



## 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, June 17, 2009, 7:00 PM  
South Dade Regional Library  
10750 SW 211<sup>th</sup> Street, 1<sup>st</sup> Floor  
Cutler Bay, Florida 33189

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

**2. PROCLAMATIONS, AWARDS, PRESENTATIONS**

A. Whispering Pines Elementary Essay Winner - Brooklyn Waters

**3. APPROVAL OF MINUTES**

- A. Special Council Meeting – May 12, 2009
- B. Regular Council Meeting – May 20, 2009

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, SUPPORTING THE CONSTRUCTION OF A TRAFFIC CIRCLE AT THE INTERSECTION OF CARIBBEAN BOULEVARD AND SW 192

TAB 2

DRIVE; REQUESTING THAT MIAMI-DADE COUNTY CONSTRUCT A TRAFFIC CIRCLE AT THAT INTERSECTION; AND PROVIDING AN EFFECTIVE DATE.

**B.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, REQUIRING THAT THE TOWN SHALL COMPLY WITH ALL STATE AND FEDERAL REQUIREMENTS WITH RESPECT TO EMPLOYEES ABSENT FROM WORK FOR SERVICE IN THE UNIFORMED SERVICES; RESCINDING PREVIOUS SUPPLEMENTAL PAY POLICY; ALLOWING FUTURE SUPPLEMENTAL PAY IF REQUIRED BY LAW OR WHERE TOWN COUNCIL, IN ITS SOLE DISCRETION, DETERMINES THAT CIRCUMSTANCES SO WARRANT; AND PROVIDING FOR AN EFFECTIVE DATE. **(MACDOUGALL)**

TAB 3

**C.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING THE TOWN'S COMPREHENSIVE PARKS MASTER PLAN TO INCLUDE RETENTION OF THE CUTLER RIDGE POOL; AND PROVIDING FOR AN EFFECTIVE DATE. **(MEERBOTT)**

TAB 4

**D.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING AN AGREEMENT WITH SUPERIOR LANDSCAPE AND LAWN SERVICE FOR THE LANDSCAPE MAINTENANCE SERVICE FOR THE TOWN; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AN AGREEMENT AND IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

TAB 5

**E.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AMENDMENT TO THE AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. TO PROVIDE CONSTRUCTION PHASE SERVICES FOR THE SAGA BAY DRAINAGE BASIN 1.3 AND 1.4 PAVING AND DRAINAGE IMPROVEMENTS PROJECT; AND PROVIDING AN EFFECTIVE DATE.

TAB 6

**F.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE SELECTION OF TYLER TECHNOLOGIES "EDEN" AS THE COMPREHENSIVE GOVERNMENT ERP SOFTWARE SYSTEM FOR THE TOWN; AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SOFTWARE SERVICES CONTRACT WITH SUCH FIRM; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 7

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

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

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

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

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

**A.** AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING SECTION 33-124 "STANDARDS" RELATING TO OFF STREET PARKING REQUIREMENTS FOR FURNITURE STORES; PROVIDING FOR CONFLICT; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE.

TAB 8

**B.** AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING REGULATIONS RELATED TO LOCAL BUSINESS TELEPHONE DIRECTORIES; ALLOWING RESIDENTS TO OPT OUT OF THE RECEIPT OF LOCAL BUSINESS TELEPHONE DIRECTORIES; 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. **(MACDOUGALL)**

TAB 9

**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. Special Election - Mail-in Ballot Deadline**

Thursday, June 25th at 7:00 p.m. Last day to submit ballots.

**B. Special Meeting - Election Certification**

Monday, June 29th at 4:30 p.m., Town Hall, 10720 Caribbean Blvd., Suite 105

**C. Whispering Pines July 4<sup>th</sup> Celebration**

Saturday, July 4<sup>th</sup> at 8:15 a.m., Whispering Pines Park, Ridgeland Drive and SW 87<sup>th</sup> Avenue

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

TAB 1

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

Tuesday, May 12, 2009, 9:30 a.m.  
Town Hall Conference Room  
10720 Caribbean Boulevard, Suite 105  
Cutler Bay, Florida 33189

**1. CALL TO ORDER/ROLL CALL OF MEMBERS:** The meeting was called to order by the mayor at 9:30 a.m. Present were the following:

Councilmember Peggy R. Bell  
Councilmember Timothy J. Meerbott  
Councilmember Ernest N. Sochin (via Conference Call)  
Vice Mayor Edward P. MacDougall  
Mayor Paul S. Vrooman

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

**2. ACTION ITEM**

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, OPPOSING SENATE BILL 360 AND REQUESTING THE GOVERNOR OF THE STATE OF FLORIDA TO VETO THIS BILL; AND PROVIDING FOR AN EFFECTIVE DATE.

The town manager made brief presentation to the Council on the Resolution.

After some discussion, Councilmember Meerbott made a motion to approve the resolution. The motion was seconded by Councilmember Bell and Resolution 09-37 was approved by a 4-1 roll call vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, and Mayor Vrooman voting Yes; Vice Mayor MacDougall voting No.

**3. ADJOURNMENT**

The meeting was officially adjourned at 10:00 a.m.

*Respectfully submitted:*

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*Erika Gonzalez-Santamaria, CMC  
Town Clerk*

*Adopted by the Town Council on  
this 17<sup>th</sup> day of June, 2009.*

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*Paul S. Vrooman, Mayor*

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

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

Wednesday, May 20, 2009, 7:00 PM  
South Dade Regional Library  
10710 SW 211<sup>th</sup> Street, 1<sup>st</sup> Floor  
Cutler Bay, Florida 33189

**1. CALL TO ORDER/ROLL CALL OF MEMBERS:** The meeting was called to order by the mayor at 7:00 PM. 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 Clerk Erika Santamaria  
Town Manager Steven J. Alexander

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

**A.** Mayor Vrooman presented a proclamation to Code Enforcement Officers, Susan Schnur, Luis Colmenarez, and Miguel Parages for Code Enforcement Week.

**B.** Mayor Vrooman recognized the following fifth grade students of Cutler Ridge Elementary for their efforts in the Miami-Dade County Geography and History Bee Samantha Hall, Maxwell Cussell, Kailin Brousseau, Ryan Trivett, and Cameron MacDonald. (8:15 p.m.)

**3. APPROVAL OF MINUTES:**

**A.** Councilmember Bell made a motion approving the minutes of the meeting on April 15, 2009. The motion was seconded by Councilmember Meerbott 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 recently the state legislation approved the distribution of CITT funds. He said the amount that the Town will receive is unknown at this point, but it is estimated that it will be approximately \$1 million. The manager stated that currently he is reviewing the police agreement with Miami-Dade County Police. He stated that he is unsure of whether or not to

continue the Miami-Dade County Police services or if it is in the best interest of the Town to form its own police department. He said these discussions will continue during the budget season with Council. The manager was proud to report that after meeting with editors of the Miami Herald that they will start to recognize the Town in its crime reporting and identify the Town in general stories. He stated that the Town is currently applying for green certification and there is a great possibility that it will be a gold status.

**B. TOWN ATTORNEY'S REPORT**

The town attorney reported that recently he received clarification from the Department of Revenue that the Town is still exempt from the required roll back rate during the budget process and millage approval. He stated that the Town will be required the following year to implement the roll back rate.

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

Councilmember Bell reported that the new pavilion at Cutler Ridge Park is completed. Currently, there is ongoing construction at Cutler Ridge Park to install a new soccer field and vita course. She reported that the parks will have new signs installed. She also reported that the Parks Committee established a sub-committee that will focus on Lake by the Bay Park. She stated that there will be a plaque dedicated to John Cosgrove at Whispering Pines Park. Member Bell announced that the next Parks Committee meeting will be held June 30<sup>th</sup>. She stated that the unofficial events committee is arranging several events such as a green event with Southland Mall, chili cook-off, and a holiday event for the Town.

Mayor Vrooman addressed the public's concern on the recent killings of neighborhood cats. He said that since this is an ongoing investigation, he did not want to go into details, but that the Cutler Bay Police Department is diligently working on the case and has partnered up the Village of Palmetto Bay to solve the case.

**5. CONSENT AGENDA:**

Vice Mayor MacDougall pulled all Items from the Consent Agenda. There was no Consent Agenda to be approved.

The town clerk read the following resolution by title:

- A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AWARDED CONTRACT FOR VEHICLE REPAIR AND MAINTENANCE TO AUTO ELECTRIC SERVICE; AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH FIRST RANKED COMPANY AUTO ELECTRIC SERVICE; PROVIDING FOR AN EFFECTIVE DATE.**

The town manager provided a brief explanation on the resolution.



Councilmember Meerbott made a motion to approve the resolution. The motion was seconded by Councilmember Bell and Resolution 09-38 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 AGREEMENT TO PROVIDE FOR PAVING & DRAINAGE IMPROVEMENTS IN THE SAGA BAY AREA; AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH FIRST RANKED CONTRACTOR TASCO PLUMBING; AND PROVIDING FOR AN EFFECTIVE DATE.

The town manager provided a brief explanation on the resolution.

Councilmember Sochin made a motion to approve the resolution. The motion was seconded by Vice Mayor MacDougall and Resolution 09-39 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:

- C.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AMENDMENT TO THE AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. TO PROVIDE CONSTRUCTION PHASE SERVICES FOR THE CUTLER RIDGE ELEMENTARY SCHOOL AREA PAVING AND DRAINAGE IMPROVEMENTS PROJECT; AND PROVIDING AN EFFECTIVE DATE.

The town manager provided a brief explanation on the resolution.

Councilmember Bell made a motion to approve the resolution. The motion was seconded by Councilmember Meerbott and Resolution 09-40 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:

- D.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO ROADWAY RESURFACING IN THE TOWN, AUTHORIZING THE ISSUANCE OF FIVE SEPARATE INVITATIONS TO BID (ITB) FOR ROADWAY RESURFACING IMPROVEMENTS; PROVIDING

FOR FUNDING BY THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009; AND PROVIDING FOR AN EFFECTIVE DATE.

The town manager provided a brief explanation on the resolution.

Councilmember Meerbott made a motion to approve the resolution. The motion was seconded by Councilmember Bell and Resolution 09-41 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:

- E. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE TOWN AND MIAMI-DADE TRANSIT AGENCY FOR FEDERAL FUNDING FOR THE INSTALLATION OF BUS SHELTERS AND ADDITIONAL ASSOCIATED ADA COMPLIANCE WORK, AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT AND ALL FUTURE FORMS AND AGREEMENTS REQUIRED FOR THE PROGRAM; AND PROVIDING FOR AN EFFECTIVE DATE.

The town manager provided a brief explanation on the resolution.

Councilmember Sochin made a motion to approve the resolution. The motion was seconded by Councilmember Meerbott and Resolution 09-42 was adopted 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)**

The town clerk read the ordinance by title:

- A. AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING SECTION 33-124 "STANDARDS" RELATING TO OFF STREET PARKING REQUIREMENTS FOR FURNITURE STORES; PROVIDING FOR CONFLICT; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE.

David Hennis, Planning and Zoning Director, provided an oral report on the ordinance.

Vice Mayor MacDougall made a motion to approve the ordinance on first reading. The motion was seconded by Councilmember Meerbott and 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.

The ordinance will be on second reading on June 17, 2009.

The town clerk read the ordinance by title:

- B.** AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING REGULATIONS RELATED TO LOCAL BUSINESS TELEPHONE DIRECTORIES; ALLOWING RESIDENTS TO OPT OUT OF THE RECEIPT OF LOCAL BUSINESS TELEPHONE DIRECTORIES; 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.

The town attorney provided an oral report on the ordinance.

Vice Mayor MacDougall made a motion to approve the ordinance on first reading. The motion was seconded by Councilmember Meerbott and 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.

The ordinance will be on second reading on June 17, 2009.

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

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

- A.** AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCE 06-22 ENTITLED, "PURCHASING"; REVISING CONTACTS CONSIDERED PERMISSIBLE UNDER THE TOWN CONE OF SILENCE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

The town attorney provided a brief explanation on the ordinance.

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

Councilmember Bell made a motion to approve the ordinance. The motion was seconded by Councilmember Sochin and the ordinance was adopted 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.

Bill Meiklejohn, 9311 Sterling Drive, Louise Lockwood, 9071 Ridgeland Drive, Steve Zarzecki, 9640 Martinique Drive, Joe Ruffo, 9641 Irene Drive, Jaime Reyes, 9750 Southwest 215 Lane, Beverly, East Ridge Retirement Village, and Arthur Nanni, 18843 Southwest 92 Avenue.

## **11. MAYOR AND COUNCIL COMMENTS**

Councilmember Sochin addressed Mr. Ruffo's comments on publishing crime statistics. Member Sochin agreed that there should be some kind of monthly crime information on the website. He also expressed his gratitude to the Miami Herald for starting to report crime within the Town.

Vice Mayor MacDougall agreed with Mr. Ruffo's comments on reporting crime statistics information on the website. He said it would be a great resource for the residents. He addressed Mr. Meiklejohn's concern with legal fees, he stated that they are always looking into trimming the legal costs. The Vice Mayor addressed Mr. Reyes concern on the size of the traffic circle located at 97<sup>th</sup> Avenue and 216<sup>th</sup> Street, he said that the size of the circle is similar to that of Coco Plum and that it will relieve the a lot of the traffic flow.

Councilmember Meerbott discussed that staff can look into how much time it takes the Village of Palmetto Bay to report on their crime statistics. Member Meerbott also addressed a concern of Cutler Ridge Pool being eliminated from the Parks Master Plan. Member Meerbott requested from staff to draft a resolution amending the Parks Master Plan to include an aquatics facility within the parks system. He reported that on a recent trip to the ICSC conference, that many of the retailers have heard of Cutler Bay because of certain chains being extremely successful in the area within the state.

Councilmember Bell encouraged citizens to be involved in the community and continue to patron local businesses in Cutler Bay. She reported that she attended a recent movie premier directed by students at Southridge Senior High School. She also discussed her recent attendance to several Florida Power and Light meetings in reference to Turkey Point expansion.

Mayor Vrooman agreed with a previous comment on the traffic circle and how it will alleviate much of the traffic that there is now.

## **12. OTHER BUSINESS:**

### **A. June 25, 2009 Special Elections – Mail-In Ballots**

The town clerk briefly discussed the recent advertisements and communication of the upcoming special election. She indicated that many forms of communication are being utilized so that there will be a greater voter turnout.

**B. Discussion on Military Leave**

Vice Mayor MacDougall initiated discussion on the item. The Vice Mayor continued to express his concern with the current economic situation of the Town and the general state of the economy and the continuance of military payments to our reservists. He hopes that his colleagues will look into the issue and needs to be re-addressed in the near future. Councilmember Bell stated that she has also addressed this issue with staff. Her understanding of the resolution that issued Administrative Order 07-01 said that it can be terminated at any time by the Town. Councilmember Meerbott requested that the Council should cease further discussion until the Council has a chance to review the information and later discuss at a meeting.

**C. CNU 17 Conference**

The mayor stated that there are some councilmember's interested in attending the Congress of New Urbanism. He stated that in the travel policy there needs to be Council approval for travel. Councilmember Sochin made motion to allow Council to attend the CNU17 conference and the motion was seconded by Councilmember Meerbott. All Councilmembers were in favor of the motion.

**13. ADJOURNMENT**

The next council meeting will be held on June 17, 2009 at South Dade Regional Library.

The meeting was officially adjourned at 9:15 P.M.

*Respectfully submitted:*

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*Erika Gonzalez-Santamaria, CMC  
Town Clerk*

*Adopted by the Town Council on  
this 17<sup>th</sup> day of June, 2009.*

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*Paul S. Vrooman, Mayor*

PURSUANT TO FLORIDA STATUTES 286.0105, THE TOWN HEREBY ADVISES THE PUBLIC THAT IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THIS COUNCIL WITH RESPECT TO ANY MATTER CONSIDERED AT ITS MEETING OR HEARING, HE OR SHE WILL NEED A RECORD OF THE PROCEEDINGS, AND THAT FOR SUCH PURPOSE, THE AFFECTED PERSON MAY NEED TO ENSURE THAT VERBATIM RECORD OF THE PROCEEDING IS

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

TAB 2



Steven J. Alexander  
Town Manager

## MEMORANDUM

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

**From:** Steven J. Alexander, Town Manager

**Date:** June 17, 2009

**Re:** **PROPOSED INSTALLATION OF A TRAFFIC CALMING CIRCLE AT THE INTERSECTION OF CARIBBEAN BLVD. AND SW 192 DRIVE**

### REQUEST

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, SUPPORTING THE CONSTRUCTION OF A TRAFFIC CIRCLE AT THE INTERSECTION OF CARIBBEAN BOULEVARD AND SW 192 DRIVE; REQUESTING THAT MIAMI-DADE COUNTY CONSTRUCT A TRAFFIC CIRCLE AT THAT INTERSECTION; AND PROVIDING AN EFFECTIVE DATE.**

### BACKGROUND AND ANALYSIS

Since late 2008, the Town Public Works Department staff has been contacted by concerned residents (via email, phone, and in person) with regards to safety issues at the intersection located at Caribbean Blvd. & SW 192 Drive. The concerns deal mainly with vehicular speeding along Caribbean Blvd and vehicles disregarding the stop signs on both approaches of SW 192<sup>nd</sup> Drive.

On November 6, 2008, our Public Works Department formally requested that the Miami-Dade County Public Works Department (MDPWD) perform a Traffic Engineering Study at the intersection. In order to expedite the request for a Traffic Engineering Study, the following information was attached to the Town's letter:

- Field observations confirmed speeding by some vehicles traveling on Caribbean Blvd and the capacity/Level of Service (LOS) analyses indicated a LOS "E" at the westbound (WB) approach of SW 192 Dr during the AM peak hour period. The analyses also reflected relatively long vehicular queues on this WB approach.
- Collected peak hour traffic volumes on both roadways indicate that the vehicular volume thresholds for supporting traffic calming measures are satisfied.
- Available crash data indicates that there have been three angle related vehicular collisions at this intersection within the last three years.

As a result of the Town's written request and several meetings with MDPWD Traffic Engineering staff, on January 8, 2009 the MDPWD "approved" the Town's initial request and proceeded with the design phase of a traffic calming circle at the intersection. One of the criteria set by the MDPWD is to obtain



full consent from the residents which are directly affected by the construction of the proposed traffic calming circle (abutting property owners).

On April 8, 2009, the Town was informed by MDPWD that based on the mail-in ballots; the required 100% consent approval was NOT obtained. MDPWD policy requires that the local municipality's governing body adopt a Resolution after a Public Hearing to discuss the proposed traffic calming circle.

The Town Council may hold a public hearing to meet the requirement of the County's criteria during its June 17<sup>th</sup> Council meeting.

### **RECOMMENDATION**

We recommend that the Town Council hold a public hearing to meet the requirement of the County's criteria during its June 17<sup>th</sup> Council meeting.

We recommend that the attached resolution be adopted, authorizing the Town Manager to forward the Town's Resolution to the Miami-Dade County Public Works Department.

**RESOLUTION NO. 09-\_\_**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, SUPPORTING THE CONSTRUCTION OF A TRAFFIC CIRCLE AT THE INTERSECTION OF CARIBBEAN BOULEVARD AND SW 192 DRIVE; REQUESTING THAT MIAMI-DADE COUNTY CONSTRUCT A TRAFFIC CIRCLE AT THAT INTERSECTION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, responding to numerous complaints by residents of the Town of Cutler Bay (the “Town”), staff undertook a study last year of the intersection of Caribbean Boulevard and SW 192 Drive (the “Intersection”) to assess the alleged deficiencies with the Intersection; and

**WHEREAS**, the Town study determined that there was an issue with speed of vehicles along Caribbean Boulevard approaching the Intersection and that there were significant intersection capacity/level of service (LOS) issues associated with that Intersection, including relatively long vehicular queues on the westbound approach during AM peak service times; and

**WHEREAS**, subsequently, Town staff submitted its data and a letter summarizing its conclusions on November 6, 2008 to Miami-Dade County (the “County”) requesting that the County install a traffic circle at the Intersection to act as a traffic calming device; and

**WHEREAS**, the County will approve the request following a public hearing on the matter and a Town Resolution in support of the traffic circle; and

**WHEREAS**, because of the dangerous nature of the intersection, danger which is supported by data collected by Town staff, the Town believes that it is of the utmost importance to construct a traffic circle at the Intersection; and

**WHEREAS**, the Town has conducted the public hearing required by the County and has listened carefully to the input of the interested parties on this issue; and

**WHEREAS**, the Town recognizes that traffic circles are more environmentally friendly and provide a safer and more aesthetically pleasing alternative to traditional old school traffic signals; and

**WHEREAS**, Town Council supports the construction of a traffic circle at the Intersection and formally requests that the County undertakes to do so at their earliest possible convenience; and

**WHEREAS**, the Town finds that this Resolution will promote the health, safety and welfare 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. Support and Request.** The Town of Cutler Bay Council has held a public hearing and the Town Council hereby supports the construction of a traffic circle at the intersection of Caribbean Boulevard and SW 192 Drive (the “Intersection”), requests that Miami-Dade County undertake the construction of a traffic circle at the Intersection at its earliest convenience, and directs the Clerk of the Town of Cutler Bay to submit a copy of this resolution to Miami-Dade County.

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

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
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 \_\_\_\_\_



## Department of Public Works

Rafael G. Casals  
Public Works Director

November 6, 2008

Mr. Muhammed Hasan, P.E., Chief  
Traffic Engineering Division  
Miami-Dade County Public Works Department  
111 NW 1<sup>st</sup> Street Suite 1510  
Miami, Florida 33128-1970

Re: Caribbean Blvd and SW 192 Drive Intersection in the Town of Cutler Bay

Dear Mr. Hasan: *Muhammed*

The Town of Cutler Bay has been contacted by concerned residents with regards to safety issues at the above referenced intersection. The concerns deal mainly with vehicular speeding along Caribbean Blvd and an indication that some vehicles are failing to stop thus disregarding the stop sign on both approaches of SW 192<sup>nd</sup> Drive.

The Town of Cutler Bay Public Works Department and its consultant The Corradino Group have collected available crash data for the past three years, traffic volume counts during the morning and afternoon peak hours and performed intersection capacity/level of service (LOS) analyses at this intersection. Although not a formal and customary traffic study, our efforts have resulted in the following points and observations:

- Field observations did confirm speeding by some vehicles traveling on Caribbean Blvd and the capacity/LOS analyses indicated a LOS E at the westbound (WB) approach of SW 192 Dr during the AM peak hour period. The analyses also reflected relatively long vehicular queues on this WB approach.
- Collected peak hour traffic volumes on both roadways indicate that the vehicular volume thresholds for supporting traffic calming measures are satisfied.
- Available crash data indicates that there have been three angle related vehicular collisions at this intersection within the last three years.

In light of the above, and out of respect for your home rule authority over the transportation network, the Town of Cutler Bay respectfully requests your office to conduct a formal traffic engineering study to address these concerns. To facilitate your efforts, I'm enclosing the following information: available police vehicular crash reports for the past three years; collected traffic count data and the intersection capacity/LOS analyses.

If you have any questions, please contact me at (305) 234-4262.

Sincerely,

Rafael G. Casals  
Public Works Director

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



**Public Works**  
 Traffic Engineering Division  
 111 NW 1st Street • Suite 1510  
 Miami, Florida 33128-1970  
 T 305-375-2030 F 305-372-6064

miamidade.gov

January 8, 2009

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

Re: Request for a Traffic Study at the Intersection of Caribbean Boulevard and SW 192 Drive

Dear Mr. Casals:

In response to your referenced request, the Miami-Dade County Public Works Department (PWD) evaluated the traffic data you submitted and obtained additional data to determine if additional traffic control devices may be warranted. As a result, it was determined that the construction of a traffic circle will improve the operational safety at this location.

Therefore, PWD will initiate the design, and upon its completion, will contact residents who will be affected by the proposed traffic circle to seek their consent for the construction. Should the residents agree with the proposal, PWD will schedule it for construction as funds and contracts are identified.

Should you have any questions or require additional information, please contact Dr. Joan Shen, P.E., PTOE, at (305) 375-2030.

Sincerely,

Muhammed Hasan, P.E.  
 Chief, Traffic Engineering Division

cc: Esther L. Calas, P.E. Director  
 Joan Shen, Ph.D., P.E., PTOE, Manager, Traffic Engineering Division  
 Vishnu Rajkumar, Signal Design Administrator  
 Muhammed Mansuri, P.E., Traffic Engineering Division  
 Teresa Novakovic, P.E., Traffic Engineering Division

*Delivering Excellence Every Day*

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



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

April 8, 2009

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

Re: Ballot Results for a Proposed Traffic Circle at the Intersection of Caribbean Boulevard and SW 192 Drive.

Dear Mr. Casals:

As a follow-up to previous correspondence of January 8, 2009, concerning the referenced device, please be advised that the Miami-Dade County Public Works Department (PWD) mailed ballots to residents who would be directly affected by construction of a traffic circle at the referenced intersection.

Tabulation of the ballots indicated PWD did not obtain the required 100% concurrence. Two of the four affected residents responded in favor of the device; however, one other voted against the proposal, while no response was received from the fourth. Since the required concurrence was not obtained, PWD will not pursue this matter any further. (Attached, please find a copy of the ballot tabulation).

Should the Town of Cutler Bay desire to pursue this matter, PWD policy provides that in lieu of concurrence from the affected residents, the City may pass a resolution after a public hearing, requesting that PWD approve the proposed traffic circle.

Should you have any questions or require additional information, please do not hesitate to contact me at (305) 375-2030.

Sincerely,

Joan Shen, Ph.D., P.E., PTOE, Manager  
Traffic Engineering Division

Attachment: Ballot Tabulation

c: Esther L. Calas, P.E. Director  
Vishnu Rajkumar, Signal Design Administrator  
Teresa Novakovic, P.E., Traffic Design

*Delivering Excellence Every Day*



PUBLIC WORKS DEPARTMENT  
111 N.W. FIRST STREET, SUITE 1510  
MIAMI, FLORIDA 33128-1970

January 30, 2009

**SAMPLE**

Dear

**OFFICIAL NEIGHBORHOOD TRAFFIC CALMING  
RESIDENT AND/OR PROPERTY OWNER BALLOT**

The Miami-Dade County Public Works Department (PWD) has completed a traffic study at the intersection of **Caribbean Boulevard and SW 192 Drive**. As a result of this study, PWD is considering the installation of a **Roundabout** at this intersection. (See attached drawing).

Should 100% of the residents and/or property owners adjacent to the **Roundabout** concur with the proposed improvement, the PWD will proceed with the installation of this device, as funds and contracts become available.

Please read through the ballot, check the appropriate box, complete the pertinent information and return this original ballot to PWD no later than. **February 27, 2009**. A self-addressed return envelope with pre-paid postage is enclosed for your convenience. All submitted ballots (one ballot per property) must be original and completed in ink.

Your presence is welcomed at the opening and tabulation of the received ballot envelopes on **March 6, 2009**, at 10:00 a.m., at the Stephen P. Clark Center, 111 NW 1<sup>st</sup> Street, 15<sup>th</sup> floor, rear conference room.

**Ballot:**

I, the undersigned resident and/or property owner do hereby indicate my preference by checking the appropriate box, **FOR** or **AGAINST** the installation of the proposed **Roundabout** at the intersection of **Caribbean Boulevard and SW 192 Drive**.

**FOR**

**AGAINST**

Signature \_\_\_\_\_

Property Address \_\_\_\_\_

Print Name \_\_\_\_\_

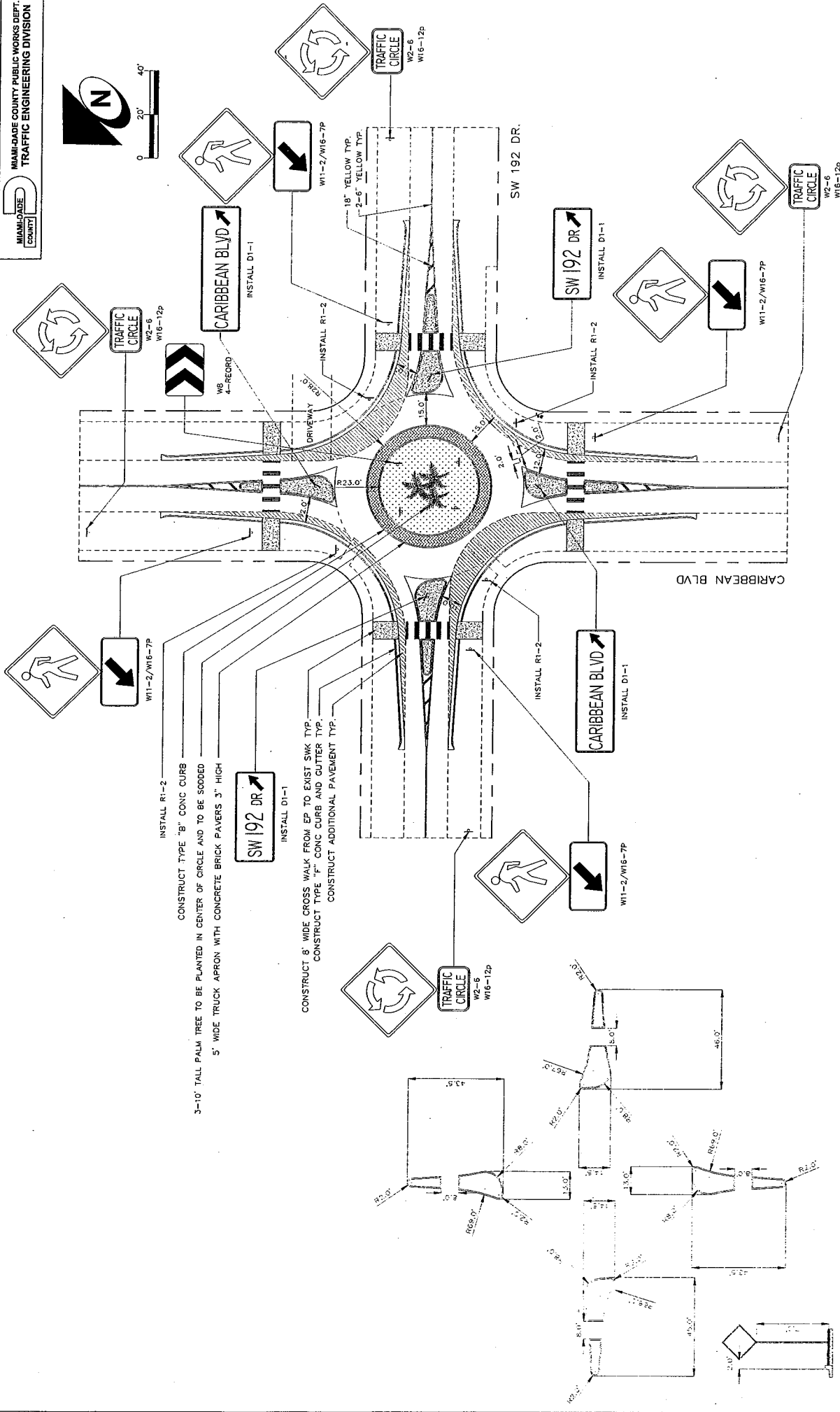
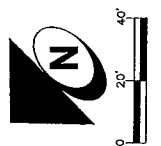
Phone Number \_\_\_\_\_

Date \_\_\_\_\_

**SAMPLE**

Should you have any questions or require additional information, please contact Dr. Joan Shen, P.E., PTOE, Manager, Traffic Engineering Division, by email at [shenj@miamidade.gov](mailto:shenj@miamidade.gov) or by phone at (305) 375-2030.





INSTALL R1-2  
 CONSTRUCT TYPE "B" CONC CURB  
 CONSTRUCT TYPE "F" CONC CURB AND GUTTER TYP.  
 CONSTRUCT ADDITIONAL PAVEMENT TYP.

CONSTRUCT 8' WIDE CROSS WALK FROM EP TO EXIST SWK TYP.  
 CONSTRUCT TYPE "F" CONC CURB AND GUTTER TYP.  
 CONSTRUCT ADDITIONAL PAVEMENT TYP.

(SIGNS PLACEMENT)

SIGN MUST BE PLACED 2' FROM OUTSIDE CURB TO EDGE OF SIGN  
 AND 7' FROM BOTTOM OF SIGN.

REV.	DATE	DESCRIPTION	BY



DESIGN	DATE
J. MUSINO	07/13/09

CARIBBEAN BLVD AND SW 192 DR. CIRCLE  
 INTERSECTION ID NO. 0000

TAB 3

**RESOLUTION NO. 09-\_\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, REQUIRING THAT THE TOWN SHALL COMPLY WITH ALL STATE AND FEDERAL REQUIREMENTS WITH RESPECT TO EMPLOYEES ABSENT FROM WORK FOR SERVICE IN THE UNIFORMED SERVICES; RESCINDING PREVIOUS SUPPLEMENTAL PAY POLICY; ALLOWING FUTURE SUPPLEMENTAL PAY IF REQUIRED BY LAW OR WHERE TOWN COUNCIL, IN ITS SOLE DISCRETION, DETERMINES THAT CIRCUMSTANCES SO WARRANT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Cutler Bay (the “Town”) recognizes the importance of employees’ responsibilities to fulfill their United States Armed forces obligations; and

**WHEREAS**, the Town Council intends to remain compliant with all state and federal requirements with respect to employees absent from work for service in the uniformed services; and

**WHEREAS**, On July 18, 2007, the Town Council passed Resolution 07-36, which ratified Town Administrative Order No. 07-01 “Military Leave for Active Military Service,” which requires supplemental pay for individuals who take military leave for active military service; and

**WHEREAS**, the Town Council has determined that as a relatively new municipality and in the interest of fiscal restraint, the Town is not in a position to continue to have a mandatory policy of providing supplemental pay above and beyond that which is required by state and/or federal law; and

**WHEREAS**, the Town Council finds that this Resolution will promote the health, safety and welfare 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. Compliance with State and Federal Law.** The Town shall comply with all state and federal requirements with respect to employees absent from work for service in the uniformed services.

**Section 3. Rescinding Supplemental Pay Policy.** Town Administrative Order 07-01 is hereby rescinded, and the Town shall not be required to pay supplemental pay, which is an amount awarded to bring employees' total salary, inclusive of their military pay, to the level earned by them in Town service at the time they were ordered to active military service, unless required to do so by state and/or federal law.

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

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
PAUL 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 Vrooman \_\_\_\_\_  
Vice Mayor Edward MacDougall \_\_\_\_\_  
Council Member Timothy J. Meerbott \_\_\_\_\_  
Council Member Ernest Sochin \_\_\_\_\_  
Council Member Peggy Bell \_\_\_\_\_

TAB 4

**RESOLUTION NO. 09-\_\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING THE TOWN'S COMPREHENSIVE PARKS MASTER PLAN TO INCLUDE RETENTION OF THE CUTLER RIDGE POOL; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on February 20, 2008, the Town of Cutler Bay (the "Town") adopted Resolution No. 08-07 approving the execution of an agreement to draft the Town's Comprehensive Parks Master Plan (the "Plan") in accordance with the Town's 5-year Strategic Plan; and

**WHEREAS**, during the course of the Plan process four separate public meetings were conducted with in conjunction with the Parks and Recreation Advisory Committee, Town residents, and the Town Council in order to solicit input regarding the wants and needs of the community concerning the Town's parks; and

**WHEREAS**, on February 18, 2009 the Town adopted Resolution No. 09-15, which approved the adoption of the Plan; and

**WHEREAS**, it is imperative that the Town assure its residents that those existing facilities identified in the Plan, specifically Cutler Ridge Pool, are valuable assets that should remain available to Town residents; and

**WHEREAS**, the Town Council desires to amend the Plan to stipulate that the Cutler Ridge Pool be retained at Cutler Ridge Park until such time as the Town can identify funding to construct a new public swimming pool at a more viable location; and

**WHEREAS**, the Town finds that this Resolution will promote the health, safety and welfare 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. Amendment to The Parks Master Plan.** The Town's Comprehensive Parks Master Plan is amended to include retaining the Cutler Ridge Pool at Cutler Ridge Park until such time as the Town can identify funding to construct a new public swimming pool at a more viable location.

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

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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

Attest:

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

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

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

Moved By:  
Seconded By:

FINAL VOTE AT ADOPTION:

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

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

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

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

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

TAB 5





## MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council

From: Steven J. Alexander, Town Manager

Date: May 20, 2009

Re: **AWARD OF RFP # 09-09: LANDSCAPE MAINTENANCE SERVICES**

### REQUEST

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING AN AGREEMENT WITH SUPERIOR LANDSCAPE AND LAWN SERVICE FOR THE LANDSCAPE MAINTENANCE SERVICE FOR THE TOWN; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AN AGREEMENT AND IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.**

### BACKGROUND AND ANALYSIS

The Town Council on March 18, 2009 via Resolution# 09-22 authorized staff to issue a Request for Proposals (RFP) # 09-09: Landscape Maintenance Services. As a result of the Road Transfer Agreement executed between Miami-Dade County and the Town (dated June 19, 2008), several "local" roads/medians were previously owned and maintained by Miami-Dade County Public Works Department's contractors. Since the transfer, the Town has utilized a landscape contractor, after obtaining three (3) written estimates for the related landscape services. In order to enter into a long-term landscape maintenance contract, the Town issued RFP # 09-09 which identified several locations that are in need of landscape services and litter control along major roadways (three days a week: Mondays, Wednesdays, and Saturdays). The improved litter removal services, will supplement the Town's NEAT team's daily efforts of maintaining a clean Town image, that residents, business owners, and visitors can be proud of.

The RFP was advertised in a newspaper of general circulation which, complies with the Town's Purchasing Ordinance. The Town received interest from thirty-one (31) landscape vendors which obtained a copy of the RFP. The RFP had a due date and time of February 20, 2009 @ 10:00a.m. The Town received eight (8) bid packages from potential contractors (see attached bid tabulation).

A complete review was performed on the "Lowest & Responsive" bidder: Superior Landscaping & Lawn Service, Inc. which, included:

- Contacting all of the provided references, as per RFP # 09-09; and
- Town staff's facilities inspections, as per RFP # 09-09; and



- Confirmation of “good standing” with the State of Florida Department of Business and Professional Regulations which, included any registered complaints.

**RECOMMENDATION**

Town Staff has set high-standards of excellence for all of our contractors and based on Town staff’s ranking/evaluation, recommends that the “lowest & responsive” bidder: Superior Landscaping & Lawn Service, Inc., be awarded the Landscape Maintenance Services contract.



**Town of Cutler Bay  
Office of the Town Clerk - Ranking Sheet  
ITB #09-09 Landscape Maintenance Services  
Bid Submission Date: May 1, 2009 at 10:00 a.m.**

<b>RANK</b>	<b>COMPANY</b>	<b>BID AMOUNT</b>
1	Superior Landscape & Lawn Service	\$ 75,050.00
2	Ground Keepers	\$ 105,000.00
3	Suncoast Nursery	\$ 119,520.00
4	Valleycrest Landscape	\$ 136,686.00
5	Florida Turf	\$ 174,595.00
6	SFM Services	\$ 195,851.00
7	Vila-n-Son	\$ 215,300.00
8	Tip Top Enterprises	\$ 322,169.00

Bid's were opened at 10:00 a.m.

The following staff were witnesses to the bid opening:

Yani Ramos, Administrative Services Director

Erin O'Donnell, Assistant to the Town Clerk

Rafael Casals, Public Works Director

Respectfully Submitted By:

---

Erika Santamaria, CMC, Town Clerk

**RESOLUTION NO. 09-\_\_**

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING AN AGREEMENT WITH SUPERIOR LANDSCAPE AND LAWN SERVICE FOR THE LANDSCAPE MAINTENANCE SERVICE FOR THE TOWN; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AN AGREEMENT AND IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

**WHEREAS**, on June 19, 2008 the Town executed the Roadway Transfer Agreement (the "Agreement") with Miami-Dade County which transferred several local roadways and right-of-ways to the Town; and

**WHEREAS**, the "Agreement" transferred the landscape maintenance responsibilities of all the local roads and right-of-ways that were identified in the "Agreement"; and

**WHEREAS**, the Town Council is committed to provide a clean town-wide image to all of the residents, businesses, and visitors; and

**WHEREAS**, on March 30, 2009 the Town of Cutler Bay (the "Town") issued a Request for Proposals (the "RFP") for landscape maintenance services for the Town; and

**WHEREAS**, the RFP identified several roadways, right-of-ways, medians, and cul-de-sacs which were transferred to the Town, along with the landscape maintenance services; and

**WHEREAS**, on May 1, 2009 the Town received eight (8) proposals from local landscape maintenance firms; and

**WHEREAS**, in accordance with the stipulations of the RFP, an evaluation committee reviewed all of the proposals and ranked them, attached as Exhibit "A", based upon the information provided in the submittals; and

**WHEREAS**, pursuant to the RFP competitive selection process utilized by the Town and the recommendation of the Town Manager, the Town Council desires to utilize the services of highest-ranked firm, Superior Landscape and Lawn Service (the "Contractor"), to provide landscape maintenance service; and

**WHEREAS**, should the negotiations be unsuccessful with the Contractor, the Town Council desires to obtain the services of the next highest ranked firm(s), in order of ranking as described in Exhibit "A"; and

**WHEREAS**, the Town Attorney's Office has reviewed the terms of the agreement with Contractor, attached as Exhibit "B", and has determined that it is legally sufficient; and

**WHEREAS**, the Town Manager has determined in accordance with Section 3.10 of the Town Charter and the Town purchasing ordinance that there is a sufficient unencumbered budget appropriation within the department to pay for this agreement, and the Town Manager has made a written recommendation to the Council for its approval; and

**WHEREAS**, the Town finds that this Resolution will promote the health, safety and welfare 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 contract with the highest ranked contractor, Superior Landscape and Lawn Service, for landscape maintenance services, in substantially the form attached hereto as Exhibit “B” (the “Agreement”).

**Section 3. Town Manger Authorization.** The Town Manager is authorized, on behalf of the Town, to negotiate and execute the Agreement for landscape maintenance services with the first-ranked firm, Superior Landscape and Lawn Service, in substantially the form attached hereto as Exhibit “B”. In the event the Town Manager is unable to execute a contract in substantially the form attached hereto with Superior Landscape and Lawn Service, then the Town Manager may negotiate and execute the Agreement with the next highest ranked firm(s), in order of ranking as described in Exhibit “A”. The Town Manager is authorized to execute the Agreement without further Town Council action and once approved by the Town Attorney as to form and legal sufficiency.

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

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
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 \_\_\_\_\_




## Public Works Department

Rafael Casals  
Public Works Director

### MEMORANDUM

**To:** Steven J. Alexander, Town Manager

**From:** Rafael Casals (Committee Chair) – Public Works Director 

**Date:** May 21, 2009

**Re:** RECOMMENDATION FOR RFP #09-09, LANDSCAPE MAINTENANCE SERVICES

### BACKGROUND AND ANALYSIS

In response to RFP #09-09, Landscape Maintenance Services, the Town of Cutler Bay received proposals from eight (8) qualified landscaping companies. On Thursday May 14, 2009, the RFP Selection Committee which was comprised of Alan Ricke – Parks & Recreation Director, Yani Ramos – Administrative Services Director, me met to discuss the proposals received and award firms points for each category specified in RFP # 09-09. Based on this meeting, three (3) companies were "short-listed" for presentations, which were scheduled on May 21, 2009. After reviewing each firm and selecting appropriate points based on the criteria provided in the RFP, the final ranking (scoring) was as follows:

RANK	BIDDER	SCORE
1	Superior Landscaping	91
2	Groundkeepers	77
3	Valleycrest Landscaping	73

### RECOMMENDATION

We recommend that the Town Manager recommend approval to the Town for the selection of the top ranked firm - Superior Landscaping, to provide Landscape Maintenance Services identified in RFP # 09-09



SECTION IV  
PROPOSAL PACKAGE

LANDSCAPE MAINTENANCE SERVICE

PROPOSALS ARE DUE ON OR BEFORE:

MAY 1, 2009 @ 10:00 AM

TO: TOWN HALL  
OFFICE OF THE TOWN CLERK  
10720 Caribbean Blvd., Suite# 105  
Cutler Bay, Florida 33189

THIS PROPOSAL SUBMITTED BY:

COMPANY NAME: SUPERIOR LANDSCAPING & LAWN SERVICE, INC.

ADDRESS: 2200 NW 23<sup>RD</sup> AVE MIAMI, FL. 33142

TELEPHONE: (305) 634 0717 FAX#: (305) 634 0744

EMAIL: SUPERLANDSCAPE@BELLSOUTH.NET



**TOWN OF CUTLER BAY  
LANDSCAPE MAINTENANCE SERVICE  
RFP # 09-09  
PROPOSAL CONFIRMATION**

In accordance with the requirements to provide Landscape Maintenance Service, RFP # 09-09, the undersigned submits the attached proposal.

The initial Contract period shall be for three (3) years with an option to renew annually not to exceed a maximum of two (2) years subject to appropriation of funds for the budget year applicable. At its sole discretion, the Town shall have an option to renew this Agreement upon the same terms and conditions for up to two (2) additional years (the "Option"). This Option may be exercised at the sole discretion of the Town Manager. Such extension shall be effective upon receipt of a written notice from the Town Manager to the Contractor received no later than 30 days prior to the date of termination.

Proposer has examined the site and locality where the work is to be performed and is fully aware of the scope of work based on these requirements, the legal requirements (federal, state and local laws, ordinances, rules and regulations) and the conditions affecting cost, progress or performance of the work and has made such independent investigation as Proposer deems necessary.

This proposal is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Proposer has not directly or indirectly induced or solicited any other Proposer to submit a false or sham proposal; Proposer has not solicited or induced any person; firm or a corporation to refrain from proposing and Proposer has not sought by collusion to obtain for himself any advantage over any other Proposer or over Owner.

The Proposer shall acknowledge this Proposal by signing and completing the spaces provided. I hereby submit this Proposal Package for Landscape Maintenance Service, RFP # 09-09 to the Town of Cutler Bay with the full understanding of the Request for Proposal, General and Special Conditions and Detail Requirements and the entire Proposal Package.

SUPERIOR LANDSCAPING & LAWN SERVICE      [Signature]      4-30-09  
Proposer's Name      INC.      Signature      Date

State of: Florida

County of: Miami Dade

The foregoing instrument was acknowledged before me this 30 day of April, 2009, by ORLANDO  
OTERO, who is (who are) personally known to me or who has produced \_\_\_\_\_  
\_\_\_\_\_ as identification and who did (did not) take an oath.

[Signature]  
Notary Public Signature

Notary Name, Printed, Typed or Stamped: MARIA VALDES  
Commission Number: \_\_\_\_\_ Notary Public - State of Florida  
My Commission Expires: \_\_\_\_\_ My Commission Expires Oct 25, 2011  
Commission # DD 729259  
Bonded Through National Notary Assn.

TOWN OF CUTLER BAY  
LANDSCAPE MAINTENANCE SERVICE  
RFP # 09-09  
PROPOSAL COST PER ZONE

Zone Number 1 – \$ 17,500.<sup>00</sup>  
Zone Number 2 – \$ 30,900.<sup>00</sup>  
Zone Number 3 – \$ 18,650.<sup>00</sup>  
Allowances (FIXED AMOUNT- PER YEAR) \$ 8,000

TOTAL BID PRICE (PER YEAR) \$ 75,050.<sup>00</sup>

TOTAL BID PRICE (IN WORDS):

SEVENTY FIVE THOUSAND AND FIFTY DOLLARS


Article II. OPTION TO RENEW

Rate shall be as quoted in initial three (3) year contract and shall not increase.

Taxpayer Identification Number: 650 838 100

Proposer: SUPERIOR LANDSCAPING & LAWN SERVICE, INC.

Company Name



Signature of Authorized Representative

ORLANDO OTERO / PRESIDENT

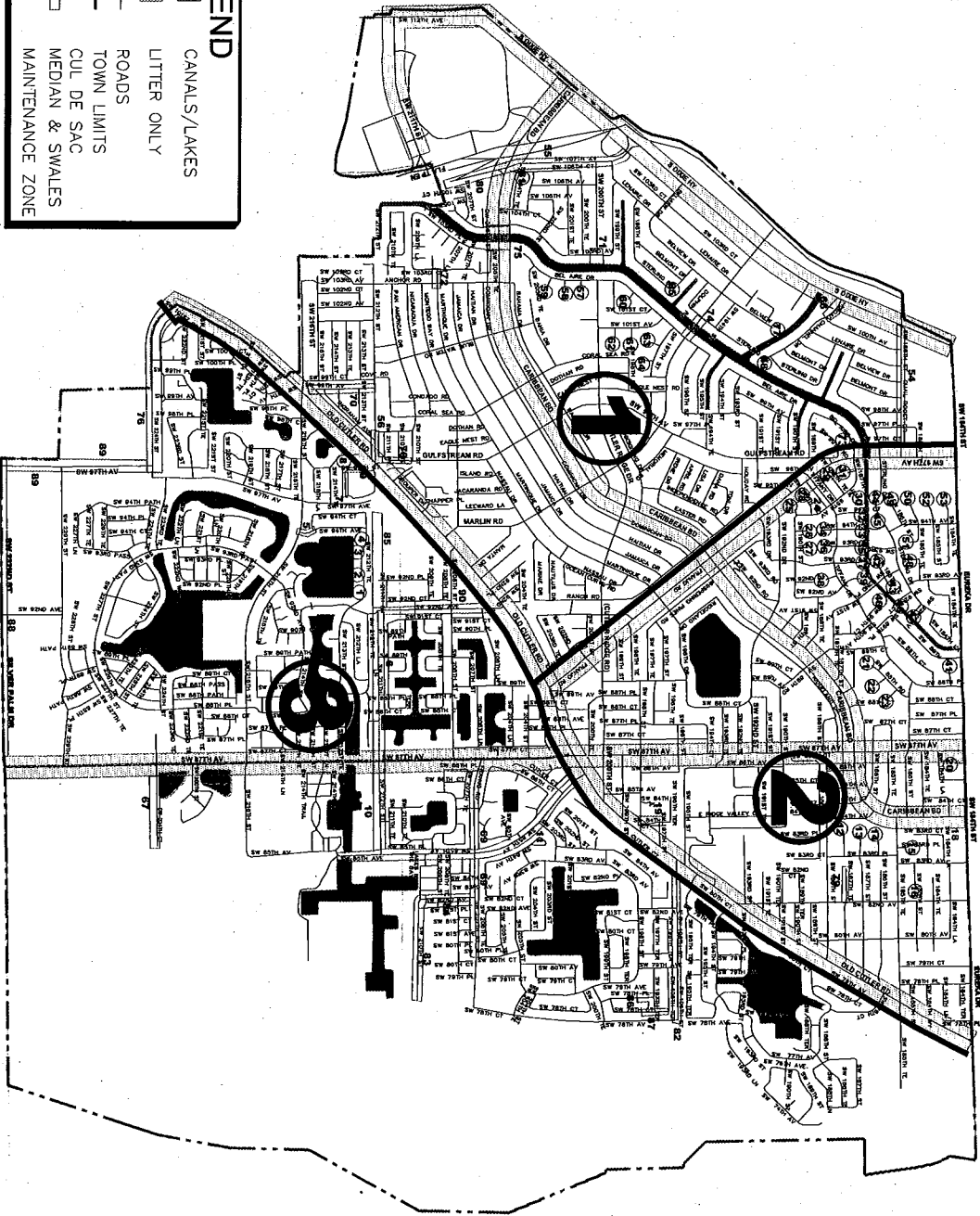
Printed Name and Title



**Kimley-Horn  
and Associates, Inc.**  
2007 KIMLEY-HORN AND ASSOCIATES, INC.  
2500 NW 33rd Avenue, Suite 109, Fort Lauderdale, FL 33309  
WWW.KIMLEY-HORN.COM  
FL 00006989

**LEGEND**

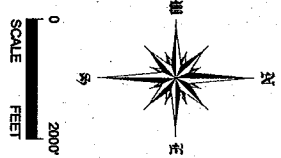
- CANALS/LAKES
- LITTER ONLY
- ROADS
- TOWN LIMITS
- CUL DE SAC
- MEDIAN & SWALES
- MAINTENANCE ZONE 1
- MAINTENANCE ZONE 2



**TOWN OF CUTLER BAY  
LANDSCAPE MAINTENANCE SERVICE MAP**

**FIGURE 1**

**BISCAYNE  
BAY**





Town of Cutler Bay  
Public Works Department  
Landscape Maintenance Services  
RFP # 09-09



SITE #	REFERENCE ADDRESS	SITE DESCRIPTION(S)
1	9233 SW 212 Terrace	CUL-DE-SAC
2	9285 SW 212 Terrace	CUL-DE-SAC
3	9335 SW 212 Terrace	CUL-DE-SAC
4	9384 SW 212 Terrace	CUL-DE-SAC
5	9400 SW 215 Lane	CENTER ISLAND
6	SW 212 Street (between SW 87 Avenue & SW 92 Place)	CENTER MEDIANS
7	9704 SW 213 Terrace	CENTER ISLAND
8	21370 SW 97 Court	CUL-DE-SAC
9	21341 SW 97 Court	CENTER ISLAND
10	SW 212 Street (between SW 87 Avenue & SW 85 Avenue)	CENTER MEDIANS
11	SW 85 Avenue (between Old Cutler Rd. & theoretical SW 213 Street)	CENTER MEDIANS & SWALES
12	8395 SW 187 Terrace	CUL-DE-SAC
13	8370 SW 187 Street	CUL-DE-SAC
14	8390 SW 186 Street	CUL-DE-SAC
15	18490 SW 83 Place	CUL-DE-SAC
16	8221 SW 185 Street	CUL-DE-SAC
17	Caribbean Blvd. & Franjo Road	CENTER MEDIANS & SWALES
18	Caribbean Blvd. & Eureka Drive	CENTER MEDIANS
19	19707 SW 84 Place	CENTER ISLAND
20	18421 SW 86 Court	CUL-DE-SAC
21	18620 SW 88 Road	CUL-DE-SAC
22	8823 SW 185 Lane	CUL-DE-SAC
23	8825 SW 185 Terrace	CUL-DE-SAC
24	Tiffany Drive & Franjo Road	CENTER MEDIAN
25	9511 SW 190 Street	CUL-DE-SAC
26	18922 SW 94 Avenue	CUL-DE-SAC
27	18924 SW 89 Court	CUL-DE-SAC
28	9542 SW 189 Terrace	CUL-DE-SAC
29	9550 SW 188 Terrace	CUL-DE-SAC
30	9475 SW 188 Street	CUL-DE-SAC

SITE #	REFERENCE ADDRESS	SITE DESCRIPTION(S)
31	18715 SW 96 Avenue	CUL-DE-SAC
32	18630 SW 94 Court	CUL-DE-SAC
33	18611 SW 94 Avenue	CUL-DE-SAC
34	18731 SW 94 Avenue	CUL-DE-SAC
35	18632 SW 93 Court	CUL-DE-SAC
36	18735 SW 93 Court	CUL-DE-SAC
37	18620 SW 93 Avenue	CUL-DE-SAC
38	18711 SW 92 Court	CUL-DE-SAC
39	18610 SW 92 Avenue	CUL-DE-SAC
40	18514 SW 90 Court	CUL-DE-SAC
41	8904 SW 184 Terrace	CUL-DE-SAC
42	9280 SW 186 Terrace	CUL-DE-SAC
43	9241 SW 186 Terrace	CUL-DE-SAC
44	18607 SW 94 Court	CUL-DE-SAC
45	18611 SW 93 Place	CUL-DE-SAC
46	18521 SW 92 Court	CUL-DE-SAC
47	18521 SW 92 Avenue	CUL-DE-SAC
48	18561 SW 93 Avenue	CUL-DE-SAC
49	9444 SW 186 Street	CUL-DE-SAC
50	9436 SW 185 Terrace	CUL-DE-SAC
51	18553 SW 93 Place	CUL-DE-SAC
52	9444 SW 185 Street	CUL-DE-SAC
53	9432 SW 184 Terrace	CUL-DE-SAC
54	SW 186 Street (between US1 & Franjo Rd.	SWALES
55	SW 107 Avenue (between Caribbean Blvd. & South Dixie Hwy.)	SWALES
56	SW 212 Street (between Old Cutler Rd. & SW 97 Place)	SWALES
57	10198 SW 200 Terrace	CUL-DE-SAC
58	10193 SW 201 Terrace	CUL-DE-SAC
59	10198 SW 202 Terrace	CUL-DE-SAC
60	10170 SW 198 Street	CUL-DE-SAC
61	10010 SW 198 Street	CUL-DE-SAC
62	10000 SW 199 Street	CUL-DE-SAC
63	19740 SW 100 Avenue	CUL-DE-SAC
64	19715 SW 99 Place	CUL-DE-SAC
65	19261 Sterling Drive	CUL-DE-SAC
66	Broad Channel Drive (between South Dixie Hwy. & Belview Drive)	CENTER MEDIANS

SITE #	REFERENCE ADDRESS	SITE DESCRIPTION(S)
67	SW 224 Street (between SW 87 Avenue & Dead End)	CUL-DE-SAC & SWALES
68	9945 Broad Channel Drive	CUL-DE-SAC & SWALE
69	SW 207 Street (between SW 87 Avenue & SW 80 Court)	CENTER MEDIANS & SWALES
70	SW 99 Avenue (between SW 212 Street & SW 216 Street)	SWALES
71	SW 200 Street & SW 103 Avenue	VACANT LOT ADJACENT TO FOOTBRIDGE
72	Martinique Drive & Anchor Road	DEAD END STREET SWALES
73	18705 SW 99 Road	LANDSCAPED AREA BEHIND GUARDRAIL
74	Marlin Road (bridge) (between Belaire Drive & Sterling Drive)	SWALE - BOTH SIDES (approaching bridge)
75	Caribbean Blvd. Bridge (between SW 103 Avenue & SW 103 Place)	SWALE - BOTH SIDES (approaching bridge)
76	SW 224 Street (between Old Cutler Rd. & SW 97 Avenue)	CENTER MEDIANS & SWALES
77	10201 Bel-view Drive	CUL-DE-SAC & SWALE
78	Gulfstream Rd. (between SW 210 Street to SW 211 Street)	SWALES
79	SW 187 Terrace (between SW 82 Avenue & theoretical SW 83 Ave.	SWALES
80	SW 107 Avenue (between Caribbean Blvd. to SW 211 Street)	SWALES
81	20420 SW 106 Court	CUL-DE-SAC & MONUMENT SIGN AREA
82	SW 196 Street (between Old Cutler Road & Dead end)	SWALES
83	SW 210 Street (between SW 81 Place to theoretical SW 78 Court)	SWALES
84	SW 81 Place between SW 207 Street to SW 210 Street	CENTER MEDIANS & SWALES
85	SW 212 Street (between SW 92 Place & SW 97 Avenue)	SWALES
86	SW 197 Terrace (between SW 78 Place & SW 78 Court)	SWALES
87	SW 78 Court (between 19621 SW 78 Court & dead end)	SWALES
88	SW 232 Street (between SW 87 Avenue & SW 97 Avenue)	SWALE -northside of SW 232 Street only
89	SW 97 Avenue (between SW 224 Street & SW 232 Street)	SWALES
90	SW 92 Avenue (between Old Cutler Road & SW 212 Street)	SWALES



TOWN OF CUTLER BAY  
LANDSCAPE MAINTENANCE SERVICE  
RFP # 09-09  
SCOPE OF SERVICES / PLAN

Clearly describe the methodology which will be used to perform, including a work plan for the scope of services proposed. Include information as to level of staff to be assigned, a list of products/chemicals used including MSDS sheets for each and a list of equipment.

ACCOUNT MANAGER WILL BE ASSIGNED TO THIS PROJECT,  
WILL BE THE MAIN POINT OF CONTACT. MANAGER WILL  
PROVIDE DESIGNATED CITY STAFF WITH WORKING  
SCHEDULE ON CALENDAR WITHIN SCOPE OF SERVICES  
LISTED. MAINTENCE CREWS WILL BE ASSIGNED TO  
THIS PROJECT. ARBOR CREWS WILL BE ASSIGNED  
TO THIS PROJECT. 2-4 MAN FERTILIZATION &  
PEST CONTROL WILL BE ASSIGNED TO THIS  
PROJECT. WEED CONTROL WILL BE HANDLED BY CREW  
FOREMAN AS A LISENCEO APPLICATBO.

\* EQUIPMENT ATTACHED

\* MSDS ATTACHED

Note: Additional sheets may be attached if necessary.



**TOWN OF CUTLER BAY  
LANDSCAPE MAINTENANCE SERVICE  
RFP # 09-09  
PROPOSER'S QUALIFICATIONS**

This section of the proposal should give a description of the firm, including the size, range of activities, and the number of years with relative experience with large accounts. Particular emphasis should be given as to how the firm-wide experience project will be brought to bear on the proposed project.

This section must also identify the contact person and telephone number.

- LUDWIG SABILLON / GENERAL MANAGER 305 636 4241
- DANIEL ROQUE / ACCOUNT MANAGER 305 636 4241
- HUMBERTO PARADA / ACCOUNT MANAGER 305 636 4241

\* COMPANY INFORMATION ATTACHED

- 250(+) EMPLOYEES.

**Note:** Additional sheets may be attached if necessary.

**TOWN OF CUTLER BAY  
LANDSCAPE MAINTENANCE SERVICE  
RFP # 09-09  
PROPOSER'S QUALIFICATIONS (CONTINUED)**

**NOTE:** This statement of Proposers Qualifications **must** be completely filled out, properly executed and returned as part of your proposal.

1. List the true, exact and proper names of the company, partnership, corporation, trade or fictitious name under which you do business and principals by name and titles:

Name of Company: SUPERIOR LANDSCAPING & LAWN SERVICE, INC.

Address: 2200 NW 23<sup>RD</sup> AVE. MIAMI, FL. 33142

Principals: ORLANDO OTERO

Titles: PRESIDENT

MARIA VALDES

SECRETARY

2. a. Are you licensed, as may be required, in the designated area(s) of Miami-Dade County, Florida?

Yes X

No \_\_\_\_\_

- b. List Principals Licensed:

Name(s): ORLANDO OTERO

Title: PRESIDENT

Remarks: \_\_\_\_\_

3. How long has your company been in business and so licensed? 25 YEARS

4. If Proposer is an individual or a partnership, answer the following: N/A

- a. Date of organization: N/A

**TOWN OF CUTLER BAY  
LANDSCAPE MAINTENANCE SERVICE  
RFP # 09-09  
PROPOSER'S QUALIFICATIONS (CONTINUED)**

b. Name, address and ownership units of all partners:

N/A

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c. State whether general or limited partnership:           N/A          

If Proposer is other than an individual, corporation or partnership, describe the organization and give the name and address of principals.

N/A

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5. If Proposer is operating under a fictitious name, submit evidence of compliance with the Florida Fictitious Name Statute.

6. How many years has your organization been in business under its present business name?

N/A

---

---

a. Under what other former names has your organization operated?

N/A

---

---

7. a. Has your company ever failed to complete a bonded obligation or to complete a Contract?

Yes \_\_\_\_\_ No   X

**TOWN OF CUTLER BAY  
LANDSCAPE MAINTENANCE SERVICE  
RFP # 09-09  
PROPOSER'S QUALIFICATIONS (CONTINUED)**

If so, give particulars including circumstances, where and when, name of bonding company, name and address of owner and disposition of matter:

N/A

8. a. List the pertinent experience of the key individuals of your organization (continue on insert sheet, if necessary).

RESUME'S ATTACHED

- b. State the name of the individual(s) and titles that will have personal supervision of the work:

LUDWIG SABILLON - GENERAL MANAGER

DANIEL ROGUE - ACCOUNT MANAGER

HUMBERTO PARADA - ACCOUNT MANAGER

9. List name and title of persons in your company who are authorized to enter into a Contract with the Town of Cutler Bay, Florida for the proposed work should your company be the Successful Proposer.

Name ORLANDO OTERO

Title PRESIDENT

Phone #: 305 634 0717

Email: SUPERLANDSCAPE@BELLSOUTH.NET



**TOWN OF CUTLER BAY  
LANDSCAPE MAINTENANCE SERVICE  
RFP # 09-09  
PROPOSER'S QUALIFICATIONS (CONTINUED)**

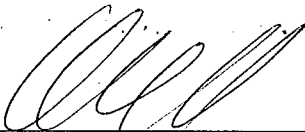
ATTEST:

MARIA VALDES  
Secretary

By ORLANDO OTERO (Seal)  
President

CRAIG OFFUTT  
Witness

DAVID VINCENTS  
Witness

  
Contractor Signature

**END OF SECTION**

**TOWN OF CUTLER BAY  
LANDSCAPE MAINTENANCE SERVICE  
RFP # 09-09  
REFERENCES**

The following is a list of at least four (4) references that Proposer has provided similar service in the past three (3) years. **Government agency references are preferred.**

1. Name of Firm, City, County or Agency: ATTACHED  
Address: \_\_\_\_\_  
Contact: \_\_\_\_\_ Title: \_\_\_\_\_ Telephone : (\_\_\_\_) \_\_\_\_\_  
Location: \_\_\_\_\_ Scope of Work: \_\_\_\_\_  
\_\_\_\_\_
  
2. Name of Firm, City, County or Agency: ATTACHED  
Address: \_\_\_\_\_  
Contact: \_\_\_\_\_ Title: \_\_\_\_\_ Telephone : (\_\_\_\_) \_\_\_\_\_  
Location: \_\_\_\_\_ Scope of Work: \_\_\_\_\_  
\_\_\_\_\_
  
3. Name of Firm, City, County or Agency: ATTACHED  
Address: \_\_\_\_\_  
Contact: \_\_\_\_\_ Title: \_\_\_\_\_ Telephone : (\_\_\_\_) \_\_\_\_\_  
Location: \_\_\_\_\_ Scope of Work: \_\_\_\_\_  
\_\_\_\_\_
  
4. Name of Firm, City, County or Agency: ATTACHED  
Address: \_\_\_\_\_  
Contact: \_\_\_\_\_ Title: \_\_\_\_\_ Telephone : (\_\_\_\_) \_\_\_\_\_  
Location: \_\_\_\_\_ Scope of Work: \_\_\_\_\_  
\_\_\_\_\_

**NOTE:** Additional references may be attached and provided.

**TOWN OF CUTLER BAY  
LANDSCAPE MAINTENANCE SERVICE  
RFP # 09-09  
INDEMNIFICATION CLAUSE**

The parties agree that one percent (1%) of the total compensation paid to Contractor for the work of the contract shall constitute specific consideration to Contractor for the indemnification to be provided under the Contractor. The Proposer shall indemnify and hold harmless the Town Council, the Town of Cutler Bay, and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the work provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.

In any and all claims against the Owner, or any of their agents or employees by any employee of the Proposer, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph shall not be limited in any way by any limitation on this amount or type of damages compensation or benefits payable by or for the Contractor or any subcontractor under Worker's Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts. Nothing in this section shall affect the immunities of the Town pursuant to Chapter 768, Florida Statutes.

ORLANDO OTEYO  
Proposer's Name

[Signature]  
Signature

4-30-09  
Date

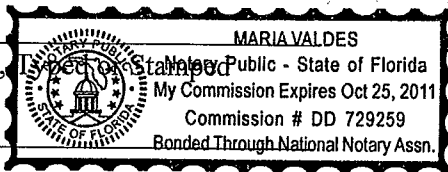
State of: FLORIDA

County of: MIAMI DADE

The foregoing instrument was acknowledged before me this 30 day of April, 2009, by ORLANDO OTEYO, who is (who are) personally known to me or who has produced [Signature] as identification and who did (did not) take an oath.

[Signature]  
Notary Public Signature

Notary Name, Printed:



Commission Number:

My Commission Expires: \_\_\_\_\_





TOWN OF CUTLER BAY  
LANDSCAPE MAINTENANCE SERVICE  
RFP # 09-09  
NON-COLLUSIVE AFFIDAVIT (CONTINUED)

ACKNOWLEDGMENT

State of FLORIDA )

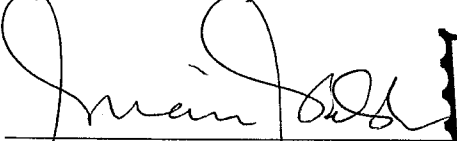
) SS:

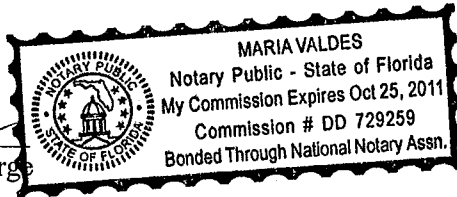
County of MIAMI-DADE

BEFORE ME, the undersigned authority personally appeared ORLANDO OTERO to me well known and known by me to be the person described herein and who executed the foregoing Affidavit and acknowledged to and before me that ORLANDO OTERO executed said Affidavit for the purpose therein expressed.

WITNESS, my hand and official seal this 30 day of April, 2009.

My Commission Expires:

  
\_\_\_\_\_  
Notary Public State of Florida at Large



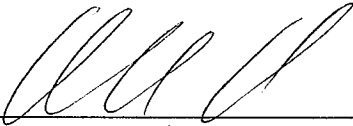
END OF SECTION

**TOWN OF CUTLER BAY  
LANDSCAPE MAINTENANCE SERVICE  
RFP # 09-09  
DRUG-FREE WORKPLACE FORM**

The undersigned vendor in accordance with Florida Statute 287.087 hereby certifies that SUPERIOR  
LANDSCAPING & LAWN SERVICE, INC. does:  
(Name of Business)

- 1) Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
- 2) Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
- 3) Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
- 4) In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
- 5) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
- 6) Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

  
\_\_\_\_\_  
Proposer's Signature

4-30-09  
\_\_\_\_\_  
Date

ORLANDO OTERO  
\_\_\_\_\_  
Print Name

**TOWN OF CUTLER BAY  
LANDSCAPE MAINTENANCE SERVICE  
RFP # 09-09  
SWORN STATEMENT ON PUBLIC ENTITY CRIMES  
SECTION 287.133(3) (a), FLORIDA STATUTES  
(CONTINUED)**

**THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.**

1. This sworn statement is submitted to the Town of Cutler Bay

by ORLANDO OTERO  
[Print individual's name and title]

for SUPERIOR LANDSCAPING & LAWN SERVICE, INC.  
[Print name of entity submitting sworn statement]

whose business address is

2200 NW 23<sup>RD</sup> AVE  
MIAMI, FL. 33142

and (if applicable) its Federal Employer Identification Number (FEIN) is 650838100

(If the entity has no FEIN, include the Social Security Number of the individual

signing this sworn statement: \_\_\_\_\_ )

2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)9g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or the United States, including, but not limited to, any bid or contract for goods and services to be provided to any public entity or an agency or political subdivision of any other state or of the United States involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1) (b), Florida Statutes, means a finding of guilt or a conviction or a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non jury trial, or entry of a plea of guilty or nolo contendere.

4. I understand than an "affiliate" as defined in Paragraph 287.133(1) (a), Florida Statutes, means:

- a) A predecessor or successor of a person convicted of a public entity crime; or
- b) An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. Te term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are

**TOWN OF CUTLER BAY**  
**LANDSCAPE MAINTENANCE SERVICE**  
**RFP # 09-09**  
**SWORN STATEMENT ON PUBLIC ENTITY CRIMES**  
**SECTION 287.133(3) (a), FLORIDA STATUTES**

active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

5. I understand that a "person" as defined in Paragraph 287.133(1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an entity.

6. Based on information and belief, the statement that I have marked below is true in relation to the entity submitting this sworn statement. **[Indicate which statement applies.]**

Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, not any affiliate of the entity, has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

This entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

the entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. **[Attach a copy of the final order]**

**TOWN OF CUTLER BAY  
LANDSCAPE MAINTENANCE SERVICE  
RFP # 09-09  
SWORN STATEMENT ON PUBLIC ENTITY CRIMES  
SECTION 287.133(3) (a), FLORIDA STATUTES**

**I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND HAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.**

  
\_\_\_\_\_

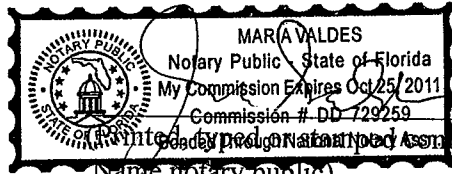
Sworn to and subscribed before me this 30 day of April, 2009.

Personally known ORLANDO OTERO

OR produced identification \_\_\_\_\_ Notary Public – State of FLORIDA

\_\_\_\_\_  
(Type of identification)

My commission expires 10/25/2011



(Printed by notary public)  
(Name notary public)

**END OF SECTION**

SECTION V

TOWN OF CUTLER BAY  
LANDSCAPE MAINTENANCE SERVICE  
RFP # 09-09  
BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, Superior Landscaping & Lawn Service, Inc.

as Principal and Contractor, and The Hanover Insurance Company

Hereinafter called Surety, are held and firmly bound unto Town of Cutler Bay, a political subdivision of the State of Florida, and represented by its Town Manager, in the sum of five (5) percent (%) of the proposed annual base bid amount of:

SEVENTY FIVE THOUSAND & FIFTY DOLLARS

(Written Dollar Amount)

dollars (\$ 75,050.<sup>00</sup>) lawful money of the United States of America, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally by these presents.

WHEREAS, the Principal contemplates submitting or has submitted, a bid to the Town of Cutler Bay for the furnishing of all labor, materials (except those to be specifically furnished by the Town), equipment, machinery, tools, apparatus, means of transportation for, and the performance of the work covered in the bid and the detailed Drawings and Specifications, entitled:

TOWN OF CUTLER BAY  
LANDSCAPE MAINTENANCE SERVICES  
RFP # 09-09

WHEREAS, it was a condition precedent to the submission of said bid that a cashier's check, certified check, or bid bond in the amount of 5% of the proposal amount be submitted with said bid as a guarantee that the Proposer would, if awarded the Contract, enter into a written Contract with the Town for the performance of said Contract, within ten (10) consecutive calendar days after written notice having been given of the award of the Contract.

NOW, THEREFORE, the conditions of this obligation are such that if the Principal within ten (10) consecutive calendar days after written notice of such acceptance, enters into a written Contract with the Town of Cutler Bay and furnishes the Performance Bond, in an amount equal to one hundred percent of the annual base bid amount, satisfactory to the Town, then this obligation shall be void; otherwise the sum herein stated shall be due and payable to the Town of Cutler Bay and the Surety herein agrees to pay said sum immediately upon demand of the Town in good and lawful money of the United States of America, as liquidated damages for failure thereof of said Principal.

IN WITNESS WHEREOF, the said Superior Landscaping & Lawn Service, Inc.

as Principal herein, has caused these presents to be signed in its name by its \_\_\_\_\_

\_\_\_\_\_ and attested by its \_\_\_\_\_

\_\_\_\_\_ under its corporate seal, and the said The Hanover Insurance

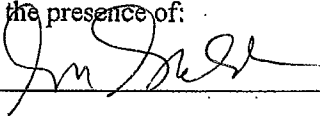
Company \_\_\_\_\_ as Surety herein, has caused these presents to be signed in its name by its

\_\_\_\_\_ Attorney in Fact

and attested in its name by its Power of Attorney \_\_\_\_\_ under its

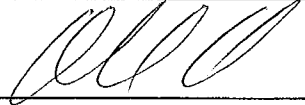
corporate seal, this 1st day of May A.D., 2009.

Signed, sealed and delivered  
in the presence of:

  
\_\_\_\_\_

As to Principal

PRINCIPAL: Superior Landscaping & Lawn Service, Inc.

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

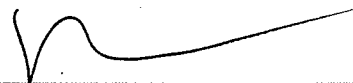
NAME: Orlando Steno  
\_\_\_\_\_

The Hanover Insurance Company

Surety 

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

Attorney-in-Fact Brett Rosenhaus  
(Power-of-Attorney to be attached)

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

Resident Agent Brett Rosenhaus

As Per Attached Power of Attorney

As to Surety

END OF SECTION



THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

POWERS OF ATTORNEY  
CERTIFIED COPY

KNOW ALL MEN BY THESE PRESENTS: That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, do hereby constitute and appoint **Brett Rosenhaus and/or Jason Katz**

of **Lake Worth, FL** and each is a true and lawful Attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, or, if the following line be filled in, only within the area therein designated

any and all bonds, recognizances, undertakings, contracts of indemnity or other writings obligatory in the nature thereof, as follows:  
**Any such obligations in the United States, not to exceed Twenty Five Million and No/100 (\$25,000,000) in any single instance**

and said companies hereby ratify and confirm all and whatsoever said Attorney(s)-in-fact may lawfully do in the premises by virtue of these presents. These appointments are made under and by authority of the following Resolution passed by the Board of Directors of said Companies which resolutions are still in effect:

"RESOLVED, That the President or any Vice President, in conjunction with any Assistant Vice President, be and they are hereby authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by a Vice President and an Assistant Vice President, this **15th** day of **September 2008**.



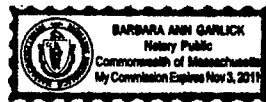
THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

*Mary Jeanne Anderson*  
Mary Jeanne Anderson, Vice President

*Robert K. Grennan*  
Robert K. Grennan, Assistant Vice President

THE COMMONWEALTH OF MASSACHUSETTS )  
COUNTY OF WORCESTER ) ss.

On this **15th** day of **September 2008**, before me came the above named Vice President and Assistant Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



*Barbara A. Garlick*  
Notary Public

My commission expires on November 3, 2011

I, the undersigned Assistant Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America.

"RESOLVED, That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or any Vice President in conjunction with any Assistant Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this **1<sup>ST</sup>** day of **may**, 20**09**

THE HANOVER INSURANCE COMPANY  
MASSACHUSETTS BAY INSURANCE COMPANY  
CITIZENS INSURANCE COMPANY OF AMERICA

*Stephen L. Braut*  
Stephen L. Braut, Assistant Vice President

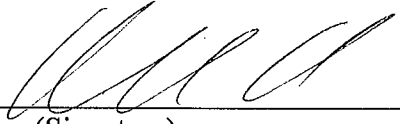
TOWN OF CUTLER BAY  
LANDSCAPE MAINTENANCE SERVICE  
RFP # 09-09  
ADDENDUM ACKNOWLEDGEMENT FORM

Addendum # Date Received

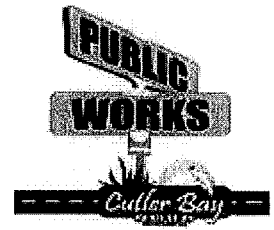
#1 - April 3, 2009	
#2 - April 21, 2009	

Proposer:

SUPERIOR LANDSCAPING & LAWN SERVICE, INC.  
(Company Name)

  
(Signature)

ORLANDO OTENO & PRESIDENT  
(Printed Name & Title)



## **ADDENDUM NO. 1**

**RFP # 09-09  
LANDSCAPE MAINTENANCE SERVICE  
APRIL 3, 2009**

**PROJECT TITLE: Town of Cutler Bay  
RFP # 09-09  
Landscape Maintenance Service**

This addendum forms a part of the Contract Documents and modifies the original Contract Documents as noted. Acknowledge receipt of this Addendum on Page 53 of 64 of the Request for Proposal. Failure to do so may subject the bidder to disqualification.

### **REVISION TO ORIGINAL RFP DOCUMENTS**

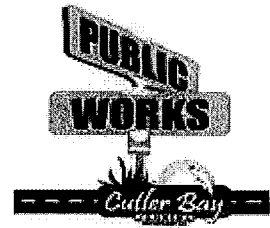
#### **PART 2 EXECUTION**

##### **2.01 MEASURE AND PAYMENT**

- A.** The cost shall include a fixed amount per the Bid Form.
- B.** Use of the allocation account shall be for unforeseeable conditions, for construction changes and for availability adjustments, if ordered and authorized by the Town. At the closeout of contract, monies remaining in the contingency allowance will be credited to the Owner by change order.
- C.** The fixed amount will be ~~\$10,000~~ **\$8,000** per year and will be added to the proposer's base bid price.

**END OF SECTION**

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## ADDENDUM NO. 2

RFP # 09-09  
LANDSCAPE MAINTENANCE SERVICE  
APRIL 21, 2009

**PROJECT TITLE: Town of Cutler Bay  
RFP # 09-09  
Landscape Maintenance Service**

This addendum forms a part of the Contract Documents and modifies the original Contract Documents as noted. Acknowledge receipt of this Addendum on Page 53 of 64 of the Request for Proposal. Failure to do so may subject the bidder to disqualification.

### REVISION TO ORIGINAL RFP DOCUMENTS

#### **I. Clarification of Section 2.14- Potholes**

2.14 The contractor may from time to time, on an emergency basis, repair potholes and shoulder of road utilizing rock and asphalt as directed by the Public Works Director or his designee. **The labor and material cost for the required repairs shall be paid for on a separate "work order" basis.**

Page 19 of 64

#### **II. Addition of Site #91 on Landscape RFP Sites**

SITE #	REFERENCE ADDRESS	SITE DESCRIPTION(S)
91	8280 SW 186 Street	CUL-DE-SAC

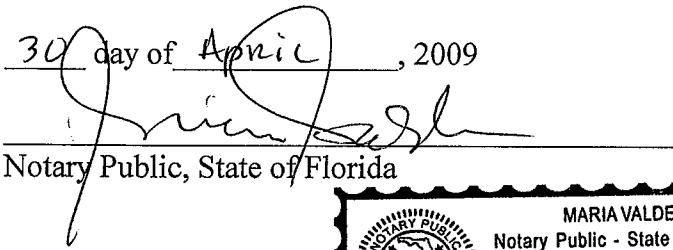
TOWN OF CUTLER BAY  
LANDSCAPE MAINTENANCE SERVICE  
RFP # 09-09  
ANTI-KICKBACK AFFIDAVIT

STATE OF FLORIDA                            }  
  } SS:  
COUNTY OF MIAMI-DADE                }

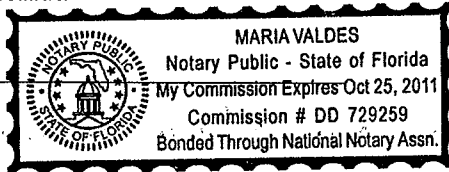
I, the undersigned, hereby duly sworn, depose and say that no portion of the sum herein bid will be paid to any employees of the Town of Cutler Bay, its elected officials, and Superior Landscaping & Lawn Service, Inc. or its design consultants, as a commission, kickback, reward or gift, directly or indirectly by me or any member of my firm or by an officer of the corporation.

By: Orlando Otero  
Title: President

Sworn and subscribed before this

30 day of April, 2009  
  
\_\_\_\_\_  
Notary Public, State of Florida

(Printed Name)



My commission expires: \_\_\_\_\_

**SECTION VII  
TOWN OF CUTLER BAY  
LANDSCAPE MAINTENANCE SERVICE  
RFP # 09-09  
ALLOWANCES**

PART 1 SCOPE OF WORK

1.01 DEFINITION

Included in the contract sum is an allocation account for unforeseen conditions, quantity adjustments, and additional work that the Town may deem necessary if ordered and authorized by the Town through the issuance of a "Work Order".

1.02 ALLOWANCE ACCOUNT

Monies in the allocation account will be used only on issuance of "Work Orders", approved by the Town Manager or his designee.

1.03 SELECTION OF PRODUCTS UNDER ALLOWANCES

Town Manager or his designee duties:

1. Consult with the Contractor in consideration of products and supplier or installers or changes in quantities of contract items.
2. Make selection in consultation with the contractor, designating:
  - a. Product, model and/or class of materials.
  - b. Accessories and attachments.
  - c. Supplier and installer as applicable.
  - d. Cost to Contractor, delivered to the site or installed, as applicable.
  - e. Warranties
  - f. Quantities
3. Transmit Town's decision to the Contractor.
4. Prepare change orders.

Contractor's Duties:

1. Assist Town Manager or his designee in determining qualified suppliers, quantities or subcontractor.
2. Obtain proposals from a minimum of three (3) suppliers and/or subcontractors when requested by Town Manager or his designee.
3. Make appropriate recommendations for consideration of the Town Manager or his designee.

4. Notify Town Manager or his designee promptly of:
  - a. Any reasonable objections Contractor may have against any supplier, or party under consideration for installation.
  - b. Any effect on the construction schedule anticipated by selection under consideration.

1.04 CONTRACTOR RESPONSIBILITY FOR PURCHASE, DELIVERY AND INSTALLATION

- A. On notification of selection, execute purchase agreement with designated suppliers and/or subcontractors.
- B. Arrange for and process shop drawings, product data and samples, as required.
- C. Make all arrangements for delivery.
- D. Upon delivery, promptly inspect products for damage or defects.
- E. Submit claims for transportation damage.
- F. Install and finish products in compliance with requirements of referenced specification sections, including restoration.

1.05 ADJUSTMENT OF COSTS

- A. Should the net cost be more or less than the specified amount of the allowance, the contract sum will be adjusted accordingly by change order. Should work be changed by change order:
  1. The amount of the change order will recognize any changes in handling costs at the site, equipment, labor, installation costs, overhead, profit, and other expenses caused by the change order.
  2. For products specified under a unit cost in the change order schedule of values, the unit cost shall apply to the additional quantities actually used.
- B. Submit any claims for anticipated additional costs at the site, or other expenses caused by the selection under the allowance, prior to execution of the work.
- C. Failure to submit claims within the designated time will constitute a waiver of claims for additional costs.
- D. At contract closeout, reflect all approved changes in contract amounts in the final statement of accounting.

PART 2 EXECUTION

2.01 MEASURE AND PAYMENT

- A. The cost shall include a fixed amount per the Bid Form.
- B. Use of the allocation account shall be for unforeseeable conditions, for construction changes and for availability adjustments, if ordered and authorized by the Town. At the closeout of contract, monies remaining in the contingency allowance will be credited to the Owner by change order.
- C. The fixed amount will be \$ 10,000 per year and will be added to the proposer's base bid price.

**END OF SECTION**

**[SPACE LEFT INTENTIONALLY BLANK]**



**SECTION VIII  
TOWN OF CUTLER BAY  
LANDSCAPE MAINTENANCE SERVICE  
RFP # 09-09**

**AGREEMENT  
LANDSCAPE MAINTENANCE SERVICE**

THIS AGREEMENT is made this 30<sup>th</sup> day of APRIL, 2009 by and between the Town of Cutler Bay, Florida (the "Town") and Superior Landscaping (the "Contractor").

The parties, for the consideration provided for below, mutually agree as follows:

1.1.1 **SCOPE OF WORK**- The Contractor shall furnish all labor, materials, supervision, equipment, supplies, and incidentals required to perform the scope of work as outlined in the Detailed Specifications of this Agreement, attached hereto as Exhibit "A" (the "Work").

1.2 **COMPENSATION/PAYMENT**-

1.2.1 Contractor shall provide the Town with an invoice on a monthly basis within ten (10) days of the end of each month stating the services provided in the preceding month.

1.2.2 The Town shall make payment on said invoices of approved amounts due, as required under the Florida Prompt Payment Act. No payments shall be due or payable for Work not performed or materials not furnished. If there is a dispute with regard to an invoice, the Town may withhold payment until all requested supporting materials are received from Contractor and the dispute is resolved.

1.2.3 Contractor shall be compensated at the unit prices specified in the Bid Proposal, attached hereto as Exhibit "B", based upon the actual Work completed for the month. The total compensation under this Agreement shall not exceed \$ 75,050.00 (the "Agreement Sum").

1.3 **TERM**- This Agreement shall be effective upon execution by both parties and shall continue for a term of three (3) years. At its sole discretion, the Town shall have an option to renew this Agreement upon the same terms and conditions for up to two (2) additional years (the "Option"). This Option may be exercised at the sole discretion of the Town Manager. Such extension shall be effective upon receipt of a written notice from the Town Manager to the Contractor received no later than 30 days prior to the date of termination.

1.4 **PROTECTION OF PROPERTY AND THE PUBLIC**- The Contractor shall continuously maintain adequate protection of all his Work from damage and shall protect public and private property from injury or loss arising in connection with this Agreement as follows:

1.4.1 The Contractor shall take all necessary precautions for the safety of employees in the performance of the Work on, about or adjacent to the work sites, and shall comply with all applicable provisions of Federal, State, and local laws, including, but not limited to the requirements of the Occupational Safety

and Health Act of 1970, and amendments thereto, and building codes to prevent accidents or injury to persons on, about or adjacent to the work site where the Work is being performed.

1.4.2 The Contractor shall erect and properly maintain at all times, all necessary safeguards, including sufficient lights and danger signals on or near the Work, from sunset to sunrise, suitable railings, barricades, or other hazards or other protective devices about unfinished work, open trenches, embankments, or other hazards and obstructions to traffic; provide all necessary security staff on the Work by day or by night for the safety of the public; and take all necessary precautions to prevent accidents and injuries to persons or property on or near the Work.

1.4.3 The Contractor shall be completely responsible for, and shall replace and make good all loss, injury, or damage to any property (including landscaping, walks, drives, or structures of the Town and of any land adjoining the work site), which may be caused by Contractor. The Contractor shall, at all times while the Work is in progress, use extraordinary care to see that adjacent property, whether real or personal, is not endangered in any way by reason of fire, water, or construction operations, and shall take all necessary or directed steps, to protect the property.

1.4.4 Buildings, sidewalks, fences, shade trees, lawns and all other improvements shall be duly protected from damage by Contractor. Property obstructions, such as sewers, drains, water or gas lines, conduits, railroads, poles, walls, posts, galleries, bridges, manholes, valve boxes, meter boxes, street monuments, etc., shall be carefully protected from injury and shall not be displaced. The Contractor shall give due notice to any department or public service corporation controlling such items as manholes, valve boxes, meter boxes, street monuments, etc., prior to adjusting them to grade and shall be held strictly liable to the affected utility if any such appliances are disturbed, damaged or covered up during the course of the Work.

## 1.5 INDEMNIFICATION-

1.5.1 The parties agree that 1% of the total compensation paid to the Contractor for the performance of this agreement shall represent the specific consideration for the Contractor's indemnification of the Town as set forth in this Section 1.5 and in the Terms and Conditions.

1.5.2 To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless the Town and their consultants, agents and employees from and against any and all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of attorneys and other professionals and court costs) arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting there from and (b) is caused in whole or in part by any willful and wanton or negligent or gross negligent acts or omission of Contractor, any subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.

1.6 **AGREEMENT DOCUMENTS**- The following documents shall, by this reference, be considered part of this Contract:

Instructions to Proposers;  
All Addendums;  
Contract Agreement;  
Proposal;  
Detailed Specifications;  
Qualification Statement;  
Public Entity Crime Form;  
Insurance Certificates

1.7 **CONTRACTOR'S EMPLOYEES**-

1.7.1 The Contractor shall at all times have a competent English speaking supervisor on site who thoroughly understands the Work, who shall, as the Contractor's agent, supervise, direct and otherwise conduct the Work. Contractor's employees shall serve the public in a courteous, helpful, and impartial manner.

1.7.2 Contractor's employees shall wear a clean uniform that provides identification of both the Contractor's company and the name of the employee.

1.7.3 Contractor shall, upon receipt of a written request from the Town, immediately exclude any employee of Contractor from providing Work under this Agreement.

1.7.4 The Work contemplated in this Agreement is on public property, accordingly no alcoholic beverages shall be allowed.

1.7.5 All references in this Agreement to the Contractor shall include Contractor's employees or subcontractors, wherever applicable.

1.8 **VEHICLES AND EQUIPMENT**- Contractor shall have on hand at all times and in good working order such vehicles, machinery, tools, accessories, and other items necessary to perform the Work under this Agreement. All vehicles used by Contractor to provide services under this Agreement shall be painted uniformly with the name of Contractor, business telephone number, and the number of the vehicle in letters legible by the public. The Town may require the repair or replacement of equipment as reasonably necessary. No other advertising shall be permitted on the vehicles. A magnetic sign displaying the Town of Cutler Bay Logo and a caption noting "Public Works" will be required on vehicles at all times.

1.9 **INSURANCE**- The Contractor shall secure and maintain throughout the duration of this Agreement, insurance of such type and in such amounts necessary to protect its interest and the interest of the Town against hazards or risks of loss as specified below. The underwriter of such insurance shall be qualified to do business in Florida, be rated AB or better, and have agents upon whom service of process may be made in the State of Florida. The insurance coverage shall be primary insurance with respect to the Town, its officials, employees, agents and volunteers. Any insurance maintained by the Town shall be in excess of the Contractor's insurance and shall not contribute to the Contractor's insurance. The insurance coverages shall include a minimum of:

1.9.1 **Worker's Compensation and Employer's Liability Insurance:** Coverage to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$500,000.00 each accident.

1.9.2 **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the Contractor and the Town against claims for injuries to members of the public and/or damages to property of others arising from the Contractor's use of motor vehicles or any other equipment and shall cover operation with respect to onsite and offsite operations and insurance coverage shall extend to any motor vehicles or other equipment irrespective of whether the same is owned, non-owned, or hired. The limit of liability shall not be less than \$2,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.

1.9.3 **Commercial General Liability.** This insurance shall be written in comprehensive form and shall protect the Contractor and the Town against claims arising from injuries to members of the public or damage to property of others arising out of any act or omission to act of the Contractor or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$2,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent contractors and Products and/or completed Operations; (3) Broad Form Property Damage, Personal Injury and a Contractual Liability Endorsement, including any hold harmless and/or indemnification agreement.

1.9.4 **Certificate of Insurance:** Contractor shall provide the Town Manager with Certificates of Insurance for all required policies. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this Agreement and shall state that such insurance is as required by this Agreement. The Town reserves the right to require the Contractor to provide a certified copy of such policies, upon written request by the Town. If a policy is due to expire prior to the completion of the services, renewal Certificates of Insurance or policies shall be furnished thirty (30) calendar days prior to the date of their policy expiration. Each policy certificate shall be endorsed with a provision that not less than thirty (30) calendar days' written notice shall be provided to the Town before any policy or coverage is cancelled or restricted. Acceptance of the Certificate(s) is subject to approval of the Town Manager.

1.9.5 **Additional Insured** - The Town is to be specifically included as an Additional Insured for the liability of the Town resulting from operations performed by or on behalf of Contractor in performance of this Agreement. Contractor's insurance, including that applicable to the Town as an Additional Insured, shall apply on a primary basis and any other insurance maintained by the Town shall be in excess of and shall not contribute to Contractor's insurance. Contractor's insurance shall contain a severability of interest provision providing that, except with respect to the total limits of liability, the insurance shall apply to each Insured or Additional Insured in the same manner as if separate policies had been issued to each. All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The Contractor shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim.

1.10 **ASSIGNMENT AND AMENDMENT-** No assignment by the Contractor of this Agreement or any part of it, or any monies due or to become due, shall be made, nor shall the Contractor hire a subcontractor to perform its duties under this Agreement without prior written approval of the Town. This Agreement may only be amended, by the parties, with the same formalities as this Agreement.

1.11 **TERMINATION**

1.11.1 Either party may terminate this Agreement without cause upon 30 days written notice to the other party.

1.11.2 Upon notice of such termination, the Town shall determine the amounts due to the Contractor for services performed up to the date of termination. The Contractor shall not be entitled to payment of any lost profits or for Work performed after the date of termination.

1.11.3 After receipt of a notice of termination, and except as otherwise directed, the Contractor shall stop all Work under this Agreement, and shall do so on the date specified in the notice of termination.

1.11.4 The Town may terminate this Agreement upon five (5) days written notice if the Contractor defaults on any material term of this Agreement.

1.12 **GOVERNING LAW**- The law of the State of Florida shall govern the contract between the Town of Cutler Bay and the successful proposer and any action shall be brought in Miami-Dade County, Florida. In the event of litigation to settle issues arising hereunder, the prevailing party in such litigation shall be entitled to recover against the other party its costs and expenses, including reasonable attorney fees, which shall include any fees and costs attributable to appellate proceedings arising on and of such litigation.

1.14 **ACCESS TO PUBLIC RECORDS**- The Contractor shall comply with the applicable provisions of Chapter 119, Florida Statutes. The Town shall have the right to immediately terminate this Agreement for the refusal by the Contractor to comply with Chapter 119, Florida Statutes. The Contractor shall retain all records associated with this Agreement for a period of three (3) years from the date of Termination.

1.15 **INSPECTION AND AUDIT**- During the term of this Agreement and for three (3) years from the date of termination the Contractor shall allow Town representatives access, during reasonable business hours, to Contractor's and, if applicable, subcontractor's records related to this Agreement for the purposes of inspection or audit of such records. If upon audit of such records, the Town determines the Contractor was paid for services not performed, upon receipt of written demand by the Town, the Contractor shall remit such payments to the Town.

1.16 **SEVERABILITY**- If a term, provision, covenant, contract or condition of this contract is held to be void, invalid, or unenforceable, the same shall not affect any other portion of this Agreement and the remainder shall be effective as though every term, provision, covenant, contract or condition had not been contained herein.

1.17 **WAIVER OF JURY TRIAL** - The parties irrevocably, knowingly agree to waive their rights to a trial by jury in any action to enforce the terms or conditions of this Agreement.

1.18 **COUNTERPARTS** - This Agreement may be signed in one or more counterparts, each of which when executed shall be deemed an original and together shall constitute one and the same instrument.

1.19 **INDEPENDENT CONTRACTOR** – It is expressly agreed and understood that the Contractor shall be in all respects an independent contractor as to Work, and that Contractor is in no respect an agent, servant or employee of the Town. Accordingly, Contractor shall not attain, nor be entitled to, any rights or benefits of the Town, nor any rights generally afforded classified or unclassified employees. Contractor further understands that Florida Worker's Compensation benefits available to employees of the Town are not available to Contractor, and agrees to provide worker's compensation insurance for any employee or agent of Contractor rendering services to the Town under this Agreement.

All employees and subcontractors of the Contractor shall be considered to be, at all times, the sole employees or contractors of Contractor, under its sole discretion and not an employee, contractor or agent of the Town.

- 1.20 **ACCIDENT PREVENTION AND REGULATIONS** – Precautions shall be exercised at all times for the protection of persons and property. The Contractor and subcontractors shall conform to all OSHA, Federal, State, County and Town regulations while performing under the terms and conditions of this Agreement. Any fines levied by the above-mentioned authorities, because of inadequacies to comply with these requirements, shall be borne solely by Contractor responsible for same.
- 1.21 **BACKGROUND CHECKS** - The Contractor will be responsible for maintaining current background checks on all employees and subcontractor employees involved in the performance of this Work. Background checks must be performed prior to the performance of any Work by the employee under this Agreement. Written verification of any background checks must be provided to the Town at the request of the Town Manager.
- 1.23 **LAWS, RULES & REGULATIONS** - Contractor shall be held responsible for any violation of laws, rules, regulations or ordinances affecting in any way the conduct of all persons engaged in or the materials or methods used by him, on the Work. Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work under this Agreement. Contractor shall secure all permits, fees, licenses, and inspections necessary for the execution of the Work, and upon termination of this Agreement for any reason, Contractor shall transfer such permits, if any, and if allowed by law, to the Town.
- 1.24 **POLICY OF NON-DISCRIMINATION** - The Contractor shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work and shall not discriminate on the grounds of race, color, religion, sex, age, marital status, national origin, physical or mental disability in the performance of work under this Agreement.
- 1.25 **NON-WAIVER**- The approval, and/or acceptance of any part of the Work by the Town shall not operate as a waiver by Town of any other terms and conditions of the Agreement.
- 1.26 **NOTICES**- Whenever any party is required to give or deliver any notice to any other party, or desires to do so, such notices shall be sent via certified mail or hand delivery to:

Town:

Town of Cutler Bay  
10720 Caribbean Blvd., Suite# 105  
Cutler Bay, FL 33189  
Attention: Town Clerk

Contractor:

SUPERIOR LANDSCAPING & LAWN SERVICE, INC.  
2200 NW 23<sup>RD</sup> AVE.  
MIAMI, FL. 33142

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

Attest:

TOWN OF CUTLER BAY

By: \_\_\_\_\_  
Erika Gonzalez-Santamaria, CMC, Town Clerk

By: \_\_\_\_\_  
Steven J. Alexander – Town Manager

By: \_\_\_\_\_  
Town Attorney

Town Resolution # \_\_\_\_\_

Signed, sealed and witnessed in the presence of:

CONTRACTOR:

By: \_\_\_\_\_

By: \_\_\_\_\_

(\* In the event that the Contractor is a corporation, there shall be attached to each counterpart a certified copy of a resolution of the board of the corporation, authorizing the officer who signs the contract to do so in its behalf.

**END OF DOCUMENT**

## **\* The Twenty Most Influential Reasons: WHY SUPERIOR?**

1. We have been providing landscaping & customer service since 1982
2. Knowledge of position in the Marketplace; with “competitive pricing”
3. Fully licensed & insured company for any size project; with bonding capacity
4. Employee licensed with many industry affiliations & organizations
5. Company and Employee Involvement in Industry Associations
6. All Landscaping and many other additional services are provided in-house
7. Statewide vendor resources
8. Ability to promote long-term partnerships; having many customers for 10(+) years
9. Providing services to all markets in the industry – diverse portfolio
10. Sheer Dedication of owner & staff to provide 100% customer satisfaction
11. Company Wide Drug Free Policy
12. Ability to provide daily, weekly and or monthly property reports
13. Providing Bi-lingual Account Managers as a main point of contact
14. Communication with 2-way radio systems and email capacity
15. Flexibility of scheduling for any emergencies and or events
16. Flexibility & Resources to handle a short start up time
17. Current Office Locations in SE & SW Florida; Capacity to service entire State
18. Equipment & Vehicles kept clean and in great working condition
19. Ability to work with owners/agents in meeting budgetary constraints for property improvements
20. Promoting efforts of improving the quality of life in our communities



## Company Summary

Since 1982, the founder of Superior Landscaping has been creating Landscape Solutions for clients across The State of Florida. Superior is a complete Landscaping & Lawn Maintenance Company that can accommodate projects of any size depending on your need. Services include; Lawn Maintenance, Landscape & Irrigation Install, Mulch, Arbor, Fertilization & Pest Control.

Our services are currently being performed throughout Southeast and Southwest Florida for all market sectors.

The Miami Airport, City of Miami Beach, The Marriott Airport, City of Bonita Springs, & Boynton Beach Mall are just a few of the Signature Projects that our services are currently being performed on.

The Primary objective for Superior Landscaping & Lawn Service, Inc. is to provide 100% customer satisfaction by delivering quality service with a unique personal touch. Focusing on building and continuing long-term partnership's while providing services that are reliable, flexible, and always on the cutting edge.

Because every customers needs are different, Superior Landscaping has developed a "Landscape Assurance Plan". This plan allows each customer to reach goals they have set forth for their property and gives them the assurance that all needs will be met professionally and thoroughly.

"We welcome the opportunity to prove ourselves!"

**Miami Dade County Office Location:**

2200 NW 23<sup>rd</sup> Ave  
Miami, Fl. 33142

## Support Services

Not only is Superior Landscaping & Lawn Service, Inc. a Full Service Landscaping Company but a General Contracting Company as well. Being licensed as a state of Florida General Contractor; Superior Landscaping now offers a wide array of services to many of our existing customer base as well as new customers.

The below list describes many of the additional support services that we are now providing:

1. Hurricane Emergency Cleanup
2. Concrete Work
3. Asphalt Work
4. Pavers
5. Plumbing Work
6. Electrical Work
7. Janitorial
8. Pressure Cleaning
9. Security/Privacy Fencing
10. Fountains
11. Obtain Permits
12. Closing of Permits
13. Rental Equipment
14. General Earthwork
15. Aquatics
16. Interior Plant Maintenance

The advantage of allowing Superior Landscaping & Lawn Service, Inc. to provide you with services for all or any of the above are many. We would be pleased to take the responsibility of maintaining and protecting your investment as your "preferred vendor". Simply call or email us with your contact information and we'll promptly get in touch with you to discuss your needs. We look forward to the potential of building a long-term partnership with you and your property.

**Credit & Banking References**

Bank of America  
Isabel Reyes  
2195 SW 8 Street  
Miami, Fl. 33135  
305 643-5500

Bank of America  
Irum Kothari, Sr. V.P., Business Banking  
7760 W Flagler, 2nd Floor  
Miami, FL 33144  
Phone 888 852-5000, Ext 3254

Florida Mulch  
4754 N. Kenansville Road  
St Cloud, FL 34773  
866 796-8524 -Mike

Florida Irrigation Supply  
300 Central Park Drive  
Sanford, FL 32771  
NEED PHONENUMBER- Mike

Marian Gardens Tree Farms  
619 W. State Road 50  
Groveland, FL 34736  
352-429-4151 -Jennifer & Sharon

All Dade Lawnmowers  
PO Box 226500  
Miami, FL 33222  
305-223-7884 -David

Villa & Son Nursery  
20451 SW 216 Street  
Miami, FL 33170  
305-245-2055

Bamboo Hammocks  
16991 SW 266 Terrace  
Homestead, Fl. 33031  
305-248-7301



**NIELSON, ROSENHAUS & ASSOCIATES**

February 26, 2009

Superior Landscaping & Lawn Service, Inc.  
2200 NW 23 Avenue  
Miami, FL 33142

Re: Superior Landscaping & Lawn Service, Inc.  
Statement of Bondability

To Whom It May Concern:

This is to advise that we are the bonding agents for Superior Landscaping & Lawn Service, Inc. through The Hanover Insurance Company. We have had the privilege of providing Bid, Performance, and Payment Bonds for The Hanover Insurance Company. for many years; we hold them in the highest regard and consider them to be among our finest clients.

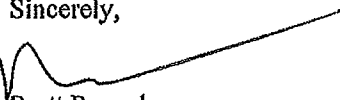
We obviously reserve the right to review final contractual documents, bond forms and obtain satisfactory evidence of funding prior to final commitment to issue bonds.

Superior Landscaping & Lawn Service, Inc. is an excellent contractor and we hold them in highest regard. We feel extremely confident in our contractor and encourage you to offer them an opportunity to execute any upcoming projects.

This letter is not an assumption of liability, nor is it a bid or performance and payment bond. It is issued only as a bonding reference requested by our respected client.

If you should have any questions, please do not hesitate to give me a call.

Sincerely,

  
Brett Rosenhaus  
Florida Resident Agent

4000 South 57th Avenue  
Suite 201  
Lake Worth, FL 33463  
P: 561.432.5550  
F: 561.432.5442  
[www.nielsonbonds.com](http://www.nielsonbonds.com)

SMART. UNCOMPROMISING. TIMELY. EFFECTIVE. NIELSON & COMPANY, INC. SURETY SOLUTIONS THAT MAKE A DIFFERENCE.



# **SUPERIOR**

**LANDSCAPING & LAWN SERVICE, INC**

PO BOX 35-0095, Miami, Fl. 33135-0095

Ph: (305) 634-0717 Fx: (305) 634-0744

## **REFERENCES**

### **City of Cape Coral**

1015 Cultural Park blvd  
Cape Coral, Fl. 33990  
Contact: Mike Webster  
Ph:(239) 574 0440  
Fax (239) 574 0452

### **Miami Dade County**

Contact: Alfredo Rivero  
Ph: (305) 270-1791  
Fax (305) 275-1116

### **City of Miami Beach**

2100 Meridian Avenue  
Miami Beach, Fl. 33139  
Contact: Mille McFadden  
Ph: (305) 673-7720  
Fax (305)-673-7392

### **City of Coral Springs**

9551 W Sample Rd  
Coral Springs, Fl. 33065  
Ph: (954) 344 1165

Contact: Dave Baker

### **City of Sunrise**

6466 NW 20th Street  
Sunrise, Fl. 33313  
Contact: William Ginter  
Ph: (954) 572-2385  
Fax (954) 749-4078

### **City of Bonita Springs**

9101 Bonita Beach Rd  
Bonita Springs, Fl.34135  
Contact: David Liccardi  
Ph: (239) 949-6246  
Fax (239) 949- 6245

### **Adler Group**

1200 NW 78<sup>th</sup> Avenue, Suite 109  
Miami, Fl. 33126  
Contact: Van L. Antle  
Ph: (305) 590-1111 ext. 222  
Fax: (305) 590-1636  
[vantle@adlergoup.com](mailto:vantle@adlergoup.com)

### **Flamingo Resort**

1500 Bay Road, Suite One  
Miami Beach, Fl. 33139  
Contact: Sara Griffin  
Ph: (305) 535 - 4800  
[sara.griffin@aimco.com](mailto:sara.griffin@aimco.com)

## Employee Contact List

<u>First &amp; Last Name</u>	<u>Job Title</u>	<u>Dept</u>	<u>Contact</u>
Orlando Otero	President	Executive	305 636 4241
Betsy Quevedo	Office Manager	Executive	305 636 4241
Maria Valdes	Secretary/Acct	Executive	305 636 4241
Craig Offutt	Director of Sales	Executive	305 636 4241
David Vincent	Asst. Business Dev.	Executive	305 636 4241
Ludwig Sabillon	General Manager	Maintenance	305 636 4241
Luis Rivera	Account Manager	Maintenance	305 634 0717
Bernard Levy	Irrigation Manager	Maintenance	305 634 0717

\*Cellular Phones & 2 way Radios available upon request

Orlando Otero



President





# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID CA  
SUPER-8

DATE (MM/DD/YYYY)  
11/26/08

**PRODUCER**

Insurance Marketers, Inc.  
2600 Douglas Road Suite 712  
Coral Gables FL 33134  
Phone: 305-442-9507 Fax: 305-447-8527

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

**INSURED**

Superior Landscaping & Lawn Services, Inc.  
P.O. Box 35-0095  
Miami FL 33135

**INSURERS AFFORDING COVERAGE**

NAIC #

INSURER A: The Hartford Ins. Companies.  
INSURER B:  
INSURER C:  
INSURER D:  
INSURER E:

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSURANCE LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	<b>GENERAL LIABILITY</b>				EACH OCCURRENCE \$
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$
	<input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR				MED EXP (Any one person) \$
					PERSONAL & ADV INJURY \$
					GENERAL AGGREGATE \$
					PRODUCTS - COMP/OP AGG \$
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				
	<b>AUTOMOBILE LIABILITY</b>				COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				
	<b>GARAGE LIABILITY</b>				AUTO ONLY - EA ACCIDENT \$
	<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY: EA ACC \$
					AGG \$
	<b>EXCESS/UMBRELLA LIABILITY</b>				EACH OCCURRENCE \$
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$
					\$
	DEDUCTIBLE				\$
	RETENTION \$				\$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>	B34001208	12/01/08	12/01/09	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT \$ 1000000
	If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE \$ 1000000
	OTHER				E.L. DISEASE - POLICY LIMIT \$ 1000000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS**

Coverages are subject to the terms, conditions, deductibles and exclusions as show on the policy. \* 10 days notice of cancellation for non payment of premium.

**CERTIFICATE HOLDER**

**CANCELLATION**

00000-1

FOR INFORMATION PURPOSE ONLY

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30\* DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Certificate

Submit Request Change Cert Holder Add Cert Holder

Bottom of Form

Help

Service Menu

Template Dates:

11/7/2008 - 11/7/2009

**CERTIFICATE OF LIABILITY INSURANCE**

**Producer**  
 Hub International Fortun  
 365 Palermo Avenue  
 Coral Gables, FL 33134-6607

**Insured**  
 Superior Landscaping & Lawn Service, Inc.  
 2200 NW 23rd Avenue  
 Miami FL 33142

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies below.

**Insurers Affording Coverage**

COMPANY A	WR BERKLEY CORP	NAIC #	981
COMPANY B	Wesco Insurance Company		
COMPANY C	Travelers Insurance Co. (CL)		
COMPANY D			
COMPANY E			

**Coverages**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Insr Ltr	Add Ins	Type of Insurance	Policy Number	Policy Effective Date	Policy Expiration Date	Limits
A	X	<b>GENERAL LIABILITY</b> X Com Gen Liab Claims Made X Occurrence Gen Agg Lmt Applies Per: Policy X Project Location	PSP0006407-00	11/7/2008	11/7/2009	Each Occurrence 1,000,000 Damage to Rented Premises (Ea Occurrence) 100,000 Med Exp (any one person) 5,000 Personal & Adv Injury 1,000,000 General Aggregate 2,000,000 Products-Comp/OP Agg 2,000,000 Pesticide/Herb 1,000,000
B	X	<b>AUTOMOBILE LIABILITY</b> X Any Auto All Owned Autos Scheduled Autos X Hired Autos X Non-Owned Autos  <b>GARAGE LIABILITY</b> Any Auto	WPP1011946-00	11/7/2008	11/7/2009	Combined Single Limit (Ea accident) 1,000,000 Bodily Injury (Per person) Bodily Injury (Per accident) Property Damage (Per accident)  Auto Only- Ea Accident Other Than Ea Acc Auto Only: Agg
C	X	<b>EXCESS LIABILITY</b> Claims Made X Occurrence Deductible X Retention 10,000  <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> Any Proprietor/Partner Executive/Officer/Member Excluded?  <b>OTHER</b>	QK06502023	11/7/2008	11/7/2009	Each Occurrence 5,000,000 Aggregate 5,000,000  WC Statutory Limits Other E.L. Each Accident E.L. Disease Ea Employee E.L. Disease Ea Policy Limit

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT SPECIAL PROVISIONS  
 Description of Ops. will be a combination of the following  
 Agency Specific Portion



STATE OF FLORIDA

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD  
1940 NORTH MONROE STREET  
TALLAHASSEE FL 32399-0783

(850) 487-1395

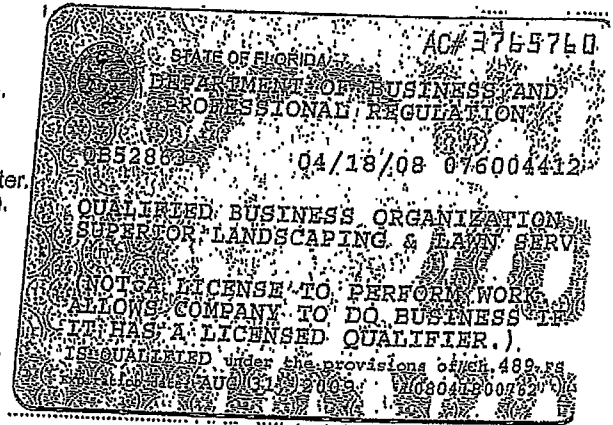
*Dan Whelan*

SUPERIOR LANDSCAPING & LAWN SERVICE INC  
PO BOX 35-0095  
MIAMI FL 33135-0095

Congratulations! With this license you become one of the nearly one million Floridians licensed by the Department of Business and Professional Regulation. Our professionals and businesses range from architects to yacht brokers, from boxers to barbeque restaurants, and they keep Florida's economy strong.

Every day we work to improve the way we do business in order to serve you better. For information about our services, please log onto [www.myfloridalicense.com](http://www.myfloridalicense.com). There you can find more information about our divisions and the regulations that impact you, subscribe to department newsletters and learn more about the Department's Initiatives.

Our mission at the Department is: License Efficiently; Regulate Fairly. We constantly strive to serve you better so that you can serve your customers. Thank you for doing business in Florida, and congratulations on your new license!



DETACH HERE

765760

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
CONSTRUCTION INDUSTRY LICENSING BOARD

DATE	BATCH NUMBER	LICENSE NUMBER	SEQ#
12/2008	07600442	0652863	L08041800762

BUSINESS ORGANIZATION  
SUPERIOR LANDSCAPING & LAWN SERVICE INC  
2216 NW 23RD AVENUE  
MIAMI FL 33142

NOT A LICENSE TO PERFORM WORK. THIS LICENSE ONLY ALLOWS COMPANY TO DO BUSINESS IF IT HAS A LICENSED QUALIFIER.  
ISSUED under the provisions of ch. 489, FS  
EXPIRES AUGUST 18, 2008

VOID

AC# 3884630

STATE OF FLORIDA

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
CONSTRUCTION INDUSTRY LICENSING BOARD

SEQ# L08073100875

DATE	BATCH NUMBER	LICENSE NBR
07/31/2008	080067621	CBC1256466

The BUILDING CONTRACTOR  
Named below IS CERTIFIED  
Under the provisions of Chapter 489 FS.  
Expiration date: AUG 31, 2010

WHELAN, DANIEL JOSEPH  
SUPERIOR LANDSCAPING & LAWN SERVICE INC  
937 MANDARIN ISLE  
FORT LAUDERDALE FL 33315-1640

CHARLIE CRIST  
GOVERNOR

CHARLES W. DRAGO  
SECRETARY

DISPLAY AS REQUIRED BY LAW

State of



Florida

Department of Agriculture and Consumer Services  
Bureau of Entomology and Pest Control

**CERTIFIED PEST CONTROL OPERATOR**

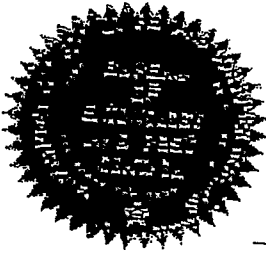
Number: JE158556

LUDWIG R. SABILON

*This is to Certify that the individual named above is a Certified Pest Control Operator and is privileged to practice*

*Lawn and Ornamental*

*in conformity with an Act of the Legislature of the State of Florida regulating the practice of Pest Control and imposing penalties for violations.*



*Charles H. Bronson*

Charles H. Bronson  
Commissioner of Agriculture

*In Testimony Whereof, Witness this signature at Tallahassee, Florida on April 3, 2008*

*Michael Day*  
Chief of Bureau of Entomology and Pest Control



South Florida Chapter

## CERTIFICATE OF COMPLETION

This certifies that

*Julio Valdes*

*Superior Landscaping & Lawn Service*

has successfully completed

### Workzone Traffic Control: Intermediate Level

Expiration Date 5/16/2010

*Ralph Kindig Jr.*  
Instructor

5/16/2006

Completion Date

# UNIVERSITY OF MISSISSIPPI

hereby confers upon  
**Edwin Thomas Baldwin**

the degree of  
**Bachelor of Science**  
**College of Agriculture and Life Sciences**

together with all the honors, privileges and obligations thereto appertaining.  
In testimony whereof, the seal of the University and the signatures of its officers are hereunto affixed this sixth day of August, nineteen hundred ninety-nine.



*R. G. Bennett*  
President of the Board of Trustees

*Walter D. Perkins*  
President of the University



*W. W. F. [Signature]*  
Dean of the College of Agriculture and Life Sciences



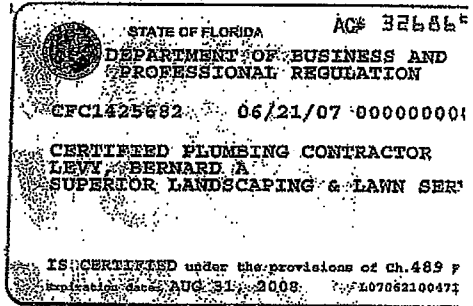
STATE OF FLORIDA

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

CONSTRUCTION INDUSTRY LICENSING BOARD  
1940 NORTH MONROE STREET  
TALLAHASSEE FL 32399-0783

(850) 487-1395

LEVY, BERNARD A  
SUPERIOR LANDSCAPING & LAWN SERVICE INC  
11231 SW 1ST COURT  
PLANTATION FL 33325



DETACH HERE

AC# 3268695

STATE OF FLORIDA

DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
CONSTRUCTION INDUSTRY LICENSING BOARD

SEQ# E0706210047

DATE	BATCH NUMBER	LICENSE NBR
06/21/2007	000000000	CFCL425682

The PLUMBING CONTRACTOR  
Named below IS CERTIFIED  
Under the provisions of Chapter 489 FS.  
Expiration date: AUG 31, 2008

LEVY, BERNARD A  
SUPERIOR LANDSCAPING & LAWN SERVICE INC  
11231 SW 1ST COURT  
PLANTATION FL 33325





The Florida Nursery, Growers & Landscape Association  
Confers on

Ludwig Sabillon

Certificate No. H08 5969

*The Title of*  
**ENGLA Certified Horticulture Professional (FCHP)**



December 31, 2008  
Expiration Date

November 2005  
Certified Since

*Richard L. Brown*  
*Joseph B. P.*

*Ben Brinkley*  
*Henry Hill*



The Florida Nursery, Growers & Landscape Association  
*Confers on*

Craig Offutt

Certificate No. HC1 5982

*The Title of*

FNGLA Certified Horticulture Professional (FCHP)



December 31, 2011  
Expiration Date  
November, 2005  
Certified Since

*Rosemary Warner*

*Ben Stanley*

*Lois Lee*

*Henry Holt*



Certificate #

GV3789-1

Pinhole ID #

GV3789

### Certificate of Training

## Best Management Practices Florida Green Industries

UNIVERSITY OF  
**FLORIDA**  
IFAS EXTENSION

The undersigned hereby acknowledges that

**Jerome Kasprzyk**

has successfully met all requirements necessary to be fully trained through the Green Industries Best Management Practices Program developed by the Florida Department of Environmental Protection with the University of Florida Institute of Food and Agricultural Sciences.

Dr. L.R. Trenholm

Issuer

Mitchell

Instructor

11/23/2008

Date of Class



Chip Program Administrator

Not valid without seal

INTERNATIONAL SOCIETY OF ARBORICULTURE

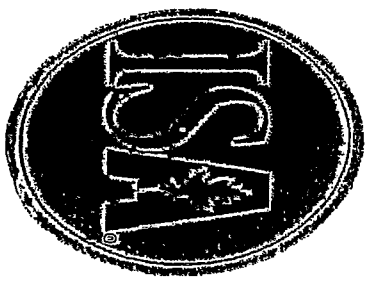
# Certified Arborist

*Gustavo E. Valdes*

Having successfully completed the requirements set by the Arborist Certification Board of the International Society of Arboriculture, the above named is hereby recognized as an ISA Certified Arborist



Jim Shiera, Executive Director  
International Society of Arboriculture



FL-5774A      Nov 17, 2007      Dec 31, 2010  
Certification Number      Certification Date      Expiration Date

**Florida Department of Agriculture and Consumer Services**

**Pesticide Certification Office  
Commercial Applicator License  
License # CM19191**

**VALDES, GUSTAVO E**

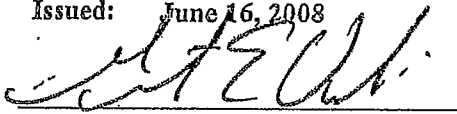
22300 SW 177TH AVE  
HOMESTEAD, FL 33170

Categories

5A, 6

Issued: June 16, 2008

Expires: June 30, 2012



Signature of Licensee



CHARLES H. BRONSON, COMMISSIONER.

The above individual is licensed under the provisions of Chapter 487, F.S. to purchase and apply restricted use pesticides.

Florida Department of Agriculture and Consumer Services

License Categories

- |                            |                               |
|----------------------------|-------------------------------|
| 1A1 Ag Row Crop            | 5B Organotin Paint            |
| 1A2 Ag Tree Crop           | 6 Right of Way                |
| 1B Ag Animal               | 7A Wood Treatment             |
| 1C Private Applicator Ag   | 7B Chlorine Gas Infusion      |
| 1D Soil and Greenhouse Fum | 7C Sewer Root Control         |
| 1E Raw Ag Commodity Fum    | 9 Regulatory Pest Control     |
| 2 Forest Pest Control      | 10 Demonstration and Research |
| 3 Ornamental and Turf      | 11 Aerial Application         |
| 4 Seed Treatment           | 20 Regulatory Insp. and Samp  |
| 5A Aquatic Pest Control    | 21 Natural Areas Weed Mgmt    |

For information, call (850) 488-3314



5440 NW 33<sup>rd</sup> Avenue Suite 106  
Ft. Lauderdale, Florida 33309  
(954) 677-1200 Phone  
(954) 677-1201 Fax

October 22, 2007

To Whom it May Concern:

Total Compliance Network implemented a State of Florida Drug Free Workplace Program for the company listed below. TCN also provided the below-indicated services. If you have any questions, please feel free to contact me at my office, (800) 881-4826.

Company Name: Superior Landscaping & Lawn Service, Inc.  
Address: 2200 NW 23<sup>rd</sup> Ave.  
Miami, FL 33142  
Telephone #: (305) 634-0717  
Contact Person: Sal Rassi

Date TCN Implemented program with the above contact person: October 2007

TCN provided the above-named company with a Compliance Manual which includes:

1. An Employee handbook containing company policy and all necessary information (i.e., Information on where to seek help, medications that affect the outcome of a drug test, etc.).
2. Initial 60-day Drug Free Workplace notification.
3. Employee agreement forms, including company disciplinary action.
4. A Supervisor's handbook.
5. Information to post in conspicuous locations (signs, posters).
6. Additional forms and agreements (rehabilitation, notification of positive test results, etc.).

TCN has also set up a drug screen collection site, AHCA or NIDA certified testing laboratory, on-staff Medical Review Officer, results reporting (telephone and hard copy) and billing.

TCN has instructed the above-named contact person on the following procedures:

1. Distribution of 60-day Drug Free Workplace notification.
2. Conducting the Employee meeting including distribution of Employee handbook, educational material and collection of signed paperwork.
3. Drug testing requirements and procedures for testing:
  - a. Job Applicants
  - b. Post-accident
  - c. Reasonable suspicion
  - d. Return-to-work
  - e. Random (if applicable).
  - f. Routine fitness-for-duty.

TCN will also continue to act as a consultant for any questions regarding this program, but will not be held responsible for any company's negligence or inability to perform the State of Florida Drug Free Workplace requirements using TCN or TCN materials.

Total Compliance Network Representative  
Nick Mirowsky

SUPERIOR LANDSCAPING LAWN SERVICE, INC.  
Asset Listing at 10/31/2006

Description	S/N or VIN	Asset Code	Truck #	Life	Date Purch/Sold		Total Price	Deprec 200	Purch From
New Holland Sick Steer Loader Lx885	116813	834		5	5/3/1999	25,500.00	1,785.00	27,285.00	Purch From
New Holland Pallet Fork Set 48" PFS	4190	808		5	5/3/1999	750.00	62.50	812.50	FORTRAC
New Holland Tree Boom	4181	809		5	5/3/1999	750.00	62.50	812.50	FORTRAC
John Deere 310G Backhoe	TO310GX936687			5	8/4/2004				FORTRAC
Caterpillar 432D Backhoe	WEP00872			5	7/3/2005				
2007 Astec RT660X Trencher/loader	RT660X44161			5	1/1/2007	60,000.00	4,200.00	64,200.00	Masters Equipment, Tamarac
2007 Caterpillar 420E IT Backhoe Loader	KMW00828			5	11/1/2006	84,797.79	5,935.85	90,733.64	Kelly Tractor, Miami, FL
Arrowmaster WAALV15SB (Golf Cart)	07931B2			5	6/1/2003	500.00	35.00	535.00	RSI Holdings of Florida
Jacobson 1994 2015 Truck (Golf Cart)	1927			5	6/1/2003	500.00	35.00	535.00	RSI Holdings of Florida
Mobark 2004 Model 13 Chipper	23966			5	9/1/2004	30,000.00	1,800.00	31,800.00	Gator Power
Mobark 2004 Model 13 Chipper	23908			5	6/30/2004	30,000.00	1,800.00	31,800.00	Gator Power
Morhart 2005 Model 13 Chipper	24044			5	8/28/2005	34,000.00	2,210.00	36,210.00	Bobcat of Broward
Morhart 2006 Model 15 Chipper	489S2161W024228			5	11/3/2005	33,800.00	2,501.12	36,301.12	Bobcat of Broward
New Holland Auger 36"		847						284,703.64	Gator Power
Pallet Jack		806							
Ingersoll Rand Air Compressor		831							
Hydro Tek 3000 PSI @ 8.0 GPM (25HP) Hydrowasher	1199BST256661120669				7/10/2006				
Equipment									
2.5 GPM @ 2700 PSI Pressure Cleaner	S/N 1577542	951		3	8/15/2005	419.99	29.40	449.39	Northern
Spreader Rotary HW SS 80: w/Deflector Kit	S/N 706699612710042			3	12/8/2006	397.25	29.79	427.04	Lesco
Bench Grinder	S/N 135086			3	12/23/2003	319.99	22.40	342.39	
Carlton 72" Shingle Attachment- New Holland	S/N 9811223C1167037			3	10/20/2005	3,400.00	204.00	3,604.00	Growers Equipment
Vermeer 2003 Stump Grinder- Gas/Kohler	S/N 1VR1102WN41000752			3	9/10/2004	13,000.00	780.00	13,780.00	Bobcat of West Palm Beach
Vermeer Trencher Model RT450	S/N TD239018			3	2/1/2006	12,900.00		12,900.00	June Wheelright- Stuart Flor
Ditch Witch 1820H Walk Behind Trencher 2001	S/N 1V0863	928		3	2/24/2006	27,820.00	1,820.00	29,640.00	GTT Company- Douglas, G
Dixie Chopper 60" Flat Lander Riding Mower	S/N 2034764	718	8	3	4/16/2004	5,900.00	404.00	6,304.00	MTI Equipment, Inc.
Echo Blower- Model PB651T: 63cc	S/N 6003140			1	9/10/2004	399.99	28.00	427.99	All Dade
Echo Blower- Model PB651T: 63cc	S/N 6003325	931		1	9/10/2004	399.99	28.00	427.99	All Dade
Echo Blower- Model PB651T: 63cc	S/N 6003318	766		1	9/10/2004	399.99	28.00	427.99	All Dade
Echo Blower- Model PB651T: 63cc	S/N 6003309	757		1	9/10/2004	399.99	28.00	427.99	All Dade
Echo Blower- Model PB651T: 63cc	S/N 6006982	755		1	3/31/2005	399.99	28.00	427.99	All Dade
Echo Blower- Model PB651T: 63cc	S/N 6006979	924		1	3/31/2005	399.99	28.00	427.99	All Dade
Echo Blower- Model PB651T: 63cc	S/N 6006973	723		1	3/31/2005	399.99	28.00	427.99	All Dade
Echo Blower- Model PB651T: 63cc	S/N 6006986	859		1	3/31/2005	399.99	28.00	427.99	All Dade
Echo Blower- Model PB651T: 63cc	S/N 6006987			1	3/31/2005	399.99	28.00	427.99	All Dade
Echo Blower- Model PB651T: 63cc	S/N 6006976	947		1	3/31/2005	399.99	28.00	427.99	All Dade
Echo Blower- Model PB651T: 63cc	S/N 6007600	947		1	3/31/2005	399.99	28.00	427.99	All Dade
Echo Blower- Model PB651T: 63cc	S/N 6010559	947		1	8/27/2005	599.99	42.00	641.99	All Dade
Echo PPT260 Power Pruner 26cc	S/N 6011872	947		1	8/27/2005	599.99	42.00	641.99	All Dade
Echo PPT260 Power Pruner 26cc	S/N 6012136			1	8/27/2005	599.99	42.00	641.99	All Dade
Echo PPT260 Power Pruner 26cc	S/N 6011875			1	8/27/2005	599.99	42.00	641.99	All Dade
Echo PPT260 Power Pruner 26cc	S/N 6012148			1	8/27/2005	599.99	42.00	641.99	All Dade
Echo Blower- Model PB651T: 63cc	S/N 6005082			1	7/6/2005	399.99	28.00	427.99	All Dade
Echo Blower- Model PB651T: 63cc	S/N 6008053			1	7/6/2005	399.99	28.00	427.99	All Dade
Echo Blower- Model PB651T: 63cc	S/N 6008054			1	7/6/2005	399.99	28.00	427.99	All Dade
Echo Blower- Model PB651T: 63cc	S/N 6008054			1	7/6/2005	399.99	28.00	427.99	All Dade
Echo Blower- Model PB651T: 63cc	S/N 6008055			1	7/6/2005	399.99	28.00	427.99	All Dade
Echo Blower- Model PB651T: 63cc	S/N 6008141			1	7/6/2005	399.99	28.00	427.99	All Dade
Echo Blower- Model PB650T	S/N 5007421			1	9/7/2004	399.99	28.00	427.99	All Dade
Echo Blower- Model PB650T	S/N 5007429	780		1	9/7/2004	399.99	28.00	427.99	All Dade
Echo Blower- Model PB650T	S/N 5007413	732		1	9/7/2004	399.99	28.00	427.99	All Dade
Echo Blower- Model PB650T	S/N 5007416	743		1	9/7/2004	399.99	28.00	427.99	All Dade
Echo Blower- Model PB230LN: 23cc	S/N 6011279			1	3/31/2005	175.99	12.32	188.31	All Dade
Echo Blower- Model PB651T	S/N 6010525			1	10/25/2005	399.99	28.00	427.99	All Dade
Echo Blower- Model PB651T	S/N 6010386			1	10/25/2005	399.99	28.00	427.99	All Dade

SUPERIOR LANDSCAPING LAWN SERVICE, INC.  
Asset Listing at 10/31/2006

Description	S/N or VIN	Asset Code	Truck #	Life	Date Purch/Sold	Total Price	Deprec 200	Purch From
Echo Blower- Model PB651T	S/N 6010408			1	10/25/2005	399.99	28.00	427.99
Echo Blower- Model PB651T	S/N 6010566			1	10/25/2005	399.99	28.00	427.99
Echo Blower- Model PB651T	S/N 6010572			1	10/25/2005	399.99	28.00	427.99
Echo Blower- Model PB651T	S/N 6010548			1	10/25/2005	399.99	28.00	427.99
Echo Blower- Model PB651T	S/N 6010551			1	10/25/2005	399.99	28.00	427.99
Echo Blower- Model PB651T	S/N 6010398			1	10/25/2005	399.99	28.00	427.99
Echo Blower- Model PB651T	S/N 6010528			1	10/25/2005	399.99	28.00	427.99
Echo Blower- Model PB651T	S/N 6007604			1	8/27/2005	399.99	28.00	427.99
Echo Blower- Model PB651T	S/N 6007605			1	8/27/2005	399.99	28.00	427.99
Echo Blower- Model PB651T	S/N 6007606			1	8/27/2005	399.99	28.00	427.99
Echo Blower- Model PB651T	S/N 6007608			1	8/27/2005	399.99	28.00	427.99
Echo Blower- Model PB651T	S/N 6007610			1	8/27/2005	399.99	28.00	427.99
Echo Chain Saw- Model 340-16	S/N 03019895			1	4/2/2003	259.95	18.20	278.15
Echo Chain Saw- Model 340-16	S/N 03013257			1	9/9/2003	259.95	18.20	278.15
Echo Chain Saw- Model 340-16	S/N 03019850		10	1	9/9/2003	259.95	18.20	278.15
Echo Chain Saw- Model 340-16	S/N 03019893		10	1	9/9/2003	259.95	18.20	278.15
Echo Chain Saw- Model 340-14	S/N 30198881	841		1	4/12/2004	249.99	17.50	267.49
Echo Chain Saw- Model 340-14	S/N 3020048		23	1	4/12/2004	249.99	17.50	267.49
Echo Chain Saw- Model 341-14	S/N 3026711		23	1	6/22/2004	259.99	18.20	278.19
Echo Chain Saw- Model 341-14	S/N 2029020			1	7/16/2004	269.99	18.90	288.89
Echo Chain Saw- Model 341-14	S/N 2025639			1	7/16/2004	269.99	18.90	288.89
Echo Chain Saw- Model 341-14	S/N 2032877			1	8/31/2004	259.99	18.20	278.19
Echo Chain Saw- Model 341-14	S/N 2032863	774		1	8/31/2004	259.99	18.20	278.19
Echo Chain Saw- Model 341-14	S/N 2032600			1	8/31/2004	259.99	18.20	278.19
Echo Chain Saw- Model 341-14	S/N 2032569			1	8/31/2004	259.99	18.20	278.19
Echo Chain Saw- Model 341-14	S/N 2032874			1	8/31/2004	259.99	18.20	278.19
Echo Chain Saw- Model 341-14	S/N 2032876			1	8/31/2004	259.99	18.20	278.19
Echo Chain Saw- Model 341-14	S/N 2033681			1	7/6/2005	239.99	16.80	256.79
Echo Chain Saw- Model CS330T-16	S/N 7013232			1	10/26/2005	207.99	14.56	222.55
Echo Chain Saw- Model CS330T-16	S/N 7013247			1	10/26/2005	207.99	14.56	222.55
Echo Chain Saw- Model CS330T-16	S/N 7013246			1	10/26/2005	207.99	14.56	222.55
Echo Chain Saw- Model CS330T-16	S/N 7013259			1	10/26/2005	207.99	14.56	222.55
Echo Chain Saw- Model CS330T-16	S/N 7013250			1	10/26/2005	207.99	14.56	222.55
Echo Chain Saw- Model CS330T-16	S/N 7013229			1	10/26/2005	207.99	14.56	222.55
Echo Chain Saw- Model CS330T-16	S/N 7013166			1	10/26/2005	207.99	14.56	222.55
Echo Chain Saw- Model CS440-18	S/N 7013243			1	10/26/2005	207.99	14.56	222.55
Echo Chain Saw- Model CS440-18	S/N 8037033			1	10/25/2005	239.99	16.80	256.79
Echo Chain Saw- Model CS440-18	S/N 8037035			1	10/25/2005	239.99	16.80	256.79
Echo Chain Saw- Model CS440-18	S/N 8036864			1	10/25/2005	239.99	16.80	256.79
Echo Chain Saw- Model CS440-18	S/N 8037055			1	10/25/2005	239.99	16.80	256.79
Echo Chain Saw- Model CS440-18	S/N 8037026			1	10/25/2005	239.99	16.80	256.79
Echo Chain Saw- Model CS440-18	S/N 8037020			1	10/25/2005	239.99	16.80	256.79
Echo Chain Saw- Model CS440-18	S/N 8037029			1	10/25/2005	239.99	16.80	256.79
Echo Chain Saw- Model CS520-20	S/N 8036863			1	8/27/2005	303.99	21.28	325.27
Echo Chain Saw- Model CS520-20	S/N 5015663			1	8/27/2005	303.99	21.28	325.27
Echo Chain Saw- Model CS520-20	S/N 5015600			1	8/27/2005	303.99	21.28	325.27
Echo Chain Saw- Model CS520-20	S/N 5014563			1	8/27/2005	303.99	21.28	325.27
Echo Chain Saw- Model CS520-20	S/N 5014552			1	8/27/2005	303.99	21.28	325.27
Echo Chain Saw- Model CS520-20	S/N 5014559			1	8/27/2005	303.99	21.28	325.27
Echo Chain Saw- Model CS520-20	S/N 5014560			1	8/27/2005	303.99	21.28	325.27
Echo Chain Saw- Model CS520-20	S/N 5014581			1	8/29/2005	303.99	21.28	325.27
Echo Chain Saw- Model CS520-20	S/N 5014663			1	8/29/2005	303.99	21.28	325.27
Echo Chain Saw- Model CS520-20	S/N 5014798			1	10/26/2005	303.99	21.28	325.27
Echo Chain Saw- Model CS520-20	S/N 5014794			1	10/26/2005	303.99	21.28	325.27
Echo Chain Saw- Model CS520-20	S/N 5014796			1	10/26/2005	303.99	21.28	325.27



SUPERIOR LANDSCAPING LAWN SERVICE, INC.  
Asset Listing at 10/31/2006

Description	S/N or VIN	Asset Code	Truck #	Life	Date Purch/Sold			Total Price	Deprac 200	Purch From
Echo Chain Saw- Model CS520-20	S/N 5014809			1	10/26/2005	303.99	21.28	325.27		All Dade
Echo Chain Saw- Model CS670-24	S/N 3016768			1	8/27/2005	383.99	26.88	410.87		All Dade
Echo Chain Saw- Model CS670-24	S/N 3016768			1	8/27/2005	383.99	26.88	410.87		All Dade
Echo Chain Saw- Model CS670-24	S/N 3016407			1	8/25/2005	383.99	26.88	410.87		All Dade
Echo Chain Saw- Model CS8000-32	S/N 80003259			1	8/25/2005	789.99	55.30	845.29		All Dade
Echo Chain Saw- Model CS360T-14	S/N 9009552			1	8/27/2005	239.99	16.80	256.79		All Dade
Echo Chain Saw- Model CS360T-14	S/N 9009536			1	8/27/2005	239.99	16.80	256.79		All Dade
Echo Chain Saw- Model CS360T-14	S/N 9008896			1	8/27/2005	239.99	16.80	256.79		All Dade
Echo Chain Saw- Model CS360T-14	S/N 9009532			1	8/27/2005	239.99	16.80	256.79		All Dade
Echo Chain Saw- Model CS360T-14	S/N 9009520			1	8/27/2005	239.99	16.80	256.79		All Dade
Echo Chain Saw- Model CS360T-14	S/N 9008592			1	8/29/2005	239.99	16.80	256.79		All Dade
Echo Chain Saw- Model CS360T-14	S/N 9008592			1	8/29/2005	239.99	16.80	256.79		All Dade
Echo SHC260 Shaft Hedge Clipper	S/N 6005015			1	7/6/2005	335.99	23.52	359.51		All Dade
Echo SHC260 Shaft Hedge Clipper	S/N 6005076			1	7/6/2005	335.99	23.52	359.51		All Dade
Echo SHC260 Shaft Hedge Clipper	S/N 6005085			1	7/6/2005	335.99	23.52	359.51		All Dade
Echo SHC260 Shaft Hedge Clipper	S/N 6005082			1	7/6/2005	335.99	23.52	359.51		All Dade
Echo SHC260 Shaft Hedge Clipper	S/N 6005314			1	9/19/2005	335.99	23.52	359.51		All Dade
Echo SHC260 Shaft Hedge Clipper	S/N 6005245			1	9/19/2005	335.99	23.52	359.51		All Dade
Echo SHC260 Shaft Hedge Clipper	S/N 6005238			1	9/19/2005	335.99	23.52	359.51		All Dade
Echo SHC260 Shaft Hedge Clipper	S/N 6005763			1	9/19/2005	335.99	23.52	359.51		All Dade
Echo SHC260 Shaft Hedge Clipper	S/N 6005785			1	9/19/2005	335.99	23.52	359.51		All Dade
Echo SHC260 Shaft Hedge Clipper	S/N 6005352			1	9/19/2005	335.99	23.52	359.51		All Dade
Echo OO-EXT Polesaw	S/N 1142			1	11/20/1998	559.00	22.61	345.61		All Dade
Echo										
F C85 Edger	S/N 260666704		21	1	6/10/2003	323.00	22.61	345.61		Joe Blair
FC85 Edger	S/N 260715635		32	1	6/11/2003	310.00	21.70	331.70		Joe Blair
HYPRO Pump w/control kit (Sprayer)				1	8/7/2003	551.05	38.57	589.62		Joe Blair
LW HO Blower 13HP Honda	S/N 1040605605			3	9/7/2004	1,349.95	94.50	1,444.45		All Dade
LW HO Blower 13HP Honda	S/N 1040613030			3	8/27/2005	1,399.95	98.00	1,497.95		All Dade
REEL CUT Mower	S/N 3862		Shop	3		600.00	42.00	642.00		All Dade
SCAG 61" 27 HP Mower- Model STT61A-27KA	S/N 8521080			3	4/12/2003	7,840.05	548.74	8,388.79		All Dade
SCAG 61" 27 HP Mower- Model STT61A-27KA	S/N 8521336			3	4/12/2003	7,840.05	548.74	8,388.79		All Dade
SCAG 61" 27 HP Mower- Model STT61A-27KA	S/N 8521339			3	4/12/2003	7,840.05	548.74	8,388.79		All Dade
SCAG 61" 27 HP Mower- Model STT61A-27KA	S/N 8521553			3	4/12/2003	7,840.05	548.74	8,388.79		All Dade
SCAG 61" 27 HP Mower- Model STT61A-27KA	S/N 8521574			3	4/12/2003	7,840.05	548.74	8,388.79		All Dade
SCAG 61" 27 HP Mower- Model STT61A-27KA	S/N 9390075			3	3/22/2004	7,919.99	554.40	8,474.39		All Dade
SCAG 61" 27 HP Mower- Model STT61A-27KA	S/N 9390645			3	6/22/2004	7,919.99	0.00	7,919.99		All Dade
SCAG 61" 27 HP Mower- Model STT61A-27KA	S/N 9390646			3	6/22/2004	7,919.99	0.00	7,919.99		All Dade
SCAG 61" 27 HP Mower- Model STT61A-27KA	S/N 9391047			3	6/22/2004	7,919.99	0.00	7,919.99		All Dade
SCAG 61" ADVY 29 HP Mower- Model STT61A-29KADFI	S/N 9400438			3	8/4/2004	8,320.00	582.40	8,902.40		All Dade
SCAG 61" ADVY 29 HP Mower- Model STT61A-29KADFI	S/N 9400443			3	8/4/2004	8,320.00	582.40	8,902.40		All Dade
SCAG 61" ADVY 29 HP Mower- Model STT61A-29KADFI	S/N 6500267			3	3/31/2005	8,960.00	627.20	9,587.20		All Dade
SCAG 61" ADVY 29 HP Mower- Model STT61A-29KADFI	S/N 6500421			3	3/31/2005	8,960.00	627.20	9,587.20		All Dade
SCAG 61" ADVY 29 HP Mower- Model STT61A-29KADFI	S/N 6500852			3	3/31/2005	8,960.00	627.20	9,587.20		All Dade
SCAG 61" ADVY 29 HP Mower- Model STT61A-29KADFI	S/N 6500509			3	3/31/2005	8,960.00	627.20	9,587.20		All Dade
SCAG 61" ADVY 29 HP Mower- Model STT61A-29KADFI	S/N A6501235			3	9/19/2005	8,960.00	627.20	9,587.20		All Dade
SCAG 61" ADVY 29 HP Mower- Model STT61A-29KADFI	S/N A6501235			3	9/19/2005	8,960.00	627.20	9,587.20		All Dade
SCAG 48" 19 HP Mower- Model STC48A-19KA	S/N 9251367			3	3/22/2004	5,850.00	409.50	6,259.50		All Dade
SCAG 48" 19 HP Mower- Model STC48A-19KA	S/N 9251625			3	3/22/2004	5,850.00	409.50	6,259.50		All Dade
SCAG 48" 19 HP Mower- Model STC48A-19KA	S/N 9256383			3	8/4/2004	5,850.00	409.50	6,259.50		All Dade
Shindaiwa T270A Trimmer	S/N 1124737			1	9/4/2002	0.00	0.00	0.00		???
Shindaiwa T270A Trimmer	S/N 2070656			1	6/11/2003	377.00	26.39	403.39		Joe Blair
Shindaiwa T270A Trimmer	S/N 2070648			1	8/22/2003	377.00	26.39	403.39		Joe Blair
Shindaiwa T270A Trimmer	S/N 2070981			1	8/9/2003	377.00	26.39	403.39		Joe Blair

SUPERIOR LANDSCAPING LAWN SERVICE, INC.  
Asset Listing at 10/31/2006

Description	S/N or VIN	Asset Code	Truck #	Life	Date Purch/Sold			Total Price	Depprec 200	Purch From
Shindaiwa T270A Trimmer	S/N 3051344	n/a	21	1	12/16/2003	369.95	25.90	395.89		All Dade
Shindaiwa T270A Trimmer	S/N 5068480			1	9/19/2005	336.00	23.52	395.89		All Dade
Shindaiwa T270A Trimmer	S/N 5068481			1	9/19/2005	336.00	23.52	395.89		All Dade
Shindaiwa T270A Trimmer	S/N 5068833			1	9/19/2005	336.00	23.52	395.89		All Dade
Shindaiwa T270A Trimmer	S/N 5068933			1	9/19/2005	336.00	23.52	395.89		All Dade
Shindaiwa T270A Trimmer	S/N 5068880			1	10/3/2005	336.00	23.52	395.89		All Dade
Shindaiwa T270A Trimmer	S/N 5068481			1	10/3/2005	336.00	23.52	395.89		All Dade
Shindaiwa T270A Trimmer	S/N 5068891			1	10/3/2005	336.00	23.52	395.89		All Dade
Shindaiwa T270A Trimmer	S/N 5068852			1	10/3/2005	336.00	23.52	395.89		All Dade
Shindaiwa T270A Trimmer	S/N 5068877			1	10/3/2005	336.00	23.52	395.89		All Dade
Shindaiwa T270A Trimmer	S/N 5068205			1	10/3/2005	336.00	23.52	395.89		All Dade
Shindaiwa T270A Trimmer	S/N 5068454			1	10/15/2005	336.00	23.52	395.89		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 3022763		16	1	2/28/2004	356.96	24.99	403.39		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 3022776		10	1	2/28/2004	356.96	24.99	403.39		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 3022774		23	1	2/28/2004	356.96	24.99	403.39		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 3022779		14	1	1/27/2004	356.96	24.99	403.39		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 3022761		14	1	1/27/2004	356.96	24.99	403.39		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 3022756		n/a	1	1/27/2004	356.96	24.99	403.39		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 3022758		n/a	1	4/14/2004	356.96	24.99	403.39		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 3022757		716	1	4/14/2004	356.96	24.99	403.39		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 3022775		n/a	1	5/7/2004	357.00	24.99	381.99		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 3022760		8	1	5/7/2004	357.00	24.99	381.99		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 4033708			1	6/22/2004	359.99	25.20	385.19		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 4033709			1	6/22/2004	359.99	25.20	385.19		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 4033712			1	6/22/2004	359.99	25.20	385.19		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 4033721		n/a	1	6/22/2004	359.99	25.20	385.19		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 4033950		33	1	6/22/2004	359.99	25.20	385.19		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 4045227		873	1	7/16/2004	359.99	25.20	385.19		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 4056900		748	1	8/28/2004	335.99	23.52	359.51		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 4056901		854	1	8/28/2004	335.99	23.52	359.51		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 4046035		874	1	8/28/2004	335.99	23.52	359.51		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 4057024		944	1	8/28/2004	335.99	23.52	359.51		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 4046480			1	3/31/2005	320.00	22.40	342.40		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 4046314		856	1	3/31/2005	320.00	22.40	342.40		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 4046311		754	1	3/31/2005	320.00	22.40	342.40		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 4046477		888	1	3/31/2005	320.00	22.40	342.40		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 4046307			1	3/31/2005	320.00	22.40	342.40		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 4046308			1	3/31/2005	320.00	22.40	342.40		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 4090393			1	7/6/2005	320.00	22.40	342.40		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 4090394			1	7/6/2005	320.00	22.40	342.40		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 4090395			1	7/6/2005	320.00	22.40	342.40		All Dade
Shindaiwa T272 Trimmer S/A HEA	S/N 4058148			1	7/6/2005	320.00	22.40	342.40		All Dade
Shindaiwa Chain Saw Model 357	S/N 905164			1	8/4/2004	230.00	16.10	246.10		All Dade
Shindaiwa LE261 Hand Held Edger	S/N 4026564			1	8/4/2004	304.00	21.28	325.28		All Dade
Shindaiwa LE261 Hand Held Edger	S/N 4026425			1	8/4/2004	304.00	21.28	325.28		All Dade
Shindaiwa LE261 Hand Held Edger	S/N 4026563			1	8/4/2004	304.00	21.28	325.28		All Dade
Shindaiwa LE261 Hand Held Edger	S/N 4026426		n/a	1	8/4/2004	304.00	21.28	325.28		All Dade
Shindaiwa LE261 Hand Held Edger	S/N 4077847		32	1	3/31/2005	296.00	20.72	316.72		All Dade
Shindaiwa LE261 Hand Held Edger	S/N 4077847			1	3/31/2005	296.00	20.72	316.72		All Dade
Shindaiwa LE261 Hand Held Edger	S/N 4077892		889	1	3/31/2005	296.00	20.72	316.72		All Dade
Shindaiwa LE261 Hand Held Edger	S/N 4077720		936	1	3/31/2005	296.00	20.72	316.72		All Dade
Shindaiwa LE261 Hand Held Edger	S/N 4077717			1	3/31/2005	296.00	20.72	316.72		All Dade
Shindaiwa LE261 Hand Held Edger	S/N 4077846			1	7/6/2005	295.96	20.72	316.68		All Dade

SUPERIOR LANDSCAPING LAWN SERVICE, INC.  
Asset Listing at 10/31/2006

Description	S/N or VIN	Asset Code	Truck #	Life	Date Purch/Sold		Total Price	Deprec 200	Purch From
Shindaiwa LE261 Hand Held Edger	S/N 4077702			1	7/6/2005	295.96	20.72	316.68	All Dade
Shindaiwa LE261 Hand Held Edger	S/N 4077680			1	7/6/2005	295.96	20.72	316.68	All Dade
Shindaiwa LE261 Hand Held Edger	S/N 4077701			1	7/6/2005	295.96	20.72	316.68	All Dade
Shindaiwa LE261 Hand Held Edger	S/N 4077691			1	7/6/2005	295.96	20.72	316.68	All Dade
Shindaiwa LE261 Hand Held Edger	S/N 5061845			1	10/3/2005	295.96	20.72	316.68	All Dade
Shindaiwa LE261 Hand Held Edger	S/N 5061846			1	7/6/2005	295.96	20.72	316.68	All Dade
Shindaiwa LE260 Hand Held Edger	S/N 2111187	1002		1	10/20/2005	295.96	20.72	316.68	All Dade
Shindaiwa LE260 Hand Held Edger	S/N 5061951	993		1	10/20/2005	295.96	20.72	316.68	All Dade
Shindaiwa HT231-40 Hedge Trimmer 40"	S/N 4033637	910		1	8/4/2004	360.00	25.20	385.20	All Dade
Shindaiwa HT231-40 Hedge Trimmer 40"	S/N 004182 77777?			1	8/4/2004	360.00	25.20	385.20	All Dade
Snapper 21" Mower 5.0 KAW Engine	S/N FADED OUT			3	2/27/2004	789.00	55.23	844.23	Pinex Mower
Snapper 21" Mower 5.0 KAW Engine	S/N 31116383			3	2/27/2004	625.00	43.75	668.75	Pinex Mower
Snapper 21" Mower 5.0 KAW Engine	S/N 31115880	796		3	2/27/2004	625.00	43.75	668.75	Pinex Mower
Snapper 21" Mower 5.0 KAW Engine	S/N 1779700			3				789.00	
Sithl HT75 Polesaw	S/N 247986631			1		559.00	39.13	598.13	
Sithl HT75 Polesaw	S/N 243897668			1		559.00	39.13	598.13	
Sithl HT101 Polesaw	S/N 261402533	783	23	1	1/27/2004	537.00	37.59	574.59	All Dade
Sithl HT101 Polesaw	S/N 261401599		10	1	1/27/2004	537.00	37.59	574.59	All Dade
Sithl HT101 Polesaw	S/N 261880296		Storage	1	4/5/2004	540.00	37.80	577.80	All Dade
Sithl HT101 Polesaw	S/N 262014294			1	6/18/2004	539.99	37.80	577.79	All Dade
Sithl HT101 Polesaw	S/N 262077030			1	7/16/2004	539.99	37.80	577.79	All Dade
Sithl HT101 Polesaw	S/N 262077024			1	8/4/2004	540.00	37.80	577.80	All Dade
Sithl Backpack Blower: STEBR400	S/N 2464450036			1	7/3/2000	359.00	25.13	384.13	
Sithl Backpack Blower: STEBR420	S/N 2500981152			1	11/9/2002	359.00	25.13	384.13	
Sithl Backpack Blower: STEBR400	S/N 2500991166		22	1	12/27/2001	359.00	25.13	384.13	
Sithl Backpack Blower: STEBR420	S/N 253558911			1	5/14/2002	359.00	25.13	384.13	
Sithl Backpack Blower: STEBR420	S/N 25572834		10	1	12/3/2002	359.00	25.13	384.13	
Sithl Backpack Blower: STEBR420	S/N 260312348	703	5	1	6/11/2003	359.50	25.17	384.67	Joe Blair
Sithl Backpack Blower: STEBR420	S/N 260312376		4	1	6/11/2003	359.50	25.17	384.67	Joe Blair
Sithl Backpack Blower: STEBR420	S/N 260312355		9	1	8/9/2003	359.95	25.20	385.15	Joe Blair
Sithl Backpack Blower: STEBR420	S/N 261151127	861	16	1	9/24/2003	359.95	25.20	385.19	Joe Blair
Sithl Backpack Blower: STEBR420	S/N 261659270		4	1	10/21/2003	357.00	24.99	381.99	All Dade
Sithl Backpack Blower: STEBR420	S/N 2616204944	794	14	1	12/16/2003	359.95	25.20	385.19	All Dade
Sithl Backpack Blower: STEBR420	S/N 261650302			1	2/28/2004	357.00	24.99	381.99	All Dade
Sithl Backpack Blower: STEBR420	S/N 261650377		Storage	1	2/28/2004	357.00	24.99	381.99	All Dade
Sithl Backpack Blower: STEBR420	S/N 261624639			1	1/27/2004	357.00	24.99	381.99	All Dade
Sithl Backpack Blower: STEBR420	S/N 261624985		32	1	1/27/2004	357.00	24.99	381.99	All Dade
Sithl Backpack Blower: STEBR420	S/N 2616250392		8	1	4/14/2004	357.00	24.99	381.99	All Dade
Sithl Backpack Blower: STEBR420	S/N 2616250385			1	5/7/2004	357.00	24.99	381.99	All Dade
Sithl Backpack Blower: STEBR420	S/N 261649772			1	5/7/2004	357.00	24.99	381.99	All Dade
Sithl Backpack Blower: STEBR420	S/N 262221241			1	6/2/2004	359.95	25.20	385.19	All Dade
Sithl Backpack Blower: STEBR420	S/N 262221263	872		1	6/2/2004	359.95	25.20	385.19	All Dade
Sithl Backpack Blower: STEBR420	S/N 262221243	731	Mt Signal	1	6/22/2004	359.99	25.20	385.19	All Dade
Sithl Backpack Blower: STEBR420	S/N 262221222	942	21	1	6/22/2004	359.99	25.20	385.19	All Dade
Sithl Backpack Blower: STEBR420	S/N 262221195	722	52	1	6/22/2004	359.99	25.20	385.19	All Dade
Sithl Backpack Blower: STEBR420	S/N 262221231 (Julio- 2622212	779	5	1	6/22/2004	359.99	25.20	385.19	All Dade
Sithl Backpack Blower: STEBR420	S/N 262221234	744		1	6/22/2004	359.99	25.20	385.19	All Dade
Sithl Backpack Blower: STEBR420	S/N 262221245	939	33	1	6/22/2004	359.99	25.20	385.19	All Dade
Sithl Backpack Blower: STEBR420	S/N 261722243		8	1	7/6/2004	359.99	25.20	385.19	All Dade
Sithl Backpack Blower: STEBR420	S/N 261722230			1	7/6/2004	359.99	25.20	385.19	All Dade
Sithl Chain Saw- Model MS192T-14	S/N 265546745			1	10/25/2005	279.95	19.60	299.55	All Dade
Sithl Chain Saw- Model MS192T-14	S/N 265546781			1	10/25/2005	279.95	19.60	299.55	All Dade
Sithl Chain Saw- Model MS440-28	S/N 155184737			1		620.00	43.40	663.40	All Dade

SUPERIOR LANDSCAPING LAWN SERVICE, INC.  
Asset Listing at 10/31/2006

Description	S/N or VIN	Asset Code	Truck #	Life	Date Purch/Sold		Total Price	Deprec 200	Purch From
Sithl Chain Saw- Model MS250-18	S/N 262585043	838	23	1	6/22/2004	289.99	20.30	310.29	All Dade
Sithl Chain Saw- Model MS250-18	S/N 262585116			1	7/19/2004	289.99	20.30	310.29	All Dade
Sithl Chain Saw- Model MS250-18	S/N 263322455			1	8/31/2004	289.99	20.30	310.29	All Dade
Sithl Chain Saw- Model MS250-18	S/N 263322538			1	8/31/2004	289.99	20.30	310.29	All Dade
Sithl Chain Saw- Model MS250-18	S/N 263322546	820		1	8/31/2004	289.99	20.30	310.29	All Dade
Sithl Chain Saw- Model MS250-18	S/N 263322501			1	8/31/2004	289.99	20.30	310.29	All Dade
Sithl Chain Saw- Model MS390-24	S/N 263176104			1	8/31/2004	439.99	30.80	470.79	All Dade
Sithl Chain Saw- Model MS390-24	S/N 263186115			1	8/31/2004	439.99	30.80	470.79	All Dade
Sithl Edger- STEFC75	S/N NO SERIAL NUMBER		4	1	???				???
Sithl Edger- STEFC75	S/N 260887324			1	6/11/2003	275.00	19.25	294.25	Joe Blair
Sithl Edger- STEFC75	S/N 262850604			1	7/16/2004	278.95	19.53	298.48	All Dade
Sithl Edger- STEFC75	S/N 262328600			1	7/16/2004	278.95	19.53	298.48	All Dade
Sithl Edger- STEFC75	S/N 260887036			1	7/11/2003	285.00	19.95	304.95	Joe Blair
Sithl Edger- STEFC75	S/N 261678667			1	2/28/2004	275.96	19.32	295.28	All Dade
Sithl Edger- STEFC75	S/N 261028893	727		52	1/27/2004	275.96	19.32	295.28	All Dade
Sithl Edger- STEFC75	S/N 263713754			1	5/3/2002	275.00	19.25	294.25	All Dade
Sithl Edger- STEFC75	S/N 255883687			1	8/1/2002	275.00	19.25	294.25	All Dade
Sithl Edger- STEFC75	S/N 261678667			1		310.00	21.70	331.70	Joe Blair
Sithl Edger- STEFC75	S/N 262328247			1	4/5/2004	278.96	19.53	298.49	All Dade
Sithl Edger- STEFC75	S/N 262328249 (Julio- 26232822)	717		8	4/5/2004	278.96	19.53	298.49	All Dade
Sithl Edger- STEFC75	S/N 262328252	713		5	4/5/2004	278.96	19.53	298.49	All Dade
Sithl Edger- STEFC75	S/N 26232884	737		9	6/22/2004	278.96	19.53	298.49	All Dade
Sithl Edger- STEFC75	S/N 262328847	790		16	6/22/2004	278.96	19.53	298.49	All Dade
Sithl Edger- STEFC75	S/N 262328013	865		9	6/22/2004	278.96	19.53	298.49	All Dade
Sithl Edger- STEFC75	S/N 262328853	738		16	6/22/2004	278.96	19.53	298.49	All Dade
Sithl Edger- STEFC75	S/N 262328851	863		16	7/6/2004	278.96	19.53	298.49	All Dade
Sithl Edger- STEFC75	S/N 262850853			1	7/6/2004	278.96	19.53	298.49	All Dade
Sithl Edger- STEFC85	S/N 260666704	726		52	6/10/2003	323.00	22.61	345.61	All Dade
Sithl Edger- STEFC85	S/N 260715635	708		32	6/11/2003	310.00	21.70	331.70	Joe Blair
Sithl Edger- STEFC85	S/N 262328849			1	5/7/2004	275.96	19.32	295.28	All Dade
Sithl Hedge Trimmer- STEHL75	S/N 252437386			1	12/27/2001	385.00	26.95	411.95	Joe Blair
Sithl Hedge Trimmer- STEHL75	S/N 251351215			1	1/7/2001	385.00	26.95	411.95	All Dade
Sithl Hedge Trimmer- STEHL75	S/N 247986638			1	1/29/2000	385.00	26.95	411.95	All Dade
Sithl Hedge Trimmer- STEHL75	S/N 254736387	720		5	9/9/2002	385.00	26.95	411.95	All Dade
Sithl Hedge Trimmer- STEHL75	S/N 255755302			1	9/11/2001	385.00	26.95	411.95	All Dade
Sithl Hedge Trimmer- STEHL75	S/N 252436325	721		23		385.00	26.95	411.95	All Dade
Sithl Hedge Trimmer- STEHL75	S/N 260262846			5	6/11/2003	385.00	26.95	411.95	Joe Blair
Sithl Fixed Hedge Trimmer- STI HL100	S/N 261558892			8	2/28/2004	419.99	29.40	449.39	All Dade
Sithl Fixed Hedge Trimmer- STI HL100	S/N 261559148	909		51	2/28/2004	419.99	29.40	449.39	All Dade
Sithl Fixed Hedge Trimmer- STI HL100	S/N 261559166			1	2/28/2004	419.99	29.40	449.39	All Dade
Sithl Fixed Hedge Trimmer- STI HL100	S/N 261559209	768		1	1/27/2004	419.99	29.40	449.39	All Dade
Sithl Fixed Hedge Trimmer- STI HL100	S/N 261559172			1	1/27/2004	419.99	29.40	449.39	All Dade
Sithl Fixed Hedge Trimmer- STI HL100	S/N 261559163			1	1/27/2004	419.99	29.40	449.39	All Dade
Sithl Fixed Hedge Trimmer- STI HL101	S/N 262203077		Mt. Sinai	9	5/7/2004	419.99	29.40	449.39	All Dade
Sithl Fixed Hedge Trimmer- STI HL100	S/N 262203076	706		32	5/7/2004	419.99	29.40	449.39	All Dade
Sithl Fixed Hedge Trimmer- STI HL100	S/N 262203058			1	5/7/2004	419.99	29.40	449.39	All Dade
Sithl Fixed Hedge Trimmer- STI HL100	S/N 262203061	n/a		1	6/2/2004	419.99	29.40	449.39	All Dade
Sithl Fixed Hedge Trimmer- STI HL100	S/N 262203072			1	6/2/2004	419.99	29.40	449.39	All Dade
Sithl Fixed Hedge Trimmer- STI HL100	S/N 262612967	n/a		1	6/22/2004	419.99	29.40	449.39	All Dade
Sithl Fixed Hedge Trimmer- STI HL100	S/N 262613129			1	6/22/2004	419.99	29.40	449.39	All Dade
Sithl Fixed Hedge Trimmer- STI HL100	S/N 262613140			1	6/22/2004	419.99	29.40	449.39	All Dade
Sithl Fixed Hedge Trimmer- STI HL100	S/N 262612990			1	6/22/2004	419.99	29.40	449.39	All Dade
Sithl Fixed Hedge Trimmer- STI HL100	S/N 262954536	735		21	7/6/2004	419.99	29.40	449.39	All Dade
Sithl Fixed Hedge Trimmer- STI HL100	S/N 262420955	876		33	7/6/2004	419.99	29.40	449.39	All Dade
Sithl Fixed Hedge Trimmer- STI HL100	S/N 262287593	876		1	8/4/2004	423.00	29.61	452.61	All Dade
Sithl Fixed Hedge Trimmer- STI HL100	S/N 262287566	753		1	8/4/2004	423.00	29.61	452.61	All Dade

SUPERIOR LANDSCAPING LAWN SERVICE, INC.  
Asset Listing at 10/31/2006

Description	S/N or VIN	Asset Code	Truck #	Life	Date Purch/Sold			Total Price	Depprec 200	Purch From
Shihl Fixed Hedge Trimmer STI HL100	S/N 262287568	877		1	8/4/2004	423.00	29.61	452.61		All Dade
Shihl Fixed Hedge Trimmer STI HL100	S/N 263387353			1	3/31/2005	423.00	29.61	452.61		All Dade
Shihl Fixed Hedge Trimmer STI HL100	S/N 263387350			1	3/31/2005	423.00	29.61	452.61		All Dade
Shihl Fixed Hedge Trimmer STI HL100	S/N 263387351			1	3/31/2005	423.00	29.61	452.61		All Dade
Shihl Fixed Hedge Trimmer STI HL100	S/N 263387347	729		1	3/31/2005	423.00	29.61	452.61		All Dade
Shihl Fixed Hedge Trimmer STI HL100	S/N 263387348			1	3/31/2005	423.00	29.61	452.61		All Dade
STI PS78 (Manual) Pole Saw	No Serial Number		4	1	6/22/2004	199.99	14.00	213.99		All Dade
STI PS78 (Manual) Pole Saw	No Serial Number		5	1	6/22/2004	199.99	14.00	213.99		All Dade
STI PS78 (Manual) Pole Saw	No Serial Number			1	7/16/2004	199.99	14.00	213.99		All Dade
STI PS78 (Manual) Pole Saw	No Serial Number			1	8/19/2004	199.99	14.00	213.99		All Dade
STI PS78 (Manual) Pole Saw	No Serial Number			1	10/9/2004	199.99	14.00	213.99		All Dade
STI PS78 (Manual) Pole Saw	No Serial Number			1	3/31/2005	199.99	14.00	213.99		All Dade
STI PS78 (Manual) Pole Saw	No Serial Number			1	3/31/2005	199.99	14.00	213.99		All Dade
STI PS78 (Manual) Pole Saw	No Serial Number			1	3/31/2005	199.99	14.00	213.99		All Dade
STI PS78 (Manual) Pole Saw	No Serial Number			1	3/31/2005	199.99	14.00	213.99		All Dade
STI PS78 (Manual) Pole Saw	No Serial Number			1	3/31/2005	199.99	14.00	213.99		All Dade
Shihl Cut-Off Saw: TS400-14"	No Serial Number	1001		1	10/17/2005	199.95	14.00	213.95		All Dade
Toro 44" Riding Mower, Model Z Master	S/N 162245765	810		3	10/20/2004	825.00	57.75	882.75		All Dade
Toro 44" Riding Mower, Model Z Master	S/N 74171-990365	817	???	3	5,500.00	385.00	5,885.00			All Dade
Toro 32" Walk Behind, Model 30157	S/N 74170-20001531	819	14	3	9/4/2001	5,500.00	385.00	5,885.00		All Dade
Toro 36" 15 HP Mid-Size Mower	S/N 30159-795361	816		3		2,300.00	161.00	2,461.00		All Dade
Toro 36" 15 HP Mid-Size Mower	S/N 200000316	811	21	3		2,800.00	196.00	2,996.00		All Dade
Toro 36" 15HP Mid-Size Mower	S/N 230005470	932	Storage	3		2,800.00	196.00	2,996.00		All Dade
Toro 36" 15HP Mid-Size Mower w/Jungle Wheels	S/N 230005159	866	9	3	8/2/2003	2,795.00	195.65	2,990.65		Joe Blair
Toro 36", 17HP Mid-Size Mower w/Velke SW	S/N 30169-240004126	711	5	3	6/11/2003	3,045.00	213.15	3,258.15		Joe Blair
Wire And Valve Locator T521TVL	S/N 30317-240000127	771	4	3	3/2/2004	3,572.99	250.11	3,823.10		All Dade
Vermeer Stump Grinder Model 206				3	8/17/2004	650.00	45.50	695.50		All Dade
Wasp Mobile Barcode Scanner WDT2200	S/N 5203441048			1	6/28/2003		0.00	2,400.00		Melrose Irrigation
Note: Yellow represents PB Trucks					3/9/2005	870.03		870.03		CDW
Trucks								399,997.20		
1999 Ford F800, Dump Bed	VIN 3FENF80CG9XMAA00526		1	3	6/27/2000		???	???		
1999 Ford F150, Pickup	VIN 1F1ZF1729XNA44272		2	3	3/20/2001		???	???		
1997 Ford F250, Pickup	VIN 1FTEX27L3VNB63216		4	3	7/18/2001		???	???		
1997 Chevy Tiltmaster Dump Bed	VIN 4KBB4B1RVJ004221		5	3	3/23/2001		???	???		
1995 Isuzu NPR Dump Body	VIN 4KL4B4B1A1SJ000179		8	3	7/24/2002		???	???		
1996 Isuzu NPR Dump Body	VIN 4KL4B4B1R4TJ001436		9	3	4/27/2001		???	???		
1997 Chevy Tiltmaster Bucket	VIN 4KBB4B1R6VJ000936		10	3	7/19/2001		???	???		
1994 Ford Explorer SUV	VIN 1FMDUJ32X1RUD66276		11	3			???	???		
1997 gmc Forward Box Truck	VIN J8DC4B1K2V7007686		13	3	12/12/2002		???	???		
2000 Isuzu NPR 14' Dump	VIN JALB4B141Y7010886		14	3	6/9/2000		???	???		
1993 Ford F350 Truck w/Utility Body	VIN 1FTFE25N4PNA77293		15	3	6/9/2000		???	???		
1999 Isuzu NPR 14' Dump	VIN JALC4B143X7000363		16	3	12/7/2002		???	???		
1999 International C-4700, 18' Flatbed Truck	VIN 1HTSCABM5KH616698		17	3	1/25/2003		???	???		
1997 Ford F800 Truck w/16' Dump Bed	VIN 1FDNF80C4VVA20352		18	3	1/17/2003		???	???		
1997 GMC 7500 w/LR11 Boom and Chipper Damper	VIN 1GDL7H1P0VJ506119		23	3	7/24/2003		???	???		
1999 Ford F350 Truck w/Utility Body	VIN 1FDWF36L7XD83732		24	3	9/5/2003		???	???		
2000 Ford Ranger, Pickup	VIN 1FTYR1005YB79163		25	3	10/7/2003		???	???		
2004 Ford F750 w/Peterason Lightning Loader	VIN 1FXRF75F84V658748		26	5	2/27/2004	45,351.00	2,771.06	48,122.06		H.M.L., Electric, Inc.
2004 Ford F150 XLT	VIN 3FTRX12W34NA16101		27	5	2/27/2004	26,610.50	1,896.63	28,507.13		Hairns Motors, Inc.



SUPERIOR LANDSCAPING LAWN SERVICE, INC.  
Asset Listing at 10/31/2006

Description	S/N or VIN	Asset Code	Truck #	Life	Date Purch/Sold			Total Price	Deprec 200	Purch From
2004 Southwest Trailer 7'x18'- Enclosed	VIN 1K907X1884D201644			5	6/24/2004	3,965.00	277.65	4,242.65	1,309.00	Southwest Trailer Manufac
2004 Southwest Trailer 7'x20'- Enclosed	VIN 1K907X2044D201648			5	6/25/2004	3,995.00	279.65	4,274.65	1,318.00	Southwest Trailer Manufac
2005 Kendall Trailer 7 x 16'- Enclosed	VIN 1K907X1675D201389			5	3/24/2005	4,300.00	308.00	4,608.00		Southwest Trailer Manufac
2005 Kendall Trailer 7 x 20'- Enclosed	VIN 272 NO VIN OR TITLE			5	3/24/2005	4,715.00	330.00	5,045.00		Southwest Trailer Manufac
2005 Kendall Trailer 7 x 20'- Enclosed	VIN 15907X2086M982158			5	8/26/2005	5,327.10	372.90	5,700.00		Southwest Trailer Manufac
								39,880.83		
Small Tools				1				4,403.23		4,403.23
Office Equipment				3				8,328.92		8,328.92
								Grand Total- ALL		2,065,482.54

# **Hurricane Contingency Plan**

prepared by

**Superior Landscaping & Lawn Service, Inc.**

**Ph: (305) 634-0717**

**Toll Free (800)759-4156**



## TABLE OF CONTENTS

HURRICANES.....	3
DANGER ZONES .....	3
WHAT IS A HURRICANE?.....	3
HOW CAN WE HELP? .....	4
PRE-STORM PREPAREDNESS .....	4
POST-STORM PHASES.....	5
<i>Phase I – First Response</i> .....	5
<i>Phase II – Save the Trees</i> .....	5
<i>Phase III – Off-Site Debris Hauling</i> .....	6
<i>Phase IV - Beautification</i> .....	6
WHAT WILL THIS COST ME?.....	7
PRE-STORM PREPARATION PRICING.....	7
<i>PHASE I &amp; II PRICING</i> .....	7
PHASE III PRICING .....	7
PHASE IV PRICING .....	7
EMERGENCY SERVICES RATES SHEET.....	8
SIGN ME UP!.....	9
TRIGGERING THE FIRST RESPONSE .....	9
HURRICANE PREPARATION INITIAL EVALUATION & FIRST RESPONSE ACTIVATION FORM .....	10

## Hurricanes

The 74- to 160- mile per hour winds of a hurricane can extend inland for hundreds of miles. Hurricanes can spawn tornados, which add to the destructiveness of the storm and flash floods generated by torrential rains also cause damage and lo sod life. Following a hurricane, inland streams and rivers can flood and trigger landslides.

When a hurricane watch is issued, the best response is to protect your property by boarding up window, bringing in outside items, and being prepared to evacuate the area as soon as officials advise.

Even more dangerous than the high winds of a hurricane is the storm surge – a dome of ocean water that can be 20 feet at its peak and 50 to miles wide. The surge can devastate coastal communities as it sweep ashore. Nine out 10 hurricane fatalities are attributable to the storm surge.

### *Danger Zones*

Areas in the United States vulnerable to hurricane include the Atlantic and Gulf coasts from Texas to Maine, the territories in the Caribbean, and tropical areas of the western Pacific, including Hawaii, Guam, American Samoa and Saipan.

As we all have come to know, Florida has experienced various major hurricanes in the past years and reports from various professional sources have indicated that hurricane season weather pattern will continue for the future.

### *What is a Hurricane?*

A hurricane is a tropical storm with winds that have reached a constant speed of 74 miles per hour or more. Hurricane winds blow in large spiral around a relatively calm center known as the "eye." The eye is generally 20 to 30 miles wide, and the storm may extend outward 400 miles. As a hurricane approaches, the skies will begin to darken and winds will grow in strength. Near land, a hurricane can bring torrential rains, high winds. And storm surges. A single hurricane can last for more than 2 weeks over open waters and can run a path across the entire length of the eastern seaboard. August and September are peak months during the hurricane season, from June 1 through November 30.<sup>1</sup>

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<sup>1</sup> Hurricane statistics and date in this plan has been obtained from The Disaster Handbook 1998 National Edition Institute of Food and Agricultural Sciences University of Florida

## How Can We Help?

Superior Landscaping & Lawn Service, Inc. provides a wide variety of specialized services to its clientele. The following plan was developed using information collected during site work, knowledge of industry and past experience.

### Pre-Storm Preparedness

The time to prepare or plan for a hurricane is **before** the event. It is important not to wait until 'the last minute' to begin to protect property and landscape from possible hurricane-force winds. We will provide labor, vehicles and all equipment needed for the following preparations:

- Initial property evaluation
- Clean drains, gutters and downspouts
- Secure all loose objects
- Install shutters, panels and/or plywood to protect glass frontage and windows (shutters, panel and/or plywood to be provided by customer)
- Provide tree and palm trimming prior to season \*

\*It is a known fact that tree trimming enhances a tree's natural shape and beauty as well as the quality of your surroundings. Trimming your trees also raises your property value and adds charm and beauty to your neighborhood. Proper trimming will improve the general health of your trees, extend their lives and allow them to flourish.

Tree trimming is done to train younger plants, rejuvenate older plants, improve overall appearance, control size and create special forms. Trimming is also performed to prevent personal injury and property damage by providing clearance between roofs, walls, telephone lines, utility lines and any other buildings or structures. Preventative seasonal trimming can minimize tree and property damage during tropical storms and hurricanes. Trees should be inspected as far in advance as possible during or before the hurricane season. Key areas to look for are big, rotten spots or holes on the tree trunk and broken or damaged limbs that could potentially fall over power lines or cause damage to your property. Hiring tree care specialist who can perform a professional consultation and plan of action for making your vegetation as secure as possible for the hurricane season is a must. Superior Landscaping & Lawn Service, Inc. maintains an ISA-certified arborist on-staff that will evaluate the property and make knowledgeable suggestions for pre-season and year-round trimming.

## Post-Storm Phases

From Phase I clean up to Phase IV beautification, Superior Landscaping & Lawn Service, Inc. will provide quality service in a pre-planned response package.

### Phase I – First Response

When a hurricane or tropical depression strikes, affected communities need to recover as quickly as possible. Blocked roadways and property entrances and excessive debris will delay reconstruction processes, employees returning to work and may prevent emergency & utility vehicles from arriving in a timely manner. Superior Landscaping & Lawn Service, Inc. will respond as soon as winds have died to below 35 MPH or as soon as weather conditions permit. The following scope of work is considered Phase I post-storm services:

- Remove large debris to clear roadways and entranceways to allow for safe vehicular and pedestrian movement (includes visibility triangles).
- At this phase, all debris will be left on site at a inconspicuous area of the property (owner or manager to coordinate with us prior to trigger)
- Labor, vehicles and miscellaneous tools such as chainsaws will be used for this phase as well as heavy equipment as deemed necessary

### Phase II – Save the Trees

After a major storm, a community is instantly changed. Buildings may be damaged or destroyed, power lines down, and trees broken and torn. In the wake of this loss, neighborhoods and entire cities may experience a sense of devastation they have never known before.

“Because trees are such a large part of a city's visual landscape, damage to them from a severe storm can be a major shock to residents,” says John Rosenow, president of The National Arbor Day Foundation, an organization that helps people plant and care for trees. “Seeing a favorite tree down or badly damaged can be a traumatic experience almost like losing an old friend.”<sup>2</sup>

At this phase, our certified arborist will evaluate damages to the trees and palms throughout the property and crews will be dispatched to:

- Reset and brace trees that do not have structural damage and are determined to be salvageable
- Provide corrective pruning of palms and trees to promote future health
- Remove or grind stumps left by fallen or removed trees
- Most debris at this phase will be chipped and will not add to waste already at the property

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<sup>2</sup> The National Arbor Day Foundation, <http://www.arborday.org>

### Phase III – Off-Site Debris Hauling

This phase will concentrate all efforts on removing debris left at the property at the inconspicuous location. Debris hauling has intentionally been left for this phase due to the extensive amount of time that must be invested in this task -it is more significant to remove potentially dangerous situations from the property instead of focusing on cosmetics. Debris will be removed using grapple trucks, 100-yard trash trucks or by any other means deemed necessary. When the last of the large debris has been removed, smaller bits of debris will be swept or blown and removed from property. Our company, in connection with the local waste management facilities, will determine the least expensive, but most eco-friendly method of disposal according to state, county and municipal laws.

### Phase IV - Beautification

Landscapes damaged by storms often require new plantings of trees, shrubs, ground cover and flowers to restore natural beauty. Proper planting techniques combined with good biological treatments can significantly reduce transplant shock and improve planting success, thereby reducing establishment time. Trees that are undergoing stress or which have been partially damaged can often be rejuvenated with proper treatment.

Sometimes, after a storm, most landscape contractors find it difficult to obtain healthy plant material. Superior Landscaping & Lawn Service, Inc. operates two nurseries (both with their own hurricane contingency plans in place) in order to be able to provide quality materials to its customers.

At this phase, our focus is set upon working with you to bring the property back to its full landscape luster. We will, at this phase:

- Provide suggestions and pricing for replacements
- Provide nutritional programs for salvageable plant materials
- Repair irrigation systems for proper coverage

## What Will This Cost Me?

### *Pre-Storm Preparation Pricing*

The first step in creating a pre-storm preparation scope of work is an initial evaluation of the property. This evaluation will be done by our team comprised of our certified arborist, horticulturist and certified landscape contractor and will be done at a rate of \$165.00 per hour.

For pre-storm preparations, a **proposal** will be issued to the customer based on the initial inspection of the property and a mutual agreement with the customer on the scope of work. Work will be scheduled upon receipt of approved proposals. This pricing will be re-evaluated on a yearly basis and may change depending on labor, vehicle, fuel and other costs.

### *Phase I & II Pricing*

As all Floridians know, calculating the exact effect a hurricane will have prior to landfall is difficult, if not impossible. Therefore, Superior Landscaping & Lawn Service, Inc. has implemented an **Emergency Services Rates Sheet** that is included in this package. As you will notice, these rates are 'per hour'. Billing will begin as soon as the vehicle and/or laborers have started traveling to your property and end as soon as they leave your property for that day. Our company monitors all vehicle and employee movement on a 'real-time' basis. Arrival, departure and break times are recorded at our office immediately. You, the customer will be invoiced according to these records.

### *Phase III Pricing*

Debris removed from your property will be calculated using a **waste manifest report**. Our trucks are registered with local waste management facilities and weight or yardage is determined every time they 'dump' trash. Waste manifest reports are filed at our office and will be used to create invoicing for debris off-site hauling.

### *Phase IV Pricing*

A **proposal** will be issued to the customer based on a post-storm inspection of the property and a mutual agreement with the customer on the scope of work. Work will be scheduled upon receipt of approved proposal.

## Sign Me Up!

As with any other plan, our company needs to know who will need our services so that we may allocate our resources correctly. In order to start benefiting from this program all this is required is for you to fill out the attached form and mail, e-mail or fax to:

**Superior Landscaping & Lawn Service, Inc.**

**P.O. Box 35-0095**

**Miami, FL 33135-0095**

**Fax: (305) 634-0744**

**e-mail: [superlandscape@bellsouth.net](mailto:superlandscape@bellsouth.net)**

When we receive your request will dispatch our team of professionals to conduct the initial property evaluation. This may be scheduled to include any members of your company as well. You will receive a report and/or proposal for property storm preparations. Our office will also keep record of this evaluation in order to determine Phase IV replacements in the future.

## Triggering the First Response

In order to let us know that you will require our first response assistance, an authorized representative from your company, must call, fax, or e-mail our office within 48 hours of landfall or at least when a hurricane **watch** has been issued. Visit the National Oceanic & Atmospheric Administration web site for information.

<http://hurricanes.noaa.gov/>

Our customers and their properties safety during the hurricane season is our concern. Please take precautions for yourself, your family and your place of business during this time. As your local 'full-service' landscape contractor we are here to answer any questions and help with these disasters. We will discuss your particular needs and customize a hurricane contingency plan that is appropriate for your property.

HURRICANE PREPARATION INITIAL EVALUATION  
& FIRST RESPONSE ACTIVATION FORM

Company Name: \_\_\_\_\_

Primary Contact: \_\_\_\_\_ Office: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Authorized Agent (s): \_\_\_\_\_

Emergency Telephone: \_\_\_\_\_

DESCRIPTION	
This agreement authorizes Superior Landscaping & Lawn Service, Inc to conduct a site visit and initial hurricane preparation evaluation. This evaluation will be conducted by our team of professionals and will be billed at a rate of <b>\$165.00 per hour</b> .	
Also, this agreement will place the property (ies) listed below on our 'first response' customers list. In the event of a threatening storm, the authorized agent must contact our office via telephone, fax, or e-mail in order to trigger a response. Failure to contact our office will result in removal from our 'first response' customer list. This contact authorizes us to begin emergency cleanup services listed below. The scope of the work will <b>only be emergency cleanup. No cosmetic work will be performed and no trash will be hauled from the property during the initial part of the total clean up.</b> The <b>MINIMUM</b> crew size will be a 3-man emergency clean up crew for a <b>MINIMUM</b> of six (6) hours (See Emergency Services Rate Sheet). The pricing will include the time that our crew was at the property along with travel time to this property.	
Please write the property (ies) that you would like to receive these services:	
1. _____	2. _____
3. _____	4. _____
5. _____	6. _____
7. _____	8. _____

Payment Terms: Payment is due upon completion of job. All invoices are due upon receipt. Past due accounts will acquire a six percent (6%) interest per month. Should collection activities be warranted, the client shall be responsible for any related expenses including but not limited to attorney's fees and court costs. There is a fifty-dollar (\$50.00) fee for each check returned for non-sufficient funds. Any alterations made to this document, will make it void.

ACCEPTANCE OF PROPOSAL

WHEREFORE, Contractor and Owner, or Owner's Agent, have accepted the scope and terms of this proposal. Owner or Owner's Agent gives express permission to Contractor to enter said property and confirms that it is clear from any hidden danger or defects.

Owner or Owner's Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Contractor:

Superior Landscaping & Lawn Service, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



TAB 6



Steven J. Alexander  
Town Manager

## MEMORANDUM

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

**From:** Steven J. Alexander, Town Manager

**Date:** June 17, 2009

**Re:** EXECUTION OF AGREEMENT FOR CONSTRUCTION PHASE SERVICES FOR SAGA BAY DRAINAGE BASINS 1.3 & 1.4 PAVING & DRAINAGE IMPROVEMENTS

### REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AMENDMENT TO THE AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. TO PROVIDE CONSTRUCTION PHASE SERVICES FOR THE SAGA BAY DRAINAGE BASIN 1.3 AND 1.4 PAVING AND DRAINAGE IMPROVEMENTS PROJECT; AND PROVIDING AN EFFECTIVE DATE.

### BACKGROUND AND ANALYSIS

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

Following a thorough evaluation by the Town's Selection Committee which included previous experience with similar projects, the proposed scope of services, project deliverables and over-all cost, the Public Works Department has selected Kimley-Horn and Associates, Inc. to complete engineering design services for Saga Bay Drainage Basin 1.3 and 1.4 paving & drainage improvements. On September 18, 2008 the Town Council adopted Resolution # 08-54 – authorizing the Town Manager to enter into an agreement with Kimley-Horn and Associates to design the drainage project. The design was completed and permitted by Miami-Dade County Department of Environmental Management. Additionally, the Town Council on May 20, 2009 adopted Resolution #09-39 awarding the construction portion of the project to Tasco Plumbing Corporation.

The attached Work Authorization will allow the Town's engineering consultant to "manage" the project and insure that the contractor is constructing the project, as per the Town's contract specifications. There are five separate construction phase tasks that this proposal will address associated with the project. The tasks are as follows:

- Task 1 Meetings
- Task 2 Resident Project Representation
- Task 3 Shop Drawing Review
- Task 4 Contract Administration
- Task 5 Project Close-out

**RECOMMENDATION**

We recommend that the attached resolution be adopted, authorizing the Town Manager to execute an agreement with Kimley-Horn and Associates, Inc. for construction phase management services for Saga Bay Drainage Basins 1.3 & 1.4 paving & drainage improvements scope of work.

**RESOLUTION NO. 09-\_\_**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AMENDMENT TO THE AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. TO PROVIDE CONSTRUCTION PHASE SERVICES FOR THE SAGA BAY DRAINAGE BASIN 1.3 AND 1.4 PAVING AND DRAINAGE IMPROVEMENTS PROJECT; AND PROVIDING AN EFFECTIVE DATE.**

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

**WHEREAS**, the Town was awarded a State of Florida Department of Environmental Protection grant (LP8912) for the Town’s Stormwater Utility and Management Projects Plan; and

**WHEREAS**, the Saga Bay area paving and drainage improvement project was a critical part of the Town’s Stormwater Utility and Management Projects Plan;

**WHEREAS**, the Saga Bay area paving and drainage improvement project costs are eligible for reimbursement from the State of Florida Department of Environmental Protection grant (LP8912); and

**WHEREAS**, in accordance with the terms of the Agreements and the provisions set forth in Resolution 07-52, the Public Works Department solicited a proposal from Kimley-Horn and Associates, Inc., which has an executed Agreement with the Town, to provide construction phase services for the Saga Bay Drainage Basin area paving and drainage improvement project; and

**WHEREAS**, Kimley-Horn and Associates had already been selected by the Town to design the Saga Bay Drainage Basin area paving and drainage improvements and has performed well thus far; and

**WHEREAS**, Town staff has determined that Kimley-Horn and Associates would be best suited to provide construction phase services for the base bid scope of work because their selection would provide continuity and the Town would benefit from their existing understanding of the project; and

**WHEREAS**, Town staff has conducted preliminary negotiations with Kimley-Horn and Associates and estimated the cost of providing these services to the Town to be approximately \$31,500; and

**WHEREAS**, the Town desires to enter into an amendment to the Agreement with Kimley-Horn and Associates to provide construction management phase services, base bid scope of work, for the Saga Bay area paving and drainage improvements (attached as Exhibit "A"); and

**WHEREAS**, the Town finds that this Resolution will promote the health, safety and welfare 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. Authorization.** In accordance with the terms and conditions of Resolution No. 07-52, which approved the execution of non-exclusive professional services agreements (the "Agreement") to allow firms to provide various engineering and architectural services for the Town, the Town Manager is authorized, on behalf of the Town, to negotiate and execute with Kimley-Horn and Associates an amendment to the Agreement to provide construction phase management services, base bid scope of work, for the Saga Bay area paving and drainage improvements, in substantially the form attached hereto as Exhibit "A".

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

PASSED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2009.

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

Attest:

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

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

---

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

Moved By:  
Seconded By:

FINAL VOTE AT ADOPTION:

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

# **PROJECT AGREEMENT**

Between

**TOWN OF CUTLER BAY, FLORIDA**

And

Kimley-Horn and Associates, Inc.

for

Work Authorization No. 09-08

Saga Bay Drainage Basins 1.3 and 1.4  
Paving and Drainage Improvements  
Limited Construction Phase Services

PROJECT AGREEMENT

Between

THE TOWN OF CUTLER BAY, FLORIDA

And

Kimley-Horn and Associates, Inc.

For

Work Authorization No. 09-08

Saga Bay Drainage Basins 1.3 and 1.4  
Paving and Drainage Improvements  
Limited Construction Phase Services

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

The TOWN and CONSULTANT agree as follows:

**SECTION 1. SCOPE OF SERVICES**

1.1 The CONSULTANT shall provide limited construction phase to the TOWN for the project as described in the “Project Description” attached as Exhibit “1.”

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

1.3 The TOWN may request changes that would increase, decrease, or otherwise modify the Scope of Services. The changes must be contained in a written change order executed by the parties in accordance with the provisions of the continuing services agreement, prior to any deviation from the terms of the project agreement, including the initiation of any extra work.



## **SECTION 2. DELIVERABLES**

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

See Scope of Services in Attachments EXHIBIT “2”.

## **SECTION 3. TERM/TIME OF PERFORMANCE/DAMAGE**

3.1 **Term.** This project agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect until the project is completed, unless otherwise terminated pursuant to section 6 or other applicable provisions of this project agreement. The TOWN manager, in his sole discretion, may extend the term of this agreement through written notification to the CONSULTANT. The extension shall not exceed 90 days.

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

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

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

Any sums due and payable hereunder by the consultant shall be payable, not as a penalty, but as liquidated damages representing and estimate at or before the time of executing this agreement. When the Town reasonably believes that completion will be inexcusably delayed, the Town shall be entitled, but not required, to withhold from any amounts otherwise due the consultant an amount then believed by the Town to be adequate to recover liquidated damages applicable to the delays. If and when the consultant overcomes the delay in achieving

completion, or any part thereof, for which the Town has withheld payment, the Town shall promptly release to the consultant those funds withheld, but no longer applicable, as liquidated damages.

#### **SECTION 4. AMOUNT, BASIS AND METHOD OF COMPENSATION**

4.1 **Lump Sum Compensation.** TOWN agrees to pay CONSULTANT as compensation for performance of all services described in Exhibit “2” \$31,500.00. The Lump Sum fee will not exceed \$31,500.00

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

#### **SECTION 5. BILLING AND PAYMENTS TO THE CONSULTANT**

##### **5.1 Invoices**

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

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

5.3 **Suspension of Payment.** In the event that the TOWN becomes credibly informed that any representations of the CONSULTANT, provided pursuant to subparagraph 5.1, are wholly or partially inaccurate, or in the event that the CONSULTANT is not in compliance with any term or condition of this project agreement, the TOWN may withhold payment of sums then or in the future otherwise due to the CONSULTANT until the inaccuracy,

or other breach of project agreement, and the cause thereof, is corrected to the TOWN'S reasonable satisfaction.

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

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

## **SECTION 6. TERMINATION/SUSPENSION**

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

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

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

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

## **SECTION 7. INCORPORATION OF TERMS AND CONDITIONS**

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

**TOWN OF CUTLER BAY**

By: \_\_\_\_\_  
Steven J. Alexander, Town Manager

Date: \_\_\_\_\_

**ENGINEER**

Kimley-Horn and Associates, Inc.

By: \_\_\_\_\_  
Gary R Ratay, Senior Associate

Date: \_\_\_\_\_

## **Exhibit “1”**

### **Project Description Limited Construction Phase Services**

The CONSULTANT provided planning and engineering services to the TOWN for the design and permitting of paving and drainage improvements within the Saga Bay Drainage basins 1.3 and 1.4. The project area consists of the following roadways: SW 81<sup>st</sup> Court, SW 80<sup>th</sup> Court and SW 79<sup>th</sup> Court from SW 198<sup>th</sup> Terrace to SW 199<sup>th</sup> Street, SW 199<sup>th</sup> Street from SW 81<sup>st</sup> Court to SW 79<sup>th</sup> Court, SW 198<sup>th</sup> Terrace from SW 80<sup>th</sup> Court to SW 79<sup>th</sup> Court, and a portion of SW 79<sup>th</sup> Avenue north and south of SW 199<sup>th</sup> Street. The paving and drainage improvements were designed in accordance with the TOWN’s Storm Water Master Plan. The project bidding phase is complete and the project is proceeding into the construction phase. The project will be funded by FDEP grant number LP6819.

This Work Authorization is to provide additional professional services for limited construction phase service by the CONSULTANT during construction of the project. There are five separate construction phase tasks that this proposal will address regarding the TOWN’s Saga Bay Drainage Improvements project. The tasks are as follows:

1. Meetings
2. Resident Project Representative
3. Shop Drawing Review
4. Contract Administration
5. Project Close-out

This project was bid with a Base Bid and an Additive Bid format. The construction duration for the Base Bid scope of work is 120 days. The construction duration for the Additive Bid adds an additional 60 days to the construction duration. This limited construction phase services scope and fee is for work associated with the Base Bid and Additive Bid portions of the project.

## **Exhibit “2”**

### **Scope of Services and Project Schedule Limited Construction Phase Services**

#### **Task 1 Meetings**

The CONSULTANT shall attend bi-monthly progress meetings (as scheduled by the CONSULTANT) with the Contractor(s) to assess the project schedule and Contractor progress for the duration of the construction process. This task includes nine (9) meetings.

#### **Task 2 Resident Project Representation**

A Resident Project Representative (“RPR”) shall be furnished by the CONSULTANT and shall act as directed by the CONSULTANT in order to assist the CONSULTANT in observing performance of the work of the Contractor(s). The duties, responsibilities, and limitations on the authority of the RPR and assistants will be in accordance with the sections of EJCDC Document associated with this issue.

The RPR shall visit the site three (3) times per week, for three (3) hours per day, for twelve (14) weeks (total of 42 visits) at the various stages of construction to observe the progress and quality of the executed work of the Contractor(s) and to determine if such work is proceeding in accordance with the contract documents for the construction of the improvements (the “Contract Documents”). The RPR shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by Contractor(s) or the safety precautions and programs incident to the work of Contractor(s). The RPR’s efforts will be directed toward providing the TOWN with a greater degree of confidence that the completed work of Contractor(s) will conform to the Contract Documents. The RPR shall not be responsible for the failure of Contractor(s) to perform the work in accordance with the Contract Documents. During such visits and on the basis of on-site observations, the CONSULTANT shall keep the TOWN informed of the progress of the work, shall endeavor to protect the TOWN against defects and deficiencies in such work, and may disapprove or reject work if it fails to conform to the Contract Documents. The CONSULTANT shall perform the observations in accordance with the standard of care of the profession at the time of service.

The RPR shall prepare and submit monthly reports of the field visits describing the general working conditions, areas of construction activity, tests performed, and special and unusual events.

#### **Task 3 Shop Drawing Review**

The CONSULTANT shall review and approve (or take other appropriate action in respect of) Shop Drawings (as that term is defined in the General Conditions of each construction contract) and samples and other data that each Contractor is required to submit, but only for conformance

with the design concept of the Project and compliance with the information given in the Contract Documents. Such review and approval, or other action, shall not extend to means, methods, sequences, techniques or procedures of construction, or safety precautions and programs incident hereto. The CONSULTANT shall perform these reviews in accordance with the standard of care of the profession at the time of service.

The CONSULTANT shall consult with and advise the TOWN as to the acceptability of substitute materials and equipment that are proposed by the prime contractor(s) hereinafter called "Contractor(s)".

#### **Task 4 Contract Administration**

##### **4.1 Contract Clarifications**

The CONSULTANT shall issue the TOWN's instructions to Contractor(s), as well as issue necessary interpretations and clarifications of the plans and specifications in connection therewith and review change orders as required.

##### **4.2 Review of Pay Application**

Based on the CONSULTANT's on-site observations and upon review of applications for payment and the accompanying data and schedules, the CONSULTANT shall determine the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts. Such recommendations of payment shall constitute a representation to the TOWN based on such observations and review that the work has progressed to the point indicated and that, to the best of the CONSULTANT's knowledge, information, and belief, the quality of work is in accordance with the Contract Documents (subject to any qualifications stated in the CONSULTANT's recommendations), and that payment of the amount recommended is due to Contractor(s).

By recommending any payment, ENGINEER shall not thereby be deemed to have represented that observations made by ENGINEER to check Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in this Agreement. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment including final payment will impose on ENGINEER responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, equipment choice and usage, sequences, or procedures of construction of safety precautions or programs incident thereto, nor Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work.



### **Task 5 Project Close-out**

The CONSULTANT shall review the Project to determine if the Project is substantially complete and conduct a final review to determine if the work has been completed in accordance with the Contract Documents. If the Contractor has fulfilled all of his obligations there under, the CONSULTANT may recommend, in writing, final payment to each Contractor and may give written notice to the TOWN and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed).

The CONSULTANT will review project record drawings prepared, provided, and certified by the Contractor. One set of reproducible "As-Built" drawings will be provided to the TOWN.

The CONSULTANT shall not be responsible for the acts or omissions of any Contractor or subcontractor, any of the Contractor(s)' or subcontractor(s)' agents or employees, or any other persons (except the CONSULTANT's own employees and agents) at the site or otherwise performing any of the Contractor(s)' work.

**EXHIBIT “3”**

**Payment Schedule  
Limited Construction Phase Services**

The CONSULTANT will complete this scope of services for the lump sum amount of \$31,500.00. The following is a breakdown of the lump sum amount for reference:

Task 1	Meetings	\$5,300.00
Task 2	Resident Project Representative	\$17,500.00
Task 3	Shop Drawing Review	\$1,400.00
Task 4	Contract Administration	\$4,000.00
Task 5	Project Close-out	<u>\$3,300.00</u>
	<b>Total Fee</b>	<b>\$31,500.00</b>

TAB 7



## Department of Finance

Robert Daddario, CPA  
*Finance Director*

# MEMORANDUM

To: Steve Alexander

From: Robert Daddario

Date: June 11, 2009

Re: Software RFP Committee recommendation

Due to our growth and increasing complexity of our governmental processes, staff has encountered and identified limitations with its existing software package. This method of tracking expenditures and resources is critical for staff to provide the high level of services it desires to provide to the resident's of Cutler Bay. As part of the budget process for fiscal year 2009, staff outlined its concerns with the current software system and recommended to Council, and Council approved, budget authorization for an upgrade to the Town's current comprehensive software system.

In advance of creating the RFP for this critical issue, staff spent numerous hours systematically identifying the needs and desires of each department for this essential tool. The results were integrated into the RFP and therefore became a vital part of the evaluation of each response. This fact is highlighted as we have truly attempted to include every probable use and function that we need in this selection process.

In response to RFP #09-01, Software ERP, the Town of Cutler Bay received proposals from five respondents. In crafting the RFP, the Town incorporated a very extensive outline of features that the Town desired in a proposed software ERP solution, based on detailed input from each department. The respondents were to demonstrate how well their proposed solution filled those departmental needs.

The software evaluation committee, comprised of myself and Sandra Cuervo from the Town, and Dennis DeBlois, the Town's IT consultant, met on February 25, 2009 to review the proposals, initially rank the respondents, and determine which firms were to be asked to come in for live

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



demonstrations of their proposed product solution. After this first round of evaluation, the responding firms were ranked as follows:

1. Tyler Technologies – EDEN
2. New World Systems
3. Tyler Technologies – INCODE
4. CRW Systems
5. KAAVA Consulting

From this initial ranking, based on the objective scoring criteria laid out in the RFP, the committee decided to invite only the top three respondents to the Town to demonstrate its proposed solution. The last two ranked firms were not invited since their proposals were deemed to be non-conforming (i.e. one firm (CRW) only proposed a solution for community development when the RFP called for a complete ERP solution and the other firm (KAAVA) failed to sign its proposal as required by the RFP).

During the weeks of March 16<sup>th</sup> and 23<sup>rd</sup>, the three selected respondents came to the Town and demonstrated their solutions. The software evaluation committee attended all demonstration sessions and departmental staff were allowed to sit in on the parts of the demonstrations that affected their departments. While not part of the evaluation committee, these additional staff members were able to see first hand the capabilities of each system and to ask questions if desired.

On March 31, 2009, the software evaluation committee met again to review the respondents' demonstrations and make final evaluations. The final ranking of the respondents by the committee was as follows:

1. Tyler Technologies – EDEN
2. Tyler Technologies – INCODE
3. New World Systems

The software evaluation committee believed that the Tyler Technologies – EDEN product is the most complete solution “out of the box” and would meet the Town’s needs well in to the future. Based on the evaluation criteria the Town set out in the RFP, this product was clearly the most ready and full featured product reviewed. Accordingly, the software



## Department of Finance

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evaluation committee recommends to the Town Manager that (1) he consider and accept the committee's recommendation of the Tyler Technologies - EDEN product as being most suitable for the Town's needs and that (2) he execute a formal contract with that firm in a form as specifically reviewed and approved by the Town Attorney. Failing to reach an agreement with that firm, the software evaluation committee would recommend that the Town Manager not negotiate with the 2<sup>nd</sup> and 3<sup>rd</sup> ranked firms as the software evaluation committee does not believe that their solutions, at this time, would meet the requirements of the Town's operating departments.

**RESOLUTION NO. 09-\_\_\_**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE SELECTION OF TYLER TECHNOLOGIES “EDEN” AS THE COMPREHENSIVE GOVERNMENT ERP SOFTWARE SYSTEM FOR THE TOWN; AND AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SOFTWARE SERVICES CONTRACT WITH SUCH FIRM; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Cutler Bay (the “Town”) is in need of software and services related to the software for an integrated ERP management system.

**WHEREAS**, the Town Council of the Town of Cutler Bay authorized the issuance of a Request For Proposals (RFP) for a Comprehensive Government ERP Software System; and

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

**WHEREAS**, an evaluation committee consisting of the Finance Director, Building Division Manager, and IT Contracted Consultant has heard and received presentations from the top three firms, has evaluated the responses to the RFP and has determined that it would like to retain the services of Tyler Technologies “EDEN” to implement said software within the Town.

**WHEREAS**, in accordance with the RFP the Town Manager has made a recommendation to the Council for its approval.

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

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

**Section 2. Authorization** The Town Manager is authorized, on behalf of the Town, to execute the software system and services contract with Tyler Technologies.

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

PASSED and ADOPTED \_\_\_\_\_ this day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
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

Motion 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 TYLER TECHNOLOGIES, INC.**  
**FOR GOVERNMENT ERP SOFTWARE SYSTEM**

THIS agreement and attached exhibits (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the Town of Cutler Bay, a Florida municipal corporation (the "TOWN"), and Tyler Technologies, Inc., a corporation organized under the laws of Delaware, with offices at 1100 Oakesdale Avenue SW, Renton, Washington 98057 ("VENDOR").

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

**PURPOSE/AUTHORIZATION**

- 1.1 The purpose of this Agreement is to provide for the TOWN’S purchase / licensing of a GOVERNMENT ERP SOFTWARE SYSTEM and all necessary services to implement said system from VENDOR for the TOWN as described in Section 2 below.

**SCOPE OF PRODUCTS AND SERVICES**

VENDOR shall provide the following to the TOWN:

2.1 **Government ERP Software System**

The TOWN desires the VENDOR to provide the necessary software products and hardware products to perform the TOWN’s services, processes and procedures as outlined by the TOWN and as stated by the VENDOR throughout the associated RFP process. These software products and hardware products are provided under the following terms and conditions:

2.1.1. **Tyler Software Products**

- 2.1.1.1. Upon the effective date of this Agreement, VENDOR hereby grants to TOWN a non-exclusive, non-transferable, royalty-free, revocable license to use the Tyler Software Products and related interfaces listed in Exhibit 1 – Investment Summary (collectively, the “Tyler Software Products”) and Tyler user manuals for TOWN’s internal business purposes only and otherwise subject to the terms and conditions of this Agreement. This license is revocable by VENDOR if TOWN fails to comply with the terms and conditions of this Agreement, including without limitation, TOWN’s failure to timely pay the Application Software License Fees set forth in Exhibit 1 -

Investment Summary in full. Upon TOWN's payment in full for the Tyler Software Products, this license shall become irrevocable, subject to the restrictions on use and other terms set forth in this Agreement.

- 2.1.1.2. VENDOR shall retain ownership of the Tyler Software Products and user manuals.
- 2.1.1.3. The Tyler Software Products are not licensed to perform functions or processing for subdivisions or entities that were not disclosed to VENDOR prior to the effective date of this Agreement.
- 2.1.1.4. The right to transfer the Tyler Software Products to a replacement hardware system is included in this Agreement. TOWN shall pay VENDOR for the cost of new media or any required technical assistance to accommodate the transfer. TOWN shall provide advance written notice to VENDOR of any such transfer.
- 2.1.1.5. TOWN acknowledges and agrees that the Tyler Software Products and user manuals are proprietary to VENDOR and have been developed as trade secrets at VENDOR's expense. TOWN shall use best efforts to keep the Tyler Software Products and user manuals confidential and to prevent any misuse, unauthorized use or unauthorized disclosure of the Tyler Software Products or user manuals by any party.
- 2.1.1.6. The Tyler Software Products may not be modified. TOWN shall not perform decompilation, disassembly, translation or other reverse engineering on the Tyler Software Products. If TOWN modifies the Tyler Software Products, VENDOR's obligations to provide maintenance services on and warranty the Tyler Software Products shall be void.
- 2.1.1.7. TOWN may make copies of the Tyler Software Products for archive purposes only. TOWN will repeat any and all proprietary notices on any copy of the Tyler Software Products. TOWN may make copies of the Tyler user manuals for internal use only.
- 2.1.1.8. **Verification of the Tyler Software Products.**
  - 2.1.1.8.1. TOWN will select one (1) of the following two (2) options within thirty (30) days of installation by providing written notice to VENDOR in accordance with this Agreement:
  - 2.1.1.8.2. Within sixty (60) days after the Tyler Software Products have been installed on TOWN's hardware, VENDOR will verify the Tyler Software Products by demonstrating to TOWN that the Tyler Software Products perform all of the functions set forth in

Exhibit 2 - Verification Test, which demonstration shall constitute verification that the Tyler Software Products substantially conform to the then-current Tyler user manuals and the functional descriptions of the Tyler Software Products in VENDOR's written proposal to TOWN; or

2.1.1.8.3. Within sixty (60) days after the Tyler Software Products have been installed on TOWN's hardware, TOWN may use its own process to verify that the Tyler Software Products perform all of the functions set forth in Exhibit 2 - Verification Test, which shall constitute verification that the Tyler Software Products substantially conform to the then-current Tyler user manuals and the functional descriptions of the Tyler Software Products in VENDOR's written proposal to TOWN.

2.1.1.8.4. Verification as described herein shall be final and conclusive except for latent defect, fraud, or gross mistake. In the event verification is not final and conclusive, pursuant to this paragraph, VENDOR shall correct the cause thereof. In the event VENDOR cannot correct the cause thereof, TOWN may invoke its rights under the provisions of the Limited Warranty in Section 2.1.1.9 set forth below.

2.1.1.8.5. VENDOR shall promptly correct any functions of the Tyler Software Products that failed verification.

2.1.1.8.6. Notwithstanding anything to the contrary herein, Verification does not preclude TOWN from invoking its rights under the warranties provided under this Agreement.

2.1.1.9. **Limited Warranty.** For as long as a current Maintenance Agreement is in place, VENDOR warrants that the Tyler Software Products will substantially conform to the then-current Tyler user manuals and the functional descriptions of the Tyler Software Products in VENDOR's written proposal to TOWN, if applicable. In the event of conflict between the afore-mentioned documents, the then-current Tyler user manuals shall control. If the Tyler Software Products do not perform as warranted, VENDOR will use reasonable efforts, consistent with industry standards, to cure the defect. Should VENDOR be unable to cure the defect or provide a replacement product, TOWN shall be entitled to a refund of the Application Software License Fee paid for the defective Tyler Software Product, as depreciated on a straight-line basis over a seven (7) year period commencing on the effective date of this Agreement.

**2.1.1.10. Intellectual Property Infringement Indemnification.**

VENDOR will defend and indemnify TOWN against any claim by an unaffiliated third party of this Agreement that a Tyler Software Product infringes that party's patent, copyright or other intellectual property right issued and existing as of the effective date of this Agreement or as of the distribution date of a release to the Tyler Software Product, and will pay the amount of any resulting adverse final judgment issued by a court of competent jurisdiction or of any settlement that VENDOR pre-approves in writing, provided that TOWN promptly notifies VENDOR in writing of any such claim, gives VENDOR reasonable cooperation, information, and assistance in connection with it, and consents to VENDOR's sole control and authority with respect to the defense, settlement or compromise of the claim. VENDOR will not be obligated under this section if the infringement results from: (i) TOWN's use of a previous version of a Tyler Software Product and the claim would have been avoided had TOWN used the current version of the Tyler Software Product; (ii) TOWN's combining the Tyler Software Product with devices or products not provided by VENDOR; (iii) use of a Tyler Software Product in applications, business environments or processes for which the Tyler Software Product was not designed or contemplated, and where use of the Tyler Software Product outside such application, environment or business process would not have given rise to the claim; (iv) corrections, modifications, alterations or enhancements that TOWN made to the Tyler Software Product; (v) use of the Tyler Software Product by any person or entity other than TOWN or TOWN's employees; or (vi) TOWN's willful infringement. In the event a Tyler Software Product is finally determined to be infringing and its use by TOWN is enjoined, VENDOR shall, at its election (i) procure for TOWN the right to continue using the infringing Tyler Software Product; (ii) modify or replace the infringing Tyler Software Product so that it becomes non-infringing; or (iii) terminate TOWN's license for the infringing Tyler Software Product and refund to TOWN the Application Software License Fee paid for the infringing Tyler Software Product, as depreciated on a straight-line basis over a seven (7) year period commencing on the effective date of this Agreement. VENDOR shall have no liability hereunder if (i) TOWN modified a Tyler Software Product and such modification is determined by a court of competent jurisdiction to be a contributing cause of the infringement; (ii) TOWN continues using the infringing Tyler Software Product after TOWN becomes aware that such infringing Tyler Software Product is or is likely to become the subject of a claim hereunder; or (iii) the infringement would have been avoided by TOWN's use of the most current version of the Tyler Software Product. The foregoing states VENDOR's entire liability and TOWN's sole and exclusive remedy with respect to the subject matter hereof.

2.1.1.11. **Limitation of Liability.** In no event shall VENDOR be liable for special, indirect, incidental, consequential, or exemplary damages, including, without limitation, any damages resulting from loss of use, loss of data, interruption of business activities, or failure to realize savings arising out of or in connection with the use of the Tyler Software Products. VENDOR's liability for damages and expenses arising out of the license of the Tyler Software Products, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to two (2) times the Application Software License Fees set forth in Exhibit 1 - Investment Summary. Such Application Software License Fees reflect and are set in reliance upon this limitation of liability.

## 2.1.2. **Third Party Products**

2.1.2.1. **Agreement to License or Sell Third Party Products.** For the price set forth in Exhibit 1 - Investment Summary (the "Third Party Product Fees"), VENDOR agrees to license or sell and deliver to TOWN, and TOWN agrees to accept from VENDOR the Third Party Products set forth in Exhibit 1 - Investment Summary ("Third Party Products").

### 2.1.2.2. **License of Third Party Products.**

2.1.2.2.1. Upon TOWN's payment in full of the Third Party Product Fees set forth in Exhibit 1 - Investment Summary, VENDOR shall grant to TOWN and TOWN shall accept from VENDOR a non-exclusive, nontransferable, non-assignable license to use the Third Party Products and related documentation for TOWN's internal business purposes, subject to the terms and conditions set forth herein.

2.1.2.2.2. The developer of the Third Party Products (each a "Developer", collectively "Developers") shall retain ownership of the Third Party Products.

2.1.2.2.3. The right to transfer the Third Party Products to a replacement hardware system is governed by the Developer. The cost for new media or any required technical assistance to accommodate the transfer would be billable charges to TOWN. TOWN shall provide advance written notice to VENDOR of any such transfer.

2.1.2.2.4. TOWN acknowledges and agrees that the Third Party Products and related documentation are proprietary to the Developer and have been developed as trade secrets at the

Developer's expense. TOWN shall use best efforts to keep the Third Party Products and related documentation confidential and to prevent any misuse, unauthorized use, or unauthorized disclosure of the Third Party Products and related documentation by any party.

2.1.2.2.5. TOWN shall not perform decompilation, disassembly, translation or other reverse engineering on the Third Party Products.

2.1.2.2.6. TOWN may make copies of the Third Party Products for archive purposes only. TOWN will repeat any and all proprietary notices on any copy of the Third Party Products. TOWN may make copies of the documentation accompanying the Third Party Products for internal use only.

2.1.2.3. **Delivery.** Unless otherwise indicated in Exhibit 1 - Investment Summary, the prices for Third Party Products include costs for shipment while in transit from the Developer or supplier to TOWN.

2.1.2.4. **Installation and Acceptance.** Unless otherwise noted in Exhibit 1 - Investment Summary, the Third Party Product installation fee includes installation of the Third Party Products. Verification of the Third Party Products in accordance with the provisions of this Agreement shall constitute TOWN's acceptance of the Third Party Products. Such acceptance shall be final and conclusive except for latent defect, fraud, or gross mistake.

2.1.2.5. **Site Requirements.** TOWN shall provide a suitable environment, location and space for the installation and operation of the Third Party Products; sufficient and adequate electrical circuits for the Third Party Products; and installation of all required cables.

2.1.2.6. **Warranties.**

2.1.2.6.1. VENDOR is authorized by each Developer to grant licenses or sublicenses to the Third Party Products.

2.1.2.6.2. VENDOR warrants that each Third Party Product shall be new and unused, and TOWN's title or license to each Third Party Product shall be free and clear of all liens and encumbrances arising through VENDOR.

2.1.2.6.3. TOWN acknowledges and agrees that VENDOR is not the manufacturer of the Third Party Products. As such, VENDOR does not warrant or guarantee the condition or operating

characteristics of the Third Party Products. VENDOR hereby grants and passes through to TOWN any warranty adjustments that VENDOR may receive from the Developer or supplier of the Third Party Products.

2.1.2.6.4. **Maintenance.**

2.1.2.6.4.1. In the event TOWN elects not to purchase through VENDOR maintenance services on the Third Party Products, or such maintenance services are unavailable, it shall be the responsibility of TOWN to repair and maintain the Third Party Products and purchase enhancements as necessary after acceptance as set forth above.

2.1.2.6.4.2. In the event TOWN elects to purchase through VENDOR maintenance services on the Third Party Products, VENDOR will facilitate resolution of a defect in a Third Party Product with the Developer.

2.1.2.6.4.3. In the event the Developer charges a fee for future Third Party Product release(s), TOWN shall be required to pay such fee.

2.1.2.6.4.4. **Limitation of Liability.** In no event shall VENDOR be liable for special, indirect, incidental, consequential, or exemplary damages, including, without limitation, any damages resulting from loss of use, loss of data, interruption of business activities, or failure to realize savings arising out of or in connection with the use of the Third Party Products. VENDOR's liability for damages and expenses arising out of the Third Party Products, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to two (2) times the Third Party Product Fees set forth in Exhibit 1 - Investment Summary. Such prices are set in reliance upon this limitation of liability.

2.2 **Software Maintenance**

VENDOR shall provide ongoing software support and maintenance of all Tyler Software Products provided to the TOWN by VENDOR (the "Maintenance") under the following terms and conditions:

2.2.1. **Term of Maintenance.** Maintenance shall be effective upon the first day of training on any of the Tyler Software Products (the first day of training shall be set forth in the mutually developed project

plan) and shall remain in force for a one (1) year term. Upon expiration of this term, TOWN may renew the Maintenance for a subsequent period of the remaining then current calendar year at the then-current Application Software Maintenance Fees in effect for similarly situated VENDOR customers. Upon expiration of this term, TOWN may renew the Maintenance for subsequent one (1) year periods at the then-current Application Software Maintenance Fees in effect for similarly situated VENDOR customers. VENDOR agrees not to increase the Application Software Maintenance Fees by more than five percent (5%) per year for the first four (4) renewals, and not to increase the Application Software Maintenance Fees by more than eight (8%) per year for the subsequent five (5) renewals, and thereafter increases shall be at VENDOR's then current rates in effect for similarly situated VENDOR customers. Notwithstanding anything to the contrary contained herein, the Year 2 Tyler Software Product Application Software Maintenance Fees shall not increase beyond that which is set forth in the Exhibit 1 – Investment Summary.

#### 2.2.2. **Maintenance Fees.**

2.2.2.1. **Additional Charges.** Any Maintenance services performed by VENDOR for TOWN which are not covered by this Agreement, as set forth below, including materials and expenses, shall be billed to TOWN at VENDOR's then current rates.

2.2.2.2. VENDOR reserves the right to suspend the Maintenance services if TOWN fails to pay undisputed Application Software Maintenance Fees within sixty (60) calendar days of the due date. VENDOR will reinstate maintenance services upon TOWN's payment of the overdue Application Software Maintenance Fees.

2.2.3. For as long as the Maintenance Services provided under this Agreement are in place, VENDOR shall, in a professional, good and workmanlike manner, perform its obligations set forth herein in order to conform the Tyler Software Products to the applicable warranty under this Agreement. If TOWN modifies the Tyler Software Products, VENDOR's obligations to provide maintenance services on and warrant the Tyler Software Products shall be void.

2.2.4. For as long as the Maintenance Services provided under this Agreement are in place VENDOR shall provide telephone support on the Tyler Software Products. VENDOR personnel will accept



telephone calls during the hours of 5 AM PST and 6 PM PST, Monday through Friday, excluding holidays.

2.2.5. For as long the Maintenance Services provided under as this Agreement are in place VENDOR shall continuously maintain a master set of the Tyler Software Products on appropriate media, a hardcopy printout of source code to the Tyler Software Products, and Tyler user manuals.

2.2.6. For as long as the Maintenance Services provided under this Agreement are in place VENDOR shall maintain personnel appropriately trained to be familiar with the Tyler Software Products in order to provide maintenance services.

2.2.7. For as long the Maintenance Services provided under as this Agreement are in place VENDOR shall provide TOWN with all releases VENDOR makes to the Tyler Software Products. TOWN acknowledges and agrees that a new release of the Tyler Software Products is for implementation in the Tyler Software Products as they exist without TOWN customization or modification.

2.2.8. TOWN acknowledges and agrees that VENDOR reserves the right to cease supporting a prior release of the Tyler Software Products six (6) months after shipping a new release of the Tyler Software Products.

2.2.9. **Limitations and Exclusions.** Application Software Maintenance Fees do not include installation or implementation of the Tyler Software Products, onsite support (unless VENDOR cannot remotely correct a defect in a Tyler Software Product), application design, other consulting services, support of an operating system or hardware, or support outside VENDOR's normal business hours.

2.2.10. **TOWN Responsibilities.**

2.2.10.1. TOWN shall provide, at no charge to VENDOR, full and free access to the Tyler Software Products; working space; adequate facilities within a reasonable distance from the equipment; and use of machines, attachments, features, or other equipment necessary to provide maintenance services set forth herein.

2.2.10.2. For as long as the Maintenance Services provided under this Agreement are in place TOWN shall maintain a VPN connection through Citrix or Microsoft Terminal

Services. VENDOR, at its option, shall use the connection to assist with problem diagnosis and resolution.

2.2.11. **Limitation of Liability.** In no event shall VENDOR be liable for special, indirect, incidental, consequential, or exemplary damages, including, without limitation, any damages resulting from loss of use, loss of data, interruption of business activities, or failure to realize savings arising out of or in connection with the provision or quality of maintenance services or use of the Tyler Software Products. VENDOR's liability for damages and expenses arising out of the Maintenance of the Tyler Software Products, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to two (2) times the Application Software Maintenance Fees paid to VENDOR during the twelve (12) months prior to the claim. Such Application Software Maintenance Fees reflect and are set in reliance upon this limitation of liability.

### 2.3 **Professional Services**

2.3.1. **Services.** VENDOR shall provide the Professional Services (the "Professional Services") set forth in Exhibit 1 - Investment Summary at TOWN's election. As the amount of such services is an estimate, TOWN shall be liable to VENDOR for the services actually provided to TOWN.

#### 2.3.2. **Professional Services Fees.**

2.3.2.1. All Training & Installation and Data Conversion services shall be invoiced on a weekly basis.

2.3.2.2. Verification shall be billable to TOWN at the rate for Training & Installation Services set forth in Exhibit 1 - Investment Summary.

2.3.2.3. Expenses shall be billed in accordance with the then-current State of Florida business travel policy. Copies of receipts shall be provided on an exception basis at no charge. Should all receipts for non per diem expenses be requested, an administrative fee shall be incurred. Receipts for mileage and miscellaneous items less than five dollars (\$5) are not available.

2.3.3. **Additional Services.** Services utilized in excess of those set forth in Exhibit 1 - Investment Summary and additional

related services not set forth in Exhibit 1 - Investment Summary shall be billed at VENDOR's then current rates.

2.3.4. **Limitation of Liability.** In no event shall VENDOR be liable for special, indirect, incidental, consequential, or exemplary damages, including, without limitation, any damages resulting from loss of use, loss of data, interruption of business activities, or failure to realize savings arising out of or in connection with the provision or quality of the services or the use of the Tyler Software Products. VENDOR's liability for damages and expenses arising out of the Professional Services provided under this Agreement, whether based on a theory of contract or tort, including negligence and strict liability, shall be limited to two times the Professional Service fees set forth in Exhibit 1 - Investment Summary. Such fees reflect and are set in reliance upon this limitation of liability.

2.3.5. **Cancellation.** In the event TOWN cancels services less than two (2) weeks in advance, TOWN is liable to VENDOR for (i) all non-refundable expenses incurred by VENDOR on TOWN's behalf; and (ii) daily fees associated with the canceled services if VENDOR is unable to re-assign its personnel.

### 3. **COMPENSATION AND PAYMENT**

3.1 For all Products / Services provided by VENDOR as described in Sections 2.1 through 2.3 of this Agreement and as set forth in Exhibit 1 - Investment Summary, VENDOR shall be compensated as follows:

3.1.1. TOWN will pay \$40,370.00 upon execution of this Agreement that equals 25% of the Application Software License Fees.

3.1.2. TOWN will pay when VENDOR has made the Tyler Software Products available to TOWN for downloading:

3.1.2.1. 50% of the Application Software License Fees (\$80,740)

3.1.2.2. 100% of the Crystal Reports Site license fees (\$4,300)

3.1.2.3. 100% of the Year 1 Fee for Crystal Reports Software Assurance (\$860)

3.1.2.4. 100% of the GBA Master Series license fees (\$34,888)

3.1.2.5. 100% of the MapObjects license fees (\$400)

- 3.1.2.6. 100% of the Year 1 Fee for MapObjects maintenance (\$80).
- 3.1.3. TOWN will pay the remaining \$40,370.00 that equals 25% of the Application Software License Fees upon Verification of the Tyler Software Products in accordance with Section 2.1.1.8 of this Agreement. Unless the VENDOR Software Products fail verification, this period shall not exceed ninety (90) days after delivery.
- 3.1.4. Town will pay \$2,425 upon delivery of the Cashiering Hardware.
- 3.1.5. Notwithstanding anything to the contrary contained herein, the total purchase price, including implementation, installation, and verification of the Tyler Software Products and Third Party Products, and first (1<sup>st</sup>) year Maintenance under this Agreement and as set forth in Exhibit 1 – Investment Summary, shall not exceed Three Hundred Ninety-Seven Thousand One Hundred Forty-Three Dollars (\$397,143), for and based on the scope of services outlined in the Sample Statement of Work attached to VENDOR’s Proposal dated February 20, 2009, and further provided that (i) TOWN fully and timely performs all its responsibilities set forth in the Statement of Work and any Project Plan mutually developed there under, (ii) all assumptions set forth in Exhibit 3 – Data Conversion Process are realized, and (iii) TOWN’s personnel learn in a time and manner usual to similarly situated VENDOR customers (VENDOR and TOWN agree that different individuals have different capacities for learning. VENDOR shall provide training services, in accordance with the warranties set forth in the agreement, to appropriate TOWN personnel, but TOWN shall be solely liable for TOWN personnel’s lack of ability to learn). Notwithstanding the foregoing, if force majeure or catastrophic events occur beyond the reasonable control of VENDOR and without fault or negligence of VENDOR, the parties agree to negotiate in good faith additional fees (including but not limited to travel expenses) to be paid to VENDOR.
- 3.1.6. Training & Installation, Data Conversion, and Other Professional Services, plus expenses, are billed, if provided/incurred, on a weekly basis, and are due and payable thirty (30) days after receipt of invoice, provided, however, that the amount set forth in Exhibit 1 –Investment

Summary is not exceeded without prior written approval of the TOWN.

3.1.7. The first annual GBA Master Series software maintenance fees of \$12,460 as set forth in the Exhibit 1- Investment Summary which cover the one (1) year period commencing upon the first day of training of the GBA Master Series software will be waived (the first day of training shall be set forth in the mutually developed project plan). Subsequent annual GBA Master Series software maintenance fees will be due on the anniversary of the first day of training of the GBA Series software. Notwithstanding anything to the contrary contained herein, VENDOR agrees not to increase the GBA Master Series software maintenance fee by more than five percent (5%) per year for the first four (4) renewals of Maintenance Services, and not to increase the GBA Master Series software maintenance fee by more than eight (8%) per year for the subsequent five (5) renewals, and thereafter increases shall be at VENDOR's then current rates in effect for similarly situated VENDOR customers.

3.1.8. The Year 1 Tyler Software Product Application Software Maintenance Fees of \$40,850 for the one (1) year period commencing upon the first day of training on any Tyler Software Product are waived (the first day of training shall be set forth in the mutually developed project plan). Subsequent annual Tyler Software Product Application Software Maintenance Fees will be due on the anniversary of the first day of training on any Tyler Software Product. Notwithstanding anything to the contrary contained herein, VENDOR agrees not to increase the Application Software Maintenance Fees by more than five percent (5%) per year for the first four (4) renewals of Maintenance Services, and not to increase the Application Software Maintenance Fees by more than eight (8%) per year for the subsequent five (5) renewals, and thereafter increases shall be at VENDOR's then current rates in effect for similarly situated VENDOR customers. Note: VENDOR will invoice Town the Year 2 Tyler Software Product Application Software Maintenance Fees prorated through December 31, 2010, or such other applicable date as appropriate.

- 3.1.9. For as long as the Maintenance Services provided under this Agreement are in place for each of the Tyler Software Products licensed under this Agreement, the TOWN shall be entitled to a “technology guarantee” credit equal to the total amount of total year one Tyler Software Product Application Software License Fees of \$161,480 paid by TOWN as set forth in the Exhibit 1 - Investment Summary, for any subsequent license purchase from VENDOR by the TOWN of another Tyler financial software system. In the event TOWN elects to replace the Tyler Software Products with another Tyler financial software system per this section, TOWN shall pay the then-current maintenance fees for the replacement Tyler financial software system products and all fees for professional services, third party hardware and software, and expenses associated with replacement Tyler financial software system products, and the TOWN’s license to use the Tyler Software Products shall terminate.
- 3.2 The VENDOR shall provide any such reasonable backup documentation requested by the TOWN to support the amounts invoiced to the TOWN for the Product / Services contemplated herein, provided, however, with respect to expenses, copies of receipts shall be provided on an exception basis at no charge. Should all receipts for non per diem expenses be requested, an administrative fee shall be incurred. Receipts for mileage and miscellaneous items less than five dollars (\$5) are not available. The TOWN shall pay the VENDOR for all invoices no later than 30 calendar days from the invoice date.
- 3.3 For all Additional Services, (Annual Maintenance or Professional Services), as described in Sections 2.2 and 2.3 of this Agreement, the TOWN shall pay VENDOR a fee mutually agreed to by the Town Manager and VENDOR.
- 3.4. **Taxes.** The fees set forth in Exhibit 1 – Investment Summary do not include any taxes, including, without limitation, sales, use or excise tax. All applicable taxes shall be paid by VENDOR to the proper authorities and shall be reimbursed by TOWN to VENDOR. In the event TOWN possesses a valid direct-pay permit, TOWN will forward such permit to VENDOR on the Effective Date of this Agreement. In such event, TOWN shall be responsible for remitting all applicable taxes to the proper authorities. If tax-exempt, TOWN shall provide VENDOR with TOWN's tax-exempt certificate.
- 3.5. **Invoice Dispute.**

3.5.1. In the event TOWN believes products or services do not conform to warranties in this Agreement, TOWN shall provide written notice to VENDOR within fifteen (15) calendar days of receipt of the applicable invoice. TOWN is allowed an additional fifteen (15) calendar days to provide written clarification and details. VENDOR shall provide a written response to TOWN that shall include either a justification of the invoice or an adjustment to the invoice. VENDOR and TOWN shall develop a plan to outline the reasonable steps to be taken by VENDOR and TOWN to resolve any issues presented in TOWN's notice to VENDOR. TOWN may only withhold payment of the amount actually in dispute until VENDOR completes its action items outlined in the plan. Notwithstanding the foregoing, if VENDOR is unable to complete its actions outlined in the plan because TOWN has not completed its action items outlined in the plan, TOWN shall remit full payment of the invoice.

3.5.2. Any invoice not disputed as described above shall be deemed accepted by TOWN. VENDOR reserves the right to suspend delivery of all services in the event TOWN fails to pay an invoice not disputed as described above within sixty (60) calendar days of receipt of invoice.

#### 4. **INDEMNIFICATION**

4.1. VENDOR shall defend, indemnify, and hold harmless the TOWN, its officers, attorneys, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages for personal injury or property damage caused by VENDOR's, its officers', agents' or employees' negligent or willful acts or omissions, negligence, recklessness, misconduct, or negligent or willful performance or non-performance of any provision of this Agreement.

4.2. VENDOR shall defend, indemnify, and hold harmless the TOWN, its officers, attorneys, agents and employees, from all losses, injuries, damages, wages or overtime compensation due VENDOR'S agents or employees in rendering services pursuant to this Agreement, including payment of TOWN's 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 employment related litigation or claims under federal or state law.

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

5. **INSURANCE**

- 5.1. VENDOR shall maintain at its sole cost and expense at all times, commercial general liability insurance of at least \$1,000,000, automobile liability insurance of at least \$1,000,000, and professional liability insurance of at least \$1,000,000. The TOWN shall be named as an additional insured on the commercial general liability policy, unless prohibited by law, and VENDOR shall provide TOWN with a certificate evidencing same. Each certificate shall also state "Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail 30 days written notice to the certificate holder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the insurer, its agents or representatives".
- 5.2. VENDOR shall maintain worker's compensation insurance at the statutory minimums required by Chapter 440, Florida Statutes.
- 5.3. VENDOR shall maintain each of above insurance policies/coverages throughout the term of this Agreement and any extensions of this Agreement, however, VENDOR reserves the right to change any deductibles or self-insured retentions without TOWN's consent.
- 5.4. VENDOR shall provide the TOWN with declaration pages for all policies except for Directors & Officers Liability and Professional Liability, and any renewals.

6. **TERMINATION**

- 6.1 The TOWN may elect to terminate all or a portion of the products and Services provided by VENDOR in this Agreement by giving VENDOR written notice at least ninety (90) calendar days prior to the effective date of termination. If the TOWN's election to terminate is based on VENDOR's failure to perform under this Agreement, TOWN shall allow VENDOR the above written notice period in which to cure such failure ("Cure Period"). If, at the end of the cure period, VENDOR has not cured such failure, TOWN will have the right to terminate this Agreement for cause. Upon a termination for cause TOWN shall be entitled to any remedies at law or in equity subject to the provisions set forth in Sections 2.1.1.9, 2.1.1.10, 2.1.1.11, 2.1.2.6.4.4, and 2.2.11 of this Agreement. Upon any termination under this section, TOWN shall pay VENDOR for products, services and expenses delivered or incurred prior to the date VENDOR received TOWN's notice of termination. Upon receipt of written notice of termination, VENDOR 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 VENDOR.

- 6.2 VENDOR may terminate the Agreement at any time by giving the TOWN written notice at least 180 calendar days prior to the effective date of termination.
- 6.3 In the event of termination or expiration of this Agreement, VENDOR and the TOWN shall cooperate in good faith in order to effectuate a smooth and harmonious transition from VENDOR to the TOWN, or to any other person or entity the TOWN may designate, and to maintain during such period of transition the same services provided to the TOWN pursuant to the terms of this Agreement.
- 6.4 Subsequent to the termination of this Agreement, the TOWN may contract with VENDOR at a mutually agreed upon amount to perform specified services on an as needed basis.
- 6.5 In the event that this Agreement is terminated for convenience, TOWN shall pay VENDOR for products, services and expenses delivered or incurred prior to the date VENDOR received TOWN's notice of termination. Upon receipt of a notice of termination, the VENDOR shall perform only those services specified by the TOWN Manager and shall not incur additional expenses without the Town Manager's prior written approval.
- 6.6 Upon termination or expiration, TOWN shall pay VENDOR for products, services and expenses delivered or incurred prior to the date VENDOR received TOWN's notice of termination, however, the TOWN shall not be liable to VENDOR for any additional compensation, consequential or incidental damages, lost profits, or any other compensation, beyond the compensation structure specifically provided for in this Agreement.

7. **ENTIRE AGREEMENT/MODIFICATION/AMENDMENT**

- 7.1. 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.
- 7.2. 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.

8. **SEVERABILITY**

8.1. 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.

9. **GOVERNING LAW**

9.1. This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Exclusive venue for any litigation shall be in Miami-Dade County, Florida.

10. **WAIVER**

10.1. Except as expressly provided herein, 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.

11. **NOTICES/AUTHORIZED REPRESENTATIVES**

11.1. 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, by registered or certified mail with postage prepaid return receipt requested, or by private postal service, addressed to the parties at the following addresses:

For the Town:

Town of Cutler Bay  
Attention: Steven Alexander, Town Manager  
10720 Caribbean Blvd, Suite 105  
Cutler Bay, Florida 33189  
Telephone: (305) 234-4262  
Facsimile: (305) 234-4251

With a copy to:

Weiss Serota Helfman Pastoriza Cole &  
Boniske, P.L., Town Attorneys  
Attention: Mitchell Bierman, Esq.  
2525 Ponce de Leon Blvd  
Suite 700  
Coral Gables, FL 33134  
Phone: (305) 854-0800

Facsimile: (305) 854-2323

For VENDOR:

Tyler Technologies, Inc.  
Attention: Contracts Manager  
370 US Route One  
Falmouth, ME 04105  
Telephone: (207) 781-2260  
Facsimile: (207) 781-2459

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

12. **INDEPENDENT VENDOR**

12.1. VENDOR is and shall remain an independent contractor and is not an employee or agent of the TOWN. Services provided by VENDOR shall be by employees of VENDOR working under the supervision and direction of VENDOR and nothing in this Agreement shall in any way be interpreted or construed to deem said employees to be agents, employees, or representatives of the TOWN. VENDOR agrees that it is a separate and independent enterprise from the TOWN.

12.2. VENDOR shall be responsible for all compensation, tax responsibilities, insurance benefits, other employee benefits, and any other status or rights of its employees during the course of their employment with VENDOR. This Agreement shall not be construed as creating any joint employment relationship between VENDOR and the TOWN, and the TOWN will not be liable for any obligation incurred by VENDOR, including but not limited to unpaid minimum wages and/or overtime payments.

13. **STAFFING/REMOVAL**

13.1 If at any time during the term of this Agreement the Town Manager becomes dissatisfied with the performance of any of VENDOR'S staff assigned to provide services under this Agreement, the Town Manager may request that the particular employee be removed from servicing this account. Representatives of VENDOR and the Town Manager shall meet to discuss appropriate remedial action to alleviate the performance deficiencies experienced by the TOWN. If the proposed resolution is unsatisfactory to the Town Manager, VENDOR shall reassign said personnel out of the TOWN within a reasonable period of notification by the Town Manager.

13.2 VENDOR agrees to act in good faith and to use its best efforts to resolve any problems experienced by the TOWN.

14. **DISPUTES AND WAIVER OF JURY TRIAL**

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

14.2. Should a dispute arise with respect to this Agreement, TOWN will notify VENDOR immediately in writing. If VENDOR and TOWN cannot resolve a dispute within thirty (30) calendar days following notification in writing by either party of the existence of said dispute, then the following procedure shall apply:

14.2.1. Each party shall appoint one (1) person to act as an impartial representative. The appointed individual shall be of sufficient knowledge and experience to understand and deal with the dispute but shall not be a person assigned to the project. The set of four (4) individuals consisting of VENDOR's Project Manager for this project, TOWN's Project Manager for this project, and the two (2) appointees is called a Dispute Resolution Group.

14.2.2. The Dispute Resolution Group shall convene no later than twenty-one (21) calendar days after the expiration of the thirty (30) calendar day period referenced above and shall meet for a minimum of four (4) four (4) hour sessions during the subsequent four (4) business days, unless otherwise mutually agreed. Any resolution shall be in writing and signed by both parties. Such resolution shall constitute a binding amendment to the Agreement.

14.2.3. Nothing in this Section shall prevent a party from applying to a federal or state court of competent jurisdiction to obtain injunctive relief pending resolution of the dispute through the dispute resolution procedures set forth herein.

15. **ASSIGNMENT/SUBCONTRACTS**

15.1. This Agreement shall not be assignable by VENDOR without the prior approval of the Town Council, at the TOWN'S reasonable discretion, provided, however, VENDOR may without the prior approval of the Town Council, assign this Agreement in its entirety to the surviving entity of any

merger or consolidation or to any purchaser of substantially all of VENDOR's assets.

15.2 VENDOR shall not subcontract any portion of the work required by this Agreement, except with the prior approval of the Town Manager, which shall be on his or her sole and absolute discretion.

15.3 This Agreement shall not be assignable by Town without the prior approval of the VENDOR, in the VENDOR's reasonable discretion.

16. **PROHIBITION AGAINST CONTINGENT FEES/CONFLICTS**

16.1. VENDOR warrants 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 VENDOR, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

16.2 Neither VENDOR nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with VENDOR'S loyal and conscientious exercise of judgment related to its performance under this Agreement.

16.3 VENDOR agrees that none of its officers or employees shall, during the Term or any renewal term of this Agreement, serve as an expert witness against TOWN in any legal or administrative proceeding in which VENDOR, he or she is not a party, unless compelled by court process.

17. **ADDITIONAL WARRANTIES OF VENDOR**

19.1 VENDOR warrants and represents that at all times during the Term or any renewal term of this Agreement that it shall maintain in good standing with the State of Florida, that all required licenses and certificates of VENDOR and its employees and agents required to perform services hereunder under federal, state and local laws necessary to perform the Scope of Services specified in this Agreement shall remain current and active.

17.2 VENDOR warrants and represents that its employees have received sexual harassment training and that VENDOR maintains appropriate sexual harassment and anti-discrimination policies.

17.3 VENDOR warrants and represents that its employees will abide by the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes and the applicable provisions of 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.

- 17.4 VENDOR shall not discriminate against any person in its operations, activities or delivery of services under this Agreement. VENDOR shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation or any other factor which cannot be lawfully used as a basis for service delivery.
- 17.5 VENDOR represents that all persons delivering the Services as required by this Agreement have the requisite 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 this Agreement and agrees to provide and perform such Services to TOWN'S satisfaction for the agreed compensation.
- 17.6 VENDOR shall maintain a Drug-Free workplace as that term is defined in Florida Statutes.
- 17.7 VENDOR shall comply with all applicable federal, state, county and Town laws, rules and regulations in the performance of Services.
- 17.7 THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER RIGHTS, REMEDIES, AND WARRANTIES EXPRESSED, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND SYSTEM INTEGRATION, WHICH ARE HEREBY DISCLAIMED BY VENDOR.

18. **ATTORNEYS' FEES**

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

19. **SOURCE CODE IN ESCROW**

- 19.1 VENDOR maintains an escrow agreement with an escrow services company under which VENDOR places the source code of each major release of the VENDOR Software Products. At TOWN's request, VENDOR will add TOWN as a beneficiary to such escrow agreement.

TOWN shall pay the annual beneficiary fee directly to the escrow services company and is solely responsible for maintaining its status as a beneficiary. A copy of Vendor's current escrow agreement is attached to this Agreement as Exhibit 6.

20. **FORCE MAJEURE** Neither party shall be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by force majeure. Force majeure shall not be allowed unless:

20.1. Within five (5) business days of the occurrence of force majeure, the party whose performance is delayed thereby shall provide the other party or parties with written notice explaining the cause and extent thereof, as well as a request for a time extension equal to the estimated duration of the force majeure events.

20.2. Within ten (10) business days after the cessation of the force majeure event, the party whose performance was delayed shall provide the other party written notice of the time at which force majeure ceased and a complete explanation of all pertinent events pertaining to the entire force majeure situation.

20.3. Either party shall have the right to terminate this Agreement if Force Majeure suspends performance of scheduled tasks by one or more parties for a period of one hundred-twenty (120) or more days from the scheduled date of the task. This paragraph shall not relieve TOWN of its responsibility to pay for services and goods provided to TOWN and expenses incurred on behalf of TOWN prior to the effective date of termination.

**[THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK]**

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

**WITNESSES:**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Town Clerk

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

\_\_\_\_\_  
Town Attorney

**VENDOR**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**TOWN OF CUTLER BAY**

By: \_\_\_\_\_

Date: \_\_\_\_\_



**Exhibit 1 – Investment Summary**

**Exhibit 2 – Verification Test**

The Verification Test will be conducted after the Tyler Software Products are installed and before they are implemented. The Verification Test is performed using the Tyler sample database. Such database contains general information applicable to all Tyler Clients. As such, the Verification Test will not demonstrate TOWN-specific functionality. Rather, the Verification Test will confirm that the Tyler Software Products are installed and performing baseline functions.

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**TOWN:**

---

**Contact:**

---

**Date:**

---

**Financial Products**

- 1. View general ledger accounts form (Initial) \_\_\_\_\_
- 2. View budget documents
- 3. View accounts payable vendor form
- 4. Find purchase orders in purchase order inquiry
- 5. View inventory item form
- 6. View fixed assets form
- 7. View projects form
- 8. View accounts receivable customers form

**Customer Information System Products**

- 1. View fee schedule with rate tables (Initial) \_\_\_\_\_
- 2. View utility billing account form
- 3. View utility billing customer form
- 4. View parcels form
- 5. View license form
- 6. View permits form

**Personnel Products**

- 1. View employee form (Initial) \_\_\_\_\_
- 2. View position form
- 3. View deduction codes
- 4. View pay type codes
- 5. View shift calendars

### Exhibit 3 – Data Conversion Process

#### *Conversion Assistance*

VENDOR will generally convert relevant and useful data from a TOWN's legacy system as a part of the conversion/installation process. The Investment Summary contains an estimated cost for the project. This estimate is based on VENDOR's experience in performing similar successful data conversions over the past twenty years. TOWN will be billed for actual conversion services provided by VENDOR.

VENDOR has developed the following proven strategy for converting data from legacy systems into VENDOR's database structure.

- A project coordinator is assigned to TOWN once the Agreement is executed.
- The project coordinator works with TOWN to schedule consultation meetings (or site visits if necessary) in accordance with the data conversions for each module.
- VENDOR provides detailed conversion data specification documents to TOWN's technical staff.
- VENDOR's conversion specialists consult with TOWN's technical staff and provide file specifications to enable TOWN's technical staff to prepare and provide the conversion data in the necessary format. If requested by TOWN, VENDOR will determine if VENDOR can gather the data itself and assist in converting it into VENDOR's data specifications (referred to as a start-to-finish conversion for an additional fee). Otherwise, VENDOR's standard conversion method requires TOWN to provide VENDOR with the extract of the required data in accordance with VENDOR's data specifications and in the technical format specified below. Data must be "in balance" in order to proceed with the conversion process.
- TOWN provides VENDOR with the first instance of data on or before a scheduled date. VENDOR inspects and verifies the accuracy of the data. Data may require additional "clean-up" by VENDOR's technical staff or VENDOR may require TOWN to provide VENDOR with new data files. Once the data is considered accurate, VENDOR converts the data into VENDOR's database schema. This is typically done using conversion programs written and maintained by VENDOR's technical staff.

- Depending on the accuracy and conformance of the data provided by TOWN, VENDOR may repeat the conversion process up to two times, in order to provide accurate and balanced data before TOWN uses the VENDOR Software Products in live production. On the more complicated VENDOR Software Products, VENDOR typically plan for an initial conversion to be aligned with the “set up” of the VENDOR Software Product, refinement of the conversion during system testing, and then a final conversion for parallel processing and use of the VENDOR Software Product in live production.
- During the entire process, a VENDOR conversion specialist is assigned to each VENDOR Software Product that is receiving converted data. This person will be responsible for working with TOWN to analyze and convert data, support VENDOR’s Implementation Consultant while on-site, and fix data problems using the available tools. Once TOWN uses the VENDOR Software Products in live production, TOWN is officially transitioned to VENDOR’s Technical Support organization.

## **I. FILE FORMATS**

There will typically be multiple conversion files for each module. Conversion import files may be provided in one of the following formats: 1) ASCII pipe “|” delimited text file, 2) Non Formatted Microsoft Excel Worksheet, or 3) Microsoft Access database.

The import files must adhere to the following characteristics:

- ASCII character content: The data must contain only printable ASCII characters. Control characters, non-printable characters, or “packed” data fields are not allowed.
- One record per line or row: Each line or row constitutes a single record or row of data.

### ASCII Pipe Delimited Text File:

Data may be provided as ASCII pipe delimited text files with variable length data separated by a “|” (“pipe”) character. Variable length records contain fields that are only as wide as the data requires (there are no leading or trailing spaces between data in each field). Files should be stored using the “.txt” file extension. Fields containing a Null value should have two adjacent pipe delimiter characters “||” representing the start of the current field and the start of the next field; it is not necessary to fill the field with spaces.

### Microsoft Excel Worksheet:

Data may be provided as a Microsoft Excel Worksheet with one worksheet representing one conversion file. All conversion files may be stored in one Microsoft Excel file as separate worksheets in the same “.xls” file extension. Worksheets cannot contain macros or data links. Each worksheet must adhere to the file specifications with the first row containing the header column information and each subsequent row representing one record of data.

### Microsoft Access Database:

Data may be provided as a Microsoft Access Database with each conversion file defined as a separate table. Table names should adhere to the file names minus the “.txt” extension. Upon request, a Microsoft Access Database may be supplied with all conversion tables pre-defined.

### ***Assumptions***

The conversion service fees listed in the Investment Summary are based upon the following assumptions:

- The conversion estimate includes conversion of financial data for one TOWN. The conversion includes the current and previous fiscal year for each VENDOR Software Product, unless otherwise noted.
- TOWN is responsible for extracting the “convert-from” data files from its systems, formatting it into VENDOR’s provided data specifications, and providing it in one of the acceptable technical formats.
- VENDOR will convert the chart of accounts, organization titles, funds, account balances, account activity on both an annual and per-period basis for every fiscal year converted, including budgets.
- For the accounts payable/purchasing conversion, VENDOR will convert vendor and vendor balance information, and outstanding check history
- Purchase orders, outstanding invoices, security setups, requisition queues, requisitions, vendor ship-to, and vendor bill-to addresses are not included in the standard general ledger/accounts payable/purchasing conversion.
- The conversion estimate for accounts receivable includes conversion of accounts receivable customer identifying information (customer number, name, addresses, and billing codes) and current accounts receivable open items (customer number, account number, due date, amount owed). The accounts receivable conversion does not include history.
- The conversion estimate for project/grant accounting includes conversion of the project strings, materials history, labor history, and project balances. This conversion includes up to five fiscal years of project accounting data.
- The conversion estimate for fixed assets includes conversion of fixed asset number and type, depreciation information, distribution information, asset class information, and improvement information.
- The payroll/position control conversion estimate includes conversion of payroll data for one TOWN. For the payroll conversion, VENDOR will convert employee and position information, grade and step tables, employee benefit and deduction information, direct deposit accounts, employee leave balances, and the current year’s employee paycheck history. Previous year’s payroll check history, job costing numbers, and job costing history, are not included in the standard payroll/position control conversion.

- The special assessments conversion estimate includes assessment district information (assessment types, ordinance numbers, and descriptions), assessment specific information (owners, assessed amounts, and balances due), and transaction specific information (bills, receipts, and their associated amounts). Fee structures are not included in the conversion.
- The estimate for parcels conversion includes basic parcel information consisting of addresses, owners, assessments and zoning, along with building information (addresses, owners), business information (addresses, owners, insurance) and professional information (surveyors, architects, engineers).
- The permit conversion estimate includes permit address, owner, applicant, and lender. All legacy fees need to be combined into a 'total fees' code representing the summation of all fees on a permit.
- The licensing module conversion estimate includes occupational information (mailing information, phone, email, tenants, lessees), and account information (numbers, fees, deposits). Fee structures are not included in the conversion.
- The utility billing conversion estimate includes customer information (mailing information, phone, email for owners, tenants, lessees, lenders, property managers, escrows, etc.), service location addresses, account information (numbers, services, fees, deposits), meter information (number, location, measurement of the meter, radio frequency), and history (meter reads and consumption, bills, receipts, billing adjustments, receipt adjustments). Fee structures and service orders are not included in the conversion.

## Exhibit 4 – ESRI End User License Agreement

### ***ESRI Products and Services***

TOWN (“Licensee”) understands and accepts that the following terms and conditions are required in order for Licensee to use applications created using MapObjects, or other ESRI products:

- 1) Reverse engineering, copying (other than a backup copy), or transfer or assignment of rights to use as well as the right to access source code is prohibited.
- 2) Any use other than as specifically granted herein is prohibited.
- 3) Licensee shall use all practical means, contractual and technical, to prevent any in-house or commercial user (including network users) from using any portions of MapObjects, and any extension thereof, separately from Licensor’s Licensed Program.
- 4) ESRI and/or its suppliers may enforce their intellectual property rights through injunctive relief and other remedies in law or equity. All copyright, government notices, trademarks, or other intellectual property notices noted under “Copyright, ESRI Trademark Name, and Government Use Notice” shall be included unmodified in the Application’s online help or Readme file and documentation.

**Copyright and U.S. Government Use Notice:** MapObjects is copyrighted by Environmental Systems Research Institute, Inc. All rights not specifically granted in this Agreement are reserved to ESRI or its suppliers.

Portions of this computer program are owned by ESRI, Copyright 1999 Environmental Systems Research Institute, Inc. All Rights Reserved.

Any software, documentation, and/or data delivered hereunder is subject to the terms of the License Agreement. In no event shall the U.S. Government acquire greater than RESTRICTED/LIMITED RIGHTS. At a minimum, use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in FAR 52.227-14 Alternates I, II, and III (JUN 1987); FAR 52.227-19 (JUN 1987) and/or FAR 12.211/12.212 (Commercial Technical Data/Computer Software); and DFARS 252.227-7015 (NOV 1995) (Technical Data) and/or DFARS 227.7202 (Computer Software), as applicable. Contractor/Manufacturer is Environmental Systems Research Institute, Inc., 380 New York Street, Redlands, CA 92373-8100 USA.

# EXHIBIT 5 – GBA MASTER SERIES® SOFTWARE LICENSE AGREEMENT

## IMPORTANT – READ CAREFULLY BEFORE INSTALLATION

This software is subject to acceptance of the *GBA Master Series*® Software License Agreement. GBA Master Series, Inc. (gbaMS) is willing to license this software to you only upon the condition that you accept all of the terms and conditions contained in the *GBA Master Series*® Software License Agreement and any stated Special Provisions. If you do not agree with the terms and conditions as stated, please return the unopened media package, the disks, and all accompanying printed materials to gbaMS for a full refund of the license fees.

THIS AGREEMENT ("**Agreement**") is between GBA Master Series, Inc., a Kansas corporation with its principal place of business at 10561 Barkley, Suite 500, Overland Park, KS 66212 ("**gbaMS**"), and the Town of Cutler Bay, Florida ("**Licensee**") with its software programs accessing databases residing at **Licensed Site**.

### RECITALS

WHEREAS, gbaMS owns certain software programs that are licensed as individual program titles which are known collectively as the "**GBA Master Series**®";

WHEREAS, Licensee would like to use, and gbaMS would like to grant Licensee the right to use, those software programs, while protecting the copyrights, trade secrets, confidential information, and other valuable intellectual property they contain.

NOW, THEREFORE, gbaMS and Licensee agree as follows:

### II. 1. DEFINITIONS.

"**Program(s)**" means the object code versions of the computer software programs, databases, and related documentation.

"**Seats**" means the number of concurrent users (i.e., the number of persons using a Program at one time) permitted to use a Program.

"**Clients**" means the number of individual database setups that can be accessed by a Program.

"**Licensed Site**" means the location at which the Licensee will be permitted to store the databases used by the Program(s).

### III. 2. LICENSE GRANT.

(a) **License**. Subject to the terms and conditions of this Agreement, gbaMS grants Licensee a fee-bearing nonexclusive license to use the object code versions of the Program(s) for its internal purposes during the term of this Agreement; provided, however, that (i) the number of concurrent users of each Program, including all users authorized to use any Program(s) pursuant to Section 2(b) below, shall not exceed the number of Seats for each such Program, (ii) the number of individual database setups that can be accessed by each Program shall not exceed the number of Clients for each such Program, and (iii) the location at which the databases accessed by the Program(s) reside shall be the Licensed Site designated herein.

(b) **Sublicense**. For information on granting sublicense rights, please contact gbaMS.

(c) **Limited Transfer**. For information on transferring the location of the Licensed Site, please contact gbaMS.

(d) **Copying**. Licensee may make only as many copies of each Program as are necessary for Licensee to utilize the total Seats for each such Program.

(e) **Future Licenses**. gbaMS and Licensee may, by mutual agreement, include future licenses of the Program(s) under this Agreement by exchanging documents (i.e., a purchase order from Licensee and acknowledgment from gbaMS) referencing this Agreement and the Program(s) to be licensed. Such future Program(s) shall be included as Program(s) under this Agreement. The parties agree that such purchase orders and acknowledgments shall have no effect on the terms and conditions of this Agreement, under which such Program(s) are licensed.

(f) **Limited Grant**. Except as expressly provided in this Section 2, gbaMS grants and Licensee receives no right, title or interest in or to the Programs or any other deliverables provided by gbaMS in connection with this Agreement and gbaMS reserves and retains all such right, title, and interest.

(g) **Disaster Recovery and Testing**. The Licensee is permitted to install the Programs at its internal disaster recovery site and to store copies of the databases used by the Programs for the purposes of testing its disaster recovery plan. The Licensee is also permitted to install the Programs in a testing environment at its Licensed Site and to store copies of the databases used by the Programs for the purposes of testing future releases and training users.

### IV. 3. LICENSE RESTRICTIONS.

(a) **No Reverse Engineering**. Licensee agrees not to disassemble, decompile, reverse analyze, or reverse engineer the Program(s).

(b) **No Modification**. Licensee agrees not to modify the Program(s) without the written consent of gbaMS.

(c) **No Copying**. Licensee agrees not to copy the Program(s), in whole or in part, except for a reasonable number of back-up copies and copies for disaster recovery and testing purposes, and as may be necessary to utilize the total Seats for a given Program.

(d) **No Third Party Use**. Licensee will not use the Program(s) in any manner to provide computer services to third parties, except as may be necessary to implement a sublicense.

(e) **Training**. Licensee will not use the Program(s) until its personnel have received sufficient training in the use of the Program(s) to generate accurate data from the operation of the Program(s).

### V. 4. PROPRIETARY RIGHTS.

(a) **gbaMS's Property**. The Program(s), in whole and in part and all copies thereof, are and will remain the sole and exclusive property of gbaMS.

(b) **Licensee's Property**. Any and all information provided by Licensee, as well as any and all information generated by Licensee's use of the Programs (specifically excluding Program code), shall remain the sole and exclusive property of Licensee.

(c) **Proprietary Notices**. Licensee will not delete or alter any copyright, trademark, and other proprietary rights notices of gbaMS and its licensors appearing on the Program(s). Licensee agrees to reproduce such notices on all copies it makes of the Program(s).

### VI. 5. DELIVERY.

gbaMS will deliver the Program(s) to Licensee, or Licensee's designated representative, within a reasonable time of execution of this Agreement by both parties.

### VII. 6. FEES AND TAXES.

(a) **License Fee**. As consideration for the rights granted to Licensee under the Agreement set forth in Section 2 of this Agreement, Licensee shall remit payment to gbaMS, or gbaMS's designated representative, the License Fee within thirty (30) days of the Shipping Date. Late payments will be subject to a late fee of one and one-half percent (1-1/2%) per month or the maximum rate permitted by applicable law,



whichever is less. gbaMS may publish revised fee schedules from time to time, and any fees for future licenses for the Program(s) included under this Agreement shall be determined by gbaMS's then-current fee schedule.

(b) **Taxes.** Fees due under this Agreement do not include any taxes. Licensee will be responsible for, and will promptly pay, all taxes of whatever nature (including but not limited to sales and use taxes) resulting from or otherwise associated with this Agreement or Licensee's receipt or use of the Program(s), except income taxes based on gbaMS's income. In lieu of payment of such taxes, Licensee shall provide gbaMS, or gbaMS's designated representative, with proof of Licensee's tax exempt status.

#### **VIII. 7. WARRANTIES.**

(a) **Warranty.** gbaMS warrants that during the ninety (90) days following the shipping date:

(I) THE PROGRAM(S) WILL BE CAPABLE OF PERFORMING IN THE MANNER DESCRIBED IN ALL THE DOCUMENTATION IN ALL MATERIAL RESPECTS; AND

(ii) the storage media containing the Program(s) will be free from defects in materials and workmanship.

(b) **Exclusive Remedy.** In the event that the Program(s) or storage media fail to conform to such warranty, as Licensee's sole and exclusive remedy for such failure gbaMS will, at its option and without charge to Licensee, repair or replace the Program(s) or storage media or refund to Licensee the License Fee paid, provided that the nonconforming item is returned to gbaMS within the 90-day warranty period.

(c) **Disclaimer.** The Warranties provided in this Section are in lieu of all other warranties, express and implied, including but not limited to any implied warranties of Merchantability, and Fitness for a Particular Purpose.

(d) **Year 2000 Compliance.** "Year 2000 Compliant" means that the Program(s), when used in accordance with its associated documentation, will (a) initiate and operate, (b) correctly store, represent, and process dates, and (c) not cause or result in abnormal termination or ending, when processing data containing dates in the year 2000 and in any preceding and following years, provided that all third party applications that exchange date data with the program do so properly and accurately in a form and format compatible with the program. The Program(s) provided by gbaMS under this agreement process dates only to the extent that the Program(s) use date data provided by the host or target operating system for date representations used in internal processes, such as file modifications. Any Year 2000 Compliance issues resulting from the operation of the Program(s) are therefore necessarily subject to the Year 2000 Compliance of the relevant host or target operating system. The preceding does not apply, however, and gbaMS does not assume any liability for, the performance of any applications that authorized licensees may create through use of the Program(s), nor for any Year 2000 Compliance issues that may arise from the use of the Program(s) with any third party products, including hardware, software or firmware. Except as expressly provided in this Section, gbaMS makes no Year 2000 related representations or warranties for the Program(s), and any such warranties, including any implied warranties, are hereby disclaimed.

#### **IX. 8. INDEMNITY.**

(a) **Duty to Indemnify and Defend.**

(i) gbaMS will defend or settle at gbaMS's own expense, any action or other proceeding brought against Licensee to the extent that it is based on a claim that the use of the Program(s) as licensed in this Agreement infringes any U.S. copyright or that the Program(s) incorporates any misappropriated trade secrets.

(ii) gbaMS will pay any and all costs, damages, and expenses (including but not limited to reasonable attorneys' fees) Licensee becomes obligated to pay in any such action or proceeding attributable to any such claim.

(iii) gbaMS will have no obligation under this Section as to any action, proceeding, or claim unless: (A) gbaMS is notified of it promptly; (B) gbaMS has sole control of its defense and settlement; and (C) Licensee provides gbaMS with reasonable assistance in its defense and settlement.

(b) **Injunctions.** If Licensee's use of any Program(s) under the terms of this Agreement is, or in gbaMS's opinion is likely to be, enjoined due to the type of infringement or misappropriation specified in Section 8(a)(i), then gbaMS may, at its sole option and expense, either:

(i) procure for Licensee the right to continue using such Program(s) under the terms of this Agreement;

(II) REPLACE OR MODIFY SUCH PROGRAM(S) SO THAT IT IS NONINFRINGEMENT AND SUBSTANTIALLY EQUIVALENT IN FUNCTION TO THE ENJOINED PROGRAM(S); OR

(III) IF OPTIONS (I) AND (II) ABOVE CANNOT BE ACCOMPLISHED DESPITE THE REASONABLE EFFORTS OF GBAMS, THEN GBAMS MAY BOTH:

(A) terminate Licensee's rights and gbaMS's obligations under this Agreement with respect to such Program(s); and

(B) refund to Licensee the unamortized portion of the License Fee paid based upon a 5 year straight-line depreciation, such depreciation to be deemed to have commenced on the effective date of this Agreement.

(c) **Exclusive Remedy.** The foregoing are gbaMS's sole and exclusive obligations, and Licensee's sole and exclusive remedies, with respect to infringement or misappropriation of intellectual property rights. gbaMS makes no separate warranty of noninfringement under or in connection with this agreement.

(d) **Exceptions.** gbaMS will have no obligations under this Section 8 with respect to infringement or misappropriation arising from: (i) modifications to the Program(s) that were not made by gbaMS (whether or not authorized by gbaMS); (ii) Program(s) specifications or modifications requested by Licensee; or (iii) the use of Program(s) with products (including but not limited to software) not provided by gbaMS.

#### **X. 9. CONFIDENTIAL INFORMATION.**

(a) **Definition.** "**Confidential Information**" refers to: (i) the Program(s), including but not limited to their software source code, and any related documentation or technical or design information related to the Program(s); (ii) the business or technical information of gbaMS, including but not limited to any information relating to gbaMS's product plans, designs, costs, product prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how; (iii) any information reasonably and appropriately designated by gbaMS as "confidential" or "proprietary" or which, under the circumstances taken as a whole, would reasonably be deemed to be confidential under applicable law; and (iv) the terms and conditions and existence of this Agreement.

(b) "Confidential Information" will not include information that:

(I) IS IN OR ENTERS THE PUBLIC DOMAIN WITHOUT LICENSEE'S BREACH OF THIS AGREEMENT;

(ii) Licensee receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation; or

(iii) Licensee party develops independently, which it can prove with clear and convincing written evidence.

(c) **Confidentiality Obligations.** Licensee agrees to take all measures reasonably required in order to maintain the confidentiality of all Confidential Information in its possession or control, which will in no event be less than the measures Licensee uses to maintain the confidentiality of its own information of equal importance.

(d) Employee Confidentiality Procedures. Licensee agrees to inform its employees of their confidentiality obligations regarding the Program(s) and other gbaMS Confidential Information. Licensee further agrees to ensure that contract employees (including temporary employees) of Licensee agree to confidentiality obligations similar to those of this Agreement.

**XI. 10. MAINTENANCE AND SUPPORT.**

gbaMS and Licensee may, by mutual agreement, include the maintenance and support services described in the software's online help for the Program(s) under this Agreement by exchanging documents (i.e., a purchase order from Licensee and acknowledgment from gbaMS) referencing this Agreement and the Program(s) to be included under such services. The parties agree that such purchase orders and acknowledgments shall have no effect on the terms and conditions of this Agreement, under which such Program(s) are licensed. Maintenance and support services are provided at a rate and for a term as mutually determined by gbaMS and Licensee for the scope of services to be provided by gbaMS for the Program(s) to be included under such services.

**XII. 11. LIMITATIONS OF LIABILITY.**

gbaMS's total liability under this Agreement will be limited to the License Fee. Licensee agrees that, as part of the material consideration for gbaMS licensing the Programs to Licensee hereunder, in no event will gbaMS be liable to Licensee or any third party under this Agreement for any Special, Incidental, or Consequential Damages, whether based on breach of contract, tort (including negligence), product liability, or otherwise, and whether or not gbaMS has been advised of the possibility of such damage. Input and/or edits of data by means other than the gbaMS standard Program(s) interface may result in loss of data, and/or improper operation of the Program(s). The Licensee agrees that in no event will gbaMS be liable to Licensee or any third party under this Agreement for costs necessary to diagnose, recover data and/or restore proper operation of the Program(s) resulting from said actions.

**XIII. 12. TERM AND TERMINATION.**

(a) Term. This Agreement will continue in full force and effect perpetually, except as follows:

(b) Termination. gbaMS will have the right to terminate this Agreement if Licensee breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days of written notice from gbaMS;

(c) Effect of Termination. If this Agreement is terminated, Licensee will immediately terminate any sublicenses then in effect, retrieve from sublicensees all copies of the Program(s) in sublicensees' possession, and then return to gbaMS, or gbaMS's designated representative, or (at gbaMS's request) destroy all copies of the Program(s) in its possession or control, and an officer of Licensee will certify to gbaMS in writing that it has done so.

(d) Survival. The provisions of Sections 4 (Proprietary Rights), 6(b) (Taxes), 7(b) and (c) (Warranties Exclusive Remedy and Disclaimer), 8(c) and (d) (Infringement Exclusive Remedy and Exceptions), 9 (Confidential Information), and 11 (Limitations of Liability) will survive termination of this Agreement for any reason.

(e) Nonexclusive Remedy. The exercise by gbaMS of any remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

**XIV. 13. GENERAL PROVISIONS.**

(a) Audit Rights. Licensee agrees to allow gbaMS, or gbaMS's designated representative, at gbaMS's sole expense, upon reasonable written notice, and during Licensee's ordinary business hours, to visit the facilities in which Licensee uses the Program(s) and review Licensee's practices with regard to the Program(s).

(b) Assignment. This Agreement will bind and inure to the benefit of each party's successors and assigns, provided that either party may not assign this Agreement, in whole or in part, without written consent of both parties.

(c) Modifications. This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.

(d) Conflicting Terms. Purchase orders or similar documents relating to the Program(s) issued by Licensee will have no effect on the terms of this Agreement.

(e) Notices. All notices under this Agreement will be deemed given when delivered personally or upon receipt of by U.S. certified mail, return receipt requested, to the address shown below or as may otherwise be specified by either party to the other in accordance with this Section.

(f) Severability. If any provision of this Agreement is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this Agreement will not be affected.

(g) Waiver. No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of such rights.

(h) Entire Agreement. This Agreement is the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter. No purchase orders, acknowledgments, invoices, or other documents exchanged in the ordinary course of business shall modify or add to the terms and conditions of this Agreement.

(i) Choice of Law. This Agreement will be governed by and construed in accordance with the laws of the State of Kansas.

Copyright © 2008 GBA Master Series, Inc. All rights reserved. **SPECIAL PROVISIONS**

The following provisions supersede the preceding standard terms and conditions.

**XV. 13. GENERAL PROVISIONS.**

(i) Choice of Law. This Agreement will be governed by and construed in accordance with the laws of the State of **Florida**.

## Exhibit 6 – Source Code Escrow Agreement

Exhibit 6 follows this page.

**MASTER PREFERRED ESCROW AGREEMENT**

#25525

Depositor Company Number 24703

This agreement ("Agreement") is effective July 1, 2004 among DSI Technology Escrow Services, Inc. ("DSI"), Eden Systems, Inc. ("Depositor") and any additional party signing the Acceptance Form attached to this Agreement ("Preferred Beneficiary"), who collectively may be referred to in this Agreement as the parties ("Parties").

- A. Depositor and Preferred Beneficiary have entered or will enter into a license agreement, development agreement, and/or other agreement regarding certain proprietary technology of Depositor (referred to in this Agreement as the "License Agreement").
- B. Depositor desires to avoid disclosure of its proprietary technology except under certain limited circumstances.
- C. The availability of the proprietary technology of Depositor is critical to Preferred Beneficiary in the conduct of its business and, therefore, Preferred Beneficiary needs access to the proprietary technology under certain limited circumstances.
- D. Depositor and Preferred Beneficiary desire to establish an escrow with DSI to provide for the retention, administration and controlled access of the proprietary technology materials of Depositor.
- E. The parties desire this Agreement to be supplementary to the License Agreement pursuant to 11 United States [Bankruptcy] Code, Section 365(n).

**ARTICLE 1 -- DEPOSITS**

1.1 Obligation to Make Deposit. Upon the signing of this Agreement by the parties, including the signing of the Acceptance Form, and Exhibit D naming the Initial Account, Depositor shall deliver to DSI the proprietary technology and other materials ("Deposit Materials") required to be deposited by the License Agreement or, if the License Agreement does not identify the materials to be deposited with DSI, then such materials will be identified on Exhibit A. If Exhibit A is applicable, it is to be prepared and signed by Depositor and Preferred Beneficiary. DSI shall have no obligation with respect to the preparation, accuracy, execution, signing, delivery or validity of Exhibit A.

1.2 Identification of Tangible Media. Prior to the delivery of the Deposit Materials to DSI, Depositor shall conspicuously label for identification each document, magnetic tape, disk, or other media upon which the Deposit Materials are written or stored. Additionally, Depositor shall complete Exhibit B to this Agreement by listing each such media by the item label description, the type of media and the quantity. Exhibit B shall be signed by Depositor and delivered to DSI with the Deposit Materials. Unless and until Depositor makes the initial deposit with DSI, DSI shall have no obligation with respect to this Agreement, except the obligation to notify the parties regarding the status of the account as required in Section 2.2 below.

1.3. Escrow Account Name Identification. At the time of execution of this Agreement, or when Depositor makes the initial deposit with DSI in accordance with Section 1.2 above, Depositor shall complete and sign Exhibit D naming the initial account upon which the Deposit Materials are written or stored. Any new deposits referencing new account names made subsequent to the signing of this Agreement, intended by the Depositor to be held in a separate account and maintained separately from the initial account, but made a part of this Agreement, shall be referenced by the Depositor on Exhibit E, which shall be signed by the Depositor and DSI.

1.4 Acceptance of Deposit. When DSI receives the Deposit Materials, DSI will conduct a visual deposit inspection. At completion of the deposit inspection, if DSI determines that the labeling of the media matches the item descriptions and quantity on Exhibit B, DSI will date and sign Exhibit B and mail a copy thereof to Depositor and Preferred Beneficiary. If DSI determines that the labeling does not match the item descriptions or quantity on Exhibit B, DSI will (a) note the discrepancies in writing on Exhibit B; (b) date and sign Exhibit B with the exceptions noted; and (c) mail a copy of Exhibit B to Depositor and Preferred Beneficiary. DSI's acceptance of the deposit occurs upon the signing of Exhibit B by DSI. Delivery of the signed Exhibit B to Preferred Beneficiary is Preferred Beneficiary's notice that the Deposit Materials have been received and accepted by DSI. OTHER THAN DSI'S INSPECTION OF THE DEPOSIT MATERIALS, DSI SHALL HAVE NO OBLIGATION TO THE ACCURACY, COMPLETENESS, FUNCTIONALITY, PERFORMANCE OR NON-PERFORMANCE OF THE DEPOSIT MATERIALS.

1.5 Depositor's Representations. During the term of this Agreement, Depositor represents as follows:

- a. Depositor lawfully possesses all of the Deposit Materials deposited with DSI;
- b. With respect to all of the Deposit Materials and any materials provided solely for verification, pursuant to Section 1.6 of the Agreement ("Test Materials") Depositor has the right and authority to grant to DSI and Preferred Beneficiary the rights as provided in this Agreement, provided further that DSI's or its independent contractor's use of any Deposit Materials or Test Materials, pursuant to Section 1.6 of this Agreement, is lawful and does not violate the rights of any third parties;
- c. As of the effective date of this Agreement, the Deposit Materials are not the subject of any liens or encumbrances, however, any liens or encumbrances made after the execution of this Agreement will not prohibit, limit, or alter the rights and obligations of DSI under this Agreement;
- d. The Deposit Materials consist of the proprietary technology and other materials identified either in the License Agreement, Exhibit A, or Exhibit B, as the case may be; and
- e. The Deposit Materials are readable and useable in their current form or, if any portion of the Deposit Materials is encrypted, the decryption tools and decryption keys have also been deposited.

1.6 Available Verification Services. Upon receipt of a written request from Preferred Beneficiary, DSI and Preferred Beneficiary may enter into a separate proposal agreement

("Statement of Work") pursuant to which DSI will agree, upon certain terms and conditions, to inspect the Deposit Materials consistent with one or several of the levels of verification described in the attached Technical Verification Options. Depositor consents to DSI's performance of any level(s) of verification described in the attached Technical Verification Options. Depositor shall reasonably cooperate with DSI by providing its facilities, computer software systems, and technical and support personnel for verification whenever reasonably necessary. If a verification is elected after the Deposit Materials have been delivered to DSI, then only DSI, or at DSI's election, an independent contractor or company selected by DSI may perform the verification.

1.7 Deposit Updates. Unless otherwise provided by the License Agreement, Depositor shall update the Deposit Materials within sixty (60) days of each release of a new version of the product, which is subject to the License Agreement. Such updates will be added to the existing deposit. All deposit updates shall be listed on a new Exhibit B and Depositor shall sign the new Exhibit B. Each Exhibit B will be held and maintained separately within the escrow account. An independent record will be created which will document the activity for each Exhibit B. Any deposit updates shall be held in accordance with Sections 1.2 through 1.5 above. All references in this Agreement to the Deposit Materials shall include the initial Deposit Materials and any updates.

1.8 Removal of Deposit Materials. The Deposit Materials may be removed and/or exchanged only on written instructions signed by Depositor and Preferred Beneficiary, or as otherwise provided in this Agreement.

## ARTICLE 2 -- CONFIDENTIALITY AND RECORD KEEPING

2.1 Confidentiality. DSI shall have the obligation to reasonably protect the confidentiality of the Deposit Materials. Except as provided in this Agreement or any subsequent agreement between the Parties, including without limitation Section 1.6, DSI shall not disclose, transfer, make available, or use the Deposit Materials. DSI shall not disclose the terms of this Agreement to any third party. If DSI receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Materials, DSI will immediately notify the parties to this Agreement unless prohibited by law. It shall be the responsibility of Depositor and/or Preferred Beneficiary to challenge any such order; provided, however, that DSI does not waive its rights to present its position with respect to any such order. DSI will not be required to disobey any order from a court or other judicial tribunal, including, but not limited to, notices delivered pursuant to Section 7.6 below.

2.2 Status Reports. DSI shall provide to Depositor and Preferred Beneficiary a report profiling the account history semiannually.

## ARTICLE 3 -- RIGHT TO MAKE COPIES

3.1 Right to Make Copies. DSI shall have the right to make copies of the Deposit Materials as reasonably necessary to perform this Agreement. DSI shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on the Deposit Materials onto any copies made by DSI. With all Deposit Materials submitted to DSI, Depositor shall provide any and all instructions as may be necessary to duplicate the Deposit Materials, including, but not limited to, the hardware and/or software needed. Any copying expenses incurred by DSI as a result of a request to copy will be borne by the party requesting the copies. Alternatively, DSI may notify

Depositor requiring its reasonable cooperation in promptly copying the Deposit Materials in order for DSI to perform this Agreement.

#### ARTICLE 4 -- RELEASE OF DEPOSIT

4.1 Release Conditions. As used in this Agreement, "Release Condition" shall mean the following:

- a. Depositor's uncured material breach of the License Agreement;
- b. Depositor's failure to continue to do business in the ordinary course; or
- c. Joint written instruction from Depositor and Preferred Beneficiary.

4.2 Filing For Release. If Preferred Beneficiary believes in good faith that a Release Condition has occurred, Preferred Beneficiary may provide to DSI written notice of the occurrence of the Release Condition and a request for the release of the Deposit Materials. Such notice shall be signed by the Preferred Beneficiary and on company letterhead. Unless DSI acknowledges or discovers independently, or through the Parties, its need for additional documentation or information in order to comply with this Section, DSI shall promptly provide a copy of the notice to Depositor by commercial express mail. Such need for additional documentation or information may extend the time period for DSI's performance under this Section.

4.3 Contrary Instructions. From the date DSI mails the notice requesting release of the Deposit Materials, Depositor shall have ten (10) business days to deliver to DSI contrary instructions ("Contrary Instructions"). Contrary Instructions shall mean the written representation by Depositor that a Release Condition has not occurred or has been cured. Contrary Instructions shall be signed by Depositor and on company letterhead. Upon receipt of Contrary Instructions, DSI shall promptly send a copy to Preferred Beneficiary by commercial express mail. Additionally, DSI shall notify both Depositor and Preferred Beneficiary that there is a dispute to be resolved pursuant to Section 7.4 of this Agreement. Subject to Section 5.2 of this Agreement, DSI will continue to store the Deposit Materials without release pending (a) joint instructions from Depositor and Preferred Beneficiary; (b) dispute resolution pursuant to Section 7.4; or (c) an order from a court of competent jurisdiction.

4.4 Release of Deposit. If DSI does not receive Contrary Instructions from the Depositor, DSI is authorized to release the Deposit Materials to the Preferred Beneficiary or, if more than one beneficiary is registered to the deposit, to release a copy of the Deposit Materials to the Preferred Beneficiary. However, DSI is entitled to receive any fees due DSI before making the release. Any copying expenses will be chargeable to Preferred Beneficiary. Upon any such release, the escrow arrangement will terminate as it relates to the Depositor and Preferred Beneficiary involved in the release.

4.5 Right to Use Following Release. Unless otherwise provided in the License Agreement, upon release of the Deposit Materials in accordance with this Article 4, Preferred Beneficiary shall have the right to use the Deposit Materials for the sole purpose of continuing the benefits afforded to Preferred Beneficiary by the License Agreement. Preferred Beneficiary shall be obligated to maintain the confidentiality of the released Deposit Materials.

## ARTICLE 5 -- TERM AND TERMINATION

5.1 Term of Agreement. The initial term of this Agreement is for a period of one (1) year. Thereafter, this Agreement shall automatically renew from year to year unless (a) Depositor instructs DSI in writing that the Agreement is terminated; (b) DSI instructs Depositor and Preferred Beneficiary in writing after its renewal date that the Agreement is terminated for nonpayment in accordance with Section 5.2; or (c) DSI reserves the right to terminate this Agreement, for any reason, by providing Depositor and Preferred Beneficiary ninety (90) days written notice of its intent to terminate this Agreement. If the Deposit Materials are subject to another escrow agreement with DSI, DSI reserves the right, after the initial one year term, to adjust the anniversary date of this Agreement to match the then prevailing anniversary date of such other escrow arrangements.

5.2 Termination for Nonpayment. In the event of the nonpayment of fees owed to DSI, DSI shall provide written notice of delinquency to all parties to this Agreement. Any party to this Agreement affected by such delinquency shall have the right to make the payment to DSI to cure the default. If the past due payment is not received in full by DSI within one (1) month of the date of such notice, then DSI shall have the right to terminate this Agreement at any time thereafter to the extent it relates to the delinquent party by sending written notice of termination to such affected parties. DSI shall have no obligation to take any action under this Agreement so long as any payment due to DSI remains unpaid.

5.3 Disposition of Deposit Materials Upon Termination. Subject to the foregoing termination provisions, and upon termination of this Agreement, DSI shall destroy, return, or otherwise deliver the Deposit Materials in accordance with Depositor's instructions. If there are no instructions, DSI may, at its sole discretion, destroy the Deposit Materials or return them to Depositor. DSI shall have no obligation to destroy or return the Deposit Materials if the Deposit Materials are subject to another escrow agreement with DSI or have been released to the Preferred Beneficiary in accordance with Section 4.4.

5.4 Survival of Terms Following Termination. Upon termination of this Agreement, the following provisions of this Agreement shall survive:

- a. The obligations of confidentiality with respect to the Deposit Materials;
- b. The obligation to pay DSI any fees and expenses due;
- c. The provisions of Article 7; and
- d. Any provisions in this Agreement which specifically state they survive the termination of this Agreement.

## ARTICLE 6 -- DSI'S FEES

6.1 Fee Schedule. DSI is entitled to be paid its standard fees and expenses applicable to the services provided. DSI shall notify the party responsible for payment of DSI's fees at least sixty (60) days prior to any increase in fees. In no event will fees increase by more than 5% per year.



For any service not listed on DSI's standard fee schedule, DSI will provide a quote prior to rendering the service, if requested.

6.2 Payment Terms. DSI shall not be required to perform any service, including release of any Deposit Materials under Article 4, unless the payment for such service and any outstanding balances owed to DSI are paid in full. Initial fees are due upon receipt of a signed contract or receipt of the Deposit Materials whichever is earliest. Payments on all renewal and services invoices are due net thirty (30) days from date of invoice. If invoiced fees are not paid, DSI may terminate this Agreement in accordance with Section 5.2.

## ARTICLE 7 -- LIABILITY AND DISPUTES

7.1 Right to Rely on Instructions. DSI may act in reliance upon any instruction, instrument, or signature reasonably believed by DSI to be genuine. DSI may assume that any employee of a party to this Agreement who gives any written notice, request, or instruction has the authority to do so. DSI will not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice or document. DSI shall not be responsible for failure to act as a result of causes beyond the reasonable control of DSI.

7.2 Indemnification. Depositor and Preferred Beneficiary each agree to indemnify, defend and hold harmless DSI from any and all claims, actions, damages, arbitration fees and expenses, costs, attorney's fees and other liabilities ("Liabilities") incurred by DSI relating in any way to this escrow arrangement except where it is adjudged that DSI acted with negligence or willful misconduct.

7.3 Limitation of Liability. In no event will DSI be liable for any incidental, indirect, special, exemplary, punitive or consequential damages, including, but not limited to, damages (including loss of data, revenue, and/or profits) costs or expenses (including legal fees and expenses), whether foreseeable or unforeseeable, that may arise out of or in connection with this Agreement; and in no event shall the collective liability of DSI exceed ten times the fees paid under this Agreement. The foregoing limitation of liability does not apply with respect to any acts of negligence, personal injury claims, property damage claims (excluding the Deposit), or intellectual property infringement.

7.4 Dispute Resolution. Any dispute relating to or arising from this Agreement shall be submitted to, and settled by arbitration by, a single arbitrator chosen by the American Arbitration Association in accordance with the Commercial Rules of the American Arbitration Association. The arbitrator shall apply Texas law. Unless otherwise agreed by Depositor and Preferred Beneficiary, arbitration will take place in Dallas, Texas, U.S.A. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator. Service of a petition to confirm the arbitration award may be made by First Class mail or by commercial express mail, to the attorney for the party or, if unrepresented, to the party at the last known business address. If, however, Depositor and/or Preferred Beneficiary refuses to submit to arbitration, the matter shall not be submitted to arbitration and DSI may submit the matter to any court of competent jurisdiction for an interpleader or similar action. Unless adjudged otherwise, any costs of arbitration incurred by DSI, including reasonable attorney's fees and costs, shall be divided equally and paid by Depositor and Preferred Beneficiary.

7.5 Controlling Law. This Agreement is to be governed and construed in accordance with the laws of the Texas, without regard to its conflict of law provisions.

7.6 Notice of Requested Order. If any party intends to obtain an order from the arbitrator or any court of competent jurisdiction, which may direct DSI to take, or refrain from taking any action, that party shall:

- a. Give DSI at least five (5) business days prior notice of the hearing;
- b. Include in any such order that, as a precondition to DSI's obligation, DSI be paid in full for any past due fees and be paid for the reasonable value of the services to be rendered pursuant to such order; and
- c. Ensure that DSI not be required to deliver the original (as opposed to a copy) of the Deposit Materials if DSI may need to retain the original in its possession to fulfill any of its other duties.

## ARTICLE 8 -- GENERAL PROVISIONS

8.1 Entire Agreement. This Agreement, which includes the Acceptance Form and Exhibits described herein, embodies the entire understanding among all of the parties with respect to its subject matter and supersedes all previous communications, representations or understandings, either oral or written. DSI is not a party to the License Agreement between Depositor and Preferred Beneficiary and has no knowledge of any of the terms or provisions of any such License Agreement. DSI's only obligations to Depositor or Preferred Beneficiary are as set forth in this Agreement. No amendment or modification of this Agreement shall be valid or binding unless signed by all the parties hereto, except that Exhibit A need not be signed by DSI, Exhibit B need not be signed by Preferred Beneficiary, Exhibit C need not be signed, Exhibit D need not be signed by Preferred Beneficiary or DSI and the Acceptance Form need only be signed by the parties identified therein.

8.2 Notices and Correspondence. All notices regarding Articles 4 and 5, and any Deposit Materials, shall be sent by commercial express or certified mail, return receipt requested. All other correspondence including invoices, payments, and other documents and communications shall be sent First Class U.S. Mail and given to the parties at the addresses specified in the attached Exhibit C and Acceptance Form. It shall be the responsibility of the parties to notify each other as provided in this Section in the event of a change of physical and e-mail addresses. The parties shall have the right to rely on the last known address of the other parties. Any correctly addressed notice or last known address of the other parties that is relied on herein that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified as provided herein shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities by mail, through messenger or commercial express delivery services.

8.3 Severability. In the event any provision of this Agreement is found to be invalid or unenforceable, the parties agree that unless it materially affects the entire intent and purpose of this Agreement, such invalidity or unenforceability shall affect neither the validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

8.4 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties. However, DSI shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor or Preferred Beneficiary unless DSI receives clear, authoritative and conclusive written evidence of the change of parties.

8.5 Waiver. Any term of this Agreement may be waived by the party entitled to the benefits thereof, provided that any such waiver must be in writing and signed by the party against whom the enforcement of the waiver is sought. No waiver of any condition, or breach of any provision of this Agreement, in any one or more instances, shall be deemed to be a further or continuing waiver of such condition or breach. Delay or failure to exercise any right or remedy shall not be deemed the waiver of that right or remedy.

8.6 Regulations. Depositor and Preferred Beneficiary are responsible for and warrant compliance with all applicable laws, rules and regulations, including but not limited to customs laws, import, export, and re-export laws and government regulations of any country from or to which the Deposit Materials may be delivered in accordance with the provisions of this Agreement.

8.7 Attorney's Fees. In any litigation or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort, or both) or seeks declaration of any rights or obligations under this Agreement (whether in contract, tort, or both), the prevailing party who has proven in court by court decree, judgment or arbitrator's determination that the other party has materially breached its representation and/or warranty under this Agreement shall be awarded reasonable attorneys' fees, together with any costs and expenses, to resolve the dispute and to enforce final judgment.

8.8 No Third Party Rights. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement unless otherwise agreed to by all the parties hereto.

8.9 Authority to Sign. Each of the Parties herein represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized and signed by a person who meets statutory or other binding approval to sign on behalf of its business organization as named in this Agreement. DSI will be able to perform its obligations under this agreement once DSI has received a fully executed Agreement.

8.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

Eden Systems, Inc. \_\_\_\_\_ DSI Technology Escrow Services, Inc.

Depositor

By:  \_\_\_\_\_

Name: Jonathan E. Jackson

Title: President


By:  \_\_\_\_\_

Name: **Blaine Rigler**

Title: **Vice President, Operations**

Date: 6/30/04

Date: 7/1/04

**Approved as to Operational Content:**  
**DSI Technology Operations**  
  
**Name: Yolanda Granberry,**  
**Operations Assistant**  
**Date: 7/1/04**

**MATERIALS TO BE DEPOSITED**

Deposit Account Number \_\_\_\_\_

Depositor represents to Preferred Beneficiary that Deposit Materials delivered to DSI shall consist of the following:

\_\_\_\_\_  
Depositor

\_\_\_\_\_  
Preferred Beneficiary

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

DESCRIPTION OF DEPOSIT MATERIALS

Depositor Company Name \_\_\_\_\_

Deposit Account Number \_\_\_\_\_

Product Name \_\_\_\_\_ Version \_\_\_\_\_  
(Product Name will appear as Exhibit B Name on Account History report)

DEPOSIT MATERIAL DESCRIPTION:

Quantity	Media Type & Size	Label Description of Each Separate Item
_____	Disk 3.5" or _____	
_____	DAT tape _____ mm	
_____	CD-ROM	
_____	Data cartridge tape _____	
_____	TK 70 or _____ tape	
_____	Magnetic tape _____	
_____	Documentation	
_____	Other _____	

PRODUCT DESCRIPTION:

Environment \_\_\_\_\_

DEPOSIT MATERIAL INFORMATION:

Is the media or are any of the files encrypted? Yes / No If yes, please include any passwords and the decryption tools.

Encryption tool name \_\_\_\_\_ Version \_\_\_\_\_

Hardware required \_\_\_\_\_

Software required \_\_\_\_\_

Other required information \_\_\_\_\_

I certify for **Depositor** that the above described Deposit Materials have been transmitted to DSI:

**DSI** has visually inspected and accepted the above materials (*any exceptions are noted above*):

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date Accepted: \_\_\_\_\_

E-mail: \_\_\_\_\_

Exhibit B#: \_\_\_\_\_

DESIGNATED CONTACT

Depositor Company Number 24703

Notices, deposit material returns and communications to Depositor should be addressed to:

Invoices to Depositor should be addressed to:

Company Name: Eden Systems, Inc.  
Address: 1100 Oakesdale Avenue SW  
Renton, WA98055

Eden Systems, Inc.  
1100 Oakesdale Avenue SW  
Renton, WA98055

Designated Contact: Barbara Staneff  
Telephone: (800) 328-0310  
Facsimile: (425) 254-1402  
E-mail: bstaneff@edeninc.com  
Verification Contact:

Contact: Barbara Staneff  
P.O.#, if required: \_\_\_\_\_

Telephone/E-mail:  
\_\_\_\_\_

Requests to change the designated contact should be given in writing by the designated contact or an authorized employee.

**DSI has two Operations Centers to serve you. Agreements, Deposit Materials and notices to DSI should be addressed to: (select location)**

**All invoice fee remittances to DSI should be addressed to:**

Attn: Client Services  
9265 Sky Park Court, Suite 202  
San Diego, CA 92123  
Telephone: (858) 499-1600  
Facsimile: (858) 694-1919  
E-mail: clientservices@dsiescrow.com

DSI Technology Escrow Services, Inc.  
PO Box 27131  
New York, NY 10087-7131

or

Attn: Client Services  
2100 Norcross Parkway, Suite 150  
Norcross, GA 30071  
Telephone: 770-239-9200  
Facsimile: 770-239-9201  
E-mail: clientservices@dsiescrow.com

Date: \_\_\_\_\_

**NAME OF INITIAL MASTER PREFERRED  
ESCROW ACCOUNT**

Depositor Company Number 24703

Eden Systems, Inc. ("Depositor") has entered into a Master Preferred Escrow Agreement with DSI Technology Escrow Services, Inc. ("DSI"). Pursuant to that Agreement, Depositor may deposit certain Deposit Materials with DSI.

The initial account will be referenced by the following name: Eden Source Code.

Deposit Account Number 25525

Eden Systems, Inc.

Depositor

By: 

Name: Jonathan E. Jackson

Title: President

Date: 6/30/04



**ADDITIONAL ESCROW ACCOUNT  
TO MASTER PREFERRED ESCROW AGREEMENT**

Depositor Company Number 24703

New Deposit Account Number \_\_\_\_\_

\_\_\_\_\_ ("Depositor") has entered into a Master Preferred Escrow Agreement with DSI Technology Escrow Services, Inc. ("DSI"). Pursuant to that Agreement, Depositor may deposit certain Deposit Materials with DSI.

Depositor desires that new Deposit Materials be held in a separate account and be maintained separately from the initial account. By execution of this Exhibit E, DSI will establish a separate account for the new Deposit Materials. The new account will be referenced by the following name: \_\_\_\_\_.

Depositor hereby agrees that all terms and conditions of the existing Master Preferred Escrow Agreement previously entered into by Depositor and DSI will govern this account. The termination or expiration of any other account of Depositor will not affect this account.

_____	DSI Technology Escrow Services, Inc.
Depositor	
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

**PREFERRED BENEFICIARY  
ACCEPTANCE FORM**

Depositor, Preferred Beneficiary and DSI Technology Escrow Services, Inc. ("DSI"), hereby acknowledge that \_\_\_\_\_ is the Preferred Beneficiary referred to in the Master Preferred Escrow Agreement effective \_\_\_\_\_, 20\_\_\_\_ with DSI as the escrow agent and \_\_\_\_\_ as the Depositor. Preferred Beneficiary hereby agrees to be bound by all provisions of such Agreement.

Depositor hereby enrolls Preferred Beneficiary to the following account(s):

<u>Account Name</u>	<u>Deposit Account Number</u>
_____	_____
_____	_____
_____	_____

Notices and communications to Preferred Beneficiary should be addressed to:

Invoices should be addressed to:

Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Designated Contact: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Contact: \_\_\_\_\_  
P.O.#, if required: \_\_\_\_\_

\_\_\_\_\_  
Preferred Beneficiary

\_\_\_\_\_  
Depositor

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

DSI Technology Escrow Services, Inc.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## TECHNICAL VERIFICATION OPTIONS

### **LEVEL I - Inventory**

This series of tests provides insight into whether the necessary information required to recreate the Depositor's development environment has been properly stored in escrow. These tests detect errors that often inhibit effective use of the escrow deposit.

*Steps include:* Analyzing deposit media readability, virus scanning, developing file classification tables, identifying the presence/absence of build instructions, and identifying materials required to recreate the Depositor's software development environment. At completion of testing, DSI will distribute a report to Preferred Beneficiary detailing DSI's investigation. This report will include build instructions, file classification tables and listings. In addition, the report will list required software development materials, including, without limitation, required source code languages and compilers, third-party software, libraries, operating systems, and hardware, as well as DSI's analysis of the deposit. When identifying materials required to recreate Depositor's software development environment, DSI will rely on information provided in Depositor's completed questionnaire (obtained via a DSI verification representative) and/or information gathered during DSI's testing experience.

### **LEVEL II - Build**

This series of tests includes a standard effort to compile the Deposit Materials and build executable code.

*Steps include:* Recreating the Depositor's software development environment, compiling source files and modules, recreating executable code, and providing a listing of the hardware and software configurations necessary to recreate the Depositor's software development environment. DSI will also create a report detailing the steps necessary to recreate the development environment, problems encountered with testing, and DSI's analysis of the deposit.

### **LEVEL III - Validation**

A Level III verification consists of testing the functionality of the compiled Deposit Materials (in a production setting or similar environment) and can be accomplished through one of the following three options:

*Option A* – With the Depositor's approval, executables created by DSI during Level II testing are provided to the Preferred Beneficiary for functionality testing.

*Option B* – The Preferred Beneficiary provides DSI with a copy of its licensed executables. DSI compares the executables created during Level II testing with the licensed executables and provides a comparison report to all parties.

*Option C* – DSI recreates the runtime environment for the licensed technology and installs the executables created during the Level II testing into that environment. (The environment is generally "scaled down" from the actual live environment.) DSI then runs test scripts supplied by the Preferred Beneficiary and provides a report of the test results to all parties. This may require Depositor approval.

For additional information about DSI Technical Verification Services, please contact a verification specialist at (800) 962-0652 or by e-mail at [verification@dsiescrow.com](mailto:verification@dsiescrow.com).

Products and Services	Tyler Software Product Application Software License Fees	Third Party Product Fees	Total Tyler Software Product Application Software License and License Fee (after Discount on eligible products)	Estimated Professional Service Fees	Estimated Travel Expenses	Total One Time Fees (Estimated)	Year 1 Application Software Maintenance Fees (waived), OSDBA Fees, & Disaster Recovery Fees
<b>TYLER SOFTWARE PRODUCTS</b>							
<b>EDEN - FINANCIAL APPLICATIONS</b>							
General Ledger / Accounts Payable / Purchasing	\$ 14,100.00		\$ 11,280.00	\$ 18,000.00	\$ 4,500.00	\$ 33,780.00	\$ 2,820.00
Advanced Budgeting	\$ 6,000.00		\$ 4,800.00	\$ 5,000.00	\$ 1,500.00	\$ 11,300.00	\$ 1,200.00
Requisitioning	\$ 3,000.00		\$ 2,400.00	\$ 2,000.00	\$ 1,000.00	\$ 5,400.00	\$ 600.00
Project Accounting	\$ 9,400.00		\$ 7,520.00	\$ 8,000.00	\$ 3,000.00	\$ 18,520.00	\$ 1,880.00
Inventory	\$ 8,500.00		\$ 6,800.00	\$ 4,000.00	\$ 1,500.00	\$ 12,300.00	\$ 1,700.00
Fixed Assets	\$ 5,500.00		\$ 4,400.00	\$ 4,000.00	\$ 1,500.00	\$ 9,900.00	\$ 1,100.00
Accounts Receivable	\$ 5,000.00		\$ 4,000.00	\$ 8,000.00	\$ 1,500.00	\$ 13,900.00	\$ 1,100.00
Role Tailored Dashboard	\$ 4,000.00		\$ 3,200.00	\$ 2,000.00	\$ 1,200.00	\$ 6,400.00	\$ 800.00
GASB 34 Reporter	\$ 3,700.00		\$ 2,960.00	\$ 5,000.00	\$ 2,250.00	\$ 10,210.00	\$ 740.00
<b>EDEN - CASHIERING APPLICATIONS</b>							
EDEN Integrated Cashiering w/IMAGING - One (1) Cash Station	\$ 19,000.00		\$ 19,000.00	\$ 4,000.00	\$ 1,500.00	\$ 24,500.00	\$ 4,750.00
<b>EDEN - PERSONNEL APPLICATIONS</b>							
Applicant Tracking	\$ 2,200.00		\$ 1,760.00	\$ 3,000.00	\$ 1,250.00	\$ 6,010.00	\$ 440.00
Human Resources	\$ 4,000.00		\$ 3,200.00	\$ 4,000.00	\$ 1,500.00	\$ 8,700.00	\$ 800.00
Payroll	\$ 9,400.00		\$ 7,520.00	\$ 13,000.00	\$ 5,250.00	\$ 25,770.00	\$ 1,880.00
Position Budgeting	\$ 1,500.00		\$ 1,200.00	\$ 1,000.00	\$ 250.00	\$ 2,450.00	\$ 300.00
<b>EDEN - CITIZEN SERVICES APPLICATIONS</b>							
Parcel Manager	\$ 4,100.00		\$ 3,280.00	\$ 4,000.00	\$ 1,000.00	\$ 8,280.00	\$ 820.00
Permits & Inspections	\$ 19,600.00		\$ 15,680.00	\$ 16,000.00	\$ 6,500.00	\$ 38,180.00	\$ 3,920.00
Licensing	\$ 6,400.00		\$ 5,120.00	\$ 8,000.00	\$ 3,000.00	\$ 16,120.00	\$ 1,280.00
Web-Extensions - Permits & Inspections	\$ 9,600.00		\$ 7,680.00			\$ 7,680.00	\$ 2,400.00
<b>OTHER TYLER (EDEN) SOFTWARE PRODUCTS</b>							
EDEN Site License	\$ 30,000.00		\$ 24,000.00	\$ -		\$ 24,000.00	\$ 6,000.00
Report Views	\$ 5,000.00		\$ 4,000.00	\$ -		\$ 4,000.00	\$ 1,000.00
Florida State Package	\$ 5,000.00		\$ 4,000.00	\$ -		\$ 4,000.00	\$ 1,000.00
Tyler Output Processor	\$ 4,200.00		\$ 3,360.00	\$ 2,000.00		\$ 5,360.00	\$ 840.00
Tyler Content Manager Limited Edition	\$ 6,000.00		\$ 4,800.00	\$ 2,000.00		\$ 6,800.00	\$ 1,200.00
Tyler Standard Forms	\$ 11,400.00		\$ 9,120.00	\$ -		\$ 9,120.00	\$ 2,280.00
<b>OTHER EDEN PROFESSIONAL SERVICES</b>							
Database Setup				\$ 2,000.00		\$ 2,000.00	
Web Install & Setup				\$ 1,000.00		\$ 1,000.00	
Cashiering Setup including VeriSign				\$ 1,000.00		\$ 1,000.00	
Chart of Accounts Consultation				\$ 3,000.00		\$ 3,000.00	
On-Site Data Mapping				\$ 5,000.00	\$ 1,750.00	\$ 6,750.00	
<b>SUB-TOTAL TYLER (EDEN)</b>	<b>\$ 197,100.00</b>		<b>\$ 161,480.00</b>	<b>\$ 125,000.00</b>	<b>\$ 39,950.00</b>	<b>\$ 326,430.00</b>	<b>\$ 40,850.00</b>
<b>THIRD PARTY PRODUCTS</b>							
GBA Master Series		\$ 62,300.00	\$ 34,888.00		\$ -	\$ 34,888.00	\$ 12,460.00
GBA Training				\$ 23,460.00		\$ 23,460.00	
GBA Expenses					\$ 4,300.00	\$ 4,300.00	
Crystal Reports Site License		\$ 4,300.00	\$ 4,300.00	\$ -		\$ 4,300.00	
Crystal Reports Software Assurance							\$ 860.00
MapObjects Runtime - 5 users		\$ 400.00	\$ 400.00	\$ -		\$ 400.00	\$ 80.00
<b>Cashiering Hardware</b>							
(1) Receipt Printer w/ Image and MICR Scanning		\$ 1,500.00	\$ 1,500.00	\$ -		\$ 1,500.00	
(1) Bar Code Scanner		\$ 300.00	\$ 300.00	\$ -		\$ 300.00	
(1) Magnetic Track Scanner		\$ 125.00	\$ 125.00	\$ -		\$ 125.00	
(2) Cash Drawers		\$ 500.00	\$ 500.00	\$ -		\$ 500.00	
<b>SUB-TOTAL THIRD PARTY PRODUCTS</b>		<b>\$ 69,425.00</b>	<b>\$ 42,013.00</b>	<b>\$ 23,460.00</b>	<b>\$ 4,300.00</b>	<b>\$ 69,773.00</b>	<b>\$ 13,400.00</b>
<b>TOTAL</b>	<b>\$ 197,100.00</b>	<b>\$ 69,425.00</b>	<b>\$ 203,493.00</b>	<b>\$ 148,460.00</b>	<b>\$ 44,250.00</b>	<b>\$ 396,203.00</b>	<b>\$ 54,250.00</b>

TAB 8



## MEMORANDUM

To: Mayor and Town Council

From: Steven Alexander, Town Manager

Date: May 11, 2009

Re: **Off-street parking requirements**

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Town Planning Staff expresses its desire to amend the requirements for off-street parking for Furniture Showrooms within the Town Code.

Comprehensive review of off-street parking requirements indicates the current code requires excessive spaces. Jurisdictions across the nation and in South Florida are promoting sustainable development actions, by providing for a lower minimum off-street parking requirement for furniture showrooms in recognition of their lower trip generation standards. Because the amount of parking is based on square footage, furniture showrooms, which provide multiple rooms replicating residential living areas, are forced to provide excessive amounts of parking. This places an extra-ordinary burden on the off-street parking counts. The current law requires 3 parking spaces for the first 2,500 sq. ft. of gross floor area.

The proposed ordinance, amending Chapter 33, Article VII. Off-Street Parking; Section 33-124, has been prepared to allow furniture showrooms to provide parking based on one parking space per 1,000 square feet of gross floor area, with a minimum of five spaces.

If in the future the property use becomes a different use type, the parking standard will change to the ratio required for that use.

### **RECOMMENDATION**

Staff finds the reduction in parking spaces required for furniture showrooms to be beneficial for the Town and will promote open and landscaped space rather than paved parking areas. Staff recommends Town Council approve the amendment.

ORDINANCE NO. 09-\_\_\_\_\_

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING SECTION 33-124 “STANDARDS” RELATING TO OFF STREET PARKING REQUIREMENTS FOR FURNITURE STORES; PROVIDING FOR CONFLICT; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Cutler Bay (the “Town”) Town staff and consultants are currently drafting new land development regulations to govern development within the Town, which include, but are not limited to, off street parking requirements; and

**WHEREAS**, after reviewing the Town’s current off street parking requirements for furniture stores, Town staff has determined that such regulations were in need of updating and modifications; and

**WHEREAS**, the Town Council, sitting as the Local Planning Agency, has reviewed this Ordinance at a duly noticed meeting on May 20, 2009, 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 TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS<sup>1</sup>:**

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

**Section 2. Amendment to Section 33-124 of the Town Code.** The Town Council hereby amends Section 33-124 of the Town Code as follows:

**Sec. 33-124. Standards.**

Off-street parking shall be provided in accordance with the following minimum standards:

\*\*\*

(h) *Commercial:*

\*\*\*

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

(3) Furniture showrooms shall be provided ~~three (3)~~ one (1) parking spaces ~~for the first twenty five hundred (2,500) square feet per 1,000 square foot of gross floor area, or fractional part thereof, and one (1) parking space for each additional five hundred (500) square feet of gross floor area or fractional part thereof with a minimum of 5 spaces.~~ When such a use is located within any BU District, the site plan submitted to the Department shall illustrate future parking spaces based on a calculation of ~~one (1) parking space for each two hundred fifty (250) square feet of gross floor area or fractional part thereof, which shall be provided in the event the furniture use is discontinued.~~ The lot area reserved for future parking spaces shall remain unencumbered with any structures and shall be landscaped. However, this landscaped area shall not be credited toward the minimum required open space. Prior to the issuance of a Certificate of Use and Occupancy for any use other than a furniture store, the property owner must provide the required number of parking spaces for the intended use as provided elsewhere in the article.

\*\*\*

**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.** This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this 20<sup>th</sup> day of May, 2009.

PASSED and ADOPTED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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



Attest:

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

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

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

Moved By:  
Seconded By:

FINAL VOTE AT ADOPTION:

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

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

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

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

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

TAB 9

ORDINANCE NO. 09-\_\_\_\_\_

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING REGULATIONS RELATED TO LOCAL BUSINESS TELEPHONE DIRECTORIES; ALLOWING RESIDENTS TO OPT OUT OF THE RECEIPT OF LOCAL BUSINESS TELEPHONE DIRECTORIES; 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”) is increasingly concerned about the adverse environmental consequences of the dissemination of unwanted non-residential telephone directories (the “Directories”) to residents of the Town; and

**WHEREAS**, the information contained in these Directories is already readily available on the internet, and providing paper copies to those whom do not wish to receive them is not only redundant but a misuse of resources as well; and

**WHEREAS**, over 500 million directories of all types are printed every year, according to the organization Yellow Pages Go Green, equating to nearly two books for every person in the United States of America; and

**WHEREAS**, again according to Yellow Pages Go Green, in order to produce 500 million directories, the following resources are used: 19 million trees need to be harvested, 1.6 billion pounds of paper are wasted, 7.2 million barrels of oil are misspent in their processing (not including the wasted gas used for their delivery to your doorstep), 268,000 cubic yards of landfill are taken up, and 3.2 billion kilowatt hours of electricity are used; and

**WHEREAS**, the Town Council of Cutler Bay finds these directories are often not the best use of resources and also use a great deal of landfill space when they are discarded; and

**WHEREAS**, in consultation with the State of Florida Public Service Commission (the “PSC”), the entity that regulates telephone companies and directories; Town staff has determined that the Town may require a note that allows residents to opt-out of receipt of these books, and because the regulation in this fashion of local business telephone directories falls outside of the jurisdiction of the State of Florida Public Service Commission (the “PSC”); and

**WHEREAS**, the Town believes that it is in the best interest of the Town, the State of Florida, and the United States of America to act decisively to reduce the distribution of unwanted business telephone directories.

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

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

**Section 2. Amendment to the Town Code.** The Town Council of the Town of Cutler Bay hereby amends the Town Code of Ordinances as follows<sup>1</sup>:

(1) Title. This section shall be known as the “Town of Cutler Bay Telephone Local Business Telephone Directory Opt-Out Ordinance.”

(2) Definitions. The following words and phrases, when used in this Ordinance, shall have the meanings ascribed to them:

(a) “Deliver”- to physically bring to a resident by personal delivery, but does not include actions by the United States Postal Service, a commercial courier, or a commercial package delivery service that allows a customer to track the status of a shipment by destination, date, and time of delivery;

(b) “Local Business Telephone Directory” - a non-residential publication listing:  
(i) the names, addresses, and telephone numbers of local businesses by type and containing advertisements promoting those businesses or the products they sell; or  
(ii) the names, addresses, and telephone numbers of local businesses in alphabetical order; commonly known as the ‘Yellow Pages’;

(c) “Resident” means a person that has a mailing address in the Town of Cutler Bay that is not a post office box.

(3). Option to decline delivery.

(a) An entity that publishes and delivers Local Business Telephone Directories in the Town of Cutler Bay (the “Town”) must print in boldfaced type in 24 point font or larger on the outside front cover of each directory, or affix on the front cover using a “post-it”-type sticker or some other type of adhesive note paper, the following information:

(1) A statement that reads: ‘IF YOU NO LONGER WISH TO RECEIVE THIS DIRECTORY, PLEASE CALL THE FOLLOWING TOLL-FREE

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

NUMBER OR ACCESS THE FOLLOWING INTERNET WEB SITE ADDRESS:’; and

(2) A toll-free telephone number and an internet web site address that a Resident may use to contact the person delivering the Local Business Telephone Directory to provide notice that the Resident no longer wishes to receive the Local Business Telephone Directory.

(b) An entity delivering Local Business Telephone Directories in the Town ~~must~~ shall prominently and conspicuously place on ~~the home~~ any South Florida-specific pages of the entity’s internet web site instructions describing how a Resident can provide notice to the entity via the internet web site that the Resident no longer wishes to receive the Local Business Telephone Directory.

(c) An entity delivering Local Business Telephone Directories in the Town must maintain a database of the name and address of each Resident who provides notice under this subdivision and must not remove the name unless the entity receives notice from the Resident that the residents name is to be removed from the database.

(d) A Local Business Telephone Directory must not be delivered to a Resident whose name is in the database maintained under paragraph (c) for a period of five years.

#### (4) Violations

(a) It shall be a violation of this Ordinance to deliver a Local Business Telephone Directory to any Resident who has notified the entity that the Resident does not wish to receive a Local Business Telephone Directory. Each Local Business Telephone Directory delivered to any Resident in violation of this section shall constitute a separate violation.

(c) Delivery of a Local Business Telephone Directory to any Resident without the opt-out notice required in section 3(a) above shall also constitute a violation of this Ordinance. Each Local Business Telephone Directory delivered that fails to include such notice shall constitute a separate violation.

**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: <sup>2</sup>

Sec. 10. Schedule of civil penalties.

TABLE INSET:

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<sup>2</sup> / Proposed additions to text of Town Code are indicated by underline; proposed deletions from text of Town Code are indicated by ~~strikethrough~~.

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
***	***	***
<u>Ordinance</u>	<u>Violation of Telephone Directory Opt-Out</u>	<u>First violation \$250; Second or subsequent violation \$500.</u>
***	***	***

**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 re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

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

PASSED on first reading this 20<sup>th</sup> day of May, 2009.

PASSED and ADOPTED on second reading this \_\_\_\_ day of \_\_\_\_, 2009.

\_\_\_\_\_  
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 \_\_\_\_\_