



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 - REVISED

Wednesday, June 16, 2010, 7:00 p.m.
South Dade Regional Library
10750 SW 211th Street,
Cutler Bay, Florida 33189

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

2. PROCLAMATIONS, AWARDS, PRESENTATIONS

- A. Presentation – Chief Judge Joel H. Brown
- B. Presentation – Nestor Caballero of Alberni, Caballero and Company

3. APPROVAL OF MINUTES

- A. Regular Council Meeting – May 26, 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 REQUESTING THE TOWN MANAGER TO POST A

TAB 2

MONTHLY REPORT OF THE TOWN'S CHECK REGISTRY, INCLUDING BUT NOT LIMITED TO ALL TOWN REVENUES AND EXPENDITURES ON THE WEBSITE FOR PUBLIC ACCESS; REQUESTING THAT THIS INFORMATION BE PROVIDED IN THE FUTURE ON A MONTHLY BASIS; AND PROVIDING AN EFFECTIVE DATE. **(MACDOUGALL)**

B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING THE INTERLOCAL AGREEMENT BETWEEN THE TOWN AND MIAMI-DADE TRANSIT AGENCY FOR FEDERAL FUNDING ADOPTED BY TOWN RESOLUTION NUMBER 09-42; MODIFYING THE PROPOSED USE OF THE FUNDING IN ORDER TO PERMIT THE PURCHASE OF A CIRCULATOR-TYPE MINI-BUS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT AND ALL FUTURE FORMS AND AGREEMENTS REQUIRED FOR THE PROGRAM; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 3

C. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO ISSUE A PURCHASE ORDER TO MARLIN ENGINEERING, INC. TO PROVIDE CONSTRUCTION PHASE SERVICES FOR THE SW 208 STREET ROADWAY AND RESURFACING IMPROVEMENT PROJECT; AND PROVIDING AN EFFECTIVE DATE.

TAB 4

D. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE AGREEMENT WITH GENERAL ASPHALT COMPANY, INC. FOR THE SW 208 STREET ROADWAY AND RESURFACING IMPROVEMENTS; AUTHORIZING THE TOWN MANAGER TO ENTER INTO THIS AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 5

E. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA AUTHORIZING THE TOWN MANAGER TO WAIVE PERMITTING FEES FOR HOME REPAIRS FOR CUTLER BAY RESIDENT DOTTY HUDSON BY ALLOCATING FUNDS FROM THE 2009/2010 FISCAL YEAR BUDGET FOR THE PAYMENT OF PERMIT FEES; AND PROVIDING FOR AN EFFECTIVE DATE. **(MEERBOTT)**

ADD-ON

F. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA AUTHORIZING THE TOWN MANAGER TO WAIVE PERMITTING FEES FOR THE INSTALLATION OF A POOL FENCE FOR CUTLER BAY RESIDENT AND POLICE OFFICER JODY WRIGHT AND DONATE FUNDS FROM THE 2009/2010 FISCAL YEAR BUDGET FOR THE PAYMENT OF PERMIT FEES; AND PROVIDING FOR AN EFFECTIVE DATE. **(MEERBOTT)**

ADD-ON

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.

A. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A HEIGHT VARIANCE FOR AN OUT PARCEL ON THE PROPERTY LOCATED AT 20505 SOUTH DIXIE HIGHWAY TO PERMIT A ONE STORY BUILDING WHERE A MINIMUM SIX STORIES IS REQUIRED; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 6

B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A VARIANCE FROM SECTION 33-284.86 (B)(1)(A) FOR AN OUT PARCEL ON THE PROPERTY LOCATED AT 20505 SOUTH DIXIE HIGHWAY TO PERMIT A BUILDING TO NOT BE DIRECTLY ACCESSIBLE FROM A STREET FRONTAGE; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 7

C. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A VARIANCE FROM SECTION 33-284.86 (B)(1)(B) FOR AN OUT PARCEL ON THE PROPERTY LOCATED AT 20505 SOUTH DIXIE HIGHWAY RELATING TO THE CLEAR GLAZED AREA OF THE FAÇADE OF THE BUILDING; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 8

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, AUTHORIZING THE TOWN MANAGER, IN ACCORDANCE WITH SECTION 4.3(7) OF THE TOWN CHARTER, TO ENTER INTO LEASES BY ADMINISTRATIVE ACTION FOR THE PROPERTY LOCATED AT 10720 CARIBBEAN BOULEVARD AND THE PROPERTY IMMEDIATELY SOUTH OF THIS PROPERTY; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 9

B. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER, IN ACCORDANCE WITH SECTION 4.3(7) OF THE TOWN CHARTER, TO ENTER INTO LEASES OF TOWN OWNED PARK LAND BY ADMINISTRATIVE ACTION; APPROVING THE SITE LEASE AGREEMENT BETWEEN THE TOWN AND T-MOBILE SOUTH LLC, A DELAWARE LIMITED LIABILITY COMPANY, TO PLACE A TELECOMMUNICATIONS TOWER DESIGNED AS A FLAG POLE, WIRELESS ANTENNA AND GROUND EQUIPMENT ON TOWN-OWNED PROPERTY LOCATED AT 10100 SW 200TH STREET (A/K/A CUTLER RIDGE PARK), PROVIDING FOR THE AUTHORIZATION OF THE TOWN MANAGER TO ENTER INTO THIS AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

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, CREATING GENERAL REGULATIONS AND PROCEDURES RELATING TO TOWN ADVISORY BOARDS; PROVIDING THAT THESE GENERAL REGULATIONS AND PROCEDURES SHALL APPLY TO ALL EXISTING BOARDS AS WELL AS THOSE BOARDS ESTABLISHED IN THE FUTURE; AND PROVIDING FOR AN EFFECTIVE DATE. **(VROOMAN)**

TAB 11

B. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, REPEALING THE EXISTING CHAPTER 8B "EMERGENCY MANAGEMENT"; CREATING A NEW CHAPTER 8B ENTITLED "EMERGENCY MANAGEMENT" RELATING TO THE CREATION OF POLICIES AND PROCEDURES IN THE CASE OF TOWN EMERGENCIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

TAB 12

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. Code Compliance Hearing

Monday, June 28th at 10:00 a.m., Town Hall, 10720 Caribbean Blvd., Suite 105

B. Old Cutler Roadway Improvements - 2nd Public Information Meeting

Monday, June 28th at 6:00 p.m., South Dade Regional Library, 10750 SW 211th ST

C. Whispering Pines July 4th Celebration

Sunday, July 4th at 9:00 a.m., Whispering Pines Park, SW 88th CT & Ridgeland Dr.

D. Community Fireworks Display

Sunday, July 4th at 9:00 p.m., Black Point Marina & Park, 24775 SW 87th Ave.

E. Council Meeting

Wednesday, July 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, May 26, 7:00 p.m.
South Dade Regional Library
10710 SW 211th Street, 2nd Floor
Cutler Bay, Florida 33189

1. CALL TO ORDER/ROLL CALL OF MEMBERS: The meeting was called to order by the mayor at 7:03 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
Assistant to the Town Clerk Erin O'Donnell
Town Manager Steven J. Alexander

Mayor Vrooman led the Pledge of Allegiance.

2. PROCLAMATIONS, AWARDS, PRESENTATIONS: There were none at this time.

3. APPROVAL OF MINUTES:

A. Councilmember Meerbott made a motion approving the minutes of the regular council meeting on April 28, 2010. The motion was seconded by Councilmember Bell and adopted by a 5-0 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall, Mayor Vrooman voting Yes.

4. REPORTS

A. TOWN MANAGER'S REPORT:

The town manager reported on the recent and upcoming training sessions of staff including CPR, sexual harassment, and customer service training. He reported on several commendations for the town's police department in recent burglaries. He also reported on several Public Works on-going projects within the town as well and reported a large turnout for the first meeting for Old Cutler Roadway improvements. The town manager introduced Ramon Castella, a representative from C3TS for the Old Cutler Roadway improvements project who then informed the public on several ways to contact the Town should they be unable to attend the public information meeting. He also stated that tentatively there will be a second public information meeting scheduled for June 28th.

The town manager also took this time to announce that items 6 A, B, and C, have been deferred from the Quasi-Judicial Hearings until the next council meeting which is scheduled for June 16th. The titles are as follows:

- A.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A HEIGHT VARIANCE FOR AN OUT PARCEL ON THE PROPERTY LOCATED AT 20505 SOUTH DIXIE HIGHWAY TO PERMIT A ONE STORY BUILDING WHERE A MINIMUM SIX STORIES IS REQUIRED; AND PROVIDING FOR AN EFFECTIVE DATE.

- B.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A VARIANCE FROM SECTION 33-284.86 (B)(1)(A) FOR AN OUT PARCEL ON THE PROPERTY LOCATED AT 20505 SOUTH DIXIE HIGHWAY TO PERMIT A BUILDING TO NOT BE DIRECTLY ACCESSIBLE FROM A STREET FRONTAGE; AND PROVIDING FOR AN EFFECTIVE DATE.

- C.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A VARIANCE FROM SECTION 33-284.86 (B)(1)(B) FOR AN OUT PARCEL ON THE PROPERTY LOCATED AT 20505 SOUTH DIXIE HIGHWAY RELATING TO THE CLEAR GLAZED AREA OF THE FAÇADE OF THE BUILDING; AND PROVIDING FOR AN EFFECTIVE DATE.

Councilmember Meerbott made a motion to defer these items to the next regularly scheduled council meeting. The motion was seconded by Vice Mayor MacDougall and was adopted by unanimous voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall, Mayor Vrooman voting Yes.

B. TOWN ATTORNEY'S REPORT:

The town attorney informed the Town Council that red light enforcement legislation was passed as a state statute. The town is required to make any necessary changes in the current contract with the vendor.

C. BOARD AND COMMITTEE REPORTS, COUNCIL ANNOUNCEMENTS

Member Meerbott gave a brief overview of the town council's trip to Atlanta for the CNU 18 Conference. He shared his experience and hopes the knowledge they learned will involve positive outcomes for the town's future.

Councilmember Sochin reported that he has met with the Charter High School Committee which is progressing well and he is impressed by the informative speakers they have had thus far. He and Chair Alvarez will be visiting neighboring charter schools and reports to the Council should be coming soon. He also expressed his thanks to Ralph Casals, Public Works Director for his prompt attention to additional signage for Cutler Ridge Park.

Mayor Vrooman reported that he was happy to see that the pothole on Old Cutler Road has been filled.

5. CONSENT AGENDA:

- A.** 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)**

- B.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO CONTRACTS, AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT WITH SYMBIONT SERVICE CORPORATION FOR THE INSTALLATION OF A GEOTHERMAL POOL HEATING SYSTEM AT CUTLER RIDGE POOL IN AN AMOUNT NOT TO EXCEED \$70,257.00; AND PROVIDING AN EFFECTIVE DATE.

- C.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA URGING MIAMI-DADE COUNTY PUBLIC WORKS DEPARTMENT TO CONDUCT A TRAFFIC STUDY OF THE CORRIDOR THAT CONSISTS OF SW 216TH ST BETWEEN SW 107TH AVE AND OLD CUTLER ROAD TO INCREASE THE SPEED LIMIT WITHIN THE AFOREMENTIONED CORRIDOR; AND PROVIDING FOR AN EFFECTIVE DATE. **(MEERBOTT)**

Vice Mayor MacDougall pulled Item D and the town manager pulled Item E from the Consent Agenda for discussion.

Councilmember Sochin made a motion to approve the Consent Agenda as amended with Items D and E pulled for discussion. The motion was seconded by Councilmember Meerbott and Resolution 10-24 through 10-26 were adopted by 5-0 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall, Mayor Vrooman voting Yes.

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

- D.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, ESTABLISHING THE SOUTH DADE GREEN CORRIDOR DISTRICT; AUTHORIZING THE TOWN MANAGER AND TOWN ATTORNEY TO TAKE ANY AND ALL STEPS NECESSARY TO ESTABLISH THIS DISTRICT AS AUTHORIZED BY SECTION 163.08, FLORIDA STATUTES; FURTHER AUTHORIZING THE TOWN MANAGER AND TOWN ATTORNEY TO NEGOTIATE AN INTERLOCAL AGREEMENT WITH OTHER LOCAL GOVERNMENTS TO PARTNER WITH THE TOWN IN THIS DISTRICT; PROVIDING FOR TRANSMITTAL; AND PROVIDING FOR AN EFFECTIVE DATE. **(VROOMAN)**

Mayor Vrooman addressed the importance of the new Florida statute recently signed by Governor Crist and its origins from the Town.

Vice Mayor MacDougall made a motion to approve the resolution. The motion was seconded by Councilmember Sochin and Resolution 10-27 was adopted by unanimous voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

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

- E. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE TD BANK, N.A., FINANCING TERMS, ATTACHED AS EXHIBIT "A," FOR THE FINANCING OF THE PURCHASE OF THE PROPERTY LOCATED AT 10720 CARIBBEAN BOULEVARD AND THE PROPERTY IMMEDIATELY SOUTH OF THIS PROPERTY; AUTHORIZING THE TOWN MANAGER TO EXECUTE LOAN DOCUMENTS, CONTRACTS, OR OTHER INSTRUMENTS CONSISTENT WITH THESE FINANCING TERMS; WAIVING COMPETITIVE BIDDING DUE TO IT NOT BEING ADVANTAGEOUS AND IMPRACTICABILITY; PROVIDING FOR AWARD OF LOANS BY NEGOTIATED SALE; PROVIDING FOR DESIGNATION OF LOANS AS BANK QUALIFIED; AND PROVIDING FOR AN EFFECTIVE DATE.

The town manager provided clarification for the town council and updated them on any changes since the last workshop on this item. The town manager recognized and thanked Councilmember Bell for her suggestion of purchasing the vacant lot just south of Tower 2. He stated that this could potential become a Town community center for all to enjoy. Finance Director Robert Daddario also further clarified the terms of financing and answered the council's questions.

Councilmember Sochin made a motion to approve the resolution with a 5 year call option rate and a 10 year fixed rate on the land parcel south of the building. The motion was seconded by Councilmember Meerbott and Resolution 10-28 was adopted 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 assistant to 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 GENERAL REGULATIONS AND PROCEDURES RELATING TO TOWN ADVISORY BOARDS; PROVIDING THAT

THESE GENERAL REGULATIONS AND PROCEDURES SHALL APPLY TO ALL EXISTING BOARDS AS WELL AS THOSE BOARDS ESTABLISHED IN THE FUTURE; AND PROVIDING FOR AN EFFECTIVE DATE. **(VROOMAN)**

The mayor provided a brief background on the intent of the ordinance. Members of the council wanted some revisions to terms and rotation sequence, but it was advised that the members express their changes to the attorney or town manager before second reading..

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

The assistant to 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, REPEALING THE EXISTING CHAPTER 8B "EMERGENCY MANAGEMENT"; CREATING A NEW CHAPTER 8B ENTITLED "EMERGENCY MANAGEMENT" RELATING TO THE CREATION OF POLICIES AND PROCEDURES IN THE CASE OF TOWN EMERGENCIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

The town manager provided clarification on the ordinance.

Councilmember Meerbott made a motion to approve the ordinance on first reading. The motion was seconded by Councilmember Bell 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

The assistant to the town clerk read the following ordinance by title:

- A.** A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, PROVIDING LIMITED APPROVAL OF THE ISSUANCE BY THE ALACHUA COUNTY HEALTH FACILITIES AUTHORITY (THE "AUTHORITY") OF ITS HEALTH FACILITIES REVENUE BONDS (EAST RIDGE RETIREMENT VILLAGE, INC. PROJECT) IN ONE OR MORE SERIES AND IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$60,000,000; THE PROCEEDS FROM THE SALE OF THE BONDS WILL BE USED PRINCIPALLY TO FINANCE AND REFINANCE CERTAIN CAPITAL IMPROVEMENTS FOR EAST RIDGE RETIREMENT VILLAGE, INC. LOCATED IN THE TOWN; AND PROVIDING AN EFFECTIVE DATE.

The town attorney explained to the town council that with passing this ordinance, it would not affect the town's budget or require involvement in any way. It is simply a requirement of the application process for East Ridge Retirement Village.

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

Councilmember Meerbott made a motion to approve the resolution. The motion was seconded by Councilmember Bell 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.

9. ORDINANCES FOR SECOND READING (PUBLIC HEARING REQUIRED): None at this time.

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: Freddy Ambrose, 19310 Bel Aire Drive.

11. MAYOR AND COUNCIL COMMENTS:

Councilmember Bell reported that Army Staff Sgt. Amicar H. Gonzalez, a Cutler Bay resident, was killed in Iraq on May 21 and would like for council to attend memorial services for him.

Councilmember Meerbott informed town citizens about the 5th National Dump the Pump Day on June 17 encouraging residents to try public transportation for one day.

Vice Mayor MacDougall applauded the town clerk on her way to update the town's Municode software without high expenses. He inquired about the status of traffic signals to be installed in school zones. He inquired also about the status of Gas Tax funds to help offset the costs of said lights.

Mayor Vrooman invited Florida Representative Dwight Bullard to speak to citizens and the council and inform them of current service offerings in their office.

12. OTHER BUSINESS: None at this time.

13. ADJOURNMENT

The next council meeting will be held on June 16, 2010 at South Dade Regional Library.

The meeting was officially adjourned at 8:40 P.M.

Respectfully submitted:

*Erin O'Donnell
Assistant to the Town Clerk*

*Adopted by the Town Council on
this 16th day of June, 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 REQUESTING THE TOWN MANAGER TO POST A MONTHLY REPORT OF THE TOWN'S CHECK REGISTRY, INCLUDING BUT NOT LIMITED TO ALL TOWN REVENUES AND EXPENDITURES ON THE WEBSITE FOR PUBLIC ACCESS; REQUESTING THAT THIS INFORMATION BE PROVIDED IN THE FUTURE ON A MONTHLY BASIS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, it is the desire of the Town Council of the Town of Cutler Bay (the "Town") to increase transparency with regard to the Town's revenues, expenditures and financial documents; and

WHEREAS, the Town Council recognizes the need to embrace and fully utilize technological improvements to keep the Town on the cutting edge of government innovation; and

WHEREAS, the Town has already taken substantial steps to increase transparency by making financial documents and budgets available to the public through the Town's website; and

WHEREAS, the Town's existing website will allow the public to access, download information on the Town's check registry, quarterly reports, proposed and final budgets, at no cost to the taxpayer; and

WHEREAS, the Town finds that this Resolution will promote the health, safety and welfare of the Town.

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

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

Section 2. Approval and Authorization. The Town Council approves the electronic posting of the contents of the Town's check registry on the Town's official website. The posting shall include, but not be limited to, the following items: checks, petty cash payment, credit card transactions, reimbursement, payments for professional service, purchase orders, grants, bond payments, loan payments, lease payments, contracts and subcontracts. The Town Council further authorizes the Town Manager to begin posting this information as soon as it is feasible to do so.

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.A.
Town Attorney

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

TAB 3



Office of the Town Manager

Steven J. Alexander
Town Manager

MEMORANDUM

To: Honorable Mayor and Councilmembers

From: Steven J. Alexander, Town Manager

Date: June 16, 2010

Re: **Resolution Authorizing the Execution of an Interlocal Agreement Between the Town and Miami-Dade Transit Agency for the Operation of a Town Circulator Bus Service**

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE INTERLOCAL AGREEMENT BETWEEN THE TOWN OF CUTLER BAY AND THE MIAMI-DADE COUNTY TRANSIT AGENCY FOR MUNICIPAL CIRCULATOR BUS SERVICES; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT AND ALL FUTURE FORMS AND AGREEMENTS REQUIRED FOR THE PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

As previously discussed with the Town Council, attached is the proposed Interlocal Agreement ("Agreement") between Miami-Dade County Transit Agency ("MDT"). This Agreement will allow the Town to contract with MDT to perform the necessary daily operation and Federal reporting requirements, of the Town's new municipal circulator bus service. The Agreement is a five (5) year agreement, with two (2) two renew options each two (2) year terms.

The proposed municipal circulator's days of service are: Monday, Wednesday, and Friday (hours of operations: 8:00 am to 5:10 pm). Annual operating costs are \$ 146,700 and will be funded through the Town's Transit portion of the ½ sales tax (People's Transportation Plan – PTP) subsequent to receipt by the Town. The operating costs will fund MDT's driver, fuel, maintenance costs, reporting requirements, and other related costs associated with the operation of the municipal circulator service.

Town staff is recommending a minimal fair charge of twenty-five cents (\$.25), in addition any rider can utilize MDT's Easy Cards and/or Golden Pass. The Municipal Circulator will follow the Town's "familiar" Holiday Circulator Route which has been very successful in the years. One of the most significant improvements, to the Town's Holiday Circulator Route is, the connectivity to MDT's existing bus routes within the Town and the connection to the South Dade Busway. These proposed connections will allow Town residents to not only move within the Town but, move within MDT's transit system (South Dade Busway, Metro-rail, People Mover – Downtown, etc.).



As part of the Agreement, MDT will issue an Annual comprehensive Performance Report. This report will study ridership data, trends, number of patrons picked-up at stops, number bus breakdowns, logged complaints & resolutions.

Additionally, the Town's circulator bus service will be included in all of MDT's bus schedules, route maps, and other promotional materials throughout the entire County.

A similar agreement has been in place with the City of Miami Beach for several years. Town staff contacted the City and received positive feedback on their municipal circulator service, which is operated on a daily basis by Miami-Dade County Transit Agency.

RECOMMENDATION

It is recommended that the Town Council approve the attached Resolution Authorizing the Town Manager to Execute the Interlocal Agreement with the Miami-Dade County Transit Agency.



RESOLUTION NO. 10-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING THE INTERLOCAL AGREEMENT BETWEEN THE TOWN AND MIAMI-DADE TRANSIT AGENCY FOR FEDERAL FUNDING ADOPTED BY TOWN RESOLUTION NUMBER 09-42; MODIFYING THE PROPOSED USE OF THE FUNDING IN ORDER TO PERMIT THE PURCHASE OF A CIRCULATOR-TYPE MINI-BUS; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT AND ALL FUTURE FORMS AND AGREEMENTS REQUIRED FOR THE PROGRAM; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay, Florida (the “Town”) has prepared an interlocal agreement (Exhibit “A”) with Miami-Dade Transit Agency (“MDT”) to have certain projects within the Town funded through the American Recovery and Reinvestment Act (the “ARRA”) of 2009, recently passed by Congress and signed by the President, to be administered through Miami-Dade Transit Agency; and

WHEREAS, MDT must submit a single grant application to Federal Transit Administration for the entire \$69.8 million and will incorporate all of the projects from participating municipalities within that application; and

WHEREAS, MDT is the only designated recipient of funds in Miami-Dade County, and it will be responsible for submitting the grant application, overseeing project management, and reporting on all of the project’s progress (inclusive of the municipalities) through the life of the grant; and

WHEREAS, the Town is seeking to amend the original application submitted and adopted via Town Resolution 09-42 which would utilize the funds received to install new bus shelters and ADA compliant sidewalks for the bus shelters with Town’s portion of the funding received by MDT; and

WHEREAS, the Town is resubmitting its application for funding to allow for the purchase of a new circulator-type mini-bus (the “Mini-Bus”) rather than for the bus shelters and sidewalk construction, which will instead be funded by the People’s Transportation Plan funding subsequent to the Town’s receipt of such funds; and

WHEREAS, in order to ensure compliance with Federal guidelines and the ARRA, the Mini-Bus will be purchased through Miami-Dade County’s Procurement process which has been modified to meet all Federal requirements; and

WHEREAS, the Town Council desires to enter into the Interlocal Agreement with MDT attached hereto as Exhibit "A" and to authorize the Town Manager or his designee to execute all further documents and agreements necessary in order for the Town to receive funding to purchase the Mini-Bus; and

WHEREAS, the Town finds that this Resolution will promote the health, safety and welfare of the Town.

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

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

Section 2. Approval of Agreement and Authorization. The Interlocal Agreement for the Town transit project relating to the purchase of a circulator-type mini-bus (the "Mini-Bus") through Miami-Dade County's procurement process, in substantially the form attached hereto as Exhibit "A", is hereby approved by the Town Council, and the Town Manager is authorized to negotiate and execute the same on behalf of the Town. Additionally, the Town Manager is hereby authorized to sign any and all additional agreements or documents and provide any further documentation to state or federal authorities required in order for the Town to receive funding or other funding from the state of Florida relating to the purchase of the Mini-Bus.

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 S. Sochin _____

**Interlocal Agreement
between
Miami-Dade County and the Town of Cutler Bay
for the Provision of
A Transit Circulator Route Service in Cutler Bay
to be Known as the Cutler Bay Circulator**

This is an Interlocal Agreement, made and entered into the _____ day of _____, 2010, by and between Miami-Dade County, a political subdivision of the State of Florida, hereinafter referred to as “the County”, and the Town of Cutler Bay, a municipal corporation of the State of Florida, hereinafter referred to as “the Town”.

WITNESSETH:

WHEREAS, both the Town and the County wish to have the County to operate a circulator route service in Cutler Bay, to be known as “The Cutler Bay Circulator” and

WHEREAS, the Cutler Bay Circulator would provide transit service to connect commercial and recreational activity centers with the residential neighborhoods in Cutler Bay, and would provide the advantages of small buses and low-cost fares to provide mobility to the residents of Cutler Bay including those without personal transportation and

WHEREAS, the Cutler Bay Circulator will provide a circulator, which maximizes service to the community, while eliminating service duplication and waste of public resources.

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, the County and the Town agree as follows:

ARTICLE 1

DEFINITIONS

- 1.1 “ADA” shall mean the Americans with Disabilities Act of 1990, as amended.
- 1.2 “Contractor” shall mean any entity, public or private, providing public transit services or contributing to the provision of the services described in this Agreement under contract to the County.
- 1.3 “The County” shall include Miami-Dade County, the Miami-Dade Transit, the Miami-Dade Consumer Services Department, and authorized representatives thereof.

- 1.4 “The Town” shall mean the Town of Cutler Bay and authorized representatives thereof.
- 1.5 “MDT” shall mean the Miami-Dade Transit and authorized representatives thereof.
- 1.6 “USDOT” shall refer to the U.S. Department of Transportation, its rules and regulations, and representatives thereof.
- 1.7 “Fare” for shuttle service shall mean the individual transportation fee paid by public transit passengers, in accordance with this Agreement.
- 1.8 “Line-up(s)” shall refer to the event(s) when new schedules or service is implemented by MDT in accordance with the CBA, as said term is defined in Subsection 1.9 below.
- 1.9 “CBA” shall mean Collective Bargaining Agreement between the Miami-Dade County and the Transport Workers Union Local 291.
- 1.10 “TWU” shall mean Transport Workers Union Local 291.
- 1.11 “The Cutler Bay Circulator” shall mean the Transit Circulator Route Service in Cutler Bay, operating diesel or an alternative fuel minibus.

ARTICLE 2

GENERAL REQUIREMENTS

- 2.1 Compliance with Applicable Laws and Regulations. The Town and the County and its contractors, if any, shall comply with all existing and future laws, statutes, ordinances, codes, rules, regulations, CBA and procedural requirements, whether federal, state, or local, which are applicable to, or in any manner affect, the provision of the Cutler Bay Circulator service. The County shall be responsible for ensuring compliance of its employees, contractors, agents, or assigns with all applicable County, State, and federal requirements, including, but not limited to, all safety, mechanical, and vehicular standards mandated by appropriate laws, regulations, ordinances, and documents and complying therewith.
- 2.2 Vehicles. Through a separate Interlocal agreement, the Town will be purchasing two ADA compatible diesel engine buses with funding from the American Recovery and Reinvestment Act (ARRA) that will be utilized to provide the Cutler Bay Circulator service. The title of these buses will be transferred to the County and those buses will be utilized solely for the provision of the Cutler Bay Circulator Service. The vehicles shall comply with all safety, mechanical, and

vehicular standards mandated by any applicable County, State, and federal requirements including, but not limited to, all safety, mechanical, and vehicular standards. The vehicles shall be maintained in conformance with manufacturer's specifications and MDT standards. Until receipt of such new vehicles, the County will use vehicles current in the MDT fleet

2.2.1 Vehicles shall be painted or decaled in distinctive livery, such as the special logos, colors and designs shown in **Exhibit A**. The logo of the Cutler Bay Circulator service shall be displayed on the vehicles along with the logo or other branding being used by the County. The vehicles in this livery shall be used for the Cutler Bay Circulator service. In circumstances when the special-liveried buses are not available for service, standard Metrobus minibuses may be used.

2.2.2 All vehicles will be equipped with Automatic Passenger Counters (APC). All vehicles will be equipped with on-board surveillance equipment (voice and video) and automated vehicle locator (AVL) systems.

2.3 Compliance with Procurement Requirements. The County and the Town agree to comply with applicable federal and state procurement requirements, as may be amended from time to time, when entering into contracts with third parties to fulfill the obligations under this Agreement.

2.4 Drug-free Workplace and Testing. In accordance with the Code of Miami-Dade County, the County, and its contractors, in any, shall continue to maintain a drug-free workplace program including pre-employment drug testing and other periodic drug testing for all persons holding safety-sensitive positions, as defined by USDOT, related to transit operations. Effective upon execution of the Agreement, the County shall require that its employees and contractors, if applicable, comply with all applicable requirements of the USDOT regulations for drug and alcohol testing. To the extent that any terms in this Agreement are inconsistent with the USDOT regulation, the requirements of the USDOT shall control.

2.5 County Representative. The County will provide service supervision for the Cutler Bay Circulator service by assigning a Transit Operation Supervisor (TOS) to the zone where the service will be provided; someone who will monitor the Cutler Bay Circulator route service on the field level. The Director or his Designee shall act as a contact person for the Town Representative. Customer service will be provided through the County's 311 system.

2.6 Town Representative. The Town shall designate individual(s) to act as liaison to the County's staff and notify the County thereof. The Town shall promptly notify the County of any changes.

- 2.7 Public Coordination. The County and Town Representatives shall present proposed modifications to the alignment, schedule and fare of the Cutler Bay Circulator service at any forums requested by the Town. In addition, the County Representative shall provide information on the overall performance and quality of service of the Cutler Bay Circulator service including ridership data and trends, number of bus breakdowns and substitutions, logged complaints and complaint resolutions, and any other data reasonably requested by the Town. MDT will include this information in the bi-annual reports. Public information meetings and workshops will be conducted by both County and Town Representatives on an as-needed basis.
- 2.8 Amendments or modifications. Unless provided otherwise elsewhere in this Agreement, amendments and modifications to this Agreement must be in writing and shall require the signatures of the County Manager and the Town Manager, or their designees, subject to authorization by their respective Board and Commission. Notwithstanding the foregoing, amendments to this Agreement regarding alignments, schedules, and fares, as described in Section 2-150 (c) of the Miami-Dade County Code, may be approved by the County Manager and the Town Manager, subject to authorization by the Town Commission.

ARTICLE 3

THE CUTLER BAY CIRCULATOR SERVICE

- 3.1 Provision of the Cutler Bay Circulator Service. The County shall provide the Cutler Bay Circulator service within the South Dade area in the Town of Cutler Bay at the locations and according to routes as contained in **Exhibit B** and schedules contained in **Exhibit C**. Any changes to **Exhibits B or C** shall be consistent with Chapter 31 of the Code of Miami-Dade County and be effective only upon the written consent of the County Manager and the Town Manager. **Exhibit C** defines the level of service that is required under this Agreement. The County will provide sufficient resources, including, but not limited to, buses and drivers to maintain this level of service.
- 3.2 Fares. The fare for the Cutler Bay Circulator service shall be twenty-five cents (\$0.25). Any proposed changes to the regular fare of \$0.25 will be presented to the Town and must be approved by the County Manager and the Town Manager, subject to authorization by the Town Council and County Commission. Qualified passengers shall pay no fare. MDT Easy Cards and Tickets, or identification entitling a passenger shall be accepted to enable passengers to ride the Cutler Bay Circulator service without paying any additional fare. The Cutler Bay Circulator service operators shall charge as appropriate and in compliance with County Code and applicable laws, rules and regulations. Operators will accept Easy Cards, Easy Tickets, or cash. Transfers were discontinued in 2009; therefore there is no transfer fare.

- 3.3 Connection and Coordination with Regular Metrobus Routes. The Cutler Bay Circulator service shall enable passengers to connect with other County Metrobus routes at points where the routes intersect, merge, or diverge. The Cutler Bay Circulator service operating schedules shall be coordinated with County Metrobus service to the extent possible.
- 3.4 The Cutler Bay Circulator Service Shown on County Bus Schedules and Maps. The County shall include the Cutler Bay Circulator service on the County's Transit Map. Such inclusion shall commence with the regular publication of the County's Transit Map. The County shall also provide information on the Cutler Bay Circulator service through MDT's routine and customary public information dissemination processes, including its transit information telephone service and on the transit web site.
- 3.5 Issuance of the Cutler Bay Circulator Service Schedules. The County shall make available to its Metrobus, Metrorail, and Metromover passengers and potential passengers maps and schedules of the Cutler Bay Circulator service. Such maps and schedules shall display the logo, "Cutler Bay Circulator", and County branding.
- 3.6 Use of Logo. The County and the Town shall both approve and design a logo uniquely identifying the Cutler Bay Circulator. In addition to the Cutler Bay Circulator service logo and the County logo shall be applied on the vehicles as appropriate. Such logos shall at all times be displayed on the exterior of all vehicles and on the County's bus stop signs at all stops served by the Cutler Bay Circulator service.
- 3.7 Bus Passenger Shelters and Benches. The Town or its contractor shall install and maintain the bus passenger shelters and/or benches at the Cutler Bay Circulator bus stops where site conditions allow. Where shelters cannot be installed, the Town or its contractor shall install and maintain bus passenger benches. The County shall provide, install, and maintain bus stop signs and sign posts at Shuttle stops along route of the Cutler Bay Circulator service. The Town agrees that it will be the responsibility of the Town to comply with all ADA regulations with regards to accessibility to and from bus passenger stops and bus shelters.
- 3.8 Service Quality Standards. The County shall abide by its own Service Standards.
- 3.09 Selection of Drivers. Drivers will be provided by the County. County employees shall bid for the Cutler Bay route in accordance with the Collective Bargaining Agreement (CBA).
- 3.10 Annual Report. The County shall provide an annual comprehensive performance report to the Town in May of each year. The report shall include ridership data and trends, number of bus breakdowns and substitutions, logged complaints and

complaint resolutions, and any other data reasonably requested by the Town. The County shall also provide a report in November of each year with projected operating costs for the Cutler Bay Circulator service for the next fiscal year. The County shall provide finalized costs in July of each year for consideration by the Town Council as part of the Town's annual budget preparation process.

- 3.11 Town Council Action. Any Cutler Bay Circulator service – related items that require consideration and approval by the Town Council shall be submitted in writing by the County to the Town Representative no later than sixty (60) days prior to the specified Council meeting date. Examples of such items are the proposed annual operating budget, and any County-proposed amendments and modifications to this Agreement.
- 3.12 Route Evaluation. MDT shall analyze the route to determine if it meets MDT Service Standards. MDT shall make the appropriate modifications to ensure the success of the Cutler Bay Circulator. MDT shall include information on the evaluation and modifications in the bi-annual reports in Section 2.7 and 3.10 in this Agreement.
- 3.13 Transit Operation Supervisor and Customer Service Staff. The County will provide TOS and Customer Service staff to take care of all complaints and concerns sent directly to the County or the Town. The County representative will be available to the Town during regular business hours.

ARTICLE 4

INSURANCE

The parties hereto acknowledge that both the County and the Town are self-insured governmental entities subject to the limitations of Section 768.28, Florida Statutes. The County and the Town shall maintain a fiscally sound and prudent risk management program with regard to its obligations under this Agreement in accordance with the provision of Section 768.28, Florida Statutes. The County and the Town shall collect and keep on file documentation of insurance of any and all contractors contracted to provide and service or product used in conjunction with the operation of the Cutler Bay Circulator service in any way. The County shall further require all contractors to include the Town as a named insured and shall provide the Town with a copy of the insurance policy purchased by any contractor prior to the commencement of the Cutler Bay Circulator service.

ARTICLE 5

INDEMNIFICATION

- 5.1 In the event the County contracts for transportation services authorized by this Agreement, the contractor shall, in its contract with the County, be required to indemnify and hold harmless the County and the Town, and their officers, agents, employees and instrumentalities from any and all liability, claims, liabilities, losses, and causes of action, including attorneys' fees and costs of defense which the County and the Town, and/or their respective officers, employees, agents and instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, or relating to or resulting from the provision of transportation services by the contractor and/or its officers, employees, agents or independent contractors. The contractor shall be required to pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County and the Town, where applicable, including appellate proceedings, and shall pay all costs, judgments and attorneys' fees which may issue thereon. The County shall require that the contract between and the County and the contractor include a provision which states that the contractor expressly understands and agrees that any insurance protection required by this agreement or otherwise provided by the contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County and the Town and/or their respective officers, employees, agents or instrumentalities as herein provided. Nothing herein shall be deemed to indemnify the County and the Town from any liability or claim arising out of the negligent performance of the County and the Town, and/or their respective officers, employees, agents or instrumentalities or any other related third party.
- 5.2 In the event the Town contracts for bus passenger shelters and benches, in conjunction with the provision of service as detailed in this Agreement, the contractor shall, in its contract with the Town, be required to indemnify and hold harmless the County and the Town, and/or their respective officers, agents, employees and instrumentalities from any and all liability, claims, liabilities, losses, and causes of action, including attorneys' fees and costs of defense which the County and the Town, and/or their respective officers, employees, agents and instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, or relating to or resulting from the provision of transportation services by the contractor and/or its officers, employees, agents or independent contractors. The contractor shall be required to pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County and the Town, where applicable, including appellate proceedings, and shall pay all costs, judgments and attorneys' fees which may issue thereon. The Town shall require that the contract between and the County

and the Town and the contractor include a provision which states that the contractor expressly understands and agrees that any insurance protection required by this agreement or otherwise provided by the contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County and the Town and/or their respective officers, employees, agents or instrumentalities as herein provided. Nothing herein shall be deemed to indemnify the County and the Town from any liability or claim arising out of the negligent performance of the County and the Town, and/or their respective officers, employees, agents or instrumentalities or any other related third party.

ARTICLE 6

FINANCIAL ASSISTANCE

- 6.1 Funding. The Town shall pay to the County one hundred percent (100%) of the actual net operating cost of The Cutler Bay Circulator service. The approximate total net operating cost of the service is not to exceed \$ 146,700 (three (3) days a week service 8:00 a.m. to 5:10 p.m.) for the first year of service except for increases to operating costs that are not due to service changes. The payment shall be made on a quarterly basis, within thirty (30) days of the Town receiving an appropriate invoice from the County. The amount of the payment shall be one fourth (1/4th) of the agreed annual Town share, unless otherwise agreed upon by the parties.

In subsequent fiscal years, the Town will continue to pay the County 100% of the actual operating costs. The County shall notify the Town of any increases in operating costs a minimum of six (6) months in advance.

It is the sole responsibility of the Town of Cutler Bay to determine the source of and dollar amount per source of funds to comprise the total contribution to the County for the provision of the Cutler Bay Circulator service as required in this Agreement.

- 6.2 Operating Expenditure Reports. The County shall prepare and provide to the Town Representative, quarterly reports of operating expenditures incurred by the Cutler Bay Circulator service.

ARTICLE 7

TERMS, MODIFICATIONS AND MISCELLANEOUS PROVISIONS

- 7.1 Term of Agreement. This Agreement shall become effective upon approval of the Board of County Commissioners and the Town Council of the Town of Cutler Bay and the execution by the County Manager and Town Manager and shall remain in force for five (5) years thereafter. This Agreement is subject to two (2) two (2) - year options to renew. The County and the Town, each at their sole discretion, reserve the right to exercise the option to renew this Agreement. Upon mutual agreement by both the County and the Town to exercise the option to renew this Agreement, approval from County Manager and the Town Council will be obtained.
- 7.2 Commencement of Service. By specific agreement of the parties, the Cutler Bay Circulator service shall begin service in _____ 2010. The County shall operate the Cutler Bay Circulator service with existing Metrobuses. The County will utilize the new buses purchased via the Inter Local Agreement between Miami-Dade Transit and the Town of Cutler Bay for Federal Funding Pass-Through Arrangements with the American Recovery and Reinvestment Act (ARRA) of 2009 Federal Transit Administration (FTA5307) for the Town to Operate Circulator Services.
- 7.3 Renegotiation or Modification. Any substantive changes in the level of service to be provided by the County as set forth herein shall only be implemented after the County and the Town have entered into a written agreement describing the changed services
- 7.4 Title VI and VII Civil Rights Act of 1964. The Town, the County, and their respective Contractors shall not discriminate against any person because of race, color, sex, religious background, ancestry, or national origin in the performance of the Agreement.
- 7.5 Termination for Cause. This Agreement may be terminated for cause by either party. Prior to exercising the option to terminate for cause, the notifying party shall give the defaulting party written notice of its violation of the particular term(s) of the Agreement and shall grant the defaulting party thirty (30) days to cure such default. If such default remains uncured after thirty (30) days, the notifying party may terminate the Agreement upon no less than one hundred twenty (120) days written notice to the defaulting party. If the termination notification is from the Town, the notice shall be sufficiently in advance for MDT to implement a line-up without the service.
- 7.5.1 If the County fails to deliver the services and meet the objectives delineated in this Agreement, and the Town terminates the Agreement for Cause, the County

will allow the Town to operate the Cutler Bay Circulator service, as defined herein.

7.6 Termination for Convenience. Notwithstanding Subsection 7.5 above, the County or the Town may terminate this Agreement for convenience upon no less than one hundred twenty (120) days written notice to the other party. If the Town terminates this Agreement for convenience, the Town agrees to reimburse the County on a prorated basis for financial assistance it is obliged to pay for the Cutler Bay Circulator service, which the County will continue to operate until the next line-up can be implemented without the service.

7.6.1 If the Town terminates this Agreement for convenience, the County will allow the Town to operate the Cutler Bay Circulator service, as defined herein.

7.7 Notices. All notices and other communications required to be remitted pursuant to this Agreement to either party hereto shall be in writing and shall be delivered by verified facsimile transmission or certified mail, return receipt requested, to the parties at the address indicated as follows:

FOR MIAMI-DADE COUNTY:

Miami-Dade Transit
701 N.W. 1st Court, Suite 1700
Miami, FL 33136
Attention: Director, Miami-Dade Transit

FOR THE TOWN OF CUTLER BAY:

Town of Cutler Bay
10720 Caribbean Blvd., Suite# 105
Cutler Bay, FL 33189
Attention: Steven J. Alexander, Town Manager

With copy to:

Town Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske, PL
2525 Ponce De Leon Blvd., Suite# 700
Coral Gables, Florida 33134

7.8 Complete and Binding Agreement. This writing embodies the full and complete agreement of the parties. No other terms, conditions or modifications shall be binding upon the parties unless in writing and signed by the parties.

7.9 Execution. This document shall be executed in four (4) counterparts, each of which shall be deemed an original.

7.10 Governing Law and Exclusive Venue. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective and duly authorized officers the day and year first above written.

ATTEST:

TOWN OF CUTLER BAY
a Municipal Corporation of
The State of Florida

By: _____
TOWN CLERK

By: _____
TOWN MANAGER

ATTEST:

MIAMI-DADE COUNTY
a political subdivision of
The State of Florida.

By: _____
HARVEY RUVIN, CLERK

By: _____
By Board of County
Commissioners

By: _____
DEPUTY CLERK

By: _____
GEORGE BURGESS
COUNTY MANAGER

Approved by County Attorney as
to form and legal sufficiency _____

EXHIBITS

Exhibit “A” Special Logos, Colors, and Bus Wrapping Designs

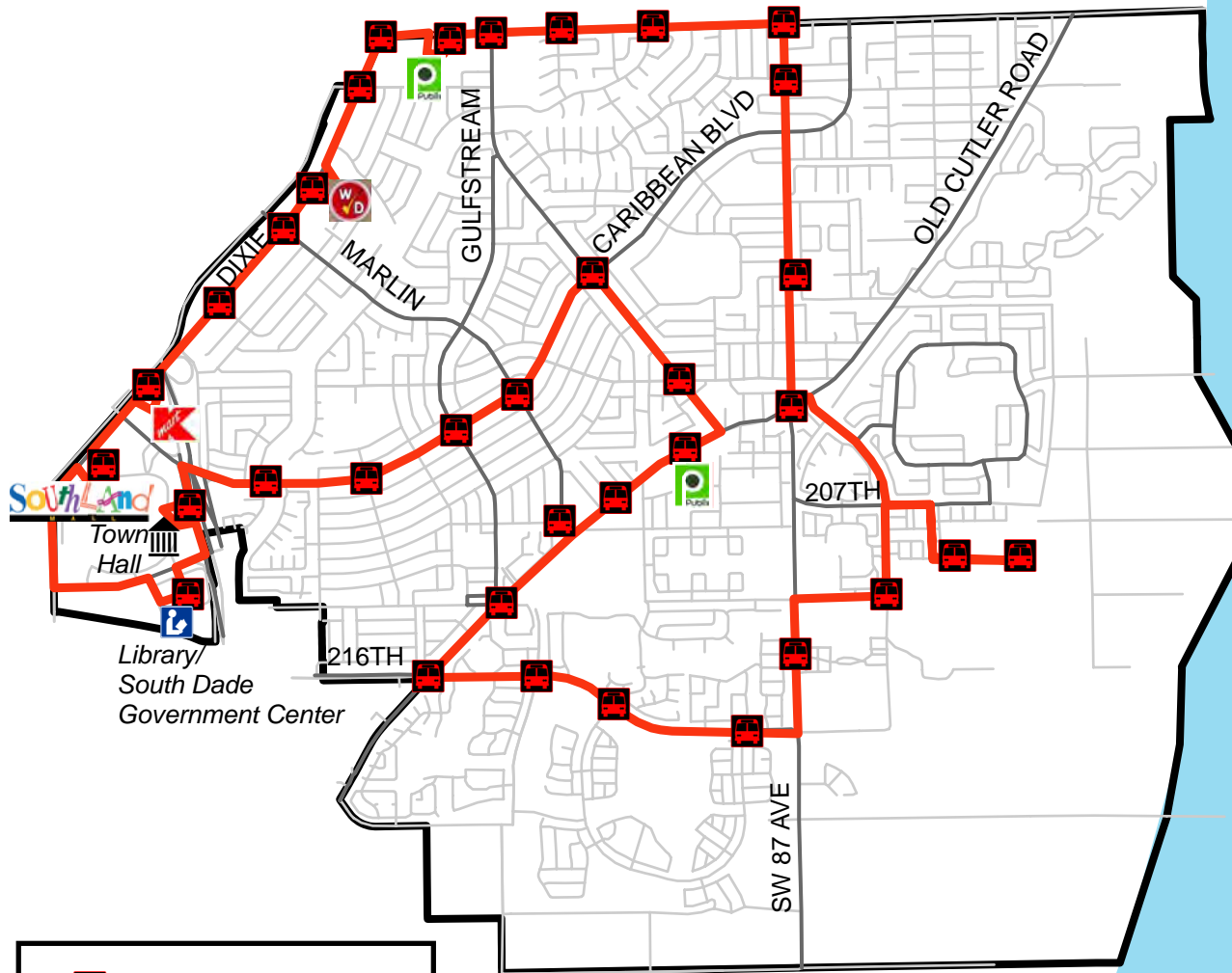
Exhibit “B” Map of the Cutler Bay Circulator Route

Exhibit “C” Schedule of the Cutler Bay Circulator Service

Cutler Bay Circulator



Town of Cutler Bay Municipal Circulator



Operating Hours:
Monday thru Friday
8am to 4pm

- Bus Stops
- Cutler Bay Circulator
- Cutler Bay Streets
- Cutler Bay Boundary

THE CORRADINO GROUP

For Additional Route
Information Please
Call Town Hall
(305) 234-4262

Town of Cutler Bay Municipal Circulator
Preliminary Schedule

Monday, Wednesday, Friday

<u>Town Hall</u>	<u>Saga Bay</u>	<u>Town Hall</u>
8:00	8:30	9:00
9:10	9:40	10:10
10:20	10:50	11:20
11:30	12:00	12:30
12:40	1:10	1:40
1:50	2:20	2:50
3:00	3:30	4:00
4:10	4:40	5:10

ATTACHMENT B

LANGUAGE FOR INCORPORATION INTO THE CONTRACT OF ASSISTANCE Grant #FL-96-X028

The "Public Body", Town of Cutler Bay, agrees that the following terms and conditions shall apply for the protection of employees in the mass passenger transportation industry in the service area of the project:

- 1 The project shall be carried out in such a manner and upon such terms and conditions as will not adversely affect employees in the mass passenger transportation industry within the service area of the project. The "service area" as used herein, includes the geographic area over which the project is operated and the area whose population is served by the project, including adjacent areas affected by the project;
- 2 All rights, privileges, and benefits (including pension rights and benefits) of employees (including employees already retired) shall be preserved and continued;
- 3 The Public Body shall be financially responsible for any deprivation of employment or other worsening of employment position as a result of the project;
- 4 In the event an employee is terminated or laid off as a result of the project, he shall be granted priority of employment or reemployment to fill any vacant position for which he or she is, or by training or retraining can become, qualified. In the event training or retraining is required by such employment or reemployment, the Public Body shall provide or provide for such training or retraining at no cost to the employee;
- 5 Any employee who is laid off or otherwise deprived of employment or placed in a worse position with respect to compensation, hours, working conditions, fringe benefits, or rights and privileges pertaining thereto at any time during his or her employment as a result of the project, including any program of efficiencies or economies directly or indirectly related thereto, shall be entitled to receive any applicable rights, privileges and benefits as specified in the employee protective arrangement, known as C-1, certified by the Secretary of Labor under Section 405(b) of the Rail Passenger Service Act of 1970 on April 16, 1971 (See Appendix C-1, a copy of which is included on the Department's website.).

An employee shall not be regarded as deprived of employment or placed in a worse position with respect to compensation, etc., in case of his or her resignation, death, retirement, dismissal for cause, or failure to work due to disability or discipline. The phrase "as a result of the project" as used herein shall include events occurring in anticipation of, during, and subsequent to the project; In the event any new employment opportunities in the areas including, but not limited to bus operators, mechanics, stock clerks, janitorial services or supervisory support of the aforementioned employment areas are created directly or indirectly or as a result of the project, said employment opportunities shall initially be offered to any laid off Miami-Dade Transit bargaining unit employees. This obligation extends only to Miami-Dade Transit employees that were not laid off for cause or any other malfeasance.

Additionally, this requirement applies to the hiring of laid off Miami-Dade Transit employees for positions comparable in nature to the positions from which they were laid off.

Such employees shall receive the applicable wage rate(s) and benefits enjoyed as determined by the compensation received in the prior twelve (12) months of employment, prior to lay off. Additionally, any employee hired in accordance with this provision shall retain all rights and privileges in accordance with applicable Collective Bargaining Agreement, for the duration of the employment.

6. In the event any provision of these conditions is held to be invalid or otherwise unenforceable, the Public Body, the employees and/or their representatives may invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements which shall be incorporated in these conditions;
7. The Public Body agrees that any controversy respecting the project's effects upon employees, the interpretation or application of these conditions and the disposition of any claim arising hereunder may be submitted by any party to the dispute including the employees or their representative for determination by the Secretary of Labor, whose decision shall be final.

In the event of any dispute as to whether or not a particular employee was affected by the project, it shall be the employee's obligation to identify the project and specify the pertinent facts of the Project relied upon. It shall then be the burden of the Public Body to prove that factors other than the project affected the employee. The claiming employee shall prevail if it is established that the project had an effect upon the employee even if other factors may also have affected the employee (See Hodgson's Affidavit in Civil Action No. 825-71);

8. The Public Body shall maintain and keep on file all relevant books and records in sufficient detail as to provide the basic information necessary to the making of the decisions called for in the preceding paragraph;
9. The Public Body will post, in a prominent and accessible place, a notice stating that the Public Body is a recipient of Federal assistance under the Federal Transit Act and has agreed to comply with the provisions of 49 U.S.C., Section 5333(b). The notice shall specify the terms and conditions set forth herein for the protection of employees; and
10. The protective arrangements certified by the Secretary of Labor are intended for the primary and direct benefit of transit employees in the service area of the project. These employees are intended third-party beneficiaries to the employee protective arrangements of the grant contract between the U.S. Department of Transportation and the Grantee/Applicant, and the parties to the contract so signify by executing that contract. Employees, or their representative on their behalf, may assert claims with respect to the protective arrangements under this provision. This clause creates no independent cause of action against the United States Government.

As a precondition to the release of assistance to any Recipient, this letter and the terms and conditions of the protective agreements or arrangements referenced above, shall be incorporated into the contract of assistance between the Grantee and/or Applicant and such Recipient, by reference.

ATTACHMENT C

MDT Grants Administration unit will provide all municipalities the following sections from the **FTA Master Agreement and FTA Circular 9030.1** to address the above aforementioned finding.

Section 19. Use of Real Property, Equipment, and Supplies

Section 28. Charter Service Operations

Section 29. School Transportation Operations

Section 39. Special Provisions for the Urbanized Area Formula Program

Section 19. Use of Real Property, Equipment, and Supplies.

The Recipient understands and agrees that the Federal Government retains a Federal interest in any real property, equipment, and supplies financed with Federal assistance (Project property) until, and to the extent, that the Federal Government relinquishes its Federal interest in that Project property. With respect to any Project property financed with Federal assistance under the Grant Agreement or Cooperative Agreement, the Recipient agrees to comply with the following provisions of this Master Agreement, except to the extent FTA determines otherwise in writing:

a. Use of Project Property. The Recipient agrees to maintain continuing control of the use of Project property to the extent satisfactory to FTA. The Recipient agrees to use Project property for appropriate Project purposes (which may include joint development purposes that generate program income, both during and after the Project's award period and used to support public transportation activities) for the duration of the useful life of that property, as required by FTA. Should the Recipient unreasonably delay or fail to use Project property during the useful life of that property, the Recipient agrees that it may be required to return the entire amount of the Federal assistance expended on that property. The Recipient further agrees to notify FTA immediately when any Project property is withdrawn from Project use or when any Project property is used in a manner substantially different from the representations the Recipient has made in its Application or in the Project Description for the Grant Agreement or Cooperative Agreement for the Project.

b. General. A Recipient that is a State, local, or Indian tribal government agrees to comply with the property management standards of 49 C.F.R. §§ 18.31 through 18.34, including any amendments thereto, and with other applicable Federal regulations in accordance with applicable Federal directives. A Recipient that is an institution of higher education or private nonprofit entity, agrees to comply with the property management standards of 49 C.F.R. §§ 19.30 through 19.37, including any amendments thereto, and with other applicable Federal regulations in accordance with applicable Federal directives. Any exception to the requirements of 49 C.F.R. §§ 18.31 through 18.34, or the requirements of 49 C.F.R. §§ 19.30 through 19.37, requires the express approval of the Federal Government in writing. A Recipient that is a for-profit entity agrees to comply with property management standards satisfactory to FTA. The Recipient also

agrees to comply with FTA's reimbursement requirements for premature dispositions of certain Project equipment, as set forth in Subsection 19.g of this Master Agreement.

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c. Maintenance. The Recipient agrees to maintain Project property in good operating order, in compliance with any applicable Federal laws and regulations in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

d. Records. The Recipient agrees to keep satisfactory records pertaining to the use of the Project property, and submit to FTA upon request such information as may be required to assure compliance with this Section 19 of this Master Agreement.

e. Incidental Use. The Recipient agrees that:

(1) General. Any incidental use of Project property will not exceed that permitted under applicable Federal laws or regulations in accordance with applicable Federal directives.

(2) Alternative Fueling Facilities. In accordance with 49 U.S.C. § 5323(p), any incidental use of its federally financed alternative fueling facilities and equipment by nontransit public entities and private entities will be permitted, only if:

(a) The incidental use does not interfere with the Recipient's Project or public transportation operations;

(b) The Recipient fully recaptures all costs related to the incidental use from the nontransit public entity or private entity;

(c) The Recipient uses revenues received from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation; and

(d) Private entities pay all applicable excise taxes on fuel.

f. Encumbrance of Project Property. Unless FTA approves otherwise in writing, the Recipient agrees to maintain satisfactory continuing control of Project property as follows:

(1) Written Transactions. Absent the express consent of the Federal Government, the Recipient agrees that it will not execute any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, sub agreement, grant anticipation note, alienation, innovative finance arrangement (such as a cross border lease, leveraged lease, or otherwise), or any other obligation pertaining to Project property, that in any way would affect the continuing Federal interest in that Project property.

(2) Oral Transactions. Absent the express consent of the Federal Government, the Recipient agrees that it will not obligate itself to any third party with respect to Project property in any manner that would adversely affect the continuing Federal interest in any Project property.

(3) Other Actions. The Recipient agrees that it will not take any action that would either adversely affect the Federal interest or adversely impair the Recipient's continuing control of the use of Project property.

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g. Transfer of Project Property. The Recipient understands and agrees as follows:

(1) Recipient Request. The Recipient may transfer any Project property financed with Federal assistance authorized under 49 U.S.C. chapter 53 to a local governmental authority to be used for any public purpose with no further obligation to the Federal

Government, provided the transfer is approved by the Federal Transit Administrator and conforms with the requirements of 49 U.S.C. §§ 5334(h)(1) through 5334(h)(3).

(2) Federal Government Direction. The Recipient agrees that the Federal Government may direct the disposition of, and even require the Recipient to, transfer title to any Project property financed with Federal assistance awarded under the Grant Agreement or Cooperative Agreement.

(3) Leasing Project Property to Another Party. Unless FTA has determined or determines otherwise in writing, if the Recipient leases any Project property to another party, the Recipient agrees to retain ownership of the leased Project property, and assures that the lessee will use the Project property appropriately, either through a written lease between the Recipient and lessee, or another similar document. Upon request by FTA, the Recipient agrees to provide a copy of any relevant documents.

h. Disposition of Project Property. With prior FTA approval, the Recipient may sell, transfer, or lease Project property and use the proceeds to reduce the gross project cost of other eligible capital public transportation projects to the extent permitted by 49 U.S.C. § 5334(h)(4). The Recipient also agrees that FTA may establish the useful life of Project property, and that it will use Project property continuously and appropriately throughout the useful life of that property.

(1) Project Property Whose Useful Life Has Expired. When the useful life of Project property has expired, the Recipient agrees to comply with FTA's disposition requirements.

(2) Project Property Prematurely Withdrawn from Use. For Project property withdrawn from appropriate use before its useful life has expired, the Recipient agrees as follows:

(a) Notification Requirement. The Recipient agrees to notify FTA immediately when any Project property is prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

(b) Calculating the Fair Market Value of Prematurely Withdrawn Project Property. The Recipient agrees that the Federal Government retains a Federal interest in the fair market value of Project property prematurely withdrawn from appropriate use. The amount of the Federal interest in the Project property shall be determined on the basis of the ratio of the Federal assistance made available for the property to the actual cost of the property. The Recipient agrees that the fair market value of Project property prematurely withdrawn from Project use will be calculated as follows:

1. Equipment and Supplies. Unless otherwise determined in writing by FTA, the Recipient agrees that the fair market value of Project equipment and supplies shall be calculated by straight-line depreciation, based on the useful life of the equipment or supplies as established

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or approved by FTA. The fair market value of Project equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of the equipment or supplies from appropriate use. In the case of Project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of the equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. As authorized by 49 C.F.R. § 18.32(b), a State may use its own disposition procedures, provided that those procedures comply with the laws of that State.

2. Real Property. The Recipient agrees that the fair market value of real property financed under the Project shall be determined by FTA either on the basis of competent appraisal based on an appropriate date approved by FTA, as provided by 49 C.F.R. Part 24, by straight line depreciation of improvements to real property coupled with the value of the land as determined by FTA on the basis of appraisal, or by other Federal law or regulations that may be applicable.

3. Exceptional Circumstances. The Recipient agrees that the Federal Government may require the use of another method to determine the fair market value of withdrawn Project property. In unusual circumstances, the Recipient may request another reasonable method including, but not limited to, accelerated depreciation, comparable sales, or established market values. In determining whether to approve such a request, the Federal Government may consider any action taken, omission made, or unfortunate occurrence suffered by the Recipient pertaining to the preservation of Project property no longer used for appropriate purposes.

(c) Financial Obligations to the Federal Government. Unless otherwise approved in writing by the Federal Government, the Recipient agrees to remit to the Federal Government the Federal interest in the fair market value of any Project property prematurely withdrawn from appropriate use. In the case of fire, casualty, or natural disaster, the Recipient may fulfill its obligations to remit the Federal interest by either:

1. Investing an amount equal to the remaining Federal interest in like-kind property that is eligible for assistance within the scope of the Project that provided Federal assistance for the property that has been prematurely withdrawn from use; or

2. Returning to the Federal Government an amount equal to the remaining Federal interest in the withdrawn Project property.

i. Insurance Proceeds. If the Recipient receives insurance proceeds as a result of damage or destruction to the Project property, the Recipient agrees to:

(1) Apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property taken out of service, or

(2) Return to the Federal Government an amount equal to the remaining Federal interest in the damaged or destroyed Project property.

j. Transportation - Hazardous Materials. The Recipient agrees to comply with applicable requirements of U.S. Pipeline and Hazardous Materials Safety Administration regulations,

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“Shippers - General Requirements for Shipments and Packaging’s,” 49 C.F.R. Part 173, in connection with the transportation of any hazardous materials.

k. Misused or Damaged Project Property. If any damage to Project property results from abuse or misuse occurring with the Recipient's knowledge and consent, the Recipient agrees to restore the Project property to its original condition or refund the value of the Federal interest in that property, as the Federal Government may require.

l. Responsibilities After Project Closeout. The Recipient agrees that Project closeout will not change the Recipient's Project property management responsibilities as stated in Section 19 of this Master Agreement, and as may be set forth in Federal laws, regulations, and directives effective at a later date, except to the extent the Federal Government determines otherwise in writing.

Section 28. Charter Service Operations.

The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142, will engage in charter service operations, except as authorized by 49 U.S.C. § 5323(d) and FTA regulations, “Charter Service,” 49 C.F.R. Part 604, and any Charter Service regulations or FTA directives that may be issued, except to the extent that FTA determines otherwise in writing. The Charter Service Agreement the Recipient has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. If the Recipient has failed to select the Charter Service Agreement in its latest annual Certifications and Assurances to FTA and does conduct charter service operations prohibited by FTA's Charter Service regulations, the Recipient understands and agrees that: (1) the requirements of FTA's Charter Service regulations and any amendments thereto will apply to any charter service it or its sub recipients, lessees, third party contractors, or other participants in the Project provide; (2) the definitions of FTA's Charter Service regulations will apply to the Recipient's charter operations, and (3) a pattern of violations of FTA's Charter Service regulations may require corrective measures and imposition of remedies, including barring the Recipient, sub recipient, lessee, third party contractor, or other participant in the

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Project operating public transportation under the Project from receiving Federal financial assistance from FTA, or withholding an amount of Federal assistance as set forth in Appendix D to those regulations. [Amendments to FTA regulations, “Charter Service,” 49 C.F.R. Part 604, were published at 73 *Fed. Reg.* 2325 *et seq.*, January 14, 2008, and amended at 73 *Fed. Reg.* 44927 *et seq.*, August 1, 2008, and at 73 *Fed. Reg.* 46554 *et seq.*, August 11 2008.]

Section 29. School Transportation Operations.

The Recipient agrees that neither it nor any public transportation operator performing work in connection with a Project financed under 49 U.S.C. chapter 53 or under 23 U.S.C. §§ 133 or 142, will engage in school transportation operations for the transportation of students or school personnel exclusively in competition with private school transportation operators, except as authorized by 49 U.S.C. §§ 5323(f) or (g), as applicable, and FTA regulations, "School Bus Operations," 49 C.F.R. Part 605 to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), in accordance with any School Transportation Operations regulations or FTA directives that may be issued at a later date, except to the extent that FTA determines otherwise in writing. The School Transportation Operations Agreement the Recipient has selected in its latest annual Certifications and Assurances is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. If the Recipient has failed to select the School Transportation Agreement in its latest annual Certifications and Assurances to FTA and does conduct school transportation operations prohibited by FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent those regulations are consistent with 49 U.S.C. §§ 5323(f) or (g), the Recipient understands and agrees that: (1) the requirements of FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), will apply to any school transportation service it or its sub recipients, lessees, third party contractor, or other participants in the project provide, (2) the definitions of FTA's School Bus Operations regulations will apply to the Recipient's school transportation operations, and (3) if there is a violation of FTA's School Bus Operations regulations to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), FTA will bar the Recipient, sub recipient, lessee, third party contractor, or other Project participant operating public transportation that has violated FTA's School Bus Operations regulations, 49 C.F.R. Part 605, to the extent consistent with 49 U.S.C. §§ 5323(f) or (g), from receiving Federal transit assistance in an amount FTA considers appropriate.

Section 39. Special Provisions for the Urbanized Area Formula Program.

The Recipient agrees that the following provisions apply to Urbanized Area Formula Program assistance authorized under 49 U.S.C. § 5307, and agrees to comply with the Federal laws and regulations applicable to that program in accordance with applicable FTA directives, except to the extent that FTA determines otherwise in writing:

a. Fares and Services. Before increasing fares or instituting a major reduction of service, the Recipient agrees to use its established administrative process to solicit and consider public comment.

b. Audit Requirements. The Recipient agrees that the Federal Government may conduct, or may require the Recipient to engage an independent entity to conduct, annual or more frequent reviews and audits as required by 49 U.S.C. § 5307(h) and applicable Federal laws and regulations in accordance with applicable Federal directives. The Recipient agrees that such audits will be conducted in accordance with U.S. GAO "Government Auditing Standards."

c. Half-Fare Requirements. The Recipient agrees that the fares or rates it charges elderly individuals and handicapped individuals during nonpeak hours for public transportation using or involving Project property will not exceed one-half the rates that generally apply to other individuals at peak hours, irrespective of whether the operation of Project facilities or equipment is by the Recipient or by another entity connected with the Project, either through lease, third party contract, or otherwise. The Recipient also agrees to give the rate required herein to any individual presenting a Medicare card duly issued to that individual pursuant to Title II or XVIII of the Social Security Act, 42 U.S.C. §§ 401 *et seq.*, or 42 U.S.C. §§ 1395 *et seq.*, respectively.

d. Use of Formula Assistance for Operations. A Recipient authorized to use Federal assistance authorized under 49 U.S.C. § 5307 to support operations agrees as follows: (1) The Recipient will comply with the restrictions of 49 U.S.C. §§ 5307(b) and 5307(f) in using Urbanized Area Formula Program assistance for operations, unless permitted otherwise by Federal law, regulation, or directive issued at a later date.

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(2) Federal assistance authorized by 49 U.S.C. § 5307 may be applied to the Net Project Cost of the Recipient's operating expenses incurred during the Project time period as set forth in the Approved Project Budget and, with FTA approval, may be extended to a later date to the extent permitted by law, provided that applicable operating assistance limits are not exceeded.

e. Public Transportation Security. For each fiscal year, the Recipient agrees to spend at least one (1) percent of its Federal assistance authorized under 49 U.S.C. § 5307 for public transportation security projects as described in 49 U.S.C. § 5307(d)(1)(J)(i), unless the Recipient has determined that such expenditures for security projects are not necessary. For a Recipient serving an urbanized area with a population of 200,000 or more, only capital projects are eligible for support with that Federal assistance.

f. Public Transportation Enhancements. If the Recipient serves an urbanized area with a population of 200,000 or more, the Recipient agrees to spend each fiscal year at least one (1) percent of its Federal assistance authorized under 49 U.S.C. § 5307 for public transportation enhancements as defined at 49 U.S.C. § 5302(a), and submit an annual report listing the projects carried out in the preceding fiscal year with that Federal assistance.

g. Reporting Requirements. For each fiscal year, the Recipient agrees to conform, and assures that any public transportation operator to which the Recipient provides Federal assistance authorized under 49 U.S.C. § 5307 will conform, to the National Transit Database reporting system and the uniform system of accounts and records required by 49 U.S.C. § 5335(a) for FTA's national transit database, and comply with implementing FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 C.F.R. Part 630, and any other reporting regulations in accordance with FTA directives.

h. Participation of Sub recipients. The Recipient agrees to enter into a written agreement with each sub recipient participating in an Urbanized Area Formula Project, which agreement sets forth the sub recipient's responsibilities, and includes appropriate clauses imposing requirements necessary to assure that the sub recipient will not compromise the Recipient's compliance with Federal requirements applicable to the Project and the Recipient's obligations under the Grant Agreement for the Project and this Master Agreement.

FTA Circular 9030.1 Chapter V: Section 5: (D) Satisfactory Continuing Control
(E) Maintenance
Section 10: (A) Bus Facilities

- d. Satisfactory Continuing Control. Section 5307(d)(1)(B) provides that the grantee must annually certify that it "has or will have satisfactory continuing control over the use of the equipment and facilities . . ." through operation or lease or otherwise.

An FTA grantee must maintain control over federally funded property; ensure that it is used in transit service, and dispose of it in accordance with Federal requirements. If the grantee leases federally funded property to another party, the lease must provide the grantee satisfactory continuing control over the use of that property. Control over FTA-funded facilities and equipment is determined in two areas: real property (land) and facilities; and personal property (equipment and rolling stock, both revenue and non-revenue). FTA requirements are for adequate property control as shown, for example, through an inventory system; for proper use and disposition of property as shown, for example, by conforming with FTA procedures described in the grants management circular (FTA C 5010.1C) for disposing of property; and for safeguards against loss, theft, or damage.

- e. Maintenance. The grant applicant must annually certify that pursuant to 49 U.S.C. Section 5307(d)(1)(C), it will maintain (federally funded) facilities and equipment.

The grantee must keep equipment and facilities acquired with Federal assistance in good operating order. This includes maintenance of rolling stock (revenue and non-revenue), machinery and equipment, and facilities. Every grant recipient of Urbanized Area Formula Program funds must have in its files a maintenance plan. The maintenance plan should identify the goals and objectives of a maintenance program, which may include, for example, vehicle life, frequency of road calls, and maintenance costs compared to total operating costs. The maintenance program, therefore, should establish the means by which such goals and objectives will be obtained.

- a. General Philosophy. FTA assists in building two categories of bus facilities:
1. facilities that support transit operations, such as maintenance garages and administrative buildings, and
 2. facilities that provide passenger amenities and extend into the urban environment, such as bus terminals, stations, shelters, and park-and-ride lots.

FTA supports projects that are transit-related; an applicant will need to justify costs that are only indirectly related to transit. FTA participates in those portions of a project most physically and functionally connected to transit. Generally speaking, FTA does not participate in costs outside the "transit footprint" of a development project. FTA does participate in joint development projects as discussed in Chapter III, paragraph 4I. TEA-21 provides that joint development projects are eligible capital costs for all of the FTA grant programs. A grant applicant interested in applying Urbanized Area Formula Program funds to a joint development project should refer to FTA Circular 9300.1A, "FTA Capital Program: Grant Application Instructions," Appendix B, for amplification concerning joint development projects.

With regard to intermodal facilities, FTA will participate on a pro rata basis, based on the public transit use or portion of the project. FTA assistance for parking is generally limited to parking for transit passengers or ride-sharing. FTA funds may not be used to support parking for shoppers or sports events unrelated to transit usage. To ensure that Federal funds appropriated for transit purposes are used as Congress intended, FTA may require a grantee to reserve FTA-assisted parking areas for transit users. Incidental use of parking areas, however, may be acceptable. An example of acceptable incidental use would be weekend use by shoppers of a parking area normally restricted for transit users during the week.



CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.

CIVIL RIGHTS REQUIREMENTS:

(1) Nondiscrimination Generally - In accordance with Title VI and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Municipality, Contractor or Subcontractor agree that they will not discriminate against any contractor and subcontractor, or any employee or applicant for employment on the basis of race, color, national origin, religion, age, disability, ancestry, veteran's status, marital status, pregnancy, sexual orientation, or the exercise of their constitutional or statutory rights. In addition, the Municipality, Contractor or Subcontractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue. The Municipality, Contractor or Subcontractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, national origin, religion, age, disability, ancestry, veteran's status, marital status, pregnancy or sexual orientation. Such action shall include, but not be limited to, the following: employment, upgrading, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeships.

(2) Equal Employment Opportunity - Each Municipality, Contractor or Subcontractor will be required to assure compliance with all equal employment opportunity policies through reporting requirements to be developed and established by Miami-Dade Transit. The following equal employment opportunity requirements apply to the underlying contract, or any project resulting from, or within the ambit not his agreement.

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Municipality, Contractor or Subcontractor agree to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq. (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of projects resulting from this interlocal agreement and funded with ARRA funds. The Municipality, Contractor or Subcontractor agree to take affirmative action to ensure that applicants are employed, and that employees are treated equitably during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment



advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements that Miami-Dade Transit and/of FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Municipality Contractor or Subcontractor agree to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements that Miami-Dade Transit and/or FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements Miami-Dade Transit and/or FTA may issue.

(3) The Municipality, Contractor and Subcontractor also agree to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, and specifically ARRA funding, and will modify the requirements only if necessary to identify the affected parties.

ACCESS TO RECORDS AND REPORTS REQUIREMENTS:

(1) The Municipality, in accordance with 49 CFR 18.36(i) agree to provide to Miami Dade County, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Municipality, which are directly pertinent to the project, or projects subject to this Interlocal Agreement and funded with ARRA funding for the purposes of making audits, examinations, excerpts and transcriptions. The Municipality also agree, pursuant to 49 C. F. R. 633.17 to provide Miami Dade County and/or the FTA Administrator or his authorized representatives including any PMO Contractor access to Municipality, records and construction sites pertaining to a capital project, subject to this interlocal agreement. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309, 5311, or ARRA funds.

(2) Contractor and subcontractor by reason of the receipt of ARRA funds agree to provide Miami-Dade county and/or, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Municipality, Contractor or Subcontractor records and construction sites pertaining to any project, or projects subject to this interlocal agreement, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309, 5311, or ARRA funds.

(3) Where the Municipality, Contractor or Subcontractor enter into a contract for a project or improvement funded with ARRA funds through other than competitive bidding, the Municipality, Contractor or Subcontractor shall make available records related to the contract to Miami Dade County, and where applicable or requested, the Secretary of Transportation and the



Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

(4) All parties agree to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(5) The Municipality, Contractor or Subcontractor agree to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Municipality, Contractor or Subcontractor agree to maintain same until Miami Dade County, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

The parties agree to report to Miami-Dade Transit their activities and expenditures on the attached forms, or via any medium that Miami-Dade Transit may request, or any other forms to be provided at later date by Miami-Dade Transit.

DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

(1) Minimum wages

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.



(ii) (A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the



applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v) (A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The municipality shall upon its own action or upon written request of an authorized representative of Miami-Dade Transits, the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the



work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Municipality may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii) (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the municipality for transmission to the Miami Dade Transit. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. MDT may require that the required reports be submitted electronically. If MDT elects that the municipalities shall make provided all required reports electronically via any software or medium designated by Miami-Dade Transit. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without



rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, Miami-Dade Transit may recommend, and the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12., and applicable county rules and ordinances.

(4) Apprentices and trainees

(i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractors registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate



specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be



grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** –

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

DISADVANTAGED BUSINESS ENTERPRISES

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency's overall goal for DBE participation is **21.4 %**. A separate contract goal for DBE participation may be established by the Municipality for each contract. If the Municipality elects to set a contract goal for any specific contract, it must in each instance submit the project goal with all supporting documents and details to MDT's Office of Civil Rights for Review and approval.

b. The municipality shall ensure that its contractors do not discriminate on the basis of race, color, national origin, or sex in the performance of its contract funded with federal dollars or ARRA funds. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as Miami-Dade Transit deems appropriate. Each subcontract that a contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b), and copies of such contracts provided to Miami-Dade Transit.

c. If a separate contract goal has been established, the municipality shall ensure that the Bidders/offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53.



Award of any contract under this Interlocal Agreement is conditioned on submission of the following

1. The names and addresses of DBE firms that will participate in this contract;
2. A description of the work each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeree's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts to do so.

Bidders/Offerors must present the information required above as a matter of responsiveness with initial proposals and prior to contract award (see 49 CFR 26.53(3)).

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the municipality. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. If the municipality elects to use progress payments, the contractor is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor's work by the municipality and contractor's receipt of the partial retainage payment related to the subcontractor's work.

e. The contractor must promptly notify municipality, who shall in turn notify MDT, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of both MDT and the Municipality.



DBE CONTRACTOR IDENTIFICATION STATEMENT

1) Name of DBE Contractor _____

2) Year business established _____

3) Address and telephone number _____

4) DBE Type: Women _____ Black _____ Hispanic _____ Other (specify) _____

All DBEs must show ownership percentage by gender-- Male _____% Female _____%

5) Name of principal officer _____

6) Principal type of work _____

7) Name of persons involved in management of firm and positions held:

NAME	RACE	SEX	POSITION/TITLE
------	------	-----	----------------



- A. _____
- B. _____
- C. _____
- D. _____
- E. _____

If additional space is needed, please use another sheet.

8) For a Corporation or Professional Association (PA): Identify those who own five percent or more of the firm's stock or five percent or more share of a Professional Association.

NAME	RACE	SEX	OWNERSHIP PERCENTAGE	YEARS OF OWNERSHIP	VOTING PERCENTAGE
A. _____	_____	_____	_____	_____	_____
B. _____	_____	_____	_____	_____	_____
C. _____	_____	_____	_____	_____	_____
D. _____	_____	_____	_____	_____	_____

If additional space is needed, please use another sheet.

(Continued on Page 2)



DBE CONTRACTOR IDENTIFICATION STATEMENT

MDT DBE Participation Program

9) For a Proprietorship, indicate the DBE status and gender of the proprietor:

Black Male _____ Black Female _____ Hispanic Male _____ Hispanic Female _____

Other Male (Specify) _____ Other Female (Specify) _____

10) Does the firm have an 8(a) Certification issued by the Small Business Administration under Section 8(a) of the Small Business Act as amended (15 U.S.C. 637 (a)?

NO _____ YES _____, Certified as an 8(a) Contractor (date) _____

11) Date certified as a DBE _____ Cert. No. _____ Expires _____.

12) The undersigned agrees to provide other relevant information concerning ownership and control if requested to do so by MDC or its representative.

Signature of Official of DBE Company

Title of Official

Date



PRIME AND SUBCONTRACTORS INFORMATION FORM

INSTRUCTIONS: To be completed by the prime and by all subcontractors that submitted a bid on the project.

Bid Description: _____ Bid No. _____

Percentage of DBE Goal _____%

BIDDER INFORMATION

Firm Name _____ F.E.I.N.* _____

Street _____ Suite No. _____

City _____ State _____ Zip Code _____

Prime Bidder? Yes _____ No _____ If No, enter name of Prime _____

Year Founded _____ Annual Gross Receipts: Under \$500k _____ Over \$500k _____

Phone No. _____ FAX No. _____ Email _____

SPECIALTY

USE APPROPRIATE TWO-DIGITS SBA STANDARD INDUSTRIAL CLASSIFICATION CODE (SIC):

Construction: Building--SIC 15 ___ Heavy--SIC 16 ___ Specialty Trades--SIC 87 ___

Professional Services (Architectural, Engineering, Accounting, etc.) SIC 87 ___

Goods, Equipment and Non-professional Services _____

MIAMI-DADE COUNTY CERTIFIED DBE:

Certificate Expiration Date: ___/___/___ Ethnicity _____ Gender _____

AFFIDAVIT

I certify that I am an authorized representative of above named firm.

Signature Name Title Date

For MDC Use Only: Was the subject bid awarded to this bidder? Yes ___ No ___



SCHEDULE FOR PARTICIPATION

Instructions for Contractors: List your DBE firms and sign.

DBE FIRM (1):

Name _____

Type of Work to Be Performed: _____

Percentage and Dollar Amount of Total Bid Committed: _____ % \$ _____

Proposed Commencement Date: _____ Proposed Completion Date: _____

DBE Firm (2):

Name _____

Type of Work to Be Performed: _____

Percentage and Dollar Amount of Total Bid Committed: _____ % \$ _____

Proposed Commencement Date: _____ Proposed Completion Date: _____

DBE Firm (3):

Name _____

Type of Work to Be Performed: _____

Percentage and Dollar Amount of Total Bid Committed: _____ % \$ _____

Proposed Commencement Date: _____ Proposed Completion Date: _____

DBE Firm (4):

Name _____

Type of Work to Be Performed: _____

Percentage and Dollar Amount of Total Bid Committed: _____ % \$ _____

Proposed Commencement Date: _____ Proposed Completion Date: _____

The undersigned certifies that it is committed to hire the above firms to do the work listed above on project _____, as part of its obligations under said project, and agrees to make the DBE & EEO Requirements of said project part of any tier of its subcontracts.

Authorized Signature

Print Name and Title

Date

Name of Contractor



LETTER OF INTENT FROM DBE SUBCONTRACTOR, SUPPLIER AND/OR CONSULTANT

To: _____ and Miami-Dade County
(Name of Prime Contractor)

From: _____
(Name of DBE Firm)

The undersigned DBE is prepared to perform the following described services and/or supply the following described goods, in connection with the following project/contract for a total dollar amount of \$_____ and certifies that, upon the execution of a contract with the Prime Contractor, it will not subcontract any part of such contract to any firm, at any tier, without obtaining prior written consent from Miami-Dade County, through the Prime Contractor; it further certifies that it has received from Prime Contractor a true copy of the Affirmative Action provisions, which must include the Davis Bacon requirements and wage determinations, if applicable.

Prime Contractor _____ Project

Name _____

DBE ASSIGNMENTS:

Item No.	Work to be performed	Dollar Amount Per Bid Form
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

Item/Supply Description	Quantity	Dollar Amount
_____	_____	_____
_____	_____	_____

Authorized Signature

Title _____

Print Name

Date

SUBCONTRACTORS MONTHLY PROGRESS REPORT

Report Period: NAME _____	CONTRACT NUMBER _____ PROJECT _____
AMOUNT \$ _____	CONTRACTOR NAME _____ CONTRACT _____
DBE GOAL _____ % PAID TO PRIME CONTRACTOR TO DATE \$ _____	

DBE FIRMS	SEX	ETHNIC	TYPE OF WORK/SERVICE	MONTHLY PAYMENT	PAYMENT TO DATE	CONTRACT AMOUNT

PAYMENTS TO NON-DBES	TYPE OF SERVICE	AMOUNT

I certify that the above information is true and accurate to the best of my knowledge and understand that if I misrepresent or falsify such information, I may be subject to civil and or criminal prosecution under Title 18 United State Code Section 1001.

Authorized Signature

Print Name and Title

Date

TAB 4



Steven J. Alexander
Town Manager

MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council

From: Steven J. Alexander, Town Manager

Date: June 16, 2010

Re: EXECUTION OF AGREEMENT FOR CONSTRUCTION PHASE SERVICES FOR THE SW 208 STREET ROADWAY AND RESURFACING IMPROVEMENTS

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, RELATING TO PROFESSIONAL SERVICES AGREEMENT, AUTHORIZING THE TOWN MANAGER TO ISSUE A PURCHASE ORDER TO MARLIN ENGINEERING, INC. FOR CONSTRUCTION PHASE SERVICES FOR STREET IMPROVEMENTS ON SW 208th STREET BETWEEN 87th AVE TO OLD CUTLER ROAD; AND PROVIDING AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

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

Following a thorough evaluation by the Town's Selection Committee which included previous experience with similar projects, the proposed scope of services, project deliverables and over-all cost, the Public Works Department has selected Kimley-Horn and Associates, Inc. to complete engineering design services for the SW 208 Street Roadway and Resurfacing Improvements. The roadway design was completed by Marlin Engineering who, has been involved with several meetings with Miami-Dade County Public Works staff. The project has been permitted through Miami-Dade County, based on the plans submitted by Marlin Engineering.

The attached work Authorization, in the amount of \$ 49,918.87, will allow the Town's engineering consultant to "manage" the project and insure that the contractor is constructing the project, as per the Town's Invitation to Bid # 10-02 contract specifications. The following tasks will be performed:

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

- Task 5 Project Close-out

Funding for the Construction Phase service is included in the Town's 2009-10 Capital Improvement Budget – SW 208 Street Roadway Improvements.

RECOMMENDATION

We recommend that the attached resolution be adopted, authorizing the Town Manager to issue a Purchase Order in the amount of \$ 49,918.87, based on the same term and conditions as stated in the Town's executed Professional Services Contract.

RESOLUTION NO. 10-__

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO ISSUE A PURCHASE ORDER TO MARLIN ENGINEERING, INC. TO PROVIDE CONSTRUCTION PHASE SERVICES FOR THE SW 208 STREET ROADWAY AND RESURFACING IMPROVEMENT PROJECT; AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the Town has budgeted for the SW 208 Street Roadway and Resurfacing Improvements within 2009-10 Capital Improvement(s) Budget; and

WHEREAS, in accordance with the terms of the Agreements and the provisions set forth in Resolution 07-52, the Public Works Department solicited a proposal from Marlin Engineering, Inc., which has an executed Agreement with the Town and

WHEREAS, Marlin Engineering, Inc. had already been selected by the Town to design the SW 208 Street Roadway and Resurfacing Project and has performed well thus far; and

WHEREAS, Town staff has determined that Marlin Engineering, Inc. would be best suited to provide construction phase services because their selection would provide continuity and the Town would benefit their existing understanding of the project; and

WHEREAS, Town staff has conducted preliminary negotiations with Marlin Engineering, Inc. and estimated the cost of providing these services to the Town to be in the amount of \$ 49,918.87 (attached as Exhibit “A”);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. In accordance with the terms and conditions of Resolution No. 07-52, which approved the execution of non-exclusive professional services agreements (the “Agreement”) to allow firms to provide various engineering and architectural services for the Town, the Town Manager is authorized, on behalf of the Town, to issue a Purchase Order in the amount of \$ 49,918.87 to Marlin Engineering Inc. to provide construction phase services on the SW 208 Street Roadway and Resurfacing Improvement Project, in substantially the form attached hereto as Exhibit “A”.

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

PASSED and ADOPTED this ____ day of _____, 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 _____

June 2, 2010

Erick Carrillo
Stormwater Utility Manager
Town of Cutler Bay
10720 Caribbean Boulevard, Suite 105
Cutler Bay, Florida 33189

Re: **Project: SW 208th Street Roadway Improvements**
Miami-Dade County

Dear Mr. Carrillo:

Per your request please find our fee proposal for CEI and Post Design Services for the above referenced project.

Total Fee: \$ 49,918.87

We appreciate the opportunity to work with you and provide the required services.

If you have any questions or need additional information please give me a call.

Sincerely,

Marlin Engineering, Inc



Rafael A. Lagos, P.E.
Design Manager

cc: Ramon Soria, P.E. (MEI)
Miguel Soria, P.E. (MEI)
File

Project Activity 3: General Tasks

Estimator: M Soria
Form Revised 6/6/05

Cutler Bay CEI / Post Design
NA

Task No.	Task	Units	No of Units	Hours / Unit	Total Hours	Comments
3.1	Assist with Bid and Award	LS	1	9	9	3 meeting x 3 hours x 1 person
3.2	Review Bid Documents	EA	1	4	4	
3.3	Plan Revisions	LS	1	12	12	3 Month Duration (3 plan revisions 4 hr per revisions)
3.4	Respond to RFI	LS	1	18	18	9 total x 2 hours
3.5	Shop Drawing Rview	LS	1	8	8	signs only
3.6	Prime Consultant EOR Meetings	LS	1	9	9	
3.7	Other Project General	LS	1	0	0	
3. General Tasks Total					60	

Construction Engineering / Inspection

Estimator: M Soria
Form Revised

Cutler Bay CEI / Post Design
NA

Task No.	Task	Units	No of Units	Hours / Unit	Total Hours	Comments
6.1	Set up- attend pre-construction meeting prepare construction schedule	LS	1	4	4	
6.2	Issue Notice to Proceed	LS	1	0	0	To be issued by Town of Cutler Bay
6.3	Provide field monitoring and recording: take before / after pictures, record date- time, weather, record equipment, material, labor, coordinate with all agencies.	HR	1	520	520	1 inspector part time and proj. engineer part time 13 weeks 520 hours total
6.4	Review sign off Construction invoices	LS	1	8	8	seven invoices 2 hours per invoice

Construction Engineering / Inspection

Task No.	Task	Units	No of Units	Hours / Unit	Total Hours	Comments
6.5	Review and sign off all closeout documents	LS	1	8	8	review all closeout documents and coordinate with agencies
6.6	Assist in the preparation and submission of reimbursement and change orders	LS	1	12	12	
6.7			1	0	0	
6.8			1	0	0	
6.9			1	0	0	
6.10			1	0	0	

Construction Engineering / Inspection

Task No.	Task	Units	No of Units	Hours / Unit	Total Hours	Comments
6.11			1	0	0	
6.12			1	0	0	
6.13			1	0	0	
6.14			1	0	0	
6.15			1	0	0	
6.16			1	0	0	
6.17			1	0	0	
6.18			1	0	0	
Technical Subtotal					552	
6.19	Field Reviews	LS	2	0	0	
6.20	Technical Meetings	LS	2	0	0	
6.21	Quality Assurance/Quality Control	LS	%	0%	0	
6.22	Independent Peer Review	LS	%	0%	0	
6.23	Supervision	LS	%	0%	0	
Drainage Analysis Nontechnical Subtotal					0	
6.24	Coordination	LS	%	0%	0	

Construction Engineering / Inspection

Task No.	Task	Units	No of Units	Hours / Unit	Total Hours	Comments
6. Total						552

TAB 5



Office of the Town Manager

Steven J. Alexander
Town Manager

MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council

From: Steven J. Alexander, Town Manager

Date: June 16, 2010

Re: **AWARD OF ITB # 10-02: SW 208 Street Roadway Improvements**

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE AGREEMENT WITH GENERAL ASPHALT COMPANY, INC. FOR THE SW 208 STREET ROADWAY RESURFACING AND IMPROVEMENTS; AUTHORIZING THE TOWN MANAGER TO ENTER INTO THIS AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

The Town Council adopted Resolution number 10-09 which, authorized staff to issue an Invitation to Bid (ITB) # 10-02: Roadway Resurfacing Improvements, funded through the Town's Local Option Gas Tax proceeds. The ITB was advertised in a newspaper of general circulation which, complies with the Town's Purchasing Ordinance. The ITB had a due date and time of June 2, 2010 @ 10:00 a.m. The Town held a "mandatory" pre-bid meeting on May 19, 2010 @ 10:00 a.m. at which time twenty-seven (27) prospective bidders attended. The Town received ten (10) bid packages from potential contractors (see attached "detailed" and "summary" Bid Tabulation sheet provided by the Town Clerk's Office).

The following bidders were comprised the top two (2) responsive:

- | | |
|---|---------------|
| • General Asphalt Company, Inc. | \$ 342,037.77 |
| • Florida Engineering & Development, Inc. | \$ 348,715.90 |

Note: the Town Consulting Engineer's Construction Cost Estimate was: **\$ 409,000.**

A complete review was performed by the Town's Consulting Engineer (Marlin Engineering) on the "Lowest & Responsive" bidder: General Asphalt Company, Inc. which, included:

- Contacting all of the provided references, as per ITB # 10-02; and
- Town staff's facilities inspections, as per ITB # 10-02; and
- Confirmation of "good standing" with the State of Florida Department of Business and Professional Regulations which, included any registered complaints.

RECOMMENDATION

Based on Town staff's evaluation of the "lowest & responsive" bidder: General Asphalt Company, Inc., it is recommended that the Town Council approve the attached Resolution.

RESOLUTION NO. 10-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE AGREEMENT WITH GENERAL ASPHALT COMPANY, INC. FOR THE SW 208 STREET ROADWAY AND RESURFACING IMPROVEMENTS; AUTHORIZING THE TOWN MANAGER TO ENTER INTO THIS AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council adopted Resolution # 10-02 on February 17, 2010, approving the issuance of a Invitation to Bid (ITB) 10-02 for the SW 208 Street Roadway and Resurfacing Improvements; and

WHEREAS, a “mandatory” pre-bid meeting was held on May 19, 2010 at which time twenty-seven (27) prospective bidders attended; and

WHEREAS, the ITB resulted in ten (10) bids being received prior to the June 2, 2010 deadline; and

WHEREAS, in accordance with Section 3.10 of the Town Charter and the Town purchasing ordinance, the Town has evaluated the ten (10) bids and the Town Manager has made a written recommendation to the Council for its approval; and

WHEREAS, pursuant to the ITB competitive selection process utilized by the Town and the recommendation of the Town Manager, the Town Council desires to utilize the services of General Asphalt Company, Inc. (the “Contractor”) to provide roadway resurfacing improvements; and

WHEREAS, the Town Attorney’s Office has reviewed the terms of the agreement with Contractor, attached as Exhibit “A”, and has determined that it 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. Approval of the Agreement. The Town Council hereby approves the agreement with General Asphalt Company, Inc. for the SW 208 Street roadway and

resurfacing improvements, which incorporates Invitation to Bid 10-02 and associated documents, in substantially the form attached hereto as Exhibit "A" (the "Agreement").

Section 3. Town Manager Authorized. The Town Manager is authorized, on behalf of the Town, to execute the Agreement for roadway resurfacing & miscellaneous improvements with General Asphalt Company, Inc. for roadway resurfacing improvements, in substantially the form attached hereto as Exhibit "A". The Town Manager is authorized to execute, without further Town Council action and once approved by the Town Attorney as to form and legal sufficiency.

Section 4. Effective Date. This Resolution shall 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 _____

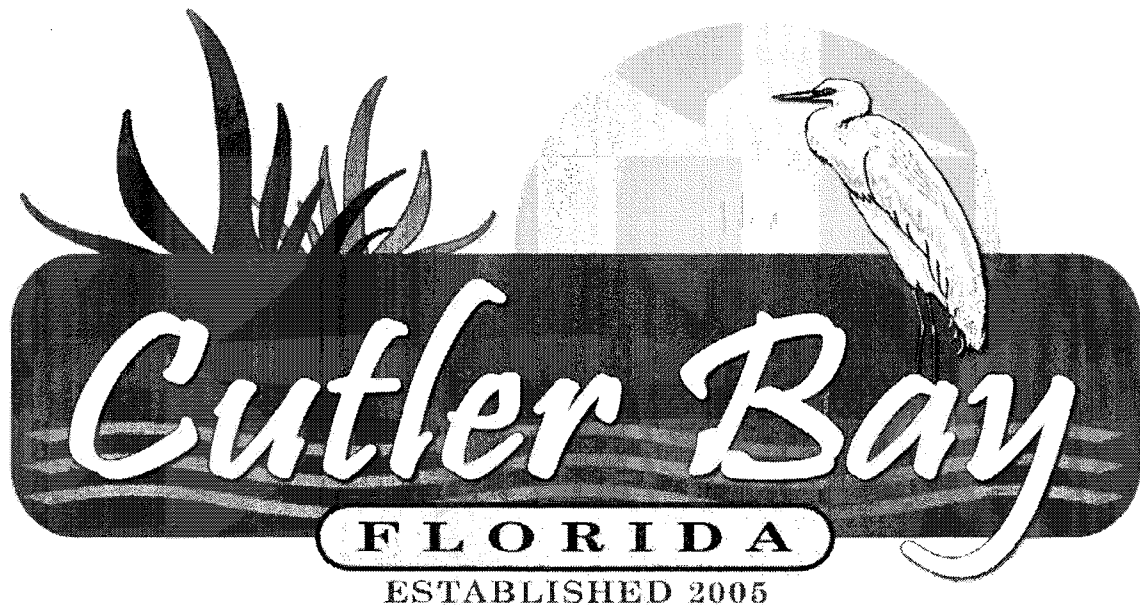
Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest S. Sochin _____

TOWN OF CUTLER BAY

**PUBLIC WORKS DEPARTMENT
INVITATION TO BID
ITB# 10-02**



SW 208 STREET ROADWAY IMPROVEMENTS

BID DUE DATE & TIME
JUNE 2, 2010 (10:00 A.M.)

MANDATORY "PRE-BID" MEETING DATE & TIME:
MAY 19, 2010 (10:00 A.M.)

SW 208 STREET – ROADWAY IMPROVEMENTS

FOR

THE TOWN OF CUTLER BAY

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INVITATION TO BID
ITB# 10-02
SW 208 STREET ROADWAY IMPROVEMENTS
TOWN OF CUTLER BAY

The Town of Cutler Bay is requesting bids from qualified firms to provide Roadway Improvements for the Town of Cutler Bay. **Interested firms should visit the Town's website at www.cutlerbay-fl.gov to obtain the Invitation to Bid package. Packages may also be picked up during normal business hours at the office of the Town Clerk, Erika Gonzalez-Santamaria, located at:**

TOWN OF CUTLER BAY
10720 CARIBBEAN BLVD., SUITE 105
Cutler Bay, FL 33189

Sealed submittals including one (1) original and three (3) copies of the submittals plus a CD containing all documents submitted must be received **no later** than **10:00 A.M.** on Wednesday **June 2, 2010** and be clearly marked on the outside, **"ITB 10-02 SW 208 Street Roadway Improvements"**, by **Erika Gonzalez-Santamaria, Town Clerk, Town of Cutler Bay, 10720 Caribbean Blvd., Suite 105, Cutler Bay, Florida, 33189.** Late submittals and electronic submittals will **not** be accepted.

A MANDATORY "pre-bid" meeting will be held on Wednesday May 19, 2010 at 10:00 A.M. in the Town Hall Conference Room, 10720 Caribbean Blvd., Suite # 105, Cutler Bay, Florida 33189.

Pursuant to Town Code, public notice is hereby given that a "Cone of Silence" is imposed concerning the Town's competitive purchasing process, which generally prohibits communications concerning the ITB from the time of advertisement of the ITB until the Town Council meeting at which the Council considers the Town Manager's recommendation to the Town Council concerning the competitive purchase transaction. Please see the detailed specifications for the public solicitation for services for a statement fully disclosing the requirements of the "Cone of Silence".

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. Please see the detailed specifications of this solicitation for further details.

The Town of Cutler Bay reserves the right to accept or reject any and/or all bids or parts of bids, to workshop or negotiate any and all bids, to waive irregularities, and to request re-bids on the required materials or services.

Steven J. Alexander
Town Manager



TOWN OF CUTLER BAY

SECTION 2

INSTRUCTIONS TO BIDDERS

- 1.01. **SEALED BIDS**- Sealed bids for furnishing all goods and services necessary to complete the Work specified in these documents will be received at:

Date: June 2, 2010 (Wednesday)

Time: 10:00 am

**Place: Town Hall
10720 Caribbean Blvd., Suite 105
Cutler Bay, Florida 33189**

- 1.02. **DEFINITION OF TERMS**- Certain terms used in these documents are defined as follows:

Bid\Proposal The bid documents submitted by the Bidder.

Any person, firm or corporation submitting a proposal for the Work covered by these specifications or his duly authorized representative.

The Town Council of the Town of Cutler Bay or the Town Manager, if applicable.

The person, firm or corporation with whom the Town has executed a contract for the Work.

Days shall mean calendar days.

In order to be considered a "responsible" bidder, the Bidder must possess integrity as well as adequate equipment and personnel to do the Work within the time limits that are established and adequate financial status to meet the obligations to perform the Work. The firm must not have defaulted on a prior contract or been disbarred by any agency.

Any person, firm or corporation submitting a Bid for the Work whose Bid form is complete and includes all required attachments and enclosures, free from exclusions or special conditions and has no alternative Bids for any items, unless alternatives are requested in the specifications.

The services required by the Contract Documents, including labor and materials.

The Town's general engineering consultant and project manager for this contract: presently Marlin Engineering Inc.

- 1.03. **DELIVERY OF BIDS**- All Bids, whether mailed or delivered in person, shall be submitted in a **SEALED ENVELOPE** bearing on the outside the following project information as well as the name of the Bidder and his address clearly marked:

SW 208 STREET ROADWAY IMPROVEMENTS

and addressed to:
Town of Cutler Bay
10720 Caribbean Boulevard
Suite 105
Cutler Bay, Florida 33189
Attention: Town Clerk

All Bids must be received by the Town no later than **10:00 a.m. on Wednesday June 2, 2010**

- 1.04. **BID GUARANTY**- A certified or cashiers check drawn on a national or state bank, or bid bond, in the amount of **five percent (5%)** of the bid, shall accompany each bid as a guarantee that the Bidder will, if award is made, execute an Agreement to do the Work for the amount proposed and furnish any required certificates of insurance and bond documents. The bid bond shall be from a surety with an A-rating or better under Best's Guidelines, made payable to: The Town of Cutler Bay.
- 1.05. **BID FORMS**- The Bidder shall submit an original Bid on the bid forms attached to this ITB. The Bidder shall fill in all the blank spaces completely for each and every unit item for which a Bid is tendered. The Bidder shall state the price, typewritten or in ink, for which he proposes to do each item of Work. The Bid shall include: 1) Agreement/Contract; 2) Bid Forms; 3) Certificate or Evidence of Insurance; 4) Bid Guarantee; 5) Qualifications Statement; 6) Sworn Statement on Public Entity Crime Form; 7) Addenda acknowledgement, if applicable; 8) Anti-Kickback Affidavit; 9) Non-Collusive Affidavit; 10) Drug Free Workplace form; and 11) a Corporate Resolution evidencing authorization to submit Bid, if applicable.
- 1.06. **SIGNATURE ON BID**- The Bidder shall sign the Bid as follows: If the Bid is made by an individual, the Bidder's name and address shall be shown. If made by a firm or partnership, the name and address of each member of the firm or partnership shall be shown. If made by a corporation, the person signing the Bid shall show the name of the state under the laws of which the corporation is chartered, also the names and business addresses of its corporate officers. The Bid shall bear the seal of the corporation attested by the secretary. Anyone signing the Bid as agent shall include in the Bid legal evidence of his/her authority to do so.
- 1.07. **COST OF BIDS** – All expenses involved with the preparation and submission of Bids to the Town or any work performed in connection therewith, shall be borne by the Bidder(s). No payment shall be made for any responses received, nor for any other effort required of or made by the Bidder(s) prior to commencement of work as defined by the Agreement duly approved by the Town Council.

- 1.08. **QUALIFICATION OF BIDDERS**- Each Bidder shall submit a completed Qualification Statement utilizing the form attached.
- 1.09. **RIGHT TO REJECT BIDS**- The Town of Cutler Bay reserves the right to accept or reject any and/or all Bids or parts of Bids, to workshop or negotiate any and all Bids, to waive irregularities, and to request re-Bids on the required materials or services.
- 1.10. **AWARD OF CONTRACT**-
- 1.10.1. The Award of the Agreement will be to the lowest Responsive and Responsible Bidder, whose qualifications indicate the Award will be in the best interest of the Town and whose Bid complies with the requirements of these specifications. In no case will the Award be made until all necessary investigations have been made into the responsibility of the Bidder(s) and the Town Manager is satisfied that the Bidder is qualified to do the Work and have the necessary organization, capital and equipment to carry out the Work in the specified timeframes. In evaluating responsibility, the Town may also consider previous contracts with the Town, past performance and experience with other contracts, compatibility of the project team with Town personnel, and any other criteria deemed relevant by the Town.
- 1.10.2. If the Town accepts a Bid, the Town will provide a written notice of Award to the lowest Responsive and Responsible Bidder, who meets the requirements of Section 1.10.1.
- 1.10.3. If the successful Bidder to whom an Agreement is awarded forfeits the Award by failing to meet the conditions of subsection 1.12, the Town may, at the Town's sole option, award the Agreement to the next lowest Responsive and Responsible Bidder or reject all Bids or re-advertise the Work.
- 1.10.4. The Town, at its sole discretion, may consider the lowest and responsive bidder as the bidder who has the lowest bid Amount for: SW 208 Street Roadway Improvements.
- 1.11. **RETURN OF THE BID GUARANTY**- All Bid Guarantees of unsuccessful Bidders will be returned after the Agreement is awarded and executed, if requested by unsuccessful bidder.
- 1.12. **EXECUTION OF CONTRACT**- The successful Bidder(s) shall, within ten (10) days of receipt of a written notice of the Award of the Agreement, deliver to the Town a fully executed Agreement and all requested certificates of insurance and bonds.
- 1.13. **FORFEITURE OF BID GUARANTY FOR FAILURE TO EXECUTE CONTRACT**- The failure of the successful Bidder(s) to execute an Agreement and submit required insurance certificates and bonds as specified in subsection 1.12 from "Standard General Conditions of the Construction Contract" will result in forfeit of the Award. Each Bidder agrees in advance that the Town will sustain certain damages too difficult to accurately ascertain. Accordingly, if the Award is forfeited under this Section, the amount of the Bid Guaranty of the forfeiting Bidder will be retained by the Town, not as forfeiture or a penalty, but as liquidated damages.

- 1.14. **TIME AND AWARD-** The Bidder agrees to abide by the overall and unit prices quoted in the Bid for up to ninety (90) days from the date of bid opening to allow for the Town review, award, and execute the Agreement.
- 1.15. **INTERPRETATION AND CLARIFICATION-** All questions about the meaning or intent of the Bid Documents and specifications shall be directed in writing to the Town Clerk's Office, Erika Gonzalez-Santamaria at 10720 Caribbean Blvd., Suite # 105, Cutler Bay, Florida 33189 or e-mail: esantamaria@cutlerbay-fl.gov. All correspondences whether in writing or through e-mail must be titled "**SW 208th Street Roadway Improvements.**" Interpretation or Clarifications considered necessary by the Town in response to such questions will be issued by means of addenda electronically mailed or delivered to all parties that are on record with the Town Clerk as having requested and received the Bid Documents. Provided however that it is each Bidder's sole responsibility to be informed of any changes to the ITB in the form of written addenda and the Town shall not be responsible for any Bidder's failure to receive same. The Town has the right to rely on all Bids received and the submittal of a Bid shall represent the Bidder's acknowledgement that he has read and understood the ITB and any addenda thereto. Written questions must be received no less than seven (7) business days prior to bid opening. Only questions answered by written addenda shall be binding. Oral and other interpretation or clarifications shall be without legal effect.
- 1.16. **BID MODIFICATIONS-** No modifications shall be submitted by Bidder or accepted by the Town.
- 1.17. **WITHDRAWAL OF A BID-** A Bidder may withdraw his Bid at any date and time prior to the time the Bids are scheduled to be opened. Notice of withdrawal should be made in writing to the Town Clerk's Office, Erika Gonzalez-Santamaria, at 10720 Caribbean Blvd., Suite # 105, Cutler Bay, Florida 33189.
- 1.18. **OPENING OF BIDS-** Bids will be publicly opened and read aloud at the appointed time and place stated in the Invitation to Bid/Request for Proposals. Late Bids will not be considered. No responsibility will be attached to any Town Staff for the premature opening of a Bid not properly addressed and identified. Bidders or their authorized agents are invited to be present at the bid opening.
- 1.19. **PUBLIC ENTITY CRIMES ACT-** In accordance with the Public Entity Crimes Act, (Section 287.133, Florida Statutes) a person or affiliate who is a contractor, who had been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the Town, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases or real property to the Town, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with the Town in excess of the threshold amount provided in Section 287.917, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section by the Contractor shall result in rejection of the Bid, termination of the contract, and may cause Contractor debarment.

- 1.20. **TOWN LICENSES, PERMITS AND FEES-** In accordance with the Public Bid Disclosure Act, 218.80, Florida Statutes, each license, permit, or fee a Contractor will have to pay the Town before or during the Work or the percentage method or unit method
- 1.21. of all licenses, permits and fees required by the Town and payable to the Town by virtue of the Work as part of the Agreement are as follows:
- 1) Contractor shall have and maintain during the term of the Agreement all appropriate Town licenses, and fees for which shall be paid in full in accordance with the Town's Fee structure for such licenses. THERE WILL NOT BE ANY PERCENTAGE REDUCTION OR WAIVING OF TOWN LICENSE FEES.
- 2) During the performance of the Agreement there may be times when the Contractor will be required to obtain a Town permit for the Work. It is the responsibility of the Contractor to insure that he or she has the appropriate Town permits to perform such Work as may become necessary during the performance of the Agreement. Any fees related to Town required permits in connection with the Agreement will be the responsibility of the Contractor and will not be reimbursed by the Town. Licenses, permits, and fees that may be required by County, State or Federal entities are not included in the above list.
- 1.22. **INSURANCE.** The Bidder shall be required to provide and maintain insurance coverage of such types and amounts as specified in Article 5-Bond and Insurance. The Bidder shall include with his or her Bid either Certificates of Insurance evidencing same or documentation from his or her insurer evidencing the insurability of the Bidder to meet the insurance requirements.
- 1.23. **BONDS.** A Performance and a Payment Bond for the **entire** base bid amount shall be required in connection with this contract.
- 1.24. **FAMILIARITY WITH LAWS-** The Bidder is assumed to be familiar with all applicable Federal, State, and local laws, ordinances, rules, and regulations that may in any manner affect the Work.
- 1.24. **EXAMINATION OF BIDDER'S FACILITIES** - The Town, as part of its evaluation may perform an examination of the Bidder's facilities. The Town Manager or designee, as part of the evaluation, may perform this examination.

The term facilities as used in this solicitation shall include, but shall not be limited to, all properties operated by the Bidder, all equipment used in the performance of business by the Bidder, and/or any other evidence, tangible or intangible, that the Town may deem necessary to substantiate the technical and other qualifications, and the abilities of the Bidder to perform the Work.

The examination shall include, but shall not be limited to, appearance and cleanliness of facilities, appearance and cleanliness of equipment, "road worthiness" of vehicles, appearance and visibility of all signage on vehicles, and possession and distribution of mandatory equipment. Vehicles shall be examined for compliance with State of Florida Statutes, as well as applicable County and Town Ordinances. Additionally, examination may include verification of some of the (physical) minimum requirements for Bidders. Additionally, the Town reserves the right to perform such examinations on the successful Bidder as often as it deems necessary, to ensure proper performance of the proposed Agreement.

1.25 **ALLOWANCES** – Included in the contract sum is an allocation account for unforeseen conditions, potential construction changes and quantity adjustments, and additional work or materials that the Town may deem necessary if ordered and authorized by the Town in accordance with the Contract Documents.

1.26 **CAMPAIGN FINANCE RESTRICTIONS ON VENDORS-** 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 of the Town, 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.

1.27 **CONE OF SILENCE-** Notwithstanding any other provision of these specifications, the provisions of Town "Cone of Silence" are applicable to this transaction. The entirety of these provisions can be found in the Town's Purchasing Ordinance, Town Ordinance 06-22. The "Cone of Silence," as used herein, means a prohibition on any communication regarding a particular Request for Proposal ("RFP"), Request for Qualification ("RFQ") or bid, between:

A potential vendor, service provider, proposer, bidder, lobbyist, or consultant; and

The Town Council, Town's professional staff including, but not limited to, the Town Manager and his or her staff, any member of the Town's selection or evaluation committee.

The Cone of Silence shall be imposed upon each RFQ, RFP and bid after the advertisement of said RFQ, RFP, or bid. The Cone of Silence shall terminate at the beginning of the Town Council meeting at which time the Town Manager makes his or her written recommendation to the Town Council. However, if the Town Council refers the Manager's recommendation back to the Manager or staff for further review, the Cone of Silence shall be re-imposed until such time as the Manager makes a subsequent written recommendation.

The Cone of Silence shall not apply to:

- (1) oral communications at pre-bid conferences;
- (2) oral presentations before selection or evaluation committees;
- (3) public presentations made to the Town Council during any duly noticed public meeting;
- (4) communication in writing at any time with any Town employee, unless specifically prohibited by the applicable RFQ, RFP or bid documents. The bidder or proposer shall file a copy of any written communication with the Town Clerk. The Town Clerk shall make copies available to any person upon request;
- (5) communications regarding a particular RFQ, RFP or bid between a potential vendor, service provider, proposer, bidder, lobbyist or consultant and the Town's Purchasing Agent or Town employee designated responsible for administering the procurement process for such RFQ, RFP or bid, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document;
- (6) communications with the Town Attorney and his or her staff;
- (7) duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the Town Manager makes his or her written recommendation;
- (8) any emergency procurement of goods or services pursuant to Town Code;
- (9) responses to the Town's request for clarification or additional information;
- (10) contract negotiations during any duly noticed public meeting;
- (11) communications to enable Town staff to seek and obtain industry comment or perform market research, provided all communications related thereto between a potential vendor, service provider, proposer, bidder, lobbyist, or consultant and any member of the Town's professional staff including, but not limited to, the Town Manager and his or her staff are in writing or are made at a duly noticed public meeting.

Please contact the Town Attorney for any questions concerning Cone of Silence compliance. Violation of the Cone of Silence by a particular bidder or proposer shall render any RFQ award, RFP award or bid award to said bidder or proposer voidable by the Town Council and/or Town Manager.

- 1.28 **LOBBYIST REGISTRATION**- Proposers must also comply with all Town Charter sections and Code provisions that pertain to lobbyists, including Section 7.6 of the Town Charter and implementing ordinance(s), including Sec. 2-11(s) of the Town Code and Ordinance 07-02. Please contact the Town Clerk at (305) 234-4262 for additional information.
- 1.28.1 **PROTEST PROCEDURES**- With respect to a protest of the terms, conditions, and specifications contained in a solicitation (RFP, RFQ, or Bid), including any provisions governing the methods for ranking bids, proposals, or replies, awarding contracts, reserving rights of further negotiation, or modifying or amending any contract, the notice of protest shall be filed in accordance with Town Ordinance 06-22.

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TOWN OF CUTLER BAY

SECTION 3

CONTRACT BETWEEN OWNER AND CONTRACTOR

THIS CONTRACT is dated as of the ___ day of _____ in the year 2010 (which shall be the Effective Date of the Contract) by and between the Town of Cutler Bay (hereinafter called "OWNER" or "TOWN") and _____ (hereinafter called "CONTRACTOR").

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1. WORK. CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The SW 208 Street improvements project is located between SW 87th Avenue to the East and Old Cutler Road at it's Western Terminus. The existing roadway configuration is a five lane undivided facility with residential dwellings abutting the project to the north and south. The proposed configuration calls for a typical section reconfiguration by converting the roadway into a two lane divided facility with landscape components.

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

TOWN OF CUTLER BAY

SW 208 STREET ROAWAY IMPROVEMENTS

("THE PROJECT")

Article 2. ENGINEER. The Project has been designed by the following:

ENGINEER:

Marlin Engineering, Inc.
2191 NW 97 Avenue
Miami, FL 33172-2313
Phone (305) 477-7575

Who is hereinafter called "ENGINEER" and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3. CONTRACT TIME.

- 3.1 If awarded the Base Bid Work, the contractor may not mobilize prior to **TBA**. The Work will be substantially completed by **TBA** and within 90 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 120 calendar days after the date when the Contract Time commences to run, after such time liquidated damages begin.
- 3.2 If awarded the Base Bid and Additive Bid Work, the contractor may not mobilize for the Base Bid Work prior to **TBA**. The Base Bid Work will be substantially completed by **TBA**, and the Base Bid and Additive Bid Work will be substantially completed within 150 calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within 180 calendar days after the date when the Contract Time commences to run.
- 3.3 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Contract and that OWNER will suffer financial loss and other damages if the Work is not substantially or finally complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not substantially or finally complete on time. CONTRACTOR acknowledges and agrees that the actual delay damages which OWNER will suffer in the event of delay in achieving Substantial Completion or Final Completion of the Work are difficult, if not impossible, to determine and that the liquidated damages described herein are a fair and reasonable estimate of the delay damages which the OWNER is expected to suffer in the event of such delay. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree, that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER One Thousand and 00/100 dollars (\$1,000.00) for each day that expires after the time specified in Paragraph 3.1 for Substantial Completion until the Work is substantially complete. Liquidated damages shall be deducted from the CONTRACTOR's Applications for Payment. However, if at the time of the CONTRACTOR's Final Application for Payment, CONTRACTOR is owed insufficient amounts to fully cover the deduction for liquidated damages, then CONTRACTOR shall pay any amount due within 10 days of written demand by OWNER.

Article 4. CONTRACT PRICE.

- 4.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents and the Schedule of Values provided for payment request purposes in current funds as follows:

Contract Price \$ _____

Contract Price (in words) _____

- 4.2 Included in the Agreement Sum is an allowance account of \$15,000.00 for the Base Bid Form for unforeseen conditions, potential construction changes and quantity adjustments, and additional work or materials that the Town may deem necessary if ordered and authorized by the Town Manager in accordance with the Contract Documents. Money may only be taken from this account at the prior approval of the Engineer and pursuant to any procedures outlined by the Town Manager.

Article 5. PAYMENT PROCEDURES.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

- 5.1. Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER, on or before the 28th day of each month during construction as provided below. The Application for Payment shall be in AIA format. All progress payments will be on the basis of the progress of the Work measured by the Schedule of Values provided in paragraph 14.01 of the General Conditions and the requirements of the Contract Documents.
- 5.1.1 Prior to Substantial Completion, progress payments will be in an amount equal to: 90% of the Work completed and 90% of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.
- 5.1.2 Upon Substantial Completion, OWNER shall pay an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price, less such amounts as ENGINEER shall determine in accordance with paragraph 14.02.B.5 of the General Conditions.
- 5.2. Final Payment. Upon Final Completion and acceptance of the Work in accordance with paragraph 14.07.B.1 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.B.1.

Article 6. INTEREST. Not Applicable

Article 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce OWNER to enter into the Contract, CONTRACTOR makes the following representations:

- 7.1. CONTRACTOR has thoroughly and to its full satisfaction familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work. CONTRACTOR has: (a) examined the Contract Documents, Project Specifications and Drawings thoroughly to its full satisfaction and has undertaken the responsibility to determine, within the scope of

CONTRACTOR's competence as a licensed General Contractor, that the Project Specifications and Drawings are fit and proper for the performance of the Work and to the best of CONTRACTOR's knowledge are: (i) free from material errors, omissions, and/or inconsistencies; and (ii) are in compliance with applicable laws, statutes, building codes, ordinances, rules and regulations, recognizing however, that CONTRACTOR is not responsible for the design of the Project; (b) visited the site to familiarize himself with local conditions that may in any manner affect cost, progress or performance of the Work; (c) examined the Project Site to its full satisfaction, including any existing work or improvements in place, and has determined that the same are fit and proper to receive the Work in their present condition and CONTRACTOR waives all claims that same are not in accordance with all data and information with respect to the Project as specified in the Drawings and Project Specifications and/or as provided by OWNER and Engineer; (d) familiarized himself with federal, state and local laws, ordinances, rules, policies, and regulations that may in any manner affect cost, progress or performance of the Work; (e) studied and carefully correlated CONTRACTOR's observations with the Contract Documents; and (f) at CONTRACTOR's own expense, made or obtained any additional examinations, investigations, explorations, tests and studies, and obtained any additional information and data which pertain to the physical conditions (surface, sub-surface and underground facilities) at or contiguous to the Project or otherwise which may affect cost, progress, performance or furnishing of the Work and which CONTRACTOR deems necessary to determine its Contract Price for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.

- 7.2. CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by ENGINEER in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.
- 7.3. CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 7.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.
- 7.4. CONTRACTOR has correlated and considered the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents and in reaching the Contract Price and Contract Time.
- 7.5. CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR. CONTRACTOR shall not rely on any conflicts, errors or discrepancies that CONTRACTOR knew or should have known exist in the Contract Documents as a basis for a claim for an extra to the Contract Price or Contract Time.

Article 8. CONTRACT DOCUMENTS.

The Contract Documents that comprise the entire Contract between OWNER and CONTRACTOR are attached to this Contract, made a part hereof and consist of the items listed in the general conditions and the following:

- 8.1. This Contract
- 8.2. Invitation to Bid
- 8.3. Bid Form
- 8.4. Standard General Conditions
- 8.5. Supplementary Conditions
- 8.6. Detailed Specifications as included in this package and as referenced
- 8.7. Code of Silence/Campaign Contribution Ordinance/Lobbyist Registration Requirements
- 8.8. Addendum Acknowledgement
- 8.9. Anti-Kickback Affidavit
- 8.10. Non-Collusive Affidavit
- 8.11. Sworn Statement
- 8.12. Qualification Statement
- 8.13. Performance Bond
- 8.14. Payment Bond
- 8.15. Drug-Free Work Place Form
- 8.16. Construction Plans titled – “SW 208 Street Roadway Improvements”
- 8.17. Any Modifications, including Work Authorizations, duly delivered after execution of the Contract.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be altered, amended or repealed by a Modification (as defined in Section 1 of the General Conditions).

Article 9. MISCELLANEOUS

- 9.1. Terms used in this Contract which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.
- 9.2. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically

stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

- 9.3. OWNER and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 9.4. This Contract may be executed in counterparts.
- 9.5. The OWNER shall retain the ownership of all shop drawings and design drawings once payment therefore is made.
- 9.7. OWNER and CONTRACTOR hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action or proceeding based upon the Contract Documents or arising out of, under, or in connection with the Work or the Project.
- 9.8. The law of the State of Florida shall govern the contract between the Town of Cutler Bay and the successful bidder and any action shall be brought in Miami-Dade County, Florida. In the event of litigation to settle issues arising hereunder, the prevailing party in such litigation shall be entitled to recover against the other party its costs and expenses, including reasonable attorney fees, which shall include any fees and costs attributable to appellate proceedings arising on and of such litigation.
- 9.9. INDEMNIFICATION- The parties agree that 1% of the total compensation paid to the Contractor for the performance of this agreement shall represent the specific consideration for the Contractor's indemnification of the Town as set forth in this Section and in the Terms and Conditions.

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

In any and all claims against the Town or any of their consultants, agents or employees by any employee of Contractor, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, the indemnification obligation under the above

paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any such Subcontractor or other person or organization under workers or workman's compensation acts, disability benefit acts or other employee benefit acts.

It is the specific intent of the parties hereto that the foregoing indemnification complies with Florida Statute 725.06 (Chapter 725). It is further the specific intent and agreement of the parties that all of the Contract Documents on this project are hereby amended to include the foregoing indemnification and the "Specific Consideration" therefore.

The official title of the Town is "Town of Cutler Bay". This official title shall be used in all insurance, or other legal documentation. Town of Cutler Bay is to be included as "Additional Insured" with respect to liability arising out of operations performed for Town of Cutler Bay by or on behalf of Contractor or acts or omissions of Contractor in connection with such operation.

- 9.10 WARRANTIES OF CONTRACTOR- The CONTRACTOR hereby warrants and represents that at all times during the term of this Agreement it shall maintain in good standing all required licenses, certifications and permits required under Federal, State and local laws necessary to perform the Specified Services.
- 9.11 DEFAULT/FAILURE TO PERFORM- The Town shall be the sole judge of nonperformance, which shall include any failure on the part of the successful bidder to accept the award, to furnish required documents, and/or to fulfill any portion of this contract within the time stipulated.

Upon default by the successful bidder to meet any terms of this agreement, the Town will notify the bidder three (3) days (weekends and holidays excluded) to remedy the default. Failure on the contractor's part to correct the default within the required three (3) days shall result in the contract being terminated and upon the Town notifying in writing the contractor of its intentions and the effective date of the termination. The following shall constitute default:

- A) Failure to perform the work required under the contract and/or within the time required or failing to use the subcontractors, entities and personnel as identified and set forth, and to the degree specified in the contract.
- B) Failure to begin the work under this contract within the time specified.
- C) Failure to perform the work with sufficient workers and equipment or with sufficient materials to ensure timely completion.
- D) Neglecting or refusing to remove materials or perform new work where prior work has been rejected as non conforming with the terms of the contract.
- E) Becoming insolvent, being declared bankrupt, or committing act of bankruptcy or insolvency, or making an assignment renders the successful bidder incapable of performing the work in accordance with and as required by the contract.
- F) Failure to comply with any of the terms of the contract in any material respect.

In the event of litigation or arbitration arising from a default by the contractor, the contractor shall also be liable for all damages caused by its default which damages may include but not be limited to any and all costs incurred by the Town in completing the project, and damages arising out of the contractor's failure to adhere to the contract

requirements and all attorney's fees and costs incurred by the Town in seeking legal relief for the default.

- 9.12 OTHER CAUSES FOR TERMINATION- The Town of Cutler Bay reserves the right to cancel this contract by written notice to the contractor effective the date specified in the notice should any of the following apply:
- A) The Town has determined that such cancellation will be in the best interest of the Town to cancel the contract for its own convenience. In the event the contract is terminated for the Town's convenience the contractor will be paid for all labor and materials provided as of the termination date. No consideration will be given for anticipated lost revenue, overhead, mobilization or demobilization or the canceled portions of the contract.
 - B) Funds are not available to cover the cost of the services. The Town's obligation is contingent upon the availability of appropriate funds.
- 9.13 ANTI-DISCRIMINATION- The bidder certifies compliance with the non-discrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin. Furthermore the bidder shall comply with all other State and local laws and policies that prohibit discrimination.
- 9.14 If any provision of this Contract or any Authorization under this Contract or the application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of the is Contract, 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.
- 9.15 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.
- 9.16 Contractor shall abide by the applicable provisions of Chapter 119, Florida Statutes (Public Records).

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IN WITNESS WHEREOF, the parties hereto have signed 6 copies of this Contract. At least one counterpart each has been delivered to OWNER, CONTRACTOR, and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on OWNER'S behalf.

OWNER
Town of Cutler Bay

CONTRACTOR

ADDRESS
10720 Caribbean Blvd., Suite 105
Cutler Bay, FL 33189

ADDRESS

BY:

BY _____

Steven J. Alexander
Town Manager

WITNESS _____

WITNESS _____

(CORPORATE SEAL)

(CORPORATE SEAL)

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TOWN OF CUTLER BAY

SECTION 4

BIDDER'S REPRESENTATION

SW 208 STREET ROADWAY IMPROVEMENTS

Proposal of GENERAL ASPHALT CO., INC.
(Name)
4850 N.W. 72 AVE., MIAMI, FL. 33166
(Address)

to furnish all materials, equipment, and labor and to perform all work in accordance with the Contract Documents for:

SW 208 STREET ROADWAY IMPROVEMENTS

("THE PROJECT")

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

The undersigned, as Bidder, hereby declares that the only person or persons interested in the Bid, as principal or principals, is or are named herein and that no other person than herein mentioned has any interests in the Bid of the Agreement to which the Work pertains; that this Bid is made without connection or arrangement with any other person, company, or parties making Bids or Proposals and that the Bid is in all respects fair and made in good faith without collusion or fraud.

The Bidder further declares that he or she has examined the geographic location and sites of the Work; that he has made sufficient investigations to fully satisfy himself that such sites are suitable for this Work; and he assumes full responsibility therefore; that he has examined the specifications for the Work and from his own experience or from professional advice that the specifications are sufficient for the Work to be done and he has examined the other Contract Documents relating thereto, including the Instructions to Bidders, the Agreement, Bid, Detailed Scope of Work/Specifications, Qualification Statement, Public Entity Crime Form, and Insurance requirements and he has read all addenda prior to the opening of Bids, and that he has satisfied himself fully, relative to all matters and conditions with respect to the Work to which this Bid pertains.

The Bidder proposes and agrees, if this Bid is accepted, to timely execute the Agreement with the Town in the form attached and to furnish all necessary materials, all equipment, all necessary machinery, tools, apparatus, means of transportation, and labor necessary to complete the Work specified in the Bid and the Agreement, and called for by the specifications and in the manner specified and to timely submit all required bonds and insurance certificates.

NOTE: THIS SCHEDULE OF BID ITEMS IS MERELY ILLUSTRATIVE OF THE MINIMUM AMOUNT/QUANTITY OF WORK TO BE PERFORMED UNDER THE CONTRACT. IN THE CASE OF ANY CONFLICT BETWEEN THIS SCHEDULE OF BID ITEMS AND THE DETAILED SPECIFICATIONS, THE DETAILED SPECIFICATIONS WILL PREVAIL.

The Bidder further proposes and agrees to comply in all respects with the time limits for commencement and completion of the Work as stated in the Agreement.

The Bidder agrees to execute the Agreement and furnish the executed Agreement, all required bonds, insurance certificates, and other required information to Town within ten (10) ten calendar days after written notice of the Award of contract. Failure on the part of the Bidder to timely comply with this provision shall give Town all rights and remedies set forth in the Instructions to Bidders.

The undersigned agrees to accept as full compensation therefore the total of the lump sum prices and extended unit prices items named in the following schedule. It is understood that the unit prices quoted or established for a particular item are to be used for computing the amount to be paid to the Contractor, based on the Work actually performed as determined by the Agreement and the Town. However, in utilizing the schedule, the Bidder agrees that in no event shall compensation paid to the Bidder under the Agreement exceed the dollar amount of the Bidder's Bid amount, as set forth in the attached Bid.

It is intended that all Work to be performed under this Bid shall commence approximately thirty (30) days after Agreement execution.

In no event shall Town be obligated to pay for Work not performed or materials not furnished.

Bidder's Certificate of Competency No. E-702

Bidder's Occupational License No. 30-0254235

WITNESS



By: 
Signature of Authorized Agent

(SEAL)

BID FORM

The following Bid Proposal is presented to assist the Town in evaluating the Bid. The Bid Amounts will include all items described in the Bid Documents (Detailed Specifications). Payment shall be made on the basis of Work actually performed and completed.

The Base Bid Amount includes all work on SW 208 Street (from: Old Cutler Road to: SW 87 Ave):

BASE BID AMOUNT \$ 342,037.77

BASE BID AMOUNT (IN WORDS) THREE HUNDRED FORTY TWO

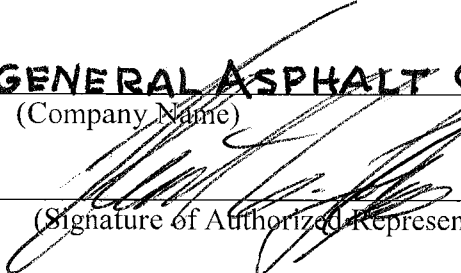
THOUSAND THIRTY SEVEN DOLLARS AND SEVENTY SEVEN CENTS

Taxpayer Identification Number:

59-1115297

BIDDER:

GENERAL ASPHALT CO., INC.
(Company Name)


(Signature of Authorized Representative)

ROBERT A. LOPEZ, PRESIDENT
(Printed Name and Title)

4850 N.W. 72 AVE, MIAMI, FL. 33166
(Company Address)

(305) 592-3480
(Company Phone Number)

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TOWN OF CUTLER BAY

BASE BID FORM

The following Base Bid Form is presented to assist the Town in evaluating the Bid. This Base Bid Form reflects estimated quantities for the Base Bid roadway sections as described above. After award, the Town reserves the right to modify estimated quantities subject to the unit price, and eliminate line items if necessary. In the event of discrepancy or approved quantity change, the Unit Price for each item will govern. Payment shall be made for the items listed on the Bid Form on the basis of the Work actually performed and completed.

BID ITEM NO.	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	VALUE
101-1	MOBILIZATION	1	LS	\$5,000.00	\$5,000.00
102-1	MAINTENANCE OF TRAFFIC	1	LS	\$10,000.00	\$10,000.00
104-10-3	SEDIMENT BARRIER	350	LF	\$1.00	\$350.00
104-18	INLET PROTECTION SYSTEM	21	EA	\$50.00	\$1,050.00
110-1-1	CLEARING & GRUBBING	0.08	LSIAC	\$188,000.00	\$15,040.00
110-4	REMOVAL OF EXISTING CONCRETE PAVEMENT	166	SY	\$11.00	\$1,826.00
120-1	REGULAR EXCAVATION	172	CY	\$60.00	\$10,320.00
160-4	TYPE B STABILIZATION	562	SY	\$4.00	\$2,248.00
162-1-11	PREPARED SOIL LAYER, FINISH SOIL LAYER, 6"	1,888	SY	\$4.00	\$7,552.00
285-706	OPTIONAL BASE, BASE GROUP 06	738	SY	\$15.00	\$11,070.00
327-70-1	MILLING EXIST ASPH PAVT 1" AVG DEPTH	15,971	SY	\$1.50	\$23,956.50
327-70-5	MILLING EXIST ASPH PAVT 2" AVG DEPTH	236	SY	\$4.00	\$944.00
334-1-13	SUPERPAVE ASPHALTIC CONC, TRAFFIC C	113.7	TN	\$100.00	\$11,370.00
337-7-32	ASPHALT CONCRETE FRICTION COURSE, TRAFFIC C, FC-9.5, RUBBER	932.0	TN	\$92.00	\$85,744.00
425-5	MANHOLE ADJUST	1	EA	\$300.00	\$300.00
425-5-1	MANHOLE ADJUST (UTILITIES)	17	EA	\$300.00	\$5,100.00
425-6	VALVE BOX ADJUST	28	EA	\$150.00	\$4,200.00
520-1-10	CONCRETE CURB & GUTTER, TYPE F	3,460	LF	\$14.00	\$48,440.00
520-5-41	TRAFFIC SEPARATOR CONCRETE- TYPE IV, 4' WIDE	526	LF	\$26.00	\$13,676.00
522-1	SIDEWALK CONCRETE, 4" THICK	212	SY	\$35.00	\$7,420.00
570-1-2	PERFORMANCE TURF, SOD	1,888	SY	\$2.00	\$3,776.00
700-20-11	SINGLE POST SIGN (LESS THAN 12 SQ. FT.)	52	AS	\$258.10	\$13,416.00
700-20-12	SINGLE POST SIGN, F&I, 12-20 SF	2	AS	\$577.00	\$1,154.00
700-20-60	SINGLE POST (REMOVE)	35	AS	\$11.00	\$385.00
705-10-1	OBJECT MARKER, TYPE 1	9	EA	\$210.00	\$1,890.00
706-3	RETRO-REFLECTIVE PAVEMENT MARKERS	468	EA	\$3.15	\$1,472.20
711-11-160	THERMOPLASTIC, STANDARD, WHITE, MESSAGE	24	EA	\$115.00	\$2,760.00
711-11-170	THERMOPLASTIC, STANDARD, WHITE, ARROW	31	EA	\$74.00	\$2,294.00
711-11-111	THERMOPLASTIC, STD, WHITE, SOLID, 6"	1,753	NM	\$4435.00	\$7,774.55
711-11-122	THERMOPLASTIC, STANDARD, WHITE, SOLID, 8"	307	LF	\$1.15	\$353.05
711-11-123	THERMOPLASTIC, STANDARD, WHITE, SOLID (12")	740	LF	\$1.70	\$1,258.00
711-11-124	THERMOPLASTIC, STANDARD, WHITE, SOLID, 18"	802	LF	\$2.50	\$2,005.00
711-11-125	THERMOPLASTIC, STANDARD, WHITE, SOLID, 24"	151	LF	\$5.25	\$792.25
711-11-151	THERMOPLASTIC, STANDARD, WHITE, /GUIDELINE 2"-4"	218	LF	\$1.00	\$218.00
711-11-211	THERMOPLASTIC, STD, YELLOW, SOLID, 6"	1,189	NM	\$4,435.00	\$5,273.21
711-11-224	THERMOPLASTIC, STANDARD, YELLOW, SOLID, 18"	375	LF	\$2.50	\$937.50
711-11-231	THERMOPLASTIC, STANDARD, YELLOW, SKIP, 6"	0.024	GM	\$1,100.00	\$26.40
711-11-421	THERMOPLASTIC, STANDARD, BLUE, SOLID, 6"	116	LF	\$2.10	\$243.00
711-11-460	THERMOPLASTIC, STANDARD, BLUE, MESSAGE	2	EA	\$200.00	\$400.00
N/A	ALLOWANCE		LS		\$30,000.00

\$342,037.77

TOWN OF CUTLER BAY

BASE BID AMOUNT \$ 342,037.77

BASE BID AMOUNT (IN WORDS) THREE HUNDRED FORTY TWO THOUSAND THIRTY SEVEN DOLLARS AND SEVENTY SEVEN CENTS

Bid Item Notes:

1. Bid Item 101-1 is a lump sum pay item for all mobilization costs. Includes the construction of two (2) project signs that shall be displayed at each approach to the work zone of the project area. The intent is that the signs will be freestanding. The sign shall display on both sides the project name, Town Logo, elected officials, engineer, and contact information. A detail of the sign will be provided at time of Notice to Proceed. Shop drawings must be submitted for approval prior to ordering the projects signs. Photos of the actual project signs must be submitted for approval prior to installation of the project signs.
2. Bid Item 102-1 is a lump sum pay item for a Maintenance of Traffic and includes all pedestrian access maintenance. All crosswalks and sidewalks shall remain open and free of obstructions. Temporary painting for roadways and crosswalks shall be maintained throughout the project. Includes the total shown on the Signing and Pavement Markings Tabulation of Quantities for painted pavement markings used for Maintenance of Traffic.
3. Bid Item 120-1 includes all cost related to the construction of 692 LF of C-900 PVC-6" Pipe, as shown on Plan Sheets.
4. Bid Item 110-1 is a lump sum pay item that includes the cost of removal and disposal of all existing asphalt pavement as indicated in the plans. Includes cost of sawcutting as required for the project.
5. Bid Item 425-6 includes the cost of relocation of one (1) existing water valve, Sta. 57+82.00, that needs to be relocated.
6. Bid Item 520-1-10 includes the cost of 53 LF of drop curb as shown in the plans. Includes the sawcutting of the existing Type F curb and gutter.
7. Bid Item 522-1 includes the cost of 34.0 SY for the reconstruction of the 4" concrete aprons as shown in the plans.

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TOWN OF CUTLER BAY

SECTION 5

SUPPLEMENTARY CONDITIONS

1.01 GENERAL:

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 edit.) and other provisions of the Contract Documents as indicated below. All provisions that are not so amended or supplemented remain in full force and effect. If there is a conflict between the Contract, General Conditions (No. 1910-8, 1996 edit.) and these Supplementary Conditions, the terms of the Supplementary Conditions shall control.

The Contractor shall note physically by cross out or cross reference notations all changes in the General Conditions called for in the Supplementary Conditions before submitting his Bid.

ARTICLE 1 - DEFINITIONS - Page 6

SC-1.01.A

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 edit.) have the meanings assigned to them in the General Conditions, unless otherwise indicated.

Amend paragraph SC-1.01.A.28 by replacing the terminology Notice of Award with Notice of Intent to Award.

Amend paragraph SC-1.01.A.29 by replacing it with the following paragraph:

Notice to Proceed-A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform a particular specified portion of the Work under the Contract Documents. It is anticipated that multiple Notices to Proceed will be issued by OWNER on an as-needed basis. OWNER is not limited in the number of separate Notices to Proceed it may issue other than by the total Contract Time and total Contract Price. Each portion of the Work shall be separately described in an applicable Notice to Proceed which shall govern that portion of the required Work and indicate substantial completion and final completion requirements. Failure to comply with such dates will be subject to liquidated damages.

Amend paragraph SC-1.01.A.42 by replacing it with the following paragraph:

Subcontractor – An individual or entity having a direct contract with CONTRACTOR. Sub-Subcontractor is an individual or entity having a direct contract with any Subcontractor for the performance of a part of Work at the Project.

Amend paragraph SC-1.01.A.30 by replacing it with the following paragraph:

OWNER – The individual, entity, public body, Town Manager, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

Add SC-1.01.A.51 as the following paragraph:

Promptly – The period of time not exceeding five business days.

ARTICLE 2 - PRELIMINARY MATTERS - Page 9

SC-2.03

Amend paragraph 2.03.A by replacing it with the following paragraph:

The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if one or more Notices to Proceed are given, on the day indicated in a particular Notice to Proceed. Multiple Notices to Proceed may be given at any time during the term of this Agreement. Each Notice to Proceed shall govern Contract Times for that portion of the Work covered in the applicable Notice to Proceed.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS - Page 13

SC-4.04

Amend paragraph 4.04.B.2 by replacing the last sentence with the following:

If OWNER or CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, a Claim may be made as provided in paragraph 10.05.

ARTICLE 5 - BONDS AND INSURANCE - Page 15

SC-5.01

Amend paragraph 5.01.C by adding the following language at the end of the paragraph:
Any additional costs shall be borne by the Contractor.

SC-5.04

Add the new paragraphs immediately after paragraph 5.04 of the General Conditions.

The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by law:

5.04.A.1 and 5.04.A.2 Workers' Compensation, etc. under paragraphs 5.04.A.1 and 5.04.A.2 of the General Conditions:

1. Comprehensive General Liability:
 - (a) Coverage to include Premise/Operations, Broad Form Property Damage, Contractual and Personal Injury, and XCU (where applicable).
 2. Limits:
 - (a) General Aggregate \$1,000,000
 - (b) Each Occurrence \$1,000,000
 - (c) Personal Injury \$1,000,000
 3. Coverage is to be written on an "occurrence" basis.
 4. Owners and Contractors Protection:
 - (a) Bodily Injury:
 - Annual Aggregate \$1,000,000
 - Each Occurrence \$1,000,000
 - (b) Property Damage:
 - Annual Aggregate \$1,000,000
 - Each Occurrence \$1,000,000
 5. Worker's Compensation shall be in accordance with the provisions of the laws of the State of Florida.
- 5.04.A.6 Comprehensive Automobile Liability:
 - (a) Coverage to include all owned, hired, non-owned vehicles, and/or trailers and other equipment required to be licensed.
 - (b) Limits:
 - Combined Single Limit \$1,000,000
- 5.04.B.1 Umbrella:
 - (a) Limits:
 - Aggregate \$1,000,000
 - (b) Cover all claims arising out of the contractor's operations or premises, anyone directly or indirectly employed by the Contractor or Subcontractor, and the Contractor's obligations under indemnification under this Contract.
- 5.04.B.8 The Town of Cutler Bay, shall be included as a named insured party under the Contractors Liability Insurance. The following paragraph is required to appear unaltered on the Certificate of Insurance.
- "The Town of Cutler Bay, Florida is hereby named Additional Insured under the terms of this policy."
- 5.04.B.9 A thirty (30) day Notice of Cancellation is required and must be stated on the Certificate of Insurance.

5.04.B10 The Certificate of Insurance shall be issued to the Town of Cutler Bay, Florida at the following address:

Town of Cutler Bay
10720 Caribbean Blvd., Suite 105
Cutler Bay, FL 33189

5.06 Delete this section in its entirety.

5.07 Delete this section in its entirety.

**ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES - INDEMNIFICATION -
Page 18**

SC-6.01

Add the new paragraphs immediately after paragraph 6.01.B of the General Conditions.

The Contractor shall perform all work in compliance with all applicable safety codes. A competent English speaking superintendent will be on the job at all times during working hours, and will be subject to call during off-duty hours for emergency situations. The superintendent shall have overall charge of the work with complete authority regarding the Contractor's workmen, equipment and material purchases. The superintendent shall have complete authority to act on behalf of the Contractor. This person must be sufficiently qualified and have read and understood the Drawings, Specifications and all Contract Documents.

SC-6.02

Modify paragraph 6.02.B to allow work on Saturday per the following new paragraph added immediately after paragraph 6.02.B of the General Conditions.

The Project sites being located in a single-family residential area, there shall be no undue noise created, whether by workers arriving at the sites or by actual construction work, before 9:00 a.m. or after 6:00 p.m. Monday through Saturday. No work shall be performed on Sunday or legal holidays as defined by the Town. There are no public sanitary facilities nearby the work sites, and the Contractor must therefore make arrangements for portable sanitary facilities as authorized by the Town.

SC-6.06

Amend paragraph 6.06.A by replacing the last sentence of the paragraph with the following sentence:

CONTRACTOR shall not be required to employ any Subcontractor, supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection, except as required by 6.06.B and the Instruction to Bidders.

Amend paragraph 6.06.B by adding the words “Instructions to Bidders” before Supplementary Conditions where ever it appears.

Amend paragraph 6.06.B by deleting the following sentence from the paragraph:

CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed.

Amend paragraph 6.06.B by adding the following language at the end of the last sentence of the paragraph:

nor does such acceptance create a contractual relationship between the OWNER and any subcontractor, supplier, individual or entity.

SC-6.09

Amend paragraph 6.09.C by replacing the first sentence of the paragraph with the following sentence:

Changes in Laws or Regulations which become effective after the time of opening of Bids (or, on the Effective Date of the Contract if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times.

Add the new paragraphs immediately after paragraph 6.09.C. of the General Conditions:

All vehicles used in connection with the Contractor's operations will be required to have identification signs.

SC-6.11

Amend paragraph 6.11.A.2 by adding the following language at the end of the last sentence:

, as set forth on the Resident Complaint Resolution Protocol attached hereto and made a part of the Contract Documents.

Add the new paragraphs immediately after paragraph 6.11.B. of the General Conditions:

Adjacent residents must have access to their driveways at all times. All barricades and warning signs for any traffic lane closures will be provided and maintained by the Contractor. Cost of all barricades and signs shall be the responsibility of the Contractor.

Any off-duty officers as may be required in the maintenance of traffic shall be provided by the Contractor at the Contractor's expense.

SC-6.12

Amend paragraph 6.12.A by replacing the first sentence of the paragraph with the following sentence:

CONTRACTOR shall maintain in a safe place at the Project one record copy of all Drawings, Project Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders, As Builts, and written interpretations and clarifications in good order and annotated to show changes made during construction.

SC-6.13

Amend paragraph 6.13.A.3 by replacing it with the following paragraph:

other property at the Project or adjacent thereto, including, but not limited, to trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and underground facilities not designated for removal, relocation, or replacement in course of construction.

SC-6.20

Amend the paragraphs 6.20.A.1 and 6.20.A.2 by replacing them with the following paragraph.

To the fullest extent permitted by Laws and Regulations, the Parties agree that in consideration of the first \$1,000.00 dollars to be paid by Owner to Contractor hereunder and other specific consideration, the receipt and sufficiency of which is hereby acknowledged, the Contractor shall indemnify, defend and hold harmless the OWNER and ENGINEER and their consultants, agents, officers and employees, and the elected officials of the Owner, from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professional and court and arbitration costs) arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is implied by Law and Regulations regardless of the negligence of any such party.

Amend paragraphs 6.20.B by replacing it with the following paragraph:

In any and all claims against OWNER and ENGINEER and their consultants, agents, officers and employees, and the elected officials of the Owner by any CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of

them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20 shall not be limited in any way, by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 8 - OWNER'S RESPONSIBILITIES - Page 26

SC-8.02

Amend paragraph 8.02.A by replacing it with the following paragraph:

In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer whose status under the Contract Documents shall be that of the former ENGINEER.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION - Page 27

SC-9.03

Amend paragraph 9.03.A by adding the following language at the end of the paragraph:

The ENGINEER will provide a Resident Project Representative for this Project with duties, responsibilities and limitations of authority as outlined in Exhibit "B" attached at the end of these Supplementary Conditions. The Resident Project Representative will not be a full time Representative, but will work such periods of time so as to cover the project in accordance with Exhibit "B".

SC-9.05

Amend paragraph 9.05.A by deleting the following sentence from the end of the paragraph:

If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefore as provided in paragraph 10.05.

SC-9.08

Amend paragraph 9.08.A by replacing the word "decision" in the second sentence with the word "recommendation" and adding the words "recommendation will be submitted to the Town Manager whose" into the third sentence between the words "written" and "decision".

SC-9.09

Amend paragraph 9.09.B by replacing the word "decision" with "recommendation" in the second paragraph and deleting the words "OWNER or" from the last sentence.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS - Page 29

SC-10.01

Amend paragraph 10.01.A by replacing the first sentence of the paragraph with the following sentence:

Without invalidating the Contract and without notice to any Surety, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, a Work Change Directive, or a Field Directive.

Amend paragraph 10.05.D by adding the following sentence at the end of the paragraph:

Adherence to the terms of paragraph 10.05 is a condition precedent to bringing any further action in litigation.

SC-10.05

Amend paragraph 10.05.B by replacing it with the following paragraph:

B. TOWN MANAGER'S Decision: ENGINEER will render a formal recommendation to the TOWN MANAGER for a binding decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. TOWN MANAGERS decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR:

Delete paragraphs 10.05.B.1 and 10.05.B.2.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCE; UNIT PRICE WORK - Page 30

SC-11.01

Amend paragraph 11.01.A.1 by deleting the word Saturday from the last sentence of the paragraph.

Delete paragraph 11.01.A.4 in its entirety.

SC-11.03.C

Amend paragraph 11.03.C by replacing it with the following paragraph:

C. A Claim may be made for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

**ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT
TIMES –**

SC-12.01.C

Amend paragraph 12.01.C.2.a. by replacing the entire sentence with the following sentence:

for costs incurred under paragraph 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 10 percent;

SC-12.01.C

Modify paragraph 12.01.C.2.c. to change the fee as follows in the first sentence:

Will be paid a fee of 10 percent of the costs incurred by such Subcontractor under paragraph 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

SC-12.06.B

Amend paragraph 12.06.B by replacing the entire paragraph with the following paragraph:

Contractor will not be entitled to any adjustment in the Contract Price for delays extended general conditions, extended overhead, loss of productivity, acceleration or any damages or other compensation whatsoever in the event of any delays in the progress of the Work on

account of hindrances or delays from any cause whatsoever. Such causes of delay include but are not limited to differing site conditions, difficulty in acquiring building permits, limited access to the Project, failure to approve plans and shop drawings on time, delays caused by governmental action, inaction or regulation, subsurface conditions, material shortages or delay in delivery of materials. It is the specific intent hereunder that an extension of time will be the sole and exclusive remedy for delay of any type, description of category. However, if occasioned by an act of God, or by any act or omission on the part of the OWNER such act, hindrance or delay may entitle the CONTRACTOR to an extension of time in which to complete the Work which shall be determined by the ENGINEER, provided that the CONTRACTOR will give notice as provided herein. The foregoing limitations on adjustments to Contract Price also apply to any causes of delay which affect any subcontractor, materialman, supplier or laborer on the Project. In no event, if any such events of delay occur, shall any subcontractor, materialman, supplier or laborer be entitled to additional compensation for delays including claims for extended general conditions, extended overhead and the like against the OWNER or Engineer.

**ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR
ACCEPTANCE OF DEFECTIVE WORK - Page 34**

SC-13.04

Amend paragraph 13.04.A by replacing it with the following paragraph:

If any Work is covered contrary to the Technical Specifications, Drawings or Contract Documents, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

Amend paragraph 13.04.B by adding the following language at the end of the second sentence:

,or direct payment if remaining Contract funds are not sufficient.

SC-13.09

Amend paragraph 13.09.C by adding the following language at the end of the first sentence:

, or direct payment if remaining Contract funds are not sufficient.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION - Page 36

SC-14.02.A.2

Amend paragraph 14.02.A.2 by deleting the existing paragraph and replacing it with the following paragraph:

With each Application for Payment, the CONTRACTOR shall include a Partial Waiver Upon Progress Payment or Statutory Waiver and Final Release, as appropriate from each and every materialman, supplier and or laborer ("Potential Lienor") who has provided labor, services or materials for the Project. Contractor shall submit its own Statutory Waiver and Partial Release of Lien or Statutory Waiver and Final Release of Lien, as appropriate, with each Application for Payment. Moreover, CONTRACTOR shall ensure that no construction liens, or any encumbrances in the nature thereof or any other

encumbrances whatsoever (including equitable lien claims), shall be filed or maintained by the CONTRACTOR or by any Potential Lienor in connection with any Work for which OWNER has made payment or for which payment is not yet due. As a condition precedent to the receipt of each progress payment from the OWNER, CONTRACTOR must furnish the Partial Waiver Upon Progress Payment Statutory Waiver and Final Release from each Potential Lienor, in the form prescribed by OWNER and/or ENGINEER, together with a Contractor's Affidavit and Partial Release, in the form prescribed by the OWNER and/or ENGINEER. Further, as a condition precedent to the receipt of the final payment, the CONTRACTOR shall provide OWNER with a Statutory Waiver and Final Release from each Potential Lienor in the form prescribed by OWNER and/or the ENGINEER, together

with a Contractor's Affidavit and Final Release. Each Release given to the OWNER shall waive and release any lien rights of the Potential Lienor to the extent payment is made with respect to any Work performed through the date of the Release. For any Potential Lienor who has served a Notice to Owner and/or Notice to Contractor, but who has not provided labor, services or materials during the period of time covered by an Application for Payment, the CONTRACTOR shall provide a Zero Dollar Release in the form prescribed by OWNER and/or ENGINEER. CONTRACTOR shall comply with all requirements of Florida Statutes, Chapter 713. CONTRACTOR agrees to indemnify, defend and hold the OWNER harmless from and against any and all liens or other claims whatsoever filed against the OWNER or the OWNER'S property by any Potential Lienor for worked performed or materials or services furnished in connection with the Work for which CONTRACTOR has been paid or for which payment is not yet due at the time the Lien is recorded. In the event a Claim of Lien is recorded against the OWNER'S property, the CONTRACTOR shall cause the same to be satisfied within ten (10) days following the date of recordation of the Claim of Lien, or in the alternative, shall cause the Claim of Lien to be transferred to a Bond. In the event any Liens are not cleared of record within ten (10) days of recordation, OWNER shall have the right to settle, satisfy, or transfer such Lien to a Bond at CONTRACTOR'S sole cost and expense and OWNER may offset any such cost against the next payment due to CONTRACTOR, or CONTRACTOR shall make a direct payment if remaining Contract funds are not sufficient. OWNER shall not be limited to and is entitled to all other remedies available at law or in equity. The provisions of this paragraph shall be deemed an independent covenant of the CONTRACTOR and shall be effective with respect to all Work performed and materials and services furnished under the Contract Documents, Change Orders or any other agreement for work with respect to the Project.

SC-14.02.D.1.b

Amend paragraph 14.02.D.1.b by deleting the existing paragraph and replacing it with the following:

Liens have been recorded in connection with the Work or the Project.

SC-14.07

Amend paragraph 14.07.A.1 by replacing it with the following paragraph:

After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operation instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in paragraph 6.12), final releases, final affidavits, Asbuilts, and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

Amend paragraph 14.07.A.2 by adding the following language at the end of the first sentence:

or claims made against the Bonds provided by CONTRACTOR under the Contract Documents.

Delete paragraph 14.07.A.3 in its entirety.

SC-14.09

Amend paragraph 14.09.A.1 by replacing it with the following paragraph:

a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens or Claims against the Bonds, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION - Page 40

SC-15.03

Delete paragraph 15.03.A.3 in its entirety.

Delete paragraph 15.03.A.4 in its entirety.

SC-15.04

Amend paragraph 15.04.A. by deleting the last sentence of the paragraph.

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EXHIBIT "B"

A LISTING OF THE DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY OF THE RESIDENT PROJECT REPRESENTATIVE

ENGINEER shall furnish a Resident Project Representative (RPR), assistants and other field staff to assist ENGINEER in observing performance of the Work of the Contractor.

Through more extensive on-site observations of the Work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work; but, the furnishing of such services will not make ENGINEER responsible for or give ENGINEER control or supervisory control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

A. General

RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall in general be with ENGINEER and CONTRACTOR keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of CONTRACTOR. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

B. Duties and Responsibilities of RPR

1. Schedules: Review the progress schedule, schedule of Shop Drawing submittals and schedule of values prepared by CONTRACTOR and consult with ENGINEER concerning acceptability.

2. Conferences and Meetings: Attend meetings with CONTRACTOR, such as pre-construction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

3. Liaison:

- a. Serve as ENGINEER's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist in understanding the intent of the Contract Documents; and assist ENGINEER in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR's operation affect OWNER's on-site operations.
- b. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.

4. Shop Drawings and Samples:
 - a. Record date of receipt of Shop Drawings and samples.
 - b. Receive samples that are furnished at the site by CONTRACTOR, and notify ENGINEER of availability of samples for examination.
 - c. Advise ENGINEER and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or sample if ENGINEER has not approved the submittal.

5. Review of Work, Rejection of Defective Work, Inspections and Tests:
 - a. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to ENGINEER whenever RPR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 - c. Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and startups.
 - d. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.

6. Interpretation of Contract Documents: Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by ENGINEER.

7. Modifications: Consider and evaluate CONTRACTOR's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to CONTRACTOR decisions as issued by ENGINEER.

8. Records:
 - a. Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.
 - b. Keep a diary or log book, recording CONTRACTOR hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in

general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.

- c. Record names, addresses and telephone numbers of all CONTRACTORS, subcontractors and major suppliers of materials and equipment.

9. Reports:

- a. Furnish ENGINEER periodic reports as required of progress of the Work and of CONTRACTOR's compliance with the progress schedule and schedule of Shop Drawing and sample submittals.
- b. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
- c. Draft proposed Change Orders and Work Directive Changes, obtaining backup material from CONTRACTOR and recommend to ENGINEER Change Orders, Work Directive Changes, and Field Orders.
- d. Report immediately to ENGINEER and OWNER upon the occurrence of any accident.

10. Payment Requests: Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values. Work completed and materials and equipment delivered at the site but not incorporated in the Work.

11. Certificates, Maintenance and Operation Manuals: During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the Work.

12. Completion:

- a. Before ENGINEER issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.
- b. Conduct final inspection in the company of ENGINEER, OWNER and CONTRACTOR and prepare a final list of items to be completed or corrected.
- c. Observe that all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

C. Limitations of Authority

Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by ENGINEER.
2. Shall not exceed limitations of ENGINEER's authority as set forth in the Contract Documents.

3. Shall not undertake any of the responsibilities of CONTRACTOR, subcontractors or CONTRACTOR's superintendent.
4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
6. Shall not accept Shop Drawings or sample submittals from anyone other than Contractor.
7. Shall not authorize OWNER to occupy the Project in whole or in part.
8. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

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TOWN OF CUTLER BAY

SECTION 6

SW 208 STREET ROADWAY IMPROVEMENTS
DETAILED SPECIFICATIONS

TECHNICAL SPECIFICATIONS INDEX

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DIVISION I
SPECIAL PROVISIONS
FOR
SW 208 STREET ROADWAY IMPROVEMENTS
IN
THE TOWN OF CUTLER BAY

It is the intent of these Contract Documents that Division I, II and III of the Florida Department of Transportation “Standard Specifications for Roads and Bridge Construction” dated 2000 be used as the basis for the work as amended by the following Supplemental Technical Specification. Where such wording refers to the State of Florida and its Department of Transportation and Personnel, such wording is hereby replaced with wording which provides proper substitute terminology; thereby making such Standard Specifications for Roads and Bridge Construction, Standard Technical Specifications of the Town of Cutler Bay.

It is the intent to include Division I of the Florida Department of Transportation “Standard Specifications for Roads and Bridge Construction” as referenced above as a supplement to the General Conditions (Engineers Joint Contract Documents Committee) and Supplementary Conditions for this Contract.

Further the applicable portions of the Town of Cutler Bay Code and Florida Building Code shall apply to the project.

Supplemental Technical Specifications that pertain to the pertinent items of construction are located in Division II.

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SECTION 01020

ALLOWANCES

PART 1 SCOPE OF WORK

1.01 DEFINITION

- A. Included in the contract sum is an allocation account for unforeseen conditions, potential construction changes and quantity adjustments, and additional work that the Town may deem necessary if ordered and authorized by the Town in accordance with the contract documents.

1.02 ALLOWANCE ACCOUNT

- A. Monies in the allocation account will be used on issuance of work authorizations for over run of unit bid items provided such over runs are pre-approved in writing by the Town, and off duty police officers.
- B. At the closeout of the contract, monies remaining in the allowance account will be credited to the Town by change order.

1.03 SELECTION OF PRODUCTS UNDER ALLOWANCES

A. Engineer's Duties:

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

B. Contractor's Duties:

1. Assist Engineer and Owner in determining qualified suppliers, quantities or subcontractor.

2. Obtain proposals from a minimum of three (3) suppliers and/or subcontractors when requested by Engineer.
3. Make appropriate recommendations for consideration of the Engineer.
4. Notify Engineer promptly of:
 - a. Any reasonable objections Contractor may have against any supplier, or party under consideration for installation.
 - b. Any effect on the construction schedule anticipated by selection under consideration.

**1.04 CONTRACTOR RESPONSIBILITY FOR PURCHASE,
DELIVERY AND INSTALLATION**

- A. On notification of selection, execute purchase agreement with designated suppliers and/or subcontractors.
- B. Arrange for and process shop drawings, product data and samples, as required.
- C. Make all arrangements for delivery.
- D. Upon delivery, promptly inspect products for damage or defects.
- E. Submit claims for transportation damage.
- F. Install and finish products in compliance with requirements of referenced specification sections, including restoration.
- G. Noise Control
 1. Contractor will use discretion whenever engaging in activities that might produce excessive noise and disturb residents in and around work areas.
 2. The Town shall have the right to impose reasonable limitations on the Contractor to prevent excessive noise and disturb residents in and around work areas.
- H. Access to Property: The Contractor shall at all times maintain meaningful access to a given property for residents of that property.
- I. Staging of Work: All staging for work by the Contractor within the Town shall be first approved by the Town's department of public works.

1.05 ADJUSTMENT OF COSTS

- A. Should the net cost be more or less than the specified amount of the allowance, the contract sum will be adjusted accordingly by change order. Should work be changed by change order:

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

PART 2 PRODUCTS

Not Used

PART 3 EXECUTION

3.01 MEASURE AND PAYMENT

- A. The cost shall include a fixed amount per the Bid Form.
- B. Use of the allocation account shall be for unforeseeable conditions, for construction changes and for availability adjustments, if ordered and authorized by the Town. At the closeout of contract, monies remaining in the contingency allowance will be credited to the Owner by change order.
- C. The fixed amount is indicted as a lump sum under Allowance pay item A-1.

END OF SECTION

SECTION 01030

SWALE RESTORATION AND AUDIO VISUAL PRECONSTRUCTION RECORD

PART 1 SCOPE OF WORK

1.01 DEFINITION

- A. Included in the contract sum is a lump sum pay item that includes the complete restoration of the swale area impacted by any construction activity adjacent to drainage work including but not limited to pipe culvert, French drain, catch basins, etc. Any swale areas impacted by the contractor outside of drainage work such as asphalt overlay, pavement markings, etc. will be restored by the contractor at no additional cost to the Town. The pay item includes but is not limited to new sod, landscaping, trees, excavation, new fill, grading, irrigation, driveway aprons, mail boxes, fences, pipes, curbs, etc. to an equal or better condition prior to construction.
- B. The contractor shall include the costs associated with a preconstruction video to confirm existing conditions. Any damage not confirmed by preconstruction video will be repaired at no additional cost to the Town.

1.02 SITE RESTORATION

- A. The Contractor shall remove all excess material and shall clean up and restore the swale area impacted by any construction activity adjacent to drainage work to its original condition or better. All damage to swale areas, as a result of WORK under this Contract, done to existing structures, pavement, driveways, paved areas, curbs and gutters, sidewalks, shrubbery, grass, trees, utility poles, utility pipe lines, conduits, drains, catch basins, flagstones, rocked, graveled or stabilized areas or driveways, and including all obstructions not specifically named herein, shall be repaired or replaced, as determined by the ENGINEER. Site restoration shall be done in a timely manner as the WORK progresses.

1.03 AUDIO-VISUAL PRECONSTRUCTION RECORD

- A. Prior to beginning the work, the Contractor shall have a continuous color audio-video recording taken along the entire length of the project, where construction will be performed, to serve as a record of preconstruction conditions. No construction shall begin prior to review and approval of the audio-video covering the construction area by the Engineer. The Engineer shall have the authority to reject all or any portion of the audio-video not conforming to the specifications and order that it be redone at no additional charge. The Contractor shall reschedule the unacceptable coverage within five days after being notified.
- B. Contractor shall provide the Engineer and the Owner with one complete set of disks for each project area.

- C. All equipment, accessories, materials and labor to perform this service shall be furnished by the Contractor.

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

3.01 MEASURE AND PAYMENT

- A. Compensation for the swale restoration as described on the plans and in this specification shall be included in the lump sum price bid for Swale Restoration.
- B. Compensation for the audio-video preconstruction record shall be included in the lump sum price bid for Swale Restoration Pay Item SR-1.

END OF SECTION

SECTION 15200

UTILITY RELOCATIONS

PART 1 SCOPE OF WORK

1.01 DEFINITION

- A. Included in the contract sum is an allowance account for unforeseen conditions that require the relocation of existing utilities. The Contractor shall verify the location of existing utilities prior to installing proposed roadway improvements, as specified in the detailed construction plans. If a conflict between the proposed improvements and the existing utility is identified, that cannot be avoided by adjusting scope of work, the Contractor shall immediately notify the Engineer. Upon direction from the Engineer, the Contractor shall coordinate with the utility provider to have the conflicting utilities relocated or deflected by provider personnel.

1.02 ALLOWANCE ACCOUNT

- A. Monies in the allocation account will be used on issuance of a work authorization, pre-approved in writing by the Town throughout
- B. At the closeout of the contract, monies remaining in the allowance account will be credited to the Town by change order.

1.03 PROCEDURE FOR COMPLETING UTILITY RELOCATIONS

- A. Engineer's Duties:
 - 1. Consult with the Contractor in considering options related to conflicts between existing utilities and proposed roadway improvements.
 - 2. Provide written authorization to request cost estimate.
 - 3. Transmit Owner's decision to the Contractor.
 - 4. Prepare work authorization.
- B. Contractor's Duties:
 - 1. Identify potential conflicts between proposed roadway improvements and existing utilities by verifying utility locations in the field prior to installation of proposed center median and notify Engineer of conflicts immediately upon discovery. The Contractor and Engineer shall explore options to avoid the conflicts with the utilities as the first step.
 - 2. Obtain cost estimates and schedules for relocation or deflection of existing utilities from provider as directed by the Engineer and provide copies of the requested information to the Engineer upon receipt.

3. If authorized by Engineer, coordinate with provider to have utility relocations/deflections constructed by provider personnel. This includes payment of any deposits or fees associated with the proposed deflections.
4. Notify Engineer promptly of:
 - a. Any effect on the construction schedule anticipated as a result of utility relocation/deflection.

1.05 ADJUSTMENT OF COSTS

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

PART 2 PRODUCTS

Not Used.

PART 3 EXECUTION

3.01 MEASURE AND PAYMENT

- C. Included in the contract sum is an allowance account for unforeseen conditions that require the relocation of existing utilities. At the closeout of the contract, monies remaining in the allowance account shall be credited to the Village by change order.
- D. The fixed amount is indicted as a lump sum under Allowance pay item A-1.

DIVISION II
SECTION 101
MOBILIZATION

PART 1 GENERAL

1.01 SUMMARY

It is the intent of these specifications that Division I, II and III of the Florida Department of Transportation "Standard Specifications for Roads and Bridge Construction" dated 2000 be used as the basis for the work as amended by the General Conditions, Supplementary Conditions, Special Provisions, and the following Supplemental Technical Specification which pertains to the pertinent items of construction.

1.02 SUPPLEMENTAL TECHNICAL SPECIFICATION

Article 101-1 Description This section is expanded to include the following:

The Town shall identify the location of the construction staging area and construction field office (if necessary). The designated area will be within the limits of the Town. The Contractor shall take pictures or make a video record of the existing conditions of the site prior to making any modifications. The Contractor shall install fencing, gates and take all other measures, as necessary, to make said site secure. No automobiles shall be permitted to park in said staging area except for delivery and pickup purposes.

The Contractor shall be responsible for obtaining electrical and water service to the field office. The Contractor will be required to furnish all materials and connections necessary for the connection of these services from the point of connection to the existing system to the field office and pay all fees and deposits as required by the utility owner. The installation and connections shall be in accordance with the requirements of the utility owner, the Building Inspection Division of the Town of Cutler Bay and all other agencies or authorities which may have jurisdiction.

At the conclusion of the project, the Contractor shall be responsible for the removal of the field office, utility connections, and the clean up and restoration of the field office and construction staging site, to its original condition. The pictures and/or videotape, obtained at the beginning of the project, will be used to evaluate the restoration of the site. The Contractor shall obtain and furnish to the Engineer a letter from the owners of the site stating they are satisfied with the clean up and restoration of their property, and releasing the Contractor from the need of any further action.

All cost for work, materials, obtaining permits, permit fees and incidental costs as specified above and required for project completion are to be included in the cost of this section unless otherwise specified.

PART 2 MATERIALS

Materials shall be per the previously referenced FDOT “Standard Specifications for Roads and Bridge Construction”.

PART 3 EXECUTION

Execution shall be per the previously referenced FDOT “Standard Specifications for Roads and Bridge Construction”.

END OF SECTION

SECTION 102

MAINTENANCE OF TRAFFIC

PART 1 GENERAL

1.01 SUMMARY

It is the intent of these specifications that Division I, II and III of the Florida Department of Transportation "Standard Specifications for Roads and Bridge Construction" dated 2000 be used as the basis for the work as amended by the General Conditions, Supplementary Conditions, Special Provisions, and the following Supplemental Technical Specification which pertains to the pertinent items of construction.

A. 1.02 SUPPLEMENTAL TECHNICAL SPECIFICATION

Article 102-1.1 Description This section is expanded to include the following:

The Contractor shall provide access to properties adjacent to the construction area at all times.

Two weeks prior to any construction, the Contractor shall provide a maintenance of traffic plan and a written schedule to the Engineer showing anticipated construction activity, timing, location, and anticipated disruptions due to occur. The maintenance of traffic plan and schedule shall be updated every two weeks during construction. The original schedule and updates shall be provided to the Engineer no later than noon each Friday for use, by the Engineer and Town, in assisting the Contractor to inform the residents of pending disruptions. However, this does not relieve the Contractor of any and all reasonable communications with the affected property owners.

The Contractor may be asked to attend meetings with the Property Owners and offer his opinions during the course of the meeting, but the Town/Engineer will chair the meeting.

Article 102-4.1 Where Required – This sub-article is amended to include:

Except as delineated in the Contract Documents, traffic may be detoured only upon approval of the Town.

PART 2 MATERIALS

Materials shall be per the previously referenced FDOT "Standard Specifications for Roads and Bridge Construction".

PART 3 EXECUTION

Execution shall be per the previously referenced FDOT "Standard Specifications for Roads and Bridge Construction".

All cost for work, materials, permits and incidental costs as specified above are to be included in the cost of other bid items. The direct cost for off-duty police officers as required under Town Ordinance 02-19 will be paid for under the Allowance Bid Item.

END OF SECTION

SECTION 104
PREVENTION, CONTROL, AND ABATEMENT
OF EROSION AND WATER POLLUTION

PART 1 GENERAL

1.01 SUMMARY

It is the intent of these specifications that Division I, II and III of the Florida Department of Transportation "Standard Specifications for Roads and Bridge Construction" dated 2000 be used as the basis for the work as amended by the General Conditions, Supplementary Conditions, Special Provisions, and the following Supplemental Technical Specification which pertains to the pertinent items of construction.

1.02 SUPPLEMENTAL TECHNICAL SPECIFICATION

Article 104-5 Preconstruction Conference

The Contractor shall comply with the National Pollutant Discharge Elimination System (NPDES) Permit requirements for the project, submitting the required documents to the U.S. Environmental Protection Agency (EPA) pursuant to the requirements of 40 CFR Part 122.26. This would include, but not be limited to, completing and submitting a Notice of Intent (NOI) and a Notice of Termination (NOT) to the U.S. EPA in accordance with the project schedule. Copies of the preprinted forms are attached as Appendix A.

Refusal by the Contractor to place his signature on any required documents or certification statements will be considered as default of the Contract. The Contractor that performs any earth disturbing activities in the absence of any required signed documents or certifications statements may also be considered by the U.S. EPA to be in violation of the Clean Air Act.

The contractor shall furnish the Engineer the name and telephone number of the person who will be responsible for monitoring and maintaining the erosion control devices.

The Contractor shall be responsible for compliance with the approved Erosion Control Plan.

All cost for work, materials, obtaining permits, permit fees and incidental costs as specified above and required for project completion are to be included in the cost of this section unless otherwise specified.

PART 2 MATERIALS

Materials shall be per the previously referenced FDOT "Standard Specifications for Roads and Bridge Construction".

PART 3 EXECUTION

Execution shall be per the previously referenced FDOT "Standard Specifications for Roads and Bridge Construction".

END OF SECTION

SECTION 300

PRIME AND TACK COAT FOR BASE AND SURFACE COURSE

PART 1 GENERAL

1.01 SUMMARY

It is the intent of these specifications that Division I, II and III of the Florida Department of Transportation "Standard Specifications for Roads and Bridge Construction" dated 2000 be used as the basis for the work as amended by the General Conditions, Supplementary Conditions, Special Provisions, and the following Supplemental Technical Specification which pertains to the pertinent items of construction.

1.03 SUPPLEMENTAL TECHNICAL SPECIFICATION

Article 300-9 – Basis of Payment - Delete the text of this article and insert the following:

No separate payment will be made for prime coat and tack coat materials but the cost of same, including furnishing, heating, hauling and applying (including sand or screening covering where required), shall be included for payment in the contract unit price either per ton or per square yard of base or asphalt pavement or in the unit price for pothole repair.

PART 2 MATERIALS

Materials shall be per the previously referenced FDOT "Standard Specifications for Roads and Bridge Construction".

PART 3 EXECUTION

Execution shall be per the previously referenced FDOT "Standard Specifications for Roads and Bridge Construction".

END OF SECTION

SECTION 425

INLETS, MANHOLES AND JUNCTION BOXES

PART 1 GENERAL

1.01 SUMMARY

It is the intent of these specifications that Division I, II and III of the Florida Department of Transportation "Standard Specifications for Roads and Bridge Construction" dated 2000 be used as the basis for the work as amended by the General Conditions, Supplementary Conditions, Special Provisions, and the following Supplemental Technical Specification which pertains to the pertinent items of construction.

1.04 SUPPLEMENTAL TECHNICAL SPECIFICATION

Article 425-6.8 Adjusting Existing Structures – Replace the last sentence of the first paragraph as follows and delete the text of the entire second paragraph:

The materials and construction methods for this work shall conform to the requirements specified above and shall also meet the standards and requirements of the utility company that owns the structure that will be adjusted.

PART 2 MATERIALS

Materials shall be per the previously referenced FDOT "Standard Specifications for Roads and Bridge Construction".

PART 3 EXECUTION

Execution shall be per the previously referenced FDOT "Standard Specifications for Roads and Bridge Construction".

END OF SECTION

TOWN OF CUTLER BAY

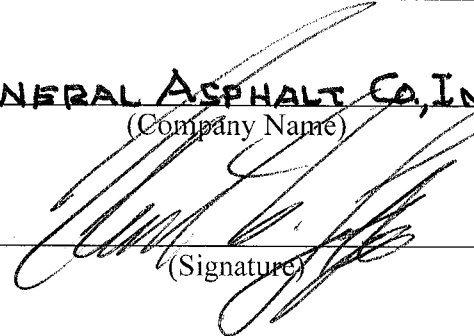
SECTION 8

ADDENDUM ACKNOWLEDGEMENT FORM

Addendum # Date Received

<u>ADDENDUM No. 1</u>	<u>MAY 21, 2010</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

BIDDER: GENERAL ASPHALT CO, INC.
(Company Name)


(Signature)

ROBERT A. LOPEZ, PRESIDENT
(Printed Name & Title)

END OF SECTION

TOWN OF CUTLER BAY

SECTION 9

ANTI-KICKBACK AFFIDAVIT

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

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

By: *[Signature]*
Title: PRESIDENT

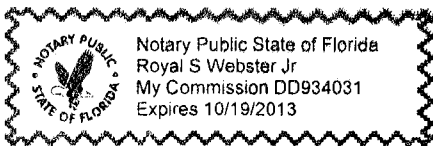
Sworn and subscribed before this

2ND day of JUNE, 2010

[Signature]
Notary Public, State of Florida

ROYAL S. WEBSTER, JR.
(Printed Name)

My commission expires: 10/19/2013



END OF SECTION

TOWN OF CUTLER BAY

SECTION 10

NON-COLLUSIVE AFFIDAVIT

State of FLORIDA }
 } SS:

County of MIAMI-DADE

ROBERT A. LOPEZ being first duly sworn, deposes and says that:

a) He/~~she~~ is the PRESIDENT, (Owner, Partner, Officer, Representative or Agent) OF GENERAL ASPHALT CO., INC., the Bidder that has submitted the attached Proposal;

b) He/she is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;

c) Such Proposal is genuine and is not collusive or a sham Proposal;

d) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm, or person to submit a collusive or sham Proposal in connection with the Work for which the attached Proposal has been submitted; or to refrain from proposing in connection with such work; or have in any manner, directly or indirectly, sought by person to fix the price or prices in the attached Proposal or of any other Bidder, or to fix any overhead, profit, or cost elements of the Proposal price or the Proposal price of any other Bidder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed work;

e) **The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.**

Signed, sealed and delivered
in the presence of

[Signature]
Witness

[Signature]
Witness

(Title)

By: [Signature]

ROBERT A. LOPEZ
(Printed Name)

PRESIDENT

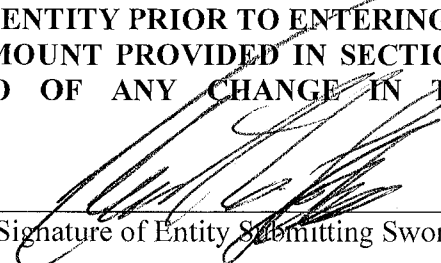
4. I understand than an “affiliate” as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
- a. A predecessor or successor of a person convicted of a public entity crime; or
 - b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term “affiliate” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm’s length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
5. I understand that a “person” as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term “person” includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an entity.
6. Based on information and belief, the statement that I have marked below is true in relation to the entity submitting this sworn statement. **[Indicate which statement applies.]**

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

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

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

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



Signature of Entity Submitting Sworn Statement

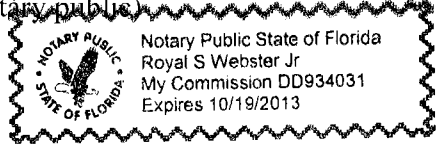
Sworn to and subscribed before me this 2ND day of JUNE, 2010.

Personally known _____

~~OR produced identification~~ _____ Notary Public – State of FLORIDA

X _____ My commission expires 10/19/2013
(type of identification)


(Printed, typed or stamped Commissioned name notary public)



END OF SECTION

TOWN OF CUTLER BAY

SECTION 12

SUPPLEMENT TO BID/TENDER FORM

THIS FORM MUST BE SUBMITTED WITH BID FOR BID TO BE DEEMED RESPONSIVE.

QUALIFICATION STATEMENT

The undersigned guarantees the truth and accuracy of all statements and the answers contained herein.

1. Please describe your company in detail.

SEE ATTACHMENT 1

2. The address of the principal place of business is:

4850 N.W. 72 AVE.
MIAMI, FL. 33166

3. Company telephone number:

(305) 592-3480

4. Number of employees:

160

5. Number of employees assigned to this project:

NOT AVAILABLE AT THIS TIME

6. Company Identification numbers for the Internal Revenue Service:

59-1115297

7. Miami-Dade County and Town of Cutler Bay Occupational License Number, if applicable, and expiration date.

8. How many years has your organization been in business?

44 YEARS

9. What similar engagements is your company presently working on?

SEE ATTACHMENT 2

10. Have you ever failed to complete any work awarded to you? If so, where and why?

No.

11. Give names, addresses and telephone numbers of three individuals, corporations, agencies, or institutions for which you have performed similar work both in scope and cost:

11.1. JUAQUIN RABASSA DADE COUNTY PUBLIC WORKS (305) 299-9822
(name) (address) (phone #)

11.2. JOHN FINTACK CITY OF SUNRISE (954) 465-3062
(name) (address) (phone #)

11.3. MARIO ROJAS FLORIDA TURNPIKE (305) 986-6417
(name) (address) (phone #)

12. List the following information concerning all contracts in progress as of the date of submission of this bid. (In case of co-venture, list the information for all co-ventures.)

<u>NAME OF PROJECT</u>	<u>OWNER</u>	<u>TOTAL CONTRACT VALUE</u>	<u>CONTRACTED DATE OF COMPLETION</u>	<u>% OF COMPLETION TO DATE</u>
------------------------	--------------	-----------------------------	--------------------------------------	--------------------------------

SEE ATTACHMENT 2

(Continue list on insert sheet, if necessary.)

13. Has the Bidder or his or her representative inspected the proposed project and does the Bidder have a complete plan for its performance?

YES

14. Will you subcontract any part of this work? If so, include a list of subcontractors and task performed by each subcontractor.

QUALITY CONSTRUCTION PERFORMANCE, INC. — CONCRETE WORK.
HIGH TECH STRIPING - STRIPING
A1A SOD — SODDING

The foregoing list of subcontractor(s) may not be amended after award of the contract without the prior written approval of the Contract Administrator, whose approval shall not be unreasonably withheld.

15. What equipment do you own that is available for the work?

ALL NECESSARY EQUIPMENT

16. What equipment will you purchase for the proposed work?

NONE

17. What equipment will you rent for the proposed work?

NONE

18. State the name of your proposed project manager and give details of his or her qualifications and experience in managing similar work.

NOT AVAILABLE AT THIS TIME

19. State the true, exact, correct and complete name of the partnership, corporation or trade name under which you do business and the address of the place of business. (If a corporation, state the name of the president and secretary. If a partnership, state the names of all partners. If a trade name, state the names of the individuals who do business under the trade name.)

PRESIDENT: ROBERT A. LOPEZ
SECRETARY: ROYAL S. WEBSTER, JR.

- 19.1 The correct name of the Bidder is: GENERAL ASPHALT CO, INC

19.2. The business is a (Sole Proprietorship) (Partnership) (Corporation).

19.3. The names of the corporate officers, or partners, or individuals doing business under a trade name, are as follows:

ROBERT A. LOPEZ - PRESIDENT
ALBERT J. LOPEZ - VICE PRESIDENT, TREASURER.
ROYAL S. WEBSTER JR. - VICE PRESIDENT, SECRETARY
ROBERT A. LOPEZ, JR. - VICE PRESIDENT

19.4. List all organizations which were predecessors to Bidder or in which the principals or officers of the Bidder were principals or officers.

NONE

19.5. List and describe all bankruptcy petitions (voluntary or involuntary) which have been filed by or against the Bidder, its parent or subsidiaries or predecessor organizations during the past five (5) years. Include in the description the disposition of each such petition.

NONE

19.6. List and describe all successful Bid, Performance or Payment Bond claims made to your surety(ies) during the last five (5) years. The list and descriptions should include claims against the bond of the Bidder and its predecessor organization(s).

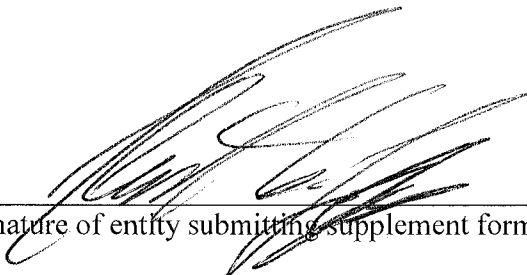
NONE

19.7. List all claims, arbitrations, administrative hearings and lawsuits brought by or against the Bidder or its predecessor organization(s) during the last five (5) years. The list shall include all case names; case, arbitration or hearing identification numbers; the name of the project over which the dispute arose; and a description of the subject matter of the dispute.

SEE ATTACH. 3

NAME

RELATIONSHIPS



Signature of entity submitting supplement form

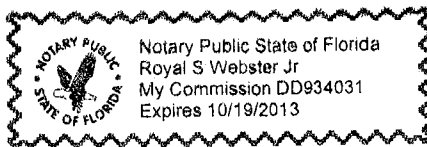
STATE OF FLORIDA)
)SS.
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this 2ND day of JUNE, 2010, by ROBERT A. LOPEZ who is personally known to me ~~or who has produced~~ x ~~as identification and who did~~/did not take an oath.

WITNESS my hand and official seal, this 2ND day of JUNE, 2010.

(NOTARY SEAL)


(Signature of person taking acknowledgment)



TOWN OF CUTLER BAY

SECTION 13
PERFORMANCE BOND

PROJECT TITLE: SW 208 STREET ROADWAY IMPROVEMENS (the "Project")

CONTRACTOR:

CONTRACT NO:

CONTRACT DATED:

STATE OF § _____

§ _____

COUNTY OF § _____

KNOW ALL MEN BY THESE PRESENTS: That by this Bond, we, _____ of the Town of _____, County of _____, and State of _____, as Principal, and _____, authorized, licensed and admitted to do business under the laws of the State of Florida to act as Surety on bonds, as Surety, are held and firmly bound unto The Town of Cutler Bay, as Obligee, in the penal sum of _____ Dollars (\$ _____) for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, by these presents:

WHEREAS, the Principal has entered into a certain written Agreement with Obligee, dated the ____ day of _____, 2010, for the construction of the Public Works Improvements (the "Contract"), which Agreement is by reference made a part of this Bond.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION, IS SUCH THAT, if the said Principal shall faithfully perform said Agreement and shall in all respects fully and faithfully observe and perform all and singular the covenants, conditions, warranties and agreements in and by said Agreement agreed and covenanted by the Principal to be observed and performed, and according to the true intent and meaning of said Agreement, then this obligation shall be void; otherwise it shall remain in full force and effect.

Whenever Principal shall be declared by Obligee to be in default under the Agreement, Obligee having performed Obligee's obligations thereunder, the Surety shall promptly remedy the default, or shall promptly:

- (1) Complete the Agreement in accordance with its terms and conditions; or
- (2) Obtain a bid or bids for completion of the Agreement in accordance with its terms and conditions and upon determination by Surety of the lowest responsive, responsible bidder, or, if Obligee elects, upon determination by Obligee and the Surety jointly of the lowest responsive, responsible bidder, arrange for a contract between such bidder and Surety for completion of the Agreement in accordance with its terms and conditions, and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price; but not exceeding the amounts set forth in the first paragraph hereof.

The term "balance of the Contract price" as used in this Bond, shall mean the total amount payable by Oblige to Principal under the Agreement and amendments thereto, less the amount paid by Oblige to Principal and less amounts withheld by Oblige pursuant to its rights under the Contract.

Surety, for value received, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement, or to the work performed thereunder, or the plans, specifications, or drawings accompanying the same, shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement, or to the work to be performed thereunder and further agrees to all of the terms contained in the Agreement.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Oblige named herein or the heirs, successors, executors or administrators of the Oblige.

IN WITNESS WHEREOF, the said Principal and Surety have signed and sealed this instrument this ____ day of _____, 2010.

Witness: _____

Witness: _____

Principal

Surety

By: _____

By: _____

Name: _____
(Print)

Name: _____
(Print)

Title: _____

Title: _____

Address: _____

Address: _____

The name and address of the Resident Agent for service of process on Surety is:

Name: _____

Address: _____

Phone: _____

END OF SECTION

TOWN OF CUTLER BAY

SECTION 14
PAYMENT BOND

PROJECT TITLE: SW 208 STREET ROADWAY IMPROVEMENTS (the "Project")

CONTRACTOR:

AGREEMENT NO:

AGREEMENT DATED:

STATE OF § _____

§ _____

COUNTY OF § _____

BY THIS BOND (the "Bond"), We as _____, called CONTRACTOR, and _____, hereinafter called SURETY, are bound to TOWN OF CUTLER BAY, FLORIDA, a Florida municipal corporation, hereinafter called Town, in the amount of _____ Dollars for payment of which CONTRACTOR and SURETY bind themselves, their heirs, personal representatives, executors, administrators, successors and assigns, jointly and severally, with reference to a written Agreement entered into by CONTRACTOR and Town, for the following:

Agreement Title:

SW 208 STREET ROADWAY IMPROVEMENTS (the "Project")

THE CONDITION OF THIS BOND is that if the CONTRACTOR:

Promptly makes payments to all claimants as defined in Section 255.05(1), Florida Statutes, supplying CONTRACTOR with labor, material, or supplies, used directly or indirectly by CONTRACTOR in the prosecution of the work provided for in the Agreement;

THEN THIS BOND IS VOID, OTHERWISE, IT REMAINS IN FULL FORCE.

Any changes in or under the Contract Documents and compliance or noncompliance with formalities, connected with the Agreement or with the changes, do not affect Surety's obligation under this bond. Surety hereby waives notice of any alteration or extension of time made by the Town.

Claimants must comply with notice requirements set forth in Section 255.05(2), Florida Statutes. No action shall be instituted against the CONTRACTOR or Surety under this bond after one (1) year from the performance of the labor or completion of the delivery of the materials or supplies.

IN WITNESS WHEREOF, this instrument is executed this the _____ day of _____, 2010.

WHEN THE PRINCIPAL IS AN INDIVIDUAL:

Signed, sealed and delivered in the presence of:

(Witness)

By: _____
(Individual Principal)

(Witness)

Business Address

WHEN THE PRINCIPAL OPERATES UNDER A TRADE NAME:

Signed, sealed and delivered in the presence of:

(Witness)

Business Name and Address

(Witness)

By: _____
Signature of Individual

WHEN A PARTNERSHIP:

Signed, sealed and delivered in the presence of:

(Witness)

Name and Address of Partnership

(Witness)

By: _____
(Partner)

WHEN THE PRINCIPAL IS A CORPORATION:

ATTEST:

(Corporate Seal)

(Corporate PRINCIPAL Name)

Business Address

Secretary

By: _____
President

ATTEST:

(Surety Seal)

(Corporate SURETY)

Business Address

By: _____
(Surety)

(Secretary)

Florida Resident Agent

ATTORNEY-IN-FACT

By: _____

Name _____
(Type)

NOTE 1: Surety shall provide evidence of signature authority, i.e., a certified copy of Power of Attorney.

NOTE 2: If both the Principal and Surety are Corporations, the respective Corporate Seals shall be affixed and attached

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State of Florida.

ATTACH a certified copy of Power-of-Attorney appointing individual Attorney-in-Fact for execution of Performance Bond on behalf of Surety.

The Performance Bond and the Statutory Payment Bond and the covered amounts of each are separate and distinct from each other.

END OF SECTION

TOWN OF CUTLER BAY

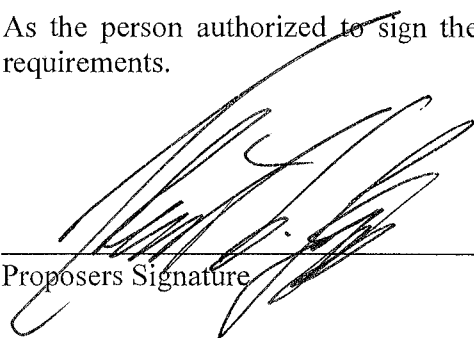
SECTION 15

DRUG-FREE WORKPLACE FORM

The undersigned vendor in accordance with Section 287.087, Florida Statutes, hereby certifies that
GENERAL ASPHALT CO., INC. does:
(Name of Business)

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

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


Proposers Signature

2 JUNE 2010
Date

END OF SECTION

THE AMERICAN INSTITUTE OF ARCHITECTS

AIA Document A310 Bid Bond

KNOW ALL MEN BY THESE PRESENTS, THAT WE General Asphalt Co., Inc.

4850 NW 72 Avenue, Miami, FL 33166

as Principal, hereinafter called the Principal, and Liberty Mutual Insurance Company

175 Berkeley Street, Boston, MA 02116

a corporation duly organized under the laws of the State of MA

as Surety, hereinafter called the Surety, are held and firmly bound unto Town of Cutler Bay

10720 Caribbean Boulevard, Ste. 105, Cutler Bay, FL 33189

as Obligee, hereinafter called the Obligee, in the sum of Five Percent of Amount Bid

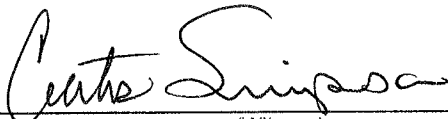
Dollars (\$ _____ 5% _____),

for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for SW 208 Street Roadway Improvements - ITB#10-02

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and materials furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

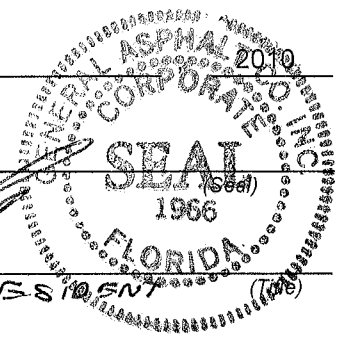
Signed and sealed this 2nd day of June


CURTIS SIMPSON (Witness)

General Asphalt Co., Inc.
(Principal)

By:

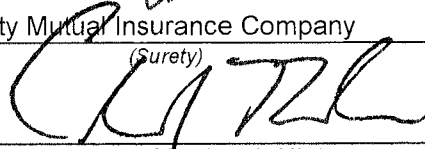

ROBERT LOPEZ PRESIDENT



Liberty Mutual Insurance Company
(Surety)

(Seal)

By:


Charles J. Nielson

(Title)


Gicelle Pajon (Witness)

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

LIBERTY MUTUAL INSURANCE COMPANY
BOSTON, MASSACHUSETTS
POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS: That Liberty Mutual Insurance Company (the "Company"), a Massachusetts stock insurance company, pursuant to and by authority of the By-law and Authorization hereinafter set forth, does hereby name, constitute and appoint MARY C. ACEVES, CHARLES J. NIELSON, KRISTI MESSEL, CHARLES D. NIELSON, DAVID R. HOOVER, ALL OF THE CITY OF MIAMI LAKES, STATE OF FLORIDA.....

each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations in the penal sum not exceeding ONE HUNDRED MILLION AND 00/100***** DOLLARS (\$ 100,000,000.00*****) each, and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company in their own proper persons.

That this power is made and executed pursuant to and by authority of the following By-law and Authorization:

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

By the following instrument the chairman or the president has authorized the officer or other official named therein to appoint attorneys-in-fact:

Pursuant to Article XIII, Section 5 of the By-Laws, Garnet W. Elliott, Assistant Secretary of Liberty Mutual Insurance Company, is hereby authorized to appoint such attorneys-in-fact as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

That the By-law and the Authorization set forth above are true copies thereof and are now in full force and effect.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of Liberty Mutual Insurance Company has been affixed thereto in Plymouth Meeting, Pennsylvania this 10th day of January, 2010

LIBERTY MUTUAL INSURANCE COMPANY

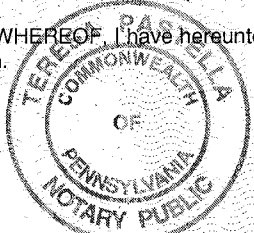
By Garnet W. Elliott, Assistant Secretary



COMMONWEALTH OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 10th day of January, 2010, before me, a Notary Public, personally came Garnet W. Elliott, to me known, and acknowledged that he is an Assistant Secretary of Liberty Mutual Insurance Company; that he knows the seal of said corporation; and that he executed the above Power of Attorney and affixed the corporate seal of Liberty Mutual Insurance Company thereto with the authority and at the direction of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires March 28, 2013
Member, Pennsylvania Association of Notaries

By Teresa Pastella, Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the officer or official who executed the said power of attorney is an Assistant Secretary specially authorized by the chairman or the president to appoint attorneys-in-fact as provided in Article XIII, Section 5 of the By-laws of Liberty Mutual Insurance Company.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of Liberty Mutual Insurance Company at a meeting duly called and held on the 12th day of March, 1980.

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said company, this 2nd day of June, 2010.



By David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



General Asphalt Co., Inc.

4850 NW 72 Avenue
Miami, Florida 33166
Phone: (305) 592-3480
Fax: (305) 477-4675

MAY 1, 2010

GENERAL ASPHALT IS A FLORIDA CORPORATION FOUNDED IN JANUARY 1966. WE OWN AND OCCUPY 13 ACRES OF LAND AT 4850 NW 72 AVE MIAMI FL. WE ARE HOT AND COLD MIX ASPHALT MANUFACTURERS AND ASPHALT PLACERS. WE HAVE TWO MANUFACTURING FACILITIES; ONE AT 4850 NW 72 AVE (A BATCH PLANT) AND ONE IN THE WHITE ROCK QUARRY (A DRUM MIX PLANT) ON US 27 JUST OUTSIDE THE FLORIDA TURNPIKE. OUR MANUFACTURING CAPACITY IS 200 TONS PER HOUR FOR THE BATCH PLANT AND 300 TONS PER HOUR FOR THE DRUM MIX PLANT.

WE HAVE OUR OWN FLEET OF TRUCKS FOR TRANSPORTING EQUIPMENT; BRINGING RAW MATERIAL TO OUR PLANTS FOR MANUFACTURING AND HAULING THE FINISHED PRODUCTS AND TRANSPORTING PERSONNEL. WE HAVE 4 FULL CREWS (10 PEOPLE EACH) ALL FDOT CERTIFIED TO PLACE HOT MIX ASPHALT. WE OWN COMPLETE PAVING PACKAGES OF EQUIPMENT FOR ALL CREWS AND BACKUP EQUIPMENT. WE HAVE A FULL STAFF OF MAINTENANCE PERSONNEL TO MAINTAIN ALL OUR EQUIPMENT. WE WORK ON APPROXIMATELY 100-150 JOBS EACH YEAR. WE WORK IN MIAMI-DADE, BROWARD AND MONROE COUNTIES. THE GROSS REVENUE LAST THREE YEAR WAS APPROXIMATELY 55 MILLION EACH YEAR. OUR CURRENT WEEKLY EMPLOYMENT IS 165 PEOPLE.

SIZE OF PROJECTS:

WE WORK ON ALL SIZES OF PROJECTS FROM TENNIS COURTS TO OUR LARGEST PROJECT THE NORTH SIDE RUNWAY AT MIA COMPLETED IN 2003 (263,000 TONS PLACED).

WE MAINTAIN OUR OFFICE AT 4850 NW 72 AVE., MIAMI, FLORIDA, 33166 (305-592-3480). WE HAVE A FULLY STAFFED ACCOUNTING OFFICE THAT DOES ALL THE RECORD KEEPING; DAILY, WEEKLY, AND MONTHLY. WE PRODUCE OUR OWN FINANCIAL REPORTS AND HAVE AN ANNUAL CERTIFIED AUDIT WITH AN INDEPENDENT AUDITING FIRM. WE ARE CERTIFIED WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION TO DO ASPHALT PAVING WORK FOR THEM. WE ALSO WORK FOR MANY DIFFERENT DEPARTMENTS OF MIAMI-DADE COUNTY, MONROE COUNTY AND BROWARD COUNTY GOVERNMENTS, AND WORK FOR MANY DIFFERENT INDEPENDENT CITIES IN ALL THREE COUNTIES. WE ALSO WORK ON PRIVATE RESIDENTIAL AND COMMERCIAL PROJECTS.

KEY CONTACT PERSONNEL:

THE KEY CONTACT PERSON AT GENERAL ASPHALT IS PRESIDENT ROBERT LOPEZ. IF HE WERE NOT AVAILABLE VICE-PRESIDENT ALBERT LOPEZ OR ROB LOPEZ, JR. COULD ANSWER QUESTIONS.

RESPECTFULLY

CURTIS SIMPSON
CONTROLLER

ANSWER TO COMPANY EXPERIENCE PORTION OF THE QUESTIONNAIRE
REGARDING LITIGATION ON CONSTRUCTION PROJECTS OVER THE
LAST FIVE YEARS

①

Docket Title BELLSOUTH TELECOMMUNICATIONS INC v. GENERAL ASPHALT CO INC
Date 02/25/2009
Docket Number 2009-002639-SP-05
Court Florida Circuit Court, Miami-Dade County
Nature of Suit Contracts
Company Interest Defendant
Company Counsel

THIS CASE WAS BROUGHT BY BELL SOUTH AGAINST GENERAL ASPHALT ON THE MIAMI-DADE COUNTY PARKS AND RECREATION DEPARTMENT PROJECT KNOWN AS ROADWAY IMPROVEMENTS @ MATHESON HAMMOCK PARK.

THE PROJECT INVOLVED RAISING THE HEIGHT OF THE ROADWAY 18" ABOVE THE EXISTING ROADWAY AND THEN PLACING ASPHALT. INSTALLING DRAINAGE, STRIPING THE ROADWAY AND INSTALLING A NEW FENCE.

IN THE PROCESS OF INSTALLING THE NEW FENCE, WHICH WAS DONE AFTER THE 18" OF ROADWAY WAS INSTALLED, THE FENCING SUBCONTRACTOR DAMAGED PHONE LINES ON 5 DIFFERENT OCCASIONS, THAT HAD NOT BEEN INSTALLED PROPERLY (PHONE LINES WERE ON THE SURFACE OF THE PREVIOUSLY EXISTING ROADWAY AND NOT BURIED AT ALL). BELL SOUTH REPAIRED THE DAMAGE AND SENT A BILL TO GENERAL ASPHALT FOR THE COSTS TO REPAIR.

GENERAL ASPHALT OBJECTED TO PAYING THE BILLS BECAUSE THE PHONE LINES WERE NOT BURIED DEEP ENOUGH FOR THE FENCING CONTRACTOR TO MISS THEM WHEN DIGGING THE HOLES FOR THE FENCE POSTS.

WE WENT TO ARBITRATION AND WERE INFORMED THAT THE LAW REQUIRES THAT ANY CONTRACTOR THAT CALLS FOR A LOCATE NOTICE (WHICH WE DID) AND IS GIVEN A LOCATE NOTICE AND PROCEEDS TO DIG AND DAMAGES THE PHONE LINE IS RESPONSIBLE FOR THE DAMAGE, NO MATTER WHAT THE CIRCUMSTANCES ARE, EVEN IF THE PHONE LINES ARE NOT BURIED AS DEEP AS THEY SHOULD HAVE BEEN.

WE THEREFORE PAID THE OUTSTANDING BILLS TO BELL SOUTH AND SETTLED THE LITIGATION.

ALL OF THE OTHER CONSTRUCTION PROJECTS LISTED OVER THE LAST 5 YEARS HAVE NOT HAD ANY LITIGATION.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and



AMERICAN CONSULTING
ENGINEERS COUNCIL

Issued and Published Jointly By



**National Society of
Professional Engineers**
Professional Engineers in Private Practice



AMERICAN SOCIETY OF
CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by

The Associated General



Contractors of America

Construction Specifications Institute



These General Conditions have been prepared for use with the Owner-Contractor Agreements (No. 1910-8-A-1 or 1910-8-A-2) (1996 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC User's Guide (No. 1910-50). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition).

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between OWNER and CONTRACTOR covering the Work.

3. *Application for Payment*--The form acceptable to ENGINEER which is to be used by CONTRACTOR during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instruments of security.

9. *Change Order*--A document recommended by ENGINEER which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the

Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by OWNER or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the OWNER and CONTRACTOR concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

13. *Contract Price*--The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

15. *CONTRACTOR*--The individual or entity with whom OWNER has entered into the Agreement.

16. *Cost of the Work*--See paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *ENGINEER*--The individual or entity named as such in the Agreement.

20. *ENGINEER's Consultant*--An individual or entity having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

21. *Field Order*--A written order issued by ENGINEER which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

22. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

23. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

24. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

25. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

27. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

28. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

29. *Notice to Proceed*--A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.

30. *OWNER*--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

31. *Partial Utilization*--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCBs*--Polychlorinated biphenyls.

33. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

35. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

36. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

37. *Resident Project Representative*--The authorized representative of ENGINEER who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

40. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for the use of CONTRACTOR.

41. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

42. *Subcontractor*--An individual or entity having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Site.

43. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

44. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

45. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases,

steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

47. *Unit Price Work*--Work to be paid for on the basis of unit prices.

48. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

49. *Work Change Directive*--A written statement to CONTRACTOR issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

50. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of ENGINEER as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The

use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. Day

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

C. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. Furnish, Install, Perform, Provide

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of CONTRACTOR, "provide" is implied.

E. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 Delivery of Bonds

A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.02 Copies of Documents

A. OWNER shall furnish to CONTRACTOR up to ten copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 Starting the Work

A. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 Before Starting Construction

A. *CONTRACTOR's Review of Contract Documents:* Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have known thereof.

B. *Preliminary Schedules:* Within ten days after the Effective Date of the Agreement (unless otherwise specified

in the General Requirements), CONTRACTOR shall submit to ENGINEER for its timely review:

1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and

3. a preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

C. *Evidence of Insurance:* Before any Work at the Site is started, CONTRACTOR and OWNER shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with Article 5.

2.06 *Preconstruction Conference*

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 *Initial Acceptance of Schedules*

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.05.B. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to ENGINEER.

1. The progress schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on ENGINEER responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor.

2. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.

3. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 *Intent*

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to OWNER.

C. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in Article 9.

3.02 *Reference Standards*

A. *Standards, Specifications, Codes, Laws, and Regulations*

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids),

except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies

1. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order; (ii) ENGINEER's approval of a Shop Drawing or Sample; or (iii) ENGINEER's written interpretation or clarification.

3.05 Reuse of Documents

A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaptation by ENGINEER. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

A. OWNER shall furnish the Site. OWNER shall notify CONTRACTOR of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CONTRACTOR must comply in performing the Work. OWNER will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If CONTRACTOR and OWNER are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in OWNER's furnishing the Site, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

B. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER, or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 *Differing Subsurface or Physical Conditions*

A. *Notice:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *ENGINEER's Review:* After receipt of written notice as required by paragraph 4.03.A, ENGINEER will promptly review the pertinent condition, determine the necessity of OWNER's obtaining additional exploration or tests with respect thereto, and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER's findings and conclusions.

C. *Possible Price and Times Adjustments*

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

a. such condition must meet any one or more of the categories described in paragraph 4.03.A; and

b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.

2. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or

c. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.03.A.

3. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in paragraph 10.05. However, OWNER, ENGINEER, and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.04 *Underground Facilities*

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities, including OWNER, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:

a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities, including OWNER, during construction, and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.

2. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, OWNER or CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

4.05 *Reference Points*

A. OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property.

monuments, and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Hazardous Environmental Condition at Site

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the ENGINEER in the preparation of the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. CONTRACTOR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. CONTRACTOR shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.

D. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous

Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify OWNER and ENGINEER (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, either party may make a Claim therefor as provided in paragraph 10.05.

F. If after receipt of such written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in paragraph 10.05. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing

in this paragraph 4.06.E shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.F shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements

of paragraph 5.01.B, CONTRACTOR shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

A. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain. OWNER shall deliver to CONTRACTOR, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by CONTRACTOR or any other additional insured) which OWNER is required to purchase and maintain.

5.04 *CONTRACTOR's Liability Insurance*

A. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.07, 6.11, and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be

correcting, removing, or replacing defective Work in accordance with paragraph 13.07; and

7. with respect to completed operations insurance, and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.05 OWNER's Liability Insurance

A. In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.04, OWNER, at OWNER's option, may purchase and maintain at OWNER's expense OWNER's own liability insurance as will protect OWNER against claims which may arise from operations under the Contract Documents.

5.06 Property Insurance

A. Unless otherwise provided in the Supplementary Conditions, OWNER shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as an additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER;

5. allow for partial utilization of the Work by OWNER;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR, and ENGINEER with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

D. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of CONTRACTOR, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by CONTRACTOR, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies provided under paragraph 5.06, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work

at the Site, OWNER shall in writing advise CONTRACTOR whether or not such other insurance has been procured by OWNER.

5.07 Waiver of Rights

A. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraph 5.06 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

B. OWNER waives all rights against CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to OWNER's property or the Work caused by, arising out of, or resulting from fire or other peril whether or not insured by OWNER; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial utilization pursuant to paragraph 14.05, after Substantial Completion

pursuant to paragraph 14.04, or after final payment pursuant to paragraph 14.07.

C. Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against CONTRACTOR, Subcontractors, ENGINEER, or ENGINEER's Consultants and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.08 *Receipt and Application of Insurance Proceeds*

A. Any insured loss under the policies of insurance required by paragraph 5.06 will be adjusted with OWNER and made payable to OWNER as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.08.B. OWNER shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

B. OWNER as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, OWNER as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, OWNER as fiduciary shall give bond for the proper performance of such duties.

5.09 *Acceptance of Bonds and Insurance; Option to Replace*

A. If either OWNER or CONTRACTOR has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required

of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 *Partial Utilization, Acknowledgment of Property Insurer*

A. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 *Supervision and Superintendence*

A. CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of OWNER or ENGINEER in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Site and shall have authority to act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR.

6.02 Labor; Working Hours

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without OWNER's written consent (which will not be unreasonably withheld) given after prior written notice to ENGINEER.

6.03 Services, Materials, and Equipment

A. Unless otherwise specified in the General Requirements, CONTRACTOR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 Progress Schedule

A. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with

any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.05 Substitutes and "Or-Equals"

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to ENGINEER for review under the circumstances described below.

1. "Or-Equal" Items: If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment ENGINEER determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under

paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR.

c. The procedure for review by ENGINEER will be as set forth in paragraph 6.05.A.2.d, as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances.

d. CONTRACTOR shall first make written application to ENGINEER for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly

required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.05.A.2.

C. *Engineer's Evaluation:* ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.05.A and 6.05.B. ENGINEER will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until ENGINEER's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." ENGINEER will advise CONTRACTOR in writing of any negative determination.

D. *Special Guarantee:* OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.

E. *ENGINEER's Cost Reimbursement:* ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute.

F. *CONTRACTOR's Expense:* CONTRACTOR shall provide all data in support of any proposed substitute or "or-equal" at CONTRACTOR's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

A. CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to OWNER as indicated in paragraph 6.06.B), whether initially or as a replacement, against whom OWNER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or

entities to be submitted to OWNER in advance for acceptance by OWNER by a specified date prior to the Effective Date of the Agreement, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

C. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR.

E. CONTRACTOR shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with ENGINEER through CONTRACTOR.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor

or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

6.07 Patent Fees and Royalties

A. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 Permits

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits

and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

6.09 *Laws and Regulations*

A. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

B. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in paragraph 10.05.

6.10 *Taxes*

A. CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 *Use of Site and Other Areas*

A. *Limitation on Use of Site and Other Areas*

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not

unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.

3. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER, or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work CONTRACTOR shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and make it ready for utilization by OWNER. At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

A. CONTRACTOR shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work

Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to ENGINEER for OWNER.

6.13 Safety and Protection

A. CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;

2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). CONTRACTOR's duties and

responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 - Safety Representative

A. CONTRACTOR shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 Hazard Communication Programs

A. CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CONTRACTOR is obligated to act to prevent threatened damage, injury, or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 Shop Drawings and Samples

A. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ENGINEER the services, materials, and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.17.E.

B. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample

submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

D. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

d. CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submittal, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop

Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

E. ENGINEER's Review

1. ENGINEER will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. ENGINEER's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. Resubmittal Procedures

1. CONTRACTOR shall make corrections required by ENGINEER and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.18 Continuing the Work

A. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except

as permitted by paragraph 15.04 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.19 CONTRACTOR's General Warranty and Guarantee

A. CONTRACTOR warrants and guarantees to OWNER, ENGINEER, and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or

2. normal wear and tear under normal usage.

B. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

1. observations by ENGINEER;

2. recommendation by ENGINEER or payment by OWNER of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereto by OWNER;

4. use or occupancy of the Work or any part thereof by OWNER;

5. any acceptance by OWNER or any failure to do so;

6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;

7. any inspection, test, or approval by others; or

8. any correction of defective Work by OWNER.

6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from

and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage:

1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and

2. is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

B. In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of CONTRACTOR under paragraph 6.20.A shall not extend to the liability of ENGINEER and ENGINEER's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

ARTICLE 7 - OTHER WORK

7.01 *Related Work at Site*

A. OWNER may perform other work related to the Project at the Site by OWNER's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to CONTRACTOR prior to starting any such other work; and

2. if OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in paragraph 10.05.

B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

C. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure to so report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

A. If OWNER intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility for such coordination.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.02 *Replacement of ENGINEER*

A. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer to whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

8.03 *Furnish Data*

A. OWNER shall promptly furnish the data required of OWNER under the Contract Documents.

8.04 *Pay Promptly When Due*

A. OWNER shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations

and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by ENGINEER in preparing the Contract Documents.

8.06 Insurance

A. OWNER's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 Change Orders

A. OWNER is obligated to execute Change Orders as indicated in paragraph 10.03.

8.08 Inspections, Tests, and Approvals

A. OWNER's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

8.09 Limitations on OWNER's Responsibilities

A. The OWNER shall not supervise, direct, or have control or authority over, nor be responsible for, CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. OWNER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

8.10 Undisclosed Hazardous Environmental Condition

A. OWNER's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.

8.11 Evidence of Financial Arrangements

A. If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract Documents, OWNER's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 OWNER'S Representative

A. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and will not be changed without written consent of OWNER and ENGINEER.

9.02 Visits to Site

A. ENGINEER will make visits to the Site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work.

B. ENGINEER's visits and observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

9.03 Project Representative

A. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If OWNER designates another

representative or agent to represent OWNER at the Site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Clarifications and Interpretations*

A. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

9.05 *Authorized Variations in Work*

A. ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR, who shall perform the Work involved promptly. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefor as provided in paragraph 10.05.

9.06 *Rejecting Defective Work*

A. ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective, or that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.07 *Shop Drawings, Change Orders and Payments*

A. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12.

C. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

9.08 *Determinations for Unit Price Work*

A. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding (except as modified by ENGINEER to reflect changed factual conditions or more accurate data) upon OWNER and CONTRACTOR, subject to the provisions of paragraph 10.05.

9.09 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 *Limitations on ENGINEER's Authority and Responsibilities*

A. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority

or responsibility or the undertaking, exercise, or performance of any authority or responsibility by ENGINEER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

C. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If OWNER and CONTRACTOR are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change

Directive, a Claim may be made therefor as provided in paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

A. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.16 or in the case of uncovering Work as provided in paragraph 13.04.B.

10.03 *Execution of Change Orders*

A. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

1. changes in the Work which are: (i) ordered by OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or OWNER's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

10.04 *Notification to Surety*

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

10.05 Claims and Disputes

A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to ENGINEER and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the ENGINEER and the other party to the Contract within 60 days after the start of such event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to ENGINEER and the claimant within 30 days after receipt of the claimant's last submittal (unless ENGINEER allows additional time).

B. *ENGINEER's Decision:* ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR unless:

1. an appeal from ENGINEER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and CONTRACTOR), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

11.01 Cost of the Work

A. *Costs Included:* The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to CONTRACTOR will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by OWNER.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

3. Payments made by CONTRACTOR to Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER, who will then determine, with the advice of ENGINEER, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in this paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of CONTRACTOR.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable,

and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance CONTRACTOR is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CONTRACTOR, whether at the Site or in CONTRACTOR's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be

considered administrative costs covered by the CONTRACTOR's fee.

2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the Site.

3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

4. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.

C. *CONTRACTOR's Fee:* When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, CONTRACTOR's fee shall be determined as set forth in paragraph 12.01.C.

D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A and 11.01.B, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

11.02 Cash Allowances

A. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allow-

ances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER subject to the provisions of paragraph 9.08.

B. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

C. OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 - CHANGE OF CONTRACT PRICE;
CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).

C. *CONTRACTOR's Fee*: The CONTRACTOR's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;

b. for costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no

fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. Any adjustment of the Contract Times (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

12.03 *Delays Beyond CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by

Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

12.04 Delays Within CONTRACTOR's Control

A. The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.05 Delays Beyond OWNER's and CONTRACTOR's Control

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.06 Delay Damages

A. In no event shall OWNER or ENGINEER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR; or

2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Notice of Defects

A. Prompt notice of all defective Work of which OWNER or ENGINEER has actual knowledge will be given

to CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

A. OWNER, ENGINEER, ENGINEER's Consultants, other representatives and personnel of OWNER, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's Site safety procedures and programs so that they may comply therewith as applicable.

13.03 Tests and Inspections

A. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and

3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection or approval.

D. CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to OWNER and ENGINEER.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.

F. Uncovering Work as provided in paragraph 13.03.E shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

13.04 Uncovering Work

A. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

B. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

13.05 OWNER May Stop the Work

A. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop

the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 Correction or Removal of Defective Work

A. CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER, remove it from the Project and replace it with Work that is not defective. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.07 Correction Period

A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that

item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

D. CONTRACTOR's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to ENGINEER's recommendation of final payment, ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by ENGINEER as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by CONTRACTOR pursuant to this sentence. If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

13.09 *OWNER May Correct Defective Work*

A. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.06.A, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In

connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the Site, take possession of all or part of the Work and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors, and ENGINEER and ENGINEER's Consultants access to the Site to enable OWNER to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by OWNER in exercising the rights and remedies under this paragraph 13.09 will be charged against CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, OWNER may make a Claim therefor as provided in paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR's defective Work.

D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The schedule of values established as provided in paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 Progress Payments

A. Applications for Payments

1. At least 20 days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge CONTRACTOR's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications

1. ENGINEER will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

2. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work.

3. By recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

4. Neither ENGINEER's review of CONTRACTOR's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment, including final payment, will impose responsibility on ENGINEER to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to OWNER free and clear of any Liens.

5. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.02.B.2. ENGINEER may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests,

revise or revoke any such payment recommendation previously made, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;

b. the Contract Price has been reduced by Written Amendment or Change Orders;

c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or

d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

C. *Payment Becomes Due*

1. Ten days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by OWNER to CONTRACTOR.

D. *Reduction in Payment*

1. OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

a. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;

b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;

c. there are other items entitling OWNER to a set-off against the amount recommended; or

d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.

2. If OWNER refuses to make payment of the full amount recommended by ENGINEER, OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld.

OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

3. If it is subsequently determined that OWNER's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

14.03 *CONTRACTOR's Warranty of Title*

A. CONTRACTOR warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

14.04 *Substantial Completion*

A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said 14 days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibility.

ties pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.05 Partial Utilization

A. Use by OWNER at OWNER's option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which OWNER, ENGINEER, and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

14.06 Final Inspection

A. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will promptly make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 Final Payment

A. Application for Payment

1. After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

B. Review of Application and Acceptance

1. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application for Payment to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, ENGINEER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.

14.08 Final Completion Delayed

A. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 OWNER May Suspend Work

A. At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes a Claim therefor as provided in paragraph 10.05.

15.02 OWNER May Terminate for Cause

A. The occurrence of any one or more of the following events will justify termination for cause:

1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);

2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;

3. CONTRACTOR's disregard of the authority of ENGINEER; or

4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate

the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses, and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and, when so approved by ENGINEER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

C. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.03 OWNER May Terminate For Convenience

A. Upon seven days written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. for all claims, costs, losses, and damages (including but not limited to all fees and charges of

engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. for reasonable expenses directly attributable to termination.

B. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 CONTRACTOR May Stop Work or Terminate

A. If, through no act or fault of CONTRACTOR, the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, or OWNER fails for 30 days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Contract and recover from OWNER payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within 30 days after it is submitted, or OWNER has failed for 30 days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, seven days after written notice to OWNER and ENGINEER, stop the Work until payment is made of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude CONTRACTOR from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping the Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 Methods and Procedures

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Agreement.

17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

TOWN OF CUTLER BAY
SW 208 STREET IMPROVEMENTS
 FROM OLD CUTLER ROAD TO SW 87TH AVENUE

PUBLIC WORKS DEPARTMENT
BIDS

Rank	Base Bid Amount	Company	Bidder's Name	Telephone	Address	Certificate of Competency No	Bidder's Occupational License	Taxpayer ID NO.	License No. Verified	Documents Verified	References Remarks
1	\$ 342,037.77	GENERAL ASPHALT CO., INC	ROBERT A LOPEZ	305-592-3480	4850 NW 72 AV, MIAMI FL 33166	E-702	30-0254235	59-1115297	RG0060992	VERIFIED	GOOD
2	\$ 348,715.90	FLORIDA ENGINEERING & DEVELOPMENT, CORP	JOSE VEGA	305-820-8333	12076 NW 98 AV, HIALEAH GARDENS, FL 33018	E-0900376	BL 9001	83-0345690	CUC1224714	VERIFIED	GOOD
3	\$ 366,213.30	MARKS BROTHERS, INC	MARTIN D MARKS	305-805-6900	9455 NW 104 ST., MEDLEY, FL 33178	E-1306	30-0258996	59-2691292	RU11066535	VERIFIED	GOOD
4	\$ 379,567.92	H & R PAVING, INC	RAUL GONZALEZ	305-261-3005	1955 NW 110 AV., MIAMI FL 33172	E-844	30-0674771	59-1690152	NO INFORMATION AVAILABLE		GOOD
5	\$ 404,347.00	TEAM CONTRACTING, INC.	JULIO C BATISTA	305 207-9799	13911 SW 42 ST, SUT.209, MIAMI, FL 33175	CGC-061511	607706-6	65-1002254	CGC061511	VERIFIED	GOOD
6	\$ 406,239.55	MAGGOLC INC.	MARIO GONZALEZ	786-291-2949	11020 SW 55 ST., MIAMI, FL 33165	E 251 302	568406-4	20-3345775	RU11066595	VERIFIED	
7	\$ 408,651.26	WILLIAMS PAVING CO. INC.	ALAN B RODRIQUEZ	305-882-1950	11300 NW S RIVER DR, MEDLEY,DL 33178	E 2313	026791-4	59-0895890	NO INFORMATION AVAILABLE		
8	\$ 425,129.90	MIGUEL LOPEZ JR, INC	MIGUEL LOPEZ	305-884-0767	7711 NW 74 AV , MEDLEY, FL 33166	E 1353	NA	65-0095596	CGC060135	VERIFIED	
9	\$ 426,245.14	COMMUNITY ASPHALT CORP.	IGNACIO HALLEY	305-884-9444	9725 NW 117 AVE SUT 110, MIAMI, FL 33018	E 396	3619187	59-2023298	QB0008479	VERIFIED	
10	\$ 545,937.22	ATLANTIC CIVIL, INC	STEVE TORCISE JR.	305-670-9610	9350 S DIXIE HWY, SUT.1250, MIAMI, FL 33156	E 619	30-0286609	59-1274059	RG0061972	VERIFIED	

BID ITEM	DESCRIPTION	ESTIMATED QTY	UNIT	GENERAL ASPHALT		FL ENG & DEVELOP		MARKS BROTHERS INC		H&R PAVING		COMMUNITY ASPHALT		TEAM CONTRACTING		MAGGOLC INC.		WILLIAMS PAVING		MIGUEL LOPEZ, JR.		ATLANTIC CIVIL, INC.		ANDALE GROUP, LLC			
				UNIT PRICE	COST	UNIT PRICE	COST	UNIT PRICE	COST	UNIT PRICE	COST	UNIT PRICE	COST	UNIT PRICE	COST	UNIT PRICE	COST	UNIT PRICE	COST	UNIT PRICE	COST	UNIT PRICE	COST	UNIT PRICE	COST	UNIT PRICE	COST
101-1	MOBILIZATION	1	LS	5,000.00	5,000.00	10,500.00	10,500.00	20,175.00	20,175.00	19,358.00	19,358.00	30,000.00	30,000.00	4,500.00	4,500.00	20,000.00	20,000.00	8,500.00	8,500.00	11,500.00	11,500.00	109,460.17	109,460.17	27,710.00	27,710.00	27,710.00	27,710.00
102-1	MAINTENANCE OF TRAFFIC	1	LS	10,000.00	10,000.00	10,000.00	10,000.00	16,730.00	16,730.00	19,358.00	19,358.00	27,000.00	27,000.00	12,000.00	12,000.00	15,000.00	15,000.00	60,000.00	60,000.00	8,500.00	8,500.00	42,255.22	42,255.22	22,750.00	22,750.00	22,750.00	22,750.00
104-10-3	SEDIMENT BARRIER	350	LF	1.00	350.00	0.70	245.00	2.60	910.00	2.00	700.00	2.00	700.00	10.00	3,500.00	10.00	3,500.00	9.00	3,150.00	10.00	3,500.00	1.92	672.00	2.20	770.00	2.20	770.00
104-18	INLET PROTECTION SYSTEM	21	EA	50.00	1,050.00	66.00	1,386.00	58.00	1,218.00	50.00	1,050.00	10.00	210.00	40.00	840.00	150.00	3,150.00	100.00	2,100.00	125.00	2,625.00	169.49	3,559.29	33.00	693.00	33.00	693.00
110-1-1	CLEARING & GRUBBING	0.08	LS/AC	188,000.00	15,040.00	297,000.00	23,760.00	47,700.00	3,816.00	4,000.00	320.00	35,000.00	2,800.00	25,000.00	2,000.00	50,000.00	4,000.00	165,000.00	13,200.00	350,000.00	28,000.00	246,696.70	19,735.74	27,710.00	2,216.80	2,216.80	
110-4	REMOVAL OF EXISTING CONCRETE PAVEMENT	166	SY	11.00	1,826.00	3.00	498.00	12.60	2,091.60	20.00	3,320.00	25.00	4,150.00	4.00	664.00	20.00	3,320.00	40.00	6,640.00	20.00	3,320.00	8.66	1,437.56	13.20	2,191.20	13.20	2,191.20
120-1	REGULAR EXCAVATION	172	CY	60.00	10,320.00	6.00	1,032.00	108.00	18,576.00	10.00	1,720.00	18.00	3,096.00	225.00	38,700.00	10.00	1,720.00	90.00	15,480.00	65.00	11,800.00	64.44	11,083.68	68.20	11,730.40	68.20	11,730.40
160-4	TYPE B STABILIZATION	562	SY	4.00	2,248.00	2.00	1,124.00	4.25	2,388.50	2.00	1,124.00	1.00	562.00	11.00	6,182.00	8.00	4,496.00	22.00	12,364.00	9.00	5,058.00	18.97	10,661.14	4.40	2,472.80	4.40	2,472.80
162-1-11	PREPARED SOIL LAYER, FINISH SOIL LAYER, 6"	1888	SY	4.00	7,552.00	3.25	6,136.00	9.90	18,691.20	10.00	18,880.00	1.82	3,436.16	11.00	20,768.00	7.00	13,216.00	5.00	9,440.00	8.00	15,104.00	13.89	26,224.32	5.50	10,384.00	5.50	10,384.00
285-706	OPTIONAL BASE, BASE GROUP 06	738	SY	15.00	11,070.00	8.50	6,273.00	17.75	13,099.50	40.00	29,520.00	40.00	29,520.00	11.00	8,118.00	14.00	10,332.00	22.00	16,236.00	10.25	7,564.50	16.78	12,383.64	15.40	11,365.20	15.40	11,365.20
327-70-1	MILLING EXIST ASPH PAVT 1 " AVG DEPTH	15971	SY	1.50	23,956.50	2.05	32,740.55	1.25	19,963.75	1.75	27,949.25	2.33	37,212.43	2.00	31,942.00	2.50	39,927.50	0.90	14,373.90	1.85	29,546.35	2.02	32,261.42	1.87	29,865.77	1.87	29,865.77
327-70-5	MILLING EXIST ASPH PAVT 2 " AVG DEPTH	236	SY	4.00	944.00	2.50	590.00	1.25	295.00	2.00	472.00	3.00	708.00	3.00	708.00	2.50	590.00	1.10	259.60	5.00	1,180.00	1.72	405.92	2.20	519.20	2.20	519.20
334-1-13	SUPERPAVE ASPHALTIC CONC. TRAFFIC C	113.7	TN	100.00	11,370.00	119.25	13,558.73	94.00	10,687.80	90.00	10,233.00	125.00	14,212.50	120.00	13,644.00	88.00	10,005.60	87.00	9,891.90	122.00	13,871.40	100.89	11,471.19	101.20	11,506.44	101.20	11,506.44
337-7-32	ASPHALT CONCRETE FRICTION COURSE, TRAFFIC C, FC-9.5, RUBBER	932	TN	92.00	85,744.00	107.70	100,376.40	94.00	87,608.00	90.00	83,880.00	120.00	111,840.00	120.00	111,840.00	111.00	103,452.00	100.00	93,200.00	115.00	107,180.00	100.89	94,029.48	101.20	94,318.40	101.20	94,318.40
425-5	MANHOLE ADJUST	1	EA	300.00	300.00	550.00	550.00	540.00	540.00	300.00	300.00	200.00	200.00	300.00	300.00	250.00	250.00	220.00	220.00	1,200.00	1,200.00	1,335.51	1,335.51	258.50	258.50	258.50	258.50
425-5-1	MANHOLE ADJUST (UTILITIES)	17	EA	300.00	5,100.00	220.00	3,740.00	50.00	850.00	250.00	4,250.00	225.00	3,825.00	50.00	850.00	275.00	4,675.00	220.00	3,740.00	750.00	12,750.00	646.98	10,998.66	330.00	5,610.00	330.00	5,610.00
425-6	VALVE BOX ADJUST	28	EA	150.00	4,200.00	110.00	3,080.00	49.00	1,372.00	180.00	5,040.00	150.00	4,200.00	50.00	1,400.00	120.00	3,360.00	220.00	6,160.00	600.00	16,800.00	323.49	9,057.72	148.50	4,158.00	148.50	4,158.00
520-1-10	CONCRETE CURB & GUTTER, TYPE F	3460	LF	14.00	48,440.00	11.30	39,098.00	12.00	41,520.00	13.00	44,980.00	10.50	36,330.00	11.00	38,060.00	20.00	69,200.00	11.00	38,060.00	15.00	51,900.00	14.96	51,761.60	17.60	60,896.00	17.60	60,896.00
520-5-41	TRAFFIC SEPARATOR CONCRETE- TYPE IV, 4' WIDE	526	LF	26.00	13,676.00	24.70	12,992.20	19.40	10,204.40	45.00	23,670.00	23.00	12,098.00	24.00	12,624.00	22.00	11,572.00	36.00	18,936.00	28.00	14,728.00	41.07	21,602.82	22.00	11,572.00	22.00	11,572.00
522-1	SIDEWALK CONCRETE, 4" THICK	212	SY	35.00	7,420.00	34.40	7,292.80	54.00	11,448.00	30.00	6,360.00	26.50	5,618.00	27.00	5,724.00	40.00	8,480.00	39.00	8,268.00	40.00	8,480.00	58.00	12,296.00	35.20	7,462.40	35.20	7,462.40
570-1-2	PERFORMANCE TURF, SOD	1888	SY	2.00	3,776.00	2.20	4,153.60	2.50	4,720.00	4.00	7,552.00	2.00	3,776.00	4.00	7,552.00	3.00	5,664.00	2.00	3,776.00	3.50	6,608.00	2.52	4,757.76	2.20	4,153.60	2.20	4,153.60
700-20-11	SINGLE POST SIGN (LESS THAN 12 SQ. FT.)	52	AS	258.00	13,416.00	220.00	11,440.00	208.00	10,816.00	220.00	11,440.00	250.00	13,000.00	220.00	11,440.00	300.00	15,600.00	225.00	11,700.00	185.00	9,620.00	307.70	16,000.40	257.95	13,413.40	257.95	13,413.40
700-20-12	SINGLE POST SIGN, F&I, 12-20 SF	2	AS	577.00	1,154.00	495.00	990.00	1,042.00	2,084.00	275.00	550.00	300.00	600.00	340.00	680.00	1,500.00	3,000.00	335.00	670.00	325.00	650.00	307.70	615.40	330.00	660.00	330.00	660.00
700-20-60	SINGLE POST (REMOVE)	35	AS	11.00	385.00	22.00	770.00	37.00	1,295.00	1.10	38.50	30.00	1,050.00	50.00	1,750.00	100.00	3,500.00	23.00	805.00	40.00	1,400.00	9.58	335.44	1.10	38.50	1.10	38.50
705-10-1	OBJECT MARKER, TYPE 1	9	EA	210.00	1,890.00	110.00	990.00	198.00	1,782.00	88.00	792.00	145.00	1,305.00	120.00	1,080.00	200.00	1,800.00	56.00	504.00	185.00	1,665.00	126.11	1,134.99	100.10	900.90	100.10	900.90
706-3	RETRO-REFLECTIVE PAVEMENT MARKERS	468	EA	3.15	1,474.20	4.15	1,942.20	3.20	1,497.60	4.12	1,928.16	3.00	1,404.00	5.00	2,340.00	4.10	1,918.80	4.00	1,872.00	4.50	2,106.00	3.13	1,464.84	3.85	1,801.80	3.85	1,801.80
711-11-160	THERMOPLASTIC, STANDARD, WHITE, MESSAGE	24	EA	115.00	2,760.00	99.00	2,376.00	83.00	1,992.00	66.00	1,584.00	125.00	3,000.00	80.00	1,920.00	70.00	1,680.00	90.00	2,160.00	100.00	2,400.00	25.22	605.28	66.00	1,584.00	66.00	1,584.00
711-11-170	THERMOPLASTIC, STANDARD, WHITE, ARROW	31	EA	74.00	2,294.00	71.50	2,216.50	50.00	1,550.00	44.00	1,364.00	45.00	1,395.00	80.00	2,480.00	50.00	1,550.00	56.00	1,736.00	55.00	1,705.00	45.40	1,407.40	49.50	1,534.50	49.50	1,534.50
711-11-111	THERMOPLASTIC, STD, WHITE, SOLID, 6"	1,753	NM	4,435.00	7,774.56	4,125.00	7,231.13	2,080.00	3,646.24	2,729.00	4,783.94	2,000.00	3,506.00	5,000.00	8,765.00	2,400.00	4,207.20	3,360.00	5,890.08	2,750.00	4,820.75	650.72	1,140.71	2,729.10	4,784.11	2,729.10	4,784.11
711-11-122	THERMOPLASTIC, STANDARD, WHITE, SOLID, 8"	307	LF	1.15	353.05	1.21	371.47	0.75	230.25	0.77	236.39	0.80	245.60	4.00	1,228.00	0.70	214.90	1.00	307.00	0.75	230.25	0.30	92.10	0.61	187.27	0.61	187.27
711-11-123	THERMOPLASTIC, STANDARD, WHITE, SOLID (12")	740	LF	1.70	1,258.00	2.00	1,480.00	4.70	3,478.00	1.21	895.40	1.25	925.00	5.00	3,700.00	1.15	851.00	1.50	1,110.00	2.00	1,480.00	0.61	451.40	1.43	1,058.20	1.43	1,058.20
711-11-124	THERMOPLASTIC, STANDARD, WHITE, SOLID, 18"	802	LF	2.50	2,005.00	2.80	2,245.60	2.00	1,604.00	1.65	1,323.30	2.00	1,604.00	7.00	5,614.00	1.70	1,363.40	2.00	1,604.00	2.75	2,205.50	0.91	729.82	1.76	1,411.52	1.76	1,411.52
711-11-125	THERMOPLASTIC, STANDARD, WHITE, SOLID, 24"	151	LF	5.25	792.75	4.40	664.40	2.00	302.00	2.31	348.81	2.75	415.25	8.00	1,208.00	3.15	475.65	2.50	377.50	4.25	641.75	1.01	152.51	2.53	382.03	2.53	382.03
711-11-151	THERMOPLASTIC, STANDARD, WHITE, /GUIDELINE 2"-4"	218	LF	1.00	218.00	1.10	239.80																				

FINAL TOTAL RANKINGS

1. GENERAL ASPHALT	\$342,037.77
2. FLORIDA ENGINEERING AND DEVELOPMENT	\$348,706.30
3. MARKS BROTHERS INC.	\$352,329.30
4. H&R PAVING	\$369,567.92
5. COMMUNITY ASPHALT	\$394,045.14
6. TEAM CONTRACTING	\$404,347.00
7. MAGGOLC, INC.	\$406,239.55
8. WILLIAMS PAVING	\$408,653.82
9. MIGUEL LOPEZ, JR.	\$425,129.00
10. ATLANTIC CIVIL INC.	\$542,918.26
11. ANDALE GROUP, INC.	\$384,655.23 NON RESPONSIVE

ADD-ON

RESOLUTION 10-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA AUTHORIZING THE TOWN MANAGER TO WAIVE PERMITTING FEES FOR HOME REPAIRS FOR CUTLER BAY RESIDENT DOTTY HUDSON BY ALLOCATING FUNDS FROM THE 2009/2010 FISCAL YEAR BUDGET FOR THE PAYMENT OF PERMIT FEES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (The “Town”) supports the efforts of community members trying to assist fellow neighbors and those in need by requesting assistance from their local government to consider the waiver of building permit fees for the completion of necessary home repairs for paraplegic and Cutler Bay resident Dotty Hudson; and

WHEREAS, the Town Council wishes to support the efforts of Venetian Builders and donate funds toward the necessary building permits needed to complete the home repairs of Dotty Hudson; and

WHEREAS, the Town Council wishes to provide financial support to Dotty Hudson in the form of a donation from the 2009/2010 fiscal year budget toward building permit fees; and

WHEREAS, the Town Council wishes to contribute \$1,500.00 towards the building permit fees from any available funds within the 2009/2010 fiscal year budget as deemed appropriate; 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 Council hereby authorizes the Town Manager to waive the building permit fees by allocating \$1,500.00 from any available funds within the 2009/2010 fiscal year budget, to pay for the building permit fees for Dotty Hudson’s home repairs .

Section 3. 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 _____

ADD-ON

RESOLUTION 10-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA AUTHORIZING THE TOWN MANAGER TO WAIVE PERMITTING FEES FOR THE INSTALLATION OF A POOL FENCE FOR CUTLER BAY RESIDENT AND POLICE OFFICER JODY WRIGHT AND DONATE FUNDS FROM THE 2009/2010 FISCAL YEAR BUDGET FOR THE PAYMENT OF PERMIT FEES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay (The “Town”) recognizes the sacrifices of its police officers specifically Police Officer Jody Wright, a Cutler Bay resident, who was shot on duty which also took the life of a fellow Police Officer Jose Somohano; and

WHEREAS, as a result of the shooting, Officer Jody Wright will require on-going long-term physical therapy; and

WHEREAS, the Town Council wishes to provide some type of financial support to Officer Jody Wright in the form of waiving the permit fees by allocating funds from the 2009/2010 fiscal year budget for building permit fees for the construction of a pool fence for her pool which is used for physical therapy purposes; and

WHEREAS, the Town Council wishes to contribute up to \$500.00 towards the building permit fees from any available funds within the 2009/2010 fiscal year budget as deemed appropriate; 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 Council hereby authorizes the Town Manager to waive the building permit fees up to \$500.00 from any available funds within the 2009/2010 fiscal year budget, to pay for the building permit fees for Officer Jody Wright’s pool fence.

Section 3. 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 _____

TAB 6



Community Development Department

David Hennis, AICP
Community Development Director

MEMORANDUM

To: Steven J. Alexander, Town Manager

From: David Hennis, Community Development Director

Date: May 13, 2010

Re: Non-Use Variance as to Minimum Height
Application V-2010-009

Southland Mall Properties, LLC, is requesting a non-use height variance from the Urban Center District Regulations for the property located at 20505 South Dixie Highway. The variance seeks relief from Code Section 3.D., of Ordinance 06-06, Building Heights Plan, which requires a minimum of 6-stories for property within the Urban Center District. The applicant intends to construct a one-story building necessitating a variance of 5 stories from code requirements. The property is an outparcel within the Southland Mall property, generally located along the northeast corner of the mall entrance along South Dixie Highway and just south of Caribbean Boulevard. The site is presently an underutilized parking area.

Section 33-311 of the Code of Ordinances requires the following Town Council findings regarding non-use variances.

- a. *The non-use variance maintains the basic intent and purpose of the zoning, subdivision and other land use regulations, which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community.*

Staff Evaluation

The request is not generally consistent with the intent and purpose of zoning, subdivision and the Charrette for the area. Modifying height from the required minimum 6-stories to 1-story will diminish the ability of the site to fulfill density, building placement and site design standards adopted following Charrette parameters and aimed at converting the area into a main street town center where buildings front open space and existing streets with height and mixed-use density to achieve a compact urban form. Limiting height to 1-story does inhibit the creation of a pedestrian friendly compact urban environment so critical to achieving design tenets of the Charrette.





- b. *The non-use variance will be otherwise compatible with the surrounding land uses and would not be detrimental to the community.*

Staff Evaluation

The request will not have an adverse impact on the environment of the Town.

RECOMMENDATION

Staff recommends denial of the request to vary the height allowed for the site from 6-stories to 1-story.



RESOLUTION NO. 10-__

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A HEIGHT VARIANCE FOR AN OUT PARCEL ON THE PROPERTY LOCATED AT 20505 SOUTH DIXIE HIGHWAY TO PERMIT A ONE STORY BUILDING WHERE A MINIMUM SIX STORIES IS REQUIRED; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Southland Mall Properties, LLC. (the “Applicant”) has submitted application number V-2010-009, pursuant to Section 33-311(A)(4)(b) of the Town of Cutler Bay (the “Town”) Code of Ordinances (the “Town Code”), to vary Ordinance 06-06 of the Town Code relating to height, to permit one (1) story where six (6) stories are required for a building proposed on an out parcel on property located at 20505 S. Dixie Highway; and

WHEREAS, staff recommended denial of the requested variance, in its report dated May 13, 2010; and

WHEREAS, public notice was provided in accordance with law; and

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

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

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

Section 2. **Approval of Variance.** The Town Council hereby approves the request by the Applicant, to vary the provisions Ordinance 06-06 of the Town Code relating to height, to permit one (1) story where six (6) stories are required for a building proposed on an out parcel on property located at 20505 S. Dixie Highway.

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

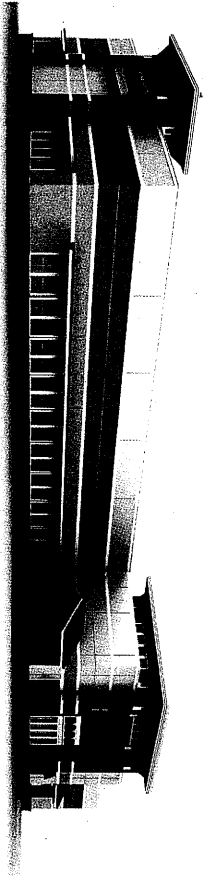
APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE USE OF THE TOWN OF CUTLER BAY:

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

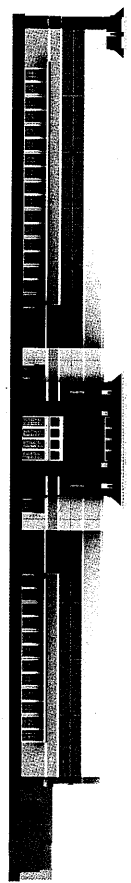
Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

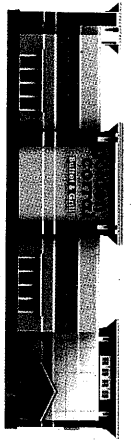
Mayor Paul S. Vrooman _____
Vice Mayor Edward P. MacDougall _____
Councilmember Peggy R. Bell _____
Councilmember Timothy J. Meerbott _____
Councilmember Ernest N. Sochin _____



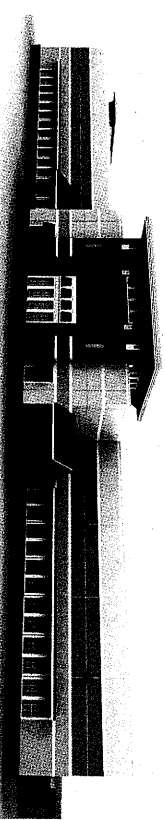
PERSPECTIVE FROM SOUTH WEST PARKING LOT (FRONT CORNER)



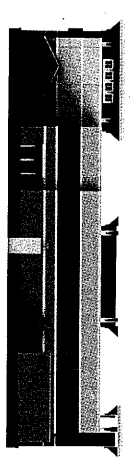
VIEW FROM MALL



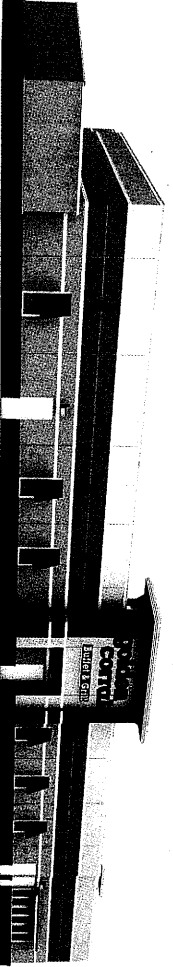
VIEW FROM ENTRANCE TO MALL



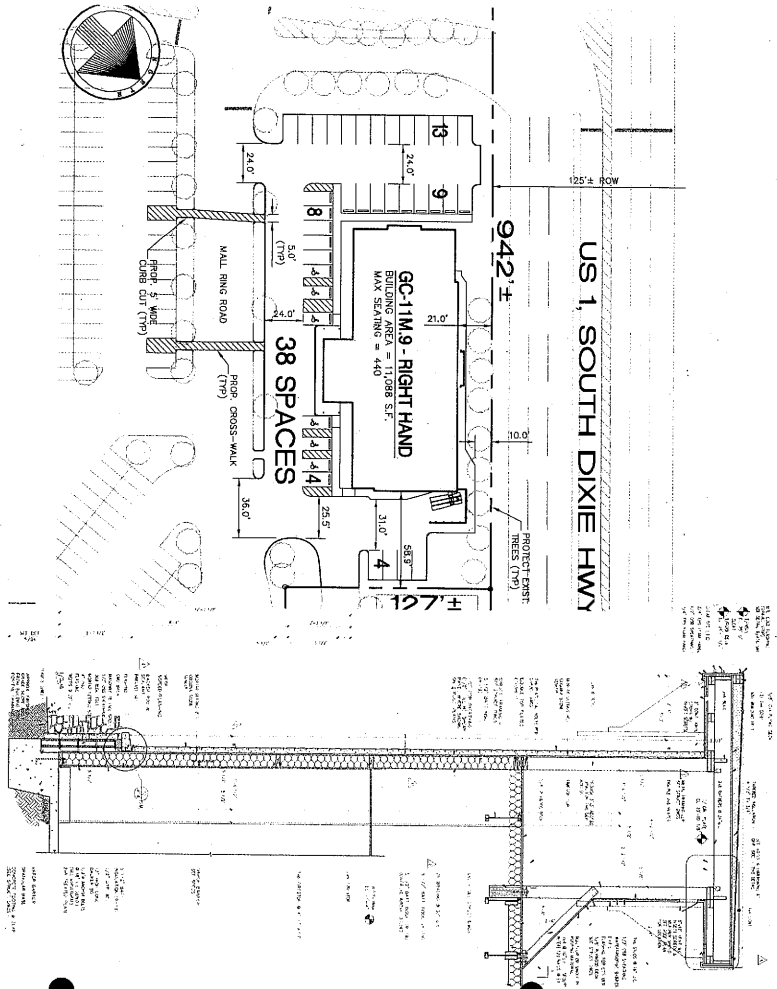
VIEW FROM US 1, SOUTH DIXIE HWY



VIEW FROM BANK



PERSPECTIVE FROM US 1, SOUTH DIXIE HWY (REAR)



PROPOSED ELEVATIONS FOR GOLDEN CORRAL @ CUTLER BAY, FL

	GOLDEN CORRAL LOCATION: Southland Mall US 1, South Dixie Hwy DRAWING: Proposed Elevations	THESE STRUCTURAL DRAWING DOCUMENTS AND SPECIFICATIONS ARE OWNED AND CONTROLLED BY GOLDEN CORRAL CORPORATION. NO PART OF THESE DOCUMENTS OR SPECIFICATIONS MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF GOLDEN CORRAL CORPORATION. GOLDEN CORRAL CORPORATION SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION CONTAINED HEREIN AND SHALL BE RESPONSIBLE FOR ANY ERRORS, OMISSIONS, OR CHANGES TO THE ORIGINAL DRAWINGS AND SPECIFICATIONS.	
	GOLDEN CORRAL CORPORATION 5151 GLENWOOD AVENUE RALEIGH, NC 27612 PHONE: (919) 781-8952	PROJECT DATE: _____ DRAWN BY: _____ CHECKED BY: _____ SCALE: _____	REVISIONS: _____

Proposed Golden Corral Restaurant



TAB 7



Community Development Department

David Hennis, AICP
Community Development Director

MEMORANDUM

To: Steven J. Alexander, Town Manager

From: David Hennis, Community Development Director

Date: May 13, 2010

Re: Non-Use Variance as to Building Entrance
Application V-2010-009

Southland Mall Properties, LLC, is requesting a non-use building variance from the Urban Center District Regulations for the property located at 20505 South Dixie Highway. The variance seeks relief from Code Section 33-284.86 B.1.a, General Requirements for Buildings, which require a storefront to be directly accessible from a street or open space and not a parking lot within the Urban Center District. The applicant intends to construct a building with its front entrance facing the mall parking lot and its rear facing South Dixie Highway. The property is an outparcel within the Southland Mall property, generally located along the northeast corner of the mall entrance along South Dixie Highway and just south of Caribbean Boulevard. The site is presently an underutilized parking area.

Section 33-311 of the Code of Ordinances requires the following Town Council findings regarding non-use variances.

- a. *The non-use variance maintains the basic intent and purpose of the zoning, subdivision and other land use regulations, which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community.*

Staff Evaluation

The request is inconsistent with the intent and purpose of zoning, subdivision and the Charrette for the area. Modifying building placement standards by having the building front a parking lot and not an open space or US-1 directly contradicts and defeats town planning, zoning, and Charrette standards adopted and supported by the community to effect a change in design for the community. The solution offered diminishes the ability of the site to fulfill building placement and site design standards aimed at converting the area into a main street town center where buildings front open space and streets. Allowing the building to face the



parking lot inhibits the creation of a pedestrian friendly environment so critical to achieving design tenets of the Charrette.

- b. *The non-use variance will be otherwise compatible with the surrounding land uses and would not be detrimental to the community.*

Staff Evaluation

The request is not generally incompatible with the Charrette and surrounding land uses; however it will be detrimental to the Town due to incompatibility with adopted building, siting, and design considerations. The solution is a sprawl design as opposed to a pedestrian friendly, main street/town center approach.

RECOMMENDATION

Staff recommends denial of the request to vary building placement standards and allow the storefront on a non-street or open space location.



RESOLUTION NO. 10-__

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A VARIANCE FROM SECTION 33-284.86 (B)(1)(A) FOR AN OUT PARCEL ON THE PROPERTY LOCATED AT 20505 SOUTH DIXIE HIGHWAY TO PERMIT A BUILDING TO NOT BE DIRECTLY ACCESSIBLE FROM A STREET FRONTAGE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Southland Mall Properties, LLC. (the “Applicant”) has submitted application number V-2010-009, pursuant to Section 33-311(A)(4)(b) of the Town of Cutler Bay (the “Town”) Code of Ordinances (the “Town Code”), to vary Section 33-284.86(B)(1)(a) of the Town Code to permit a building to not be directly accessible from a street frontage, which is proposed on an out parcel on property located at 20505 S. Dixie Highway; and

WHEREAS, staff recommended denial of the requested variance, in its report dated May 13, 2010; and

WHEREAS, public notice was provided in accordance with law; and

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

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

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

Section 2. **Approval of Variance.** The Town Council hereby approves the request by the Applicant, to vary the provisions of Section 33-284.86(B)(1)(a) of the Town Code to permit a building to not be directly accessible from a street frontage, which is proposed on an out parcel on property located at 20505 S. Dixie Highway.

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 _____

Proposed Golden Corral Restaurant



TAB 8



Community Development Department

David Hennis, AICP
Community Development Director

MEMORANDUM

To: Steven J. Alexander, Town Manager

From: David Hennis, Community Development Director

Date: May 13, 2010

Re: Non-Use Variance as to Storefront Transparent Clear Glazed Area
Application V-2010-009

Southland Mall Properties, LLC, is requesting a non-use building variance from the Urban Center District Regulations for the property located at 20505 South Dixie Highway. The variance seeks relief from Code Section 33-284.86 B.1.b, General Requirements for Buildings, which require a storefront to have a transparent clear glazed area of not less than 70 percent of the facade area within the Urban Center District. The applicant intends to construct a building with a transparent clear glazed area facing the mall parking lot of 18 percent and on the portion facing South Dixie Highway of 6 percent. The property is an outparcel within the Southland Mall property, generally located along the northeast corner of the mall entrance along South Dixie Highway and just south of Caribbean Boulevard. The site is presently an underutilized parking area.

Section 33-311 of the Code of Ordinances requires the following Town Council findings regarding non-use variances.

- a. *The non-use variance maintains the basic intent and purpose of the zoning, subdivision and other land use regulations, which is to protect the general welfare of the public, particularly as it affects the stability and appearance of the community.*

Staff Evaluation

The request is inconsistent with the intent and purpose of zoning, subdivision and the Charrette for the area. Modifying building placement standards by having the building front with a transparent clear glazed area of 18 or 6 percent directly contradicts and defeats town planning, zoning, and Charrette standards adopted and supported by the community to effect a change in design for the community. The solution offered diminishes the ability of the site to fulfill building placement and site design standards aimed at converting the area into a pedestrian oriented



main street town center. Allowing the building to have substantial non-transparent walls inhibits the creation of a pedestrian friendly environment so critical to achieving design tenets of the Charrette.

- b. *The non-use variance will be otherwise compatible with the surrounding land uses and would not be detrimental to the community.*

Staff Evaluation

The request is not generally incompatible with the Charrette and surrounding land uses; however it will be detrimental to the Town due to incompatibility with adopted building, siting, and design considerations. The solution is a sprawl design as opposed to a pedestrian friendly, main street town center approach.

RECOMMENDATION

Staff recommends denial of the request to vary building transparent clear glazed area standards by allowing the storefront to be virtually non-transparent.



RESOLUTION NO. 10-__

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A VARIANCE FROM SECTION 33-284.86 (B)(1)(B) FOR AN OUT PARCEL ON THE PROPERTY LOCATED AT 20505 SOUTH DIXIE HIGHWAY RELATING TO THE CLEAR GLAZED AREA OF THE FAÇADE OF THE BUILDING; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Southland Mall Properties, LLC. (the “Applicant”) has submitted application number V-2010-009, pursuant to Section 33-311(A)(4)(b) of the Town of Cutler Bay (the “Town”) Code of Ordinances (the “Town Code”), to vary Section 33-284.86(B)(1)(b) of the Town Code to permit a transparent clear glazed area facing the Southland Mall parking lot of 18 percent and on the portion of the building facing South Dixie Highway of 6 percent where 70 percent is required, for a building located on an out parcel on property located at 20505 S. Dixie Highway; and

WHEREAS, staff recommended denial of the requested variance, in its report dated May 13, 2010; and

WHEREAS, public notice was provided in accordance with law; and

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

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

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

Section 2. **Approval of Variance.** The Town Council hereby approves the request by the Applicant, to vary the provisions of Section 33-284.86(B)(1)(b) of the Town Code to permit a transparent clear glazed area facing the Southland Mall parking lot of 18 percent and on the portion of the building facing South Dixie Highway of 6 percent for a building proposed on an out parcel on property located at 20505 S. Dixie Highway.

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	_____

Proposed Golden Corral Restaurant



TAB 9

ORDINANCE NO. 10- _____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER, IN ACCORDANCE WITH SECTION 4.3(7) OF THE TOWN CHARTER, TO ENTER INTO LEASES BY ADMINISTRATIVE ACTION FOR THE PROPERTY LOCATED AT 10720 CARIBBEAN BOULEVARD AND THE PROPERTY IMMEDIATELY SOUTH OF THIS PROPERTY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on June 14, 2010, the Town Council purchased the property located at 10720 Caribbean Boulevard and authorized funding for the purchase of the property immediately south of this property (Collectively, the “Property”); and

WHEREAS, Section 4.3(7) of the Town Charter requires leases of Town lands to be adopted by ordinance; and

WHEREAS, this section of the Town Charter also allows the Town Council to authorize the Town Manager to enter into leases of Town lands by administrative action; and

WHEREAS, in order to facilitate leasing of the Property, the Town Council desires to allow the Town Manager to enter into leases of the Property by administrative action; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS¹:

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

Section 2. Authorizing Leases by Administrative Action. The Town Council hereby authorizes the Town Manager, in accordance with Section 4.3(7) of the Town Charter, to enter into leases of the Property by administrative action.

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

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

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

Section 5. 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 re-numbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this _____ 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 10



MEMORANDUM

To: Mayor and Town Council

From: Steven Alexander

Date: June 7, 2010

Re: Resolution Approving T-Mobile Site Lease Agreement

BACKGROUND:

The Town will enter into an Agreement with T-Mobile for an initial term of five (5) years that may be renewed for four (4) additional terms of five (5) years each, unless T-Mobile provides notice of its intention not to renew to the Town not less than ninety (90) days prior to the expiration of the then-current term.

BUDGETARY IMPACT:

In consideration for T-Mobile's placement of its telecommunications tower camouflaged to appear as a flagpole, wireless antenna and associated ground support equipment on the Leased Premises, T-Mobile agreed to submit a one-time capital contribution in the amount of \$10,000, and remit payments of \$30,000.00, per year, to be increased by 4% annually thereafter, to the Town.

RECOMMENDATION:

It is staff's recommendation that the Town Council of the Town of Cutler Bay approve the execution of the site lease agreement ("Agreement") between the Town of Cutler Bay and T-Mobile South, LLC, a Delaware limited liability company authorized to do business in the State of Florida, d/b/a T-Mobile, to lease approximately 520 square feet of Town-owned property located at 10100 SW 200th Street, a/k/a Cutler Ridge Park ("Leased Premises"), to allow T-Mobile to place a telecommunications tower camouflaged to appear as a flagpole, wireless antenna, and associated ground support equipment.



ORDINANCE NO. 10-____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER, IN ACCORDANCE WITH SECTION 4.3(7) OF THE TOWN CHARTER, TO ENTER INTO LEASES OF TOWN OWNED PARK LAND BY ADMINISTRATIVE ACTION; APPROVING THE SITE LEASE AGREEMENT BETWEEN THE TOWN AND T-MOBILE SOUTH LLC, A DELAWARE LIMITED LIABILITY COMPANY, TO PLACE A TELECOMMUNICATIONS TOWER DESIGNED AS A FLAG POLE, WIRELESS ANTENNA AND GROUND EQUIPMENT ON TOWN-OWNED PROPERTY LOCATED AT 10100 SW 200TH STREET (A/K/A CUTLER RIDGE PARK), PROVIDING FOR THE AUTHORIZATION OF THE TOWN MANAGER TO ENTER INTO THIS AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town owns several different parks and is considering to lease certain portions of these parks; and

WHEREAS, Section 4.3(7) of the Town Charter requires leases of Town lands to be adopted by ordinance; and

WHEREAS, this section of the Town Charter also allows the Town Council to authorize the Town Manager to enter into leases of Town lands by administrative action; and

WHEREAS, in order to facilitate leasing portions of the Town parks, the Town Council desires to allow the Town Manager to enter into leases of five years or less of Town parks by administrative action; and

WHEREAS, T-Mobile South LLC, a Delaware limited liability company authorized to do business in the State of Florida (“T-Mobile”), submitted an application to the Town for approval to place a one hundred (100) foot monopole telecommunications tower designed as a flag pole, a wireless antenna and ground equipment in approximately five hundred twenty (520) square feet of space on Town-owned property located at 10100 SW 200th Street a/k/a Cutler Ridge Park (“Leased Premises”); and

WHEREAS, Town staff has evaluated T-Mobile’s application and accompanying site plans in accordance with the Town’s wireless regulations; and

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

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

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

Section 2. Authorizing Leases by Administrative Action. The Town Council hereby authorizes the Town Manager, in accordance with Section 4.3(7) of the Town Charter, to enter into leases of Town Park lands of five years or less by administrative action.

Section 3. Site Lease Agreement. The Town Council hereby approves the Site Lease Agreement in substantially the form attached hereto as Exhibit “A.”

Section 4. Town Manager Authorized. The Town Manager is authorized to take all action necessary to enter into the Site Lease Agreement in substantially the form attached hereto as Exhibit “A,” for the Town.

Section 5. Severability. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 6. Conflict. All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 7. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this _____ day of _____, 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:

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 _____

**SITE LEASE AGREEMENT
BETWEEN THE TOWN OF CUTLER BAY, FLORIDA AND
T-MOBILE SOUTH LLC**

This Site Lease Agreement (this "Agreement") made and entered into the _____ day of _____, 20____, by which the TOWN OF CUTLER BAY, a Florida municipal corporation, with an address of 10720 Caribbean Blvd., Cutler Bay, Florida 33189 ("Owner" or "Town"), leases to T-MOBILE SOUTH LLC, a Delaware limited liability company authorized to do business in the State of Florida ("Lessee"), the "Leased Premises" described below (which is part of that certain real property owned by Owner (the "Property") and is more fully described in Exhibit "A" attached hereto), for the Permitted Use as described in Section 1(c) below.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS SET FORTH HEREIN, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Premises and Use.

(a) Owner hereby leases to Lessee and Lessee leases from Owner approximately five hundred twenty (520) square feet on the Property located at 10100 SW 200th Street, Cutler Bay FL 33189, a/k/a Cutler Ridge Park, and all access and utility easements necessary or desirable therefore ("Leased Premises"), subject to certain conditions described below and depicted in Exhibit "B" attached hereto. Lessee shall comply with all applicable permit requirements by the Town Code and other applicable law related thereto.

(b) Lessee shall construct, erect and maintain a one hundred foot (100') wireless communications monopole tower camouflaged to appear as a flagpole ("Tower"), located within the Leased Premises and subject to all required Town approvals, including but not limited to site plan and building permit approvals. The Tower shall be constructed to accommodate, at a minimum, two (2) additional co-locators on the Tower in addition to Owner's Public Safety Equipment (as defined herein). The parties hereto acknowledge that the Tower will also function as a flagpole. At its sole cost and expense, Lessee shall: (i) purchase, install, repair and replace a U.S. flag to be flown on the Tower and all related parts and equipment necessary to fly the flag, including a lighting system that will illuminate the flags (provided that Owner shall be responsible for the utility costs associated with operating such lighting system and for the maintenance and replacement of any bulb related thereto and (ii) be responsible for maintaining and repairing any Tower-mounted parts and equipment relating to the flag except to the extent damaged by Owner or its agents or contractors. Both parties agree that no equipment shall be allowed to unreasonably interfere with the flying of the flag on the Tower. Owner acknowledges that it shall be solely responsible for raising and lowering the flag in accordance with standard protocol relating to the U.S. flag.

(c) The Leased Premises will be used by Lessee for no other purpose other than installing, removing, replacing, modifying, maintaining, repairing and operating, at its expense, a communications facility, including, without limitation, the Tower, transmitting and receiving antennas, microwave dishes and communications equipment, air conditioned equipment shelter

and/or cabinets, cable wiring, back-up power sources (including generators and/or batteries), related fixtures and appurtenances (collectively "Lessee Equipment"), which, with the exception of the ground equipment, shall all be stealth and in accordance with Owner's applicable ordinances the "Permitted Use"). Notwithstanding the foregoing, Lessee shall not be permitted to maintain fuel storage tanks (except for temporary fuel tanks for emergency generator(s)) within the Leased Premises or Property.

(d) Lessee, at its sole cost and expense shall construct a chain link fence ("Fence") as depicted in Exhibit B, necessary to surround any shelter/cabinet(s) to be used by Lessee. Any other party that desires to collocate its equipment on the Tower must lease ground space from Owner and such tenant shall be responsible for expanding the Fence to surround its shelters/cabinets using like-kind materials as the original Fence. Lessee agrees to reasonably cooperate with any future tenant(s) to facilitate the expansion of the Fence and will provide to any future tenant(s) the names of the original suppliers that provided the materials for the original Fence constructed by Lessee.

(e) The Tower, Lessee Equipment and the portion of the Fence constructed by Lessee are collectively referred to as the "Lessee Facilities".

(f) All of Lessee's construction, installation and repair work shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner, all in accordance with Owner's applicable ordinances. Lessee shall hold title to the all of the Lessee Facilities and all of the Lessee Facilities shall remain Lessee's personal property and are not fixtures. Lessee has the right to remove the Lessee Equipment, at its sole expense on or before the expiration or earlier termination of this Agreement, and Lessee shall repair any damage to the Leased Premises caused by such removal. Within ninety (90) days after the expiration or earlier termination of this Agreement, unless otherwise agreed to by the parties hereto in writing, Lessee shall remove the Lessee Facilities from the Property, but is not required to remove any foundation more than one (1) foot below grade level, and Lessee will restore the Leased Premises to a condition substantially similar to the condition existing on the Commencement Date, reasonable wear and tear and damage due to casualty excepted. Lessee agrees to pay rent at the then existing monthly rate until such time as the removal of the Lessee Facilities, fixtures and or personal property, however characterized, is completed. In the event Lessee does not remove such items within the time period provided in this Paragraph, Owner will give Lessee written notice of such failure and, if Lessee thereafter fails to remove such items within thirty (30) days then the personal property remaining on Leased Premises shall be deemed the property of Owner. Notwithstanding the foregoing, in the event Lessee fails to remove the Lessee Facilities within six (6) months of the expiration or early termination of this Agreement, Lessee agrees to pay holdover rent at a sum equal to one hundred twenty-five (125%) percent the then existing monthly rate until such time as the removal of the Lessee Facilities, fixtures and or personal property, however characterized, is completed.

(g) Notwithstanding anything to the contrary set forth herein, Owner shall have the option of keeping the Tower and/or the Fence at the expiration or earlier termination of this Agreement by providing Lessee with written notice of its intent to do so no less than ninety (90) days prior to the expiration or earlier termination of this Agreement and provided Owner takes ownership

of the Tower subject to the terms and conditions of the following sentence. Upon the expiration or earlier termination of this Agreement, and if Owner exercises its option pursuant to the immediately preceding sentence, Owner shall take title to and accept the Tower in its "AS IS" and "WHERE IS" condition without representation or warranty of any kind or nature, whether express or implied, and with the exception of the other portions of Lessee's Facilities, Owner shall thereafter assume full responsibility for all maintenance, repair and liability related to or arising from the Tower or its ownership thereof.

(h) The Leased Premises described above are located in the location(s) shown on Exhibit B attached hereto and made a part hereof. The Leased Premises shall also include the non-exclusive use of an area for reasonable access, as described in this Agreement, extending from the nearest public right-of-way to the Lessee's Facilities, for access, installation, operation and maintenance and an easement for the installation, operation and maintenance of utility wires, poles, cables, conduits, and pipes over, under, or along such area as permitted. Such access and utility area ("Access Area") is as described on Exhibit B. The Access Area may be used by Lessee during the entire term of this Agreement, subject to any restrictions provided herein.

(i) Lessee shall be required to provide Owner with twenty-four (24) hour prior telephonic or written notice regarding the schedule for any regularly scheduled work to be performed at the Leased Premises during the term of the Agreement; provided, however, that in the event of an emergency Lessee may access the Leased Premises at any time and, within twenty-four (24) hours thereafter, shall provide notice to the Owner with respect to the nature of such emergency and the repairs, if any, performed by Lessee.

(j) Lessee shall submit a copy of the site plan and specifications of the Lessee Facilities to Owner for Owner's written approval, which approval will not be unreasonably withheld, conditioned or delayed, and which approval constitutes Owner's approval under this Agreement but does not constitute approval otherwise required by the Code of the Town of Cutler Bay, as it may be amended, which governmental approvals and permits are to be separately applied for by Lessee.

(k) In all respects, throughout this Agreement, any time Owner's consent is required such consent may be given by Owner's designee(s). Lessee's submitted plans shall undergo a preliminary review by Town staff for the purpose of approval under this Agreement. Except as permitted in subsection (l) below, no construction or installation shall be commenced until the Owner has approved plans for such work and all necessary permits have been properly issued as required herein.

(l) Following the initial installation of the Lessee Facilities, Lessee may, at any time, modify, supplement, replace, repair, remove or relocate any of the Lessee Facilities or other appurtenances located within the Leased Premises during the term of this Agreement, which includes routine maintenance, the like-replacement of the transmitting, amplifying and receiving antennas and/or related communications equipment, or any modifications to the interior of the equipment shelter or items housed therein or located behind the Fence. Owner's consent shall not be required where the modification is non-structural in nature or involves the replacement of substantially similar equipment.

2. **Term.**

(a) In accordance with the Town Charter, this Agreement shall be effective as of the date of execution by both parties ("Effective Date"); provided, however, the initial term of this Agreement (the "Initial Term") is five (5) years, commencing on the start of construction of the Lessee Facilities or within six (6) months of the Effective Date, whichever event occurs last ("Commencement Date"). In no event shall the Commencement Date occur later than six (6) months after the Effective Date.

(b) This Agreement may be renewed for four (4) additional separate terms (each a "Separate Renewal Term") of five (5) years each, unless Lessee provides Owner notice of its intention not to renew not less than ninety (90) days prior to the expiration of the Initial Term or any Separate Renewal Term. If at the end of the fourth (4th) Separate Renewal Term, this Agreement has not been terminated by either party by giving to the other written notice of an intention to terminate the Agreement at least six (6) months prior to the end of such term, this Agreement shall continue in force upon the same covenants, terms and conditions for a further term of one (1) year and for one (1) year terms thereafter until terminated by either party by giving to the other written notice of its intention to so terminate at least six (6) months prior to the end of such term.

3. **Rent.** The Lessee's rental obligation shall become due and owing within thirty (30) days of the Commencement Date. On that date, Lessee shall pay Owner a lump sum payment in the amount of Thirty Thousand and 00/100 Dollars (\$30,000.00) ("Annual Rent") as rent for the first year of the Initial Term. Thereafter, the Annual Rent will be paid by Lessee to Owner in advance in equal monthly installments, with the first such installment due on the first anniversary of the Commencement Date and all subsequent installments due by the first day of each month during the remainder of the Initial Term and any Renewal Term(s), and the rent for any partial months will be prorated. On each annual anniversary of the Commencement Date during the Initial Term and any Renewal Term(s), the Annual Rent will increase by one hundred four percent (104%) of the Annual Rental payable with respect to the immediately preceding one (1) year term. Lessee shall pay all rent without Owner submitting invoices.

4. **Assignment/Subletting.** Lessee will not assign or transfer this Agreement without the prior written consent of Owner, which consent will not be unreasonably withheld, conditioned or delayed; provided, however, Lessee may assign or transfer this Agreement without Owner's prior written consent to Lessee's principal(s), affiliates, subsidiaries of its principal(s) and affiliates or to any entity which acquires all or substantially all of Lessee's assets in the market defined by the Federal Communications Commission ("FCC") in which the Leased Premises is located by reason of a merger, acquisition or other business reorganization. Lessee may lease, license or sublet space on the Tower, with the exception of the space reserved for Owner specified in this Agreement, provided; however, that any such lessee, licensee or sublessee requiring ground space must enter into a ground lease agreement directly with Owner. Lessee may not sublease ground space within the Leased Premises as described herein. Upon assignment, transfer or sublet of the Agreement or the entire Leased Premises, Lessee shall be

relieved of all liabilities and obligations hereunder incurred on or following the date of assignment and Owner shall look solely to the assignee for performance under this Agreement and all obligations hereunder. Notwithstanding the foregoing, no such assignment, transfer or sublet of the Agreement or the entire Leased Premises, shall relieve Lessee from all liabilities and obligations incurred prior to the date of assignment, unless expressly agreed to in writing by Owner, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary, Lessee may sublet space on the Tower reserved for the Owner upon Owner's written consent, which consent may be withheld by Owner in its sole but reasonable discretion. Additionally, Lessee may, upon prior written consent of Landlord, collaterally assign or grant a security interest in this Agreement and the Lessee Facilities, and may assign this Agreement and the Lessee Facilities to any mortgagees or holders of security interests, including their successors or assigns (collectively "Secured Parties"). In such event, Owner shall execute such consent to leasehold financing as may reasonably be required by such Secured Parties. Notwithstanding the foregoing, Lessor hereby consents to the assignment of this Agreement and the Lessee Facilities as collateral with respect to Secured Parties that already have a vested secured interest therein.

5. **Inspections.** Commencing on the Effective Date, Owner, upon reasonable prior notice and consent, shall permit Lessee, and its lessees, licensees and sublessees and its or their respective employees, agents, and contractors during this Agreement, free ingress and egress to the Leased Premises to conduct structural strength analysis, subsurface boring tests, environmental inspections (including Phase I and Phase II audits), radio frequency tests, and such other tests, investigations, and similar activities as Lessee may deem necessary (collectively the "Inspections"), at the sole cost of Lessee. The sequence and timing of the Inspections shall require prior Owner consent giving public safety considerations paramount importance, which consent shall not be unreasonably withheld, conditioned or delayed. Lessee, its lessees, licensees and sublessees and its or their respective employees, agents and contractors shall also obtain prior Owner consent, to bring the necessary vehicles and equipment onto the Leased Premises to conduct any Inspections, which consent shall not be unreasonably withheld, conditioned or delayed. Lessee shall indemnify and hold Owner harmless against any loss or damage for personal injury or physical damage to the Leased Premises or the Property, or the property of third parties to the extent caused by any Inspections, unless caused by Owner or Owner's employees', agents', contractors' and/or subcontractors' gross negligence or willful misconduct. Within thirty (30) days following written request, Lessee shall furnish to Owner copies of the environmental findings. Prior to the commencement of the Inspections, Lessee shall furnish Owner with the evidence of insurance required under this Agreement.

6. **Title and Quiet Possession.** Owner represents and agrees (a) that it is the owner of the Property and has the legal right to use the Leased Premises and the Access Area and to grant Lessee the right to use the Leased Premises and the Access Area as set forth in this Agreement; (b) that it has the right to enter into this Agreement; (c) that the person signing this Agreement has the authority to sign; and (d) that Lessee is entitled to access to the Leased Premises at all times subject to the terms of this Agreement and to the quiet use and possession of the Leased Premises throughout the Initial Term and each Separate Renewal Term so long as Lessee is not in default beyond the expiration of any cure period. Lessee represents and agrees that it has the right to enter into this Agreement; and that the person signing this Agreement has

the authority to sign.

7. **Notices.** All notices must be in writing and are effective only when deposited in the U.S. mail, certified, return receipt requested and postage prepaid, or when sent via next day delivery (provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender). Notices to Lessee are to be sent to: T-Mobile South LLC, 12920 SE 38th Street, Bellevue, WA 98006, Attn: PCS Lease Administration, With a copy to: Legal Dept., and an additional copy to: T-Mobile South LLC, 3407 West Dr. Martin Luther King Jr. Blvd., Tampa, FL 33607, Attn: Lease Administrator. Notices to Owner must be sent to the Town of Cutler Bay, Town Manager, 10720 Caribbean Blvd., Cutler Bay, Florida 33189, with a copy to the Office of the Town Attorney, Weiss Serota Helfman Pastoriza Cole & Boniske, P.L., Attention: Mr. Scott A. Robin, 200 E. Broward Blvd., Suite 1900, Fort Lauderdale, FL 33301. Telephonic notice to Owner for access purposes shall be made to (954) 763-4242.

8. **Improvements.** Except as otherwise expressly provided in paragraphs 1(h), (i), (j), (k) and (l) above, prior to the substantial alteration or modification to the Lessee Facilities, Lessee may, at its expense and upon the prior written consent of Owner, which consent shall not be unreasonably withheld, conditioned or delayed, make such improvements on the Leased Premises as it deems necessary from time to time for the operation of the Lessee Facilities (the "Improvements"). Lessee shall be responsible for any structural modifications to the Lessee Facilities approved by Owner in connection with the Improvements. Owner agrees to reasonably cooperate with Lessee with respect to obtaining any required governmental approvals for the Leased Premises and the Improvements, at no cost to Owner. Lessee is liable for damage to the Leased Premises caused by the Improvements or the installation, removal or replacement thereof.

9. **Compliance with Laws.** To the best of Owner's knowledge, without inquiry, Owner represents that the Property, and all improvements located thereon, are in substantial compliance with laws, codes and regulations of applicable governmental authorities. Lessee covenants that it will keep the Lessee Facilities in good repair as required by all federal, state, county and local laws, including without limitation any federal rules and regulations with regard to the lighting, marking and painting of the Tower. Lessee will further comply with all applicable laws, ordinances and regulations, including but not limited to zoning codes, building codes and applicable safety codes relating to its specific use of the Lessee Facilities but shall not be required to remedy any prior existing state of non-compliance related to the Property or the Leased Premises.

10. **Interference.** Lessee agrees to install radio equipment of the type and frequency which will not cause technical interference problems with other equipment located on the Property as of the Effective Date of this Agreement. Lessee shall operate the Lessee Facilities in compliance with all FCC requirements including those prohibiting interference to communications facilities of Owner's other lessees or licensees of the Property, provided that the installation and operation of any such lessee or licensee facilities predate the installation of the Lessee Facilities. Lessee understands and agrees that the continuity of Owner's Public Safety Equipment (as defined in Section 34 of this Agreement) is of paramount importance to Owner. Lessee shall at all times exercise the highest standard of care and judgment to prevent damage to

or interference with Owner's Public Safety Equipment. Owner may not install Owner's Public Safety Equipment on the Tower until Owner first submits specifications to Lessee regarding its proposed location on the Tower, equipment to be installed and frequencies to be utilized and in no event may Owner use more than fifteen (15) continuous linear feet of the Tower for its Public Safety Equipment. Owner will use best efforts to install and operate such equipment in a manner that will not interfere with Lessee's Facilities. In the event Lessee desires to add equipment to the Leased Premises at any future date pursuant to the terms of this Agreement, Lessee agrees that such future installations shall not cause technical interference problems with other pre-existing equipment then located on the Property. Notwithstanding anything to the contrary herein, Lessee shall comply with Section 33-63.10 of the Town's Wireless Telecommunications Facilities Ordinance, which is entitled "Interference with Public Safety Telecommunications." Likewise, subject to the terms of Section 34 of this Agreement regarding Owner's Public Safety Equipment, Owner will not permit or suffer the installation, modification or replacement of any future non-Owner equipment at or on the Property which (a) results in technical interference problems with Lessee's then existing equipment or (b) encroaches onto the Leased Premises. Lessee and Owner agree, within twenty-four (24) hours after receipt of written notice from the other party, to resolve, at its sole cost and expense, any technical interference arising out of a violation of the provisions of this Paragraph. In the event the interfering party is unable to resolve the technical interference within said twenty-four (24) hours, the interfering party agrees to power down its communications equipment or portion thereof (or in the case of a subsequent third party co-locator interfering with Lessee's equipment, Owner agrees to use its best efforts to cause said third party to power down its communications equipment or portion thereof) causing said interference until such time as the interference is eliminated; provided, however, the interfering party shall have the right to briefly resume normal power output of its communications equipment for testing purposes during off-peak hours. In the event that the interference is not temporarily cured by powering down the equipment in question, then the interfering party must shut down all power to the equipment causing the interference. Notwithstanding the foregoing, in the event Owner's Public Safety Equipment is causing interference to the Lessee Facilities, Owner agrees to make best efforts to cure such interference in a reasonable time period and further agrees to permit Lessee to temporarily relocate its equipment in accordance with Section 18(d) until such time as Owner repairs its equipment or otherwise cures such interference. Owner and Lessee acknowledge that there will not be an adequate remedy at law for non-compliance with the provisions of this Paragraph and therefore, either party hereto shall have the right, in addition to any and all other legal, contractual or equitable remedies provided herein, to specifically enforce the provisions of this Paragraph in a court of competent jurisdiction and/or seek injunctive relief. Notwithstanding anything to the contrary in this Agreement, Owner and Lessee do each hereby reserve any and all rights under Federal and State law regarding interference from the other party's equipment.

11. **Utilities.** To the best of Owner's knowledge, without inquiry, Owner represents that utilities are available for Lessee's use of the Leased Premises. Lessee will pay for all utilities used by it at the Leased Premises at the rate charged by the servicing utility provider. Lessee shall have the right to install utilities, at Lessee's expense, and to improve the present utilities on the Property (including, but not limited to, the installation of emergency power generators). Owner will reasonably cooperate, at no cost to Owner, with Lessee in Lessee's efforts to obtain utilities from any location provided by Owner or the servicing utility, including signing any

easement or other instrument reasonably required by the utility company. In the event Owner desires to relocate the utilities and utility easement(s), Owner will use its best efforts, during the relocation of such utilities, not to interfere with the construction, maintenance, or operation of Lessee's Facilities. In the event any interruption with the operation of the Lessee's Facilities is anticipated Lessee shall have the right to utilize backup power generators during such periods of interruption.

12. **Termination.**

(a) Unless otherwise set forth herein, this Agreement may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default, except that this Agreement shall not be terminated if the default cannot reasonably be cured within such sixty (60) day period and the defaulting party has commenced to cure the default within such sixty (60) day period and diligently pursues the cure to completion; provided that the grace period for any monetary default is ten (10) days from receipt of written notice; or (ii) by Owner and/or Lessee if Lessee does not obtain or maintain any license, permit or other approval necessary for the construction and operation of the Lessee Facilities beyond any applicable appeals period; or (iii) by Lessee if Lessee is unable to occupy and utilize the Leased Premises due to an action of the FCC, including without limitation, a take back of channels or change in frequencies; or (iv) by Lessee if any environmental report for the Property reveals the presence of any Hazardous Material after the Commencement Date; or (v) by Lessee if Lessee determines that the Leased Premises are not appropriate for its operations for economic or technological reasons, including, without limitation, signal interference.

(b) Upon termination, all prepaid rent will be retained by Owner unless such termination is due to Owner's failure of proper ownership or authority, or such termination is a result of Owner's default, or such termination results from Lessee's interference with Owner's Public Safety Equipment, or Owner's interference with Lessee's Facilities or from the failure of Lessee to obtain or maintain necessary permits or approvals for the operations of Lessee's Facilities despite best efforts to do so or a take back of frequencies by the FCC. In each such event Lessee shall receive a prorated reimbursement of said prepaid rent. All prepaid consideration paid by Lessee will be retained by the Owner.

13. **Liability and Indemnity.** Owner and Lessee shall each indemnify, defend and hold the other harmless from and against all claims, losses, liabilities, damages, costs, and expenses (including reasonable attorneys' and consultants' fees, costs and expenses) (collectively "Losses") to the extent caused by the indemnifying party's breach of any term or condition of this Agreement or from the negligence or willful misconduct of the indemnifying party or its agents, employees, contractors or subcontractors in or about the Property. Lessee acknowledges that Owner is a municipal corporation, and that, to the extent applicable, it does not waive sovereign immunity, and the limits of liability thereunder, as well as limitations on indemnification, as set forth in Section 768.28, Florida Statute, and other applicable state laws.

The duties described in this Paragraph 13 shall apply as of the Effective Date of this Agreement and survive the termination of this Agreement.

14. **Hazardous Substances.**

(a) As of the Effective Date of this Agreement: (1) Lessee hereby represents and warrants that it shall not use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon or affecting the Property in violation of any Environmental Law (as defined below), and (2) Owner hereby represents to the best of its knowledge: (i) it has no knowledge of the presence of any Hazardous Material located in, on, under, upon or affecting the Property in violation of any Environmental Law; (ii) no notice has been received by or on behalf of Owner from, and Owner has no knowledge that notice has been given to any predecessor owner or operator of the Property by, any governmental entity or any person or entity claiming any violation of, or requiring compliance with any Environmental Law for any environmental damage (or the presence of any Hazardous Material) in, on, under, upon or affecting the Property; and (iii) it will not permit itself or any third party to use, generate, handle, store or dispose of any Hazardous Material in, on, under, upon, or affecting the Property in violation of any Environmental Law.

(b) Without limiting Paragraph 13, Owner and Lessee shall each indemnify, defend and hold the other harmless from and against all Losses (specifically including, without limitation, reasonable attorneys', engineers', consultants' and experts' fees, costs and expenses) arising from (i) any breach of any representation or warranty made in this Paragraph 14 by such party; and/or (ii) environmental conditions or noncompliance with any Environmental Law (as defined below) to the extent caused by, in the case of Lessee, from operations in or about the Property by Lessee or Lessee's agents, employees, contractors or subcontractors, and in the case of Owner, from the ownership or control of, or operations in or about, the Property by Owner or Owner's predecessors in interest, and their respective agents, employees, contractors, subcontractors lessees, guests or other parties. Lessee acknowledges that Owner is a municipal corporation, and that, to the extent applicable, it does not waive sovereign immunity, and the limits of liability thereunder, as well as limitations on indemnification, as set forth in Section 768.28, Florida Statute, and other applicable state laws. The provisions of this Paragraph 14 shall apply as of the Effective Date of this Agreement and survive termination of this Agreement.

(c) "**Hazardous Material**" means any solid, gaseous or liquid wastes (including hazardous wastes), regulated substances, pollutants or contaminants or terms of similar import, as such terms are defined in any Environmental Law, and shall include, without limitation, any petroleum or petroleum products or by-products, flammable explosives, radioactive materials, asbestos in any form, polychlorinated biphenyls and any other substance or material which constitutes a threat to health, safety, property or the environment or which has been or is in the future determined by any governmental entity to be prohibited, limited or regulated by any Environmental Law.

(d) "**Environmental Law**" means any and all present or future federal, state or local laws, rules, regulations, codes, ordinances, or by-laws, and any judicial or administrative interpretations thereof, including orders, decrees, judgments, rulings, directives or notices of

violation, that create duties, obligations or liabilities with respect to: (i) human health; or (ii) environmental pollution, impairment or disruption, including, without limitation, laws governing the existence, use, storage, treatment, discharge, release, containment, transportation, generation, manufacture, refinement, handling, production, disposal, or management of any Hazardous Material, or otherwise regulating or providing for the protection of the environment.

15. **Taxes and Assessments.** Lessee shall pay on or before their respective due dates, to the appropriate collecting authority, any and all real estate taxes, ad valorem, sales, excise or personal property taxes, assessments and fees, which are now or may hereafter be levied or assessed against the Leased Premises or Lessee as a direct result of installation of the Lessee Facilities, (excluding any income tax, franchise or other similar corporate or partnership tax levied against Owner), and shall maintain in current status all federal, state, county and local licenses and permits, now or hereafter required for the operation of the business conducted by Lessee. Owner shall provide to Lessee reasonable documentation from the appropriate taxing authority that is necessary to demonstrate that the increase is due to Lessee's Improvements. Owner shall reasonably cooperate with Lessee in the protest of any such assessment. Lessee maintains the right, at its sole option and its sole cost and expense, to appeal, challenge or seek modification of any real estate tax assessment or billing for which Lessee is wholly or partly responsible for payment under this Agreement, to the appropriate governmental authority. Nothing in this paragraph shall be construed as limiting either party's rights to contest, appeal or challenge any tax assessment.

16. **Insurance.**

(a) Lessee, at Lessee's sole cost and expense, shall procure and maintain commercial general liability ("CGL") insurance covering bodily injury and property damage with a combined single limit of at least Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence. Subject to the standard exclusions and limitations of CGL policies, such insurance shall insure, on an occurrence basis, against liability for property damage or bodily injury of Lessee, its employees and agents arising out of or in connection with Lessee's use of the Leased Premises, all as provided for herein. Lessee shall name the Owner as an additional insured. Within thirty (30) days following the Effective Date, Lessee shall provide Owner with a certificate of insurance ("COI") evidencing the coverage required by this Paragraph 16. The aforesaid insurance may be provided through the combination of Lessee's primary and excess/umbrella policies.

(b) Owner, at Owner's sole cost and expense, shall procure and maintain CGL insurance covering bodily injury and property damage with a combined single limit of at least Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence. Subject to the standard exclusions and limitations of CGL policies, such insurance shall insure, on an occurrence basis, against all liability of Owner, its employees and agents arising out of or in connection with Owner's use, occupancy and maintenance of the Property. Within thirty (30) days following the Effective Date, Owner shall provide Lessee with a COI evidencing the coverage required by this Paragraph 16.

17 **Condemnation.** If the whole of the Leased Premises, or such portion thereof as will make the Leased Premises commercially unviable, as reasonably determined by Lessee

using good faith commercially reasonable judgment, for the purposes herein leased, within thirty (30) days of the condemnation date is condemned by any legally constituted public authority, this Agreement, and the term hereby granted, shall cease from the time when possession thereof is taken by the public authority, and rent shall be accounted for as between Owner and Lessee as of that date. Any lesser condemnation shall in no way affect the respective rights and obligations of Owner and Lessee hereunder, provided however, in the event of any condemnation of the Property, Lessee may terminate this Agreement upon fifteen (15) days written notice to Owner if such condemnation may reasonably be expected to disrupt Lessee's operations at the Leased Premises for more than thirty (30) days. Lessee may on its own behalf make a claim in any condemnation proceeding involving the Leased Premises for losses related to the Lessee Facilities, its relocation costs and its damages and losses including its leasehold interest. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Agreement.

18. **Maintenance.**

(a) Lessee, at its sole cost and expense, will be responsible for repairing and maintaining the Lessee Facilities and any other Improvements installed by Lessee at the Leased Premises, in a proper operating and reasonably safe condition. Owner will maintain and repair all other portions of the Property in a proper operating reasonably safe condition.

(b) Lessee hereby grants to Owner the right to conduct periodic inspection of Leased Premises, Tower and Fence from time-to time by providing Lessee with at least forty-eight (48) hours prior written notice, (except in the event of an emergency). Lessee has the right to have a representative of Lessee present during Owner's inspection. Owner shall not damage, move, alter, disrupt, turn off, adjust or otherwise affect or impair the continuous operation of the Lessee Equipment and shall reimburse Lessee for any damage to the Lessee Equipment caused by Owner or Owner's employees, agents, contractors or subcontractors. While conducting the inspections, Owner and Owner's employees, agents, or contractors shall comply with any and all regulations of the FCC including the FCC's radio frequency emissions exposure guidelines. Owner and Lessee acknowledge that the purpose of such inspections is to ensure that the Leased Premises, Tower and Fence comply with all applicable aesthetic and safety requirements of the applicable laws, ordinances and regulations, including but not limited to zoning codes, and building codes. In the event that Owner reasonably determines that the reasonable aesthetic and/or safety modifications ("Repairs") are required, Owner shall provide written notice to Lessee detailing the Repairs. Lessee, at its sole cost and expense, shall commence the Repairs within thirty (30) days after receipt of written notice provided such Repairs are not necessitated due to Owner's or its agents' or contractors' actions for which Owner shall be responsible. If Lessee cannot reasonably effect such Repairs within such time period despite Lessee's diligent efforts or obtain any necessary zoning and/or building permit requirements necessary to commence the Repairs, the Repairs period may be extended a reasonable amount of time mutually agreed to by Lessee and the Town Manager for such additional time as may be reasonably necessary for Lessee to diligently pursue and complete such Repairs. Nothing

contained herein shall be construed so as to require Lessee to shut down the Lessee Equipment or otherwise discontinue its operations from the Leased Premises or to make Repairs inconsistent with FCC requirements or other applicable federal, state or local laws, rules and/or regulations.

(c) If Lessee fails to commence the Repairs as specified in this Paragraph, which default is not cured by Lessee in accordance with Paragraph 12 above, Owner may commence the repairs and use, apply or retain all or part of the Security Fund, as depicted in Paragraph 23 below, to reimburse Owner for any loss, damage or expense incurred by Owner for Lessee's uncured default of Repairs. Prior to invading the Security Fund, Owner shall provide Lessee thirty (30) days written notice of Owner's intent to invade the Security Fund and the date and amount of such intended invasion together with written documentation of the loss, damage or expense for which Owner seeks reimbursement from the Security Fund.

(d) Owner agrees to reasonably cooperate with Lessee in the event Lessee determines, that it needs to make repairs to the Tower or Fence which would require temporary removal of Owner's communications equipment or the Lessee Equipment, subject to the following conditions: (i) Lessee shall provide at least thirty (30) days prior written notice to Owner of the need to make any such repairs, which notice shall give details of the type of repairs that will occur (the "Notice"), provided, however, in the event of an emergency or if any repair work necessitated by events beyond Lessee's control or required to meet regulatory requirements and for which Lessee is unable to give said thirty (30) day prior notice, Lessee agrees to give Owner notice as soon as reasonably practical under the circumstances; (ii) Lessee, or its contractors, at Lessee's sole cost and expense, shall temporarily remove and relocate all communications equipment as may be necessary to accommodate the repairs by Lessee, to a substitute location mutually agreed to by both parties, if available, which substitute location is sufficient to meet Lessee's coverage and engineering needs and is economically reasonable to Lessee in its reasonable discretion, and (iii) In the event Lessee's communications equipment located on the Tower or on the ground adjacent to the Tower must be temporarily relocated, Lessee will have the right to use a temporary transmission site or cell on wheels ("COW") on the Owner's Property at a location sufficient to meet Lessee's coverage and engineering needs and as reasonably agreed upon by the parties. Rent shall abate for the period of time beyond the initial seven (7) calendar days that Lessee is unable to operate its Lessee Facilities due to such repairs including during the period Lessee's equipment is being relocated to or from the COW. Lessee shall continue to pay rent to Owner as required herein during such relocation. The placement of any temporary transmission facilities shall be subject to Owner's prior written consent which shall not be unreasonably withheld, conditioned or delayed but shall be subject to all other necessary government approvals in accordance with the Owner's zoning and land use codes, administrative codes, ordinances, rules and regulations. As a condition of this privilege to utilize a COW, the Owner shall have the option to collocate its Public Safety Equipment on that COW at no cost to the Owner provided that the COW is structurally capable of supporting the Owner's Public Safety Equipment (taking into account Lessee's equipment to be installed thereon) which Lessee shall determine in its sole but reasonable discretion. Lessee agrees to diligently and in good faith undertake and complete the repairs as expeditiously as possible in order to minimize the period of time that Lessee's, Owner's and/or other third party co-locator's communications equipment needs to be relocated. Lessee and Owner shall both be afforded the opportunity and sufficient time to install temporary communications equipment in alternative locations on the

Property prior to removing their existing communications equipment to ensure that they have continuous coverage. Under no circumstances will Lessee or anyone acting on its behalf attempt to move, relocate or remove any communications equipment of Owner without prior notification to Owner. Notwithstanding the foregoing, in the event Tower repairs can be made without the relocation of Owner's communications equipment by temporarily powering down such equipment, Owner agrees to do so at a time mutually agreeable to both parties to accommodate such repairs which Lessee agrees to promptly commence and diligently pursue to completion.

19. **Future Expansion.** If additional land is requested beyond the area of five hundred twenty (520) square feet, a formal plan must be presented to and approved by Owner. If the plan is approved by Owner, Owner agrees to set the rental rate for the expanded area equal to the current escalated dollar per square foot rate that Owner is receiving from Lessee at the time of the approval.

20. **Additional Rent.** In the event of any default of this Agreement by Lessee beyond any applicable cure period(s) as described herein, Owner may, at any time after notice, cure the default for the account of and at the expense of Lessee; provided, however, unless Lessee fails to timely remove its equipment pursuant to Paragraph 1(f) hereof, under no circumstances is Owner (or anyone on behalf of Owner) permitted to move, alter, relocate or remove Lessee's Equipment. If Owner elects to cure such default, then any sum of money reasonably so expended by Owner in connection with such cure, including reasonable attorney's fees, shall be deemed to be additional rent and shall be due from the Lessee to Owner within thirty (30) days following Lessee's receipt of an invoice and supporting documentation detailing such costs.

21. **As-Is.** Except as otherwise set forth herein with respect to representations or warranties made by Owner, by taking possession of the Leased Premises, Lessee accepts the Leased Premises in the condition existing as of the date of execution of this Agreement. Except as otherwise expressly provided herein, Owner makes no representation or warranty with respect to the condition of the Leased Premises and Owner shall not be liable for any latent or patent defect in the Leased Premises. Notwithstanding anything to the contrary herein, Owner shall not at any time be liable for injury or damage occurring to any person or property from any cause whatsoever arising out of Lessee's construction, maintenance, repair, use, operation, condition or dismantling of the Leased Premises unless caused by the negligence or willful misconduct of Owner, its employees, agents or contractors.

22. **Cost-Recovery.** Owner and Lessee acknowledge that Lessee paid Owner an initial fee of Eight Thousand (\$8,000.00) Dollars for the Owner's costs and expenses, including reasonable legal fees incurred by Owner in connection with the negotiation of this Agreement and site plan review costs. Lessee shall pay any reasonable additional cost recovery expenses associated with Owner's review of the site plan and the negotiation of this Agreement as well as the negotiation of any future amendments to this Agreement within thirty (30) days after receiving an invoice for same provided that such additional costs and expenses do not exceed the sum of Ten Thousand and 00/100 (\$10,000.00) Dollars.

23. **Security Fund.** Prior to construction or installation of the Facility, Lessee shall submit a security bond in the amount of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00), in compliance with Section 33-63.16 of the Town's 814.10 of the Town's Wireless Telecommunications Facilities Ordinance, in a form reasonably acceptable to the Town. The terms of this security bond shall comply with the requirements of the Section 33-63.16 of the Town's Wireless Communications Facilities Ordinance and shall be used to ensure Lessee's faithful performance of and compliance with all provisions of this Agreement, and other applicable laws, including the payment by the Lessee of any claims, liens, fees, fines or taxes due the Owner. Neither the posting of any form of security fund with the Owner, nor the receipt of any damages recovered by the Owner thereunder, shall be construed to excuse faithful performance by the Lessee or limit the liability of the Lessee under the terms of this Agreement for damages, either to the full amount of the fund or otherwise. In the event the Owner rightfully withdraws funds from the bond, Lessee will provide supplemental funds to maintain the amount of security required herein.

24. **Additional Consideration.** As additional consideration, on or before the Commencement Date of this Agreement, Lessee shall pay to Owner a one-time capital contribution payment in the amount of Ten Thousand and 00/100 Dollars (\$10,000.00). Lessee and Owner acknowledge that this is a one-time payment for the maintenance and/or improvements to Owner's Property for the Initial Term of the Agreement and any subsequent Renewal Term(s).

25. **Late Fees.** Lessee shall pay Owner a late payment charge equal to five (5%) percent of the overdue amount for any payment not paid within ten (10) business days of its due date. Any amounts not paid within ten (10) business days of its due date shall also bear interest until paid at the lesser of the rate of ten (10%) percent per month or the highest rate permitted by law.

26. **Miscellaneous.** (a) This Agreement applies to and binds the heirs, successors, executors, administrators and assigns of the parties to this Agreement; (b) this Agreement is governed by the laws of the state in which the Leased Premises is located; (c) if requested by Lessee, Owner agrees promptly to execute and deliver to Lessee a recordable Memorandum of this Agreement in a form attached hereto as Exhibit C; (d) this Agreement (including the Exhibits) constitutes the entire agreement between the parties and supersedes all prior written and verbal agreements, representations, promises or understandings between the parties with respect to the subject matter hereof, (e) any amendments to this Agreement must be in writing and executed by both parties; (f) if any provision of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, will not be affected and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law; (g) the prevailing party in any action or proceeding in court or mutually agreed upon arbitration proceeding to enforce the terms of this Agreement is entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party, including all costs and expense incurred through all appeals, (h) the failure of either party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under the Agreement shall not waive such rights and such party shall

have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, either in law or in equity, and (i) the captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement and they shall not affect or be utilized in the construction or interpretation of the Agreement.

27. **Non-Binding Until Fully Executed.** This Agreement is not and shall not be binding on either party until and unless it is fully executed by both parties.

28. **Surveys.** Prior to the Commencement Date, Owner hereby grants to Lessee the right to survey all or part of the Property, including the Leased Premises and cost for such work shall be borne by the Lessee. The parties hereto agree that a copy of the survey shall be provided to Owner within ninety (90) days of the Effective Date.

29. **Rights Upon Sale.** Should Owner at any time during the term of this Agreement, decide to sell all or any part of the Property to a purchaser other than Lessee, such sale shall be under and subject to this Agreement and Lessee's rights hereunder, and any sale by the Owner of the portion of the Property underlying the Access Area herein granted shall be under and subject to the right of Lessee in and to the Access Area. Owner agrees not to sell or lease to any third party areas of Owner's Property or surrounding property for the installation, operation, or maintenance of other wireless communications facilities if, such installation, operation, or maintenance would interfere with Lessee's Facilities as determined by radio propagation tests performed by Lessee at purchasing parties' expense, unless the sale involves issues concerning public safety in which case the Owner may sell or lease to any third party areas of Owner's Property or surrounding property and such sale or lease shall not be subject to this Agreement provided that best efforts are used to avoid interference with Lessee's operations on the Leased Premises. If the radio frequency propagation tests demonstrate levels of interference unacceptable to Lessee, the sale or lease to the third party shall be conditioned upon the third party undertaking any and all steps necessary to prevent interference with Lessee's equipment. Owner shall not be prohibited from the selling, leasing, or using of any of Owner's Property or surrounding property for non-wireless communication use provided such non-communication use does not interfere with Lessee's operations as set forth hereunder.

30. **Casualty.**

(a) In the event of damage by fire or other casualty to the Leased Premises that cannot reasonably be expected to be repaired within thirty (30) days following same or, if the Leased Premises is damaged by fire or other casualty so that such damage may reasonably be expected to disrupt Lessee's operations at the Leased Premises for more than thirty (30) days, then Lessee may at any time following such fire or other casualty, terminate this Agreement upon fifteen (15) days written notice to Owner. Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the parties shall make an appropriate adjustment, as of the date of such casualty, with respect to payments due to the other under this Agreement.

(b) In the event of casualty, or total destruction of the Lessee Facilities, Owner agrees

to use its reasonable efforts to permit Lessee to place a COW and/or other temporary transmission facilities on the Property until such time as Lessee is able to secure a replacement transmission location for the Lessee Facilities. The placement of any temporary transmission facilities shall be subject to Owner's prior written consent and all other necessary government approvals in accordance with the Owner's zoning and land use codes, administrative codes, ordinances, rules and regulations. Lessee agrees that it will use its reasonable efforts to avoid interfering with Owner's efforts to redevelop the Property arising out of such casualty or total destruction and Owner shall similarly use reasonable efforts to avoid interfering with Lessee's permitted use as set forth herein. Notwithstanding the foregoing, all rental payments shall abate during the period of such fire or other casualty, so long as the fire or other casualty is not the fault of the Lessee.

31. **No Waiver of Police Power.** Owner cannot and hereby specifically does not, waive or relinquish any of its regulatory approval or enforcement rights and obligations as it may relate to governmental regulations of general applicability which may govern the Leased Premises, any improvements thereon, or any operations at the Leased Premises. Nothing in this Agreement shall be deemed to create an affirmative duty of Owner to abrogate its sovereign right to exercise its police powers and governmental powers by approving or disapproving or taking any other action in accordance with its zoning and land use codes, administrative codes, ordinances, rules and regulations, federal laws and regulations, state laws and regulations, and grant agreements. In addition, nothing herein shall be considered zoning by contract.

32. **Survival.** The provisions of the Agreement relating to indemnification from one party to the other party shall survive termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

33. **Waiver of Owner's Lien.**

(a) Owner waives any lien rights it may have concerning the Lessee Facilities, all of which are deemed Lessee's personal property and not fixtures, and Lessee has the right to remove the same at any time, subject to all other applicable provisions of this Agreement without Owner's consent.

(b) Owner acknowledges that Lessee has entered into or may in the future enter into a financing arrangement including promissory notes and financial and security agreements for the financing of the Lessee Facilities ("Collateral") with a third party financing entity (and may in the future enter into additional financing arrangements with other financing entities). In connection therewith, Owner (i) consents to the installation of the Collateral; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed, subject to all other applicable provisions of this Agreement at any time without recourse to legal proceedings.

34. **Owner's Public Safety Equipment.** Subject to the interference provisions set forth in Section 10 herein, Lessee acknowledges and agrees that Owner reserves the right, at its

sole cost and expense, to place on the Tower communications equipment necessary to link Owner's Fire, Police, Community Service and Public Works/Utilities departments to Owner's central LAN hub (hereinafter said equipment is referred to as "Owner's Public Safety Equipment") located at a location on the Tower to be mutually agreed upon by the parties provided that Owner does not use more than fifteen (15) continuous linear feet of the Tower. Owner agrees that after Lessee has installed its equipment pursuant to plans approved by Owner or as otherwise authorized herein and pursuant to a building permit issued by all pertinent Town departments, Lessee shall not be required to relocate its equipment to accommodate the installation of Owner's Public Safety Equipment. After the initial installation of Owner's Public Safety Equipment, Owner shall be solely responsible for all costs and expenses relating to the operation, repair, maintenance and replacement of Owner's Public Safety Equipment, including, without limitation, its utility service charges. Owner acknowledges that it carries insurance coverage on the Property and will carry insurance coverage on any of Owner's antennas and equipment in amounts as required by applicable law. A copy of Owner's insurance policy is on file with the Town of Cutler Bay and will be provided to Lessee at any time upon request. Owner's contractors who perform work on the Tower must maintain insurance coverage in amounts and types that are customary for contractors who perform work on communications towers and will be responsible for any damage to the Tower or Lessee's Equipment to the extent caused thereby. Owner will not be required to pay Lessee rent with respect to Owner's Public Safety Equipment. Notwithstanding the foregoing, at all times, the installation or modification of Owner's Public Safety Equipment will at all times be subject to the then current load capacity of the Tower.

The following Exhibits are attached to and made a part of this Agreement: Exhibits A, B, C and D.

*****SIGNATURES ON FOLLOWING PAGE*****

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: Town of Cutler Bay through its Town Council, signing by and through its Mayor, authorized to execute same by Commission action on the ____ day of _____, 2010; and T-Mobile South LLC authorized to execute same, through its Vice President, Engineering and Operations.

TOWN OF CUTLER BAY, through its
Town Council

ATTEST:

Erika Gonzalez Santamaria, CMC
Town Clerk

By: _____
Paul Vrooman, Mayor
____ day of _____, 20__

By: _____
Steve Alexander, Town Manager
____ day of _____, 20__

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

By: _____
Mitchell Bierman, Town Attorney
____ day of _____, 20__

(TOWN SEAL)

WITNESSES:

T-MOBILE SOUTH LLC, a Delaware
limited liability company authorized to do
business in the State of Florida

Kama Hall

By: *Bentley C Alexander*

Vice President, Eng. and Ops.

Dina Hau
Print Name

Bentley C. Alexander
Print Name
18th day of *May*, 20*10*

Ann Brooks
Ann Brooks
Print Name

State of Florida)

SS:

County of Miami-Dade)

THIS IS TO CERTIFY, that on this ___ day of _____, 2010 before me, an officer duly authorized to take acknowledgements in the State and County aforesaid, personally appeared Steve Alexander, as Town Manager of the Town of Cutler Bay, a Florida corporation, who (check one) [] is personally known to me or [] produced _____ as identification.

Notary Public, State of Florida

Print Name: _____

My Commission expires:

State of Texas)

) SS:

County of Collin)

THIS IS TO CERTIFY, that on this 18 day of May, 2010, before me, an officer duly authorized to take acknowledgements in the State and County aforesaid, personally appeared Bentley C. Alexander, as Vice President, Engineering and Operations, of T-MOBILE SOUTH LLC, a Delaware limited liability company authorized to do business in the State of Florida, who is (check one) [] is personally known to me or [] produced _____ as identification.

J Lehet

Notary Public, State of Texas

Print Name: Jared Lehet

My Commission expires:

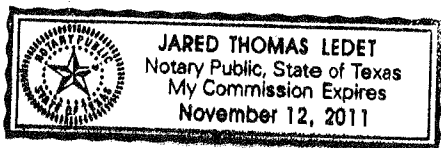


EXHIBIT A

DESCRIPTION OF LAND

to the Agreement dated _____, 20____, by and between The Town of Cutler Bay, a Florida municipal corporation, as Owner, and T-MOBILE SOUTH LLC, a Delaware limited liability company authorized to do business in the State of Florida, as Lessee.

The Land is described and/or depicted as follows (metes and bounds description):

**The W 4/5th of the W1/2 of the NW1/4 of the NW1/4 of
NE1/4 of Section 8.**

EXHIBIT B

DESCRIPTION OF PREMISES

to the Agreement dated _____, 20___, by and between The Town of Cutler Bay, a Florida municipal corporation, as Owner and T-MOBILE SOUTH LLC, a Delaware limited liability company authorized to do business in the State of Florida, as Lessee.

The Premises are described and/or depicted as follows:

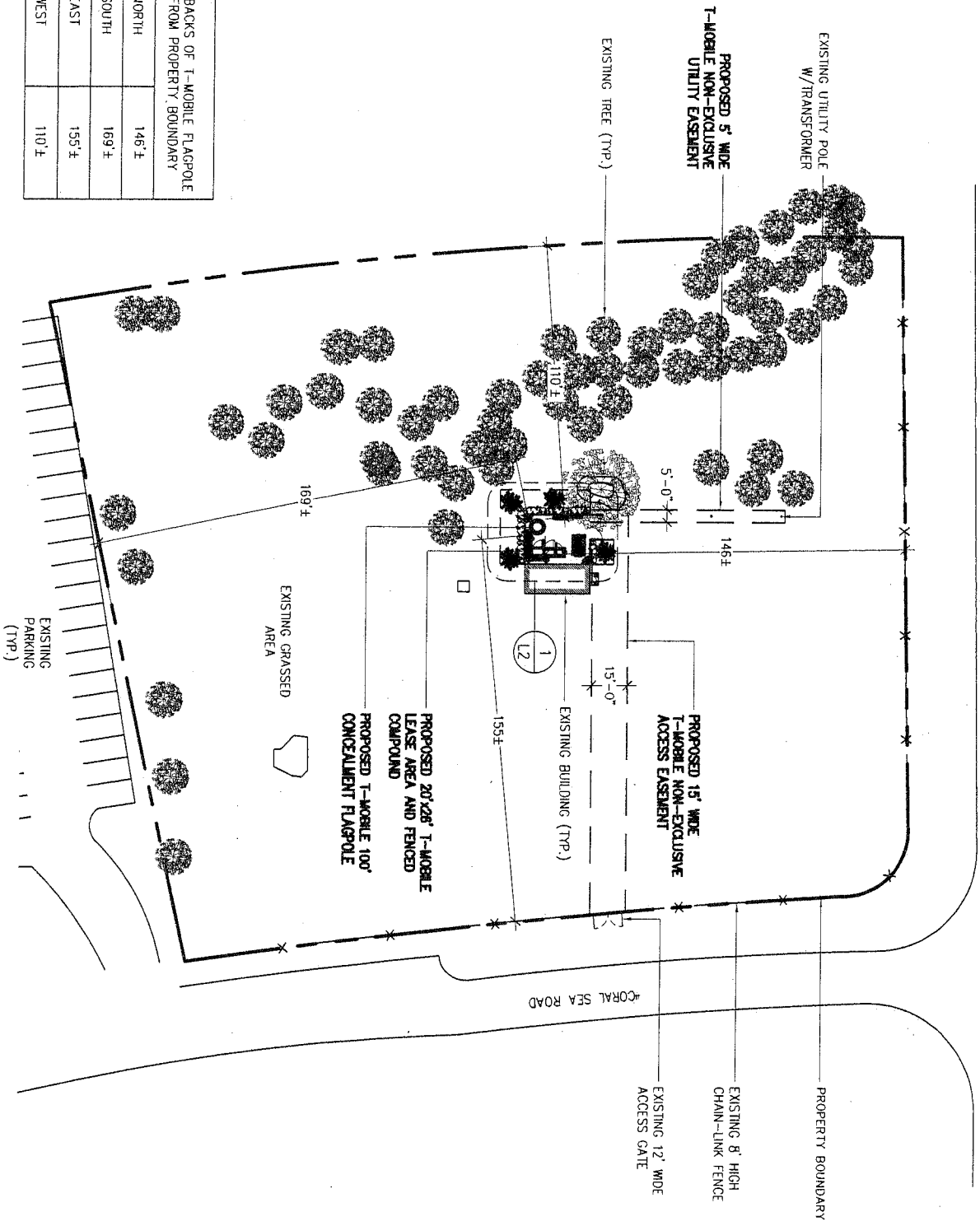
**A DRAWING OF THE PREMISES WILL BE
PRESENTED HERE OR ATTACHED HERETO**

Notes:

1. Lessee may replace this Exhibit with a survey of the Leased Premises once Lessee receives it.
2. The Leased Premises shall be setback from the Land's boundaries as required by the applicable governmental authorities or as otherwise permitted upon granting of a setback variance by the applicable governmental authorities.
3. The access road's width will be the width required by the applicable governmental authorities, including police and fire departments.
4. The type, number, mounting positions and locations of antennas and transmission lines are illustrative only. The actual types, numbers, mounting positions and locations may vary from what is shown above.
5. The location of any utility easement is illustrative only. The actual location will be determined by the servicing utility company in compliance with all local laws and regulations.

SITE PLAN

SETBACKS OF T-MOBILE FLAGPOLE FROM PROPERTY BOUNDARY	
NORTH	146' ±
SOUTH	169' ±
EAST	155' ±
WEST	110' ±



SCALE: 1" = 60'

T-Mobile
stick together

1300 CONCORD TERRACE
SUITE 200
SUNRISE, FL 33323

MACTEC
MACTEC ENGINEERING & CONSULTING, INC.

CORPORATE OFFICE
1105 LAKEWOOD PARKWAY
ALPHARETTA, GA 30004

LOCAL OFFICE
5845 NW 158th STREET
MIAMI LAKES, FL 33014
TEL: (305) 826-5588
FAX: (305) 826-1799

CERTIFICATE OF AUTHORIZATION #: 6090

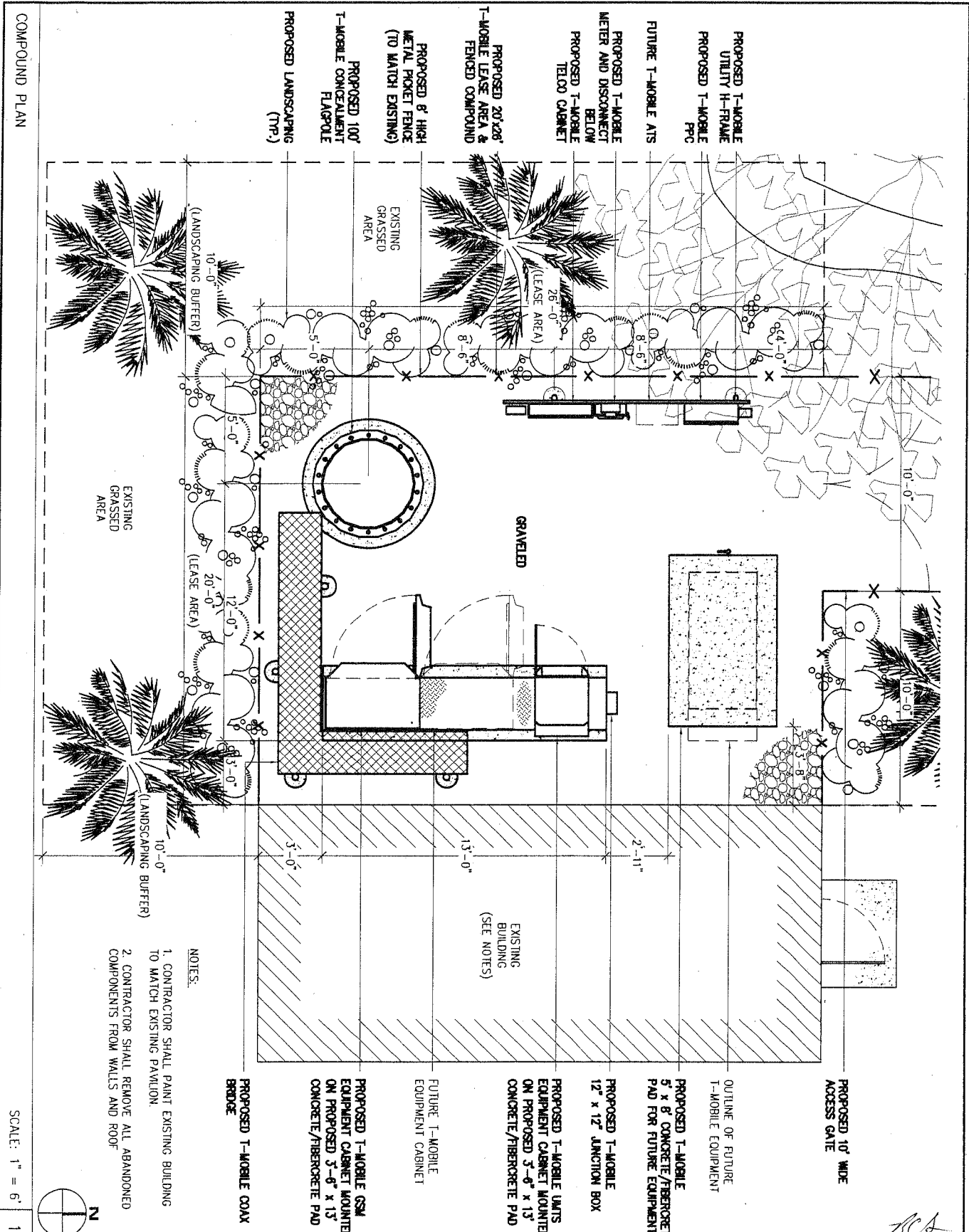
MD1411C

CUTLER RIDGE PARK

10100 SW 200th STREET
CUTLER BAY, FL 33157

2	2/1/10	REVISED
REV.	DATE	DESCRIPTION
SHEET TITLE		SHEET NUMBER
SITE PLAN		L1
PROJECT NO.	DRAWN BY:	CHECKED BY:
6788-09-1888 (69)	C. TELLEZ	M. ABBEY

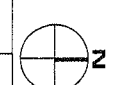
BCA



COMPOUND PLAN

- NOTES:
1. CONTRACTOR SHALL PAINT EXISTING BUILDING TO MATCH EXISTING PAVILION.
 2. CONTRACTOR SHALL REMOVE ALL ABANDONED COMPONENTS FROM WALLS AND ROOF

SCALE: 1" = 6' 1



T-Mobile
stick together

1300 CONCORD TERRACE
SUITE 200
SUNRISE, FL 33323

MACTEC
MACTEC ENGINEERING & CONSULTING, INC.

LOCAL OFFICE
5845 NW 58th STREET
MIAMI LAKES, FL 33014
TEL: (305) 826-5588
FAX: (305) 826-1799

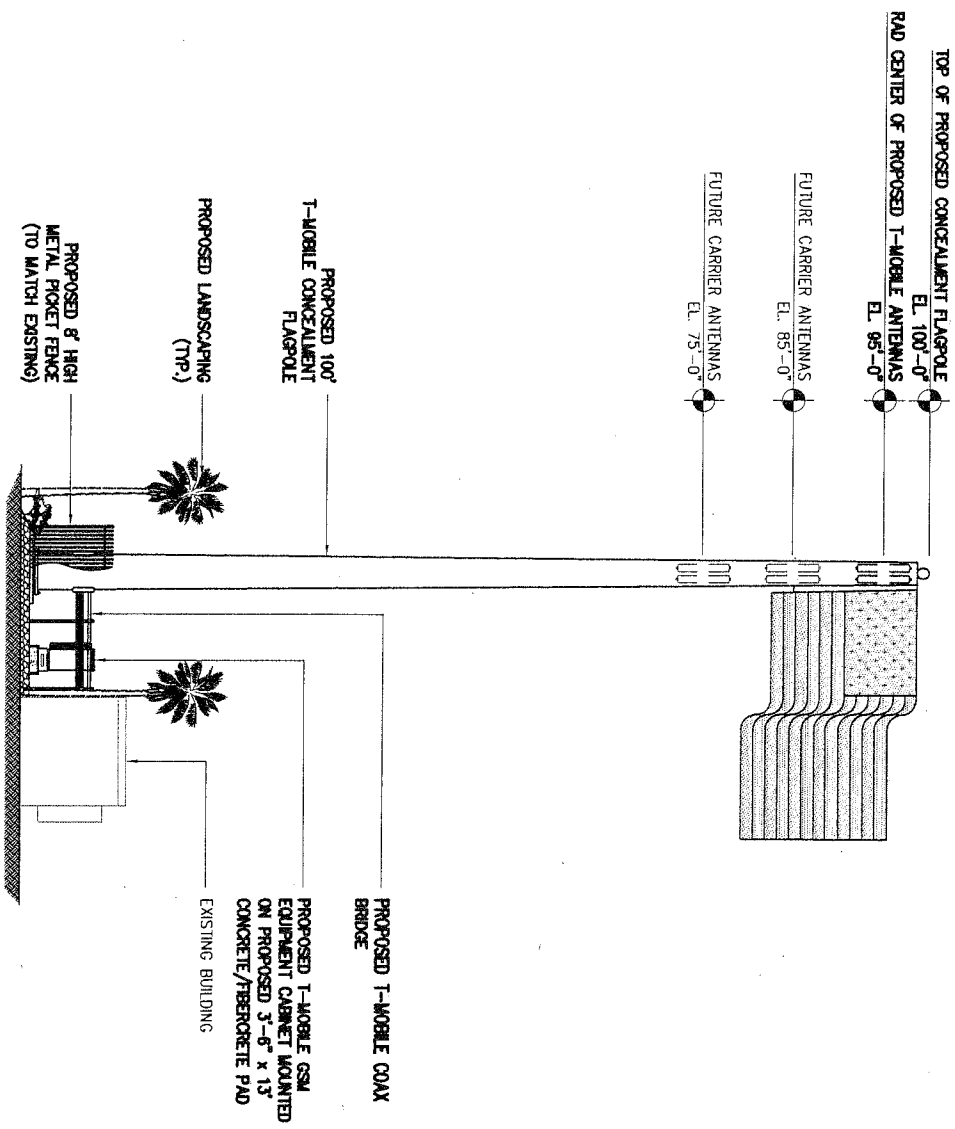
CERTIFICATE OF AUTHORIZATION #: 6090

MD1411C
CUTLER RIDGE PARK

1000 SW 200th STREET
CUTLER BAY, FL 33157

2	2/1/10	REVISED
REV.	DATE	DESCRIPTION
SHEET TITLE		SHEET NUMBER
COMPOUND PLAN		L2
PROJECT NO.		DRAWN BY:
6788-09-1888 (69)		C. TELLEZ
		CHECKED BY:
		M. ABBEY

ELEVATION



SCALE: 1" = 20'-0"
1

BCA

T-Mobile
stick together

1300 CONCORD TERRACE
SUITE 200
SUNRISE, FL 33323

MACTEC
MACTEC ENGINEERING & CONSULTING, INC.

CORPORATE OFFICE: 1105 LAKEWOOD PARKWAY, ALPHARETTA, GA 30004
LOCAL OFFICE: 5845 NW 158th STREET, MIAMI LAKES, FL 33014
TEL: (305) 826-5588
FAX: (305) 826-1798

CERTIFICATE OF AUTHORIZATION # 6090

MD1411C

CUTLER RIDGE PARK

10100 SW 200th STREET
CUTLER BAY, FL 33157

2	2/1/10	REVISED
REV.	DATE	DESCRIPTION
SHEET TITLE		SHEET NUMBER
ELEVATION		L3
PROJECT NO.	DRAWN BY:	CHECKED BY:
6788-09-1888 (69)	C. TELLEZ	M. ABBEY

EXHIBIT C

to the Agreement dated _____, 20____, by and between the Town of Cutler Bay, a Florida municipal corporation, as Owner, and T-MOBILE SOUTH LLC, a Delaware limited liability company authorized to do business in the State of Florida, as Lessee.

Memorandum of Agreement

Exhibit C
MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is entered into on this _____ day of _____ 2010, by and between the Town of Cutler Bay, a Florida municipal corporation with an address of 10720 Caribbean Blvd., Cutler Bay, Florida 33189 (hereinafter referred to as "Owner or Town") and T-Mobile South, LLC, a Delaware limited liability company, with a principle office address of 12929 SE 38th Street, Bellevue, Washington 980006, (hereinafter referred to as "Lessee").

Owner and Lessee entered into a Site Lease Agreement ("Lease") on the _____ day of _____ 2010, for the purpose of constructing, installing, operating and maintaining a wireless communications monopole tower and other improvements. All of the foregoing are set forth in the Lease.

The Lease is for a term of five (5) years and will commence on the date as set forth in the Lease (the "Commencement Date"). Tenant shall have the right to extend this Lease for four (4) additional and successive five -year terms.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum effective as of the date of the last party to sign.

TOWN OF CUTLER BAY, through its Town Council

By: _____ NOT FOR EXECUTION _____
Printed Name: _____
Title: _____
Date: _____

WITNESS:
By: _____
Printed Name: _____
Date: _____

WITNESS:
By: _____
Printed Name: _____
Date: _____

T-MOBILE SOUTH, LLC

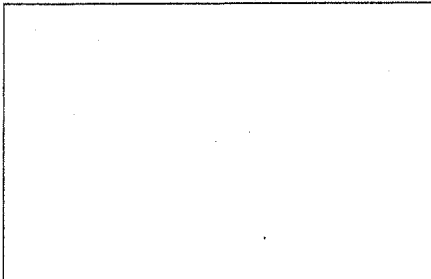
By: _____ NOT FOR EXECUTION _____
Printed Name: _____
Title: _____
Date: _____

[Notary block for Town of Cutler Bay]

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____ by _____,
[title] _____ of and on behalf of the Town of Cutler Bay, a Florida municipal corporation on behalf of
said Town of Cutler Bay.
Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

Dated: _____



(Use this space for notary stamp/seal)

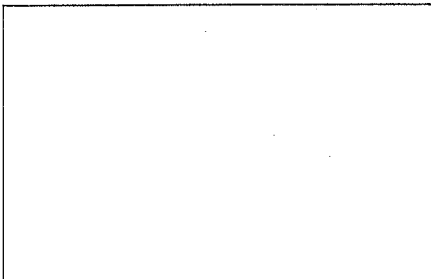
NOT FOR EXECUTION
Notary Public
Print Name _____
My commission expires _____

[Notary block for T-Mobile South, LLC]

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that Bentley C. Alexander is the person who appeared before me, and
said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and
acknowledged it as the _____ of T-Mobile South LLC, a Delaware limited liability
company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.
Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

Dated: _____



(Use this space for notary stamp/seal)

NOT FOR EXECUTION
Notary Public
Print Name _____
My commission expires _____

Memorandum of Lease Exhibit A
Legal Description

The Property is legally described as follows:

The W 4/5th of the W1/2 of the NW1/4 of the NW1/4 of
NE1/4 of Section 8.

EXHIBIT D

SURVEY

to the Agreement dated _____, 20____, by and between the Town of Cutler Bay, a Florida municipal corporation, as Owner and T-MOBILE SOUTH LLC, a Delaware limited liability company authorized to do business in the State of Florida, as Lessee.

A COPY OF THE SURVEY SHALL BE ATTACHED HERETO

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement is entered into on this _____ day of _____ 2010, by and between the Town of Cutler Bay, a Florida municipal corporation with an address of 10720 Caribbean Blvd., Cutler Bay, Florida 33189 (hereinafter referred to as "Owner or Town") and T-Mobile South, LLC, a Delaware limited liability company, with a principle office address of 12929 SE 38th Street, Bellevue, Washington 980006, (hereinafter referred to as "Lessee").

Owner and Lessee entered into a Site Lease Agreement ("Lease") on the _____ day of _____ 2010, for the purpose of constructing, installing, operating and maintaining a wireless communications monopole tower and other improvements. All of the foregoing are set forth in the Lease.

The Lease is for a term of five (5) years and will commence on the date as set forth in the Lease (the "Commencement Date"). Tenant shall have the right to extend this Lease for four (4) additional and successive five -year terms.

IN WITNESS WHEREOF, the parties hereto have respectively executed this memorandum effective as of the date of the last party to sign.

TOWN OF CUTLER BAY, through its Town Council

By: _____
Printed Name: _____
Title: _____
Date: _____

WITNESS:

By: _____
Printed Name: _____
Date: _____

WITNESS:

By: _____
Printed Name: _____
Date: _____

T-MOBILE SOUTH, LLC

By: Bentley C. Alexander
Printed Name: **Bentley C. Alexander**
Title: **Regional Vice President**
Date: 5/18/10

[Signature]
T-Mobile Market Approval

WITNESS:

By: Dana Hall
Printed Name: Dana Hall
Date: 5-18-2010

WITNESS:

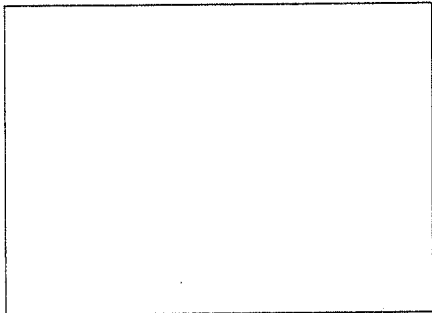
By: [Signature]
Printed Name: Ann Brooks
Date: 05.18.10

[Notary block for Town of Cutler Bay]

STATE OF _____)
) ss.
COUNTY OF _____)

This instrument was acknowledged before me on _____ by _____, [title] _____ of and on behalf of the Town of Cutler Bay, a Florida municipal corporation on behalf of said Town of Cutler Bay.
Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

Dated: _____



(Use this space for notary stamp/seal)

Notary Public _____
Print Name _____
My commission expires _____

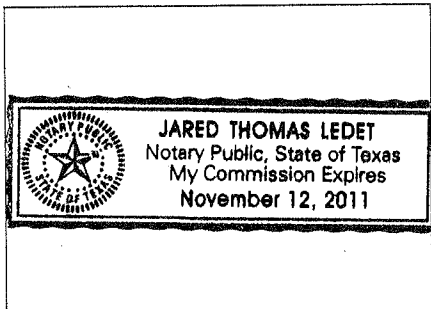
[Notary block for T-Mobile South, LLC]

STATE OF Texas)
) ss.
COUNTY OF Collin)

I certify that I know or have satisfactory evidence that Bentley C. Alexander is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Vice President of Engineering & Operations of T-Mobile South LLC, a Delaware limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.
Personally Known OR Produced Identification _____
Type of Identification Produced _____

Dated: 5/18/10

J LeDET



(Use this space for notary stamp/seal)

Notary Public _____
Print Name Jared LeDET
My commission expires 11/12/11

Memorandum of Lease Exhibit A
Legal Description

The Property is legally described as follows:

The W 4/5th of the W1/2 of the NW1/4 of the NW1/4 of NE1/4
of Section 8.

TAB 11

ORDINANCE NO. 10- _____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, CREATING GENERAL REGULATIONS AND PROCEDURES RELATING TO TOWN ADVISORY BOARDS; PROVIDING THAT THESE GENERAL REGULATIONS AND PROCEDURES SHALL APPLY TO ALL EXISTING BOARDS AS WELL AS THOSE BOARDS ESTABLISHED IN THE FUTURE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 3.9 of the Town Charter provides that the Town Council may establish Town advisory boards or committees (“boards”) as well as procedures and regulations governing such boards; and

WHEREAS, although the Town Council has established several boards, the Town Council has yet to establish general regulations and procedures governing the operation and selection of such boards; and

WHEREAS, the Town Council desires to create certain general regulations governing all existing boards as well as those boards established subsequent to the adoption of this Ordinance; and

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

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

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

Section 2. Creation of Town Advisory Board Ordinance. The Town Council of the Town of Cutler Bay hereby creates the Town Advisory Board Ordinance as follows¹:

(a) **Establishment of Boards.** Pursuant to Section 3.9 of the Town Charter, the Town Council shall establish such advisory boards, committees, task forces, and bodies (the “boards”) as it may deem advisable. All boards so established shall report their findings to the Town Council. Unless otherwise provided by law, all boards shall serve at the pleasure of the Town Council. Appointees may be removed from his or her appointive position upon: (i) the written notice of the Town Council member that sponsored the appointee; or (ii) by subsequent motion

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

of any member of the Town Council and upon vote of removal by a supermajority of the members of the Town Council.

(b) **Appointment to Boards.** The Town Council shall determine how many board members shall serve on a board. If a board has at least five board members, each Town Council member shall have the right to appoint an individual to the board. If a board has more or less than five members, the Town Council shall determine the method in which the board members will be selected. No Council member shall hold any appointive office on any board. However, Town Council members may serve as an ex officio, non-voting member or council liaison to the board if approved by the Town Council. No citizen may serve on more than two boards simultaneously. The Town Council shall determine the term of the board members serving on a board. However, in no case may the term of a Town Council member's board appointee extend beyond the Town Council member's term of office. Upon newly elected or reelected Town Council member(s) taking office, he or she shall have the right to appoint board members to all seats vacated by the expiration of the previous Town Council member's term.

(c) **Board Terms.** When establishing a board, the Town Council shall establish a definitive term and goal for the board. The board shall be automatically dissolved upon the expiration of the term or upon delivery of the board's final report to the Town Council, whichever occurs first. In its sole discretion the Town Council may extend the term of the board.

(d) **Board Qualifications.** The Town Manager shall provide relevant background information related to prospective board appointees. This information shall be provided prior to the meeting in which appointment of the prospective board appointees are being considered. The background information may include, but are not limited to, a resume, a list of qualifications, a statement by the prospective appointee and/or any other relevant information. Furthermore, all prospective appointees shall make themselves available to the Town Council for the meeting in which their appointments are being considered.

(e) **Board Reports.** Unless otherwise provided by the Town Council, board reports which are presented to the Council shall include the following components:

(1) *Name.* The name of the board making the report, a listing of officers, an attendance table including members and any other person(s) who attended the meetings, all agendas, minutes, staff reports, and any other documents that were reviewed by the board. This information may be compiled in a separate document.

(2) *Methodology.* The report shall include a description of the way in which the board undertook its charge.

(3) *Facts found.* The report shall include the facts uncovered or information obtained.

(4) *Recommendations.* The report shall include the recommendations of the board, preferably in a form suitable for framing of a motion for the Town Council to consider.

(5) *Signatures.* All members of the board who concur with the report must sign the report. The chair may sign the report only if a majority of the members of the board approve the report and authorize the Chairman to sign. Those members who do not concur with the report shall be listed as dissenting members. The dissenting members may submit their own report(s) in the same format as presented above.

(f) **Notice of Meetings and Agendas.** At least 48 hours notice shall be given to the public and board members of board meetings. The public shall be notified of board meetings by a posting at Town Hall by the Town Clerk. The Town Council, Town Attorney, and the Town Manager shall be provided notice of the meeting by email from the Town Clerk. The public notice shall advise of the potential for attendance of one or more Town Council members at the meeting of the board. The Town Clerk shall notify board members of board meetings by telephone or mail or fax or email or hand delivery. A written agenda shall be prepared and distributed by the Town Clerk for each board meeting. Special board meetings may be called by the Chairman or by a majority of the board members. All board proceedings shall comply with F.S. § 286.011(the "Sunshine Law"). Written minutes shall be promptly prepared and kept of all board meetings and shall be submitted to the Town Clerk who shall be responsible for the preservation of such minutes.

(g) **Board Absences.** Unless otherwise provided by the Town Council, members of boards who are absent from three regularly scheduled meetings of the board in any one calendar year shall be automatically removed from the board. Each board shall determine which meetings are considered as the "regularly scheduled meetings". Board members who are removed through this process may be reappointed by the Town Council.

(h) **Board Discipline.** A board has no power to discipline its members for improper conduct related to its proceedings. Any such incident of misconduct shall be reported to the Town Manager. This shall not diminish the authority of the board Chairman to maintain order at meetings.

(i) **Quorum.** Unless otherwise provided by the Town Council, a majority of the board members shall constitute a quorum. No business shall be conducted unless a quorum is present, other than by a committee of the whole process which may be invoked when a quorum fails to attend a regular meeting. Any vote by the committee of the whole shall be preliminary and non-binding and shall be subject to subsequent ratification by a quorum of the board at a duly held meeting.

(j) **Board Rules of Procedure.** A board may adopt rules of procedure governing its conduct which do not conflict with either the fundamental parliamentary procedures of Roberts Rules of Order or with this section. Each board shall appoint a Chairperson, Vice Chairperson and Secretary who may engage in discussions, make motions and vote on items before the board in the same manner as other board members. This section shall prevail over any conflicting provision of Roberts Rules of Order.

(k) **Applicability.** The provisions of this Ordinance shall apply to all existing boards as well as all boards established subsequent to the adoption of this Ordinance.

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

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

Section 5. 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 re-numbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on first reading this 26th day of May, 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:

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

Moved By:
Seconded By:

FINAL VOTE AT ADOPTION:

Mayor Paul S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

TAB 12

ORDINANCE NO. 10-___

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, REPEALING THE EXISTING CHAPTER 8B “EMERGENCY MANAGEMENT”; CREATING A NEW CHAPTER 8B ENTITLED “EMERGENCY MANAGEMENT” RELATING TO THE CREATION OF POLICIES AND PROCEDURES IN THE CASE OF TOWN EMERGENCIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Hurricane Andrew devastated this community seventeen years ago and the dangerous conditions posed by the storm both during and afterwards gravely threatened the health and safety of those in our community; and

WHEREAS, Hurricane Frances, Hurricane Charley, and Hurricane Ivan all came ashore in other parts of Florida within the past several years, destroying communities and severely inhibiting their ability to function afterwards; and

WHEREAS, most recently Hurricane Wilma struck Miami-Dade County with surprising force just three years ago, disrupting the orderly conduct of government and society at-large; and

WHEREAS, the Town may face future emergencies due to tropical storms, hurricanes, or other weather related events; and

WHEREAS, the Town may face other emergencies due to civil unrest, strike, national disaster, terrorism, or other events affecting the health, welfare and property of the Town, its residents and businesses; and

WHEREAS, upon incorporation the Town adopted the emergency procedures of Miami-Dade County, Florida, established under Chapter 8B, as the Town’s process for dealing with emergency situations; and

WHEREAS, the Mayor and Town Council of the Town of Cutler Bay seek to create a new Chapter 8B of the Town’s code of ordinances creating a policy and a process for emergency management in preparation for potential public emergency situations that affect life, health, property or the public peace, which policy and process is tailored to meet the specific needs of the Town; and

WHEREAS, the Town Charter, at Article IV, Section 4.4, entitled “Emergency Ordinances” entitles the Council to adopt emergency ordinances, other than ordinances that would provide for the levy of taxes, grant, renew or extend any municipal franchise; set service or user charges for any municipal services; or authorize the borrowing of money except as provided under the charter; and

WHEREAS, the Town finds that this Ordinance will promote the health, safety and welfare of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY AS FOLLOWS¹:

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

Section 2. Amendment to Chapter 8B of the Town Code. The Town Council of the Town of Cutler Bay hereby repeals Chapter 8B “Emergency Management” of the Town Code of Ordinances in its entirety and instead substitutes as follows:

8B-1.1 Definitions.

For the purposes of this chapter, the following definitions shall be effective:

Average retail price shall mean the price at retail for merchandise, goods or services at which similar merchandise, goods or services were being sold immediately preceding a declaration of public emergency.

Emergency shall mean a condition which threatens or adversely affects the public health, safety, property, public peace, general welfare or security and which is or threatens to be beyond the control of those public and private agencies normally responsible for the management of such a condition, resulting from an act of imminent threatened act of war, riot, terrorism, mob or other acts of violence, from conflagration, explosion, hazardous materials incident or release, from a weather event such as a flood, hurricane or tornado, from a disruption in utility systems, or from any other cause, reason, condition or circumstance.

Town Manager shall mean the Town Manager designated in accordance with Section 3.1 of the Town Charter or the acting Town Manager designated in accordance with section 3.4 of the Town Charter, and who has the powers delineated in section 3.3 and 3.4 of the Town charter.

8B-1.2 Applicability of provisions.

All officers, employees, contractors, vendors, boards, commissions, authorities and other agencies of the Town are subject to the provisions of this chapter.

8B-1.3 Emergency management structure.

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

(a) The Town Manager shall perform the function of director of emergency management and shall implement, manage and report on all actions authorized and taken under the provisions of this chapter.

(b) The Town Manager or the Town Manager's designee shall plan for the coordination of those actions necessary for the creation and maintenance of an effective emergency response capability to prepare for and manage emergency conditions.

8B-1.4 Powers, duties and responsibilities.

The Town Manager, when acting as the director of emergency management, shall have the following powers, duties and responsibilities:

(1) To declare a state of emergency pursuant to section 8B-1.5 and to promptly file with the Town Council a certificate showing such emergency and the necessity for such action.

(2) To direct the creation, revision and the exercise of emergency response plans consistent with state and county emergency plans for the mitigation of, preparation for, response to, and recovery from emergencies, and to exercise all powers permitted by chapter 252, Florida Statutes.

(3) To recommend a budget to the Town Council from the creation and maintenance of an emergency response capability as provided in this chapter.

(4) To issue emergency regulations necessary for the protection of life and property, establishment of public order, and control of adverse conditions affecting public welfare resulting from an emergency.

(5) To plan for and develop an emergency operations control center to include equipment, manning and operational procedures necessary to the management and control of emergency conditions, as well as procurement of necessary goods and services.

(6) To develop and manage the Town's emergency awareness public information program.

(7) To apply for public assistance or other disaster relief funding.

(8) To coordinate emergency management efforts with his/her counterparts in municipalities across county, Miami-Dade County, State of Florida and nation.

(9) To award contracts and expend necessary Town funds for emergency relief and provide for the Town Council an itemized account of all expenditures. Further, this ordinance shall constitute Town Council consent and approval of the Town Manager's contractual and purchasing authority hereunder as required pursuant to Section 3.10 of

the Town Charter. The Town Council may, by resolution, establish procedures which apply to this paragraph (9).

8B-1.5 Declaration of a state of emergency.

(a) The Town Manager shall have the sole authority to declare a state of emergency hereunder.

(b) Any declaration of a state of emergency and all emergency regulations activated under the provisions of this article and any emergency expenditures made hereunder pursuant to subsection 8B-1.4(9) shall be confirmed by the Town Council by resolution no later than at the next regular meeting, unless the nature of the emergency renders a meeting of the Town Council impossible. Confirmation of the emergency declaration shall disclose the reasons for actions proposed and taken to manage the emergency, and other pertinent data relating to the emergency requiring the declaration.

(c) Emergency ordinances, which may be enacted after the fact, authorized under Section 4.4 of the Town Charter and by this chapter may include, but are not limited to, the following subjects:

(1) Evacuation;

(2) Curfews, declaration of areas off limits;

(3) Suspension or regulation of the sale of, or offer to sell, with or without consideration, alcoholic beverages, ammunition, firearms, explosives, or combustibles;

(4) Prohibiting the sale of merchandise, goods or services at more than the average retail price;

(5) Water use restrictions;

(6) Suspension of local building regulations;

(7) Regulating the use of and rationing of fuel, ice, bottled water, and other essentials;

(8) Emergency appropriations procedures in compliance with section 4.4(5) of the Town charter.

(d) A declaration of a state of emergency shall activate the emergency plans applicable to the Town. A declaration of a state of emergency shall automatically invoke the emergency measures of section 870.044, Florida Statutes, if the emergency relates to overt acts of violence or the imminent threat of such violence.

(e) A state of emergency, when declared, shall continue in effect from day-to-day until declared to be terminated by the Town Manager or Town Council in accordance with section 8B-16.

(f) Upon the declaration of a state of emergency, the Town Manager shall post a written notice of such declaration upon the main bulletin board in Town hall, and shall, as promptly as practicable, file with the Town clerk a notice of a declared state of emergency, or emergency measure declared or ordered and promulgated by virtue of Florida Statutes. The Town Manager shall notify the local media if practicable and shall post the notice on the Town's website as soon as practicable.

(g) The Town Manager may issue orders pursuant to this article and may elect to adopt orders issued by County or State emergency management agencies.

8B-1.6 Termination of a state of emergency.

A state of emergency shall be terminated by a vote of the Town Council if practicable or upon the certification of the Town Manager that the conditions leading to or causing the emergency no longer exist and the Town's agencies and departments are able to manage the situation without extraordinary assistance; provided, however, Section 4.4(4) of the Town charter is adhered to, which provision requires automatic repeal of the declaration and associated emergency ordinances by the 91st day from enactment; provided, additionally, that a state of emergency established under sections 870.041 – 870.048, Florida Statutes, shall terminate at the end of a period of 72 consecutive hours after the declaration of the emergency, unless, prior to the end of the 72-hour period, the Town manager or the Town Council has terminated such state of emergency. Any extension of the 72-hour time by the Town Manager must be confirmed by the Town Council by resolution at the next regular meeting, unless the nature of the emergency renders a meeting of the Town Council impossible. Notice of termination of the emergency declaration shall be made to the public by the Town Manager by the same means as the notice of the declaration of the state of emergency, as provided under 8B-1.5.

8B-1.7 Police emergencies.

(a) An emergency may be declared because of civil unrest, terrorist act or other imminent threat to public peace or order when the chief of police, or if unavailable, the next highest ranking officer in the Town police department chain of command certifies to the Town Manager that an emergency condition arising from hostile actions of others, armed or unarmed, or other imminent threat to public peace or order, requires extraordinary measures of control, including, but not limited to curfew; blockage; proscription of the sale of firearms, other weapons or alcoholic beverages; explosives and combustibles; evacuation; and other similar actions. The Town Manager may issue a declaration of a state of emergency in accordance with this section 8B-1.5.

(b) The declaration of a state of emergency because of civil unrest, terrorism or other imminent threat to public peace, health, welfare, and property or order, shall authorize the

issuance of emergency ordinances, as may be required and may, if applicable, require automatic emergency measures pursuant to section 870.044, Florida Statutes. In addition, additional discretionary emergency measures pursuant to section 870.045, Florida Statutes, may be issued.

(c) A state of emergency may be declared because of fire and hazardous materials emergencies, utility emergencies, and weather emergencies when the chief of police, public works director, or designee, certifies to the Town Manager that an emergency condition exists.

8B-1.8 Fire and hazardous materials emergencies.

(a) An emergency may be declared because of fire or a hazardous materials incident emergency when the Miami-Dade County fire chief, or designee, certifies to the Town Manager that an actual or potential condition arising from fire, explosion, chemical spill or release, building collapse, or plane, train or other vehicle accident, requires extraordinary measures for control, including, but not limited to calling out of off-duty personnel; assistance by outside agencies; evacuation; and other similar actions. The Town Manager may issue a declaration of a state of emergency in accordance with section 8B-1.5.

(b) The declaration of public emergency because of fire and hazardous material emergency shall authorize the issuance of emergency resolutions and other appropriate resolutions, as may be required.

8B-1.9 Utility emergencies.

(a) An emergency may be declared because of utility conditions when the public works director, or designee, or the authorized representative of the relevant utility certifies to the Town Manager the following:

(1) A condition exists or is imminent that endangers the safety, potability, quantity, availability, collection, conveyance, transmission, distribution, treatment, or storage of water or waste through or within the Town; or

(2) A condition exists or is imminent that endangers the safety, quality, quantity, availability, transmission, distribution, or storage of gas or electricity through or within the Town; or

(3) Extraordinary actions to control and correct the situation are required, including but not limited to emergency purchase; calling out of off-duty personnel; assistance by outside agencies; and other similar actions.

(b) (b) The declaration of a state of emergency because of utility conditions shall authorize the issuance of emergency resolutions or orders, and other appropriate resolutions or orders, as may be required.

8B-1.10 Weather emergencies.

(a) An emergency may be declared because of weather conditions when the National Weather Service or a state, county or local emergency management agency informs the Town or the public that emergency conditions resulting from meteorological conditions are present or imminent. Meteorological conditions covered by this section shall include, but are not limited to hurricanes, floods, tornados, or other severe weather conditions and the results therefrom. The Town Manager may issue a declaration of a state of emergency in accordance with section 8B-1.5.

(b) The declaration of a public emergency because of weather conditions shall authorize the issuance of emergency resolutions and other appropriate resolutions, as may be required.

8B-1.11 Suspension of local building regulations.

The Town Manager may authorize a suspension of local building regulations during and following a declared state of emergency when the building official certifies to the Town Manager that such action is necessary for the expeditious restoration of property damaged by an emergency event. Suspension of building regulations may be applied on a case-by-case basis as required to remedy specific conditions and to facilitate the provision of emergency housing to disaster victims. The building official shall specify the provisions of the building code to be suspended and the reasons therefore, when certifying the necessity of such suspension to the Town Manager.

8B-1.12 Certification of emergency conditions.

A certification of emergency conditions to the Town Manager may be verbal, but each verbal certification shall be confirmed in writing within 24 hours following an emergency declaration.

8B-1.13 Penalty.

Any person, firm or corporation who violates any provision of this article or orders issued hereunder, for which another penalty is not specifically provided herein or required by law shall, upon conviction, be subject to such fine or imprisonment or both as provided by section 1-5 of the Town Code of Ordinances. Each day that a violation shall continue to exist shall constitute a separate offense.

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

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

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

PASSED on first reading this 26th day of May, 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:

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 _____