



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

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

TOWN COUNCIL MEETING AGENDA

Wednesday, August 20, 2008, 7:00 PM
South Dade Government Center
10710 SW 211th Street, Room 203
Cutler Bay, Florida 33189

1. CALL TO ORDER, ROLL CALL, PLEDGE OF ALLEGIANCE, MOMENT OF SILENCE

2. PROCLAMATIONS, AWARDS, PRESENTATIONS

A. Presentation from Miami-Dade Solid Waste Management

3. APPROVAL OF MINUTES

A. Council Meeting – July 16, 2008

TAB 1

4. REPORTS

A. TOWN MANAGER'S REPORT

B. TOWN ATTORNEY'S REPORT

C. BOARD/COMMITTEE REPORTS AND COUNCIL ANNOUNCEMENTS

5. CONSENT AGENDA

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

A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE EXECUTION OF THE AGREEMENT SUBSEQUENT TO THE NEGOTIATION AND AUTHORIZING THE TOWN MANAGER TO EXECUTE AND ENTER

TAB 2

INTO AN AGREEMENT WITH BUXTON COMMUNITY ID TO DEVELOP A RETAIL ECONOMIC DEVELOPMENT STRATEGY FOR THE TOWN OF CUTLER 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.

B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE AGREEMENT WITH CAP GOVERNMENT, INC. FOR BUILDING AND PERMITTING SERVICES; AUTHORIZING THE TOWN MANAGER TO ENTER INTO THIS AGREEMENT; 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 FIRST RENEWAL OF 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 AND AMEND AND RENEW THE SAME; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 4

D. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING AN AGREEMENT FOR RELOCATION OF AN OFF-PREMISE SIGN; PROVIDING FOR THE AUTHORIZATION OF THE TOWN MANAGER TO ENTER INTO THIS AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 5

E. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING AN AGREEMENT FOR SCANNING SERVICES BETWEEN THE TOWN AND T-SQUARE EXPRESS, INC.; PROVIDING FOR THE AUTHORIZATION OF THE TOWN MANAGER TO ENTER INTO THIS AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 6

F. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING THE TOWN OF CUTLER BAY STORMWATER MASTER PLAN; AND PROVIDING AN EFFECTIVE DATE.

TAB 7

G. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, FINDING THAT ACQUISITION OF PRIVATE PROPERTY THROUGH NEGOTIATED CONVEYANCE OR EMINENT DOMAIN SERVES A PUBLIC PURPOSE AND IS NECESSARY FOR DEVELOPMENT AND EXPANSION OF THE TOWN'S NEIGHBORHOOD PARK SYSTEM AND RECREATIONAL

TAB 8

FACILITIES; AUTHORIZING THE TOWN ATTORNEY'S OFFICE TO INITIATE EMINENT DOMAIN PROCEEDINGS; AUTHORIZING THE TOWN ATTORNEY'S OFFICE TO RETAIN EXPERT WITNESSES AND CONSULTANTS AND TAKE FURTHER ACTIONS THAT ARE REASONABLY NECESSARY TO ACQUIRE THE PROPERTY DESCRIBED IN EXHIBIT "A"; AND PROVIDING FOR AN EFFECTIVE DATE.

- H. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING THE MIAMI-DADE COUNTY LOCAL MITIGATION STRATEGY; AUTHORIZING THE TOWN MANAGER TO IDENTIFY AND PRIORITIZE HAZARD MITIGATION GRANT PROGRAM PROJECTS TO BECOME A PART OF THE LOCAL AND STATEWIDE HAZARD MITIGATION STRATEGY; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 9

6. QUASI-JUDICIAL HEARINGS (PUBLIC HEARING REQUIRED)

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

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

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING THE TAX SCHEDULE FOR BUSINESS TAX RECEIPTS; AMENDING THE PENALTIES RELATED TO BUSINESS TAX RECEIPTS TO REFLECT STATUTORY PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 10

- B. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 19 "RESPONSIBLE PROPERTY OWNER AND MERCHANT ACT" TO INCLUDE PROVISIONS RELATING TO THE REGISTRATION, MAINTENANCE AND SECURITY OF ABANDONED REAL PROPERTY; PROVIDING FOR AN EFFECTIVE DATE. (MEERBOTT)

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- C. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA AMENDING CHAPTER 33 "ZONING" OF THE TOWN CODE OF ORDINANCES BY COMPREHENSIVELY UPDATING AND REVISING LOT COVERAGE AND OPEN SPACE REQUIREMENTS WITHIN THE TOWN; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

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D. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING REMEDIAL COMPREHENSIVE PLAN AMENDMENTS RELATING TO THE COASTAL HIGH HAZARD AREA IN ACCORDANCE WITH A COMPLIANCE AGREEMENT WITH THE DEPARTMENT OF COMMUNITY AFFAIRS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

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E. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING REGULATIONS RELATED TO MALLS AND BUSINESSES WITH PARKING LOTS CONTAINING 25 OR MORE PARKING SPACES; PROVIDING FOR INSTALLATION OF SECURITY CAMERA SYSTEMS FOR PARKING LOT SURVEILLANCE; PROVIDING FOR A PROCEDURE FOR MALLS AND BUSINESSES TO KEEP RECORDINGS FOR 72 HOURS; PROVIDING FOR AN EXEMPTION FOR CONVENIENCE BUSINESSES ALREADY GOVERNED BY SIMILAR FLORIDA STATUTES; PROVIDING TECHNICAL SPECIFICATIONS FOR A SECURITY CAMERA SYSTEM; CREATING A GRACE PERIOD FOR COMPLIANCE FOR EXISTING MALLS AND BUSINESSES; AMENDING THE SCHEDULE OF VIOLATIONS AND CIVIL PENALTIES SECTION OF THE CODE TO INCLUDE PENALTIES FOR VIOLATION OF THESE SECTIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING AN EFFECTIVE DATE.

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8. ORDINANCES FOR FIRST READING (PUBLIC HEARING REQUIRED)

A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING A 10 YEAR WATER SUPPLY FACILITIES WORK PLAN AND AMENDING THE TOWN'S COMPREHENSIVE PLAN (GROWTH MANAGEMENT PLAN) TO STRENGTHEN COORDINATION BETWEEN WATER SUPPLY AND LOCAL LAND USE PLANNING AS REQUIRED BY FLORIDA LAW; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

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9. ORDINANCES FOR SECOND 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

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SEVERABILITY; REPEALING ALL ORDINANCES IN CONFLICT;
PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING
AN EFFECTIVE DATE. **(BELL)**

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. Council Budget Workshop
Tuesday, August 26, 2008 at 11 a.m.
Town Hall
10720 Caribbean Blvd., Suite 105

- B. Town Hall Closed
Monday, September 1, 2008
In observance of the Labor Day holiday

- C. First Budget Hearing
Tuesday, September 9, 2008 at 7 p.m.
South Dade Regional Library
10750 SW 211th ST, 2nd Floor

- D. Zoning Workshop
Wednesday, September 10, 2008 at 7 p.m.
Cutler Ridge Park
10100 SW 200th ST

- E. Regular Council Meeting
Wednesday, September 17, 2008, 7:00 P.M.
South Dade Regional Library, 2nd Floor
10750 SW 211th ST

- F. Second Budget Hearing
Wednesday, September 24, 2008 at 7 p.m.
South Dade Regional Library
10750 SW 211th ST, 1st Floor

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

TAB 1

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

Wednesday, July 16, 2008, 7:00 PM
South Dade Regional Library
10750 SW 211th Street, 1st Floor
Cutler Bay, Florida 33189

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

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

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

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

3. APPROVAL OF MINUTES:

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

4. REPORTS

A. TOWN MANAGER'S REPORT

The town manager reported that crime has slightly increased due to the economy. He stated that he has allocated funds for a Burglary Prevention Task Force within the community to deter further crime. He reported that Channel 10 and Channel 7 produced a story on the school buses that were donated by the School Board for hurricane emergencies and any other town crisis that may arise. The manager then introduced, Officer Gigi Ortiz, who proceeded to discuss the crime statistics within the town in comparison with the district. She confirmed that the crime comparison is lower by 22% than that of the Cutler Ridge District crime rate.

B. TOWN ATTORNEY'S REPORT

The town attorney provided a brief explanation on the changes for agenda Item C and additional changes, such as the add-ons to the agenda.

C. BOARD AND COMMITTEE REPORTS, COUNCIL ANNOUNCEMENTS

Councilmember Meerbott thanked Mr. Bill Meiklejohn for providing him time on the Cutler Bay Business Association agenda to address the sign ordinance at their recent luncheon. He also discussed the upcoming Vision 20/20 bus tour that the Economic Development Council will conduct on September 26th.

Councilmember Bell thanked Mr. Meerbott for representing the Town Council at the CBBA luncheon.

Councilmember Sochin also attended the CBBA luncheon and discussed his first meeting with the WiFi committee.

Vice Mayor MacDougall discussed his recent conversations with the property owner of SW 216th Street. He thought it would be best to discuss the potential property purchase at a council workshop.

5. CONSENT AGENDA:

- A.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, DECLARING NO OBJECTION AND SUPPORTING THE CODESIGNATION BY THE FLORIDA LEGISLATURE, PURSUANT TO SENATE BILL 1604, DESIGNATING SOUTH DIXIE HIGHWAY/US-1 (STATE ROAD 5), FROM SW 184TH STREET TO SW 112TH AVENUE, CUTLER BAY, FLORIDA, AS "CUTLER BAY BOULEVARD;" FURTHER DIRECTING THE TOWN MANAGER TO INSTRUCT THE DIRECTOR OF PUBLIC WORKS TO TRANSMIT A COPY OF THIS RESOLUTION TO THE FLORIDA DEPARTMENT OF TRANSPORTATION, DISTRICT SIX, FOR SIGN INSTALLATION WITHIN THE NEWLY DESIGNATED ROADWAY.

- E.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, IN SUPPORT OF LEGISLATION TO RESTRICT THE USE OF PLASTIC SHOPPING BAGS, OR IN THE ALTERNATIVE TO REPEAL THE BAN ON LOCAL AND STATE REGULATION OF THE USE OF PLASTIC SHOPPING BAGS; AND PROVIDING AN EFFECTIVE DATE. **(MACDOUGALL)**

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

- H.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH THE FLORIDA

DEPARTMENT OF ENVIRONMENTAL PROTECTION FOR THE ACCEPTANCE OF LEGISLATIVE APPROPRIATIONS FUNDS FOR LLI GRANT NUMBERS L0803 AND L0804; AND PROVIDING FOR AN EFFECTIVE DATE.

Vice Mayor MacDougall pulled Item B. Town Attorney pulled Item C. Councilmember Bell pulled Items D. Mayor Vrooman pulled Item G.

Councilmember Bell made a motion to approve the Consent Agenda as amended with pulled Items B, C, D, and G. The motion was seconded by Councilmember Sochin and Resolutions 08-38, 08-42, 08-43, and 08-45 was adopted by unanimous voice vote. The vote was as follows: Councilmembers Bell, Sochin, Meerbott, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The town clerk read the following resolution by title:

- B.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE FLORIDA RECREATION DEVELOPMENT ASSISTANCE PROGRAM (FRDAP) PROJECT AGREEMENTS BETWEEN THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION AND THE TOWN OF CUTLER BAY FOR FRDAP PROJECT NUMBERS A9006 AND A9045; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SAME AND PROVIDING FOR AN EFFECTIVE DATE.

After some discussion, Vice Mayor MacDougall made a motion to approve the resolution. The motion was seconded by Councilmember Meerbott and Resolution 08-39 was approved by unanimous voice vote. The vote was as follows: Councilmembers Bell, Sochin, Meerbott, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

- C.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CALLING AN ELECTION ON THE PROPOSED AMENDMENTS TO THE TOWN CHARTER TO BE HELD ON TUESDAY, NOVEMBER 4, 2008, PROVIDING FOR SUBMISSION TO THE ELECTORS FOR APPROVAL OR DISAPPROVAL OF A SERIES OF PROPOSED CHARTER AMENDMENTS WHICH RESULTED FROM THE TOWN COUNCIL'S REVIEW OF THE RECOMMENDATIONS OF THE TOWN'S CHARTER REVISION COMMISSION; PROVIDING FOR REQUISITE BALLOT LANGUAGE; PROVIDING FOR PROCEDURE FOR BALLOTING; PROVIDING FOR NOTICE; PROVIDING FOR RELATED MATTERS; PROVIDING FOR EFFECTIVE DATE.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CALLING A SPECIAL ELECTION ON THE PROPOSED AMENDMENTS TO THE TOWN CHARTER TO BE HELD ON THURSDAY, SEPTEMBER 18, 2008, PROVIDING FOR SUBMISSION TO THE ELECTORS FOR APPROVAL OR DISAPPROVAL

OF A SERIES OF PROPOSED CHARTER AMENDMENTS WHICH RESULTED FROM THE TOWN COUNCIL'S REVIEW OF THE RECOMMENDATIONS OF THE TOWN'S CHARTER REVISION COMMISSION; PROVIDING FOR REQUISITE BALLOT LANGUAGE; PROVIDING FOR MAIL BALLOT ELECTION; PROVIDING FOR NOTICE; PROVIDING FOR RELATED MATTERS; PROVIDING FOR EFFECTIVE DATE. **(ALTERNATIVE)**

After some discussion, Vice Mayor MacDougall made a motion to approve the alternative resolution. The motion was seconded by Councilmember Meerbott and Resolution 08-40 was approved by unanimous voice vote. The vote was as follows: Councilmembers Bell, Sochin, Meerbott, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

- D.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PURCHASING, APPROVING THE PURCHASE OF FOUR (4) MOTOR VEHICLES FOR THE POLICE DEPARTMENT, AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS; AUTHORIZING THE MANAGER TO PURCHASE MOTOR VEHICLES AND RELATED EQUIPMENT FROM MAROONE CHEVROLET IN AN AMOUNT NOT TO EXCEED \$116,175.50 EXECUTE ANY REQUIRED DOCUMENTS; WAIVING COMPETITIVE BIDS PURSUANT TO TOWN CHARTER SECTION 3.10, AND PROVIDING FOR AN EFFECTIVE DATE.

After some discussion, Councilmember Meerbott made a motion to approve the resolution. The motion was seconded by Councilmember Bell and Resolution 08-41 was approved by unanimous voice vote. The vote was as follows: Councilmembers Bell, Sochin, Meerbott, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

- G.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, SUPPORTING THE STATE OF FLORIDA'S PURCHASE OF NEARLY 300 SQUARE MILES OF LANDS FOR EVERGLADES RESTORATION; URGING THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT TO CONTINUE PURCHASING ENVIRONMENTALLY SENSITIVE LAND WITHIN THE TOWN; PROVIDING FOR TRANSMITTAL TO THE STATE; AND PROVIDING FOR AN EFFECTIVE DATE. **(VROOMAN)**

After some discussion, Councilmember Sochin made a motion to approve the resolution. The motion was seconded by Vice Mayor MacDougall and Resolution 08-44 was approved by unanimous voice vote. The vote was as follows: Councilmembers Bell, Sochin, Meerbott, 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)**
8. **ORDINANCES FOR FIRST READING (PUBLIC HEARING REQUIRED)**
9. **ORDINANCES FOR SECOND READING (PUBLIC HEARING REQUIRED):**

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

- A. AN ORDINANCE OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCE 07-30 RELATING TO "DANGEROUS INTERSECTION SAFETY REGULATIONS" BY AMENDING THE NOTICE AND INTRODUCTORY PERIOD; PROVIDING FOR INCLUSION WITHIN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

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

The mayor opened the public hearing. Jaime Reyes, 9640 Southwest 215 Lane, addressed the Council.

Councilmember Meerbott made a motion to approve the ordinance. The motion was seconded by Councilmember Bell and Ordinance 08-13 was approved by unanimous 5-0 roll call vote. The vote was as follows: Councilmembers Bell, Sochin, Meerbott, 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: Rosi Alvarez, 7740 Southwest 184 Terrace, Bill Meiklejohn, 9311 Sterling Drive, Brian Dreher, 9324 Southwest 212 Terrace, Barbara Condon, 19641 Holiday Road, Steve Zarzecki, 9640 Martinique Drive, Jaime Reyes, 9640 Southwest 215 Lane.

11. MAYOR AND COUNCIL COMMENTS

Councilmember Meerbott stated that the town's efforts in negotiating with property owners for potential purchases should continue.

Councilmember Bell recommended that a workshop be considered for the purchases of the properties located on SW 216th ST and what is generally known as the "Potato Field."

Councilmember Sochin commended Mr. Bill Meiklejohn for his efforts with the Pinewood Villas clean-up project.

Vice Mayor MacDougall also discussed the potential purchase of the properties in question. He is also supported the idea of having a council workshop to discuss the purchase of the properties.

12. OTHER BUSINESS:

The manager requested that the council consider approving councilmember's traveling to the Florida League of Cities for the annual conference in Tampa. It was the general consensus of the council to approve the travel.

13. ADJOURNMENT

The next council meeting will be held on August 20, 2008 at South Dade Government Center.

The meeting was officially adjourned at 9:25 P.M.

Respectfully submitted:

*Erika Gonzalez-Santamaria, CMC
Town Clerk*

*Adopted by the Town Council on
this 20th day of August, 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



MEMORANDUM

To: Honorable Mayor and Town Council

From: Steven Alexander

Date: August 14, 2008

Re: COMMUNITYID – RETAIL ECONOMIC DEVELOPMENT STRATEGY FOR TOWN OF CUTLER BAY

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE EXECUTION OF THE AGREEMENT SUBSEQUENT TO THE NEGOTIATION AND AUTHORIZING THE TOWN MANAGER TO EXECUTE AND ENTER INTO AN AGREEMENT WITH BUXTON TO DEVELOP A RETAIL ECONOMIC DEVELOPMENT STRATEGY FOR THE TOWN OF CUTLER 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.

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 endure the economic viability of the retails 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's retail trade areas.
- Evaluating Cutler Bay's retail potential.
- Matching retailers and restaurant's to Cutler Bay's market potential.
- Delivering Cutler 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, APPROVING THE EXECUTION OF THE AGREEMENT SUBSEQUENT TO THE NEGOTIATION AND AUTHORIZING THE TOWN MANAGER TO EXECUTE AND ENTER INTO AN AGREEMENT WITH BUXTON COMMUNITY ID TO DEVELOP A RETAIL ECONOMIC DEVELOPMENT STRATEGY FOR THE TOWN OF CUTLER 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 Consultant and Town, through mutual negotiation, have agreed upon a scope of services, schedule, and fee for certain retail economic development strategy services (the “Project”); and

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

WHEREAS, Buxton will deliver specific and separate retail marketing reports and recommendations to Cutler Bay and will provide outreach services to appropriate retail and restaurant developers to attract them to locate in Cutler; 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, the Town desires to engage the Consultant to perform the services and provide the deliverables; and

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

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

Section 2. Town Manager Authorized. The Town Manager is authorized, on behalf of the Town, to execute the retail marketing services agreement 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 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 _____

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE TOWN OF CUTLER BAY
AND
BUXTON COMPANY**

THIS AGREEMENT (this “Agreement”) is made effective as of the ____ day of _____, 2008 (the “Effective Date”), by and between the **TOWN OF CUTLER BAY**, a Florida municipal corporation (hereinafter the “Town”), and **BUXTON COMPANY**, a Florida corporation (hereinafter the “Consultant”).

WHEREAS, the Consultant and Town, through mutual negotiation, have agreed upon a scope of services, schedule, and fee for certain retail economic development strategy services (the “Project”); and

WHEREAS, the Town desires to engage the Consultant to perform the services and provide the deliverables as specified below.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Consultant and the Town agree as follows:

1. **Scope of Services.**

1.1. The Consultant shall furnish such professional services and provide deliverables (the “Services”) as described in the Proposal to Develop a Retail Economic Development Strategy, dated July 29, 2008, attached hereto and made a part hereof as Exhibit “A” (the Proposal”).

2. **Term/Commencement Date.**

2.1 This Agreement shall become effective upon the Effective Date and shall remain in effect until Consultant completes the Services described herein, which Services are scheduled to be complete sixty (60) days after the “launch call” for the CommunityID services and three years after completion of the Community ID services are completed for the SCOUT services as described on Page 20 of the Proposal, unless earlier terminated in accordance with Paragraph 8.

2.2 Consultant agrees that time is of the essence and Consultant shall complete the Services within the timeframes set forth in the Proposal, unless extended by the Town Manager.

3. **Compensation and Payment.**

3.1 Compensation for Services provided by Consultant shall be due in accordance with the fee schedule described on Page 21 of the Proposal.

3.2 Consultant shall deliver an invoice to Town no more often than once per month detailing Services completed and the amount due to Consultant under this Agreement. Fees shall be paid in arrears each month, pursuant to Consultant's invoice, which shall be based upon the work completed for each task invoiced. The Town shall pay the Consultant in accordance with the Florida Prompt Payment Act after approval and acceptance of the Services by the Town Manager.

4. **Subconsultants.**

4.1 The Consultant shall be responsible for all payments to any subconsultants and shall maintain responsibility for all work related to the Project.

4.2 Consultant may only utilize the services of a particular subconsultant with the prior written approval of the Town Manager, which approval may be granted or withheld in Town Manager's sole discretion.

5. **Town's Responsibilities**

5.1 Town shall make available any maps, plans, existing studies, reports and other data pertinent to the Services and in possession of the Town upon Consultant's request.

6. **Consultant's Responsibilities**

6.1 The Consultant shall exercise the same degree of care, skill and diligence in the performance of the Services for the Project as is ordinarily provided by a consultant under similar circumstances. If at any time during the term of this Agreement or within two (2) years from the completion of the Project, it is determined that the Consultant's deliverables or services are incorrect, not properly rendered, defective, or fail to conform to the Services for the Project, upon written notification from the Town Manager, the Consultant shall at Consultant's sole expense, immediately correct the work.

6.2 The Consultant hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws applicable to and necessary to perform the Services for Town as an independent contractor of the Town.

7. **Conflict of Interest.**

7.1 To avoid any conflict of interest or any appearance thereof, Consultant shall not, for the term of this Agreement, provide any consulting services to any private sector entities (developers, corporations, real estate investors, etc.), with any adversarial issues in the Town. For the purposes of this section “adversarial” shall mean any development application where staff is recommending denial or denied an application, or an administrative appeal or court action wherein the Town is a party.

8. **Termination.**

8.1 The Town Manager, with or without cause, may terminate this Agreement upon thirty (30) days written notice to the Consultant.

8.2 Upon receipt of the Town's written notice of termination, Consultant shall immediately stop work on the Project unless directed otherwise by the Town Manager.

8.3 In the event of termination by the Town, the Consultant shall be paid for all work accepted by the Town Manager up to the date of termination, provided that the Consultant has first complied with the provisions of Paragraph 8.4.

8.4 The Consultant shall transfer all books, records, reports, working drafts, documents, and data pertaining to the Services and the Project to the Town, in a hard copy and electronic format within fourteen (14) days from the date of the written notice of termination or the date of expiration of this Agreement.

9. **Nondiscrimination.**

9.1 During the term of this Agreement, Consultant shall not discriminate against any of its employees or applicants for employment because of their race, color, religion, sex, or national origin, and to abide by all Federal and State laws regarding nondiscrimination

10. **Attorneys Fees and Waiver of Jury Trial.**

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

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

11. **Indemnification.**

11.1 Consultant shall defend, indemnify, and hold harmless the Town, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or any way connected with Consultant's performance or non-performance of any provision of this Agreement, including, but not limited to, liabilities arising from contracts between the Consultant and third parties made pursuant to this Agreement. Consultant shall reimburse the Town for all its expenses including reasonable attorneys fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of, related to, or in any way connected with Consultant's performance or non-performance of this Agreement.

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

12. **Notices/Authorized Representatives.**

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

For the Town: Steven J. Alexander
Town Manager
Town of Cutler Bay
10720 Caribbean Boulevard, Suite 105
Cutler Bay, Florida 33189

With a copy to: Mitchell Bierman, Esq.
Town Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Blvd.
Coral Gables, Florida 33134

For The Consultant: [PLEASE COMPLETE]

13. **Governing Law.**

13.1 This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida.

14. **Entire Agreement/Modification/Amendment.**

14.1 This writing contains the entire Agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

14.2 No agent, employee, or other representative of either party is empowered to modify or amend the terms of this Agreement, unless executed with the same formality as this document.

14.3 Consultant represents that is an entity validly existing and in good standing under the laws of Texas and is properly authorized to do business in the State of Florida. The execution, delivery and performance of this Agreement by Consultant have been duly authorized, and this Agreement is binding on Consultant and enforceable against Consultant in accordance with its terms. No consent of any other person or entity to such execution, delivery and performance is required.

15. **Ownership and Access to Records and Audits.**

15.1 Consultant acknowledges that all inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports and all similar or related information (whether patentable or not) which relate to Services to the Town which are conceived, developed or made by Consultant during the term of this Agreement (“Work Product”) belong to the Town. Consultant shall promptly disclose such Work Product to the Town and perform all actions reasonably requested by the Town (whether during or after the term of this Agreement) to establish and confirm such ownership (including, without limitation, assignments, powers of attorney and other instruments).

15.2 All records, books, documents, maps, data, deliverables, papers and financial information (the “Records”) that result from the Consultant providing the Services to the Town under this Agreement shall be the property of the Town.

15.3 The Town Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any

Records of the Consultant involving transactions related to this Agreement.

15.4 The Town may cancel and terminate this Agreement immediately for refusal by the Consultant to allow access by the Town Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.

16. **Nonassignability.**

16.1 This Agreement shall not be assignable by Consultant unless such assignment is first approved by the Town Manager. The Town is relying upon the apparent qualifications and expertise of the Consultant, and such firm's familiarity with the Town's area, circumstances and desires.

17. **Severability.**

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

18. **Independent Contractor.**

18.1 The Consultant and its employees, volunteers and agents shall be and remain an independent contractor and not an agent or employee of the Town with respect to all of the acts and services performed by and under the terms of this Agreement. This Agreement shall not in any way be construed to create a partnership, association or any other kind of joint undertaking, enterprise or venture between the parties.

19. **Compliance with Laws.**

19.1 The Consultant shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities in carrying out Services under this Agreement, and in particular shall obtain all permits from all jurisdictional agencies to perform the Services under this Agreement.

20. **Waiver**

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

21. **Survival of Provisions**

21.1 Any terms or conditions of either this Agreement that require acts beyond the date of the term of the Agreement, shall survive termination of the Agreement, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

22. **Prohibition of Contingency Fees.**

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

23. **Public Entity Crimes Affidavit**

23.1 Consultant shall comply with Section 287.133, Florida Statutes (Public Entity Crimes Statute), notification of which is hereby incorporated herein by reference, including execution of any required affidavit.

24. **Counterparts**

24.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

25. **Miscellaneous**

25.1 This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the sam

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and date first above written.

TOWN:

TOWN OF CUTLER BAY

CONSULTANT:

BUXTON COMPANY, a Texas corporation

By: _____
Steven J. Alexander , Town Manager

By: _____
Name: _____
Title: _____

Attest: _____
Erika Gonzalez-Santamaria, Town Clerk

Approved as to Form and Legal Sufficiency:

Town Attorney

EXHIBIT “A”

THE PROPOSAL

Exhibit “A”

TAB 3



Planning & Zoning Department

R. Don O'Donniley, AICP
Planning Director

MEMORANDUM

To: Steve Alexander, Town Manager

From: R. Don O'Donniley

Date: August 20, 2008

Re: Contract for Building Permit and Inspection Services

BACKGROUND

The Town of Cutler Bay entered into an agreement with CAP, Inc in 2006 to provide building permit review and inspection services. Staff initiated a RFP to assure the level of service and cost offered by contracting party was the most efficient available. The RFP was prepared and four companies responded with proposals, including the current out source firm CAP, Inc. The Manager appointed a review committee made up by the Planning Director, Finance Director and the Public Works Director. Each committee member ranked the firms based on a review of the responses to the RFP and the firm with the highest ranking was CAP, Inc. The Committee recommended that CAP, Inc. be selected as the out source provider of building services to the Manager.

REQUEST

The Manager has negotiated a two year contract with CAP, Inc and presents the contract for Town Council approval.

ANALYSIS

The proposed contract provides for a more favorable term to the Town by increasing the share of fees paid to the Town to 30%. In addition, the revised contract recognizes the Town's commitment to implement a green strategy by providing for a LEED certified reviewer for projects accomplishing LEED standards. The contract also continues to implement the Town's Strategic Plan by utilizing an out sourced service provider as a means of efficiently providing a service when this is the most appropriate delivery approach.

RECOMMENDATION

Staff recommends the Council approve the attached contract between Cap, Inc and the Town of Cutler Bay.

RESOLUTION NO. 08-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE AGREEMENT WITH CAP GOVERNMENT, INC. FOR BUILDING AND PERMITTING SERVICES; AUTHORIZING THE TOWN MANAGER TO ENTER INTO THIS AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Cutler Bay (“Town”) finds that it is both necessary and appropriate to retain a firm to provide building and permitting services for the Town; and

WHEREAS, the Town Council authorized the issuance of a Request for Proposals (RFP) for Building and Permitting Services; and

WHEREAS, the RFP resulted in four proposals being received prior to the deadline; and

WHEREAS, the evaluation of the proposals has revealed that all of the submittals were responsive; and

WHEREAS, in accordance with Section 3.10 of the Town Charter, the Town Manager has made a written recommendation to the Council for its approval; and

WHEREAS, the Town Attorney’s Office has reviewed the terms of the agreement with CAP, Government, Inc., attached as Exhibit A, and has determined that it is legally sufficient; and

WHEREAS, the Town Council finds this Resolution to be 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, THAT:

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 CAP Government, Inc. for building and permitting services, in substantially the form attached hereto as Exhibit A.

Section 3. Town Manager Authorized. The Town Manager is authorized, on behalf of the Town, to execute the building and permitting services contract with CAP,

Government, Inc., for building and permitting services, in substantially the form attached hereto as Exhibit A.

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

PASSED and ADOPTED this _____ day of _____, 2008.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

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

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

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

**CONTRACT BETWEEN
THE TOWN OF CUTLER BAY
AND C.A.P. GOVERNMENT, INC., FOR
BUILDING AND PERMITTING SERVICES**

THIS AGREEMENT is made and entered into this ____ day of August, 2008, by and between the Town of Cutler Bay, (hereinafter referred to as the Town) a Florida municipal corporation, and C.A.P. Government, Inc., a Florida corporation (hereinafter referred to as CAP). The effective start date of services and all provisions of this agreement shall be October 1, 2008.

NOW THEREFORE, the parties agree to the following:

1. PURPOSE; AUTHORIZATION

1.1. The purpose of this agreement is to provide for the engagement of CAP by the Town to perform building and permitting services as described in Section 2 below. In performing all services it is understood that all CAP employees, while performing services for the Town shall report to the Town's Building Division Manager, or designee, CAP also agrees to work cooperatively with the Town's Building Division Manager to ensure that services are provided in a coherent and uniform process. The Building Division Manager shall be the principal agent of the Town relating to enforcement of this contract. However, the Town Manager shall be the ultimate decision maker relating to Section 9, termination provisions.

1.2. CAP's employees assigned to perform services for the Town shall be authorized to enforce the Town code under the Town's constitutional home rule powers.

2. SCOPE OF SERVICES

CAP shall provide the following services to the Town:

2.1. Building and Permitting Services

2.1.1. Process all building permit applications for the Town and verify contractor's licenses.

2.1.2. Services shall include all services listed in the Request for Proposals for Building and Permitting Services, Request for Proposal Number **07-05 r1**, which include:

- a. Process permit applications
- b. Review plans for permitting
- c. Issue permits and conduct plan review.
- d. Inspect all permitted jobsites.

- e. Coordinate in Issuing Certificates of Use (CU)
- f. Enforce the requirements of the building code.
- g. Collect and report all permit-related revenues per the Town's permit fee schedule.
- h. Conduct Certificate of Use inspections.
- i. Submit monthly reports including trial balance reports, permit activities, rejection rates, number of permits issues, plans reviewed, and inspections performed, report of revenues collected, and any amount forwarded to the Town.
- j. Process records relating to permits and storage and archiving of permit files. Under the supervision of the Building Division Manager, CAP staff shall assist in developing an archiving system, process for cross-referencing, locating permits, and for properly scanning the documents.
- k. Provide administrative and clerical staff to support permitting and enforcement and the telephone operator's functions, which staff shall be under the supervision of the Town's Building Department Office Manager to perform these duties.
- l. Consult with architects/engineers and contractors for building code guidance on large projects.
- m. Meet with architects/engineers, homeowners, contractors and other permit holders when requested, to discuss any questions, problems or concerns on plans or permits.
- n. Provide emergency 24-hour building code service to respond to damage to structures.
- o. Verify notices of commencement.
- p. Provide adequate communication capabilities through utilization of available equipment (cellular phones, two-way radios, pagers, etc.) to all personnel.
- q. Maintain satisfactory workload/service level demands through utilization of increases and/or decreases in staffing, including weekends, whenever required. Under Section 16, infra, CAP agrees to provide adequate service levels for the staffing persons identified therein and as provided under Exhibits "A" and "C".
- r. Verify contractor's license and appropriate insurance upon acceptance of permit application.
- s. Receive and respond to, in a timely manner, questions and, or complaints, relating to the building code.
- t. Attend Town staff and council meetings upon request of the Building Division Manager, Town Manager or Town Council.
- u. Provide a LEED or other approved agency Certified plan reviewer capable of determining whether plan sets meet adopted "Green Building standards"

2.1.4. CAP shall maintain the following service standards, as outlined in the RP # **07-05 r1**:

- a. The first plan review for single family residences will be completed within seven (7) business days of receipt of a final set of plans. In order to attain this goal, as well as issue a permit within the same time frame, the permit processing staff shall call/fax/e-mail the plan reviewer's results to the appropriate designer of record or

contractor as each trade completes its review. Plan reviews of single family residence of much less complexity will be completed within one to three (1-3) business days.

b. Commercial building, multi-dwelling units, and similar types of construction projects will have plan review completed within fifteen (15) business days for the first review. The permit processing staff shall call/fax/e-mail results to the appropriate designer of record or contractor as each trade completes its review. Permit issuance will depend upon the size and complexity of the project and length of time taken by the designer to return plans with corrections to conform to the building code. All proposed plans which require a LEED review shall also meet this review schedule.

c. Inspections will be performed within 24 business hours from the time they are called into the Town. Inspection requests may be submitted via phone, fax or e-mail to the Town. Inspections shall be performed within a 4-hour scheduled time frame.

d. Consumer's questions and/or complaints will be responded to within a reasonable time not exceeding two (2) business days.

e. Provide "walk-thru" permitting for specified types of work, as requested by the Town. This "walk-thru" program shall begin as a trial pilot program, which program shall consist of twice (2) weekly, two (2) hour periods, as requested by the Town with one month notice, to provide "walk-thru" permitting, with building discipline representatives present during the two (2) hour period(s). If the "walk-thru" pilot program fails to provide sufficient work or use of CAP resources as jointly determined by CAP and the Town, the "walk-thru" program shall be discontinued at the end of the three (3) month test period. If the "walk-thru" program succeeds, the program shall be continued as part of basic services (not an additional service).

f. Respond to building applicants' questions and/or complaints within two (2) business days.

g. Provide high quality friendly and courteous customer services which shall include:

1. The Town Manager and Building Division Manager shall establish the customer service standards for office personnel. Day to day coordination to assure these standards are met shall be under the supervision of the Building Division Manager, including staff appearance, for the purpose of providing building services, which CAP employees shall adhere to.

2. The Town Manager or his designee shall establish an employee code of conduct towards customers consistent with the provisions of this agreement, which CAP employees shall adhere to.

3. Upon request by the Town, the Town Manager or his designee shall establish flexible staff work schedules for CAP's employees to extend office hours and services on certain days of the

week and/or on weekends. CAP employees shall be available to work during extended hours upon the Town Manager's request. All such work shall be compensated in accordance with Exhibit "B".

4. Staff shall greet each customer coming into the office and on the telephone with courtesy.

5. Staff shall return all inquiries and telephone calls/messages within two (2) business days.

6. CAP office staff shall assist in the filing and scanning of plans.

7. The Building Division Manager shall develop a customer service evaluation form, approved by the Town Manager, to gather constructive feedback from customers, which CAP shall adhere to.

8. The Building Division Manager approved by the Town Manager, shall create a system for processing complaints and suggestions regarding building services, promptly responding to complaints, and to provide written follow-up regarding complaints. CAP employees shall adhere to same.

9. Attend annual educational seminars for property owners and contractors on building permitting requirements and procedures.

10. When applicable, coordinate code compliance efforts between code compliance officers and building inspectors and the Building Division Manager.

11. CAP shall provide personnel to assist in the task of timely and orderly outsourcing the imaging of plans.

12. CAP shall provide the review and approval of initial Certificates of Use.

2.1.5. Provide all necessary vehicles, mobile phones or radios and equipment for CAP employees to perform the services required by this agreement. CAP shall provide clearly marked Town identification on all vehicles used in conjunction with the performance of this agreement. Town, at its option, shall provide uniforms (shirts) and any other identification to CAP.

2.2. **Town Projects.**

2.2.1. CAP shall provide plan review, inspection and permitting services for Town projects as directed by the Town Manager. These services shall be treated as additional services pursuant to section 2.3 hereof and compensated in accordance with Exhibit "B".

2.3. **Additional Services.**

2.3.1. CAP shall provide other additional building department services to the Town as mutually agreed to in writing by the Town Manager and CAP.

2.3.2. CAP shall provide additional services of zoning inspection (other than certificate of use inspections which shall be part of the scope of services described at 2.1) as mutually agreed to by the Town Manager and CAP.

2.3.3. Provide jobsite disaster preparation and follow-up service. Provide flexible staff work schedules for employees to extend office hours and services on certain days of the week and/or on weekends, as requested by the Town following a hurricane, to carry out special code compliance sweeps, to enforce building code regulations, etc., which services will be compensated in accordance with Exhibit "B".

2.3.4. Coordinate the issuance of Certificates of occupancy (CO), in conjunction with appropriate review and inspections as required by the Building Official. A Town zoning inspector will be utilized to perform CO inspections. Zoning inspection funds received by the Town shall not be considered part of the monthly permit fees identified in Section 4. The zoning funds shall be deposited into a separate account by the Town and shall not affect CAP's compensation under this Agreement.

2.3.5. Provide building code damage assessment services for emergencies and natural disasters as requested by the Town.

2.3.6. Provide expedited plan review for an additional fee as agreed with the Town.

2.3.7. Provide after-hours and weekend inspections and appointments with key personnel, by appointment, for an additional fee as agreed with the Town.

2.3.8. CAP understands and agrees that the Town shall not be liable to pay, and shall not pay, charges for extra work, delay charges, or additional work, unless the Town Manager or his designee specifically authorizes the extra or additional work, in a written task order before the commencement of the work.

2.3.9. None of the work or services under this Contract shall be subcontracted, unless CAP obtains prior written consent from the Town Manager. Should the subcontractor be approved, CAP shall be subject to each provision of this Contract and CAP shall be responsible and shall indemnify the Town against any losses related to subcontractors' actions or omissions.

2.3.10. Provide automation and computer support and/or software for servicing permits, inspections and Building Code activities (Town uses EnerGov).

2.3.11. CAP shall provide additional services of the intake and processing of applications for Public Works as mutually agreed to by the Town Manager and CAP. Public Works permitting and reviews will be coordinated with the Public Works Director. Compensation for public works reviews will be according to section 4.1 of this agreement, except for the case of Utility Company public works permits, for which the review rate will be \$75/hour.

2.3.12. CAP shall provide additional services of the intake and process applications for Zoning permits as mutually agreed to by the Town Manager and CAP.

2.4 **Change Orders**

2.4.1 The Town or CAP, may at any time, upon mutual agreement and by written order, make changes within the general scope of this Contract in the services to be performed provided such changes/modifications comply with the RFP and procurement policies and procedures. The Town may, from time to time, request changes in the services of CAP to be performed hereunder. Such changes, including any increase or decrease in the amount of the CAP's compensation, which are mutually agreed upon between the parties shall be incorporated in written amendments to this Contract.

3. **TOWN RESPONSIBILITIES**

3.1. The Town shall provide a Building Division Manager.

3.2. The Town shall provide badges or photo identification for CAP employees, which shall be worn by CAP employees at all times while conducting official Town functions.

3.3. The Town shall provide workspace, furniture, computer software and hardware, fax line and telephones (in office) for all administrative staff, inspectors and plan examiners provided by CAP to perform the services required by this agreement.

3.4. The Town shall be the record custodian for all records and shall be responsible for the cost of imaging.

3.5. Upgrades to and/or cost of outsourcing the imaging of plans shall be provided by the Town, however, CAP shall provide personnel to assist in the task of timely and orderly outsourcing the imaging of plans.

3.6. CAP has developed a team of highly trained, professional building and permitting experts. The Town is discouraged from hiring any of CAP's staff.

3.7. Town uses EnerGov, and shall provide CAP appropriate access to same.

3.8. The Town shall be responsible for the bank fees related to NSF (Non-sufficient fund) checks received from customers as well as credit card merchant service fees associated with CAP's obligations under this agreement while CAP is performing the services required by this agreement.

4. **COMPENSATION**

4.1 For all building and zoning services provided by CAP as described in Section 2.1 of

this agreement, the Town shall pay CAP a monthly fee equal to 70% of all fees collected. The balance of the fees not paid to CAP shall be retained by the Town. The Building Official's salary, as specified in Exhibit B, shall be the responsibility of the Town.

4.2 Additional services such as disaster preparation and follow-up services, zoning inspections, and expedited plan review for an additional fee paid by the applicant, shall be billed at the hourly rates shown on Exhibit B to the contract. Annual renewals of the Certificates of Use shall be considered an additional service to be reimbursed in accordance with paragraph 4.1.

4.3 For all additional services as described in Section 2.3 of this agreement, the Town shall pay CAP a fee mutually agreed to by the Town Manager and CAP.

4.4 The Town shall pay CAP monthly based on the permit fees collected by the Town for the preceding month. CAP will submit an invoice within the first seven (7) calendar days of the month and payment shall be made within 15 calendar days of receipt of the invoice.

4.5 Town shall have the right to prior approval of CAP's proposed fee schedule and any subsequent changes thereto requested by CAP. Such initial fee schedule shall be presented for Town approval within 1 week of execution of this agreement.

5. RECORDS; RIGHT TO INSPECT AND AUDIT

5.1 All original sketches, tracings, drawings, computations, details, design, calculations, plans, permits, work papers and all other documents and plans (collectively referred to as records) that result from CAP providing services to the Town under this agreement shall be the property of the Town and will be kept at a place designated by the Town.

5.2 The Town Manager, shall, during the term of this agreement, have access to, and the right to examine and audit, any records of CAP involving transactions related to this agreement during normal business hours upon five (5) days prior written notice.

5.3 CAP has the right to examine and audit any records of the Town regarding the permit collections and transactions related to this agreement upon five (5) days prior written notice.

5.4 The Town may cancel this agreement because of the refusal by CAP to allow access by the Town Manager or designee to any records pertaining to work performed under this agreement.

5.5 Public access to records shall be governed by Chapter 119 and other applicable provisions of the Florida Statutes. CAP shall promptly comply, in no more than two (2) business days, with any request made by the Town to CAP in connection with the Town's compliance with Chapter 119, Florida Statutes.

6. INDEMNIFICATION

6.1 CAP shall defend, indemnify, and hold harmless the Town, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgments or damages, and statutory fines and penalties (collectively referred to as loss or losses) arising out of, related to, or in any way connected with CAP's performance, errors, acts or omissions under any provision of this agreement including, but not limited to, liabilities arising from contracts between CAP and third parties made pursuant to this agreement, except to the extent the losses are caused by or arise out of any act or omission of the Town, its officers, agents and employees. CAP shall reimburse the Town for all its expenses, including reasonable attorneys' fees and costs, incurred in and about the defense of any claim or investigation and for any loss arising out of, related to, or in any way connected with CAP's performance, errors, acts or omissions under this agreement, except to the extent the losses are caused by or arise out of any act or omission of the Town, its officers, agents and employees.

6.2 The Town shall defend, indemnify, and hold harmless CAP, its shareholders, directors, officers, agents, employees and affiliates, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, and statutory fines and penalties (collectively referred to as loss or losses) arising out of, related to, or in any way connected with this agreement, except to the extent the losses are caused by or arise out of any act or omission of CAP, its shareholders, directors, officers, agents, employees and affiliates. The Town shall reimburse CAP for all its expenses including reasonable attorneys' fees and costs incurred in and about the defense of any claim or investigation and for any losses arising out of, related to, or in any way connected with the Town's performance, errors, acts or omissions under this agreement, except to the extent the losses are caused by or arise out of any act or omission of CAP, its shareholders, directors, officers, agents, employees and affiliates.

6.3 CAP shall defend, indemnify and hold the Town harmless from all claims, including but not limited to claims presented to EEOC, FHRC and MDCEOC, losses, injuries or damages and wages or overtime compensation due its employees in rendering services pursuant to this agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act or any other federal, state, or local law.

6.4 The provisions of this section shall survive termination of this agreement.

7. INSURANCE

7.1. CAP shall maintain, at its sole cost and expense, during the term of the agreement, standard professional liability insurance in the minimum amount of \$1,000,000 per occurrence.

7.2. CAP shall maintain, at its sole cost and expense, during the life of the agreement, commercial general liability, including contractual liability insurance, in the amount of

\$1,000,000 per occurrence to protect it from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damage which may arise from any operations under the agreement, whether the operations be by CAP or by anyone directly employed by or contracting with CAP.

7.3. CAP shall maintain, at its sole cost and expense, during the life of the agreement, comprehensive automobile liability insurance in the minimum amount of \$500,000 combined single limit for bodily injury and property damage liability to protect it from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles, whether the use of the vehicle be by CAP or by anyone directly or indirectly employed by CAP.

7.4. CAP shall maintain, at its sole cost and expense, during the life of the agreement, adequate worker's compensation insurance and employer's liability insurance as required by Chapter 440, Florida Statutes.

7.5. CAP shall maintain each of the insurance policies throughout the term of this agreement and any extensions of this agreement.

7.6. CAP shall provide the Town with a current copy of each of the above insurance policies, and any renewals.

7.7. The underwriter of the insurance shall be qualified to do business in Florida, be Best rated A-8 or better, and have agents upon whom service of process may be made in the State of Florida.

7.8. Policies shall contain waiver of subrogation against the Town, where applicable, and shall expressly provide that the policy or policies are primary over any other insurance the Town may have. All policies shall contain a "severability of interest" or "cross-liability" clause without obligation for premium payment by the Town.

7.9. All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The successful Respondent shall be responsible for the payment of any deductible or self-insured retention in the event of any claim.

7.10. The Certificates shall clearly indicate that CAP has obtained insurance of the type, amount, and classification as required and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the Town's representative, and shall include the Town of Cutler Bay as an additional insured.

7.11. CAP shall require its approved consultants and sub-consultants, if any, to procure and maintain insurance coverage in the required amounts or alternatively insure the activities provided by any consultants or sub-consultants in CAP's own policies. Compliance with the foregoing requirements shall not relieve CAP of its liability and

obligations under the agreement.

8. TERM

8.1. This agreement shall become effective on the date signed below and shall remain in force until September 30, 2010, unless earlier terminated as provided in Section 9.

8.2. The Town shall have the option to renew this agreement for two additional one-year terms upon the same terms and conditions contained in this agreement upon a 60 day written notice to CAP.

9. TERMINATION

9.1 Without Cause.

9.1.1 The Town may terminate this contract at any time, without cause, upon 45-day's prior written notice. Contractor shall be entitled to payment for services rendered upon the effective date termination but shall not be entitled to future lost profits, consequential or compensatory damages, or other costs or expenses. Upon receipt of written notice of termination, CAP shall not enter into any third party agreements and shall incur only those expenses specifically approved or directed in writing by the Town Manager. Upon written notice of termination, the Town Manager may elect not to use the services of CAP.

9.1.2 CAP may terminate this agreement at any time by giving the Town written notice at least 120 calendar days prior to the effective date of termination.

9.1.3. In the event of termination or expiration of this agreement, CAP and the Town shall cooperate in good faith in order to effectuate a smooth and harmonious transition from CAP to the Town, or to any other person or entity the Town may designate, and to maintain during the period of transition the same services provided to the Town pursuant to the terms of this agreement.

9.1.4. CAP will take all reasonable and necessary actions to immediately transfer all books, records and data of the Town in its possession in an orderly fashion to either the Town or its designee in a hard copy and electronic format.

9.1.5 Subsequent to the termination of this agreement, the Town may contract with CAP at a mutually agreed upon amount to perform specified services on an as-needed basis.

9.1.6 The Town shall compensate CAP in the event of termination of the contract under 9.1 for all services provided prior to the date of termination and pay all reasonable expenses associated with those services incurred by CAP.

9.2 For Cause.

9.2.1 If, through any cause, CAP shall fail to fulfill in a timely and proper manner his obligations under this Contract, or if CAP shall violate any of the covenants, agreements, or stipulations of this Contract, the Town shall thereupon have the right to terminate this Contract by giving written notice to CAP of such termination and specify the effective date of termination, at least 15 days prior to such date of termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CAP under this Contract shall, at the option of the Town, become Town's property. CAP shall be entitled to receive just and equitable compensation for any work satisfactorily completed and not yet billed and/or paid to CAP.

9.2.2 Notwithstanding the above, CAP shall not be relieved of liability to the Town for damages sustained by the Town by virtue of any breach of the Contract by CAP, and the Town may withhold any payments to CAP for the purpose of set-off until such time as the exact amount of damages due the Town from CAP is determined.

9.2.3 CAP may terminate this agreement for non-payment, by giving written notice fifteen (15) calendar days prior to the effective date of termination. If payment is made prior to the effective date of termination stated in the notice, then such notice shall be considered void and null and CAP shall not have the right to terminate this agreement as a result of the previously unpaid amount.

9.3 **Right To Withhold.**

9.3.1 If work under this Contract is not performed in accordance with the terms hereof, the Town has the right to withhold any payment due to CAP, of any sums as the Town may deem ample to protect it against loss, or to ensure payment of claims arising there from, and, at its option, the Town may apply such sums in such manner as the Town may deem proper to secure itself or to satisfy such claims. The Town will provide CAP with fifteen (15) days prior written notice in the event that it elects to exercise its right to withhold under this Section.

9.4 **Remedies - Termination For Default.**

9.4.1 Except as provided in section 9.2.3 hereof, either party may terminate this contract prior to the expiration of the initial term or any subsequent renewal term on account of a material breach of this contract by the other party, which has not been cured within three days of the date of receipt of written notice of breach from the party seeking termination. Should Contractor fail to cure within 30 days, the Town may then immediately terminate the contract "for cause."

9.4.2 Termination shall be effective as of the end of the notice period in the case of any uncured material breach.

9.4.3 Contractor may terminate this contract prior to the expiration of the initial term or any subsequent renewal term upon not less than 60-days prior written notice to the Town in the event that contractor is unable to complete the services identified in section 2 due to causes beyond contractor's control.

9.4.4 The Town shall have no liability to CAP for future profits or losses in the event of termination for default.

9.4.5 The rights and remedies of the Town provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

10. ENTIRE AGREEMENT; MODIFICATION/AMENDMENT

10.1. This writing contains the entire agreement of the parties and supersedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

10.2 No agent, employee, or other representative of either party is empowered to modify and amend the terms of this agreement, unless executed with the same formality as this document.

11. SEVERABILITY

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

12. GOVERNING LAW

12.1. This agreement shall be construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any litigation arising under or related to this agreement shall be in Miami-Dade County, Florida.

13. WAIVER

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

14. NOTICES; AUTHORIZED REPRESENTATIVES

14.1. Any notices required or permitted by this agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, or by registered or

certified mail with postage prepaid, return receipt requested, addressed to the parties at the following addresses:

For the Town:

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

With a copy to:

Mitch Bierman
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, FL 33134
Tel: (305) 854-0800
Fax: (305) 854-2323

For CAP:

Carlos A. Penin, P.E., President
C.A.P. Government, Inc.
8350 NW 52 Terrace
Suite 209
Doral, FL 33166
Phone: (305) 448-1711
Facsimile: (305) 448-1712

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

15. INDEPENDENT CONTRACTOR

15.1. CAP is, and shall be, in the performance of all work, services and activities under this agreement, an independent contractor and not an employee, agent or servant of the Town. Services provided by CAP shall be by employees of CAP and nothing in this agreement shall create an employment relationship between the Town and any CAP employee. CAP agrees that it is a separate and independent enterprise from the Town.

15.2. CAP shall be solely responsible for all employee insurance benefits, civil service benefits, compensation, including, but not limited to, unpaid minimum wages and overtime,

and, or, any status or rights during the course of employment with CAP. Accordingly, the Town shall not be called upon to assume or share any liability for, or direct payment of, any salaries, wages, contribution to pension funds, insurance premiums or payments, workers' compensation benefits under Chapter 440, Florida Statutes, or any other benefits of employment to any CAP personnel performing services, duties and responsibilities under this agreement for the benefit of the Town, or any other liabilities whatsoever. This agreement shall not create any joint employment relationship between CAP and the Town, and the Town will not be liable for any obligation incurred by CAP and, or regarding its employees.

15.3. CAP understands and agrees that CAP shall not represent other clients in matters adverse to the Town, and shall make promptly known any conflicts or potential conflicts. If said conflict(s) cannot be satisfactorily resolved to the Town's satisfaction, the Town reserves the right to suspend and/or terminate the services of CAP and procure services elsewhere. A conflict of interest shall be defined as provided for under the Town's Conflict of Interest Code, and section 2-11.1, Miami-Dade County Code of Ordinances. CAP and each of its employees and subcontractors shall be bound by the Miami-Dade County code of ethics and shall not be allowed to accept any gifts including consumables of any kind.

15.4. CAP, shall, at its own expense, obtain all necessary permits, pay all licenses, fees and taxes required to comply with all local ordinances, state and federal laws, rules, regulations and professional standards that would apply to this contract.

15.5 CAP, shall, at its own expense, continue with any continuing education requirements for state professional licensing purposes.

16. STAFFING

16.1. CAP shall provide CAP employees in the job classifications contained in Exhibit "A" to perform all services provided for in this agreement.

16.2 CAP shall certify that each of its staff persons and any subcontractors used to staff the Town engagement is not using illegal drugs and has undergone a criminal background investigation. CAP shall ensure that no staff person has been convicted of a felony, crime of moral turpitude or violent crime; that no staff person that has been convicted of a felony or a misdemeanor, which misdemeanor concerns allegations of assault, sexual offender, theft or violence shall be assigned to staff the Town. Failure to do the background screening or failure to provide the background screening information to the Town shall be cause for immediate, for cause, termination of services. The knowing or negligent use of staff convicted of a felony, crime of moral turpitude, or violent crime shall be cause for immediate termination of the contract.

16.3 CAP agrees to perform annual State-wide background checks of its staff pursuant to section 16.2 and shall advise the Town Manager of any instances of concern as identified under section 16.2. Based upon the information provided, the Town Manager, within his discretion, is entitled to request that CAP replace such staff persons for Town engagement staffing purposes.

16.4 If at any time during the term of this agreement the Town Manager becomes dissatisfied with the performance of any CAP employee or approved sub-consultant assigned to provide professional services under this agreement, the Town Manager may request that CAP transfer the employee within two (2) business days of notification by the Town Manager. CAP agrees to act in good faith and to use its best efforts to resolve any problems experienced by the Town, and CAP agrees that if the issue is not resolved, the Town Manager's request for transfer of a CAP staff person shall be complied with.

16.5 CAP shall identify at Exhibit "C", the proposed staff persons to be used to staff the Town engagement of services. CAP may not change the principal person(s) in the engagement without the express permission of the Town. Should staff listed in Exhibit "C" be changed due to circumstances beyond CAP's control (i.e. retirement, resignation) or due to a request from the Town Manager to replace the staff person as provided under this agreement, CAP shall provide relevant information under section 16.3 to the Town Manager as to the replacement staff person.

17. ASSIGNMENT

17.1 This agreement shall not be assignable by CAP without the prior approval of the Town Council. The Town Council shall not unreasonably withhold the assignment of the contract.

17.2 No work or services under this contract shall be subcontracted unless contractor obtains prior written consent from the Town. Approved subcontractors shall be subject to each provision of this contract and contractor shall be responsible and indemnify the Town for all subcontractors' acts, errors or omissions.

17.3 CAP shall not assign, transfer or pledge any interest in this contract without the prior written consent of the Town; provided, however, that claims for money by CAP from the Town under this contract may be assigned, transferred or pledged to a bank, trust company, or other financial institution without the Town's approval. Written notice of any assignment, transfer or pledge of funds shall be furnished within 30 days by CAP to the Town.

18. PROHIBITION AGAINST CONTINGENT FEES

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

19. WARRANTIES OF CAP

19.1 CAP warrants and represents that at all times during the term of this agreement it shall maintain in good standing all licenses and certificates required under federal, state and local laws necessary to perform the scope of services specified in this agreement.

19.2. CAP warrants and represents that its employees have received sexual harassment training, that it maintains appropriate sexual harassment and non-discrimination policies, and that it has implemented procedures for enforcing its sexual harassment and non-discrimination policies. CAP employees and subcontractors will not use illegal drugs and will not use tobacco during any working period.

19.3 CAP warrants and represents that its employees will abide by the conflict of interest and code of ethics ordinances sets forth in Section 2-11.1 of the Town code and Section 2-11.1 of the Miami-Dade County Code, as these codes may be amended from time to time.

19.4 CAP, its approved subcontractors, suppliers and laborers (“subcontractors”) are prohibited from placing a lien on the Town’s property. CAP shall execute a similar contract with subcontractors, as applicable, confirming that subcontractors are prohibited from placing liens on the Town’s property. Further, both contractor and subcontractor warrant not to file or record liens or notices of liens against the Town’s property.

19.5 CAP warrants that it: (a) is duly licensed by the State of Florida and Miami-Dade County to provide the services identified in Section 2 of this contract; (b) has not provided a commission, bonus or other benefit or payment to any person to procure this contract other than paying the salaries of employees in the ordinary course of business; (c) has not committed a violation of a public entity crime statute and is not otherwise disqualified by the State of Florida from entering into this Agreement; and (d) no member, officer, or employee of the Town shall or for one year after current tenure, have any interest, direct or indirect, in this contract.

20. ATTORNEYS' FEES

20.1. In the event of any litigation arising out of this agreement, the prevailing party shall be entitled to recover its attorneys’ fees and costs, including the fees and expenses of any paralegals, law clerks and legal assistants, and including fees and expenses charged for representation at both the trial and appellate levels; provided, however, any award of attorneys’ fees against the Town shall not exceed \$35,000.00. The Town does not waive sovereign immunity under 768.28, Florida statutes. Neither party shall be liable for prejudgment interest.

20.2 The Town does not waive sovereign immunity for any claim of prejudgment interest and prejudgment interest shall not be awarded against the Town.

21. WAIVER OF JURY TRIAL

21.1 In the event of any litigation arising out of this agreement, each party waives its right to trial by jury.

22. TIME OF THE ESSENCE

22.1 Time shall be of the essence for each and every provision of this agreement.

23. MISCELLANEOUS.

23.1 In the event a court must interpret any word or provision of this agreement, the word or provision shall not be construed against either party by reason of drafting or negotiating this agreement.

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

WITNESSES:

C.A.P. Government, Inc.

By: _____
Carlos A. Penin, P.E., President

Print Name: _____

Print Name: _____

Date: _____

ATTEST:

TOWN OF CUTLERBAY

Erika Santa-Maria, Town Clerk

By: _____
Steven Alexander, Town Manager

Date: _____

APPROVED AS TO FORM:

Mitch Bierman.
Town Attorney

EXHIBIT "A"

Job Classifications: The following job classifications will be staffed to achieve the required level of services:

- A. **Building Official** certified by the Miami-Dade County Board of Rules and Appeals. This position will supervise all activities for CAP and coordinate with the code enforcement unit.

- B. **Structural Plan Reviewer** certified by the Miami-Dade County Board of Rules and Appeals. This professional engineer performs structural review of building permit plans as mandated by the Florida Building Code requirements.

- C. **Chief Building Inspector / Building Plans Examiner / Inspector** certified by the Miami-Dade County Board of Rules and Appeals and will perform all plans review (certified plans examiner) and field inspection of structural, building, A.D.A (certified building inspector) and roofing components (certified roofing inspector). The certified Chief Building Inspector is responsible for supervising the building plan review activities and mandatory building and roofing inspections for purposes of determining that all work is performed per requirements the Florida Building Code.

- D. **Chief Mechanical, Chief Plumbing and Chief Electrical** are delegated power by the Building Official to enforce the Florida Building Code and to interpret the code requirements of their respective trades.

- E. **Zoning Official** The Town of Cutler Bay Planning Director or his designee shall be used to perform zoning plan reviews and zoning code and ordinance interpretations as directed by the Town Manager.

EXHIBIT "B"

SCHEDULE OF HOURLY COST FOR ADDITIONAL SERVICES

EXHIBIT “C” – PROPOSED STAFF

Elio Alvarez	Electrical Plans Examiner & Inspector
Adalberto Viciado, P.E.	Structural Plans Examiner
Pedro Achet, E.I.	Building Plans Examiner & Inspector
Thomas J. Bassing	Plumbing Plans Examiner & Inspector
Eduardo Kriger, P.E.	Structural Plans Examiner
Tomas Menendez	Electrical Plans Examiner & Inspector
Jan Pierre Perez	Mechanical Plans Examiner & Inspector
Burt Saymon, P.E.	Mechanical Plans Examiner
Aurelio J. Ramos, R.A.	Building & Roofing Plans Examiner & Inspector
Angel R. Rivas, E.I.	Building & Roofing Plans Examiner & Inspector
Raul Rodriguez	Building Official
Jorge Hernandez	Building & Roofing Plans Examiner & Inspector
Peter Wagoner, P.E.	Building & Roofing Plans Examiner & Inspector
Henry Willis	Building & Roofing Plans Examiner & Inspector
Joseph Garcell	Building & Roofing Plans Examiner & Inspector
Miguel Arronte	Building & Roofing Plans Examiner & Inspector
Felix Pousa	Electrical Plans Examiner & Inspector
Orlando Hernandez	Mechanical Plans Examiner & Inspector
Don Bender	Plumbing Plans Examiner & Inspector
Carlos Naumann, P.E.	Structural Plans Examiner
Elisa Vera	Zoning
Morelia Rodriguez	Administrative Assistant
Natalie Winters	Permit Clerk
Estela Cassau	Permit Clerk
Debbie Gutierrez	Permit Clerk
Sonia Perez	Permit Clerk
Ailyn Jimenez	Permit Clerk
Adriana Molina	Permit Clerk

TAB 4



MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council
From: Steven J. Alexander, Town Manager
Date: August 20, 2008
Re: The Children's Trust Grant Agreement - First Renewal

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE FIRST RENEWAL OF 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 AND AMEND AND RENEW THE SAME AND PROVIDING FOR AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

On October 17, 2007, resolution #07-49 was adopted by the Town Council, approving a contract between the Town of Cutler Bay and The Children's Trust (TCT) for the After School Program at Cutler Ridge Park. The original contract allowed for two one-year renewals under substantially the same terms and conditions that were contained in the original contract. The first renewal is now being exercised for the period of August 1, 2008 to July 31, 2009 and will cover the 2008-2009 school year, contingent upon the successful renewal of The Children's Trust funding by the electorate of Miami-Dade County on August 26, 2008.

Some of the conditions contained in the new contract are as follows:

- Due to a variety of factors effecting most governmental agencies, funding has been reduced by \$3,160.00 to \$108,098.00.
- The program will be available to a maximum of 75 participants, an increase of 25 participants.
- Funding will provide for one full time Outreach Worker to assist with the recruitment, testing and tracking of program participants; two additional part-time staff to provide additional supervision; daily transportation for program participants from local schools to Cutler Ridge Park; snacks for each program participant on a daily basis; and a computer lab for students to sharpen their computer skills and assist with homework and school projects.

RECOMMENDATION

We recommend that the attached resolution be adopted authorizing the Town Manager to execute and amend the agreement between the Town and the Children's Trust.

RESOLUTION NO. 08-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE FIRST RENEWAL OF 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 AND AMEND AND RENEW THE SAME; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Children's Trust (the "Trust") is a dedicated source of revenue established by voter referendum to improve the lives of children and families in Miami-Dade County; and

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

WHEREAS, the original agreement allowed for two one-year renewals at substantially the same terms and conditions; and

WHEREAS, the Trust and the Town are desirous of renewing the agreement for the period from August 1, 2008 to July 31, 2009 to cover the 2008-2009 school year.

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. Agreement Approved. The "Contract Between The Children's Trust and the Town of Cutler Bay for Out-of-School Programs" relating to the disbursement of Trust funds to the Town in substantially the form attached hereto as Exhibit "A," (the "Contract") is hereby approved.

Section 3. Town Manager Authorized. The Town Manager is authorized to execute the Contract on behalf of the Town.

Section 4. Town Manager Authorized. The Town Manager is authorized to make future amendment(s) to the Contract as well as renew the Contract on behalf of the Town, unless such amendment(s) or renewal would have a fiscal impact upon the Town.

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

PASSED and ADOPTED this _____ day of _____, 2008.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

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

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

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

Attachment A
Out-of-School Scope of Services
Contract No. 810-XXX
Agency name: Town of Cutler Bay
Program name: Cutler Ridge Park After School Program

1. Program Summary (Limit to 100 words):

The Town of Cutler Bay will provide the Cutler Ridge Park After School Program, a year-round out-of-school program. Programming will include a wide range of activities for 75 General Population participants ages 6 to 13 residing primarily in the Cutler Bay area. The activities are designed to build character and provide alternative activities to self-defeating behavior in addition to reading, physical fitness, and computer skills. The program will fulfill the participants' curiosity and love of learning to focus on their strengths, develop their personal and interpersonal social skills and provide recreational and physical activities to develop physical skills. The program will provide daily transportation from local elementary and middle schools to the program site through the use of a leased van.

2. Target Population (Include the number to be served, ages, demographic characteristics, disabilities, and targeted geographic area(s) served, as applicable):

The out-of-school program will serve 75 general population participants, both boys and girls ages 6-13 from low to moderate income families and/or underserved communities in the 33157 and 33189 zip codes. Participants will be referred from the Cutler Bay Police Department generated from calls of family violence or youth encountered who are at risk of criminal activity and from neighboring elementary and middle schools for children in need of academic assistance for reading improvement.

3. Service Delivery: After-School - August, 2008 to June, 2009

<i># of Participants: General Population and Children with Disabilities</i>	<i>After-School Activities/ Service Name & Description</i> <i>Specify site, age, and other differences and adaptations for children with disabilities when applicable</i>	<i>Site or Group Comment/ Variance</i>	<i>Frequency, Intensity and Duration</i>
75 GP	Literacy: Students in the After School Program will be required to complete a minimum of one hour of educational activities each day prior to participating in scheduled recreational activities listed below. The educational activities will be conducted by Recreation Coordinators and Park Service Aides and will include tutoring with an emphasis towards completion of school-assigned homework assignments, concentrating on recognized deficiencies in subject areas and reading literacy.		5 times per week for 1 hour/day for 40 weeks
75 GP	Physical Fitness: Fitness activities including stretching, aerobics and calisthenics will encourage the students in the After School Program to develop healthy habits and improve over-all fitness. Information on healthy eating habits will also be provided. We		5 times per week for 30 min/day for 40 weeks

# of Participants: <i>General Population and Children with Disabilities</i>	After-School Activities/ Service Name & Description <i>Specify site, age, and other differences and adaptations for children with disabilities when applicable</i>	Site or Group Comment/ Variance	Frequency, Intensity and Duration
	will utilize the "Operation FitKids" curriculum provided by the American Council on Exercise under the direction of the Recreation Coordinator.		
75 GP	Computer Literacy: Program participants will receive instruction in age-appropriate computer skills to improve computer literacy. Computer instruction will include basic computer skills such as word processing, spreadsheets and presentations leading up instruction in creating and maintaining a web page. These activities will be provided by the Computer Instructor.		1 time per week for 1 hour/day for 40 weeks
75 GP	Recreational Activities: After School Program students will participate in sports activities including basketball, volleyball, tennis, soccer and flag football according to the sport's season. In addition, general recreational activities such as dodge ball and kick ball as well as indoor recreational activities such as ping pong, foosball, chess and checkers will be available.		5 times per week for 1 hour/day for 40 weeks

Provider will ensure that all children and youth have a snack every day during the After School Program.

4. Performance Measures

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

After-School Outcomes Table			
Outcomes	Outcome Indicators	Data Source/ Measurement Tool	Data Collection & Management
Improve academic skills and literacy	85% of GP participants improve oral reading skills	1 Minute Oral Reading Fluency	Cutler Ridge Park staff, directed by the Outreach Coordinator, will administer pre, mid and post tests; Administrative Assistant will enter data into data system and provide data to the Director for reporting and analysis.
Improve physical health and fitness	85% of GP participants improve fitness performance	Shuttle Run	Cutler Ridge Park staff under the direction of the Recreation Coordinator will administer pre and post tests and provide data to the Director for reporting and analysis.

After-School Outcomes Table			
Outcomes	Outcome Indicators	Data Source/ Measurement Tool	Data Collection & Management
Improved Computer Skills	85% of the After School Program participants will show an improvement in their computer skills	Computer Literacy Assessment Test	The Computer Instructor will administer pre and post tests and provide data to the Director for reporting and analysis.

During the after-school program, all participants will be pre-tested within two weeks of enrollment, regardless of when enrollment occurs. Mid-tests for reading will be administered to all participants in attendance in December before the holiday recess, and all participants in attendance in the After School Program in May will be post-tested during the last two weeks of the after-school program.

Pre- and post-test data will be reported as outlined in Attachment C.

5. Staff Qualifications:

Staffing Plan must EXACTLY match the staff, volunteers and sub-contractors listed in the budget

# & Status(FT/PT) Indicate if counted in child/staff ratio below: Y or N		Position	Qualifications	Duties
After School	Summer 2009	Specify if Staff, Volunteer or Subcontractor	Required Education & Experience	
1 FT Ratio :N	N/A Ratio: N	Parks and Recreation Director (in kind)	BS in Recreation and 10 years experience or equivalent combination of education and experience	Responsible for overseeing parks, pool, recreation programs, special events and landscape maintenance contracts, writing and coordinating RFP's and park agreements, grants writing and coordination.
2 FT Ratio: Y	N/A Ratio:	Recreation Coordinator (in kind)	BS in Sports administration and 5 years experience or equivalent combination of education and experience	Plans, promotes, organizes and supervises the programming of athletic leagues, tournaments, games, recreational programs, activities and special events.
2 PT Ratio: Y	N/A	Park Service Aide	High School Diploma or equivalent	Responsible for the safety and supervision of program participants
3 PT Ratio: Y	N/A	Park Service Aide (in kind)	High School Diploma or equivalent	Responsible for the safety and supervision of program participants
1 FT Ratio: N	N/A Ratio:	Administrative Assistant	High School Diploma or equivalent with a minimum of 3 years experience	Collect and input client data including enrollment forms, attendance, test results, etc.
1 FT Ratio: Y	N/A Ratio:	Outreach Worker	Bachelors' Degree or comparable experience	To recruit youth, additional resources/partners and to work on community based projects for youth. Maintain forms and reports for program. Attend

# & Status(FT/PT) <i>Indicate if counted in child/staff ratio below: Y or N</i>		Position	Qualifications	Duties
After School	Summer 2009	Specify if Staff, Volunteer or Subcontractor	Required Education & Experience	
				monthly meetings and TCT trainings.
1 PT Ratio: N	N/A Ratio:	Computer Instructor (sub-contractor)	2 years College or Technical Experience in Computer Design/Build, Graphics. Experience working with youth and/or after school programs preferred.	Responsible for the implementation, organization and coordination of all aspects of the computer literacy program.

6. Ratios:

School Year 2008/2009: 12 Children per 1 Direct Service Staff
 School Year for Children with Disabilities 2008/2009: N/A Children per 1 Direct Service Staff

Summer 2009: N/A Children per 1 Direct Service Staff
 Summer for Children with Disabilities 2009: N/A Children per 1 Direct Service Staff
 Innovative Summer 2009: N/A Children per 1 Direct Service Staff

7. Best practices

Provider shall perform its duties, obligations, and services under this Contract in a skillful and respectful manner. The quality of Provider's performance and all interim and final product(s) provided to or on behalf of The Trust shall be comparable to local, state and national best practice standards.

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**CONTRACT NO. ###-###
BETWEEN THE CHILDREN'S TRUST
AND [AGENCY NAME]
FOR [OOS, P&P, etc.] 2008-09**

THIS CONTRACT, made and entered into by and between The Children's Trust whose address is 3150 S.W. 3rd Avenue, 8th Floor, Miami, Florida 33129 and [Agency Name] hereinafter referred to as the "Provider" whose address is _____, Miami, Florida 331__, states the conditions and covenants for the rendering of services to children and families (hereafter referred to as "Services") for The Children's Trust.

In consideration of the mutual covenants herein, The Children's Trust and the Provider (sometimes hereafter referred to as "**Parties**") agree as follows:

A. EFFECTIVE TERM

The effective term of this Contract shall be from _____ through _____, subject to funding availability and Provider's performance as expressly provided below.

B. TERMS OF RENEWAL, if applicable

In the sole discretion of The Children's Trust this Contract may be renewed twice and with the acknowledgement of the Provider. Renewal may not exceed a term equal to the term of the initial contract, for a total maximum of three (3) terms. In considering the exercise of any contract renewal, The Children's Trust in its sole discretion will consider, but is not limited to, the following:

1. Provider meeting the performance requirements specified in this Contract.
2. Continued demonstrated and documented need for the services funded;
3. Program performance and fiscal compliance by the Provider that is deemed satisfactory in The Children's Trust's sole discretion; and
4. The availability of funds from The Children's Trust. The Children's Trust is prohibited from creating obligations in anticipation of budgeted revenues from one fiscal year to another without year to year extension provisions in the contract.
5. If applicable, The Children's Trust in its sole discretion will initiate re-negotiation of this Contract before the contract term expires.

C. SCOPE OF SERVICES

1. Provider agrees to render services in accordance with the Scope of Services, Attachment A, to this Contract. Provider shall implement the Scope of Services, Attachment A, in a manner deemed satisfactory to The Children's Trust. Any modification to the Scope of Services shall not be effective until approved, in writing, by The Children's Trust and the Provider.
2. Provider agrees that all funding provided by The Children's Trust, pursuant to this Contract will be used exclusively for Services in and for the benefit of Miami-Dade County residents.

D. TOTAL FUNDING

Subject to the availability of funds, the maximum amount payable for Services rendered under this Contract shall not exceed \$[dollar amount]. The Parties agree that should available funding to The Children's Trust be reduced, the amount payable under this Contract will be proportionately reduced at the sole option of The Children's Trust, with a proportionate reduction in the Services. Provider agrees to adhere to the Budget and Method of Payment outlined in Attachment B to this Contract.

E. FISCAL MANAGEMENT

1. Double Payments

Provider costs or earnings claimed under this Contract may not also be claimed under another contract or grant from The Children's Trust or, unless such claim is denied by The Children's Trust, from any other agency. Any claim for double payment by Provider shall be a material breach of this Contract.

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2. No Supplanting of Existing Public Funds

The Children's Trust funding may not be used by any provider as a substitute for existing resources or for resources that would otherwise be available for children's services, or to replace funding previously provided by and currently available from local and state funding sources for the same purpose. Government agencies must certify that they have maintained their previous funding level when applying for additional funding from The Children's Trust. A violation of this section shall be considered a material breach of this Contract.

3. Use of Cost Allocation Methodology

Provider attests that no other reimbursement is available or used for invoiced Services unless expressly authorized in writing by The Children's Trust. Provider shall develop and maintain a cost allocation methodology and a copy shall be submitted to The Children's Trust.

4. Capital Equipment

Capital equipment is included in the definition of "property" under Florida Statutes, Chapter 274, and the Florida Administrative Code, Section 69I-73.001, and is defined for purposes of this Contract as individual items with a value of \$1,000 or greater which have a life expectancy of more than one year. Capital equipment purchased with Trust funds by Provider become assets of The Children's Trust; are intended for The Children's Trust funded programs; are owned by The Children's Trust; and must be tagged at the time of purchase as an asset of The Children's Trust. The Children's Trust will work with Provider to tag the asset and receive all information regarding the capital equipment. Provider must maintain a record of any capital equipment purchased with funds provided by The Children's Trust. When Provider is no longer funded by The Children's Trust, the equipment will be returned to The Children's Trust for use by another funded program unless it is fully depreciated. Provider must initiate return of such capital equipment to The Children's Trust. Ownership of capital equipment will be transferred to Provider and removed from The Children's Trust's fixed asset system if the capital equipment is fully depreciated and in the possession of Provider unless The Children's Trust has approved the retainage of any fees collected by Provider.

5. Assignments and Subcontracts

Neither Provider nor The Children's Trust shall assign this Contract to another party. Provider shall not subcontract any Services contemplated under this Contract without prior written approval of The Children's Trust. Provider shall incorporate appropriate language from The Children's Trust contract into its subcontract and shall require that all subcontractors providing services shall be governed by the terms and conditions of this contract. All sub-contracted providers must agree to be monitored by or on behalf of The Children's Trust in the same manner as Provider under the terms of this contract.

Provider shall be responsible for all services performed and all expenses incurred with this Contract, including services provided and expenses incurred by any and all subcontractors. It is understood by Provider that The Children's Trust shall not be liable to a subcontractor for any expenses or liabilities incurred under any subcontract and Provider shall be solely liable under the subcontract. Provider agrees, at Provider's sole expense, to hold harmless and defend The Children's Trust against any such claims, demands or actions related to any subcontract.

In no event shall The Children's Trust directly provide funds to any subcontractor. All payments to any authorized subcontractor shall be paid directly by Provider to the subcontractor.

6. Religious Purposes

Organizations and their faith-based community partners shall not use funds provided under this Contract to support inherently religious activities, such as religious instruction, worship, or proselytization.

7. Lobbying

Provider shall not use any funds provided under this Contract or any other funds provided by The Children's Trust for lobbying any federal, state or local government or legislators.

8. Adverse Action or Proceeding

Provider shall not utilize the funds provided under this Contract or any other funds provided by The Children's Trust to retain any legal counsel for any action or proceeding against The Children's Trust or any of its agents, employees or officials.

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F. INDEMNIFICATION BY PROVIDER

1. Government Entity

Subject to the limitations and sovereign immunity provisions of Florida Statute, Sec. 768.28, Provider shall indemnify and hold harmless The Children's Trust and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Contract by Provider or its employees, agents, servants, partners, principals or subcontractors.

Subject to the limitations and sovereign immunity provisions of Florida Statutes, Sec. 768.28, Provider shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of The Children's Trust, where applicable, including appellate proceedings, and shall pay all costs, judgments, and reasonable attorney's fees which may issue thereon.

2. All Other Providers

Provider shall indemnify and hold harmless The Children's Trust and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including reasonable attorneys' fees and costs of defense, which The Children's Trust or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of action or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Contract by the Provider or its employees, agents, servants, partners, principals or sub contractors, except to the extent arising from The Children's Trust's willful or wanton acts or omissions, or those of its employees or principals.

To the extent arising from a liability that is covered by the foregoing indemnification, Provider shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of The Children's Trust, where applicable, including appellate proceedings, and shall pay all costs, judgments, and reasonable attorney's fees which may issue thereon. Provider expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by Provider shall in no way limit the responsibility to indemnify, keep and save harmless and defend The Children's Trust or its officers, employees, agents as herein provided.

The provisions of this section on indemnification shall survive the expiration or termination of this Contract.

G. COPYRIGHTS AND RIGHT TO DATA/MATERIALS

Where activities supported by this Contract produce original writing, data, sound recordings, pictorial reproductions, drawings or other graphic representations and works of similar nature, The Children's Trust has a license to reasonably use, duplicate and disclose such materials in whole or in part in a manner consistent with the purposes and terms of this Contract, and to have others acting on behalf of The Children's Trust to do so, provided that such use does not compromise the validity of any copyright, trademark or patent. If the data/materials so developed are subject to copyright, trademark or patent, legal title and every right, interest, claim or demand of any kind in and to any patent, trademark or copyright, or application for the same, will vest in the Provider or with any applicable third party who has licensed or otherwise permitted the Provider to use the same. Provider agrees to allow The Children's Trust and others acting on behalf of The Children's Trust to have reasonable use of the same consistent with the purposes and terms of this Contract, at no cost to The Children's Trust, provided that such use does not compromise the validity of such copyright, trademark or patent.

H. OWNERSHIP AND LICENSING OF INTELLECTUAL PROPERTY RIGHTS

The Parties understand that this Contract is subject to the provisions, limitations and exceptions of Chapter 119, Florida Statutes, regarding public records. Accordingly to the extent permitted by Chapter 119, Florida Statutes, the Provider retains sole ownership of intellectual property developed under this Contract. It is the responsibility of the Provider to pay all required licensing fees if intellectual property owned by other parties is

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incorporated by the Provider into the services required under this Contract. Such licensing should be in the exclusive name of the Provider. Payment for any such licensing fees or costs arising from the use of others' intellectual property rights must be made by the Provider from funds available under this Contract

As applicable under Fla. Stat. Section 768.28, and to the extent permitted by and within the limitations of Fla. Stat. Section 768.28, the Parties shall indemnify and hold each other harmless from liability of any nature or kind, including costs and expenses for or on account of third party allegations that use of any intellectual property owned by the third party and provided, manufactured or used by the indemnifying Party in the performance of this Contract violates the intellectual property rights of that third party.

I. BREACH OF CONTRACT AND REMEDIES

1. Breach

A material breach by the Provider shall have occurred under this Contract if the Provider through action or omission causes any of the following:

- a. Fails to provide the Services outlined in the scope of services (Attachment A) within the effective term of this Contract;
- b. Ineffectively or improperly uses The Children's Trust funds allocated under this Contract;
- c. Does not furnish the certificates of insurance required by this Contract or as determined by The Children's Trust;
- d. Does not meet or satisfy the conditions of award required by this Contract;
- e. Fails to submit or submits incorrect or incomplete proof of expenditures to support disbursement requests or advance funding disbursements, or fails to submit or submits incomplete or incorrect detailed reports of requests for payment, expenditures or final expenditure reports;
- f. Does not submit or submits incomplete or incorrect required reports pursuant to the scope of Services in this Contract;
- g. Refuses to allow The Children's Trust access to records or refuses to allow The Children's Trust to monitor, evaluate and review the Provider's program, including required client data;
- h. Fails to comply with child abuse and incident reporting requirements;
- i. Attempts to meet its obligations under this Contract through fraud, misrepresentation or material misstatement;
- j. Fails to correct deficiencies found during a monitoring, evaluation or review within a specified reasonable time;
- k. Fails to meet the terms and conditions of any obligation or repayment schedule to The Children's Trust or any of its agencies;
- l. Fails to maintain the confidentiality of client files, pursuant to Florida and federal laws;
- m. Fails to fulfill in a timely and proper manner any and all of its obligations, covenants, contracts and stipulations in this Contract;
- n. Fails to comply with Background Screening, as required under this Contract.

Waiver of breach of any provisions of this Contract shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Contract.

2. Remedies

If the Provider breaches this Contract, and fails to cure any such breach within thirty (30) days after receiving written notice from The Children's Trust identifying the breach, The Children's Trust may pursue any of the following remedies:

The Children's Trust may, at its sole discretion, enter into a written performance improvement plan with the Provider to cure any breach of this Contract as may be permissible under state or federal law. Any such remedial plan shall be an addition to this Contract and shall not affect or render void or voidable any other provision contained in this Contract, costs, and any judgments entered by a court of appropriate jurisdiction.

The Children's Trust may suspend payment in whole or in part under this Contract by providing written notice to the Provider of such suspension and specifying the effective date thereof, at least five business days before the effective date of suspension. On the effective date of suspension the Provider may (but shall not be obligated to) continue to perform the services provided for in this Contract, but the Provider shall promptly cease using The Children's Trust's logo and any other reference to The Children's Trust in connection with such services. All payments to the Provider as of this date shall

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cease, except that The Children's Trust shall continue to review and pay requests for payment for services that were performed and/or for deliverables that were substantially completed **at the sole discretion of The Children's Trust**, prior to the effective date of such suspension. If payments are suspended, The Children's Trust must specify in writing the actions that must be taken by the Provider as condition precedent to resumption of payments and shall specify a reasonable date for compliance. The Children's Trust may also suspend any payments in whole or in part under any other contracts entered into between The Children's Trust and the Provider by providing separate written notice to the Provider of each such suspension and specifying the effective date thereof, which must be at least five business days before the effective date of such suspension, in any event The Children's Trust shall continue to review and pay requests for payment as provided for in such other contracts for services that were performed and/or for deliverables that were substantially completed at the sole discretion of The Children's Trust prior to the effective date of such suspension. The Provider shall be responsible for all direct and indirect costs associated with such termination including reasonable attorney's fees.

The Children's Trust may terminate this Contract by giving written notice to the Provider of such termination and specifying the date thereof at least five (5) business days before the effective date of termination. In the event of such termination, The Children's Trust may (a) request the Provider to deliver to The Children's Trust clear and legible copies of all finished or unfinished documents, studies, surveys, reports prepared and secured by the Provider with Trust funds under this Contract subject to the rights of the Provider thereto as provided for in Paragraphs G and H above; (b) seek reimbursement of any Trust funds which have been improperly paid to the Provider under this Contract; (c) terminate further payment of Trust funds to the Provider under this Contract, except that The Children's Trust shall continue to review and pay requests for payment for services that were performed and/or deliverables that were substantially completed at the sole discretion of The Children's Trust prior to the effective date of such termination; **and/or** (d) terminate or cancel any other contracts entered into between The Children's Trust and the Provider by providing separate written notice to the Provider of each such termination and specifying the effective date thereof, which must be at least five business days before the effective date of such termination, in which event The Children's Trust shall continue to review and pay requests for payment as provided for in such other contracts for services that were performed and/or for deliverables that were substantially completed at the sole discretion of The Children's Trust prior to the effective date of such termination. The Provider shall be responsible for all direct and indirect costs associated with such termination, including reasonable attorney's fees.

The Children's Trust may seek enforcement of this Contract including but not limited to filing an action with a court of appropriate jurisdiction. The Provider shall be responsible for all direct and indirect costs associated with such enforcement, including reasonable attorney's fees, costs, and any judgments entered by a court of appropriate jurisdiction, **including all direct and indirect costs and reasonable attorneys' fees through conclusion of all appellate proceedings, and including any final settlement.**

The provisions of this Paragraph I shall survive the expiration or termination of this Contract.

J. INSURANCE REQUIREMENTS

Except as required by Florida law for government entities, Provider shall provide to The Children's Trust **within 30 days of contract execution**, Certificates of Insurance or, as applicable, a letter of self-insurance indicating coverage applicable to a Florida municipal corporation or written verification (binders) required under this section or as determined by The Children's Trust. **The Children's Trust shall be named as an additional insured as their interest may appear** on all applicable policies. **As a condition of the execution of the contract**, The Children's Trust **will** not disburse any funds until The Children's Trust is provided with the necessary Certificates of Insurance, letter of self-insurance or written verification (binders) and The Children's Trust has approved such documents. The Children's Trust shall have the rights to review said certificates or letters and if applicable, reasonably require updating of types and amounts of coverage provided upon any renewal of this Contract.

Provider will carry insurance policies in the amounts and with the requirements indicated below:

- 1. Worker's Compensation Insurance for all employees and non-incorporated independent contractors and or consultants of the Provider, as required by Florida Statutes, Chapter 440. The employer's liability portion will be \$500,000/\$500,000/\$500,000 as a minimum.**

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2. Comprehensive General Liability insurance in an amount not less than \$500,000 combined single limit per occurrence and \$1,000,000 aggregate in a policy year. Deductibles exceeding \$ 1,000 are discouraged, unless Provider can provide financials to support a higher deductible. The Children's Trust must be designated and shown as an "Additional Insured as Their Interest May Appear" with respects to this coverage. The general liability policy must contain coverage for the following:
 - a) Bodily Injury;
 - b) Property Damage;
 - c) No exclusions for Abuse, Molestation or Corporal Punishment;
 - d) No endorsement for premises only operations.
3. If applicable, Special Events Coverage, as determined by The Children's Trust. The liability coverage will be the same as the coverage and limits required for comprehensive general liability and The Children's Trust must be designated and shown as "Additional Insured as Their Interest May Appear." Special Events policies are for short term functions and not meant to replace annual liability policies. The coverage is for the day or days of the event and must provide coverage the day prior and the day following the event.
4. Automobile liability coverage for all owned and/or leased vehicles of the Provider and non-owned coverage for their employees and /or sub-contractors transporting program participants. The amount of coverage is \$1,000,000 combined single limit per occurrence for bodily injury and property damage. The Children's Trust must be designated and shown as an "Additional Insured as Their Interest May Appear" with respects to this coverage. Coverage can be purchased as non-owned without hired auto coverage, but rental cars can not be used in the course of the Provider's regular operations. Rental cars may be used for travel to attend conferences outside the tri-county area.
5. Automobile liability coverage for all owned and/or leased vehicles of the Provider and non-owned coverage for their employees and/or sub-contractors not transporting program participants. The minimum amount of coverage is \$300,000 combined single limit per occurrence for bodily injury and property damage. The Children's Trust must be designated and shown as an "Additional Insured as Their Interest May Appear" with respects to this coverage. Coverage can be purchased as non-owned without hired auto coverage, but rental cars can not be used in the course of the Provider's regular operations. Rental cars may be used for travel to attend conferences outside the tri-county area.
6. If applicable, Professional Liability insurance, as determined by The Children's Trust, with coverage amounts determined by The Children's Trust but not less than \$250,000 per claim and in the aggregate. Defense costs may be inside the limits of liability and the policy can be written on claims made form. The Children's Trust is not required to be named as an Additional Insured.
7. If applicable, Proof of Property Coverage is required when the Provider has capital equipment paid for by The Children's Trust and said capital equipment is under the care custody and control of the Provider. The Children's Trust must be shown on the evidence of property coverage as a Loss Payee.

Certificate Holder must read:

The Children's Trust
3150 SW 3rd Avenue, 8th Floor
Miami, Florida 33129

Classification and Rating

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as the financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the reasonable approval of The Children's Trust's Risk Management Division, or The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

The Provider shall notify The Children's Trust, in writing, of any material changes in insurance coverage, including, but not limited, to any renewals of existing insurance policies, not later than thirty (30) days prior to the effective date except for ten (10) days for lack of payment changes.

In the event of any change in the Provider's Scope of Services, Attachment A, The Children's Trust may

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increase, waive or modify, in writing any of the foregoing insurance requirements. Any request by a Provider to decrease, waive or modify any of the foregoing insurance requirements shall be approved, in writing, by The Children's Trust prior to any such decrease, waiver or modification.

In the event that an insurance policy is canceled during the effective period of this Contract, The Children's Trust shall withhold all payments from the Provider until a new Certificate of Insurance or written verification (binders) of insurance required under this section is submitted and approved by The Children's Trust. The new insurance policy shall cover the time period commencing from the date of cancellation of the prior insurance policy.

The Children's Trust may require the Provider to furnish additional and different insurance coverage, or both, as may be required from time to time under applicable federal or state laws. Provision of insurance by Provider, in no instance, shall be deemed to be a release, limitation, or waiver of any claim, cause of action or assessment that The Children's Trust may have against the Provider for any liability of any nature related to performance under this Contract or otherwise.

All insurance required hereunder may be maintained by the Provider pursuant to a master or blanket policy or policies of insurance.

K. PROOF OF TAX STATUS

Provider is required to keep on file the following documentation for review by The Children's Trust. The Internal Revenue Service (I.R.S.) tax status determination letter;
The most recent (two years) I.R.S. form 990 or applicable tax return filing within six (6) months after the Provider's fiscal year end or other appropriate filing period permitted by law;
If required by applicable law to be filed by the Provider, IRS 941 - quarterly federal tax return reports within thirty-five (35) calendar days after the quarter ends and if the 941 reflects a tax liability, proof of payment must be submitted within sixty (60) calendar days after the quarter ends.

L. NOTICES

All notices pursuant to this Contract shall be in writing and sent by certified mail to the addresses for each Party appearing on the first page of this Contract, and in the case of notices to **The Children's Trust**, marked to the attention of its President and CEO. It is each Party's responsibility to advise the other Party in writing of any changes in name, address and/or telephone number.

M. AUTONOMY

Both Parties agree that this Contract recognizes the autonomy of, and stipulates or implies no affiliation between, the contracting parties. It is expressly understood and intended that Provider is only a recipient of funding support and is not an agent or instrumentality of The Children's Trust, and that Provider's agents and employees are not agents or employees of The Children's Trust.

N. RECORDS, REPORTS, AUDITS AND MONITORING

1. Accounting records

Provider shall keep accounting records which conform to generally accepted accounting principles. All such records will be retained by Provider for not less than **five** years beyond the last date that all applicable terms of this Contract have been complied with and final payment has been received and appropriate audits have been submitted to and accepted by the appropriate entity. However, if any audit, claim, litigation, negotiation or other action involving this Contract or Modification hereto has commenced before the expiration of the retention period, the records shall be retained until completion of the action and resolution of all issues which arise from it or until the end of the regular retention period, which ever is later.

2. Financial audit

Within 180 days of the close of its fiscal year, Provider agrees to submit to The Children's Trust an Annual Financial Audit performed by an independent audit firm of all its corporate activities and any accompanying management letter(s) or report(s) on other matters related to internal control, for each year during which this Contract remains in force and until all funds expended from this Contract have been audited. This audit

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shall be conducted in accordance with auditing standards generally accepted in the United States of America and standards contained in the Government Auditing Standards issued by the Comptroller General of the United States.

If Provider receives a combined total of \$300,000 or more from The Children's Trust from this or any other The Children's Trust contract, related to the fiscal year under audit, the Provider agrees to have a program-specific audit relating to The Children's Trust contracts, in addition to the annual financial audit of the Provider's entire organization. This program-specific audit is to encompass an audit of The Children's Trust contract amounts and requires:

- Submission of: (a) schedule of total expenditures, reflecting expenditures during the audit period for each The Children's Trust contract by contract number, (b) summary of schedule of prior audit findings, (c) disclosure of any significant finding(s) relating to The Children's Trust contract(s), (d) disclosure of all questioned costs and liabilities due to The Children's Trust, with a reference to the contract number involved, and (e) a recommendation for a corrective action plan on any finding;
- Report whether the schedule of expenditure(s) is fairly stated;
- Provide notes to the schedule of expenditures that describe the significant accounting policies used in preparing the schedule;
- Report whether contractual matching requirements were met, if applicable;
- Report whether the provider has internal controls in place to provide reasonable assurance of compliance with The Children's Trust applicable contractual requirements and on the reliability of financial operations. Format of report is provided in **Attachment D**.

A provider that does not meet the program-specific audit threshold requirement of a combined total of \$300,000 or more from The Children's Trust, in the fiscal year being audited, will be exempt from the program-specific audit requirement in the fiscal year that the audit threshold is not met.

Providers that are required to have a single audit conducted under OMB Circular A-133, Audit of States, Local Government and Non-Profit Organizations or the Florida Single Audit Act, Florida Statutes 215.97 agree to submit the schedule of expenditures pertaining to awards, summary schedule of prior audit findings, applicable auditor's reports and the corrective action plan when the schedule of findings and questioned costs prepared by the independent auditor discloses audit findings. In the event that the independent auditor does not disclose audit findings, Provider shall provide written notification to The Children's Trust that an audit of Provider was conducted in accordance with applicable laws and regulations and that the findings and questioned costs disclosed no audit findings related to this Contract; and, that the summary schedule of prior audit findings did not report on the status of any audit findings relating to awards that The Children's Trust provided.

Audit extensions may be granted in writing by The Children's Trust, after proper approval has been obtained from The Children's Trust's Finance Department, upon receipt in writing of such request with appropriate justification by the Provider.

3. Access to records

The Children's Trust reserves the right to require Provider to submit to an audit by an auditor of The Children's Trust's choosing at The Children's Trust's expense. Provider shall provide access to all of its records which relate to this Contract at its place of business during regular business hours. Provider agrees to provide such assistance as may be necessary to facilitate their review or audit by The Children's Trust to insure compliance with applicable accounting and financial standards, including access by The Children's Trust or its designee, to Provider's independent auditor's working papers for complying with federal, state or local requirements.

4. Monitoring

Provider agrees to permit The Children's Trust personnel or contracted agents to perform random scheduled and/or unscheduled monitorings, reviews, and evaluations of the program which is the subject of this Contract including any subcontracts under this Contract using The Children's Trust approved monitoring tools. The Children's Trust or contracted agents shall monitor both fiscal/administrative and programmatic compliance with all the terms and conditions of the Contract. Provider shall permit The Children's Trust or contracted agents to conduct site visits, client interviews, client assessment surveys, fiscal/administrative review and other techniques deemed reasonably necessary in The Children's Trust's sole discretion to fulfill the monitoring function. A report of monitoring findings will be delivered to

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Provider and Provider will rectify all deficiencies cited within the period of time specified in the report.

5. Client Records

Pursuant to Florida Statute 119.071(5), The Children's Trust collects the social security numbers of child participants of funded programs and services for the following purposes: (a) to research, track and measure the impact of The Children's Trust funded programs and services in an effort to maintain and improve such programs and services for the future (individual identifying information will not be disclosed); (b) to identify and match individuals and data within and among various systems and other agencies for research purposes. The Children's Trust does not collect social security numbers for adult participants.

Provider shall maintain a separate file for each child/family served. This file shall include all pertinent information regarding program enrollment and participation. At a minimum, the file will contain enrollment information (including parent registration consents and child demographics), service plans, outcome measures (as set forth in Attachment A), and notes documenting referrals, special needs, or incident reports. These files shall be subject to the audit and inspection requirements under this Contract, subject to applicable confidentiality requirements. All such records will be retained by the Provider for not less than five calendar years after the participant is no longer enrolled. Provider agrees to comply with all applicable state and federal laws on privacy and confidentiality.

6. Internal Documentation/Records Retention

Provider agrees to maintain and provide for inspection to The Children's Trust, during regular business hours the following as may be applicable, subject to applicable confidentiality requirements: (1) personnel files of employees which include hiring records, background screening results, job descriptions, and evaluation procedures; (2) authorized time sheets, records, and attendance sheets to document the staff time billed to provide Services pursuant to this Contract; (3) daily activity logs and monthly calendars of the provision of Services pursuant to this Contract; (4) training modules; (5) pre and post session questionnaires; (6) participant consent and information release forms; (7) agency policies and procedures; and (8) such other information related to Service provision as described in Attachment A; all upon request by The Children's Trust. Provider shall retain all records for not less than five years beyond the last date that all applicable terms of this Contract have been complied with and final payment has been received, and appropriate audits have been submitted to and accepted by the appropriate entity.

7. Confidentiality

Provider and The Children's Trust understand that during the course of performing the Services hereunder, each party may have access to certain confidential and proprietary information and materials of the other party in order to further performance of the Services. The Parties shall protect confidential information and comply with applicable federal and state laws on confidentiality to prevent unauthorized use, dissemination or publication of confidential information as each party uses to protect its own confidential information in a like manner. The Parties shall not disclose the confidential information to any third party (except that such information may be disclosed to such Party's attorneys), or to any employee of such Party who does not have a need to know such information, which need is related to performance of a responsibility hereunder. However, this Contract imposes no obligation upon the Parties with respect to confidential information which (a) was lawfully known to the receiving party before receipt from the other, (b) is or becomes a matter of public knowledge through no fault of the receiving party, (c) is rightfully received by the receiving party from a third party without restriction on disclosure, (d) is independently developed by or for that party, (e) is disclosed under operation of law, (f) is disclosed by the receiving party with the other party's prior written approval or (g) is subject to Chapter 119 of the Florida Statutes or is otherwise required to be disclosed by law. The confidentiality provision of this Contract shall remain in full force and effect after the termination of this Contract.

8. Security Obligation

Provider shall maintain an appropriate level of data security for the information Provider is collecting or using in the performance of this Contract. This includes, but is not limited to, approving and tracking all Provider employees who request system or information access and ensuring that user access has been removed from all terminated employees of Provider.

O. MODIFICATIONS

Any alterations, variations, modifications, extensions or waivers of provisions of this Contract including but not limited to amount payable and effective term shall only be valid when they have been reduced to writing, duly approved and signed by both Parties.

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P. GOVERNING LAW & VENUE

This Contract shall be interpreted and construed in accordance with and governed by the laws of the State of Florida without regard to its conflicts of laws provisions. Any controversies or legal problems arising out of the terms of this Contract and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the state courts of the Eleventh Judicial Circuit, in and for, Miami-Dade County, Florida.

Q. EMPLOYEE BACKGROUND SCREENING

In accordance with Sections 943.0542, 984.01, Chapter 435, 402, 39.001, and 1012.465 Florida Statutes, as applicable, employees, volunteers and subcontracted personnel **who work in direct contact with children or who come into direct contact with children must complete** a satisfactory Level 2 background screening. Level 2 Background screenings must be completed through the Florida Department of Law Enforcement (FDLE), VECHS Program. Satisfactory background screening documentation will be accepted for those agencies that already conduct business with either the Department of Children and Families (DCF) or the Department of Juvenile Justice (DJJ) or the Miami Dade **County** Public School System (MDCPS). **A clearance letter from MDCPS Office of Employment Standards indicating the person has successfully completed a Level 2 screening will be accepted.** In addition, an Attestation of Good Moral Character must be completed **annually** for each employee, volunteer, and subcontracted personnel who work in direct contact with children. The Provider shall **re-screen each employee, volunteer and/or subcontractor every five years.**

R. CHILDREN WITH DISABILITIES AND THEIR FAMILIES

Provider understands that The Children's Trust expects Provider to meet the federal standards under the Americans with Disabilities Act. By policy of The Children's Trust, providers must also implement reasonable programmatic accommodations to include children with disabilities and their families, whenever possible. Notwithstanding anything to the contrary, the Provider shall not be required to make any alteration to any public school building or other building or structure which is not owned by the Provider.

S. REGULATORY COMPLIANCE

1. Non-discrimination and Civil Rights

Provider shall not discriminate against an employee, volunteer, or client of the Provider on the basis of race, color, gender, pregnancy, marital status, familial status, sexual orientation, religion, ancestry, national origin, disability, or age, except that programs may target services for specific target groups as may be defined in the competitive solicitation.

Provider shall demonstrate that it has standards, policies, and practices necessary to render services in a manner that respects the worth of the individual and protects and preserves the dignity of people of diverse cultures, classes, races, religions, sexual orientation, and ethnic backgrounds.

Provider agrees to abide by Chapter 11A of the Code of Miami-Dade County ("County Code"), as amended, which prohibits discrimination in employment, housing and public accommodations; Title VII of the Civil Rights Act of 1968, as amended, which prohibits discrimination in employment and public accommodation; the Age Discrimination Act of 1975, 42 U.S.C. Section 6101, as amended, which prohibits discrimination in employment because of age; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended, which prohibits discrimination on the basis of disability; and the Americans with Disabilities Act, 42 U.S.C. §12101 et seq., which prohibits discrimination in employment and public accommodations because of disability.

It is expressly understood that upon receipt of evidence of discrimination under any of these laws, The Children's Trust shall have the right to terminate all or any portion of this Contract. If Provider or any owner, subsidiary, or other firm affiliated with or related to Provider, is found by the responsible enforcement agency or the courts to be in violation of these laws, said violation will be a material breach of this Contract and The Children's Trust will conduct no further business with Provider.

2. Public Entities Crime Act

Provider will not violate the Public Entities Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a Provider, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to The Children's Trust, may not submit a bid on a contract with The Children's Trust for the construction or repair of a public building or public work, may not submit bids on leases of real property to The Children's Trust, may not be awarded or

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perform work as a Provider supplier, sub Provider, or consultant under a contract with The Children's Trust, and may not transact any business with The Children's Trust in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in cancellation of this Contract and recovery of all monies paid hereto, and may result in debarment from The Children's Trust's competitive procurement activities.

3. Conflict of Interest

Provider represents that the execution of this Contract does not violate Miami Dade County's Conflict of Interest and Code of Ethics Ordinance, www.miamidade.gov/ethics/library/Ethics-Brochure-2005.pdf and Florida Statutes §112 as amended, which are incorporated herein by reference as if fully set forth herein. Provider agrees to abide by and be governed by these conflict of interest provisions throughout the course of this Contract and in connection with its obligations hereunder.

4. Compliance with Sarbanes-Oxley

Provider shall comply with the following provisions of the Sarbanes-Oxley Act.

- Provider agrees not to alter, cover up, falsify, or destroy any document that may be relevant to an official investigation.
- Provider agrees not to punish whistleblowers or retaliate against any employee who reports suspected cases of fraud or abuse.

5. Licensing

The Provider shall obtain and maintain in full force and effect during the term of this Contract any and all licenses, certifications, approvals, insurance, permits and accreditations, required by the State of Florida, Miami-Dade County, The Children's Trust or the federal government.

6. Proof of Policies

Provider shall keep on file copies of its policies on non-discrimination, equal opportunity and/or affirmative action, Americans with Disabilities Act, and drug-free workplace.

7. Incident Reporting

Provider shall immediately report knowledge or reasonable suspicion of abuse, neglect, or abandonment of a child, aged person, or disabled adult to the Florida Abuse Hotline on the statewide toll-free telephone number (1-800-96-ABUSE). As required by Chapters 39 and 415, Florida Statutes, this is binding upon both the Provider and its employees.

Provider shall complete an incident report in the event of any serious bodily injury to anyone within the scope of this Contract or arising out of the performance of this Contract. Provider shall provide written notification of the incident together with a copy of the incident report to The Children's Trust within three (3) working days after Provider is informed of such incident. Provider shall provide written notification to The Children's Trust, within seven (7) days, if any legal action which is filed as a result of such an injury.

8. Sexual Harassment

Provider shall complete an incident report in the event a client or employee makes an allegation of sexual harassment, sexual misconduct or sexual assault by a Provider employee arising out of the performance of this Contract and the Provider has knowledge thereof. Provider shall provide written notification to The Children's Trust within three (3) business days after Provider is informed of such an allegation. Provider shall provide written notification to The Children's Trust, within seven (7) business days, if any legal action which is filed as a result of such an alleged incident.

T. CONSENT

Demographic and service information on program participants will be provided to The Children's Trust as part of The Children's Trust's research mission. Provider will ask participants to sign a voluntary Consent to Photograph and for Communications. The form is available in English, Spanish, and Creole and must be downloaded from www.thechildrenstrust.org. All signed Consent forms will be submitted to the Contract Manager, with a copy filed in the participant's record. Any refusal of consent must be properly documented and signed by the parent or legal guardian on the Consent form. Provider will exercise its best efforts to have each program participant's contact information is current and updated upon exiting the program.

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U. PROGRAMMATIC DATA REPORTING

Provider agrees to comply and participate in any data collection reporting, including participant data as required by The Children's Trust and described in **Attachment C** to this contract, Programmatic Data Reporting Requirements, subject to confidentiality requirements. In addition, Provider agrees to furnish The Children's Trust with quarterly program narrative reports in the format to be reasonably specified by The Children's Trust.

V. PUBLICITY

Provider agrees that events funded by this Contract shall recognize The Children's Trust as a funding source. Provider shall ensure that all publicity, public relations, advertisements and signs within its control recognize The Children's Trust for the support of all contracted activities. The use of the official The Children's Trust logo is permissible.

Provider shall use its best efforts ensure that all media representatives, when inquiring with the Provider about the activities funded by this Contract, are informed that The Children's Trust is a funding source. Provider shall distribute a press release announcing that it has been awarded funding by The Children's Trust. Provider shall, if it possesses the appropriate technology, provide a link between the website and The Children's Trust's website.

W. PUBLICATIONS

Provider agrees to supply The Children's Trust, without charge, up to three copies of any publication developed in connection with implementation of programs addressed by this Contract. Such publications will state that the program is supported by The Children's Trust. Provider agrees that The Children's Trust will have use of copyrighted materials developed under this Contract to the extent provided in, and subject to, the provisions of Paragraphs G and H above.

To the extent permitted by the applicable journal or other publication source, Provider shall include The Children's Trust logo and the following paragraph in all materials featuring programs funded by The Children's Trust, including but not limited to newsletters, press releases, brochures, fliers, homepage of websites or any other materials for dissemination to the media or general public.

English:

The (organization) is funded by The Children's Trust. The Children's Trust is a dedicated source of revenue established by voter referendum to improve the lives of children and families in Miami-Dade County.

Spanish:

The (organization) está financiado ("in part" or equivalent translated into Spanish) por El Fidecomiso de los Niños (The Children's Trust). El Fidecomiso de los Niños es una fuente de financiación, establecida por referendum para mejorar las vidas de niños y familias en el Condado de Miami-Dade.

Kreyol:

The (organization) finanse ("in part" or equivalent to be translated into Creole) pa "The Children's Trust". Trust la, se yon sous lajan ke gouvènman amerikin vote an referandom pou ke' li investi byen nan pwogram kap amelyore la Vi Ti Moun ak fanmi yo nan Myami Dade.

Note: In cases where funding by The Children's Trust represents only a percentage of the Provider's overall funding, the above language can be altered to read "The (organization) is funded in part by The Children's Trust..."

X. HEADINGS, USE OF SINGULAR AND GENDER

Paragraph headings are for convenience only and are not intended to expand or restrict the scope or substance of the provisions of this Contract. Wherever used herein, the singular shall include the plural and plural shall include the singular, and pronouns shall be read as masculine, feminine or neuter as the context requires.

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Y. TOTALITY OF CONTRACT/SEVERABILITY OF PROVISIONS

This Contract with its attachments as referenced below contains all the terms and conditions agreed upon by the parties:

Attachment A: Scope of Services

Attachment B: Budget & Method of Payment

Attachment C: Reporting Requirements

Attachment D: Financial Audit and Financial Report Requirements

Attachment E: Performance Improvement Plan, if applicable

No other contract, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or bind any of the parties hereto. If any provision of this Contract is held invalid or void, the remainder of this Contract shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

**[Agency Name]
MIAMI-DADE COUNTY, FLORIDA**

The Children's Trust

By: _____
(Signature of Authorized Representative)

by: _____
Modesto E. Abety, President/CEO

Type or Print Name

Date: _____

Date: _____

Approved as to form and legal sufficiency

County Attorney

Date: _____

This contract is not valid until signed by both parties

ATTACHMENT A:

Scope of Services

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**Attachment A
Scope of Services
Contract No.
Agency name:
Program name:**

1. Program Summary (Limit to 100 words):

2. Target Population (Include numbers in table and a narrative description of participant characteristics, including ages, geography, disabilities, etc.):

Population	Total number of unduplicated participants (describe population below the table)
Children/Youth	
Parents/Primary Caregivers	
Other populations (e.g., staff professionals, general public)	

3. Service Locations:

Site Name	Site Address	Site Phone Number

4. Service Delivery:

TYPE 1 ACTIVITIES (3 or more contacts with participants)

Activities/Service Name & Description (Include frequency, length & duration of sessions, as well as the number of cycles expected to be offered)	Total # unduplicated participants to be served (specify if children/youth, parents or others)	Minimum # participants to be served (guideline is no less than 85% of total)	Expected Dosage: Minimum # of sessions a participant will complete

TYPE 2 ACTIVITIES (less than 3 contacts with participants)

Activities/Service Name & Description (Include frequency, length & duration of sessions)	Total # participants to be served (specify if children/youth, parents or others)	Total # of sessions to be offered by provider across cycles and sites

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TYPE 3 ACTIVITIES (Other deliverables that are not direct services)

Activities Name & Description	Count / Number

5. Performance Measure:

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

Outcomes	Outcome Indicators	Measurement Tool	Timing (when will tools be administered)	Associated Activities (from Service Delivery)*

*More than one activity may be associated with a single outcome; and more than one outcome may be affected by a single activity.

6. Staff Qualifications:

Provider represents that all persons delivering the Services required by this Contract have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and Services set forth in the Scope of Services (Attachment A) and to provide and perform such Services to The Trust’s satisfaction.

# & Status FT/PT	Position (specify staff, volunteer or sub-contractor)	Qualifications: Required, Education & Experience	Duties

7. Best practices

Provider shall perform its duties, obligations, and services under this Contract in a skillful and respectful manner. The quality of Provider’s performance and all interim and final product(s) provided to or on behalf of The Trust shall be comparable to local, state and national best practice standards.

ATTACHMENT B:

**Budget &
Method of Payment**

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**ATTACHMENT B
FISCAL REQUIREMENTS, BUDGET & METHOD OF PAYMENT**

Advance payment requests

The Children's Trust offers advance payments up to 15% of the total contract amount. Advance requests shall be limited to governmental entities and not-for-profit corporations, in accordance with subsection 216.181 (16) (b), F.S. The advance request is to include the amount requested and the justification. Advance payment requests must be submitted using the designated form and must be approved in writing by The Children's Trust's Contract Manager and Chief Financial Officer or their designee(s).

Advanced funds if not used shall be invested by the provider in an insured interest bearing account, in accordance with subsection 216.181 (16) (b), F.S. Interest earned on advanced funds shall be returned to The Children's Trust on a quarterly basis or applied against the amount of the contract owed by The Children's Trust.

Advance payment

Within 60 calendar days of receipt of an advance, Provider shall report the actual expenditures paid by or charged to the advanced funds using the reporting "invoice" form provided by The Children's Trust. If the "invoice" amount is less than the amount advanced, The Children's Trust will deduct the difference from the next applicable monthly payment request. Provider may request, in writing, an extension of the repayment of the advance. A fiscal need must be clearly demonstrated and substantiated by the Provider in order for an extension request to be considered by The Children's Trust.

Budget revisions

Budget revision(s) require prior written approval from the Contract Manager and The Children's Trust's Chief Financial Officer or their designee(s). Request for budget revisions must be submitted to the Contract Manager using the appropriate form, as determined by The Children's Trust. The Provider must request a budget revision to add, delete, and/or modify any line item(s). Budget revisions can not exceed the contracted amount. Budget revisions will be incorporated into the Contract.

Indirect Administrative Costs

In no event shall The Children's Trust fund indirect administrative costs in excess of ten (10%) percent of the total contract award.

Cost Reimbursement Method of Payment

The parties agree that this is a cost reimbursement method of payment contract; the Provider shall be paid in accordance with the approved budget and/or approved budget revision as set forth in this Attachment.

Invoice Requirements

The Provider shall submit an original request for payment, in the format prescribed by The Children's Trust and in accordance with the approved budget or approved budget revision. The request for payment is due on or before the fifteenth (15th) day of the month following the month in which expenditures were incurred (exclusive of legal holidays or weekends). The Children's Trust agrees to reimburse Provider on a monthly billing basis. The Children's Trust reserves the right to request any supporting documentation.

A final request for payment (last payment) from the Provider will be accepted by The Children's Trust up to forty-five (45) days after the expiration of this Contract. If Provider fails to comply, all rights to payment shall be forfeited. If The Children's Trust determines that Provider has been paid funds not in accordance with this Contract, and to which it is not entitled, Provider shall return such funds to The Children's Trust or submit appropriate documentation to support the payment. The Children's Trust shall have the sole discretion in determining if Provider is entitled to such funds in accordance with this Contract and The Children's Trust's

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decision on this matter shall be binding if in accordance with this Contract.

If the Provider fails to serve the number of participants and/or fails to utilize the funds in accordance with the Contract, The Children's Trust may amend the Contract to reduce the amount of dollars. Any delay in amendment by The Children's Trust is not deemed a waiver of The Children's Trust's right to amend or seek reimbursement for under-serving participants in accordance with the Contract.

In order for a request for payment to be deemed proper as defined by the Florida Prompt Payment Act, all requests for payment must comply with the requirements set forth in this Contract and must be submitted on the forms as prescribed by The Children's Trust. Requests for payment and/or documentation returned to Provider for corrections may be cause for delay in receipt of payment. Late submission may result in delay in receipt of payment. The Children's Trust shall pay Provider within thirty (30) calendar days of receipt of Provider's properly submitted Request for Payment and/or other required documentation.

In the event that Provider, its independent auditor or The Children's Trust discovers that an overpayment has been made, Provider shall repay said overpayment within thirty (30) calendar days without prior notification from The Children's Trust.

The Children's Trust shall retain any payments due until all required reports or deliverables are submitted and accepted by The Children's Trust.

Supporting Documentation Requirements

Provider shall keep accurate and complete records of any fees collected, reimbursement, or compensation of any kind received from any client or other third party, for any Service covered by this Contract, and shall make all such records available to The Children's Trust upon request.

The Provider shall maintain records documenting actual expenditures and services provided according to the approved budget and scope of services as required.

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[SUBSTITUTE THIS PAGE WITH THE AGENCY BUDGET]

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[SUBSTITUTE THIS PAGE WITH THE PROGRAM BUDGET]

ATTACHMENT C:

Reporting Requirements

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Attachment C Program /Initiative Programmatic Data Reporting Requirements

The Provider shall submit to The Children's Trust individual participant demographics, attendance, and outcome data, as noted in the Scope of Service (Attachment A). Reporting will include direct submission of information into the electronic web-based reporting application (Data Tracker), as well as standard paper reports, as noted below.

DEMOGRAPHICS, ATTENDANCE and ORAL READING FLUENCY TEST (requires attendance at training and user login)

Scores for the Oral Reading Fluency test and any other required assessment shall be entered in Data Tracker by the fifteenth (15th) day of the month following the end of the month in which the tests were administered, exclusive of legal holidays or weekends.

Programs with 3 or more contacts with the same children and/or parents will enter:

- Participant Demographics (including all the items noted below), shall be entered within seven (7) days of entry into the program. All participant demographics shall be updated on an ongoing basis if and when new information is collected.
- Participant Attendance shall be entered by the fifteenth (15th) day of the month following the end of each month, exclusive of legal holidays or weekends.

Demographics required for child/parent participants with 3 or more contacts:

- Name (last, first, middle initial)
- Parent's name (last, first, middle initial)
- Street Address, City, and Zip Code
- Gender (male, female)
- Date of Birth
- Race (American Indian/Alaska Native, Asian, Black/African American, Pacific Islander, White, Other)
- Ethnicity (Hispanic, Haitian, Other)
- English proficiency (yes/no)
- Additional/Other language(s) spoken (English, Spanish, Haitian Creole, Other)
- Child's Social Security #
- Child's Miami-Dade County Public Schools ID Number
- Child's Current Grade Level
- Child's Current School
- Health Insurance (yes/no)
- Does child have a disability? (yes/no)
- Documentation of disability (Individualized Family Service Plan, Individualized Education Plan, Section 504 Plan, Medical diagnosis, Other)
- If disabled, what type? [Autism Spectrum Disorders, Chronic Medical Condition, Developmental Delay, Emotional and/or Behavioral Disorder, Hearing Impairment (or deaf), Intellectual Disability (or mental retardation), Learning Disability, Physical Disability, Speech/Language Impairment, Visual Impairment (or blind), Other]
- Is participant involved with (Optional Field):
 - Dependency system (e.g., DCF, Our Kids, full case management agencies, dependency & family courts)
 - Delinquency system (e.g., DJJ, Juvenile Services Department, diversion/Civil Citation programs)
- Voluntary Consent Responses (Photography Y/N, Mailing List Y/N, Communication Y/N, and Release & Waiver Y/N)

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OUTCOMES & NARRATIVE REPORTS (Paper Reporting - Excel and Word Documents)

- Outcomes Measurement and Results (Excel spreadsheet reports customized for each program/provider, based on current contract scope of service)—due quarterly
- Quarterly Program Narrative Report (using standard Word document format provided by The Trust) captures a BRIEF report of successes, challenges and supports needed—due quarterly by the 15th of the month following the end of the quarter. In addition, volunteer hours, number of accidents and incidents will be reported.

The provider shall create and/or update annually their agency and program profiles in the Community Resource Directory maintained by Switchboard of Miami to facilitate referrals to Children's Trust-funded services. Evidence that the profile(s) have been created or updated must be provided to the Contract Manager within 30 days of execution of this contract.

Out of School Reporting Due Dates

SCHOOL YEAR 2008-2009

October 15, 2008*

1. Outcome Report (Number of Pre-test conducted) (Excel)
2. Narrative Report (Word)

January 15, 2009*

1. Outcomes Results (Excel)
2. Narrative Report (Word)

April 15, 2009*

1. Outcome Report (Any additional pre or post tests should be reported) (Excel)
2. Narrative (Word)
3. Satisfaction Survey Results (Excel)

July 15, 2009*

1. Outcome Results (Excel)
2. Narrative Report (Word)

SUMMER CAMP 2009

September 15, 2009*

1. Summer Outcome spreadsheet report (Excel)
2. Summer Narrative Report (Word)
3. Satisfaction Survey (Excel)

***If the 15th falls on a weekend/holiday, then reports are due the following business day.**

Programmatic Data Reporting Requirements

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The Provider shall submit to The Children's Trust individual participant demographics, attendance, and outcome data, as noted in the Scope of Service (Attachment A). Reporting will include direct submission of information into the electronic web-based reporting application (Data Tracker), as well as standard paper reports, as noted below.

DEMOGRAPHICS, ATTENDANCE and ORAL READING FLUENCY TEST (requires attendance at training and user login)

Scores for the Oral Reading Fluency test and any other required assessment shall be entered in Data Tracker by the fifteenth (15th) day of the month following the end of the month in which the tests were administered, exclusive of legal holidays or weekends.

Programs with 3 or more contacts with the same children and/or parents will enter:

- Participant Demographics (including all the items noted below), shall be entered within seven (7) days of entry into the program. All participant demographics shall be updated on an ongoing basis if and when new information is collected.
- Participant Attendance shall be entered by the fifteenth (15th) day of the month following the end of each month, exclusive of legal holidays or weekends.

Demographics required for child/parent participants with 3 or more contacts:

- Name (last, first, middle initial)
- Parent's name (last, first, middle initial)
- Street Address, City, and Zip Code
- Gender (male, female)
- Date of Birth
- Race (American Indian/Alaska Native, Asian, Black/African American, Pacific Islander, White, Other)
- Ethnicity (Hispanic, Haitian, Other)
- English proficiency (yes/no)
- Additional/Other language(s) spoken (English, Spanish, Haitian Creole, Other)
- Child's Social Security #
- Child's Miami-Dade County Public Schools ID Number
- Child's Current Grade Level
- Child's Current School
- Health Insurance (yes/no)
- Does child have a disability? (yes/no)
- Documentation of disability (Individualized Family Service Plan, Individualized Education Plan, Section 504 Plan, Medical diagnosis, Other)
- If disabled, what type? [Autism Spectrum Disorders, Chronic Medical Condition, Developmental Delay, Emotional and/or Behavioral Disorder, Hearing Impairment (or deaf), Intellectual Disability (or mental retardation), Learning Disability, Physical Disability, Speech/Language Impairment, Visual Impairment (or blind), Other]
- Is participant involved with (Optional Field):
 - Dependency system (e.g., DCF, Our Kids, full case management agencies, dependency & family courts)
 - Delinquency system (e.g., DJJ, Juvenile Services Department, diversion/Civil Citation programs)
- Voluntary Consent Responses (Photography Y/N, Mailing List Y/N, Communication Y/N, and Release & Waiver Y/N)

OUTCOMES & NARRATIVE REPORTS (Paper Reporting - Excel and Word Documents)

- Outcomes Measurement and Results (Excel spreadsheet reports customized for each

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program/provider, based on current contract scope of service)—due quarterly

- Quarterly Program Narrative Report (using standard Word document format provided by The Trust) captures a BRIEF report of successes, challenges and supports needed—due quarterly by the 15th of the month following the end of the quarter. In addition, volunteer hours, number of accidents and incidents will be reported.

The provider shall create and/or update annually their agency and program profiles in the Community Resource Directory maintained by Switchboard of Miami to facilitate referrals to Children's Trust-funded services. Evidence that the profile(s) have been created or updated must be provided to the Contract Manager within 30 days of execution of this contract.

Out of School Reporting Due Dates

SCHOOL YEAR 2008-2009

October 15, 2008*

3. Outcome Report (Number of Pre-test conducted) (Excel)
4. Narrative Report (Word)

January 15, 2009*

3. Outcomes Results (Excel)
4. Narrative Report (Word)

April 15, 2009*

4. Outcome Report (Any additional pre or post tests should be reported) (Excel)
5. Narrative (Word)
6. Satisfaction Survey Results (Excel)

July 15, 2009*

3. Outcome Results (Excel)
4. Narrative Report (Word)

SUMMER CAMP 2009

September 15, 2009*

4. Summer Outcome spreadsheet report (Excel)
5. Summer Narrative Report (Word)
6. Satisfaction Survey (Excel)

***If the 15th falls on a weekend/holiday, then reports are due the following business day.**

HIGHLIGHTED TEXT INDICATES NEW CORE CONTRACT LANGUAGE

**Attachment D
Financial Audit and Financial Report Requirements**

The auditor's report(s) as to the program specific audit shall state that the audit was conducted in accordance with the program specific audit requirements listed in The Children's Trust contract and include the following:

An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the provider is presented fairly in all material respects in conformity with the stated accounting policies;

An opinion (or disclaimer of opinion) as to whether the schedule of expenditures is presented fairly in all material respects in conformity with the stated accounting policies;

A report on internal control related to The Children's Trust contract, which shall describe the scope of testing of internal control and the results of the tests;

A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the provisions of contract(s) with The Children's Trust which could have a direct and material effect on the program; and

A schedule of findings and questioned costs for The Children's Trust contract that includes a summary of the auditor's results relative to The Children's Trust and findings and questioned costs.

HIGHLIGHTED TEXT INDICATES NEW CORE CONTRACT LANGUAGE

**Attachment E
Performance Improvement Plan**

Program Name: XXX

Performance Improvement Plan

By this attachment a performance improvement plan will remain a part of this contract until the Provider has corrected all deficiencies, as solely determined by The Children’s Trust.

Provider agrees that any findings, reports and underlying work papers will be subject to complete review by The Children’s Trust.

Provider agrees to comply with and implement the Performance Improvement deliverables as listed below as part of a plan approved by The Children’s Trust.

Failure of the Provider to comply with the Performance Improvement Plan as set forth in Resolution #200X-xx will be a material breach of this contract as defined in Section I.

Performance Improvement Plan

Capacity Areas	Noted Deficiencies	Action Plan	Due Date
Programmatic			
Fiscal /Administrative			

Contract Period: August 1, 2008 to July 31, 2009 12 months

Areas in Blue to be completed by the Agency

PROGRAM BUDGET	Program Period 08/18/08 to 06/05/09		Program Period 08/09:		08/09 After-School and Summer Requested Funding Total	Justification (Provide justification in each line by Program Period: After-School 08/09, Summer 09 & remaining days of Summer 08) For all line items, show the calculations used to determine the amounts requested.	
	After-School 08/09		Summer 08 & 09				
	Annual Salary (12 Months)	AfterSchool Salary Equivalent	Requested				Summer Salary Equivalent
Position Name		Percent	Amount	Percent	Amount		
<u>List Full-Time Employees</u>							
Parks & Recreation Director	84,000.00		0.0%	0.00		0.00	After-School: (N/A) Summer 08: (N/A) Summer 09: (N/A)
Recreation Coordinator	36,000.00		0.0%	0.00		0.00	After-School: (N/A) Summer 08: (N/A) Summer 09: (N/A)
Recreation Coordinator	36,000.00		0.0%	0.00		0.00	After-School: (N/A) Summer 08: (N/A) Summer 09: (N/A)
Administrative Assistant	38,000.00		0.0%	0.00		0.00	After-School: (N/A) Summer 08: (N/A) Summer 09: (N/A)
Outreach Worker	29,993.00	25,379.00	100.0%	25,379.00		25,379.00	After-School: (\$14.42 hr x 40 hr/wk x 44 wks x 100% effort) Summer 08: (N/A) Summer 09: (N/A)
Full-Time Total			1.0	25,379.00		0.0	0.00
<u>List Part -Time/Seasonal Employees</u>							
Park Service Aide	8,240.00	8,240.00	100.0%	8,240.00		8,240.00	After-School: (\$10.30 hr x 20 hr/wk x 40 wks x 100% effort) Summer 08: (N/A) Summer 09: (N/A)
Park Service Aide	8,240.00	8,240.00	100.0%	8,240.00		8,240.00	After-School: (\$10.30 hr x 20 hr/wk x 40 wks x 100% effort) Summer 08: (N/A) Summer 09: (N/A)
Park Service Aide	8,240.00	6,180.00	100.0%	6,180.00		6,180.00	After-School: (\$10.30 hr x 15 hr/wk x 36 wks x 100% effort) Summer 08: (N/A) Summer 09: (N/A)
Park Service Aide	8,240.00		0.0%	0.00		0.00	After-School: (N/A) Summer 08: (N/A) Summer 09: (N/A)
Park Service Aide	8,240.00		0.0%	0.00		0.00	After-School: (N/A) Summer 08: (N/A) Summer 09: (N/A)
Part-Time Total			3.0	22,660.00		0.0	0.00
TOTAL FTEs/SALARIES			4.0	\$48,039.00		0.0	\$0.00
FRINGE BENEFITS							
Fica/Mica	Rate: 7.65%			3,674.98		0.00	3,674.98
W-Comp's	Rate: 5.84%			2,805.48		0.00	2,805.48
Unemploy	Rate:			0.00		0.00	0.00
Retirement	Rate: 9.85%			4,731.84		0.00	4,731.84
Other	Specify & provide calculations						0.00
Health Ins.	Cost per Staff: \$8,000.00			8,000.00		0.00	8,000.00
							After-School: (9.85% X salaries for 1 FT & 2 PT emp.= \$4,577.59) Summer 08: (N/A) Summer 09: (N/A)
							After-School: (\$800/mo. X 10 mo. X 1 FT emp. = \$8,000) Summer 08: (N/A) Summer 09: (N/A)

Life Ins.	Rate:		0.00		0.00	0.00	After-School: (N/A) Summer 08: (N/A) Summer 09: (N/A)
	Rate:		0.00		0.00	0.00	
TOTAL FRINGE BENEFITS			\$19,212.30		\$0.00	\$19,212.30	
OPERATING EXPENSES:		After-School 08/09 Cost		Summer 08 & 09 Cost		08/09 After-School and Summer Requested Funding Total	
Travel (other than participants)		0.00		0.00		0.00	After-School: (\$ Summer 08: (\$ Summer 09: (\$
Travel (participants)		12,556.00		0.00		12,556.00	After-School: (Transportation from school for participants enrolled in the After School Program. Lease of one 8 passenger van @ \$805.60 per month x 10 months = \$8,056.00; Insurance for leased vehicle @ \$200.00 per month x 10 months x 1 van = \$2,000.00; Fuel & Maint. @ \$250.00 per month X 10 months = \$2,500.00) Summer 08: (N/A) Summer 09: (N/A)
Meals (participants)		11,250.00		0.00		11,250.00	After-School: (Snacks provided to students in the After School Program and Teacher's Workday Program - one snack per child per day @ \$.75/child x 75 children x 200 days=\$11,250.00.) Summer 08: (N/A) Summer 09: (N/A)
Space and utilities (rent, utilities, maintenance, telephone, etc)		0.00		0.00		0.00	After-School: (\$ Summer 08: (\$ Summer 09: (\$
Supplies (office and program supplies e.g. postage, printing, curricula, books, etc.)		4,000.00		0.00		4,000.00	After-School: (General educational and recreational supplies - paper, pencils; puzzles, educational games, reading literature, program manuals, posters, etc. Printing flyers, announcements, etc. \$40.00 for 36 weeks x 75 participants. Additional supplies related to computer lab such as printer ink, CDs, etc. \$1000.00) Summer 08: (N/A) Summer 09: (N/A)
Non-Capital Equipment (less than \$1,000) (List each)		0.00		0.00		0.00	After-School: (\$ Summer 09: (\$
Capital Equipment (greater than \$1,000) (List each)		0.00		0.00		0.00	After-School: (\$ Summer 09: (\$
Professional Services (List each)							
Computer Instructor		9,000.00		0.00		9,000.00	After-School: (Responsible for the implementation, organization and coordination of the computer literacy program - \$25.00/hr. X 2 hrs./day X 5 days/wk. x 36 weeks.) Summer 08: (N/A) Summer 09: (N/A)
				0.00		0.00	After-School: (\$ Summer 08: (\$ Summer 09: (\$
Other (List each)							
Background screenings		240.00		0.00		240.00	After-School: (\$60 / new staff X 4 staff) Summer 08: (N/A) Summer 09: (N/A)
				0.00		0.00	After-School: (\$ Summer 08: (\$ Summer 09: (\$
TOTAL OPERATING EXPENSES:		\$37,046.00		\$0.00		\$37,046.00	
Administrative/Indirect Costs (Can not exceed 10%)	4%	3,800.70		0.00		3,800.70	
TOTAL BUDGET		\$108,098.00		\$0.00		\$108,098.00	

TAB 5



Planning & Zoning Department

R. Don O'Donniley, AICP
Planning Director

MEMORANDUM

To: Steven Alexander, Town Manager

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

Date: August 20, 2008

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

REQUEST:

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

BACKGROUND AND ANALYSIS

On June 7, 2006, the Town of Cutler Bay adopted Ordinance 06-13; prohibiting the erection of any additional off premises billboards. The existing four sites were assigned non-conforming use status. All four locations may continue as off premises billboard sites until such time as the sites are abandoned or fail to comply with other criteria spelled out in Section 33-35 of the Code. Three sites exist on the west side of US-1 (South Dixie Highway) and the fourth location is on SW 211th Street.

The continuation of the current billboard locations poses a deterrent to redevelopment more in keeping with the vision of the Town. The intent of this ordinance is to create a narrowly defined area along the Expressway (HEFT) where owners of current billboard signs can be encouraged to voluntarily re-locate. The proposed ordinance provides for a voluntary payment to the Town to off-set review of proposed sites and address mitigating impacts associated with relocation of the off premise signs.

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

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

This ordinance was passed on first reading on August 15, 2007.

RECOMMENDATION

Staff recommends approval.

RESOLUTION NO. 08-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING AN AGREEMENT FOR RELOCATION OF AN OFF-PREMISES SIGN; PROVIDING FOR THE AUTHORIZATION OF THE TOWN MANAGER TO ENTER INTO THIS AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on September 19th, 2007, the Town of Cutler Bay (“Town”) Town Council passed Ordinance Number 07-23, which permitted non-conforming off-premises signs to relocate within the Town; and

WHEREAS, the Town desires to ensure that the off-premises relocation sign program is operated in a manner satisfactory to the Town; and

WHEREAS, in accordance with Section 33-95.1 of the Town Code of Ordinances, Carter, Pritchett, & Hodges, Inc. (“Billboard Owner”) and Town are required to enter into a relocation agreement; and

WHEREAS, the Billboard Owner owns a non-conforming off-premises sign within the Town which the Billboard Owner desires to relocate, and the Billboard Owner has applied to the Town to relocate this sign; and

WHEREAS, in furtherance of this desire, the Town and Billboard Owner have agreed to enter into the Contract for the Relocation of an Off-Premises Sign within the Town, (the “Agreement”) in substantially the form attached hereto as Exhibit “A”; and

WHEREAS, the Town Council finds that this Resolution is in the best interest 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 between the Town and Carter, Pritchett, & Hodges, Inc. in substantially the form attached hereto as Exhibit “A.”

Section 3. Authorization of the Town Manager. The Town Manager is hereby authorized to execute the Agreement between the Town and Carter, Pritchett, & Hodges, Inc. in substantially the form attached hereto as Exhibit “A,” on behalf of 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 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 _____

AGREEMENT
BETWEEN THE
TOWN OF CUTLER BAY
AND
CARTER, PRITCHETT, HODGES, INC.
FOR
THE RELOCATION OF AN OFF-PREMISES SIGN WITHIN THE TOWN

THIS AGREEMENT, made and entered into this __ day of _____, 2008 between the Town of Cutler Bay, a municipal corporation, hereinafter referred to as “the Town,” and, Carter, Pritchett, Hodges, Inc. (hereinafter referred to as “Billboard Owner”)

RECITALS:

WHEREAS, on September 19th, 2007, the Town passed Ordinance Number 07-23, which permitted non-conforming off-premises signs to relocate within the Town; and

WHEREAS, the Town desires to ensure that the off-premises relocation sign program is operated in a manner satisfactory to the Town; and

WHEREAS, in accordance with Section 33-95.1 of the Town Code of Ordinances the Billboard Owner and Town are required to enter into a relocation agreement in order to ensure the provisions of the relocation program have been met; and

WHEREAS, the Billboard Owner owns a nonconforming off premises sign within the Town, which is legally described in Exhibit “A;” and

WHEREAS, the Billboard owner has applied to the Town to relocate this sign on property, which is legally described in Exhibit “B” to this Agreement; and

WHEREAS, on _____, 2008, the Town Council passed Resolution No. 08-__ authorizing the execution of this Agreement and permitting the Billboard Owner to relocate the non-conforming off-premises sign to the location legally described in Exhibit “B” to this Agreement; and

WHEREAS, the Billboard Owner and the Town desire to agree to the terms and conditions set forth below for the relocation of the nonconforming off-premises sign.

IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS HEREIN EXPRESSED AND THE FAITHFUL PERFORMANCE OF ALL SUCH COVENANTS AND CONDITIONS, THE PARTIES AGREE AS FOLLOWS:

SECTION I — RECITALS

The above recitations are true and correct and incorporated herein by reference.

SECTION II — DEFINITIONS

Billboard Owner. The owner of the Relocated off premises sign.

FDOT. This is the Florida Department of Transportation.

Relocated off-premises sign. A non-conforming off-premises sign that is located on property, legally described in Exhibit “A” to this Agreement, which is to be relocated to the Relocated off-premises sign site.

Relocated off-premises sign site. The geographic location, which is legally described in Exhibit “B” to this Agreement, where the Relocated off premises sign is to be located.

Town Code. This is the Town Code of Ordinances.

SECTION III — RELOCATION OF OFF-PREMISES SIGN

The Town agrees to permit the Billboard owner to relocate the Relocated off premises sign to the Relocated off-premises sign site in accordance with Section 33-95.1 of the Town Code and subject to the terms and conditions as set forth herein. Billboard Owner agrees that it will relocate the Relocated off premises sign to the Relocated off-premises sign site in accordance with Section 33-95.1 of the Town Code and pursuant to the terms and conditions set forth herein.

SECTION IV — CONDITIONS

- (a) The Relocated off-premises sign shall be relocated in accordance with the permit issued by FDOT to the Relocated off-premises sign site. Billboard Owner shall obtain FDOT approval and permits within twelve (12) months from the date that the last party executed this Agreement.
- (b) The Billboard Owner shall obtain the prior approval of the Town Planning Director prior to any tree removal necessary to erect the Relocated off-premises sign. Any and all tree removal shall comply with the Town Code and the National Arborist Standards.
- (c) The Billboard Owner shall use all reasonable efforts to minimize impact of the Relocated off-premises sign on nearby residential zoning districts.
- (d) The Billboard Owner shall construct the Relocated off-premises sign in accordance with the site plan approved by the Town.
- (e) Billboard Owner agrees that the Relocated off-premises sign shall not:
 - 1. Have flashing or intermittent lights;

2. Revolve, move, or rotate;
 3. Have more sign faces than the nonconforming off-premises sign that is to be removed. In the event the nonconforming off-premises sign that is removed has a double faced sign, such sign faces shall be of the same size and shall be placed at an angle to form a single “V” or placed back-to-back and not placed in a straight line;
 4. Result in a total sign area in excess of 672 square feet (including any embellishments) per face;
 5. Emanate noise, odors, or smoke or other visible matter;
 6. Utilize a sign with electronic digital features, unless Billboard Owner agrees to the provisions described in Section III (i) of this Agreement;
 7. Use the words “stop” or “danger” or similar words that present or imply the need or requirement for stopping or the existence of danger;
 8. Include spinning devices, or strings of spinning devices, streamers, pennant, banners, or other similar devices on the sign;
 9. Use any type of animation; and
 10. Be of such intensity or brilliance as to cause glare or impair the vision of the driver of any motor vehicle.
- (f) The placement of the Relocated off-premises sign shall conform with Chapter 479, Florida Statutes, and all other applicable federal, state, county and municipal regulations.
- (g) The Billboard Owner agrees to place a statement on the Relocated off-premises sign structure under the sign indicating that revenues from the sign will be used to assist the Town with Town wide beautification projects and such statement shall be legible from the Homestead Extension of the Florida Turnpike. Furthermore, in lieu of landscaping and maintaining the area around the base of the Relocated off-premises sign at the Relocated off-premises sign site, the Billboard Owner shall voluntarily contribute to the Town the annual sum of five- hundred dollars (\$500.00).
- (h) The Billboard Owner shall pay to the Town twelve thousand dollars (\$12,000) prior to the issuance of the first building permit for the Relocated off-premises sign and two thousand dollars (\$2,000) each subsequent year in order to assist in Town wide beautification projects to mitigate the aesthetic impacts of the Relocated off-premises sign. The annual payments of \$2,000 shall be paid to the Town on or prior to January 1st of each year and shall be annually adjusted based upon the Consumer Price Index as determined by the Town.

SECTION V — INDEMNITY AND INSURANCE

- (a) Billboard Owner shall indemnify and hold harmless the Town, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness or intentional wrongful conduct of the Billboard Owner and persons employed or utilized by the Billboard Owner in the performance of this Agreement.
- (b) Billboard Owner shall not commence construction, installation or any other work relating to the Relocated off-premises sign and the Relocated off-premises sign site until they have obtained all insurance required under this provision and such insurance has been approved by the Town Manager, nor shall Billboard Owner allow any contractor or subcontractor to commence work on its contract or subcontract until all similar such insurance required of the contractor or subcontractor has been obtained or approved.
- (c) Billboard Owner shall, at their sole expense, provide the Town with liability insurance for bodily injury and property damage to protect the Town against damage, costs and attorneys' fees arising out of accidents or occurrences of any kind on or about the Relocated off-premises sign and the Relocated off-premises sign site. The insurance shall have liability limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) for the injury or death of more than one person and ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for property damage. The above coverages shall be maintained and remain in force at all times during the term of this Agreement. The Town shall be named as an additional insured on all such policies.
- (d) Billboard Owner shall provide CERTIFICATES OF INSURANCE reflecting evidence of the required insurance to Town Manager, prior to the construction and installation of Relocated off-premises sign. These certificates shall contain a provision that coverage afforded under these policies will not be canceled until at least thirty (30) days prior written notice has been given to the Town. Policies shall be issued by companies authorized to do business under the laws of the State of Florida and shall have adequate Policyholders and Financial ratings in the latest ratings of A.M. Best and be part of the Florida Insurance Guarantee Association Act.
- (e) In the event that the CERTIFICATES OF INSURANCE provided indicate that the insurance shall terminate and lapse during the period of this Agreement, the Billboard Owner shall furnish, at least thirty (30) days prior to the expiration of the date of insurance, a renewed CERTIFICATE OF INSURANCE as proof that equal and like insurance coverage for the balance of the period of the Agreement and extension thereunder is in effect. The Billboard Owner shall not commence any construction, installation or any other work at the Relocated off-premises sign site unless all required insurance remains in full force and effect.

SECTION VI — DEFAULT

- (a) Notice. If a party to this Agreement (the "Defaulting Party") fails to perform under this Agreement or fails to comply with the terms and conditions of this Agreement (a "Default"), the other party hereto (the "Non-Defaulting Party") shall send written notice

(the “Default Notice”) to the Defaulting Party, according to the notice requirements set forth in this Agreement.

- (b) Opportunity to Cure. The Defaulting Party shall have a period of 30 days after receipt of the Default Notice to either cure its Default or to provide a written response to the Non-Defaulting Party indicating the status of the Defaulting Party’s resolution of the Default and a schedule for the curing of the Default.
- (c) Remedies. If, within 30 days after receipt of Default Notice, the Defaulting Party fails to either cure its Default, or to provide a written response to the Non-Defaulting Party indicating the status of the Defaulting Party’s resolution of the Default and a schedule for the curing of the Default, then the parties agree that the Town Manager and the Billboard Owner shall meet and attempt to cure the Default before either party initiates legal action to enforce this Agreement. If a Default shall occur and shall continue, the Non-Defaulting Party shall be entitled to all remedies available at law or in equity, which may include, but not be limited to, the right to damages and/or specific performance.

SECTION VII — TERMINATION

- (a) This Agreement shall terminate automatically, if Billboard Owner fails to obtain FDOT permits and approvals for the Relocated off-premises sign and Relocated off-premises sign site within twelve (12) months from the date that the last party executed this Agreement. In the event that Billboard Owner fails to comply with the terms of this Agreement, the Town may terminate this Agreement upon thirty (30) days written notice to Billboard Owner.
- (b) The parties agree that if the Billboard Owner fails to pay its annual contribution to the Town, and does not cure such failure within ninety (90) days after receiving notice of such default, then this Agreement shall automatically terminate. Upon automatic termination of this Agreement the Billboard Owner will have thirty (30) days to remove the Relocated off-premises sign structure from the Relocated off-premises sign site upon notice to remove from the Town, and if they fail to do so, the Town has the right to remove the Relocated off-premises sign structure at the sole expense of the Billboard Owner; or (2) the Town may provide notice to Billboard Owner and thereafter utilize the Relocated off-premises sign at its sole discretion. Pursuant to Section 70.20(2), Florida Statutes, Billboard Owner hereby waives its rights to challenge the Town’s ordinances as to validity, constitutionality, and enforceability relating to Relocated off-premises signs, including but not limited to, the sign provisions within Chapter 33 of the Town Code and the terms and conditions of this Agreement.

SECTION VIII — ADVERTISING PROHIBITED

Billboard Owner shall not advertise on the Relocated off-premises sign any adult entertainment establishments, obscene or offensive materials, or anything else that might be perceived to be offensive, lewd, or lascivious in nature. If the Town reasonably objects to any advertisement, such advertisement shall be removed within fifteen (15) days written notice by the Town.

SECTION IX — COMPLIANCE WITH LAWS

Billboard Owner hereby agrees that it shall comply with all applicable laws, rules, ordinances and regulations pursuant to which the Relocated off-premises sign permit is issued.

SECTION X — ADVERTISING BY THE TOWN

Upon a space available basis, Billboard Owner will allow Town approved public service announcements (“Town Announcements”) to be advertised on the Relocated off-premises sign. Any such public service announcements may be removed by Billboard Owner in the event that space so occupied by Town Announcements is leased or rented to third parties by Billboard Owner unless the Town is utilizing the Relocated off-premises sign as a condition of Termination. The cost of preparation and installation of such Town Announcements shall be paid by the Town. Billboard Owner hereby agrees to give the Town reasonable notice of anticipated space availability on the Relocated off-premises sign for Town Announcements; provided, however, that Billboard Owner shall have no obligation to notify the Town if such space availability is limited to time periods of less than thirty (30) days.

SECTION XI — NOTICES

Whenever either party desires to give notice to the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, hand delivered or by facsimile transmission with proof of receipt, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. Notice shall be deemed given upon receipt by any method of delivery authorized above. For the present, the parties designate the following as the respective places for giving of notice:

For Town:

Mr. Steve J. Alexander
Town Manager
10720 Caribbean Blvd, Suite 105
Cutler Bay, FL 33189
Telephone: (305) 234-4262
Facsimile: (305) 234-4251

With copy to:

Mitchell Bierman, Esquire
Town Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, FL 33134
Telephone: (305) 854-0800
Facsimile: (305) 854-2323

For Billboard Owner:

Carter, Pritchett, Hodges, Inc.
[please insert]

SECTION XII — INVALID PROVISIONS

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions.

SECTION XIII — ASSIGNMENT

Billboard Owner shall not assign, transfer or sublet this Agreement or its rights, title or interest thereupon without the Town Manager's prior written approval, which shall not be unreasonably withheld.

SECTION XIV — PROHIBITION AGAINST CONTINGENT FEES

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

SECTION XV — DURATION OF AGREEMENT

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

SECTION XVI — SUCCESSORS AND ASSIGNS

This Agreement will inure to the benefit of and be binding upon the Town and Billboard Owner and their respective legal representatives, successors, and permitted assigns.

SECTION XVII — SEVERABILITY

If any provision of this Agreement or the application thereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

SECTION XVIII — WAIVER

No waiver of any provision of this Agreement will be deemed to have been made unless such waiver is in writing and signed by the party waiving the provision. The failure of any party to insist upon strict performance of any provision of this Agreement shall not be construed as waiving or relinquishing such provision in the future.

SECTION XIX — THIRD PARTY BENEFICIARIES

This Agreement is solely for the benefit of the Billboard Owner and the Town, and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any person or corporation other than the Billboard Owner and the Town any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the Billboard Owner and the Town, and their respective representatives, successors, and assigns.

SECTION XX— ENTIRETY OF AGREEMENT; VENUE

- (a) This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing, signed by both parties hereto, and approved by the Town. The Town Manager shall act for Town hereunder.

- (b) This Agreement, regardless of where executed, shall be governed by and construed according to the laws of the State of Florida, and venue for any litigation hereunder shall be made in Miami-Dade County, Florida.

[THIS SPACE INTENTIONALLY LEFT BLANK]

AGREEMENT BETWEEN THE TOWN OF CUTLER BAY AND CARTER, PRITCHETT, HODGES, INC. FOR THE RELOCATION OF AN OFF-PREMISES SIGN WITHIN THE TOWN

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: Town of Cutler Bay, through its Town Manager, authorized to execute this Agreement by virtue of Resolution No. 2008-__, adopted on the __ day of __, 2008, and Carter, Pritchett, Hodges, Inc. authorized to execute same, through _____.

ATTEST:

By: _____
Steven Alexander, Town Manager

Erika Gonzalez Santamaria, Town Clerk

_____ day of _____, 2008

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

(TOWN SEAL)

By: _____
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L., Town Attorney

_____ day of _____, 2008

CARTER, PRITCHETT, HODGES, INC.

WITNESSES:

By: _____

_____ day of _____, 2008

Print Name

Print Name

EXHIBIT "A"

EXHIBIT "B"

TAB 6



Planning & Zoning Department

R. Don O'Donniley, AICP
Planning Director

MEMORANDUM

To: Steve Alexander, Town Manager

From: R. Don O'Donniley

Date: August 20, 2008

Re: T-Square Contract for Scanning Services

BACKGROUND

The Town of Cutler Bay sought bids from firms to provide scanning services and to provide for electronic storage of public records in the Building Division. All records stored can be retrieved by placing an order with the Town to reproduce plan sets stored in the system.

REQUEST

The Manager has negotiated a contract with T-Square to provide scanning, storage and retrieval services for building permit files. The contract for these services is submitted to the Town Council for approval.

ANALYSIS

Under state law, all public entities are required to keep official records. The statute does offer an opportunity to store files electronically so long as there is assurance of duplicate files stored on a second electronic space. All firms solicited for proposals have duplicate storage capability. The Planning Director, Town Clerk and Building Division Manager reviewed the proposals received and found the T-Square offered to provide the cheapest service while maintaining easy access for record retrieval and securing files at two locations as required by state rules.

This contract continues to implement the Strategic Plan by utilizing an out sourced service provider as a means of efficiently providing a service when this is the most appropriate delivery approach.

RECOMMENDATION

Staff recommends the Council approve execution of the attached contract between T-Square and the Town of Cutler Bay.

RESOLUTION NO. 08-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING AN AGREEMENT FOR SCANNING SERVICES BETWEEN THE TOWN AND T-SQUARE EXPRESS, INC.; PROVIDING FOR THE AUTHORIZATION OF THE TOWN MANAGER TO ENTER INTO THIS AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Cutler Bay desires to retain the services of T-Square Express, Inc. (“T-Square”) to perform certain scanning, document management, digital distribution, storage, and reprographic services for the Town of Cutler Bay; and

WHEREAS, in furtherance of this desire, the Town and T-Square have agreed to enter into the Contract for Document Management, Digital Distribution and Reprographic Services (the “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 Agreement between the Town and T-Square in substantially the form attached hereto as Exhibit “A.”

Section 3. **Authorization of the Town Manager.** The Town Manager is hereby authorized to execute the Agreement on behalf of the Town and to take all action necessary to implement the purposes of this resolution and the Agreement.

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 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 _____

Exhibit "A"

Contract for Document Management, Digital Distribution and Reprographic Services

**Contract for Document Management,
Digital Distribution and Reprographic Services
For The Town of Cutler Bay**

This sales agreement is made on July 15, 2008 between T-Square Express, Inc., a corporation organized and existing under the laws of the State of Florida ("seller"), with its principal office located at 998 West Flagler Street, Miami, FL 33130, and THE TOWN OF CUTLER BAY, FL. ("buyer").

SECTION ONE.

PRINTING, COPYING, PLOTTING AND SCANNING; DESCRIPTION

Seller agrees to manufacture and sell to buyer the following goods: Large Format Bond Printing form cad files and hard copy, quick copies (specs), color copies, Planwell on-line planroom (the "goods").

SECTION TWO.

PAYMENT

Buyer agrees to pay for any goods it orders at the rates set forth on the attached exhibit titled "Contract Prices for the Town of Cutler Bay, FL." Payment is expected net 30 days from date of invoice.

SECTION THREE.

DELIVERY SCHEDULE

Seller shall deliver copies to address determined by the Town of Cutler Bay, FL with a minimum billing of \$25.00 for delivery. Deliveries will be charged at \$ 10.00 to The Town of Cutler Bay. In the event buyer requests delivery to multiple addresses in a single order, buyer will be charged \$18.95 for each delivery, within Miami Dade County. The first delivery in such order shall be free if the terminus of that delivery is The Town of Cutler Bay. Actual FedEx or other courier charges will be billed to the Town of Cutler Bay, FL's account or as designated by the Town of Cutler Bay, FL.

SECTION FOUR.

CONTRACT PERIOD AND PRICING

This contract shall commence on June 6, 2008 and will be in force for one (1) year on a demand for services basis. The initial prices will be honored until May 31, 2009 and may be extended at the same rate if seller's material costs of paper, toner and equipment service do not rise.

Contract Prices for the Town of Cutler Bay, FL

Detailed Reprographics Price Sheet

Planwell Digital Black & White Bond Prints	\$ 0.10 per sq. ft.
Planwell Digital Black & White Bond Prints (Half size)	\$ 0.75 ea.
Large Document Binding-Plastic Strips/Screw Post	\$ 4.50 per set
Large Document Binding-Paper Edge Binding	\$ 0.60 per set
B&W Documents 8.5"x 11"	\$ 0.07 ea.
B&W Documents 8.5"x 14"	\$ 0.10 ea.
B&W Documents 11"x 17"	\$ 0.12 ea.
Color Documents 8.5"x 11"	\$ 0.99 ea.
Color Documents 11"x 17"	\$ 1.75 ea.
Cover Stock	\$ 0.50 ea.
Clear Plastic Cover	\$ 0.75 ea.
Hard Plastic Cover	\$ 0.75 ea.
Comb, Spiral, and Wire Binding	
Up- to 1" (includes punching)	\$ 2.50 ea.
Up- to 2" (includes punching)	\$ 3.50 ea.
Oversize Color Scanning up to 60" wide	\$ 10.00 sf \$35.00 min
CD Burn	\$ 5.00 per CD

Planwell Scan Large Documents	\$ 0.75 per Drawing
Planwell Indexing Large Documents	\$ 0.75 per Drawing
Planwell Upload Large Documents	\$ 0.75 per Drawing
Planwell Scan Small Documents	\$ 0.15 per Page
Planwell Upload Small Documents	\$ 0.15 per Page
Planwel Legacy Management Large Doc. (Monthly)	\$ 0.02 per drawing
Planwel Legacy Management Small Doc. Viewable (Monthly)	\$ 0.01 per page
Planwell Digital Download	\$ 0.40 per drawing
Conversion to (PDF) Large Format	\$ 0.50 per original

PRICING SCHEDULE AND PAYMENT TERMS

All discounts and special prices are contingent upon account being maintained in current status.

SECTION FIVE.

NO WARRANTIES ARE EXTENDED BEYOND THE DESCRIPTION ON THE FACE OF THIS AGREEMENT.

ENTIRE AGREEMENT

The parties agree that this constitutes the entire agreement and there are no further items or provisions, either oral or otherwise. The parties have executed this agreement at Miami, Florida the day and year first above written.

For T-Square Express, Inc.

For the Town of Cutler Bay, FL

Document comparison done by DeltaView on Wednesday, July 09, 2008 4:06:32 PM

Input:	
Document 1	file://C:/Documents and Settings/hnizel/Desktop/Cutler Bay Proposal 06-23-08.doc
Document 2	file://C:/Documents and Settings/hnizel/Desktop/Cutler Bay Proposal 06-23-08 - revised.doc
Rendering set	Standard2

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	5
Deletions	3
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	8

T-SQUARE

reprographics & imaging solutions

FOR OFFICE USE ONLY	
DATE:	_____
ACC. #:	_____
C. LIMIT:	_____
SLS. #:	_____

MIAMI
998 West Flagler Street
Miami, FL 33130
305-324-1234
Fax 305-324-8040

CORAL GABLES
3824 SW 8th Street
Coral Gables, FL 33134
305-446-8816
Fax 305-445-3218

FT. LAUDERDALE
415 NE 3rd Street
Ft. Lauderdale, FL 33301
954-763-4211
Fax 954-763-1284

BOCA RATON
1000 Clint Moore Rd.#107
Boca Raton, FL 33487
561-998-9222
Fax 561-998-9119

WEST PALM BEACH
3829 Westgate Ave. #1
W. Palm Beach, FL 33409
561-471-3711
Fax 561-471-3911

www.t-square.com

APPLICATION FOR CREDIT AND AGREEMENT FOR PURCHASE OF GOODS

BILL TO: _____

BILLING ADDRESS: _____

SUITE: _____ PHONE: _____ FAX: _____

CITY: _____ STATE: _____ COUNTY: _____ ZIP: _____

SHIPPING ADDRESS: _____

E-MAIL: _____ WEBSITE: _____

CONTACT: _____ FED I.D.# or SSN: _____

BUSINESS TYPE (X):

- ACC Accountant
- ADV Advertising / Marketing
- AIR Air Line / Aero
- ARC Architect
- ATY Attorney
- BNK Bank / Finance
- CON Contractor
- DEV Developer
- ENG Engineer
- EXP Export
- GO General Office
- GRP Graphic Design
- GVT Government
- HTL Hotel
- ID Interior Design
- INS Insurance
- LM Light Manufacturing
- MAR Marine
- MC Mech Contractor
- MED Medical
- RE Real Estate
- RET Retail / Mdse.
- RST Restaurant
- SCH Schools
- SEC Security
- SUR Surveyor
- TRS Transportation
- TRV Travel Agency
- UTL Utility
- Other _____

GENERAL BUSINESS INFORMATION

Please Attach A Copy Of Latest Financial Statements

No. of Office Employees _____ Years in Business _____

Credit Line Requested _____ Do you require a P.O.#? _____

Are You Tax Exempt? Yes (Supply us with Certificate of Resale) No

Corporation Partnership Individual

Services Needed Repro Electronic Imaging Drafting Supplies

Graphics Office Supplies Other _____

Accounts Payable Contact _____

Phone No. _____ Fax No. _____

LIST EACH PRINCIPAL

President _____ SS# _____

Residence Address _____

City _____ State _____ ZIP _____

Home Phone () _____

Vice President _____ SS# _____

Residence Address _____

City _____ State _____ ZIP _____

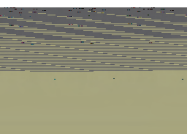
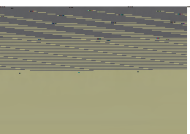
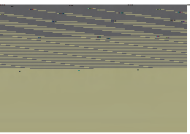
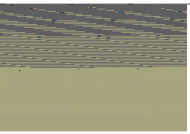
Home Phone () _____

Secretary / Treasurer _____ SS# _____

Residence Address _____

City _____ State _____ ZIP _____

Home Phone () _____



TAB 7

RESOLUTION NO. 08-_____

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL
OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING
THE TOWN OF CUTLER BAY STORMWATER MASTER
PLAN; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, in 2006, the South Florida Water Management District (SFWMD) recognized the importance of developing and implementing a Stormwater Master Plan for the newly incorporated Town of Cutler Bay (“Town”); and

WHEREAS, in 2007, the South Florida Water Management District awarded the “Town” a grant in the amount of \$ 200,000 to develop a Stormwater Master Plan; and

WHEREAS, the Scope of Work was comprised of: Information gathering and mapping, Basin and sub-basin delineation, Basin and sub-basin prioritization, Priority sub-basin modeling and analysis, and Capital improvement program stormwater planning; and

WHEREAS, the Town executed a Project Agreement with Kimley-Horn and Associates, Inc. for the preparation of the Town’s Stormwater Master Plan; and

WHEREAS, the preparation and completion of the Stormwater Master Plan is a high priority initiative that was identified in the Town’s Strategic Plan; and

WHEREAS, Kimley-Horn and Associates, Inc. has completed for delivery and implementation the Town’s Stormwater Master Plan, and staff respectfully recommends that the Town Council adopt the Stormwater Master Plan, attached as Exhibit A to this Resolution; and

WHEREAS, the Town Council finds this Resolution to be 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 Stormwater Master Plan. The Town Council hereby approves the Stormwater Master Plan, prepared by Kimley-Horn and Associates, Inc., which is attached as Exhibit “A” to this Resolution.

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

PASSED and ADOPTED this ___day of _____, 2008.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

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

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

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

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

■

Town of Cutler Bay Stormwater Utility Management Report



Prepared for:
The Town of Cutler Bay
043145000
August 2007
©Kimley-Horn and Associates, Inc.

Town of Cutler Bay
Stormwater Utility
Management Report



Prepared for:
The Town of Cutler Bay

043145000

August 2007

©Kimley-Horn and Associates, Inc.

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Executive Summary

As part of the Town of Cutler Bay's (Town) incorporation from Miami-Dade County, the South Florida Water Management District (SFWMD) granted the Town \$200,000 to furnish a Stormwater Master Plan and to develop a stormwater utility. The Stormwater Master Plan will identify stormwater management issues throughout the Town and will include prioritized capital improvement projects to address those issues with associated costs. A stormwater utility is an enterprise fund that provides stable funding for stormwater capital projects and operation of the system. This enterprise fund can be used to improve drainage within the community to reduce flooding and provide stormwater quality treatment in compliance with state and federal permitting requirements. The stormwater utility customer is the property owner or occupant who benefits from the stormwater management system. Most stormwater utilities use a property's impervious area as the measure of the benefit accrued to the property owner by the public stormwater system. This is the method recommended for use in the Town of Cutler Bay.

The recommended stormwater utility rate structure is based on an Equivalent Residential Unit (ERU). Each residential property unit will be billed for one unit of stormwater utility service. Each non-residential property will be billed for stormwater utility service based on the impervious area of the non-residential property divided by the impervious area of the average residential property or ERU. It is recommended that the stormwater utility rate be set so that annual stormwater utility revenue will allow the Town to implement a Stormwater Capital Improvement Plan, an operation and maintenance program, and include associated administrative costs. The rate should also account for coordination of stormwater utility fee collections with Miami-Dade County and plan for future stormwater capital projects.

The recommended billing method is to include the stormwater utility fee as part of the customers' current Miami-Dade County Water and Sewer Authority (WASD) monthly/quarterly utility bill. This method is most commonly used by stormwater utilities in Dade County because it reduces billing and collection costs for the Town. This billing process will require an agreement with the WASD to collect stormwater utility fees for residents in the Town of Cutler Bay. Properties without water and sewer service can be billed annually by the Town on a separate bill.

1.0 Introduction

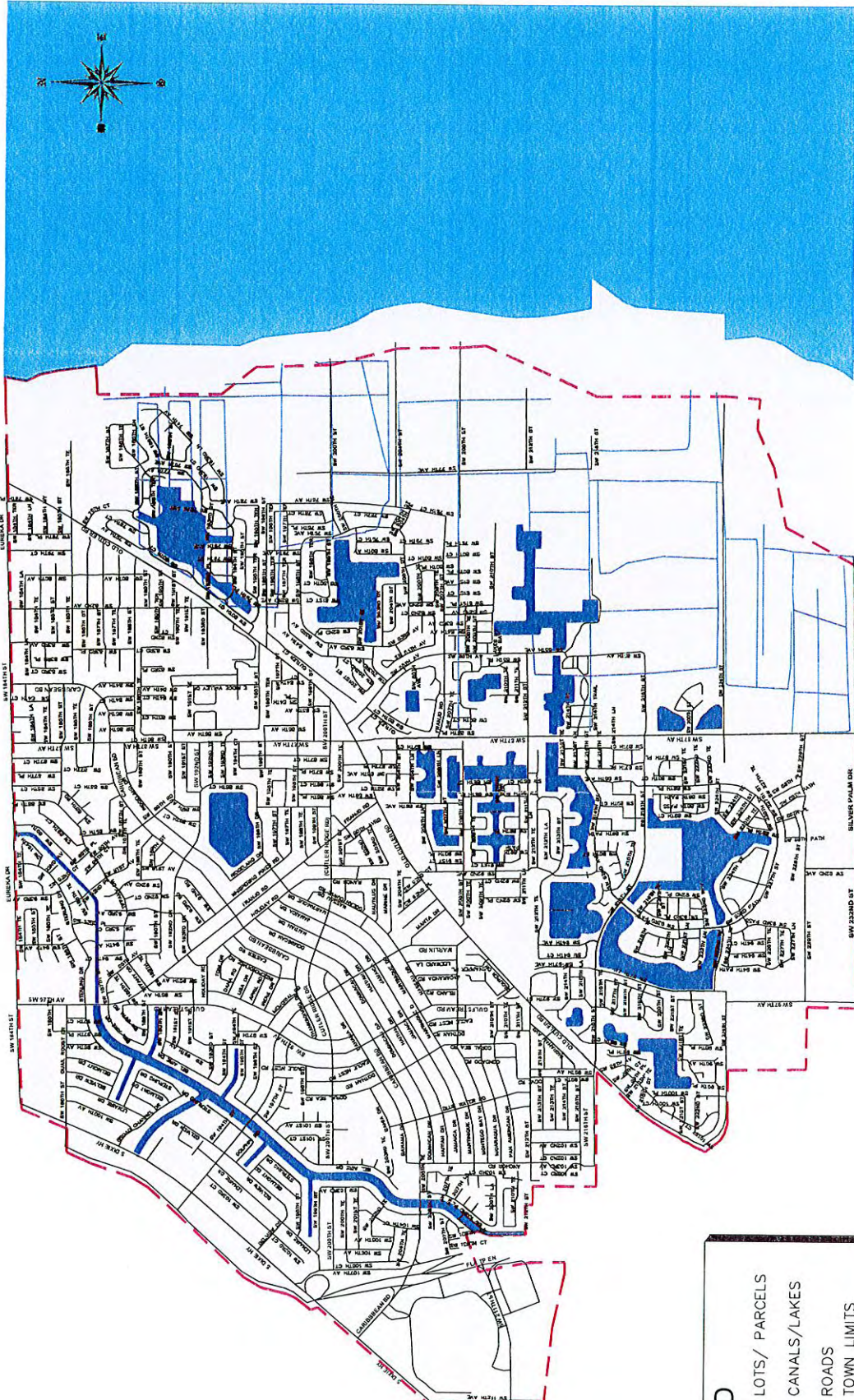
The Town of Cutler Bay, Florida was incorporated in November, 2005. The Town has a population of over 37,000 and is approximately 9.7 square miles, located along Biscayne Bay in southern Miami-Dade County. Neighboring communities include the Village of Palmetto Bay and unincorporated portions of Miami-Dade County. Figure I-1 on the following page is a boundary map of the Town.

As part of the Stormwater Master Plan, a Capital Improvement Plan will be developed to identify and prioritize improvement projects with associated costs. In addition to capital costs, operation and maintenance budgets will be established. The Town of Cutler Bay Public Works Department will become responsible for the operation and maintenance of the stormwater management system within Town boundaries with the exception of canals maintained by South Florida Water Management District (SFWMD). As a recently incorporated municipality, the Town's stormwater operation and maintenance responsibilities are currently funded through the Miami-Dade County Stormwater Utility. The Town is considering establishing its own stormwater utility to fund the cost of operation and maintenance of the stormwater management system and to provide revenue for capital improvements to upgrade the system. This would allow the Town to assume responsibility for its own stormwater management system from Miami-Dade County.

A stormwater utility is an enterprise fund that provides stable funding for stormwater management operations and capital projects. This enterprise fund can be used to improve drainage within the community to reduce flooding and to improve stormwater quality to comply with state and federal stormwater discharge permitting requirements. Improving stormwater quality within the Town has an impact on improving the water quality at Biscayne Bay since stormwater runoff from Cutler Bay eventually reaches Biscayne Bay through the canal system. The dual goals of improving drainage and improving water quality can be met through a variety of maintenance activities and capital improvement projects.

Once the Town establishes a stormwater utility, it will provide a sustainable revenue source and a bondable revenue stream to provide for stormwater capital improvements. The sustainability of the revenue source will allow the Town to take a long-term view when preparing capital improvement programs and planning maintenance activities because the revenue stream is not dependent on the year-to-year funding environment.

One of the first steps in establishing a stormwater utility is to determine the rate structure to be used, the fee to be charged, and the billing method. Therefore, the Town initiated a Stormwater Utility Management Report and selected Kimley-Horn and Associates, Inc. (KHA) to research the Town's options with regard to stormwater utility rate structures and fees. This report contains the results of that research.



LEGEND

- LOTS/ PARCELS
- CANALS/LAKES
- ROADS
- TOWN LIMITS


DESIGNER	DESIGN ENGINEER	FLORIDA REGISTRATION NUMBER	FLORIDA DATE
	TOWN OF CUTLER BAY		
DATE	DATE	AUG 2007	PROJECT NO.
	MIAMI-DADE		
SCALE	SCALE	1"=2000'	PROJECT NO.
	043145000		
DRAWN BY	DRAWN BY	DNY	HS
			
DATE	DATE	DATE	DATE
BY	BY	BY	BY

FIG. 1-1
BOUNDARY MAP

Working name: H:\04314500\04314500-Cutler\04314500-Cutler\CONCEPT\BOUNDARY MAP FIG. 1-1.dwg Layout: Aug 22, 2007 11:18am By: danny.wong

2.0 Drainage Conditions Assessment

2.1 Background

An assessment of the stormwater management system within the Town of Cutler Bay was conducted in three (3) phases as part of the Town's Stormwater Master Plan. The first phase included a review of drainage complaints filed with Miami-Dade County Public Works and the Town of Cutler Bay. The complaint locations were added to Figure 2-1 (see Page 5) for reference to show problem areas that need mitigation.

The second phase of the drainage assessment was an evaluation of drainage structures within the Town. Geographic Information System (GIS) data provided by the Department of Environmental Resource Management (DERM) was used to map the location of many public drainage structures within the Town. Approximately 100 of these structures were then chosen for field evaluation. The structures chosen for field evaluation included those in the areas where roadway flooding was noted in the first and second phases of the drainage system evaluation. Additional structures were evaluated to provide a geographically diverse array of structures. The location of the evaluated structures can be seen in Figure 2-2 (see Page 6).

The final phase involved a visual assessment of roadway flooding conditions within the Town. This assessment was conducted during rainy periods between June, July and August, 2007. The roadway drainage conditions were assessed within the first 15 to 75 minutes after rainfall events lasting at least one hour. Areas where flooding extended into the roadways were noted. The locations where roadway flooding was noted during this phase of the assessment can be seen in Figure 2-1.

2.2 Visual Assessment of Existing Conditions

KHA reviewed drainage complaints reported to Miami-Dade County Public Works and the Town of Cutler Bay. Figure 2-1 shows the location of these drainage complaint areas.

In order to evaluate existing drainage conditions within the Town, KHA visually assessed roadway flooding conditions before and after rainfall events lasting one hour or more. The



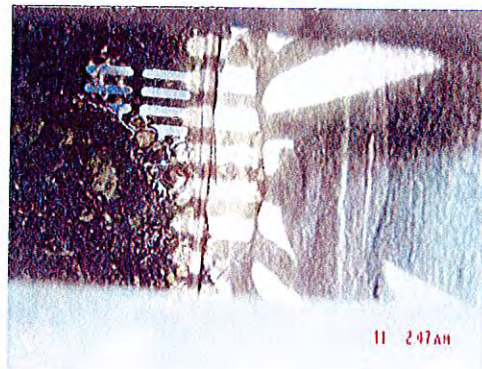
approximate locations, where flooding extended across the entire width of the roadway, are noted on Figure 2-1. KHA also evaluated the condition of existing drainage structures within the Town of Cutler Bay. Geographic Information System (GIS) data provided by DERM was used to map the location of the majority of the public drainage structures within the Town. Approximately 100 of these structures were chosen for field evaluation. The objective in choosing the 100 structures was to provide a wide cross-section of the structures in the Town. The location of the evaluated structures can be seen in Figure 2-2.

Some maintenance-related causes of roadway flooding that were discovered during the drainage structure evaluation are noted below:

Clogged inlets/pipes. It was noticeable during the visual observation of the drainage structures, that some catch basins have debris covering the asphalt apron and the top of the grate that may contribute to inadequate flow of water through the systems and localized flooding near structures. In some of the structures, the bottom of the inlet itself was filled with leaves, silt, and other debris. Debris at the bottom of the inlet can find its way into pipes and exfiltration trench, thereby reducing the efficiency of the drainage system.



Blocked drainage outfalls. Some of the drainage outfalls pipes appear to have blockages or damage that prevent them from discharging the amount of runoff they were design to carry.

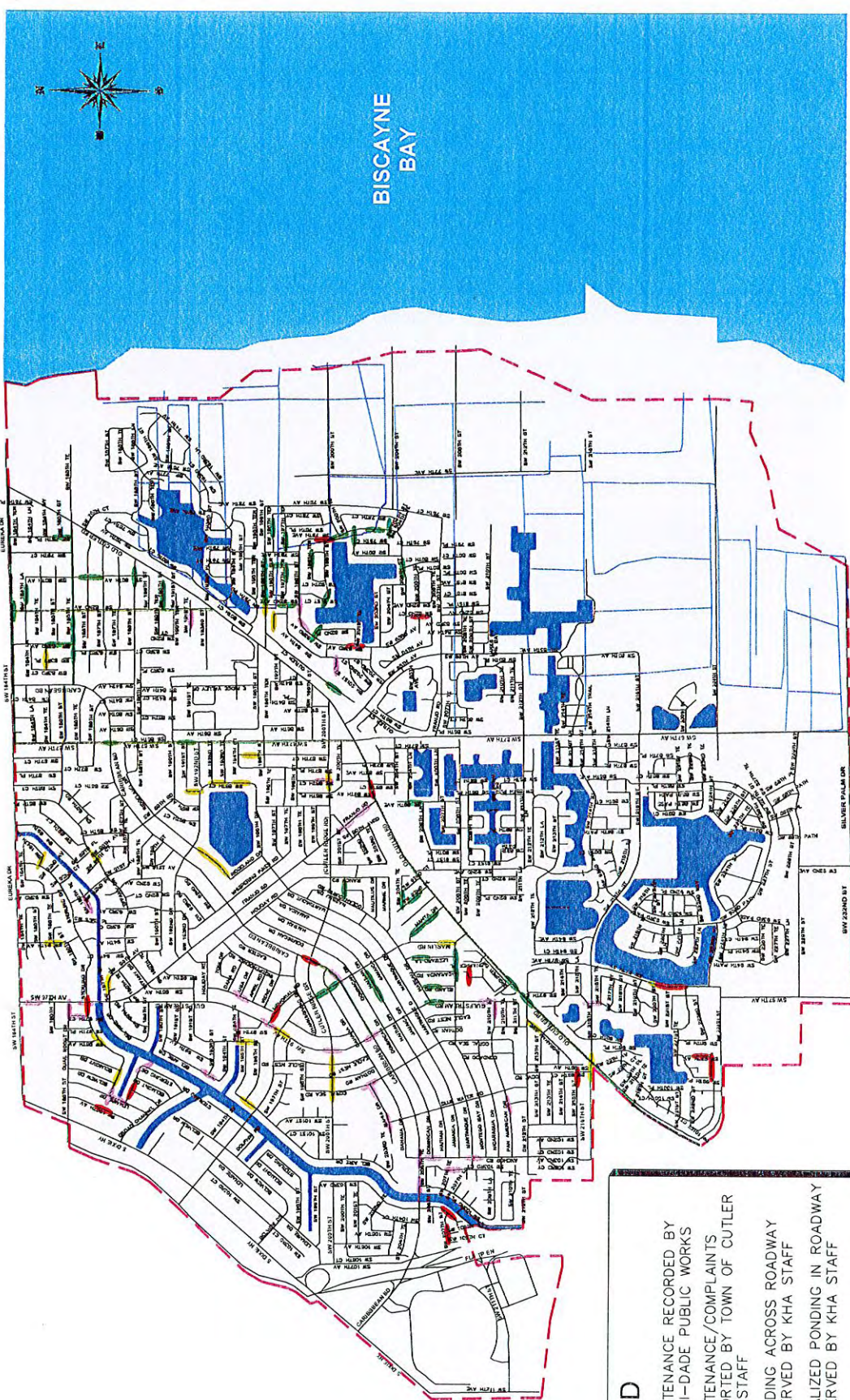


No baffles to protect exfiltration trench from oil and grease deposits. Few drainage structures observed contained pollution retardant baffles to prevent the accumulation of grease, oil, and debris within the trench. Grease and oil accumulation reduces the drainage effectiveness and lifespan of the exfiltration trench.





Poorly graded/settled asphalt and pavement. Many areas that flooding and ponding were observed showed signs of poorly grading asphalt that did not allow proper flow of stormwater to the catch basins. Other locations showed signs of settling asphalt. This may create low points on roads and driveways that could pond.

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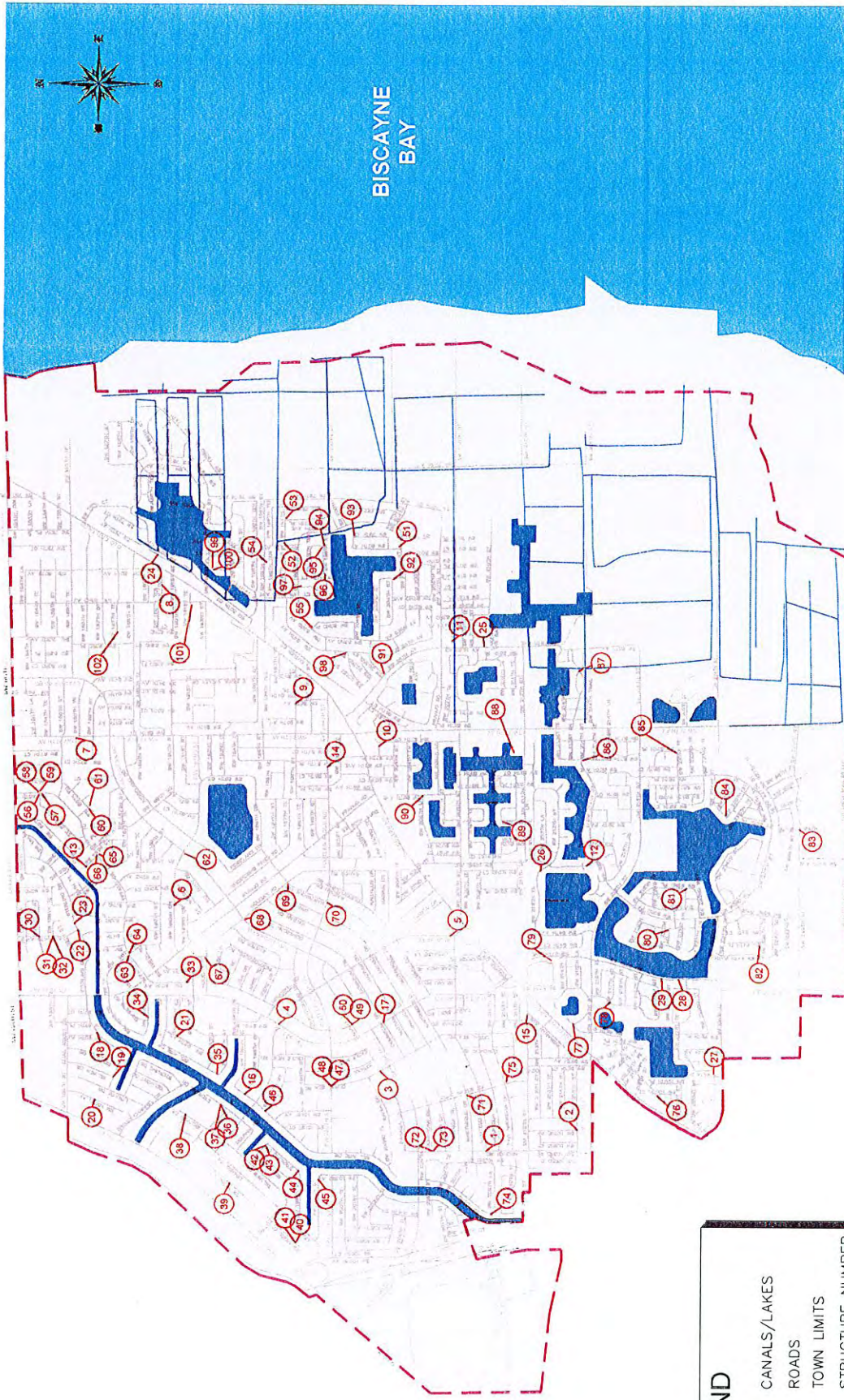


LEGEND

- MAINTENANCE RECORDED BY MIAMI-DADE PUBLIC WORKS
- MAINTENANCE/COMPLAINTS REPORTED BY TOWN OF CUTLER BAY STAFF
- FLOODING ACROSS ROADWAY OBSERVED BY KHA STAFF
- LOCALIZED PONDING IN ROADWAY OBSERVED BY KHA STAFF



		 <p>Kimley-Horn and Associates, Inc. 2025 N.W. 10th Avenue, Suite 400, Miami Beach, FL 33139 Phone: 305-675-2020 Fax: 305-677-9622 kimley-horn.com</p>	DATE: AUG 2007 PROJECT NO: 04-3145000	TOWN OF CUTLER BAY MIAMI-DADE FLORIDA	SHEET NUMBER: FIG. 2-1 DRAINAGE DEFICIENCIES (IN PROGRESS)
SCALE: 1"=2000' DESIGNED BY: DNY DRAWN BY: DNY CHECKED BY: DNY	REVISIONS:	DESIGN NUMBER: FLORIDA REGISTRATION NUMBER:	DATE:	DESIGNER:	SHEET NUMBER: FIG. 2-1

Drawing Name: H:\043\085\043145000-Cutler Bay Stormwater Management\CONCEPT\PACKAGE DEFENDERS FIG 2-1.dwg Layout: Aug 22 2007 1:20pm By: denny.wong



LEGEND

-  CANALS/LAKES
-  ROADS
-  TOWN LIMITS
-  STRUCTURE NUMBER

NO.	REVISIONS	DATE	BY
			
SCALE: 1" = 2000' DESIGNED BY: DNY DRAWN BY: DNY CHECKED BY: HS		DATE: AUG 2007 PROJECT NO: 04-3145000	
			
MIAMI - DADE		FLORIDA DATE	
TOWN OF CUTLER BAY			
DELIVER DRAWING		FLORIDA REGISTRATION NUMBER	
SHEET NUMBER		FIG. 2-2	
DRAINAGE STRUCTURE INVENTORY			

2.3 Drainage Basin Analysis

Basin Delineation

The Town of Cutler Bay is located at the junction of three Miami-Dade County Canal Basins: C-100, C-1, and DA-4 (Figure 2-3).

The C-100 Basin portion of the Town is bounded as follows: Starting at the intersection of SW 184th Street (Eureka Drive) and SW 97th Avenue (Franjo Road), east on Eureka Drive to Old Cutler Road, then southwest along Old Cutler Road to SW 200th Street, then west on SW 200th Street to SW 87th Avenue (Galloway Road), then south on Galloway Road to Old Cutler Road, then west southwest on Old Cutler Road to Franjo Road, then northwest on Franjo Road to Eureka Drive.

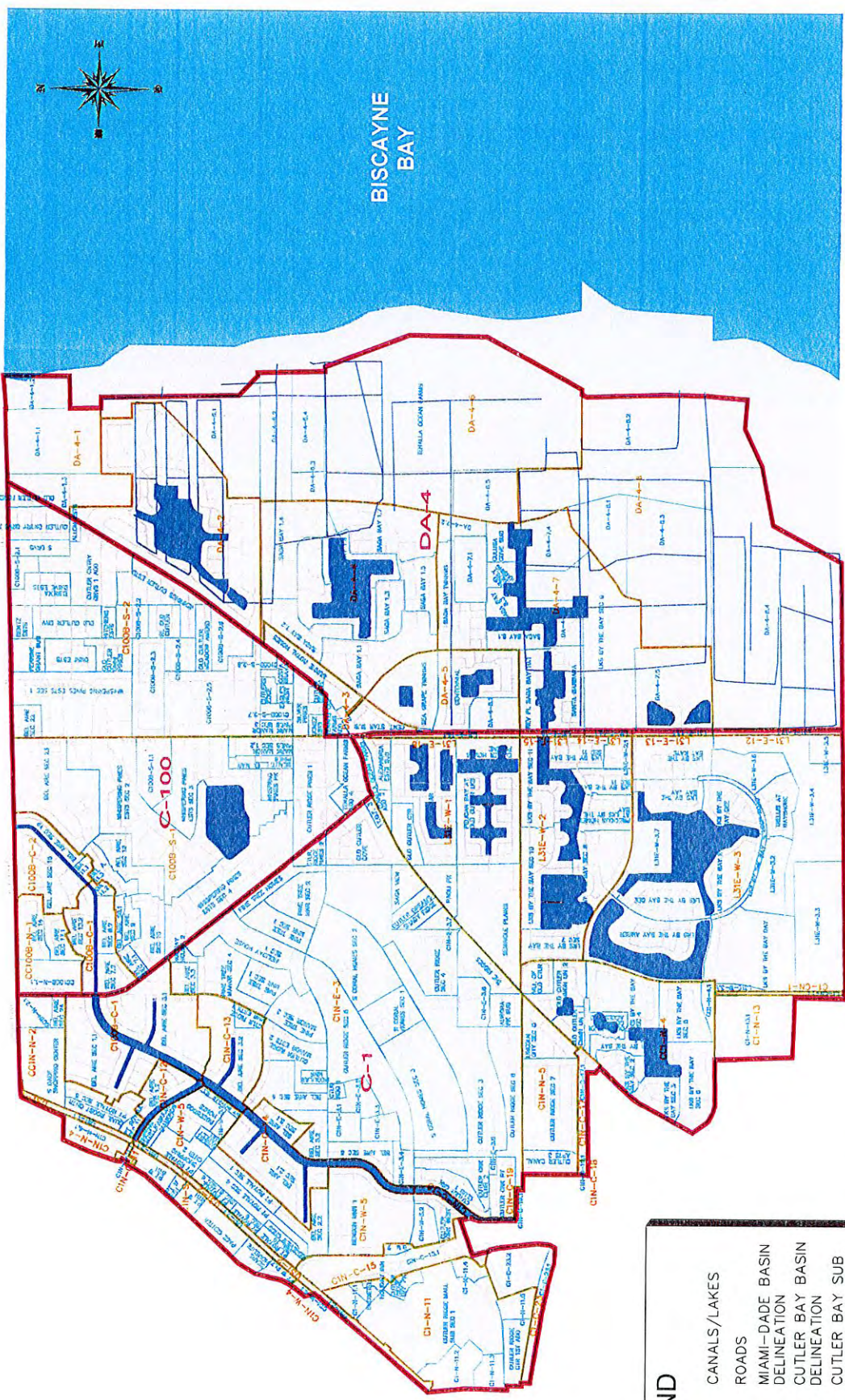
The C-1 Basin portion of the Town is bounded as follows: Starting at the intersection of Eureka Drive and Franjo Road, west on Eureka Drive to US-1, then following the west and south borders of the Town to Galloway Road, then north on Galloway Road to Old Cutler Road, then west southwest on Old Cutler Road to Franjo Road, then northwest on Franjo Road to Eureka Drive.

The DA-4 Basin portion of the Town is bounded as follows: Starting at the intersection of Eureka Drive and Old Cutler Road, east on Eureka Drive, along the north, east and south borders of the Town to Galloway Road, the north on Galloway Road to SW 200th Street, then east on SW 200th Street to Old Cutler Road, then northeast on Old Cutler Road to Eureka Drive.




The boundaries of said basins are delineated by Miami-Dade County DERM and SFWMD. There are six major canals that lie within and/or border the Town of Cutler Bay: C-100, C-100B, C-1, C-1N, C-1W, and L-31E. These canals provide three main functions:



- To provide drainage and flood protection for the C-100, C-1N, and DA-4 Basins.
- To supply water to the basins for irrigation.
- To maintain a groundwater table elevation that is adequate near the lower reach of C-100 and to DA-4 in order to prevent saltwater intrusion into local groundwater. Water is supplied to the basins during periods of low natural flow from C-1 by way of S-122 and C-100B and from C-1W by way of S-338.

To more effectively delineate the C-100, C-1, and DA-4 canal basins per Miami-Dade County Stormwater Master Plan, DERM divided the drainage basins into drainage sub-basins based on topography, land use, and drainage characteristics. The Town will adopt the boundaries and numbering system of the Miami-Dade County drainage sub-basins that are located within the Town. These Miami-Dade County sub-basins will be designated as drainage basins for the Town of Cutler Bay Stormwater Master Plan. The Town's Basins (County sub-basins) will then be further sub-divided into Town sub-basins based on hydrologic characteristics and subdivision boundaries. Figure 2-3 on the following page is a map showing the location of the Town's Basins.



LEGEND

-  CANALS/LAKES
-  ROADS
-  MIAMI-DADE BASIN DELINEATION
-  CUTLER BAY BASIN DELINEATION
-  CUTLER BAY SUB BASIN DELINEATION

NO.	REVISIONS	DATE	BY
			
SCALE	1" = 2000'	DESIGNED BY	DNY
CHECKED BY	DNY	DATE	AUG 2007
		PROJECT NO.	04-3145000
© 2007 KIMLEY-HORN AND ASSOCIATES, INC. 1001 HIGHLAND AVENUE, SUITE 400, MIAMI BEACH, FL 33139 WWW.KIMLEY-HORN.COM P.O. BOX 500000		MIAMI-DADE	FLORIDA
DESIGN ELEMENT FLORIDA REGISTRATION NUMBER		TOWN OF CUTLER BAY	
SHEET NUMBER FIG. 2-3		BASIN DELINEATION MAP	

2.4 Alternatives Evaluation

The Stormwater Master Plan will show the prioritization of the drainage sub-basins from the development of Hydrologic/Hydraulic Modeling and conceptual flood mitigation plans. The development of the priority sub-basins will be based on several factors including:

1. Magnitude of observed flooding
2. Flood complaint records
3. Condition of existing roadways
4. Proximity to other priority sub-basins
5. Relative traffic volumes on the affected roadways
6. Town Input

Flood mitigation plans for the priority areas consist of one or more of the following:

1. Constructing additional catchbasins and drainage system connectors or exfiltration trench for low points without positive drainage.
2. Increasing drainage capacity by adding exfiltration trench or increasing the size of existing pipes. Exfiltration trench consists of a perforated pipe placed underground and surrounded with gravel. The gravel is wrapped in a porous textile cloth that allows water to gradually seep into the surrounding soil. Exfiltration trench is commonly referred to as a french drain. It provides underground water storage in the pores between the gravel. Increased pipe size can allow for greater capacity in the movement of water from one place to another (i.e. from the road to the lake).
3. Installing exfiltration trench where none currently exists to provide pre-treatment prior to discharge into lakes. Pretreatment improves the water quality of stormwater runoffs from rain and other areas. The filtration provided by the gravel and geotextile in an exfiltration trench can remove pollutants before the water is allowed to discharge into a body of water. Federal, state, and county resolutions require this pre-treatment.

The remainder of this report discusses the reasons for establishing a stormwater utility and options available for stormwater utility rate structures and billing. Much of the background information for this discussion of alternatives was taken from the Florida Association of Stormwater Utilities manual entitled "Establishing a Stormwater Utility in Florida". The final section of the report outlines KHA's research for the administration, rate structure and billing method for the Town of Cutler Bay Stormwater Utility.

3.0 Reasons for Establishing a Stormwater Utility

3.1 Stormwater Management Challenges

Stormwater issues, unlike water and wastewater issues, are not directly related to population. Due to the changing weather patterns, stormwater flows are also not predictable on a daily or monthly basis. Potential stormwater associated challenges include the following:

- Physical System Capacity
- Facilities Maintenance
- Regulatory Programs
- Water Quality
- Funding Problems
- Public Perceptions

Each of these challenges is discussed in more detail below.

Physical System Capacity

Flooding and other drainage problems impact both public systems and private property. Flooding problems are the most visible indicators of capacity problems in any stormwater management system. Property development can cause increases in runoff volume and rate, reductions in ground water recharge, and increased pollutant loads in runoff. When existing conveyance systems are subjected to increased runoff volumes and peak flow rates, localized flooding can occur. Water quality degradation can also occur when minimally treated stormwater flows enter receiving waters.

Physical drainage problems are caused by a combination of very intense precipitation falling on flat terrain during periods of high groundwater. When relatively severe rainfalls occur following extended dry periods they frequently produce little flooding because groundwater levels are low. Conversely, after prolonged periods of rainfall, less intense storms often produce flooding due to elevated water table conditions.

Facilities Maintenance

Stormwater conveyance and treatment facilities must be properly maintained in order to perform as designed. Funding should be consistently available to meet maintenance demand because improper or delayed maintenance reduces the operational capacity of the stormwater management system. Although some chronic drainage problems can be attributed to design limitations, maintenance deficiencies can also lead to capacity problems and flooding.

In order to be effective, a maintenance program should include a regular and frequent schedule for inspection and cleaning of drainage structures and pipes and mowing and grading of roadside swales. Additionally, frequent street sweeping will reduce the amount of pollutants entering the stormwater management system. The maintenance program should also include funding to repair and reconstruct deteriorating stormwater infrastructure as needed. Often without a stormwater utility to provide regular funding, these maintenance activities are delayed or performed infrequently and the capacity of the stormwater management system suffers.

Regulatory Programs

Federal and state regulations are requiring more pro-active stormwater management each year. Recent legislation has expanded the focus of drainage programs to include floodplain regulation, water quality management and ecological preservation. Federal and state regulatory programs impacting local stormwater management programs include the following:

FEMA Floodplain Management Programs

Until recently, the federal government's influence on community stormwater programs was relatively small and limited to interaction with the Federal Emergency Management Agency (FEMA). FEMA's stormwater focus is on regulating development in the 100-year floodplain and issuing of flood insurance through the National Flood Insurance Program (NFIP). FEMA programs are typically voluntary participation programs, but property owners in communities that are in compliance with these programs enjoy lower flood insurance premiums than their counterparts in non-compliant communities.

Stormwater NPDES Permitting Program

In recent years, the federal government has become more involved in stormwater management through the Environmental Protection Agency's (EPA) National Pollutant Discharge Elimination System (NPDES) stormwater permitting program. Starting in 1990, the EPA required many counties (including Dade County) to secure Municipal Separate Storm Sewer System (MS4) Permits for their stormwater discharges. The MS4 Permit focuses on the reduction of pollutant loads discharged from stormwater outfalls. The Town of Cutler Bay has coordinated with the Florida Department of Environmental Protection (DEP) and has become a co-permittee on the MS4 permit for Dade County. As a co-permittee, the Town is required to meet the obligations of the permit.

EPA's NPDES stormwater permitting program is a mandatory process and the EPA has administrative, civil and criminal penalties for failure to apply for required permits and failure to properly implement issued permits. Within the State of Florida, the NPDES Permitting Program is monitored by the DEP. The NPDES program directly impacts the Town of Cutler Bay's stormwater management costs through the incremental costs associated with employees and equipment to implement permit required enhanced stormwater management and maintenance programs.

Water Management District Rules

In response to extensive flooding in the 1960s, the state created five water management districts (WMDs) that were intended to provide statewide management of flood flows. In the last 25 years, the Water Management Districts have constructed canal improvements and flood control facilities to reduce/ eliminate regional flooding and have developed regulatory programs to address the treatment of off-site stormwater discharges. The Town of Cutler Bay falls within the jurisdiction of the South Florida Water Management District (SFWMD). The SFWMD normally requires communities to secure Environmental Resources Permits (ERP) which address stormwater management and are issued for both new stormwater management facility construction and capital improvements to existing stormwater facilities.

Water Quality

As the discussion of regulatory programs above indicates, physical drainage problems are not the only stormwater management challenge. Water quality impacts to lakes, streams and estuaries caused by increasing stormwater discharges are less visible than flooding problems, but are becoming important considerations in annual stormwater management budgetary decisions.

Water pollution is a significant problem that must be carefully evaluated. Drainage systems can create water pollution in canals and receiving waters if not designed with mitigation components. Stormwater from urban areas can not only carry pollutants directly into drainage ditches and canals, it can also transfer them downstream toward fragile estuaries, wetlands and streams. Significant water pollution incidents can occur if hazardous, toxic or exotic materials are spilled or dumped into storm drains, swales or canals, but a major spill is not required to create serious water pollution problems. The cumulative effect of many small pollutant sources can also have a significant impact.

Miami-Dade County was required to apply for an MS4 Permit pursuant to NPDES regulations and has prepared a baseline water quality assessment and discharge monitoring program to characterize the quality of local stormwater discharges. The result of this effort is that the County and its co-permittees now have a better understanding of ambient water quality conditions and annual non-point source pollutant discharges within the County. The Miami-Dade County MS4 permit includes responsibility for inspection and cleaning of detention and conveyance systems, installation of oil separation systems and other best management practices. Erosion and sediment control is another NPDES stormwater management priority.

Funding Issues

Stormwater facility operation and maintenance responsibilities are currently funded through the Town's general fund revenue and grants through the SFWMD, but the present level of funding for drainage programs is not yet clearly defined and likely to be insufficient to carry out effective day-to-day operations and construct major capital projects. Two benefits of a stormwater utility fund approach are that the revenues generated are dedicated to stormwater management activities only and that the revenues are directly related to stormwater management system operating costs and capital improvement needs.

Public Perception

Public perception will dictate the viability of any strategy to build stormwater management improvements and enhance the Town's stormwater operations and maintenance program. In most Florida communities, a large segment of the general public lacks an understanding of stormwater problems and needs in the community. Stormwater management studies help to raise community awareness of stormwater issues and the physical components of the stormwater management systems. Most stormwater managers generally recognize that public perceptions are difficult to precisely assess, respond to, and alter. Factors which may influence public perceptions of stormwater issues in the Town of Cutler Bay include:

- Cyclic weather patterns and fading memory of recent storm events and flooding problems
- New and seasonal resident's lack of experience with local stormwater management problems and issues
- Lack of public understanding of the need for a comprehensive stormwater management program

- Limited public understanding of the interaction between the Town's stormwater management program and those of the South Florida Water Management District and Miami-Dade County
- Misunderstanding of the time involved in planning, design and construction of stormwater capital improvements. The public may be reluctant to pay for a program that does not result in immediate, observable improvements to the current drainage system.

3.2 Purpose of a Stormwater Utility

Detailed information on the number of stormwater utilities in Florida is available from the Florida Stormwater Association (FSA) stormwater utilities survey, which is conducted every two years. Information reported to FSA indicates that there are at least 100 established stormwater utilities within the state. To date, the majority of the stormwater utilities have been established by municipalities to serve residents while the remainder has been developed by urban counties to serve residents of unincorporated areas.

The Stormwater Utility Concept

Chronically limited funding for capital improvements, operation and maintenance of stormwater management systems, combined with the emphasis placed on stormwater quality management by NPDES permitting of stormwater discharges, dictates that communities secure stable funding and develop new financing strategies for their stormwater management programs. The essence of a stormwater utility is summarized in the following concepts derived from the most recent FSA member survey:

- Stormwater utilities are frequently founded for a particular purpose such as improving drainage within the community. However, other issues such as water quality improvement and environmental management may be included in the initial charter or included in an expanded charter after the utility has operated for a few years.
- Most stormwater utilities are designed to provide the majority of a community's stormwater funding thereby off-setting other funding sources.
- Revenues generated by stormwater utilities are constant and gradually increase with community growth.
- The most commonly used stormwater rate methodology, used in over 90% of Florida communities, is based on impervious area.
- Adding the stormwater utility bill to existing monthly bills for other utility services is the most common billing process, used by over 80% of Florida stormwater utilities, because it reduces billing and collection costs. About 11% of the utilities add the stormwater utility charges to the annual property tax bill, with the remaining utilities opting for other methods.
- Revenue capacity depends on whether undeveloped as well as developed properties are charged, and whether the municipality charges itself for streets and other public properties. Municipalities with more mature stormwater programs typically have higher service charges than those just beginning to develop their programs.

Stormwater Utility Focus

Stormwater utilities are commonly focused on improving a community's ability to meet a variety of objectives, such as funding improved maintenance and capital improvements, improving flood management abilities, and improving water quality prior to discharge to delicate waters. These objectives are typically met by focusing on one or several of the following services:

- Capital Projects for Improved Flood Control
- Enhanced Maintenance for Improved Flood and Pollution Control
- Capital Projects for Water Quality Treatment
- Water Quality Management and MS4 Permit Compliance
- Capital Facilities that Induce Groundwater Recharge for Water Supply
- Ecological Preservation
- System-wide Planning
- Regulation and Enforcement Activities

3.3 Benefits of a Stormwater Utility

A stormwater utility would be responsible for funding of the Town's stormwater management program in whole or in part. As such, it would provide the following benefits:

- *New Funding Source* - Revenues generated by the stormwater utility can be used as a new source of funds to supplement the Town's current stormwater management funding such as grants from SFWMD.
- *Supplemental Funding Source* – Stormwater utility revenues can be used to replace current general fund/ad valorem tax funding which enables the tax based funding to be used for other Town needs.
- *Sustainable Revenues* - Revenues generated by stormwater utilities are constant, tend to gradually increase with the Town's growth, and can be gradually increased through rate increases and/or imposing special user fees.
- *Bondable Revenue Stream* - Bonds for capital improvements can be issued to facilitate constructing stormwater management facilities, because the revenues generated by stormwater utilities can be used to repay the bonds.
- *Programmatic Stability* – With a stable funding source, the Town's stormwater management program can operate on a stable basis which supports staff stability, continued levels of maintenance operations, and continuity in CIP programs.
- *Long-Term View* – The stable funding source also allows for adoption of a longer view in planning for capital investments, undertaking maintenance enhancement, and developing staff since management will no longer be operating in a year-to-year funding environment, which lacks certainty of continued funding in successive years.
- *Facilitation of NPDES Compliance* – The Town will be more readily able to comply with the specific permit conditions requiring the development of annual operation, maintenance and monitoring programs contained in the Miami-Dade County MS4 permit.

A stormwater utility can provide the Town with numerous, continuing benefits that compensate the initial effort and costs of its development and implementation.

3.4 Stormwater Utility Operations

Prior to the establishment of a stormwater utility, the Town should identify its stormwater management program needs and identify functional requirements for meeting these needs. Functional requirements include support activities and expenses directly related to various operational functions (such as administrative oversight, logistical support, and computer time) as well as the work activities themselves. Stormwater management services are not always provided by a centralized stormwater management division. It is likely that the Town will achieve its stormwater management objectives through the actions of a number of different departments. Five basic functional categories should be provided within the context of a stormwater management program. The functional requirements can be divided into the following categories:

- Administration
- Planning and Engineering
- Regulation and Enforcement
- Maintenance Operations
- Capital Construction

Each category includes closely related groups of activities. Many of the tasks are similar or common to more than one category, and numerous overlaps exist. Some tasks might be placed in more than one category, but the overall stormwater management needs of the Town are represented by the list of functions.

Administration

Seven subgroups of administrative functions and types of support expenses, including those associated with financial management and program development can be included under the program administration category:

- General Administration
- Secretarial and Clerical Support
- Financial Management
- Program Planning and Development
- Capital Outlay and Overhead Expenses
- NPDES Compliance and Reporting
- Public Awareness and Involvement

These activities, and occasionally coordination of billing and collection of fees with Miami-Dade County, are described as administrative functions. Overhead and logistical expenses (space, telephone, utilities, etc.) and capital outlays for office furniture and fixtures not attributable to other functions are also identified under the administrative category. Capital outlay and overhead costs are normally classified as "non-functional" aspects of the stormwater program in the sense that they are not work activities that are directly related to a specific function but are common to all functions.

Planning and Engineering

The technical functions, engineering and planning, are directly influenced by stormwater master plans, basin studies and sizing of the conveyance and treatment components of the stormwater

management system. These functions continue to be essential elements as improvements are made to the system. The technical functions can be grouped into eight categories:

- Surveying and Documentation of Existing Conditions
- GIS Development and Operations
- Facilities Mapping and Inventories
- Stormwater Master Planning/Basin Planning
- Water Quality Planning and Engineering
- Design and Field Engineering
- Hazard Mitigation
- Support Requirements

Most of the planning and engineering activities for stormwater management are related to project design and construction, negotiation of permits, and coordination of operations and maintenance programs.

Regulation and Enforcement

Individuals, developers, agricultural interests and large companies contribute to the need for better regulation of the stormwater systems. Therefore, the Town needs a regulatory program to control and mitigate the general public's actions. Homeowners dump grass clippings, brush trimmings and other debris into drainage ditches and swales. If dumping is not prevented, this debris must be removed by maintenance crews, so it does not contribute to pollution and blockages downstream.

Public education has proven to be effective in reducing the impact that individuals have on stormwater systems, but increased regulatory enforcement is also needed. Regulation and enforcement functions included in the Town's stormwater program can be separated into six distinct categories:

- Permit Administration
- Inspection of Construction Activities
- Code Development and Enforcement
- Private Stormwater System Regulation
- Floodplain Management
- Monitoring of Stormwater Discharges and Receiving Waters

Experience in Florida communities has shown that regulatory efforts are among the most cost-effective and productive stormwater control measures. Regulations can be developed more quickly than capital projects, are less expensive than increased maintenance, tend to reduce the causes of problems quickly if vigorously pursued, and are permanent when applied consistently and repeatedly.

Maintenance Operations

Maintenance operations, both routine and remedial, must be undertaken by the Town if it intends to keep its stormwater infrastructure operating at or near its design capacities. Routine maintenance includes debris and sediment removal activities. Remedial maintenance involves repair and reconstruction short of total replacement, enlargement, or construction of entire

stormwater systems. Remedial work is typically performed on existing systems that are deteriorated due to aging or damage.

Both routine and remedial maintenance are required to ensure that the system works as effectively as possible when storms occur. Ten primary work tasks and related support activities included under the operation and maintenance category include the following:

- Operations Management
- Routine Maintenance
- Remedial Maintenance
- Erosion and Sediment Control
- Emergency Response Operations
- Water Quality Operations
- Street Sweeping
- Litter Control
- Spill Response/Containment
- Support Services

The ability of the stormwater management system to operate at a Level of Service (LOS) adopted by the Town lies in a combination of proper sizing during design and a suitable level of facilities maintenance to assure that the system components function as originally designed.

Capital Construction

Most Florida communities have significant planned, deferred and future needs for stormwater system capital improvements. These needs are generally addressed in the form of capital improvement programs for conveyance improvements, treatment facilities, and reconstruction of aged and deteriorated components of the existing system which have been identified through master planning and basin studies. Major types of capital investments and other capitalized expenditures that are required in the Town can be grouped in five general categories:

- Strategic Detailed Basin Studies
- Major Capital Improvements
- Minor Capital Improvements
- Land Acquisition
- Easement and Right-of-Way Acquisition

3.5 Financial Considerations and Institutional Issues

Development and implementation of a functional stormwater management program requires more than a concentrated Public Works effort. It also involves many different components of the Town's governmental structure, and impacts financial operations and existing institutional systems. The financial considerations associated with developing and implementing a stormwater utility is an area that requires careful attention. Given a utility's ability to generate operating and capital investment funding, it is important to address the basic financial considerations which will establish the feasibility of the utility.

Cost of data acquisition and/or development is one of the most important considerations in selecting a preferred stormwater service charge rate methodology. Two types of data are needed for a stormwater utility: (1) information on the appropriate physical parameters on each parcel of

property subject to the billing, and (2) information which allows the bill to be delivered to the proper party and receipts to be properly tracked. Many cities and counties have selected their preferred stormwater rate methodology primarily on the ready availability of data in their files or their ability to deliver a bill efficiently through one mechanism or another. The following chapter discusses some of the stormwater utility rate structures available for consideration when establishing a stormwater utility.

3.6 Recommendations

Currently, the Town of Cutler Bay is part of the Miami-Dade County Stormwater Utility. The municipalities within Miami-Dade County may establish their own Stormwater Utilities and request exemption from the Miami-Dade County Stormwater Utility. The Town has started this process with Miami-Dade County. It is recommended that the exemption process be completed from the County's Stormwater Utility system to ensure that revenue collected from the Town residents through the utility fee will be used to maintain and improve drainage systems within the Town. Otherwise, Stormwater Utility fees collected as part of the County's system are applied to improvements throughout the County based on County priorities.

The steps the Town of Cutler Bay will need to implement in order to initiate a Stormwater Utility are:

1. Develop and adopt the Town's Stormwater Master Plan (in progress).
2. Adopt Stormwater Management Report (in progress).
3. Adopt a resolution requesting exemption from the Miami-Dade County Stormwater Utility (completed).
4. Obtain approval of the requested exemption from the County Commission (in progress).
5. Adopt an ordinance creating the Town of Cutler Bay Stormwater Utility including the Equivalent Residential Unit (ERU) size.
6. Adopt the rate to be used for assessing the stormwater utility fee.
7. Authorize a method for collection of the fees.

4.0 Stormwater Utility Rate Structure Options

4.1 Background

A concept fundamental to any utility is the ability for the service delivered by that utility to be purchased in measurable, discrete units of service. For electric utilities, the unit is kilowatt-hours of power usage. For water utilities, the unit is thousands of gallons of water. In each case the user pays only for the service that the user consumes.

For stormwater utilities, the users are the owners of all of the parcels that contribute stormwater runoff to the public stormwater management system. The amount of runoff generated by each parcel and sent to the public stormwater system represents the parcel owner's proportionate share of the cost of maintaining and improving the stormwater system. The ability to contribute runoff to the stormwater system provides a direct benefit to the user. This benefit is provided through two basic categories of service: Water Quantity services and Water Quality services.

Water Quantity services reduce the flood related impacts of rainfall events by providing storage and conveyance of runoff away from buildings, roads, parking areas and other improved areas where flooding is undesirable. Services that contribute to water quantity impact reduction include the planning, design, construction and maintenance of retention and detention ponds, canals, drainage swales, pipelines and other storage and conveyance systems.

Water Quality services reduce the pollution related impacts of rainfall events in urban areas by reducing the amount of pollutants entering water bodies from the stormwater runoff. Services that contribute to water quality impact reduction include the planning, design, construction and maintenance of sediment traps, filtration devices, retention and detention basins, street sweeping programs, regular canal maintenance, and other treatment methods.

4.2 Rate Structure Fundamentals

Two basic principles guide the formulation of a stormwater utility rate structure.

1. The rate each user pays should be proportionate to the service provided by the stormwater utility to the user.
2. There should be a balance between simplicity and equity. The fairest rate structure would be one that addressed every conceivable factor affecting the quality and quantity of stormwater runoff from each individual parcel within the service area. However, such a structure would be cost prohibitive due to the expense of collecting extensive data on each individual parcel, entering it into a database and then maintaining that database so that the information remains current as parcels change over time.

The key is to strike a balance between the two principles such that enough factors are considered for the rate structure to be fair, but, at the same time, the structure should remain simple enough to allow for explanation to users and cost-effective administration.

A stormwater utility must simply but fairly estimate the volume of runoff generated by a given parcel, the water quality of that runoff and the rate at which the runoff leaves the parcel. Some of the most important factors contributing to the volume, quality and rate of runoff generated by a given parcel are:

- Impervious area is the portion of the parcel that is hard and impenetrable to rainfall. It generally includes building rooftops, driveways, parking lots, sidewalks and other concrete or paved surfaces. Close to 100% of rainfall on these areas becomes runoff and can enter the public stormwater system.
- Pervious area is the portion of the parcel that is permeable to rainfall. It generally consists of the landscaped or planted portion of the parcel. Only about 5% to 15% of the annual rainfall on pervious areas becomes runoff that can enter the public stormwater system because much of the rain that falls on pervious area is stored in the soil.
- Direct connection refers to the ability for runoff from a parcel to reach the public stormwater system. A parcel can be graded (or bermed) such that runoff from some storm events does not leave the property.
- Pollutant contribution of runoff affects the water quality of stormwater entering the public stormwater system. Many factors can influence the pollutant contribution. Typically, chemical contaminants from pervious areas are fertilizers and pesticides. Parking areas and driveways are usually the major contributors of petroleum based contaminants. Both pervious and impervious areas can contribute sediment, leaves and other debris to the stormwater system. Property owners may install controls such as detention/ retention ponds and filtration systems on their properties to reduce their pollutant contribution to the public stormwater system.
- Soil type affects the storage capacity of pervious areas within the parcel because some soil types, such as sandy soils, are more permeable and can more readily absorb and store water.
- Amount and direction of slope affects the rate of runoff contribution to the public stormwater system.
- Amount of water already in the soil affects the storage capacity of pervious areas within the parcel because saturated soil may not have remaining capacity available to store additional water.

According to the Florida Stormwater Association (FSA) manual Establishing a Stormwater Utility in Florida, impervious area is generally accepted as the most significant factor. This is not to say that the other factors are not also important, but in general some of them do not usually vary widely from parcel to parcel within a municipality and can be assumed to be constant. Items that fall into this category include: soil type, slope, and amount of water already in the soil. In addition to impervious area, pervious area, direct connection and contamination can vary from parcel to parcel and should be considered to the extent practicable when evaluating rate structures.

4.3 Impervious and Pervious Area as a Basis for a Rate Structure

Because impervious and pervious areas are so important to a property's contribution to the public stormwater system, it is logical to use these variables as a basis for establishing the stormwater utility rate structure. The method used by most stormwater utilities is to define a billing unit based on impervious area and charge the user based on the number of billing units located on the

user's property. The base billing unit can be defined in several ways. A few of the most common are listed below:

1. Average Impervious Area per Single Family Residential Properties – This unit is fairly simple for the typical user to understand and it allows a large portion of the users (single-family homeowners) to be grouped into a category paying a standard rate.
2. Average Impervious Area for All Residential Property Units – This unit is similar to the first, but it incorporates other types of residential properties such as apartments, mobile homes and condominiums into the average calculation in addition to single family residences. This approach has two advantages over the single family approach. First, an even greater portion of the users (residential properties) can be treated as a group paying a standard rate. Second, this method typically results in a smaller base unit since the amount of impervious area per unit for apartments and condominiums is typically smaller than the amount of impervious area for single family homes. A smaller base billing unit shifts more of the revenue burden to non-residential accounts and can result in higher revenue per dollar rate charge. A disadvantage of this approach is that by equalizing the revenue burden over the entire residential user pool, it can be perceived to place a greater revenue burden on owners of properties with smaller impervious areas per unit (such as condominiums) and a lesser burden on owners of properties with larger impervious areas per unit (such as single family homes).
3. Average Impervious Area per Multi-Family Residential Unit – This unit is similar to the first, but it is based on multifamily properties instead of single-family properties. This method typically has the advantage of creating a smaller base billing unit since the amount of impervious area per unit is typically smaller than the amount of impervious area for single family homes. A smaller base billing unit shifts more of the revenue burden to non-residential accounts and can result in higher revenue per dollar rate charge. In addition, if the average single family unit is described as an established number of multi-family units, all residential properties can be treated as one of two groups paying standard rates based on the type of residential property. A disadvantage is the added complexity involved in defining and billing two residential rate classes instead of just one.
4. Effective Impervious Area for Single Family Residential Properties – This unit is identical to the first approach listed above except that the effect of pervious area is factored into the average. This is accomplished by multiplying a parcel's pervious area by a coefficient that represents the runoff generated by pervious area relative to impervious area and then adding the product to the impervious area. The advantage is that the additional factor of pervious area is added into the revenue burden calculation. The disadvantage is that the inclusion of this additional factor increases the data collection and maintenance requirements
5. Effective Impervious Area for All Residential Property Units – This unit adds a pervious area contribution to the Average Impervious Area for All Residential Property Units. It has the same advantages and disadvantages as units 2 and 4 above.
6. Effective Impervious Area for Multi-Family Residential Property Units – This unit adds a pervious area contribution to the Average Impervious Area for Multifamily Units. It has the same advantages and disadvantages as 3 and 4 above.

According to the FSA, the first two base billing units are most commonly used. The average billing unit for all respondents to the 2007 FSA member survey was 2,581 square feet of impervious area.

4.4 Calculating Rates Based on a Standard Billing Unit

Once a base billing unit has been chosen, the rate charged to individual property owners can be determined using an equation that relates the impervious area (or effective impervious area) on the individual property owner's parcel to the standard billing unit. The equation can also take into consideration a mitigation factor to account for on-site pollutant reduction systems and a connection factor to account for retention of stormwater runoff on-site or drainage patterns that do not contribute to the public system. A general equation for stormwater utility billing may look like this:

$$\# \text{ Billing Units} = \text{Impervious Area} / \text{Base Billing Unit} * \text{Mitigation Factor} * \text{Connection Factor}$$

Where:

- Imperious Area = the amount of non-permeable surface on a parcel
- Base Billing Unit = one of the options from the previous page or an equivalent
- Mitigation Factor = a multiplier that reduces the # of billing units for parcels that provide on-site stormwater management facilities
- Connection Factor = a measure of the extent to which the impervious area on a parcel is directly connected to the public stormwater conveyance and treatment system

This equation can be applied across the board to all properties, or properties with similar attributes can be grouped together into rate classes and be billed for the same number of billing units.

4.5 Designation and Treatment of Rate Classes

Single-Family Residential

Each single-family residential parcel is assigned one billing unit, regardless of the amount of impervious area on the parcel if the base billing unit is based on single-family or on all residential properties. If the base billing unit is based on multifamily properties, each single-family residential parcel is assigned a standard number of billing units based on the relative area of the average multi-family unit vs. the average single family unit.

Residential Condominiums

If the base billing unit is based on single-family properties, owners of this type of property can be billed by the average impervious area for all condominium units divided by the average impervious area of the base billing unit. If the base billing unit is based on all residential properties, each condominium is assigned one billing unit regardless of the impervious area for the complex. If the base billing unit is based on multi-family residential properties, each condominium is assigned one billing unit regardless of the impervious area for the complex.

Mobile Home Lots

Mobile homes on individual lots can be treated similar to other residential properties. If the base billing unit is based on single-family properties or multi-family properties, owners of this type of property can be billed by the average amount of impervious area for all mobile home lots divided by the average impervious area of the base billing unit. If the base billing unit is based on all residential properties, each mobile home lot is assigned one billing unit regardless of the impervious area.

Mobile Home Parks

If the base billing unit is based on single-family properties or multi-family properties, owners of this type of property can be billed by the average impervious area per mobile home pad for all mobile home parks divided by the average impervious area of the base billing unit. If the base billing unit is based on all residential properties, each mobile home pad is assigned one billing unit regardless of the impervious area for the mobile home park.

Multi-Family Residential

If the base billing unit is based on single-family properties, owners of this type of property can be billed by the average impervious area per dwelling unit for all multi-family properties divided by the average impervious area of the base billing unit. If the base billing unit is based on all residential properties, each multi-family dwelling unit is assigned one billing unit regardless of the impervious area for the property. If the base billing unit is based on multi-family residential properties, each multi-family dwelling unit is assigned one billing unit regardless of the impervious area of the property.

All Non-residential Properties

Billed as general parcels based on the impervious area (and pervious area if applicable) of the individual property divided by the average impervious area of the base billing unit. This category includes commercial, industrial, agricultural, institutional and undeveloped properties.

Exemptions

All properties which receive service from the stormwater utility can be charged. However, the community may wish to exempt certain properties for political or equity reasons. Proposed exemptions from the stormwater utility fee need to be examined to ensure that applicable legal tests are met. The creation of an exemption must be founded on a legitimate public purpose and may not conflict with the federal constitutional concept of equal protection. Also, to ensure public acceptance, any proposed exemption should make common sense and be fundamentally fair.

4.6 Mitigation and Connection Factors

A mitigation factor allows for adjustments to the stormwater utility fee for the maintenance of man-made on-site stormwater treatment facilities. Properties that provide on-site stormwater treatment facilities typically contribute a smaller volume of runoff and/ or a less polluted runoff than their counterparts that do not provide stormwater treatment. Therefore, owners of these properties could make the argument that they should be given credit for the treatment they provide. Credit should only be given if the system is not maintained publicly. The amount of

credit given for the stormwater treatment facility should be based on an engineering estimate of the benefit to the public system provided by the private stormwater treatment system.

A connection factor allows for adjustments to the stormwater utility fee for properties that have some unique feature whereby all of the runoff from the parcel does not drain to the public stormwater management system. This factor could be applied on an exception basis in cases where not applying it would lead to an obvious inequity such as when a portion of the runoff from a property drains to a water body not maintained by the stormwater utility.

Mitigation and connection factors allow stormwater utility fees to be fine tuned to meet the fairness test for properties with unique characteristics. However, allowing credits for mitigation and connection factors requires the collection and maintenance of additional engineering data on individual parcels beyond impervious area data. The increased time and expense of collecting, analyzing and maintaining the information required for connection and mitigation factors outweigh the potential for increased fairness their inclusion in the rate structure formula provides. Therefore, mitigation and connection factors are not recommended for the Town.

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5.0 Data Collection

5.1 Introduction

One of the critical factors in the success of stormwater utility fee implementation is the collection of data to support the fee structure and the individual fees for customers. Data that was collected for the Town of Cutler Bay Stormwater Utility included:

1. Size of Miami-Dade County Equivalent Residential Unit (ERU) from Miami-Dade County Stormwater Utility
2. Number of Residential and Non-Residential ERU's within Town of Cutler Bay from Miami-Dade County Stormwater Utility
3. Land Use Designations for residential properties from the Town of Cutler Bay Comprehensive Plan.
4. Number of units for multi-family residential properties from Miami-Dade County Property Appraiser's website (www.co.miami-dade.fl.us/pa).
5. Mean impervious area per unit for multi-family and single family residential properties in the Town of Cutler Bay. Mean impervious area was determined based on area take-offs from digital aerial photographs and Geographic Information System (GIS) mapping information provided by Miami-Dade County Information Technology Department (ITD).

5.2 Definition of Billing Units

Prior to performing the area take-off calculations necessary to determine the mean impervious area for single-family and multi-family residential properties, a definition of impervious and pervious area had to be established.

Definitions

For the purposes of this report, the following definitions are applied to impervious and pervious areas:

- "Impervious Area" means the horizontal projection of areas on a customer's property that do not allow the infiltration of rainfall. Examples of impervious area include roofs of buildings, driveways, parking areas, sidewalks, tennis courts, etc. For a multi-story building, only the actual footprint area is considered part of the impervious area; additional stories do not add additional impervious coverage to the lot.
- "Pervious Area" means the horizontal projection of areas on a customer's property that allow infiltration of rainfall. In other words, the pervious area is the total property area minus the impervious area. Examples include grassed and forested areas.

Difficult Areas to Categorize as Impervious or Pervious Areas

While these definitions seem straight forward, there are a few exceptions that ultimately need to be considered as policy decisions. These are discussed below.

Shell, Gravel, and Sand

Driveways, parking lots and roads may be covered with what might be considered semi-impervious materials: shell, gravel, or sand. In each of these cases in an urban environment, the semi-impervious materials are underlain with compacted soil, so infiltration is impeded and reduced. For the purpose of this report, any compacted surface was considered to be impervious.

Swimming Pools

Clearly, the decking around swimming pools impedes the infiltration of rainfall and is impervious area. The pool itself, however, collects stormwater and does not create runoff. For each of the sampled properties, swimming pool area was collected separately and will be discussed in more detail later in this report.

Wetlands and Private Lakes

Another policy issue to consider is that of private lakes and wetlands on private property. The issue is that private lakes and wetlands do allow rainfall to collect and eventually infiltrate to the ground; however, during certain rain events, they can discharge stormwater directly to ditches and canals which are owned and operated by the Town.

There are a few factors that argue in favor of private lakes and wetlands being pervious areas. First, by their nature, they can not be developed further such that water quantity increases or stormwater quality decreases. Second, such lakes and wetlands do provide a measure of stormwater treatment by mechanical (settling), chemical (transformation), and biological (uptake) means. Therefore, the creation and maintenance of private lakes and wetlands should be encouraged. For these reasons, private lakes and wetlands were not considered to be impervious areas in this report.

Rights-of-Way

Another type of area that is difficult to classify is a right-of way (ROW). For the purposes of this chapter, a ROW includes residential streets and roads, and other public roads (town, county, state and interstate). A ROW is clearly impervious and contributes stormwater to the municipal stormwater management system. On the other hand, many times the municipal stormwater management system discharges excess stormwater to the ROW and the ROW transports and stores rainwater.

Private roads and streets (e.g., internal roads in an apartment complex) which are neither owned nor maintained by the municipal government discharge to the municipal storm sewer system and act, for all practical purposes, like other impervious areas within the parcel. For this reason, we will count private roads as impervious areas in the utility fee calculation.

Residential streets and other public roads can convey stormwater runoff to attenuation and treatment facilities and provide storage of runoff. State and interstate transportation systems are also constructed with a high drainage and stormwater quality level of service, and in some cases, accept runoff from municipal stormwater systems. Therefore, most if not all stormwater utilities adopted in Florida do not include public roads (ROW) as impervious areas to be included in the stormwater utility calculation. In essence, the ROW is considered part of the stormwater

management system that is paid for by separate funding methods (e.g., gas taxes). We will not consider public roads as impervious area in this report.

A definition of developed and undeveloped land will also need to be established. At first glance, these categories appear easy to distinguish. However, vacant lands can often get confused with undeveloped lands, so policy definitions are needed. For the purposes of this report, the following definitions will be used:

- "Developed Lands" are properties that have been altered from their natural state for the purposes of urban or agricultural use. General categories of developed lands include residential, commercial, industrial, institutional, agricultural, and governmental. Some stormwater utilities simplify this definition even further by defining developed lands as ones with impervious areas.
- "Undeveloped Lands" are properties that have not been altered from their natural state.

The definitions provided are consistent with many of the stormwater utility ordinances adopted in Florida and make a distinction between undeveloped lands and vacant ones. Vacant lands have developed land uses but there are no tenants. In the case of a utility fee that is sent to the tenant, this definition is important. In the case of an assessment that is sent to the owner, the definition is not important since the owner pays the bill whether there is a tenant or not.

Vacant versus undeveloped property is an issue related to data collection for the utility billing database. Therefore, a policy regarding undeveloped and vacant properties must be developed prior to initial billing. Some data may be collected first to help consider the policies. The vacant and undeveloped parcels are considered further below.

Developed but Vacant Parcels

As indicated above, the importance of vacant parcels depends on the type of funding program provided by the utility. A stormwater assessment is billed to the property owner so issues regarding tenants are not important. A stormwater user fee is normally billed to the tenant, so vacancy issues may be important. Two types of vacant properties are discussed in this section:

1. *Vacated Tenant* - Property which has been developed (i.e., has impervious area) is considered vacant if no tenant is present. Because the property is developed, runoff exits from the property whether the tenant is present or not. For a user fee, especially those billed in association with other utilities such as water or wastewater user fees, the absence of a tenant usually means the absence of other utilities. For administrative ease, most stormwater utilities do not send a separate bill for the stormwater user fee when no other utility bill is sent. However, this is a policy decision that must be considered as the stormwater utility fee database is being prepared.
2. *Seasonal Customer* - Another type of developed property that may be vacant has seasonal tenants. In Florida, this is very common, and seasonal changes in utility service needs can be significant in some communities. These customers should be addressed in the same manner as other utility customers during the vacated period.

Undeveloped Properties

Undeveloped properties do not have impervious areas and have not been altered from their natural state. If the reference area includes impervious areas only, then undeveloped properties simply have to be identified in the utility billing database but no additional information is required. If the reference area includes pervious area, then total parcel area must be defined for each undeveloped property. It should be noted that undeveloped properties receive little or no benefit from a normal stormwater management program, and they also provide infiltration and recharge benefits to the municipality. This means that great care should be taken in assessing undeveloped lands a utility fee or assessment.

5.3 Agricultural Lands

Agriculture is the last category of land use that affects the development of the stormwater utility database and how the data is collected. Agricultural lands vary in uses including cropland, timberland (silviculture), grazing lands, orchards, dairies and feedlots, and nurseries. Generally, agricultural lands have small impervious areas and large pervious areas. Water use is usually controlled since water and pumping costs reduce profits. For agricultural lands other than for grazing, property can be altered from its natural state to improve drainage and irrigation, and many agricultural uses require pesticides and fertilizers to increase crops. Pesticides and herbicides can be carried by runoff to potentially impact surface waters. Sediment loads from agricultural lands can also be significant. Furthermore, some types of crops (e.g., strawberries) require temporary cover: aerial photographs appear to show significant impervious areas, yet rainfall is retained onsite. On the other hand, stormwater management programs generally do not provide agricultural lands with significant service since the rural stormwater system requires minimal maintenance. Because of these issues, some stormwater utilities charge agricultural lands a user fee or assessment and some do not, regardless of the choice of reference area.

How agricultural lands are to be addressed in the stormwater utility should be decided early in the database development process. In very urban environments (e.g., cities), agricultural lands are not significant so inclusion or exclusion generally does not affect utility revenues. Within the Town of Cutler Bay agricultural properties will be treated similar to other non-residential properties and billing will be based on the individual property's impervious area.

5.4 Information Provided by Miami-Dade County

Miami-Dade County currently operates a Stormwater Utility that includes all properties within the Town of Cutler Bay. The billing unit upon which the Miami-Dade Stormwater Utility is based is an Equivalent Residential Unit (ERU) of 1,548 square feet (sf) of impervious area per residential unit. According to Miami-Dade County staff, there are 13,495 residential units currently billed by the existing Stormwater Utility. The Miami-Dade Stormwater Utility also bills 6,786.95 ERU's for non-residential properties located within Cutler Bay. Therefore, non-residential properties within Cutler Bay contain 6,786.95 ERU's x 1,548 (sf) impervious area per ERU = 10,506,198.6 (sf) impervious area.

5.5 Residential Area Measurement Methods

Based on a review of the Town of Cutler Bay Tax Roll information, provided by the Town of Cutler Bay, 9,042 single-family residential properties were identified. Taking 9,042 single-family residential units away from 13,495 total residential units, there remains 4,453 multi-family billed

units. Two spreadsheets were created for residential properties types: one for single-family and one for multi-family. Copies of those spreadsheets can be found in Appendix A.

Single-Family Property Measurements

Of the single-family properties, a random sample of parcels was chosen for measurement in the initial sample. The GIS coverage was electronically overlaid on the aerial photograph of the Town in AutoCAD 2007. Then the sample properties were located on the GIS map using a folio number search on the Miami-Dade County Property Appraiser's website (<http://gisims2.miamidade.gov/myhome/propmap.asp>). The total lot area for each sample property was measured by drawing an AutoCAD poly-line around the property and listing the property line. The building area was similarly measured by drawing a poly-line around any building rooftops visible on the aerial photograph of the property. In the same way, the paved area and pool area for each sample property was measured. The area information for each of the sample properties was entered into the single-family property spreadsheet.---

The measurement results for the initial sample of single-family homes was analyzed to determine the size of the sample needed to provide 90% confidence that the measured average would be within 5% of the true average. This was done by applying the following equation to the total impervious area (building area + paved area):

$$N = (1.645\sigma / 0.05X_a)^2$$

Where:

N = sample size for 90% confidence of being within 5% of the true average

σ = the standard deviation of the initial sample

X_a = the average (arithmetic mean) of the initial sample

Applying this equation, it was determined that a sample of one hundred ninety-six (196) single-family properties would be sufficient, therefore, a total of one hundred ninety-six (196) single-family properties were measured in the way described above.

Multi-Family Property Measurements

An initial sample of multi-family residential properties was measured using the same methods described previously for single-family properties. The measurement results for the initial sample of multi-family properties were analyzed to determine the size of the sample needed to provide 90% confidence that the measured average would be within 5% of the true average. It was determined that a sample of 466 property units would be sufficient. Therefore, 537 units were measured. The average areas per unit for multi-family properties were determined by dividing total measured area by the number of units. The number of units for each property was determined using a folio number search on the Miami-Dade County Property Appraiser's website (<http://gisims2.miamidade.gov/myhome/propmap.asp>).

5.6 Calculation of the Equivalent Residential Unit (ERU)

The number of units, total area, average building area, paved area, pool area and impervious area calculated including and not including pools for each of the residential property types is listed in Table 5-1 below.

Table 5-1. Average Area per Unit by Residential Property Class

Type of Property Unit	No. of Units	Mean Total Area per Unit (SF)	Mean Building Area per Unit (SF)	Mean Paved Area per Unit (SF)	Mean Pool Area per Unit (SF)	Mean Impervious Area per Unit (SF) Including Pools	Mean Impervious Area per Unit (SF) Not Including Pools
Single-Family	9,042	9,092	2,601	1,048	103	3,752	3,649
Multi-Family	4,453	4,066	1,224	584	5	1,813	1,808
All Residential	13,495	7,434	2,147	895	71	3,112	3,042

After collecting the sample measurements for each of the residential property classes, KHA analyzed the data to determine the equivalent residential unit based for six different alternatives:

1. Total residential unit equivalency including swimming pools as impervious area.
2. Total residential unit equivalency not including swimming pools as impervious area.
3. Single-family unit equivalency including swimming pools as impervious area.
4. Single-family unit equivalency not including swimming pools as impervious area.
5. Multi-family unit equivalency including swimming pools as impervious area.
6. Multi-family unit equivalency not including swimming pools impervious area.

Alternatives 1, 3 and 5 include swimming pools as impervious area while Alternatives 2, 4 and 6 do not. Swimming pools are technically impervious, but rain falling on them usually enters the sanitary sewer system through the pool's filtering and drainage system instead of the stormwater system. Thus, they can be considered to be either pervious or impervious in the calculation of the equivalent residential unit. Table 5-1 summarizes the impervious area per unit for the residential property types including pools as impervious area and not including pools as impervious area.

Alternatives 1 and 2 are based on total residential unit equivalency. Total residential unit equivalency includes all residential property classes in the calculation of the average reference area upon which utility fees will be based. The unit defined by this method can be referred to as an Equivalent Residential Unit (ERU). From Table 5-1, the ERU for Alternative 1 which includes swimming pools as impervious area is calculated to be 3,752 square feet per the following formula:

$$\text{ERU} = \frac{(9,042 \text{ Single Family}) \times (3,752 \text{ SF}) + (4,453 \text{ Multi-Family}) \times (1,813 \text{ SF})}{(13,495 \text{ Residential Properties})}$$

$$\text{ERU} = 3,112 \text{ square feet of impervious area.}$$

The ERU for Alternative 2 which does not include swimming pools as impervious area is calculated in the same manner to be 3,042 square feet of impervious area.

Alternatives 3 and 4 are based on single-family unit equivalency. Single-family unit equivalency includes only single-family residential properties in the calculation of the average reference area upon which stormwater utility fees will be based. The unit defined by this method can be referred to as a Single-Family Unit (SFU). For Alternative 3, the SFU was calculated to be 3,752 square feet of impervious area. For Alternative 4, the SFU was calculated to be 3,649 square feet of impervious area.

Alternatives 5 and 6 are based on multi-family unit equivalency. Multi-family unit equivalency includes only multi-family residential properties in the calculation upon which stormwater utility fees will be based. The unit defined by this method can be referred to as a Multi-Family Residential Unit (MRU). For Alternative 5, the MRU was calculated to be 1,813 square feet of impervious area. For Alternative 6, the MRU was calculated to be 1,808 square feet of impervious area.

5.7 Utilizing Miami-Dade County ERU

As an alternative to calculating an ERU based on property characteristics throughout the Town, the Town may consider utilizing Miami-Dade County's current ERU size of 1,548 square feet (sf) of impervious area per residential unit. Data obtained from the Florida Stormwater Association (FSA), an organization that was established in 1994 to assist professionals in the public and private sectors as they confront the problems associated with stormwater management and finance, identified that the municipalities of Aventura, Bay Harbor Islands, El Portal, Opa-Locka, Pembroke Park, Pinecrest, Palmetto Bay and Sunny Isles Beach have adopted the Miami-Dade County ERU size. This approach maintains the current ratio between residential and commercial revenue burden generated through the stormwater utility. A disadvantage for this approach is that since the impervious area per unit is based on properties throughout the County and not the Town, challenges to the ERU could be legitimate. The County's ERU rate will lessen the burden on residential property owners, but may be challenged by non-residential properties. Research was not performed as part of this report to identify if past or current legal cases exist in Miami-Dade County. However, FSA has documented cases throughout the state arguing that in the case of a tax, there is no requirement that a taxpayer receive a proportionate benefit or service, but there must be some general legislation that authorizes the tax. In contrast, a user fee or rate is not a tax and is within the "home rule" authority of a city if the rate is rationally related to a demand for a public service, and the amount of the fee is rationally related to the cost of the service. Although utilizing the County's ERU is calculated, it is related to properties throughout the County and not the specific properties throughout the Town.

5.8 Stormwater Utility Fee Preliminary Budgetary Analysis

A Capital Improvements Program (CIP) will be developed for the Town of Cutler Bay as part of the Stormwater Master Plan. Based on this CIP, an annual budget will be recommended for Capital Improvements. In addition, the Town should budget for annual operations and maintenance costs, administrative and professional costs, and stormwater bond debt service as outlined in the Preliminary Operation and Maintenance Budget in Table 5-2.

Table 5-2. Preliminary Operation and Maintenance Budget for Stormwater Utility Fee

Items	Annual Budget
Catch Basin & Exfiltration Trench Inspection	\$30,000
Clean Catch Basins & Manholes	\$70,000
Pipe Flushing	\$30,000
Exfiltration Trench Cleaning	\$35,000
Street Sweeping	\$70,000
NPDES Permit Fees / DERM Monitoring	\$7,000
Canal Maintenance / Joint Project Agreement with Miami-Dade County	\$30,000
Town wide Swale Maintenance and Litter Program	\$80,000
WASD Fee Collection	\$120,000
Professional Services – Engineering and Legal	\$60,000
Series 1992 and 2004 Stormwater Bonds, debt service	\$194,000
Stormwater Utility Administration	\$117,000
NPDES and FEMA Reports and Activities	\$15,000
Minor Repairs and Improvements and Contingency	\$50,000
Establish the Community Rating System (CRS) – FEMA Program	\$30,000 *
Public Outreach and Workshops (NPDES and CRS)	\$15,000
Staff Training (NPDES, CRS, and Stormwater)	\$5,000
TOTAL	\$958,00

* One time initial CRS Application Process

5.9 Stormwater Utility Rates for Florida Stormwater Association Utilities Members

KHA obtained the current list of stormwater utility rates for members of the FSA. The FSA publishes its Survey of Stormwater Utilities every two years and updates its listing of stormwater utility rates on a regular basis. Table 5-2 contains an abbreviated version of the list from 2007 that includes rates for stormwater utilities in Broward, Palm Beach and Miami-Dade Counties. This information can be used to compare rate proposals for the Town of Cutler Bay’s stormwater utility with other stormwater utilities in South Florida.

Table 5-2. Current Stormwater Utility Rates for Miami-Dade, Broward and Palm Beach County Members of FSA (2007)

Jurisdiction	ERU Rate	ERU Size (SF)	Rate per 1,000 SF
Aventura	\$2.50	1,548	\$1.61
Boynton Beach	\$5.00	1,937	\$2.58
Delray Beach	\$5.33	2,502	\$2.13
Fort Lauderdale	\$2.90	N/A	N/A
Hallandale Beach	\$2.68	958	\$2.80
Hialeah	\$2.50	1,664	\$1.50
Hollywood	\$2.69	2,250	\$1.20
Jupiter	\$4.10	2,651	\$1.55
Lake Worth	\$5.80	1,748	\$3.32
Margate	\$2.69	2,382	\$1.16
Medley	\$3.00	1,487	\$2.02
Miami	\$3.50	1,191	\$2.94
Miami Shores	\$3.25	1,435	\$2.26
Miami Springs	\$3.67	N/A	N/A
Miami-Dade County	\$4.00	1,548	\$2.58
Miramar	\$2.50	3,619	\$0.69
North Lauderdale	\$3.00	2,138	\$1.40
North Miami	\$4.65	1,760	\$2.64
North Miami Beach	\$4.50	1,800	\$2.50
Oakland Park	\$6.00	1,507	\$3.98
Pembroke Park	\$5.67	1,548	\$3.66
Pinecrest	\$3.00	1,548	\$1.94
Pompano Beach	\$3.00	2,880	\$1.04
Riviera Beach	\$4.50	1,920	\$2.34
Sunny Isles Beach	\$2.50	1,548	\$1.61
Sunrise	\$2.32	1,884	\$1.23
Tamarac	\$8.00	1,830	\$4.37
West Miami	\$2.50	1,400	\$1.79
West Palm Beach	\$6.95	2,171	\$3.20
Wilton Manors	\$3.50	3,460	\$1.01
Median	\$3.38	1,780	\$2.08
Mean	\$3.87	1,940	\$2.18

6.0 Selecting a Rate Structure for the Town of Cutler Bay

6.1 Review of Alternatives

Chapter 5 of this report discussed rate structures available for the establishment of a stormwater utility. This chapter will further examine some of these alternatives based on the property characteristics of the Town of Cutler Bay. In particular, two alternative rate structures will be discussed. The first is based on total residential unit equivalency and the second is based on multi-family residential unit equivalency. Both alternatives are based on calculated property characteristics throughout the Town. A third alternative of utilizing the current Miami-Dade County ERU size is discussed as well.

6.2 Total Residential Unit Equivalency

Total residential unit equivalency includes all residential property types throughout the Town in the calculation of the average reference area upon which utility fees will be based. The unit defined by this method can be referred to as an Equivalent Residential Unit (ERU). In Chapter 5, the ERU was calculated for two different definitions of impervious area. The first definition included swimming pools as impervious area and the second definition did not. Because the Town of Cutler Bay decided not to include swimming pools in the definition of impervious area, the second definition of impervious area will be applied in this discussion. Under this definition, the average impervious area for all residential units within the Town of Cutler Bay is 3,042 square feet.

If this figure is used as the ERU upon which the stormwater utility fee is based, each of the 13,495 residential property units could be assigned one billing unit regardless of relative size. This provides 13,495 billing units for residential property within the Town. Each non-residential property could be assigned billing units based on the individual property's impervious area divided by the ERU (3,042 square feet). Since non-residential properties within the Town of Cutler Bay have a total impervious area of 10,506,198.6 square feet, the number of billing units for all non-residential properties would be $10,506,198.6 / 3,042$ equaling 3,454. Adding the number of billing units for residential and non-residential properties together, we arrive at a total of 16,949 stormwater utility billing units under the simplest application of total residential unit equivalency. In this simplest application, the ERU is based only on impervious area and no mitigation or connection credits are given to any property.

6.3 Single-Family Residential Unit Equivalency

Single-family residential unit equivalency includes only single-family residential properties throughout the Town in the calculation of the average reference area upon which utility fees will be based. The unit defined by this method can be referred to as a Single-Family Residential Unit (SFU). Under this method of equivalency each of the 9,042 single-family residential property units could be assigned one billing unit regardless of relative size. Other residential property types such as multi-family would be assigned billing units based on the average impervious area for that property type as a percentage of the average impervious area for single-family residential properties. From Table 5-1 on Page 30, each of the 4,453 multi-family units at 1,808 square feet of impervious area would be assigned approximately 50% of an SFU (3,649 square feet). This approach would provide the Town with a total of 11,269 SFU billing units for residential properties. Each non-residential property could be assigned billing units based on the individual property's impervious area divided by the SFU (3,649 square feet) for a total of 2,879 billing

units. The resulting number of stormwater utility billing units for residential and non-residential properties together is 14,148 under single-family residential unit equivalency. In this simplest application, the SFU is based only on impervious area and no mitigation or connection credits are given to any property.

6.4 Comparison of ERU and SFU Based Stormwater Fee Rate Structures

The revenue generated per \$1.00 stormwater utility fee is greater for the ERU based billing unit than the SFU based billing unit because the smaller reference area leads to the creation of a larger data set of billing units within the Town. Based solely on revenue generating potential, it would seem that an ERU based on total residential equivalency is the best alternative if utilizing property characteristics throughout the Town. However, the principles of simplicity and fairness discussed in Chapter 3 should be considered before an alternative is chosen.

Simplicity Comparison

The derivation of the ERU based on total residential equivalency can be described clearly enough for the average citizen to understand. The derivation of the SFU based on single-family unit equivalency can also be described in language that the average citizen can understand. The single-family residential unit may be a little easier to visualize, so this unit may gain a slight simplicity edge in the public relations aspect. However, the ERU based rate structure has an edge in simplicity of implementation, because it creates a single rate class for all residential properties whereas the SFU based rate structure requires residential properties to be grouped into two different rate classes with residential class being billed a different fee.

Fairness Comparison

The SFU based on single-family residential equivalency may provide for a fairer distribution of revenue generation responsibility among the residential properties because it allows the properties to be grouped into classes based on land use designation. Since the average impervious area for each of the residential land use classes varies widely, this method allows the stormwater utility fee paid by each class of residential property to more closely represent the amount of impervious area on the individual property. With the ERU based on total residential equivalency there is only one rate class for residential properties, so residential property types with less impervious area per unit pay a higher fee relative to the amount of impervious area than residential property types with more impervious area.

6.5. Utilizing Miami-Dade County ERU

As discussed in Chapter 5, a third alternative is to utilize the current Miami-Dade County ERU size of 1,548 square feet (sf) of impervious area per residential unit. This approach would maintain the current ratio between residential and commercial revenue burden generated through the stormwater utility.

If the current Miami-Dade County size is used as the ERU upon which the Town's stormwater utility fee is based, each of the 13,495 residential property units could be assigned one billing unit regardless of relative size. This provides 13,495 billing units for residential property within the Town. Each non-residential property could be assigned billing units based on the individual property's impervious area divided by the Miami-Dade County ERU (1,548 square feet). Based upon Miami-Dade County records, the number of billing units for all non-residential properties would remain at 6796.95. Adding the number of billing units for residential and non-residential

properties together, we arrive at a total of 20,281.95 stormwater utility billing units under the simplest application of total residential unit equivalency. In this simplest application, the ERU is based only on impervious area and no mitigation or connection credits are given to any property.

6.6 Rate Structure, Stormwater Utility Fee and Annual Revenue

Based on the above analysis, it is recommended that the Town of Cutler Bay utilize total residential equivalency as the basis for its stormwater utility fee as opposed to single family unit equivalency. The Town must decide whether to implement an Equivalent Residential Unit (ERU) based on property characteristics throughout the Town (3,042 sq. ft. ERU with 16,949 billing units) or to implement Miami-Dade County's current ERU (1,548 sq. ft. ERU with 20,281.95 billing units). Table 6-1 below shows the Annual Revenue generated per \$0.50 incremental fee increase for both approaches.

Table 6-1. Annual Revenue per \$0.50 Fee Based on ERU

Current Miami-Dade County ERU Size

Fee	Residential ERU's	Residential Revenue	Non-residential ERU's	Non-Residential Revenue	Total Revenue
3.50	13,495	\$566,790	6,787	\$285,052	\$851,842
4.00	13,495	\$647,760	6,787	\$325,774	\$973,534
4.50	13,495	\$728,730	6,787	\$366,495	\$1,095,225
5.00	13,495	\$809,700	6,787	\$407,217	\$1,216,917
5.50	13,495	\$890,670	6,787	\$447,939	\$1,338,609
6.00	13,495	\$971,640	6,787	\$488,660	\$1,460,300
6.50	13,495	\$1,052,610	6,787	\$529,382	\$1,581,992
7.00	13,495	\$1,133,580	6,787	\$570,104	\$1,703,684
7.50	13,495	\$1,214,550	6,787	\$610,826	\$1,825,376
8.00	13,495	\$1,295,520	6,787	\$651,547	\$1,947,067

Town of Cutler Bay Calculated ERU Size

Fee	Residential ERU's	Residential Revenue	Non-residential ERU's	Non-Residential Revenue	Total Revenue
3.50	13,495	\$566,790	3,454	\$145,068	\$711,858
4.00	13,495	\$647,760	3,454	\$165,792	\$813,552
4.50	13,495	\$728,730	3,454	\$186,516	\$915,246
5.00	13,495	\$809,700	3,454	\$207,240	\$1,016,940
5.50	13,495	\$890,670	3,454	\$227,964	\$1,118,634
6.00	13,495	\$971,640	3,454	\$248,688	\$1,220,328
6.50	13,495	\$1,052,610	3,454	\$269,412	\$1,322,022
7.00	13,495	\$1,133,580	3,454	\$290,136	\$1,423,716
7.50	13,495	\$1,214,550	3,454	\$310,860	\$1,525,410
8.00	13,495	\$1,295,520	3,454	\$331,584	\$1,627,104
8.50	13,495	\$1,376,490	3,454	\$352,308	\$1,728,798
9.00	13,495	\$1,457,460	3,454	\$373,032	\$1,830,492

	Residential	Residential	Non-residential	Non-Residential	Total
Fee	ERU's	Revenue	ERU's	Revenue	Revenue
9.50	13,495	\$1,538,430	3,454	\$393,756	\$1,932,186
10.00	13,495	\$1,619,400	3,454	\$414,480	\$2,033,880
10.50	13,495	\$1,700,370	3,454	\$435,204	\$2,135,574
11.00	13,495	\$1,781,340	3,454	\$455,928	\$2,237,268
11.50	13,495	\$1,862,310	3,454	\$476,652	\$2,338,962

Section 5.8 of this report establishes a Preliminary Operation and Maintenance Budget for the Town of \$958,000. The Stormwater Master Plan will also describe budgets for a proposed Capital Improvement Program. The Town's monthly Stormwater Utility fee should be set at a level that provides revenue necessary to implement the recommended Operations and Maintenance and Capital Improvement Programs. If the Miami-Dade ERU is used, the monthly fee could be approximately 15% to 20% less per ERU than the ERU based on Town property characteristics in order to generate the same amount of revenue. A monthly fee in either approach would meet the needs of the current fiscal year budget and provide some flexibility for expansion as additional stormwater utility needs are identified through the stormwater management planning process.

As discussed in Chapter 3, mitigation factors and connection factors can also be added to the rate structure equation. The use of credits may result in extensive property data collection and program maintenance required by the Town. If the Town decides to provide mitigation and/or connection credits at a later time, it is recommended that credit for mitigation only be given to those properties that provide treatment beyond that required by regulatory agencies at the time of application for credit, and that the burden of collecting data to support the credit be placed on the property owner who is seeking the credit.

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7.0 Stormwater Utility Billing Methods

7.1 Introduction

At least three options are available for stormwater utility fee billing: special assessment, user fees attached to other utility bills and user fees billed separately from other utility fees. For the purpose of this chapter, the stormwater utility customer is the person (or entity) to whom the stormwater utility assessment or fee is applicable.

For special assessments, the customer is the property owner or escrow account. In other words, since the billing process through the tax collector is directed toward the property owner, special assessments are also associated with the owner. Therefore, data required for stormwater utility special assessment must be related to the property owner and the property owned. Land uses, impervious and pervious areas, location within incorporated areas, and other factors must be related to the property boundaries and, in fact, the primary key for assessment databases is the parcel identification number used by the Property Appraiser and Tax Collector. Therefore, the fee can appear on an annual property tax bill and paid within the appropriate time period as normally associated property taxes.

For user fees, the customer can be defined in a number of ways. If the fee is to be billed along with other existing utilities, then the customer is the existing customer for the other utilities. Many of the cities with existing stormwater user fees associate the stormwater fee with either the electric or water utility fees. In these cases, the customer is the electric or water customer. For user fees associated with other utilities, the customer can be either the owner or the tenant. The basis for the user fee database is generally the existing utility customer and the primary key for the database is the existing customer utility account number.

7.2 Factors Affecting the Applicability of Billing Methodologies

There are a number of factors that affect the selection of the most appropriate billing methodology for any given local government. These factors include:

- Billing Coverage
- Cost Perception
- Noticing Requirements
- Bill Recipient (property owners or tenants)
- Service Area Demographics

Billing Coverage

A key factor is the existence of a mechanism to distribute charges associated with the stormwater utility in a cost-effective and enforceable manner. For example, in a highly developed municipality, there are typically existing utilities (e.g., water and/or sewer utility) which already have a billing system in place. This billing system typically reaches the majority of the customer base within the municipal service area. To the contrary, a comprehensive utility system is not typically found in a partially developed municipality or in many unincorporated areas.

Cost Perception

The Stormwater Utility fee charge when compared to the other charges listed on the customer's Water and Sewer Department (WASD) bill will be minimal. In addition, collecting the fee quarterly instead of annually also adds to the perception of the charge as a small fee. Public perception toward the new stormwater charge is a factor in deciding which method of billing should be utilized. Within this cost perception factor, there are several sub-factors that a jurisdiction should consider when selecting a billing method.

Appearance of a Tax

Many customers are less likely to perceive the new charge as a tax if the charge appears on a utility bill, as opposed to the charge appearing as a non-ad valorem assessment on the tax bill. Most local governments want to reduce the perception of the charge as a tax.

Monthly versus Annual Payment

Another factor affecting the choice of a billing method is the impression of a large annual bill (as with an assessment) versus a smaller monthly (or other periodic) utility bill.

Noticing Requirements

A consideration, which often enters into the selection of the billing method type, is the special statutory noticing requirements associated with collecting non-ad valorem assessments. Chapter 197 of the Florida Statutes outlines the noticing requirements which include stringent notification by specific dates if charges are to be collected as non-ad valorem assessments on the tax bill. If the Town has not planned for these requirements in advance, it may find itself in the position of having to delay implementation of the charges or utilizing another method of collection.

Bill Recipient

Another key issue in selecting a billing method is the local preference as to who should receive the bill for the stormwater charge. For non-ad valorem or special assessments, the recipient will be the property owner. In the case of a utility bill, the recipient will be the tenant or occupant of a property. In many, but not all, cases, the occupant is the property owner. In some situations, the bill may be sent to the occupant/tenant unless the property is undeveloped/ uninhabited, in which case it will be sent to the property owner.

Service Area Demographics

This factor is closely related to the billing coverage factors; e.g. the parcel/property makeup of the service area of the stormwater utility. Issues such as the percentage of undeveloped and uninhabited property, variations in land use (high commercial/non-residential), seasonal residents, etc. may affect the choice of a billing system

7.3 Comparison of Collection Devices

The user fee has been the most frequently used methodology for the collection of stormwater charges among municipal governments. The user fee is typically collected through the use of an existing utility bill, and for this reason has been commonly used by municipalities where stormwater utilities have been implemented. The underlying reason for utilizing this method is

that the typical municipality has one or more existing utility systems (e.g., water, sewer, solid waste) which reach the majority of customers within its political boundaries.

The advantages and disadvantages of user fee billing compared to special assessment billing are shown in Table 7-1.

Table 7-1. Advantages and Disadvantages of Using Utility Billing for Stormwater Fees

Advantages	Disadvantages
<ol style="list-style-type: none"> 1. Cost effective since an existing system is in place 2. Strong enforcement mechanism, i.e. discontinuation of an existing utility service such as water, electric or solid waste disposal. 3. Charges are relatively small when compared to an annual billing method. 4. Provides a constant revenue stream 5. No statutory or special noticing requirements 6. Appears more as a fee/charge rather than a tax. 7. Flexibility related to issues such as changing utility rates. 8. Greater control 	<ol style="list-style-type: none"> 1. Non-collectibles are typically higher than w/ special assessment billing. 2. Requires development of mechanism for dealing with undeveloped and uninhabited property. 3. Parcel characteristic data does not necessarily coincide with utility account database causing higher setup costs. 4. Potential for customer confusion over stormwater charge with other charges shown on the utility bill (i.e. sanitary sewer).

7.4 Billing Method for the Town of Cutler Bay

Based on the advantages and disadvantages discussed above, required lead time, legal requirements and other practical considerations, it is recommended that the Town not select special assessment as the preferred billing method for the Town's stormwater utility. Instead, it is recommended the Town bill the stormwater utility fee on customers' monthly/quarterly water and sewer bills. Since WASD provides water and sewer services to most properties in the Town of Cutler Bay, the Town will either enter into an agreement with WASD to collect stormwater utility fees monthly or the Town will implement a separate billing cycle to collect the fee quarterly, semi-annually or annually. Properties without water and sewer service will be billed annually on a separate bill if they are vacant properties and not undeveloped parcels. Also, the Town can enter in an agreement with Miami-Dade County to bill the utility customer annually on the existing tax bill. Consequently, the utility billing system does not require the special noticing requirements that would be required for inclusion of the fee in the Tax Assessor's annual bill. Therefore, the fee can be more easily modified as required to meet the changing needs of the Town of Cutler Bay.

8.0 Conclusion

8.1 Stormwater Utility Purposes

A stormwater utility is an enterprise fund that provides stable funding for stormwater operations and capital projects. This enterprise fund can be used to improve drainage within the community to reduce flooding and to improve stormwater quality to comply with state and federal stormwater discharge permitting requirements. The dual goals of improving drainage and improving water quality can be met through a variety of maintenance activities and capital improvement projects. The stormwater utility customer is the property owner or occupant who benefits from the stormwater management system. Most stormwater utilities use a property's impervious area as the measure of the benefit accrued to the property owner by the provision of public stormwater management facilities. This method is recommended for use in the Town of Cutler Bay.

8.2 Stormwater Utility Rate Structure and Fee

The recommended stormwater utility rate structure is based on a unit referred to as an Equivalent Residential Unit (ERU). Each residential property unit will be billed for one unit of stormwater utility service. Each non-residential property will be billed for N units of stormwater utility service where:

$$N = \frac{\text{Impervious Area of Individual Non-residential Property}}{\text{ERU (Mean Impervious Area per Unit for All Residential Properties)}}$$

8.3 Stormwater Utility Rate Alternatives

There are currently 13,495 residential units within the Town of Cutler Bay. If the current Miami-Dade County ERU is implemented, the mean impervious area per residential unit is 1,548 square feet. If the ERU based on property characteristics throughout the Town is implemented, the mean impervious area per residential unit is 3,042 square feet. The total non-residential impervious area in the town is 10,506,198.6 square feet. Therefore, the Town of Cutler Bay has a total of 20,281.95 stormwater utility billing units if the County ERU is used or 16,949 stormwater utility billing units if the calculated ERU for the Town of Cutler Bay is used. Budgetary requirements to implement a stormwater Capital Improvement Program will be proposed in the Town's Stormwater Master Plan. However, it is KHA's experience that a typical stormwater master infrastructure project budget should be a minimum of \$600,000 to \$700,000 to generate sufficient bidding interest in the contractor community. Adding this to the recommended Operation and Maintenance Budget gives a total stormwater related cost of approximately \$1,600,000 to \$1,700,000. Therefore, it is recommended that the fee be set between \$6.50 and \$7.00 if the County ERU is used or between \$8.00 and \$8.50 if the ERU is based on the Town's characteristics.

Although the stormwater rate can be set to accomplish the level of service the Town desires, establishing the size of the ERU is a policy decision that is required by the Town prior to establishing a stormwater utility. Therefore, the following alternatives are offered:

- Alternative A: Implement the current Miami-Dade County ERU (1,548 square feet of impervious area).
- Alternative B: Implement the ERU based on Town property characteristics (3,042 square feet of impervious area).

8.4 Billing Method

The recommended method is billing the stormwater utility fee on customers' monthly water and sewer bills. Since WASD provides water and sewer services to properties in most of the Town of Cutler Bay, the Town will either enter into an agreement with WASD to collect stormwater utility fees monthly or the Town will implement a separate billing cycle to collect the fee quarterly, semi-annually or annually. Properties without water and sewer service will be billed annually on a separate bill if they are vacant but not if the parcel is undeveloped. There are approximately 100 ERUs billed by DERM that do not receive WASD bills.

A stormwater utility will provide the Town of Cutler Bay with the ability to implement stormwater management improvements through the application of an improved stormwater operation and maintenance program and the ability to implement capital projects. The resulting improvements will upgrade the stormwater system to provide improved storage, treatment, and conveyance of stormwater runoff to better serve the Town of Cutler Bay.

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Appendix A
Area Data for Sampled Residential Properties

Single Family Homes Sample Data

Index	Property ID	Address	Total Lot Area	Building Area	Pavement Area	Pool Area	Impervious Area (w/o pool imp)	Impervious Area (w/ pool imp)	Pervious Area (w/o pool imp)	Pervious Area (w/ pool imp)
1	36-6004-022-0480	9376 SW 784 TERR	8,800	1,942	566	0	2,508	2,508	6,292	6,292
2	36-6009-030-1040	9063 SW 206 ST	5,500	2,216	622	0	2,837	2,837	2,663	2,663
3	36-6004-015-0390	9525 TIFFANY DR	9,600	2,395	1,897	424	4,292	4,716	5,308	4,884
4	36-6010-021-0440	21029 SW 85 PSGE	5,805	1,629	756	0	2,385	2,385	3,420	3,420
5	36-6004-019-0440	18525 SW 90 CT	10,000	3,088	958	474	4,045	4,519	5,955	5,481
6	36-6008-023-0110	10371 SW 210 TERR	4,555	1,887	238	0	2,125	2,125	2,430	2,430
7	36-6003-023-0040	8050 SW 187 TERR	15,832	3,217	3,287	487	6,504	6,991	9,328	8,841
8	36-6003-020-0150	8149 SW 190 ST	15,000	3,784	3,632	436	7,416	7,852	7,584	7,148
9	36-6010-019-0040	8221 SW 198 ST	8,288	2,553	2,001	0	4,554	4,554	3,734	3,734
10	36-6004-025-0090	8540 SW 205 LN	6,320	2,535	745	0	3,279	3,279	3,041	3,041
11	36-6004-008-0400	8831 SW 198 ST	7,760	2,475	932	0	3,408	3,408	4,352	4,352
12	36-6004-008-0400	9301 MARTINIQUE DR	8,470	2,110	277	0	2,387	2,387	6,083	6,083
13	36-6009-011-0110	9180 SW 203 TERR	8,066	2,671	1,413	0	4,084	4,084	3,982	3,982
14	36-6004-013-0830	19401 RIDGELAND DR	21,418	6,814	3,660	0	10,474	10,474	10,944	10,944
15	36-6004-012-0580	9511 LISA RD	8,800	1,805	236	0	2,041	2,041	6,759	6,759
16	36-6005-007-1270	19601 BELVIEW DR	8,250	1,712	770	0	2,482	2,482	5,768	5,768
17	36-6008-009-0600	10471 SW 201 TERR	7,500	1,973	2,705	0	4,678	4,678	2,822	2,822
18	36-6010-016-0710	8517 FRANJO RD	4,060	1,980	485	0	2,465	2,465	1,595	1,595
19	36-6008-008-1140	10005 SW 215 ST	7,500	1,808	722	231	2,530	2,761	4,970	4,739
20	36-6010-023-0440	8642 SW 207 TERR	6,066	2,186	339	0	2,525	2,525	3,541	3,541
21	36-6003-028-0560	19720 CUTLER CT	10,688	2,663	1,994	0	4,657	4,657	6,031	6,031
22	36-6008-019-0020	9149 SW 213 TERR	8,115	2,392	1,066	0	3,459	3,459	4,656	4,656
23	36-6003-021-0080	18405 SW 77 CT	15,166	4,464	1,071	0	5,535	5,535	9,631	9,631
24	36-6004-030-0460	18424 SW 87 CT	15,246	4,499	684	0	5,183	5,183	10,063	10,063
25	36-6004-007-0970	8861 RIDGELAND DR	8,091	2,581	1,413	0	3,994	3,994	4,098	4,098
26	36-6009-024-0940	9018 SW 211 LN	5,444	1,454	579	0	2,033	2,033	3,411	3,411
27	36-6009-009-0370	20710 JACARANDA RD	10,504	2,699	616	0	3,315	3,315	7,189	7,189
28	36-6016-006-0720	21472 SW 88 PL	4,080	2,473	822	0	3,294	3,294	786	786
29	36-6005-006-0390	9850 SW 197 ST	9,500	2,362	1,463	360	3,824	4,184	5,676	5,316
30	36-6009-024-0670	21103 SW 88 PL	5,000	2,493	480	0	2,973	2,973	2,027	2,027
31	36-6004-009-1590	8720 SW 193 TERR	15,246	3,470	1,946	392	5,417	5,808	9,829	9,438
32	36-6010-004-0310	8125 SW 205 TERR	8,925	2,675	663	0	3,339	3,339	5,586	5,586
33	36-6010-010-0200	20211 SW 80 AVE	7,875	2,575	1,307	0	3,882	3,882	3,993	3,993
34	36-6008-001-0670	9801 HAITIAN DR	8,250	1,429	2,572	444	4,001	4,445	4,249	3,805
35	36-6004-018-0400	18934 SW 93 CT	9,440	2,051	2,766	0	4,816	4,816	4,624	4,624
36	36-6005-004-1090	18620 LENAIRE DR	9,009	2,488	658	0	3,146	3,146	5,863	5,863
37	36-6005-004-0140	18851 STERLING DR	9,500	3,700	1,425	0	5,125	5,125	4,375	4,375
38	36-6003-003-1290	18715 SW 84 AVE	15,224	3,531	1,487	379	5,018	5,397	10,206	9,827
39	36-6008-006-0180	10235 MONTEGO BAY DR	8,330	2,166	327	0	2,494	2,494	5,836	5,836
40	36-6003-014-0020	8225 SW 184 TERR	16,080	3,937	2,252	0	6,189	6,189	9,891	9,891
41	36-6005-016-0120	19321 STERLING DR	9,375	2,860	597	0	3,457	3,457	5,918	5,918
42	36-6010-023-0330	20810 SW 86 PL	5,633	2,146	292	0	2,438	2,438	3,195	3,195
43	36-6009-014-0600	20866 SNAPPER PL	2,153	1,103	321	0	1,424	1,424	729	729
44	36-6009-014-0690	20857 SNAPPER PL	2,496	1,117	388	0	1,505	1,505	991	991
45	36-6009-014-0720	20827 SNAPPER PL	2,436	1,160	147	0	1,308	1,308	1,128	1,128
46	36-6003-014-0820	20804 GROUPE DR	2,452	1,720	287	0	2,007	2,007	445	445
47	36-6016-003-0040	21556 SW 87 PL	1,248	1,051	50	0	1,101	1,101	147	147

48	36-6016-003-2170	21543 SW 87 CT	1,392	1,063	133	0	1,196	1,196	196	196
49	36-6016-003-2280	21569 SW 87 CT	1,392	1,263	119	0	1,382	1,382	10	10
50	36-6016-003-2340	8760 SW 215 TERR	2,323	1,725	355	0	2,080	2,080	243	243
51	36-6016-003-2440	8751 SW 215 TERR	1,392	1,001	175	0	1,176	1,176	216	216
52	36-6016-008-0010	21522 SW 87 CT	1,392	1,259	82	0	1,341	1,341	51	51
53	36-6016-008-0200	21439 SW 88 AVE	4,080	2,157	740	0	2,897	2,897	1,183	1,183
54	36-6017-012-1140	22179 SW 98 PL	3,506	1,430	739	0	2,169	2,169	1,337	1,337
55	36-6017-007-0450	21812 SW 98 PL	3,787	2,133	793	0	2,926	2,926	861	861
56	36-6009-023-0050	9354 SW 212 TERR	7,994	1,897	2,195	360	4,091	4,451	3,903	3,543
57	36-6016-010-0280	22162 SW 95 PL	11,570	2,781	581	0	3,363	3,363	8,207	8,207
58	36-6003-034-3510	7467 SW 189 ST	7,700	2,797	987	0	3,784	3,784	3,916	3,916
59	36-6003-034-2720	7615 SW 193 LN	11,273	3,490	371	0	3,861	3,861	7,412	7,412
60	36-6003-034-0680	7914 SW 194 ST	8,891	4,671	436	0	5,107	5,107	3,784	3,784
61	36-6004-009-1050	8711 SW 192 ST	9,450	2,236	593	0	2,829	2,829	6,621	6,621
62	36-6004-002-1150	9391 MARTINIQUE DR	8,543	2,249	451	0	2,700	2,700	5,843	5,843
63	36-6004-023-0610	9160 STERLING DR	9,460	2,016	683	163	2,699	2,862	6,761	6,598
64	36-6005-004-0840	18771 LENAIRE DR	11,204	2,197	728	0	2,926	2,926	8,278	8,278
65	36-6005-007-1610	19730 LENAIRE DR	8,250	2,958	549	0	3,507	3,507	4,743	4,743
66	36-6004-004-0610	9961 BAHAMA DR	8,250	2,641	477	0	3,118	3,118	5,132	5,132
67	36-6004-004-1320	9541 BAHAMA DR	10,233	3,397	867	0	4,284	4,284	5,949	5,949
68	36-6009-009-1170	9220 MARINE DR	11,182	3,394	1,970	190	5,364	5,554	5,818	5,628
69	36-6009-024-1730	9024 SW 206 ST	5,000	2,257	299	0	2,556	2,556	2,444	2,444
70	36-6009-030-0440	9024 SW 206 ST	5,000	2,608	438	0	3,046	3,046	1,954	1,954
71	36-6004-003-0130	19421 HOLIDAY RD	12,516	3,097	2,472	0	5,569	5,569	6,947	6,947
72	36-6010-025-0280	20215 SW 85 PL	8,734	2,954	544	0	3,498	3,498	5,236	5,236
73	36-6010-001-0350	8410 SW 201 ST	8,521	3,341	996	348	4,336	4,684	4,185	4,185
74	36-6003-016-0870	7850 SW 196 TERR	8,400	3,131	1,614	437	4,745	5,183	3,655	3,655
75	36-6003-020-0340	8221 SW 192	16,817	4,283	1,903	0	6,186	6,186	10,631	10,631
76	36-6003-003-0570	8531 SW 185 TERR	15,500	4,187	1,216	168	5,403	5,571	10,097	9,929
77	36-6003-029-0010	7900 SW 185 TERR	22,799	5,167	4,749	700	9,916	10,616	12,883	12,183
78	36-6009-009-0670	20500 LEEWARD LN	9,225	2,379	532	0	2,911	2,911	6,314	6,314
79	36-6010-001-0650	20511 SW 84 AVE	13,231	4,601	1,585	449	6,186	6,635	7,045	6,596
80	36-6009-023-0530	21200 SW 92 AVE	7,290	2,883	662	0	3,545	3,545	3,745	3,745
81	36-6010-004-0140	SAGA BAY	8,925	3,133	564	0	3,697	3,697	5,228	5,228
82	36-6004-014-0170	19810 SW 87 CT	8,800	2,938	533	0	3,471	3,471	5,329	5,329
83	36-6008-006-2530	9545 NASSAU DR	8,250	2,451	212	0	2,663	2,663	5,587	5,587
84	36-6009-021-0400	21201 SW 97 CT	6,495	1,828	480	0	2,308	2,308	4,187	4,187
85	36-6017-008-0090	21705 SW 99 AVE	7,297	2,778	516	0	3,294	3,294	4,003	4,003
86	36-6004-021-0060	9407 STERLING DR	9,350	3,193	726	127	3,919	4,046	5,431	5,304
87	36-6010-001-0150	8441 SW 201 ST	15,723	3,903	1,582	956	5,485	6,441	10,238	9,282
88	36-6009-030-2060	8765 SW 208 ST	6,000	2,743	932	0	3,674	3,674	2,326	2,326
89	36-6009-030-1800	20765 SW 89 AVE	7,250	3,305	583	0	3,888	3,888	3,363	3,363
90	36-6009-027-0120	8861 SW 212 TERR	8,690	3,024	834	0	3,859	3,859	4,831	4,831
91	36-6004-002-1210	9331 MARTINIQUE DR	8,250	3,564	1,499	444	5,063	5,063	3,187	2,744
92	36-6009-030-1030	9073 SW 206 ST	5,500	2,845	676	0	3,522	3,522	1,978	1,978
93	36-6004-014-1060	20040 SW 88 PL	10,700	2,429	1,269	458	3,698	4,156	7,002	6,544
94	36-6016-001-0620	9741 SW 219 ST	7,214	2,162	534	0	2,686	2,686	4,518	4,518
95	36-6004-002-1860	9580 CARIBBEAN BLVD	9,728	2,628	833	0	3,461	3,461	6,267	6,267
96	36-6009-024-2330	8971 SW 208 TERR	5,425	2,061	1,287	0	3,348	3,348	2,077	2,077
97	36-6004-014-1440	8925 SW 199 ST	7,950	2,554	502	0	3,055	3,055	4,895	4,895
98	36-6004-002-0770	9600 JAMAICA DR	8,250	2,849	768	0	3,617	3,617	4,633	4,633
99	36-6009-026-1160	8756 SW 214 TERR	4,080	1,279	959	0	2,238	2,238	1,842	1,842

100	36-6004-011-0100	19531 HOLIDAY RD	8,305	2,436	873	486	3,309	3,795	4,996	4,510
101	36-6004-004-0370	9881 CARIBBEAN BLVD	8,583	2,007	497	0	2,504	2,504	6,079	6,079
102	36-6003-025-0080	19747 SW 84 PL	9,516	3,287	1,887	487	5,174	5,661	4,342	3,855
103	36-6017-008-0490	21770 SW 99 PL	3,979	1,869	564	0	2,433	2,433	1,546	1,546
104	36-6009-009-1480	9425 NASSAU DR	8,250	2,195	327	0	2,521	2,521	5,729	5,729
105	36-6004-009-1590	8720 SW 193 TERR	15,246	2,442	262	0	2,704	2,704	12,542	12,542
106	36-6005-007-1870	10430 SW 199 ST	8,800	2,458	848	0	3,306	3,306	5,494	5,494
107	36-6005-008-2880	9907 SW 194 ST	10,240	2,709	548	0	3,257	3,257	6,983	6,983
108	36-6009-009-1300	9360 MARINE DR	8,625	2,768	669	0	3,436	3,436	5,189	5,189
109	36-6004-009-1740	8920 SW 197 ST	8,800	2,471	855	503	3,326	3,829	5,474	4,971
110	36-6009-026-0550	21437 SW 87 CT	4,103	1,622	724	0	2,346	2,346	1,757	1,757
111	36-6010-010-0050	20565 SW 80 PL	8,610	3,252	1,692	0	4,944	4,944	3,666	3,666
112	36-6004-014-1110	8950 SW 200 ST	9,024	1,948	911	0	2,860	2,860	6,164	6,164
113	36-6009-019-0410	21136 PERMIT LN	4,424	2,043	552	0	2,595	2,595	1,829	1,829
114	36-6008-002-0720	9880 HAITIAN DR	9,350	1,947	177	0	2,125	2,125	7,225	7,225
115	36-6009-009-0560	20715 JACARANDA RD	11,734	3,207	1,365	339	4,865	4,904	7,169	6,830
116	36-6004-017-0050	18730 SW 94 AVE	11,700	1,974	965	228	2,939	3,167	8,761	8,533
117	36-6017-007-0080	21654 SW 98 PL	3,200	1,786	581	0	2,367	2,367	833	833
118	36-6008-005-0180	9810 SW 212 ST	8,625	2,277	405	0	2,682	2,682	5,943	5,943
119	36-6008-006-1250	9920 MONTEGO BAY DR	8,375	1,509	626	0	2,134	2,134	6,241	6,241
120	36-6004-004-1900	20030 EAGLE NEST RD	8,584	2,002	762	0	2,764	2,764	5,830	5,830
121	36-6003-006-0130	8300 SW 184 LN	15,000	3,253	3,110	368	6,363	6,731	8,269	8,269
122	36-6004-023-0620	9021 SW 184 LN	13,515	2,073	433	0	2,506	2,506	11,009	11,009
123	36-6004-005-1120	9355 HAITIAN DR	8,250	2,214	914	239	3,368	3,368	5,121	4,882
124	36-6004-005-0410	9545 INDEPENDENCE RD	15,030	2,813	857	0	3,670	3,670	11,360	11,360
125	36-6009-009-0230	20700 ISLAND RD	9,840	3,062	1,147	320	4,209	4,528	5,631	5,312
126	36-6004-004-1400	9730 CUTLER RIDGE DR	12,153	1,427	206	0	1,633	1,633	10,520	10,520
127	36-6004-003-0760	9401 EASTER RD	12,794	3,016	1,745	591	4,760	5,352	8,034	7,442
128	36-6008-007-2280	19236 SW 92 RD	8,250	2,327	1,428	327	3,754	4,081	4,496	4,169
129	36-6008-002-0640	9901 MARTINIQUE DR	8,250	2,019	2,267	0	4,286	4,286	3,964	3,964
130	36-6010-004-0220	8104 SW 206 TERR	8,400	3,424	987	424	4,411	4,835	3,989	3,565
131	36-6009-024-2230	8871 SW 208 TERR	6,242	1,763	505	0	2,268	2,268	3,974	3,974
132	36-6003-028-0160	19831 CUTLER CT	10,688	3,005	630	0	3,635	3,635	7,053	7,053
133	36-6003-003-0360	8501 SW 185 ST	15,128	2,971	3,070	0	6,042	6,042	9,086	9,086
134	36-6003-028-0620	19630 CUTLER CT	12,281	2,725	2,053	427	4,778	5,205	7,503	7,076
135	36-6009-021-1050	8751 SW 212 TERR	8,316	3,015	569	0	3,584	3,584	4,732	4,732
136	36-6008-007-1040	21035 CONDADO RD	8,250	2,261	1,500	465	3,761	4,226	4,489	4,024
137	36-6016-013-0700	8837 SW 222 TERR	5,278	3,042	454	0	3,496	3,496	1,782	1,782
138	36-6009-030-0640	8935 SW 207 ST	5,000	3,009	408	0	3,417	3,417	1,583	1,583
139	36-6004-003-0690	9450 INDEPENDENCE RD	11,311	2,585	674	0	3,259	3,259	8,052	8,052
140	36-6003-031-0190	8250 SW 193 ST	17,018	4,286	3,782	436	8,078	8,513	8,940	8,505
141	36-6008-019-0180	9725 SW 214 TERR	9,375	2,517	1,037	0	3,553	5,822	5,822	5,822
142	36-6003-019-0070	8651 SW 200 ST	10,406	3,285	945	0	4,231	4,231	6,175	6,175
143	36-6008-001-0680	9781 HAITIAN DR	8,250	1,652	1,002	415	2,654	3,068	5,596	5,182
144	36-6008-006-2780	20710 ANCHOR RD	8,800	2,601	768	167	3,369	3,536	5,431	5,265
145	36-6009-009-2450	20025 RANCH RD	8,250	3,322	2,093	0	5,414	5,414	2,836	2,836
146	36-6009-023-1150	21351 SW 90 CT	9,753	2,559	536	0	3,055	3,055	6,658	6,658
147	36-6009-009-1720	9321 MARINE DR	8,250	2,489	257	0	2,746	2,746	5,504	5,504
148	36-6003-003-1180	18745 SW 84 CT	15,015	3,868	2,879	513	6,747	7,260	8,268	7,755
149	36-6009-026-0850	8760 SW 213 LN	4,080	1,252	737	0	1,989	1,989	2,091	2,091
150	36-6003-004-0180	8007 SW 185 ST	15,875	3,335	3,287	515	6,621	7,136	9,254	8,739
151	36-6005-011-0330	19722 SW 99 PL	19,632	4,542	1,591	338	6,133	6,471	13,499	13,161

152	36-6003-034-0350	18756 SW 78 CT	17,115	4,287	852	0	5,139	5,139	11,976	11,976
153	36-6004-023-0070	18500 SW 92 PL	8,800	1,782	1,218	0	3,000	3,000	5,800	5,800
154	36-6004-014-0430	CUTLER RIDGE PINES	9,168	2,937	963	287	3,900	4,187	5,268	4,981
155	36-6008-008-0320	9941 SW 213 ST	7,500	1,972	1,141	0	3,113	3,113	4,387	4,387
156	36-6009-030-1590	20511 SW 87 CT	6,900	3,080	531	0	3,612	3,289	3,289	3,289
157	36-6009-009-2170	9300 MARTINIQUE DR	9,877	3,251	474	0	3,725	3,725	6,152	6,152
158	36-6004-014-1680	19860 FRANJO RD	7,500	2,097	1,750	445	3,847	4,292	3,653	3,208
159	36-6004-025-0200	19685 SW 88 CT	10,650	2,804	915	0	3,719	3,719	6,931	6,931
160	36-6004-013-1070	9001 SW 197 TERR	8,250	2,264	443	0	2,706	2,706	5,544	5,544
161	36-6004-004-0400	9951 CARIBBEAN BLVD	8,250	2,002	486	0	2,488	2,488	5,762	5,762
162	36-6008-002-1570	10200 CARIBBEAN BLVD	8,448	1,443	348	0	1,791	1,791	6,657	6,657
163	36-6004-012-0510	9520 DANA RD	8,800	1,917	1,062	0	2,978	2,978	5,822	5,822
164	36-6004-015-0330	9530 SW 188 TERR	8,625	3,127	2,357	276	5,484	5,760	3,141	2,865
165	36-6005-004-2290	18620 SW 97 CT	7,875	2,328	439	0	2,768	2,768	5,107	5,107
166	36-6005-008-1090	9851 BEL AIRE DR	13,005	3,292	2,512	0	5,805	5,805	7,200	7,200
167	36-6005-008-0540	18931 SW 97 AVE	7,875	2,394	654	0	3,049	3,049	4,826	4,826
168	36-6004-013-2160	9405 SW 193 DR	8,250	2,673	511	0	3,184	3,184	5,066	5,066
169	36-6004-007-1320	9110 SW 188 TERR	8,250	2,133	653	161	2,785	2,946	5,465	5,304
170	36-6004-030-1030	18625 SW 88 RD	28,706	3,394	2,458	455	5,852	6,308	22,854	22,398
171	36-6009-032-0090	20369 SW 88 CT	6,465	2,048	468	0	2,516	2,516	3,949	3,949
172	36-6004-020-0130	18911 SW 92 CT	13,280	2,537	1,699	0	4,236	4,236	9,044	9,044
173	36-6004-016-0360	18660 SW 93 AVE	10,000	2,678	1,762	403	4,440	4,843	5,560	5,157
174	36-6004-021-0130	9454 SW 186 ST	11,120	3,287	504	0	3,792	3,792	7,328	7,328
175	36-6004-030-0800	18535 SW 89 CT	14,810	2,459	1,165	0	3,625	3,625	11,185	11,185
176	36-6004-014-1520	9025 SW 199 ST	10,717	2,297	918	0	3,216	3,216	7,501	7,501
Average			9,092	2,601	1,048	103	3,649	3,752	5,443	5,341
Standard Deviation			4,094	857	834	189	1,470	1,574	3,108	3,054
Required Sample (95% confidence w/n 5% of mean)							249	270		
Required Sample (90% confidence w/n 5% of mean)							176	190		

Multi-Family Sample Data									
Index	Property ID	Address	# of Units	Total Lot Area/unit (sf.)	Building Area/unit (sf.)	Pavement Area/unit (sf.)	Pool Area/unit (sf.)	Impervious Area/unit (sf.)	Pervious Area/unit (sf.)
1	36-6009-002-0140	20127 SW 88 CT	2	3,626	1,286.78	686.42	0.00	1,973.20	1,652.81
2	36-6010-028-0010	8160 SW 210 ST	155	1,808	155.91	286.45	0.00	442.37	1,365.57
3	36-6005-086-0001	18612 SW 100 AVE	68	2,583	676.30	773.64	0.00	1,449.93	1,132.71
4	36-6004-004-1380	9710 CUTLER RIDGE DR	2	5,249	1,067.64	1,398.85	0.00	2,466.48	2,782.02
5	36-6005-017-0560	19851-53 SW 103 CT	2	9,941	1,709.81	328.63	0.00	2,038.44	7,902.32
6	36-6010-020-0010	21269 SW 85 AVE	79	1,389	174.86	246.62	0.00	421.48	967.16
7	36-6005-020-0100	18705 SW 100 AVE	2	4,723	1,346.18	418.78	0.00	1,764.95	2,957.80
8	36-6005-020-0030	18625 SW 100 AVE	2	5,763	1,590.77	875.61	217.59	2,683.96	3,078.54
9	36-6005-020-0160	18765 SW 100 AVE	2	4,829	1,497.58	560.73	0.00	2,058.31	2,770.69
10	36-6005-087-0001	19626 SW 103 CT	8	2,552	658.73	724.98	0.00	1,383.71	1,168.48
11	36-6009-031-0001	21130 SW 87 AVE	48	2,198	470.62	710.26	0.00	1,180.88	1,017.04
12	36-6005-017-0100	19501 SW 103 CT	2	5,036	1,356.84	610.89	0.00	1,967.73	3,068.28
13	36-6005-042-0001	19350 SW 103 CT	4	2,482	784.46	488.29	0.00	1,272.75	1,209.50
14	36-6005-017-0220	19341 SW 103 CT	2	7,115	1,343.06	688.56	0.00	2,031.62	5,082.89
15	36-6005-001-0030	9760 SW 184 ST	51	2,064	617.93	754.11	16.77	1,388.82	675.57
16	36-6004-022-0290	9368 SW 185 ST	2	3,977	1,122.77	347.05	0.00	1,469.82	2,506.68
18	36-6009-010-0010	20500 MANTA DR	2	3,044	1,383.71	260.95	0.00	1,644.66	1,399.09
19	36-6009-010-0200	20621 20623 MANTA DR	2	3,722	1,042.36	220.15	0.00	1,262.50	2,459.00
20	36-6009-003-0270	20180 OLD CUTLER RD	2	4,124	1,286.00	369.59	0.00	1,655.59	2,468.67
21	36-6009-002-0020	20075 SW 87 PL	2	4,021	1,474.93	158.27	0.00	1,633.20	2,387.81
22	36-6009-015-0010	20540 SW 92 PL	2	4,301	1,547.40	387.79	0.00	1,935.19	2,365.32
23	36-6009-015-0300	20441 SW 92 PL	2	3,129	1,300.12	437.35	0.00	1,737.47	1,391.55
24	36-6009-015-0120	9261-63 SW 204 TERR	2	5,100	2,198.90	810.36	0.00	3,009.26	2,091.00
25	36-6005-020-0010	18605-07 SW 100 AVE	2	6,426	1,344.10	1,091.74	0.00	2,435.84	3,990.42
26	36-6009-015-0270	20515 20517 SW 92 CT	2	2,901	1,443.63	273.93	0.00	1,717.56	1,183.45
27	36-6009-002-0260	20070 SW 88 CT	2	3,506	1,346.31	546.64	0.00	1,892.95	1,612.55
28	36-6005-024-0001	19641 SW 103 CT	2	5,046	1,288.34	457.28	0.00	1,745.61	3,300.39
29	36-6005-037-0001	19733 SW 103 CT	2	4,664	1,649.09	627.41	0.00	2,276.50	2,387.50
30	36-6005-004-0360	10040 BROAD CHANNEL RC	2	5,517	1,424.04	933.98	0.00	2,358.02	3,158.73
31	36-6004-012-0560	9471 LISA RD	2	4,553	799.21	1,819.71	0.00	2,618.92	1,934.33
32	36-6009-002-0410	20131 SW 89 AVE	2	3,536	1,160.98	445.56	0.00	1,606.54	1,929.71
33	36-6009-015-0050	20500-02 SW 92 PL	2	3,781	1,448.98	557.92	0.00	2,006.89	1,773.61
34	36-6009-015-0370	20534-36 SW 92 CT	2	4,766	1,179.01	540.08	0.00	1,719.09	3,046.91
35	36-6009-015-0150	9247 SW 204 TER	2	3,256	1,320.66	425.94	0.00	1,746.60	1,509.40
36	36-6005-001-0021	9720 SW 184 ST	22	2,229	663.12	1,120.69	0.00	1,783.81	444.69
37	36-6005-090-0001	19520 SW 103 CT	8	2,552	658.73	724.98	0.00	1,383.71	1,168.48
38	3-6600-504-8001	19831 SW 103 CT	2	4,844	1,309.41	485.95	0.00	1,795.36	3,048.64
39	36-6005-017-0050	19601 SW 103 CT	2	4,727	1,356.83	408.46	0.00	1,765.30	2,961.21
40	36-6005-029-0001	19531 SW 103 CT	2	4,967	1,356.83	933.96	0.00	2,290.79	2,676.46
41	36-6005-017-0150	19411 SW 103 CT	2	4,529	1,356.83	402.07	0.00	1,758.90	2,769.77
42	36-6005-021-0001	19376 SW 103 CT	8	2,698	766.17	643.83	0.00	1,409.99	1,288.13
43	36-6005-091-0001	19506 SW 103 CT	8	1,921	357.13	392.94	0.00	750.07	1,170.49
44	36-6005-020-0180	18785 SW 100 AVE	2	5,720	1,569.58	727.75	0.00	2,297.34	3,422.41
45	36-6009-010-0100	20640 20642 MANTA DR	2	3,566	1,552.23	349.23	0.00	1,901.46	1,664.79
46	36-6009-010-0080	20620 20622 MANTA DR	2	3,623	1,426.97	223.95	0.00	1,650.92	1,971.58
47	36-6009-010-0030	20530 MANTA DR	2	3,692	1,571.40	247.93	0.00	1,819.32	1,872.68
48	36-6009-010-0130	20521 20523 MANTA DR	2	3,780	1,560.56	575.69	0.00	2,136.26	1,643.24
49	36-6009-010-0110	20491 MANTA DR	2	5,559	2,241.85	562.10	0.00	2,803.95	2,755.30
50	36-6009-015-0330	20511 SW 92 PL	2	3,520	1,328.29	319.92	0.00	1,648.21	1,871.29
68	36-6005-020-0130	18735 SW 100 AVE	2	4,633	1,633.49	809.11	0.00	2,442.60	2,189.90
Average			10.74	4,065.63	1,224.15	583.86	4.69	1,812.70	2,252.93
Std. Deviation			26.70	1,518.91	443.25	314.95	30.81	525.07	1,223.09
Total Samples			537						
Required Sample									
(99% Confidence within 5% of true average)									466

TAB 8

RESOLUTION NO. 08-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, FINDING THAT ACQUISITION OF PRIVATE PROPERTY THROUGH NEGOTIATED CONVEYANCE OR EMINENT DOMAIN SERVES A PUBLIC PURPOSE AND IS NECESSARY FOR DEVELOPMENT AND EXPANSION OF THE TOWN'S NEIGHBORHOOD PARK SYSTEM AND RECREATIONAL FACILITIES; AUTHORIZING THE TOWN ATTORNEY'S OFFICE TO INITIATE EMINENT DOMAIN PROCEEDINGS; AUTHORIZING THE TOWN ATTORNEY'S OFFICE TO RETAIN EXPERT WITNESSES AND CONSULTANTS AND TAKE FURTHER ACTIONS THAT ARE REASONABLY NECESSARY TO ACQUIRE THE PROPERTY DESCRIBED IN EXHIBIT "A"; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Cutler Bay ("Town") has adopted the Cutler Bay Comprehensive Plan ("Plan"), which promotes the health, safety, and welfare of its residents by creating principles, guidelines, and standards for the orderly and balanced economic, social, physical, environmental, and fiscal development of the Town; and

WHEREAS, in accordance with Florida law and based upon studies and data, the Plan incorporates several "Objectives" that contain goals, standards, and policies for proper implementation of the Plan; and

WHEREAS, the goal of the Plan's Recreation and Open Space Objective is to "provide and ensure a comprehensive system of public parks, open spaces and recreational programs, that are well planned, convenient and customized to the recreational needs of the residents of Cutler Bay;" and

WHEREAS, the Recreation and Open Space Objective identifies Level-Of-Service Standards for Active Open Space, which are intended to provide active public recreation opportunities for Town residents; and

WHEREAS, the Recreation and Open Space Objective states, "the Town shall add additional active park land to the Town's inventory to meet and maintain the established Active Open Space Level-of-Service Standard of 1.2 acres per 1,000 residents;" and

WHEREAS, the existing level of active park acreage and recreational facilities in the Town is inadequate to satisfy the Level-of-Service Standards specified in the Plan's Recreation and Open Space Objective; and

WHEREAS, the Town has identified privately owned property (described in Exhibit "A" and referred to as "subject property") that is immediately adjacent to other Town-owned property

and which is suitable for development of a neighborhood park and construction of active recreational facilities for residents; and

WHEREAS, acquisition of the subject property will provide suitable active park acreage and allow development of recreational facilities, thereby helping to bring the Town into compliance with the Active Open Space Level-of-Service Standard under the Plan's Recreation and Open Space Objective; and

WHEREAS, the Town Council finds that acquisition of fee simple title to the subject property serves a public purpose and is necessary for development and expansion of the Town's neighborhood park system and recreational facilities; and

WHEREAS, the Town Council, through the process of public meetings, has considered costs, long-range area planning, and other factors relevant to acquisition; and

WHEREAS, the Town Council finds that it is necessary to take legal action and employ legal counsel, real estate appraisers, and other experts to accomplish such acquisition; and

WHEREAS, the Town Council is authorized by Sections 166.401 and 166.411, Florida Statutes, to exercise the right and power of eminent domain.

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. Public Purpose and Necessity. It is hereby declared that it is necessary to acquire, through negotiated conveyance or eminent domain, fee simple title to the subject property described in Exhibit "A". It is further declared that acquisition of the subject property serves a public purpose and is necessary for development and expansion of the Town's neighborhood park system and recreational facilities.

Section 3. Authorization to Initiate Proceedings. The Town Attorney and all others acting on his behalf are authorized to initiate eminent domain proceedings pursuant to Chapters 73, 74, and 166, Florida Statutes, and to file petitions, pleadings, affidavits, declarations of taking, and any other documents authorized by Florida Statute or rule of court to accomplish the acquisition as described herein.

Section 4. Authorization to Engage Professionals. The Town Attorney and all others acting on his behalf are authorized to contract with outside counsel, real estate appraisers, land planners, engineers, title examiners, and other expert witnesses and consultants in connection with eminent domain proceedings.

Section 5. Authorization to Take Other Necessary Action. The Town Manager and Town Attorney and all others acting on their behalf are authorized to take such further actions as are reasonably required to fully accomplish the purposes hereinabove directed.

Section 6. 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 _____

EXHIBIT "A"

Parcel 1:

Lots 1, 2, 3, 4, 5, 6, 7 and 8 in Block 64 of LINCOLN CITY SECTION "G" according to the Plat thereof, as recorded in Plat Book 48, at Page 75 of the Public Records of Miami-Dade County, Florida. Less the following described property:

All that part of Block 64 of LINCOLN CITY SECTION "G", according to the plat thereof recorded in Plat Book 48 at Page 75 of the Public Records of Dade County, Florida, which lies Southerly of the following described line:

Commence at the point of intersection of the Southerly extension of the Westerly block line of said Block 64 and the Southwesterly extension of the Southeasterly block line of said Block 64; thence run Northeasterly, along said Southeasterly block line and its Southwesterly extension for a distance of 216.85 feet to the point of curvature of a circular curve concave to the Northwest, said point of curvature being the Point of Beginning of the herein described line; thence run Southwesterly, along the arc of said circular curve concave to the Northwest, having a radius of 291.50 feet, through a central angle of 34 12'26", for an arc distance of 174.03 feet to the point of intersection with the Westerly block line of said Block 64, and the End of the herein described line; said point of intersection being 73.14 feet Northerly of the point of intersection of the Southerly extension of the Westerly block line of said Block 64 and the Southwesterly extension of the Southeasterly block line of said Block 64 as measured along the Westerly block line of said Block 64 and its Southerly extension.

TAB 9



Office of the Town Manager

Steven J. Alexander
Town Manager

MEMORANDUM

To: Honorable Mayor and Councilmembers

From: Steven J. Alexander, Town Manager

Date: August 20, 2008

Re: A Resolution adopting the Miami-Dade County Local Mitigation Strategy and inclusion of Town identified "mitigation" projects

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING THE MIAMI-DADE COUNTY LOCAL MITIGATION STRATEGY, IDENTIFYING AND PRIORITIZING HAZARD MITIGATION GRANT PROGRAM PROJECTS TO BECOME A PART OF THE LOCAL AND STATEWIDE HAZARD MITIGATION STRATEGY

BACKGROUND AND ANALYSIS

In 1998, the State of Florida contracted with and provided funding to each of the counties within the State to develop a Local Mitigation Strategy (LMS). Shortly thereafter, a working group was developed, in order to identify a variety of mitigation related projects throughout Miami-Dade County and all of the incorporated municipalities, at that time. Several projects were identified within the Town's municipal boundaries which were included in the unincorporated county-wide project listing. One of the projects is the widening and dredging of the Caribbean Blvd. bridge project. In addition to smaller neighborhood drainage related projects.

Recently, the Town has completed the Stormwater Master Plan which has identified several flooding related projects that can be included in the County's Local Mitigation Strategy. Once the Town identified projects are formally included in the County's LMS plan, grant funding will become available both from the State of Florida and FEMA.

Town staff will forward potential "mitigation" projects to the County's LMS committee, in order to have the projects included in the County's LMS plan.

RECOMMENDATION

It is recommended that the Town Council approve the attached Resolution Adopting the Miami-Dade County Local Mitigation Strategy and authorizing the Town Manager to include Town-wide "Mitigation" projects.

RESOLUTION NO. 08-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING THE MIAMI-DADE COUNTY LOCAL MITIGATION STRATEGY; AUTHORIZING THE TOWN MANAGER TO IDENTIFY AND PRIORITIZE HAZARD MITIGATION GRANT PROGRAM PROJECTS TO BECOME A PART OF THE LOCAL AND STATEWIDE HAZARD MITIGATION STRATEGY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Federal Emergency Management Agency funded a national initiative to help communities develop local mitigation strategies that identify projects to mitigate the effects of natural disasters and to identify sources of funds to address those problems; and

WHEREAS, the State of Florida Department of Community Affairs entered into a contract with Miami-Dade (“County”) to provide the funding for the County and municipalities to jointly develop a Local Mitigation Strategy to become a component of the Statewide Mitigation Strategy; and

WHEREAS, the County entered into agreements with local municipalities to establish a unified process for developing the Local Mitigation Strategy and convey funds for participation in the plan development; and

WHEREAS, the Local Mitigation Strategy meets the State contract requirements and was accomplished with the participation of local governments, the Miami-Dade School Board, and a broad range of private not-for-profit agencies, businesses and universities coordinated by the Miami-Dade Office of Emergency Management; and

WHEREAS, the Town wishes to participate in the County’s Adopted Local Mitigation Strategy (Exhibit “A”); and

WHEREAS, the completion of the Town’s Stormwater Master Plan has identified several flood mitigation projects that qualify as projects in the County’s Local Mitigation Strategy; and

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

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND 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. Adoption of the Miami-Dade County Local Mitigation Strategy.

The Town Council hereby adopts the Miami-Dade County Local Mitigation Strategy, which is attached as Exhibit "A" to this Resolution.

Section 23. Authorization.

The Town Manager is hereby authorized to identify and prioritize potential mitigation projects to be included within Miami-Dade County's Local Mitigation Strategy Plan, which will include, but are not limited to, various mitigation projects identified in the Town's Stormwater Master Plan.

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

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 _____

The
**Local Mitigation
Strategy**

* * * * *

for
Miami-Dade County
and its
Municipalities, Departments and Private Sector Partners

LMS
Miami-Dade

December 31, 2007

The Local Mitigation Strategy of **Miami-Dade County and its Municipalities and Partners**

Introduction

Miami-Dade County is made up of thirty-five municipalities plus a large unincorporated area referred to as the “Unincorporated Municipal Services Area” (UMSA). While referred to as cities throughout this document, officially, some are cities, others are towns and still others are villages. These municipalities consist of both coastal and inland communities; urban, suburban and rural communities; communities that are heavily industrialized, some with an agricultural base and those that are almost completely residential. The county has two of the five largest cities in the state of Florida (Miami and Hialeah) and one city, Islandia, so small it has no infrastructure whatsoever.

In the spring of 1998, the state of Florida contracted with and provided funding to each of the counties within the state to develop a Local Mitigation Strategy (LMS). Miami-Dade County is a highly diverse community yet because of a hurricane named Andrew we all have a profound appreciation for hazard mitigation and a willingness to make the “Strategy” work. Consequently, all of the municipalities in Miami-Dade County have participated in the Local Mitigation Strategy (LMS) at one time or another and have formed, with many other organizations, what we refer to as the LMS Working Group.

The LMS Working Group

During the development of the LMS each municipality designated a representative to the Working Group. Additionally, each of the major departments within the county government assigned a representative to the Working Group to address the issues of the unincorporated portions of the county and the county owned and operated facilities that lie within the boundaries of the municipalities. In order to streamline planning, the Working Group was divided into seven subgroups, which, for convenience sake, used the groupings that were already in place within the county as “divisional emergency operations centers” (DEOC) and are loosely based upon geographical proximity. The subgroups are as follows (with new cities added where appropriate):

- Group 1: Aventura, Bal Harbour, Golden Beach, Miami Gardens, North Miami Beach and Sunny Isles Beach.
- Group 2: Bay Harbor Islands, Biscayne Park, Indian Creek Village, North Miami and Surfside.
- Group 3: Doral, Hialeah, Hialeah Gardens, Medley, Miami Lakes, Miami Springs, Opa-locka and Virginia Gardens.
- Group 4: El Portal, Key Biscayne, Miami, Miami Beach, Miami Shores and North Bay Village.

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- Group 5: Coral Gables, Palmetto Bay, Pinecrest, South Miami, Sweetwater, and West Miami.
- Group 6: Cutler Bay, Florida City, Homestead, Islandia and the Miccosukee Tribe of Indians of Florida.
- Group 7: Miami-Dade County departments, divisions and offices – offices and divisions that operate fairly independently of their parent department act on their own in the LMS Working Group.

Other active participants in the Working Group include state and federal agencies, colleges, universities and schools (including the Miami-Dade County Public Schools), hospitals, not-for-profit organizations and private sector companies.

The makeup of the Working Group is not limited to the any particular organization or jurisdiction. Numerous others have expressed the desire to participate in the Local Mitigation Strategy and are welcome to do so. It has been asked why federal and state agencies and private sector companies should participate in the LMS. Well, the answer is easy: They live here and work here, too; our disasters are their disasters.

Each organization, (municipality, county department or other participating organization) appoints an official representative to the Working Group who will vote on behalf of the organization and will be the “voice” of the organization. Each organization is encouraged to solicit participation and commentary from its citizens, employees and members.

It must be noted, however, that to be considered a participant of the Local Mitigation Strategy and receive the benefits thereof, a municipality, county department or any other organization must attend at least two of the four quarterly meetings held each year. The Working Group endorsed this policy unanimously on September 20, 2001. However, any organization may substitute regular participation and attendance on an active LMS committee or subcommittee in lieu of attendance at the quarterly meetings.

Although the state of Florida’s LMS development contract with Miami-Dade County and its municipalities officially terminated in August of 1999 there was a presumption in both the contract and in the publication *The Local Mitigation Strategy: A Guidebook for Florida Cities and Counties* that the Working Group or other successor entity would continue in some form far beyond that date. The requirement for the development of evaluation criteria and review and revision policies implies continuity, as does a long-term conflict resolution policy utilizing the Working Group as part of the process. In any event, the continuation of the Working Group has been addressed as part of the Local Mitigation Strategy even though not required by the contract.

LMS Committees

In order to streamline the Working Group’s activities, various committees may be formed, each addressing an area of concern. Initially, committees were formed to deal with flooding, evacuations, funding, community education, external policy, agriculture and wildfires. Other committees may be formed as needed. To act as a “board-of-directors” and to guide

policy between meetings of the Working Group, a Steering Committee has been formed with members representing the organizations found within the Working Group (i.e. municipal, county, educational, not-for-profit and private sectors). The Steering Committee will also act as a review committee for the establishment of this Local Mitigation Strategy and the prioritization of the projects therein. Membership on any committee shall be voluntary and subject to the review and approval of the Working Group. A committee member who fails to attend a reasonable number of committee meetings may be dropped from participation in the committee by a majority vote of the other members of that committee. As stated above, serving on a committee may act in lieu of attendance at the quarterly LMS meetings.

Program Continuity and Meetings

In September 1999, The Miami-Dade County Local Mitigation Working Group voted to continue the LMS program with or without state funding. The Steering Committee will meet as needed and the full Working Group will meet once each calendar quarter. Working Group meetings will be noticed by e-mail to the official representative of each jurisdiction and to other interested parties. The representatives are encouraged to post meeting notifications prominently, on community bulletin boards or in some other way, to notify the public or other interested parties at least thirty days prior to each meeting. Meeting times, dates and locations will also be posted on the LMS website: www.miamidade.gov/oem/lms.asp.

In March 2000, the Working Group determined that the LMS master document needed to be updated two to three times each year and the updates, including the deletion of completed or abandoned projects, the addition of new projects and amendments to existing projects, will be published and forwarded to the Florida Division of Emergency Management. In December 2000 it was finally agreed to by the Working Group that the LMS master document would be updated and published on June 30th and December 31st of each year.

The LMS Coordinator working through the Miami-Dade Office of Emergency Management (OEM) and with the assistance of the LMS Steering Committee, will undertake to organize the updates. All additions, deletions and amendments must be received at OEM at least thirty days prior to each agreed upon publication date or risk not being included in the final publication for that time period.

At all times, the latest published version of the Local Mitigation Strategy will be posted on the Miami-Dade County Internet website – www.miamidade.gov/oem/lms.asp – for public scrutiny and commentary. An email address, mdlms@miamidade.gov, has been established for such commentary, which is strongly encouraged; let us hear from you.

On June 6, 2000 the Miami-Dade Board of County Commissioners passed Resolution R-572-00 formally adopting the Local Mitigation Strategy as official county policy thus further promoting program continuity. Because Miami-Dade County has a metropolitan form of government, this means that each of the municipalities within the county has also automatically adopted the LMS unless they choose not to and to date, none have opted out.

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On September 13, 2000 Miami-Dade County, along with its municipalities and other organizations was designated by FEMA and the Florida Department of Community Affairs to be a "Project Impact Community." At the December 6, 2000 meeting of the LMS Working Group, it was agreed that the LMS Working Group would become the Project Impact Working Group and that the Local Mitigation Strategy would continue under the auspices of Project Impact. Henceforth, Project Impact and the Local Mitigation Strategy became synonymous. Additionally, the LMS Steering Committee will continue its functions under Project Impact. On May 30, 2001, a formal "signing ceremony" took place at Vizcaya Museum and Gardens when many members of the Working Group signed a proclamation, each becoming a "Project Impact Partner." Although FEMA no longer endorses Project Impact, it has indicated that it will not abandon the Project Impact communities as long as their grants are still in effect. Conversations within the Working Group indicate that Project Impact will continue in Miami-Dade County regardless.

On June 7, 2005, the Miami-Dade Board of County Commissioners passed Resolution R-710-05, which states that grant applications filed under the auspices of the Miami-Dade Local Mitigation Strategy no longer have to go to the Commission for approval, but instead authorizes the county manager to "*Apply for, receive, expend and amend applications for grant funds for projects listed in the Miami-Dade County Local Mitigation Strategy.*"

As of this publication date of December 31, 2008, the LMS Working Group is still going strong and there are over 300 completed mitigation projects at a value exceeding 250 million dollars. Additionally, there are nearly \$17 million in Pre-Disaster Mitigation (PDM) program projects that have been recently awarded and millions more in Hazard Mitigation Grants Program (HMGP) still pending from the 2004 and 2005 hurricane seasons. The HMGP funding that has become available as a result of Hurricanes Katrina and Wilma in 2005 will lead to significant mitigation advances in the near future.

Part I – The Strategy

Guiding Principles

Federal, State and Regional Governmental Entities

The federal, state and local entities that perform hazard mitigation functions are almost too numerous to name. However, some of the more prominent ones are: the Federal Emergency Management Agency (FEMA), the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSHA), U. S. Army Corps of Engineers (USACE), Natural Resources Conservation Service (NRCS), Florida Department of Community Affairs (DCA), Florida Department of Transportation (FDOT), South Florida Water Management District (SFWMD) and many more.

The government entities which are located in and affect Miami-Dade County and its municipalities that perform hazard mitigation functions are varied and represent all levels of government: federal, state, county and local.

The Federal Emergency Management Agency has funded hundreds of hazard mitigation projects following Hurricane Andrew and to a lesser extent following the 1993 March windstorm or “Storm of the Century,” the February, 1998 “Groundhog Day” storms and more projects have been implemented following Hurricane Irene in 1999 and the October 3, 2000 floods (pre-Tropical Storm Leslie), the tornados of March 27, 2003, the hurricanes of 2004 (Charley, Frances, Ivan and Jeanne) and most recently: Katrina, Rita and Wilma. FEMA also delves deeply into mitigation as administrator of the National Flood Insurance Program.

The U. S. Army Corps of Engineers is responsible for restoration and renourishment of most of the county’s beaches, maintenance of the Intercoastal Waterway, maintenance of Government Cut and the Miami Harbor entrance, and some shared responsibility with the South Florida Water Management District for the canal and levee systems throughout the county. Mitigation functions in these areas by the Corps are multiple and varied.

The South Florida Water Management District maintains canal, pumping, and drainage systems throughout the county and controls when control structures are opened and closed thus flood control mitigation opportunities exist to benefit all of South Florida. These structures, located throughout the county, also mitigate against saltwater intrusion into our drinking water supply.

The United States National Park Service controls Everglades National Park that covers one third of the land area of Miami-Dade County and Biscayne National Park that covers over half of Biscayne Bay. One of our municipalities, the City of Islandia, lies entirely within the boundaries of Biscayne National Park.

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The Florida Department of Environmental Protection oversees considerable flood plain management and also controls the state park system, two of which, Oleta River and Bill Baggs State Recreation Areas, lie within Miami-Dade County; state parks that are vulnerable to hurricanes and storm surge because of their locations, one on Biscayne Bay and the Intercoastal Waterway and the other on Key Biscayne, a barrier island.

The United States Department of Agriculture's Farm Service Agency provides assistance to the farming community similar to that which FEMA provides to counties and municipalities. Also, the Natural Resources Conservation Service (formerly Soil Conservation Service) helps with mitigation such as canal bank restoration and stabilization.

The United States Forestry Service and the Florida Division of Forestry both keep fire trails and fire breaks open, conduct controlled or prescribed burns and assist with debris clearance, all of which mitigate and facilitate fire control by keeping fuel levels low.

The Florida Department of Transportation must be a major participant in any mitigation endeavors undertaken throughout the county. They, along with the Miami-Dade Expressway Authority, maintain and control our major thoroughfares including the expressway system. They also control, along with Miami-Dade County Public Works, Florida East Coast and CSX railroads and the Town of Bay Harbor Islands, the twenty-three movable bridges that cross the Miami River and the Intercoastal Waterway.

Municipal Agencies and Their Mitigation Functions

The municipalities of Miami-Dade County each have within their makeup certain departments and agencies which affect and promote mitigation. While these agencies may have slightly different names from city to city, the role they perform in the mitigation function remains the same (e.g. public works or public services or community services, etc).

Police and fire rescue departments: Each of the municipalities except Doral, Islandia, Miami Gardens, Miami Lakes and Palmetto Bay maintains its own Police Department while the cities of Coral Gables, Hialeah, Key Biscayne, Miami and Miami Beach also maintain their own fire departments with the balance of the cities using Miami-Dade Fire Rescue for this service. While these departments, except for their own buildings, do not truly do mitigation as it pertains to this strategy, they can be an extremely helpful as sources of information because they are the first responders to most of our hazard events and their insights into preventive measures can be invaluable. The police and fire departments also conduct educational seminars to residents to spread awareness on emergency preparedness.

The building department (or building & zoning): The functions of this department relate extensively to a wide range of mitigation projects and on-going mitigation activities. In most of our cities, the Building Official is responsible for

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interpreting and enforcing all laws, codes, ordinances, regulations and municipal policies related to the construction, improvement, expansion, repair or rehabilitation of buildings within the city. This department ensures that all new construction complies with the Florida Building Code which in itself is a major contribution to hazard mitigation. The department usually is responsible for the prevention of development in Special Hazard Areas; preservation of open space; general control of land use intensities; and coordination between the capacity of public infrastructure in relation to proposals of private development. This department also ensures all proposed development in the city conforms to the city's comprehensive plan as it relates to urban design of public areas and buildings, infrastructure planning and maintenance of flood data and other statistical information.

Planning and Development Department: Often is a part of the building department and even, at times, a part of public works. However, a number of our municipalities maintain planning and development as a separate entity which interacts within the mitigation strategy in many ways and must be part of the overall strategy especially in the area of urban land use..

Public Works Department: In most of our cities this department is responsible for construction and maintenance of roads, bridges and waterways and storm water management including drainage system development, inspection and maintenance, all functions that relate in various ways to hazard mitigation. Public works activities are a major component of any mitigation strategy.

Mitigation Goals and Objectives

In a community as large and diverse as metropolitan Miami-Dade County no single list is going to include every conceivable mitigation goal or objective. However, we can start with the philosophies necessary to bring the community together as a single mitigating entity.

Mitigation goals and objectives must be consistent with the goals and objectives of the county and the individual municipalities' master plans, their codes and ordinances, as well as other endeavors that reflect the aspirations for the welfare, safety and quality of life of their citizens.

Goals

1. The primary mitigation goal is to reduce vulnerability to natural, technological and societal hazards from all sources but especially, in South Florida, from hurricanes, tornadoes, major rainfall and other severe weather events.
2. Related to the above is the goal to mitigate the extent and severity of the problems created by these hazards and to, collaterally, secure the necessary commitments and, to the maximum extent feasible, the necessary resources to implement mitigation activities in annual action plans to achieve these goals.

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3. To prevent any additions to the list of “Repetitive Loss Properties” published annually by the FEMA National Flood Insurance Program (NFIP) and to reduce the number of repetitive loss properties to a point where the municipalities and the county can qualify as a category A or B Community (i.e. a community containing no more than nine repetitive loss properties). A repetitive loss property is a single property that has two or more NFIP flood insurance claims of \$1,000 or more.
4. To assure incremental improvements in municipalities’ standing and classification in the Community Rating System (CRS), with the related consequences of making flood insurance under the NFIP more affordable and reachable, while improving cities’ effectiveness in coping with flood hazards, problems and emergencies. It is also a goal of the Local Mitigation Strategy to ensure that all the municipalities in Miami-Dade County are or will become members of the CRS program.
5. Increase the continual dissemination of information on a repetitive basis with respect to the existence of flood hazards and the availability of measures to mitigate the problems presented by such hazards.
6. Continually improve and maintain cutting-edge, state-of-the-art, effectiveness of the cities’ emergency preparedness and disaster response capacity.
7. To increase the level of coordination of mitigation management concerns, plans and activities at the municipal, county, state and federal levels of government.
8. To secure an enforceable commitment for the implementation of the local hazard mitigation strategy.

Objectives

1. To follow the mitigation recommendations espoused in the FEMA publication *Building Performance: Hurricane Andrew in Florida*, a document that dramatically sets forth the many deficiencies brought to light by Hurricane Andrew.
2. Protection of expressways, major highways and other thoroughfares and, more importantly, our bridges and causeways to provide for continuous, free flowing traffic and circulation as needed for the effective and unencumbered provision of emergency services and evacuation operations.
3. Protection of “critical facilities” vital to the safe and continuous operation of countywide infrastructure including hospitals and health facilities; water and sewer facilities; major airports; the seaport; electrical, natural gas and telephone systems; bus and rail lines; schools and waterways.

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4. Protection of critical facilities vital to disaster response, including the structures occupied by the Fire and Police Departments and all other emergency-related personnel, equipment and facilities involved with the transportation, communication, and energy requirements for an effective response to a major rainstorm, hurricane, tornado, terrorist act or other similar disaster event.
5. Addition of building envelope protection – including window and door protection – and inclusion of a continuous load path from roof to foundation on all structures within the county.
6. Reduction or mitigation of low points in the county's or cities' topography; specifically to encourage the flow of storm water away from structures and toward streets where storm drainage systems are concentrated and to eliminate or modify surfaces that would otherwise drain toward these low points.
7. Reduction and mitigation of rainstorm hazards and problems.
8. Reduction and mitigation of storm surge hazards and effects by encouraging greater setbacks from shorelines for new developments of waterfront properties, encouraging retrofitting and elevation of structures with high priority consideration for those built on waterfront properties, seeking opportunities to acquire, exchange or otherwise secure limited control of waterfront real estate.
9. Goals related to existing soil conditions.
10. Reduction and mitigation of problems from structures built below base flood elevation (BFE). These "old law" buildings were constructed under the older Dade County Building Code, which only required the finished floor elevation of a structure to be 13" above the crown of the road. The goal is to reduce the number of and eventually eliminate structures built with a finished floor elevation below the BFE.
11. Collection of flood data information and analysis and completion of a countywide database which incorporates a wider range of property data, topographical data, storm drainage data, rainfalls data, building permit data, data on insurance, history of flooding, etc.
9. Enhancement of the land component of real estate values throughout the county, thereby creating a market driven, rather than regulatory environment for the "substantial improvement" (i.e. more than 50% of value) of structures with current finished floor elevations below BFE.
10. Enhance public information and involvement and increase the public awareness of hazards and problems and educate the public through a widespread program of general information, media coverage and participatory involvement.

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11. Initiate organizational, managerial and administrative goals to make mitigation a mainstream function of government affairs; spread the responsibilities throughout many departments and agencies to ensure continuity and a full integration of mitigation management functions in the operations of government.

Policies, Ordinances and Programs Affecting Mitigation

Each municipality is similar in that it is located in Miami-Dade County, Florida. The same federal, state and county laws govern each. Each individual municipality is unique and has its own municipal ordinances, policies, procedures, and programs that differ according to specific needs and priorities. The basic federal, state and county documents affecting hazard mitigation listed are generally applicable throughout the municipalities. Other documents vary; therefore data sources for each have been listed according to the respective municipal government. Adherence to these policies, ordinances and programs is an integral part of the Miami-Dade LMS.

There are many federal, state and county laws and policies that affect hazard mitigation and all the members of the Working Group. Some of those are:

Federal:

1. The Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended (The Stafford Act) is interpreted by Title 44 of the Code of Federal Regulation (44 CFR) and governs FEMA and emergency management and sets forth the federal concepts for hazard mitigation. It also defines the Coastal Barriers Resources Act (44 CFR 206 subpart J) and describes floodplain and environmental management (Parts 9 and 10). The Disaster Mitigation Act of 2000 (DMA-2K) has also redefined much of this and those changes have been incorporated into this document. Much of FEMA has been further redefined by the "Post-Katrina Emergency Management Reform Act of 2006," which was enacted by Congress and signed into law by the President in the Fall of 2006.
2. The National Flood Insurance Program (NFIP) and the Community Rating System (CRS) FLA-15, July 1996, sets up a community rating system for flood insurance offering incentives for communities and credits for eighteen floodplain management activities.
3. National Fire Code, 1993 and NFPA 101 Life Safety Code define uniform fire safety standards adopted by rule by the State Fire Marshal.
4. Title 15 of the Code of Federal Regulations, which defines the Coastal Zone Management Act (15 CFR Parts 923 and 930).
5. Title 40 of the Code of Federal Regulation which defines the National Environmental Policy Act including such mitigation measures as included in the National Emission Standards for Hazardous Air Pollutants (Part 61), Toxic

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Substances Control Act (Part 763), the Resource Conservation and Recovery Act and CERCLA (the Superfund).

6. Title 29 of the Code of Federal Regulations that defines the Occupational Safety and Health Act containing many hazard mitigation measures.
7. Presidential Decision Directives 39 and 62 are the authorities directing the development of terrorism response.

State:

1. State of Florida laws which are pertinent to hazard mitigation include:
 - a. Chapter 161 – Beach and Shore Preservation
 - b. Chapter 255 – Public Property and Public Buildings
 - c. Chapter 373 – Water Resources
 - d. Chapter 403 – Environment Controls
2. The South Florida Water Management District provides guidelines that control the canal network within Miami-Dade County and its municipalities.
3. South Florida Fire Prevention Code, 1992-93 (adopted by the County Commission) defines standards for fire prevention and allows controlled burns as mitigation.

County:

1. Board of County Commission Resolutions
 - a. R-572-00, which establishes the Miami-Dade Local Mitigation Strategy as official county policy
 - b. R-710-05, which authorizes the county manager to apply for, receive, expend and amend applications for projects listed in the Miami-Dade Local Mitigation Strategy.
2. Pertinent Miami-Dade County laws include codes and ordinances that govern municipal activities, as follows:
 - a. Chapter 8(b) of the county code, which deals with emergency management;
 - b. Chapter 17, i.e. the Housing Code, focused on maintaining the housing stock in decent safe and sanitary conditions;

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- c. Chapter 24 covering the activities of the Department of Environmental Resources Management (DERM) for permitting hazardous materials;
 - d. Chapter 28 of the county code which deals with subdivision regulations;
 - e. Floodplain Management Program sets the criteria for elevations and assesses the risks for flooding for different areas of the County;
 - f. Miami-Dade County Comprehensive Emergency Management Plan mandates that municipalities have emergency management plans, as well as recommends the performance of hazard mitigation activities;
 - g. Miami-Dade County Comprehensive Land Use Plan dictates current land use and controls future land use and growth throughout the county;
 - h. The Public Works Manual, especially Section D5, concerning coastal construction;
 - i. Dade County Environmental Protection Ordinance, Coastal and Freshwater Wetlands Regulations, Sections 24-58 and 24-59.
3. Miami-Dade County Landscape Maintenance Special Taxing Districts provide tree-trimming programs that prevent more severe damage during windstorms.
 4. Miami-Dade County and all of the municipalities use the Florida Building Code (FBC), adopted in March 2002, as a standard. In deference to the South Florida Building Code that it replaced, the High Velocity Hurricane Zone portion of the FBC applies to Miami-Dade and Broward Counties and allows for stricter design and construction measures in addition to ASCE 7-98, especially the requirements to protect windows, walls and roofs from wind-born debris.
 5. The Local Law Enforcement Mutual Aid Agreement with Miami-Dade County designed to coordinate and supplement local resources.
 6. The Statewide Mutual Aid Agreement for Catastrophic Disaster Response and Recovery establishes a local resource for all Working Group members that are presently signatories, which, in Miami-Dade County, is all except the city of Islandia that lies entirely within Biscayne National Park and has no infrastructure.

Municipalities:

- a. The Basic Emergency Management Plan sets forth the procedure for all activities of the municipality before, during and after emergencies.

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- b. A Stormwater Management Plan, which is focused on flood-related hazards and defines the relevant mitigation goals, evaluates appropriate and feasible mitigation measures and prioritizes such measures into an Action Plan for systematic implementation.
- c. A Floodplain Management Plan governing development in the floodplain. All cities within the county are striving to establish a floodplain management plan and participate in the Community Rating System. NFIP has stated that this document, the Local Mitigation Strategy, may serve as a floodplain management plan for its participants.
- d. A Comprehensive Land Use Plan controlling growth and development within the municipality.

Effectiveness Evaluation

Following Hurricane Andrew in 1992 and continuing for several years thereafter, the county government and the governments of most of the municipalities did an in depth evaluation of existing policies, ordinances and programs. The big question was “why was the damage so severe?” And, “what could we have done to prevent this extent of damage?”

As a result of the evaluations, many revisions came to pass, especially in the Florida Building Code. As noted in the previous section, the load standards of section 6 of the American Society of Civil Engineers Standard 7-88 were adopted as part of the code. New measures for community protection came to be. For example, storm shutters must now pass certain impact tests; in fact, storm shutters or other type window protection are now required on all new buildings. Requiring heavier decking, tighter nailing and stronger internal bracing has strengthened roof structures. These tougher standards remain in effect in Miami-Dade County in the new Florida Building Code and especially in the High Velocity Hurricane Zone section thereof. (Note: At the 2003 National Hurricane Conference in New Orleans, the Miami-Dade Building Code Compliance Office was presented the national award for mitigation for their fight to retain the tougher, stricter building codes.)

The Miami-Dade LMS calls for an “evaluation of existing municipal mitigation policies, ordinances and programs.” Hurricane Andrew forced it. South Florida is still in the process of this evaluation and a continuous effort to increase the effectiveness of these programs. Many recommendations are included in the aforementioned FEMA publication: *Building Performance: Hurricane Andrew in Florida*. This has all been built into our version of the Local Mitigation Strategy.

Analysis of Existing Policies, Ordinances and Programs

The achievement of the mitigation goals and objectives of the community presupposes clear goals and measurable objectives, both with consensus support from the

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county and the municipalities. The ability of existing policies, ordinances, and programs to help the community achieve its goals and reach its objectives can only be analyzed at this time if certain assumptions are made regarding what the goals and objectives are to be. Thus, the following assumptions are made: Municipal governments' ordinances, policies and programs will continue to be the primary tools used to effectuate hazard mitigation projects; funding for hazard mitigation projects will continue to be provided by state and federal sources; the goal of reducing the cost to the community, both monetary and human, of future hazards is primary in determining what policies to adopt, what programs to implement, and what objectives to measure.

Based on the above assumptions, the challenge of "strengthening" existing policies, ordinances and programs is not to improve or increase them, but to clarify, simplify and prioritize them in a way that persuades local government to place more emphasis on implementing them. In addition, local programs designed to understand and take advantage of state and federal funding opportunities must be emphasized. Finally, the appropriation of funds needs to maximize the reduction of costs to the community of future hazards.

As the population grows in Miami-Dade County, hazard mitigation laws must prevent new structures from being built in areas susceptible to unusual occurrences. For example, new building construction in low lying flood areas must be limited or built in such a manner to withstand flooding or wind damage. Similarly, future construction sites of natural gas, electrical and nuclear power plants must have mechanisms in place that will self contain, or significantly limit, effects of potential catastrophic incidents.

Local government and the private sector must provide ongoing training and information sessions for the public. Clear, unbiased knowledge is a key ingredient for safety enhancement for the public. Ongoing training could include public information notices and continuous training sessions at local libraries, hospitals and schools. Part of the cost for this training should be borne by those private parties who ask or have businesses that may contribute to an unusual occurrence. For example, construction of a new electrical substation, a natural gas company building a new facility, a professional dry cleaner establishment, a new gas station, etc. would have impact fees assessed to offset the mitigation training costs.

Training and equipment to prepare for and subsequently resolve hazard situations are necessary and vital. Alternative financial resources must be assessed and located in addition to including these costs in all respective governmental budgets.

Periodic review and revision of the local government ordinances, policies and programs must occur no less than once every other year.

Each municipality that has not yet done so should adopt a floodplain management ordinance and participate in the community rating system program. At the present time, the Miami-Dade Local Mitigation Strategy will serve as a floodplain management plan if adopted by a municipality.

Conflict Resolution Procedures

The Miami-Dade County Local Mitigation Strategy Working Group has established procedures to resolve conflicts between member entities that may arise from the development of the LMS as required by the Florida Department of Community Affairs. It has borrowed extensively from the *Regional Dispute Resolution Process of the South Florida Regional Planning Council*.

These procedures are designed to clearly identify and resolve problems as early as possible, to utilize procedures in a low-cost to high-cost sequence, to allow flexibility in which procedures are used, to provide for the appropriate involvement of affected and responsible parties, and to provide as much process certainty as possible.

There are two basic components: process initiation and settlement meetings. Additionally, there are five optional components: pre-initiation meeting, situation assessments, mediation, advisory decision-making, and referral to other dispute resolution processes.

The Working Group consists of representatives from Miami-Dade County, its incorporated municipalities, county departments and other participating organizations.

In the event of a dispute, parties named in the Initiation Letter (see below) are automatically allowed to participate. Other jurisdictions, public or private organizations, groups, or individuals must be suggested by a named party and agreed to by a majority of the named parties before inclusion; or recommended for inclusion by a mediator mutually selected by the named parties.

Other jurisdictions, public and private organizations, groups, or individuals seeking to become named parties can submit a written petition to the Working Group. Such groups will become named parties if agreed to by a majority of the named parties or by a mutually selected mediator. Named parties have twenty-one days to respond to the Initiation Letter.

Each named party must appoint a representative who should have authority to act. Jurisdictions are encouraged to designate a representative before one is needed. This person will be responsible for the party's interests and maintain communication throughout the process. The representative must be named in writing.

- **Pre-Initiation Meeting:** Any jurisdiction, organization, group or individual may request an informal pre-initiation meeting with the Working Group coordinator.
- **Initiation Letter:** The conflict resolution process begins with an Initiation Letter from a jurisdiction's governing body, which is sent to all named parties and the Working Group coordinator. This must be accompanied by either a resolution or written authorization from the same governing body.

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The Initiation Letter must identify the issues to be discussed; named parties to be involved; name of the initiating party's representative; others who will attend; and a brief history of the dispute that indicates why this dispute is appropriate for this process.

- **Response Letter:** The named parties must send a response letter to the Working Group coordinator and all other named parties. The response letter must indicate the respondent's willingness to participate in a settlement meeting and include any additional issues for discussion as well as a brief description and history of the dispute from the respondent's point of view.
- **Situation Assessment:** At the request of a jurisdiction, organization, group, or individual, the Working Group coordinator or other neutral party can perform a situation assessment at any time, before or after initiation of the process. The situation assessment can involve examination of documents, interviews and assessment meetings, and can result in a recommendation concerning the issues to be addressed, parties that may participate, appropriate dispute resolution procedures, and a proposed schedule.

Private interests may ask any member of the Working Group to initiate the process. Any public or private organization, group, or individual may request that the Working Group recommend use of the process. The Working Group can recommend that a potential dispute is suitable for the process and transmit its recommendation to the potential parties.

All requests must be in writing and provide all required information. A Working Group representative must respond after reviewing the petitioner's request; meeting with the requesting organization, group, or individual; and performing a situation assessment. If the Working Group representative agrees with this process, a recommendation will be sent to the potential parties.

Settlement Meetings: At a minimum, the representatives of the named parties must attend the first settlement meeting. This meeting may be facilitated by a member of the Working Group or a mutually agreed upon neutral facilitator. At the initial settlement meeting the named parties must consider adding named parties; consider guidelines for participation; identify the issues to be addressed; explore options for a solution; and seek agreement.

If the settlement meeting is not held or it produces no agreement to proceed with mediation or advisory decision making, then the participating parties may formally withdraw from the process or proceed to a joint meeting of the governing bodies (as in Florida Statute 164); litigation; administrative hearing; or arbitration.

Mediation: If two or more named parties submit a request for mediation to the Working Group, then a representative of the Working Group will assist them in

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selecting and retaining a mediator. Alternatively, the named parties may request that the Working Group coordinator make the selection or request similar assistance from the South Florida Regional Planning Council.

A mediator who understands hazard mitigation issues and is acceptable to the named parties shall mediate all disputes. Mediators shall be guided by the Standards of Professional Conduct, Florida Rules for Certified and Court Appointed Mediators, Rules 10.020-10.150 F.A.C.

Advisory Decision Making: If two or more named parties submit a request for advisory decision making to the Working Group, then a representative of the Working Group will assist in selecting and retaining an appropriate neutral. Alternatively, the named parties may request that the Working Group coordinator make the selection. A neutral party that understands hazard mitigation issues and is acceptable to the named parties shall handle all disputes.

Initial settlement meetings are scheduled and held within thirty days of receipt of the initiation letter. Additional settlement meetings, mediation, or advisory decision-making must be completed within forty-five days of the date of the conclusion of the initial settlement meeting.

Timeframes may be altered by mutual agreement of the named parties. The optional components of this process may be used in any order.

In the early stages of the process, the parties should address deferring or seeking stays of judicial or administrative proceedings while using this process.

The form of all agreements shall be determined by the named parties and may include: inter-local agreements; concurrent resolutions; memoranda of understanding; contracts; plan amendments; deed restrictions; or other forms as appropriate.

Agreements signed by the party's representative may be in the form of a recommendation to a formal body and subject to its formal approval.

Two or more parties may reach agreements even if all of the named parties don't agree or don't sign a formal agreement.

After settlement meetings, mediation, or advisory decision-making, the named parties must submit a joint report to the Working Group. The report must contain any statements that any of the named parties wants included as well as:

- An identification of the issues discussed;
- A list of potentially affected or involved jurisdictions, public or private organizations, groups, or individuals (even those who are not named parties);

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- A timeframe for starting and ending informal negotiations, additional settlement meetings, mediation, advisory decision making, joint meetings of elected bodies, administrative hearings or litigation;
- Any additional assistance required;
- A cost allocation agreement; and
- A description of responsibilities and schedules for implementing and enforcing agreements reached.

Appropriate opportunities for public input should be considered during the process. Applicable public notices and public records requirements must be observed (Chapters 119 and 120, F.S.).

The participants agree to make every effort to keep costs at a minimum. All costs are to be shared equally among the parties unless otherwise agreed upon or as recommended by a mediator mutually selected by the parties.

To the extent possible, the confidentiality provisions of Chapter 44, F.S. will govern mediation under this process. By participating in this process, participants agree not to offer any comments, meeting records, or written or verbal settlement offers as evidence in subsequent judicial or administrative action.

Hazard Identification & Vulnerability Assessment

As was touched upon in the introduction to the LMS, metropolitan Miami-Dade County is a large and diverse place and therefore vulnerable to many hazards. Since the establishment of the LMS in 1998, we have had eight major disaster declarations and four emergency declarations for hurricanes, tornadoes and major flooding, which are the main hazards that threaten Miami-Dade County. While our hazards are as diverse as our community and our culture and, although each municipality within the county is different and has unique characteristics, the hazards and vulnerabilities are very similar because of climate, terrain and other features. It is worth noting that Miami-Dade County is **not** subject to the risk of avalanches, dam failure, earthquakes, landslides, volcanoes or severe winter storms and these events are not addressed in the LMS.

We can, however, start with the basic types of hazards that do affect us:

1. Natural Hazards (hurricanes, tornadoes, floods, etc.);
2. Technological Hazards—accidents involving manmade facilities or functions (hazardous material spills, nuclear power plant accidents, airplane crashes, etc.);
3. Societal Hazards—major disruptions in normal governmental and community functioning (riots, mass migration, terrorism, etc.).

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Let us take each of the above varieties of hazard and examine which of these we have experienced and to which we are most vulnerable. The appendices to this document contain a matrix that assesses each jurisdiction as it's affected by each of the disaster events that could occur in Miami-Dade plus charts of hurricanes and major rainfall events affecting South Florida over the last 100 years as well as maps of Miami-Dade County flood zones, repetitive loss properties, evacuation zones, flammable natural areas and the county's comprehensive land use plan.

Windstorm

Traditionally, we look at hurricanes as the major destructive force to strike south Florida and, they certainly are. However, the area is also subjected to tornadoes and severe thunderstorms that are almost always accompanied by dangerous lightning. Mitigation for all of these is similar so we will address the issue of windstorm as a single hazard condition. The problems inherent with floods caused by the rainfall that usually accompanies hurricanes are discussed later under the topic of "Flooding."

Background and History

South Florida juts out into the Atlantic just asking for a hurricane to show up. And, they do. Since 1904, thirty-two hurricanes and tropical storms have come within seventy-five miles of Miami-Dade County, most of them passing directly over us. As mentioned above, there have been numerous presidential declarations in recent years resulting from hurricanes or tornadoes: Hurricanes Andrew (August 1992, DR-955), Georges (September 1998, ER-3131), Floyd (September 1999, ER 3143), Charley (September 2004, DR-1539), Frances (September 2004, DR-1545), Jeanne (September 2004, DR-1561), Katrina (August 2005, DR-1602), Rita (September 2005, ER-3259) and Wilma (October 2005, DR-1609); the "Storm of the Century" (March 1993, DR-1982) and for the Groundhog Day 1998 (DR-1204) and March 2003 (DR-1460) tornadoes and storms. We were also brushed by Tropical Storm Gordon and Hurricane Michelle, neither of which resulted in a declaration but, nonetheless, did extensive crop damage in our agricultural community. Hurricane Ivan in 2004 and Hurricane Dennis in 2005 came close enough to require activation of our Emergency Operations Center and to contemplate evacuations. Hurricane Irene in 1999 and the October storm of 2000 (which would later become Tropical Storm Leslie) were also declared events that impacted us and are later under "Flooding."

The entire population of Miami-Dade County, some 2.4 million people, all resides within twenty miles of the coast with no hills to buffer the wind. Some have remarked that Hurricane Andrew did no damage beyond twenty miles inland; but that's because there is nothing beyond twenty miles inland except the Everglades. And so, everybody and every thing in Miami-Dade County are vulnerable to the hazards of windstorm.

What We Know Now

Unlike other natural hazards, windstorm events, hurricanes, tornadoes and severe thunderstorms don't sneak up on us the way they used to. Modern technology provides a warning. For thunderstorms and tornados we have as much as an hour or more notice that conditions are favorable for an occurrence. That's not much time, but it's a warning. With hurricanes, we know days and even weeks in advance that one is on the way. So, here's this hurricane out there; it's dangerous, deadly even, and it's on the way; it may come here and, there is nothing that we can do to stop it. We can't stop it but the LMS Working Group has developed a number of measures to mitigate against the full force of the storm.

What to Do About It

Arguably, the best way to prevent damage from severe windstorms is to build stronger structures to withstand them. Miami-Dade County prides itself by having established the nation's, if not the world's, toughest building codes. Everywhere one goes one sees construction material vendors pointing out that they have received the Miami-Dade County "product approval." As noted earlier, the Miami-Dade Building Code Compliance Office received a national mitigation award for their fight to retain the tough codes during the process of developing a single statewide *Florida Building Code*. The new code contains a section called the HVHZ – the High Velocity Hurricane Zone – that applies principally to Miami-Dade and Broward counties. This new code also mandates window protection on all new construction and any repair of substantial damage.

That new code now requires window protection, but what about the buildings already standing. The LMS Working Group sponsors several mitigation programs to retrofit these structures with shutters as well as other windstorm mitigation measures such as adding additional hurricane straps to the roof and strengthening entry doors. Our residential shuttering program installs shutters on the homes of low-income citizens. Our institutional shuttering program installs window protection on buildings owned by municipal, county and other eligible organizations. We have also retrofitted many public schools to protect the building and to serve as hurricane evacuation centers.

Another condition that usually accompanies a hurricane is **Storm Surge**, that dome of water that comes ashore with a hurricane. Using the SLOSH II computer model from FEMA and the National Weather Service along with historical data, those areas in the county that are vulnerable to damage from storm surge have been noted and the evacuation areas found in Appendix C of this document are based on this information.

Flooding

Background and History

During the early stages of development in Miami-Dade County, the land was frequently inundated for long periods due to the flat topography, low land elevations and the high groundwater table in the Biscayne aquifer. To remedy this situation, and to make the land suitable for habitation, various local governments and private entities initiated the construction of the canal system that exists today. This system was designed to remove water to the east and ultimately to Biscayne Bay using gravity flow. However, the excavation of the canal system exposed the Biscayne aquifer, the county's primary source of drinking water, to saltwater intrusion. In order to stem the flow of salt water into the Biscayne aquifer, salinity control structures were constructed at the mouths of both primary and secondary canals throughout Miami-Dade County.

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In addition, the early design of the canal system did not consider additional development in the western parts of the county. These western areas are lower in elevation, and thus more flood-prone. Therefore, drainage from these areas is dependent on the areas to the east being drained, and thereby making room in the canals to drain the western areas.

Due to the unexpected development in the western areas and the general increase in population and development throughout the county, the primary canal system has exceeded its design capacity for drainage. The system relies on gravity to discharge, and is inadequate to remove stormwater volume caused by major rain events, particularly considering large tidal surge that may accompany tropical storm events.

Today, the canal system in Miami-Dade County consists of over 616 miles laid out in approximate one to two-mile grids. The canal system is divided into 360 miles of primary canals and 260 miles of smaller secondary canals. The primary system, including most of the salinity control structures, is operated by the South Florida Water Management District. The secondary system is the responsibility of Miami-Dade County. In general, the secondary canal system connects into the primary system, which empties into Biscayne Bay. The ability to move water in the secondary system is dependent on the available capacity of the primary system, which, in turn, is dependent in part on the proper operation of the salinity control structures.

The principal functions of the canal system are:

1. To maintain adequate groundwater levels in the Biscayne aquifer, to provide for both water supply and to prevent salt-water intrusion. In general, the canal system recharges the Biscayne aquifer during the dry season when flow is conveyed from Lake Okeechobee and the water conservation areas into the urbanized areas. Conversely, during the wet season, groundwater flows from the aquifer into the canals and is discharged to the ocean, as needed, to prevent flooding.
2. To provide for drainage during periods of excess rainfall, when the control structures must be operated to prevent overtopping of canal banks.

Recent Flood Events

Two recent flood events changed the way water managers, emergency managers and residents approached disasters in south Florida. Prior to Hurricane Irene, the focus had been on hurricanes as potential wind hazards, and not particularly flood events.

In October 1999, Hurricane Irene (DR-1306) developed and started a path towards south Florida. Initial projections were correct in stating the hurricane would impact the west coast of Florida, and Irene traveled through the state and, on October 15, passed just to the west of Miami-Dade County.

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Although the hurricane did not pass directly through the county and no exceptionally high winds were experienced, the heavy rainfall associated with this storm did hit Miami-Dade County, and the impacts were severe. Some roads were impassible for weeks, electricity was out in certain areas, and residents and businesses suffered heavy losses.

As a result of Hurricane Irene, the Miami-Dade County Board of County Commissioners created a Flood Management Task Force, to analyze why certain areas were so heavily impacted by floodwaters. After eight months of meetings with affected residents and industry, the Task Force offered eighteen recommendations. These recommendations are being implemented where possible, and progress is being tracked.

On October 3, 2000, a low-pressure system, later to become Tropical Storm Leslie, developed off the west coast of Cuba, and headed toward South Florida (DR-1345). Water managers and weather officials closely tracked the storm, and preemptive measures were taken to start moving water out of the canals.

However, weather forecasts called for 4-8 inches of rainfall from this storm, and unfortunately, once the storm passed over south Florida, it exploded, dumping 14 to 18 inches of rainfall over a linear area in the center of the county. Equally as unfortunate were residents and businesses that experienced a similar result as in Irene.

Immediately after this so-called "no-name" storm hit, the county commission reconvened the Task Force, to re-examine the problem. This Task Force recently released an updated report that includes additional data concerning the flood events.

Hurricane Katrina in August, 2005 was every bit as much a flood event as it was a windstorm. Large areas in south Miami-Dade County were impacted by flooding, especially in the agricultural community.

Where Are We Now?

Because Miami-Dade County is located in a unique low-lying area, it is particularly susceptible to flooding from major rain events and storm surge. The county is surrounded by and interspersed with canals, lakes, rivers, the everglades, the Atlantic Ocean and Biscayne Bay. Miami-Dade County lies close to sea level, and its water supply lies just below the surface of the ground. Major rain events sometimes leave rainwater nowhere to drain, causing flooding in parts of the county.

Total structures last counted in the unincorporated area of Miami-Dade County consist of 112,600 structures in Special Flood Hazard Areas, and 132,400 in X and X-500 zones. Due to the variety of factors such as storm paths, intensity and duration, the low-lying topography of the total area, and seasonal variations in groundwater elevations, any number of structures from a few to the total numbers stated above could be impacted from the flood hazard. The types of flood hazards that have potential to occur are listed below.

Coastal Flooding

Coastal flooding has potential to impact residential and commercial development along the east coast of south Florida, and Biscayne Bay, primarily through storm surge and inundation by a hurricane or tropical rain event occurring in the Atlantic Ocean. Although these impacts have potential to occur from a storm with a path from west to east, this type of impact would be rare.

The county's coastline consists of mainly residential development, and county and state parks. Dune lines and some mangrove fringes do exist over part of these geographical areas.

Hurricanes

Hurricanes have potential to impact all areas of Miami-Dade County, depending upon their origin, makeup and path. As demonstrated above, hurricanes have heavily impacted county residents, without displaying heavy winds or structural damage, as earlier, more powerful storms (Andrew, 1992) have displayed. Weather forecasters and emergency managers now have to look at a hurricane's potential for flooding, and not just structural damage, when a storm is impending.

Tropical Weather

Due to the impacts of the storm of October 2000, all tropical weather systems have to be carefully monitored, several days before they make landfall. Because of the time needed to move water through canals to increase capacity, more advanced monitoring is needed.

Inland Flooding

Both Hurricane Irene and Tropical Storm Leslie traveled through the interior of the state, and affected inland areas. Canal and groundwater elevations, when combined with seasonal rainfall variations and the volume of the potential storm, result in a definite flood hazard to inland areas.

Elevations of Pre-FIRM Structures

Pre-FIRM structures represent a potential flood hazard, in that, due to the relatively flat terrain, older structures built lower will experience more of a hazard than structures built to FIRM elevations. In fact, because newer structures may be sited close to the pre-FIRM buildings, their potential risk for flood damage may be even greater.

Other Hazards

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Windstorm and floods are our major hazard events but not by any means the only hazards to threaten south Florida and Miami-Dade County.

Natural Disasters

Mother Nature does things to us other than hurricanes and floods, which have been covered in detail above. The following is a look at some of the other natural disasters that occur in Miami-Dade County.

Agriculture Losses

Agriculture is second only to tourism in the economy of South Florida. Besides the devastation caused by hurricane and tropical storms as discussed above, we have endured hard freezes, severe drought, the Mediterranean fruit fly, citrus canker and now the pink hibiscus mealy bug, all of which can cause – have caused – as much damage as any storm could. The Miami-Dade LMS Working Group has an agricultural committee, composed of interested members and established to address and mitigate the various problems of the agriculture community. Losses in the agricultural community have numbered in the hundreds of millions of dollars in recent years. These losses are not only from crop damage but also include loss of irrigation systems, damage or destruction to greenhouses and other growing facilities and loss of transportation equipment.

Drought

In addition to its impact on farming, as noted above, severe drought has many other dynamic effects on our community. Water shortages have been acute in recent years causing annoyances such as curtailed lawn watering and car washing, but also major threats to our drinking water supply by allowing salt water intrusion into the ground water. The LMS flood committee addresses the impact of not enough water as well as the issue of too much.

Epidemic Diseases

While epidemic diseases are certainly a threat to Miami-Dade County and its citizens, mitigating factors are under the control of the federal government through the Centers for Disease Control and Prevention, the Food and Drug Administration and other agencies. Therefore, this threat is not one that can be easily mitigated through the Local Mitigation Strategy.

Extreme Heat

As anyone can attest who has been in Miami in August, heat can be a hazard with which we must contend. Miami-Dade County has a large elderly population that is especially susceptible to the affects of extreme heat. One of the mitigation methods used is to open air-conditioned shelters during the hottest times of day. Other mitigation methods are continuously being looked at.

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Wildfires

While Miami-Dade County does not have vast forests that can catch fire, we do have considerable natural areas that are subject to wildfires (See map in Appendix D). The Miami-Dade Park & Recreation Department oversees undeveloped natural areas and the Miami-Dade Department of Environment Resources Management oversees the EEL or Environmentally Endangered Lands program. Also, over one third of this county falls within Everglades National Park that has huge areas vulnerable to wildfire. The major harm from wildfires in Miami-Dade County isn't so much from the fires themselves but from ensuing smoke that drifts into the urban areas. This can be extremely dangerous to the very young, the elderly and those with respiratory problems. The LMS Working Group has a wildfire committee made up of interested parties such as the National Park Service, Florida Division of Forestry, Miami-Dade Fire Rescue and several others. The prime interest of the committee is to promote controlled or prescribed burns, which removes the fuel load and dramatically reduces the chance of a wildfire.

Tsunami

The possibility of a tsunami hitting Miami-Dade County is extremely rare and experts from the National Weather Service predict that at no time would a tsunami wave height be greater than ten feet at impact with the barrier islands such as Miami Beach and Key Biscayne thereby affecting only the immediate shoreline beach area. This area is similar to the "V" zones of a FIRM issued by the National Flood Insurance Program. The effects of Tsunami in Miami-Dade would be similar to those of storm surge of a like wave height and are mitigated in a similar manner.

Technological Hazards

Mother Nature isn't the only villain causing hazards in the county; people keep causing hazards, too.

Hazardous Materials

A bleach factory. A plating plant. A tire warehouse. A propane distributor. A cold storage facility. Plus, chemicals in trucks and chemicals in rail cars continuously passing through. What do they all have in common? Hazardous materials in abundance in our county that must be dealt with to protect our citizens. Miami-Dade County, the city of Miami and the city of Hialeah fire rescue departments each maintains a hazardous materials response (HazMat) team. Miami-Dade OEM routinely holds training classes in various HazMat subjects. Additionally, the locations of all HazMat sites as defined by Section 302 of the Federal Emergency Planning and Community Right-to-Know Act are contained in the Local Mitigation Strategy critical facilities inventory as well as documentation on the facilities mentioned above.

Nuclear Power Plant

Miami-Dade County is the home of Florida Power & Light's Turkey Point nuclear power plant and all the possible mishaps that may occur. Miami-Dade OEM and FPL have developed complete evacuation plans and other consequence management procedures to deal with problems at the plant. While the risk of disaster from a nuclear plant accident is very low, practice drills and exercises to maintain readiness in the rare event of an accident are constantly carried out. Furthermore, FPL is an active member of the LMS Working Group and continuously contributes to our mitigation measures. Appendix D contains a map of the Turkey Point Power Plant 10-Mile EPZ (Emergency Planning Zone) and the land uses therein.

Transportation Accidents

Miami International Airport is one of the busiest airports in the world in both passengers carried and in the air cargo arena. The Port of Miami is the world's leading cruise port and is also one of the busiest container ports on the eastern seaboard. Furthermore, the Miami River is the fifth busiest port in the state of Florida. Our railroads are Amtrak, CSX, Florida East Coast Railroad and TriRail plus our own Metrorail and Metromover systems. The southern terminus for the Florida Turnpike, I-75 and I-95 are all in Miami-Dade County. There are twenty-three drawbridges in the county – twenty-one automobile and two railroad – that could cause major interruptions if a malfunction should occur. So what does this all mean in the way of hazard events? In recent years Value Jet, FineAir and Chalk's Ocean aircraft all crashed in Miami-Dade County. Carnival Cruise Lines' MS Ecstasy caught fire as it departed the port and Norwegian Cruise Lines' SS Norway experienced a boiler explosion while in port. Between 1995 and 2000 there were 53 train accidents within the county borders. And, of course, the too-many-to-count traffic accidents on our major roadways. Suffice it to say, there is much to mitigate and this area is one of our countywide initiatives that may be found in Part II of this document.

Societal Hazards

The citizens of this county are a unique blend from many cultures with many languages and ethnic backgrounds and because of this conflicts are sure to occur. Among these societal hazards are:

Mass Migration

We have continuous mass migration situations in Miami-Dade County from the Mariel boatlift in 1980 to the constant stream of Cuban rafters to boatloads of Haitian refugees that must be addressed. Miami-Dade Office of Emergency Management addresses this mass migration issue in a portion of a plan called the "Caribbean Mass Migration" annex to the Comprehensive Emergency Management Plan. This plan brings

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together federal, state and local agencies that have the responsibility to deal with the subject.

Change in Cuban Government

To most of the United States, a change in the government of Cuba is inconsequential. However, this is not true of Miami-Dade County with its large Cuban refugee population. In 2006, for the first time, the Miami-Dade County Emergency Operations Center was activated when Fidel Castro turned over the reins of government to his brother Raul.

Riots and Demonstrations

Unfortunately, Miami-Dade has experienced too many riots and demonstrations over the years for various reasons such as racial incidents (McDuffie, etc.) or cultural conflict (the Latin Grammys), not to mention the many issues that surfaced during the Elián Gonzalez affair.

Terrorism

Terrorism is not new to Miami-Dade County. During the 1960s there were numerous bombings in this community attributed to radical Cuban groups opposed to any persons or organizations that espoused moderation toward Fidel Castro and his regime. It's believed by many that south Florida is a favored place for Middle East terrorists to hide and scheme. The LMS Working Group has established a terrorism mitigation committee to study and develop counter terrorism measures. The committee has already determined that one excellent measure is to develop a curriculum to help school children understand and cope with future terrorism. Additionally, the Miami-Dade County Domestic Preparedness Strategy (DPS), which includes homeland security and terrorism mitigation measures, is, by reference, included in the Local Mitigation Strategy.

Data Sources Identified

We have identified the following data sources as being important and comprehensive to the accomplishment of our mitigation goals. However, additional data sources will surely be discovered as we proceed with the task of mitigation.

FEMA

- National Flood Insurance Program repetitive loss inventory. This has been updated during 2003 and in 2005 to include every repetitive loss property in Miami-Dade County.
- Flood Insurance Rate Maps, hurricane storm surge maps, and previous natural hazard computer modeling results. A FIRM restudy was begun in early 2003 by the

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FIRM subcommittee of the LMS flood committee to update the county's FIRM maps. This restudy continues in 2005.

- The FEMA website www.fema.gov has a wealth of accumulated data that can be extremely valuable in developing mitigation measures.

Other U. S. Government Databases and Information Sources

- National Hurricane Center and the National Oceanographic Atmospheric Administration (NOAA) historical storm related data.
- The National Weather Service Miami Forecast Office data files.
- National Hurricane Center "SLOSH" models.
- National Priorities List (NPL)
- Comprehensive Environmental Response, Compensation and Liability Information System List (CERCLIS – the "Superfund")
- No Further Remedial Action Planned List (NFRAP)
- Emergency Response Notification System List (ERNS)
- RCRA Corrective Action Tracking System List (CORRACTS)
- Resource Conservation and Recovery Information System List (RCRIS)
- Hazardous Waste Data Management System List (HWDMS)
- Facility Index Data System List (FINDS)
- Toxic Release Inventory System List (TRIS)
- U. S. Immigration and Naturalization Service databases.

State of Florida

- Florida State University Department of Meteorology hurricane historical database.
- State-Funded Action Sites List (SFAS).
- State Sites List (SITES).
- Solid Waste Facilities List (SLDWST).

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- Petroleum Contamination Tracking System Report (PCTS).
- Stationary Tank Inventory System List (TANKS).
- Hazardous Waste Compliance & Enforcement Tracking System List (COMHAZ).
- South Florida Water Management District (SFWMD).

Miami-Dade County

- Municipal and County Emergency Management Plans and Comprehensive Plans.
- Municipal and County Floodplain Management Plans.
- Miami-Dade Stormwater Management Master Plan and Capital Improvements Projects.
- Miami-Dade County, Department of Environmental Resources Management (DERM) GIS database.
- Miami-Dade County, Information Technology Department, Critical Facilities Inventory and other GIS databases.
- Enforcement Case Tracking System Report (ECTS).
- Fuel Spill Report (FSPILL).
- Hazardous Waste Report (HW).
- Industrial Waste Reports.
- Underground Storage Tanks Report (UST).
- Agriculture extension services and databases.

Municipal Agencies

Staff resources, records and data files.

Additional Resources

- The American Red Cross will provide information regarding shelters, as well as staff resources and records.

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- Internet web sites provided by the Florida Department of Community Affairs as part of the Local Mitigation Strategy Guidebook.

Private Sector Interests

The first task in this section was to identify private sector interests that would benefit from participation in the LMS process. It is difficult to identify any private sector interest that would not benefit from the LMS process and this is the concept adopted by the Working Group. The method used to accomplish private sector involvement has been to merely ask – which has met with considerable success since the private sector in south Florida also experienced Hurricane Andrew and the other disaster events. By mitigating damages to the private sector we are mitigating against the economic impact of lost jobs, lost inventory and lost quality of life.

Each municipal member of the Working Group has submitted a list of suitable businesses and citizen groups located within each community. The initial private sector members of the Working Group have also made recommendations.

Meetings have been held with several private sector groups including hospitals and health service organizations, insurance industry representatives, the banking industry, the cruise lines that are based in the Miami area, engineering firms and VOAD (Volunteer Organizations Active in Disasters). The area's institutes of higher learning have been especially interested in LMS, not only the public schools – Florida Atlantic University, Florida International University, Miami-Dade College and the University of Florida – but the private schools including Barry University, Florida Memorial University, Johnson & Wales University, St. Thomas University and the University of Miami as well. Miami-Dade County Public Schools plus several private schools take part.

Finally, we approached the various chambers of commerce that exist throughout the county and found considerable interest in contributing to the LMS project.

A number of private sector interests are not only active in LMS now but plan to continue as active members of the Working Group especially as we move into the more active phases of the strategy.

Prioritizing Mitigation Initiatives

Once the vulnerability assessment and risk analysis are complete and the hazard mitigation opportunities have been identified, proper priorities must be established concerning each proposed project's impact on life safety, on quality of life, cost effectiveness and value to the overall community including but, by no means limited to, value as compared to other similar projects especially during times of limited funding availability.

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Prioritization of countywide projects may be accomplished by the LMS Steering Committee or other “review committee” established by and representing a cross section of the Working Group. The Miami-Dade Office of Emergency Management’s LMS Coordinator or his designated representative will act as the committee facilitator. The committee’s primary function will be to review and act on recommendations with respect to its evaluation of mitigation initiatives and its ranking of the priorities for their implementation. In a similar manner, each municipality, county department or other organization will prioritize the projects that affect only that jurisdiction and submit to the Steering Committee a complete, prioritized list for inclusion in the LMS.

Miami-Dade Office of Emergency Management will be responsible for soliciting, securing, evaluating, and generally acting as the technical & administrative staff for the management of the prioritization process and for the coordination of the implementation of initiatives selected for priority treatment.

The first step in prioritization is the adoption of a list of potential mitigation initiatives that:

1. Reduce vulnerability;
2. Study and identify cost beneficial mitigation activities, including engineering studies;
3. Identify mitigation initiatives found in existing local government capital improvement plans for future funding consideration;
4. Recommend program and policy actions and revisions to further promote effective hazard mitigation.
5. Adoption of evaluation criteria for the initiatives included in the above list.

The prioritization process has been divided into three parameters: suitability, risk reduction potential and cost. Within each parameter are recommended measures to be considered during prioritization of the project:

- Appropriateness of the measure: How well and effectively does it relate to identified hazards and vulnerability targets and problems? Does the initiative help achieve mitigation goals? How many and, to what extent?
- Community acceptance: Do most communities accept it completely, partially or is it not likely to be accepted by the community at all – the “not-in-my-backyard” situation?
- Environmental impact: Will the initiative have a positive or negative impact on the environment or, perhaps, none at all?

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- **Legislation:** Can the initiative be implemented within existing laws and regulations or will it require action at the legislative or senior management levels? How does it relate to current legislative intents?
- **Scope of the benefits:** Does the measure benefit the entire county, multiple municipalities, a limited number of the communities or, perhaps, a single community?
- **Potential to save lives:** How many lives, if any, will this measure save or protect?
- **Importance of benefits:** What is the effect of the measure on essential services such as life safety, human health and the basic necessities of life?
- **Inconveniences avoided:** Will completion of the project cause significant inconvenience to the community (traffic problems, business interruptions, delays, loss of power)? Or, will nuisances be few?
- **Economic effects and property damage avoided:** What will be the adverse economic effects of the measure? Will there be business losses or property damage?
- **Number of people to benefit:** Will a large number of people benefit or only a few? Over 100,000? Over 10,000? Less than 10,000?
- **Estimated costs:** What is the initial cost of the project or measure? Less than \$100,000? Less than \$1,000,000? Over \$1,000,000? And, what will it cost to maintain in the future? High or low maintenance costs?
- **Benefit to cost ratio:** To what extent do the economic benefits exceed the cost of the initiative using FEMA technical analysis criteria?
- **Financing:** Are there methods available for financing the cost of the initiative? Does it qualify for available loan and/or grant programs? How well does it relate to the priorities of loan and grant sources? Are matching funds available if required?
- **Affordability:** Can we afford this? What is the initiative's cost in relation to available resources at county and municipal levels? What is the cost of maintenance and can we afford to maintain it once it's complete?
- **Repetitive losses:** The facility was damaged at least once. How will this measure affect repetitive losses? Greatly reduced? Somewhat reduced? Unaffected?
- **Other issue or factors:** What unknown issue may crop up? Is the measure consistent with existing master or emergency plans?

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The process itself will follow these steps:

1. The LMS Coordinator will communicate with the various municipalities and other Working Group members at least semi-annually inviting them to submit projects for implementation within the framework of the Local Mitigation Strategy.
2. The LMS Coordinator evaluates the proposals in terms of the above criteria and submits the findings to the review committee.
3. Using the priority matrix (see appendix F), the review committee rates and ranks the countywide initiatives, formalizing those selected, as "Priority Initiatives" and includes them, along with the prioritized project lists from the various other jurisdictions, in Part II, "The Projects" section of the LMS.
4. The final step is for the local municipalities and the review committee to collaborate in the preparation of implementation programs for hazard mitigation initiatives derived from the prioritization process.

The above process provides a context for identifying the most relevant hazard mitigation initiatives. It provides a means to coordinate these initiatives and pool the ability to justify and secure resources on a far more effective basis than if each community were to seek them on its own.

Evaluation Criteria and Procedures to Review and Revise the LMS

The LMS Steering Committee or other review committee will meet prior to each publication of this document, *the Local Mitigation Strategy*, but at least once annually to review, update and revise the LMS as well as the evaluation criteria used in the review process. The annual review would be most effective if held in the spring of each year prior to the beginning of hurricane season, June 1st. Additionally, a special meeting of the committee should be convened immediately after any significant event such as a hurricane, destructive tornado, severe hazardous materials spill or any other occurrence where mitigation could benefit the community. Results of the committee's actions will then be distributed to all affected parties by the LMS Coordinator.

The evaluation criteria should include:

1. Have there been any new mandates from federal, state or local agencies that require changes to the Local Mitigation Strategy? Any new or changing laws, policies or regulations?
2. Are there any societal developments or significant changes in the community that must be added to the current LMS? Does the LMS still reflect the concerns of the

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- community? Are the demographics the same? Has there been any growth or development in hazard areas?
3. Have there been any changes in funding sources or requirements?
 4. Are there any recent technological developments that should be reviewed for inclusion in the LMS document?
 5. Should the LMS be updated to include any new forms of hazards or areas of vulnerability within our community?
 6. Have there been any changes in the Comprehensive Plan or any other form of standard operating procedure?
 7. Have any of the mitigation opportunities been implemented? Are the priorities for implementation the same?
 8. What are the recommendations or lessons learned from any major incidents that have occurred during the past year?

When it convenes, the review committee should first address each of the points in the evaluation criteria to determine if they are still valid and make any adjustments found necessary. When satisfied that the criteria are appropriate, the committee will then compare each of the outstanding mitigation opportunities against the criteria. All existing mitigation opportunities that are determined to still be viable projects will be left standing. All those that are determined to be no longer workable will be set aside for further review and revision or, dropped as no longer feasible.

Miami-Dade County Critical Facilities Inventory

Miami-Dade County and the municipalities therein, along with the many other participants in the Local Mitigation Strategy, received from the Florida Department of Community Affairs maps depicting areas vulnerable to storm surge, inland flooding and wind which were augmented by data provided by the Tropical Prediction Center of the National Weather Service (National Hurricane Center) and statistics gathered based on actual vulnerabilities learned from Hurricane Andrew and other disaster events.

Using data supplied by the municipalities and the various county departments, a database has been developed which includes the critical facilities inventory, NFIP repetitive loss data, historic flood data and the locations of hazardous materials that fall under the jurisdiction of Section 302 of the Federal Emergency Planning and Community Right-to-Know Act. This data has been supplied by the Miami-Dade County Department of Environmental Resources Management (DERM) and the State Emergency Response Commission.

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Flooding in South Florida is virtually always the result of excessive rainfall. Historical flood data has been compiled by DERM based on flooding by two principal causes, low elevation (the saucer effect) and clogged, damaged or insufficient storm drains. This is augmented by data from the National Weather Service.

Repetitive loss data has been gathered from FEMA and the National Flood Insurance Program through the various city building officials and Community Rating System coordinators. Unfortunately, there are over 2,500 repetitive loss properties in Miami-Dade County, a number too large to be included in this document (See map at Appendix E). The repetitive loss data will be maintained by DERM and the municipal building officials separately and will be continuously updated as more information is acquired.

Similarly, Miami-Dade and the municipalities control a huge inventory of properties. Therefore, due to its voluminous size, the listing of non-critical municipal public building and facilities will be maintained separately by the county and each municipality.

A critical facilities inventory is maintained by Miami-Dade Office of Emergency Management (OEM) and Miami-Dade Enterprise Technology Services Department (ETSD) that includes those facilities that have been deemed critical by the state and federal governments. A copy has been supplied to the Florida Division of Emergency Management as well. The inventory includes GIS coverage for the following: the Miami-Dade County street network, day care centers, medical facilities (MMF, hospitals, nursing homes, adult living facilities), Miami-Dade fire stations, municipal fire stations, Miami-Dade police stations, municipal police stations, solid waste management sites, sewage treatment plants, sewer pump stations, water treatment plants, Miami-Dade County schools, hazardous materials sites, municipal critical facilities inventory, the Miami-Dade evacuation network, and hurricane evacuation centers.

While the state and federal government defines critical facilities as those listed above, the Miami-Dade LMS Working Group has defined critical facilities in three types or levels, which are:

1. Level 1 – A facility that must remain available in all circumstances and at all times. The community cannot do without this facility at all. Protective measures are an absolute must.
2. Level 2 – A facility that must be restored within twenty-four hours or risk dire consequences to the community.
3. Level 3 – A facility that must be restored within seventy-two hours or the community may suffer major problems.

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The Working Group concludes that any facility that the community can do without for more than seventy-two hours is not truly critical; important perhaps, but not critical.

These facilities that are important but not critical include such venues as sports arenas, shopping malls, governmental buildings, churches, general service hospitals, etc. It also includes facilities with a social importance to certain groups such as the Freedom Tower to the Cuban community and the Holocaust Memorial to the Jewish community. A listing of important facilities is also kept in inventory and this inventory is available to those so authorized.

TAB 10



MEMORANDUM

To: Honorable Mayor and Town Council

From: Steven J. Alexander, Town Manager

Date: August 11, 2008

Re: An Ordinance amending the tax schedule for business tax receipts and amending the penalties related to business tax receipts to reflect statutory penalties.

REQUEST

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING THE TAX SCHEDULE FOR BUSINESS TAX RECEIPTS; AMENDING THE PENALTIES RELATED TO BUSINESS TAX RECEIPTS TO REFLECT STATUTORY PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

In 2007, the Florida Legislature enacted Senate Bill 1178 that amended Sections 205.053 and 205.0535, Florida Statutes, to provide that by October 1, 2008, any municipality that had adopted a local business tax after October 1, 1995, could by ordinance reclassify businesses, professions, and occupations and could establish new rate structures. State law provides that, prior to the adoption of a reclassification and revision ordinance, the Town of Cutler Bay (the "Town") was required to establish an equity study commission and appoint its members.

On February 20, 2008, the Town Council established the Cutler Bay Business Tax Equity Study Advisory Board (the "Equity Study Board") to serve as the equity study commission, and established procedures for appointment of members, a timetable and rules of procedure governing the Equity Study Board in the conduct of its business. On May 21, 2008, the Town Council appointed representatives of the business community within the Town to serve as members of the Equity Study Advisory Board. After holding four public meetings, the Equity Study Board on August 8, 2008 recommended a new Business Tax Receipt reclassification and rate structure. These changes are summarized in Exhibit 1.



Staff believes the findings and recommendations of the Committee are fair and just and that this tax, as amended, will promote the health, safety and welfare of the Town.

RECOMMENDATION

Staff recommends adoption of the ordinance to amend the business tax receipt fee schedule and business tax receipt penalties as set forth by the Equity Study Board.

ORDINANCE NO. 08-_____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING THE TAX SCHEDULE FOR BUSINESS TAX RECEIPTS; AMENDING THE PENALTIES RELATED TO BUSINESS TAX RECEIPTS TO REFLECT STATUTORY PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in 2007, the Florida Legislature enacted Senate Bill 1178 that amended Sections 205.053 and 205.0535, Florida Statutes, to provide that by October 1, 2008, any municipality that had adopted a local business tax after October 1, 1995, could by ordinance reclassify businesses, professions, and occupations and could establish new rate structures; and

WHEREAS, state law provides that, prior to the adoption of a reclassification and revision ordinance, the Town of Cutler Bay (the "Town") was required to establish an equity study commission and appoint its members; and

WHEREAS, on February 20, 2008, the Town Council established the Cutler Bay Business Tax Equity Study Advisory Board (the "Equity Study Board") to serve as the equity study commission, and established procedures for appointment of members, a timetable and rules of procedure governing the Equity Study Board in the conduct of its business; and

WHEREAS, on May 21, 2008, the Town Council appointed representatives of the business community within the Town to serve as members of the Equity Study Advisory Board; and

WHEREAS, after holding four public meetings, the Equity Study Board recommended a new Business Tax Receipt reclassification and rate structure; and

WHEREAS, the Town of Cutler Bay (the "Town") finds and determines that it is fair and just to amend the business tax schedule and business tax receipt penalties as set forth herein; and

WHEREAS, the Town finds that this tax will promote the health, safety and welfare of the Town.

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

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

Section 2. Ratification of Appointments. The Town Council approves the appointments of the following Equity Study Board Members:

- a) Art Nanni Jr. replacing Roberto Rosa
- b) Linda Peterson replacing Russell Rogg

Section 3. Amendment of Town Ordinance 07-13. Town Ordinance 07-13 shall be amended as follows:

Sec. 5. Violations; penalties.

~~(a) Any person convicted of violating this article who engages in or manages any business, occupation, or profession in the Town without first obtaining a local business tax receipt, if required, or of any person making a fraudulent return application, shall be punished as provided by subsection (e) of this section, in the discretion of the court, and in addition such person shall be penalized a sum equal subject to a penalty of to 25 percent of any the local business tax avoided or evaded by and through the medium of such fraudulent return. due, in addition to any other penalty provided by law or ordinance.~~

~~(b) Each and every day of selling or disposing of merchandise or engaging in a business or profession without making the affidavit and/or without compliance in full with all of the provisions of this article shall constitute a separate and distinct violation of this article.~~

~~(e b) No person shall engage in or manage any business, profession or occupation without first obtaining from the Town a receipt for each separate location in the Town and paying the amount set forth in this article. Any person engaging in or managing any business, occupation or profession mentioned in this article between October 1 and November 1 of each year without first having complied with the provisions of this article and paying the amount of local business tax as provided for in this article shall be declared delinquent. Those receipts not renewed when due and payable and are considered delinquent and shall be subject to a delinquency penalty of ten percent for the month of October, plus an additional five percent penalty for each month of delinquency thereafter until paid. However, the total delinquency penalty shall not exceed 25 percent of the local business tax for the delinquent establishment.~~

~~(d c) A receipt shall be required to cover each and every business advertised by sign, newspaper, magazine or otherwise. Such advertisement shall be considered evidence of conducting the business advertised and shall be a sufficient predicate for conviction by the court or other enforcement authority. Such receipt shall be issued to cover each and every location of such business, and the assessment and amount of such local business taxes are classified and fixed per annum unless otherwise specified.~~

~~(e d) Any person who violates any provision of this article shall, upon conviction, be punished by a fine not to exceed engages in any business, occupation, or profession covered by this article, who does not pay the required business tax within 150 days after the initial notice of tax due, and who does not obtain the required receipt is subject to civil actions and penalties, including court costs, reasonable attorneys' fees, additional administrative costs incurred as a result of collection efforts, and a penalty of up to \$250.00. This article shall be subject to enforcement under the Local Government Code Enforcement Act, F.S. Ch. 162. Enforcement may also be by suit for declaratory, injunctive or other appropriate relief in a court of competent jurisdiction.~~

Sec. 12. Tax schedule.

For purposes of this article, inventory shall mean the average selling value of annual inventory owned by the business, exclusive of excise tax. The amounts assessed for Local Business Taxes shall be fixed by resolution, as follows:

Type of Business	Tax					
Abstract company	\$100.00 - <u>110.00</u>					
Accountant	30.00 - <u>33.00</u>					
Acupuncture	30.00 - <u>33.00</u>					
Administrative office	30.00 - <u>33.00</u>	+ 3.00	for each additional employee	from 11	to 99,999	
Adult bookstore/novelty	<u>300.00</u>					
Adult day care	30.00 - <u>33.00</u>	+ 3.00	for each additional employee	from 11	to 99,999	
Adult entertainment	<u>450.00</u>					
Advertising / marketing / public relations	30.00 - <u>33.00</u>	+ 3.00	for each additional employee	from 11	to 99,999	
Advertising space rental	25.00 - <u>27.50</u>	+ 3.00	for each additional space	from 2	to 99,999	
Alteration service -- commercial	30.00 - <u>33.00</u>	+ 3.00	for each additional employee	from 11	to 99,999	
Alterations	25.00 - <u>27.50</u>					
Ambulance service	30.00 - <u>33.00</u>	+ 3.00	for each additional employee	from 11	to 99,999	
Amusement center	25.00 - <u>27.50</u>					
Amusement device (non coin)	25.00 - <u>27.50</u>	+ 15.00	for each additional device	from 2	to 99,999	
Amusement facility	25.00 - <u>27.50</u>	+ 15.00	for each additional unit	from 2	to 99,999	
Amusement ride	25.00 - <u>27.50</u>	+ 15.00	for each additional ride	from 2	to 99,999	
Amusement / service vending machine	25.00 - <u>27.50</u>		for one machine			
	25.00 - <u>27.50</u>	+ 15.00	for each additional machine	from 2	to 30	
	460.00 - <u>506.00</u>	+ 6.00	for each additional machine	from 31	to 99,999	
Animal service	30 - <u>33.00</u>	+ 3.00	for each additional employee	from 11	to 99,999	
Answering service	30 - <u>33.00</u>	+ 3.00	for each additional employee	from 11	to 99,999	
Antique / art dealer / studio	30.00 - <u>33.00</u>	+ 3.00	for each additional employee	from 11	to 99,999	
Apartments	not taxable		apartments	from 1	to 4	

	<u>30.00—33.00</u>			apartments	from	5	to	10
	<u>30.00—33.00</u>	+ 2.00		for each additional apartment	from	11	to	99,999
Apparel / accessory mfg	<u>30.00—33.00</u>	+ 3.00		for each additional employee	from	11	to	99,999
Appraiser	<u>30.00—33.00</u>							
Architect	<u>40.00—44.00</u>							
Artist / illustrator	<u>30.00—33.00</u>							
Assembly / fabricating	<u>30.00—33.00</u>	+ 3.00		for each additional employee	from	11	to	99,999
Assisted living facility	<u>100.00—125.00</u>	+ 3.00		for each additional employee	from	21	to	99,999
Astrology / palm reader	<u>230.00—253.00</u>							
Attorney	<u>40.00—44.00</u>	+ 10.00		library fee				
Attorney branch office	<u>30.00—33.00</u>							
Auction sales / liquidator	<u>30.00—33.00</u>	+ 3.00		for each additional employee	from	11	to	99,999
Auctioneering service	<u>30.00—33.00</u>	+ 3.00		for each additional employee	from	11	to	99,999
Audio visual service	<u>30.00—33.00</u>	+ 3.00		for each additional employee	from	11	to	99,999
Audiologist / speech pathologist	<u>30.00—33.00</u>							
Auditorium / playhouse	<u>100.00—110.00</u>				from	1	to	500 seats
	<u>200.00—220.00</u>				from	501	to	1,000 seats
	<u>300.00—330.00</u>				from	1,001		and up
Author / writer	<u>30.00—33.00</u>							
Auto / truck / van sales	<u>30.00—33.00</u>	+ 3.00		for each additional employee	from	11	to	99,999
Auto / truck / van service	<u>30.00—33.00</u>	+ 3.00		for each additional employee	from	11	to	99,999
Auto tag branch agency	<u>100.00—110.00</u>							
Automated teller machine	<u>50.00—100.00</u>							
Baby sitting service (itinerant)	<u>25.00—27.50</u>							
Bail bond business	<u>100.00—110.00</u>							
Bakery	<u>30.00—33.00</u>	+ 3.00		for each additional employee	from	11	to	99,999
Bank / trust company	<u>200.00—220.00</u>	+ 3.00		for each additional employee	from	51	to	99,999
Banking facility	<u>80.00—88.00</u>							
Barber or beauty school	<u>30.00—33.00</u>	+ 3.00		for each additional employee	from	11	to	99,999
Barber shop / chair	<u>30.00—33.00</u>	+ 3.00		for each additional	from	11	to	99,999

			employee				
Beauty service	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Beauty shop / chair	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Beeper paging	<u>80.00—88.00</u>						
Billing / bookkeeping service	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Binding service	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Blood bank center	<u>50.00—55.00</u>						
Body / paint / repair shop	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Bookkeeping / tax / immigration service	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Bowling lanes	<u>25.00—27.50</u>	+ 15.00	for each additional lane	from	2	to	99,999
Bulk merchandise vending stand	<u>25.00—27.50</u>	+ 16.00	for each additional stand	from	2	to	99,999
Business service	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Cabinets / woodworking mfg.	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Cable TV franchise/ <u>Video service provider</u>	<u>500.00—550.00</u>						
Canning / bottling	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Car wash / auto detailing	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Cargo handler	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Carnival (sponsored)	<u>25.00—27.50</u>	+ 15.00	for each additional unit	from	2	to	99,999
Cash / Payroll advance/ <u>Check service/cashing</u>	<u>80.00—120.00</u>						
Catering service	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Cemetery / crematorium	<u>200.00—220.00</u>						
Ceramic studio / kiln / supplies	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Charter / leasing service	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Check service / cashing	30.00—	+ 3.00	for each additional employee	from	11	to	99,999
Child day care facility	<u>30.00—33.00</u>	+ 3.00	for each additional	from	11	to	99,999

			employee				
Chiropractor	40.00 — 44.00						
Circus / carnivals (not sponsored)	100.00 — 100.00		per day				
Cleaner / laundry / alterations	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Cleaning service	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Clinic / medical center / dialysis	100.00 — 110.00	+ 3.00	for each additional employee	from	21	to	99,999
Clinical social worker	40.00 — 44.00						
Collection / credit service	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Commercial / Industrial / Office space	50.00 — 55.00		250,000 or less leasable sq. ft.				
	150.00 — 165.00		from 250,001 leasable sq. ft. and up				
Community pharmacy	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Community TV antenna	600.00 —						
Community TV antenna franchise	500.00 —						
Computer / data processing service	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Concession / news stand	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Consultant	40.00 — 44.00						
Copy / DUP / reproduction service	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Correspondence school	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Courier drop box	25.00 — 27.50		per location				
Courier service	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Court reporter	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
CPA	40.00 — 44.00						
Credit / debit card co.	150.00 — 165.00	+ 3.00	for each additional employee	from	51	to	99,999
Cruise line /dinner cruise	100.00 — 110.00		per vessel				
Custom house broker	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Cutting / sewing / press service	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Dancing or entertainment / one night only	150.00 — 165.00						

Dancing or entertainment	<u>225.00</u> – <u>247.50</u>						
Dating / escort business	<u>100.00</u> – <u>200.00</u>						
Dealer in intangible personal property	<u>80.00</u> – <u>88.00</u>						
Dealer in petroleum products	<u>75.00</u> – <u>82.50</u>	+ 3.00	for each additional employee	from	11	to	99,999
Delivery / messenger service	<u>30.00</u> – <u>33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Dental lab school	<u>30.00</u> – <u>33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Dental laboratory	<u>30.00</u> – <u>33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Dentist	<u>40.00</u> – <u>44.00</u>						
Designer	<u>40.00</u> – <u>44.00</u>						
Dietician / Nutritionist	<u>30.00</u> – <u>33.00</u>						
Dispatch service	<u>30.00</u> – <u>33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Dispensing optician	<u>30.00</u> – <u>33.00</u>						
Drafting service	<u>30.00</u> – <u>33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Drive in restaurant	<u>60.00</u> – <u>66.00</u>						
Eating establishment	<u>30.00</u> – <u>33.00</u>		seats	from	1	to	30
	<u>60.00</u> – <u>66.00</u>		seats	from	31	to	74
	<u>90.00</u> – <u>99.00</u>		seats	from	75	to	149
	<u>120.00</u> – <u>132.00</u>		seats	from	150	to	99,999
Educational institutions (<u>private</u>)	<u>30.00</u> – <u>33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Electric plant	<u>600.00</u> – <u>660.00</u>						
Electric plant franchise	<u>500.00</u> – <u>550.00</u>						
Electrical contractor	<u>30.00</u> – <u>33.00</u>	+ 3.00	for each additional employee	from	51	to	99,999
Electrolysis service	<u>30.00</u> – <u>33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Electronic credit approval	<u>100.00</u> – <u>110.00</u>						
Electronic telephone info	<u>200.00</u> – <u>220.00</u>						
Embalmer	<u>40.00</u> – <u>44.00</u>						
Embroidery / monogram service	<u>30.00</u> – <u>33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Employee leasing service	<u>120.00</u> – <u>132.00</u>	+ 3.00	for each additional employee	from	21	to	99,999
Employment agency	<u>30.00</u> – <u>33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Engraving / laminating service	<u>30.00</u> – <u>33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Equipment operator	<u>30.00</u> – <u>33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999

Export / import	30.00 — 60.00	+ 3.00	for each additional employee	from	11	to	99,999
Farmers market	200.00 — 220.00						
Fax communication	50.00 — 55.00						
Film / photo process / develop	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Finance / loans / mortgages	150.00 — 100.00	+ 3.00	for each additional employee	from	51	to	99,999
Firearms mfg	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Fitness center - membership	200.00 — 220.00						
Fitness center - non-member	100.00 — 110.00						
Flea market	230.00 — 253.00						
Flea market sales	30.00 — 33.00						
Food products mfg / process	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Food / beverage sales	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Foreign exchange	80.00 — 88.00						
Framing service	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Freight forwarding / cargo service	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Fruit shipping agent	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Funeral director	40.00 — 44.00						
Funeral director / embalmer	40.00 — 44.00						
Funeral home	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Garbage / waste disposal	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Gas plant	600.00 — 660.00						
Gas plant franchise	500.00 — 550.00						
General building contractor	30.00 — 33.00	+ 3.00	for each additional employee	from	51	to	99,999
General engineering contractor	30.00 — 33.00	+ 3.00	for each additional employee	from	51	to	99,999
General mechanical contractor	30.00 — 33.00	+ 3.00	for each additional employee	from	51	to	99,999
Golf course / miniature	25.00 — 27.50	+ 15.00	for each additional course	from	2	to	99,999
Graphic / art / typesetting	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Guard patrol agency	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999

Hall for hire	<u>230.00</u> — <u>253.00</u>						
Handwriting analyst -- affidavit	<u>30.00</u> — <u>33.00</u>						
Health / Dental (prepaid) maintenance organization	<u>100.00</u> — <u>110.00</u>	+ 3.00	for each additional employee	from 21	to 99,999		
Health testing -- invasive	<u>30.00</u> — <u>33.00</u>	+ 3.00	for each additional employee	from 11	to 99,999		
Health testing non-invasive	<u>30.00</u> — <u>33.00</u>	+ 3.00	for each additional employee	from 11	to 99,999		
Hearing aid specialist	<u>30.00</u> — <u>33.00</u>						
Holding company / franchising	<u>150.00</u> — <u>165.00</u>	+ 3.00	for each additional employee	from 51	to 99,999		
Home health care agency	<u>120.00</u> — <u>132.00</u>						
Home health care provider	<u>25.00</u> — <u>27.50</u>						
Hospital / emergency room	<u>100.00</u> — <u>110.00</u>	+ 3.00	for each additional employee	from 21	to 99,999		
Hotel	not taxable		rooms	from 1	to 4		
	<u>30.00</u> — <u>33.00</u>		rooms	from 5	to 10		
	<u>30.00</u> — <u>60.00</u>	+ 2.00 3.00-	for each additional room	from 11	to 99,999		
Hypnotherapist (affidavit)	<u>30.00</u> — <u>33.00</u>						
Ice cream vendor	<u>30.00</u> — <u>33.00</u>						
Information / referral service	<u>30.00</u> — <u>33.00</u>	+ 3.00	for each additional employee	from 11	to 99,999		
Inspection service	<u>30.00</u> — <u>33.00</u>	+ 3.00	for each additional employee	from 11	to 99,999		
Installation service -- non contractor	<u>30.00</u> — <u>33.00</u>	+ 3.00	for each additional employee	from 11	to 99,999		
Instructor / training / tutor	<u>30.00</u> — <u>33.00</u>	+ 3.00	for each additional employee	from 11	to 99,999		
Insurance adjustor	<u>25.00</u> — <u>27.50</u>						
Interior decorator	<u>30.00</u> — <u>33.00</u>	+ 3.00	for each additional employee	from 11	to 99,999		
Interior designer	<u>40.00</u> — <u>44.00</u>						
Investments / land development	<u>150.00</u> — <u>165.00</u>	+ 3.00	for each additional employee	from 21	to 99,999		
Janitorial service	<u>30.00</u> — <u>33.00</u>	+ 3.00	for each additional employee	from 11	to 99,999		
Junk dealer / junk yard	<u>100.00</u> — <u>110.00</u>						
Key making	<u>30.00</u> — <u>33.00</u>	+ 3.00	for each additional employee	from 11	to 99,999		
land surveyor	<u>40.00</u> — <u>44.00</u>						
Landfill / dump	<u>100.00</u> — <u>110.00</u>						
Landscape architect	<u>40.00</u> — <u>44.00</u>						
Laundromat / laundry room	<u>25.00</u> — <u>50.00</u>	+ 1.50 2.00	for each additional machine	from 2	to 99,999		

Laundry machines	25.00 — 50.00	+ 1.50 <u>2.00</u>	for each additional machine	from 2	to 99,999
Lawn / lawnscape / tree service	30.00 — 60.00	+ 3.00	for each additional employee	from 11	to 99,999
Limousine service	30.00 — 33.00	+ 3.00	for each additional employee	from 11	to 99,999
Local exchange telephone service	900.00 — 990.00				
Locksmith service	30.00 — 33.00	+ 3.00	for each additional employee	from 11	to 99,999
Long distance communications	250.00 — 275.00				
LPG dealer / distributor and installation	130.00 — 143.00				
LPG equipment dealer	130.00 — 143.00				
LPG equipment manufacturer	130.00 — 143.00				
LPG installer	50.00 — 55.00				
LPG (Propane) Gas Tank Exchange Under 20 lbs.	25.00 — 27.50				
LPG tank refill	60.00 — 66.00				
Lunch wagon / truck	30.00 — 33.00				
Machine / welding shop	30.00 — 33.00	+ 3.00	for each additional employee	from 11	to 99,999
Mail order	30.00 — 33.00	+ 3.00	for each additional employee	from 11	to 99,999
Mailing facility	100.00 — 110.00				
Management service	30.00 — 33.00	+ 3.00	for each additional employee	from 11	to 99,999
Manufacturing	30.00 — 33.00	+ 3.00	for each additional employee	from 11	to 99,999
Marine surveyor	40.00 — 44.00				
Marine / boat repair	30.00 — 33.00	+ 3.00	for each additional employee	from 11	to 99,999
Marriage and family therapist	40.00 — 44.00				
Massage establishment	30.00 — 33.00	+ 3.00	for each additional employee	from 11	to 99,999
Massage therapist	25.00 — 27.50				
Membership organization	200.00 — 100.00				
Mental health counselor	40.00 — 44.00				
Merchandise vending machine	25.00 — 27.50		for one machine		
	25.00 — 27.50	+ 6.00	for each additional machine	from 2	to 30
	199.00 — 218.90	+ 3.00	for each additional machine	from 31	to 99,999
MFG representative (individual)	30.00 — 33.00				
Mobile auto mechanic	25.00 — 27.50				
Mobile home park / camp grounds	30.00 — 33.00		spaces	from 1	to 100
	60.00 — 66.00		spaces	from 101	to 200

	<u>90.00—99.00</u>			spaces	from	201	to	99,999
Mobile home sales	<u>30.00—33.00</u>	+ 3.00		for each additional employee	from	11	to	99,999
Mortgage broker business	<u>80.00—88.00</u>							
Motel	not taxable			rooms	from	1	to	4
	<u>30.00—33.00</u>			rooms	from	5	to	10
	<u>30.00—60.00</u>	+ <u>2.00</u> <u>3.00</u>		for each additional room	from	11	to	99,999
Movie / multi theatre	<u>80.00—88.00</u>			per screen				
Moving / hauling / storage (local)	<u>30.00—33.00</u>	+ 3.00		for each additional employee	from	11	to	99,999
Multiple business	<u>100.00—110.00</u>							
Naturopath	<u>40.00—44.00</u>							
News / wire service	<u>80.00—88.00</u>							
Non-emergency transportation service	<u>30.00—33.00</u>	+ 3.00		for each additional employee	from	11	to	99,999
Nurse / midwife	<u>30.00—33.00</u>							
Nursery plant sales	<u>30.00—33.00</u>	+ 3.00		for each additional employee	from	11	to	99,999
Nursing / convalescent home	<u>100.00—110.00</u>	+ 3.00		for each additional employee	from	21	to	99,999
Occult science	<u>230.00—253.00</u>							
Operation center	<u>30.00—33.00</u>	+ 3.00		for each additional employee	from	11	to	99,999
Optometrist	<u>40.00—44.00</u>							
Osteopathic physician	<u>40.00—44.00</u>							
Packing / packaging	<u>30.00—33.00</u>	+ 3.00		for each additional employee	from	11	to	99,999
Packing/ processing (farm products)	<u>25.00—27.50</u>	+ 2.00		for each additional employee	from	11	to	60
	<u>150.00—165.00</u>			employees	from	61	to	99,999
Paralegal	<u>30.00—33.00</u>							
Paramedic / physician assistant	<u>30.00—33.00</u>							
Parking facility	<u>30.00—33.00</u>			spaces	from	1	to	100
	<u>60.00—66.00</u>			spaces	from	101	to	200
	<u>90.00—99.00</u>			spaces	from	201	to	99,999
Party / entertainment service	<u>30.00—33.00</u>	+ 3.00		for each additional employee	from	11	to	99,999
Passenger motor carrier	<u>30.00—33.00</u>	+ 3.00		for each additional employee	from	11	to	99,999
Passenger transportation service	<u>30.00—33.00</u>	+ 3.00		for each additional employee	from	11	to	99,999
Pawnbroker	<u>340.00—400.00</u>							
Pay telephone provider	<u>75.00—82.50</u>	+ 7.50		for each employee	from	11	to	99,999
Peddler	<u>30.00—33.00</u>							

Permanent exhibit / admission facility	230.00							
Personal services	30.00—33.00	+ 3.00	for each additional employee	from	11	to	99,999	
Pest control service	30.00—33.00	+ 3.00	for each additional employee	from	11	to	99,999	
Photographer / video service	30.00—33.00	+ 3.00	for each additional employee	from	11	to	99,999	
Physical / Occupational therapist	30.00—33.00							
Physical / Occupational therapy center	30.00—33.00	+ 3.00	for each additional employee	from	11	to	99,999	
Physician	40.00—44.00							
Plumbing contractor	30.00—33.00	+ 3.00	for each additional employee	from	51	to	99,999	
Podiatrist	40.00							
Polygraph examiner	30.00—33.00	+ 3.00	for each additional employee	from	11	to	99,999	
Postal service	30.00—33.00	+ 3.00	for each additional employee	from	11	to	99,999	
Prescription drug wholesaler	30.00—33.00	+ 3.00	for each additional employee	from	11	to	99,999	
Printing / lithograph	30.00—33.00	+ 3.00	for each additional employee	from	11	to	99,999	
Private investigative agency	30.00—33.00	+ 3.00	for each additional employee	from	11	to	99,999	
Process server	30.00—33.00	+ 3.00	for each additional employee	from	11	to	99,999	
Processing plant	30.00—33.00	+ 3.00	for each additional employee	from	11	to	99,999	
Producer / productions	300.00—330.00							
Professional association / Corporation / Partnership / firm	30.00—33.00	+ 3.00	for each additional employee	from	11	to	99,999	
Professional engineer	40.00—44.00							
Professional sports team	300.00—330.00							
Promotor / coordinator	200.00—220.00							
Psychologist	40.00—44.00							
Publishing service	30.00—33.00	+ 3.00	for each additional employee	from	11	to	99,999	
Purchasing agent / ship chandler	30.00—33.00	+ 3.00	for each additional employee	from	11	to	99,999	
Quarrying / mining	30.00—33.00	+ 3.00	for each additional employee	from	11	to	99,999	
Railroad	225.00—247.50							
Real estate appraiser	30.00—33.00							
Real estate branch office	30.00—33.00	+ 3.00	for each additional employee	from	11	to	99,999	

Real estate broker	<u>30.00—33.00</u>						
Real estate firm	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Real estate school	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Recording / film studio	<u>300.00—330.00</u>						
Recycling / refiners	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Refinish / finishing / dye service	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Rental service - not real property	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Repossessing service	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Resale of communication time	<u>150.00—165.00</u>						
Research / search service	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Retail of firearms	<u>30.00—60.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Retail pharmacy	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Retail store	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Rooms / boarding / guest home	Not taxable		rooms	from	1	to	4
	<u>30.00—33.00</u>		rooms	from	5	to	10
	<u>30.00—33.00</u>	+ 2.00	for each additional room	from	11	to	99,999
Sales broker agent(individual)	<u>30.00—33.00</u>						
Satellite Master Antenna TV	<u>500.00—550.00</u>						
Savings and loan association	<u>200.00—220.00</u>	+ 3.00	for each additional employee	from	51	to	99,999
School bus service	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
School psychologist	<u>40.00—44.00</u>						
Scrap metal processor	<u>150.00—300.00</u>						
Secretarial / clerical service	<u>30.00—33.00</u>	+ 3.00	for each additional employee	from	11	to	99,999
Security systems monitoring	<u>100.00—110.00</u>						
Self storage	<u>75.00—82.50</u>			from	1	to	500 units
	<u>100.00—110.00</u>			from	501	to	1,000 units
	<u>125.00—137.50</u>			from	1,001	to	99,999 units
Seller of travel	<u>30.00—33.00</u>	+ 3.00	for each additional	from	11	to	99,999

			employee				
Selling / trading tangible personal property	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Service and repairs - non contractor	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Showroom / sales office	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Slaughter house	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Specialty building contractor	30.00 — 33.00	+ 3.00	for each additional employee	from	51	to	99,999
Specialty electrical contractor	30.00 — 33.00	+ 3.00	for each additional employee	from	51	to	99,999
Specialty engineering contractor	30.00 — 33.00	+ 3.00	for each additional employee	from	51	to	99,999
Specialty mechanical contractor	30.00 — 33.00	+ 3.00	for each additional employee	from	51	to	99,999
Specialty plumbing contractor	30.00 — 33.00	+ 3.00	for each additional employee	from	51	to	99,999
Special transportation service	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Stadium / arena	150.00 — 165.00		seats	from	1	to	10,000
	300.00 — 330.00		seats	from	10,001	to	30,000
	600.00 — 660.00		seats	from		to	99,999
Stevedore agency	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Stock and bond / commodity broker	150.00 — 165.00	+ 3.00	for each additional employee	from	51	to	99,999
Sub building contractor	30.00 — 33.00	+ 3.00	for each additional employee	from	51	to	99,999
Sub general building contractor	30.00 — 33.00	+ 3.00	for each additional employee	from	51	to	99,999
Subscription business	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Swimming pool	25.00 — 27.50	+ 15.00	for each additional pool	from	2	to	99,999
Tailor / dressmaking	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Take out food / snack bar	30.00 — 33.00						
Tattoo studio/Body piercing (affidavit)	30.00 — 60.00	+ 3.00	for each additional employee	from	11	to	99,999
Taxicab passenger service company	30.00 — 33.00	+ 3.00	for each additional employee	from	11	to	99,999
Tele / radio / sat communication	250.00 — 275.00						

Telecom systems sales / service	250.00 – 275.00						
Telegraph	80.00 – 88.00						
Telemarketing	30.00 – 33.00	+ 3.00	for each additional employee	from 11	to 99,999		
Temporary employment agency	120.00 – 132.00	+ 3.00	for each additional employee	from 21	to 99,999		
Tennis courts	25.00 – 27.50	+ 15.00	for each additional court	from 2	to 99,999		
Tent sales	30.00 – 33.00	+ 3.00	for each additional employee	from 11	to 99,999		
Testing service (non-medical)	30.00 – 33.00	+ 3.00	for each additional employee	from 11	to 99,999		
Textile products mfg	30.00 – 33.00	+ 3.00	for each additional employee	from 11	to 99,999		
Ticket sales / reservation	30.00 – 33.00	+ 3.00	for each additional employee	from 11	to 99,999		
Time share property	Not taxable		apartments	from 1	to 4		
	30.00 – 33.00		apartments	from 5	to 10		
	30.00 – 33.00	+ 2.00	for each additional apartment	from 11	to 99,999		
Time share sales exchange office	30.00 – 33.00	+ 3.00	for each additional employee	from 11	to 99,999		
Tip sheet	230.00 – 253.00						
Title insurance companies	100.00 – 110.00						
Tour guide service	25.00 – 27.50						
Tour / travel agency	30.00 – 33.00	+ 3.00	for each additional employee	from 11	to 99,999		
Towing truck	25.00 – 50.00		per truck				
Transport - local / intra state	30.00 – 33.00	+ 3.00	for each additional employee	from 11	to 99,999		
Traveling junk dealer	30.00 – 33.00						
Unclassified business	100.00 – 110.00						
Upholstering	30.00 – 33.00	+ 3.00	for each additional employee	from 11	to 99,999		
Used merchandise sales / no pawn	30.00 – 33.00	+ 3.00	for each additional employee	from 11	to 99,999		
Used motor vehicle parts dealer	100.00 – 110.00						
Valet parking	30.00 – 33.00	+ 3.00	for each additional employee	from 11	to 99,999		
Veterinarian	40.00 – 44.00						
Veterinary clinic	50.00 – 55.00	+ 1.50	for each additional employee	from 11	to 99,999		
Warehouse / distribution center	30.00 – 33.00	+ 3.00	for each additional employee	from 11	to 99,999		
Water / sewer plant	500.00 – 550.00						

Web surfing outlets	25.00 — 27.50	+	10.00	for each additional terminal	from	2	to	99,999
Weight control center	30.00 — 33.00	+	3.00	for each additional employee	from	11	to	99,999
Wholesale / distributor	30.00 — 33.00	+	3.00	for each additional employee	from	11	to	99,999
Yacht / boat / marine broker	30.00 — 33.00	+	3.00	for each additional employee	from	11	to	99,999

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

Section 5. Severability. The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 6. Inclusion in the Code. It is the intention of the Town 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 7. 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



Planning & Zoning Department

R. Don O'Donniley, AICP
Planning Director

MEMORANDUM

To: Steve Alexander, Town Manager

From: R. Don O'Donniley

Date: August 20, 2008

Re: Ordinance Requiring Mortgagees Foreclosing on Property to Register with the Town and Maintain Property

BACKGROUND

The Town of Cutler Bay has witnessed an increase in the number of foreclosed properties. As foreclosures have increased, the instances where properties are not being maintained have increased and have presented compliance problems for Code Enforcement. The presence of these problems is also adversely affecting values of other homes. Council member Meerbott requested staff to look into an ordinance requiring the mortgagee to register the foreclosure with the Town and provide for maintenance; including contact information.

REQUEST

The Town Council adopt the attached ordinance providing for mortgage companies to register with the Town two weeks prior to foreclosure, establish maintenance for the property and a contact. The Ordinance also provides a penalty for failure to comply.

ANALYSIS

The proposed Ordinance is remedial and aimed at a growing problem of foreclosure. Across the country, a number of jurisdictions have noted the increased burden foreclosed properties have placed on code enforcement. In addition, the un-kept nature of foreclosed properties often is a danger to the neighborhood as a breeding ground for vermin. Property owners adjacent have reported a decrease in value and real estate agents confirm the difficulty experienced in selling homes when un-kept foreclosed properties are nearby. Town Code Compliance staff reports these properties rapidly change hands as the foreclosed mortgage is moved from one company to another faster than Public records can be updated.

RECOMMENDATION

Staff recommends the Council adopt the attached Ordinance requiring Mortgagees to register foreclosures.

ORDINANCE NO. 08-___

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 19 “RESPONSIBLE PROPERTY OWNER AND MERCHANT ACT” TO INCLUDE PROVISIONS RELATING TO THE REGISTRATION, MAINTENANCE AND SECURITY OF ABANDONED REAL PROPERTY; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the “Town”) recognizes an increase in the number of vacant and abandoned properties located throughout the Town; and

WHEREAS, the presence of vacant and abandoned properties can lead to a decline in property value, create attractive nuisances, and lead to general decrease in neighborhood and community aesthetic; and

WHEREAS, vacant and abandoned properties present a serious threat to the public health and safety of the community; and

WHEREAS, the presence of vacant and abandoned properties may discourage prospective buyers from purchasing real property within the Town; and

WHEREAS, many vacant and abandoned properties are the responsibility of lenders and trustees who fail to adequately secure and maintain such properties; and

WHEREAS, the Town has a vested interest in protecting the Town against the decay caused by vacant and abandoned properties and concludes that it is in the best interest of the citizens and residents to impose registration requirements on such properties located within the Town.

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

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

Section 2. Amendment to Chapter 19 of the Town Code. The Town Council of the Town of Cutler Bay hereby amends Chapter 19 “Responsible Property Owner and Merchant Act” of the Town Code of Ordinances by adding a new section 19-16 as follows:

Section 19-16. Abandoned Real Property; Purpose and Intent.

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.

It is the purpose and intent of the Town to establish a process to address the amount of abandoned real property located within the Town. It is the Town's further intent to specifically establish an abandoned residential property program as a mechanism to protect residential neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties.

Section 19-16.1. Definitions.

The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned real property means any property that is vacant and is subject to a mortgage under a current Notice of Default and/or Notice of Mortgagee's Sale, pending Tax Assessors Lien Sale and/or vacant properties that have been the subject of a foreclosure sale where the title was retained by the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure or sale.

Evidence of vacancy means any condition that on its own, or combined with other conditions present would lead a reasonable person to believe that the property is vacant. Such conditions may include, but not be limited to, overgrown and/or dead vegetation, accumulation of abandoned real property, as defined herein, statements by neighbors, passers-by, delivery agents or government agents, among other evidence that the property is vacant.

Foreclosure means the process by which a property, placed as security for a real estate loan, is sold at public sale to satisfy the debt if the borrower defaults.

Enforcement officer means any building official, zoning inspector, code enforcement officer, fire inspector or building inspector employed within the Town.

Property management company means a property manager, property maintenance company or similar entity or individual responsible for the maintenance of abandoned real property.

Vacant means any building/structure that is not legally occupied.

Section 19-16.2. Applicability.

This section shall be considered cumulative and not superseding or subject to any other law or provision for same, but shall rather be an additional remedy available to the Town above and beyond any other state, county and/or local provisions for same.

Section 19-16.3. Penalties; schedule of civil penalties

Any person who shall violate the provisions of this section 19-16 shall, upon conviction, be punished as provided in this section.

The following table shows the sections of this section 19-16, as they may be amended from time to time, which may be enforced pursuant to the provisions of this regulation; and the dollar amount of civil penalty for the violation of these sections as they may be amended. The "descriptions of violations" below are for informational purposes only and are not meant to limit or define the nature of the violations or the subject matter of the listed Code sections, except to the extent that different types of violations of the same Code section may carry different civil penalties. For each Code section listed in the schedule of civil penalties, the entirety of that section may be enforced by the mechanism provided in this section 19-16, regardless of whether all activities proscribed or required within that particular section are described in the "Description of Violation" column. To determine whether a particular activity is proscribed or required by this Code, the relevant Code section shall be examined.

TABLE INSET:

<u>Code Section</u>	<u>Description of Violation</u>	<u>Civil Penalty</u>
<u>19-16.5</u>	<u>Failure to register abandoned real property</u>	<u>\$500.00</u>
<u>19.-16.6</u>	<u>Failure to properly maintain abandoned real property</u>	<u>\$500.00</u>
<u>19.-16.7</u>	<u>Failure to properly secure abandoned real property</u>	<u>\$500.00</u>
<u>19-16.8</u>	<u>Interference with Code Enforcement Officer</u>	<u>\$500.00</u>
	<u>All sections of this section 19-16 not specifically listed in this schedule</u>	<u>\$500.00</u>

Section 19-16.4. Public Nuisance.

All abandoned real property is hereby declared to be a public nuisance, the abatement of which pursuant to the police power is hereby declared to be necessary for the health, welfare and safety of the residents of the Town.

Section 19-16.5. Registration of Abandoned Real Property.

(a) Any mortgagee who holds a mortgage on real property located within the Town shall, upon default by the mortgagor and prior to the issuance of a notice of default, perform an inspection of the property that is the security for the mortgage. If the property is found to be vacant or shows evidence of vacancy, it shall be deemed abandoned real property and the mortgagee shall, within ten (10) days of the inspection, register the property with the town manager, or his or her designee, on forms provided by the Town. A registration is required for each vacant property.

(b) If the property is occupied but the mortgage on the property remains in default, the property shall be inspected by the mortgagee or his designee monthly until (1) the mortgagor or other party remedies the default, or (2) it is found to be vacant or shows evidence of vacancy at which time it is deemed abandoned, and the mortgagee shall,

within ten (10) days of that inspection, register the property with the town manager, or his or her designee, on forms provided by the Town.

(c) Registration pursuant to this section shall contain the name of the mortgagee, the direct mailing address of the mortgagee, a direct contact name and telephone number of mortgagee, a facsimile number and e-mail address for mortgagee, and the name and twenty-four (24) hour contact phone number of the Property management company responsible for the security and maintenance of the property.

(d) This section shall also apply to properties that have been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale.

(e) A registration fee in the amount of \$150.00, per property, shall accompany the registration form(s).

(f) Properties subject to this section shall remain under the registration requirement, security and maintenance standards of this section as long as they remain vacant.

(g) Any person or corporation that has registered a property under this section must report any change of information contained in the registration in writing within ten (10) days of the change to the town manager or his or her designee.

Section 19-16.6. Maintenance Requirements.

(a) Properties subject to this section shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers, circulars, flyers, notices (except those required by federal, state, or local law), abandoned vehicles, portable storage devices, discarded personal items including, but not limited to, furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned.

(b) The property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior structure.

(c) Front, side, and rear yards, including landscaping, shall be maintained in accordance with the Town's Code of Ordinances.

(d) Yard maintenance shall include, but not be limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation. Acceptable maintenance of yards and/or landscaping shall not include weeds, gravel, broken concrete, asphalt or similar material.

(e) Maintenance shall include, but not be limited to, watering, irrigation, cutting, and mowing of required ground cover and/or landscape and removal of all trimmings.

(f) Pools and spas shall be maintained so that the water remains free and clear of pollutants and debris. Pools and spas shall comply with all requirements of the Town Code of Ordinances and Florida Building Code, as amended from time to time.

(g) Failure of the mortgagee and/or property owner of record to properly maintain the property may result in a violation of the Town Code and issuance of a citation or Notice of Violation/Notice of Hearing by a Town Code Enforcement Officer. Pursuant to a finding and determination by the Town's Special Magistrate, the Town may take the necessary action to ensure compliance with this section.

Section 19-16.7. Security Requirements.

(a) Properties subject to this section 19-16 shall be maintained in a secure manner so as not to be accessible to unauthorized persons.

(b) A "secure manner" shall include, but not be limited to, the closure and locking of windows, doors, gates and other openings of such size that may allow a child to access the interior of the property and/or structure. Broken windows shall be secured by reglazing of the window.

(c) If the property is owned by a corporation and/or mortgagee that is unable or unwilling to perform maintenance and inspections itself, a Property management company shall be contracted to perform bi-weekly inspections to verify compliance with the requirements of this section, and any other applicable laws.

(d) The mortgagee shall inspect or have inspected the property on a bi-weekly basis to ensure that the property is in compliance with this section. Upon the request of Town, the mortgagee shall provide a copy of the inspection reports to the code enforcement division.

(e) Failure of the mortgagee and/or property owner of record to properly maintain the property may result in a violation of the Town Code and issuance of a citation or Notice of Violation/Notice of Hearing by a Town Code Enforcement Officer. Pursuant to a finding and determination by the Town's Special Magistrate, the Town may take the necessary action to ensure compliance with this section.

Section 19-16.8. Opposing, obstructing enforcement officer; penalty.

Whoever opposes, obstructs or resists any enforcement officer or any person authorized by the enforcement office in the discharge of duties as provided in this section, upon conviction shall be punished by the imposition of a civil penalty in the amount of \$500.00.

Section 19-16.9. Immunity of enforcement officer.

Any enforcement officer or any person authorized by the enforcement officer shall be immune from prosecution, civil or criminal, for reasonable, good faith trespass upon real property while in the discharge of duties imposed by this section.

Section 19-16.10. Additional Authority.

The town manager, or his or her designee, shall have authority to require the mortgagee and/or owner of record of any property affected by this section, to implement additional maintenance and/or security measures including, but not limited to, securing any and all door, window or other openings, employment of an on-site security guard, or other measures as may be reasonably required to prevent a decline of the property.

Section 19-16.11. Adoption of rules; expenditure of funds; declaration of Town purpose.

The Town manager is authorized and empowered to adopt rules and regulations and expend Town funds as may be reasonably necessary and available to carry out the terms of this section, the expenditure of such funds being declared a proper Town purpose.

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

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

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

PASSED on first reading this _____ 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 12



Planning & Zoning Department

R. Don O'Donniley, AICP
Planning Director

MEMORANDUM

To: Steve Alexander, Town Manager

From: R. Don O'Donniley

Date: August 20, 2008

Re: Approval of an Ordinance Amending Definition of " Lot Coverage"

BACKGROUND

The Town adopted Miami-Dade County zoning regulations at its initial incorporation. The Miami-Dade County regulations do not define lot coverage in the definitions section. However, the County Code did provide that when a swimming pool was attached to a house with a screen enclosure, the pool and deck did count as lot coverage. The same pool and deck was not counted as part of lot coverage when the pool and deck is not attached to the house.

The County requires all off street parking areas to be "properly drained so that no nuisance will be caused to adjoining or nearby property owners" (33-126, (4)).

The Town also has recognized a duty to include environmentally sound regulations in its management of development. Council has also identified the need to prevent excessive run off and promote affordable flood insurance rates. In 2007, the Town Council amended the Town Code to include swimming pools in the calculation of lot coverage. During a recent application for a variance, the Council discussed with staff an approach to resolving whether to count driveways approved while this area was under County jurisdiction as part of lot coverage. In addition, the concept that there should be some minimum area where vegetation or grass is provided was identified as a key component of the Town's greening program.

The Town has recently completed a Stormwater Utility Management Report and the average lot coverage for homes in Cutler Bay was found to be approximately 41% if the home has a swimming pool. The Florida Department of Environmental protection also recently completed a report. In Table B-1 of that report, a number of cities were indicated but Pompano Beach with a density of 5.3 units in the drainage area studied is the closest to the Town's adopted future density of 5 units to the acre for low density residential land use. Pompano Beach had an impervious surface ratio of 43.9%.

REQUEST

Staff requests that the Town Council amend Section 33-1, Definitions, to establish a definition of lot coverage (impervious surface ratio).

EU-S & EU-M	30%
RU-1 and RU-2	45%
RU-3	50%
RU-4 & RU-TH	50%
BU, UCD, & IU	50%

Staff requests the Town Council amend Section 33-1, Definitions, to establish a minimum green surface ratio of 40% to be made up of grass or landscaped area that is pervious.

In addition, staff recommends that additional authority be granted to staff to require remedial measures for administrative adjustments. Section 33-36.1, ©, (3) should be amended to require an administrative adjustment between 5% and 10% be granted only after the applicant provides a drainage study and implements the findings contained in the drainage study. The study should establish a level of retention or detention that will assure no increased net run off resulting from the increase in lot coverage.

ANALYSIS

Staff has divided the run off issue into two separate considerations. As a community that has areas subject to flood, it is important that the development process result in building practices that will maintain a flood insurance rating as low a level as possible. Examples of steps that have been implemented include reviewing all new structures to determine if they meet or exceed the required flood elevation. A second example is to require run off post development not exceed pre-development.

The second area of concern is generally improvements that occur after the initial development. Typical examples are improving driveways, creating storage areas for R.V.'s or a boat, pools, and decks/ terraces. These all usually result in added run off. Staff has looked at a number of sources cited above to determine a range of reasonable limits while assuring we do not adversely impact neighbors or increase flooding potential. In addition, as numbers have been developed, staff has applied each to a typical lot within that zone district to test the proposed limitations. While the numbers proposed are both reflective of other jurisdictions and take into account current development here, it should be clearly said no regulation can assure every property it will be able to make these improvements.

Prior development regulations permitted lots smaller than the minimum standard adopted in the Growth Management Plan (6,000 square feet). The Town has eliminated future lots to small to accommodate accessory improvements many owners would like to implement by adopting a higher minimum lot standard. This results in our analysis focusing on existing development and points out the importance of considering current development levels in the Town and other similar developed jurisdictions.

Staff also suggests that our commitment to greening our community can only be assured if we develop an absolute requirement for a minimum area of green space on each lot. Our analysis has also considered this as an additional requirement and need to assure we implement a green strategy.

RECOMMENDATION

Staff recommends the Council approve the attached amendments to Chapter to establish an impervious surface ratio (lot coverage) that includes all improvements that contribute to run off and a minimum green space ratio.

ORDINANCE NO. 08-_____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA AMENDING CHAPTER 33 “ZONING” OF THE TOWN CODE OF ORDINANCES BY COMPREHENSIVELY UPDATING AND REVISING LOT COVERAGE AND OPEN SPACE REQUIREMENTS WITHIN THE TOWN; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the “Town”) Code of Ordinances (the “Town Code”) regulates the amount of lot coverage and open space for certain types of developments within the Town; and

WHEREAS, after review of the Town Code, Town staff recommends amending certain lot coverage requirements in order to decrease the amount of flooding within the Town as well as to increase the amount of green open space on site; and

WHEREAS, the Town Council, sitting as the Local Planning Agency, has reviewed the proposed Ordinance and recommended approval; and

WHEREAS, the Town Council finds that these changes are in the best interest and welfare of the residents of the Town.

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

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

Section 2. **Amendment to Chapter 33.** The Town Council hereby amends Chapter 33 “Zoning” of the Town Code of Ordinances to read as follows:

Sec. 33-36.1. Administrative adjustment procedure.

(c) *Limitations and exclusions.* Applications for administrative adjustment shall be subject to the following limitations and exclusions:

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.

(1) Administrative adjustment approvals shall be limited to those lots within an area where at least seventy-five (75) percent of the lots in the immediate vicinity, as defined in section 33-1(58.1), have already been developed or platted.

(2) A setback shall not be adjusted below twenty-five (25) percent of that required by the underlying district regulations.

(3) The impervious surface ratio ~~Lot coverage~~ for a principal and/or accessory structure may be adjusted up to five (5) percent more than that required by the underlying zoning district regulations. Notwithstanding the foregoing, the impervious surface ratio for a principal and/or accessory structure may be adjusted up to a maximum of ~~shall not be increased by more than~~ ten (10) percent ~~more than~~ of that required by the underlying zoning district regulations, if the applicant provides a drainage study, prepared by an engineer licensed in the state of Florida, that demonstrates that such additional impervious lot coverage would not result in any increased net run off.

(4) Spacing between structures on the same lot may be reduced; provided, however, in no event shall such spacing be less than 5 feet.

(5) Unless specifically permitted by the underlying zoning regulations, no accessory building shall be placed in front of the front building line of the principal building.

(6) Under this section, no application shall be made for nor shall approval be granted for an adjustment to canopy carport regulations.

Sec. 33-49. Table of minimum widths, area of lots; maximum impervious surface ratio lot coverage, and minimum building sizes.

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

TABLE INSET:

<i>District</i>	<i>Families</i>	<i>Min. Width</i>	<i>Min. Lot Area (Sq. Ft.)</i>	<i>Max. Lot Coverage (% of Lot Area) <u>Impervious Surface Ratio</u></i>	<i>Min. Bldg. Size (Cu. Ft.)</i>
RU-1	1	New sub.-75'	7,500	35% for subdivisions platted on or before March 8, 2002; <u>45%</u> for subdivisions platted after March 8,	8,500

				2002—	
		Old sub.-50'	5,000	3 45%	8,500
RU-1M(a)	1	50'	5,000	40% for subdivisions platted on or before March 8, 2002; 45% for subdivisions platted after March 8, 2002	8,500
RU-1M(b)	1	60'	6,000	40% for subdivisions platted on or before March 8, 2002; 45% for subdivisions platted after March 8, 2002	8,500
RU-1Z	1	New sub.-45'	4,500	45 50%	8,500
		Old sub.*			
*as approved by public hearing or administrative site plan review					
RU-2	1	New sub.-75'	7,500	3 45%	8,500
		Old sub.-None	3,750	3 45%	8,500
	2 singles	New sub.-75'	7,500	3 45%	8,500 front res.
					5,000 rear res.
		Old sub.-50'	5,550	3 45%	8,500 front res.
					3,000 rear res.
	duplex	New sub.-75'	7,500	3 45%	8,500
		Old sub.-50'	5,550	3 45%	8,500
RU-3	1	Same as single family residence in			

		RU-2 District.			
	2 singles	Same as two single family residences in RU-2 District.			
	duplex	Same as duplex in RU-2 District.			
	3 or 4 unit	75'	7,500	450%	7,500
	Multi-family housing development	100'	2 acres net lot area	350%	
RU-3B	1	Same as single family residence in RU-2 District.			
	2 singles	Same as two single family residences in RU-2 District.			
	duplex	Same as duplex in RU-2 District.			
	3 or 4 unit	Same as 3 or 4 unit in RU-3 District.			
	bungalow	100'	2000 per fam.	450%	See RU-3B
	court		10,000 min.		
RU-4	1 or 2 singles	Same as 1 or 2 single family residences in RU-2 District.			
	duplex	Same as duplex			

		in RU-2 District.			
	3 or 4 unit	Same as 3 or 4 unit in RU-2 District.			
	5 or more units	100'	500 per fam. 10,000 min.	See RU-4	
RU-4A	1 or 2 singles	Same as 1 or 2 single family residences in RU-2 District.			
	duplex	Same as duplex in RU-2 District.			
	3 or 4 unit	Same as 3 or 4 unit in RU-2 District.			
	5 or more units	100'	500 per fam. 10,000 min.	See RU-4	
	bungalow villa	See RU-4A			
EU-M	1	Prior to 5-9-57 100'	15,000	30%	12,500
		New sub.-120' (Min. depth 115')	15,000	30%	12,500
EU-S	1	125' (Min. depth 135')	25,000 (inc. r/w)	30%	15,000
EU-1	1	Prior to 4-17-51 100'	1 ac. (inc. r/w)	15 30%	15,000
		New sub.-125'	1 ac. (inc. r/w)	15 30%	15,000

EU-1C	1	150'	2 1/2 ac. (inc. r/w)	15 30%	17,500
EU-2	1	200'	5 ac. (inc. r/w)	15 30%	17,500
AU	1	Prior to 2-13-51 100'	10,000	25%	7,500
		New sub.-200'	5 ac. (inc. r/w)	15%	7,500

NOTE 1. Impervious surface ratio means a measurement of the intensity of hard-surfaced development on a site. An impervious surface ratio is the relationship between the total area covered by impervious surfaces on a site and the net land area of the lot. The impervious surface ratio is calculated by dividing the square footage of the area of all impervious surfaces on the site by the square footage of the net land area.

~~Percentage of lot coverage allowed applied to principal structure. Lot coverage for accessory buildings such as guest houses, secondary residences, etc., shall be as provided in other applicable Sections.~~

Impervious surface ratio lot coverage requirements shall in no way affect existing setback or spacing requirements, or the requirements that residential uses must conform to residential setbacks when established in business or industrial districts.

ARTICLE XXIV. BU-1, NEIGHBORHOOD BUSINESS DISTRICT

Sec. 33-237. Purpose.

The purpose of the BU-1, Neighborhood District, is to provide for retail and service convenience facilities which satisfy the essential and frequent needs of the adjacent residential neighborhood.

Sec. 33-241. Floor area ratio and impervious surface ratio lot coverage.

The floor area ratio shall be forty-one-hundredths (0.40) at one (1) story and shall be increased by eleven-one-hundredths (0.11) for each additional story. Structure parking shall not count as part of the floor area, but shall be counted in computing building height and number of stories. The total impervious surface ratio lot coverage permitted for all buildings on the site shall not exceed fifty forty (450) percent of the total lot area. Impervious surface ratio means a

measurement of the intensity of hard-surfaced development on a site. An impervious surface ratio is the relationship between the total area covered by impervious surfaces on a site and the net land area of the lot. The impervious surface ratio is calculated by dividing the square footage of the area of all impervious surfaces on the site by the square footage of the net land area. Impervious surfaces, as a percent of the impervious surface ratio, shall be based on the permeability factor of the material used for such surfaces. Enclosed or nonenclosed mall areas shall not count as part of the floor area, for floor area ratio computation purposes, nor as part of the impervious surface ratio lot coverage.

Sec. 33-242. Landscaped Open space.

The minimum landscaped open space for a one (1) story building shall be at a minimum forty (40) percent of the total lot area. at one (1) story shall be in accordance with the following table:

TABLE INSET:

<i>Size of the Total Lot Area</i>	<i>Percent of the Total Lot Area</i>
Up to one (1) acre	18.0%
More than one (1) acre and up to five (5) acres	16.0%
More than five (5) acres and up to twenty five (25) acres	14.0%
More than twenty five (25) acres	12.0%

The minimum landscaped open space shall be increased by one and one-half (1.5) percent for each additional story or part thereof. For the purpose of computing the amount of required landscaped open space where the building height varies, the number of stories shall be equal to the sum of the products of the number of stories of each part of the building(s) of a different height times its floor area divided by the sum of the floor area of all parts of the building(s). Said open space shall be extensively landscaped with grass, trees and shrubbery. Water areas may be used as part of the required landscaped open space provided such water areas do not exceed twenty (20) percent of the required landscaped open space. The specific areas within enclosed or nonenclosed malls which are landscaped with grass, trees and/or shrubbery, water areas therein, and areas therein with permanent art display may be used as part of the required landscaped open space provided such areas do not exceed ten (10) percent of the required landscaped open space. Landscaping and trees shall be provided in accordance with Chapter 18A of this Code.

ARTICLE XXV. BU-1A, LIMITED BUSINESS DISTRICT

Sec. 33-246. Purpose.

The purpose of the BU-1A, General Business District, is to provide for retail and service convenience facilities which satisfy the essential and frequent needs of the adjacent residential neighborhood as well as the more specialized commercial facilities which may serve several neighborhoods.

Sec. 33-250. Floor area ratio and impervious surface ratio lot coverage.

The floor area ratio shall be 0.40 at one (1) story and shall be increased by 0.11 for each additional story. Structure parking shall not count as part of the floor area, but shall be counted in computing building height and number of stories. The total impervious surface ratio lot coverage permitted for all buildings on the site shall not exceed ~~forty-fifty~~ (450) percent of the total lot area. Impervious surface ratio means a measurement of the intensity of hard-surfaced development on a site. An impervious surface ratio is the relationship between the total area covered by impervious surfaces on a site and the net land area of the lot. The impervious surface ratio is calculated by dividing the square footage of the area of all impervious surfaces on the site by the square footage of the net land area. Impervious surfaces, as a percent of the impervious surface ratio, shall be based on the permeability factor of the material used for such surfaces. Enclosed or nonenclosed mail areas shall not count as part of the floor area for floor area ratio computation purposes, nor as part of the impervious surface ratio lot coverage.

Sec. 33-251. ~~Landscaped~~ Open space.

The minimum ~~landscaped~~ open space for a one (1) story building shall be at a minimum forty (40) percent of the total lot area. ~~at one (1) story shall be in accordance with the following table:~~

TABLE INSET:

—Size of the Total Lot Area—	Percent of the Total Lot Area—
Up to one (1) acre—	18.0—
More than one (1) acre and up to five (5) acres—	16.0—
More than five (5) acres and up to twenty five (25) acres—	14.0—
More than twenty five (25) acres—	12.0—

The minimum ~~landscaped~~ open space shall be increased by one and one-half (1.5) percent for each additional story or part thereof. For the purpose of computing the amount of required ~~landscaped~~ open space where the building height varies, the number of stories shall be equal to the sum of the products of the number of stories of each part of the building(s) of a different height times its floor area divided by the sum of the floor area of all parts of the building(s). Said open space shall be extensively landscaped with grass, trees and shrubbery. Water areas may be used as part of the required ~~landscaped~~ open space provided such water areas do not exceed twenty (20) percent of the required ~~landscaped~~ open space. The specific areas within enclosed or

nonenclosed malls which are landscaped with grass, trees and/or shrubbery, water areas therein, and area therein with permanent art display may be used as part of the required ~~landscaped~~ open space provided such areas do not exceed ten (10) percent of the required ~~landscaped~~ open space. Landscaping and trees shall be provided in accordance with Chapter 18A of this Code.

ARTICLE XXVI. BU-2, SPECIAL BUSINESS DISTRICT

Sec. 33-252. Purpose.

The purpose of the BU-2, Regional Shopping Center and Office Park District, is to provide for large scale commercial and/or office facilities which service the needs of large urban areas.

Sec. 33-253.3. Floor area ratio and impervious surface ratio ~~lot coverage~~.

The floor area ratio shall be forty-one-hundredths (0.40) at one (1) story and shall be increased by eleven-one-hundredths (0.11) for each additional story up to eight (8) stories, thereafter the floor area ratio shall be increased by six-one-hundredths (0.06) for each additional story. Structure parking shall not count as part of the floor area, but shall be counted in computing building height and number of stories. The total impervious surface ratio ~~lot coverage~~ permitted for all buildings on the site shall not exceed ~~forty~~ fifty (450) percent of the total lot area. Impervious surface ratio means a measurement of the intensity of hard-surfaced development on a site. An impervious surface ratio is the relationship between the total area covered by impervious surfaces on a site and the net land area of the lot. The impervious surface ratio is calculated by dividing the square footage of the area of all impervious surfaces on the site by the square footage of the net land area. Impervious surfaces, as a percent of the impervious surface ratio, shall be based on the permeability factor of the material used for such surfaces Enclosed or nonenclosed mall areas shall not count as part of the floor area, for floor area ratio computation purposes, nor as part of the impervious surface ratio ~~lot coverage~~.

Sec. 33-253.4. ~~Landscaped~~ Open space.

The minimum ~~landscaped~~ open space for a one (1) story building shall be at a minimum forty (40) percent of the total lot area. at one (1) story shall be in accordance with the following table:

TABLE INSET:

<i>— Size of the Total Lot Area —</i>	<i>Percent of the Total Lot Area —</i>
Up to one (1) acre —	18.0% —
More than one (1) acre and up to five (5) acres —	16.0% —

More than five (5) acres and up to twenty five (25) acres—	14.0%—
More than twenty five (25) acres—	12.0%—

The minimum landscaped open space shall be increased by one and one-half (1 1/2) percent for each additional story or part thereof, up to eight (8) stories, thereafter the landscaped open space shall increase by two and one-half (2 1/2) percent for each additional story or part thereof. For the purpose of computing the amount of required landscaped open space where the building height varies, the number of stories shall be equal to the sum of the products of the number of stories of each part of the building(s) of a different height times its floor area divided by the sum of the floor area of all parts of the building(s). Said open space shall be extensively landscaped with grass, trees and shrubbery. Water areas may be used as part of the required landscaped open space provided such water areas do not exceed twenty (20) percent of the required landscaped open space. The specific areas within enclosed or nonenclosed malls which are landscaped with grass, trees and/or shrubbery, water areas therein, and areas therein with permanent art display may be used as part of the required landscaped open space provided such areas do not exceed ten (10) percent of the required landscaped open space. Landscaping and trees shall be provided in accordance with Chapter 18A of this Code.

ARTICLE XXVII. BU-3 LIBERAL BUSINESS DISTRICT

Sec. 33-254. Purpose.

The purpose of the BU-3 Liberal Business District is to provide for large scale commercial activities.

Sec. 33-256.2. Floor area ratio and impervious surface ratio ~~lot coverage~~.

The floor area ratio shall be forty-one-hundredths (0.40) at one (1) story and shall be increased by eleven-hundredths (0.11) for each additional story up to eight (8) stories, thereafter the floor area ratio shall be increased by six-hundredths (0.06) for each additional story. Structure parking shall not count as part of the floor area, but shall be counted in computing building height and number of stories. The total impervious surface ratio ~~lot coverage~~ permitted for all buildings on the site shall not exceed ~~forty-fifty~~ (45) percent of the total lot area. Impervious surface ratio means a measurement of the intensity of hard-surfaced development on a site. An impervious surface ratio is the relationship between the total area covered by impervious surfaces on a site and the net land area of the lot. The impervious surface ratio is calculated by dividing the square footage of the area of all impervious surfaces on the site by the square footage of the net land area. Impervious surfaces, as a percent of the impervious surface ratio, shall be based on the permeability factor of the material used for such surfaces. Enclosed or nonenclosed mall areas shall not count as part of the floor area, for floor area ratio computation purposes, nor as part of the impervious surface ratio ~~lot coverage~~.

Sec. 33-256.3. ~~Landscaped~~ Open space.

The minimum ~~landscaped~~ open space for a one (1) story building shall be at a minimum forty (40) percent of the total lot area. ~~at one (1) story shall be in accordance with the following table:~~

TABLE INSET:

Size of the Total Lot Area	Percent of the Total Lot Area
Up to one (1) acre	18.0%
More than one (1) acre and up to five (5) acres	16.0%
More than five (5) acres and up to twenty five (25) acres	14.0%
More than twenty five (25) acres	12.0%

The minimum ~~landscaped~~ open space shall be increased by one and one-half (1.5) percent for each additional story or part thereof, up to eight (8) stories, thereafter the ~~landscaped~~ open space shall increase by two and one-half (2.5) percent for each additional story or part thereof. For the purpose of computing the amount of required ~~landscaped~~ open space where the building height varies, the number of stories shall be equal to the sum of the product(s) of the number of stories of each part of the building(s) of a different height times its floor area divided by the sum of the floor area of all parts of the building(s). Said open space shall be extensively landscaped with grass, trees and shrubbery. Water areas may be used as part of the required ~~landscaped~~ open space provided such water areas do not exceed twenty (20) percent of the required ~~landscaped~~ open space. The specific areas within enclosed or nonenclosed malls which are landscaped with grass, trees and/or shrubbery, water areas therein, and areas therein with permanent art displays may be used as part of the required ~~landscaped~~ open space provided such areas do not exceed ten (10) percent of the required ~~landscaped~~ open space. Landscaping and trees shall be provided in accordance with Chapter 18A of this Code.

ARTICLE XXXIII(K). STANDARD URBAN CENTER DISTRICT REGULATIONS

Sec. 33-284.91. Impervious Surface Ratio.

The Impervious Surface Ratio within the Urban Center District shall be forty (40) percent. Impervious surface ratio means a measurement of the intensity of hard-surfaced development on a site. An impervious surface ratio is the relationship between the total area covered by impervious surfaces on a site and the net land area of the lot. The impervious surface ratio is calculated by dividing the square footage of the area of all impervious surfaces on the site by the square footage of the net land area. Impervious surfaces, as a percent of the impervious surface ratio, shall be based on the permeability factor of the material used for such surfaces.

ARTICLE XXXVI. ZONING PROCEDURE

Sec. 33-302. Definitions.

In construing the provisions hereof and each and every word, term, phrase or part thereof where the context will permit the definitions provided in Section 1.01, Florida Statutes, and Chapter 33 of the Code of Miami-Dade County, Florida, and the following additional definitions, shall apply:

(t) "Open space" means that portion of a parcel of land that is open to the sky and which is not covered with a building, structure, or impervious surface. ~~and is open to the sky and may include patios, limited roof overhangs, screened enclosures with screened roofs, open trellises, walkways, swimming pools, tennis courts, landscaped areas, decks, and non covered parking areas.~~

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

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

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

PASSED on first reading this _____ 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 13



MEMORANDUM

To: Steve Alexander, Town Manager

From: R. Don O'Donniley

Date: August 20, 2008

Re: Town of Cutler Bay Growth Management Plan Remedial Amendment to the Coastal Management Element and Exhibit FLU-8

BACKGROUND:

The Town's Growth Management Plan was determined by the State to be fully in compliance with the exception of the Coastal High Hazard Area map (Exhibit FLU-8) and Coastal Management Policy CM-8E. Revisions have been made to the map and to Policy CM-8E to be consistent with the definition of the Coastal High Hazard Areas as defined in Section 163.3178(2)(h), Florida Statutes, which states: "The coastal high-hazard area is the area below the elevation of the category 1 storm surge line as established by a Sea, Lake, and Overland Surges from Hurricanes (SLOSH) computerized storm surge model."

This remedial amendment is proposed to adopt the definition of Coastal High Hazard Area pursuant to state statutes as well as to adopt the updated Exhibit FLU-8 to be consistent with the adopted Coastal High Hazard Area map prepared by Miami-Dade County, Office of Emergency Management, 2007, titled "Areas Subject to Coastal Flooding", Figure 11.

REQUEST:

Adoption of a Remedial Amendment to the Coastal Management Element and Exhibit FLU-8 of the Town of Cutler Bay Growth Management Plan in compliance with State requirements for adoption of an updated map and definition of the coastal high hazard area within the Town's boundary.

RECOMMENDATION:

It is recommended that the Town Council **approve** the adoption of the remedial amendment to the Growth Management Plan to amend Exhibit FLU-8 and Coastal Management Policy CM-8E.

ORDINANCE NO. 08-_____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING REMEDIAL COMPREHENSIVE PLAN AMENDMENTS RELATING TO THE COASTAL HIGH HAZARD AREA IN ACCORDANCE WITH A COMPLIANCE AGREEMENT WITH THE DEPARTMENT OF COMMUNITY AFFAIRS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the “Town”) recently adopted its first Comprehensive Plan, pursuant to Chapter 163, Florida Statutes; and

WHEREAS, the Department of Community Affairs (the “DCA”) found the plan to be in compliance with the exception of the Coastal High Hazard definition and related map; and

WHEREAS, the Town Council seeks to enter into a compliance agreement with the DCA and to adopt the remedial amendments to the Comprehensive Plan, which are attached as Exhibit “A,” in order for the Coastal High Hazard definition and related map to be found in compliance by the DCA; and

WHEREAS, the Town Council, sitting as the Local Planning Agency, has reviewed the proposed Ordinance and recommended approval; and

WHEREAS, the Town Council finds that these changes are in the best interest and welfare of the residents of the Town.

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

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

Section 2. Approval of Comprehensive Plan Amendments. The Town Council hereby adopts the remedial comprehensive plan amendments, attached as exhibit “A” to this Ordinance.

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

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.

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

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

PASSED on first reading this _____ 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:

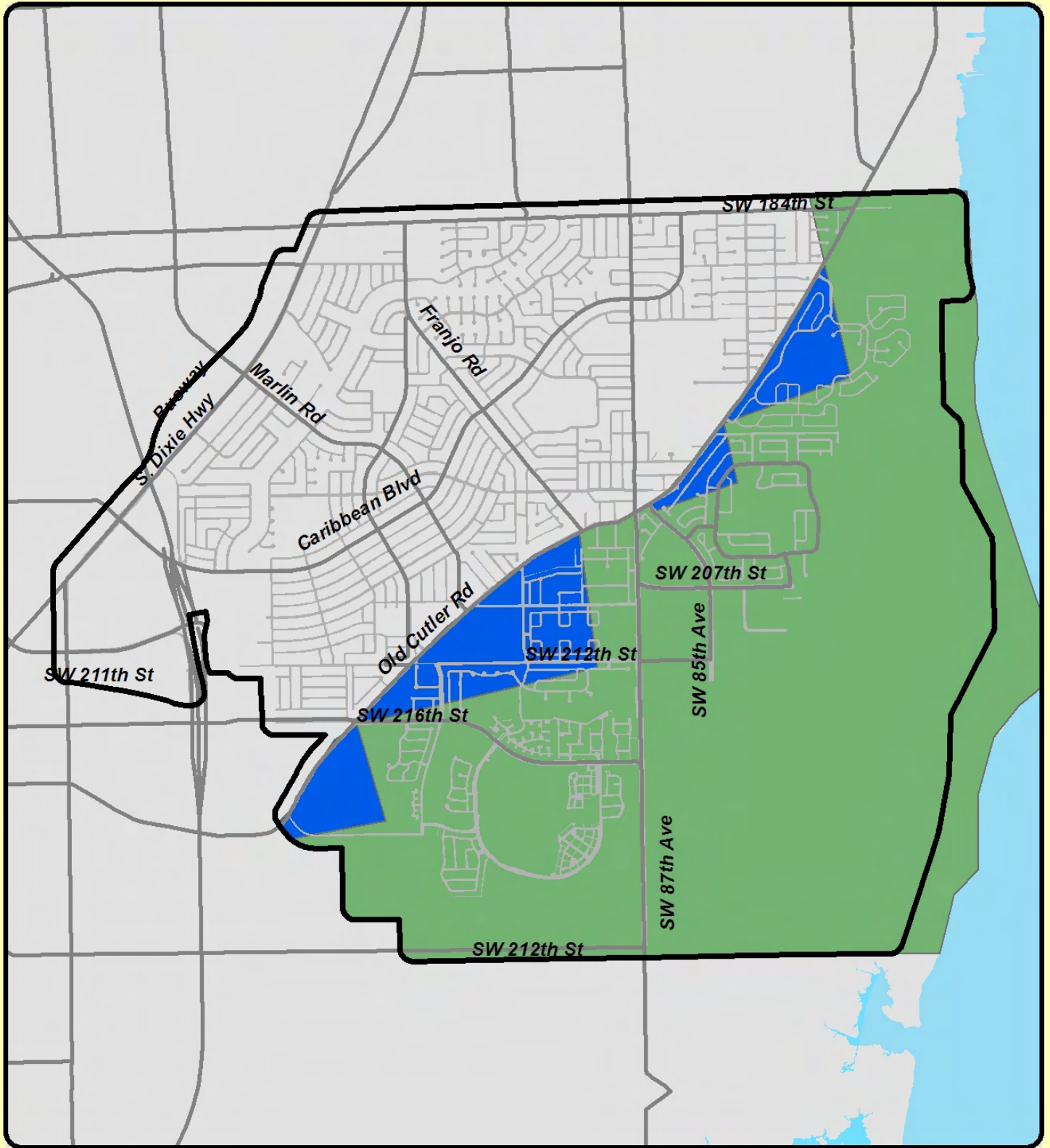
Mayor Paul S. Vrooman _____
Vice Mayor Edward P. MacDougall _____
Councilmember Peggy R. Bell _____
Councilmember Timothy J. Meerbott _____
Councilmember Ernest N. Sochin _____

Cutler Bay Growth Management Plan
Coastal Management Element
Amendment to Page CM-11, Policy CM-8E


Policy CM-8E: ~~The Town shall maintain a map depicting the three evacuation zones: Zone A (Coastal High Hazard Area), Zone B (Hurricane Vulnerability Zone) and Zone C (related to the most severe storms) and make it available to the public for information purposes. This map shall be maintained and updated, including incorporating any changes the State may make to the definitions of the evacuation zones. The public shall be informed as appropriate.~~ The Coastal High Hazard Area (CHHA), as shown on Exhibit FLU-8, is defined as the areas below the elevation of the category 1 storm surge line, as established by a Sea, Lake and Overland Surges from Hurricanes (SLOSH) computerized storm surge model.


Town of Cutler Bay


Miami-Dade County Coastal High Hazard Areas



Legend

 Cutler Bay Boundary

 Coastal High Hazard Area

 Hurricane Vulnerability Zone



Source: Miami-Dade County,
THE CORRADINO GROUP

Exhibit FLU - 8

TAB 14

ORDINANCE NO. 08-_____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING REGULATIONS RELATED TO MALLS AND BUSINESSES WITH PARKING LOTS CONTAINING 25 OR MORE PARKING SPACES; PROVIDING FOR INSTALLATION OF SECURITY CAMERA SYSTEMS FOR PARKING LOT SURVEILLANCE; PROVIDING FOR A PROCEDURE FOR MALLS AND BUSINESSES TO KEEP RECORDINGS FOR 72 HOURS; PROVIDING FOR AN EXEMPTION FOR CONVENIENCE BUSINESSES ALREADY GOVERNED BY SIMILAR FLORIDA STATUTES; PROVIDING TECHNICAL SPECIFICATIONS FOR A SECURITY CAMERA SYSTEM; CREATING A GRACE PERIOD FOR COMPLIANCE FOR EXISTING MALLS AND BUSINESSES; AMENDING THE SCHEDULE OF VIOLATIONS AND CIVIL PENALTIES SECTION OF THE CODE TO INCLUDE PENALTIES FOR VIOLATION OF THESE SECTIONS; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (the “Town”) deems it to be in the best interest of the health, safety, and welfare of its citizens, businesses, and visitors to provide safer environments for customers and employees in its community; and

WHEREAS, the Town Council of Cutler Bay finds that the parking lots of businesses and both enclosed malls and retail strip malls (the “Malls”) may expose people to the risk of abductions, robberies, and other similar criminal acts; and

WHEREAS, statistics compiled by the Cutler Bay Police Department demonstrate that insufficient mall security is a significant threat to the health, safety, and well-being of visitors to Miami-Dade County malls, and Town of Cutler Bay malls in particular, and

WHEREAS, the Cutler Bay police have determined, for example, that there were 136 documented, significant criminal incidents last year at the Southland Mall in Cutler Bay alone, nearly 32% higher than the other comparable Malls studied; and

WHEREAS, this risk was corroborated by a recent investigative report in the *South Florida Sun-Sentinel* that studied 13 malls in Miami-Dade, Broward, and Palm Beach Counties, including the fact that parking lots and garages are the most dangerous places at a mall, that in four of five cases surveillance cameras which could have prevented or helped solve the crime were non-existent, broken, or captured only flawed and useless images, and that in three of four cases a suspect is not arrested or even identified; and

WHEREAS, the Town Council of Cutler Bay, as corroborated by the Cutler Bay Police Department, finds that certain minimum security standards, including the installation of security cameras to monitor the parking lots of Malls and businesses, should both improve the solvability of crimes in those areas and deter and prevent future crimes; and

WHEREAS, the threat of liability for these incidents to mall and business owners is very significant and could undermine the economic health of the Town's business community . For example, in November of 2007, there was a \$104 million verdict against a North Miami strip mall for negligent security; and

WHEREAS, by installing these security cameras now, rather than after an incident takes place, owners of businesses and Malls may take affirmative steps to not only protect their loyal customers and employees but also help insulate themselves from liability; and

WHEREAS, the installation of security cameras would be a valuable tool for protecting customers and employees from harm and to help protect owners of Malls from liability.

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

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

Section 2. Cameras in Retail Strip Malls, Enclosed Malls, and Businesses.

- (1) This section shall be known as the "Town of Cutler Bay Parking Lot Security Ordinance."
- (2) **Findings.** The Town Council finds that in the absence of security measures the parking lots of businesses, and enclosed malls and retail strip malls ("Malls"), may leave the Town's citizens, visitors and business employees vulnerable to abductions, robberies, and other similar criminal acts, despite the provision of law enforcement services. The Town Council of Cutler Bay, corroborated by the Town's Police Department (contracted through the Miami-Dade Police Department), finds that certain minimum security standards, including the installation of security cameras to monitor the parking lots of businesses, may improve both the solvability of crimes in those areas and, more importantly, deter future crime. The Town Council also finds that certain minimum-security requirements are beneficial to better protect the health, welfare, and safety of residents and visitors to the town.
- (3) **Intent.** It is the Council's intent to require businesses or Malls which have 25 or more parking spaces to install, use, and maintain security cameras to protect employees and the consumer public from robbery, burglary and other violent crimes. It is the Council's intent that security cameras required hereunder shall be adequate enough to significantly improve solvability of crimes committed in parking lots.

(4) Security measures for convenience businesses. Any convenience business, as defined by F.S. § 812.171 is hereby exempt from the requirements of this ordinance.

(5) Required security measures for Businesses and Malls.

(a) Every business and Mall that is open to the public and has 25 or more parking spaces shall install, operate, and maintain a video or security camera system in its parking lot for surveillance purposes that is capable of recording and retrieving a clear and identifiable image for each section of applicable parking areas to assist law enforcement personnel in offender identification and apprehension. The security system shall be capable of making such recording in any location within the parking facilities and the system shall be installed so that no part of the parking facility is obscured from surveillance and it produces a clear and identifiable image. The minimum technical specifications of the security camera system, which have been created with input from experts in this field, are contained within Attachment “A”. Businesses with secured parking facilities shall be exempt from the requirements of this subsection. For the purposes of this section, secured parking facilities means a parking facility operated by an entity, with 24-hour on-site security patrol or a completely fenced in parking lot with the premises controlled by a manned guard gate.

(b) This ordinance shall be limited in its application to those parking lots for Malls and businesses whose primary purpose is to serve retail, restaurant and service establishments, and these requirements shall not apply to parking areas that solely serve locations containing solely private office or residential complexes.

(6) Enforcement Grace Period.

(a) Businesses and Malls which exist on the effective date of this ordinance and are required by this ordinance to have a security camera system shall have a period of 120 days (the “Grace Period”) from the effective date of this ordinance to comply with the regulations set forth herein. Businesses and Malls which commence operations after the effective date of this Ordinance shall not have a Grace Period.

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

Sec. 10. Schedule of civil penalties.

TABLE INSET:

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
***	***	***

¹ / Proposed additions to text of Town Code are indicated by underline; proposed deletions from text of Town Code are indicated by ~~strike through~~.

<u>Ordinance</u>	<u>Violation of Parking Lot Security</u>	First violation \$125; Second Violation \$250; Third or subsequent violation \$500.
***	****	***

Section 4. Conflicts. All ordinances or Code provisions in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. Severability. The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 6. Inclusion in the Code. It is the intention of the Town 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 7. 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 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	_____

Attachment A

Technical Specifications for Security Camera Systems

Digital Video Recordings

The DVR used for this purpose shall adhere to the following guidelines:

1. Have one dedicated channel for each camera in operation.
2. Shall record at least 640 X 480 recording resolution level.
3. Shall have the capacity to record at fifteen frames per second, per camera. For example, a system with 10 cameras would need to have a DVR capable of recording at least 150 frames per second.
4. Shall have enough memory to retain data from all cameras for a period of thirty days. One estimate has been provided that this would equal approximately 40 GB of hard drive memory per camera.
5. Possess the ability to view and retrieve data while the system remains in operation.
6. Possess the ability to time stamp and “watermark” the recorded images.
7. Possess the ability to produce a DVD-R copy of desired data for evidentiary purposes in a format playable via Windows Media Player or a standard DVD player.
8. Shall be placed in a locked and secured location to prevent destruction or tampering.

Cameras

1. Operate with a minimum of 480 Total Vertical Lines (TVL) of resolution.
2. The camera shall have the ability to record color images during sufficient lighting and record in black and white during hours of low light.
3. Each camera shall be matched to each specific application taking into consideration:
 - a. Distance to target image.
 - b. “Lux rating” or compatibility with the amount of light available to include excessive amounts of sunlight.

- c. View angle of camera in relation to area of desired coverage.
4. Each camera shall have a clear and unobstructed view of the area of desired coverage.
5. Cameras shall be positioned to capture “Head and Shoulder” images of every parking space, as well a clear view of each vehicle’s license tag at the exits and entrances to the entire parking area, of each establishment that is governed by this ordinance.

Digital Video Recorder Monitors

1. Each system shall have a monitor that may be accessed by the Police Department for viewing of the recorded images.
2. The monitor shall be of a Liquid Crystal Display (LCD) design with a screen no smaller than fifteen diagonal inches.
3. **Power Supply**

Each system shall have a dedicated power source to prevent intentional or accidental deactivation.

TAB 15



Planning & Zoning Department

R. Don O'Donniley, AICP
Planning Director

MEMORANDUM

To: Steve Alexander, Town Manager

From: R. Don O'Donniley

Date: August 20, 2008

Re: Town of Cutler Bay 10-Year Water Supply Facilities Work Plan and related Growth Management Plan Amendments

BACKGROUND:

The Town of Cutler Bay is subject to the jurisdiction of the South Florida Water Management District (SFWMD). The SFWMD has concluded that traditional water supply sources will not be sufficient to meet the water needs of the growing South Florida population. As a result, the Florida Legislature enacted bills in 2002, 2004 and 2005 in order to address the state's water supply needs as potential limitations on the continued use of traditional water supplies, such as the Biscayne Aquifer, became increasingly apparent.

In 2005, the state legislation modified Chapters 163 and 373, F.S. to improve the coordination of water supply planning and land use planning. Senate Bills 360 and 444 require all local municipalities to prepare a 10-Year Water Supply Facilities Work Plan and adopt that plan into the comprehensive plan within 18 months of the SFWMD's approval of the Lower East Coast Water Supply Plan. The work plan and the comprehensive plan amendments must address the development of traditional and alternative water supplies and conservation and reuse programs that are necessary to serve existing and new development for at least a 10-year planning period.

Proposed amendments to the goals, objectives and policies of the Growth Management Plan have been made to incorporate the water supply plan in the Infrastructure and Conservation Elements.

The purpose of this request to transmit and adopt the Town's first 10-Year Water Supply Facilities Work Plan and the related amendments to the Growth Management Plan. A copy of the proposed Water Supply Facilities Work Plan and the related Growth Management Plan amendments are attached.

REQUEST:

Transmittal and adoption of the Town's 10-Year Water Supply Facilities Work Plan and related Growth Management Plan amendments in compliance with State requirements for local water supply planning.

RECOMMENDATION:

It is recommended that the Town Council **approve** the transmittal and adoption of the 10-Year Water Supply Facilities Work Plan and related Growth Management Plan amendments to the Department of Community Affairs.

ORDINANCE NO. 08-_____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ADOPTING A 10 YEAR WATER SUPPLY FACILITIES WORK PLAN AND AMENDING THE TOWN'S COMPREHENSIVE PLAN (GROWTH MANAGEMENT PLAN) TO STRENGTHEN COORDINATION BETWEEN WATER SUPPLY AND LOCAL LAND USE PLANNING AS REQUIRED BY FLORIDA LAW; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 163.3167(13) Florida Statutes, requires each local government to address in its comprehensive plan, the water supply sources necessary to meet and achieve the existing and projected water use demand for an established planning period; and

WHEREAS, Section 163.3177(4)(a), Florida Statutes requires coordination of the local comprehensive plan with the water management district's regional water supply plan; and

WHEREAS, the Town of Cutler Bay recognizes the need for better integration between land use planning and water supply planning; and

WHEREAS, Section 163.3177(6)(c), Florida Statutes, requires that local governments prepare and adopt a 10-Year Water Supply Facilities Work Plan and amend their comprehensive plans within 18 months after the water management district approves a regional water supply plan or its update; and

WHEREAS, the Town of Cutler Bay has proposed amendments to the policies of the Infrastructure Element and Conservation Element of its Growth Management Plan; and

WHEREAS, the Town Council adopts the 10 Year Water Supply Facilities Work Plan as supporting data and analysis for the Plan amendments; and

WHEREAS, the Town Council finds the proposed 10 Year Water Supply Facilities Work Plan and the amendments to its Growth Management Plan to be in compliance with and consistent with Florida law and its adopted Growth Management Plan.

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

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.

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

Section 2. Amendment to the Infrastructure Element within the Comprehensive Plan (Growth Management Plan). The Town Council hereby amends the Infrastructure Element within the Town’s Comprehensive Plan (Growth Management Plan) as follows:

Objective I1-4

Town of Cutler Bay shall comply with its 10-year Water Supply Facilities Work Plan, as required by section 163.3177(6)(c), F.S. within 18 months after the governing board of the South Florida Water Management District approves its Lower East Coast Water Supply Plan Update. The Work Plan will be updated, at a minimum, every 5 years. The Town of Cutler Bay Water Supply Facilities Work Plan is designed to: assess current and projected potable water demands; evaluate the sources and capacities of available water supplies; and, identify those water supply projects, using all available technologies, necessary to meet the Town’s water demands for a 10-year period.

Monitoring Measure I1-4

The Work Plan shall remain consistent with the County’s 20-Year Supply Facilities Work Plan, which is compatible with the Miami Dade County Water Use Permit renewals and with projects as listed in the South Florida Water Management District’s Lower East Coast Regional Water Supply Plan. The Work Plan will be updated, at a minimum, every 5 years and within 18 months after the South Florida Water Management District’s approval of an updated Lower East Coast Regional Water Supply Plan.

Policy I1-4A: Comply with the 10-year Water Supply Facilities Work Plan and incorporate such work plan into the Town of Cutler Bay Growth Management Plan.

Policy I1-4B: Coordinate appropriate aspects of its comprehensive plan (GMP) with the appropriate water management district’s regional water supply plan.

Policy I1-4C: The Miami-Dade County Water Supply Facilities Work Plan, as prepared by the Miami-Dade County Department of Water and Sewer dated July, 2007, and revised April 2008 is incorporated by reference into the Town of Cutler Bay Growth Management Plan as the Town’s 10-year Water Supply Facilities Work Plan.

Section 3. Amendment to the Conservation Element within the

Comprehensive Plan (Growth Management Plan). The Town Council hereby amends the Conservation Element within the Comprehensive Plan (Growth Management Plan) as follows:

Objective C-2

Increase potable water conservation in order to better meet present and projected needs of all consumers and reduce demands on water service.

Monitoring Measures C-2

The successful implementation of the following policies will be analyzed to determine if water resources were conserved.

Policy C-2A: The Town will develop language and standards in the Land Development Regulations to comply with the water conservation policies of the South Florida Water Management District (SFWMD) to conserve the potable water supply and protect the Town from saltwater intrusion, including groundwater recharge, water-saving devices and xeriscape concepts.

Policy C-2O: Encourage water conservation through the use of Green Building construction and site design techniques.

Policy C-2P: Continue to promote water conservation through public education.

Section 4. Adoption of the Town’s 10-year Water Supply Facilities Work Plan. The Town Council hereby adopts the 10-year Water Supply Facilities Work Plan, attached as Exhibit “A” to this Ordinance.

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

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

Section 7. Effective Date. This Ordinance shall be effective immediately upon passage by the Town Council on second reading, except that the effective date of these plan amendments approved by this Ordinance shall be the date a final order is issued by the Department of Community Affairs or Administration Council finding the plan amendments in compliance in accordance with Section 163.3184, Florida Statutes,

whichever occurs earlier. The Department of Community Affairs notice of intent to find the plan amendments in compliance shall be deemed to be a final order if no timely petition challenging the plan amendments is filed.

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 16



Planning & Zoning Department

R. Don O'Donniley, AICP
Planning Director

MEMORANDUM

To: Steve Alexander, Town Manager

From: R. Don O'Donniley

Date: August 20, 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. The proposed Ordinance was heard on first reading by the Town Council on June 18, 2008. Following the first reading, a Workshop was held with stakeholders on August 13, 2008.

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. The revised ordinance promotes sign types which are more consistent with the desired appearance of development within 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

Our 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 MAYOR AND 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, b~~Blinking 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 d~~During 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.

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>

(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 AU/GU District (not of a residential character) and all BU and IU Zones shall not exceed 10 feet measured from grade to top of sign. 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. Real estate signs in AU/GU District (not of a residential character) and all BU and IU Zones 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. 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. <u>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.</u>

						<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 and Spacing</i>	<i>Illumination</i>	<i>Maximum Height</i>	<i>Special Conditions</i>
Detached	1.5 square feet	Only 1 sign per parcel or dwelling unit; signs shall be permitted of a type to be selected by applicant	15 feet from r.o.w. line 5' to interior property line— 5 feet from a r.o.w. line	See general section on illumination Lighting permitted if does not conflict with adjacent property— Not permitted	20 feet 5 feet from grade to top of sign	No permit, if sign is not illuminated and sign is 1.5 square feet or less— No advertising copy permitted; may be displayed in window
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>	<u>RU-3</u> permitted 6 square feet except for <u>churches, schools, religious institutions, educational facilities,</u> and universities 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 monument	See detached monument 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 monument	See detached monument above	15 10 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 <u>property adjacent property line</u>	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; per	<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</u> are permitted an additional <u>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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<p>Detached</p>	<p>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</p>	<p>See special conditions</p>	<p>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</p>	<p>See general section on illumination</p>	<p>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</p>
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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 only if 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 from r.o.w. 5 feet from interior side property line</u>	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

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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 <u>10</u> 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.

~~(c) 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 18th day of June, 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 _____