



## 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, March 17, 2010, ~~7:00~~ 8:30 p.m.

South Dade Regional Library  
10750 SW 211<sup>th</sup> Street,  
Cutler Bay, Florida 33189

**1. CALL TO ORDER, ROLL CALL, and PLEDGE OF ALLEGIANCE**

**2. PROCLAMATIONS, AWARDS, PRESENTATIONS**

A. Proclamation – Bill Pacetti

**3. APPROVAL OF MINUTES**

- A. Regular Council Meeting – February 17, 2010  
B. Special Council Meeting – February 22, 2010

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 URGING THE HONORABLE CHIEF JUDGE JOEL H. BROWN, OF THE 11<sup>TH</sup> CIRCUIT COURT, TO OPEN THE COURT HOUSE

TAB 2

LOCATED IN CUTLER BAY AT THE SOUTH DADE GOVERNMENT CENTER AS A FULLY FUNCTIONING AND FULLY STAFFED COURT OF MIAMI-DADE COUNTY; AND PROVIDING FOR AN EFFECTIVE DATE. **(MEERBOTT)**

- B.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, SUPPORTING WORLD WILDLIFE FUND'S 2010 EARTH HOUR, RELATING TO THE RAISING AWARENESS AMONG THE GENERAL PUBLIC ABOUT CLIMATE CHANGE AND THE EARTH HOUR EVENT; AND PROVIDING FOR AN EFFECTIVE DATE. TAB 3
  
- C.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA ESTABLISHING THE 2010 COMMUNITY-WIDE GARAGE SALE DATES PURSUANT TO ORDINANCE 10-02; AND PROVIDING FOR AN EFFECTIVE DATE. **(BELL)** TAB 4
  
- D.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA CREATING AN EDUCATION ADVISORY COMMITTEE; PROVIDING FOR APPOINTMENT OF COMMITTEE MEMBERS; PROVIDING FOR DISSOLUTION OF THE COMMITTEE; PROVIDING FOR AN EFFECTIVE DATE. **(BELL)** TAB 5
  
- E.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROFESSIONAL SERVICES, AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH BILTMORE CONSTRUCTION COMPANY, INC. FOR DESIGN-BUILD SERVICES FOR BEL AIRE PARK AND SAGA LAKE PARK IMPROVEMENT PROJECTS; AND PROVIDING AN EFFECTIVE DATE. TAB 6
  
- F.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROFESSIONAL SERVICES, AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH KVC CONSTRUCTORS, INC. FOR DESIGN-BUILD SERVICES FOR THE SAGA BAY PARK IMPROVEMENTS PROJECT; AND PROVIDING AN EFFECTIVE DATE. TAB 7
  
- G.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, TERMINATING THE TOWN AGREEMENT WITH THE WREN GROUP; WAIVING COMPETITIVE BIDDING BASED ON THE MANAGER'S FINDING OF SOLE SOURCE AVAILABILITY FOR THE SELECTION OF A REPRESENTATIVE TO PROVIDE UNIQUE AND SPECIALIZED CONSULTING SERVICES; APPROVING THE SELECTION OF FUENTES CONSULTING GROUP TO PROVIDE THOSE SERVICES; AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH FUENTES CONSULTING GROUP TO PROVIDE THOSE SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE. TAB 8

H. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE INTERLOCAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND TOWN OF CUTLER BAY FOR LOCAL POLICE SERVICES; AUTHORIZING AND DIRECTING THE TOWN MANAGER TO EXECUTE SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 9

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

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

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

A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 26 OF THE TOWN CODE OF ORDINANCES ENTITLED, "PARK AND RECREATION DEPARTMENT RULES AND REGULATIONS"; REVISING RULES FOR TOWN PARKS; UPDATING PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.  
**(BELL)**

TAB 10

**8. ORDINANCES FOR FIRST READING OR RESOLUTIONS REQUIRING A PUBLIC HEARING**

**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 ARTICLE 5, SECTION B OF ORDINANCE 09-06 ENTITLED, "FLOODPLAIN MANAGEMENT REGULATIONS"; REVISING TOWN STANDARDS TO CONFORM TO FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) GUIDELINES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 11

**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. Parks Committee Meeting**

Thursday, March 18th at 7:00 p.m., Cutler Ridge Park, 10100 SW 200th ST

**B. Code Compliance Hearing**

Monday, March 22<sup>nd</sup> at 10:00 a.m., Town Hall, 10720 Caribbean Blvd., Suite 105

**C. Council Meeting**

Wednesday, April 21, 2010, at 7:00 p.m. at South Dade Regional Library,  
10750 SW 211th ST

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

TAB 1

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

Wednesday, February 17, 2010, 7:00 p.m.  
South Dade Regional Library  
10710 SW 211<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Cutler Bay, Florida 33189

**1. CALL TO ORDER/ROLL CALL OF MEMBERS:** The meeting was called to order by the mayor at 7:00 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

Cub Scout Pack 654 from Whispering Pines Elementary led the Pledge of Allegiance.

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

**A.** Rafael Casals, Public Works Director, presented the Town Council with the Tree City USA flag and signage. He explained the entire process of becoming a Tree City through the Arbor Day Foundation.

**3. APPROVAL OF MINUTES:**

**A.** Vice Mayor MacDougall made a motion approving the minutes of the regular council meeting on January 20, 2010. The motion was seconded by Councilmember Bell and adopted by a unanimous voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

**4. REPORTS**

**A. TOWN MANAGER'S REPORT**

The town manager reminded the Council and public that on Saturday, February 20<sup>th</sup> is the annual Founder's Day event. He reported that out of all the cities competing we were granted \$50,000 from the MPO for our bicycle and pedestrian master plan. Yesterday he reported that he attended a meeting on PTP funds. He reported that the County will postpone of the County's plan to push forward the ordinance and that a working group will be established which Cutler Bay will be a part

of. He stated that the Town will continue and push for funding from PTP. Potentially, the annual allocation to the Town would be \$1.3 million.

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

The town attorney stated that he nothing to report at this time.

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

Member Bell reported that Patricia Fulton was not able to attend the meeting due to a medical emergency. Vice Mayor MacDougall gave a brief background on Ms. Fulton. Member Sochin made a motion to waive the rule of having potential members be present. The motion was seconded by Vice Mayor MacDougall.

Councilmember Sochin made a motion to approve Patricia Fulton and Louise Lockwood to the Charter School Committee. Councilmember Bell seconded the motion and all members of the Council favored the motion.

Councilmember Bell stated that the next Parks Committee meeting would be March 18<sup>th</sup>. She stated that there was a Rules and Regulations sub-committee working on regulations for the Town parks. Member Bell stated that she will have something prepared for the Council to consider by the next meeting. Councilmember Bell stated that the first Community-wide Garage Sale event will be April 17<sup>th</sup>.

Mayor Vrooman stated that the Council should look at the structure of the committee, especially with appointments if the councilmember is not serving any longer. He recommended that the subject on committees should be discussed in a workshop. He reported that the green corridor resolution has been passed in several cities, Palmetto Bay, Pinecrest, and South Miami. Currently, the item is in Tallahassee.

Vice Mayor MacDougall announced that Southland Mall are collecting goods for relief efforts in Haiti. Vice Mayor MacDougall withdrew Item 7A from the agenda.

Councilmember Sochin said that Google is offering certain areas as test sites for broadband. He stated that he will keep the Council in the loop on the program.

**5. CONSENT AGENDA:**

- A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA URGING MIAMI-DADE COUNTY'S METROPOLITAN PLANNING ORGANIZATION TO APPROVE THE TOWN'S SUBMISSION FOR THE 2010 MUNICIPAL GRANT PROGRAM FOR A BICYCLE AND PEDESTRIAN MASTER PLAN; AND PROVIDING FOR AN EFFECTIVE DATE. (SOCHIN)**

Vice Mayor MacDougall pulled Item B from the Consent Agenda for discussion. Mayor Vrooman requested that a last minute add-on item on wetlands be added to the Consent Agenda for consideration by the Town Council.

Councilmember Sochin made a motion to approve the Consent Agenda as amended with Item B pulled for discussion and add-on Item C. The motion was seconded by Councilmember Meerbott and Resolution 10-08 was adopted by unanimous voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The town clerk read the following resolution by title:

- B.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE ISSUANCE OF AN INVITATION TO BID (ITB) FOR SW 208 STREET ROADWAY IMPROVEMENTS; AUTHORIZING THE TOWN MANAGER TO NEGOTIATE AND ENTER INTO AN AGREEMENT WITH THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER; AND PROVIDING FOR AN EFFECTIVE DATE.

Rafael Casals, Public Works Director, provided a brief explanation on the resolution.

Councilmember Bell made a motion to approve the resolution. The motion was seconded by Councilmember Meerbott and Resolutions 10-09 was adopted by unanimous voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The town clerk read the following add-on resolution by title:

- C.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, DIRECTING AND AUTHORIZING THE TOWN MANAGER TO NEGOTIATE THE CONVEYANCE OF THE CONSERVATION AREAS LOCATED GENERALLY SOUTHWEST OF THE LAKES BY THE BAY DEVELOPMENT, AS FURTHER DESCRIBED IN EXHIBIT "A;" AND PROVIDING FOR AN EFFECTIVE DATE.  
**(VROOMAN)**

Mayor Vrooman explained the intent of the resolution. He further explained how precious these wetland areas are to the community.

Councilmember Bell made a motion to approve the resolution. The motion was seconded by Vice Mayor MacDougall and Resolution 10-10 was approved by unanimous voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

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

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



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

The town clerk read the following ordinance by title:

- A.** AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING SECTION 2-93 ENTITLED "RECOVERY OF COSTS FOR FAILURE OF THE RESPONSIBLE PERSON TO APPEAR ON BEHALF OF THE BUSINESS" RELATING TO ALLEGED SHOPLIFTING CRIMES; AND PROVIDING FOR AN EFFECTIVE DATE. **(MACDOUGALL)**

Vice Mayor MacDougall withdrew his ordinance from consideration. He stated he needed more information and will bring it forward on another date.

The town clerk read the following ordinance by title:

- B.** AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ARTICLE 5, SECTION B OF ORDINANCE 09-06 ENTITLED, "FLOODPLAIN MANAGEMENT REGULATIONS"; REVISING TOWN STANDARDS TO CONFORM TO FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) GUIDELINES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

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

**8. ORDINANCES FOR FIRST READING OR RESOLUTIONS REQUIRING A PUBLIC HEARING**

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

The town clerk read the following ordinance by title:

- A.** AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA AMENDING CHAPTER 30 "TRAFFIC AND MOTOR VEHICLES" TO PROVIDE COMPREHENSIVE REGULATIONS RELATING TO THE USE OF GOLF CARTS ON DESIGNATED STREETS WITHIN THE TOWN; AMENDING CHAPTER 8CC "CODE ENFORCEMENT" TO INCLUDE CIVIL PENALTIES RELATED TO GOLF CART USE; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE. **(MEERBOTT)**

The mayor opened the public hearing. Steve Zarzecki, 9640 Martinique Drive and Jaime Reyes, 9750 Southwest 215 Lane, addressed the Council.

The town attorney recommended certain language changes. He suggested that in

- Section 30-422.4 Prohibited Use. Strike section (1)
- Section 30-422.5 Registration. (b) All language after “owner”
- Section 30-422.9 Operators. Drivers must be at least 14 years of age to operate a golf cart on the streets of the Town.

Member Sochin made a motion to approve the ordinance and continue to include the requirement of a valid driver’s license. Councilmember Meerbott seconded the motion and provided an amendment to the motion to add “or a restricted driver’s license.” The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

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

Councilmember Meerbott made a motion directing staff to speak to the Town’s lobbyist and draft a letter to State legislators for amending the golf cart statute for State legislative consideration. Councilmember Bell seconded the motion. All members of the Council were in favor of the motion.

**10. PUBLIC COMMENTS**

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

The following individuals spoke: Bill Meiklejohn, 9320 Sterling Drive, Steve Zarzecki, 9640 Martinique Drive, Jaime Reyes, 9750 Southwest 215 Lane, and Marlayne Behenna, 9451 Toni Drive.

**11. MAYOR AND COUNCIL COMMENTS:**

Vice Mayor MacDougall flashing school lights around the local schools. Rafael Casals, Public Works Director provided information that three public schools in Cutler Bay do not have these cautionary speed lights. He mentioned that he has made contact with the Miami-Dade County Public Works and it is a work in progress. He will follow-up with the status on a regular basis. He asked when the SW 208<sup>th</sup> Street construction meetings will take place and emphasized that the public will be involved. Vice mayor commented on the area located off of Old Cutler Road and SW 184<sup>th</sup> Street. He stated that he has spoken to Freddie Ambrose to create a committee to establish a Veteran’s Memorial in the Town.

Councilmember Bell also communicated with Freddie Ambrose about having a Town-wide celebration for Veteran’s. She asked that the Town Council support a Town Hall meeting with residents so that there is open communication among the Town and its citizens. Member Bell stated that the she will be presenting a resolution establishing an education committee that will focus on local schools in the community.

Councilmember Meerbott mentioned that South Ridge Senior High School and how we can improve and help the school. The principal is new and has fresh ideas, he has hopes that the FCAT

results will improve this year. Member Meerbott has asked the principal to come to a council meeting and provide updates on the school.

Mayor Vrooman agreed that the Old Cutler Road and SW 184<sup>th</sup> Street issue is important and Council needs to keep track of rumors and provide real information to residents. The mayor reminded the Council that at the last meeting the Council passed several resolutions supporting Haiti. He stated that one of the Town staffers, Miguel Parages, traveled to Haiti to provide necessary service and aid to relief teams.

**12. OTHER BUSINESS:** None at this time.

**13. ADJOURNMENT**

The next council meeting will be held on March 17, 2010 at South Dade Regional Library.

The meeting was officially adjourned at 9:00 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 March, 2010.*

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*Paul S. Vrooman, Mayor*

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

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

Monday, February 22, 2010, 6:00 p.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 6:00 p.m. Present were the following:

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

Town Manager Steven J. Alexander  
Town Clerk Erika Santamaria  
Special Outside Counsel Lynn Dannheisser

Councilmember Ernest N. Sochin was absent.

**2. ACTION ITEM**

The town clerk read the following Resolution by title:

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

The town manager made a brief presentation to the Council on the Resolution. He explained the process of the process on the RFQ.

Councilmember Bell made a motion to approve the Resolution. The motion was seconded by Councilmember Meerbott and Resolution 10-11 was approved by unanimous 5-0 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

**3. ADJOURNMENT**

The meeting was officially adjourned at 6:20 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 March, 2010.*

---

*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

**RESOLUTION 10-\_\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA URGING THE HONORABLE CHIEF JUDGE JOEL H. BROWN, OF THE 11<sup>TH</sup> CIRCUIT COURT, TO OPEN THE COURT HOUSE LOCATED IN CUTLER BAY AT THE SOUTH DADE GOVERNMENT CENTER AS A FULLY FUNCTIONING AND FULLY STAFFED COURT OF MIAMI-DADE COUNTY; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Town of Cutler Bay's (the "Town") Police Department spends significant resources on investigations, enforcement and prosecution of suspected criminal activities; and

WHEREAS, all Miami-Dade County Courts are located a significant distance from the Town of Cutler Bay which makes it inconvenient and difficult for victims, witnesses and jurors to take time away from their occupations and families; and

WHEREAS, criminal defense attorneys have used the strategy of requesting a jury trial knowing that due to the time and distance to attend hearings and trials, many witnesses may not attend resulting in potential guilty criminals going free; and

WHEREAS, there is a fully equipped courthouse located in the South Dade Government Center which could be utilized to serve the needs of the citizens and businesses of the Town and other residents of the southern portion of the County; and

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

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

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

**Section 2.    Request.** The Town Council hereby requests that Honorable Chief Judge Brown implement the use of the Court located at the South Dade Government Center to meet the needs of the south Miami-Dade area.

**Section 3.    Transmittal.** The Town Council hereby directs the Town Clerk to furnish a copy of this Resolution to the Honorable Chief Judge Joel H. Brown and the State Attorney's Office immediately upon its adoption.

**Section 4. Effective Date.** That this Resolution shall become effective immediately upon adoption hereof.

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
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 3

**RESOLUTION NO. 10-\_\_**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, SUPPORTING WORLD WILDLIFE FUND'S 2010 EARTH HOUR, RELATING TO THE RAISING AWARENESS AMONG THE GENERAL PUBLIC ABOUT CLIMATE CHANGE AND THE EARTH HOUR EVENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Cutler Bay (The "Town") finds that climate change is one of the most serious issues facing our planet today; and

**WHEREAS**, the Town Council is deeply concerned about the adverse effects of climate change and the future health and well-being of not only our planet, but our community as well; and

**WHEREAS**, the Town Council finds that scientific studies emphasize that energy efficiency and natural resource conservation are important elements to combating climate change, and consequently the Town Council supports efforts aimed at increasing efficiency and conservation; and

**WHEREAS**, tens of millions of people around the world will come together on March 27, 2010, at 8:30 p.m. to make a bold statement about climate change through a simple gesture, turning off their lights for one hour (the "Earth Hour"); and

**WHEREAS**, in 2010, Earth Hour will be even better, with nearly 800 cities already committing to turn off the lights for the event, including the Town as a supporting city; and

**WHEREAS**, the Town Council believes that it is in the best interest of the health safety, and welfare of residents of the Town to raise awareness of the adverse effects of climate change through their support for a Town-wide energy conservation event such as Earth Hour, which additionally provides a rallying point on the issue for residents of the Town.

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

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

**Section 2. Support and Transmittal.** The Town Council hereby supports 2010 Earth Hour and directs the Town Clerk to submit a copy of this Resolution to the representatives of Earth Hour.

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

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
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 4

**RESOLUTION 10-\_\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL  
OF THE TOWN OF CUTLER BAY, FLORIDA  
ESTABLISHING THE 2010 COMMUNITY-WIDE GARAGE  
SALE DATES PURSUANT TO ORDINANCE 10-02; AND  
PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the Town of Cutler Bay (the “Town”) desires to have community-wide garage sales within the Town; and

WHEREAS, Ordinance 10-02 adopted on January 20, 2010, provides that dates for the community-wide garage sales may be established by resolution; and

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

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

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

**Section 2. Community-wide Garage Sale Dates.** The Town Council have established the following dates for the community-wide garage sales:  
a. April 17, 2010

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

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
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 5

**RESOLUTION 10-\_\_\_\_\_**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL  
OF THE TOWN OF CUTLER BAY, FLORIDA CREATING  
AN EDUCATION ADVISORY COMMITTEE; PROVIDING  
FOR APPOINTMENT OF COMMITTEE MEMBERS;  
PROVIDING FOR DISSOLUTION OF THE COMMITTEE;  
PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Cutler Bay (the “Town”) desires to have an Education Advisory Committee (the “Committee”) to advise the Town Council with regard to improving existing local schools and promoting academic excellence and community involvement at all levels of the local school system within the Town; and

**WHEREAS**, Councilmember Peggy Bell has volunteered to serve as the Town Council liaison to the Education Advisory Committee due to her particular interest in the local education system in the Town; and

**WHEREAS**, the Town Council finds that the creation of the Education Advisory Committee is in the best interest of the Town and its residents.

**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.**     **Education Advisory Committee Created.** The Town Council hereby creates an advisory committee, to be known as the Education Advisory Committee to study, advise and make recommendations to the Town Council regarding the possible improvements and development of the Town’s existing local school system. Councilmember Peggy Bell is hereby appointed Town Council liaison to the Committee and shall report to the Town Council as to the Committee’s activities on a regular basis. The Town Council liaison shall not be considered a member of the Committee.

**Section 3.**     **Composition of Committee.** The Committee shall consist of five (5) citizens of the Town who shall be chosen by the Town Council with each Councilmember selecting one Committee member who shall have some specific skill or knowledge relating to education and who has expressed an interest in serving on the Committee. The members shall serve until the Committee’s work is deemed complete and the Committee automatically dissolves pursuant to section 4 below.

**Section 4.**     **Dissolution of the Committee.** The Committee shall be automatically dissolved at such time as the Town Council accepts its recommendations and advises the Committee that its services are no longer required.



PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
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 6



Steven J. Alexander  
Town Manager

## MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council

From: Steven J. Alexander, Town Manager

Date: March 17, 2010

Re: **EXECUTION OF DESIGN-BUILD CONTRACT FOR BEL AIRE PARK AND SAGA LAKE PARK IMPROVEMENTS**

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### REQUEST

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROFESSIONAL SERVICES, AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH BILTMORE CONSTRUCTION COMPANY, INC. FOR DESIGN-BUILD SERVICES FOR BEL AIRE PARK AND SAGA LAKE PARK IMPROVEMENT PROJECTS; AND PROVIDING AN EFFECTIVE DATE.**

### BACKGROUND AND ANALYSIS

At the September 23, 2009 Town Council meeting, authorization was given to advertise Request For Qualifications (RFQ) # 09-11 for design-build services for various municipal public works and park improvement projects. The RFQ process resulted in the Town entering into Professional Services Agreements with two firms – Biltmore Construction Company, Inc. and KVC Constructors – to provide design-build services for the Town. The proposed resolution will allow for the Town Manager to enter into a design-build construction contract with Biltmore Construction for the completion of planned park improvements at Bel Aire Park and Saga Lake Park.

Funding is provided through a grant in the amount of \$292,600 from the Safe Neighborhood Parks Bond Program and an equal amount of matching funds provided in the current year's budget.

### RECOMMENDATION

We recommend that the attached resolution be adopted, authorizing the Town Manager to execute an agreement with Biltmore Construction Company, Inc. in an amount not to exceed \$595,200.00 for design-build services for the Bel Aire Park and Saga Lake Park Improvement Projects.



**RESOLUTION NO. 10-\_\_\_**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROFESSIONAL SERVICES, AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH BILTMORE CONTRSRUCTION COMPANY, INC. FOR DESIGN-BUILD SERVICES FOR BEL AIRE PARK AND SAGA LAKE PARK IMPROVEMENT PROJECTS; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on August 19, 2009, the Town of Cutler Bay (the “Town”) adopted Resolution No. 09-61 authorizing the Town Manager to apply for grant funding from the Safe Neighborhood Parks Bond Program for the Bel Aire Park and Saga Lake Park Improvement Projects; and

**WHEREAS**, on September 23, 2009, the Town adopted Resolution No. 09-72 authorizing the Town Manager to provide for matching funding for the Bel Aire Park and Saga Lake Park improvement projects in an amount not to exceed \$292,600.00; and

**WHEREAS**, on September 23, 2009, the Town adopted Resolution No. 09-71 approving the issuance of a Request for Qualifications (the “RFQ”) for design-build services for public works and park improvement projects and authorizing the Town Manager to enter into Professional Services Agreements with the top-ranked firms; and

**WHEREAS**, Biltmore Construction Company, Inc. was one of the firms that was selected to perform design-build services pursuant to Resolution No. 09-71 and the RFQ, and has entered into a Professional Services Agreement with the Town for design-build services; and

**WHEREAS**, the Town seeks to provide park improvements in accordance with its Parks Master Plan; 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. Authorization.** The Town Manager is authorized to execute an agreement with Biltmore Construction Company, Inc. in an amount not to exceed \$585,200.00 for design-build services for the Bel Aire Park and Saga Lake Park Improvement Projects in substantially the form as attached hereto as Exhibit "A"..

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

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
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.  
Interim Town Attorney

Moved By:  
Seconded By:

FINAL VOTE AT ADOPTION:

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

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

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

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

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

**PROFESSIONAL SERVICES**

**A G R E E M E N T**

**Between**

**TOWN OF CUTLER BAY, FLORIDA**

**And**

**Biltmore Construction Co., Inc.**

**PROFESSIONAL SERVICES**

**A G R E E M E N T**

**Between**

**TOWN OF CUTLER BAY, FLORIDA**

**And**

**Biltmore Construction Co., Inc.**

---

**THIS AGREEMENT** is made between the TOWN OF CUTLER BAY, FLORIDA, a Florida municipal corporation, (hereinafter referred to as the “TOWN”) and Biltmore Construction Co., Inc., a Florida corporation authorized to do business in the State of Florida, (hereinafter referred to as the “CONSULTANT”), whose principal place of business is 1055 Ponce de Leon Blvd., Belleair, FL 33756.

**WHEREAS**, pursuant to Section 287.055, Florida Statutes, the TOWN requested qualifications from qualified design-build firms and selected the CONSULTANT to provide design-build services; and

**WHEREAS**, the CONSULTANT is willing and able to perform such professional, services for the TOWN within the basic terms and conditions set forth in this agreement (hereinafter referred to as “Continuing Services Agreement or Agreement”); and

**WHEREAS**, the purpose of this Continuing Services Agreement is not to authorize the CONSULTANT to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

NOW THEREFORE, in consideration of the mutual terms, conditions, promises and covenants set forth below, the TOWN and CONSULTANT agree as follows:

**SECTION 1. DEFINITIONS**

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

1.1 **Compensation:** The total amount paid by the TOWN for the CONSULTANT’S professional services for a specific project, exclusive of reimbursable expenses.

1.2 **Reimbursable Costs/Services:** are those authorized by the TOWN in writing in addition to the Basic and Additional Services and consist of actual expenditures made by the Consultant and directly attributable to the Project. Reimbursable expenses include long-distance communications, application and permit fees paid for securing approval of authorities having jurisdiction over the Specific Project; actual cost of reproduction, printing, binding and photocopying of drawings, specifications, renderings and other documents; postage; travel expenses; and subconsultant's fees.

a. The following Reimbursable Services shall be provided by the CONSULTANT at the TOWN'S request and with the prior written approval of the cost of the Reimbursable Services by the Town Manager or if the cost exceeds the Town Manager's authority, with the prior written approval of the Town Council:

i. Surveys of building sites, giving boundary dimensions, locations of existing structures and/or trees, the grades and lines of street, pavement, and adjoining properties; the rights, restrictions, easements, boundaries, and topographic data of a building site, and such information as it has relative to sewer, water, gas and electrical services.

ii. Soil borings or test pits; chemical, mechanical, structural, or other tests when deemed necessary; also, if required, an appropriate professional interpretation thereof and recommendations. The CONSULTANT shall recommend necessary tests to the TOWN.

iii. Field investigations as necessary to obtain sufficient information to perform CONSULTANT'S services.

b. All reimbursements shall be approved pursuant to receipts or proof of expenditures provided by the CONSULTANT.

1.3 **Specific Project Agreement or Project Agreement:** an agreement to provide services for a particular Project.

1.4 **Subconsultant Fee:** the direct and actual cost of the Subconsultant with no markup, as reflected by actual invoices of the Subconsultant.

1.5 **Travel Expenses:** authorized travel and lodging and meals incurred directly for the Specific Project for travel outside of Miami-Dade County (subject to the limitations imposed by Chapter 112.601, Florida Statutes and the Town's per diem regulations). No overnight travel or out-of-town travel outside of Miami-Dade County shall be reimbursed unless the CONSULTANT has secured advance written authorization for such travel from the Town Manager. Reimbursement for such authorized travel expenses shall be at the rates provided for



in Chapter 112, Florida Statutes, as may be amended from time to time, which rates shall by reference be made a part of this Agreement as though set forth in full.

**SECTION 2. SPECIFIC PROJECTS/SCOPE OF SERVICES**

2.1 In accordance with the Consultants' Competitive Negotiation Act, the CONSULTANT may provide professional services to the TOWN for Specific Projects as authorized from time to time by either the Town Council or Town Manager as authorized by subsection 2.6. The CONSULTANT may be asked to provide professional services for any parks-related or public works-related design-build projects in the TOWN, including the following specific projects:

- a. Saga Bay Park Improvements
- b. Saga Lake Park Improvements
- c. Bel Aire Park Improvements

The TOWN shall describe the scope of work for these projects in greater detail in future Project Agreements amending this Continuing Services Agreement.

2.2 When the need for services for a Specific Project occurs, the Town Manager may, enter into negotiations with the CONSULTANT for that Specific Project under the terms and conditions of this Agreement. The TOWN shall initiate said negotiations by providing the CONSULTANT with a "Scope of Services Request," requesting from the CONSULTANT a proposal to provide professional services for the Specific Project. The CONSULTANT shall prepare a proposal which includes those subjects specified in subsection 2.3 (a) through (g). The Town Manager and CONSULTANT shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 2.3.

2.3 The TOWN and CONSULTANT shall utilize as the agreement for each Specific Project a Standard Project Agreement ("Project Agreement"), a copy of which is attached and incorporated into this Agreement as Exhibit "A". Each supplemental Project Agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:

- a. The Scope of Services;
- b. The Deliverables;
- c. The Time and Schedule of Performance and Term;
- d. The amount of Compensation;
- e. The Personnel assigned to the Specific Project;

- f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consultant agreements;
- g. Any other terms deemed necessary by the Town to adequately protect its interests.

2.5 The professional services to be rendered by the CONSULTANT shall commence subsequent to the execution of each Project Agreement. Performance of work by CONSULTANT prior to execution of a Project Agreement shall be at CONSULANT'S sole risk. The CONSULTANT agrees to complete each task within the time stipulated in the Project Agreement.

2.6 The TOWN Manager is authorized to negotiate and execute a Project Agreement for specific projects in which the CONSULTANT'S services do not exceed \$25,000.00.

2.7 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Continuing Services Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

2.8 CONSULTANT'S direction under this Continuing Services Agreement shall be derived solely from the TOWN Manager or his or her designee.

2.9 Time is of the essence with respect to the performance of the CONSULTANT'S services within the time limits established herein. The CONSULTANT shall not, except for cause beyond the reasonable control of the CONSULTANT, exceed time limits established by this Continuing Services Agreement. Any adjustments to the schedule must be approved in writing by TOWN and must be requested in writing by the CONSULTANT within ten (10) calendar days after the occurrence upon which the CONSULTANT'S request for adjustment is based.

### **SECTION 3. TERM/TERMINATION**

3.1 **Term of Agreement.** – This Continuing Services Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect, unless and until terminated pursuant to Section 3.2 or other applicable sections of this Continuing Services Agreement. Each Project Agreement shall specify the period of service agreed to by the TOWN and CONSULTANT for services to be rendered under said Project Agreement.

3.2 **Termination – For Convenience** – This Continuing Services Agreement may be terminated by the TOWN for convenience upon seven (7) calendar days written notice to the CONSULTANT.

3.3 **Effect on Project Agreement** – Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3.4 **Non-Exclusive Agreement** - Notwithstanding the provisions of Subsection 3.1, the Town Manager may issue requests for proposals for this professional discipline at any time and may utilize the services of any other consultants retained by the TOWN under similar continuing services agreements. Nothing in this Continuing Services Agreement shall be construed to give the CONSULTANT a right to perform services for a Specific Project.

#### **SECTION 4. ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES**

4.1 **Changes Permitted.** Changes in the Scope of Services of a Project Agreement consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the TOWN by Change Order without invalidating the Project Agreement.

4.2 **Change Order Defined.** Change Order shall mean a written order to the CONSULTANT executed by the TOWN, issued after execution of a Project Agreement, authorizing and directing a change in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and/or the Contract Time may be changed only by Change Order.

4.3 **Effect of Executed Change Order.** The execution of a Change Order by the TOWN and the CONSULTANT shall constitute conclusive evidence of the CONSULTANT's agreement to the ordered changes in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The CONSULTANT, by executing the Change Order, waives and forever releases any claim against the TOWN for additional time or compensation for matters relating to or arising out of or resulting from the Services included within or affected by the executed Change Order.

#### **SECTION 5. SURVIVAL OF PROVISIONS**

5.1 Any terms or conditions of either this Continuing Services Agreement or any subsequent Project Agreement that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

#### **SECTION 6. TOWN'S RESPONSIBILITIES**

6.1 Assist CONSULTANT by placing at its disposal all available information as may be requested in writing by the CONSULTANT and allow reasonable access to all pertinent information relating to the services to be performed by CONSULTANT.

6.2 Furnish to CONSULTANT, at the CONSULTANT'S written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by CONSULTANT, in possession of the TOWN.

6.3 Arrange for access to and make all provisions for CONSULTANT to enter upon public property as required for CONSULTANT to perform services.

## **SECTION 7. CAMPAIGN CONTRIBUTION DISCLOSURE**

7.1 Ordinance 06-11; Town Code Chapter 8A. Pursuant to Ordinance 06-11; Town Code Chapter 8A; Section 7.6 of the Town Charter, vendors of the Town are required to disclose any campaign contributions to the Town Clerk, and each vendor must do so prior to and as a condition of the award of any Town contract to the vendor.

### **Vendors' Campaign Contribution Disclosure:**

#### 1. General requirements:

(A) Any vendor required to disclose campaign contributions pursuant to the Charter of the Town of Cutler Bay, as may be amended, shall file a written disclosure with the Town Clerk, stating all contributions made that were accepted by an elected official, the official to whom they were made and the date they were made. The Town Clerk may develop a form to be used by vendors for such disclosure.

(B) The disclosure shall be filed prior to and as a condition of the award of any Town contract to the Vendor.

(C) The Town Clerk shall inform the Council of any disclosures which were made in relation to any items before the Council prior to the hearing on the item or prior to the award of the contract.

(D) If an existing vendor makes a contribution the vendor must report the same to the clerk within ten days of its acceptance or prior to being awarded any additional contract or renewal, whichever occurs first.

(E) The Town Clerk shall file a quarterly report with the Council, which lists all the vendor disclosures in the quarter.

#### 2. Disqualification

(A) As per Section 7.6 of the Town Charter, if a Vendor of products or services who directly or through a member of the person's immediate family or through a political action committee or through any other person makes a campaign

contribution to a Town candidate and fails to disclose it then he/she/it shall be barred from selling any product or service to the town for a period of two years following the swearing in of the subject elected official.

## **SECTION 8. POLICY OF NON-DISCRIMINATION**

8.1 The CONSULTANT 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 Continuing Services Agreement.

## **SECTION 9. OWNERSHIP OF DOCUMENTS/DELIVERABLES**

9.1 Drawings and Specifications as instruments of service are and shall become the property of the TOWN whether the Specific Project for which they are made is executed or not. The CONSULTANT shall be permitted to retain copies, including reproducible copies, of Drawings and Specifications for information and reference in connection with the TOWN'S use and occupancy of the Project.

9.2 The Drawings and Specifications shall not be used by the TOWN on other projects, and TOWN agrees to indemnify the CONSULTANT should it breach this paragraph.

9.3 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Specific Project is not to be construed as publication in derogation of the CONSULTANT'S rights.

9.4 CONSULTANT agrees not to divulge, furnish or make available to any third person, firm or organization, without TOWN'S prior written consent, or unless incident to the proper performance of the CONSULTANT'S obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, or if reasonably necessary for the CONSULTANT to defend itself from any suit or claim, any non-public information concerning the services to be rendered by CONSULTANT hereunder, and CONSULTANT shall require all of its employees, agents, sub-CONSULTANTS and subcontractors to comply with the provisions of this paragraph.

9.5 All final plans and documents prepared by the CONSULTANT shall bear the endorsement and seal of a person duly registered as a Professional Engineer, Architect, Landscape Architect, Professional Geologist, or Land Surveyor, as appropriate, in the State of Florida and date approved and/or sealed.

## **SECTION 10. RECORDS/AUDITS**

10.1 CONSULTANT shall maintain and require Subconsultants to maintain, complete and correct records, books, documents, papers and accounts pertaining to the Specific Project.

Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the Town Manager or any authorized TOWN representative with reasonable notice and shall be kept for a period of four (4) years after the completion of each Project Agreement. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by or reimbursement to the TOWN of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the TOWN.

10.2 The CONSULTANT shall comply with Chapter 119, Florida Statutes, as applicable.

10.3 Refusal of the CONSULTANT to comply with the provisions of Sections 10.1 or 10.2 shall be grounds for immediate termination for cause by the TOWN of this Agreement or any Project Agreement.

#### **SECTION 11. NO CONTINGENT FEE**

11.1 CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Continuing Services Agreement. In the event the CONSULTANT violates this provision, the TOWN shall have the right to terminate this Continuing Services Agreement or any Project Agreement, without liability, and at its sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

#### **SECTION 12. INDEPENDENT CONTRACTOR**

12.1 The CONSULTANT is an independent contractor under this Continuing Services Agreement and any Project Agreements. Personal services provided by the CONSULTANT shall be by employees of the CONSULTANT and subject to supervision by the CONSULTANT, and not as officers, employees, or agents of the TOWN, Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Continuing Services Agreement or any Project Agreements shall be those of the CONSULTANT.

#### **SECTION 13. ASSIGNMENT; AMENDMENTS**

13.1 This Continuing Services Agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT, without the prior written consent of the TOWN.

13.2 No modification, amendment or alteration in the terms or conditions of this Continuing Services Agreement shall be effective unless contained in a written document executed with the same formality as this Continuing Services Agreement.

#### **SECTION 14. INDEMNIFICATION/HOLD HARMLESS**

14.1 Pursuant to Section 725.08, Florida Statutes, the CONSULTANT shall indemnify and hold harmless the TOWN, and its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT, the Sub-CONSULTANTS and other persons employed or utilized by the CONSULTANT in the performance of this Continuing Services Agreement. The CONSULTANT'S obligation under this paragraph shall not be limited in any way by the agreed upon contract price, or the CONSULTANT'S limit of, or lack of, sufficient insurance protection.

14.2 The indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONSULTANT and/or any Sub-CONSULTANTS under worker's compensation acts, disability benefit acts, or other employee benefit acts.

14.3 To the extent this indemnification clause or any other indemnification clause in this Continuing Services Agreement does not comply with Chapter 725, Florida Statutes, as it may be subsequently amended, this Article and all aspects of the respective Contract Documents for each Specific Project shall hereby be interpreted as the parties' intention for the indemnification clauses and the respective Contract Documents for each Specific Project to comply with Chapter 725, Florida Statutes, as may be amended.

14.4 The CONSULTANT shall not specify or allow any SubConsultant to specify a particular design, process or product that infringes upon any patent. The CONSULTANT shall indemnify and hold TOWN and its officers and employees harmless from any loss, cost or expense, including reasonable attorney's fees and costs incurred, on account thereof if the CONSULTANT violates the requirements of this Section.

#### **SECTION 15. INSURANCE**

The CONSULTANT shall secure and maintain throughout the duration of this Continuing Services Agreement and any Project 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 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 CONSULTANT'S insurance and shall not contribute to the CONSULTANT'S insurance. The insurance coverages shall include a minimum of:

15.1 **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 \$100,000.00 each accident.

15.2 **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the CONSULTANT and the TOWN against claims for injuries to members of the public and/or damages to property of others arising from the CONSULTANT'S use of non-owned and hired 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 \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive that the latest edition of the Business Automobile Liability Policy, without restrictive endorsement, as filed by the Insurance Services Office.

15.3 **Commercial General Liability.** This insurance shall be written in comprehensive form and shall protect the CONSUTLANT 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 CONSULTANT or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.

(a) 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.

(b) 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 CONSULTANT in performance of this or any Project Agreement. CONSULTANT'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 CONSULTANT'S insurance. CONSULTANT'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.

15.4 **Professional Liability:** The CONSULTANT shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$2,000,000.00 with a deductible of \$25,000.00 per claim. The CONSULTANT shall be responsible for maintaining



this professional liability insurance for a minimum of five (5) years from the date of execution of each Project Agreement. Upon request of the TOWN, the CONSULTANT shall make available for inspection copies of any claims filed or made against the policy during the policy term. The CONSULTANT shall additionally notify the TOWN, in writing, within thirty (30) calendar days of any claims filed or made against this policy in excess of \$100,000.00 during the policy term.

15.5 **Certificate of Insurance:** Prior to the execution of this Continuing Services Agreement, CONSULTANT shall provide the Town Manager with evidence of insurability from the Consultant's Insurance Carrier or a Certificate of Insurance. Prior to execution of any Project Agreement, the CONSULTANT shall provide to the Town Manager, Certificates of Insurance evidencing the required insurance coverages. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this and any Project Agreement and shall state that such insurance is as required by this and any Project Agreement. The TOWN reserves the right to require the CONSULTANT 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.

15.6 All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The CONSULTANT shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The Town Manager may require the CONSULTANT, as a condition of execution of a particular Project Agreement, to provide a bond or other monetary consideration to cover the CONSULTANT'S deductible for Professional Liability Insurance.

## **SECTION 16. REPRESENTATIVE OF TOWN AND CONSULTANT**

16.1 **TOWN Representative.** It is recognized that questions in the day-to-day conduct of this Continuing Services Agreement will arise. The TOWN designates the Town Manager or his or her designee, as the person to whom all communications pertaining to the day-to-day conduct of this Continuing Services Agreement shall be addressed.

16.2 **CONSULTANT Representative.** CONSULTANT shall inform the TOWN Representative, in writing, of the representative of the CONSULTANT to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

## **SECTION 17. WAIVER OF JURY TRIAL**

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

## **SECTION 18. ALL PRIOR AGREEMENTS SUPERSEDED**

18.1 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this Continuing Services Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Continuing Services Agreement that are not contained in this document. Accordingly it is agreed that no deviation from the terms of the Continuing Services Agreement shall be predicated upon any prior representations or agreements whether oral or written.

## **SECTION 19. CONSULTANT'S RESPONSIBILITIES**

19.1 The CONSULTANT warrants that the services to be performed hereunder shall be performed by the CONSULTANT'S own staff, unless otherwise approved in writing by the TOWN. Said approval shall not be construed as constituting an agreement between the TOWN and said other person or firm. The CONSULTANT'S services shall be performed in a manner consistent with that degree of skill and care ordinarily exercised by practicing design professionals performing similar services in the same locality and under the same or similar circumstances and conditions.

19.2 The CONSULTANT represents that it possesses the requisite skills and shall follow the professional standards of industry-recognized professional associations as well as the necessary accreditation entities in performing all services under this Continuing Services Agreement. The CONSULTANT agrees to use its skill and judgment in furthering the TOWN'S interests hereunder and CONSULTANT shall perform its services in accordance with the practice of the pertinent industry and as expeditiously as is consistent with reasonable skill and care. If at any time during the term of this Continuing Services Agreement or the construction of the Project for which the CONSULTANT has provided engineering, architectural, surveying or mapping services under this Continuing Services Agreement, it is determined that the CONSULTANT'S documents are incorrect, defective or fail to conform to the terms of this Continuing Services Agreement, upon written notification from the TOWN, the CONSULTANT shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the TOWN for any other services and expenses made necessary thereby, save and except any costs which the TOWN would have otherwise paid absent the CONSULTANT'S error or omission. The TOWN'S and or any governmental agency's approval, acceptance, use of or payment for all or any part of the CONSULTANT'S services shall in no way alter the CONSULTANT'S obligations or TOWN'S rights hereunder.

19.3 CONSULTANT agrees, within fourteen (14) calendar days of receipt of a written request from the TOWN, to promptly remove and replace any personnel employed or retained by the CONSULTANT, any sub-CONSULTANTS or subcontractors or any personnel of any such

sub-CONSULTANT or subcontractors engaged by the CONSULTANT to provide and perform services or work pursuant to the requirements of this Continuing Services Agreement, whom the TOWN shall request in writing to be removed, which request may be made by the TOWN.

19.4 If the CONSULTANT allows any work to be performed knowing, or when with the exercise of due care the CONSULTANT should have known, it to be contrary to any such applicable, known and published laws, ordinances, rules, regulations or restrictions and fails to give TOWN written notice thereof prior to performance thereof, the CONSULTANT shall bear all costs, liabilities, and expenses arising therefrom, which costs, liabilities and expenses shall not be considered a part of the CONSULTANT'S fees or any other amounts due hereunder.

19.5 The CONSULTANT'S obligations under Paragraph 19.2 of this Agreement shall survive termination of this Continuing Services Agreement or any Project Agreement.

## **SECTION 20. SUBCONSULTANTS**

20.1 In the event the CONSULTANT requires the services of any Subconsultants or other professional associates in connection with services covered by any Project Agreement, the CONSULTANT must secure the prior written approval of the Town Manager. The CONSULTANT shall utilize his/her best efforts to utilize Subconsultants where principal place of business is located within the Town of Cutler Bay, Florida.

20.2 All services provided by the SubConsultants shall be pursuant to appropriate agreements between the CONSULTANT and the SubConsultants which shall contain provisions that preserve and protect the rights of the TOWN and the CONSULTANT under this Continuing Services Agreement. Each Subconsultant agreement shall incorporate the terms of this Continuing Services Agreement, and shall include termination provisions that state that the agreements may be terminated. TOWN shall not be responsible for termination expenses of any third parties.

20.3 Any subcontract with a Subconsultant shall afford to the CONSULTANT rights against the Subconsultant which correspond to those rights afforded to the TOWN against the CONSULTANT herein, including but not limited to those rights of termination as set forth herein.

20.4 No reimbursement shall be made to the CONSULTANT for any subconsultants that have not been previously approved by the TOWN for use by the CONSULTANT.

## **SECTION 21. NOTICES**

Whenever either party desires to give notice to the other, it must be given by hand delivery or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the

provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

**FOR CONSULTANT:**

Biltmore Construction Co., Inc.  
Attention: Edward A. Parker, Jr., PE, President  
1055 Ponce de Leon Blvd.  
Belleair, FL 33756  
Telephone: (727) 585-2084  
Facsimile: (727) 585-2088

**FOR TOWN:**

Town of Cutler Bay  
Attention: Steve Alexander, Town Manager  
10720 Caribbean Boulevard, Suite 105  
Cutler Bay, Florida 33014  
Telephone: (305) 234-4263  
Facsimile: (305) 234-4251

With a copy to Town Attorney:

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

**SECTION 22. CONSENT TO JURISDICTION**

The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this Continuing Services Agreement or any Project Agreement. Venue of any action to enforce this Continuing Services Agreement or any Project Agreement shall be in Miami-Dade County, Florida.

**SECTION 23. GOVERNING LAW**

This Continuing Services Agreement and any Project Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

**SECTION 24. HEADINGS**

Headings are for convenience of reference only and shall not be considered in any interpretation of this Continuing Services Agreement.

**SECTION 25. EXHIBITS**

Each Exhibit referred to in this Continuing Services Agreement forms an essential part of this Continuing Services Agreement. The Exhibits if not physically attached, should be treated as part of this Continuing Services Agreement, and are incorporated by reference.

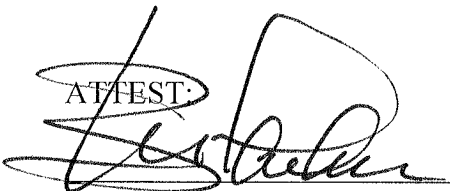
**SECTION 26. SEVERABILITY**

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

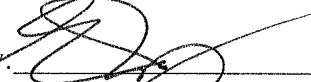
**SECTION 27. COUNTERPARTS**

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

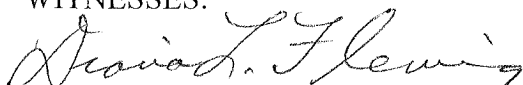
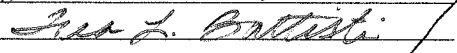
**IN WITNESS WHEREOF**, the parties execute this Continuing Services Agreement on the respective dates under each signature: The TOWN, signing by and through its Town Manager, attested to by its TOWN Clerk, duly authorized to execute same and by CONSULTANT by and through its President, whose representative has been duly authorized to execute same through a resolution of the corporation or partnership.

ATTEST:  
  
Secretary

BILTMORE CONSTRUCTION CO., INC.

By:   
Edward A. Parker, Jr., President

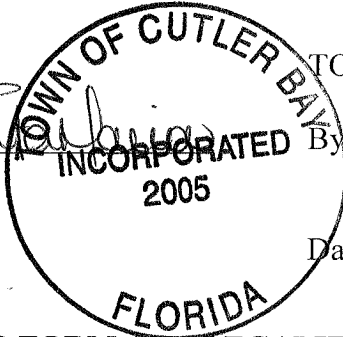
Date: Jan 6, 2010

WITNESSES:  
  


Print Name: DIANA L. FLEMING  
Print Name: TREA L. BATTISTI

ATTEST:

*Epurka...*  
Town Clerk



TOWN OF CUTLER BAY

By: *Steven Alexander*  
Steven Alexander, Town Manager

Date: January 14, 2010

**APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND RELIANCE OF THE  
TOWN OF CUTLER BAY, FLORIDA, ONLY:**

*M.B.*  
Town Attorney

**ATTEST:**

\_\_\_\_\_  
Assistant Secretary  
\_\_\_\_\_  
Please type name of Secretary

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

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

WITNESSES:

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

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

**EXHIBIT "A"**

SAMPLE  
**PROJECT AGREEMENT**

## **Bel Aire Park Improvements Preliminary Scope of Work**

### **Football Field Renovation:**

Re-grade and re-sod (Bermuda 419) to relocate field to the west end of the park as per the park master plan.

### **Field Lighting Re-location:**

Relocate/re-aim/upgrade four light poles west to accommodate re-located football field.

### **Irrigation System:**

Install complete automatic irrigation system for entire field.

### **Scoreboard Re-location:**

Relocate scoreboard to west side of field.

### **Playground:**

Install playground equipment to accommodate children 12 and under as per the park master plan.

### **Bleachers:**

Remove existing bleachers and replace with new 10-row aluminum bleachers.



## **Saga Lake Park Improvements Preliminary Scope of Work**

### **Field Construction:**

Filling and grading a portion of the open play area and installation of approximately 30,000 sq. ft. of Bermuda sod.

### **Picnic Pavilion:**

Construction of a 30' x 30' picnic pavilion with water and electrical connections.

### **Walkway/Vita Course:**

Expansion of existing asphalt walkway and the installation of an outdoor fitness station system.

### **Irrigation System:**

Installation of a new automatic irrigation system to water the new practice fields.

### **Utility Connections:**

Electric and water connections to service the irrigation system and picnic pavilion.

### **Landscaping:**

Installation of approximately 30 shade trees to act as a buffer between the new practice fields and the remaining open play space.

**RESOLUTION NO. 09-61**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO GRANTS; AUTHORIZING THE TOWN MANAGER TO APPLY FOR GRANT FUNDING FROM THE SAFE NEIGHBORHOOD PARKS BOND PROGRAM FOR PARKS PROJECTS; PROVIDING FOR THE COMPLETION OF THE PROJECTS; PROVIDING FOR PARK ACCESSIBILITY; PROVIDING FOR FUNDING TO SUPPORT THE PROJECTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the citizens of Miami Dade County have authorized the issuance of general obligation bonds (the "Bonds") for the purpose of financing capital improvement programs for certain parks, beaches, natural areas and recreation facilities; and

**WHEREAS**, to implement and give effect to the Bond program, the Board of County Commissioners of Miami Dade County, Florida enacted Ordinance No. 96-115, the Safe Neighborhood Parks Ordinance (the "Ordinance"); and

**WHEREAS**, the Town Council of the Town of Cutler Bay (the "Town") has sought, to improve the Town's parks and natural areas in order to improve the quality of life, to increase property values within the community, to promote prevention of juvenile crime by providing positive recreation opportunities, and to improve the recreation facilities for youth, adult, and senior citizens in this community; and

**WHEREAS**, in order to foster those important values, the Town will be seeking reimbursement pursuant to the terms of the Ordinance for the Bel Aire Park Improvements project and Saga Bay Park Improvements project; and

**WHEREAS**, pursuant to the terms of the Ordinance, the passage of this Resolution and the acts contemplated by this Resolution are conditions to obtaining a grant; and

**WHEREAS**, the Town wishes to apply for the grant monies for the Bel Aire Park Improvements project and Saga Bay Park Improvements project subject to all terms and conditions of the Ordinance; 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. Grant Application Authorized.** The Town Manager is authorized to make application for a grant to fund the projects and in the amount listed below, and to expend Safe Neighborhood Parks bond funds received for the purposes described in the funding request. Application shall be made with respect to each of the following projects (the "Projects") in the amounts set forth below.

<u>Grant Title</u>	<u>Total Grant</u>
Bel Aire Park Improvements	\$179,400
Saga Lake Park Improvements	\$113,200

**Section 3. Projects Completion.** The Town shall complete each of the Projects in accordance with the terms the Ordinance and the administrative rules authorized by the Citizens' Oversight Committee (the "Committee") to implement the Ordinance. If the total cost of a Project exceeds the value allocated in the grant, then the Town will provide any supplemental funds required to complete the Project.

In the event that supplemental funds are necessary for the completion of either of the Projects, as of the point in time that it is known that supplemental funds are needed, the Town will demonstrate that such supplemental funds have been committed to either of the Projects prior to, and as a condition of, disbursement or further disbursement of grant funds. The requirement for the Town to provide any supplemental funds required to complete either of the Projects may, at the sole discretion of the Committee, be modified in whole or in part by a reduction in scope of work consistent with the Ordinance.

**Section 4. Accessibility.** The Town recognizes and directs that any beach, park, or other public facility acquired, developed, rehabilitated or restored with Bond funds, including the Projects, shall be open and accessible to the public without discrimination as to race, color, gender, age, religion, belief, residence, natural origin, marital status or disability.

**Section 5. Operating Funds.** To the extent allowed by law, the Town shall commit any and all funds which may be required to operate, maintain and provide programming at each of the Park Projects, upon the completion of the respective Park Projects.


**Section 6. Funding Substitutions.** No substitution in capital project funding by the Town shall occur as a result of the grant for which the Town is applying.

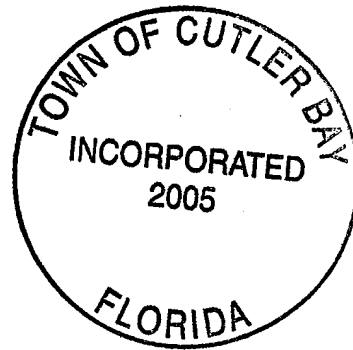
**Section 7. Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this 19<sup>th</sup> day of August, 2009.


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

Attest:

  
ERIKA GONZALEX-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: Councilmember Meerbott  
Seconded By: Councilmember Bell

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman	<u>YES</u>
Vice Mayor Edward P. MacDougall	<u>YES</u>
Councilmember Peggy R. Bell	<u>YES</u>
Councilmember Timothy J. Meerbott	<u>YES</u>
Councilmember Ernest N. Sochin	<u>YES</u>

**RESOLUTION NO. 09-71**

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

**WHEREAS**, the Town of Cutler Bay (the "Town") Public Works and Parks and Recreation Department (the "Department") will be responsible for overseeing various capital improvement projects (the "Projects") throughout the Town; and

**WHEREAS**, the Department desires, and it is in the best interest of the Town, to contract with the most qualified and experienced consultants to provide professional design-build services to the Town to assist in completing the Projects, utilizing funding provided in the Town's annual operating and capital budget; and

**WHEREAS**, in accordance with Chapter 287.055 of the Florida Statutes, a Request For Qualifications (RFQ) has been prepared to identify the best available consultants to provide professional design-build services for an initial period of three years to assist in completing the Projects; and

**WHEREAS**, Town Ordinance Number 06-22 requires the Town Manager to obtain authorization from the Town Council to advertise solicitations for bids and proposals prior to advertising the solicitation; and

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

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

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

**Section 2.      Request For Qualifications Approved.** The Town Manager is hereby authorized to advertise and issue a Request For Qualification for Professional Design-Build Services (the "RFQ") in substantially the form attached hereto as Exhibit "A."

**Section 3.      Authorization.** The Town Manager is hereby authorized to negotiate and enter into a Professional Services Agreement (the "Agreement") with the top three ranked firms as a result of the RFQ process, provided that the Agreement is subject to review for legal sufficiency by the Town Attorney.

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


PASSED and ADOPTED this 23<sup>rd</sup> day of September, 2009.

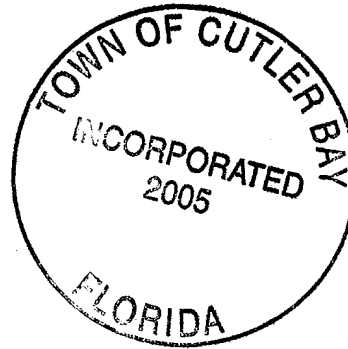
  
PAUL S. VROOMAN, Mayor

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: Councilmember Bell  
Seconded By: Councilmember Sochin

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman	<u>YES</u>
Vice Mayor Edward P. MacDougall	<u>YES</u>
Councilmember Peggy R. Bell	<u>YES</u>
Councilmember Timothy J. Meerbott	<u>YES</u>
Councilmember Ernest N. Sochin	<u>YES</u>

**RESOLUTION NO. 09-72**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO MATCHING GRANT FUNDS; AUTHORIZING THE TOWN MANAGER TO MATCH THE FUNDING PROVIDED BY A MIAMI-DADE COUNTY GRANT FOR THE BEL AIRE PARK AND SAGA LAKE PARK IMPROVEMENT PROJECTS IN AN AMOUNT NOT TO EXCEED \$292,600; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town Council of the Town of Cutler Bay (the "Town") has sought, to improve the Town's parks and natural areas in order to improve the quality of life, to increase property values within the community, to promote prevention of juvenile crime by providing positive recreation opportunities, and to improve the recreation facilities for youth, adult, and senior citizens in this community; and

**WHEREAS**, pursuant to those goals, Resolution Number 09-61 of the Town authorized the Town Manager to apply for grant funding from the Miami-Dade County Safe Neighborhood Parks (SNP) bond program for park improvement projects; and

**WHEREAS**, the Town submitted applications to the SNP for funding in the amount of \$179,400 for improvements at Bel Aire Park and \$113,200 for improvements at Saga Lake Park (the "Projects"); and

**WHEREAS**, the Miami-Dade County Office of Safe Neighborhood Parks (OSNP) has selected both of the Town's applications for full funding; and

**WHEREAS**, prior to awarding the grants, the OSNP requires proof of matching funds through a resolution of the Town Council;

**WHEREAS**, the Town Council desires to authorize the Town Manager to allocate matching funds as a part of the Town's 2009-2010 Annual Operating and Capital Budget in an amount not to exceed \$292,600 to help fund the Projects and meet the OSNP matching funds requirement; 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.

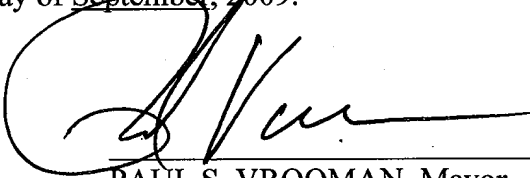
**Section 2. Matching Funds Authorized.** The Town Manager is authorized to provide matching funds in the 2009-2010 Annual Operating and Capital Budget in an amount not

to exceed \$292,600 and to take all steps necessary on behalf of the Town to provide for the completion of the following projects:

<u>Grant Title</u>	<u>Total Grant</u>
Bel Aire Park Improvements	\$179,400
Saga Lake Park Improvements	\$113,200

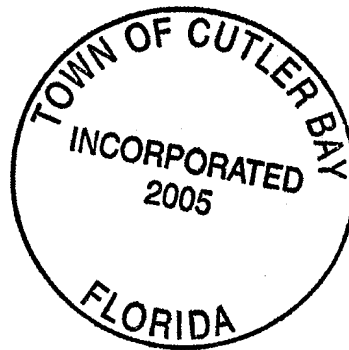
**Section 3. Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this 23<sup>rd</sup> day of ~~September~~, 2009.

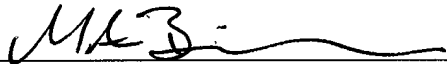
  
PAUL S. VROOMAN, Mayor

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: Councilmember Bell  
Seconded By: Councilmember Sochin

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman	<u>YES</u>
Vice Mayor Edward P. MacDougall	<u>YES</u>
Councilmember Peggy R. Bell	<u>YES</u>
Councilmember Timothy J. Meerbott	<u>YES</u>
Councilmember Ernest N. Sochin	<u>YES</u>



TAB 7



Steven J. Alexander  
Town Manager

## MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council

From: Steven J. Alexander, Town Manager

Date: March 17, 2010

Re: **EXECUTION OF DESIGN-BUILD CONTRACT FOR SAGA BAY PARK IMPROVEMENTS**

---

### REQUEST

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROFESSIONAL SERVICES, AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH KVC CONSTRUCTORS, INC. FOR DESIGN-BUILD SERVICES FOR THE SAGA BAY PARK IMPROVEMENTS PROJECT; AND PROVIDING AN EFFECTIVE DATE.**

### BACKGROUND AND ANALYSIS

At the September 23, 2009 Town Council meeting, authorization was given to advertise Request For Qualifications (RFQ) # 09-11 for design-build services for various municipal public works and park improvement projects. The RFQ process resulted in the Town entering into Professional Services Agreements with two firms – Biltmore Construction Company, Inc. and KVC Constructors – to provide design-build services for the Town. The proposed resolution will allow for the Town Manager to enter into a design-build construction contract with KVC Constructors for the completion of planned park improvements at Saga Bay Park.

Funding is provided through grants in the amount of \$135,500 from the Florida Recreation Development Assistance Program (FRDAP), \$200,000 from a 2008-2009 state line item appropriation and matching funds in the amount of \$135,500 provided in the current year's budget. A portion of these funds has already been spent on playground equipment replacement and the installation of a shade structure at Saga Bay Park.

### RECOMMENDATION

We recommend that the attached resolution be adopted, authorizing the Town Manager to execute an agreement with KVC Constructors, Inc. in an amount not to exceed \$395,000.00 for design-build services for the Saga Bay Park Improvements Project.



**RESOLUTION NO. 10-\_\_\_**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROFESSIONAL SERVICES, AUTHORIZING THE TOWN MANAGER TO EXECUTE AN AGREEMENT WITH KVC CONSTRUCTORS, INC. FOR DESIGN-BUILD SERVICES FOR THE SAGA BAY PARK IMPROVEMENTS PROJECT; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on September 23, 2009, the Town of Cutler Bay (the “Town”) adopted Resolution No. 09-71 approving the issuance of a Request for Qualifications (the “RFQ”) for design-build services for public works and park improvement projects and authorizing the Town Manager to enter into Professional Services Agreements with the top-ranked firms; and

**WHEREAS**, KVC Constructors, Inc. was one of the firms that was selected to perform design-build services pursuant to Resolution No. 09-71 and the RFQ, and has entered into a Professional Services Agreement with the Town for design-build services; and

**WHEREAS**, the Town seeks to provide park improvements in accordance with its Parks Master Plan; 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. Authorization.** The Town Manager is authorized to execute an agreement with KVC Constructors, Inc. in an amount not to exceed \$395,000.00 for design-build services for the Saga Bay Park Improvements Project in substantially the form as attached hereto as Exhibit “A”.

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

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
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.  
Interim Town Attorney

Moved By:  
Seconded By:

FINAL VOTE AT ADOPTION:

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

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

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

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

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

**PROFESSIONAL SERVICES**

**A G R E E M E N T**

**Between**

**TOWN OF CUTLER BAY, FLORIDA**

**And**

**KVC Constructors, Inc.**



**PROFESSIONAL SERVICES**

**A G R E E M E N T**

**Between**

**TOWN OF CUTLER BAY, FLORIDA**

**And**

**KVC Constructors, Inc.**

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**THIS AGREEMENT** is made between the TOWN OF CUTLER BAY, FLORIDA, a Florida municipal corporation, (hereinafter referred to as the “TOWN”) and **KVC Constructors, Inc.**, a Florida corporation authorized to do business in the State of Florida, (hereinafter referred to as the “CONSULTANT”), whose principal place of business is 9499 NE 2<sup>nd</sup> Avenue, Suite 205, Miami Shores, Fl 33138.

**WHEREAS**, pursuant to Section 287.055, Florida Statutes, the TOWN requested qualifications from qualified design-build firms and selected the CONSULTANT to provide design-build services; and

**WHEREAS**, the CONSULTANT is willing and able to perform such professional, services for the TOWN within the basic terms and conditions set forth in this agreement (hereinafter referred to as “Continuing Services Agreement or Agreement”); and

**WHEREAS**, the purpose of this Continuing Services Agreement is not to authorize the CONSULTANT to perform a Specific Project, but to set forth certain terms and conditions which shall be incorporated into subsequent supplemental agreements for Specific Projects or services when required.

NOW THEREFORE, in consideration of the mutual terms, conditions, promises and covenants set forth below, the TOWN and CONSULTANT agree as follows:

**SECTION 1. DEFINITIONS**

The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

1.1 **Compensation:** The total amount paid by the TOWN for the CONSULTANT’S professional services for a specific project, exclusive of reimbursable expenses.

1.2 **Reimbursable Costs/Services:** are those authorized by the TOWN in writing in addition to the Basic and Additional Services and consist of actual expenditures made by the Consultant and directly attributable to the Project. Reimbursable expenses include long-distance communications, application and permit fees paid for securing approval of authorities having jurisdiction over the Specific Project; actual cost of reproduction, printing, binding and photocopying of drawings, specifications, renderings and other documents; postage; travel expenses; and subconsultant's fees.

a. The following Reimbursable Services shall be provided by the CONSULTANT at the TOWN'S request and with the prior written approval of the cost of the Reimbursable Services by the Town Manager or if the cost exceeds the Town Manager's authority, with the prior written approval of the Town Council:

i. Surveys of building sites, giving boundary dimensions, locations of existing structures and/or trees, the grades and lines of street, pavement, and adjoining properties; the rights, restrictions, easements, boundaries, and topographic data of a building site, and such information as it has relative to sewer, water, gas and electrical services.

ii. Soil borings or test pits; chemical, mechanical, structural, or other tests when deemed necessary; also, if required, an appropriate professional interpretation thereof and recommendations. The CONSULTANT shall recommend necessary tests to the TOWN.

iii. Field investigations as necessary to obtain sufficient information to perform CONSULTANT'S services.

b. All reimbursements shall be approved pursuant to receipts or proof of expenditures provided by the CONSULTANT.

1.3 **Specific Project Agreement or Project Agreement:** an agreement to provide services for a particular Project.

1.4 **Subconsultant Fee:** the direct and actual cost of the Subconsultant with no markup, as reflected by actual invoices of the Subconsultant.

1.5 **Travel Expenses:** authorized travel and lodging and meals incurred directly for the Specific Project for travel outside of Miami-Dade County (subject to the limitations imposed by Chapter 112.601, Florida Statutes and the Town's per diem regulations). No overnight travel or out-of-town travel outside of Miami-Dade County shall be reimbursed unless the CONSULTANT has secured advance written authorization for such travel from the Town Manager. Reimbursement for such authorized travel expenses shall be at the rates provided for

in Chapter 112, Florida Statutes, as may be amended from time to time, which rates shall by reference be made a part of this Agreement as though set forth in full.

## **SECTION 2. SPECIFIC PROJECTS/SCOPE OF SERVICES**

2.1 In accordance with the Consultants' Competitive Negotiation Act, the CONSULTANT may provide professional services to the TOWN for Specific Projects as authorized from time to time by either the Town Council or Town Manager as authorized by subsection 2.6. The CONSULTANT may be asked to provide professional services for any parks-related or public works-related design-build projects in the TOWN, including the following specific projects:

- a. Saga Bay Park Improvements
- b. Saga Lake Park Improvements
- c. Bel Aire Park Improvements

The TOWN shall describe the scope of work for these projects in greater detail in future Project Agreements amending this Continuing Services Agreement.

2.2 When the need for services for a Specific Project occurs, the Town Manager may, enter into negotiations with the CONSULTANT for that Specific Project under the terms and conditions of this Agreement. The TOWN shall initiate said negotiations by providing the CONSULTANT with a "Scope of Services Request," requesting from the CONSULTANT a proposal to provide professional services for the Specific Project. The CONSULTANT shall prepare a proposal which includes those subjects specified in subsection 2.3 (a) through (g). The Town Manager and CONSULTANT shall negotiate the terms of the Specific Project in accordance with the provisions of Subsection 2.3.

2.3 The TOWN and CONSULTANT shall utilize as the agreement for each Specific Project a Standard Project Agreement ("Project Agreement"), a copy of which is attached and incorporated into this Agreement as Exhibit "A". Each supplemental Project Agreement for a Specific Project will, by mutual agreement, set forth, among other things, the following:

- a. The Scope of Services;
- b. The Deliverables;
- c. The Time and Schedule of Performance and Term;
- d. The amount of Compensation;
- e. The Personnel assigned to the Specific Project;



- f. Any additional contractual requirements of Section 287.055, Florida Statutes, for consultant agreements;
- g. Any other terms deemed necessary by the Town to adequately protect its interests.

2.5 The professional services to be rendered by the CONSULTANT shall commence subsequent to the execution of each Project Agreement. Performance of work by CONSULTANT prior to execution of a Project Agreement shall be at CONSULANT'S sole risk. The CONSULTANT agrees to complete each task within the time stipulated in the Project Agreement.

2.6 The TOWN Manager is authorized to negotiate and execute a Project Agreement for specific projects in which the CONSULTANT'S services do not exceed \$25,000.00.

2.7 The Contract Documents for each Specific Project shall incorporate this Continuing Services Agreement. In the event that any of the terms or conditions of this Continuing Services Agreement conflict with the Project Agreement, the provisions of the Project Agreement shall apply.

2.8 CONSULTANT'S direction under this Continuing Services Agreement shall be derived solely from the TOWN Manager or his or her designee.

2.9 Time is of the essence with respect to the performance of the CONSULTANT'S services within the time limits established herein. The CONSULTANT shall not, except for cause beyond the reasonable control of the CONSULTANT, exceed time limits established by this Continuing Services Agreement. Any adjustments to the schedule must be approved in writing by TOWN and must be requested in writing by the CONSULTANT within ten (10) calendar days after the occurrence upon which the CONSULTANT'S request for adjustment is based.

### **SECTION 3. TERM/TERMINATION**

3.1 **Term of Agreement.** – This Continuing Services Agreement shall commence on the date this instrument is fully executed by all parties and shall continue in full force and effect, unless and until terminated pursuant to Section 3.2 or other applicable sections of this Continuing Services Agreement. Each Project Agreement shall specify the period of service agreed to by the TOWN and CONSULTANT for services to be rendered under said Project Agreement.

3.2 **Termination – For Convenience** – This Continuing Services Agreement may be terminated by the TOWN for convenience upon seven (7) calendar days written notice to the CONSULTANT.

3.3 **Effect on Project Agreement** – Nothing in this section shall be construed to create a right by either party to terminate any ongoing Project Agreement(s). Termination of a Project Agreement shall be exclusively through the termination provisions of the specific Project Agreement.

3.4 **Non-Exclusive Agreement** - Notwithstanding the provisions of Subsection 3.1, the Town Manager may issue requests for proposals for this professional discipline at any time and may utilize the services of any other consultants retained by the TOWN under similar continuing services agreements. Nothing in this Continuing Services Agreement shall be construed to give the CONSULTANT a right to perform services for a Specific Project.

#### **SECTION 4. ADDITIONAL SERVICES AND CHANGES IN SCOPE OF SERVICES**

4.1 **Changes Permitted.** Changes in the Scope of Services of a Project Agreement consisting of additions, deletions, revisions, or any combination thereof, may be ordered by the TOWN by Change Order without invalidating the Project Agreement.

4.2 **Change Order Defined.** Change Order shall mean a written order to the CONSULTANT executed by the TOWN, issued after execution of a Project Agreement, authorizing and directing a change in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and/or the Contract Time may be changed only by Change Order.

4.3 **Effect of Executed Change Order.** The execution of a Change Order by the TOWN and the CONSULTANT shall constitute conclusive evidence of the CONSULTANT's agreement to the ordered changes in the Scope of Services or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The CONSULTANT, by executing the Change Order, waives and forever releases any claim against the TOWN for additional time or compensation for matters relating to or arising out of or resulting from the Services included within or affected by the executed Change Order, except as may be noted in the terms of the executed Change Order.

#### **SECTION 5. SURVIVAL OF PROVISIONS**

5.1 Any terms or conditions of either this Continuing Services Agreement or any subsequent Project Agreement that require acts beyond the date of the term of either agreement, shall survive termination of the agreements, shall remain in full force and effect unless and until the terms or conditions are completed and shall be fully enforceable by either party.

#### **SECTION 6. TOWN'S RESPONSIBILITIES**

6.1 Assist CONSULTANT by placing at its disposal all available information as may be requested in writing by the CONSULTANT and allow reasonable access to all pertinent information relating to the services to be performed by CONSULTANT.

6.2 Furnish to CONSULTANT, at the CONSULTANT'S written request, all available maps, plans, existing studies, reports and other data pertinent to the services to be provided by CONSULTANT, in possession of the TOWN.

6.3 Arrange for access to and make all provisions for CONSULTANT to enter upon public property as required for CONSULTANT to perform services.

## **SECTION 7. CAMPAIGN CONTRIBUTION DISCLOSURE**

7.1 Ordinance 06-11; Town Code Chapter 8A. Pursuant to Ordinance 06-11; Town Code Chapter 8A; Section 7.6 of the Town Charter, vendors of the Town are required to disclose any campaign contributions to the Town Clerk, and each vendor must do so prior to and as a condition of the award of any Town contract to the vendor.

### **Vendors' Campaign Contribution Disclosure:**

#### 1. General requirements:

(A) Any vendor required to disclose campaign contributions pursuant to the Charter of the Town of Cutler Bay, as may be amended, shall file a written disclosure with the Town Clerk, stating all contributions made that were accepted by an elected official, the official to whom they were made and the date they were made. The Town Clerk may develop a form to be used by vendors for such disclosure.

(B) The disclosure shall be filed prior to and as a condition of the award of any Town contract to the Vendor.

(C) The Town Clerk shall inform the Council of any disclosures which were made in relation to any items before the Council prior to the hearing on the item or prior to the award of the contract.

(D) If an existing vendor makes a contribution the vendor must report the same to the clerk within ten days of its acceptance or prior to being awarded any additional contract or renewal, whichever occurs first.

(E) The Town Clerk shall file a quarterly report with the Council, which lists all the vendor disclosures in the quarter.

#### 2. Disqualification

(A) As per Section 7.6 of the Town Charter, if a Vendor of products or services who directly or through a member of the person's immediate family or through a

political action committee or through any other person makes a campaign contribution to a Town candidate and fails to disclose it then he/she/it shall be barred from selling any product or service to the town for a period of two years following the swearing in of the subject elected official.

## **SECTION 8. POLICY OF NON-DISCRIMINATION**

8.1 The CONSULTANT 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 Continuing Services Agreement.

## **SECTION 9. OWNERSHIP OF DOCUMENTS/DELIVERABLES**

9.1 Drawings and Specifications as instruments of service are and shall become the property of the TOWN whether the Specific Project for which they are made is executed or not. The CONSULTANT shall be permitted to retain copies, including reproducible copies, of Drawings and Specifications for information and reference in connection with the TOWN'S use and occupancy of the Project provided the Town has paid in full for services rendered.

9.2 The Drawings and Specifications shall not be used by the TOWN on other projects, and TOWN agrees to indemnify the CONSULTANT should it breach this paragraph.

9.3 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Specific Project is not to be construed as publication in derogation of the CONSULTANT'S rights.

9.4 CONSULTANT agrees not to divulge, furnish or make available to any third person, firm or organization, without TOWN'S prior written consent, or unless incident to the proper performance of the CONSULTANT'S obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, or if reasonably necessary for the CONSULTANT to defend itself from any suit or claim, any non-public information concerning the services to be rendered by CONSULTANT hereunder, and CONSULTANT shall require all of its employees, agents, sub-CONSULTANTS and subcontractors to comply with the provisions of this paragraph.

9.5 All final plans and documents prepared by the CONSULTANT shall bear the endorsement and seal of a person duly registered as a Professional Engineer, Architect, Landscape Architect, Professional Geologist, or Land Surveyor, as appropriate, in the State of Florida and date approved and/or sealed.

## **SECTION 10. RECORDS/AUDITS**

10.1 CONSULTANT shall maintain and require Subconsultants to maintain, complete and correct records, books, documents, papers and accounts pertaining to the Specific Project. Such records, books, documents, papers and accounts shall be available at all reasonable times for examination and audit by the Town Manager or any authorized TOWN representative with reasonable notice and shall be kept for a period of four (4) years after the completion of each Project Agreement. Incomplete or incorrect entries in such records, books, documents, papers or accounts will be grounds for disallowance by or reimbursement to the TOWN of any fees or expenses based upon such entries. Disallowed fees will be paid when incomplete or incorrect entries are remedied to the satisfaction of the TOWN.

10.2 The CONSULTANT shall comply with Chapter 119, Florida Statutes, as applicable.

10.3 Refusal of the CONSULTANT to comply with the provisions of Sections 10.1 or 10.2 shall be grounds for immediate termination for cause by the TOWN of this Agreement or any Project Agreement.

#### **SECTION 11. NO CONTINGENT FEE**

11.1 CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Continuing Services Agreement. In the event the CONSULTANT violates this provision, the TOWN shall have the right to terminate this Continuing Services Agreement or any Project Agreement, without liability, and at its sole discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

#### **SECTION 12. INDEPENDENT CONTRACTOR**

12.1 The CONSULTANT is an independent contractor under this Continuing Services Agreement and any Project Agreements. Personal services provided by the CONSULTANT shall be by employees of the CONSULTANT and subject to supervision by the CONSULTANT, and not as officers, employees, or agents of the TOWN, Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Continuing Services Agreement or any Project Agreements shall be those of the CONSULTANT.

#### **SECTION 13. ASSIGNMENT; AMENDMENTS**

13.1 This Continuing Services Agreement shall not be assigned, transferred or otherwise encumbered, under any circumstances, by CONSULTANT, without the prior written consent of the TOWN.

13.2 No modification, amendment or alteration in the terms or conditions of this Continuing Services Agreement shall be effective unless contained in a written document executed with the same formality as this Continuing Services Agreement.

#### **SECTION 14. INDEMNIFICATION/HOLD HARMLESS**

14.1 Pursuant to Section 725.06, Florida Statutes, and Section 725.08, Florida Statutes, the CONSULTANT shall indemnify and hold harmless the TOWN, and its officers and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the CONSULTANT, the Sub-CONSULTANTS and other persons employed or utilized by the CONSULTANT in the performance of this Continuing Services Agreement. The CONSULTANT'S obligation under this paragraph shall not be limited in any way by the agreed upon contract price, or the CONSULTANT'S limit of, or lack of, sufficient insurance protection.

14.2 The indemnification obligation under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONSULTANT and/or any Sub-CONSULTANTS under worker's compensation acts, disability benefit acts, or other employee benefit acts.

14.3 To the extent this indemnification clause or any other indemnification clause in this Continuing Services Agreement does not comply with Chapter 725, Florida Statutes, as it may be subsequently amended, this Article and all aspects of the respective Contract Documents for each Specific Project shall hereby be interpreted as the parties' intention for the indemnification clauses and the respective Contract Documents for each Specific Project to comply with Chapter 725, Florida Statutes, as may be amended.

14.4 The CONSULTANT shall not specify or allow any SubConsultant to specify a particular design, process or product that infringes upon any patent. The CONSULTANT shall indemnify and hold TOWN and its officers and employees harmless from any loss, cost or expense, including reasonable attorney's fees and costs incurred, on account thereof if the CONSULTANT violates the requirements of this Section.

#### **SECTION 15. INSURANCE**

The CONSULTANT shall secure and maintain throughout the duration of this Continuing Services Agreement and any Project 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 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 CONSULTANT'S insurance and shall not contribute to the CONSULTANT'S insurance. The insurance coverages shall include a minimum of:

15.1 **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 \$100,000.00 each accident.

15.2 **Comprehensive Automobile and Vehicle Liability Insurance:** This insurance shall be written in comprehensive form and shall protect the CONSULTANT and the TOWN against claims for injuries to members of the public and/or damages to property of others arising from the CONSULTANT'S use of non-owned and hired 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 \$1,000,000.00 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.

15.3 **Commercial General Liability.** This insurance shall be written in comprehensive form and shall protect the CONSULTANT 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 CONSULTANT or any of its agents, employees, or subcontractors. The limit of liability shall not be less than \$1,000,000.00 per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability.

(a) 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.

(b) 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 CONSULTANT in performance of this or any Project Agreement. CONSULTANT'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 CONSULTANT'S insurance. CONSULTANT'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.

15.4 **Professional Liability:** The CONSULTANT shall furnish professional liability errors and omissions insurance coverage in an amount not less than \$2,000,000.00 with a deductible of \$25,000.00 per claim. The CONSULTANT shall be responsible for maintaining this professional liability insurance for a minimum of five (5) years from the date of execution of each Project Agreement. Upon request of the TOWN, the CONSULTANT shall make available for inspection copies of any claims filed or made against the policy during the policy term. The CONSULTANT shall additionally notify the TOWN, in writing, within thirty (30) calendar days of any claims filed or made against this policy in excess of \$100,000.00 during the policy term.

15.5 **Certificate of Insurance:** Prior to the execution of this Continuing Services Agreement, CONSULTANT shall provide the Town Manager with evidence of insurability from the Consultant's Insurance Carrier or a Certificate of Insurance. Prior to execution of any Project Agreement, the CONSULTANT shall provide to the Town Manager, Certificates of Insurance evidencing the required insurance coverages. The Certificates of Insurance shall not only name the types of policy(ies) provided, but also shall refer specifically to this and any Project Agreement and shall state that such insurance is as required by this and any Project Agreement. The TOWN reserves the right to require the CONSULTANT 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.

15.6 All deductibles or self-insured retentions must be declared to and be approved by the Town Manager. The CONSULTANT shall be responsible for the payment of any deductible or self-insured retentions in the event of any claim. The Town Manager may require the CONSULTANT, as a condition of execution of a particular Project Agreement, to provide a bond or other monetary consideration to cover the CONSULTANT'S deductible for Professional Liability Insurance.

## **SECTION 16. REPRESENTATIVE OF TOWN AND CONSULTANT**

16.1 **TOWN Representative.** It is recognized that questions in the day-to-day conduct of this Continuing Services Agreement will arise. The TOWN designates the Town Manager or his or her designee, as the person to whom all communications pertaining to the day-to-day conduct of this Continuing Services Agreement shall be addressed.

16.2 **CONSULTANT Representative.** CONSULTANT shall inform the TOWN Representative, in writing, of the representative of the CONSULTANT to whom all communications pertaining to the day-to-day conduct of this Agreement shall be addressed.

## **SECTION 17. WAIVER OF JURY TRIAL**



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

**SECTION 18. ALL PRIOR AGREEMENTS SUPERSEDED**

18.1 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained in this Continuing Services Agreement and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Continuing Services Agreement that are not contained in this document. Accordingly it is agreed that no deviation from the terms of the Continuing Services Agreement shall be predicated upon any prior representations or agreements whether oral or written.

**SECTION 19. CONSULTANT'S RESPONSIBILITIES**

19.1 The CONSULTANT warrants that the services to be performed hereunder shall be performed by the CONSULTANT'S own staff, unless otherwise approved in writing by the TOWN. Said approval shall not be construed as constituting an agreement between the TOWN and said other person or firm. The CONSULTANT'S services shall be performed in a manner consistent with that degree of skill and care ordinarily exercised by practicing design professionals performing similar services in the same locality and under the same or similar circumstances and conditions.

- (a) Subconsultants contracting directly with CONSULTANT and performing services as described hereunder may be pre-approved in writing by the TOWN at the commencement of the Project for the duration of the Project if it is anticipated that the subconsultants will have significant, on-going responsibilities throughout the Project.
- (b) The TOWN pre-approves the design firm of Wolfberg Alvarez and Partners, which was selected as a part of CONSULTANT's proposed team for RFQ 09-11, to perform design services for the duration of the Project.

19.2 The CONSULTANT represents that it possesses the requisite skills and shall follow the professional standards of industry-recognized professional associations as well as the necessary accreditation entities in performing all services under this Continuing Services Agreement. The CONSULTANT agrees to use its skill and judgment in furthering the TOWN'S interests hereunder and CONSULTANT shall perform its services in accordance with the practice of the pertinent industry and as expeditiously as is consistent with reasonable skill and care. If at any time during the term of this Continuing Services Agreement or the construction of the Project for which the CONSULTANT has provided engineering, architectural, surveying or mapping services under this Continuing Services Agreement, it is determined that the CONSULTANT'S documents are incorrect, defective or fail to conform to the terms of this Continuing Services Agreement, upon written notification from the TOWN, the CONSULTANT

shall immediately proceed to correct the work, re-perform services which failed to satisfy the foregoing standard of care and shall pay all costs and expenses associated with correcting said incorrect or defective work, including any additional testing, inspections, and construction and reimbursements to the TOWN for any other services and expenses made necessary thereby, save and except any costs which the TOWN would have otherwise paid absent the CONSULTANT'S error or omission. The TOWN'S and or any governmental agency's approval, acceptance, use of or payment for all or any part of the CONSULTANT'S services shall in no way alter the CONSULTANT'S obligations or TOWN'S rights hereunder.

19.3 CONSULTANT agrees, within fourteen (14) calendar days of receipt of a written request from the TOWN, to promptly remove and replace any personnel employed or retained by the CONSULTANT, any sub-CONSULTANTS or subcontractors or any personnel of any such sub-CONSULTANT or subcontractors engaged by the CONSULTANT to provide and perform services or work pursuant to the requirements of this Continuing Services Agreement, whom the TOWN shall request in writing to be removed, which request may be made by the TOWN.

19.4 If the CONSULTANT allows any work to be performed knowing, or when with the exercise of due care the CONSULTANT should have known, it to be contrary to any such applicable, known and published laws, ordinances, rules, regulations or restrictions and fails to give TOWN written notice thereof prior to performance thereof, the CONSULTANT shall bear all costs, liabilities, and expenses arising therefrom, which costs, liabilities and expenses shall not be considered a part of the CONSULTANT'S fees or any other amounts due hereunder.

19.5 The CONSULTANT'S obligations under Paragraph 19.2 of this Agreement shall survive termination of this Continuing Services Agreement or any Project Agreement.

## **SECTION 20. SUBCONSULTANTS**

20.1 In the event the CONSULTANT requires the services of any Subconsultants or other professional associates in connection with services covered by any Project Agreement, the CONSULTANT must secure the prior written approval of the Town Manager. The CONSULTANT shall utilize his/her best efforts to utilize Subconsultants where principal place of business is located within the Town of Cutler Bay, Florida.

20.2 All services provided by the Subconsultants shall be pursuant to appropriate agreements between the CONSULTANT and the Subconsultants which shall contain provisions that preserve and protect the rights of the TOWN and the CONSULTANT under this Continuing Services Agreement. Each Subconsultant agreement shall incorporate the terms of this Continuing Services Agreement, and shall include termination provisions that state that the agreements may be terminated. TOWN shall not be responsible for termination expenses of any third parties.

20.3 Any subcontract with a Subconsultant shall afford to the CONSULTANT rights against the Subconsultant which correspond to those rights afforded to the TOWN against the

CONSULTANT herein, including but not limited to those rights of termination as set forth herein.

20.4 No reimbursement shall be made to the CONSULTANT for any subconsultants that have not been previously approved by the TOWN for use by the CONSULTANT.

**SECTION 21. NOTICES**

Whenever either party desires to give notice to the other, it must be given by hand delivery or written notice, sent by certified United States mail, with return receipt requested or a nationally recognized private mail delivery service, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

**FOR CONSULTANT:**

KVC Constructors, Inc.  
Attention: Vick Crespin, Vice President  
9499 NE 2<sup>nd</sup> Avenue, Suite 205  
Miami Shores, Florida 33138  
Telephone: (305) 757-7707  
Facsimile: (305) 757-7701

With a copy to Consultant Attorney:

Stephen H. Reisman, Esq.  
Peckar & Abramson, P.C.  
One S.E. Third Avenue  
Suite 3100  
Miami, Florida 33131  
(305) 358-2600 (5233)  
(305) 358-2723 (direct)  
(305) 375-0328 (fax)

**FOR TOWN:**

Town of Cutler Bay  
Attention: Steve Alexander, Town Manager  
10720 Caribbean Boulevard, Suite 105  
Cutler Bay, Florida 33014  
Telephone: (305) 234-4263  
Facsimile: (305) 234-4251



With a copy to Town Attorney:

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

## **SECTION 22. CONSENT TO JURISDICTION**

The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this Continuing Services Agreement or any Project Agreement. Venue of any action to enforce this Continuing Services Agreement or any Project Agreement shall be in Miami-Dade County, Florida.

## **SECTION 23. GOVERNING LAW**

This Continuing Services Agreement and any Project Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

## **SECTION 24. HEADINGS**

Headings are for convenience of reference only and shall not be considered in any interpretation of this Continuing Services Agreement.

## **SECTION 25. EXHIBITS**

Each Exhibit referred to in this Continuing Services Agreement forms an essential part of this Continuing Services Agreement. The Exhibits if not physically attached, should be treated as part of this Continuing Services Agreement, and are incorporated by reference.

## **SECTION 26. SEVERABILITY**

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


**SECTION 27. COUNTERPARTS**


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

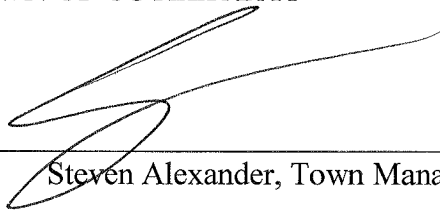
**IN WITNESS WHEREOF**, the parties execute this Continuing Services Agreement on the respective dates under each signature: The TOWN, signing by and through its Town Manager, attested to by its TOWN Clerk, duly authorized to execute same and by CONSULTANT by and through its Vice-President, whose representative has been duly authorized to execute same through a resolution of the corporation or partnership.

ATTEST:

TOWN OF CUTLER BAY


  
Town Clerk



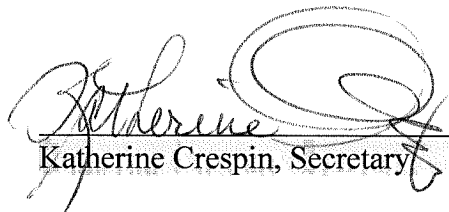
By:   
Steven Alexander, Town Manager

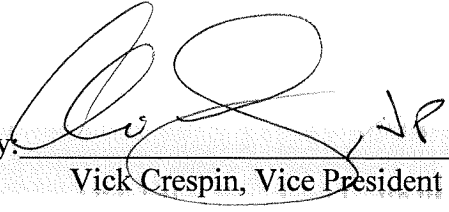
Date: 2/17/10

**APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND RELIANCE OF THE  
TOWN OF CUTLER BAY, FLORIDA, ONLY:**

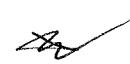
  
Town Attorney

ATTEST:


  
Katherine Crespin, Secretary

By:   
Vick Crespin, Vice President

Date: 2/12/2010



WITNESSES:

  
\_\_\_\_\_  
Albert Ziri

  
\_\_\_\_\_  
Andres Rodriguez



**EXHIBIT "A"**

**SAMPLE  
PROJECT AGREEMENT**

*Handwritten mark*

## **Saga Bay Park Improvements Scope of Work**

### **Tennis Courts:**

Construct two new "Laykold" tennis courts, resurface two existing courts, install lighting for four courts.

### **Restroom Facilities:**

Construct restroom building.

### **Walkway/Vita Course:**

Re-route existing asphalt walkway around new tennis courts and install new outdoor fitness stations.

### **Parking Area:**

Installation of a new porous surface parking area.



**RESOLUTION NO. 09-71**

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

**WHEREAS**, the Town of Cutler Bay (the "Town") Public Works and Parks and Recreation Department (the "Department") will be responsible for overseeing various capital improvement projects (the "Projects") throughout the Town; and

**WHEREAS**, the Department desires, and it is in the best interest of the Town, to contract with the most qualified and experienced consultants to provide professional design-build services to the Town to assist in completing the Projects, utilizing funding provided in the Town's annual operating and capital budget; and

**WHEREAS**, in accordance with Chapter 287.055 of the Florida Statutes, a Request For Qualifications (RFQ) has been prepared to identify the best available consultants to provide professional design-build services for an initial period of three years to assist in completing the Projects; and

**WHEREAS**, Town Ordinance Number 06-22 requires the Town Manager to obtain authorization from the Town Council to advertise solicitations for bids and proposals prior to advertising the solicitation; and

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

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


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

**Section 2.      Request For Qualifications Approved.** The Town Manager is hereby authorized to advertise and issue a Request For Qualification for Professional Design-Build Services (the "RFQ") in substantially the form attached hereto as Exhibit "A."

**Section 3.      Authorization.** The Town Manager is hereby authorized to negotiate and enter into a Professional Services Agreement (the "Agreement") with the top three ranked firms as a result of the RFQ process, provided that the Agreement is subject to review for legal sufficiency by the Town Attorney.

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


PASSED and ADOPTED this 23<sup>rd</sup> day of September, 2009.

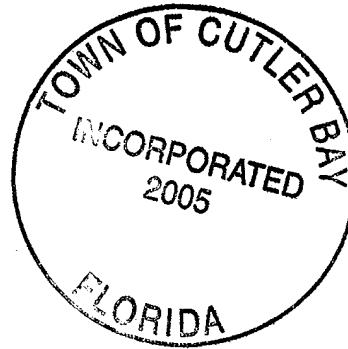
  
PAUL S. VROOMAN, Mayor

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: Councilmember Bell  
Seconded By: Councilmember Sochin

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman	<u>YES</u>
Vice Mayor Edward P. MacDougall	<u>YES</u>
Councilmember Peggy R. Bell	<u>YES</u>
Councilmember Timothy J. Meerbott	<u>YES</u>
Councilmember Ernest N. Sochin	<u>YES</u>

TAB 8

**RESOLUTION NO. 10-\_\_\_**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, TERMINATING THE TOWN AGREEMENT WITH THE WREN GROUP; WAIVING COMPETITIVE BIDDING BASED ON THE MANAGER'S FINDING OF SOLE SOURCE AVAILABILITY FOR THE SELECTION OF A REPRESENTATIVE TO PROVIDE UNIQUE AND SPECIALIZED CONSULTING SERVICES; APPROVING THE SELECTION OF FUENTES CONSULTING GROUP TO PROVIDE THOSE SERVICES; AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH FUENTES CONSULTING GROUP TO PROVIDE THOSE SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, in December of 2009 the Town of Cutler Bay (the "Town") selected Wren Group as the Town's consultant, providing professional consulting services and representation before the South Florida Water Management District and the Florida Department of Environmental Protection, as well as provide strategic consulting for the 2010 Florida Legislative Session; and

**WHEREAS**, in the interim, the principal at the Wren Group ("Wren") whom the Town principally utilized has left Wren to form a new consulting entity, Fuentes Consulting Group (the "Consultant"), providing the same services that the Town previously relied upon Wren to provide; and

**WHEREAS**, the Town Manager has determined that with the departure of that principal, the Consultant is now the sole source available for these specialized, unique consulting services and that this prevents the issuance of a formal request for proposals or invitation to bid, and the Town Manger has recommended that the Town waive formal competitive bidding; 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 the Consultant's services in an amount not to exceed \$40,000.00; and

**WHEREAS**, the Town Manager has made a written recommendation to the Town Council for its approval and the Town Council has determined that it is not advantageous to competitively bid these services by way of a formal competitive bid because there is a sole source available to provide these specialized, unique services; and

**WHEREAS**, the Town Council desires to authorize the Town Manager, on behalf of the Town, to negotiate and enter into a professional services agreement (the "Agreement") in substantially the form attached hereto as Exhibit "A", provided that the Town Attorney determines that the Agreement is legally sufficient; 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, THAT:**

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

**Section 2. Termination.** Pursuant to Section 4 of the professional services agreement with Wren Consulting Group (“Wren”), the Town Council terminates the Town’s professional services agreement with Wren.

**Section 3. Approval and Authorization.** Pursuant to Section 3(A) of the Town of Cutler Bay Ordinance 06-22 and Section 3.10 of the Town Charter, the Town Council waives competitive bidding requirements for the selection of Fuentes Consulting Group (the “Consultant”) to provide professional consulting services for representation before the South Florida Water Management District and the Florida Department of Environmental Protection, as well as provide strategic consulting for the 2010 Florida Legislative Session, because the Consultant is the sole source available to provide these unique services; and authorizes the Town Manager to enter into an agreement for professional services (the “Agreement”) with the Consultant in substantially the form attached hereto as Exhibit “A” in an amount not to exceed \$40,000.00, provided that Town Attorney determines that the terms of the Agreement are legally sufficient.

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

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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

Attest:

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

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

---

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

Moved By:  
Seconded By:

FINAL VOTE AT ADOPTION:

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

## **Exhibit "A"**

### **AGREEMENT FOR PROFESSIONAL SERVICES**

Agreement is made this 15<sup>th</sup> day of February 2010 between the Town of Cutler Bay (hereinafter referred to as the "Cutler Bay") and Fuentes Consulting Group, (hereinafter referred to as "Fuentes").

**WHEREAS**, Cutler Bay desires that Fuentes make available its services as specified in this document, in support of it's government relations and public affairs efforts; and

**WHEREAS**, Fuentes has special professional qualifications in said services and is willing and able to provide same under the terms and conditions set forth in this document;

**NOW, THEREFORE, the parties do mutually agree as follows:**

1. The period of this agreement shall be from February 15, 2010 until February 15, 2011 inclusive. This Agreement will renew automatically for additional year(s) on the anniversary date(s) beginning February 15, 2011 unless terminated by either party with thirty (30) day written notice prior to the expiration date.

For the performance of the services described in the attached Schedule A (Scope of Work), Cutler Bay shall pay Fuentes the compensation provided for in the attached Schedule B (Compensation).

2. Fuentes agrees to perform its services with that standard of care, skill, and diligence normally provided by a professional organization in the performance of similar services. It is understood that Cutler Bay and Fuentes shall be entitled to rely on such information. Fuentes agrees that any such information provided to it shall only be used for the performance of this engagement and shall not be divulged to a third-party.
3. It is understood and agreed that Fuentes is acting as an independent contractor and not as an employee of Cutler Bay.
4. Fuentes agrees that all acts to be performed by it in connection with this Agreement must be performed in strict conformity with all applicable laws and regulations of Federal, State, and local jurisdictions.

5. Either party may terminate this Agreement without penalty by giving thirty (30) days notice of termination to the other party. In the event the Town terminates the agreement it shall pay Fuentes all fees earned up to the date of termination on a pro rata basis. In the event of termination Fuentes shall provide Cutler Bay with a status report describing all actions taken by the firm in furtherance of Cutler Bay's legislative goals up through the date of termination and all files and other documents in Fuentes's possession relating to Cutler Bay or its legislative goals. Cutler Bay shall reimburse all costs incurred through the date of termination as provided in Schedule B, Section 2 hereof upon presentation of appropriate documentation.
  
6. A waiver by either party of any of the terms and conditions, provisions, or covenants of this Agreement in any instance shall not be deemed or construed to be a waiver of any such term, condition, provision, or covenant for the future, or of any subsequent breach of same.
  
7. This Agreement constitutes the entire agreement between the parties and supersedes all other agreements or understandings, written or oral, prior to the signing of this document.
  
8. The laws of the State of Florida govern all questions with respect to this Agreement, and the rights and liabilities of the parties.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed the day and year first written.

**TOWN OF CUTLER BAY**

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

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

**CONSULTANT**

\_\_\_\_\_

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

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



## **SCHEDULE A**

This sets forth the objectives to be reached by this effort and the planned work content in accordance with the term and provisions of this Agreement. Fuentes believes that effective lobbying is based on a series of interrelated elements and these constitute its approach. In order to secure the state policy objectives of Cutler Bay, Fuentes will undertake the tasks outlined below:

- Promote the passage of a dedicated funding source for Water Resources.
- Coordinate the application and approval of projects through the State Revolving Loan (SRL) Program.
- Support the modification of the SRL Program guidelines in order to ensure that all local governments have a fair opportunity to access these funds.
- Represent the Town as one of its designated lobbyist before the South Florida Water Management District (“SFWMD”) and Miami-Dade County as it relates Environmental Issues, Land Acquisition, and in pursuit of the transfer of title for lands located within the Biscayne Bay Coastal Wetlands.
- Serve as a Town representative and spokesperson in meetings with federal, state, regional and local governmental entities, members of the Florida Legislature, legislative and executive branch staff, other stakeholders involved in the implementation of environmental protection programs in Florida.
- Directly work with and report to the Town’s identified primary manager or general counsel for guidance, authorization for negotiations, legal analysis, and any other instructions or directives by the Town to Fuentes Group.
- Identify, solicit, and secure stakeholders that may wish to support the Town in its effort to promote the timely completion of the projects as identified by the manager.
- Coordinate with, and manage other environmental professionals (with the Town’s prior approval) to assist Fuentes Group achieve the Town’s recreational greenspace development goals.

## **SCHEDULE B**

This sets forth the compensation payable by Cutler Bay to Fuentes in accordance with the terms set forth in the Agreement.

The Town shall pay Fuentes Group the sum total of Forty Thousand Dollars (\$40,000.00) over the course of the term of the Agreement to perform the services specified in this proposal (the total shall be referred to as the “fee”). Fee payment shall be made as follows: a retainer amount of Ten Thousand Dollars (\$10,000.00) due within seven days of Agreement execution, plus, three quarterly payments in the amount of Ten Thousand Dollars (\$10,000.00) payable over the remaining eleven months following the Town’s receipt of invoices from Fuentes Group.

The fee to Fuentes Group specified in this proposal covers all additional costs or fees for prospective subcontractors identified by Fuentes Group and authorized by the Town for retention. The fee includes Fuentes Group incurred general expenses to perform services for the Town.

Fuentes Group may request reimbursement of expenses for approved business travel or other events during the term of the agreement. Cutler Bay agrees to reimburse Fuentes for any reasonable and appropriate expense, extraordinary in nature and incurred with the prior approval of the Town in the course of performing the services specified in this document. Fuentes will provide any and all documentation in connection with any reimbursable expenses incurred, not to exceed \$3,000 during the course of any annual period.

TAB 9

**RESOLUTION NO. 10-\_\_**

**A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE INTERLOCAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND TOWN OF CUTLER BAY FOR LOCAL POLICE SERVICES; AUTHORIZING AND DIRECTING THE TOWN MANAGER TO EXECUTE SAID AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Cutler Bay (the “Town”) currently uses the Miami-Dade County Police Department (the “Police Department”) to provide police services to the Town; and

**WHEREAS**, the Town finds that the Police Department provides a high level of professional police service to the Town; and

**WHEREAS**, as such, the Town desires to continue to contract for such services upon the terms and conditions set forth in the Interlocal Agreement between Miami-Dade County and Town of Cutler Bay for Local Police Services (the “Interlocal Agreement”), attached as Exhibit “A” to this Resolution; 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. Interlocal Agreement Approved.** The Town Council hereby approves the Interlocal Agreement attached as Exhibit “A” to this Resolution.

**Section 3. Town Manager Authorization.** The Town Council hereby directs and authorizes the Town Manager executed the Interlocal Agreement, in substantially the form attached hereto, attached as Exhibit “A,” for the Town.

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

PASSED and ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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

**INTERLOCAL AGREEMENT BETWEEN**  
**MIAMI-DADE COUNTY AND**  
**TOWN OF CUTLER BAY FOR**  
**LOCAL POLICE SERVICES**

**THIS AGREEMENT**, by and between the Town of Cutler Bay a municipal corporation organized and existing under the laws of the State of Florida, (hereinafter referred to as "the Town "), Miami-Dade County, Florida (hereinafter referred to collectively as "MDC"), the Miami-Dade Police Department (hereinafter referred to as "MDPD").

**WHEREAS**, the Town is desirous of maintaining a high level of competent professional police service in conjunction and harmony with its fiscal policies of sound, economical management, and

**WHEREAS**, the Town should have the flexibility to determine the level and deployment of police services and to establish service priorities; and,

**WHEREAS**, MDC law enforcement personnel will be responsive to the residents, businesses and visitors of the Town, and it will work cooperatively with the Town to deter crime, solve crimes and address emerging trends; and,

**WHEREAS**, MDC has agreed to render to the Town a continuing high level of professional police service, and the Town is desirous of contracting for such services upon the terms and conditions hereinafter set forth, and

**WHEREAS**, the Town is desirous of providing its daily police services through a contractual relationship with MDC, and

**WHEREAS**, the parties' desire to have a relationship based on principles of professionalism and cooperation in order to effectively serve the Town and its citizens, and

**WHEREAS**, MDC and the Town's relationship shall be governed by the following principles:

1. MDC law enforcement employees shall be responsive to the citizens of the Town.
2. MDC law enforcement employees shall work cooperatively with Town organizations in a problem-solving mode to maintain the safety and welfare of Town residents and visitors.
3. MDC shall provide at a reasonable cost, efficient, high-quality, appropriate law enforcement services supported by technology that furthers the goals and expectations of the Town and MDC. New technology shall be implemented in a manner that follows the County's existing scheduled implementation plans, unless otherwise mutually agreed upon by the parties.

4. MDC shall provide a high service level of police services within the Town's boundaries, as provided in this agreement, and MDC desires to provide a high level of service.
5. MDC shall provide to the Town for the term of this agreement, and any extensions of the term in accordance with the provisions of this agreement, competent professional police services within and throughout the corporate limits of the Town to the extent and in the manner agreed upon by the parties.

**NOW THEREFORE**, in consideration of the following mutual obligations the parties agree as follows:

## **ARTICLE I**

### **PURPOSE AND INTENT**

MDC shall provide to the Town competent, courteous, lawful, efficient and effective local police services, as specified and for the term prescribed in this agreement. The Town will pay for, and cooperate with MDC in the provision of those law enforcement services.

The Whereas Clauses express the intent of the parties and are incorporated into this agreement.

## **ARTICLE II**

### **DEFINITIONS**

For the purposes of this Agreement, the following terms shall be defined as:

***Attrition Rate*** shall mean a percentage of unfilled budgeted positions.

***Assistant Director*** shall mean the Assistant Director of MDPD who is responsible for overseeing the Town Commander's compliance with the contractual terms and conditions of this Agreement.

***Call-For-Service*** shall mean a request received from the public requiring a police response or assistance.

***District Major*** shall mean an MDPD District Major who may be responsible for overseeing the Town Commander's compliance with specific operational goals and objectives as set forth by the Town Manager. Additionally, the District Major shall ensure maintenance of quality service delivery to the Town.

***Enhanced Enforcement Initiative (EEI)*** Monies designated, in addition to the normal operating budget, that are utilized by the Town Commander to address crime trends, Town initiatives, and quality of life issues within the Town. The amount of these funds are designated by the Town Manager and funded by the Town.

***Fringe Benefits*** include FICA, MICA, Retirement and all associated insurance and longevity payments.

**Patrol Activities** means those diverse activities directed toward the attainment of the objectives of enforcing the law, preventing and deterring crime, arresting criminal offenders, maintaining public order, and providing service to the community. Such activities include, but are not limited to, directing and enforcing traffic laws, responding to emergency and non-emergency calls for service, conducting field interviews, arresting criminal offenders, issuing traffic citations and reporting quality of life issues.

**Patrol Personnel** means MDPD law enforcement personnel assigned to the Town.

**Patrol Unit** means one marked patrol car/motorcycle unit and includes, but is not limited to, one uniformed police officer and all standard support equipment as described in Exhibit A.

**Police Service** shall mean those local police patrol activities and services, listed in Article III and provided each day of the year, on a 24-hour per day basis within the municipal boundaries of the Town.

**Staffing Levels** shall mean the number of officers assigned to the Town as they are listed in Exhibit B of this Agreement or, for future years, the number of officers approved in the Town's annual budget process.

**Staff Schedules** means those schedules prepared by the Town Commander to appropriately deploy personnel to ensure appropriate police resources are maintained each shift.

**Strategic Planning and Policing Bureau (SPPB)** Provides assistance to municipal governments, other Miami-Dade County Departments and Departmental elements within MDPD to resolve issues, verify information and submit requests for information that are relevant to incorporation and annexation. Additionally, SPPB shall be responsible for ensuring MDPD's compliance with contractual stipulations and shall act as a liaison between the Town and Departmental elements.

**Town Commander** means a designated Police Major, Captain or next lower ranked position, who at the Director's option, shall be authorized to direct the daily police operations in the Town, effectuating the Town's law enforcement priorities, managing the delivery of police services, and ensuring the policing needs of the Town are adequately met. The Town Commander shall liaison with the Town Manager and shall be responsive to the Town Manager in the same manner as would the Chief of a municipal police force.

**Town Officials** means the Council members, Town Manager, Town Attorney, and employees of the Town.



## ARTICLE III

### LOCAL POLICE PATROL SERVICES

MDPD shall provide comprehensive local police patrol services, as set forth in this agreement in accordance with Florida Statutes and the Miami-Dade County Charter.

Without limiting the duty prescribed in the preceding paragraph, MDPD patrol personnel shall respond to, and render aid in, emergency, life-saving and in-progress violent crime incidents occurring inside the boundaries of the Town.

- 3.1 A General Investigations Unit shall be established to conduct the necessary investigations of criminal activity within the Town. The General Investigations Unit is a specialized assignment with the Town for particular investigations where and as needed. The unit shall operate in the traditional MDPD shift structure and be comprised of police officers from the staffing structure described in Exhibit B. The police officers assigned to this unit shall handle criminal investigations not handled by the central specialized investigative units.
- 3.2 Patrol personnel will conduct watch orders upon formal request of a Town resident, property owner or business owner in the Town. A watch order will constitute a minimum of one visual and physical check by a uniformed patrol unit of a residence, business, or other location to include the perimeter area within a 24-hour period.
- 3.3 Patrol personnel will respond to all calls-for-service within the Town; such as, but not limited to, traffic crash, burglar alarm signals and calls of suspicious activity at locations in the Town.
- 3.4 At the request of the Town Manager, the Town Commander or designee shall be available to attend each regular and special Town council meeting.
- 3.5 Patrol personnel assigned to the Town shall make best efforts to maintain:
  - 3.5.1 An average emergency response time goal will be established on a yearly basis while maintaining safe operations for the term of this Agreement. The average emergency response time goal will be established on an annual basis.
  - 3.5.2. The average non-emergency response time goal should be thirty minutes or less.
  - 3.5.3. Follow-up investigations for the General Investigations Unit - The average response time for detectives to arrive at a crime scenes, as described in Exhibit G, shall not exceed one hour.

- 3.6 Patrol personnel may, if needed, respond to and/or render aid in, emergency, life-saving, and in-progress violent crime incidents occurring outside the boundaries of the Town. MDPD uniform patrol units, not part of the patrol personnel assigned to the Town, may, if needed, respond to and/or render aid in, emergency, life-saving, and in-progress violent crime incidents occurring inside the boundaries of the Town. In the event patrol personnel must respond to incidents occurring outside the boundaries of the Town, the Town Commander or designee shall ensure sufficient personnel remain in the Town to continue routine and emergency patrol activities and shall advise the Town Manager per protocols established by the Town Manager.
- 3.7 Patrol personnel shall remain within the Town's boundaries during their assigned shift unless dispatched outside the Town boundaries by the Town Commander or his or her designee. A record of these authorized dispatches outside the Town's boundaries will be kept by the Town Commander and may be reviewed at any time by Town officials.
- 3.8 MDC will provide dispatch response, manage the 911 system, and provide communications support to police personnel assigned to the Town consistent with what is provided to the County.
- 3.9 Nothing in this contractual agreement is intended to usurp the authority of the MDPD policies and procedures and the MDC collective bargaining agreements. The Town or its officials will not involve themselves in negotiating with any collective bargaining unit, direct MDPD personnel to conduct unlawful activities, utilize law enforcement information provided by MDPD in an official capacity for personal use, or direct police personnel to deliberately contradict the established MDPD policies and procedures. In addition, nothing herein is intended to usurp the authority of the Town, its policies, procedures and Charter.
- 3.10 MDPD shall continue to maintain a grid system that corresponds to the boundaries of the Town. Statistical data shall be compiled to accurately describe the incidence of reports and responses to criminal activity and other calls for service within each grid and to identify emerging trends in criminal activity. MDPD shall compile data, prepare and deliver monthly and quarterly reports to the Town Manager. The reports shall describe the type and number of criminal incidents and other calls for service for each grid during the preceding period. The Town Commander, with the recommendation of the Town Manager, will have the ability to redefine the grids as necessary. The Town Commander shall present an annual crime report to the Town Council. The Town Commander or designee

shall deliver other reports to the Town Council upon the request of the Town Manager.

- 3.11 While in the performance of their duties, officers assigned to the Town shall report any quality of life issues that are observed. These include, but are not limited to, the reporting of pot holes, downed trees or debris on the road, flooding, suspected construction without permits, verification of garage sale permits, animals, non-working traffic signals and street lights, and any street signage that is down.
- 3.12 MDPD will enforce Town ordinances with criminal penalties, MDPD shall assist Town code enforcement with enforcement of Town civil ordinances as defined below and false alarm ordinances adopted by the Town. The Town shall provide the MDPD Police Legal Bureau with any draft ordinances that include an enforcement component subject to MDPD enforcement and MDPD shall advise the Town if MDPD can enforce the ordinance prior to the Town's adoption of the draft regulations. MDPD shall not be obligated to enforce ordinances that it advises are unconstitutional. The Town understands that it must contract with the State Attorney's Office (SAO) for the prosecution of Town or MDC criminal ordinance violation cases. In all instances where there is both a Town ordinance and a state statute for the same charge, the state statute will be charged. The Town agrees and understands that MDC is not responsible for any filing fees for Town or MDC criminal ordinance violations nor any costs encumbered by the SAO for prosecuting Town or MDC criminal ordinances. MDPD shall coordinate attendance of MDPD officers assigned to the Town to appear at Town Special Master hearings on any civil penalty violations or at county or circuit court on criminal violations. MDPD will assist the Town's code enforcement officers with enforcement of Town code violations, including utilizing appropriate state laws, accompanying a Town code enforcement officer on a call, writing reports of observations of violations of the Town's code and attendance at hearings.

#### **ARTICLE IV**

##### **OPTIONAL LAW ENFORCEMENT SERVICES**

- 4.1 Upon written request of the Town Manager, MDC shall provide to the Town optional services as depicted in Exhibit D. Payments for these services are in addition to payment made pursuant to Article VII. The Town Manager will direct the level and frequency of these optional services in consultation with the Town Commander.

- 4.2 MDPD shall be the sole provider of optional services that require sworn personnel. The Town may elect to procure optional services that do not require sworn personnel from other providers.
- 4.3 In the event that the Town elects to independently procure such optional services, that do not require sworn personnel, the Town shall provide a written 45-day notification of cancellation to MDPD. Upon the date of cancellation of optional services, the Town shall incur all costs and liabilities associated with independently contracted services.
- 4.4 The Town has enacted a Municipal Alarm Ordinance. The Town shall be entitled to all fees and fines associated with the False Alarm Program. The Town shall be responsible for all maintenance and enforcement of such services. The Town may request that MDPD administer their False Alarm Program. The Town shall provide a 45-day written notification of this request and shall pay an administrative fee that is mutually agreed upon by both parties, and shall be recalculated on an annual basis.

## **ARTICLE V**

### **SUPPORT & ANCILLARY SERVICES**

Support services attributed to the establishment and performance of local patrol services will be provided to the Town. These services are identified and are included as a contract support fee and may be recalculated on a yearly basis. The list of services under Exhibit E is subject to change and will be re-evaluated on a yearly basis.

Ancillary Services denoted in Exhibit F are currently provided to the Town without additional costs. As further areas in unincorporated MDC continue to incorporate, it may be necessary to re-evaluate these services and associated costs to the various incorporated areas.

MDPD agrees to provide public records at the Town's request that may assist the Town in its preparation of any law enforcement related federal and state grant applications. Such records will be provided pursuant to law and applicable County and MDPD policies and procedures. Both the Town and the County may share information with respect to identifying law enforcement related grants that may be pursued by either agency. Any programs funded by grants received by MDPD that are implemented in MDPD's District Stations for local patrol activities shall also be implemented for the Town's Police Unit. Such programs will be implemented on a prorata basis as best approximated by the proportion of the number of sworn officers being funded by the Town to the number of funded sworn officers serving solely UMSA not including other contract municipalities or other special assignments not related to local patrol activities, as applicable.

MDPD will obtain the Town's approval before applying for any grants that may support MDPD's patrol activities and require the Town to participate and provide matching funds.

## **ARTICLE VI**

### **MAINTENANCE OF ABILITY**

- 6.1 MDPD shall furnish to, and maintain for the benefit of the Town, all necessary labor, supervision, equipment and vehicles in good working condition, communication facilities and routine supplies necessary and proper for the purpose of performing the services, duties and responsibilities described in this Agreement and as necessary to maintain the service level specified in Article III.
- 6.2 MDPD shall provide adequate training for all personnel; including customer service training for police officers and minor crime scene processing as listed in Exhibit "G", Section A.
- 6.3 In all instances where special supplies, stationery, notices, forms, business cards, the Town seal and the like must be issued in the name of the Town , and the cost shall be incurred by the Town.
- 6.4 Knowledge of law enforcement related Town Codes and local ordinances is required.

## **ARTICLE VII**

### **CONSIDERATION**

For local police services:

- 7.1 The Town shall make payments to MDC in equal monthly payments based on the local patrol staffing budget adopted in the Town's annual budget ordinance. The Town shall consult with MDPD prior to annual adoption of its budget to arrive at a mutually acceptable charge for the services to be delivered by MDPD. The payments by the Town shall be made to MDC no later than the 30th day of the following month without demand.
- 7.2 The Town's payment for local police services shall be based on the staffing level in Exhibit B.
- 7.3 Within 30 days from the end of each fiscal quarter, MDC shall issue a credit or debit memorandum to the Town based upon a reconciliation of the payments made by the Town and actual personnel and vehicle costs of personnel assigned to the Town. The actual costs shall include direct salaries, plus all associated fringe benefit costs, contract support fees

and vehicle costs. Each quarter's debit or credit memorandum shall be applied by the Town to the following month's payment.

- 7.4 Payment by the Town for optional services will be based upon services rendered to the Town. MDC will invoice the Town on a quarterly basis for optional services. Payments for optional services are due no later than the 15th day from receipt of an invoice by the Town.
- 7.5 Payment for the services provided by MDC shall be based upon the level of staffing services requested by the Town utilizing the actual costs of personnel and equipment.
- 7.6 The County will retain all 911 fees generated within the Town to offset the costs of providing 911 services.
- 7.7 Except for the 911 fees, the Town shall retain the right to receive all revenues generated pursuant to Florida Statutes and available to municipalities for law enforcement activities.
- 7.8 In the event Miami-Dade County, in the future, requires its officers to pay a stipend relating to take home vehicles, the Town of Cutler Bay shall be entitled to receive a proportionate credit or equivalent percentage access to the funds for the officers assigned to the Town.
- 7.9 In the event Miami-Dade County effect other cost cutting measures in the future, the Town shall be entitled to receive a proportionate credit or equivalent percentage access to the funds or cost saving reduction measures.

## **ARTICLE VIII**

### **DISTRICT OFFICE**

- 8.1 For the duration of this Agreement, unless the Town exercises its right in section 8.3 MDPD personnel assigned to the Town shall continue to use the Town Hall located at 10720 Caribbean Boulevard, Cutler Bay, Florida 33189.
- 8.2 Should the Town exercise the option to collocate police staff within an MDPD District or facility, costs associated with the district station to include lease, utilities, and maintenance would be added to the contract support fee paid by the Town. MDPD shall provide the Town with a non-emergency phone line dedicated to the Town. MDC will work cooperatively with the Town to determine the best method and cost of implementing this provision.
- 8.3 The Town reserves the right, at its sole expense, to establish a police station and/or, satellite offices with appropriate equipment, subject to the approval of MDPD, and approval shall not be unreasonably withheld. The Town will comply with any law enforcement accreditation standards

so that MDPD will be able to maintain its accredited status. Upon approval, MDPD shall relocate the Town of Cutler Bay personnel to this location. The Town shall be responsible for items such as space rental, furniture, fixtures, regular telephones, capital equipment and utilities. In the event the Town exercises this option, the contract support fees for Facilities Maintenance Section shall be reduced accordingly. In the event the Town exercises its right to establish its own police station or satellites office(s), MDPD shall be responsible for installing and maintaining the following specialized police equipment: base station radio, bullet proof glass, external antennae and FCIC/NCIC software.

**ARTICLE IX**  
**COMMAND STAFF**

MDPD recognizes the importance of the Town Commander in the provision of law enforcement services to the Town, and will make every effort to designate a Town Commander who will be responsive to the Town and the community, meet the needs of area residents, businesses and visitors, and ensure the highest level of law enforcement activities are provided to the Town.

The Town Commander shall, among other specified duties, act as liaison between the Town and MDPD.

- 9.1 The Town Manager shall be entitled to select the Town Commander. The Town Commander shall be selected from nominations provided by the Director or designee to the Town Manager. The nominees shall be of duly sworn and qualified MDPD Majors, Captains and may include the next lower ranked position if no acceptable candidates are available. Prior to selection, the Town Manager shall solicit input and concerns from the Director prior to the designation of the Town Commander. The Director or designee shall advise the Town Manager of any nominees who have elected to participate in the DROP program. In the event of a vacancy in the Town Commander position, the above selection process will be followed.
- 9.2 In the event the Town becomes dissatisfied with the performance of the Town Commander, specific concerns regarding performance should be discussed with the District Major or Division Chief to ascertain avenues of resolution and immediate remediation, if any.
- 9.3 In the event the Town becomes dissatisfied with the response of the District Major or Division Chief, specific concerns regarding Town Commander's performance should be discussed with the Director or his designee to ascertain avenues of resolution and immediate remediation, if any.
- 9.4 MDPD agrees to act expeditiously and in good faith in resolving any problems experienced by the Town and in replacing the Town Commander. If specific issues cannot be resolved, the Town

Manager shall request removal of the Town Commander. The Director or designee shall honor the Town Manager's request and designate a new Town Commander through the selection process prescribed in Section 9.1 of this Agreement.

- 9.5 The Town Commander will be permanently located in the same facility as police personnel assigned to the Town. However, in the event that this location differs from the Town's governmental facility, the Town Commander will liaison daily with the Town Manager or his, or her, designee.
- 9.6 The Town and MDC will collectively be responsible for all emergency management duties of the Town, in conjunction with the Town and MDPD emergency operations policies and procedures.

## **ARTICLE X**

### **EMPLOYMENT RESPONSIBILITY**

- 10.1 All police officers and other persons employed by MDPD in the performance of local police services for the Town shall be and remain MDC employees.
- 10.2 MDPD employees assigned to the Town will continue to abide by the MDPD policies and procedures established in the Departmental Manual and pertinent subordinate directives.
- 10.3 MDC and all of its personnel are, and shall be, in the performance of all work, services and activities under this agreement, an independent contractor and not an employee, agent or servant of the Town. Nothing in this agreement shall be construed to create an employment relationship between the Town and any MDC employees.
- 10.4 Pursuant to Article VII of this Agreement, the Town shall pay the actual cost associated with the local patrol services to include all direct salaries, all associated fringe benefit costs, contract support fee, and vehicle costs. Based upon payment of these costs from the Town, MDC shall be solely responsible for all employee insurance benefits, civil service benefits, compensation and/or any status of rights during the course of employment with MDC. Accordingly, the Town shall not be called upon to assume or share any liability for or direct payment of any salaries, wages, contribution to pension funds, insurance premiums or payments, workers compensation benefits under Chapter 440, Florida Statutes or any other amenities of employment to any MDC personnel performing services, duties and responsibilities hereunder for the benefit of said Town and the residents thereof or any other liabilities whatsoever.



## ARTICLE XI

### **EMPLOYMENT; RIGHT OF CONTROL**

- 11.1 MDPD shall have and maintain the responsibility and control of the services rendered, standards of performance, discipline of personnel, all personnel-related matters and other matters incident to the performance of the services, duties and responsibilities, as described and contemplated in this Agreement.
- 11.2 The Town Commander, after consultation with the Town Manager, shall have the discretion to assign new personnel and to transfer or reassign any personnel assigned to the Town pursuant to departmental policies and collective bargaining Agreements. MDPD will not make arbitrary staff changes. Transfers may be made for promotional, career opportunity, at the request of the employee, or at the discretion of the Director of MDPD or designee.
- 11.3 Staffing levels are listed in Exhibit B of this Agreement, and may be modified by the Town Commander, with the approval of the Town Manager as needs arise. The level, degree, type of service and number of positions assigned to each service shall be determined by the Town Manager in consultation with MDPD. The Town shall not be required to fund the position of Captain unless the Town opts to include a Captain in the staffing level. However, at no time shall the staffing level be less than the determined minimum number of requisite positions mutually agreed upon and reflected in Exhibit C. The Town Commander may utilize overtime to fill temporary vacancies, with the prior approval of the Town Manager, caused by, but not limited to, leave issues, temporary disability, relief of duty and Family Medical Leave Act. The financial costs associated with overtime utilized to fill such vacancies will be the sole responsibility of the Town. The Town Commander, in consultation with the Town Manager, shall have the option to replace staff due to extended leave issues, light duty, disability and Family Medical Leave Act for those incidents projected to exceed 90 days.
- 11.4 The Town Commander may maintain staffing levels by adjusting the schedules of personnel assigned to the Town.
- 11.5 Staff schedules may be adjusted temporarily upon the approval of the Town Commander to meet operational needs, not to exceed one pay period (2 weeks). Any permanent adjustment to staff schedules to include those which exceed one pay period will require the prior written approval of both the Town Manager and the Town Commander or designee. Pursuant to the MDC collective bargaining agreements, the final decision of any unresolved issues regarding this matter will be left at the discretion of the Director of MDPD.

- 11.6 In the event the Town Manager becomes dissatisfied with the performance of any personnel assigned to the Town, the Town Manager shall discuss the concerns with the Town Commander. Upon the request of the Town Manager, the Town Commander may transfer or reassign personnel out of the Town with the concurrence of the Director of MDPD or designee.
- 11.7 The Town Commander shall provide the Town Manager with a prompt written notice of any transfer, change in status or reassignment of Town police personnel initiated by MDPD.
- 11.8 The Town Commander will promptly address concerns expressed by the Town Manager regarding performance of police personnel pursuant to the departmental policies and procedures, career service procedures and collective bargaining Agreements.
- 11.9 In the event a vacancy occurs, the position assigned to the Town shall be filled in accordance with departmental policies. The Department shall use its best efforts to fill the vacancy immediately. However, such a vacancy in the Town shall not exceed 120 days. In the event the number of vacancies exceeds the agreed upon attrition rate of one position, then all vacancies above the attrition rate shall be filled immediately.
- 11.10 Nothing shall preclude the Town Manager from discussing matters of concern regarding police services to the Town with the Director of MDPD, and/or the Miami-Dade County Manager.
- 11.11 Nothing in this Agreement is intended to usurp the authority of MDPD policies and procedures and the MDC collective bargaining agreements. The Town or its officials will not involve themselves in negotiating with any collective bargaining unit, direct MDPD personnel to conduct unlawful activities, utilize law enforcement information provided by MDPD in an official capacity for personal use, interfere with or obstruct any MDPD internal/administrative investigations directed towards MDPD employees or direct police personnel to deliberately contradict the established MDPD policies and procedures.
- 11.12 The Town agrees and understands that MDPD's ability to investigate and supervise MDPD employees in the event of an allegation or suspicion of wrongdoing by MDPD employees or to ensure compliance with MDPD established Directives and procedures is in the best interest of the Town, MDPD, and the citizens of the Town and Miami-Dade County. In order to maintain MDPD's ability to conduct such investigations and supervise its employees, the Town agrees to allow and provide access to any and all records or data created by MDPD employees regardless of the type of records/data storage medium (for example; paper,

video/audio tape, disk, electronic, etc.) or the records/data storage device (for example; computer, personal digital assistant, mobile telephone, flash drive, etc.). Furthermore, the Town agrees to allow and provide access to these records/data storage media and devices even if they are owned by the Town. In those situations where it will be necessary for MDPD to remove a records/data storage device for further analysis, MDPD will provide a suitable and reasonable replacement so as not to hinder the ability of MDPD employees to provide services to the Town. Such replacements will be provided as soon as reasonably possible. The Town understands, agrees and will allow the immediate removal and securing of records/data media and/or storage devices used by MDPD employees in order to preserve the records/data contained therein. Additionally, MDPD will format all newly assigned devices, and remove all MDPD proprietary software prior to the equipment being released back to the Town.

## **ARTICLE XII**

### **EMPLOYMENT; AUTHORITY TO ACT**

- 12.1 Each sworn officer of MDPD who, from time-to-time, may be assigned to the Town, to the extent allowed by law, shall be, and hereby is, vested with the police powers of the Town that are necessary to provide the police services under this Agreement. This vesting of powers is made for the sole and limited purpose of giving official and lawful status to the performance of law enforcement services provided by sworn officers.
- 12.2 Every sworn officer of MDPD assigned to the Town shall be deemed to be a sworn officer of the Town while performing the services, duties and responsibilities that constitute municipal functions and are within the scope of this Agreement.
- 12.3 Sworn officers of MDPD shall be, and hereby are, vested with the additional power to enforce the criminal ordinances of the Town, to make arrests incident to the enforcement of MDC and Town criminal ordinances, and to perform other tasks as are reasonable and necessary in the exercise of their powers.
- 12.4 Nothing herein is intended to usurp the authority of the Town, its laws, codes, policies, procedures, and Charter.

## **ARTICLE XIII**

### **OVERTIME DETAILS AND SPECIAL ASSIGNMENTS**

- 13.1 The Town Manager may request additional police personnel assigned to patrol within the Town in order to provide additional police security

activities for special initiatives, Town sponsored activities and events. The additional police security activities may be provided on an overtime basis and shall be paid for based upon the actual personnel costs, to include overtime and applicable fringe benefit rates, pursuant to applicable collective bargaining Agreements.

- 13.2 The Town Manager will make every effort to notify the Town Commander, in writing, at least 14 days, or as soon as practical, prior to a Town event to request police personnel.
- 13.3 The Town Commander, within the constraints of the collective bargaining Agreements and with the approval of the Town Manager, should have maximum flexibility to modify staff assignments, develop special assignments for staff and coordinate staff participation in special task forces and groups (i.e., Honor Guard, September 11<sup>th</sup> Disaster Response and Operation Blue Lightning).
- 13.4 The Town has the option to enhance its existing overtime budget to be utilized for Enhanced Enforcement Initiatives (EEI). Prior to commencement of an EEI, written authorization by the Town Manager shall be required.
- 13.5 The Town Commander will work collectively with the Town Manager to ensure that overtime funding is properly expended. The Town Commander shall provide quarterly overtime reports, to include EEI expense reports, to the Town Manager. Additionally the Town Commander shall advise the Town Manager immediately of any overages of overtime usage.

## **ARTICLE XIV**

### **OFF-DUTY REGULAR DETAILS**

- 14.1 Private companies, associations and citizens may request that additional police services are provided on an off-regular-duty basis pursuant to the Miami-Dade County Administrative Order 7-15, Rates for Special Off-Duty Services, as it is revised from time-to-time.
- 14.2 Off-regular duty details within the Town's boundaries will be first offered to MDPD personnel assigned to the Town.
- 14.3 Off-regular-duty activities will be governed in accordance with MDPD policies and procedures and as such, are on a voluntary basis and subject to officer availability.

## ARTICLE XV

### SPECIAL EQUIPMENT PROVISION

- 15.1 Patrol Vehicle Exterior Appearance: Each patrol unit may prominently display on the vehicle exterior at a location to be designated by MDPD, and agreed upon by the Town Manager, the legend "Town of Cutler Bay" and the Town seal in accordance with the vehicle markings depicted in Exhibit H. A substantial change to the design and, or, graphics of MDPD marked patrol unit shall require the approval of both the Director and the Town Manager.
- 15.2 Town's Option to Purchase Marked Vehicles and Transfer Title to MDC: Marked vehicles utilized by units assigned to the Town shall be provided, maintained, and purchased solely by MDPD, unless, at the sole discretion of the Town, the Town purchases vehicles directly using MDPD vehicle specifications, as they may change from time-to-time. If the Town elects to purchase marked vehicles, the Town will notify MDC no later than June 1 of each calendar year in order for MDC and the Town to coordinate the transition of the existing vehicles with the Town-provided marked vehicles for the following fiscal year. If the Town elects to directly purchase these marked vehicles, the title for these vehicles purchased by the Town may be subsequently transferred to MDC for the sum of one dollar for each. For the duration of the Agreement, the Town will be responsible for performing the maintenance of these vehicles (that were originally purchased by the Town and subsequently titled to MDC) while they are covered under the manufacturer's warranty. MDC will perform routine maintenance and repairs on these vehicles after the manufacturer's warranty expires. All costs associated with the maintenance of and any damages to these marked vehicles while in use for the Town will be the responsibility of the Town. The Town will be responsible for replacing these marked vehicles as they are retired, or shall utilize MDPD-provided marked fleet vehicles, incurring all associated costs (e.g., policy charges, maintenance, repairs, etc.). Marked vehicles that were originally purchased with Town funds and subsequently titled to MDC needing retirement will be identified by MDC according to MDC policies. MDPD will notify the Town of the number of vehicles anticipated for retirement and options available to the Town to replace vehicles with MDC vehicles according to printouts provided by MDC General Services Division. Retired marked vehicles that were originally purchased by the Town will be transferred back to the Town for the sum of one dollar for each vehicle.
- 15.3 "Totaled" or Irreparable Marked Vehicles Purchased by the Town and Titled to MDC: In the event that a marked vehicle that was originally purchased with Town funds and subsequently titled to MDC is damaged beyond repair or "totaled" according to MDPD criteria, title will be transferred back to the Town. The "totaled" marked vehicle will be

replaced with a vehicle that is, at minimum, similar in terms of make, model, age, mileage, and condition. MDPD will replace the vehicle from the existing MDPD fleet or the Town will provide a replacement vehicle. If MDPD replaces the vehicle from its existing fleet, all maintenance and charges associated with that vehicle will be incurred by the Town.

- 15.4 Transition of Marked Vehicles Originally Purchased by the Town after Expiration or Termination of Agreement: After expiration or termination of the Agreement, and if there is no renewal of the Agreement, MDC agrees to transfer title to all marked vehicles originally purchased with Town funds back to the Town for the sum of one dollar for each and provide the Town with copies of all current maintenance records. The sale of these vehicles back to the Town will be phased in during the transition period as provided in Article XXVI. MDPD will continue to own, operate and maintain possession of any of these vehicles during the transition period when necessary to supply patrol officers with vehicles in order to maintain services pursuant to this Agreement. Furthermore, these vehicles that were originally purchased with Town funds and subsequently titled to MDC will be retired according to MDPD policies.
- 15.5 Town's Option to Purchase Vehicles and Maintain Title: The Town may purchase vehicles for use by the Policing Unit and retain title. Such vehicles must meet any minimum performance or safety standards and specifications required by MDC. The Town is responsible for all routine maintenance and repairs of these vehicles and the associated costs. In the event that a town-owned vehicle is damaged beyond repair or "totaled" or needs to be retired according to MDPD criteria, the Town will replace the vehicle with a vehicle that is similar in terms of make and model. If a Town-owned vehicle has been "totaled", or has been identified by MDPD as needing retirement, the condition of the replacement vehicle must be acceptable for MDPD's use according to MDPD policies. MDPD will notify the Town of the number of vehicles anticipated for retirement. In the event the Town is not able to provide a replacement vehicle and MDPD needs to replace a vehicle from its existing fleet in order to meet its contractual commitments, all maintenance costs and charges associated with that vehicle will be incurred by the Town. If the Town elects to purchase vehicles the Town will notify MDC no later than June 1 of each calendar year in order for MDC and the Town to coordinate the transition of the existing vehicles with the Town-provided vehicles for the following fiscal year. MDPD will continue to operate and maintain possession of any of these vehicles during the transition period referred to in ARTICLE XXVI when necessary to supply officers with vehicles in order to maintain services pursuant to this Agreement.

- 15.6 Town Patch: Each uniform may have, as a minimum, a unique and distinctive police uniform patch utilized as the Town of Cutler Bay identifier for MDPD personnel assigned to the Town and shall be placed on left sleeve of the police uniform. The distinct police uniform patch must be consistent in size, design and format with MDPD police uniforms, and subject to MDPD review.
- 15.7 Uniform Pins: Each uniform may have a unique and distinctive pin made part of the officer's nameplate, or placed below the officer's nameplate, and utilized as the Town of Cutler Bay identifier for MDPD personnel assigned to the Town. The distinctive pin must be consistent in size, design, and format with MDPD police uniforms, and subject to MDPD review.
- 15.8 Design and Acquisition Costs: The costs for the design and acquisition of the items mentioned in this article shall be incurred by the Town.
- 15.9 Uniform and Uniform Accessories Standards: Any changes to the uniform or uniform accessories not previously mentioned in this article shall require the approval of the MDPD Appearance Standards Committee (APC). The APC reviews and processes recommendations concerning modifications to departmental uniform standards. A request to convene the committee shall be submitted by the Town Commander. The committee shall include a representative from the Town's policing unit.
- 15.10 Consistency of Town-Purchased Property and Equipment with MDPD policies and procedures / Maintenance and Repair Costs: All property and equipment purchased by the Town through the Town's general fund or forfeiture monies for use by MDPD personnel assigned to the Town will be the sole property of the Town, and shall be subject to the approval of MDPD to ensure consistency with its policies and procedures and operational uniformity. Should the Town elect to purchase its own equipment, the cost associated with maintenance and repairs will be incurred solely by the Town. Any agreements for sale of the property to MDPD will be approved pursuant to the Town's policies and procedures.

## **ARTICLE XVI**

### **REPORTING**

Statistical data shall be compiled to accurately describe the incidence of reports and responses to, criminal activity and other calls for service within each grid and to identify emerging trends in criminal activity. MDPD shall compile data, prepare and deliver monthly and quarterly reports to the Town Manager. The reports shall describe the type and number of criminal incidents and other calls for service for each grid during the preceding period. Such reports shall be released as prescribed through departmental policy. All costs associated with printed

reports that require special preparation (e.g., glossy paper, colored paper, special binders other than staples, photographs and unusual graphics) or are not normally prepared by MDPD, shall be incurred solely by the Town.

Upon request, MDPD will provide the following reporting services to the Town:

**16.1 Annual Reports.**

- a. **Crime Report.** On an annual basis, the Town Commander shall present an Annual Crime Report to the Town Council.
- b. **Fiscal Report.** MDPD shall submit an annual report detailing the Town's budgetary police expenditures and reconciliation of funds. MDC shall deliver any audit reports on police expenditures relating to the Town's local patrol services to the Town Manager within 20 days of the preparation of the report by a County auditor or delivery of the report to the County by an outside auditor.
- c. **Annual Management Report.** A comprehensive police report specifically for the Town that provides an overview of significant accomplishments, goals, and objectives.

**16.2 Burglar Alarm Information.** The MDPD shall forward to the Town, on a weekly basis, copies of all "False Alarm Reports," including the suite numbers for condominium buildings, along with an "Alarm Transmittal Memorandum" and on a monthly basis, an electronic file reflecting the complete data in a format acceptable to the Town.

**16.3 Dispatches Outside of Town Boundaries.** A record of these authorized dispatches outside the Town's boundaries will be kept by the Town Commander and reviewed daily with the Town Manager.

**16.4 Electronic Data.** The MDPD shall forward to the Town, on a monthly basis, all incidents that occurred within the Town's boundaries in an electronic format acceptable to the Town.

**16.5 Forfeiture Reports.** MDPD shall submit a biannual report detailing forfeiture activity involving law enforcement personnel assigned to the Town for the period and the year. The report shall include a description and estimate of value of properties seized and whether or not disposition has been adjudicated.

**16.6 Maintenance of Criminal Records.** MDPD Central Records Bureau is the central repository for all departmental records and ensures compliance with Florida Public Records Law, Chapter 119, Florida Statutes. MDPD will continue to maintain Offense/Incident Reports, Supplemental Reports, Arrest Affidavits relating to the Town, and report uniform crime statistics to the Florida Department of Law Enforcement on behalf of the Town.



- 16.7 **Miscellaneous Crime Trend Reports.** The Town Commander, or designee, shall deliver such reports regarding crime trends that occur within the Town's boundaries to the Town Council upon the request of the Town Manager.
- 16.8 **Notification of Significant Situations.** The Town Commander, or designee, will notify the Town Manager, or his or her designee, and appropriate MDPD chain-of-command personnel, in the event of a significant criminal occurrence or emergency situation within the Town. The Town Commander and Town Manager shall designate what they consider "significant" by a memorandum, signed by each.
- 16.9 **Routine Reports.** MDPD will provide monthly, quarterly, and yearly reports regarding criminal activity, workload indicators, and crime statistics, and other information regarding law enforcement services provided to the Town, as well as *ad hoc* reports when requested by the Town Manager.
- 16.10 **Reporting Systems.** MDPD will collect accurate crime statistics, calls for service data, average response time and other related law enforcement statistics specifically within the Town boundaries in order to provide accurate data collection on law enforcement services provided in the Town.
- 16.11 **Vacancy Reports.** MDPD shall submit a monthly report detailing the number of vacant positions to the Town Manager by the 15<sup>th</sup> day of the month immediately following the month in which the vacancy occurred. The report shall state whether the MDPD complied with the minimum number of requisite police patrol staffing levels was met for the reporting period.

## ARTICLE XVII

### TOWING AND STORAGE

- 17.1 MDPD will continue to utilize the existing MDC contract within the jurisdiction of the Town for towing and storage services related to police enforcement through and including the current contract term, any renewal terms and extensions where such renewal term or extension has been exercised. However, the Town may, at its option, enter into its own towing and storage contract if the following conditions are met: (1), the Town's towing and storage contract will include all of the specifications and requirements outlined by MDPD for towing contractors; (2), the Town will provide written notice to MDPD of its intention to enter into its own towing contract 180 days prior to the expiration the MDC towing and storage contract term, or any subsequent renewal term or extension where such renewal term or extension has been exercised; and (3), the Town will have its own towing and storage contract in effect when the

applicable MDC towing and storage contract term, renewal term or extended term expires. The expiration date for current term of the MDC towing and storage contract is September 14, 2011, not including any renewal terms or extensions. In the event that the Town exercises its option to enter into its own towing and storage contract, MDC and the Town shall cooperate in good faith in order to effectuate a smooth and harmonious transition from the MDPD towing and storage contract to the Town's towing and storage contract.

- 17.2 Any revenues derived from towing as a result of police enforcement activities within the Town will be credited to the next payment due from the Town.
- 17.3 The Town may issue a separate towing contract for activities unrelated to MDPD police services.

### **ARTICLE XVIII**

#### **FORFEITURES**

- 18.1 The Town shall have title to, and the power to dispose of, forfeitures and unclaimed property in accordance with State and Federal law.
- 18.2 The Town will be solely responsible for the administration, control, financial management, and compliance requirements of all Federal and State forfeiture funds awarded to the Town.
- 18.3 The MDPD Legal Bureau will be solely responsible, pursuant to established departmental policies and procedures, for all other matters concerning State and Federal forfeitures involving MDPD personnel assigned to the Town.
- 18.4 The Town's share of any forfeited property will be based solely upon the ratio that the participation of the law enforcement personnel assigned to the Town bears to the participation of all law enforcement agencies participating in the seizure of the property in accordance with State and Federal law. However, any costs associated with court filing fees, court reporters, interpreters and published legal notices will be subtracted from the value of the Town's share of the forfeited property.

### **ARTICLE XIX**

#### **CLAIMS**

- 19.1 MDC is a political subdivision of the State of Florida and has elected to provide a program to administer and resolve claims that would generally be covered by a contractual insurance carrier, subject to the provisions of Section 768.28, Florida Statutes.

- 19.2 During the term of this agreement, MDC shall process any and all claims by any parties related to MDC's performance of services specified in this agreement, subject to the limitations of Section 768.28, Florida Statutes.

**ARTICLE XX**  
**INDEMNIFICATION**

- 20.1 To the extent permitted by law, and as limited by Section 768.28, Florida Statutes, the Town shall defend, indemnify and hold harmless MDC and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which MDC or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the tortuous performance of this Agreement by the Town, its employees, officers and agents. MDC shall promptly notify the Town of each claim, cooperate with the Town in the defense and resolution of each claim, and not settle or otherwise dispose of the claim without the Town's participation.
- 20.2 To the extent permitted by law and as limited by Section 768.28, Florida Statutes, MDC shall defend, indemnify and hold harmless the Town and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the Town or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the tortuous performance of services provided pursuant to this contract by MDC, its employees, officers, and agents. The Town shall promptly notify MDC of each claim, cooperate with MDC in the defense and resolution of each claim, and defend, resolve, settle or otherwise dispose of the claim, demand, suit, or cause of action without MDC's participation; provided, however that where the County defends the Town pursuant to this paragraph, the County, in its sole discretion, may utilize the County Attorney's Office to defend, resolve, settle or dispose of such matter. Notwithstanding any provision herein to the contrary, MDC shall not be required to defend, indemnify or hold harmless for liability, losses or damages resulting from services performed by the Town or its officers, employees, or agents.
- 20.3 The indemnification provisions of this Agreement shall survive termination of this Agreement for any claims that may be filed after the termination date of the Agreement provided the claims are based upon actions that occurred during the performance of this Agreement.

## ARTICLE XXI

### **MOBILIZATION AND MUTUAL AID**

On occasion, MDPD has an obligation to mobilize personnel during time of emergencies or during pre-planned events in which the safety of the public is paramount. During these occasions, the Director of MDPD, or his designee, has the final control and the authority to draw personnel from within all areas of assignment in order to address the immediate need. Mobilizations and mutual aid shall be governed in accordance with departmental policy, applicable agreements, and Federal, State, and local laws. The following are, but not limited to, examples in which a mobilization may be invoked or personnel may be mobilized:

- 21.1 Mutual Aid: An incident or event in which one or more jurisdictions send personnel to assist another jurisdiction during time of emergency or by request. During these incidents, the cost associated with the aid is assumed by each of the parties and there is no additional cost, other than entities own personnel, incurred by the parties. Under the Mutual Aid Agreement, these situations are usually short-term and brief in nature. For the purposes of Mutual Aid, Town personnel are considered to be separate from MDPD and not subject to Mutual Aid requests from agencies outside Miami-Dade County.
- 21.2 Preplanned Event: When a mobilization is necessary for large-scale events outside the Town's jurisdiction, such as FTAA, Presidential Debate or an Elections security detail, the Town is under no obligation to mobilize their personnel. With the approval of the Town Manager, personnel assigned to the Town may be utilized for out-of-town events, provided that MDPD agrees to reimburse the Town for all costs associated with the use of their personnel. Should an event impact the Town; personnel assigned to the Town shall be utilized in consultation with the Town Manager.
- 21.3 Countywide Event or Incident: This type of mobilization may be implemented for hurricanes or other weather events or incidents such as wide area power outages. If the situation is severe or dangerous such as a hurricane warning, the Department may mandate that the Town mobilize their personnel to address the situation. Once a mobilization has been ordered by the Director of MDPD or a mobilization is imminent, the Town Commander shall immediately advise the Town Manager of all mobilization plans. During the mobilization, the Town Commander shall continually apprise the Town Manager and District Major of all issues, concerns and situations that may impact the Town.

Once the event has passed or no longer affects the Town, a decision to demobilize must be considered. The Town Commander will confer with

the Town Manager to determine the feasibility of remaining mobilized. This decision must be based on all factors that impact public safety within the Town, as well as surrounding or adjacent areas. After evaluating all available information, the Town Commander will then confer with his chain of command. The Town Commander, in conjunction with the Town Manager, will then make a decision whether to remain mobilized, demobilize, or institute modified staffing. As this is a joint decision, the Town Commander and the Town Manager must be mindful that a decision to demobilize prematurely may leave the Town vulnerable. Additionally, the Town shall be liable for any adverse incidents that occur in their jurisdiction as a result of the Town electing to demobilize prior to a demobilization order of personnel by the Director of MDPD.

- 21.4 MDPD shall assist the Town with endeavors to collect reimbursement which may be available through FEMA or other government reimbursement programs in accordance with state and federal law.

## **ARTICLE XXII**

### **TERMINATION AND REMEDIES**

- 22.1 In the event that either party breaches a material term or condition of this Agreement, the party in breach, upon receipt of a written request from the non-breaching party, shall remedy the breach within 30 days of receipt of the request. If the breach is not cured within the specified time period, the non-breaching party may terminate the Agreement or may alternatively utilize the remedies of declaratory judgment, specific performance, mandamus or injunctive relief to compel the breaching party to remedy the breach. A termination under this paragraph shall be effective 180 days from the date of the written notice of termination.
- 22.2 The parties reserve all available remedies afforded by law to enforce any term of condition of this agreement. The parties shall submit to the dispute resolution procedures of Chapter 164, Florida Statutes, prior to the filing of any legal proceeding.
- 22.3 Either party may terminate this Agreement for convenience by providing the other party with no less than 365 days written notice of the termination. Notwithstanding any other provisions of this Agreement, neither party shall terminate for convenience during the last 12 months of the term specified in Article XXVI or any renewal term.

## **ARTICLE XXIII**

### **FEE SERVICES**

Upon execution of this agreement, MDPD personnel assigned to the Town may provide certain services according to the fee schedule described in County Administrative Order 4-33, Fee Schedule for Miami-Dade Police Department, as it may be revised from time to time. Fees collected will be refunded to the Town on a quarterly basis. The Town may charge additional fees for any particular service, over and above those provided in County Administrative Order 4-33, if such additional fees are not contrary to law. Additional fees charged by the Town will be clearly identified as additional fees, over and above MDPD fees, in any forms and receipts for any service provided.

## **ARTICLE XXIV**

### **OPTION TO RENEW**

- 24.1 The parties shall meet no later than February 20, 2013, to negotiate the terms and conditions of any extension (the "Renewal Term") to the Initial Term listed in Article XXVI in order for both parties to anticipate budgetary considerations for fiscal year range. The Renewal Term may be for a period of up to five years.
- 24.2 In the event that the parties cannot come to a mutual agreement on the terms and conditions of the Renewal Term, this Agreement shall expire on the date specified in Article XXVI.

## **ARTICLE XXV**

### **TERM**

This agreement shall be retroactive from August 20 2009, and shall expire at midnight on August 20, 2014, unless terminated earlier as specified in Article XXII.

## **ARTICLE XXVI**

### **TRANSITION**

- 26.1 In the event of the termination for default or expiration of this agreement, MDC and the Town shall cooperate in good faith in order to effectuate a smooth and harmonious transition from MDPD to a local police department and to maintain during the transition period the same high quality of police protection prescribed by this agreement for the residents, businesses and visitors of the Town.
- 26.2 Upon the expiration of this agreement relating to local police and related support services, as required by Article IX, Section 9.4 of the Town Charter, the transition period shall be no less than 12 months, except for vehicles purchased by the Town and

subsequently titled to the MDPD, which transition period shall be within the first 12 months of such expiration of agreement.

- 26.3 Upon completion of the transition period and in the further event that the Town is unable to provide the same level of local police protection through its own police force at the time of the termination or expiration, the term of this agreement shall be extended upon the written request of the Town Manager in 90 day increments or until the Town is capable of rendering the police service.
- 26.4 The compensation to be paid to MDC during the phase-out period shall be a pro-rated at the time of termination or expiration, and shall be in an amount agreed to by the parties.

## **ARTICLE XXVII**

### **INDEPENDENT CONTRACTORS**

MDC, for the purposes of this agreement, is and shall remain an independent contractor provided; however, independent contractor status shall not diminish the power and authority vested in MDPD and its sworn officers pursuant to Article XII.

## **ARTICLE XXVIII**

### **RECORDS, INSPECTION, AUDIT**

- 28.1 MDC shall keep records with respect to the expenditure of funds paid by the Town and the services provided to the Town under this agreement. All the records shall be retained by MDC for a minimum of three years from the date of termination or expiration of this agreement. MDC shall maintain accounting records on expenditures under this agreement in accordance with generally accepted accounting standards, generally accepted government accounting standards, and other applicable standards.
- 28.2 The Town Manager, or his or her designee, may inspect and audit the records upon reasonable notice to MDC. Reasonable notice should include a written request no less than seven working days prior to the intended site visit and the identification of the specific records to be inspected.
- 28.3 MDC shall provide access to the Town Manager or his, or her, designee to the records during regular business hours. MDC agrees to provide the assistance, as may be necessary, to facilitate the inspection or audit by the Town to insure compliance with applicable accounting and financial standards.

- 28.4 Should the Town, in any audit of MDC's records, find a discrepancy between the actual amount of funds paid by the Town and the actual services received by the Town from MDC, or the costs of the services, or the Town finds a discrepancy in the amounts provided in the reconciliation by MDC, then MDC shall, within 30 days of receipt of written notification from the Town Manager, either credit or debit the Town the amount of the discrepancy or refund the amount. If MDC disagrees with the Town's audit, MDC shall notify the Town Manager within 15 days of the receipt of the audit findings requesting an independent audit. The Town Manager and the County Manager shall mutually agree to the selection of an independent auditor to review the audit and resolve the discrepancies. The auditor's fee will be paid by both parties equally.

## **ARTICLE XXIX**

### **AUTHORITY TO EXECUTE; NO CONFLICT CREATED**

- 29.1 The County Mayor, by execution of this agreement, represents to the Town that he has full power and authority to make and execute this agreement pursuant to the resolution of the county commission.
- 29.2 The Town Manager, by the execution of this agreement, represents to the MDC that the Manager has full power and authority to make and execute this agreement pursuant to the resolution of the Town council.

## **ARTICLE XXX**

### **AMENDMENTS**

This agreement may be modified at any time during the term by mutual written consent of both parties.

## **ARTICLE XXXI**

### **NOTICE**

All required notices shall be given by first class mail, except that any notice of termination shall be mailed via U.S. Mail, return receipt requested. Notices shall be addressed to the parties at the following addresses:



Town: Town Mayor  
Paul Vrooman  
Town of Cutler Bay  
10720 Caribbean Blvd  
Cutler Bay, Florida 33189

and Town Manager  
Steven Alexander  
Town of Cutler Bay  
10720 Caribbean Blvd  
Cutler Bay, Florida 33189

MDC: County Mayor  
Carlos Alvarez  
Miami-Dade County  
Stephen P. Clark Center  
111 NW First Street  
Suite 2910  
Miami, Florida 33128

and Director  
James K. Loftus  
Miami-Dade Police Department  
9105 NW 25 Street  
Miami, Florida 33172

and Office of the County Attorney  
Stephen P. Clark Center  
111 NW First Street  
Suite 2810  
Miami, Florida 33128

## **ARTICLE XXXII**

### **NON-ASSIGNABILITY**

Neither party shall assign any of the obligations or benefits of this agreement.

## **ARTICLE XXXIII**

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Interlocal Agreement/Police Services

March 9, 2010

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## **ENTIRE AGREEMENT**

The parties acknowledge, one to the other, that the terms of this agreement constitute the entire understanding and agreement of the parties regarding the subject matter of the agreement.

The exhibits referred to and annexed to this agreement are made a part of this agreement.

If a court of competent jurisdiction renders any provision of this agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this agreement.

## **ARTICLE XXXIV**

### **BINDING EFFECT**

This agreement shall insure to the benefit of, and be binding upon, the respective parties' successors.

(Signature Page Follows)

ATTEST:

TOWN OF CUTLER BAY,  
a municipal corporation

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

\_\_\_\_\_

Clerk Erika Gonzalez-Santamaria  
Town Clerk

Steven Alexander  
Town Manager

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

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

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

MIAMI-DADE COUNTY  
A political subdivision of the  
State of Florida  
By it's Board of County  
Commissioners:

\_\_\_\_\_  
Carlos Alvarez  
County Mayor

ATTEST:  
HARVEY RUVIN, CLERK

By \_\_\_\_\_

Deputy Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

By \_\_\_\_\_  
County Attorney

TAB 10

**ORDINANCE NO. 10 - \_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING CHAPTER 26 OF THE TOWN CODE OF ORDINANCES ENTITLED, “PARK AND RECREATION DEPARTMENT RULES AND REGULATIONS”; REVISING RULES FOR TOWN PARKS; UPDATING PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, upon incorporation the Town of Cutler Bay (the “Town”) assumed control of certain parks owned and operated by Miami-Dade County (the “County”) within the geographic boundaries of the Town pursuant to the interlocal agreement it entered into with the county; and

**WHEREAS**, as a part of the transition process the Town also assumed those regulations regarding parks already present in the Miami-Dade County Code of Ordinances upon incorporation; and

**WHEREAS**, after a careful, deliberate review process the Town wishes to update those rules within the Town Code of Ordinances that govern Town parks so that they better suit the specific needs of the Town and protect the Town’s specific interests; and

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

**NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS<sup>1</sup>:**

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

**Section 2. Amendment to Chapter 26 of the Town Code.** The Town Council of the Town of Cutler Bay hereby amends Chapter 26 of the Town Code of Ordinances entitled, “PARK AND RECREATION DEPARTMENT RULES AND REGULATIONS”, as follows:

**ARTICLE I. IN GENERAL**

**Sec. 26-1. Rules and Regulations Adopted.**

*Rule 1. Definitions*

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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.

When used herein the following definitions shall apply:

- (a) The terms "Parks," "Parkways," "Recreational Areas," "~~Marinas~~" and other "Areas Operated and Maintained by the ~~Miami-Dade County Park~~ Town of Cutler Bay Parks and Recreation Department" are defined to mean parks, wayside parks, parkways, playgrounds, recreation fields, museums, auditoriums, ranges and buildings, natural areas, forests or preserves, lakes, streams, canals, lagoons, waterways, water areas and beaches therein and all public service facilities conducted on grounds, buildings, and structures in ~~Miami-Dade County~~ the Town of Cutler Bay that are under the control of or assigned for upkeep, maintenance or operation by the ~~Miami-Dade County Park~~ Town of Cutler Bay Parks and Recreation Department, and all beaches and ocean areas available to the public in the ~~unincorporated area of the County~~ Town of Cutler Bay, now or in the future.
- (b) The term "Park Property" when used hereinafter is defined to cover all areas, buildings, locations, and facilities described in the foregoing paragraph.
- (c) The terms "Parks Department" and "the Department" when used hereinafter are defined as "The ~~Miami-Dade County~~ Town of Cutler Bay Parks and Recreation Department" and the term "Department Director" refers to the Director of said Department
- (d) The term "Department Employee" refers to individuals employed by the Parks and Recreation Department with responsibilities for the safe management, security, operation or maintenance of park facilities.
- (e) In construing the provisions hereof and each and every word, phase or part thereof where the context will permit, the definitions provided in Sections 1.01 Florida Statutes shall apply.

## TRAFFIC

### *Rule 2. Traffic Ordinances and State Vehicle Laws*

The traffic ordinances of ~~this Miami-Dade County~~ [~~Chapter 30 of this Code~~] and applicable State Vehicle laws shall apply in and about all park property and in addition thereto the traffic regulations contained in this section shall be applicable.

### *Rule 3. Roads and Driveways Within Parks*

- (a) No person driving, operating, controlling or propelling any vehicle, whether motorized, horse-drawn or self-propelled (i.e. golf carts, go karts, ATV's, etc.), shall use any other than the regularly designated paved or improved park roads, ~~or driveways~~ or parking lots, except when directed to do so by a police officer or Department Employee. The provisions of this subsection shall not apply to the use of any self-propelled wheelchair, power wheelchair, electric scooter, or other mobility device by an individual with a mobility impairment.
- (b) No person shall ride, drive or propel any motorized vehicle on any but the regular vehicular roads, except that such vehicles, with motors shut off, may be pushed by hand not faster than a walk or carried over grassy areas normally reserved for the use of pedestrians.
- ~~(c) No driver or operator of any vehicle shall obstruct traffic or park or stop on any road or driveway except at a place so designated or in case of an emergency beyond his control. If so caused to stop or park for more than fifteen (15) minutes the operator shall report such fact to a police officer or park Department Employee. At places so designed and clearly marked, a vehicle may be stopped for a period of no more than fifteen (15) minutes in order for the occupant to view the scenic features.~~

### *Rule 4. Trucks, Buses, Other Heavy Vehicles*

No truck, commercial vehicle, or bus of any type will be driven on any restricted park road or property without special authorization from the Parks and Recreation Department for the purpose of park work, service or activities except that trucks and buses used for transporting persons to a park for recreational purposes will be afforded use of ingress and egress on park roads and parking facilities as provided for conventional passenger vehicles.

*Rule 5. Non-Motorized Equipment Use*

(a) No person shall ride, drive or propel any bicycle, tricycle, skate boards, roller skates, roller blades or similar non-motorized equipment on any but the regular vehicular roads or paved pathways and trails designated for said purpose. No person shall skate or skateboard within or upon any park, parking lot, walkway, court, patio, playground, bench, bleacher, curb, table or other equipment that is not specifically designed or designated for such use. No person shall deviate from compliance with all traffic ordinance provisions governing the operation of bicycles while on park property.

~~(b) No person shall ride, drive or propel any registered motorized vehicle on any but the regular vehicular roads, except that such vehicles, with motors shut off, may be pushed by hand not faster than a walk or carried over grassy areas normally reserved for the use of pedestrians.~~

~~(e)~~ The provisions of these subsections shall not apply to the use of self-propelled wheelchair, power wheelchair, electric scooter, or other mobility device by an individual with a mobility impairment.

~~(d)~~ Violators of this provision shall pay a fine not to exceed one hundred dollars (\$100.00) for the first violation and two hundred dollars (\$200.00) for each succeeding violation. Provisions of this rule shall not apply to the operation of these vehicles on those portions of park property specifically designated for such use. ~~(Ord. No. 99-80(b))~~ Parents or guardians will be held strictly accountable for the actions of minors in regards to the prohibitions in the foregoing paragraphs.

*Rule 6. Parking*

(a) No person shall park a vehicle any place on park property other than in the designated facilities provided for that particular type of vehicle, unless directed otherwise by police officers or department employees who are authorized to designate other areas for parking when conditions so warrant. The provisions of this subsection shall not apply to the use of self-propelled wheelchair, power wheelchair, electric scooter, or other mobility device by an individual with a mobility impairment.

(b) Except for ~~County~~ Town vehicles or those on official ~~County~~ Town business, no operator of any vehicle shall park or permit to remain parked any vehicle on any driveway, parkway, parking area or other park property ~~except in areas designated as twenty four hour boat launching areas between sunrise and sunset or as otherwise posted.~~

~~(c) Exception to the provisions of the two (2) foregoing subsections is to be made in reference to the restaurants and leased facilities to permit patrons of these privately operated concessions to enter in and remain in same at any hour when open for business and to use the parking areas set aside for these concessions during the same hours. The Department Director may from time to time designate other similar use park areas as exempt from general park closing hours.~~

(d) No Department Employee shall be permitted to accept any fee or gratuity for any service concerning the parking of a vehicle except those employees assigned to areas where a stated fee is charged by the Department.

(e) Police officers and Department Employees may require any individual(s) remaining inside of a parked vehicle for more than five minutes within a Town park to either exit the vehicle or vacate the park premises.

*Rule 7. Use of Vehicles*

(a) ~~No~~ With the exception of an individual authorized by or including Town staff, no Operator of



a vehicle shall tow another vehicle or wheeled device on park roads except when ~~the towed vehicle is used in transporting a boat into a marina or other designated area or when necessary to remove a disabled vehicle or when authorized by the Department. No tow vehicles shall be allowed on Department managed beaches where the Department shall provide for towing of boats or vehicles and shall be authorized to recover the costs for such service.~~

(b) No vehicles except those authorized by the Parks and Recreation Department to carry passengers for hire or fare will be permitted to so operate in the parks and these vehicles will be the only ones that pedestrians may hail or make prior arrangements for rides.

(c) No person shall abandon, change any parts, repair, wash, grease, wax, polish, ~~or clean~~ or offer for sale or lease a vehicle on any park roadway, parkway, driveway, parking lot or other park property.

~~(d) No~~ With the exception of an individual authorized by or including Town staff, no-person shall operate any unlicensed or unregistered motorized vehicle of any kind on any park roadway, parkway, driveway, parking lot, or other park property. The provisions of this subsection shall not apply to ~~golf course golf carts and~~ authorized maintenance equipment or vehicles designated primarily for use by individuals with disabilities ~~or in areas specifically designated for such use. The County Manager may, however, designate with appropriate signage and in accordance with safety regulations, certain areas of parks for use by four wheeled motorized carts or mini bikes.~~

## PARK PROPERTY

### *Rule 8. Preservation of Property*

(a) As all property in all parks is ~~County~~ Town property, no person entering or being within parks or areas operated and maintained by the Parks and Recreation Department shall violate the provisions of this ordinance by offense against property.

(b) No person shall vandalize, deface or destroy any park property or equipment within a park site.

~~(c) No~~ With the exception of an individual authorized by or including Town staff, no-person shall damage or remove plants or plant materials, trees or parts thereof or any flowers, nuts, seeds, ~~or~~ fruits, earth, stone or other material whatsoever, except that park personnel may be empowered to make such removals and scientists and students of botany may be issued a Special Permit for specimen collecting by the Department Director or his/her designee. In addition, all provisions of the Town's Tree Ordinance shall apply to all of the Town's parks.

(d) No person shall excavate or remove any artifact from any archaeologically sensitive areas. Of particular concern are Native American burial grounds and living sites.

~~(e) No~~ With the exception of an individual authorized by or including Town staff, no-person shall make any excavation by tool, equipment, blasting, or other means or utilize metal detectors or shall construct or erect any building or structure of whatever kind, whether permanent or temporary, or run or string any public utility including the use of generators and/or electric extension cords, into, upon, across or over any park or recreation lands unless authorized by permit or easement.

(f) No fires shall be built by any person against or adjacent to any park building, structure, tree or plant or near the property of others or in any area of any park except in such areas as are specifically designated for fire building, nor shall any person drop, throw and permit to be scattered by any means, hot coals, lighted matches, burning tobacco products or any other flammable material within any park area or any highway, road or street abutting or contiguous thereto.

~~(g) No~~ With the exception of an individual authorized by or including Town staff, no-person shall build, light or cause to be lighted, any fire upon the ground or beach or other object in any area except in an approved grill, stove, fireplace or other suitable container, nor shall any person starting a fire leave the area without extinguishing the fire.

(h) ~~No~~ With the exception of an individual authorized by or including Town staff, no person shall use a grill or other device in such a manner as to burn, char, mar or blemish any bench, table, or other object of park property.

(i) ~~No~~ With the exception of an individual authorized by or including Town staff, no person shall stand, ~~or sit, lay or climb~~ on any fence rail, ~~or on any~~ picnic table or any other structure or furnishings not intended for such use in a park or parkway.

*Rule 9. Protection and Preservation of Wildlife*

(a) ~~No~~ With the exception of an individual authorized by or including Town staff, no person shall molest, harm, frighten, kill, net, trap, snare, hunt, chase, shoot or throw or propel by any means missiles at any wildlife roaming free about a park ~~or in captivity in a zoo cage~~, nor shall any person remove or possess the young of any wild animal or the nest or eggs of any reptile or bird or to collect, remove, possess, give away, sell or offer to sell, buy or offer to buy, or accept as a gift any specimen dead or alive of any animal within a park, unless specifically authorized by the Director of the Parks and Recreation Department. This provision is not intended to limit any Department-authorized program for the purpose of control of nuisance wildlife as set forth in Rule No. 10 below.

(b) No person shall disobey posted notice prohibiting feeding ~~zoo~~ animals, birds or reptiles.

(c) No person shall place, dump, abandon or leave any animal, reptile or bird, either wild or domestic on the grounds of any ~~zoo~~ ~~or~~ park.

*Rule 10. Control of Nuisance Animals*

(a) Definitions. When used in this rule the following terms shall have the meanings set forth below:

(1) Exotic Animal: A non-native animal species that occurs in South Florida, as a result of direct or indirect, deliberate or accidental actions by humans, which shall include, but not be limited to, all domestic, semi-domestic or feral animals with the exception of dogs and cats under the immediate control of their owner.

(2) Native Animal: An animal species that occurs naturally in or is indigenous to South Florida.

(3) Natural Resource Park: A Natural Resource Park shall mean any of the current so designated parks and any park acquired or opened by the Department after the effective date of this ordinance that contains more than two (2) acres (cumulative) of pine rockland, hammock, freshwater wetland, coastal wetland, or scrubby flatwood plant community.

(b) The introduction by any person of any exotic animal and the placement, abandonment or leaving of any animal in a Town park or in public areas immediately adjacent to a Town park is strictly forbidden.

(c) The feeding by any person of any exotic or native animal in a Town park or in the public areas immediately adjacent to a Town park is hereby strictly forbidden unless specifically authorized by the Department Director.

(d) Exotic animals, with the exception of those authorized by the Director, roaming free in Town parks are hereby declared to constitute a nuisance. The Parks and Recreation Department Director has the authority and responsibility to establish process and procedures to control and remove from the park, the species which are declared to constitute a nuisance.

(e) The Director of the Parks and Recreation Department is hereby authorized, in consultation with the Florida Fish and Wildlife Conservation Commission, to declare certain native species located in identified parks to constitute a nuisance. Native species shall be determined to be a nuisance when, in the discretion of the Director of the Parks and Recreation Department, in consultation with staff of the Florida Fish and Wildlife Conservation Commission, the number, location, behavior or other characteristics of the native species or the remains of deceased animals

constitute a hazard to human health and/or safety or to the resources of the particular park.

*Rule 11. Domestic Animals*

~~(a) No person shall be permitted to take any domestic animal other than a horse, as provided in Rule 21 below, into any park whether on leash, in arms or running at large, dogs in particular being excluded from parks, and provisions of Miami Dade County Dog Control Ordinance No 58-28 [Sections 5-3-5-15] shall apply to any and all park property, except for those areas specifically designated for dogs or other domesticated animals.~~

Domestic animals shall be permitted to run free in those specific areas within any Town park that are designated by the Town Manager or designee for such purpose. Domestic animals shall be permitted, if on leash, in all other areas of all Town parks with the exception of that area(s) or park(s) specifically prohibited by the Town Manager or designee.

Each person that takes a domestic animal into a Town park shall be required to immediately remove any fecal droppings and properly dispose of such in an approved container or location. Failure to immediately remove such fecal droppings according to procedures established by the park shall result in the immediate removal of the person and the animal from all Town parks for a six month period. The Parks Department shall maintain such records as necessary to enforce this provision.

(b) Cattle, horses, mules, swine, sheep, goats, or fowl shall not be allowed upon park property and all owners or attendants of such animals are charged with the duty of preventing such occurrences. This prohibition does not apply to animals and fowl brought into the park for demonstration purposes under a permit issued ~~kept~~ by the Parks Department or under its direction.

*Rule 12. Aircraft*

(a) No person operating, directing, or responsible for any airplane, helicopter, glider, balloon, dirigible, parachute or other aerial apparatus (excluding kites) will take off from or land in or on any park land or waterway, except when human life is endangered or written permission has been obtained from the Department Director. ~~Take off from and landing in any natural resource area, and the environmentally sensitive Deering Estate at Cutler is specifically prohibited except, when human life is endangered.~~

(b) No person operating any aircraft shall do any stunt flying over or fly lower than one thousand (1,000) feet above the highest obstruction located in any park or recreation areas that are considered to be populated areas requiring compliance with Federal Aviation (FAA) Administration regulations regarding same.

*Rule 13. Closing of Parks*

(a) No person shall be or remain in any part of any park that is fenced in or provided with gates between the closing of the gates at night and their reopening on the following day; nor shall any person be or remain in any park not fenced in or provided with gates, between sunset and sunrise or as specifically posted, ~~except in areas designated as twenty four hour boat launching areas, except in well-lit areas designated for use until 11 :00 p.m. when in the discretion of the Department Director and upon consultation with the neighboring community or the Commissioner of the affected district and the applicable police department, and except that persons and vehicles may pass through such parks without stopping, on the most direct walk or driveway leading from their point of entrance to the exit nearest to their point of destination.~~ The provisions of this section shall not apply to police officers, Code Compliance officers or Department Employees while in the discharge of their duties, nor to persons having a permit in writing issued by the Department to be or remain in any part of the parks between such hours. The Department Director has the authority to establish exceptions to the closing hours as set forth

above when it is in the interest of the public health, safety or welfare and such exceptions shall be posted.

(b) No person shall enter upon any part of any park, which is in an unfinished state or under construction or withheld from general public usage in the interest of public safety, health and/or welfare unless specifically permitted by the Department Director.

## RECREATIONAL ACTIVITIES

### *Rule 14. Recreational Activities*

No person shall engage in recreational or other activities other than those prescribed in certain areas set aside for such purposes. For example, in areas set aside for boating, swimming is prohibited, and in areas set aside for swimming, boating is prohibited.

### *Rule 15. Games, etc.*

No person or persons shall engage in rough or potentially dangerous games or practice for same, such as football, baseball, softball, horseshoes, golf, lacrosse, soccer, cricket, rugby, tennis, volleyball, badminton or any other games, practice or exercise involving thrown or otherwise propelled objects such as balls, stones, arrows, javelins, shuttlecocks, radio controlled or model aircraft or engage in rocketeering except in the areas specifically designated and set aside for such recreational usages or with prior written authorization from the Parks and Recreation Department.

### *Rule 16. Bathing and swimming*

(a) No person, regardless of age, sex, or manner of dress shall swim, wade, or bathe in waters or waterways in or adjacent to any park other than at such places as are provided for such activities and in compliance with the rules of these areas as to hours of the day and safety limitations for such use.

(b) No person, minor or adult, shall enter or be in water at any bathing area wearing, carrying, pushing or towing any flotation device; ~~provided, however, that surfboarding may be engaged in at certain prescribed areas that may from time to time be specifically designated for such sport by posted signs.~~ Notwithstanding the above prohibition, the department is authorized to permit the use of any such device when required to accommodate park supervised programs or the needs of individuals with disabilities.

(c) No person shall erect or cause to be erected any tent, shelter or structure on or in any ~~beach, bathing or wading area~~ park in such a manner that a guy wire, rope, extension, brace or support connected or fastened from any such structure to any other structure, stake, rock or other object is necessary without receiving prior approval from the Department, nor shall any structure, tent or shelter lack an obstructed view of the interior from at least two (2) sides.

### *Rule 17. Fishing*

No person, adult or minor, shall fish in park waters, either fresh or salt, by use of hook-and-line, seine, net, trap, spear, gig or other device except at such places and in such areas as have been prescribed for such usage which will include specified lakes, canals, lagoons, ~~and creeks and stretches on ocean beaches marked by moveable signs in areas other than those used for bathing.~~

### *Rule 18. Hunting and firearms*

(a) No person shall carry, use or possess firearms of any description, air rifles or pistols, spring guns, bows and arrows, paint guns or any other form of weapon potentially inimical or harmful to wildlife or dangerous to human safety on or in any park area or property ~~except at and in accordance with the rules and regulations of the Trial Glades Ranges, and the Camp Owaissa Bauer archery range.~~ Exception is made for sworn security personnel and Police Officers Metrozoo Employees for the purpose of animal control and human safety.

~~(b) All persons using Miami Dade County Park and Recreation Department range facilities shall be under permit to abide by resolutions governing range activities, copies of which will be furnished with each permit, and shall be required to complete a Range Safety Course prior to utilizing such range.~~

*Rule 19. Toy Firearms, Fireworks and Explosives.*

(a) No person may bring into, or have in his possession, or set off or otherwise cause to explode, discharge or burn in any park area or on any public lands or highways adjacent thereto, any firecrackers, torpedoes, rockets, toy firearms or cannon, sparklers or other fireworks or explosives of inflammable materials or any substance or compound that, may explode, discharge or burn, unless he first obtains a written permit from the Department Director.

(b) Parents or guardians will be held strictly responsible and accountable for the actions of minors in regards to the prohibitions in the foregoing paragraph.

*Rule 20. Picnic Areas and Use*

(a) No person will picnic, lunch or cook in any area not specifically designated by and regulated by the ~~Park Managers~~ Department for such usage. Rule 24 of this ~~code~~ ordinance establishes rules for the Picnic Shelter Permit Reservations.

(b) ~~The Park Managers~~ Department Employees will regulate activities in picnic areas when necessary to prevent congestion and to secure the maximum use for the comfort and convenience of all. If the facilities are crowded, persons holding picnics in any park picnic area, building or structure, will avoid using same to the exclusion of others for an unreasonable time, the determination of what is unreasonable being at the discretion of the ~~Park Manager~~ Department Director. Use of the individual grills, together with tables and benches, generally follows the rule of "first come, first served", with use of picnic tables limited to two tables per party, unless specifically authorized by the ~~Park Manager~~ Department Director. Except that a reservation fee may be paid in advance to reserve a designated picnic area within a park.

*Rule 21. Horseback Riding*

No person shall engage in horseback riding in any park or Park Department area other than those where provisions for such is provided by clearly marked bridle paths, trails, and other necessary features and then only upon thoroughly broken and properly restrained animals that are ridden with care, prevented from grazing, straying unattended, untethered to any rock, tree or shrub and not ridden or led on park land other than that so designated.

RECREATIONAL ACTIVITIES BY PERMIT ONLY

*Rule 22. Boating*

(a) No person shall bring into or operate any boat, yacht, cruiser, canoe, raft or other water craft (except non-motorized toys too small for human occupancy) in any park property watercourses, bays, lagoons, lakes, canals, rivers, ponds, or sloughs other than those designated for such use or purpose by the Parks and Recreation Department and then only in strict conformance with Metropolitan Safe Boating Ordinance No. 59-46, ~~[Ch. 7 of this Code]~~.

~~(b) No person shall moor, anchor or tie up to the bank or any wharf, dock, tree, building, rock or any object or structure on the bank in waters within or contiguous to any park within two hundred (200) feet of the shore line unless the owner, or his representative, of the boat, houseboat, barge, vessel, ship or watercraft of any kind whatsoever, has obtained written permission from the Parks and Recreation department, except that if the boat or ship is the property of the government of the United States, or is in distress, or ties up at a dock, wharf or pier designated for such purpose and then only long enough to enable the occupants to obtain repairs, towing service, food, fuel, water, bait, tackle or marine supplies.~~

~~(c) Public docks or shore line or bank facilities are provided in parks and recreation areas for dockage and other marine uses and purposes, but shall be used only after arrangements have been made with the park dockmaster who shall assign space and collect reasonable rental charges in accordance with established regulations and rates. Dockmasters shall lend emergency assistance if such should be required.~~

~~(d) No motorboats shall be operated on park waters unless equipped to divert their exhaust under water or to otherwise muffle the sound thereof.~~

~~(e) Regulations and rules covering conduct in reference to occupancy and use of docking and mooring facilities are set forth on each permit and violation of the same will be punishable by revocation of the permit in addition to any other punishment that may be imposed in accordance with law.~~

*Rule 23. Permit to Operate Boats for Rent or Hire*

(a) Permission to rent, hire or operate for charge any kind of boat, or water craft, whether powered or not, on any park waters or from any park dock, ~~mooring or marina area~~, shall be reserved for the Parks Department or regularly licensed operators. ~~Any boat operating for any commercial activity or for hire, or carrying passengers for money, or contemplating same, before docking or mooring or receiving such passengers at any dock or wharf or landing place or anchorage in the park jurisdiction shall obtain a special permit from the Department.~~

~~(b) It shall be necessary for any person operating passenger launches or excursion boats from park waters for rent or hire or carrying passengers for money who desires to maintain a scheduled boat line to land, anchor or tie up in any park area, either seasonal or annual, to make formal written application to the Park Department and upon receiving permission to operate such boat lines or liveries such permittee shall be subject to all the rules and regulations governing the operation of boats in park waters, including the inspection requirements of the Department.~~

*Rule 24. Picnic Shelter Permit*

(a) Normally the larger picnic shelters and their facilities will be used only on reservation, which must be obtained in advance and must be for a specific time and duration. However, picnic shelters may be used by the public without charge during unreserved periods. Reservations for picnic shelters shall be subject to the provisions of the permit and use of picnic areas must comply with park rules concerning same.

(b) Unless permitted by the Department Director, financial arrangement in connection with picnics held in a park, either on a reserved basis or otherwise, must be made outside the limits of the park, and the sale of tickets, acceptance of money, soliciting or accepting donations or offerings, in order to defray the expense of a picnic or to realize a profit therefrom is prohibited and subjects a permit holder to immediate cancellation of said permit.

*Rule 25. Camping*

There shall be no camping or overnight stay in parks unless authorized by the ~~Park Manager~~ Department Director. ~~Camping in permanent cabins constructed by the Park Department~~ or in privately owned tents erected under Parks Department permit and used by groups of persons under adequate supervision are the only types of overnight camping that shall be allowed in the parks. Hence, the bringing into a park and using for overnight occupancy any house trailer, camp trailer, camp wagon, or any other form of moveable structure or special vehicle, except in areas designated for that purpose by the Parks Department, is prohibited.

SANITATION

*Rule 26. Pollution of Waters*

Using the fountains, drinking fountains, ponds, lakes, streams, bays, or any other bodies of water within

the parks, or the tributaries, storm sewers or drains flowing into them as dumping places for any substance or matter or thing which will or may result in the pollution of said waters is strictly prohibited.

*Rule 27. Refuse, Trash, and Destruction of Park Property*

(a) No person shall deposit or drop or place any refuse including bottles, broken glass, ashes, paper, boxes, cans, dirt, rubbish, waste, garbage, tobacco products or containers of foil upon the ground or on any other park property except in receptacles provided for trash disposal. At no time shall any petroleum products be disposed of on park property ~~except into those containers provided at marina facilities for that purpose.~~

(b) No person shall bring to or use any water or beverage container made of glass on any beach available to the public in the ~~unincorporated area of the County~~ Town of Cutler Bay.

(c) No person shall deposit into any recycle bin or container any material other than that for which it is intended.

UNDESIRABLE ACTS AND BEHAVIOR

*Rule 28. Noise*

No person entering or upon Parks and Recreation areas shall make excessive unnecessary noise, and all provisions of Chapter 21-28 and 21-28.1 of the Town of Cutler Bay Code shall apply to and be enforced in all park areas.

*Rule 29. Merchandising, Vending, Peddling, etc.*

No person, organization or firm other than licensed concessionaires permitted by and acting under the authority of the Parks Department will expose or offer for sale, rent or trade, any article or thing, or station or place any stand, cart, or vehicle for the transportation, sale or display of any article or merchandise within the limits of any park or recreation area.

*Rule 30. Advertising, ~~and~~ Publicity and Signs*

No person shall advertise or obtain publicity through any means whatsoever within or upon any park property, except as permitted by Article ~~6~~ 7 of the Miami- Dade County Home Rule Charter. To insure compliance, specific approval in advance and in writing from the Department Director is required and such approval shall be so worded as to prohibit damage to or marring of park property or vegetation, disturbance of park patrons or the display of anything unsightly or in disharmony with park beauty.

*Rule 31. Public Demonstration, Gatherings, Performances, Speeches, etc.*

The ~~County~~ Town Manager in conjunction with the Parks and Recreation Department Director has the responsibility and authority to establish guidelines for the permitting for demonstrations, gatherings, performances or other mass assemblages at Town parks. Such rules and regulations shall be codified ~~in~~ via Administrative Order ~~8-3, as amended,~~ and be readily accessible to the public.

*Rule 32. Under the Influence of Drugs and/or Alcohol Intoxication*

No person who is intoxicated or under the influence of drugs will be permitted entry to parks or recreation areas and if discovered therein will be ejected forthwith.

*Rule 33. Intoxicating liquors, Beer, Wine, etc.*

Drinking of alcoholic liquors or beverages and the bringing of such into the park areas shall be permitted only under the circumstances set forth in the following paragraphs:

(a) ~~At certain special specifically designated facilities where meals or lunches are served under concession privileges, the sale of alcoholic liquors or alcoholic beverages by such concessionaire or his employees will be permitted under strict regulation, being restricted to certain hours of the day and under the special authorization and control of the Department. Such sales shall be made~~

~~only in individual cups (not in original packages or otherwise in bulk) and shall be served for consumption on the immediate premises of the concession and such sales of beer and wine are to be permitted only in open containers for consumption on the immediate premises of the concession except that the sale of unopened containers through concessions furnishing boats will be permitted.~~

~~(b~~a~~)~~ At picnic parties during the hours of noon to sundown; and can only be consumed at picnic shelter areas or areas specifically designated by the Department Director. Special events as designated by the Department Director shall be exempt from the provisions of this paragraph.

~~(c)~~ Owners of boats or vessels regularly docked or moored at or in park marina areas, or occupants of cabanas, shall be permitted to transport alcoholic liquors or beverages across park properties for use on board said boats, vessels, or in cabanas only.

~~(d~~b~~)~~ Unless authorized in writing by the Director of the Parks and Recreation Department, the consumption of alcoholic beverages is specifically prohibited by those directing, participating in, or spectators of any athletic events. However, under no circumstance shall the Director of the Parks and Recreation Department authorize the consumption of alcoholic beverages at any youth activities and programs, regardless of who they are organized by the County or self-organized and authorized under permit by the Department.

~~(e)~~ The Director of the Parks and Recreation Department shall provide the Board of County Commissioners with a monthly report detailing the permitted instances of alcohol consumption at adult athletic events and the results thereof in order to allow the Board to assess the impact to the parks from such alcohol consumption.

#### *Rule 34. Proper Use of Facilities*

(a) No person over the age of ten (10) shall occupy such seats or benches or enter into such pavilions or other park structures or sections thereof that are reserved or designed by the Parks Department for the exclusive use of the opposite sex unless, providing personal assistance to a person with a disability, when no unisex facility exists. Children ten (10) years of age and under entering such opposite sex facilities must be accompanied by a parent or guardian.

(b) No person will loiter in or around any restroom, dressing room or bathhouse, picnic shelter, wooded or natural area or parking lot. Loitering will be construed to mean sitting, standing or pacing within plain view of any of the above-mentioned areas for a period of ten minutes or more without making proper use of the facilities for which they were intended.

(c) No person shall be nude or dress or undress to the point of nudity in any park, vehicle or vessel, except in such structures as may be provided for such purpose.

(d) No person shall be permitted to intentionally urinate or defecate outdoors or in plain view of the public within any Town park, except when properly using facilities designed specifically for that use.

#### *Rule 35. Gambling*

No person or organization shall conduct raffles, bingo games, or card games for money or drawings for prizes or participate in any other forms of gambling within park limits unless specifically permitted in writing by the Parks and Recreation Department.

### ENFORCEMENT AND OBEDIENCE TO RULES

#### *Rule 36. Authority of ~~Miami-Dade~~ Police Department Officials and Parks Department Officials*

(a) It shall be the duty and responsibility of the Town of Cutler Bay Policing Unit of the Miami-Dade Police Department to enforce all State laws, County and Town ordinances, and in conjunction with Department Employees, enforce all regulations and rules as well as all provisions of permits issued by the Parks and Recreation Department within all parks and other areas maintained and operated by the Town of Cutler Bay Parks and Recreation Department ~~the~~



following areas of the County:

- (1) All parks and other areas maintained and operated by the Miami Dade Parks and Recreation Department;
- (2) All beaches and ocean areas east of the State designated erosion control line and made available to the public in the unincorporated area of the County and in municipalities.

**Sec. 26-2. Effect of other ordinances; cumulative; definitions.**

Other ordinances not in conflict with the police regulations, rules and permits adopted pursuant to Section 26-1 hereof shall be enforced in all properties under the management and control of the Parks and Recreation Department, and violators shall be punished in accordance with the particular ordinance violated.

This chapter and the police regulations, rules and permits adopted pursuant to Section 26-1 hereof shall be taken to be cumulative and shall not be construed to amend or repeal any other valid County or Town ordinance or penalty.

In construing the foregoing provisions and each and every word, phrase, or part thereof, where the context will permit, the definitions provided in Section 1.01 Florida Statutes shall apply.

~~Sec. 26-2.1. Reserved.~~

~~Sec. 26-3. Application to Rickenbacker Causeway and Venetian Causeway.~~

~~The provisions of this chapter, save and except Rules 3.(a) and (b), 16.(a), 22.(a) and (b), 11. (a), and 7.(e) as stated in Section 26-1 hereof, shall be applicable to and enforced by the Metro Dade Police Department in, about and on Rickenbacker Causeway and Venetian Causeway and all improvements, recreation areas and public property thereof.~~

**Sec. 26-43. Penalty.**

Any person convicted of a violation of any of the provisions of the Police Regulation, Rules and Permits adopted pursuant to Section 26-1, with the exception of Section 26-1, Rules 27(a) and 8(b), shall be punished by a fine not to exceed one hundred dollars (\$100.00) or by imprisonment in the County Jail for a period not to exceed thirty (30) days or such fine and imprisonment. Violation of Section 26-1, Rules 27(a) and 8(b) shall be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the County Jail for a period not to exceed thirty (30) days or both such fine and imprisonment. Any person who violates Section 26-1, Rule 8(b) by writing, painting or drawing any inscription, figure or mark ~~or~~ of any type on park property shall be punished in the manner set forth in Section 21-30.01 (3) of ~~this the~~ the Code of the Town of Cutler Bay, Florida.

~~Sec. 26-5. County employees and officials receiving benefits at county facilities.~~

~~None of the following enumerated persons: (a) County officials;~~

~~(b) Members of the Public Health Trust;~~

~~(c) Employees of either the County or Public Health Trust who receive executive benefits;~~

~~shall accept or grant any discount or other complimentary financial benefit, for playing golf or tennis at any Town park or other facility, unless such discount or benefit is available to all County employees under the same terms and conditions or unless such discount or benefit is available to all members of the public under the same terms and conditions.~~

~~Violation of this section shall be punishable by a fine not exceeding five hundred dollars (\$500.00), or by imprisonment in the county jail for not more than sixty (60) days or by both such fine and imprisonment.~~

~~Sees. 26-6-26-20. Reserved.~~

\*\*\*

**Section 3. Conflicts.** All ordinances or Code provisions in conflict herewith are hereby repealed to the extent of such conflict.

**Section 4. Severability.** The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 5. Inclusion in the Code.** It is the intention of the Town Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 6. Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

PASSED AND ADOPTED on second reading this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
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 11



## MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council

From: Steven J. Alexander, Town Manager

Date: March 17, 2010

Re: **ORDINANCE ADOPTING REVISIONS TO THE TOWN'S FLOODPLAIN MANAGEMENT REGULATION**

### REQUEST

**AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCE 09-06 ENTITLED, "FLOODPLAIN MANAGEMENT REGULATIONS"; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

### BACKGROUND AND ANALYSIS

In order for the Town residents to be eligible for participation in the National Flood Insurance Program (NFIP), the Town initially adopted a Floodplain Management Ordinance # 06-10. Town staff and Consulting Engineers have met with the Federal Emergency Management Agency (FEMA) to determine how to improve the Town's initial rating under the NFIP's Community Rating System (CRS) program. As a result of the meeting, Town staff prepared the requested FEMA changes which, resulted in the adoption of Ordinance #09-06.

Inadvertently, one of the "required" changes to the Town's Floodplain Management Ordinance, was not included within Ordinance #09-06. As a result, the Town' CRS application is on hold. Town staff is recommending the following changes (changes are underlined and ~~struck through~~) to Article 5, Section (B) (3) (a):

(3) *Elevated Buildings*. New construction or substantial improvements of elevated buildings that include enclosed areas formed by foundation and other exterior walls below the lowest floor elevation shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.

(a) Designs for complying with this requirement must be certified by a professional engineer or architect and meet or exceed the following criteria:

(i) Provide openings in each wall having a total net area of not less than 50% of the total wall area subject to flooding **and shall equal or exceed one square inch for each square foot of enclosed area.**



- (ii) **Provide A—at least one opening per wall, and the bottom elevation of all such openings shall be no higher than one foot above grade; and**
  
- (iii) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they provide the required net area of the openings and permit the automatic flow of floodwaters in both directions.

\*\*\*

### RECOMMENDATION

It is recommended that the Town Council adopt the proposed ordinance revising Town Ordinance number 09-06.



**ORDINANCE NO. 10 - \_\_\_\_**

**AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ARTICLE 5, SECTION B OF ORDINANCE 09-06 ENTITLED, “FLOODPLAIN MANAGEMENT REGULATIONS”; REVISING TOWN STANDARDS TO CONFORM TO FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) GUIDELINES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, in order to obtain coverage under the National Flood Insurance Program (“NFIP”) the Town must adopt Floodplain Management Regulations; and

**WHEREAS**, in consultation with the Federal Emergency Management Agency (“FEMA”), the Federal Agency which administers the NFIP, Town staff recommends additional changes to the Town’s regulations in order to fully comply with NFIP standards; and

**WHEREAS**, the Town Council wishes to make the following technical changes to Ordinance 09-06, which governs Floodplain Management; and

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

**NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS<sup>1</sup>:**

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

**Section 2. Amendment to Article 5, Section B of Ordinance 09-06 of the Town Code.** The Town Council of the Town of Cutler Bay hereby amends Article 5, Section B of Ordinance 09-06 of the Town Code of Ordinances as follows:

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**ARTICLE 5. PROVISIONS FOR FLOOD HAZARD REDUCTION**

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**SECTION B. SPECIFIC STANDARDS.**

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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.

In all A-Zones where base flood elevation data have been provided (Zones AE, A1-30, and AH), as set forth in Article 3, Section B, the following provisions, in addition to those set forth in Article 5, Section A, shall apply:

- (1) *Residential Construction.* All new construction or substantial improvement of any residential building (including manufactured home) shall have the lowest floor, including basement, mechanical and utility equipment and ductwork, elevated to no lower than one foot above the base flood elevation, beginning March 1, 2009. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate automatic equalization of flood hydrostatic forces on both sides of the exterior walls shall be provided in accordance with standards of Article 5, Section B (3).
- (2) *Non-Residential Construction.* All new construction or substantial improvement of any commercial, industrial, or non-residential building (including manufactured home) shall have the lowest floor, including basement, mechanical and electrical equipment and ductwork, elevated to no lower than one foot above the base flood elevation, beginning March 1, 2009. All buildings located in A-Zones may be flood-proofed, in lieu of being elevated, provided that all areas of the building components (including mechanical and electrical equipment and ductwork) below the base flood elevation plus one foot are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied using the FEMA Floodproofing Certificate. Such certification along with the corresponding engineering data, and the operational and maintenance plans shall be provided to the Floodplain Administrator.
- (3) *Elevated Buildings.* New construction or substantial improvements of elevated buildings that include enclosed areas formed by foundation and other exterior walls below the lowest floor elevation shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls. ~~(Note changes to this section should provide for 300 CRS points, but could impact remodeling of buildings with garages below the BFE i.e. Cutler Cay)~~
  - (a) Designs for complying with this requirement must be certified by a professional engineer or architect and meet or exceed the following criteria:
    - (i) Provide openings in each wall having a total net area of not less than 50% of the total wall area subject to flooding and shall equal or exceed one square inch for each square foot of enclosed area.
    - (ii) Provide At least one opening per wall and the bottom elevation of all such openings shall be no higher than one foot above grade; and



- (iii) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they provide the required net area of the openings and permit the automatic flow of floodwaters in both directions.
- (b) Enclosed areas below the lowest floor shall solely be used for parking of vehicles, storage, and building access. Access to the enclosed area shall be minimum necessary to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in connection with the premises (standard exterior door), or entry to the living area (stairway or elevator); and
- (c) The interior portion of such enclosed area shall not be finished or partitioned into separate rooms.

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**Section 3. Conflicts.** All ordinances or Code provisions in conflict herewith are hereby repealed to the extent of such conflict.

**Section 4. Severability.** The provisions of this Ordinance are declared to be severable, and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 5. Inclusion in the Code.** It is the intention of the Town Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

**Section 6. Effective Date.** That this Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this 17<sup>th</sup> day of February, 2010.

PASSED and ADOPTED on second reading this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
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:

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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 \_\_\_\_\_