provisions to the end of said Article:

"LESSOR shall design and construct a free-standing bathroom facility on a portion of the DEMISED PREMISES, at a location to be mutually agreed upon by LESSOR and LESSEE. The total project cost to design and construct the bathroom facility is estimated at approximately \$105,590.



LESSEE shall be responsible for funding \$100,000 towards the total project cost, and LESSOR shall be responsible for funding the balance of the total project cost, estimated at \$5,590. LESSEE shall submit payment to LESSOR for LESSEE'S portion of the total project cost (\$100,000) within thirty (30) days following completion of the bathroom facility.

In the event LESSOR removes or demolishes the bathroom facility, terminates the Lease prior to the end of the initial lease term, or impacts the usefulness of the playfield area such that LESSEE cannot reasonably operate its recreational programs, LESSOR shall reimburse LESSEE for the remaining portion of LESSEE'S contribution towards the cost of designing and constructing the bathroom facility (\$100,000), as amortized equally over a twenty (20) year period commencing upon completion of the bathroom facility."

4. Article IX of the Lease is hereby amended to add the following provision:

"LESSOR shall provide and be responsible for payment of all utilities serving the bathroom facility to be constructed by LESSOR on the DEMISED PREMISES."

5. Article X(A) of the Lease is hereby amended to add the following provisions:

- "6. keeping the bathroom facility to be constructed by LESSOR on the DEMISED PREMISES clean and neat, including trash pick-up and removal, during LESSOR'S period of use;
7. restocking of consumables used in the bathroom facility to be constructed by LESSOR on the DEMISED PREMISES during LESSOR'S period of use;
8. repair of any damage to the bathroom facility to be constructed by LESSOR on the DEMISED PREMISES resulting from LESSOR'S period of use."

6. Article X(B) of the Lease is hereby amended to add the following provisions:

- "6. keeping the bathroom facility to be constructed by LESSOR on the DEMISED PREMISES, clean and neat, including trash pick-up and removal, during LESSEE'S period of use. This activity is to take place prior to 7:30 a.m. on each school day;
7. restocking of consumables used in the bathroom facility to be constructed by LESSOR on the DEMISED PREMISES during LESSEE'S period of use;



8. repair of any damage to the bathroom facility to be constructed by LESSOR on the DEMISED PREMISES resulting from LESSEE'S period of use."
7. The first paragraph in Article XI of the Lease is hereby amended to add the following provision:

"Notwithstanding the foregoing, in the event the bathroom facility to be constructed by LESSOR on the DEMISED PREMISES should be destroyed or damaged by fire, windstorm or other casualty or acts of God to the extent that the bathroom facility is rendered untenable or unfit for the purpose of LESSEE or LESSOR (as determined solely by LESSOR'S Department of Safety), LESSOR shall cause the bathroom facility to be repaired or replaced within one hundred eighty (180) days after the date of such damage or destruction, or such other period of time as mutually agreed to."

8. BACKGROUND SCREENING REQUIREMENTS

In accordance with the requirements of sections 1012.32, 1012.465, and 435.04, Florida Statutes (2004) as well as with the requirements of HB 1877, The Jessica Lunsford Act (2005), effective September 1, 2005, LESSEE agrees that all of its employees who will be using the DEMISED PREMISES provide or may provide services under this Lease have completed all background screening requirements as outlined in the above-referenced statutes. LESSEE agrees to bear any and all costs associated with acquiring the required background screenings. LESSEE agrees to require all its affected employees to sign a statement, as a condition of employment with LESSEE in relation to performance under this Lease, that the employee will abide by the terms and notify LESSEE/Employer of any arrest or conviction of any offense enumerated in s. 435.04, Florida Statutes within 48 hours of their occurrence. LESSEE agrees to provide the LESSOR with a list of all of its employees who have completed background screening as required by the above-referenced statutes and meet the statutory requirements contained therein. LESSEE agrees that it has an ongoing duty to maintain and update these lists as new employees are hired and in the event that any previously screened employee fails to meet the statutory standards, LESSEE further agrees to notify the LESSOR immediately upon becoming aware that one of its employees who was previously certified as completing the background check and meeting the statutory standards is subsequently arrested or convicted of any disqualifying offense. Failure by LESSEE to notify the LESSOR of such arrest or conviction within 48 hours of being put on notice by the employee and within 5 days of its occurrence, shall constitute grounds for immediate termination of this Lease by the LESSOR. The parties further agree that failure by LESSEE to perform any



of the duties described in this paragraph shall constitute a material breach of the Lease entitling the LESSOR to terminate this Lease immediately with no further responsibility to make payment or perform any other duties under this Lease.


COMPLIANCE WITH SCHOOL CODE

LESSEE agrees to comply with all sections of the Florida K-20 Education Code, Title XLVIII, Florida Statutes as it presently exists, and further as it may be amended from time to time. Further LESSEE agrees that failure to comply with the Florida K-20 Education Code shall constitute a material breach of this Lease and may result in the termination of this Lease by the LESSOR."

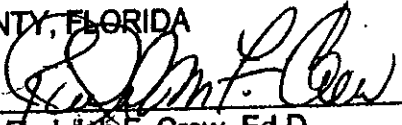
9. All other terms and conditions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the LESSOR and LESSEE have caused this Amendment to be executed by their respective and duly authorized officers the day and year first hereinabove written.

LESSEE:
VILLAGE OF PINECREST

By: 
Name: PETER G. LOMBARDI
Title: VILLAGE MANAGER

LESSOR:
THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA

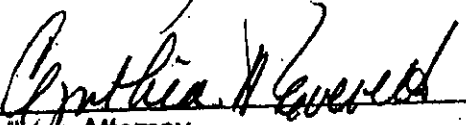
By: 
Rudolph F. Crew, Ed.D.
Superintendent of Schools

ATTEST:




Village Clerk

APPROVED AS TO FORM:



Village Attorney

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:



School Board Attorney

Office of School Facilities
Rose Diamond, Chief Facilities Officer

**SUBJECT: AUTHORIZE THE SUPERINTENDENT TO FINALIZE
NEGOTIATIONS AND EXECUTE AN AMENDMENT TO THE
LEASE AGREEMENT WITH THE VILLAGE OF PINECREST FOR
THE USE OF PLAYFIELD AND PARKING LOTS AT THE
PALMETTO MIDDLE SCHOOL/PALMETTO ELEMENTARY
SCHOOL CAMPUS, LOCATED AT SW 74 AVENUE AND SW 128
STREET, TO ALLOW CONSTRUCTION OF RESTROOM
FACILITIES**

COMMITTEE: FACILITIES AND CONSTRUCTION REFORM

Background

Since August 1998, the Village of Pinecrest (Village) has leased parking and playfield facilities at the Palmetto Middle School/Palmetto Elementary School campus for playground, athletic and recreational purposes. At a Village Council meeting held on April 11, 2006, the Village requested that the District construct a free-standing bathroom facility within a portion of the playfield for District use during school hours, and by the public during those hours that the park is used by the Village.

An analysis prepared by the Office of School Facilities and Construction estimates the total project cost of the bathroom facility to be approximately \$105,590, and the Village has agreed to contribute \$100,000 towards that cost. The District will fund the estimated additional project cost of approximately \$5,590.

The proposed lease amendment will include, substantially, the following terms and conditions:

- the District will design and construct a free-standing bathroom facility on a portion of the demised premises, in a location as mutually agreed upon by the parties;
- the District will provide utilities to the bathroom facility, at its sole cost and expense;
- the parties shall keep the bathroom facility clean and neat, and restock consumables, during their respective periods of use;
- the parties shall each be responsible to repair any damage to the facility resulting from their respective periods of use;
- the District shall be responsible for repair or replacement of the bathroom facility in the event of damage or destruction;
- the initial lease term will be extended an additional twenty (20) years, from July 30, 2008 until August 1, 2028; and

REVISED
F - 10

- in the event the District removes or demolishes the bathroom facilities, terminates the lease agreement prior to the end of the initial lease term, or impacts the usefulness of the playfield area such that the Village can not reasonably operate its recreational programs, the District shall reimburse the Village for the unamortized portion of the Village contribution, amortized equally over a twenty (20) year period commencing upon completion of the project.

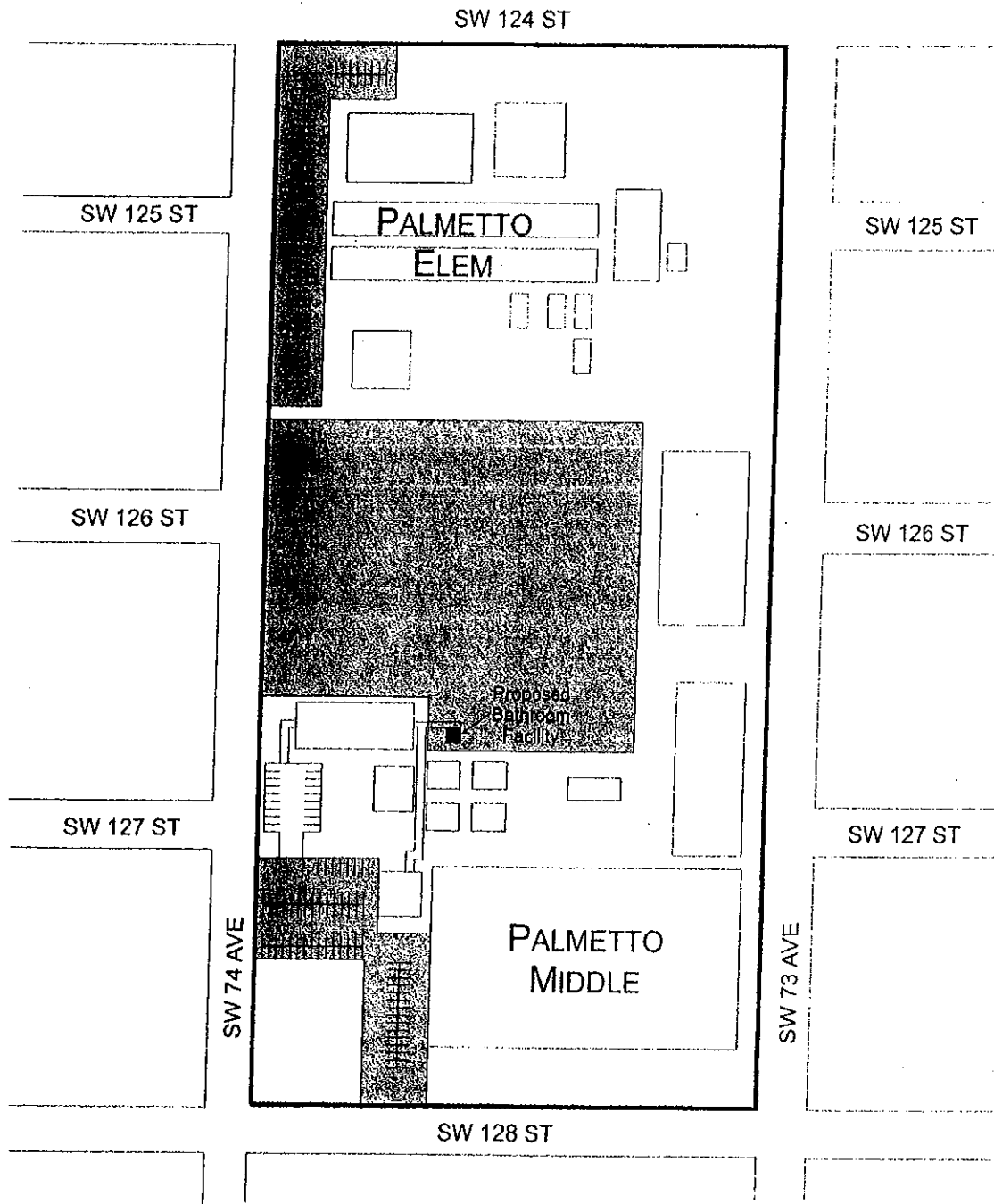
REVISED

All other terms and conditions of the lease agreement will remain unchanged.


RECOMMENDED: That The School Board of Miami-Dade County, Florida, authorize the Superintendent to finalize negotiations and execute an amendment to the lease agreement with the Village of Pinecrest for the use of playfield and parking lots at the Palmetto Middle School/Palmetto Elementary School campus, located at SW 74 Avenue and SW 128 Street, to allow construction of restroom facilities, and in conformance with the other terms and conditions noted above. The Village will contribute \$100,000 towards the total project cost, with the Board to fund the estimated additional project cost of approximately \$5,590.

MAL:scj

LOCATION MAP



LEGEND

 Demised Premises

(NOT TO SCALE)



TAB 3



MEMORANDUM

To: Mayor, Vice Mayor and Council Members

From: Steven Alexander

Date: June 5, 2008

Re: **PROPOSAL TO DEVELOP A JOINT RETAIL ECONOMIC DEVELOPMENT STRATEGY FOR THE TOWN OF CUTLER BAY AND THE VILLAGE OF PALMETTO BAY**

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 BUXTON TO DEVELOP A JOINT RETAIL ECONOMIC DEVELOPMENT STRATEGY FOR THE TOWN OF CUTLER BAY AND THE VILLAGE OF PALMETTO BAY; AND PROVIDING FOR AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

Buxton's CommunityID product is designed to assist leaders address their retail recruitment challenges. It is a step by step through the process of attracting retailers, restaurants and shopping centers to sites identified in the community. CommunityID serves as the framework for developing a sustainable marketing program that not only achieves short-term goals but also endures the economic viability of the retail sector over the long term. It has also helped leaders in nearly 350 large and small cities to address their biggest retail recruitment challenges. The Town will be involved in the process to make important decisions that guide the direction and results. The four main phases of the process are:

- Researching and verifying Cutler Bay and Palmetto Bay's retail trade areas.
- Evaluating Cutler Bay and Palmetto Bay's retail potential.
- Matching retailers and restaurant's to Cutler Bay and Palmetto Bay's market potential.
- Delivering Cutler Bay and Palmetto Bay's new retail oriented marketing packages.

RECOMMENDATION

It is recommended that the Town Council approve the Resolution.

RESOLUTION NO. 08-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO CONTRACTS, AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH BUXTON COMMUNITY ID TO DEVELOP A JOINT RETAIL ECONOMIC DEVELOPMENT STRATEGY FOR THE TOWN OF CUTLER BAY AND THE VILLAGE OF PALMETTO BAY AND WAIVING THE REQUIREMENT FOR BIDDING OF THE CONTRACT IN ACCORDANCE WITH SECTION 3.10 OF THE TOWN CHARTER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (THE “Town”) reviewed an unsolicited proposal from Buxton Community ID (“Buxton”) to develop a retail economic strategy; and

WHEREAS, Buxton has proposed to research and verify Cutler Bay and Palmetto Bay’s retail trade area and evaluate Cutler Bay and Palmetto Bay’s retail potential and thereby match retailers and restaurants with Cutler Bay and Palmetto Bay according to the findings and

WHEREAS, Buxton will deliver specific and separate retail marketing reports and recommendations to Cutler Bay and Palmetto Bay and will provide outreach services to appropriate retail and restaurant developers to attract them to locate in Cutler Bay and Palmetto Bay; and

WHEREAS, pursuant to the Town Charter, section 3.10, the Town Manager has determined and has recommended in writing that it is not practicable or advantageous for the Town to procure these services through competitive bidding where Buxton possesses unique qualifications to provide said services for which there is no competitive market and therefore recommends that the Council waive the competitive bidding requirements of section 3.10 of the Town Charter and the Town’s purchasing ordinance and award the instant contract to Buxton;

WHEREAS, in accordance with the proposal the Town Manager has made a recommendation to the Council for its approval based upon the advantageous pricing offered by Buxton of having Cutler Bay and Palmetto Bay each share equally one half of the full cost while each receives full benefits of full participation; and

WHEREAS, the Council desires to award a contract, substantially in the form attached hereto, to Buxton.

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 Manager Authorized. The Town Manager is authorized, on behalf of the Town, to execute the retail marketing services contract and engagement letter with Buxton in substantially the form attached hereto.

Section 3. 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
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 _____



CommunityID[®]

Proposal to Develop:

**A JOINT RETAIL ECONOMIC DEVELOPMENT
STRATEGY**

**For:
Cutler Bay, FL
&
Palmetto Bay, FL**

**From:
Chip Rodgers**

May 23, 2008

Expiration Date: August 20, 2008

INDEX

- I. SUMMARY
- II. INTRODUCTION TO BUXTON
- III. NEEDS/CHALLENGES
- IV. GOALS/DESIRED RESULTS
- V. PROCEDURES/SCOPE OF WORK
- VI. PROJECT TEAM
- VII. PROJECT REQUIREMENTS
- VIII. TIMELINE
- IX. FEES FOR SERVICES
- X. SIGNATURE PAGE
- XI. ENDORSEMENTS/REFERENCES

I. SUMMARY

CommunityID® is a proven retail development strategy that can be immediately implemented by the cities of Cutler Bay and Palmetto Bay.

Buxton integrated proprietary technical capabilities with more than 500 cumulative years experience in retail management and local economic development to create CommunityID®. This unique strategy has brought both innovation and a disciplined approach to municipal retail development efforts.

During the 60 business days it takes to complete CommunityID®, civic leaders are actively involved in the process and make important decisions that guide the direction and results. The four main phases of the process are:

Researching and Verifying Cutler Bay and Palmetto Bay's Retail Trade Areas

This phase starts with the in-depth collection of the same location variables that Buxton uses to qualify locations for retail clients. Because of Buxton's unique capabilities, we can translate this retail-specific information into market intelligence that community leaders need to attract and grow their retail sectors.

Evaluating Cutler Bay and Palmetto Bay's Retail Potential

The evaluation phase will clarify what makes Cutler Bay and Palmetto Bay distinctive and valuable from a retailer's viewpoint. Through daily involvement in retail location analysis, Buxton has acquired the unmatched ability to evaluate a community's retail potential.

Matching Retailers and Restaurants to Cutler Bay and Palmetto Bay's Market Potential

The consumer profile of Cutler Bay and Palmetto Bay's trades area will be matched against the customer profiles of over 5,000 retailers and restaurants in Buxton's proprietary database. The final match list is developed with the input of community leaders so that it reflects the needs and desires of the residents.

Delivering Cutler Bay and Palmetto Bay's Marketing Packages

Individual marketing (pursuit) packages for each retailer match are delivered in both hard copy and in SCOUT®. Our exclusive online marketing system, SCOUT® helps you to showcase your city in the best light. It gives you the ability to create presentations and quality documents and to share information in the match reports.

With CommunityID®, Cutler Bay and Palmetto Bay can unleash their full retail potential, seize new retail opportunities and expand existing businesses.

II. INTRODUCTION TO BUXTON

Since our founding in 1994, Buxton has been a leading force in retail location and development. We are recognized for creating solutions that provide results.

Buxton began as a service to help retailers make informed site selection decisions by understanding their customers and precisely determining their markets. Buxton leaders soon realized that the company's expertise in retail location and market analysis could also be leveraged to benefit communities desiring retail expansion. Please note that in this proposal the term "retail" is inclusive of all retail concepts.

CommunityID[®]

Designed specifically for use in community economic development programs, Buxton's CommunityID[®] process has assisted more than 350 public sector clients nationwide, resulting in the development of more than 15 million square feet of retail space. We integrate our impressive technical capabilities with more than 500 cumulative years of retail management and local economic development experience to help municipalities achieve their retail goals.

More than simply providing data, CommunityID[®] supplies custom marketing materials and strategies targeting the unique location requirements of retailers, developers and commercial real estate brokers. CommunityID[®] clients achieve outstanding success using our tools for retail identification, selection and recruitment. And our clients benefit from our unique understanding of retail site selection from the retailer's point of view. The combination of technical expertise and professional guidance gives municipalities the capacity to immediately implement an effective retail development program.

Benefits of CommunityID[®]

With CommunityID[®] you have immediate access to:

- **Retail Industry Expertise.** Gain a competitive position by working with professionals who have years of retail management experience plus current insights into your community and site selection processes and trends.
- **Community Development Best Practices.** Expand and sharpen your retail development focus by incorporating best practices discovered by Buxton through daily work with municipalities across the nation.
- **Proprietary Systems.** Gather useful information by having Buxton's technology specialists analyze your trade area accessing data stored on Buxton's in-house databases.

- **Personalized Content.** Advance your retail recruitment program by receiving personal guidance from our staff and ongoing insight into key industry topics via our monthly e-newsletter, webcasts and other interactive tools.
- **Long-Term Partnership.** As a Buxton client and partner you have unlimited access to our staff to help optimize your marketing efforts at the International Council of Shopping Centers (ICSC) annual meeting in Las Vegas, NV.
- **Marketing Data and Tools.** Enhance your marketing messages and presentations by using SCOUT®, Buxton's online trade area database and marketing tool, available to you for one year after project delivery.
- **Add-On Research.** Keep your CommunityID® updated and focused by getting special rates on additional research, including retail marketing packages and refreshes of basic information.

III. NEEDS/CHALLENGES

Cutler Bay and Palmetto Bay want to understand and then capitalize on the retail development opportunities.

As communities increasingly compete for retail dollars, attracting the attention of retailers has become more challenging than ever. Marketing your community plays a dominant role in today's competitive economy. The challenge for the community is to attract retailers and developers by providing trade area information that is complete, accurate and up-to-date.

Using our proprietary methodologies, Buxton will collect and analyze your community's trade area information and give it to you in a format that is easy-to-use and appealing to real estate executives and developers. The best information, however, is useless without a plan for using it. Much more than data collection, CommunityID[®] is an execution strategy that can help you build or revitalize your existing marketing and economic development program.

With CommunityID[®], you will be prepared to:

- Achieve your retail potential by establishing a long-term partnership with Buxton
- Integrate retail development into your economic development program
- Increase your success by preparing Cutler Bay and Palmetto Bay to meet the needs of retailers
- Effectively position your community by leveraging your locations' strengths and minimizing weaknesses
- Convey Cutler Bay and Palmetto Bay's advantages over competitors' advantages
- Establish credibility with retail decision makers
- Maximize time and resources by not pursuing unqualified prospects
- Win the confidence and trust of prospects by understanding their priorities
- Use competitive analysis to close the sale

IV. GOALS AND DESIRED RESULTS

The primary goal of CommunityID[®] is to prepare Cutler Bay and Palmetto Bay to successfully expand its retail sector.

CommunityID[®] serves as the framework for developing a sustainable marketing program that not only achieves short-term goals but also endures to ensure the economic viability of the retail sector over the long-term. Such a marketing program will bring the following desired results:

- Residents' desires to shop and dine at home will be fulfilled
- Retail leakage will be minimized
- Tax revenues (property and sale/use taxes) will increase
- Employment opportunities will grow
- Cutler Bay and Palmetto Bay's ability to capture other economic opportunities will be enhanced

V. PROCEDURES/SCOPE OF WORK

Once you have engaged Buxton to work with you in developing Community ID, a project team will be assigned to guide you through the entire process —from initial data collection to final presentation of the results. This team consists of:

- Client services manager, who will serve as your primary source of communication during the project
- Geographic Information System specialist, who will analyze your trade areas and create customized maps and reports
- Professionals with backgrounds as retail executives and economic development practitioners, who will address your unique challenges and help maximize Cutler Bay and Palmetto Bay's retail opportunities

Staff Visits

During visits to the community, Buxton's staff is able to make clear and candid assessments of the community's strengths, weaknesses and potential by using the same analytical programs and location matrixes that are used to qualify communities and sites for our retail clients. Our daily involvement with over 1,700 retail and restaurant clients in finding optimal locations keeps us current on retail location trends. This provides a rational and analytical basis for helping Cutler Bay and Palmetto Bay decide how to best focus resources on the most promising retail opportunities.

Data Collection

Buxton uses over 250 consumer and business databases that are updated throughout the year, and in some cases, every month. Although it is possible to obtain these databases for less expense on a community or regional basis, Buxton buys and is licensed to use the complete U.S. datasets. With this information Buxton will compare Cutler Bay and Palmetto Bay's potential locations to the universe of all retail locations operating in the U.S.

The following are some of the more well-known sources used in our studies, but there are dozens more that we employ to provide additional insight:

- Mediamark
- Acxiom
- InfoUSA
- Claritas
- National Research Bureau
- Navteq Geographic Data
- Dunn & Bradstreet Business Data

Identify Market Influencers

All communities have special and often unique features that impact the local retail market and have to be taken into consideration to fully understand the market potential of the community. Such influencers include larger ethnic populations, significant new or expanded developments, military bases, universities and colleges, destination tourist attractions, prisons, medical facilities or major employers.

After identifying these market influencers in your community, Buxton will quantify and qualify their influence on the retail market and help to match retailers that can capitalize on these customer bases.

You will benefit from the project team's expertise and insight in these four areas:

1. Researching and verifying Cutler Bay and Palmetto Bay's retail trade areas
2. Evaluating Cutler Bay and Palmetto Bay's retail potential
3. Matching retailers and restaurants to Cutler Bay and Palmetto Bay's market potential
4. Delivering Cutler Bay and Palmetto Bay's marketing packages

These four major components comprise the Community ID® process. Each component is explained in detail as follows:

1. Researching and Verifying Cutler Bay and Palmetto Bay's Retail Trade Areas

The location decision process for all retailers begins with the collection, analysis and evaluation of numerous location variables such as demand density, customer buying habits, economic trends, competition, traffic volumes, and available sites, to name a few.

The Community ID® process for Cutler Bay and Palmetto Bay will also start with the in-depth collection of data using the same location variables that we use for our retail clients to qualify sites for the location of their retail stores and restaurants. One goal is to define current retail situations in Cutler Bay and Palmetto Bay, in the trade area and in any neighboring communities that impact on Cutler Bay and Palmetto Bay's retail environment. The other goal is to understand the community's expectations and desires. This analysis includes personal visits to the community, collection of data components necessary to conduct the analysis and identification of market influencers.

Drive-Time Trade Area Definition

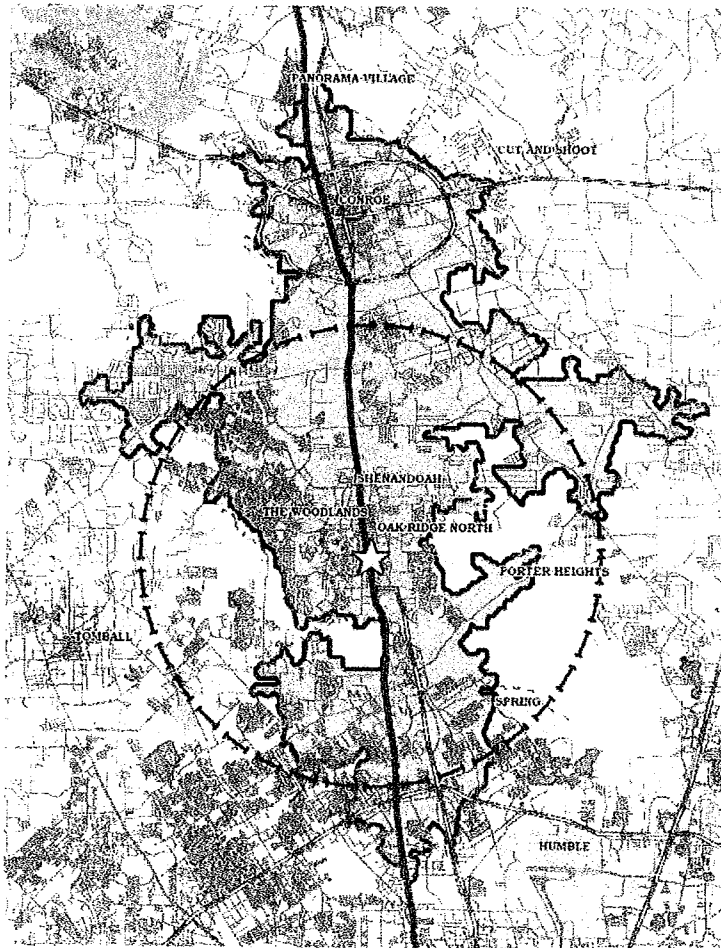
Customers today shop by convenience, measuring distance based on time, not mileage. CommunityID® will employ a custom drive-time analysis to determine Cutler Bay and Palmetto Bay's trade area. An example of a drive-time trade area is shown in Figure 1.

This custom analysis is developed using an in-house database supported by our knowledge of individual retail client's actual trade areas.

The resulting drive-time trade area map will be a polygon that more accurately depicts consumer shopping patterns than trade rings.

To assure the accuracy of the drive-time trade area, the draft maps are reviewed with community leaders and verified before proceeding with the next step.

Figure 1. Example - Drive-Time Trade Area



2. Evaluating Cutler Bay and Palmetto Bay's Retail Potential

The purpose of the evaluation phase is to understand what makes Cutler Bay and Palmetto Bay distinctive and valuable from a retailer's viewpoint and scrutiny.

Our evaluations capitalize on Buxton's knowledge about the retail marketplace and the location requirements and expectations of retailers. Combining this knowledge with our economic development competencies all ow us to evaluate and recommend proven community practices. Our evaluations do not rely on dated government research or national/state statistics, all of which fail to reflect local realities. Rather, we implement our real-world experience gained from working with municipalities that have opened more than 15 million square feet of new or expanded retail space. We know how to help Cutler Bay and Palmetto Bay sharpen their retail marketing strategies, aggressively market the cities and improve competitive performance.

Retail Leakage/Supply Analysis

The Retail Leakage/Supply Analysis provides an estimate of retail dollars flowing in or out of the trade area.

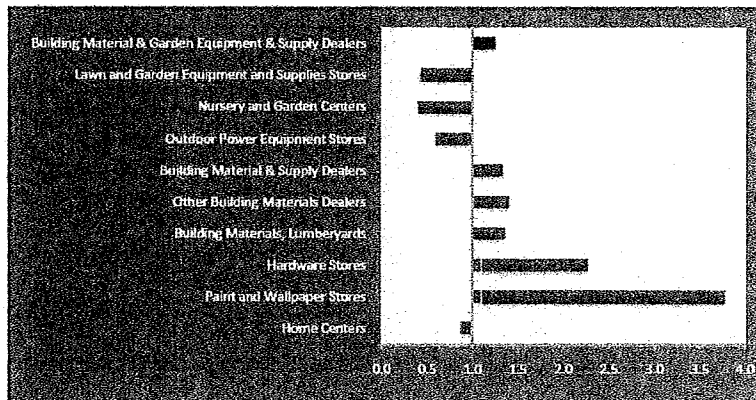
The two main components of this analysis are: 1) current actual sales (supply) by retail store type and products, in dollar amounts, and 2) estimated sales potential (demand) for retail store type and products, in dollar amounts.

We first calculate a sales gap index that illustrates your ability to capture your residents' expenditures. An example of this index is shown in Figure 2.

The sales gap index provides a relative comparison of leakage/surplus and an estimate of the dollars that are being spent outside the trade area (leakage) and the amount of dollars coming in from outside the trade area (surplus).

This report can be run via SCOUT at any location within the map view.

Figure 2.Example - Sale Gap Index

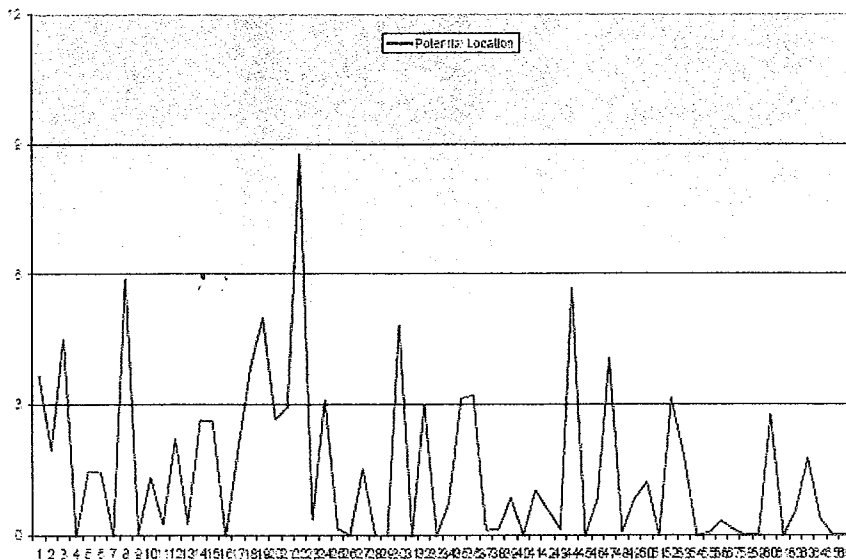


Customer Profiling

The CommunityID® process will identify and analyze all the households in Cutler Bay and Palmetto Bay's drive-time trade areas. Based on more than 4,500 categories of lifestyles, purchase behaviors and media reading and viewing habits (psychographics), the households in your trade area are assessed to gain an understanding of the types of retailers that would be attracted to your community. Our in-house databases include both traditional demographic data and the most current psychographic lifestyle information for over 120 million households in the United States (as well as up to seven individuals living in each of these households).

Each household in a trade area falls into one of 66 market segments reflecting the buying habits of customers in the household. The blue line in Figure 3 graphically profiles the households in a city's trade area.

Figure 3: Example - Psychographic Profile



Retail Site Assessment

Buxton will analyze up to two (2) distinct retail locations, selected by Cutler Bay and Palmetto Bay. Based on our collective experience in retail locations, the following factors are considered:

- Psychographic analysis of households in trade area
- Demand for retail goods and services
- Site setting, situation and configuration
- Growth plans and relevant development
- Retail goals of the community

Buxton will develop a demand density profile of Cutler Bay and Palmetto Bay's trade areas. Demand density measures the bottom-line value of the customers in the trade area—who they are, how many there are and what they buy. One of the significant advantages of Buxton is our ability to take the demand density data and to creatively translate it into a proactive market strategy tailored to take advantage of Cutler Bay and Palmetto Bay's strengths and to achieve their retail goals.

3. Matching Retailers and Restaurants to Cutler Bay and Palmetto Bay's Market Potential

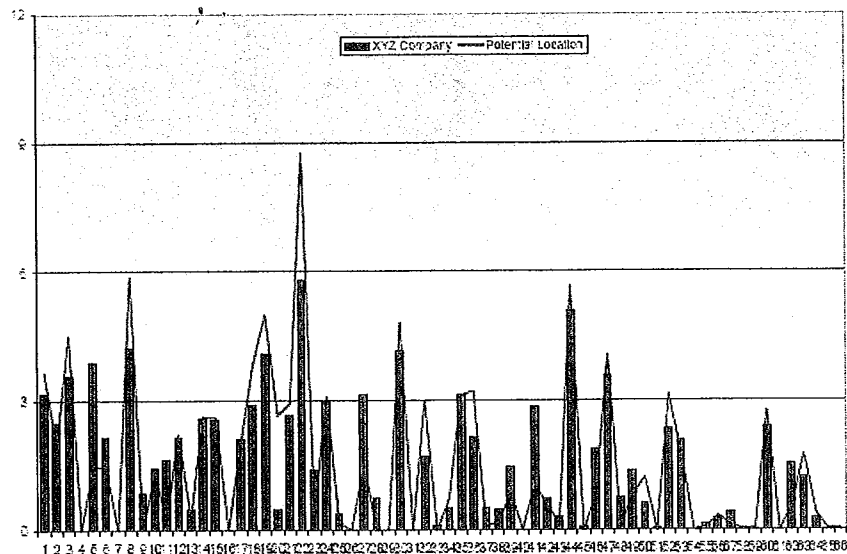
Once the consumer profiles in Cutler Bay and Palmetto Bay's trade areas have been determined, the CommunityID® process will match these profiles against the customer profiles of 5,000+ retailers in our proprietary database.

In Figure 4, the blue line indicates the customer profile of households in a community's trade area. The red line represents a specific retailer's customer profile. A similarity between the two profiles as shown in Figure 4 analyzed using Buxton's proprietary retail matching algorithm concludes that this site is an opportunity for a specific retailer to open a successful store.

This matching results in a list of possible retailers. To develop the preliminary retail match list, Buxton analyzes a number of factors about each possible retailer to qualify it. This analysis is designed to eliminate those retailers that for any reason would not be a candidate for Cutler Bay and Palmetto Bay. Considered in this analysis are such factors as, verification of a retailer currently operating or expanding into your market, location of operations in similar cities, and competition and cannibalization from nearby locations.

Once this analysis is complete, the preliminary list of retailers will be discussed and reviewed with Cutler Bay and Palmetto Bay. Based on the selections by the sponsor, a final list of up to ten (10) retailers per city will be created for the development of marketing (pursuit) packages.

Figure 4: Example - Trade Area Consumers Matched with Retailer Customer Profile



4. Delivering Cutler Bay and Palmetto Bay's Marketing Packages


Buxton will assemble individualized marketing (pursuit) packages for each targeted retailer. At Cutler Bay and Palmetto Bay's request, Buxton will customize each marketing package for presentation to individual retailers, developers, real estate brokers or potential franchisees. Because it is tailored to the specific needs of the target audience, each marketing package is ready to use as collateral marketing materials providing compelling and precise information that demonstrates Cutler Bay and Palmetto Bay's qualifications as a location.

Each marketing package contains:

1. Map of the retail site and trade area
2. Map of retailer's potential customers
3. Retailer match report that compares the site's trade area characteristics with the retailer's locations in similar trade areas
4. Demographic and psychographic profiles of the households in the trade area
5. Contact information for the person at the retailer who has location decision responsibilities

CommunityID® targets not only specific companies but also the individual in the company who has the responsibility for location decisions. To provide the best possible reception when Cutler Bay and Palmetto Bay contacts the targeted retailer, Buxton notifies each company that Cutler Bay and Palmetto Bay has been qualified by Buxton as a potential viable location for a store, restaurant or development and should expect to be contacted by a representative of the city.

Figure 5: Example - Retail Match Report (Retail Match Report summarizes a city's location advantages for a specific retailer).

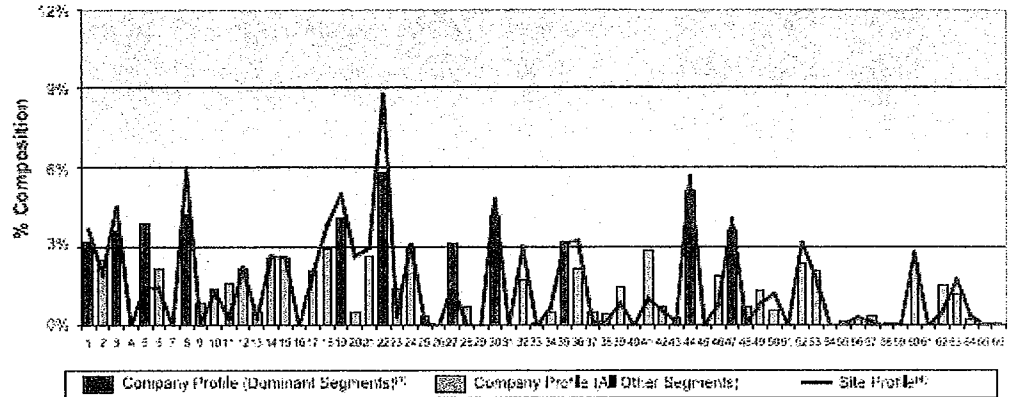


CommunityID®

Retailer Match Report

Company: XYZ Company	Site: State Highway 384 & Grice Road
Report Date: 4/15/2005	Your Community: USA

Segmentation Profile⁽¹⁾ (15 Minute Drive Time)⁽²⁾



Trade Area Comparison (15 Minute Drive Time)

	XYZ Company Average Trade Area ⁽³⁾	Your Community, USA	
		Site Trade Area	
		2003 Estimated	2008 Projected
Total Population	43,925	44,596	47,311
Total Households	17,278	17,817	18,903
Retailer Dominant Segment Households	9,772	12,870	13,612
Daytime (Workday) Population ⁽⁴⁾	19,170	21,160	22,827

⁽¹⁾ Segmentation Profile
⁽²⁾ Drive Time
⁽³⁾ Dominant Segments
⁽⁴⁾ Site Profile
⁽⁵⁾ Average Trade Area
⁽⁶⁾ Daytime Population

Every U.S. household is classified into one of 60 distinct segments described by that household's lifestyle and spending habits. Drive time is used to define the trade area. Any segment that makes up at least three percent of a retailer's targeted profile (RED BARS). Those segments within the site's drive time trade area (BLUE LINE). XYZ Company trade areas and in this community are similar in population and market type to Your Community, USA. The number of persons analyzed in the daytime trade area.

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DELIVERABLES

CommunityID[®] deliverables will be presented to Cutler Bay and Palmetto Bay in two bound hard copies and in SCOUT[®], an electronic format (described below).

SCOUT[®] is an online marketing system that will allow you to effectively use CommunityID[®] by enabling you to showcase your best retail site to achieve maximum results. You can access CommunityID[®] reports via SCOUT[®] to reproduce maps, site-specific data and generate your own custom marketing presentations.

With SCOUT[®] you are directly tied to Cutler Bay and Palmetto Bay password protected data, maintained and updated in Buxton's databanks. Using your computer you can tailor reports and presentations and immediately respond to questions or information requests from retailers or developers. SCOUT[®] allows you to:

- Graphically display and count the households that appeal to specific target retailers
- Manage all your retail-specific data, from maps to photos to zoning information, in a central location
- Merge your community's existing marketing materials with Community ID[®]
- Select the information that best makes your case
- Store and retrieve information on retail buildings and sites
- Organize all relevant retail information in a central data center
- Present all materials electronically to recruit retailers and developers

Deliverables include the following:

- Drive Time Trade Area Map
- Retail Site Assessment – includes Retail Leakage/Supply Analysis and Customer Profile
- Retail Match List
- Final Report and Marketing (Pursuit) Packages
- An electronic presentation highlighting the CommunityID[®] process and findings will be a part of the deliverables. It is designed for local presentations to chambers of commerce, civic clubs and other groups interested in the retail development of Cutler Bay and Palmetto Bay.

VI. PROJECT TEAM

Team members for your project will include Buxton personnel with strong retail and economic development backgrounds as well those from operations: the Territory Business Manager, appropriate Senior Vice President and Client Services representative.



Chip Rodgers

Senior Vice President,
CommunityID® Division

Chip has worked with numerous municipalities throughout the United States to maximize their sales tax growth and quality of life by successfully attracting new shopping and dining options. He has shared his insights and knowledge by speaking to economic development organizations such as Florida City and County Managers Association, Virginia Municipal League, Florida League of Municipalities and Texas Municipal League. Prior to joining Buxton, Chip was with Florida-based MPS, where he worked with city and county governments to develop strategies for delivering services to their residents via the Internet. Chip is a graduate of Oklahoma State University.



Philip Davis

Manager/Senior GIS Analyst
CommunityID® Division

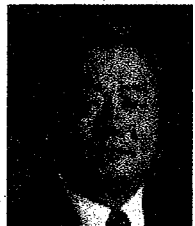
As senior analyst for the CommunityID® division, Philip oversees every aspect of CommunityID® projects in Buxton's GIS department. His duties include supervising daily operations, working with clients, managing projects and serving as a liaison between analysts and the sales team. Philip has managed the GIS function for more than 350 CommunityID® projects for such clients as San Jose, CA; Atlanta, GA.; and Birmingham, AL. Working on projects for two divisions in the company has given Philip a complete understanding of both the retail industry and municipal needs, adding to his expertise in community retail recruitment. Philip graduated from the University of North Texas with a degree in Geography.



Bill R. Shelton, CEcD

Partner
CommunityID® Division

Bill is a founding partner of Community ID®, Buxton's retail development program for communities. For more than 20 years, Bill worked for the Fort Worth Chamber of Commerce, serving 16 years as its president. He is a Certified Economic Developer and is past chair of the American Economic Development Council. A founding member of the Texas Economic Development Council, he has served as the organization's president. Bill was honored with a lifetime membership to the International Economic Development Council. Bill's professional service also includes serving as dean of the Basic Economic Development Course at Texas A&M University. Bill holds a bachelor's degree in marketing from the University of Texas at Austin, and he completed post-graduate studies at Texas A&M University.



Harvey H. Yamagata

Chief Marketing Officer & President
CommunityID® Division

Clients benefit from the expertise Harvey has gained during 35 years in retail, including leadership roles in brick and mortar, catalog and website retailing. His 20-year career at Tandy Corporation covered the time when the company grew from \$350 million to \$3.5 billion in sales and took him from retailing in Europe to opening distributors in Asia. He headed the marketing efforts of the RadioShack Business Products division at a time when they held the major share in the burgeoning personal computer market. Harvey received a bachelor's degree from the University of Wisconsin and a master of business administration degree from Texas Christian University.

VII. PROJECT REQUIREMENTS

To effectively initiate this project, we request that you provide the following:

1. Project Liaison

- Cutler Bay and Palmetto Bay will each designate a project manager who will serve as Buxton's primary contact during the project.

2. Community Information and Reports

- City logo (vector file – request your ad agency and/or printer)
- Addresses and descriptive information for up to two sites that will be evaluated
- Current traffic count data
- List of planned retail, commercial or mixed use (either proposed or in development) in the community
- List of major, national or regional retailers that have closed, left or moved from the community
- General community marketing materials, data and economic reports

Project Launch

A conference call with representatives of Cutler Bay and Palmetto Bay and the Buxton Project Team will officially launch the project. The project launch will occur when:

1. An agreement is executed
2. The initial payment is received, and
3. The Community Information and Reports are received

VIII. TIMELINE

The following timeline is sequential and cumulative. It starts on the day of the project launch conference call.

Business Days	Client Responsibilities	Buxton Responsibilities
Start	Provide to Buxton all necessary community information.	
Day 1	Participate in the launch call.	Participate in the launch call.
Day 6		Trade Area Map ships.
Day 13	Approve Trade Area Map.	
Day 18		Retail Site Assessment ships.
Day 25	Approve Retail Site Assessment	
Day 40		Retail Match List ships.
Day 50	Submit selections of all retail matches to be included in the Final Report and Retail Marketing Packages.	
Day 60		Final Report and Retail Marketing Packages ship.

By adhering to this timeline, the Community ID® deliverables (Retail Match Reports – both the hard-copy and SCOUT®, the electronic version) will be sent on or before 60-days after the launch date.

Any missed target dates can delay the final delivery date. If there are extenuating circumstances that prevent target dates from being met, a new timeline will be developed.

Delays of more than 45 days in timeline schedule by the community will result in an administrative fee of five percent (5%) of the contract price to be charged.

IX. FEE FOR SERVICES

The Cost of CommunityID[®] is \$70,000; payable as follows:

1. \$35,000 due upon execution of this agreement
2. \$25,000 due upon delivery of retail site assessment
3. \$10,000 due upon delivery of retail marketing packages

Hard copies of all CommunityID[®] deliverables including marketing packages will be provided.

SCOUT[®] will be delivered for one-year with this agreement and includes the following:

1. Waived - Monthly maintenance fee of \$1,000 per month
2. Waived - Set Up fee of \$3,000
3. Two Marketing (Pursuit) Packages at no cost

After the first year SCOUT[®] will be available for a \$1,000 per month maintenance fee that is not included in this agreement, beginning the 13th month.

Direct travel costs will be charged for any pre-arranged, mutually agreed upon travel associated with the project. This does not include travel associated with the presentation or negotiation of this agreement.

For services specifically requested by Cutler Bay and Palmetto Bay and performed by Buxton outside the scope of this agreement, an hourly rate of \$200 will apply.

Additional Research Services (post analysis)

Marketing (Pursuit) Packages (Match reports for additional specific retailers)
- Includes two bound hard copies and an electronic version \$2,000

X. SIGNATURE PAGE

This agreement is between Cutler Bay and Palmetto Bay and Buxton (the "Parties") for the performance of services described in this proposal. The Parties agree that an independent contractor/employer relationship is created as a result of this agreement. Buxton will not be considered an agent or employee of Cutler Bay and Palmetto Bay for any purpose.

The term of this agreement is one (1) year. This agreement may be terminated by Cutler Bay and Palmetto Bay at any time upon written notice of thirty (30) days. If this agreement is terminated, Buxton will be paid for services performed up to the date the written notice is received.

This agreement shall be administered and interpreted under the laws of the State of Texas. In order to avoid paying State of Texas Sales and Use Tax, Cutler Bay and Palmetto Bay may be required to provide Buxton with a certificate indicating it is a non-profit corporation and not subject to Texas Sales and Use Tax.

Agreed and accepted this _____ day of _____, 2008.

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

For Buxton
David Glover
Chief Financial Officer
Buxton
2651 S. Polaris Drive
Fort Worth, TX 76137

(Signature)

(Signature)

For Palmetto Bay

Town of Palmetto Bay
8950 SW 152 Street
Palmetto Bay, FL 33157

(Signature)

XI. ENDORSEMENTS/REFERENCES

Buxton prides itself on exceptional client service that results in ongoing client satisfaction. Following are just a few of many endorsements from Community ID[®] clients.



Community/ID References

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City of Selma, CA

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City of West Plains, MO

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City of Yukon, OK

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Population 30,000 – 50,000

City of Duncanville, TX

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City of Edinburg, TX

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City of Moore, OK

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City of Palm Springs, CA

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City of Park Ridge, IL

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Richmond/Wayne County Convention and Tourism Bureau, IN

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Executive Director
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Population 50,000 – 70,000

City of Cupertino, CA

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City of Marion, IN

Wayne Seybold
Mayor
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City of New Braunfels, TX

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President
Greater New Braunfels Chamber of Commerce
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City of Paramount, CA

Joe Perez, Community Development Director
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Population 70,000 +

City of Denton, TX

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City of Gary, IN

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City of Sumter, SC

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City of South Bend, IN

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City of St. Paul, MN

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City of Bridgeport, TX

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Lawrence County, AL

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Sealy Economic Development Corporation, TX

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TAB 4



Office of the Town Manager

Steven J. Alexander
Town Manager

MEMORANDUM

To: Honorable Mayor and Councilmembers

From: Steven J. Alexander, Town Manager

Date: June 18, 2008

Re: **A Resolution approving the Interlocal Agreement between the Miami-Dade Metropolitan Planning Organization (MPO) for the development of the Town's Transportation Master Plan.**

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE MIAMI-DADE METROPOLITAN PLANNING ORGANIZATION (MPO) AND THE TOWN OF CUTLER BAY FOR THE CUTLER BAY TRANSPORTATION MASTER PLAN; PROVIDING FOR THE AUTHORIZATION OF THE TOWN MANAGER TO ENTER INTO THIS AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

The Metropolitan Planning Organization annually awards grants to encourage Miami-Dade County municipalities to perform relevant transportation planning studies for community-based and cost-effective improvements.

The Town requested a grant in the amount of \$ 60,000 to prepare a "Transportation Master Plan" to accommodate local mobility needs while enhancing the character of the community and improving the quality of life for our residents, by providing viable transportation alternatives. The full cost of this study will cost \$ 100,000, the remaining funds \$ 40,000 are included in the Public Works Department's 2007-08 Operating Budget.

RECOMMENDATION

It is recommended that the Town Council approve the attached Resolution Authorizing the Town Manager to Execute the Interlocal Agreement with the Miami-Dade County Metropolitan Planning Organization (MPO).

RESOLUTION NO. 08-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE MIAMI-DADE METROPOLITAN PLANNING ORGANIZATION (MPO) AND THE TOWN OF CUTLER BAY FOR THE CUTLER BAY TRANSPORTATION MASTER PLAN; PROVIDING FOR THE AUTHORIZATION OF THE TOWN MANAGER TO ENTER INTO THIS AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the “Town”) and the Miami-Dade Metropolitan Planning Organization (the “MPO”) desire to jointly fund the “Cutler Bay Transportation Master Plan;” and

WHEREAS, in furtherance of this desire, the Town and the MPO have mutually agreed to enter into the Interlocal Agreement, in substantially the form attached hereto as Exhibit “A;” and

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

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

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

Section 2. Approval of the Agreement. The Town Council hereby approves the Interlocal Agreement for the “Cutler Bay Transportation Master Plan” between the Town and the MPO in substantially the form attached hereto as Exhibit “A.”

Section 3. Authorization of the Town Manager. The Town Manager is hereby authorized to take all action necessary to enter into the Interlocal Agreement for the “Cutler Bay Transportation Master Plan” between the Town and the MPO in substantially the form attached hereto as Exhibit “A” for the Town.

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

PASSED and ADOPTED this _____ day of _____, 2008.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

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

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

Moved By:
Seconded By:

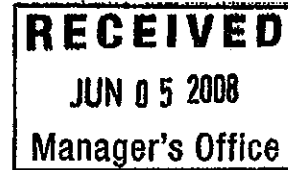
FINAL VOTE AT ADOPTION:

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



METROPOLITAN PLANNING ORGANIZATION
(MPO) SECRETARIAT
111 N.W. 1 STREET, SUITE 910
MIAMI, FLORIDA 33128-1904
(305) 375-4507
FAX: (305) 375-4950

June 3, 2008



The Honorable Paul Vrooman, Mayor
Town of Cutler Bay
10720 Caribbean Boulevard, Suite 105
Cutler Bay, FL 33189

Subject: FY 2009 Municipal Grant Program Award Notification

Dear Mayor Vrooman:

The MPO Board at their May 22nd meeting approved the recommendations by the Municipal Grant Program Committee awarding the Town of Cutler Bay up to \$60,000 to conduct the Transportation Master Plan. Wilson Fernandez, MPO Project Manager, will be contacting the Town Manager's Office with the details of the needed Interlocal Agreement. As a condition of awarding the funds, an authorized official of the recipient city must sign and comply with the attached form and return to our office.

Thank you for participating in this fiscal year's Municipal Grant Program. We look forward in working with your staff in producing an important transportation-related end product.

Sincerely,


Jose-Luis Mesa, Director
MPO Secretariat

c: Steven J. Alexander, Town Manager
Oscar Camejo, MPO Finance Manager
Wilson Fernandez, MPO Transportation Systems Manager

EXHIBIT "A"

INTERLOCAL AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2008, by and between the Miami-Dade Metropolitan Planning Organization (MPO), hereinafter called the MPO and the *Town of Cutler Bay*, hereinafter called **CUTLER BAY**.

That the MPO and **CUTLER BAY** have determined to jointly fund the *Cutler Bay Transportation Master Plan* and that **CUTLER BAY** has determined to provide the services for such study and its share of the costs thereof as provided below.

WITNESSETH:

ARTICLE 1.00: The MPO does hereby retain **CUTLER BAY** to provide the services for the *Cutler Bay Transportation Master Plan*, which services are described in Exhibit "A": "Scope of Services", and Exhibit "B": "Tentative Project Schedule". The parties further agree that the project costs are provided in Exhibit "C": "Project Cost." The referenced exhibits are attached hereto and made a part hereof as though fully recited herein. Article 16.00 governs each party's obligations for its portion of the Project Cost.

ARTICLE 2.00: The MPO and **CUTLER BAY** mutually agree to furnish, each to the other, the respective services, information and items as described in Exhibit "A" Scope of Services, Exhibit "B" Tentative Project Schedule, and Exhibit "C" Project Cost. The MPO agrees to furnish **CUTLER BAY** and its duly designated representatives information including, but not limited to, existing data and projects related to the study area which may be available in other governmental offices. **CUTLER BAY** agrees to perform or cause to be performed, in a timely and professional manner, the work elements set forth in the above-enumerated Exhibits, in accordance with the Schedule set forth in Exhibit "B".

Before initiating the work described in Exhibits "A", "B", and "C", the MPO Director or his designee shall execute and issue **CUTLER BAY** a Notice-to-Proceed with the work described in

said Exhibits, such work to constitute performance of the *Cutler Bay Transportation Master Plan* as set forth in said Exhibits.

ARTICLE 3.00: The services to be rendered by **CUTLER BAY** shall be commenced subsequent to the execution and issuance of the Notice-to-Proceed and shall be completed within *nine (9) months* from the date of execution and issuance of the Notice-to-Proceed.

ARTICLE 4.00: **CUTLER BAY** agrees to provide Project Schedule progress reports on a monthly basis and in a format acceptable to the MPO Director. The MPO Director shall be entitled at all times to be advised, at his request, as to the status of work being done by **CUTLER BAY** and of the details thereof. Coordination shall be maintained by **CUTLER BAY** with representatives of the MPO. Either parties to the agreement may request and be granted a conference.

ARTICLE 5.00: In the event there are delays on the part of the MPO as to the approval of any of the materials submitted by **CUTLER BAY** or if there are delays occasioned by circumstances beyond the control of **CUTLER BAY** which delay the Project Schedule completion date, the MPO Director or his designee may grant **CUTLER BAY**, by a letter an extension of the contract time, equal to the aforementioned delays, provided there are no changes in compensation or scope of work.

It shall be the responsibility of **CUTLER BAY** to ensure at all times that sufficient contract time remains within which to complete services on the project and each major Task Group as shown on Exhibit "B". In the event there have been delays which would affect the project completion date or the completion date of any major Task Group, **CUTLER BAY** shall submit a written request to the MPO Director or his designee *twenty (20) days* prior to the schedule completion date which identifies the reason(s) for the delay and the amount of time related to each reason. The MPO Director or his designee will review the request and make a determination as to granting all or part of the requested extension. Scheduled completion dates shall be determined

by the elapsed times shown in Exhibit "B" and the issue date of the Notice-to-Proceed.

In the event contract time expires and **CUTLER BAY** has not requested, or if the MPO Director or his designee has denied an extension of the completion date, partial progress payments will be stopped on the date time expires. No further payment for the project will be made until a time extension is granted or all work has been completed and accepted by the MPO Director or his designee.

ARTICLE 6.00: **CUTLER BAY** shall maintain an adequate and competent professional staff and may associate with it, for the purpose of its services hereunder, without additional cost to the MPO, other than those costs negotiated within the limits and terms of this Agreement and upon approval by the MPO Director, such specialists as **CUTLER BAY** may consider necessary.

ARTICLE 7.00: The MPO shall not be liable for use by the **CUTLER BAY** of plans, documents, studies or other data for any purpose other than intended by the terms of this Agreement.

ARTICLE 8.00: All tracings, plans, specifications, maps, and/or reports prepared or obtained under this Agreement shall be considered research and shall become the property of the MPO without restriction or limitation on their use; and shall be made available, upon request, to the MPO at any time. Copies of these documents and records shall be furnished to the MPO upon request, verbal or written, allowing reasonable time for the production of such copies.

SUB-ARTICLE 8.10: Records of costs incurred by **CUTLER BAY** and all subconsultants performing work on the project, and all other records of **CUTLER BAY** and subconsultants considered necessary by the MPO for proper audit of project costs, shall be furnished to the MPO upon request.

Whenever travel costs are included in the performance of services set forth in Exhibits "A", "B" and "C", the provisions of Metropolitan Miami-Dade County Administrative Order 6-1, shall govern *or Florida Statutes, whichever is more restrictive.*

CUTLER BAY shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by **CUTLER BAY** in conjunction with this Agreement. Failure by **CUTLER BAY** to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the MPO Director.

ARTICLE 9.00: **CUTLER BAY** shall comply with all federal, state, and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance or work under this contract.

ARTICLE 10.00: The MPO agrees to pay **CUTLER BAY** compensation as per Article 16.00 of this Agreement and Exhibits "A", "B", and "C", attached hereto and made a part hereof.

ARTICLE 11.00: The MPO Director may terminate this Agreement in whole or in part at any time the interest of the MPO requires such termination.

SUB-ARTICLE 11.10: If the MPO Director determines that the performance of **CUTLER BAY** is not satisfactory, the MPO Director shall have the option of (a) immediately terminating the Agreement or (b) notifying **CUTLER BAY** of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time.

SUB-ARTICLE 11.20: If the MPO Director requires termination of the Agreement for reasons other than unsatisfactory performance of **CUTLER BAY**, the MPO Director shall

notify **CUTLER BAY** of such termination, with instructions as to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

SUB-ARTICLE 11.30: If the Agreement is terminated before performance is completed, **CUTLER BAY** shall be paid for the work satisfactorily performed. Payment is not to exceed the prorated amount of the total share of the project costs to be paid by MPO as provided in Article 16.00 agreement amount based on work satisfactorily completed. Such determination shall be based and calculated upon a percentage allocation of total project cost, by major Task Group.

ARTICLE 12.00: All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

ARTICLE 13.00: **CUTLER BAY** warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for **CUTLER BAY**, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

SUB-ARTICLE 13.10: For the breach or violation of Article 13.00, the MPO Director shall have the right to terminate this Agreement without liability, and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

ARTICLE 14.00: **CUTLER BAY** agrees that it shall make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of this Agreement, without first

notifying the MPO Director or his designee and securing its consent. **CUTLER BAY** also agrees that it shall not copyright or patent any of the data and/or information furnished in compliance with this Agreement, it being understood that, under Article 8.00 hereof, such data or information is the property of the MPO. This Section shall not be construed to limit or restrict public access to documents, papers, letters or other material pursuant to Article 8.10 of this Agreement.

ARTICLE 15.00: The MPO shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure. Any contract, verbal or written, made in violation of this subsection shall be null and void, and no money shall be paid on such contract.

ARTICLE 16.00: Payment of project costs - It is mutually agreed and understood that the Project Costs shall be as provided in Exhibit C. MPO shall pay **CUTLER BAY** 60% of such Project Costs. **CUTLER BAY** shall be responsible for the remaining 40% of such Costs. **CUTLER BAY** shall invoice MPO monthly for MPO's share of Project Costs in a format acceptable to the MPO Director or his designee and shall be paid therefore on a percentage of completion basis for each Task described in the Notice-to-Proceed executed in accordance with Article 2.00. **CUTLER BAY** shall invoice 100% of the MPO's share of the Project Cost upon completion of all Task Orders, as indicated under Exhibit "A". The total compensation to be paid by the MPO to **CUTLER BAY** hereunder shall not exceed **\$60,000.00**.

SUB-ARTICLE 16.10: It is agreed that said compensation provided in Article 16.00 hereof shall be adjusted to exclude any significant sums where the MPO Director shall determine that reported costs by **CUTLER BAY** reflect inaccurate, incomplete or non-current costs. All such adjustments shall be made within 60 days following the end of the Agreement. For purpose of this Agreement, the end of the Agreement shall be deemed to be the date of final billing or acceptance of the work by the MPO Director or his designee, whichever is later.

ARTICLE 17.00: Standards of Conduct - Conflict of Interest - **CUTLER BAY** covenants and agrees that it and its employees shall be bound by the standards of conduct provided in Florida Statutes 112.313 as it relates to work performed under this Agreement, which standards will be referred and made a part of this Agreement as though set forth in full. **CUTLER BAY** agrees to incorporate the provisions of this article in any subcontract into which it might enter with reference to the work performed.

ARTICLE 18.00: The MPO Director reserves the right to cancel and terminate this Agreement in the event **CUTLER BAY** or any employee, servant, or agent of **CUTLER BAY** is indicted or has direct information issued against him for any crime arising out of or in conjunction with any work being performed by **CUTLER BAY** for or on behalf of the MPO, without penalty. It is understood and agreed that in the event of such termination, all tracings, plans, specifications, maps, and data prepared or obtained under this Agreement shall immediately be turned over to the MPO Director in conformity with the provisions of Article 8.00 hereof. **CUTLER BAY** shall be compensated for its services rendered up to the time of any such termination in accordance with Article 11.00 hereof.

ARTICLE 19.00: To the extent permitted by law, and subject to the limitations included within Florida Statutes Section 768.28, **CUTLER BAY** shall indemnify and save harmless the MPO from any and all claims, liability, losses and causes of action arising out of **CUTLER BAY'S** negligence or other wrongful acts in the performance of this agreement. However, nothing herein shall be deemed to indemnify the MPO for any liability or claims arising out of the negligence, performance, or lack of performance of the MPO.

To the extent permitted by law, and subject to the limitations included within Florida Statutes Section 768.28, the MPO shall indemnify and save harmless **CUTLER BAY** from any and all claims, liability, losses and causes of action arising out of the MPO's negligence or other wrongful acts in the performance of this agreement. However, nothing herein shall be deemed to indemnify **CUTLER BAY** for any liability or claims arising out to the negligence, performance, or lack of performance of **CUTLER BAY**.

ARTICLE 20.00: This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

ARTICLE 21.00:

Attachments:

Exhibit "A", Scope of Services

Exhibit "B", Project Schedule

Exhibit "C", Project Budget

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing, signed by both parties hereto, and approved by the Governing Board of the Metropolitan Planning Organization.

This Agreement, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida and venue shall be in Miami-Dade County, Florida.

IN WITNESS WHEREOF, the parties hereto have executed these presents this _____ day of _____, 2008.

ATTEST: MIAMI-DADE COUNTY FLORIDA

**By The Governing Board of
Metropolitan Planning Organization(MPO)**

By: _____ Print Name _____

Director, MPO Secretariat

ATTEST: TOWN OF CUTLER BAY

By: _____ Print Name _____

CUTLER BAY Authorized Representative

By: _____ Print Name _____

CUTLER BAY Project Manager

SCOPE OF SERVICES

CUTLER BAY TRANSPORTATION MASTER PLAN

SCOPE OF SERVICES

OBJECTIVE

The objective here is to study the existing and future conditions of the transportation system within the Town of Cutler Bay, including the roadway network, the transit system, the pedestrian and bicycle network and to determine how each interacts with the existing and future land uses.

This will be done by examining the existing transportation conditions in the town, by looking at roadway, transit and nonmotorized levels of service today, and in two planning horizons. It would engage the public in the generation of transportation solutions. As a result a project bank of multi-modal solutions will be developed. Probable costs for these will be developed and the projects will be prioritized and placed in an implementation plan.

TASKS

Task 1: Public involvement

Engaging the public and incorporating public input is a multi-level process that takes place consistently throughout the duration of the plans development.

The public involvement process begins with the formation of a steering committee made up of members integrally knowledgeable and involved in the process. Next, stakeholders representing a diversity of interests are identified and consulted individually. Concurrent with the technical work of data collection and analysis, community workshops are held to offer all community members an opportunity to be involved in an informal setting. As the plan approaches completion, public hearings are held to give public officials and the general public the opportunity to hear, comment, and approve the plan. Finally, the plan is brought to the MPO and FDOT, offering a final opportunity for public comment.

Steering Committee

The steering committee should consist of the Town's Project Manager as a representative of staff, and members of the general public with established knowledge and experience with issues and processes involved. The committee will be consulted at the outset of the planning process and at the culmination of each task to review the previous efforts and to strategize for the next task. The committee will also assist in the identification of stakeholders.

Stakeholders

The Steering Committee, staff, and elected officials will assemble a list of 10 to 20 stakeholders to be individually consulted. Stakeholders should include leaders from political, business, civic, and religious communities, as well as representatives of special interest groups such as environmental groups and the disabled. Each stakeholder will be consulted on an individual basis to provide insight and advice regarding the issues, needs, and solutions to be addressed in the plan.

EXHIBIT "A"

SCOPE OF SERVICES

Community Workshops

Three separate Community Workshops will be held throughout the duration of the project.

Public Hearings

At the culmination of plan development process first and second public hearings will be held with the Town Council, giving the public further opportunity to participate.

Agency Meetings

The results of the study will be presented to the MPO and FDOT, as a process for keeping these bodies informed.

Task 2: Data Collection and Analysis

Previous and Ongoing Work

Prior to actual new data collection, all previous reports will be reviewed and to every extent possible incorporated into the data collection and analysis process.

Traffic counts

An extensive set of traffic counts will be taken to develop a picture of existing conditions. These counts will provide the basis from which the analysis and development of needs will begin.

Signal Timing

Signal timing data will be downloaded from the Miami Dade County Signal Division web site.

Data Analysis

Various levels of analysis will be provided. Each is focused on the Level of Service throughout the Town and the ability to quantify and display traffic movement patterns and trends occurring today and in the future. The resulting spread sheets could be used as a basis for a concurrency management system, since they will detail the utilization and capacity of each roadway link.

Task 3: Needs Assessment

The three level analyses provided above will point to various levels of need, for various modes. From this assessment a list of potential projects will be developed.

The four project categories will include:

- **Capacity**

Projects will be developed to address streets that have roadway capacity issues. These projects generally will focus on improving intersections and links that are at LOS D or worse, in the existing or future year. These will be mapped.

- **Alternative Mode**

This will focus on areas of transit, pedestrian, and bicycle and their levels of service, particularly as they interface with major intersections, trip generators and transit stations.

- **Corridor Enhancement**

EXHIBIT "A"

SCOPE OF SERVICES

This work will take into consideration arterial roads that function as major conduits of traffic through the Town.

- **Policy**

This will focus on policy initiatives which may help mitigate lack of mobility. These may include concurrency, TDM, and TSM measures.

Task 4: Development of Potential Projects

Potential projects that arise from the needs assessment resulting from the analysis will be placed in a "Project Bank", which will essentially be the Town's Transportation Master Plan Capital Improvements schedule, as mandated by SB 360 and will be integral to meeting the demands of growth management regulations.

Each project will be conceptually developed. This will entail the development of a project sheet that provides:

- Description of the project
- Location
- Cost
 - Planning
 - Design
 - Construction

All projects will be cataloged by type in the project bank report.

Task 5: Implementation Plan

The formal Implementation Plan will refine the Project Bank by prioritizing the individual projects, identifying funding sources and strategies, or recommending initiatives for strengthening transportation and mobility opportunities.

Essentially this task will prioritize the Project Bank, develop consensus of the community, have it approved by the Town Council, and then by the Miami-Dade MPO. Further tasks will be to have individual projects begin implementation. Acceptance on the LRTP or TIP will be simplified with these approvals.

Task 6: Executive Summary

The final report will be a combination and summation of all tasks.

END PRODUCT

A final report and highly graphic executive summary will be produced as will a PowerPoint presentation of that report. Drafts will be delivered to the Town for review. After the final presentation, bound and electronic copies will be made available.

EXHIBIT "B"

**TENTATIVE PROJECT
SCHEDULE**

**Cutler Bay Transportation Master Plan
Proposed Schedule**

Task	Months					
	1	2	3	4	5	6
Task 1 - Public Involvement	█	█	█	█	█	█
Task 2 - Data Collection	█	█	█	█	█	█
Task 3 - Needs Assessment	█	█	█	█	█	█
Task 4 - Alternatives Refinement	█	█	█	█	█	█
Task 5 - Implementation	█	█	█	█	█	█
Final Product	█	█	█	█	█	█

EXHIBIT "C"

PROJECT COST

**Cutler Bay Transportation Master Plan
Proposed Costs**

Task	Fee	MPO Contribution
Task 1 - Public Involvement	\$ 15,000	\$ 9,000
Task 2 - Data Collection	\$ 20,000	\$ 12,000
Task 3 - Needs Assessment	\$ 30,000	\$ 18,000
Task 4 - Alternatives Refinement	\$ 10,000	\$ 6,000
Task 5 - Implementation	\$ 20,000	\$ 12,000
Final Product	\$ 5,000	\$ 3,000
TOTAL	\$ 100,000	\$ 60,000

TAB 5



MEMORANDUM

To: Honorable Mayor and Councilmembers

From: Steven J. Alexander, Town Manager

Date: June 18, 2008

Re: **A Resolution approving a Project Agreement between The Corradino Group Inc. and the Town for the development of a Transportation Master Plan.**

REQUEST

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA APPROVING THE PROJECT AGREEMENT BETWEEN THE CORRADINO GROUP, INC. AND THE TOWN CUTLER BAY FOR PREPARATION OF THE TRANSPORTATION MASTER PLAN; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

The Town was recently awarded a grant from the Metropolitan Planning Organization (MPO) in the amount of \$ 60,000 to prepare a "Transportation Master Plan" to accommodate local mobility needs while enhancing the character of the community and improving the quality of life for our residents, by providing viable transportation alternatives. The full cost of this study will cost \$ 100,000. The remaining funds, \$ 40,000 are included in the Public Works Department's 2007-08 Operating Budget.

The objective of the Transportation Master Plan is to study the existing and future conditions of the transportation system within the Town, including the roadway network, the transit system, the pedestrian & bicycle networks, and determine how each element interacts with the existing and future land uses. The consultants will engage the public in the generation of the transportation solution, by holding several public hearings and the creation of a Steering Committee.

The following Tasks will be completed by the Town's consultant:

- Task 1: Public Involvement
- Task 2: Data Collection and Analysis
- Task 3: Needs Assessment
- Task 4: Development of Potential Projects
- Task 5: Implementation Plan
- Task 6: Executive Summary



Office of the Town Manager

RECOMMENDATION

It is recommended that the Town Council approve the attached Resolution Authorizing the Town Manager to execute the Agreement with the Corradino Group, Inc. for the development of the Town's Transportation Master Plan.

RESOLUTION NO. 08-_____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA APPROVING THE PROJECT AGREEMENT BETWEEN THE CORRADINO GROUP, INC. AND THE TOWN CUTLER BAY FOR PREPARATION OF THE TRANSPORTATION MASTER PLAN; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the “Town”) has retained the services of The Corradino Group, Inc. and

WHEREAS, a need exists in the Town to accommodate local mobility needs while enhancing the Town’s community character and improving the quality of life; and

WHEREAS, the objective is to study the existing and future conditions of the transportation system within the Town, including the roadway network, the transit system, the pedestrian and bicycle network and to determine how each interacts with the existing and future land uses; and

WHEREAS, the existing transportation conditions within the Town will be evaluated by studying the current roadway, transit, and non-motorized levels of service; and

WHEREAS, the Town Council finds that approval of the project agreement between the Town and The Corradino Group, Inc. for preparation of the Transportation Master Plan is in the best interest 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 into this resolution by this reference.

Section 2. Approval of Agreement. The Project Agreement between The Corradino Group, Inc. and the Town of Cutler Bay for preparation of the Town’s Transportation Master Plan (the “Agreement”), a copy of which is attached as Exhibit “A,” together with such non-material changes as may be acceptable to the Town Manager and approved as to form and legality by the Town Attorney, is approved.

Section 3. Execution of Agreement. The Town Manager is authorized to execute the Agreement 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
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 _____

CUTLER BAY TRANSPORTATION MASTER PLAN

SCOPE OF SERVICES

OBJECTIVE

The objective here is to study the existing and future conditions of the transportation system within the Town of Cutler Bay, including the roadway network, the transit system, the pedestrian and bicycle network and to determine how each interacts with the existing and future land uses.

This will be done by examining the existing transportation conditions in the town, by looking at roadway, transit and nonmotorized levels of service today, and in two planning horizons. It would engage the public in the generation of transportation solutions. As a result a project bank of multi-modal solutions will be developed. Probable costs for these will be developed and the projects will be prioritized and placed in an implementation plan.

TASKS

Task 1: Public involvement

Engaging the public and incorporating public input is a multi-level process that takes place consistently throughout the duration of the plans development.

The public involvement process begins with the formation of a steering committee made up of members integrally knowledgeable and involved in the process. Next, stakeholders representing a diversity of interests are identified and consulted individually. Concurrent with the technical work of data collection and analysis, community workshops are held to offer all community members an opportunity to be involved in an informal setting. As the plan approaches completion, public hearings are held to give public officials and the general public the opportunity to hear, comment, and approve the plan. Finally, the plan is brought to the MPO and FDOT, offering a final opportunity for public comment.

Steering Committee

The steering committee should consist of the Town's Project Manager as a representative of staff, and members of the general public with established knowledge and experience with issues and processes involved. The committee will be consulted at the outset of the planning process and at the culmination of each task to review the previous efforts and to strategize for the next task. The committee will also assist in the identification of stakeholders.

Stakeholders

The Steering Committee, staff, and elected officials will assemble a list of 10 to 20 stakeholders to be individually consulted. Stakeholders should include leaders from political, business, civic, and religious communities, as well as representatives of special interest groups such as environmental groups and the disabled. Each stakeholder will be consulted on an individual basis to provide insight and advice regarding the issues, needs, and solutions to be addressed in the plan.

Community Workshops

Three separate Community Workshops will be held throughout the duration of the project.

Public Hearings

At the culmination of plan development process first and second public hearings will be held with the Town Council, giving the public further opportunity to participate.

Agency Meetings

The results of the study will be presented to the MPO and FDOT, as a process for keeping these bodies informed.

Task 2: Data Collection and Analysis

Previous and Ongoing Work

Prior to actual new data collection, all previous reports will be reviewed and to every extent possible incorporated into the data collection and analysis process.

Traffic counts

An extensive set of traffic counts will be taken to develop a picture of existing conditions. These counts will provide the basis from which the analysis and development of needs will begin.

Signal Timing

Signal timing data will be downloaded from the Miami Dade County Signal Division web site.

Data Analysis

Various levels of analysis will be provided. Each is focused on the Level of Service throughout the Town and the ability to quantify and display traffic movement patterns and trends occurring today and in the future. The resulting spread sheets could be used as a basis for a concurrency management system, since they will detail the utilization and capacity of each roadway link.

Task 3: Needs Assessment

The three level analyses provided above will point to various levels of need, for various modes. From this assessment a list of potential projects will be developed.

The four project categories will include:

- Capacity

Projects will be developed to address streets that have roadway capacity issues. These projects generally will focus on improving intersections and links that are at LOS D or worse, in the existing or future year. These will be mapped.

- Alternative Mode

This will focus on areas of transit, pedestrian, and bicycle and their levels of service, particularly as they interface with major intersections, trip generators and transit stations.

- Corridor Enhancement

This work will take into consideration arterial roads that function as major conduits of traffic through the Town.

- Policy

This will focus on policy initiatives which may help mitigate lack of mobility. These may include concurrency, TDM, and TSM measures.

Task 4: Development of Potential Projects

Potential projects that arise from the needs assessment resulting from the analysis will be placed in a "Project Bank", which will essentially be the Town's Transportation Master Plan Capital Improvements schedule, as mandated by SB 360 and will be integral to meeting the demands of growth management regulations.

Each project will be conceptually developed. This will entail the development of a project sheet that provides:

- Description of the project
- Location
- Cost
 - Planning
 - Design
 - Construction

All projects will be cataloged by type in the project bank report.

Task 5: Implementation Plan

The formal Implementation Plan will refine the Project Bank by prioritizing the individual projects, identifying funding sources and strategies, or recommending initiatives for strengthening transportation and mobility opportunities.

Essentially this task will prioritize the Project Bank, develop consensus of the community, have it approved by the Town Council, and then by the Miami-Dade MPO. Further tasks will be to have individual projects begin implementation. Acceptance on the LRTP or TIP will be simplified with these approvals.

Task 6: Executive Summary

The final report will be a combination and summation of all tasks.

END PRODUCT

A final report and highly graphic executive summary will be produced as will a PowerPoint presentation of that report. Drafts will be delivered to the Town for review. After the final presentation, bound and electronic copies will be made available.

Cutler Bay Transportation Master Plan
Proposed Schedule

Task	Months					
	1	2	3	4	5	6
Task 1 - Public Involvement						
Task 2 - Data Collection						
Task 3 - Needs Assessment						
Task 4 - Alternatives Refinement						
Task 5 - Implementation						
Final Product						

Cutler Bay Transportation Master Plan
Proposed Costs

Task	Fee	MPO Contribution
Task 1 - Public Involvement	\$ 15,000	\$ 9,000
Task 2 - Data Collection	\$ 20,000	\$ 12,000
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Task 5 - Implementation	\$ 20,000	\$ 12,000
Final Product	\$ 5,000	\$ 3,000
TOTAL	\$ 100,000	\$ 60,000

TAB 6



Office of the Town Attorney

Mitchell A. Bierman
Town Attorney

Chad S. Friedman
Town Attorney

MEMORANDUM

To: The Honorable Mayor and Town Council
Steven Alexander, Town Manager, Town of Cutler Bay

From: John J. Kendrick

Date: June 11, 2008

Re: IRS Application for Cutler Bay Town Foundation, Inc.

Below please find information concerning the filing of a 501(c)(3) application for a Florida nonprofit corporation. Please note that these are general statements regarding the filing of an application for exemption and may differ from the requirements for a particular application.

1. The IRS requires the filing of an application for exemption for all organizations that anticipate receipt of contributions in excess of \$25,000.00 per year.
2. Form 1023-Application for Recognition of Exemption is the form used to apply for the exemption for nonprofit status. The IRS states that a newly created entity should apply for the exemption within twenty-seven months (27) of creation. If the entity is already existing, it can be requested that the exemption reflect back to the date of incorporation.
3. The Form 1023 takes a significant amount of time to complete and includes such things as an explanation of the planned activities of the corporation, a listing of the officers and directors, copies of the Articles of Incorporation and Bylaws, and, most significantly, projected financial information if the corporation is a new entity.
4. The IRS states that it can take anywhere from 6 - 8 months to receive notice back on an application (the 6 - 8 month time frame is an average provided by the IRS, for a new entity filing it is anticipated that notification would be much sooner). The anticipated activities of the entity can also reflect on this anticipated time frame.

RESOLUTION NO. 08 - _____

A RESOLUTION OF THE TOWN OF CUTLER BAY, FLORIDA, ESTABLISHING CUTLER BAY TOWN FOUNDATION, INC.; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING TOWN OFFICIALS TO TAKE ALL NECESSARY STEPS TO CREATE CUTLER BAY TOWN FOUNDATION, INC.; AUTHORIZING THE MAYOR AND APPROPRIATE TOWN PERSONNEL TO EXECUTE REQUIRED DOCUMENTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the “Town”) has a need for the establishment of a non-profit organization to fund community improvements in the Town; and

WHEREAS, the Town Council has directed staff to create an organization to begin raising funds for community improvements.

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. Creation of Cutler Bay Town Foundation. The Town Council hereby authorizes the Town Manager and Town Attorney to create a “Cutler Bay Town Foundation” in order to raise money to fund community improvements in the Town of Cutler Bay.

Section 3. Expenditure of Funds. The Town Manager is authorized to expend budgeted funds to prepare the required documents and begin the fundraising process.

Section 4. Authorization of Town Officials. The Town Manager and Town Attorney are authorized to create a corporation, apply for the appropriate tax-exempt status, open up a bank account and take all other steps necessary for the creation of the Cutler Bay Town Foundation, Inc.

Section 5. Execution of Documents. The Town Manager and other appropriate Town personnel are authorized to execute any required documents on behalf of the Cutler Bay Town Foundation, Inc.

Section 4. Effective Date. 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 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 _____

**ARTICLES OF INCORPORATION
FOR
CUTLER BAY TOWN FOUNDATION, INC.,
a Florida not for profit corporation**

The undersigned, pursuant to Chapter 617 of the Florida Statutes, hereby submits the following Articles of Incorporation:

ARTICLE I

The name of the Corporation shall be **CUTLER BAY TOWN FOUNDATION, INC.**, (hereinafter referred to as "Corporation").

ARTICLE II

The principal office address and mailing address of the Corporation is: 10720 Caribbean Boulevard, Cutler Bay, Florida 33189.

ARTICLE III

1. No Stock. The Corporation is organized upon a non stock basis.
2. No Members. The Corporation shall not have any members.

ARTICLE IV

The Corporation shall have perpetual existence.

ARTICLE V

The Corporation is organized and shall be operated exclusively for charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. In furtherance of such purposes, the Corporation shall be authorized:

1. To raise funds and other monies for community improvements for the benefit of the community in the Town of Cutler Bay, Florida.
2. To solicit and accept contributions of money and property and to accept devises and bequests and all other monies and property made available by virtue of trusts, endowments, deeds of gift, annuities, policies of insurance, or otherwise, and to use and administer such monies or property for the furtherance of the Corporation's purposes.
3. To do all acts and things requisite, necessary, proper, and desirable to carry out and further the objects for which this Corporation is formed; and, in general, to

have all rights, privileges, and immunities, and enjoy all the benefits of the laws of the State of Florida applicable to corporations of this character, including, but not limited to, the powers described in Section 617.0302 of the Florida Statutes, subject however to the requirements of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and to the other limitations provided in these Articles of Incorporation.

ARTICLE VI

The street address of the Corporation’s registered office is: 10720 Caribbean Boulevard, Cutler Bay, Florida 33189. The name of the Corporation’s registered agent is: Mitchell A. Bierman.

ARTICLE VII

The number of directors may be changed, from time to time, in accordance with the Bylaws, provided that there shall at all times be at least _____ (__) directors. The names and addresses of the persons who shall serve as the initial board of directors until the first annual meeting of the directors or until their successors are elected and qualified are as follows:

_____	_____
_____	_____
_____	_____
_____	_____

The method of election of directors and their term of office shall be in accordance with the Bylaws.

ARTICLE VIII

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to its directors, officers or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article V hereof. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these Articles, the Corporation shall not carry on any other activities not permitted to be carried on by a corporation (i) exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding section of any future federal tax code; or (ii) contributions

to which are deductible under Section 170(c)(2) of the Internal Revenue code of 1986, or the corresponding section of any future federal tax code.

ARTICLE IX

1. Distribution of Income. The Corporation shall distribute its income for each tax year at such time and in such manner as not to become subject to the tax on undistributed income imposed by Section 4942 of the Internal Revenue Code of 1986, as amended, or the corresponding section of any future federal tax code.

2. Self-Dealing. The Corporation shall not engage in any act of self-dealing as defined in Section 4941(d) of the Internal Revenue Code of 1986, as amended, or the corresponding section of any future federal tax code.

3. Excess Business Holdings. The Corporation shall not retain any excess business holdings as defined in Section 4943(c) of the Internal Revenue Code of 1986, as amended, or the corresponding section of any future federal tax code.

4. Investments Jeopardizing Charitable Purpose. The Corporation will not make any investment in such manner as to subject it to tax under Section 4944 of the Internal Revenue Code of 1986, as amended, or the corresponding section of any future federal tax code.

5. Taxable Expenditures. The Corporation shall not make any taxable expenditures as defined in Section 4945(d) of the Internal Revenue Code of 1986, as amended, or the corresponding section of any future federal tax code.

ARTICLE X

Upon the dissolution of the Corporation, assets shall be distributed for one or more exempt purposes within the meaning of (or distributed to any one or more organizations operated exclusively for charitable purposes and which qualifies as tax exempt under) Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding section of any future federal tax code.

ARTICLE XI

To the maximum extent permitted by Florida law, the Corporation shall:

1. Indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of the Corporation), by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against liability incurred in connection with such proceeding, including any appeal thereof, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the

best interests of the Corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that a person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

2. Indemnify any person who was or is a party to any proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses and amounts paid in settlement not exceeding, in the judgment of the board of directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonable incurred in connection with the defense or settlement of such proceeding, including any appeal thereof.

Expenses incurred by an officer or director in defending a civil or criminal proceeding shall be paid by the Corporation in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if he or she is ultimately found not to be entitled to indemnification by the Corporation.

The indemnification and advancement of expenses provided pursuant to this Article are not exclusive, and the Corporation may make any other or further indemnification or advancement of expenses of any of its directors, officers, employees, or agents, under any Bylaw, agreement, vote of disinterested director, or otherwise both as to action in his or her official capacity and as to action in another capacity while holding such office.

ARTICLE XII

The name and address of the incorporator is:

Mitchell A. Bierman
Weiss Serota Helfman
2525 Ponce de Leon Blvd.
Coral Gables, Florida 33134

IN WITNESS WHEREOF, the undersigned has executed these Articles of Incorporation this _____ day of January, 2007.

Mitchell A. Bierman, Incorporator

ACCEPTANCE BY REGISTERED AGENT

Pursuant to the provisions of Section 617.0501 of the Florida Not For Profit Corporation Act, the undersigned submits the following statement in accepting the designation as registered agent and registered office of Cutler Bay Town Foundation, Inc., a Florida not for profit corporation (the "Corporation"), in the Corporation's Articles of Incorporation:

Having been named as registered agent and to accept service of process for the Corporation at the designated registered office, the undersigned accepts the appointment as registered agent and agrees to act in this capacity. The undersigned further agrees to comply with the provisions of all statutes relating to the proper and complete performance of its duties, and the undersigned is familiar with and accepts the obligations of its position as registered agent.

IN WITNESS WHEREOF, the undersigned has executed this Certificate this _____ day of January, 2007.

Mitchell A. Bierman

**BY-LAWS
OF
CUTLER BAY TOWN FOUNDATION, INC.,
a Florida not for profit corporation**

Adopted as of _____

The following are the by-laws of the CUTLER BAY TOWN FOUNDATION, INC., a corporation not for profit under the laws of the State of Florida (the "Corporation").

ARTICLE I. CORPORATE OFFICE.

The office and principal place of business of the corporation shall be located at: 10720 Caribbean Boulevard, Cutler Bay, Florida 33189.

ARTICLE II. BOARD OF DIRECTORS.

Section 2.01. General Powers. Subject to the limitations of the articles of incorporation, these by-laws, and the Florida Not For Profit Business Corporation Act, all corporate powers shall be exercised by or under the authority of the board of directors, and the business and affairs of the corporation shall be managed under the direction of the board of directors.

Section 2.02. Initial Directors, Number, Tenure, and Election. For the purpose of adopting these by-laws, the board of directors shall initially consist of _____ (__) persons as set forth in the articles of incorporation (hereafter, the "Initial Board").

Section 2.03. Board of Directors. Subsequent to the adoption of these by-laws, the number of directors shall be remain a total of _____ (__) and the individual directors of the Initial Board shall either step down or shall remain and be appointed to take such office. The directors appointed shall be appointed for a term of either two (2) or four (4) years at the discretion of the Initial Board. Notwithstanding anything provided for herein or in the articles of incorporation, only one (1) member of the board of directors may serve concurrently as a member of the Town Council of the Town of Cutler Bay, Florida.

Section 2.04. Tenure. The new board of directors and each board thereafter shall serve for either two (2) or four (4) years, depending upon their appointment to the board of directors or the term of the prior director they are replacing, until the second succeeding annual meeting of election and until their successors have been elected or appointed and qualified.

Section 2.05. Number. The number of the board of directors may be increased or decreased from time to time by amendment to these by-laws, but shall consist of a minimum of three (3) directors.

Section 2.06. Acceptance of Nomination and Annual Meetings. The board of directors shall hold an annual meeting for the purpose of electing new members to the board and transacting such other business as may be properly brought before the meeting. If there is a vacancy on the board of directors or the board wishes to remove one of the directors, the remaining board members may submit a written nomination for a new board member, the new board member shall thereafter be confirmed and the board member holding the respective seat shall step down and the replacement member shall begin its term of office.

Section 2.07. Meetings and Telephonic Conferencing. Regular meetings of the board of directors shall be held at such times as shall be fixed from time to time by resolution of the board. Special meetings of the board may be called at any time by the president, or, if the president is absent or is unable or refuses to act, by any two members of the board. Notice need not be given of regular meetings of the board, nor need notice be given of adjourned meetings. Notice of special meetings shall be in writing, delivered in person or by first-class mail or telegram or cablegram at least two (2) days prior to the date of the meeting. Neither the business to be transacted nor the purpose of any such meeting need be specified in the notice. Attendance of a director at a meeting shall constitute a waiver of notice and a waiver of all objection to the place, time, and manner of calling the same, except where the director states, at the beginning of the meeting, any objection to the transaction of business because the meeting is not lawfully called or convened. Individual directors may participate in any meeting of the board by means of a conference telephone or similar communications equipment by which all persons participating can hear each other at the same time, and attendance by such means shall constitute presence in person at a meeting.

Section 2.08. Quorum and Voting. A simple majority of directors in office shall constitute a quorum for the transaction of business, and the acts of a majority of directors present at a meeting at which a quorum is present shall constitute the acts of the board of directors. If, at any meeting of the board of directors, less than a quorum is present, a majority of those present may adjourn the meeting, from time to time, until a quorum is present. In the event of a tie vote, the vote shall be considered a “no vote” and the item under consideration shall be deemed denied.

Section 2.09 Vacancies. A vacancy in the board of directors shall exist on the happening of any of the following events:

- (1) A director dies, resigns, abandons or is removed from office.

(2) The authorized number of directors is increased without the simultaneous election of a director or directors to fill the newly authorized position.

(3) The board of directors declares vacant the office of a director who has been adjudicated of unsound mind or has been finally convicted of a felony, or who, within three (3) business days after notice of his or her election to the board, neither accepts the office in writing nor attends a meeting of the board of directors.

A reduction in the authorized number of directors does not remove any director from office prior to the expiration of his or her term of office.

Section 2.10. Filling of a Vacancy. A vacancy in the board of directors shall be filled by the board by majority vote of the remaining directors (even though a quorum is not present). Such replacement directors shall have all of the powers of a director and shall serve until their replacements election and qualification.

Section 2.11. Removal. At any regular meeting of the board of directors or any special meeting called for such purpose, any director or directors may be removed from office, with or without cause, by majority vote of the remaining board of directors. Removal of a board member shall not affect the qualifications for board membership set forth in Section 2.06 above.

Section 2.12. Compensation. Directors shall not receive compensation for serving on the board. However, the board shall be entitled to reimbursements for any reasonable expenses incurred in attending board meetings.

Section 2.13. Indemnification. The corporation shall indemnify any person who was or is a party or is threatened to be made a party, to any threatened, pending, or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative, by reason of the fact that he or she is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of any other corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlements, actually and reasonably incurred by him or her in connection with such action, suit, or proceeding, including any appeal of such action, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe such conduct was unlawful. However, no indemnification shall be provided in any action or suit by or in the right of the corporation to procure a judgment in its favor, with respect to any claim, issue, or matter as to which such person is adjudged to be liable for negligence or misconduct in the performance of his or her duty to the corporation. Indemnification under this section shall be made by the corporation only as authorized in the specific case on a determination by a simple majority of

disinterested directors, that such individual met the applicable standard of conduct set forth above. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or on a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not meet the applicable standard of conduct. Indemnification shall continue as to a person who has ceased to be a director or officer, and shall inure to the benefit of the heirs, executors, and administrators of such a person.

Section 2.14. Committees. The board of directors may, by resolution adopted by a majority of the board, appoint two or more directors to constitute an executive committee which, to the extent provided in such resolution, shall have and may exercise all of the authority of the board of directors in the management of the corporation, except that such committee shall have no authority to fill vacancies on the board of directors or remove members of the board of directors or of any committee; or adopt, amend, or repeal these by-laws. The board of directors shall have the power at any time to fill vacancies in, to change the size or membership of, and to discharge any such committee. Any such executive committee shall keep a written record of its proceedings and shall submit such record to the whole board at each regular meeting and at such other times as may be requested by the board. However, failure to submit the record, or failure of the board to approve any action indicated in the record shall not invalidate such action (provided such action was within such committee's authority) to the extent such action has been carried out by the corporation prior to the time the record was or should have been submitted to the board as provided.

ARTICLE III. OFFICERS.

Section 3.01. Enumeration of Offices. The corporation shall have as officers a president, a secretary, and a treasurer. The board of directors, in its discretion, may appoint one or more additional vice-presidents, one or more assistant secretaries, one or more assistant treasurers, and such other officers as the business of the corporation may require.

Section 3.02. Election and Term of Office. The principal officers of the corporation shall be elected by a majority vote of the board of directors at the annual meeting, or as soon afterward as is reasonably possible. Subordinate officers may be elected from time to time as the board may see fit. Each officer shall hold office until his or her successor is elected and qualified or until his or her resignation, death, or removal. The term of office for each officer shall be one (1) years from appointment.

Section 3.03. Removal. Any officer may be removed from office at any time, with or without cause, on the affirmative vote of the majority of the board of directors.

Section 3.04. Vacancies. Vacancies in offices, however occasioned, may be filled by election by the board of directors at any time for the unexpired terms of such offices.

Section 3.05. President; Powers and Duties. Subject to any supervisory duties that may be given by the board of directors to any chairman of the board, the president shall be the principal executive officer of the corporation. Subject to the control of the board of directors, the president shall supervise and direct generally all the business and affairs of the corporation. The president shall preside at all meetings of the board of directors at which he or she is present. The president may sign, with the secretary or any other officer of the corporation so authorized by the board of directors, any deeds, mortgages, bonds, contracts, or other instruments that the board of directors has authorized for execution, except when the signing and execution has been expressly delegated by the board of directors or these by-laws to some other officer or agent of the corporation or is required by law to be otherwise signed or executed. The president shall also make reports to the board of directors and in general shall perform all duties incident to the office of president and such other duties as may be prescribed from time to time by the board of directors.

Section 3.06. Treasurer; Powers and Duties. The treasurer of the corporation shall have the following powers and duties:

- (a) To be custodian and take charge of and be responsible for all funds and securities of the corporation;
- (b) To receive and give receipts for money due and paid to the corporation from any source;
- (c) To deposit all such monies paid to the corporation in the name of the corporation in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of these by-laws;
- (d) To perform all of the duties incidental to the office of treasurer and such other duties as may be assigned to the treasurer, from time to time, by the president or the board of directors; and
- (e) To give a bond for faithful discharge of his or her duties when required to do so by the board of directors.

Section 3.07. Secretary; Powers and Duties. The secretary of the corporation shall have the following powers and duties:

- (a) To keep the minutes for the meetings of the board of directors, in one or more books provided for that purpose;
- (b) To see that all notices are duly given, in accordance with these by-laws or as required by law;

- (c) To be custodian of the corporate records and the seal of the corporation;
- (d) To see that the seal of the corporation is affixed to all documents duly authorized for execution under seal on behalf of the corporation; and
- (e) To perform all duties incidental to the office of secretary and such other duties as may be assigned to the secretary, from time to time, by the president or the board of directors.

Section 3.08. Optional Subordinate Officers. Other subordinate officers, including without limitation an assistant treasurer or treasurers and an assistant secretary or secretaries may be appointed by the board of directors from time to time, and shall exercise such powers and perform such duties as may be delegated to them by the resolutions appointing them, or by subsequent resolutions adopted by the board of directors from time to time.

Section 3.09. Absence or Disability of Officers. In the case of the absence or disability of any officer of the corporation and of any person authorized to act in his or her place during such absence or disability, the board of directors may by resolution delegate the powers and duties of such officer to any other officer, or to any director, or to any other person whom it may select.

ARTICLE IV. CORPORATE ACTIONS.

Section 4.01. Contracts. The board of directors may authorize any officer or officers, or any agent or agents of the corporation to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances subject to the requirements set forth in Section 4.02 below.

Section 4.02. Loans. No loans shall be made or contracted on behalf of the corporation, and no evidences of indebtedness shall be issued in its name, unless authorized by resolution of the board of directors. Such authority may be general or confined to specific instances.

Section 4.03. Checks, Drafts, or Orders. All checks, drafts, or other orders for the payment of money by or to the corporation, and all notes and other evidence of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents of the corporation and in such manner as shall from time to time be determined by resolution of the board of directors.

Section 4.04. Bank Deposits. . All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the board of directors may select.

ARTICLE V. MISC.

Section 5.01. Fiscal Year. The fiscal year of the corporation shall be the fiscal calendar year or begin on the first day of October of each year and end at midnight on the thirtieth day of September of the following year.

Section 5.02. Corporate Seal. The board of directors shall adopt an official seal for the corporation, which shall be circular in form and be inscribed with the name of the corporation, the state of incorporation, and the words Corporate Seal.

Section 5.03. Majority Vote. For the purpose of these by-laws, a majority vote of the board shall mean a simple majority vote from those board members present at a meeting where a quorum has been established.

Section 5.04. Unanimous Vote. For the purpose of these by-laws, a unanimous vote of the board shall mean a unanimous vote from the board of directors present at a meeting where a quorum has been established.

ARTICLE VI. AMENDMENTS.

Any amendment to the articles of incorporation or these by-laws including, but not limited to, an amendment to the stated purpose of the corporation or an increase or decrease in the number and/or composition of the board of directors, shall require a unanimous vote of the board of directors.

ARTICLE VII. DISSOLUTION.

This Corporation may be dissolved only after a unanimous vote of the board of directors.

TAB 7



Office of the Town Manager

Steven J. Alexander
Town Manager

MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council

From: Steven J. Alexander, Town Manager

Date: June 18, 2008

Re: **EXECUTION OF AGREEMENT FOR COMPREHENSIVE ROADWAY & SIDEWALK ASSESSMENT REPORT AND DEVELOPMENT OF A CAPITAL IMPROVEMENT PROGRAM**

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROFESSIONAL SERVICES, AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH CORZO, CASTELLA, CABALLO, THOMPSON, AND SALMAN (C3TS), INC. FOR THE COMPLETION OF A COMPREHENSIVE ROADWAY & SIDEWALK ASSESSMENT REPORT AND DEVELOPMENT OF A CAPITAL IMPROVEMENT PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

At the November 17, 2007 Town Council meeting, Resolution No. 07-03 was adopted approving the execution of non-exclusive professional services agreements with firms to provide various engineering and architectural services for the Town, including Landscape Architectural Services. C3TS was one of the firms selected to perform such services.

Following a thorough evaluation by the Town's Selection Committee which included previous experience with similar projects, the proposed scope of services, project deliverables and over-all cost, the Public Works Department has selected Corzo, Castella, Caballo, Thompson, and Salman (C3TS), Inc. to complete the "Roadway & Sidewalk Assessment Report and Capital Improvement Program". The report is expected to take approximately six (6) months to complete at a cost of \$85,428.00 which is budgeted in the Public Works Department's 2007-08 fiscal year operating budget.

RECOMMENDATION

We recommend that the attached resolution be adopted, authorizing the Town Manager to execute an agreement with Corzo, Castella, Caballo, Thompson, and Salman (C3TS), Inc. for the completion of the Comprehensive Roadway & Sidewalk Assessment Report and development of a Capital Improvement Program.

RESOLUTION NO. 08- _____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROFESSIONAL SERVICES, APPROVING AND AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH CORZO, CASTELLA, CABALLO, THOMPSON, AND SALMAN (C3TS), INC. FOR THE COMPLETION OF A COMPREHENSIVE ROADWAY & SIDEWALK ASSESSMENT REPORT AND DEVELOPMENT OF A CAPITAL IMPROVEMENT PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the Town seeks to continuously provide a high level of service to its residents by identifying and addressing deficiencies in the Town's roadway, sidewalk, and curb networks as it relates to the quality of existing facilities, and

WHEREAS, the Town's Public Works Department has budgeted funds in the 2007-08 fiscal year budget for the completion of a Comprehensive Roadway & Sidewalk Assessment Report and Capital Improvement Program; and

WHEREAS, in accordance with the stipulations of the professional services agreements, the Public Works Department solicited a proposal from Corzo, Castella, Caballo, Thompson, and Salman (C3TS), Inc. which has an executed agreement with the Town; and

WHEREAS, the Town Council hereby approves the agreement with Corzo, Castella, Caballo, Thompson, and Salman (C3TS), Inc. in the amount of \$85,428.00 for the completion of a Comprehensive Roadway & Sidewalk Assessment Report and development of a Capital Improvement Program, in substantially the form attached hereto as Exhibit "A," and authorizes the Town Manager to enter said agreement; and

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

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

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

Section 2. Approval of the Agreement. The Town Council hereby approves the agreement with Corzo, Castella, Caballo, Thompson, and Salman (C3TS), Inc. in the amount of \$85,428.00 for the completion of a Comprehensive Roadway & Sidewalk Assessment Report and development of a Capital Improvement Program in substantially the form attached hereto as Exhibit "A."

Section 3. Town Manager Authorization. The Town Manager is authorized to execute an agreement with Corzo, Castella, Caballo, Thompson, and Salman (C3TS), Inc. in the amount of \$85,428.00 for the completion of a Comprehensive Roadway & Sidewalk Assessment Report and development of a Capital Improvement Program in substantially the form attached hereto as Exhibit "A."

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

PASSED and ADOPTED this _____ day of _____, 2008.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

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

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

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____



Engineers
Architects
Planners

WORK ORDER FOR PROFESSIONAL SERVICES

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

Date: 05/13/08
File: 00359-00

ATTENTION: Ralph Casals, Public Works Director

PROJECT NAME: Roadway & Sidewalk Assessment Report and CIP
Cutler Bay, Florida

SCOPE OF PROJECT:

This Roadway and Sidewalk Assessment & CIP is being developed in accordance with the Town of Cutler Bay Strategic Plan (2006-2011) specifically:

Goal 3.1 - The Town of Cutler Bay will provide the infrastructure needed to meet current and emerging needs of the community.

Strategic Initiative - Prepare an annual Capital Improvement Plan that includes funding, infrastructure, capital needs, and prioritization of projects.

Goal 5.1 - Cutler Bay will be recognized as a Town where people prefer to live, and whose residents feel a strong sense of Town identity and community pride.

Strategic Initiative - Study ways to enhance pedestrian friendliness in the Town by better signage, striping, signalization, and the possible construction of crossovers, overpasses, and bike paths.

Goal 6.3 - Optimize the smooth flow of traffic through the Town of Cutler Bay by minimizing traffic congestion and maximizing the capacity of our local roadways.

Strategic Initiative - Enhance the pedestrian friendliness of the Town by improved signalization, electronics, striping, pedestrian crossovers, overpasses, and bike paths.

Goal 9.1 - Develop the Town of Cutler Bay into a model community for the condition of its roads, street lighting, storm drainage facilities, swale maintenance, sidewalks, etc.

Strategic Initiative - Develop and implement a multi-year plan for road resurfacing, pot holes, shoulders, sidewalks, curbs and gutters, signage, drainage, swales, lighting, etc.

Accordingly, the assignment will consist of a Townwide assessment of all roadways and sidewalks for capital improvement planning and budgeting purposes. Development of a 10-year Capital Improvement program for roadway resurfacing/rehabilitation and sidewalk repairs and construction for connectivity based on this assessment, and the prioritization of area needs. This report and CIP does not address traffic signage and pavement markings (except as noted below) or roadway drainage.

SCOPE OF SERVICES:

1. Development of pavement classification and pavement condition rating methodology. Development of sidewalk repair and ADA accessibility compliance criteria. Development of pedestrian crosswalk requirements (along arterial and collector roadways only). Development of pavement restriping needs criteria.
2. Development of Town GIS map for roadway and sidewalk conditions.
3. General visual assessment of all Town of Cutler Bay roadways and sidewalks. This excludes roadways under Miami-Dade County or Florida Department of Transportation jurisdiction.
4. Specific detailed assessment of certain defective roadway and sidewalk areas to complement the general visual assessment. ADA violations (sudden rise) or absence of handicap ramps will be noted.
5. Input field data into GIS system.
6. Analyze roadway segments and areas to develop prioritization of needs and define project areas and estimated construction costs. These project recommendations will be coordinated with recommendations within the Town's Stormwater Master Plan.
7. Develop Capital Improvement program for roadway resurfacing/rehabilitation and sidewalk repair and construction. The CIP will be summarized in a prioritized manner with estimated construction cost associated with each improvement.
8. Prepare final report and color-coded wall map.
9. Three progress meetings with staff, and a final presentation at a possible Town Council Workshop.

Ten (10) copies of the "Final" report will be provided to the Town and an electronic version of the report.

TERMS AND CONDITIONS:

All terms and conditions shall be per our General Agreement for Professional Services. Our fees for the above services shall be \$85,428.

We are ready to begin working on this assignment upon your authorization to proceed. If acceptable to you, we will accept a signed copy of this form as your written authorization to proceed with the assignment.

PROJECTED TIMELINE

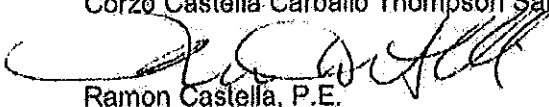
We anticipate that the duration of the services, as described above, shall be six (6) months.

The anticipated milestones after Notice to Proceed (NTP) within this period are:

Establish Criteria/Methodology/Unit Cost	NTP + 1 mo.
Finalize Field Work	NTP + 3 mo.
Finalize GIS Input	NTP + 4 mo.
Draft Report	NTP + 5 mo.
Final Report	NTP + 6 mo.

Thank you.

Corzo Castella Carballo Thompson Salman, P.A.



Ramon Castella, P.E.
Vice-President

RC/er

Town of Cutler Bay
Approved by:

_____ Date

FEE WORKSHEET

DATE: May 13, 2008

PROJECT: Roadway & Sidewalk Assessment Report & CIP
Cutler Bay, Florida

Task	Prin	PE/RA	EI/AI	Sr. Tech.	Tech.	Clerical
Develop Methodology - Pavement Classification and Condition	2	8	4			
Establish Criteria - Sidewalk, Crosswalks & Restriping	2	12	24	12		
Establish Repair/Resurf. Unit Costs	2	12	16	8		
General Vehicular Assmt. - Roadways	2	12	100	100		
General Vehicular Assmt - Sidewalks	2	12	40	36		
Specific Detailed Assmt - Roadways	2	4	12			
Specific Detailed Assmt - Sidewalks	2	4	8	8		
GIS Map Setup	2	6	12		60	
Input Field Data to GIS	2	6	12	16	60	
Coordinate/Develop Budgets with P.W.	4	4	4			4
Prioritization of Street/Sidewalks	2	6	8	8		
Develop Project Areas & Scopes	2	12	12	6		
Develop Project Costs	2	4	6	8		
Report Preparation (DRAFT)	2	6	12	12	40	16
Presentation of Report	4	6	4	4	4	12
Report (FINAL)	2	4	4	4	4	6
Sub-Total Hours	36	118	278	222	168	38
Billing Rate	185	135	98	85	77.5	58
Labor Cost	\$6,660	\$15,930	\$27,244	\$18,870	\$13,020	\$2,204
Labor Sub-Total						\$83,928

Printing & Reproduction \$1,500

Total \$85,428

TAB 8



Steven J. Alexander
Town Manager

MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council

From: Steven J. Alexander, Town Manager

Date: June 18, 2008

Re: EXECUTION OF AGREEMENT FOR ENGINEERING SERVICES FOR CUTLER RIDGE ELEMENTARY SCHOOL AREA PAVING & DRAINAGE IMPROVEMENTS

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROFESSIONAL SERVICES, AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR ENGINEERING SERVICES FOR CUTLER RIDGE ELEMENTARY SCHOOL AREA PAVING AND DRAINAGE IMPROVEMENTS; AND PROVIDING AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

At the November 17, 2007 Town Council meeting, Resolution No. 07-03 was adopted approving the execution of non-exclusive professional services agreements with firms to provide various engineering and architectural services for the Town, including Landscape Architectural Services. Kimley-Horn is one of the firms that was selected to perform such services on an as needed basis.

Following a thorough evaluation by the Town's Selection Committee which included previous experience with similar projects, the proposed scope of services, project deliverables and over-all cost, the Public Works Department has selected Kimley-Horn and Associates, Inc. to complete engineering design services for Cutler Ridge Elementary school area paving & drainage improvements. The engineering design services costs for this project total \$ 60,000.00 which, is eligible for reimbursement by the Florida Department of Environmental Protection grant award (LP 6819). The project area has been identified in the Town's Stormwater Master Plan, as a "priority" drainage basin project.

RECOMMENDATION

We recommend that the attached resolution be adopted, authorizing the Town Manager to execute an agreement with Kimley-Horn and Associates, Inc. for engineering design services for Cutler Ridge Elementary school area paving & drainage improvements.

RESOLUTION NO. 08-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROFESSIONAL SERVICES, AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. FOR ENGINEERING SERVICES FOR CUTLER RIDGE ELEMENTARY SCHOOL AREA PAVING AND DRAINAGE IMPROVEMENTS; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, Kimley-Horn is one of the firms that was selected to perform professional services pursuant the Resolution No. 07-52, and

WHEREAS, the Town seeks to improve the existing drainage deficiencies occurring in the surrounding area adjacent to Cutler Ridge Elementary School; and

WHEREAS, the Town’s Stormwater Master Plan has identified the surrounding area adjacent to Cutler Ridge Elementary as a “priority” stormwater basin; and

WHEREAS, the Town was awarded a State of Florida Department of Environmental Protection grant (LP6819) for Stormwater Utility and Management Projects Plan; and

WHEREAS, the Cutler Ridge Elementary School paving and drainage improvement costs are eligible for reimbursement from the State of Florida Department of Environmental Protection grant (LP6819); and

WHEREAS, in accordance with the stipulations of the professional services agreements, the Public Works Department received a proposal from Kimley-Horn and Associates, Inc. which has an executed agreement with the Town; and

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

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

Section 2. Authorization. The Town Manager is authorized to execute an agreement with Kimley-Horn and Associates, Inc. in the amount of \$60,000.00 for engineering design services in substantially the form attached hereto.

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 _____

PROJECT AGREEMENT

Between

TOWN OF CUTLER BAY, FLORIDA

And

Kimley-Horn and Associates, Inc.

for

Work Authorization No. 08-01

**Cutler Ridge Elementary School Area
Paving and Drainage Improvements**

PROJECT AGREEMENT

Between

THE TOWN OF CUTLER BAY, FLORIDA

And

Kimley-Horn and Associates, Inc.

For

Work Authorization No. 08-01

Cutler Ridge Elementary School Area
Paving and Drainage Improvements

Pursuant to the provisions contained in the "Non-Exclusive Professional Services Agreement" between the TOWN OF CUTLER BAY, FLORIDA, 10720 Caribbean Blvd., Suite 105, Cutler Bay, Florida 33189 (the "TOWN") and Kimley-Horn and Associates, Inc., ("CONSULTANT" or "ENGINEER") dated January 17, 2008, this project agreement authorizes the CONSULTANT to provide the services as set forth below:

The TOWN and CONSULTANT agree as follows:

SECTION 1. SCOPE OF SERVICES

1.1 The CONSULTANT shall provide engineering services to the TOWN for the design and permitting of paving and drainage improvements for the project as described in the "Project Description" attached as Exhibit "1." The paving and drainage improvements will be designed in accordance with the TOWN's Stormwater Master Plan criteria. This scope of services does not include construction phase services. Those services can be provided as additional services at the request of the Town.

1.2 The "Scope of Services" and tasks to be provided by the CONSULTANT for this project are those services and tasks as listed in Exhibit "2."

1.3 The TOWN may request changes that would increase, decrease, or otherwise modify the Scope of Services. The changes must be contained in a written change order executed by the parties in accordance with the provisions of the continuing services agreement,

prior to any deviation from the terms of the project agreement, including the initiation of any extra work.

SECTION 2. DELIVERABLES

As part of the Scope of Services and Project Schedule, the CONSULTANT shall provide to the TOWN the following Deliverables:

See Scope of Services in Attachments EXHIBIT "2".

SECTION 3. TERM/TIME OF PERFORMANCE/DAMAGE

3.1 **Term.** This project agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect until the project is completed, unless otherwise terminated pursuant to section 4 or other applicable provisions of this project agreement. The TOWN manager, in his sole discretion, may extend the term of this agreement through written notification to the CONSULTANT. The extension shall not exceed 90 days.

3.2 **Commencement.** The CONSULTANT's services under this project agreement and the time frames applicable to this project agreement shall commence upon the date provided in a written Notification of Commencement ("Commencement Date") provided to the CONSULTANT from the TOWN. The CONSULTANT shall not incur any expenses or obligations for payment to third parties prior to the issuance of the Notification of Commencement. CONSULTANT must receive written notice from the TOWN manager or his designee prior to the beginning the performance of services.

3.3 **Contract Time.** Upon receipt of the Notification of Commencement, the CONSULTANT shall commence services to the TOWN on the Commencement Date, and shall continuously perform services to the TOWN, without interruption, in accordance with the time frames set forth above. The number of calendar days from the Commencement Date, through the date set forth in the Project Schedule for completion of the project or the date of actual completion of the project, whichever shall last occur, shall constitute the Contract Time.

3.4 **Liquidated Damages.** Unless otherwise excused by the Town in writing, in the event that the consultant fails to meet to the contract time for completion of services as determined by the Project Schedule, the consultant shall pay to the Town the sum of dollars identified below per day for each and every calendar day unexcused delay beyond the completion date, plus approved time extensions, until completion of the project: \$0 per day. The consultant may claim extension if the factors involved are not under their direct control.

Any sums due and payable hereunder by the consultant shall be payable, not as a penalty, but as liquidated damages representing and estimate at or before the time of executing this agreement. When the Town reasonably believes that completion will be inexcusably delayed, the Town shall be entitled, but not required, to withhold from any amounts otherwise

due the consultant an amount then believed by the Town to be adequate to recover liquidated damages applicable to the delays. If and when the consultant overcomes the delay in achieving completion, or any part thereof, for which the Town has withheld payment, the Town shall promptly release to the consultant those funds withheld, but no longer applicable, as liquidated damages.

SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION

4.1 **Lump Sum Compensation.** TOWN agrees to pay CONSULTANT as compensation for performance of all services described in Exhibit "2" \$60,000.00. The Lump Sum fee will not exceed \$60,000.00

4.2 **Reimbursable Expenses.** The following expenses are included in the Lump Sum fee: travel and accommodations, long distance telephone calls, facsimile, courier services, mileage, photo and reproduction services.

SECTION 5. BILLING AND PAYMENTS TO THE CONSULTANT

5.1 Invoices

5.1.1 **Lump Sum Compensation and Reimbursable Expenses.** CONSULTANT shall submit invoices which are identified by the specific project number on a monthly basis in a timely manner. These invoices shall identify the nature of the work performed, the phase of work, and the estimated percent of work accomplished in accordance with the Payment Schedule set forth in Exhibit "3", to this project agreement. Invoices for each phase shall not exceed amounts allocated to each phase of the Project. The statement shall show a summary of fees with accrual of the total and credits for portions previously paid by the TOWN. The TOWN shall pay CONSULTANT within 30 days of approval by the TOWN manager of any invoices submitted by CONSULTANT to the TOWN.

5.2 **Disputed Invoices.** In the event that all or a portion of an invoice submitted to the TOWN for payment to the CONSULTANT is disputed, or additional backup documentation is required, the TOWN shall notify the CONSULTANT within 15 working days of receipt of the invoice of the objection, modification or additional documentation request. The CONSULTANT shall provide the TOWN with additional backup documentation within five working days of the date of the TOWN'S notice. The TOWN may request additional information, including but not limited to, all invoices, time records, expense records, accounting records, and payment records of the CONSULTANT. The TOWN, at its sole discretion, may pay to the CONSULTANT the undisputed portion of the invoice. The parties shall endeavor to resolve the dispute in a mutually agreeable fashion.

5.3 **Suspension of Payment.** In the event that the TOWN becomes credibly informed that any representations of the CONSULTANT, provided pursuant to subparagraph 5.1, are wholly or partially inaccurate, or in the event that the CONSULTANT is not in

compliance with any term or condition of this project agreement, the TOWN may withhold payment of sums then or in the future otherwise due to the CONSULTANT until the inaccuracy, or other breach of project agreement, and the cause thereof, is corrected to the TOWN'S reasonable satisfaction.

5.4 **Retainage.** The Town reserves the right to withhold retainage in the amount of 10 percent of the final payment due to the consultant until the project is completed. Said retainage may be withheld as security for the successful completion of the consultant's duties and responsibilities under the project agreement. Any retainage held will be released immediately upon receipt of deliverables for all tasks as outlined in the Scope of Work and Project Agreement.

5.5 **Final Payment.** Submission of the CONSULTANT's invoice for final payment and reimbursement shall constitute the CONSULTANT's representation to the TOWN that, upon receipt from the TOWN of the amount invoiced, all obligations of the CONSULTANT to others, including its CONSULTANT's, incurred in connection with the project, shall be paid in full. The CONSULTANT shall deliver to the TOWN all documents requested by the TOWN evidencing payments to any and all subconsultant's, and all final specifications, plans, or other documents as dictated in the Scope of Services and Deliverable. Acceptance of final payment shall constitute a waiver of any and all claims against the TOWN by the CONSULTANT.

SECTION 6. TERMINATION/SUSPENSION

6.1 **For Cause.** This project agreement may be terminated by either party upon five calendar days written notice to the other party should the other party fail substantially to perform in accordance with its material terms through no fault of the party initiating the termination. In the event that CONSULTANT abandons this project agreement or causes it to be terminated by the TOWN, the CONSULTANT shall indemnify the TOWN against any costs incurred in replacing CONSULTANT for this project agreement. In the event that the CONSULTANT is terminated by the TOWN for cause and it is subsequently determined by a court of competent jurisdiction that the termination was without cause, the termination shall thereupon be deemed a termination for convenience under section 6.2 of this project agreement and the provision of section 6.2 shall apply.

6.2 **For Convenience.** This project agreement may be terminated by the TOWN for convenience upon 14 days' written notice to the CONSULTANT. In the event of termination, the CONSULTANT shall incur no further obligations in connection with the project and shall, to the extent possible, terminate any outstanding sub CONSULTANT obligations. The CONSULTANT shall be compensated for all services performed to the satisfaction of the TOWN and for reimbursable expenses incurred prior to the date of termination. The CONSULTANT shall promptly submit its invoice for final payment and reimbursement and the invoice shall comply with the provisions of paragraph 5.1 of this project agreement. Under no circumstances shall the TOWN make any payment to the CONSULTANT for services which have not been performed.

6.3 **Assignment upon Termination.** Upon termination of this project agreement, a copy of all of the CONSULTANT's work product shall become the property of the TOWN and the CONSULTANT shall, within 10 working days of receipt of written direction from the TOWN, transfer to either the TOWN or its authorized designee, a copy of all work product in its possession, including but not limited to designs, specifications, drawings, studies, reports and all other documents and data in the possession of the CONSULTANT pertaining to this project agreement. Further, upon the TOWN'S request, the CONSULTANT shall assign its rights, title and interest under any subconsultant's agreements to the TOWN.

6.4 **Suspension for Convenience.** The TOWN shall have the right at any time to direct the CONSULTANT to suspend its performance, or any designated part thereof, for any reason whatsoever or without reason, for a cumulative period of up to 30 calendar days. If the suspension is directed by the TOWN, the CONSULTANT shall immediately comply with same. In the event the TOWN directs a suspension of performance as provided for herein through no fault of the CONSULTANT, the TOWN shall pay to the CONSULTANT its reasonable costs, actually incurred and paid, of demobilization and remobilization, as full compensation for the suspension.

SECTION 7. INCORPORATION OF TERMS AND CONDITONS

7.1 This project agreement incorporates the terms and conditions set forth in the attached Kimley-Horn and Associates, Inc. Standard Provisions. In the event that any terms or conditions of this project agreement conflict with the Standard Provisions, the provisions of this specific project agreement shall prevail and apply.

TOWN OF CUTLER BAY

By: _____
Steven J. Alexander, Town Manager

Date: _____

ENGINEER

Kimley-Horn and Associates, Inc.

By: _____
Gary R Ratay, Vice President

• Date: _____

Exhibit "1"

Project Description

This proposal is to assist the Town in addressing the current flooding issues occurring in the area surrounding Cutler Ridge Elementary School. The area consists of Cutler Ridge Drive from Bel Aire Drive to Coral Sea Road, Coral Sea Road from Cutler Ridge Drive to Bahia Drive, and Bahia Drive to approximately 433 feet west of Blue Water Road. As well, Kimley-Horn and Associates, Inc. will incorporate sidewalk slope corrections for the sidewalk in the public right-of-way located on the Southwest corner of Cutler Ridge Drive and Coral Sea Road. The project will be funded by will be funded by FDEP grant number LP6819.

Exhibit “2”

Scope of Services and Project Schedule

The professional services for this project will include the following:

Task 1 - Project Initiation, Coordination and Schematic Design

As part of this task, the CONSULTANT shall obtain, review, and analyze survey and soil testing for the areas included in the Project Area. Upon receipt of the survey and geotechnical information, the CONSULTANT shall visit each site to collect data and note existing conditions. The survey and information collected during the site visits will be utilized to develop a schematic drainage design plan. The schematic design plan will be represented to the Town on one (1) plan sheet identifying proposed drainage improvements and existing conditions. The schematic drainage design plans will be the basis for discussion of alternatives with TOWN staff.

As part of this task, two (2) copies of the survey will be forwarded to each utility company known to operate in the vicinity of the Project Area. Each utility company will be requested to return one redlined survey, identifying the horizontal and vertical location of their facilities and any proposed improvements planned within the next two years to the Town. This information will be incorporated into the Design Development Plans upon receipt from the utility companies.

As part of this Task, the CONSULTANT shall attend two (2) meetings with TOWN staff. Task 1 will be completed within 20 weeks of authorization to proceed.

Task 2 – Design Development Plans

Utilizing the survey, soil testing results and schematic plan developed in Task 1 above, the CONSULTANT shall prepare preliminary 60% design plans for the construction of paving and drainage improvements within the Project Area. These Design Development Plans shall show the geometric layout on top of the base survey data. The basis for design will be the Miami-Dade County Public Works Manual and Florida Department of Transportation (the “FDOT”) Standard Indexes where applicable. Task 2 will be completed within 12 weeks of receiving Schematic Plan approval from TOWN staff. The following plan sheets may be included in the Design Development Plans:

1. Key Sheet – Project title, vicinity map, engineer of record, and other appropriate information.
2. Resurfacing Maps – Identifying the limits of the roadways that will be resurfaced as part of this project.
3. Plan and Profile Sheets (in a 22” x 34” format) – Containing the geometric, horizontal and vertical alignment for the reconstruction or milling and resurfacing of the roadways within the project area. These sheets shall also contain the horizontal, vertical, and geometric alignments for modifications/additions to the existing drainage system.

4. Miscellaneous Construction Details – These sheets shall provide construction details that are not included in the FDOT Standard Indexes or Miami-Dade County Details.
5. Miscellaneous Drainage Details – These sheets would provide construction details that are not included in the FDOT Standard Indexes or Miami-Dade County Details.
6. Typical Signing and Pavement Marking Details – Signing and pavement markings shall be detailed for use in the project.

Task 3 – Drainage Design and Permitting

3.1 Coordination Meetings

The CONSULTANT shall attend one coordination meeting each with representatives of the Miami Dade County Department of Environmental Resources Management (“DERM”) and the Miami-Dade County Department of Public Works (“Miami-Dade Public Works”) during the course of the design and permitting process. The intent of the meetings will be to review the proposed design and permitting requirements.

3.2 Hydraulic Analysis

The hydraulic analysis shall be completed for the Project Area based upon the geotechnical and survey information obtained in Task 1. During the analysis, the volume of stormwater runoff shall be calculated from the design storm and the capacity of the existing stormwater collection system shall be evaluated. The results of the above noted calculations along with the incorporation of budget constraints will be the basis for design of the stormwater system.

3.3 Permitting

The CONSULTANT shall prepare and submit permit applications to DERM and Miami-Dade Public Works as required. The package will consist of the permit application form, pre-development and post-development runoff calculations, and the Design Development Plans. Responses to comments (one set of review comments by DERM and Miami-Dade Public Works) will be prepared within the Final Construction Plans. The Town will pay all permit fees directly. The permit applications will be submitted within 14 weeks of receiving Schematic Plan approval from TOWN staff.

Task 4 - Final Construction Plans and Contract Documents

4.1 Final Construction Plans

Upon receipt of comments from DERM and Miami-Dade Public Works, the Design Development Plans will be upgraded to construction plans incorporating the permitting agency comments. This task will be completed within 10 weeks of receiving DERM and Miami-Dade Public Works permit approval.

The final construction document set will include the following:

1. Key Sheet – Project title, vicinity map, engineer of record, and other appropriate information.
2. Resurfacing Maps – Identifying the limits of the roadways that will be resurfaced as part of this project.
3. Plan and Profile Sheets (in a 22” x 34” format) – Containing the geometric, horizontal and vertical alignment for the reconstruction or milling and resurfacing of the project area. These sheets shall also contain the horizontal, vertical, and geometric alignments for modifications/additions to the existing drainage system.
4. Miscellaneous Construction Details – These sheets shall provide construction details that are not included in the FDOT Standard Indexes or Miami-Dade County Details.
5. Miscellaneous Drainage Details – These sheets would provide construction details that are not included in the FDOT Standard Indexes or Miami-Dade County Details.
6. Typical Signing and Pavement Marking Details – Signing and pavement markings shall be detailed for use in the project.

Plan set summary of estimated sheets:

Key Sheet	1
Resurfacing Maps	2
Plan and Profile Sheets	6
Miscellaneous Construction Details	2
Miscellaneous Drainage Details	2
Typical Signing and Pavement Marking Details	2

Total Number of Sheets **15**

4.2 Contract Documents

The Engineers Joint Contract Documents Committee (“EJCDC”) standard contract documents will be utilized for this project. It is intended that the FDOT Technical Specifications be used for this project. Supplemental Technical Specifications shall be prepared by the CONSULTANT to address construction elements not addressed in the FDOT standard Technical Specifications or that are included but require modifications to make them project specific.

Task 5 – Contractor Selection Assistance

5.1 Bidding Assistance

It is our understanding that the TOWN will use a competitive bidding process to hire a contractor to construct the improvements described in the final construction plans and contract

documents. The CONSULTANT shall consult with and advise the TOWN and act as its representative for the proposed improvements during the bidding process. This task is limited to attendance at a pre-bid meeting and issuance of addenda in response to contractor questions. Once bids are received, the CONSULTANT shall review the bids and prepare a bid tabulation sheet for use in making the recommended award.

EXHIBIT "3"

Payment Schedule

The CONSULTANT will complete this scope of services for the lump sum amount of **\$60,000.00**.

Task	Description	Labor Fee
1	Project Initiation, Survey, and Schematic Design	\$18,000.00
2	Design Development Plans	\$12,000.00
3	Drainage Design and Permitting	\$9,000.00
4	Final Construction Plans and Contract Documents	\$17,000.00
5	Contractor Selection Assistance.....	\$4,000.00
LUMP SUM FEE		\$60,000.00

TAB 9



Office of the Town Attorney

Mitchell A. Bierman
Town Attorney

Chad S. Friedman
Town Attorney

M E M O R A N D U M

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: June 11, 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 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.

10720 Caribbean Boulevard, Suite 105
Cutler Bay, FL 33189
(305) 234-4262 Office
(305) 234-4251 Fax
www.cutlerbay-fl.gov



Office of the Town Attorney

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.

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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 10



Planning & Zoning Department

R. Don O'Donniley, AICP
Planning Director

M E M O R A N D U M

To: Steve Alexander, Town Manager

From: R. Don O'Donniley

Date: June 18, 2008

Re: **Proposed Amendments to the Sign Code for the Town of Cutler Bay**

BACKGROUND

The Mayor and Town Council have expressed its desire to improve the signage permitted within the Town.

REQUEST

Council Member Bell requested staff to prepare a specific proposal to implement the directions expressed by the Mayor and Town Council.

ANALYSIS

The proposed ordinance, amending Chapter 33 "Zoning," Article VI "Signs" of the Code of Ordinances, has been prepared by Town planning staff with the advice of the Town attorneys in order to modernize the Town's sign regulations by prohibiting obsolete signs including pole signs, v-shaped point of sale signs, and freestanding and attached neon signs, while promoting sign types which are more consistent with the desired appearance of development in the Town. Additionally, the proposed updates also clarify the application procedures which apply to sign permits, as recommended by the Town Attorney.

The proposed amendments are summarized as follows:

1. Revisions of Sign-Related Definitions

The ordinance includes proposed revisions to Sec. 33-84 "Definitions" of the Code. The proposed revisions to the sign-related definitions specifically define permitted sign types (such as monument signs) and prohibited sign types (such as pole signs and "v-shaped" point-of-sale signs) to effectively regulate these signs types.

2. Amendment to Sign Permitting Procedure

The Town Attorneys have recommended that the Town's sign permitting procedures be revised to provide applicants with a quick, clear and defined path to judicial review in the event an applicant desires to challenge a Town decision on a sign permit. The revised Code provides definite procedural guidelines, which are necessary for addressing governmental approvals affecting the exercise of First Amendment rights.

3. Amendment to Section 33-95 to Prohibit Certain Sign Types

Staff has proposed the following prohibitions on certain sign types, in the interest of improved aesthetics and traffic safety:

- Freestanding and attached signs including exposed or visible neon light tubing
- V-shaped point of sale signs
- Animated signs
- Freestanding and attached painted signs
- Pole signs

4. Clarification of Regulations of Automatic Electric Changing Signs and Manual Changeable Copy Signs

Current Code applies Miami-Dade County regulations as to permissible locations for "automatic electric changing signs" ("ACS signs"). Section 33-96.1 has been revised to limit the location of these signs to monument signs on major or minor roadways within BU districts. The definition of Automatic Electric Changing Signs has been revised to comprehensively address and regulate digital and electronic signs, to better address the rapidly-evolving technologies used in this type of sign.

The current regulations allow "manual changeable copy signs" (removable-letter signs regulated as "attraction boards" under the current code) to proliferate in many districts. For aesthetic purposes, the proposed regulations will limit such signs to placement within a properly permitted monument sign posted by one of the following uses: drive-through restaurants, places of public assembly and worship, educational facilities, and gasoline service stations.

5. Monument Sign Requirement and Construction Standards

To improve the quality and appearance of freestanding signage throughout the Town, the ordinance provides that monument signs are generally required in lieu of obsolete types of freestanding detached signs such as pole signs. Solid, CBS-constructed monument signs are advantageous for both aesthetic and structural safety reasons.

6. Master Sign Plan Requirement

A uniform signage plan is proposed to be required for all multi-tenant centers. The uniform signage plan requirement addresses the design characteristics, size, location, and number of

signs in a multi-tenant development, and will be approved in conjunction with the site plan for the development. Where new or replacement signage is proposed for existing multi-tenant centers, the Director or his designee must approve a sign plan that will be implemented for each replacement sign in the development.

7. Flag Display Standards

Section 33-96.5 has been created to set forth appropriate limitations on the size and manner of display of flags in residential and nonresidential districts.

8. Window Sign Regulations

The current sign regulations lack sufficient limitations on the amount of signage that can be placed in the windows of commercial structures. For aesthetic and safety reasons, the proposed regulations will limit window signs to cover no more than twenty (20) percent of the area of each individual glass window pane.

9. Sign Variance Procedure

A proposed sign variance procedure is included with this amendment, to allow relief from the strict requirements of the sign regulations in limited cases. The variance procedure operates similarly to the traditional zoning variance, requiring the applicant to demonstrate that the literal interpretation of a sign regulation would result in an unnecessary and undue hardship on the applicant. An example of a situation in which a variance may be warranted is an awkward parcel configuration which makes it difficult for an establishment's signage to be viewed from the right of way. Limited departure from size or placement standards may be justified as specified in the procedure.

10. Amortization of Freestanding and Attached Neon Signs and V-Shaped Signs

Signs which were legally permitted within the Town and later become prohibited pursuant to Section 33-95 of the Code are generally "grandfathered" as legal non-conforming structures. These signs may remain indefinitely until they are removed or destroyed as determined by the Code. In that event, they must be replaced with signage that conforms to the current standards.

However, an amortization program is included in this ordinance to require the removal of two types of prohibited signs, v-shaped point of sale signs and freestanding and attached signs with exposed or visible neon light tubing, pursuant to an amortization schedule which has been developed based on current legal authority. Removal of these signs will be required in accordance with an amortization schedule which will permit property owners to recoup their investment in such signs.

11. Amendment to Regulation of Temporary Construction and Real Estate Signs

The ordinance includes proposed reductions in the maximum size and height for temporary construction signs. Construction signs are permitted to be posted from the date any building permit is issued for the subject development. Such sign must be removed no later than the time of building permit expiration, or the date that certificates of occupancy have

been issued for one-half of the project square footage (for nonresidential development) or one-half of the residential dwelling units (for residential development).

For real estate signs, the ordinance includes a revision to the time period for posting. A real estate sign used to advertise a single parcel, dwelling unit, or commercial space shall be posted no earlier than the date of listing of the property for lease or sale, and shall be removed no later than ten (10) days following the date of closing or leasing. A real estate sign used to advertise multiple units or commercial spaces shall be posted no earlier than the date of listing of the properties for lease or sale, and shall be removed no later than ten (10) days following the date of sale or leasing of sixty (60) percent of the dwelling units or non-residential spaces.

RECOMMENDATION

Staff recommends the Council approve the ordinance amending the sign regulations for the Town of Cutler Bay.

ORDINANCE NO. 08-_____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 33 “ZONING” ARTICLE VI “SIGNS” IN ORDER TO REVISE THE PROCEDURAL AND SUBSTANTIVE REGULATIONS OF SIGNS IN THE TOWN AND PROVIDE FOR AMORTIZATION OF CERTAIN TYPES OF NONCONFORMING OR PROHIBITED SIGNS; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town Council finds and determines that the Town’s sign regulations are intended to maintain and improve the aesthetics, quality of life, and safety of the Town and its residents, while meeting the need for signage that clearly identifies locations, advertises businesses, and otherwise communicates commercial and noncommercial messages; and

WHEREAS, sign regulation to advance the governmental purpose of aesthetics has long been upheld by the state and federal courts; and

WHEREAS, the U.S. Supreme Court recognized that “the concept of the public welfare is broad and inclusive”, in *Berman v. Parker*, 348 U.S. 26, 33 (1954), which was followed by *State v. Miami Beach Redevelopment Agency*, 392 So. 2d 875 (Fla. 1980); and

WHEREAS, sign regulations have been held to advance these aesthetic purposes and advance the public welfare in *City of Lake Wales v. Lamar Advertising Ass'n of Lakeland, Florida*, 414 So. 2d 1030 (Fla. 1982); and

WHEREAS, the Town Council finds and determines that the Town’s land development regulations are required to regulate signs as provided by Section 163.3202(2)(f), Florida Statutes; and

WHEREAS, the Town Council finds and determines that this Ordinance is consistent with all applicable policies of the Miami-Dade County Comprehensive Plan; and

WHEREAS, the Town Council desires to provide for the free expression of its residents, as required by *City of Ladue v. Gilleo*, 512 U.S. 43 (1994), by allowing one permanent noncommercial sign per dwelling unit to be posted in any zoning district which permits residential use, in addition to any other permitted signs; and

WHEREAS, the Town Council desires to effectuate a prohibition on certain types of signs in order to promote the public health, safety and welfare of the Town's residents; and

WHEREAS, the Town Council, to ensure the protection of property rights in connection with signs determined to be non-conforming with this Ordinance, desires to implement a reasonable amortization period for the removal of v-shaped point of sale signs, pole signs, and signs including exposed or visible neon light tubing, with the exception of window signs; and

WHEREAS, local ordinances requiring the removal of prohibited signs through the use of a reasonable amortization period have been upheld as constitutional by numerous courts in cases including, but not limited to, *Lamar Advertising Associates of East Florida, Ltd. v. City of Daytona Beach*, 450 So.2d 1145 (Fla. App. 5 Dist. 1984); *Art Neon Co. v. Denver*, 488 F.2d 118 (10th Cir. 1973); *Outdoor Graphics v. City of Burlington, Iowa*, 103 F.3d 690 (8th Cir. 1996); *Georgia Outdoor Advertising v. City of Waynesville*, 900 F.2d 783 (4th Cir. 1990); and *Naegele Outdoor Advertising, Inc. v. City of Durham*, 803 F. Supp. 1068 (M.D. North Carolina 1992); and

WHEREAS, the Town Council, sitting as the Local Planning Agency, has reviewed this Ordinance at a duly noticed meeting on _____, 2008, and recommended its adoption; and

WHEREAS, the Town Council hereby finds and declares that adoption of this Ordinance is necessary, appropriate, and advances the public interest.

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

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

Section 2. Amendment to Chapter 33 of the Town Code. The Town Council hereby amends Chapter 33 "Zoning," Article VI "Signs" as follows:

DIVISION 1. TITLE, APPLICABILITY, PURPOSE AND DEFINITIONS

Sec. 33-82. Short title and applicability.

~~(a)~~ This article shall be known as the "Sign Code of ~~Miami-Dade County~~ the Town of Cutler Bay, Florida" and shall be applicable ~~in the unincorporated areas of Miami-Dade County, and specifically in the incorporated areas of Miami-Dade County~~ the Town of Cutler Bay. ~~When the provisions of this article are applicable to a municipality, the municipality shall be responsible for enforcement.~~

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

~~(b) If property in the unincorporated area fronting a street right of way forms a common boundary with a municipality, and if the zoning classifications on both sides of the boundary are comparable, the property in the unincorporated area shall comply with the provisions of the municipal ordinance, provided the municipality has a sign ordinance with stricter standards than this article. In such event Miami Dade County shall apply and enforce the provisions of the municipal ordinance in the unincorporated areas of the County. No variance from this section shall be permitted without the prior express consent of the affected municipality.~~

Sec. 33-83. Scope, Purpose, Substitution and Severability.

(a) *Purpose.* The purpose of this article is to permit signs that will not, because of size, location, method of construction and installation, or manner of display:

- (1) Endanger the public safety; or
 - (2) Create distractions that may jeopardize pedestrian or vehicular traffic safety; or
 - (3) Mislead, confuse, or obstruct the vision of people seeking to locate or identify uses or premises; or
 - (4) Destroy or impair aesthetic or visual qualities of ~~Miami Dade County~~ the Town which is so essential to tourism and the general welfare;
- and

The purpose of this article is also to permit, regulate and encourage the use of signs with a scale, graphic character, and type of lighting compatible with buildings and uses in the area, so as to support and complement land use objectives as set forth in the ~~Comprehensive Development Master Plan~~ Growth Management Future Land Use Plan. It shall be further the purpose of this article to promote the aesthetics, safety, health, and general welfare and the ~~assurance of assured~~ protection of adequate light and air within the Town by regulation of the general posting, displaying, erection, use, and maintenance of signs. In the event of any conflict between this code and any declaration of covenants, bylaws, or other restrictions applying to any property within the town, the language affording the more restrictive interpretation shall apply.

(b) *Scope.* The provisions of this article shall govern the number, size, location, and character of all signs which may be permitted either as a main or accessory use under the terms of this article. No signs shall be permitted on a plot or parcel either as a main or accessory use except in accordance with the provisions of this article.

(c) *Substitution of Noncommercial Speech for Commercial Speech.* Notwithstanding any provisions of this article to the contrary, to the extent that this article permits a sign containing commercial copy, it shall permit a noncommercial sign to the same extent. The noncommercial message may occupy the entire sign area or any portion thereof, and may substitute for or be combined with the commercial message. The sign message may be changed from commercial to noncommercial messages, or from one noncommercial message to another, as frequently as desired by the sign's owner, provided that the sign is not prohibited, and the sign continues to comply with all requirements of this article.

(d) *Severability.*

(1) *Generally.* If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this article is declared unconstitutional by the final and valid judgment or decree of any court of competent jurisdiction, this declaration of unconstitutionality or invalidity shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this article.

(2) *Severability where less speech results.* This subsection (2) shall not be interpreted to limit the effect of subsection (1) above, or any other applicable severability provisions in the code of ordinances or any adopting ordinance. The town council specifically intends that severability shall be applied to these regulations even if the result would be to allow less speech in the town, whether by subjecting currently exempt signs to permitting or by some other means.

(3) *Severability of provisions pertaining to prohibited signs.* This subsection (3) shall not be interpreted to limit the effect of subsection (1) above, or any other applicable severability provisions in the code of ordinances or any adopting ordinance. The town council specifically intends that severability shall be applied to section 33-95, entitled “Prohibited signs,” so that each of the prohibited sign types listed in that section shall continue to be prohibited irrespective of whether another sign prohibition is declared unconstitutional or invalid.

(4) *Severability of prohibition on off-premises signs.* This subsection (4) shall not be interpreted to limit the effect of subsection (1) above, or any other applicable severability provisions in the code of ordinances or any adopting ordinance. If any or all of this article or any other provision of the town’s code of ordinances is declared unconstitutional or invalid by the final and valid judgment of any court of competent jurisdiction, the town council specifically intends that that declaration shall not affect the prohibition of off-premises signs in Section 33-95(k).

Sec. 33-84. Definitions.

For the purposes of this article the following words and phrases are hereby defined as provided in this section, unless the context clearly indicates otherwise. Where there is a question as to the correct classification or definition of a sign, it shall be the prerogative of the Director to place said sign in the strictest category and/or classification.

~~(a) *Sign:* Any display of characters, letters, logos, illustrations or any ornamentation designed or used as an advertisement, announcement, or to indicate direction. Use of merchandise, products, vehicles, equipment, inflated balloons, or the like as an attention attractor or advertising device, with or without a printed or written message or advertisement, shall be considered a sign.~~

Animated sign: A sign that uses movement, change of lighting or change of color to depict action or create a special effect or scene. Also, a sign or device visible from the

public right-of-way with letters or characters that move or change more frequently than every six (6) seconds.

Attached sign: A sign which is attached to or supported by a building, wall, or other structure. The definition of “attached sign” shall not include a sign painted directly on the wall face of a building or structure.

~~-(b) Attraction board: A sign or portion of a sign on which copy is changed periodically, advertising special sales, bargains, etc. Said attraction board may be incorporated into the sign permitted.~~

Automatic electric changing sign (“ACS”): Any electrical or electronically controlled sign where different messages or copy changes are shown, including tri-vision panels. Also, any sign, or portions of a sign, where any light source, including but not limited to incandescent bulbs or light-emitting diodes (LEDs), constitutes the sign text or image. This type of sign includes, but is not limited to electronic message boards; television screens; plasma screens; digital screens; flat screens; LED screens; video boards; other types of electric and electronic display boards and screens; and holographic displays.

~~(e) Awning, canopy, roller curtain or umbrella sign: Any sign painted, stamped, perforated, or stitched on the surface area of an awning, canopy, roller curtain or umbrella.~~

~~(d) Cantilever: That portion of a building, projecting horizontally, whether it be on the same plane as the roof line or not.~~

~~(e) Cantilever sign: Any sign which is mounted on a cantilever. No cantilever sign may extend beyond the cantilever.~~

Changeable copy sign (manual) shall mean any sign displaying a message which can be changed by hand through the use of removable characters.

~~(f) Class A (temporary signs): Any sign(s) to be erected on a temporary basis, such as signs advertising the sale or rental of the premises on which located; signs advertising a subdivision of property; signs advertising construction actually being done on the premises on which the sign is located; signs advertising future construction to be done on the premises on which located, and special events, such as carnivals, concerts, public meetings, sporting events, political campaigns or events of a similar nature.~~

~~(g) Class B (point of sale sign): Any sign advertising or designating the use, occupant of the premises, or merchandise and products sold on the premises, shall be deemed to be a point of sale sign (class B) and shall be located on the same premises whereon such is situated or the products sold.~~

~~(h) Class C (commercial advertising signs): Any sign which is used for any purpose other than that of advertising to the public the legal or exact firm name of business carried on the premises, or for advertising any service or product or products actually and actively being offered for sale on the premises, or which is designed and displayed solely to offer for sale or rent the premises or to advertise construction being done, or proposed to be done, on the premises, or advertising special events approved by the Department shall constitute a class C sign.~~

Class C signs may be in the form of a billboard, bulletin board, or poster board, or may be affixed flat to a building or painted thereon.

~~(i) Detached sign: Any sign not attached to or painted on a building, but which is affixed and permanently attached to the ground and which is not a monument sign as defined herein. “Permanently attached” as used herein shall mean that the supporting~~

structure of the sign is attached to the ground by a concrete foundation or other support anchored in the ground.

~~(j)~~ *Director:* The Planning Director or his qualified ~~agent~~ designee.

~~(k)~~ *Directional sign:* A sign which guides or directs the public and contains no advertising. The name of the facility (such as store name), which the sign is giving direction to, may be included when specified conditions in the ~~ordinance~~ Code are complied with.

~~(l)~~ *Entrance features:* Any combination of decorative structures and landscape elements located at the entrance to a development, which identifies or draws attention to the development and/or exercises control of ingress and egress to the development. An entrance feature may include, although not necessarily be limited to, ornamental walls, fences, identifying lettering, logos, works of art, and other decorative structures, earthworks, water bodies, fountains, trees, plantings, and other landscape elements, as well as gatehouses, either singly or in any combination thereof.

Flag: A piece of fabric with a color or pattern representing a government or other organization, entity, or idea.

~~(m)~~ *Flat sign:* Any sign attached to and erected parallel to the face of, or erected or painted on the outside wall of any building, and supported throughout its length by such wall or building.

Freestanding sign: Any sign not painted or mounted on a building, fence, or wall.

~~(n)~~ *Marquee:* A covered structure projecting from, and supported by the building with independent roof and drainage provisions, and which is erected over a doorway or entranceway as protection against the weather.

Marquee sign: Any sign attached to or hung from a marquee.

Monument sign: A freestanding, self-supported structure of solid construction, not attached or affixed in any way to a building or any other primary structure, and with concealed means of support that is built into the ground that could not be construed to be a pole sign.

Multifamily office sign: A sign identifying the location of the management office of a multifamily residential property.

Multi-tenant center: Any shopping center, office center or business center in which two (2) or more occupancies abut each other or share common parking facilities or driveways or are otherwise related.

Noncommercial sign: A sign containing only noncommercial copy. "Noncommercial" shall mean not-for-profit or commercial gain. Regardless of the content of the copy, a noncommercial sign shall not be construed to be an off-premises sign.

Non-conforming sign: A sign located within the town limits on the effective date of this code or existing in an area annexed by the town after the effective date of this code (or amendments hereto) which, by its height, type, area, design, colors, materials, location, use, or structural support, conformed to the town code prior to the effective date of this ordinance, but does not conform to the requirements of this code. This shall include signs that had been granted variances that were approved, and signs that were issued a construction permit by the Town of Cutler Bay or Miami-Dade County prior to the effective date of this ordinance.

Off-premises sign: A sign that directs attention to a commercial business, commodity, service, product, or activity not conducted, sold, offered, or available on the premises where such sign is located, the copy of which may be intended to be changed periodically. An off-premises sign is the principal use of the property on which it is located. It may also be referred to as a "billboard." This definition includes a sign displayed on a trailer or the bed of a truck that advertises something other than the identity of the truck, the driver or its contents.

On-premises sign: A sign that is located on the premises of the occupant, business, or property identified on the sign. The occupant, business, or property is the principal use of the property, and the sign is an accessory use of the property on which it is located.

Point of sale sign: Any sign advertising or designating the use, occupant of the premises, or merchandise or products sold on the premises.

Pole sign: A sign erected upon a pole, poles, post, or "pole-like" structure that is visible and wholly independent of any building or structure for support.

(p) *Portable sign:* Any sign not attached to or painted on a building and not affixed or permanently attached to the ground.

(q) *Projecting sign:* Any sign which is an independent structure, which is attached to the building wall, and which extends at any angle from the face of the wall. No projecting sign shall extend above the roof or parapet wall in any residential district.

(r) *Pylon:* A vertical extension of a building, constructed integrally and concurrently with the building, or in connection with a major remodeling or alteration of a building. To classify as a pylon for sign purposes, the pylon structure must be an integral part of the building structure, extending to ground level. ~~In business and industrial districts only, the material and construction may vary from the materials and type of construction of the exterior walls of the building, but same must be approved by the Director. In all cases, the pylon shall have the appearance of a solid structure.~~

(s) *Pylon sign:* A flat sign attached to ~~or painted on~~ the face of a pylon. The outer edge of the sign shall not extend beyond the pylon nor above the roof line.

(t) *Roof sign:* Any sign which is ~~painted on~~, fastened to, or supported by the roof or erected over the roof.

(u) *Semaphore:* Any sign consisting of two (2) dual-face signs extending horizontally from a light standard. Such sign must projecting from opposite sides of such light standard, and ~~such signs~~ must be located in the parking lot of a shopping center to identify the location of parking areas. No advertising is permitted on the sign.

(v) *Shopping center:* ~~An area zoned for business is a shopping center where~~ An area with at least two hundred fifty (250) feet of street frontage ~~has been~~ zoned for ~~commercial~~ retail purposes under one (1) application and under one (1) ownership, and ~~where it contains~~ with at least two (2) tiers of ~~in front~~ parking, ~~contains~~ two (2) or more retail uses, and which is subject to site plan or plot use approval as a condition of the applicable resolution or ordinance.

Sign: A device or representation for visual communication that is used for the purpose of making something known. Signs include, but are not limited to, figures, letters, logos, devices, flags, pennants, emblems, and pictures.

Temporary sign: Any sign to be displayed for a limited period of time. Temporary signs include signs capable of being mounted on the ground through use of supports made of wood, plastic, or metal, or leaned or affixed to a structure or similar object, hand-carried

signs, temporary portable signs as defined herein, but shall not include bumper stickers placed on vehicle bumpers.

V-shaped point of sale sign: A point of sale sign with two sign faces, which is constructed of solid materials in the form of a “v”.

~~(w) Wall: For sign purposes, As used in this article, that portion of the building's exterior, horizontal surface on the same plane, regardless of vertical or horizontal indentations, and including the surface of parapets and pylons projecting from the building. A plane is defined, for purposes of this chapter, as a continuous architectural façade which may include projections and/or recesses. For sign purposes, there shall be considered to be only four (4) planes to any building and it shall be the prerogative of the Director to determine which portion of odd shaped buildings, such as buildings of hexagon or octagon design, to which flat signs may be affixed, with such location to be so determined as to prevent a grouping of signs which can be viewed from one (1) direction.~~

~~(x) Wall sign: Any sign painted on or attached to and erected parallel to the face of, or erected and confined within the limits of, the outside wall of any building and supported by such wall or building and which displays only one (1) advertising surface.~~

Window sign: A sign located on the inside of a window or within a building or other enclosed structure, where the sign face is visible and legible from the exterior through a window or other opening.

DIVISION 2. GENERAL PROVISIONS

Sec. 33-86. Permits required.

(a) Applications and permits. No sign, ~~unless excepted by this article,~~ shall be erected, constructed, posted, painted, altered, maintained, or relocated, except as provided in this ~~article~~ section and until a permit has been issued by the Community Development Department (Department). Before any permit is issued, an application for such permit shall be filed together with sets of drawings and/or specifications ~~(one (1) to be returned to the applicant one (1) original set and two (2) sets of copies)~~ as may be necessary to fully ~~advise and acquaint the issuing department with~~ describe the location, method of construction, type of materials, manner of illumination, method of erection, securing or fastening, number and type of signs applied for, and advertisement to be carried. All signs which are electrically illuminated ~~by neon or any other means~~ shall require a separate electric permit and inspection. Each application for a sign permit shall be presented on the forms supplied by the Department and shall specifically include the following information:

- (1) Location;
- (2) Construction;
- (3) Materials;
- (4) Manner of illumination;
- (5) Method of securing or fastening;
- (6) Number of signs applied for;

- (7) Wording of the sign;
- (8) Dimensions of the sign;
- (9) Dimensions of the individual letters and logos;
- (10) Photograph of all existing signs for the business; and
- (11) Photograph of all existing signs on the building.

(c) *Calculating number of signs.* A single sign containing advertisement on each side shall be counted as one (1) sign. Every other sign shall be counted as a separate sign for each face thereof. ~~Excepting class C signs, "V" type signs will be considered as one (1) sign if the spread of the "V" at the open end is not greater than the length of its narrowest side.~~

(e) *Submission and review.* Upon the submission of an application for a sign permit and the applicable fee, Department staff shall have ten (10) business days to determine whether the application is complete. If staff finds that the application is not complete, staff shall provide the applicant with written notice of the application's deficiencies within the ten (10) day period. Upon resubmission of the application, staff shall have five (5) additional business days to determine whether the applicant's revisions are sufficient to complete the application. If they are not, staff will again inform the applicant of any remaining deficiencies in writing. This process shall continue until the applicant has submitted a complete application, or demands that the application be reviewed "as is."

(f) *Approval or denial.* The Department shall approve or deny the sign permit based on whether it complies with the requirements of this article. The Department shall approve or deny the sign permit within thirty (30) business days after receipt of a complete application. The Department shall prepare a written notice of its decision, describing the applicant's appeal rights, and send it by certified mail, return receipt requested, to the applicant. The applicant may file a written notice of appeal to the Town Council within fifteen (15) business days after the date of receipt of the Town's written notice of decision. The Town Council shall hear the appeal at the next available Council meeting that is at least twenty-five (25) business days after the date of receiving the written notice of appeal. If the Town Council does not grant the appeal, then the appellant may seek relief in the Circuit Court for Miami-Dade County, as provided by law.

Sec. 33-94. Signs permitted without a sign permit.

~~(e) Awning, canopy, roller curtain, or umbrella sign or signs shall be limited to eight-inch letters in height, and shall not exceed a total coverage of twenty four (24) square feet. Any such sign shall be limited to the identification of the occupant and/or use of the~~

~~property. No sign permit shall be required for the awning, canopy, roller curtain or umbrella sign, but the same shall comply with applicable technical codes.~~

~~***~~

~~(f) (g) Flags and insignia of any government, except when displayed in connection with commercial promotion, as displayed in accordance with Section 33-96.5.~~

~~***~~

Sec. 33-95. Prohibited signs.

~~(f) In both the incorporated and unincorporated areas of the County even if not classified as a sign, bBlinking or flashing lights, streamer lights, pennants, banners, streamers, balloons, and all fluttering, spinning or other type of attention attractors or advertising devices are prohibited ~~except for national flags, flags of bona fide civic, charitable, fraternal and welfare organizations and further except~~ dDuring recognized holiday periods such attention-attractors that pertain to such holiday periods may be displayed on a temporary basis during such periods. The flags permitted by this ~~subsection~~ article shall not be used in mass in order to circumvent this subsection by using said flags primarily as an advertising device.~~

~~* * *~~

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

l. Attached and freestanding signs including exposed or visible neon light tubing.

m. V-shaped point of sale signs.

n. Animated signs.

o. Painted freestanding or attached signs.

p. Pole signs.

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Sec. 33-96.1. Automatic electric changing signs.

Subject to the following mandatory conditions, Automatic Electric Changing Signs ("ACS"), shall be permitted in BU and IU districts, ~~seaports, airports, sports stadiums, racetracks, and other similar uses~~ as follows:

(a) ~~This provision shall apply~~ An ACS may be incorporated into Class B (Point of Sale) signs only, and shall not increase the maximum display area permitted. In no event shall the sign face of any ACS exceed 72 square feet.

(b) An ACS shall conform to all sign size, placement, setback, and quantity limitations as provided elsewhere in this chapter and shall comply with all building code requirements.

~~(c) Incandescent lamps/bulbs in excess of 9 watts are prohibited in an ACS. Incandescent lamps/bulbs in an ACS shall not be exposed but shall be covered by a translucent lenses or filters.~~

~~(d) (c)~~ An ACS shall be equipped with an automatic operational night dimming device. The maximum brightness of an ACS shall not exceed illumination of 3,500 nits (candelas per square meter) during daylight hours, nor 750 nits between dusk to dawn, as measured from the sign's face at maximum brightness. The ACS must be equipped with an automatic dimmer control to produce a distinct illumination change from a higher illumination level to a lower level for the time period between one half hour before sunset to one half hour before sunrise.

~~(e)~~ (d) The following operating modes are prohibited:

(1) Flash -- the condition created by displaying the same message intermittently by turning it on and off, on and off, with rapidity, or any other delivery mode that creates a flashing effect. The copy on messages may not move or appear to move. A change of message may occur at no more than six-second intervals.

(2) Zoom -- the look or condition created by expanding a message from a central point to its full size.

(3) Any signs which use the word "stop" or "danger" or imply the need or requirement of stopping, or which are copies or imitations of official signs.

(4) Red, green or amber (or any color combination thereof) revolving or flashing light giving the impression of a police or caution light shall be prohibited.

~~(f)~~ (e) A minimum of ten (10) acres gross improved land area shall be required for the placement of an ACS.

~~(g) (f)~~ With the exception of airports or seaports, the subject An ACS shall be located limited to locations only on a major or minor roadway as depicted on the adopted Comprehensive Development Master Plan Land Use Plan map Growth Management Future Land Use Plan Map.

~~(h) (g)~~ A detached freestanding ACS shall be of a monument type and shall comply with the sign height and size regulations for monument signs within the BU district surrounded by a minimum of twenty five (25) square feet of landscaped area. A plan indicating such landscape area shall be submitted to the Director at the time of building permit application.

~~(i)~~ The content of the ACS shall be limited solely to the promotion of products or services offered on the premises. The only fixed message shall be the name of the company possessing a valid Certificate of Use and Occupancy for the subject premises.

~~(j) (h)~~ The applicant for an ACS shall file of record a declaration of use, on a form prescribed and approved by the Director, which will govern the operation of the ACS and contain penalties for abatement and removal of the ACS for violations of the declaration of use and the provisions herein.

Sec. 33-5.1. Relocation of Nonconforming Off-Premises or Billboard Signs

* * *

(B) Relocation Procedures.

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

(2) The sign owner may hold the certificate, or redeem it for a building permit to construct a new off-premises or billboard sign at the relocated site. A relocated off-premises or billboard sign shall not be affixed to or painted directly on the wall of any building or structure.

Sec. 33-96.2. Manual Changeable Copy Signs

Manual changeable copy signs shall be permitted within permissible monument signage in accordance with the following requirements:

<u>Type of Signs</u>	<u>Size</u>	<u>Number</u>	<u>Setback and Spacing</u>	<u>Illumination</u>	<u>Maximum Height</u>	<u>Special Conditions</u>
<u>Manual Changeable Copy</u>	<u>Must comply with the applicable size restrictions for monument signs within the district</u>	<u>1 per parcel</u>	<u>Must comply with the applicable district setback restrictions for monument signs</u>	<u>Permitted in accordance with applicable district standards; see general provision on illumination</u>	<u>Must comply with the applicable district height restrictions for monument signs</u>	<u>Permissible for drive-through restaurants, places of public assembly and worship, educational facilities, and gasoline service stations only. Manual changeable copy signs must be incorporated into a monument sign and shall comply with the size and height restrictions of the applicable zoning</u>

						<u>district.</u>
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Sec. 33-96.3. Monument sign construction and landscaping.

a. Solid CBS and stucco construction is required for all permanent monument signs. Structural components shall not be covered by a material that is high gloss, reflective, or illuminated. The solid ground-mounted base of a monument sign shall be equal to or greater than the length of the sign face.

b. If a monument sign is not placed in an area of required landscaping, a planting bed at least two (2) feet in width shall surround the sign. This bed shall contain shrubs and supplemental ground cover, and shall be shown on the site plan. If the base of the sign is less than thirty (30) inches wide, the landscaping must be equal to the height of the base, subject to approval by the Planning Director. In no case shall the planting be less than eighteen (18) inches in height.

c. An application for a monument sign shall include an accurate and up-to-date survey of the property indicating the lot dimensions, the proposed location of the sign with all setbacks to property lines, and a landscaping plan, if required.

Sec. 33-96.4. Master sign plan.

a. A uniform signage plan shall be required for all multitenant centers. The uniform signage plan shall address the design characteristics, size, location, type, and number of signs. The uniform signage plan shall be considered and approved in conjunction with the site plan for the development, and shall apply to all signs to be displayed within the development. Logos of individual establishments, and nationally or state-registered trademark lettering, are exempt except for dimensional requirements.

b. Where new or replacement signage is proposed for existing multitenant centers, the Director shall establish a sign plan that will be implemented for each replacement sign in the development. Once the criteria has been established for a multitenant center, the criteria shall apply to the entire center, as well as each individual occupant, and shall remain as long as the center exists, regardless of change of ownership or management. The criteria may only be changed if all signs in the development are changed to conform to the new criteria which is approved by the Director.

c. Written consent to the plans and criteria must be provided by the owner of the building, structure or land to which or on which the sign structure is to be erected, relocated, maintained or altered.

Sec. 33-96.5. Flag display standards.

(a) Maximum height. Except as otherwise provided herein, flags shall be displayed on flag poles. Such poles in nonresidential zoning districts shall not exceed the allowed structure height of the zoning district or 60 feet, whichever is less. Flagpoles may not be placed on top of buildings or light poles. Flagpoles in residential districts shall not exceed 20 feet.

(b) Maximum number and size.

(1) The maximum dimensions of any flag shall be proportional to the flag pole height. The hoist side of the flag shall not exceed 20% of the vertical height of the pole. In addition, flags are subject to the following dimensional limitations:

<u>Pole Height</u>	<u>Maximum Flag Size</u>
<u>Up to 25 feet</u>	<u>24 total square feet</u>
<u>25 to 39 feet</u>	<u>40 total square feet</u>
<u>40 to 49 feet</u>	<u>60 total square feet</u>
<u>50 to 60 feet</u>	<u>150 total square feet</u>

(2) Each property shall be allowed a maximum of three (3) flag poles. A maximum of two flags shall be allowed per flag pole. References to flagpole height in this division refer to vertical flagpoles. References to the number of flags and flag poles and flag dimensions refer to both vertical flagpoles and mast-arm flagpoles (for example, staffs extending at an angle from a building). On United States and Florida holidays, there shall be no maximum flag size or number or other limitations on manner of display.

(c) Flags on permanent fixtures other than poles. Flags that are attached to the side of a structure without a pole shall not, individually or cumulatively, cover more than the greater of 24 square feet or 10% of the facade of the structure on which the flag is mounted. One flag is permitted on up to two building facades.

(d) Setback. A vertical flag pole must be set back at least 5 feet from all property boundaries.

(e) Condition of flag and pole or other permanent mounting. The flag and flag pole or other permanent mounting shall be maintained in good repair. Flag poles with broken halyards shall not be used, and torn or frayed flags shall not be displayed.

(f) Use of flags as attention-attractors prohibited. The placement of flags upon merchandise or structures to draw the public's attention to such items shall be considered to render such flags prohibited "attention attractors" pursuant to Section 33-95(f) of the Code.

DIVISION 3. SIGN STANDARDS REQUIREMENTS AND CHARTS

Sec. 33-99. Class A temporary signs.

Type of signs permitted: Real estate; subdivision; construction; future construction; special events; ~~balloons.~~

<i>Type of Signs</i>	<i>Size</i>	<i>Number</i>	<i>Setback and Spacing</i>	<i>Illumination</i>	<i>Maximum Height</i>	<i>Special Conditions</i>
Real estate	Real estate signs in an AU/GU District (not of a residential character) and all BU and IU Zones shall be limited to 40 square feet Real estate signs in AU and GU Districts (of a residential character) and RU EU District shall be limited to 4 square feet	1 sign only	Real estate signs shall be no closer than 5 feet to an official r.o.w. line unless attached to an existing building 15 feet to an interior side property line or centered on a lot between interior side property lines	Permitted See general provision on illumination	Real estate signs in <u>AU/GU District (not of a residential character) and all BU and IU Zones</u> shall not exceed 10 feet measured from grade to top of sign. <u>Real estate signs in AU and GU Districts (of a residential character) and RU EU District shall not exceed 5 feet measured from grade to top of sign.</u>	No permit required for signs that are no larger than 6 square feet and which are not electrically illuminated Real estate signs shall only be permitted on premises advertised for rent or for sale No class A temporary sign shall be maintained on the premises for a period to exceed 90 days, unless justifiable reason is shown to the satisfaction of the Director and approval is secured upon proper application. Upon the expiration of the approved period, the sign shall be removed from the premises.

						<p><u>A real estate sign used to advertise a single parcel, dwelling unit, or commercial space shall be posted no earlier than the date of listing of the property for lease or sale, and shall be removed no later than ten (10) days following the date of closing or leasing. A real estate sign used to advertise multiple units or commercial spaces shall be posted no earlier than the date of listing of the properties for lease or sale, and shall be removed no later than ten (10) days following the date of sale or leasing of sixty (60) percent of the dwelling units or non-</u></p>
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						<u>residential spaces.</u>
Subdivision signs	Maximum of 256 square feet per sign but total square footage for all signs shall not exceed 512 square feet	3 per subdivision	Not closer than 15 feet to official r.o.w. Not closer than 15 feet to property under a different ownership	Same as real estate signs	Shall not exceed 22 feet from ground to top of sign	Same as real estate signs
*** Construction signs ***	Maximum of <u>256 80</u> square feet <u>for all signs on the parcel for a detached sign</u> When <u>construction signs are painted on an approved construction shed, there is no size limitation</u>	1 general sign and 1 for each trade provided the total sign area does not exceed <u>256 80</u> square feet	15 feet from official r.o.w. 15 feet to property under different ownership or centered between interior property lines	Same as real estate signs	Same as subdivision signs <u>8 feet</u>	Same as real estate signs <u>Construction signs may be posted from the date any building permit is issued for the subject development. Such sign must be removed no later than the time of building permit expiration, or the date that certificates of occupancy have been issued for one-half of the project square footage (for nonresidential development) or one-half of</u>

						<u>the residential dwelling units (for residential development).</u>
Future construction signs	Maximum of 40 square feet in BU and IU District 24 square feet in AU, GU, EU and RU Districts	1 sign	Same as <u>subdivision construction signs</u>	Same as real estate signs	Shall not exceed 22 feet from ground level to top of sign <u>8 feet</u>	Same as real estate signs <u>Future construction signs shall be posted no earlier than the date of site plan approval for the property and shall be removed no later than ten (10) days following the date of building permit approval for the site.</u>
*** Balloons	Maximum of 32 feet in height and 25 feet in width	1 sign for each property	5 feet from official r.o.w. and property lines	Permitted until 11:00 p.m.	See provision on size	No balloon sign shall be maintained on the premises except for four (4) times each calendar year, for no more than once each calendar quarter. Balloons can be maintained on the premises up to a maximum of seventeen

						<p>(17) days during any one (1) calendar quarter. Balloons may only be used in BU and IU Districts. Such signs are limited to identification of the occupant and/or use of the property. Balloons suspended in air may not be elevated to a height greater than thirty-two (32) feet above the rooftop of the building in which the advertised use or occupant is located. Rooftop installations are permitted with the consent of the property owner. Balloon signs will be permitted for special events with prior approval of the County Manager or his designee</p>
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						<p>and will be allowed for forty eight (48) hours before the special event and must be removed within forty eight (48) hours after the close of the special event. Such time may be extended for one (1) business day, if necessary, when the 48 hours after the close of the special event falls on a weekend or holiday. Prior to receiving any permit under this section each person erecting balloon signs shall post and maintain a \$2,500 cash bond, which shall remain in effect so long as such person continues to erect balloon signs in Miami-Dade County. If</p>
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						<p>any — such person — erects a balloon sign and — fails to remove it — in accordance with — this section, — the Director shall provide — such person — 48 hours' — prior written notice of intent to forfeit — the bond. — Such notice shall be sufficient — if delivered — to the — address provided — by the — person applying — for the permit to erect — a balloon sign. If the person does not cure the — violation within — 48 — hours — after delivery — of the Director's notice, — the bond shall be forfeited. If a person's bond is — forfeited and — such person fails to post — a new bond, — all existing permits issued under — this section — shall</p>
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						be — forfeited and — all balloon signs shall — be removed. —
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Sec. 33-100. Permanent point of sale signs for GU, EU-1, EU-1C, EU-2, EU-M, RU-1, RU-2, RU-1MA, RU-1Z, and RU-TH Districts.

(a) Type of signs permitted: Detached; flat; ~~awning, canopy, roller curtain, umbrella;~~
~~projecting.~~

<i>Type of Signs</i>	<i>Size</i>	<i>Number</i> <i>2</i>	<i>Setbacks</i> <i>and</i> <i>Spacing</i>	<i>Illumination</i>	<i>Maximum</i> <i>Height</i>	<i>Special</i> <i>Conditions</i>
Detached	1.5 square feet	Only 1 sign <u>per parcel or dwelling unit</u> ; signs shall be permitted of a type to be selected by applicant	15 feet from <u>r.o.w. line</u> 5' to interior property line — 5 feet from a <u>r.o.w. line</u>	See general section on illumination Lighting permitted if does not conflict with adjacent property — <u>Not permitted</u>	20 feet <u>5 feet</u> from grade to top of sign	No permit, if sign is not illuminated and sign is 1.5 square feet or less — <u>No advertising copy permitted; may be displayed in window</u>
Flat 1 (wall and cantilever)	Same as detached	See detached above	Not applicable	Same as detached	Not applicable	Same as above
Awning, canopy, roller curtain and umbrella signs	Same as detached	See detached above	Same as detached	No illumination permitted	Not applicable	No permit required Letters attached or painted to fabric shall be limited to 8 inches in height and such sign

						shall be limited to the identification of the occupant and/or use of the property—
Projecting—	Same as detached—	See detached above—	Same as detached—	Same as detached—	9 feet from established grade to bottom of sign	Same as detached sign Near edge of sign shall be no more than 18" from building wall—

(b) 4— Nonconforming uses. ~~N-A~~ nonconforming use(s) in a residential district is permitted a flat sign only of the same size as if the use was established on a property in a district zoned permitting the use concerned.

(c) 2— ~~Churches, schools~~ Religious institutions, educational facilities, and universities, when located in these districts, shall be permitted 1 monument sign not to exceed 24 square feet, as provided for in the RU-3 District pursuant to Section 33-101.

Sec. 33-100.1. Permanent point of sale signs for AU.

(a) Type of signs permitted: ~~Detached monument~~; flat; awning, canopy, roller curtain, umbrella; projecting.

<i>Type of Signs</i>	<i>Size</i>	<i>Number</i>	<i>Setbacks and Spacing</i>	<i>Illumination</i>	<i>Maximum Height</i>	<i>Special Conditions</i>
<u>Detached Monument</u>	24.0 square feet	Only 1 sign permitted of a type to be selected by applicant	15 10 feet from r.o.w. line 5' to interior property line	See general section on illumination. Lighting permitted if does not conflict with adjacent property	20 feet 10 feet from grade to top of sign	Permit required
Flat (wall and cantilever)	See <u>detached monument above</u>	See <u>detached monument above</u>	Not applicable	Same as <u>detached monument</u>	Not applicable	Same as <u>above monument</u>

Awning, canopy, roller curtain and umbrella signs	Same as <u>detached monument</u>	See <u>detached monument</u> above	Same as <u>detached monument</u>	No illumination permitted	Not applicable	Same as <u>above monument</u>
Projecting	Same as <u>detached monument</u>	See <u>detached monument</u> above	Same as <u>detached monument</u>	Same as <u>detached monument</u>	9 <u>10</u> feet from established grade to bottom of sign	Same as <u>detached monument</u> sign Near edge of sign shall be no more than 18" from building wall

~~1 (b) Churches, schools~~ Religious institutions, educational facilities, and universities, when located in these districts, shall be permitted 1 monument sign ~~not to exceed 24 square feet, as provided in RU-3 District pursuant to Section 33-101.~~

Sec. 33-101. Permanent point of sale signs in the RU-3, ~~RU-3b, and RU-3m~~ District.
Type of signs permitted: Detached; flat; awning, canopy, roller curtain, umbrella; projecting; monument; marquee.

<i>Type of Signs Permitted</i>	<i>Size</i>	<i>Number</i>	<i>Setbacks and Spacing</i>	<i>Illumination</i>	<i>Maximum Height</i>	<i>Special Conditions</i>
<u>Detached Monument</u>	RU-3 permitted 6 square feet except for churches, schools <u>religious institutions, educational facilities, and universities</u> which are	Only 1 sign of a type as selected by applicant An additional office sign of not more than 1.5 square feet is permitted <u>One (1)</u>	15 <u>10</u> feet from r.o.w.; 5 feet from interior <u>side property adjacent property line</u>	Illumination permitted; see general provision on illumination	20 <u>8</u> feet from grade to top of sign	

	permitted 24 square feet RU 3B and RU 3M permitted 24 square feet—	<u>sign per r.o.w. frontage</u>				
Flat (wall and cantilever)	Same as detached <u>monument</u>	See detached <u>monument</u> above	Not applicable	Same as above	Cantilever signs shall not extend vertically above the roof line or parapet wall, whichever is higher	
Awning, canopy, roller curtain and umbrella signs	Same as detached <u>monument</u>	See detached <u>monument</u> above	15 <u>10</u> feet from r.o.w. 5 feet to interior side property line	No illumination permitted	Not applicable	No permit required Letters attached or painted to fabric shall be limited to the identification of the occupant and/or use of the property
<u>Multifamily Office Sign</u>	<u>1.5 square feet</u>	<u>1 per multifamily office</u>	Not applicable	<u>Illumination permitted; see general provision on illumination</u>	Not applicable	
<u>Detached</u>	<u>1.5 square feet</u>	<u>1 sign per parcel or dwelling unit; signs shall be of a type to be selected by</u>	<u>5 feet from a right-of- way line</u>	<u>Not permitted</u>	<u>5 feet from grade to top of sign</u>	<u>No advertising copy permitted</u>

		<u>applicant</u>				
Projecting	Same as <u>detached monument</u>	See <u>detached monument</u> above	Same as <u>detached monument</u>	Same as <u>detached monument</u>	9 feet from grade to bottom of sign	
Marquee	Same as <u>detached monument</u>	See <u>detached monument</u> above	Same as <u>detached monument</u>	Same as <u>detached monument</u>	Not applicable	

Sec. 33-102. Permanent point of sale signs in the RU-4L and RU-4M Districts.

Type of signs permitted: Detached; flat; marquee; awning, canopy, roller curtain, umbrella; monument; projecting; pylon.

<i>Type of Signs</i>	<i>Size</i>	<i>Number</i>	<i>Setbacks and Spacing</i>	<i>Illumination</i>	<i>Maximum Height</i>	<i>Special Conditions</i>
Detached— <u>Monument</u>	24 square feet for detached sign	Only 2 signs of a type as may be selected by applicant An additional office sign no more than 1.5 square feet is permitted <u>1 per r.o.w. frontage</u>	15 <u>10</u> feet from r.o.w.; 5 feet from interior side property adjacent property line	Illumination permitted; see general provision on illumination	20 <u>8</u> feet from grade to top of sign	
Flat (wall and cantilever)	40 square feet for a building not exceeding	See <u>detached monument above</u>	Not applicable	Same as <u>detached monument</u>	Cantilever sign shall not extend vertically above the	

	15 feet in height; thereafter, .4 square feet for each foot of building height above 15 feet measured to the lowest point of the sign on the building				roof line or parapet wall	
Marquee	40 square feet	See detached <u>monument</u> above	Same as detached <u>monument</u>	Same as detached <u>monument</u>	Not applicable	
Awning, canopy, roller curtain and umbrella signs	24 square feet	See detached <u>monument</u> above	Same as detached <u>monument</u>	No illumination	Not applicable	No permit required Letters attached or painted to fabric shall be limited to 8 inches in height and such signs shall be limited to the identification of the occupant and/or use of the property
Projecting	24 square feet	See detached <u>monument</u>	Same as detached <u>monument</u>	Same as detached <u>monument</u>	Not applicable	

		above				
Pylon	40 square feet	See detached monument above	Not applicable	Same as detached monument	Not applicable	See definition for pylon sign
<u>Multifamily Office Sign</u>	<u>1.5 square feet</u>	<u>1 per multifamily office</u>	Not applicable	<u>Illumination permitted; see general provision on illumination</u>	Not applicable	
<u>Detached</u>	<u>1.5 square feet</u>	<u>1 sign per parcel or dwelling unit; signs shall be of a type to be selected by applicant</u>	<u>5 feet from a r.o.w. line</u>	<u>Not permitted</u>	<u>5 feet from grade to top of sign</u>	<u>No advertising copy permitted</u>

Sec. 33-103. Permanent point of sale signs in the RU-4 District.

Type of signs permitted: Detached; marquee; flat; awning, canopy, roller curtain, umbrella; monument; ~~projecting; pylon.~~

<i>Type of Signs</i>	<i>Size</i>	<i>Number</i>	<i>Setbacks and Spacing</i>	<i>Illumination</i>	<i>Maximum Height</i>	<i>Special Conditions</i>
*** Pylon	40 square feet	See detached above	Not applicable	Same as detached	Not applicable	Same as detached
<u>Detached</u>	<u>1.5 square feet</u>	<u>1 sign per parcel or dwelling unit; signs shall be of a type to</u>	<u>5 feet from a r.o.w. line</u>	<u>Not permitted</u>	<u>5 feet from grade to top of sign</u>	<u>No advertising copy permitted; may be displayed in</u>

		<u>be selected by applicant</u>				<u>window</u>
<u>Detached Monument</u>	24 square feet per detached sign	Only 2 signs of a type selected by applicant <u>1 per r.o.w. frontage</u>	15 10 feet from r.o.w.; 5 feet from interior side property line 10 feet between signs	illumination permitted; see general provision on illumination	20 8 feet from grade to top of sign	See notes at end of chart for these districts
Flat (wall and cantilever)	40 square feet for a building not exceeding 15 feet in height; thereafter, <u>.8 .4</u> square feet for each foot of building height above 15 feet measured to the lowest point of the sign on the building	See <u>detached monument</u> above	Not applicable	Same as <u>detached monument</u>	Cantilever signs shall not extend vertically above the roof line or parapet wall	Same as <u>detached monument</u>
Awning, canopy, roller curtain and	24 square feet	See <u>detached monument</u>	Same as <u>detached monument</u>	No illumination	Not applicable	No permit required

umbrella sign		above				
Projecting	24 square feet	See detached <u>monument</u> above	Not applicable	Same as detached <u>monument</u>	Not applicable	Same as detached <u>monument</u>
Marquee	Total of 40 square feet	See detached <u>monument</u> above	15 10 feet from r.o.w. 5 feet from interior side property line	Same as detached <u>monument</u>	Not applicable	Same as detached <u>monument</u>

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Sec. 33-105. Permanent point of sale signs for shopping centers.

Type of signs permitted: ~~Detached; attraction board;~~ flat; pylon; manual changeable copy; awning, canopy, roller curtain, umbrella; semaphore; monument.

<i>Type of Signs</i>	<i>Size</i>	<i>Number</i>	<i>Setbacks and Spacing</i>	<i>Illumination</i>	<i>Maximum Height</i>	<i>Special Conditions*</i>
<u>Detached Monument</u>	Up to 40 square feet for first 50 feet of frontage plus .75	1 sign only if shopping center has less than 500 feet of lineal street frontage; <u>per</u>	<u>Minimum</u> setback for all street r.o.w.'s is 7 <u>10 feet for a sign not exceeding</u>	Illumination permitted; see general provision on illumination	30 8 feet from grade to top of sign	Sign shall be used only to identify the shopping center and/or as a directory of

	<p><u>.50</u> square feet for each additional foot of frontage to a maximum sign size of 300 square feet</p>	<p>each street <u>frontage</u>, a shopping center with 500 or more lineal street frontage is permitted either 1 <u>300-48</u> square-foot <u>monument</u> sign or 2 <u>200-24</u> square-foot <u>monument</u> signs; <u>shopping centers on a corner lot are permitted an additional 40-square foot sign on a side street</u></p>	<p>40 square feet; thereafter .8125 feet of additional setback for each 10 square feet of sign (calculated to the nearest 1/2 foot) Interior side setback is a minimum of 3 1/2 <u>5</u> feet for a sign not exceeding 40 square feet; thereafter the interior side setback shall be increased by 10 percent of the calculated street frontage up to 100 lineal feet and by 20 percent of the calculated street frontage where the same exceeds 100 lineal feet</p>			<p>tenants in the shopping center; see <u>Section 33-96.1</u> if <u>located in BU district</u></p>
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			<p>but does not exceed 200 lineal feet; then increases by 30 percent of the calculated street frontage above the 200 lineal feet</p> <p>Minimum space between detached monument signs shall be 20 <u>200</u> feet</p>			
<p>*** Flat (wall and cantilever)</p>	<p>10 percent of the wall area for a building that does not exceed 15 feet in height, then 1.5 percent increase for each foot of building height above grade measure d to the</p>	<p>Only 2 signs of a type selected by applicant</p>	<p>Not applicable</p>	<p>Same as <u>detached monument</u></p>	<p>Not applicable</p>	<p>Signs permitted only for individual tenants, shopping center <u>Signs</u> must be placed flat against building or on a cantilever or pylon <u>and must be placed parallel to a the street frontage served that the sign serves.</u></p>

	bottom of the sign					
<u>Window</u>	<u>Window signs shall cover no more than twenty (20) percent of the area of each individual glass window pane</u>	<u>Not Applicable</u>	<u>Not Applicable</u>	<u>Permitted; see general provision on illumination</u>	<u>Not Applicable</u>	

Sec. 33-106. Permanent point of sale signs in the BU and IU Districts.

Type of signs permitted: ~~Detached~~; marquee; flat; awning, canopy, roller curtain, umbrella; projecting; pylon. (Not applicable to shopping centers; see definition for shopping centers.)

<i>Type of Signs</i>	<i>Size</i>	<i>Number</i>	<i>Setbacks and Spacing</i>	<i>Illumination</i>	<i>Maximum Height</i>	<i>Special Conditions</i>
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Detached	40 square feet maximum for first 50 feet of initial street frontage plus .75 square foot for each additional foot of street frontage to a maximum sign size of 300 square feet	See special conditions	Setback for all street r.o.w.'s is 7 feet for a sign not exceeding 40 square feet; thereafter .8125 foot of additional setback for each 10 square feet of sign calculated to the nearest 1/2 foot; maximum required setback need not be greater than 20 feet. Interior side setback is a minimum of 3 1/2 feet for a sign not exceeding 40 square feet; thereafter the interior side setback shall be increased by 10 percent of the calculated street frontage up to 100 lineal feet and by 20 percent of the calculated street frontage where the same exceeds 100 lineal feet but does not	See general section on illumination	Type and number of point of sale signs permitted for a single individual business on a lot will be based on the following formula: <i>Lot frontage Signs (feet) allowed</i> 0-75 2 signs but no detached 76-150 3 signs, one (1) of which may be detached 151+ 4 signs, one (1) of which may be detached In addition, a corner lot with minimum dimensions of 300 feet by 300 feet will be allowed 4 signs, 2 of which may be detached signs provided that the second sign is no greater than 1/2 the size allowed the first sign and
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		<p>exceed 200 lineal feet; then increases by 30 percent where the calculated street frontage is above the 200 lineal feet</p> <p>Minimum space between detached signs shall be 10 feet.</p> <p>Pole signs erected in connection with service stations may disregard the interior side setbacks, provided that they do not overhang on property of different ownership and the clear distance between the bottom of the sign and the established grade elevation of the property is at least 8 feet</p>		<p>provided the separation between the 2 signs is at least equal to 50 percent of the total amount of frontage on both streets or roadways</p> <p>Where multiple businesses are located on a given lot, each business use shall be permitted a wall sign only</p>
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<p><u>Window</u></p>	<p><u>Window signs shall cover no more than twenty (20) percent of the area of each individual glass window pane</u></p>	<p><u>Not Applicable</u></p>	<p><u>Not Applicable</u></p>	<p><u>Permitted; see general provision on illumination</u></p>	<p><u>Not Applicable</u></p>	<p><u>Not Applicable</u></p>
<p><u>Pylon</u></p>	<p>Approved sign surface area shall be 20 percent of the wall area from which the pylon extends or projects Pylon size shall be limited to a</p>	<p>Same as <u>detached monument</u></p>	<p>Same as <u>detached monument</u></p>	<p>Same as <u>detached monument</u></p>	<p>Not applicable</p>	<p>In Business and Industrial Districts only, the material and construction may vary from the materials and type of construction of the exterior walls of the building but same must be approved by</p>

	maximum of 50 percent of the approved sign surface area					the Director. In all cases, the pylon shall have the appearance of a solid structure
<u>Monument</u>	Up to 48 square feet	1 <u>sign</u> only if <u>shopping center has less than 500 feet of lineal street frontage; per each street frontage, a shopping center with 500 or more lineal street frontage is permitted either one 48 square-foot monument sign or 2 24 square-foot monument signs-</u>	<u>Minimum setback for all street r.o.w.'s is 10 feet; minimum setback for interior side setback is a minimum of 5 feet; minimum space between detached signs shall be 200 feet</u>	<u>Illumination permitted; see general provision on illumination</u>	<u>8 feet from grade to top of sign</u>	<u>Sign shall be used only to identify the shopping center and/or as a directory of tenants in the shopping center; see Section 33-96.1 if located in BU district</u>
Marquee	40 square feet	Same as <u>detached monument</u>	15 <u>10 feet</u> from r.o.w. 5 feet from interior side property line	Same as <u>detached monument</u>	Same as <u>detached monument</u>	Same as <u>detached monument</u> In addition, for purpose of counting signs, each face of a

						marquee shall count as an individual sign
Flat (wall and cantilever)	10 percent of the wall area for a building that does not exceed 15 feet in height; then 1.5 1 percent increase for each foot of building height above the 15 feet measured to bottom of the sign	Same as detached <u>monument</u>	Not applicable	Same as detached <u>monument</u>	Not applicable	
Awning, canopy, roller curtain and umbrella signs	24 square feet	Same as detached <u>monument</u>	Same as detached <u>monument</u>	Same as detached <u>monument</u>	Not applicable	No permit required 8" letter height
Projecting	40 square feet	Same as detached <u>monument</u>	Same as detached <u>monument</u>	Same as detached <u>monument</u>	Not applicable	In Business and Industrial Districts only, the material and construction may vary from the materials and type of construction of the exterior walls of the building but

						same must be approved by the Director. In all cases, the pylon shall have the appearance of a solid structure
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Sec. 33-107. Class C commercial signs:

Type of signs permitted: Billboard; bulletin board; poster board.

<i>Type of Signs</i>	<i>Size</i>	<i>Number</i>	<i>Setback and Spacing</i>	<i>Illumination</i>	<i>Maximum Height</i>	<i>Special Conditions</i>
Detached	Maximum size of 14 feet by 48 feet (672 square feet) plus embellishment providing overall size of sign does not exceed 750 square feet	No more than 2 signs shall be placed in a group except when such signs are less than 48 feet long and form a triangle	20 feet to official r.o.w. line 5 feet to interior side property line 15 feet from any lot on which there is a residential building (regardless of the zoning classification of such lot) 30 feet to any EU or RU District boundary, except where the face of the sign fronts or orients toward the EU or RU	No illumination shall be installed on any class C sign which may conflict with adjacent uses or be objectionable to residential areas and uses Also see general provisions on illumination	30 feet from normal or average grade to top of sign	When grouped, all signs shall be placed at an angle to form a single "V" or placed back to back and not be placed in a straight line Plans submitted for a permit shall show location and setback of all buildings within 100 feet of the

			<p>District, then the spacing shall be 300 feet.</p> <p>No closer to r.o.w. than the nearest existing substantial building fronting on the same side of the street and within 100 feet of such sign. Except when flat against a legally existing building the sign shall not be placed:</p> <ol style="list-style-type: none"> 1. Within 100 feet of the point of beginning of the change of direction on the side toward which the direction of a highway changes 2. In the inside of a curve. 3. No sign shall be erected closer than 100 feet to any church, 			<p>proposed sign location</p>
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			<p>school, cemetery, public park, public reservation, public playground, State or national forest</p> <p>4. In the BU- 1A, 2, 3, and IU 1, IU 2 and IU 3 Zones, no class C sign shall be erected closer than 600 feet to another class C sign on the same side of the street measured along the center line of the same roadway or street, except that cantilever back-to-back signs shall be considered as 1 sign for the purposes of spacing and except when such signs are on opposite ends of the same</p>		
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			building, the restriction shall not apply as between the signs on opposite ends of the same building, providing such signs otherwise conform to spacing requirements from other class C signs in the area			
Wall	Same as detached, except in BU-1A and BU-2 Districts, wall signs shall conform to class B point of sale wall signs	No more than 2 in group	Same as detached	Same as detached	Shall not extend above the roof or parapet of the building	None

Sec. 33-108 107 Point of sale signs for the Office Park District.

Type of signs permitted: ~~Detached~~; flat; entrance feature; monument

<i>Type of Signs</i>	<i>Size</i>	<i>Number</i>	<i>Setbacks and Spacing</i>	<i>Illumination</i>	<i>Maximum Height</i>	<i>Special Conditions</i>
<u>Detached Monument</u>	50 square feet	1 detached monument or flat wall sign per principal building;	20 10 feet from official r.o.w. line, edge of pavement of private drives,	See general provision on illumination	10 feet from grade to top of sign	The flat or detached monument sign may only identify the building or occupants

		must be located adjacent to principal building being identified	and any property lines			therein
Flat (wall)	Same as detached <u>monument</u>	See detached <u>monument</u> above	Not applicable	Same as detached <u>monument</u>	Not applicable	Same as detached <u>monument</u>
Entrance feature	Determined by administrative approval of entrance features	1 only	Site plan review	Same as detached <u>monument</u>	Not applicable	Signage to identify the office park complex shall be integrated into entrance feature design and be permitted upon entrance feature approval

DIVISION 5. COMMERCIAL SIGNS ON EXPRESSWAY RIGHT-OF-WAY

Sec. 33-121.10. 120.10. Definitions.

(a) "Expressway" shall mean limited access rights-of-way and facilities and related approaches, viaducts, bridges and interchange facilities and service roads and any portion of the interstate highway system, now existing or as may be later constructed or designated.

(b) "Applicable regulations" shall mean any pertinent zoning, building or other regulations in effect in the incorporated or unincorporated areas of Miami-Dade County or the State of Florida.

(c) "Protected areas" shall mean all property in Miami-Dade County within six hundred (600) feet of the right-of-way of any expressway right-of-way provided that directional signs and semaphore signs may be located on any portion of a shopping center which is approved as a development of regional impact pursuant to section 380.06,

Florida Statutes, or which has received a binding letter of vested rights from the State of Florida issued prior to January 1, 1980, exempting it from development of regional impact review. Any such signs shall be subject to the requirements of Article VI of this Chapter, but the provisions of section 33-121.15 shall not apply.

~~(d) "Sign" shall mean any display of characters, letters, illustrations or any ornamentation designed or used as an advertisement, announcement or to indicate direction.~~

~~(e) "Erect" shall mean to construct, build, rebuild (if more than fifty (50) percent of the structural members involved), relocate raise, assemble, place, affix, attach, paint, draw, or in any other manner bring into being or establish.~~

~~(f) "Temporary sign" shall mean signs to be erected on a temporary basis, such as signs advertising the sale or rental of the premises on which located; signs advertising a subdivision of property; signs advertising construction actually being done on premises on which the sign is located; signs advertising future construction to be done on the premises on which located and special events, such as public meetings, sporting events, political campaigns or events of a similar nature.~~

~~(g) "Point of sale sign" shall mean any sign advertising or designating the use, occupant of the premises, or merchandise or products sold on the premises.~~

~~(h) "Outdoor advertising sign" shall mean any sign which is used for any purpose other than that of advertising to the public the legal or exact firm name or type of business conducted on the premises, or of products or merchandise sold on the premises; or which is designed and displayed to offer for sale or rent the premises on which displayed, or the subdivision of such premises, or present or future construction or development of such premises, or advertising special events, shall constitute an outdoor advertising sign.~~

Sec. 33-121.11. Applicability.

~~This division shall apply to both the incorporated and unincorporated area. Any municipality may establish and enforce more restrictive regulations as such municipality may deem necessary.~~

Sec. 33-121.12. Signs prohibited in protected areas.

~~It shall be unlawful hereafter for any person, firm or corporation, or any other legal entity to erect, permit or maintain any sign in protected areas, except as provided for hereinafter.~~

Sec. 33-121.13. 120.11. Exceptions. Regulations of signs within protected areas.

~~Erection of the following signs shall be permitted in protected areas, subject to the conditions and limitations listed herein and further, subject to other applicable regulations where such regulations are more restrictive or more definitive than the provisions of this division and are not inconsistent therewith:~~

~~(a) *Temporary signs* which are located and oriented to serve streets other than an expressway, and are located at least one hundred (100) feet from the expressway right-of-way, except that such signs may serve and be oriented to an expressway if the property concerned abuts the expressway right-of-way and is not served by a parallel expressway service road or is abutting the expressway right-of-way and has direct, permanent legal~~

access to the expressway. In no event shall any temporary sign be larger than one hundred twenty (120) square feet.

(b) *Point of sale signs* which are located on and oriented to the frontage on the street which provides actual and direct access to the front or principal entrance of the place of business; however, on corner lots a second detached point of sale sign will be permitted provided that the same is not larger than forty (40) square feet, and is located on and ~~oriented~~ the sign face is oriented directly perpendicular to the street frontage ~~of the street other than the one (1) serving the principal entrance of the place of business.~~ "Oriented," in connection with point of sale signs, shall mean, in the case of detached signs, placed at a ninety (90) degree angle to the street being serviced; in the case of roof signs, parallel to and fronting ~~such~~ the street and within the front twenty-five (25) percent of the building concerned; and in the case of pylon signs, within the front twenty (20) percent of the building concerned. Wall signs within two hundred (200) feet of an expressway shall be confined to the wall of the building containing the principal entrance, except that a wall sign may be placed on one (1) other wall of such building and shall be limited to ten (10) percent of such other wall area. In no event shall any detached point of sale sign be erected within the protected area which is greater in height than twenty-five (25) feet above the average grade of the premises concerned, and no point of sale roof sign shall be erected which is greater in height above the roof than ten (10) feet.

~~(e) Outdoor advertising signs shall not be erected for the purpose of serving any expressway, and outdoor advertising signs in protected areas shall be erected and oriented to serve only streets other than expressways, subject to the following conditions:~~

~~(1) That in no event shall any outdoor advertising sign be erected or placed closer than two hundred (200) feet to the right-of-way lines of any expressway.~~

~~(2) That outdoor advertising signs shall be erected and placed only in business or commercial (not including industrial) zoning districts which permit outdoor advertising under the applicable zoning regulations of the County or municipality having jurisdiction.~~

~~(3) That no outdoor advertising sign shall be erected that is larger than fifteen (15) feet in width and fifty (50) feet in length, whether single or multiple boards.~~

~~(4) That no detached outdoor advertising sign shall be erected which is more than twenty five (25) feet above the average existing grade of the site on which such sign is erected, or the flood criteria elevation (if property is filled to such elevation) whichever is the greater; nor shall an outdoor advertising roof sign be erected which is more than twenty (20) feet above the roof.~~

~~(5) That no advertising signs shall be erected or placed within three hundred (300) feet of another outdoor advertising sign, such distance to be measured in all directions from the outermost edges of such sign.~~

~~(6) That no outdoor advertising sign shall be erected or placed within one hundred (100) feet of any church, school, cemetery, public park, public reservation, public playground, State or national forest.~~

~~(7) That outdoor advertising signs shall be erected and placed at right angles to the street which they are serving and shall be located within the front seventy (70) feet of the lot or tract on which erected.~~

~~(8) That no outdoor advertising signs shall be erected or placed on a street dead-ended by the expressway, between the expressway and the first street running~~

~~parallel to the expressway and on the same side of the dead end street, even though such distance may be greater than two hundred (200) feet.~~

~~(9) That outdoor advertising signs shall be erected and placed only on property conforming in size and frontage to the requirements of the zoning district in which located, and detached outdoor advertising signs shall not be erected on property already containing a use or structure.~~

~~(10) That detached outdoor advertising sign structures shall be of the so-called cantilever type construction (double faced sign, both faces of the same size, secured back to back on vertical supports with no supporting bracing).~~

~~(d) Any sign which fails to conform with the provisions of this division but is not visible from any expressway due to an intervening obstruction.~~

~~Sec. 33-121.14. Nonconforming signs.~~

~~(a) Signs which have been erected prior to the effective date* of this division may continue to be maintained until March 1, 1968. Thereafter, unless such signs conform to the provisions of this division, they shall be removed: If a nonconforming spacing situation can be eliminated by the removal of one (1) sign, the sign which has been erected for the longest period of time shall have priority.~~

~~erected, permitted, or maintained subsequent to July 11, 1963, which is not in violation of this division but upon the opening for public use of an expressway or applicable portion thereof becomes nonconforming, the same may continue to be maintained for a period of five (5) years from the day of such opening provided on or before the expiration of the five (5) year period, the nonconforming sign must be removed; provided, any sign which is exempt from the provisions of this division pursuant to Subsection (d) of Section 33-121.13 hereof, but subsequently becomes nonconforming due to the elimination of the obstruction preventing its visibility from an expressway, must be removed within five (5) years from the time of the elimination of such obstruction; further provided, after the effective date of this amendment any sign erected, permitted or maintained after a future expressway right-of-way has been designated by the recording of an expressway right-of-way map in the public records of Miami Dade County, Florida, which becomes nonconforming due to the completion of such expressway shall be removed within thirty (30) days after such expressway or applicable portion thereof is opened for public use.~~

~~(e) If approved as a result of a public hearing by the appropriate Community Zoning Appeals Board, a nonconforming sign may be replaced or modernized provided the board size and height is not increased.~~

~~Sec. 33-121.15. Variances.~~

~~No variances shall be granted through provisions of applicable regulations which will in any way conflict with or vary the provisions of this division.~~

~~Sec. 33-121.16. Penalty.~~

~~Any person violating any of the provisions of this division shall be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the County Jail for a period not to exceed sixty (60) days, or by both such fine and imprisonment, in the discretion of the County Court. Any continuing violations of the provisions of this division may be enjoined and restrained by injunctive order of the Circuit Court in appropriate proceedings instituted for such purpose.~~

~~Sec. 33-121.17. Repeal clause.~~

~~(a) All County and municipal ordinances, County and municipal resolutions, municipal charters, special laws applying only to Miami Dade County or any municipality in Miami Dade County, or any general laws which the Board of County Commissioners is authorized by the Constitution to supersede, nullify, modify or amend, or any part of such ordinance, resolution, charter or law, in conflict with any provision of this division, is hereby repealed.~~

~~(b) Provisions of this division shall not apply to signs authorized by the City of Miami pursuant to City of Miami Ordinance No. 9993 only when said ordinance has been amended by the City of Miami in accordance with the City of Miami Resolution No. 85-540.~~

~~DIVISION 6. COMMERCIAL SIGNS ON RAPID TRANSIT SYSTEM RIGHT OF WAY~~

~~Sec. 33-121.20. Definitions.~~

~~(a) *Rapid Transit System right of way* shall mean an official map designating outside boundaries for the Fixed Guideway Rapid Transit System for Miami Dade County, Florida, which may from time to time be amended. The Rapid Transit System right of way map shall be so designated and recorded and on file in the public records of Miami Dade County, Florida.~~

~~(b) *Applicable regulations* shall mean any pertinent zoning, building or other regulations in effect in the incorporated or unincorporated areas of Miami Dade County or the State of Florida.~~

~~(c) *Protected areas* shall mean all property in Miami Dade County within three hundred (300) feet of the right of way of any Rapid Transit System right of way.~~

~~(d) *Sign* shall mean any display of characters, letters, illustrations or any ornamentation designed or used as an advertisement, announcement or to indicate direction.~~

~~(e) *Erect* shall mean to construct, build, rebuild (if more than fifty (50) percent of the structural members involved), relocate, raise, assemble, place, affix, attach, paint, draw, or in any other manner bring into being or establish.~~

~~(f) *Temporary sign* shall mean signs to be erected on a temporary basis, such as signs advertising the sale or rental of the premises on which located; signs advertising a subdivision of property; signs advertising construction actually being done on premises on which the sign is located; signs advertising future construction to be done on the premises on which located and special events, such as public meetings, sporting events, political campaigns or events of a similar nature.~~

~~(g) *Point of sale sign* shall mean any sign advertising or designating the use, occupant of the premises, or merchandise or products sold on the premises.~~

~~(h) *Outdoor advertising sign* shall mean any sign which is used for any purpose other than that of advertising to the public the legal or exact firm name or type of business conducted on the premises, or of products or merchandise sold on the premises; or which is designed and displayed to offer for sale or rent the premises on which displayed, or the subdivision of such premises, or present or future construction or development of such premises, or advertising special events, and which shall constitute an outdoor advertising sign. Outdoor advertising sign shall not include a sign which is erected inside a building for the purpose of serving the persons within the building.~~

~~Sec. 33-121.21. Applicability.~~

~~This division shall apply to both the incorporated and unincorporated area. Any municipality may establish and enforce equivalent or more restrictive regulations, as such municipality may deem necessary.~~

~~Sec. 33-121.22. Signs prohibited in protected areas.~~

~~It shall be unlawful hereafter for any person, firm or corporation, or any other legal entity, to erect, permit or maintain any sign in protected areas, except as provided for hereinafter.~~

~~Sec. 33-121.23. Exceptions to sign prohibition.~~

~~Erection of the following signs shall be permitted in protected areas, subject to the conditions and limitations listed herein and further, subject to other applicable regulations where such regulations are more restrictive or more definitive than the provisions of this division and are not inconsistent therewith:~~

~~(a) Temporary signs which are located and oriented to serve streets other than a Rapid Transit System, and are located at least one hundred (100) feet from the Rapid Transit System right of way, except that such signs may serve and be oriented to a Rapid Transit System if the property concerned abuts the Rapid Transit System right of way and is not served by a parallel Rapid Transit System service road or is abutting the Rapid Transit System right of way and has direct, permanent legal access to the Rapid Transit System. In no event shall any temporary sign be larger than one hundred twenty (120) square feet.~~

~~(b) Point of sale signs which are located on and oriented to the frontage on the street which provides actual and direct access to the front of principal entrance of the place of business; however, on corner lots a second detached point of sale sign will be permitted provided that the same is not larger than forty (40) square feet, is located on and oriented to the street frontage of the street other than the one (1) serving the principal entrance of the place of business. "Oriented," in connection with point of sale signs, shall mean, in the case of detached signs, placed at a ninety-degree angle to the street being served; in the case of roof signs, parallel to and fronting such street and within the front twenty five (25) percent of the building concerned; and in the case of pylon signs, within the front twenty (20) percent of the building concerned. Wall signs within two hundred (200) feet of a Rapid Transit System shall be confined to the wall of the building containing the principal entrance, except that a wall sign may be placed on one (1) other wall of such building and shall be limited to ten (10) percent of such other wall area. In no event shall any detached point of sale sign be erected within the protected area which is greater in height than twenty five (25) feet above the average grade of the premises concerned, and no point of sale roof sign shall be erected which is greater in height above the roof than ten (10) feet.~~

~~(c) Outdoor advertising signs shall not be erected for the purpose of serving any Rapid Transit System, and outdoor advertising signs in protected areas shall be erected and oriented to serve only streets other than Rapid Transit Systems, subject to the following conditions:~~

~~(1) That in no event shall any outdoor advertising sign be erected or placed closer than three hundred (300) feet to the right of way lines of any Rapid Transit System.~~

~~(2) That outdoor advertising signs shall be erected and placed only in business and commercial (not including industrial) zoning districts which permit outdoor~~

advertising under the applicable zoning regulations of the County or municipality having jurisdiction.

~~(3) That no outdoor advertising sign shall be erected that is larger than fifteen (15) feet in width and fifty (50) feet in length, whether single or multiple boards.~~

~~(4) That no detached outdoor advertising sign shall be erected which is more than twenty five (25) feet above the average existing grade of the site on which such sign is erected or the flood criteria elevation (if property is filled to such elevation), whichever is the greater; nor shall an outdoor advertising roof sign be erected which is more than twenty (20) feet above the roof.~~

~~(5) That no advertising signs shall be erected or placed within three hundred (300) feet of another outdoor advertising sign, such distance to be measured in all directions from the outermost edges of such sign.~~

~~(6) That no outdoor advertising sign shall be erected or placed within one hundred (100) feet of any church, school, cemetery, public park, public reservation, public playground, State or national forest.~~

~~(7) That outdoor advertising signs shall be erected and placed at right angles to the street which they are serving and shall be located within the front seventy (70) feet of the lot or tract on which erected.~~

~~(8) That no outdoor advertising signs shall be erected or placed on a street dead-ended by the Rapid Transit System, between the Rapid Transit System and the first street running parallel to the Rapid Transit System and on the same side of the dead end street, even though such distance may be greater than three hundred (300) feet.~~

~~(9) That outdoor advertising signs shall be erected and placed only on property conforming in size and frontage to the requirements of the zoning district in which located, and detached outdoor advertising signs shall not be erected on property already containing a use or structure.~~

~~(10) That detached outdoor advertising sign structures shall be of the so-called cantilever type construction (double-faced sign, both faces of the same size, secured back to back on vertical supports with no supporting bracing).~~

~~(d) Any sign which fails to conform with the provisions of this division but is not visible from any Rapid Transit System due to an intervening obstruction.~~

DIVISION 6. NONCONFORMING SIGNS

Sec. 33-121.14 120.12. Nonconforming signs.

~~(a) Signs which have been erected prior to the effective date* of this division may continue to be maintained until March 1, 1968. Thereafter, unless such signs conform to the provisions of this division, they shall be removed. If a nonconforming spacing situation can be eliminated by the removal of one (1) sign, the sign which has been erected for the longest period of time shall have priority.~~

~~(b) Any sign legally erected, permitted, or maintained subsequent to July 11, 1963, which is not in violation of this division but upon the opening for public use of an~~

~~expressway or applicable portion thereof becomes nonconforming, the same may continue to be maintained for a period of five (5) years from the day of such opening provided on or before the expiration of the five (5) year period, the nonconforming sign must be removed; provided, any sign which is exempt from the provisions of this division pursuant to Subsection (d) of Section 33-121.13 hereof, but subsequently becomes nonconforming due to the elimination of the obstruction preventing its visibility from an expressway, must be removed within five (5) years from the time of the elimination of such obstruction; further provided, after the effective date of this amendment any sign erected, permitted or maintained after a future expressway right of way has been designated by the recording of an expressway right of way map in the public records of Miami Dade County, Florida, which becomes nonconforming due to the completion of such expressway shall be removed within thirty (30) days after such expressway or applicable portion thereof is opened for public use.~~

~~(e) If approved as a result of a public hearing by the appropriate Community Zoning Appeals Board, a nonconforming sign may be replaced or modernized provided the board size and height is not increased.~~

(a) Signs or sign structures made legally nonconforming under this article, or upon the passage of any amendment to this article, shall be governed by the following regulations:

(1) A sign existing within the Town, or an area subsequently annexed to the Town, upon the passage of this Ordinance or any future amendment to this article, which because of its height, square foot area, location, or other characteristic, does not conform to this article in all respects is hereby declared to be a nonconforming sign.

(2) A nonconforming temporary sign must be removed within thirty (30) days from the effective date of the ordinance creating the non-conformity.

(3) Nonconforming signs subject to the amortization provisions of Sec. 33-121.28 shall be governed by the applicable amortization requirements of that section.

(4) Failure to remove a nonconforming or prohibited sign as required by this section shall cause the sign to be declared an illegal sign.

(b) If any nonconforming sign is damaged by any cause and the cost of repairing the sign equals fifty percent (50%) or more of the original cost of the sign structure, then its classification as a nonconforming sign under this section shall be automatically revoked and the sign must be repaired or replaced to meet all the requirements of this article.

(c) Loss of nonconforming status.

(1) Immediate loss of nonconforming status. A nonconforming sign shall immediately lose its nonconforming status if:

i. The sign is altered in any way that renders the sign less in compliance with the requirements of this article than it was before the alteration (including alteration of the technology used in a sign); or

ii. The sign is relocated to a position making it less in compliance with the requirements of this article; or

iii. The sign is replaced or abandoned for a period of six (6) months or more.

If any one of these events occurs, the sign shall be immediately brought into compliance with this article.

(2) *Nonconforming sign maintenance and repair.* Nothing in this article shall relieve the owner or user of a nonconforming sign, or the owner of the property on which the nonconforming sign is located, from the provisions of this Article, regarding safety, maintenance and repair of signs.

(3) *Notification of repair or alteration to nonconforming sign.* The owner of a nonconforming sign who desires to make any repair or alteration to such sign shall, in addition to compliance with the applicable building code requirements, submit an application describing the nature of the repair or alteration to the Department of Planning and Development. All final determinations as to the nonconforming status of any sign shall be made by the Director.

DIVISION 7. VARIANCE PROCEDURE.

Sec. 33-121.15 120.13. Variances.

No variances shall be granted through provisions of applicable regulations which will in any way conflict with or vary the provisions of this division. No sign shall be permitted to be erected contrary to the size, location and appearance provisions of this article unless a variance is approved by the Town Council in conformance with the following criteria:

(1) Special conditions and circumstances exist which are peculiar to the land on which the sign is proposed and that these conditions and/or circumstances are not applicable to other lands in the same zoning district.

(2) The special conditions and circumstances do not result from the actions of the applicant.

(3) The granting of the variance requested will not confer upon the applicant any special privilege that is denied by this article to others in the same zoning district.

(4) Literal interpretations of the provisions of this article would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this article and would result in an unnecessary and undue hardship on the applicant.

(5) The grant of the variance is not contrary to the intent of this article, or Chapter 33, Article VI of the Miami-Dade County Code of Ordinances, as applicable, will be in harmony with the purpose of this Article, and will not be injurious to the area involved or otherwise detrimental to the public welfare.

~~Sec. 33-121.26. Penalty; injunctive remedy.~~

~~Any person violating any of the provisions of this division shall be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the County Jail for a period not to exceed sixty (60) days, or by both such fine and imprisonment, in the discretion of the County Court. Any continuing violations of the provisions of this division may be enjoined and restrained by injunctive order of the Circuit Court in appropriate proceedings instituted for such purpose.~~

~~Sec. 33-121.27. Repeal clause.~~

~~All County and municipal ordinances, County and municipal resolutions, municipal charters, special laws applying only to Miami Dade County or any municipality in Miami Dade County, or any general laws which the Board of County Commissioners is authorized by the Constitution to supersede, nullify, modify or amend, or any part of such ordinance, resolution, charter or law, in conflict with any provision of this division, is hereby repealed.~~

DIVISION 8. AMORTIZATION

~~Sec. 33-121.28 120.14. Amortization of certain prohibited signs.~~

(a) It is the intent of this section to recognize that the eventual elimination of certain existing signs that are not in conformity with the provisions of these regulations, in as expeditious a manner as it is reasonable, bears as much relation to the health, safety, and welfare of the citizens of the Town as the prohibition of new signs that would violate these regulations. It is also the intent of this section to protect private property rights to the extent required by law.

(b) *Applicability.* This sign amortization procedure shall apply to v-shaped point of sale signs, pole signs, and attached and freestanding signs including exposed or visible neon light tubing, as prohibited by Section 33-95 of this Chapter. This procedure shall not apply to off-premises signs governed by the provisions of Section 70.20, Florida Statutes (2002).

(c) *Continuance.* Subject to the sign amortization schedule below, a nonconforming v-shaped point of sale sign, pole sign, and attached or freestanding sign including exposed or visible neon light tubing may be continued for the length of the applicable amortization period, and shall be maintained in good condition, and shall conform with the regulations applicable to nonconforming structures in the Town.

(d) Removal or conformance; amortization schedules. All nonconforming v-shaped point of sale signs, pole signs, and attached and freestanding signs including exposed or visible neon light tubing in existence upon the effective date of the prohibition on such signs as adopted by this Ordinance, and which previously conformed to all legal requirements, but which are made nonconforming by the provisions of these regulations, shall be brought into conformity or shall be removed in accordance with the following amortization plan.

Schedule of time periods for removal, replacement, or alteration of signs subject to amortization procedures to meet ordinance requirements based upon the cost of original installation

<u>Cost of Original Installation</u>	<u>Time Period to Conform</u>
<u>\$0-500</u>	<u>6 months</u>
<u>\$500-\$999</u>	<u>1 year</u>
<u>\$1,000 -\$7,000</u>	<u>2 years</u>
<u>\$7,001 and over</u>	<u>3 years</u>

(e) Procedure for enforcement of amortization requirements.

(1) The amortization schedule applicable to each sign determined to be subject to this subsection shall be determined by the Director or his or her designee based upon a review of building permits to determine the original cost of installation of the sign. The period of nonconformity shall begin as of the effective date of this Ordinance. Prior to the Town enforcing the amortization period against any sign, it shall be the responsibility of the Director, or his or her designee, to make an inventory and a record of all nonconforming signs subject to the amortization requirement and to serve notification of the commencement of amortization regulations on the owners of such signs. Such inventory shall include the following information:

- a. Owner;
- b. Location; and
- c. Valuation.

(2) Application for extension of amortization period. An owner of a sign who desires an amortization period longer than that specified in the amortization schedule shall file an application for extension with the Department of Planning and Development within thirty (30) days of notification of the commencement of amortization regulations. The application shall be on a form provided by the Department, and shall include a statement setting forth the cost of the nonconforming sign, the date of installation, and/or the cost and date of the most recent renovation. The application for extension of amortization period shall be reviewed by the Director or his or her designee, who shall conduct a review of the

application and issue a staff recommendation on the requested extension. The application shall be scheduled for public hearing before the Town Council. An extension of an amortization period may be granted if the Town Council finds that, with regard to the individual sign at issue, the amortization period set forth in this ordinance is unreasonable.

Section 3. Conflicts. All ordinances or Code provisions in conflict herewith are hereby repealed.

Section 4. 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 5. 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 6. Effective Date. That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this ____, day of _____, 2008.

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

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE

SOLE USE OF THE TOWN OF CUTLER BAY:

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 28th 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 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 MAYOR AND 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 21st day of May, 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 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 On Development for Residential, Institutional, Certain Non-residential Buildings and Mixed Use Developments with Exceptions for Certain Sustainable Building Standards.**

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 **the issuance of site plans development**. The following categories of **site plans 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 Silver Platinum. 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. 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 34% 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 Silver-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 Silver 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 final site plan approval from the Town or the County 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 90 ~~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 90 ~~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 21st day of May, 2008.

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

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

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