



TOWN OF CUTLER BAY

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

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

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

TOWN COUNCIL MEETING AGENDA

Wednesday, July 21, 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

3. APPROVAL OF MINUTES

A. Regular Council Meeting – June 16, 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, AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS FOR THE PURCHASE OF AN OUTDOOR MOVIE SCREEN WITH PROJECTOR AND RELATED EQUIPMENT FROM AN AUTHORIZED VENDOR IN AN AMOUNT NOT TO EXCEED \$10,000.00, AND PROVIDING FOR AN EFFECTIVE DATE. **(BELL)**

TAB 2

- B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE CONTRACT BETWEEN THE CHILDREN’S TRUST AND THE TOWN OF CUTLER BAY FOR THE PROVISION OF AN AFTER SCHOOL PROGRAM AT CUTLER RIDGE PARK; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SAME AND PROVIDING FOR AN EFFECTIVE DATE. TAB 3

- C. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, DETERMINING THE PROPOSED MILLAGE RATE, THE CURRENT YEAR ROLLED-BACK RATE, AND THE DATE, TIME AND PLACE FOR THE FIRST AND SECOND PUBLIC BUDGET HEARINGS AS REQUIRED BY LAW; DIRECTING THE TOWN CLERK AND TOWN MANAGER TO FILE THIS RESOLUTION WITH THE PROPERTY APPRAISER OF MIAMI-DADE COUNTY PURSUANT TO THE REQUIREMENTS OF FLORIDA STATUTES AND THE RULES AND REGULATIONS OF THE DEPARTMENT OF REVENUE OF THE STATE OF FLORIDA; AND PROVIDING AN EFFECTIVE DATE. TAB 4

- D. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, DIRECTING THE TOWN MANAGER TO TAKE ANY AND ALL MEANS NECESSARY TO CONDUCT A NATIONWIDE SEARCH FOR POTENTIAL CANDIDATES FOR THE TOWN CLERK POSITION; AND PROVIDING AN EFFECTIVE DATE. **(SOCHIN)** TAB 5

- E. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, URGING THE FEDERAL HOUSING FINANCE AGENCY TO ADOPT AND IMPLEMENT THE NECESSARY UNDERWRITING GUIDELINES AND CONSUMER PROTECTION STANDARDS TO PROTECT THE MORTGAGE INDUSTRY, WHILE AT THE SAME TIME ALLOWING SENIOR LIEN PACE LENDING INITIATIVES TO PROCEED IN ORDER TO PROTECT OUR ENVIRONMENT; PROVIDING FOR TRANSMITTAL; AND PROVIDING AN EFFECTIVE DATE. TAB 6

- F. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO EXECUTE AND ENTER INTO AN AGREEMENT WITH GROUNDKEEPERS, INC. FOR THE PURCHASE AND INSTALLATION OF LIVE OAK TREES WITHIN THE TOWN’S DESIGNATED RIGHT-OF-WAYS FOR AN AMOUNT NOT TO EXCEED \$150,000.00 WITH DISBURSEMENT FROM ACCOUNT NUMBER 001.519000.3400; AND PROVIDING FOR AN EFFECTIVE DATE. TAB 7

6. QUASI-JUDICIAL HEARINGS (PUBLIC HEARING REQUIRED)

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

- 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 8

- 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 9

- 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 10

- D. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A FLOOR AREA RATIO VARIANCE FOR CITY FURNITURE, LOCATED AT 18750 & 18760-80 S. DIXIE HIGHWAY, TO PERMIT 63.46% WHERE 51% IS REQUIRED; AND PROVIDING FOR AN EFFECTIVE DATE. TAB 11

- E. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A LOT COVERAGE VARIANCE FOR CITY FURNITURE, LOCATED AT 18750 & 18760-80 S. DIXIE HIGHWAY, TO PERMIT 44.4% WHERE 40% IS REQUIRED; AND PROVIDING FOR AN EFFECTIVE DATE. TAB 12

- F. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A LANDSCAPING VARIANCE FOR CITY FURNITURE, LOCATED AT 18750 & 18760-80 S. DIXIE HIGHWAY, TO PERMIT 16% WHERE 17.5% IS REQUIRED; AND PROVIDING FOR AN EFFECTIVE DATE. TAB 13

- G. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A SIGNAGE VARIANCE FOR CITY FURNITURE, LOCATED AT 18750 & 18760-80 S. DIXIE HIGHWAY, TO PERMIT THREE WALL SIGNS ON THE BUILDING WHERE ONE IS PERMITTED; AND PROVIDING FOR AN EFFECTIVE DATE. TAB 14

- H. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING AN ORNAMENTAL ROOF ELEMENT VARIANCE FOR CITY FURNITURE, LOCATED AT 18750 & 18760-80 S. DIXIE HIGHWAY, TO PERMIT 18% WHERE 10% IS PERMITTED; AND PROVIDING FOR AN EFFECTIVE DATE. TAB 15

- I. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A SITE PLAN FOR CITY FURNITURE, LOCATED AT 18750 & 18760-80 SOUTH DIXIE HIGHWAY, TO PERMIT A 56,558 SQUARE FOOT BUILDING; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 16

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

- A. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCE 07-30 RELATING TO DANGEROUS INTERSECTION SAFETY; PROVIDING FOR RECORDED IMAGE MONITORING AND ENFORCEMENT OF RED LIGHT TRAFFIC CONTROL SIGNALS CONSISTENT WITH GENERAL LAW AS PROVIDED BY CHAPTER 2010-80, LAWS OF FLORIDA; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR INCLUSION WITHIN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 17

- B. AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCE 06-22 RELATING TO PURCHASING GUIDELINES FOR TOWN HALL; AND PROVIDING FOR AN EFFECTIVE DATE.

TAB 18

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 19

- C. 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 20

- D. 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;

TAB 21

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.

10. PUBLIC COMMENTS

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

11. MAYOR AND COUNCIL COMMENTS

12. OTHER BUSINESS

13. ADJOURNMENT

A. Parks Committee Meeting

Monday, July 26th at 7:00 p.m., Cutler Ridge Park, 10100 SW 200th ST

B. Council Meeting

Wednesday, August 18, 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, June 16, 7:00 p.m.
South Dade Regional Library
10710 SW 211th Street, 1st Floor
Cutler Bay, Florida 33189

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

- A. Chief Judge Joel H. Brown of the State Attorney's Office presented information in reference to the request set forth by Councilmember Meerbott in Resolution 10-12 to utilize the South Dade Courthouse
- B. Nestor Caballero of Alberni, Caballero and Company presented the Council with an overview of the Town's financial status. He also presented the 2009 Comprehensive Annual Financial Report to the Council.

3. APPROVAL OF MINUTES:

A. Councilmember Bell made a motion approving the minutes of the regular council meeting on May 26, 2010. The motion was seconded by Vice Mayor MacDougall and adopted by a 5-0 voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall, and Mayor Vrooman voting Yes.

4. REPORTS

A. TOWN MANAGER'S REPORT:

The town manager elaborated on the presentation given by Mr. Caballero and commended staff on their usage of Town funds. He mentioned the large attendance from residents for the first public

forum on Old Cutler Roadway Improvements and announced that the second round would be taking place on June 28, 2010 at 6 p.m. He informed the council and residents that summer camp at Cutler Ridge Park had just started its first week that Monday. He updated on the status of the purchase of the building and stated that all tenants were notified of the change in ownership and have been properly introduced to our staff for all maintenance concerns. In conclusion, he updated Vice Mayor MacDougall on the influx of money coming from PTP funds to help fund the traffic signals to slow motorists in school zones, it is expected to arrive before 2013.

B. TOWN ATTORNEY'S REPORT:

None at this time.

C. BOARD AND COMMITTEE REPORTS, COUNCIL ANNOUNCEMENTS

Councilmember Sochin reported on the progress of the Charter School Committee. He invited Chair Rosa Alvarez to speak on behalf of the committee. Chair Alvarez gave a summary of the committee's guest speakers and topics as well as details of her recent charter school visits around Miami-Dade County.

Councilmember Bell mentioned that the Parks Committee would be presenting their new reports soon.

5. CONSENT AGENDA:

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.

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.

Councilmember Sochin pulled Item A. Councilmember Meerbott pulled items B and G were pulled for discussion. Vice Mayor MacDougall pulled items E and F at a later time for reconsideration and discussion.

Councilmember Meerbott made a motion to approve the Consent Agenda as amended with Items A, B, E, F, and G pulled for discussion. The motion was seconded by Councilmember Bell and Resolution 10-31 and 10-32 were adopted by 5-0 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 resolution by title:

- A. 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. (MACDOUGALL)**

Vice Mayor MacDougall explained the reason for proposing this ordinance. He stated that his intention was to create a more effective and transparent Town.

Councilmember Sochin made a motion to defer the item to the next council meeting for more discussion and research. The motion was seconded by Councilmember Bell, which was later withdrawn after discussion. The item failed to be deferred due the lack of a second.

Councilmember Meerbott made a motion to approve the resolution. The motion was seconded by Vice Mayor MacDougall and failed with a 2-3 roll call vote. The vote was as follows: Councilmember Meerbott and Vice Mayor MacDougall voting Yes; Councilmember Bell, Councilmember Sochin, and Mayor Vrooman voting No.

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

- B. A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, 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. (REVISED)**

Item B had a revised memorandum and therefore pulled to address such action. Public Works Director Ralph Casals, informed the council on the current status of these funds. He also addressed specific designs of the bus and future route schedules.

Councilmember Meerbott made a motion to approve the resolution. The motion was seconded by Councilmember Sochin and Resolution 10-30 was adopted 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 add-on resolution by title:

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

The town manager provided an explanation on the resolution.

Vice Mayor MacDougall made a motion to approve the resolution. The motion was seconded by Councilmember Sochin and Resolution 10-35 was adopted 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 Vice Mayor made a motion to reconsider Items E and F for discussion. The motion was seconded by Councilmember Sochin and was adopted by 3-2 by voice vote. The vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall voting Yes, Councilmember Meerbott and Mayor Vrooman voting No.

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 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)**

Councilmember Meerbott explained the current situation of resident Dotty Hudson for further clarification of the intent of the resolution. The attorney made amendments to this resolution by revising the language to reflect that the Town will not be using funds from the 2009/2010 fiscal year but rather waiving these fees entirely.

Vice Mayor MacDougall made a motion to approve the resolution. The motion was seconded by Councilmember Sochin and Resolution 10-33 was adopted 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 add-on resolution by title:

- 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)**

Councilmember Meerbott explained the current situation of Officer Jody Wright for further clarification of the intent of the resolution. The attorney made amendments to this resolution by revising the language to reflect that the Town will not be using funds from the 2009/2010 fiscal year but rather waiving these fees entirely.

Vice Mayor MacDougall made a motion to approve the resolution. The motion was seconded by Councilmember Meerbott and Resolution 10-34 was adopted with a 5-0 roll call 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.

All witnesses giving testimony were sworn-in by the assistant to the town clerk. The assistant to the town clerk read the following add-on resolutions by title:

- 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.

Planning Director David Hennis gave an oral report denying approval of the applicant's request for a waiver.

John Herin, 150 West Flagler Street, Suite 2200, a representative of the applicant, addressed the Council.

After discussion and presentations by the applicant, Councilmember Meerbott made a motion to defer all three items to the next council meeting on July 21, 2010. The motion was seconded by Councilmember Bell. The motion carried and the roll call vote was as follows: Councilmembers Bell, Meerbott, Sochin, Vice Mayor MacDougall and Mayor Vrooman voting Yes.

The mayor recessed the meeting at 9:30 p.m. The mayor commenced the meeting at 9:40 p.m.

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, 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.**

The town manager provided an explanation on the ordinance.

Vice Mayor MacDougall 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.

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, 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.

The town manager provided an explanation on the resolution. He offered clarification on lease rates and design aesthetics.

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

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

None at this time.

9. ORDINANCES FOR SECOND READING (PUBLIC HEARING 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 town attorney provided clarification and additional amendments given at the previous meeting. Amendments for consideration included allowed amounts of absenteeism by appointed members, addition of detailed description of a Council liaison's duties and responsibilities, and term limits for provisional Chair appointments.

Councilmember Meerbott made a motion to defer the item for discussion with the new amendments until the next council meeting on July 21, 2010. The motion was seconded by

Councilmember Sochin and passed. 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 attorney provided an explanation on the ordinance. Amendments to this ordinance include having both the manager and mayor declaring a public emergency as well as changing language in Section 8B-1.5 (b) stating that confirmation by resolution regarding expenditures be approved as soon as possible rather than at the next regularly scheduled town council meeting.

Vice Mayor MacDougall made a motion to approve the ordinance on second reading. The motion was seconded by Councilmember Sochin and Ordinance 10-07 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 mayor opened the public hearing. The following individuals spoke: Steve Zarzecki, 9640 Martinique Drive.

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.

There were no public comments.

11. MAYOR AND COUNCIL COMMENTS:

Councilmember Bell expressed her sadness at the passing of former Parks Committee Member Mike Vaughan.

12. OTHER BUSINESS: None at this time.

13. ADJOURNMENT

The next council meeting will be held on July 21, 2010 at South Dade Regional Library.

The meeting was officially adjourned at 10:55 p.m.

Respectfully submitted:

*Erin O'Donnell
Assistant to the Town Clerk*

*Adopted by the Town Council on
this 21st day of July, 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 NO. 10-___

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS FOR THE PURCHASE OF AN OUTDOOR MOVIE SCREEN WITH PROJECTOR AND RELATED EQUIPMENT FROM AN AUTHORIZED VENDOR IN AN AMOUNT NOT TO EXCEED \$10,000.00, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town’s Parks and Recreation Citizen Advisory Committee, (the “Committee”) has made a recommendation to the Town Council to purchase an outdoor movie system to encourage community-building and unity by providing free entertainment benefits within the community during the current economy; and

WHEREAS, the Town Council wishes to share information with its residents by providing an additional medium of communication; and

WHEREAS, the purchase of the outdoor movie system is more cost effective than renting and will benefit the Town businesses that may sponsor a movie to promote their business and services; and

WHEREAS, the Town Council wishes to utilize \$10,000.00 of the encumbered budget appropriation within the Town’s parks budget for the 2009/2010 fiscal year, for the purchase of an outdoor movie system; and

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

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

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

Section 2. Authorization. The Town Manager is authorized to purchase an outdoor movie system in an amount not to exceed \$10,000.00 on behalf of the Town, from an authorized vendor.

Section 3. Effective Date. This resolution shall become effective immediately upon its 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 Ernest N. Sochin _____

Councilmember Timothy J. Meerbott _____

TAB 3



MEMORANDUM

To: Honorable Mayor, Vice Mayor and Town Council
From: Steven J. Alexander, Town Manager
Date: July 21, 2010
Re: **THE CHILDREN'S TRUST GRANT AGREEMENT**

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE CONTRACT BETWEEN THE CHILDREN'S TRUST AND THE TOWN OF CUTLER BAY FOR THE PROVISION OF AN AFTER SCHOOL PROGRAM AT CUTLER RIDGE PARK; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SAME AND PROVIDING FOR AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

For the past three school years, the Town has received funding through The Children's Trust for the After School Program at Cutler Ridge Park. The Town has received favorable evaluations from The Children's Trust during the past grant period, and has once again been awarded grant funding for the 2010-2011 school year. While some Children's Trust program providers are facing decreases in funding due to lowered property values, the Town will receive the same funding from The Children's Trust as last fiscal year.

Some of the highlights of the agreement are as follows:

- Funding in the amount of \$96,200 will be available on a reimbursement basis for enhancements to the after school program
- This funding is available to the Town for a one-year term and may be renewed at the discretion of The Children's Trust
- The program will be available to a maximum of 75 participants
- Funding will continue to provide for additional employees to assist with the recruitment, testing and tracking of program participants; daily transportation to Cutler Ridge Park; snacks for each program participant on a daily basis; computer-based reading programs; fitness instruction; and recreational activities.

The attached agreement will allow us to continue to provide quality after school programming for many families in the Cutler Bay community that will address their children's recreational, educational and social needs.

RECOMMENDATION

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

RESOLUTION NO. 10-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING THE CONTRACT BETWEEN THE CHILDREN'S TRUST AND THE TOWN OF CUTLER BAY FOR THE PROVISION OF AN AFTER SCHOOL PROGRAM AT CUTLER RIDGE PARK; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE SAME AND PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, the Trust provides funding for organizations to provide out-of-school programs throughout Miami-Dade County; and

WHEREAS, the Town of Cutler Bay (the "Town") has been selected by the Trust as a recipient of funding for the Town's after school program at Cutler Ridge Park; and

WHEREAS, the Trust staff and the Town's staff have worked together on the details of the scope of services and budget for the Trust-funded portion of the Town's after school program.

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

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

Section 2. **Agreement Approved.** The attached "Contract # 1010-401" relating to the disbursement of Trust funds to the Town in substantially the form attached hereto as Exhibit "A," is hereby approved.

Section 3. **Town Manager Authorized.** The Town Manager is authorized to execute "Contract # 1010-401", and any subsequent annual renewals, in substantially the form attached hereto as Exhibit "A," on behalf of the Town.

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

SIGNATURE PAGE TO FOLLOW
PASSED and ADOPTED this _____ day of July, 2010.

Page 1 of 2

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 _____

Document4

**FY 2010-2011
CONTRACT NO. 1010-401
BETWEEN THE CHILDREN'S TRUST
AND TOWN OF CUTLER BAY
FOR OUT-OF-SCHOOL FY 2010-2011**

THIS CONTRACT, between **The Children's Trust** whose address is 3150 S.W. 3rd Avenue, 8th Floor, Miami, Florida 33129 and **Town of Cutler Bay** hereafter "Provider" whose address is 10100 S.W. 200th Street, Cutler Bay, Florida 33189, states the conditions and covenants for the rendering of services to children and families for The Children's Trust.

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

A. EFFECTIVE TERM

The effective term of this Contract shall be from August 1, 2010 through July 31, 2011, subject to funding availability and Provider's performance.

B. TERMS OF RENEWAL, if applicable

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

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

C. SCOPE OF SERVICES

1. Provider agrees to render services in accordance with the Scope of Services, Attachment A, hereafter "Services", to this Contract. Provider shall implement the Services in a manner deemed satisfactory to The Children's Trust. Any modification to the Services shall not be effective until approved, in writing, by The Children's Trust and Provider.
2. The Services' activities and performance measures, as well as complete and accurate data and programming information will be used in the evaluation of Provider's overall performance.
3. Provider agrees that all funding provided by The Children's Trust, pursuant to this Contract will be used exclusively for services in and for the benefit of Miami-Dade County residents.

D. TOTAL FUNDING

Subject to the availability of funds, the maximum amount payable for Services rendered under this Contract shall not exceed **\$96,209.00**. The Parties agree that should available funding to The Children's Trust be reduced, the amount payable under this Contract will be reduced at the sole option of The Children's Trust. Provider agrees to adhere to Other Fiscal Requirements, Budget and Method of Payment outlined in Attachment B to this Contract.

E. FISCAL MANAGEMENT

1. Double Billing and Payments

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

2. No Supplanting of Existing Public Funds

The Children's Trust funding may not be used as a substitute for existing resources or for resources that would otherwise be available for children's services, or to replace funding previously provided by and currently available from local and state funding sources for the same purpose. A violation of this section shall be considered a material breach of this Contract.

3. Capital Equipment

Capital equipment is included in the definition of "property" under Florida Statutes, Chapter 274, and Florida Administrative Code, Section 69I-73.001, and is defined as individual items with a value of \$1,000 or greater which have a life expectancy of more than one year. Provider is to maintain proof of Property Coverage in accordance with the insurance requirements prescribed in this Contract (see Section K. Insurance).

Capital equipment purchased with Trust funds by Provider become assets of The Children's Trust; are intended for The Children's Trust funded programs; are owned by The Children's Trust; and must be tagged at the time of purchase as an asset of The Children's Trust. The Children's Trust will work with Provider to tag the asset and receive all information regarding the capital equipment. Provider must maintain a record of any capital equipment purchased with funds provided by The Children's Trust. When Provider is no longer funded by The Children's Trust, the equipment will be returned to The Children's Trust unless it is fully depreciated. Ownership of capital equipment will be transferred to Provider and removed from The Children's Trust's fixed asset system if the capital equipment is fully depreciated and in the possession of Provider. Provider can purchase the equipment at the depreciated cost with the approval of The Children's Trust. If capital equipment is not purchased by Provider prior to the equipment being fully depreciated, Provider must return such capital equipment to The Children's Trust before submission of the final invoice.

In the event that property of The Children's Trust is either damaged, lost, or stolen, while in Provider's possession, Provider is to perform the following: a) within 5 business days provide written notification to The Children's Trust contract manager that the capital equipment has been either damaged, lost or stolen; b) provide a police report for lost or stolen items; or provide a written statement as to how the capital equipment was damaged; and c) reimburse The Children's Trust for the value, as determined by The Children's Trust of the capital equipment.

4. Assignments and Subcontracts

Provider shall not assign this Contract to another party. Provider shall not subcontract any Services under this Contract without prior written approval of The Children's Trust. In any subcontract, Provider shall incorporate appropriate language from this contract into each subcontract and shall require each subcontractor providing services to be governed by the terms and conditions of this contract. Provider shall submit to The Children's Trust a copy of each subcontract to this Contract, within 30 days of its execution. All sub-contractors of Provider must agree to be monitored by Provider and/or on behalf of The Children's Trust in the same manner as Provider under the terms of this contract. Provider acknowledges and agrees that The Children's Trust and any subcontractor to this Contract have authority to communicate and exchange information about contract, program, and/or fiscal issues. Provider waives any and all claims, demands, and/or legal action based upon any such communications.

Provider shall be responsible for all Services performed, and all expenses incurred, under this Contract, including services provided and expenses incurred by any and all subcontractors. The Children's Trust shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract, and Provider shall be solely liable under any subcontract. Provider shall

hold harmless and defend, at Provider's expense, The Children's Trust against any claims, demands or actions related to any subcontract.

The Children's Trust shall not provide funds to any subcontractor unless specifically agreed to in writing by The Children's Trust with notification to the Provider. All payments to any contracted subcontractor shall be paid directly by Provider to the subcontractor. The Children's Trust reserves the right to require verification from Provider and/or subcontractor of payment due for satisfactory work performed by the subcontractor.

Provider and any Subcontractor must be currently qualified to do business in the State of Florida at the time that a subcontractor agreement is entered into and services are rendered.

5. Religious Purposes

Providers and/or their faith-based community partners shall not use any funds provided under this Contract to support any inherently religious activities, including but not limited to, any religious instruction, worship, proselytization, publicity or marketing materials. Any such use by Provider shall be a material breach of this Contract.

6. Lobbying

Provider shall not use any funds provided under this Contract or any other funds provided by The Children's Trust for lobbying any federal, state or local government or legislators. Any such use by Provider shall be a material breach of this Contract.

7. Adverse Action or Proceeding

Provider shall not use any funds under this Contract, or any other funds provided by The Children's Trust, for any legal fees, or for any action or proceeding against The Children's Trust, its agents, employees or officials. Any such use by Provider shall be a material breach of this Contract.

F. INDEMNIFICATION BY PROVIDER

1. Government Entity

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

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

2. All Other Providers

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

To the extent arising from a liability that is covered by the foregoing indemnification, Provider shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of The Children's Trust, where

applicable, including appellate proceedings, and shall pay all costs, judgments, and reasonable attorney's fees which may issue thereon. Provider agrees that any insurance protection required by this Contract or otherwise provided by Provider shall in no way limit the responsibility to indemnify, keep and save harmless and defend The Children's Trust or its officers, employees, agents.

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

G. COPYRIGHTS AND RIGHT TO DATA/MATERIALS

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

H. OWNERSHIP AND LICENSING OF INTELLECTUAL PROPERTY

This Contract is subject to the provisions, limitations and exceptions of Chapter 119, Florida Statutes, regarding public records. Accordingly to the extent permitted by Chapter 119, Florida Statutes, Provider retains sole ownership of intellectual property developed under this Contract. Provider is responsible for payment of required licensing fees if intellectual property owned by other parties is incorporated by Provider into the services required under this Contract. Such licensing should be in the exclusive name of Provider. Payment for any licensing fees or costs arising from the use of others' intellectual property shall be at the sole expense of Provider.

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

I. BREACH OF CONTRACT AND REMEDIES

1. Breach

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

- a. Fails to comply with Background Screening, as required under this Contract.
- b. Fails to provide the Services outlined in the scope of services (Attachment A) within the effective term of this Contract;
- c. Fails to correct an imminent safety concern or take acceptable corrective action;
- d. Ineffectively or improperly uses The Children's Trust funds allocated under this Contract;
- e. Does not furnish and maintain the certificates of insurance required by this Contract or as determined by The Children's Trust;
- f. Does not meet or satisfy the conditions of award required by this Contract;
- g. Fails to submit or submits incorrect or incomplete proof of expenditures to support disbursement requests or advance funding disbursements, or fails to submit or submits incomplete or incorrect detailed reports of requests for payment, expenditures or final expenditure reports;

- h. Does not submit or submits incomplete or incorrect required reports pursuant to the scope of Services in this Contract;
- i. Refuses to allow The Children's Trust access to records or refuses to allow The Children's Trust to monitor, evaluate and review Provider's program, including required client data;
- j. Fails to comply with child abuse and incident reporting requirements;
- k. Attempts to meet its obligations under this Contract through fraud, misrepresentation or material misstatement;
- l. Fails to correct deficiencies found during a monitoring, evaluation or review within a specified reasonable time;
- m. Fails to meet the terms and conditions of any obligation or repayment schedule to The Children's Trust or any of its agencies;
- n. Fails to maintain the confidentiality of client files, pursuant to Florida and federal laws;
- o. Fails to fulfill in a timely and proper manner any and all of its obligations, covenants, contracts and stipulations in this Contract;

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

2. Remedies

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

- a. The Children's Trust may, at its sole discretion, enter into a written performance improvement plan with Provider to cure any breach of this Contract as may be permissible under state or federal law. (Attachment F, if applicable). Any such remedial plan shall be an addition to this Contract and shall not affect or render void or voidable any other provision contained in this Contract, costs, or any judgments entered by a court of appropriate jurisdiction.
- b. The Children's Trust may suspend payment in whole or in part under this Contract by providing written notice of suspension to Provider of such suspension and specifying the effective date of suspension, at least five business days before the effective date of suspension. On the effective date of suspension Provider may (but shall not be obligated to) continue to perform the Services in this Contract, but Provider shall promptly cease using The Children's Trust's logo and any other reference to The Children's Trust in connection with such Services. All payments to Provider as of the date of suspension shall cease, except that The Children's Trust shall continue to review and pay verifiable requests for payment for Services that were performed and/or for deliverables that were substantially completed at the sole discretion of The Children's Trust, prior to the effective date of such suspension. If payments are suspended, The Children's Trust must specify in writing the actions that must be taken by Provider as condition precedent to resumption of any payments and shall specify a reasonable date for Provider's compliance. The Children's Trust may also suspend any payments in whole or in part under any other contracts entered into between The Children's Trust and Provider by providing separate written notice to Provider of each such suspension and specifying the effective date of suspension, which must be at least five business days before the effective date of such suspension, in any event The Children's Trust shall continue to review and pay verifiable requests for payment as provided for in such other contracts for services that were performed and/or for deliverables that were substantially completed at the sole discretion of The Children's Trust prior to the effective date of such suspension. Provider shall be responsible for all direct and indirect costs associated with such suspension including reasonable attorney's fees.
- c. The Children's Trust may terminate this Contract by giving written notice to Provider of such termination and specifying the date of termination at least five (5) business days before the effective date of termination. In the event of such termination, The Children's Trust may (a) request Provider to deliver to The Children's Trust clear and legible copies of all finished or unfinished documents, studies, surveys, reports prepared and secured by Provider with Trust funds under this Contract subject to the rights of Provider as provided for in Paragraphs G and H above; (b) seek reimbursement of any Trust funds which have been improperly paid to Provider under this Contract; (c) terminate further payment of Trust funds to Provider under this Contract, except that The Children's Trust shall continue to review and pay verifiable requests for payment for services that were performed and/or deliverables that were substantially

completed at the sole discretion of The Children's Trust prior to the effective date of such termination; and/or (d) terminate or cancel, without cause, any other contracts entered into between The Children's Trust and Provider by providing separate written notice to Provider of each such termination and specifying the effective date of termination, which must be at least five business days before the effective date of such termination, in which event The Children's Trust shall continue to review and pay verifiable requests for payment as provided for in such other contracts for services that were performed and/or for deliverables that were substantially completed at the sole discretion of The Children's Trust prior to the effective date of such termination. Provider shall be responsible for all direct and indirect costs associated with such termination, including reasonable attorney's fees.

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

J. TERMINATION BY EITHER PARTY

The parties agree that this Contract may be terminated by either party by written notice to the other party of intent to terminate at least thirty (30) calendar days prior to the effective date of such termination.

K. INSURANCE REQUIREMENTS

Provider shall have Provider's insurance agent(s) provide to The Children's Trust within 30 days of contract execution, Certificates of Insurance or, if applicable, a letter of self-insurance indicating coverage applicable to a Florida municipal corporation required under this section or as determined by The Children's Trust, except as required by Florida law for government entities. Provider must comply with this requirement; failure to comply is a material breach of this Contract.

The Children's Trust shall be named as an additional insured as their interest may appear on all applicable policies, and all applicable policies shall be maintained in full force and effect for the term of this Contract. The Children's Trust will not disburse any funds until The Children's Trust is provided with the necessary Certificates of Insurance or letter of self-insurance and The Children's Trust has approved such documents.

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

1. Worker's Compensation Insurance covering all employees, non-incorporated independent contractors or consultants, and incorporated independent contractors or consultants that do not have worker's compensation coverage or a valid State of Florida exemption on file with the Department of Labor, as required by Florida Statutes, Chapter 440. In the event that the Provider is no longer exempt from obtaining Worker's Compensation insurance, the Provider must notify The Children's Trust and provide the necessary certificate of insurance upon the termination of the exemption. The employer's liability portion will be \$500,000/\$500,000/\$500,000 as a minimum.
2. Comprehensive General Liability insurance, to include sexual molestation, in an amount not less than \$500,000 combined single limit per occurrence and \$1,000,000 aggregate in a policy year. Deductibles exceeding \$1,000 are discouraged, unless Provider can provide financials to support a higher deductible. The Children's Trust must be designated and shown as an "Additional

Insured as Their Interest May Appear" with respects to this coverage. The general liability policy must contain coverage for the following:

- a. Bodily Injury;
 - b. Property Damage;
 - c. No exclusions for Abuse, Molestation or Corporal Punishment;
 - d. No endorsement for premises only operations.
3. Automobile liability coverage for all owned and/or leased vehicles of Provider and non-owned coverage for their employees and/or sub-contractors and transportation companies **transporting program participants**. The amount of coverage is \$1,000,000 combined single limit per occurrence for bodily injury and property damage. The Children's Trust must be designated and shown as an "Additional Insured as Their Interest May Appear" with respects to this coverage. Coverage can be purchased as non-owned without hired auto coverage when the cost is prohibitive for hired automobile coverage such as the case with the Florida Automobile Joint Underwriting Association; but rental cars cannot be used in the course of Provider's regular operations. Rental cars may be used for travel to attend conferences outside the tri-county area. Transportation companies used by the Provider for the funded program must list The Children's Trust as a certificate holder and as an additional insured.
4. Automobile liability coverage for all owned and/or leased vehicles of Provider and non-owned coverage for their employees and /or sub-contractors **not transporting program participants**. The minimum amount of coverage is \$300,000 combined single limit per occurrence for bodily injury and property damage. The Children's Trust must be designated and shown as an "Additional Insured as Their Interest May Appear" with respects to this coverage. Coverage can be purchased as non-owned without hired auto coverage when the cost is prohibitive for hired automobile coverage such as the case with the Florida Automobile Joint Underwriting Association; but rental cars cannot be used in the course of Provider's regular operations. Rental cars may be used for travel to attend conferences outside the tri-county area.
5. If applicable, Special Events Coverage, as determined by The Children's Trust. The liability coverage will be the same as the coverage and limits required for comprehensive general liability and The Children's Trust must be designated and shown as "Additional Insured as Their Interest May Appear." Special Events policies are for short term functions and not meant to replace annual liability policies. The coverage is for the day or days of the event and must provide coverage the day prior and the day following the event.
6. If applicable, Professional Liability Insurance, as determined by The Children's Trust, with coverage amounts determined by The Children's Trust but not less than \$250,000 per claim and in the aggregate. Defense costs may be inside the limits of liability and the policy can be written on claims made form. The Children's Trust is not required to be named as an Additional Insured. Professional liability insurance is generally required when the scope of services uses professional services that require certification or license(s) to provide direct services to program participants.
7. Proof of Property Coverage is required when Provider has capital equipment owned by The Children's Trust and said capital equipment is under the care custody and control of Provider. The Children's Trust must be shown on the evidence of property coverage as a Loss Payee. Property coverage shall survive the expiration or termination of this Contract until such time the ownership of the capital equipment is transferred to Provider or such capital equipment is returned to The Children's Trust.

Certificate Holder

Certificate holder must read:
The Children's Trust
3150 SW 3rd Avenue, 8th Floor
Miami, Florida 33129

Classification and Rating

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

The company must be rated no less than "B" as to management, and no less than "Class V" as the financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the reasonable approval of The Children's Trust.

Provider and or Provider's insurance agent, as applicable, shall notify The Children's Trust, in writing, of any material changes in insurance coverage, including, but not limited, to any renewals of existing insurance policies, not later than thirty (30) days prior to the effective date except for ten (10) days for lack of payment changes. Provider shall be responsible for ensuring that all applicable insurances are maintained and submitted to The Children's Trust for the duration of this Contract.

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

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

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

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

L. PROOF OF TAX STATUS

Provider is required to keep on file the following documentation for review by The Children's Trust.

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

M. NOTICES

Written notices pursuant to this Contract shall be sent to the addresses for each Party appearing on the first page of this Contract. Notices to The Children's Trust shall be marked to the attention of its President/CEO. It is each Party's responsibility to advise the other Party in writing of any changes in responsible personnel for accepting Notices under this Contract; mailing address, and/or telephone number.

N. AUTONOMY

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

O. RECORDS, REPORTS, AUDITS AND MONITORING

The provisions of this section shall survive the expiration or termination of this Contract, consistent with Florida laws.

1. Accounting records

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

2. Financial audit and program specific audit

Within 180 days of the close of its fiscal year, Provider agrees to submit to The Children's Trust an Annual Financial Audit, performed by an independent certified audit firm that is registered to do business with the Florida State Department of Business Regulation, of all its corporate activities and any accompanying management letter(s) or report(s) on other matters related to internal control, for each year during which this Contract remains in force and until all funds expended from this Contract have been audited. If no management letter or report or other matters related to internal control is prepared by the independent audit firm, Provider must confirm in writing to The Children's Trust that no such report was submitted to Provider. This audit shall be conducted in accordance with auditing standards generally accepted in the United States of America and standards contained in the Government Auditing Standards issued by the Comptroller General of the United States.

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

Within 180 days of the close of its fiscal year, a Provider who is contracted for a combined total of \$300,000 or more from The Children's Trust from this or any other The Children's Trust contract(s), related to the fiscal year under audit, Provider agrees to have a program-specific audit relating to The Children's Trust contract(s), in addition to the annual financial audit. This program-specific audit is to encompass an audit of The Children's Trust contract(s) as specified in Attachment D: Program Specific Audit Requirements.

A provider that does not meet the program-specific audit threshold requirement will be exempt from the program-specific audit requirement in the fiscal year that the audit threshold is not met.

Audit extensions may be granted in writing by The Children's Trust after proper approval has been obtained from The Children's Trust's Finance Department, upon receipt in writing of such request with appropriate justification by Provider. A copy of the engagement letter, along with the audit completion date and any concerns from the auditing firm in relation to the audit, must accompany the request. Approved extension requests allow for the continuation of payment until such time that the extension expires.

The financial audit and other financial information will be used in the evaluation of Provider's performance and Provider's overall fiscal health.

3. Access to records

Provider shall provide access to all records including subcontractor(s) which relate to this Contract at its place of business during regular business hours. Provider agrees to provide such assistance as may be necessary to facilitate their review or audit by The Children's Trust to insure compliance with applicable accounting, financial, and programmatic standards. This would include access by The Children's Trust or its designee, to Provider's independent auditor's working papers for complying

with federal, state and local requirements. The Children's Trust reserves the right to require Provider to submit to an audit by an auditor of The Children's Trust's choosing at The Children's Trust's expense.

4. Monitoring

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

5. Client Records

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

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

6. Internal Documentation/Records Retention

Provider agrees to maintain and provide for inspection to The Children's Trust, during regular business hours the following as may be applicable, subject to applicable confidentiality requirements: (1) personnel files of employees which include hiring records, background screening affidavits, job descriptions, verification of education, and evaluation procedures; (2) authorized time sheets, records, and attendance sheets to document the staff time billed to provide Services pursuant to this Contract; (3) daily activity logs and monthly calendars of the provision of Services pursuant to this Contract; (4) training modules; (5) pre and post session questionnaires; (6) all participant attendance records; (7) participant consent and information release forms; (8) agency policies and procedures; and (9) such other information related to Service provision as described in Attachment A and as required by this Contract; all upon request by The Children's Trust. Provider shall retain all records for not less than five years beyond the last date that all applicable terms of this Contract have been complied with and final payment has been received, and appropriate audits have been submitted to and accepted by the appropriate entity.

7. Confidentiality

Provider and The Children's Trust understand that during the course of performing the Services hereunder, each party may have access to certain confidential and proprietary information and materials of the other party in order to further performance of the Services. The Parties shall protect confidential information and comply with applicable federal and state laws on confidentiality to prevent unauthorized use, dissemination or publication of confidential information as each party uses to protect its own confidential information in a like manner. The Parties shall not disclose the confidential information to any third party (except that such information may be disclosed to such Party's attorneys), or to any employee of such Party who does not have a need to know such information, which need is related to performance of a responsibility hereunder. However, this Contract imposes no obligation upon the Parties with respect to confidential information which (a)

was lawfully known to the receiving party before receipt from the other, (b) is or becomes a matter of public knowledge through no fault of the receiving party, (c) is rightfully received by the receiving party from a third party without restriction on disclosure, (d) is independently developed by or for that party, (e) is disclosed under operation of law, (f) is disclosed by the receiving party with the other party's prior written approval or (g) is subject to Chapter 119 of the Florida Statutes or is otherwise required to be disclosed by law. The confidentiality provision of this Contract shall remain in full force and effect after the termination of this Contract. Provider shall specifically require all sub-contractors to comply with this paragraph.

8. Security Obligation

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

9. Withholding of payment

At the sole discretion of The Children's Trust, payment may be withheld for non-compliance of contractual terms. The Children's Trust will provide payment upon satisfactory compliance of the contractual terms as solely determined by The Children's Trust.

P. MODIFICATIONS

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

Q. GOVERNING LAW & VENUE

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

R. BACKGROUND SCREENING

In accordance with Sections 943.0542, 984.01, Chapter 435, 402, 39.001, and 1012.465 Florida Statutes, as applicable, employees, volunteers and subcontracted personnel who work in direct contact with children or who come into direct contact with children must complete a satisfactory Level 2 background screening. Level 2 Background screenings must be completed through the Florida Department of Law Enforcement (FDLE), VECHS (Volunteer & Employee Criminal History System) Program. Satisfactory background screening documentation will be accepted for those agencies that already conduct business with either the Department of Children and Families (DCF) or the Department of Juvenile Justice (DJJ) or the Miami Dade County Public School System (MDCPS). A clearance letter from MDCPS Office of Employment Standards indicating the person has successfully completed a Level 2 screening will be accepted.

If background screenings are completed with VECHS, then Provider shall complete an Attachment E: "Affidavit for Level 2 Background Screenings" each for contract term. The Affidavit will cover employees, volunteers, or subcontractors performing services under this contract who are required to complete a Level 2 background screening as defined in this section. Provider shall keep Attachment E: "Affidavit for Level 2 Background Screenings" in Provider's personnel, volunteers, and/or sub-contractors files.

An Attestation or Affidavit of Good Moral Character, as applicable, must be completed annually for each employee, volunteer, and subcontracted personnel who work in direct contact with children. Provider shall re-screen each employee, volunteer and/or subcontractor every five years.

S. CHILDREN WITH DISABILITIES AND THEIR FAMILIES

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

T. REGULATORY COMPLIANCE

1. Non-discrimination and Civil Rights

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

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

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

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

2. Public Entities Crime Act

Provider will not violate the Public Entities Crimes Act (Section 287.133, Florida Statutes), which essentially provides that a person or affiliate who is a Provider, consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to The Children's Trust, may not submit a bid on a contract with The Children's Trust for the construction or repair of a public building or public work, may not submit bids on leases of real property to The Children's Trust, may not be awarded or perform work as a Provider supplier, sub Provider, or consultant under a contract with The Children's Trust, and may not transact any business with The Children's Trust in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in cancellation of this Contract and recovery of all monies paid hereto, and may result in debarment from The Children's Trust's competitive procurement activities.

3. Conflict of Interest

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

conflict of interest provisions throughout the course of this Contract and in connection with its obligations hereunder.

4. Compliance with Sarbanes-Oxley Act of 2002

Provider shall comply with the following provisions of the Sarbanes-Oxley Act of 2002:

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

5. Licensing

Provider (and subcontractor, as applicable,) shall obtain and maintain in full force and effect during the term of this Contract any and all licenses, certifications, approvals, insurances, permits and accreditations, required by the State of Florida, Miami-Dade County, relevant municipalities, The Children's Trust or the federal government. Provider must be qualified and registered to do business in the State of Florida both prior to and during the contract term with The Children's Trust.

6. Incident Reporting

An incident is defined as any actual or alleged event or situation that creates a significant risk of substantial or serious harm to the physical or mental health, safety or well being of a child participating in the program. Reportable incidents include, but are not limited to, allegations of abuse, neglect or exploitation of a child, injury of a participant, missing child or abandoned child, loss of property use for the program, or destruction of property used in the program.

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

Provider shall notify the contract manager of any incident as defined within three (3) days after Provider is informed of such incident. Provider shall provide written notification of the incident together with a copy of the incident report. The report must contain the following:

- (1) Name of reporter (person giving the notice)
- (2) Name and address of victim and guardian
- (3) Phone number where the reporter can be contacted
- (4) Date, time, and location of incident
- (5) Complete description of incident and injuries, if any

Police report and actions taken shall be submitted to The Children's Trust within fifteen (15) days of the incident. Provider shall provide written notification to The Children's Trust, within seven (7) days, of any legal action related to the incident.

7. Sexual Harassment

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

8. Proof of Policies

Provider and subcontractor, as applicable, shall keep on file copies of its policies including but not limited to confidentiality, incident reporting, sexual harassment, non-discrimination, equal opportunity and/or affirmative action, Americans with Disabilities Act, and drug-free workplace.

U. CONSENT

Provider must obtain parental/legal guardian consent for all minor participants to participate and/or for adult participants in the program for services; and to share information with The Children's Trust for monitoring and evaluation purposes.

Provider will ask participants to sign a voluntary Consent to Photograph form. The form is available in English, Spanish, and Creole and can be downloaded from www.thechildrenstrust.org. The signed consent form for photography will be maintained at the program site, with a copy filed in the participant's record. The consent shall be part of the participants' registration form, and signed by parent/guardian before services commence or assessments are administered. Any refusal of consent must be properly documented and signed by the parent or legal guardian on the consent form.

V. PROGRAMMATIC DATA REPORTING

Demographic and service information on program participants will be provided to The Children's Trust as part of The Children's Trust's research mission. Provider agrees to comply and participate in any data collection reporting, including participant data as required by The Children's Trust and described in **Attachment C** to this contract, Programmatic Data and Reporting Requirements, subject to confidentiality requirements. In addition, Provider agrees to furnish The Children's Trust with complete and accurate reports in the timeframe and format to be reasonably specified by The Children's Trust, and as described in Attachment C.

Provider must participate and provide agency (agency profile) and site(s) information to Switchboard of Miami 2-1-1, The Children's Trust 24 hour helpline, as applicable and as defined in Attachment C: Programmatic Data Reporting Requirements.

W. PUBLICITY

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

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

X. PUBLICATIONS

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

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

English:

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

Español:

Town of Cutler Bay está financiado por El Fidecomiso de los Niños (The Children's Trust). El Fidecomiso de los Niños es una fuente de financiación, establecida por referendum para mejorar las vidas de niños y familias en el Condado de Miami-Dade.

Kreyol:

Town of Cutler Bay finanse pa "The Children's Trust". Trust la, se yon sous lajan ke gouvnan amerikin vote an referandom pou ke' li investi byen nan pwogram kap amelyore la Vi Ti Moun ak fanmi yo nan Myami Dade.

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

Y. HEADINGS, USE OF SINGULAR AND GENDER

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

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Z. TOTALITY OF CONTRACT/SEVERABILITY OF PROVISIONS

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

- Attachment A: Scope of Services
- Attachment B: Other Fiscal Requirements, Budget, and Method of Payment
- Attachment C: Programmatic Data and Reporting Requirements
- Attachment D: Program Specific Audit Requirements
- Attachment E: Affidavit for Level 2 Background Screenings, if applicable
- Attachment F: Performance Improvement Plan, if applicable

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

**Town of Cutler Bay
MIAMI-DADE COUNTY, FLORIDA**

THE CHILDREN'S TRUST

Provider Federal ID#_020768791_____

By: _____
(Signature of Authorized Representative)

by: _____
(Signature)

Type or Print Name

Modesto E. Abety

(Type/Print Title)

President and CEO

Date: _____

Date _____

Approved as to form and legal sufficiency

County Attorney

Date: _____

This contract is not valid until signed by both parties

ATTACHMENT A:

Scope of Services

Attachment A
Out-of-School Scope of Services
Contract No. 1010-XXX
Agency Name: Town of Cutler Bay
Program Name: Cutler Ridge Park After School Program

1. Program Summary (Limit to 100 words):

The Town of Cutler Bay's After School Program at Cutler Ridge Park is a year-round out-of-school program for 75 General Population participants ages 6 to 12 residing primarily in the Cutler Bay area. Programming will include a wide range of activities designed to enhance the children's education, fitness and social interactions. The program will provide daily transportation from local elementary schools to the program site through the use of a leased van. The program utilizes a computer lab to enhance reading skills, strengthen computer skills and provide homework assistance. Daily homework assistance is provided in order to relieve some of that burden from busy parents.

2. Contracted Services:

	After-School 2009-2010	Summer Camp 2010
Number of slots to be filled daily:	GP: 70 CWD: 5 Total: 75	GP: CWD: Total:

3. Performance Measures: Quantity – "How much will we do?"

AFTER-SCHOOL – August 23, 2010 to June 8, 2011
(42 weeks, including winter break and spring break)

After-School Activities Service Name & Description Specify site, age, and other differences and accommodations for children with disabilities when applicable 75% of the program's operating hours must be accounted for in planned activities.	Site of Service Committee Variable Hours/Week	
Literacy / Academics <u>Literacy Activities:</u> Children will use the Lexia Reading computer program by Lexia Learning. Participants will have access to the program for their appropriate grade (either "Lexia Primary Reading" for children ages 6 to 8, or the "Lexia Strategies for Older Students" for children ages 9 to 12). Children will also read in a group setting, including reading aloud from age-appropriate books. <u>Evidence-Based Curriculum Used:</u> <i>Lexia Reading</i>		Daily for 30 min. per day
<u>Accommodations for CWD (if applicable):</u> Modifications will be made to grade level reading assignments and duration of the reading activity (if warranted) on a "per student" basis for those participants who are identified by their parents as having a learning disability, and for whom an IEP is provided by the parents.	Anticipating 5 Children With Disabilities who might be affected.	Daily for a minimum of 30 min. per day

<p align="center">After-School Activities/ Service Name & Description</p> <p align="center"><i>Specify site, age, and other differences and accommodations for children with disabilities when applicable</i></p> <p align="center"><i>75% of the program's operating hours must be accounted for in planned activities.</i></p>	<p align="center">Site or Group Comment/ Variance</p> <p align="center"><i>(Include slots)</i></p>	<p align="center">Frequency, Intensity and Duration</p>
<p>Homework Assistance will be offered daily Monday through Thursday (Fridays as needed) when school is in session.</p>		<p align="center">Daily for 30 min. per day</p>
<p>Literacy Facilitator and Academic Activities Facilitator(s) : Recreation Coordinator Homework Assistance Facilitator(s): Outreach Worker and Park Service Aides</p>		
<p>Fitness</p> <p><u>Fitness Activities:</u> Participants will be engaged in a variety of active games designed to stress three fitness components – cardiovascular endurance, muscular strength and flexibility. In addition, healthy eating habits will be reinforced utilizing the Commit 2B Fit program.</p>		<p align="center">Daily for 30 min. per day</p>
<p><u>Evidence-Based Curriculum Used:</u> Commit 2B Fit</p>		
<p><u>Accommodations for CWD:</u> N/A</p>		
<p><u>Fitness Facilitator(s):</u> Recreation Coordinator and Park Service Aides</p>		
<p>Social Skills</p> <p><u>Social Skills Activities:</u> Participants will be introduced to literature and activities that address fundamental character qualities using the Positive Action curriculum. Using games, posters, poetry, art and literature, the Outreach Worker will facilitate six units throughout the school year – “Self-Concept”, “Positive Actions for Body and Mind”, “Managing Yourself Responsibly”, “Social Skills and Character”, “Mental Health”, “Setting and Achieving Goals”.</p>		<p align="center">1 time/wk for 30 min. per day</p>
<p><u>Evidence-Based Curriculum Used:</u> <i>Positive Action</i></p>		
<p><u>Accommodations for CWD (if applicable):</u> N/A</p>		
<p><u>Social Skills Facilitator:</u> Outreach Worker</p>		
<p>Family Involvement</p> <p><u>Family Involvement Activities:</u> Program staff will coordinate two family events during the school year: The <i>Thanksgiving Dinner</i> and the <i>Spring Fling Pool Party</i> will allow parents to interact with program staff, other parents and their children's friends on a relaxed social level. Children will be able to demonstrate proper social skills learned during the year.</p>		<p align="center">Two activities during the school year - one in the Fall and one in the Spring</p>
<p><u>Family Involvement Activity Facilitator(s):</u> Outreach Worker, Recreation Coordinator and Park Service Aides</p>		
<p>Supervised Free-Choice Activities</p> <p><u>Supervised Free Choice Activities:</u> Children will have the opportunity to participate in active outdoor activities including soccer, football, volleyball, basketball and tennis as well as indoor recreational activities including table tennis, table soccer, chess, checkers, and</p>		<p align="center">Daily for 30 min. per day</p>

After-School Activities/ Service Name & Description <i>Specify site, age, and other differences and accommodations for children with disabilities when applicable</i> 75% of the program's operating hours must be accounted for in planned activities.	Site or Group Comment/ Variance <i>(Include # slots)</i>	Frequency, Intensity and Duration
other board games. Children will also have the option to use the swimming pool once a week on Fridays.		
Supervised Free-Choice Facilitator: Recreation Coordinator and Park Service Aides		

Nutritious Food and Beverage Requirement: Provider will ensure that all children and youth have a nutritious lunch and snack, at a minimum, during summer and full-day program days and a snack during after-school and partial day program days. Weekly menus are to be posted in a visible location at each service site.

4. Performance Measures: Outcomes - Measuring "Is anyone better off?"

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

After-School Outcomes Table			
Outcomes	Outcome Indicators	Data Source/ Measurement Tool	Data Collection Method/Instrument
Improve academic skills and literacy	<u>Midpoint Performance:</u> 85% of children will improve oral reading skills <u>End-of-Year Performance:</u> 90% of children will improve oral reading skills	1 Minute Oral Reading Fluency	The Outreach Coordinator will administer pre, mid and post tests and will present the results to the Administrative Assistant who will enter data into The Trust's data system. The Parks and Recreation Director and Recreation Coordinator will review the data for accuracy and analyze reports to assess and improve program performance.
Improve physical health and fitness	<u>Midpoint Performance:</u> 75% of children will improve fitness performance <u>End-of-Year Performance:</u> 85% of children will improve fitness performance	PACER Multi-Stage Shuttle Run	The Outreach Coordinator and Recreation Coordinator will administer pre, mid and post tests and will present the results to the Administrative Assistant who will enter data into The Trust's data system. The Parks and Recreation Director and Recreation Coordinator will review the data for accuracy and analyze reports to assess and improve program performance.

Compliance, performance and outcome testing and reporting requirements are outlined in Attachment C.

5. Staff Qualifications:

Provider represents that all persons delivering the Services required by this Contract have the knowledge

and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and Services set forth in the Scope of Services (Attachment A) and to provide and perform such Services to The Children's Trust's satisfaction. All persons delivering the services described herein must be included in the Staffing Plan worksheet in the Budget (Attachment B).

6. Ratios:

School Year 2010/2011:	14	Children (Slots) per 1 Direct Service Staff*
School Year for Children with Disabilities 2010/2011:	5	Children (Slots) per 1 Direct Service Staff*

Summer 2011:	N/A	Children (Slots) per 1 Direct Service Staff*
Summer for Children with Disabilities 2011:		Children (Slots) per 1 Direct Service Staff*

*Volunteers may only be counted towards the staff:slot ratio if they are screened and trained and their work days and times match what would be required for a paid staff member in the position a volunteer occupies.

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APENDIX 1:

Schedule of Activities

**Town of Cutler Bay
ACTIVITY SCHEDULE
AFTER SCHOOL 2010-2011**

TIME	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
2:30-3:00	Transportation	Transportation	Early Release HW Assistance	Transportation	Transportation
3:00-3:30	Snack	Snack	Snack	Snack	Snack
3:30-4:00	Literacy Time	Literacy Time	Literacy Time	Literacy Time	Literacy Time
4:00-4:30	HW Assistance	HW Assistance	HW Assistance	HW Assistance	HW Assistance
4:30-5:00	HW Assistance	HW Assistance	Social Skills	HW Assistance	HW Assistance
5:00-5:30	Fitness	Fitness	Fitness	Fitness	Fitness
5:30-6:00	Supervised Free Choice	Supervised Free Choice	Supervised Free Choice	Supervised Free Choice	Supervised Free Choice

APENDIX 2:

**Program Service Operating
Site Table**

SITE LOCATION 1

Site Name: Cutter Ridge Park IF MDCPS school-based site, list School Name: _____ Zip Code: 33189
 Site Address: 10100 Sw 200 Street City: Cutter Bay
 Phone Number: (305) 238-4166 Fax: (305) 233-5457
 Contact Person: Alan Rickle Does your organization currently operate a program at this site (Y/N)? Y
 Phone Number: (305) 238-4166 After School: Summer Age Range: 6 to 12 Grade Range: K through 5
 E-mail: andrea@cutterbay.com Site License? N/A Exemption Letter? Yes State if Pending or Not Applied: N/A
 DCF Child Care License Status: _____ Do you anticipate you will have openings for the Summer 2011 Camp (Y/N)? N/A
 Source of After-School Snacks: _____ Agency-Pay: State Purchase Source of Summer Camp Lunches & Snacks: Select From Drop Down List
 Vendor/Sponsor/Donor/Other: _____ BI's / Public Vendor/Sponsor/Donor/Other: _____
 After-School Food Other: Select From Drop Down List Source of Summer Camp Food Other: Select From Drop Down List

The Children's Trust must approve a change of this site location prior to such change being executed by the provider.

If fees are charged, a sliding fee scale is required and a copy of the scale must be submitted to The Children's Trust.

Service Name	Service Start Date	Service End Date	Specific Dates	Number of days	Hours of Operation	Hours per day	General Population	Children with Disabilities	Total	Total Units	Registration Fee	Fee per Child	Specify Daily, Weekly, Monthly, Seasonal, etc.
After School Days	8/23/2010	6/9/2011	N/A	180	2:30 PM to 6:00 PM	3.5	70	5	75	13,500	\$10.00	\$0.00	
Saturdays			N/A	0	N/A	0	0	0	0	0			
Legal Holiday			N/A	0	N/A	0	0	0	0	0			
Teacher Planning			2010: Sep. 9, Nov. 1 & 2, 2011: Jan. 21, Feb. 18, Apr. 4 & 22	7	7:30 AM to 6:00 PM	10.5	30	0	30	210			
Thanksgiving/Winter/Spring Breaks			Winter: Dec. 20 - 30, 2010 Spring: Mar. 14 - 18, 2011. Exc. 12/24 & 12/30	13	7:30 AM to 6:00 PM	10.5	30	0	30	390			
Summer Camp 2011	N/A	N/A	N/A	0	N/A	0	0	0	0	0			

SITE LOCATION 2

Site Name: _____ IF MDCPS school-based site, list School Name: _____ Zip Code: _____
 Site Address: _____ City: _____
 Phone Number: _____ Fax: _____
 Contact Person: _____ After School: _____ Does your organization currently operate a program at this site (Y/N)? _____
 Phone Number: _____ Summer _____ Age Range: _____ Grade Range: _____
 E-mail: _____ Site License? _____ Exemption Letter? _____ State if Pending or Not Applied: _____
 DCF Child Care License Status: _____ Do you anticipate you will have openings for the Summer 2011 Camp (Y/N)? _____
 Source of After-School Snacks: _____ Agency-Pay: _____ Source of Summer Camp Lunches & Snacks: Select From Drop Down List
 Vendor/Sponsor/Donor/Other: _____ BI's / Public Vendor/Sponsor/Donor/Other: _____
 After-School Food Other: Select From Drop Down List Source of Summer Camp Food Other: Select From Drop Down List

The Children's Trust must approve a change of this site location prior to such change being executed by the provider.

If fees are charged, a sliding fee scale is required and a copy of the scale must be submitted to The Children's Trust.

Service Name	Service Start Date	Service End Date	Specific Dates	Number of days	Hours of Operation	Hours per day	General Population	Children with Disabilities	Total	Total Units	Registration Fee	Fee per Child	Specify Daily, Weekly, Monthly, Seasonal, etc.
After School Days	8/23/2010	6/9/2011	N/A	180					0	0			
Saturdays									0	0			
Legal Holiday									0	0			
Teacher Planning									0	0			
Thanksgiving/Winter/Spring Breaks									0	0			
Summer Camp 2011	N/A	N/A	N/A	0					0	0			

Overall Program Summary - Do not fill Overall Program Summary section. Complete Site Location sections displayed in blue ONLY. Formulas are in place to summarize all sites.

*This table lists projected dates and number of service days based on the available 2010-2011 school calendar. Dates may be revised based on changes to the MDCPS calendar.

Please do not erase formulas in the cells.

Service Name	Service Start Date	Service End Date	Specific Dates	Maximum Number of Days	Hours of Operation	Hours per day	Number of Kids (Children)			Average # Proposed Sessions	Output Utilization Target
							General Population	Children with Disabilities	Total		
After School Days 2010-2011	08/23/10	06/09/11	Number of Days as per State Statute	180	N/A	N/A	70	5	75	180.00	13,500
Saturdays	8/1/2010	7/31/2011	Includes every Saturday Specify dates below	52	N/A	N/A	0	0	0		0
Legal Holiday (Full Day)	N/A	N/A	2010: Sep 6, Nov 11 & 25, Dec 24 & 31 2011: Jan 17, Feb 21, May 30 & Jul 4 (Dec 25 & Jan 1 are included as Saturdays)	9	N/A	N/A	0	0	0		0
Teacher Planning Day (TPD) (Full Day)	N/A	N/A	2010: Sep 9, Nov 1 & 2 2011: Jan 21, Feb 18, April 4, April 22, June 10	8	N/A	N/A	30	0	30	7.00	210
Thanksgiving/Winter/Spring Breaks (Full Day)	N/A	N/A	Thanksgiving: Nov 26 (1 day) Winter: Dec 20 - Dec 31 (6 days exc. 12/24 & 31) Spring: March 14-18 (5 days)	14	N/A	N/A	30	0	30	13.00	390
Summer Camp 2011			Includes every day Mon-Fri, except July 4 Holiday				34	15	49	\$031/01	500

Full Day Types Aggregated for Data Tracker Purposes

**The contract period to which the tables below relate ends July 31, 2011. However, in order for The Children's Trust Data System (Data Tracker) to calculate utilization rates for the entire Summer Camp 2011, please complete these tables through the intended completion of your entire summer 2011 program. If your program anticipates providing summer camp services beyond the July 31st contract end, please include that information in the column labeled August 2011. Please note, however, that the direct service expenses requested in the Summer 2011 contract budget can not exceed the number of days shown for the months of June & July. Expenses for Summer Camp days in August 2011, will be included in the 2011/2012 contract if the program is re-funded in the upcoming OOS RFP.

Children/Youth by Age Group - Add the total number of unduplicated children / youth estimated to be served for After School and Summer by Age Group, as noted in the table above and in the Scope of Services. These are estimates to be used for Trust purposes only and will not be considered in assessing contract compliance.

Estimated Ages	Young Children Ages Birth- 5 years	Ages 6 - 12 years	Ages 13 - 18 years (up to 22 if serving CWD)	TOTAL
After School Days	0	75	0	75
Summer 2011	0	0	0	0
TOTAL				

These totals must match the totals in the Summary Table above

Eligible participants in The Children's Trust funded Out-of-School programs are school-age children ages 5 to 18 years. In addition, children with disabilities ages 18-22 who are still enrolled in K-12 programs and have not achieved a standard diploma may be served with Trust funding through the school year in which they turn 22. Further, only participants enrolled in daily after-school day services are eligible to participate in Trust-funded full day or Saturday services during the school year. The Children's Trust Out-of-School funding is not intended to be used to provide "drop-in" services.

Primary Food Source Key to be used below:

- Provided by Feeding South Florida
 - Agency Pay: Store Purchase
 - Agency Pay: Caterer
 - DOE/DOH/USDA Reimbursed: Store Purchased
 - DOE/DOH/USDA Reimbursed: Caterer
 - Miami Dade Community Action Agency
 - Miami Dade County Schools
 - Other: DOE/DOH/USDA Food Sponsor-Identify Below
 - Donated - Identify Source
 - Other - Identify Source
- Snacks obtained through Feeding South Florida (formerly Daily Bread Food Bank)
 - The agency purchases food from local stores (Publix, Costco, Sysco, etc.). Agency pays for food using Trust funding, other funding or donations, or agency cash
 - The agency purchases prepared food from local caterer. Agency pays for food using Trust funding, other funding or donations, or agency cash
 - The agency purchases food from local stores (Publix, Costco, Sysco, etc.). Agency pays for food and is reimbursed by DOE/DOH/USDA
 - The agency purchases prepared food from caterer. Agency pays for food and is reimbursed by DOE/DOH/USDA
 - Snacks/lunches obtained through Miami-Dade Community Action Agency
 - Snacks/lunches obtained through Miami-Dade County Public Schools
 - Snacks/lunches obtained through any other DOE/DOH/USDA food sponsor. Identify the sponsor in the space provided.
 - Snacks/lunches donated to the program. Identify the donor in the space provided.
 - Snacks/lunches obtained through any other source. Identify the source in the space provided.

ATTACHMENT B:

**Other Fiscal Requirements,
Budget and
Method of Payment**

**ATTACHMENT B
OTHER FISCAL REQUIREMENTS, BUDGET and METHOD OF PAYMENT**

Advance payment requests

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

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

Advance payment

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

Budget revisions

Budget revision(s) require prior written approval from the Contract Manager and The Children's Trust's Chief Financial Officer or their designee(s). Request for budget revisions must be submitted to the Contract Manager using the appropriate form, as determined by The Children's Trust. Provider must request a budget revision to add, delete, and/or modify any line item(s). Budget revisions can not be used to modify the total contracted amount nor can they be used to modify the Scope of Services. No more than two (2) budget revisions may be approved during the contract term. Budget revision requests must be submitted sixty (60) days prior to the expiration of Contract. Budget revisions will be incorporated into the Contract.

Indirect Administrative Costs

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

Cost Reimbursement Method of Payment

The parties agree that this is a cost reimbursement method of payment contract; Provider shall be paid in accordance with the approved budget and/or approved budget revision as set forth in this Attachment. Provider also agrees to timely pay its subcontractors, vendors, and employees for the fulfillment of services provided in this Contract.

Invoice Requirements

Provider shall submit an original request for payment, in the format prescribed by The Children's Trust and in accordance with the approved budget or approved budget revision(s). The request for payment is due on or before the fifteenth (15th) day of the month following the month in which expenditures were incurred (exclusive of legal holidays or weekends). The Children's Trust agrees to reimburse Provider on a monthly billing basis. Every request by Provider for payment for services provided, work performed, or costs incurred pursuant to this Contract, except for any advanced payments by The Trust, shall be accompanied by a Request for Payment from The Children's Trust. If there are subcontractors to this Contract, 'Subcontractor Verification of Payment' from subcontractors of Provider must be included if the Request for Payment includes a request for reimbursement in relation to a payment made to a

subcontractor. These forms may be downloaded from The Trust's website. For the purpose of payment only, a subcontractor is defined as an independent agency that has entered into agreement with Provider to perform services pertaining to The Children's Trust funded programs identified in this Contract.

The Children's Trust reserves the right to request any supporting documentation. A final request for payment (last monthly invoice of the contract term) from Provider will be accepted by The Children's Trust up to forty-five (45) days after the expiration of this Contract. If Provider fails to comply, all rights to payment shall be forfeited.

If The Children's Trust determines that Provider has been paid funds not in accordance with this Contract, and to which it is not entitled, Provider shall return such funds to The Children's Trust or submit appropriate documentation to support the payment. The Children's Trust shall have the sole discretion in determining if Provider is entitled to such funds in accordance with this Contract and The Children's Trust's decision on this matter shall be binding.

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

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

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

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

Supporting Documentation Requirements

Provider shall maintain original records documenting actual expenditures and services provided according to the approved budget and scope of services as required. Supporting documentation shall be made available and provided to The Children's Trust upon request.

Provider shall keep accurate and complete records of any fees collected, reimbursement, or compensation of any kind received from any client or other third party, for any Service covered by this Contract, and shall make all such records available to The Children's Trust upon request. Provider shall maintain a cost allocation methodology that it uses to allocate its costs. Provider shall use a cost allocation methodology which assures that The Children's Trust is paying only its fair share of costs for services, overhead, and staffing not solely devoted to the program funded by this Contract. Such methodology shall be made available to The Children's Trust upon request.

GENERAL INFORMATION

Areas in Blue to be completed by the Agency

Organization Name: Town of Cutler Bay
 Agency Fiscal Year: October 1 to September 30 (for example: July 1 to June 30)
 Program Title: Cutler Ridge Park After School Program

BUDGET REVENUES

Agency Source of Funding	Name of Source of Matching Funds for the Program Budget	Program Revenues	Agency Revenues	% of Agency Revenues
Trust Amount Requested		\$96,110.44	\$96,110.44	7.1%
Trust Other Funding				0.0%
Total Sources of Revenue Other than The Trust and In-Kind		0.00	0.00	0.0%
Miami-Dade County Grants(Local)				0.0%
Federal Grants				0.0%
State Grant				0.0%
Foundations/Charitable Funds				0.0%
Cash/Fees/Other Revenue				0.0%
- Cash				0.0%
- Program Fees				0.0%
- CDS Subsidies for School-Aged children				0.0%
- Other				0.0%
In-Kind Contributions (list below)		115,437.22	1,253,040.00	92.9%
Town of Cutler Bay	General Fund Budget	115,437.22	1,253,040.00	92.9%
				0.0%
				0.0%
Subtotal Sources of Revenue Other than The Trust		115,437.22	1,253,040.00	92.9%
Total Budget - Revenues		\$ 211,547.66	\$ 1,349,150.44	100.0%

BUDGET EXPENSES

	Program Expenses	Agency Expenses	% of Agency Expenses
Total Program Budget	\$ 211,547.66	\$ 211,547.66	100.0%
Total Agency Other Expenses			0.0%
Total Budget - Expenses	\$ 211,547.66	\$ 211,547.66	100.0%
Variance	\$ -	\$ 1,137,602.78	

Organization Name: Town of Cutler Bay
 Contract Period: 8/1/10 to 7/31/11 months

Areas in Blue to be completed by the Agency

PROGRAM BUDGET	Program Period		Program Period		Program Period		10/11 Summer Requested Funding Total	Matching Funds Amount	Justification (Provide justification in each line by Program Period: After-School 10/11, Summer 2011) For all line items, show the calculations used to determine the amounts requested.
	August 23, 2010 to June 8, 2010		Summer 2010/2011		10/11				
	After-School	Summer	Requested	Requested	Requested	Requested			
Position Name	Annual Salary (12 Months)	Equivalent	Percent	Amount	Equivalent	Percent	Amount	Amount	
LEAD Full-Time Employees	90,000.00	18,000.00	0.0%	0.00	0.00	0.00	0.00	18,000.00	After-School: N/A
Parks & Recreation Director (In-kind)	36,000.00	18,000.00	0.0%	0.00	0.00	0.00	0.00	18,000.00	After-School: N/A
Administrative Assistant (In-kind)	38,000.00	7,600.00	0.0%	0.00	0.00	0.00	0.00	7,600.00	After-School: N/A
Outreach Worker	30,576.00	25,872.00	100.0%	25,872.00	0.00	0.00	25,872.00	4,704.00	After-School: \$14,70/hr X 40 hrs./wk. X 44 weeks. Position will devote 100% of time for 44 weeks. Paid bi-weekly.
Full-Time Total			1.0	25,872.00		0.00	25,872.00	48,304.00	
LEAD Part-Time / Seasonal Employees									
Park Service Aide (2 In-kind)	11,812.50	11,812.50	0.0%	0.00	0.00	0.00	0.00	23,625.00	After-School: N/A
Park Service Aide (3)	10,631.25	8,977.50	300.0%	26,932.50	0.00	0.00	26,932.50	1,653.75	After-School: \$11.25/mr X 19 hrs./wk. X 42 wks. X 3 positions. Positions will devote 100% of time for 42 weeks. Paid bi-weekly.
Part-Time Total			3.0	26,932.50		0.00	26,932.50	25,278.75	
TOTAL PTEA/SALARIES			4.0	\$52,804.50		\$0.00	\$52,804.50	\$73,582.75	
FRINGE BENEFITS									
FICA/MICA	Rate: 7.65%			4,039.54		0.00	4,039.54	5,629.08	
W-Comp's	Rate: 5.84%			3,083.78		0.00	3,083.78	4,297.23	
Unemploy	Rate:			0.00		0.00	0.00	0.00	
Retirement	Rate: 9.85%			5,201.24		0.00	5,201.24	7,247.90	After-School: 9.85% x salaries for 1 FT and 3 PT employees = \$5261.24
Other	Specify & provide calculations								
Health Ins	Cost per Staff: \$10,200.00	8500	100%	8,500.00		0.00	8,500.00	10,880.00	After-School: \$850.00/mo X 1 FT employee X 10 mos. = \$8,500.00
Life Ins.	Rate:			0.00		0.00	0.00	0.00	After-School: Included in Health Ins. cost
TOTAL FRINGE BENEFITS				\$20,824.56		\$0.00	\$20,824.56	\$28,054.21	Exceed 30% of TCT Requested Salaries
OPERATING EXPENSES:									
Travel (other than participants)									After-School: N/A
Travel (participants)				8,001.13			8,001.13	1,360.26	After-School: Transportation from school for participants enrolled in the After-School Program. Lease of one 8 passenger van @ \$650.13 per month x 12 months = \$7801.56 + 83 % = \$6501.30 plus \$.50 X 3,000 Miles = \$1,500
Meals (participants)				10,704.00			10,704.00		After-School: Snacks provided to students in the After-School Program, Teacher's Workday Program and Holiday Camps - one snack per child per day @ \$.60/child x 75 children x 200 days = \$9,000.00 plus lunch provided for 30 children/day X 7 Teacher's Workdays X \$2.84 per day = \$596.40; plus lunch provided for 30 children/day X 13 Holiday Camp days X \$2.84/day = \$1,107.60.
Space (rent of a building)							0.00	0.00	After-School: N/A

Program Budget

Utilities (e.g. telephone, utilities)				0.00			0.00	11,000.00	After-School: N/A
Supplies - office (e.g. paper, printing, postage)		0.00					0.00	1,500.00	After-School: N/A
Supplies-program (e.g. curricula, books)		3,776.25					3,776.25		After-School: Positive Action curriculum materials and student handouts (\$2,340) for social skills component, and Lexia Reading hosting services (\$540) for literacy component and Commit2BFF materials (\$296.25) for Fitness component of After School Program = \$3,176.25. Puzzles, educational games, reading literature, program manuals, posters, arts & crafts supplies, etc. = \$600.
Non-Capital Equipment (less than \$1,000) (List each)		0.00			0.00		0.00		After-School: N/A
Capital Equipment (greater than \$1,000) (List each)		0.00			0.00		0.00		After-School: N/A
Subcontractors (List each)		0.00			0.00		0.00		After-School: N/A
Professional Services/ Independent Contractors		0.00			0.00		0.00		
Instructor (List each)		0.00			0.00		0.00		After-School: N/A
Certified Teacher (List each)		0.00			0.00		0.00		After-School: N/A
Tutor (List each)		0.00			0.00		0.00		After-School: N/A
Professional Services/ Independent Contractor - Additional (List each)		0.00			0.00		0.00		After-School: N/A
Other		0.00			0.00		0.00		After-School: N/A
Advertising		0.00			0.00		0.00		After-School: N/A
Background screening							0.00		After-School: N/A
Admission to field trips							0.00		After-School: N/A
Other - Additional (List each)		0.00			0.00		0.00		After-School: N/A
TOTAL OPERATING EXPENSES:									
Administrative/ Indirect Costs (Can not exceed 10%)		\$22,481.38		\$0.00			\$22,481.38	\$13,800.26	
TOTAL BUDGET		\$96,110.44		\$0.00			\$96,110.44	\$115,437.22	
TOTAL PROGRAM COST (REQUESTED FUNDING AND MATCH) MUST Agree with Total Program Budget on Agency Budget Worksheet								\$211,547.66	

Staffing Plan must EXACTLY match the paid and in-kind staff, volunteers, consultants and sub-contractors described in Attachment A and listed in the Program Budget. Add or delete rows and adjust links to the Program Budget as necessary.

If additional rows for staff positions were added in the Program Budget, please add rows below in the appropriate section and adjust the links to the	After School		Summer		Justification	
	# of Staff	Ratio Yes or No	# of Staff	Ratio Yes or No	Qualifications: Required Minimum Education & Experience	Description of responsibilities related to the program described in Attachment A
List Full-Time Employees						
Parks & Recreation Director (In-kind)	1	N			BS in Recreation and 10 years experience or equivalent combination of education and experience	Responsible for overseeing parks, pool, recreation programs, special events and landscape maintenance contracts, writing and coordinating RFP's and park agreements, grants writing and coordination.
Recreation Coordinator (In-kind)	1	N			BS in Sports administration, Certified Teaching Certificate and 5 years experience or equivalent combination of education and experience	Plans, promotes, organizes and supervises the After School Program.
Administrative Assistant (In-kind)	1	N			High School Diploma or equivalent with a minimum of 3 years experience	Collect and input client data including enrollment forms, attendance, test results, etc.
Outreach Worker	1	Y			Bachelors' Degree or comparable experience	To recruit youth, additional resources/partners. Primary contact/liaison between parents and children in the program. Maintains forms and reports for program. Attend monthly meetings and TCT trainings.
List Part-Time / Seasonal Employees						
Park Service Aide (2 In-kind)	2	Y			High School Diploma or equivalent	Responsible for the safety and supervision of program participants. Provide homework assistance, reading assistance, supervises recreational play and fitness activities.
Park Service Aide (3)	3	Y			High School Diploma or equivalent	Responsible for the safety and supervision of program participants. Provide homework assistance, reading assistance, supervises recreational play and fitness activities.
List Subcontractors who do not have separate budgets:						
List Professional Services/Independent Contractors						
Instructors:						
0						
Certified Teachers:						

If additional rows for staff positions were added in the Program Budget, please add rows below in the appropriate section and adjust the links to the	After School		Summer		Justification	
	# of Staff	Ratio Yes or No	# of Staff	Ratio Yes or No	Qualifications: Required Minimum Education & Experience	Description of responsibilities related to the program described in Attachment A
0						
Tutors:						
0						
Additional Contractors:						
0						
List Other:						
Volunteers **						
Additional Other:						
0						
Subcontractors with Subcontractor Budget:	If the budget includes one or more separate subcontractor budgets, list the subcontractor's paid and in-kind staff, volunteers, consultants, and sub-contractors in the applicable section below. In the Responsibilities section, indicate the employment status of the position: FT employee, PT employee, In-kind Position, Subcontractor, Consultant, or Volunteer. Add additional sections and rows as needed. Delete these sections if not needed.					
Subcontractor:	Insert Subcontractor Name Here					
						Status: Responsibilities:

* # of Staff refers to the number of paid and in-kind staff, subcontractors, consultants and volunteers in each position identified.

**Volunteers may only be counted towards the staff: participant slot ratio if they are screened and trained and they work days and times that match what would be required for a paid staff member in the position a volunteer occupies.

ATTACHMENT C:

Programmatic Data and Reporting Requirements

Attachment C
OUT-OF-SCHOOL
Programmatic Performance and Data Reporting Requirements
Contract No. 1010-XXX
Agency name: Town of Cutler Bay
Program name: Cutler Ridge Park After School Program

The Provider shall submit to The Children's Trust individual participant demographics, attendance, and outcome data for all children participating in the program as noted in the Scope of Service (Attachment A). Reporting includes electronic submission of information into The Children's Trust web-based reporting system (Data Tracker), as well as outcome, narrative, and satisfaction survey reports, as noted below. Provider's use of Data Tracker requires mandatory training (provided by The Children's Trust) and a user login name.

Minimum standards for performance are described in the sections below. The Children's Trust reserves the right to evaluate provider performance against the minimum standards and to reward providers exceeding those standards and to impose remedies on providers performing below the minimum standards. For mid and end of year performance reviews, the Provider is awarded incremental credit for approaching the identified performance targets.

PARTICIPANTS

Eligibility - Children eligible for The Children's Trust funded out-of-school (OOS) programs will be school-age children ages 5 to 18 years. In addition, children with disabilities ages 18-22 who are enrolled in K-12 programs and have not achieved a standard diploma may be served with Trust funding through the school year in which they turn 22.

Demographics - Children's demographics (including all the items noted below), shall be entered into Data Tracker within seven (7) calendar days of each child's first day of attendance. All children's demographics shall be updated on an ongoing basis if and when new information is collected (i.e. new address, grade level, school).

Demographic information required for all children in attendance:

- Participant's Name (last, first, middle initial)
- Parent's name (last, first, middle initial)
- Street Address, City, and Zip Code
- Gender (male, female)
- Date of Birth
- Race (American Indian/Alaska Native, Asian, Black/African American, Pacific Islander, White, Other)
- Ethnicity (Hispanic, Haitian, Other)
- English proficiency (yes/no)
- Other language(s) spoken (English, Spanish, Haitian Creole, None, Other)
- Child's Social Security #
- Child's Miami-Dade County Public Schools ID Number
- Child's Current Grade Level
- Child's Current School
- Does child have a Health Insurance? (yes/no)
- Does child have a disability? (yes/no)
- If disabled, what type? [Autism Spectrum Disorders, Chronic Medical Condition, Developmental Delay, Emotional and/or Behavioral Disorder, Hearing Impairment (or deaf), Intellectual Disability (or mental retardation), Learning Disability, Physical Disability, Speech/Language Impairment, Visual Impairment (or blind), Other]
- Documentation of disability (Individualized Family Service Plan, Individualized Education Plan, Section 504 Plan, diagnosis from a medical doctor, state certified or licensed professional; and/or disclosure by a parent/guardian); *if child is noted as having a documented disability, a hard copy of the selected documentation must be kept within the participant's file for monitoring purposes.*
- Is participant (information to be reported in the Program Narrative Report):

- A child of a migrant farm worker (i.e., parent/caregiver crossed county or state lines in search of temporary or seasonal farm work within the past 36 months)
- Involved with the *Dependency System* (e.g., DCF, Our Kids, full case management agencies, dependency and family courts)
- Involved with the *Delinquency System* (e.g., DJJ, Juvenile Services Department, diversion/Civil Citation programs)

Other information to be obtained for all participants and included in the participant files

- Medical History and Authorization (including special needs and conditions)
- Emergency Contact Information
- Transportation and Pick-up Authorizations
- Confidentiality of Client Information
- Voluntary Consent for Video and Photography
- Signed release of information to The Children's Trust and authorization to participate

Children with Disabilities - The Children's Trust expects that programs will serve children with disabilities, regardless of disability type or level, provided they can be safely and reasonably accommodated in accordance with the American Disabilities Act (www.ada.gov).

Providers who may need assistance in determining whether they can safely and reasonably accommodate children with disabilities must contact their assigned Inclusion Specialist from the All Children Together (ACT) Resource Network. All children must be admitted into programs unless the assigned Inclusion Specialist determines that reasonable accommodations cannot be made.

ACTIVITIES

- A representative Daily Schedule of Activities for each period contracted is included as Appendix – 1. The schedule shall reflect the activities, frequency, and intensity as outlined in Attachment A. Provider may modify the schedule(s), however, any changes that alter the type, frequency, intensity, and/or duration of the activities will require a contract amendment. The approved Schedule of Activities is to be posted in a visible location at each service site.
- Provider will ensure that approximately 75% of the program's operating hours are accounted for in planned activities as indicated in Appendix 1.

PERFORMANCE MEASURES

Attendance – How much are you doing?

- Attendance refers to the actual number of children (with at least one day of attendance) participating in a program during a specific time frame. All children must have their demographic information entered in Data Tracker before they can be credited for attendance. Enrolled children are expected to regularly attend after school days and/or summer camp days. During the school year, only children attending after school days may participate in Full Days and/or Saturdays. Children cannot enroll in a program and attend only Full Days and/or Saturdays.
- Days of Service – Refers to the number of days contracted to be delivered by providers during the school year and/or summer time. The Programmatic Utilization Report in Data Tracker identifies this as, "Total offered sessions." During the school year 180 after school days of service must be offered, and a minimum of 6 consecutive weeks (29 days) must be offered during the summer.
- Average Attendance Per Day – This reflects the average number of contracted slots/seats that are filled on any given day at a program. The Children's Trust recognizes that the number of children enrolled throughout the contract year may be higher than the number of contracted slots filled on a daily basis, and that not all children will attend their program every day. However, material compliance with this

contract requires that a minimum of 85% of slots contracted for participating children will be occupied on a daily basis.

Engagement– How well are you doing?

- Engagement – Refers to the average number of after school days each child has attended based on the child's first day of attendance through an end date. For performance review purposes, providers will be evaluated based on engagement at the midpoint and end of school year. Engagement will not be evaluated during summer camp. Only children enrolled in the program for at least 14 calendar days will be included in the school year engagement calculation.
- Participants are expected to attend a minimum of 80% of program days offered by the midpoint, and 70% by end of school year.

Utilization – How much are you doing?

- Output Utilization – Refers to the number of units served, or the total number of days attended across all children. "Actual" utilization is calculated by summing the total number of days attended by all children (with at least one day of attendance). "Proposed" utilization is based on the total number of proposed or contracted slots multiplied by the total number of proposed sessions. The actual utilization during the selected time frame is then divided by the proposed utilization.
- During any given time frame, The Trust requires that providers serve a minimum of 85% of the units of service contracted (children x days) to be served during that period.

Outcomes – Is anyone better off?

The purpose of evaluation is to promote improvements in outcome achievement and to facilitate changes in program practices that result in improved outcome achievement. To that end, we expect that all children will be evaluated and that all children (and programs) can improve as result. All children attending OOS programs will be tested using the Oral Reading Fluency (ORF) assessment to evaluate oral reading skills, and results must be entered in Data Tracker. If a fitness outcome is part of the contract, the Progressive Aerobic Cardiovascular Endurance Run (PACER) must be used, and results must be entered in Data Tracker.

- **ORF/PACER Adaptations.** The original format of ORF and PACER may not be appropriate for all children. In these cases, providers must review approved adaptation options for the ORF and/or PACER assessments. Currently, ORF has two adaptation options: ORF passage alteration (letter-naming ORF Level K), and an adaptation for visual impairment. PACER has one adaptation for children with hearing impairments. For additional information or assistance with implementing any of these adaptations, contact your Contract Manager. If one of the adaptations does not meet the child's individual assessment needs, then an alternate assessment must be administered.
- **Alternates to ORF/PACER.** Alternate assessments are conducted for children who are not capable of responding or performing via the original or adapted ORF and/or PACER assessment methods. Alternate assessments to ORF and PACER are reserved for children with disabilities. Rather than exempting children from assessments, The Children's Trust requires that providers collaborate with Trust staff (as well as Project RISE and the ACT Resource Network, if needed) to identify developmentally appropriate assessments for every child. Alternate assessments will be identified during contract negotiations, and if needed, alternate outcome indicators will be developed based on previous performance levels. If it is determined that an alternate assessment is needed after contract negotiation, contact your Contract Manager

immediately for further guidance. A contract amendment may not be needed if less than 10% of children require the use of an alternate assessment.

- For each child who receives an alternate assessment to ORF or PACER, the provider must indicate that an alternate assessment was administered to each of those children on the ORF or PACER testing roster in Data Tracker, and also submit additional information on the assessment.
- Aggregate performance data for children receiving alternate assessments to ORF or PACER will be reported as outlined under the subsequent section, "Other Outcomes."
- **Other Outcomes.** Data for assessments other than ORF and PACER (such as social skills assessments or alternate assessments) must be reported into Data Tracker. Providers are required to enter this information directly into Data Tracker in an outcomes reporting section. The data must be submitted electronically to The Children's Trust by the applicable report due dates outlined in this document.

Testing Compliance - For all outcomes contracted, test administration must be as follows:

School Year

- Pre-test - 100% of children will be tested within 30 calendar days of their first day of attendance, regardless of when enrollment occurs.
- Mid-point test - 100% of children with at least one day of attendance between December 1st and January 15th must be tested within that timeframe, regardless of when enrollment occurs.
- Post-test - 100% of children with at least one day of attendance between May 1 and June 9 must be tested within that timeframe, regardless of when enrollment occurs. Post-tests are also to be administered to children who withdraw from the program during the year when prior notice is given.

Summer

- Pre-test - 100% of children will be tested within 14 calendar days of their first day of attendance, regardless of when enrollment occurs. Post-tests administered in the after-school program may serve as pre-tests for returning children if they were administered within 2 weeks of the child's starting date in the summer camp program.
- Post-test - 100% of children in attendance will be tested during the final 14 calendar days of the summer program or no later than July 31st if the Provider will not be funded by The Children's Trust for Out-of-School services after that date. All children in attendance for at least one day during the test administration timeframe are required to be tested.

Matched Sets Compliance - Matched sets refer to those children with at least 2 tests within a review period.

School Year

- 90% of children enrolled for 90+ days by January 15th will have been tested at least twice (based on number of calendar days between the first day of attendance through January 15, 2011).
- 95% of children enrolled for 90+ days by June 9th will have been tested at least twice (based on number of calendar days between the first day of attendance through June 9, 2011).

Summer

- 90% of children enrolled for 30+ days by the end of the program will have been tested at least twice (based on number of calendar days between the first day of attendance through the last day of the program)

Outcome Achievement – Providers are expected to meet the following performance standards on the ORF for oral reading skills, PACER for fitness performance, and social skills measures. Data for all children with matched sets will contribute towards these performance goals:

School Year

- 85% of children will improve oral reading skills at the mid-point; 90% at end-of-year
- 75% of children will improve fitness performance at the mid-point; 85% at end-of-year (if contracted)
- 85% of children will improve social skills at the mid-point; 90% at end-of-year (if contracted)

Summer

- 85% of children will improve or maintain oral reading skills
- 85% of children will improve or maintain fitness performance (if contracted)
- 85% of children will improve or maintain social skills (if contracted)

Satisfaction Surveys – How well are you doing?

Satisfaction surveys must be administered to 100% of children, youth, and their parents once during the school year in March and once during the summer. Providers have the option to administer the satisfaction surveys from The Children’s Trust (which can be found at The Children’s Trust website) or to use a satisfaction survey of their choosing. Providers may also choose to administer the surveys by distributing paper copies of the surveys and asking respondents to complete them, or online through Survey Monkey. If a provider chooses Survey Monkey, it must set up its own user account. Providers will submit aggregate information on the survey results for the school year through an online survey by April 15, 2011. Online survey responses for summer camp surveys must be submitted by September 15, 2011.

QUARTERLY PROGRAM NARRATIVE REPORT

The Program Narrative Report captures a report of program’s successes, challenges, support needed, incidents, and volunteer participation. A standard Word document format is provided and available in the Trust website for download. The report must be submitted quarterly to The Trust.

TRAINING AND QUALITY IMPROVEMENT

The Children’s Trust offers a variety of trainings on important topics to improve service delivery and contract compliance, enhance administrative capacity, and support program and employee development. The Provider is required to ensure attendance by appropriate agency and/or program staff at the following trainings annually: Oral Reading Fluency, Progressive Aerobic Cardiovascular Endurance (PACER), Data Tracker, School-Age Care Environmental Rating Scale (SACERS), New and Renewal Contract Development and Contract Management trainings, Quarterly Provider Meetings, and other topical trainings offered throughout the contract year. Provider must attend a minimum of one training regarding inclusion of children with disabilities during each contract year. In addition, full participation is required with Project RISE, the All Children Together (ACT) Resource Network, and other Trust-funded initiatives that may be appropriate.

- *Project RISE* (<http://cps.nova.edu/projectrise/>)
The Children’s Trust requires that Trust-funded out-of-school providers fully participate with Project RISE (Research, Inspiration, Support, and Evaluation), a quality improvement initiative offered to support and improve the services available to Miami-Dade children and youth, with the ultimate goals of improving academic, health/fitness, and socio-emotional/mental health outcomes of participants. Providers (including all staff involved in test administration) are required to become recertified in ORF and PACER administration annually.

- All Children Together Resource Network (http://ccdhs.org/act/about_act/)
The Children's Trust requires that providers attend trainings to educate them about the inclusion of children with disabilities during the contract year. Inclusion requires that programs be appropriately adapted to meet the needs of all participating children. The ACT Resource Network is a resource available to offer training, technical assistance, mentoring, and consultation regarding provision of services to children with disabilities.

REPORTING SUBMISSION AND DATA ENTRY

- Participant attendance for a given month shall be entered into Data Tracker by the fifteenth (15th) of the following month, exclusive of legal holidays or weekends.
- Data Entry Requirements - Scores for the ORF and PACER tests as well as aggregate data for other assessments shall be entered in Data Tracker as follows. If the due date falls on a weekend/holiday, then reports are due the following business day.

School Year

- Pre-test - By the fifteenth (15th) day of the month following the month in which the tests were administered
- Mid-test - By January 31, 2011
- Post-test - By June 15, 2011

Summer

- Pre-test - By the fifteenth (15th) day of the month following the month in which the tests were administered
- Post-test - By September 15, 2011

	Report Due Date	What to Report
School Year 2010-2011	October 15, 2010	1. Program Narrative Report (Word)
	January 31, 2011	1. Program Narrative Report (Word)
	April 15, 2011	1. Program Narrative Report (Word) 2. Response to online survey requesting aggregate satisfaction survey responses
	June 15, 2011	1. Program Narrative Report (Word)
Summer Camp 2011	September 15, 2011	1. Summer Program Narrative report (Word) 2. Response to online survey requesting aggregate satisfaction survey responses

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

Provider shall create and/or update agency and program profiles, and site(s) information in the Community Resource Directory maintained by Switchboard of Miami. Provider shall maintain accurate information for the duration of this Contract term to facilitate referrals. Evidence that the profile(s) has been created or updated must be provided to the Contract Manager within 30 days of execution of this Contract.

Attachment D Program Specific Audit Requirements

The Program Specific Audit is to encompass an audit of The Children's Trust contract(s) in accordance with section N.2. Financial Audit and Program Specific Audit as follows (a sample may be found on The Children's Trust website):

- Submission of: (a) schedule of budget to actual total expenditures by budget category, reflecting expenditures during the audit period for each The Children's Trust contract by contract number, (b) if applicable, audit of attendance if payment is based on attendance, or payment as specified in Attachment B; (c) summary of schedule of prior audit findings, (d) disclosure of any significant finding(s), (e) disclosure of all questioned costs and liabilities due to The Children's Trust, with a reference to the contract number involved, and (f) a recommendation for a corrective action plan on any finding;
- Report whether the schedule of expenditure(s) is fairly stated;
- Provide notes to the schedule of total budget to actual expenditures that describe the significant accounting policies used in preparing the schedule;
- Report whether contractual matching requirements were met, if applicable;
- Report whether Provider has internal controls in place to provide reasonable assurance of compliance with The Children's Trust applicable contractual requirements and on the reliability of financial operations;
- The auditor must include in their testing: testing of the budget versus the actual expenditure, double billing i.e. billing under The Children's Trust contract the same expenditure that is billed under another contract and/or revenue source, testing for unallowable expenditures e.g. costs not included in the approved budget or budget revision and unallowable costs identified in the budget guidelines included on The Children's Trust website, testing for questioned costs, testing that the Provider billed and was reimbursed by The Children's Trust in accordance with the method of payment identified in the Contract and within the Contract period, testing that monies used for the program were for eligible participants, testing for the supplanting of funds, testing of match requirements, if applicable, testing of attendance or other unit if the method of payment is other than a cost reimbursement payment method, and testing of the cost allocation plan to verify that The Children's Trust is paying only its fair share of costs for services, overhead and staffing.

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

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

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

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

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

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

ATTACHMENT E
Affidavit for Level 2 Background Screenings

**Affidavit Affirming Compliance with
Background Screening for Provider Personnel
and/or Volunteers, Subcontracted Personnel, as applicable**

In accordance with Sections 943.0542, 984.01, Chapter 435, 402, 39.001, and 1012.465 Florida Statutes, and pursuant to the requirements of Paragraph Q. Background Screening of this Contract, the undersigned affiant makes the following statement under oath, under penalty of perjury, which is a first degree misdemeanor, punishable by a definite term of imprisonment not to exceed one year and/or a fine not to exceed \$1,000, pursuant to Sections 837.012 and 775.082, Florida Statutes.

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

Before me, the undersigned authority, personally appeared (CEO/Executive Director)
Authorized Provider Representative

of (Provider Name) , who being by me first duly sworn, deposes and says:

Name of Contracted Provider

(Signature of CEO/Executive Director/HR Director)

Date

I swear and affirm that the above-named contracted Provider is compliant with the requirements for personnel background screening detailed in Sections 943.0542, 984.01, Chapter 435, 402, 39.001, and 1012.465 Florida Statutes, as applicable, for all personnel having direct contact with children.

Sworn to and subscribed before me at Miami-Dade County, Florida this _____ day of _____, 2009 by _____.

___ Who is personally known to me

___ Who produced identification: _____

Type of identification

Signature of Notary Public
State of Florida at Large

Print, type or stamp name of notary public

My Commission Expires:

Attachment F

Performance Improvement Plan Contract No. 1010-401 Agency Name: Town of Cutler Bay

Program Name: 1010-401

Performance Improvement Plan

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

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

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

Performance Improvement Plan

Priority	Findings/Deficiencies	Action Plan	Due Date
Programmatic	<p>**Provider has met 1 of 2 outcomes based on final afterschool pre/post test results. The following outcomes were not met: <u>Afterschool:</u> Fitness (85.33%)</p>	<p>Plan: Provider must develop and implement a plan to identify the causes for poor outcome performance and improve service delivery that is likely to improve outcome performance. The plan must include staff training on administration of the outcome assessment(s) and/or delivery of the program services related to the outcome(s) indicated between 8/1/10 and 6/30/11.</p> <p>Performance: Provider will demonstrate a minimum outcome achievement rate as follows:</p> <ul style="list-style-type: none"> • Fitness (PACER) - 90% based on pre, mid & post tests administered by the end of After School 2009-2010 and reported by June 15, 2010. 	<p>Plan: Due 08/23/10</p> <p>Performance: Reported by 06/15/2011</p>

**** This is a CURE item within the Performance Improvement Plan.**

TAB 4

RESOLUTION 10-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, DETERMINING THE PROPOSED MILLAGE RATE, THE CURRENT YEAR ROLLED-BACK RATE, AND THE DATE, TIME AND PLACE FOR THE FIRST AND SECOND PUBLIC BUDGET HEARINGS AS REQUIRED BY LAW; DIRECTING THE TOWN CLERK AND TOWN MANAGER TO FILE THIS RESOLUTION WITH THE PROPERTY APPRAISER OF MIAMI-DADE COUNTY PURSUANT TO THE REQUIREMENTS OF FLORIDA STATUTES AND THE RULES AND REGULATIONS OF THE DEPARTMENT OF REVENUE OF THE STATE OF FLORIDA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on July 1, 2010, the Property Appraiser of Miami-Dade County, Florida (the "Property Appraiser") served upon the Town of Cutler Bay, Florida (the "Town"), a "Certification of Taxable Value" certifying to the Town its 2010 taxable value; and

WHEREAS, the provisions of Section 200.065, Florida Statutes, require that the Town, within thirty-five (35) days of service of the Certification of Taxable Value, furnish to the Property Appraiser and Tax Collector the proposed millage rate and the date, time, and place at which public hearings will be held to consider the millage rate and the tentative budget; and

WHEREAS, the Town is proposing the adoption of a millage rate of 3.2322 mills and desires to set the dates for the first and second public hearings to adopt its budget and set the final millage rate; 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. Proposed Millage. The proposed millage rate for the first public hearing is hereby declared to be 3.2322 mills, which is \$3.2322 per \$ 1,000 of assessed property within the Town.

Section 3. Current Rollback Rate. The current year rolled-back rate, computed pursuant to Section 200.065, F.S., is \$3.2322 per \$1,000.

Section 4. Date, Time, Place. The date, time and place of the first and second public hearings are hereby set by the Town Council as follows:

<u>Date</u>	<u>Time</u>	<u>Place</u>
September __, 2010	7:00 p.m.	South Dade Library Branch 10750 SW 211 Street 2 nd Floor Cutler Bay, Florida 33189
September __, 2010	7:00 p.m.	South Dade Library Branch 10750 SW 211 Street 2 nd Floor Cutler Bay, Florida 33189

Section 5. Transmittal. The Town Clerk and Town Manager are directed to attach the original Certification of Taxable Valuable to a certified copy of this Resolution and serve the same upon the Honorable Pedro J. Garcia, Property Appraiser of Miami-Dade County on or before August 2, 2010.

Section 6. 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 5

RESOLUTION 10-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, DIRECTING THE TOWN MANAGER TO TAKE ANY AND ALL MEANS NECESSARY TO CONDUCT A NATIONWIDE SEARCH FOR POTENTIAL CANDIDATES FOR THE TOWN CLERK POSITION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town's Clerk unfortunately recently resigned from her position; and

WHEREAS, the Town Council would like to find a highly qualified replacement for the Town Clerk; and

WHEREAS, as such, the Town Council directs the Town Manager to take any and all means necessary to conduct a nationwide search for potential candidates for the Town Clerk position; 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. Town Manager Directed. The Town Council hereby directs the Town Manager to take any and all means necessary to conduct a nationwide search for potential candidates for the Town Clerk position.

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 6

RESOLUTION 10-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, URGING THE FEDERAL HOUSING FINANCE AGENCY TO ADOPT AND IMPLEMENT THE NECESSARY UNDERWRITING GUIDELINES AND CONSUMER PROTECTION STANDARDS TO PROTECT THE MORTGAGE INDUSTRY, WHILE AT THE SAME TIME ALLOWING SENIOR LIEN PACE LENDING INITIATIVES TO PROCEED IN ORDER TO PROTECT OUR ENVIRONMENT; PROVIDING FOR TRANSMITTAL; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Property Assessment Clean Energy (PACE) programs have been recently adopted by several different states in order to try to reduce their dependence on fossil fuels and reduce their carbon footprint; and

WHEREAS, the Florida Legislature recently passed House Bill 7179, which created Florida's PACE program allowing local governments to provide the upfront funds to cover the financing costs for energy related improvements such as solar panels; and

WHEREAS, pursuant to Florida's PACE program, the financing of the improvements are secured by a non ad-valorem assessment along with a recorded financing agreement, which would constitute a senior priority lien on the property; and

WHEREAS, on July 6, 2010, the Federal Housing Finance Agency (FHFA), which regulates Fannie Mae, Freddie Mac, and the Federal Home Loan Banks, issued a statement providing that senior lien PACE lending initiatives present a significant safety and soundness concern and that appropriate underwriting guidelines and consumer protection standards are necessary; and

WHEREAS, the Town supports FHFA's intent in protecting the mortgage market, but also supports a sustainable environment and sustainable energy; and

WHEREAS, as such, the Town urges the FHFA to adopt and implement the necessary underwriting guidelines and consumer protection standards to protect the mortgage industry, while at the same time allowing senior lien PACE lending initiatives to proceed in order to protect our environment; 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. Urging the Federal Housing Finance Agency. The Town Council hereby urges the Federal Housing Finance Agency to adopt and implement the necessary underwriting guidelines and consumer protection standards to protect the mortgage industry, while at the same time allowing senior lien PACE lending initiatives to proceed in order to protect our environment.

Section 3. Transmittal. The Town Clerk is hereby directed to transmit this Resolution to the President of the United States, President of the Senate, Speaker of the House of Representatives, and the Federal Housing Finance Agency Director.

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

PASSED and ADOPTED this _____ day of _____, 2010.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

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

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.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 7



Steven J. Alexander
Town Manager

MEMORANDUM

To: Honorable Mayor and Councilmembers

From: Steven J. Alexander, Town Manager

Date: July 21, 2010

Re: Purchase and Installation of Live Oak Trees

REQUEST

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AUTHORIZING THE TOWN MANAGER TO EXECUTE AND ENTER INTO AN AGREEMENT WITH GROUNDKEEPERS, INC. FOR THE PURCHASE AND INSTALLATION OF LIVE OAK TREES WITHIN THE TOWN'S DESIGNATED RIGHT-OF-WAYS FOR AN AMOUNT NOT TO EXCEED \$150,000.00 WITH DISBURSEMENT FROM ACCOUNT NUMBER 001.519000.3400; AND PROVIDING FOR AN EFFECTIVE DATE.

BACKGROUND AND ANALYSIS

As part of the Street Tree Master Plan which, was adopted via Resolution # 09-02 in January 2009, Town Staff is recommending approval for Phase III – street tree planting. The recommended contract: Groundkeepers, Inc. has successfully completed the planting of 534 Live Oak trees as part of Phase I & II planting cycles. The contractor has been very cooperative and has replaced 11 trees which did not survive the initial planting and watering phase. Additionally, both Town staff and consulting Landscape Architects will be tagged all of the trees at the tree farm, insuring that the trees meet all of the specifications outlined in the contract.

Town Staff has carefully reviewed existing contracts for the purchase and installation of oak trees, from other surrounding municipalities. Based on the review, costs, and warranties, staff has determined that active “tree replacement” contract awarded by the City of Hialeah Gardens (Bid# 03-01), will expedite the purchase and installation of much needed street tree canopy as identified in the Town’s Tree Master Plan.

The live oak tree “Quercus Virginia” is an ideal native tree for shade, open spaces, parks and where there are generous right-of-ways. The live oaks, in time, will form an archway over the paving creating a pedestrian friendly environment. Additional, tree increased





canopy will reduce the levels of carbon monoxide and enhance the air quality throughout the surrounding neighborhoods.

The selected live oaks will have the following specifications:

Live Oak, Florida No. 1, Container Grown, 14'-16' Height, 5"-5½" Caliper, 5'-6' Clear Trunk, 8'-10' Spread. Additionally, the live oaks will be warranted for one (1) year from the time of initial planting.

All of the necessary tree planting permits will be obtained from the appropriate agencies:

Miami-Dade County and/or Florida Department of Transportation.

The selected contractor (Groundkeepers, Inc.) has previously provided three (3) separate reference letters from City of North Bay Village, City of Hialeah Gardens, and Town of Miami Lakes. Additionally, the Village of Palmetto Bay which planted the same type of specified Live Oak tree has provided a positive recommendation. Each of these municipalities considers GroundKeepers, Inc. a responsive contractor. The recommendation letters are attached for your review.

RECOMMENDATION

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, AUTHORIZING THE TOWN MANAGER TO EXECUTE AND ENTER INTO AN AGREEMENT WITH GROUNDKEEPERS, INC. FOR THE PURCHASE AND INSTALLATION OF LIVE OAK TREES WITHIN THE TOWN'S DESIGNATED RIGHT-OF-WAYS FOR AN AMOUNT NOT TO EXCEED \$150,000.00 WITH DISBURSEMENT FROM ACCOUNT NUMBER 001.519000.3400; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Cutler Bay, ("Town") as a result of past hurricanes, tropical storms, and other conditions has lost a great deal of tree canopy; and

WHEREAS, the Town of Cutler Bay recognizes the importance of enhanced tree canopy; and

WHEREAS, the Town has completed and adopted via Resolution # 09-02 a Street Tree Master Plan that identified several neighborhoods with little or no tree canopy; and

WHEREAS, Town Council has included in the fiscal year 2009-10 budget funding for Phase II new tree plantings throughout the Town's right-of-ways; and

WHEREAS, the Town Council deems purchases from contracts of other municipal or governmental entities in which said contracts were awarded pursuant to competitive bids based on clearly drawn specifications to comply with the requirements of the Town Charter; and

WHEREAS, the purchase and installation of live oak (*Quercus Virginiana*) trees will be accomplished by "piggybacking" on a current City of Hialeah Gardens contract.

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

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

Section 2. Town Manager Authorized. The Town Manager is authorized, on behalf of the Town, to issue a purchase order in an amount not to exceed \$150,000.00 to GroundKeepers, Inc. for the purchase and installation of live Oak Trees with the same terms, conditions, and warranties as defined in 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

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 _____



*Environmental Maintenance
& Landscape Development*

July 13, 2010

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

Re: "Piggyback" City of Hialeah Gardens

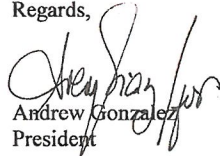
Dear Mr. Casals:

As per our previous conversation, please find below the purchase option, which we can provide for the Town of Cutler Bay:

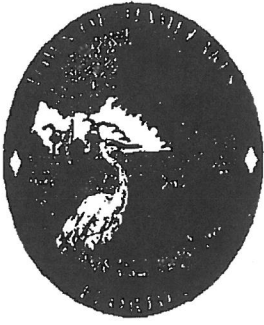
<u>Quantity</u>	<u>Type - Specs per Town of Miami Lakes contact</u>	<u>Unit Cost</u>	<u>Total</u>
272	4"-5 1/2" Caliper, 14'-16' Height, 5'-6' clear trunk Option # 3 Total Trees: <u>272</u>	\$ 550 per	\$149,500

Should you have any questions, please feel free to contact me at (786) 326-9634.

Regards,


Andrew Gonzalez
President

8004 N.W. 154th Street, Suite #330 Miami Lakes, FL 33016
Phone: (305) 825-1712 Fax: (305) 825-1713
E-Mail: 1groundkeepers@bellsouth.net



Town Of Miami Lakes

15700 NW 67 Avenue, Suite 302 • Miami Lakes, Florida 33014
(305) 364-6100/Fax (305) 558-8511
www.townofmiamilakes.com

January 25, 2008

Mr. Andrew Gonzalez
Groundkeepers, Inc.
8004 N.W. 154 Street, Suite# 330
Miami Lakes, FL 33016

Dear Mr. Gonzalez:

Please accept this letter as a reference from the Town of Miami Lakes for the outstanding services currently being provided in the following areas: Tree Replacement Program, NW 87 Avenue Landscape Enhancement Project and Miscellaneous Right-of-Way Maintenance.

Additional services provided that have been performed to meet the Town's standards as part of the regular miscellaneous right-of-way maintenance includes tree trimming and landscape improvements. The response time has been excellent for both routine and special services requested by the Town, especially after weather related incidents and Town sponsored events.

The Town looks forward to maintaining the level of service that our residents expect and appreciate your receptiveness when there has been room for improvement.

Sincerely,

A handwritten signature in black ink, appearing to read "Osdel F. Larrea".

Osdel F. Larrea
Public Works and Code Compliance Director



City of North Bay Village

Administrative Offices

1666 Kennedy Causeway Suite 700 North Bay Village FL 33141-4190
(305) 756-7171 Fax (305) 756-7722 Website - www.nbvillage.com

January 28, 2007

To Whom It May Concern:

It is with great pleasure that I recommended Mr. Andy Gonzalez & his company Groundkeepers, Inc. Over the past few years, his company has been providing lawn maintenance work for our City. In his time with us, his company has worked efficiently and innovatively in maintaining and beautifying our City's green areas.

This past winter, his company undertook the task of decorating our City for the holidays. We are truly pleased with optimal aesthetic results he provided our City with. Mr. Gonzalez, time and again, has proven to be very dependable and always willing to work with you to achieve the best results possible.

I'm sure that his company's services will be an asset to any organization.

Sincerely,

Jorge Forte
City Manager

Mayor
Frank S. Collier

Vice Mayor
George A. Kane

Commissioner
Oscar Alfonso

Commissioner
Reinaldo Trujillo

Commissioner
Dr. Paul Vogel



City of Hialeah Gardens

10001 N.W. 87th Avenue Hialeah Gardens, FL 33016

Tel: 305-558-4114 • Fax: 305-819-5315

www.cityofhialeahgardens.com

January 28, 2008

To Whom It May Concern:

In 2003, the City of Hialeah Gardens set out to improve the overall appearance and perception by increasing the quality of the landscape and maintenance of all common areas. The City selected Ground Keepers, Inc. to help guide us through the challenges of accomplishing this goal. Within the first year, the City began receiving positive feedback from the residents. After five years, the City has witnessed a transformation that is attributed to the hard work and guidance provided by Ground Keepers, Inc.

I would not hesitate to recommend Ground Keepers, Inc. for landscaping and maintenance services. If you require any further information, I can be reached at 305-558-4114 Ext. 213.

Sincerely,

Marcos Piloto
Office of Management & Budget
Director

Hialeah Gardens

10001 N.W. 87 AVENUE, 33016 – PHONE: 558-4114 – FAX: 362-7155

STATE OF FLORIDA



Memorandum

To: Honorable Mayor Yioset De La Cruz and Council Members

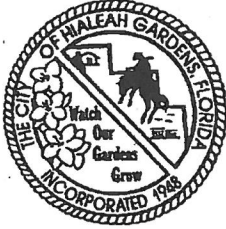
From: Marcos Piloto – O.M.B. Director *MP*

Date: January 21, 2003

Re: **Landscaping and Maintenance Advertisement**

On January 9, 2003 the City of Hialeah Gardens advertised an invitation to bid for landscaping and maintenance (see attached bid # 03-01) in order to initiate the Mayor's beautification plans throughout the City. A pre-bid conference was held on January 15, 2003 and specific areas of the City were addressed. Interested vendors were instructed to submit a sealed bid no later than 5:00 P.M. on January 21, 2003 to the City Clerks Office. The City received one sealed bid from Ground Keepers Environmental Maintenance & Landscape Development, which was received at 9:35 A.M..

At this time the Office of Management and Budget is requesting to be placed on the next scheduled council meeting for staff recommendations.



CITY OF HIALEAH GARDENS PUBLIC NOTICE

INVITATION TO BID

Landscaping and Maintenance Services BID # 03-01

SCOPE OF SERVICES:

The City of Hialeah Gardens in efforts to beautify the City is seeking professional landscaping companies to maintain and plant new trees as well as colorful flowers near and around various locations throughout the City of Hialeah Gardens.

All questions or comments will be addressed at the pre-bid conference, which will be held on January 15, 2003 at 10:00 AM in City Hall located at 10001 NW 87th Ave, Hialeah Gardens, FL 33016.

Sealed bids for consideration to provide landscaping and maintenance services throughout various areas of the City, shall be received by Maria L. Joffe, City Clerk for the City of Hialeah Gardens, 10001 NW 87th Ave. Hialeah Gardens, FL 33016. Bids will be received until 5:00 PM, on January 21, 2003 at which time the bids will be transferred to the City Council Chambers where after 7:30 PM they will be publicly opened and read aloud during the City Council meeting.

Respondents are to deliver ONE (1) copy of the bid including a letter of interest and any other pertinent information for consideration. Late bids shall not be accepted or considered.

The City of Hialeah Gardens reserves the right to accept any bid deemed to be in the best interest of City or to waive any informality in any bid. The City may reject any or all bids and re-advertise. There exists the possibility that the City may consider in its best interest, to award the contract to more than one (1) vendor, each to be available for specific assignments as the need arises.

Hialeah Gardens

10001 N.W. 87 AVENUE, 33016 – PHONE: 558-4114 – FAX: 362-7155

STATE OF FLORIDA



Memorandum

To: Honorable Mayor Yiozet De La Cruz and Council Members

From: Marcos Piloto – Director of O.M.B. *MP*

Date: February 4, 2003

Re: **Staff Recommendations – Invitation to Bid for Landscaping Services**

At our previous council meeting on January 21, 2003, sealed bids for landscaping services were opened and read into the record. The City of Hialeah Gardens received one sealed bid from Ground Keepers Environmental Maintenance & Landscape Development totaling \$ 187,269.00.

The Office of Management and Budget requested the time needed to review said bid. After careful review staff recommends entering into a contractual agreement with the responsive bidder for landscaping services.

Rafael Casals

From: Maritza Pena [mpena@cityofhialeahgardens.com]

Sent: Tuesday, July 13, 2010 11:33 AM

To: Rafael Casals

Cc: greny@groundkeepers.net; Marcos Piloto

Dear Mr. Casals:

This is to confirm that Groundkeepers, Inc., is a current vendor for the City of Hialeah Gardens for the year 2010-11.

If you need further information please contact Marcos Piloto, OMB Director, at 305-558-4114 Ext. 213.

Thanks,

Maritza Peña
Administrative Assistant to OMB Director
www.cutlerbay-fl.gov



Please consider the environment before printing this e-mail 

PLEASE NOTE: Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.

RESOLUTION 1953

RESOLUTION OF THE CITY OF HIALEAH GARDENS, FLORIDA, AUTHORIZING THE AWARD OF A CONTRACT FOR THE CITY LANDSCAPING MAINTENANCE TO GROUNDS KEEPERS ENVIRONMENTAL MAINTENANCE & LANDSCAPE DEVELOPMENT FOR ALL CITYWIDE LANDSCAPING MAINTENANCE AND SERVICE; AUTHORIZING THE APPROPRIATE CITY OFFICIALS TO EXECUTE AN AGREEMENT WITH GROUNDS KEEPERS ENVIRONMENTAL MAINTENANCE & LANDSCAPE DEVELOPMENT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, in an effort to beautify the City with professional landscaping, the City of Hialeah Gardens ("City"), Florida, publicly advertised Request for Proposals for professional landscaping companies to maintain and plant new trees as well as colorful flowers near and around various locations in the City; and

WHEREAS, only one proposal was submitted to the City for the city wide landscaping service and maintenance which was opened and reviewed in order to determine the cost and responsiveness to the City's technical specifications; and

WHEREAS, Grounds Keepers Environmental Maintenance & Landscaping Development submitted a bid in the amount of \$187,269.00 for professional landscaping to maintain and plant new trees as well as flowers near and around various locations in the City; and

WHEREAS, the Director of the Office of Management and Budget recommended that Hialeah Gardens utilize Grounds Keepers Environmental Maintenance & Landscaping Development; and

WHEREAS, the City Council of the City of Hialeah Gardens by motion on February 3, 2003 deemed it to be in the best interest of the citizens and residents of Hialeah Gardens that citywide landscaping service and maintenance be provided contractually by Grounds Keepers Environmental Maintenance & Landscaping Development.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH GARDENS, FLORIDA, AS FOLLOWS:

Section 1: The foregoing WHEREAS clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption thereof.

Section 2: The award of the Request for Proposals for landscaping service and maintenance in an amount equal to \$187,269.00 for labor and materials is hereby authorized.

Section 3: The Mayor is hereby authorized to execute the Agreement attached hereto as Exhibit "1" with Grounds Keepers Environmental Maintenance & Landscaping Development.


Section 4: All Resolutions or parts of Resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 5: If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Resolution that can be given effect without the invalid provision or application, and to this end, the provisions of this Resolution are declared to be severable.

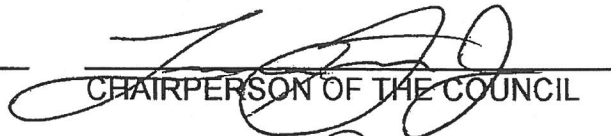
Section 6: This Resolution shall become effective upon its adoption in accordance with law.

PASSED AND ADOPTED by the Mayor and City Council of Hialeah Gardens, Florida, this 5 day of MARCH, 2003.


ATTEST:



MARIA L. JOFFEE
CITY CLERK



CHAIRPERSON OF THE COUNCIL




YIOSET DE LA CRUZ
Mayor of Hialeah Gardens, Florida

Vote of the Council

Luciano Garcia	<u>YES</u>
Miguel Haddad	<u>YES</u>
Jorge Merida	<u>YES</u>
Rolando Piña	<u>YES</u>
Manuel Zardon	<u>YES</u>

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:



CITY ATTORNEY

AGREEMENT

THIS AGREEMENT, made as of the 28 day of, **July 2003** by and between the City of Hialeah Gardens, Florida, a municipal corporation organized and existing under the laws of the State of Florida ("CITY"), and Groundskeepers, Inc., ("CONTRACTOR"),

WITNESSETH:

WHEREAS, the CITY has determined to contract for landscaping, plant maintenance and plant watering services in order to further beautify CITY; and

WHEREAS, the CITY requested through a request for proposal entitled "Landscaping Service" proposals

WHEREAS, the CONTRACTOR was the only respondent to the RFP; and

WHEREAS, the CITY determined that it is in the best interest of the CITY to accept the proposal of the CONTRACTOR.

NOW THEREFORE, in consideration of the monies herein described and for other good and valuable considerations, the legal sufficiency of which is hereby acknowledged, the parties agree as follows:

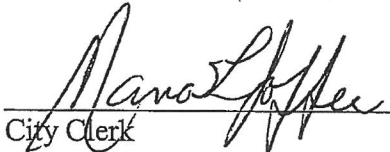
1. **QUALIFICATIONS; BID DOCUMENTS:** CONTRACTOR, and the individual executing this Agreement on behalf of the CONTRACTOR, warrant to the CITY that CONTRACTOR is a Florida corporation, in good standing with the Secretary of State of Florida, and the CONTRACTOR possesses all of the required licenses and certificates of competency required by the State of Florida and the County of Miami-Dade to perform the work herein described.
2. **SCOPE OF THE WORK; TIME OF PERFORMANCE:** The CONTRACTOR shall perform the following work, in a good and workmanlike manner, including the supply of all labor, materials, supplies and equipment for the necessary and prompt performance of the services contracted for herein as directed by the Director of Department of Public works in accordance with the specifications and other conditions set forth in attached Exhibit "A", provided that in the event the attachment described herein varies from the terms of the Contract, the terms of said Contract shall control.
3. **COST; PAYMENT:** The CITY shall pay the CONTRACTOR the sum(s) and at the times set forth in the Landscape and Maintenance Schedule and the Plant List and Pricing Schedule attached hereto:
4. **ENTIRE AGREEMENT; MODIFICATION:** No statements, representations, warranties either written or oral, from whatever source arising, except as expressly stated in this

Agreement shall have any legal validity between the parties or be binding upon any of them. The parties acknowledge that this Agreement contains the entire understanding and agreement of the parties. No modifications hereof shall be effective unless made in writing and executed by the parties hereto with the same formalities as this Agreement.


5. CONSTRUCTION: This Agreement and the terms hereof shall be constructed in accordance with the laws of the State of Florida and venue for all actions in a court of competent jurisdiction shall lie in Miami-Dade County, Florida.

IN WITNESS WHEREOF, the parties; have hereunto set their hands and seals on the day and year set forth below their respective signatures.

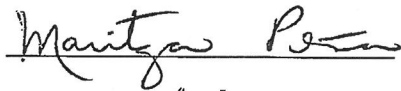
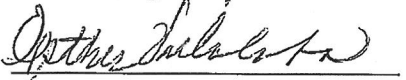
ATTEST:


City Clerk

CITY OF HIALEAH GARDENS


Mayor
Dated: 7/31/03

WITNESS:


CONTRACTOR:
By: 
Dated: 7/31/03

EXHIBIT A

GENERAL TERMS AND CONDITIONS

CITY OF HIALEAH GARDENS

LANDSCAPING, PLANT MAINTENANCE AND PLANT WATERING SERVICES

1. **QUANTITIES:** Quantities shown are estimates only. No guarantee or warranty is given or implied by the CITY as to the total amount that may or may not be purchased from any resulting Contract. The CITY reserves the right to decrease or increase quantities or add or delete any item from the Contract, if it is determined that it best serves the interests of the CITY.
2. **PRICES AND PAYMENTS:** Prices shall be fixed and firm to the extent required under Special Conditions Payment will be made only after receipt and acceptance of services. The terms shall be net 15 calendar days after receipt of invoice. Payment is deemed to be made on the date of payment of check.
3. **SAFETY STANDARDS:** The CONTRACTOR warrants that the products supplied to the CITY conform in all respects to the standards set forth in the Occupational Safety and Health Act and its amendments to any industry standards, if applicable.
4. **PERFORMANCE:** Failure on the part of the CONTRACTOR to comply with the conditions, terms, specifications and requirements of the bid shall be just cause for the cancellation of the award. The CITY may, by written notice to the CONTRACTOR terminate the contract for failure to perform. The date of the termination shall be stated in the notice. The CITY shall be the sole judge of non-performance.
5. **DEFAULT:** In the event that the CONTRACTOR defaults on the Contract or the Contract is terminated for cause due to performance, the CITY reserves the right to obtain the materials or services from the next lowest CONTRACTOR during the remaining term of the Contract.
6. **TERMINATION FOR CONVENIENCE OF THE CITY:** Upon seven (7) calendar days notice delivered by Certified Mail, Return Receipt Requested, to the Contractor, the CITY may without cause and without prejudice to any other right or remedy, terminate the Contract for the CITY'S convenience whenever the CITY determines that such termination is in the best interest of the CITY. Where the Contract is terminated for the convenience of the CITY, notice of termination to the CONTRACTOR must state that the Contract is being terminated for the convenience of the CITY under the termination clause and extent of termination. Upon receipt of the notice or termination for convenience, the CONTRACTOR shall promptly discontinue all work at the time and to

the extent indicated on the Notice of Termination, terminate all outstanding subcontractors and purchase orders to the extent that they relate to the terminated portion of the Contract and refrain from placing further orders and subcontractors except as they may be necessary.

7. **ASSIGNMENT:** CONTRACTOR shall not transfer or assign the performances required by this Contract without the prior written consent of the CITY. Any award issued pursuant to this Contract and monies that may become due hereunder are not to be assignable except with the prior written approval of the CITY.
8. **EMPLOYEES:** Employees of the CONTRACTOR shall at all times be under its sole direction and will no be deemed an employee or agent of the CITY. The CONTRACTOR shall supply competent and physically able employees. The CITY may require the CONTRACTOR to remove an employee it deems careless, incompetent, insubordinate, or otherwise objectionable. CONTRACTOR shall be responsible to the CITY for the acts and omissions of its employees working under its direction.
9. **TAXES:** The City of Hialeah Gardens is exempt from all Federal, State and Local taxes. an exemption certificate will be provided where applicable upon request.
10. **SITE INSPECTION:** It shall be the responsibility of the CONTRACTOR to inspect the site before submission of bids. No plea of ignorance by the CONTRACTOR of conditions that exist or that may hereafter exist as a result of failure to fulfill the requirements of this Contract will be accepted as the basis for varying the requirements of the CITY or the compensation to the CONTRACTOR.
11. **OMISSION OF DETAILS:** Omission of any special details does not relieve CONTRACTOR of supplying such product(s) as specified.
12. **INSURANCE REQUIREMENTS:** CONTRACTOR agrees that he will, in the performance of the work and services under this Contract, comply with all federal, state and local laws and regulations now in effect or hereinafter enacted during the term of this Contract that are applicable to CONTRACTOR. its employees, agents, or subcontractors, if any, with respect to the work and services described herein.

CONTRACTOR shall at CONTRACTOR'S expense obtain all necessary insurance in such form and amount as required by the CITY'S Risk Management before beginning work under this Contract including, but not limited to, Worker's Compensation Insurance, Unemployment Insurance, Contract's Liability Insurance and all other insurance required by law. CONTRACTOR shall maintain such insurance in full force and effect during the life of this Contract. CONTRACTOR shall provide to the CITY'S Risk Manager certificates of all insurance required under this section prior to beginning any work under this Contract. CONTRACTOR shall maintain in full force during the life of the Contract, Worker's Compensation Insurance covering all employees in performance or work under the Contract. CONTRACTOR shall make this same requirement for any of its subcontractors.

CONTRACTOR shall indemnify and save the CITY harmless from any damages resulting to them for failure of either CONTRACTOR or any subcontractor to take out or maintain such insurance. This indemnification is supported by separate consideration.

The following are required types and minimum limits of insurance coverage that the CONTRACTOR agrees to maintain during the term of this Contract: See Insurance Requirements Declaration attached as Exhibit "B"

13. **INDEMNIFICATION:** The CONTRACTOR shall indemnify and shall hold the City of Hialeah Gardens its elected and appointed officials and employees harmless from any and all claims, suits, actions damages, liability and expenses including attorney's fees in connection with loss of life, bodily or personal injury, or proper damage arising directly or indirectly from the actions of CONTRACTOR or its subcontractors, officers, employees, independent contractors or agents. This obligation of indemnification is supported by separate consideration.
14. **CLARIFICATION TO TERMS AND CONDITIONS:** Where there appears to variances or conflicts; between the General Terms and Conditions and the Special Conditions and/or Technical Specifications outlined in this bid, the Special Conditions and/or the Technical Specifications shall prevail.

The CONTRACTOR shall examine all bid documents and shall judge all matters relating to the adequacy and accuracy of such documents. Any inquires, suggestions, requests concerning clarification or solicitation for additional information shall be submitted in writing to the City of Hialeah Gardens Purchasing Officer. The CITY shall not be responsible for oral interpretations given by any CITY employee or its representatives.

SPECIAL CONDITIONS

1. **ASSIGNMENT OF CONTRACT:** Neither this Contract, nor any position thereof, shall be assigned, except by formal approval of the City Council. No such approval will be construed as making the CITY a part of or to such assignment, or subjecting the CITY to liability of any kind to any assignee. No subcontract or assignment shall, under any circumstances, relieve the CONTRACTOR of his liability and obligation under this Contract. And despite any such assignment the CITY shall deal through the CONTRACTOR only. However, if the company is sold during the life of the Contract, the buying agent must provide the CITY with a letter signed by an officer of the new owner that can legally bind the company, stating that they will continue to perform the requirements of the Contract under all terms, conditions and specifications so stated in the Contract.

2. **CONTRACTOR'S RESPONSIBILITY:** CONTRACTOR shall provide sufficient manpower so as to perform work safely and expeditiously with all equipment plainly marked with the company name. All equipment provided pursuant to this Contract shall be in good and proper working order. The CONTRACTOR shall provide a qualified foreman present on the site at all times, as a fully authorized agent of the CONTRACTOR, and capable of making on-site decisions. The CONTRACTOR shall be aware that the job site is in a CITY facility, that it is not secured, and as such is subject to pedestrian traffic at all times of the day and night. It shall be the responsibility of the CONTRACTOR to secure the job site at all times during and after **construction** to protect the general public from harm, **remove the job site** and properly dispose of all residues at the end of each and every workday. No arrangements have been made with and prior approval obtained from applicable CITY personnel in writing. Any materials or equipment left on site shall be with the CONTRACTOR, who is fully and totally responsible for security.

3. **DAMAGE TO PUBLIC AND/OR PRIVATE PROPERTY:** Extreme care shall be taken to safeguard all existing facilities, site amenities, utilities, irrigation systems, windows and vehicles on or around the job site. Damage to public and/or private property shall be the responsibility of the CONTRACTOR and shall be repaired and/or replaced in equal or better condition at no additional cost to the CITY. The CONTRACTOR shall use all means to protect existing objects, structures and vegetation designated to remain. In the event of damage, immediately make all repairs, replacements and dressings to damaged materials to the approval of the CITY, at no additional cost to the CITY. In the event of damage to public and/or private property, the CONTRACTOR shall immediately contact the CITY'S Public Works Department by telephone 305-694-8177 and inform the appropriate staff member about the location and the extent of the damages.

4. **PERMITS AND LICENSES:** The CONTRACTOR shall be responsible for securing all CITY building permits. However, all CITY permit fees are waived. The CONTRACTOR shall submit copies of all permits required for this work. The CONTRACTOR will be responsible for all county fees.
5. **CONTRACT DOCUMENTS:** The Contract shall consist of the Bid Proposal executed and submitted by the CONTRACTOR, Project Specifications, Plans and Specifications (where applicable) any Addendum or Charge Order, Performance Bond, Insurance Certificate, and the CITY Resolution awarding the bid.
6. **CHANGE ORDER:** Without invalidating the Contract, and without notice to any surety, the CITY reserves and shall have the right to make increases, decreases or other changes to the character or quality of the work as may be consider necessary or desirable to complete the proposed construction in as satisfactory manner.

The CONTRACTOR shall not start work on any such alteration that requires an increase to either the Contract price or Contract time until a change order setting forth the adjustments is approved by the CITY, and executed by the CITY and CONTRACTOR. Once the change is so approved, the CONTRACTOR shall proceed with the work.

In the event satisfactory adjustments cannot be reached by the CITY and the CONTRACTOR for any item requiring a change in the Contract price or Contract time, and a change order has not been issued, the CITY reserves the right at its sole option to terminate the Contract as it applies to these items in question and make such arrangements as the CITY deems necessary to complete the work. The value of any work covered by a change order for any increase or decrease in the Contract price shall be determined by mutual acceptance of a lump sum by the CITY and CONTRACTOR. If notice of any change in the Contract or Contract time is required to be given to a surety by the provisions of the bond, the giving of such notice shall be the CONTRACTOR'S responsibility, and the amount of each applicable bond shall be adjusted accordingly.

7. **CLARIFICATION TO TERMS AND CONDITIONS:** Where there appears to be variances or conflicts between the General Terms and Conditions and the Special Conditions and/or Technical Specifications outlined in this bid, the Special Conditions and/or the Technical Specifications shall prevail.

The CONTRACTOR shall examine all bid documents and shall judge all matters relating to the adequacy and accuracy of such documents. Any inquiries, suggestions, requests concerning clarification or solicitation for additional information shall be submitted in writing to the City of Hialeah Gardens Purchasing Officer. The CITY shall not be responsible for oral interpretations given by any CITY employee or its representatives. *This paragraph has been repeated.*

TECHNICAL SPECIFICATIONS

LANDSCAPING, LAWN AND PLANT MAINTENANCE AND PLANT WATERING

SERVICES SPECIFICATION

PROVISIONS: The services to be provided pursuant to this Contract shall include the labor, materials equipment, machinery, tools, transportation, supplies, workers, supervision necessary to perform the landscaping, lawn and plant maintenance and plant watering services and other undertakings described herein, according to the specifications. The term of the Contract shall be two (2) years. The Contract will thereafter automatically renewed every year for a one-year period unless notice of cancellation be given either days from the commencement of the new contract term.

SPECIFICATIONS:

- A. The areas described in the attached Landscape and Maintenance Schedule shall be landscaped, maintained, and watered according to the awarded bid.
- B. Service Frequency:

- C. Service times shall be at the discretion of the CONTRACTOR. The CITY reserves the right to review such schedule and require modifications to the CONTRACTOR'S service time schedule prior to beginning service if it is determined that certain times are disruptive to the public.
- D. The CONTRACTOR shall notify the CITY of any hazardous conditions or material that is observed during its operations.
- E. The removal, hauling and dumping of debris shall be the sole responsibility of the CONTRACTOR. All removal, hauling and dumping of debris must be done in accordance with all local, county and state rules and regulations. All transportation costs and tipping/disposal fees shall be at the expense of the CONTRACTOR.
- F. It is the responsibility of the CONTRACTOR to request from the appropriate water district the fire hydrants and other water sources needed for the CONTRACTOR'S use.
- G. CONTRACTOR'S supervisor shall have the authority to represent CONTRACTOR, under the terms and conditions of this Contract. Such supervisor shall also be available during the working hours in regards to Groundkeepers, Inc. issues.

-
- H. CONTRACTOR shall visit all areas included in the scope of its work and shall be familiar with the varying degrees of difficulty associated with all such areas. Areas in the scope of work are to be maintained for the stated unit bid price regardless of what the degree of difficulty may be.
- I. The CONTRACTOR must invoice the CITY on a monthly **basis**, listing the areas serviced.
- J. After the initial contract terms the CONTRACTOR has the right to request a CPI increase. If during the term of the Contract the disposal fee increases, CONTRACTOR has the right to request additional fees to set off his costs. Any increase in disposal shall be documented and given to the CITY thirty (30) days in advance.

Revised date: 6/27/2008

LANDSCAPING AND MAINTENANCE SCHEDULE

The following areas are going to be landscaped based on the awarded bid:

* City Hall Complex- *Please note as of this month we have not billed for maintenance on City Hall.*

- Estates Park
 - Brothers to the Rescue Monument
 - 97th Avenue and 127th Terrace
 - Median beginning on NW 103rd Avenue and 128th Terrace through Frontage Rd.
 - Median on 104th Avenue and Frontage Rd.
 - Government Complex on 103rd Street and 87th Avenue
 - Corner of Frontage Road and NW 92nd Avenue
 - Linear Park NW 87th Court from 108th Street and 116th Street
 - Hialeah Gardens Boulevard
 - Vietnam Memorial
 - All existing and new Hialeah Gardens welcome signs
 - Golden Eagle Park
 - Bernie Wilson Park
 - Duke Field
 - Police Station
 - 122 Street and Frontage
 - 119th Street from Lanear Park to 89th Avenue
 - 89th Avenue from 119th Street to 122nd Street
 - 108th Street – Lanier Park -89th Avenue
 - Senior Center
 - Estate Rotundas
 - 107th Avenue – Center Media
-
- City Hall Complex will be added as per this new contract.

Revised Date 6/27/2008

PLANT LIST AND PRICING FOR LANDSCAPING SITES

Perennials/ Annuals	\$ 3.30	delivered and installed, guaranteed throughout each plant season
Roebellini Palm	\$ 132.50	
Foxtail Palm	\$ 132.00	
Bottle Ferns	\$ 250.00	
Spindle Palms	\$ 250.00	
Cocoplum	\$ 8.80	
Coconut Palm	\$ 350.00	
Perennials/Kalanchue	\$ 3.30	
Hawaiian Tai	\$ 8.00	
Pentas	\$ 3.30	
Mulch Color Wise	\$ 3.75	per bag
Live Oak Tree	\$ 550.00	4"-5 1/2" Caliper, 14'-16' Height, 5'-6' clear trunk
Orange Geiger	\$ 310.00	Orange Geiger -10'-12' tall
St. Augustine Sod	\$ 100.00	Per pallet (500 square feet area)
Royal Palm	\$ 250.00	
Palm Tree 0-19 ft Trimmed	\$ 30.00	
Palm Tree 20-50 ft	\$ 75.00	
Palm Tree 50-75 ft	\$ 105.00	

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: July 14, 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 _____

TAB 9



Community Development Department

David Hennis, AICP
Community Development Director

MEMORANDUM

To: Steven J. Alexander, Town Manager

From: David Hennis, Community Development Director

Date: July 14, 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 _____

TAB 10



Community Development Department

David Hennis, AICP
Community Development Director

MEMORANDUM

To: Steven J. Alexander, Town Manager

From: David Hennis, Community Development Director

Date: July 14, 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	_____

TAB 11



Community Development Department

David Hennis, AICP
Community Development Director

MEMORANDUM

To: Steven J. Alexander, Town Manager

From: David Hennis, Community Development Director

Date: July 14, 2010

Re: Non-Use Variance as to Floor Area Ratio (F.A.R.)
Application V-2010-010

City Furniture, Inc., is requesting a non-use variance from the maximum Floor Area Ratio permitted for the property located at 18750 and 18760-80 South Dixie Highway. The variance seeks relief from Code Section 33-250, Floor Area Ratio, which allows a maximum 0.51 floor area ratio within the BU-1A Zoning District. The applicant is seeking site plan approval for a project within a BU-1A district with a 0.6346 Floor Area Ratio.

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 consistent with the intent and purpose of zoning, subdivision and the Non-Residential Guidelines for the area. Unlike other retail uses, the size of a retail furniture center does not have a direct correlation to the development impacts addressed by site development regulations. Industry standards require that customers be provided with multiple showroom areas that replicate residential living areas. Due to the size of individual products offered for sale at such centers, each showroom space requires expansive floor areas (i.e., the amount of space that would be comparable to a small living room, bedroom or dining room). To accommodate for these industrial standards, the Applicant requests a non-use variance to permit more FAR than generally permitted.

- 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 surrounding land uses.



RECOMMENDATION

Staff recommends approval of the request to vary F.A.R. from the permitted 0.51 to 0.6346.



RESOLUTION NO. 10-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A FLOOR AREA RATIO VARIANCE FOR CITY FURNITURE, LOCATED AT 18750 & 18760-80 S. DIXIE HIGHWAY, TO PERMIT 63.46% WHERE 51% IS REQUIRED; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, City Furniture (the “Applicant”) has submitted an application for a variance from, Section 33-250 of the Town Code of Ordinances (the “Town Code”), to permit a floor area ratio of 63.46% where 51% is permitted for a 56,558 square foot furniture store on property located at 18750 & 18760-80 South Dixie Highway; and

WHEREAS, staff recommended approval of the requested application, in its report dated July 14, 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 Floor Ratio Area Variance. The Town Council hereby approves the requested variance from, Section 33-250 of the Town Code, to permit a floor area ratio of 63.46% where 51% is permitted for a 56,558 square foot furniture store on property located at 18750 & 18760-80 South 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.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 12



Community Development Department

David Hennis, AICP
Community Development Director

MEMORANDUM

To: Steven J. Alexander, Town Manager

From: David Hennis, Community Development Director

Date: July 14, 2010

Re: Non-Use Variance as to Lot Coverage
Application V-2010-010

City Furniture, Inc., is requesting a non-use variance from the maximum Lot Coverage permitted for the property located at 18750 and 18760-80 South Dixie Highway. The variance seeks relief from Code Section 33-250, Lot Coverage, which allows a maximum 40% Lot Coverage for property within the BU-1A Zoning District. The applicant is seeking site plan approval for a project within a BU-1A district with 44.4% lot coverage.

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 consistent with the intent and purpose of zoning, subdivision and the Non-Residential Guidelines for the area. Unlike other retail uses, the size of a retail furniture center does not have a direct correlation to the development impacts addressed by site development regulations. Industry standards require that customers be provided with multiple showroom areas that replicate residential living areas. Due to the size of individual products offered for sale at such centers, each showroom space requires expansive floor areas (i.e., the amount of space that would be comparable to a small living room, bedroom or dining room). To accommodate for these industrial standards, the Applicant requests a non-use variance to permit more lot coverage than generally permitted.

- 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 surrounding land uses.



RECOMMENDATION

Staff recommends approval of the request to vary Lot Coverage from the permitted 40% to 44.4%.



RESOLUTION NO. 10-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A LOT COVERAGE VARIANCE FOR CITY FURNITURE, LOCATED AT 18750 & 18760-80 S. DIXIE HIGHWAY, TO PERMIT 44.4% WHERE 40% IS REQUIRED; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, City Furniture (the “Applicant”) has submitted an application for a variance from, Section 33-250 of the Town Code of Ordinances (the “Town Code”), to permit lot coverage of 44% where 40% is required for a 56,558 square foot furniture store on property located at 18750 & 18760-80 S. Dixie Highway; and

WHEREAS, staff recommended approval of the requested application, in its report dated July 14, 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 Lot Coverage Variance. The Town Council hereby approves the requested variance from, Section 33-250 of the Town Code, to permit lot coverage of 44% where 40% is required for a 56,558 square foot furniture store on property located at 18750 & 18760-80 S. Dixie Highway, subject to the conditions set forth below.

Section 3. Conditions. The approvals granted by this Resolution are subject to the Applicant’s compliance with the following conditions, to which the Applicant stipulated at the public hearing:

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

PASSED and ADOPTED this _____ day of _____, 2010.

PAUL S. VROOMAN, Mayor

Attest:

ERIKA GONZALEZ-SANTAMARIA, CMC
Town Clerk

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

WEISS SEROTA HELFMAN PASTORIZA
COLE & BONISKE, P.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 13



Community Development Department

David Hennis, AICP
Community Development Director

MEMORANDUM

To: Steven J. Alexander, Town Manager

From: David Hennis, Community Development Director

Date: July 14, 2010

Re: Non-Use Variance as to Landscaping
Application V-2010-010

City Furniture, Inc., is requesting a non-use variance from the requirements of Section 33-251 for the property located at 18750 and 18760-80 South Dixie Highway. The variance seeks relief from the Section 33-251, Landscaped Open Space, which requires a minimum of 17.5% landscaped open space within the BU-1A Zoning District. The applicant is seeking the variance to reduce the minimum landscaped open space required for the project from 17.5% to 16%.

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 generally consistent with the intent and purpose of the zoning, subdivision, and other land use regulations. The site plan incorporates substantial landscape improvements and pedestrian amenities affording improvement of the site in a manner which contributes to the economic health and aesthetics of the Town.

- 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 compatible with the surrounding land uses and is not detrimental to the Town.

RECOMMENDATION

Staff recommends approval of the request to vary Landscaped Open Space from the permitted 17.5% to 16%.

RESOLUTION NO. 10-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A LANDSCAPING VARIANCE FOR CITY FURNITURE, LOCATED AT 18750 & 18760-80 S. DIXIE HIGHWAY, TO PERMIT 16% WHERE 17.5% IS REQUIRED; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, City Furniture (the “Applicant”) has submitted an application for a variance from, Section 33-251 of the Town Code of Ordinances (the “Town Code”), to reduce the landscaping requirement to 16% where 17.5% is required for a 56,558 square foot furniture store on property located at 18750 & 18760-80 S. Dixie Highway; and

WHEREAS, staff recommended approval of the requested application, in its report dated July 14, 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 Lot Coverage Variance. The Town Council hereby approves the requested variance from, Section 33-251 of the Town Code, to reduce the landscaping requirement to 16% where 17.5% is required for a 56,558 square foot furniture store on property located at 18750 & 18760-80 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.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 14



Community Development Department

David Hennis, AICP
Community Development Director

MEMORANDUM

To: Steven J. Alexander, Town Manager

From: David Hennis, Community Development Director

Date: July 14, 2010

Re: Non-Use Variance as to Wall Signage
Application V-2010-010

City Furniture, Inc., is requesting a non-use variance from the requirements of Ordinance 08-14 for the property located at 18750 and 18760-80 South Dixie Highway. The variance seeks relief from Code Section 33-106 of Ordinance 08-14, Permanent Point of Sale Signs, which permits one wall sign per building within the BU-1A Zoning District. The applicant is seeking a variance to permit placement of 3 wall signs on the City Furniture building. The three signs are to be located on the north, south, and east elevations of the building. The signs on the north and south elevations will be 155 SF, while the sign proposed for the east elevation will be 210 SF. The existing pole sign along US-1 will be replaced by a monument sign under a separate permit.

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 other land use regulations. Modifying the allowed number of signs on the site diminishes the aesthetic improvements desired for the corridor and will negatively affect the appearance of the community.

- 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 surrounding land uses; however it will be detrimental to the Town due to incompatibility with adopted and implemented zoning regulations.



RECOMMENDATION

Staff recommends denial of the request to vary Section 33-106 from the permitted 1 wall sign to 3 wall signs.



RESOLUTION NO. 10-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A SIGNAGE VARIANCE FOR CITY FURNITURE, LOCATED AT 18750 & 18760-80 S. DIXIE HIGHWAY, TO PERMIT THREE WALL SIGNS ON THE BUILDING WHERE ONE IS PERMITTED; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, City Furniture (the “Applicant”) has submitted an application for a variance from, Section 33-106 of the Town Code of Ordinances (the “Town Code”), to permit three wall signs where one is permitted for a 56,558 square foot furniture store on property located at 18750 & 18760-80 S. Dixie Highway; and

WHEREAS, staff recommended denial of the requested application, in its report dated July 14, 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 Lot Coverage Variance. The Town Council hereby approves the requested variance from, Section 33-106 of the Town Code of Ordinances (the “Town Code”), to permit three wall signs where one is permitted for a 56,558 square foot furniture store on property located at 18750 & 18760-80 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.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 15



Community Development Department

David Hennis, AICP
Community Development Director

MEMORANDUM

To: Steven J. Alexander, Town Manager

From: David G. Hennis, Community Development Director

Date: July 14, 2010

Re: Non-Use Variance as to Ornamental Roof Elements
Application V-2010-010

City Furniture, Inc., is requesting a non-use variance from the requirements of Section 33-55 for the property located at 18750 and 18760-80 South Dixie Highway. The variance seeks relief from Code Section 33-55, Certain Structures Exempt, which allows roof structures used only for ornamental purposes to exceed height requirements provided they do not exceed 10% of the roof area. The applicant intends to construct a building with two lighted rooftop pyramids, covering approximately 18% of the roof area of the new City Furniture building. The two pyramids total 5,000 SF in area (2,500 SF each) and 17-feet in height. The 10% requirement allows ornamental roof elements totaling only 2,707 SF.

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 Non-Residential Guidelines for the area. The structures are 50 feet in width and 17 feet in height and out of character and inconsistent with the surrounding area; as such will negatively affect the appearance of the community. They function as signs; not simple roof elements used only for ornamentation. Each pyramid is a separate structure attached to the roof, with a height of 17 feet above the roof with the intent to gain visibility and attract attention. The structures are a different color than the façade and are lighted.

- 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 incompatible with the surrounding land uses and will be detrimental to the Town due to incompatibility with adopted zoning regulations, building, siting, and design considerations.

RECOMMENDATION

Staff recommends denial of the request to vary Sec 33-55 from the permitted 10% to approximately 18%.



RESOLUTION NO. 10-____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING AN ORNAMENTAL ROOF ELEMENT VARIANCE FOR CITY FURNITURE, LOCATED AT 18750 & 18760-80 S. DIXIE HIGHWAY, TO PERMIT 18% WHERE 10% IS PERMITTED; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, City Furniture (the “Applicant”) has submitted an application for a variance from, Section 33-55 of the Town Code of Ordinances (the “Town Code”), to permit an ornamental roof element to be 18% of the roof area where 10% is permitted for a 56,558 square foot furniture store on property located at 18750 & 18760-80 S. Dixie Highway; and

WHEREAS, staff recommended denial of the requested application, in its report dated July 14, 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 Lot Coverage Variance. The Town Council hereby approves the requested variance from, Section 33-55 of the Town Code, to permit an ornamental roof element to be 18% of the roof area where 10% is permitted for a 56,558 square foot furniture store on property located at 18750 & 18760-80 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.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 16



Community Development Department

David Hennis, AICP
Community Development Director

MEMORANDUM

To: Steven J. Alexander, Town Manager

From: David G. Hennis, Community Development Director

Date: July 14, 2010

Re: City Furniture Site Plan Application
SP-2010-007

City Furniture, Inc., has submitted a site plan amendment application for further development of the 3.26 acres located at 18750 and 18760-80 South Dixie Highway. The applicant is seeking site plan approval to permit a new 56,558 SF retail furniture store on the property. The existing 45,295 SF building will be reduced in size to 33,588 SF and converted to an Ashley Furniture retail store. Upon completion of all improvements the site will contain 90,146 SF of commercial space, composed of two separate but attached furniture facilities. The new City Furniture facility will be 2 stories while the reconfigured existing building will remain one story.

The site is located along the western edge of South Dixie Highway with more than 522 linear feet of street frontage. The site plan indicates the project will be constructed to achieve LEED Silver certification according to the Green Building rating system administered by the USGBC. The applicant has requested approval of 5 non-use variances, submitted under separate applications in support of the site plan.

Section 33-311 (4) (b) of the Code of Ordinances require the following findings in consideration of site plan applications.

- (1) The development permitted by the application, if granted, conforms to the Comprehensive Development Master Plan; is consistent with applicable area or neighborhood studies or plans, and would serve a public benefit warranting the granting of the application at the time it is considered.

Staff Evaluation

The application conforms to the Growth Management Plan, area plans and serves a public benefit warranting consideration. The site is within a mixed use area designated on the Future Land Use Map and within mixed uses areas, commercial development is encouraged and supported as a land development activity.

- (2) The development permitted by the application, if granted, will have a favorable impact on the environmental and natural resources of the Town of Cutler Bay, including consideration

of the means and estimated cost necessary to minimize the adverse impacts; the extent to which alternatives to alleviate adverse impacts may have a substantial impact on the natural and human environment; and whether any irreversible or irretrievable commitment of natural resources will occur as a result of the proposed development;

Staff Evaluation

The approval of this request will not have an adverse impact on the environment of the Town.

- (3) The development permitted by the application, if granted, will have a favorable or unfavorable impact on the economy of the Town of Cutler Bay;

Staff Evaluation

The approval of this request will not have an adverse impact on the economy of the Town.

- (4) The development permitted by the application, if granted, will efficiently use or not unduly burden water, sewer, solid waste disposal, recreation, education or other necessary public facilities which have been constructed or planned and budgeted for construction;

Staff Evaluation

The approval of this request will not have an adverse impact on the necessary public facilities planned or budgeted for construction.

- (5) The development permitted by the application, if granted, will efficiently use or not unduly burden or affect public transportation facilities, including mass transit, roads, streets and highways which have been constructed or planned and budgeted for construction, and if the development is or will be accessible by public or private roads, streets or highways.

Staff Evaluation

The approval of this request will not have an adverse impact on the necessary public transportation facilities. The applicant will construct pedestrian and bicycle amenities to facilitate public transportation needs generated by the proposed uses.

STAFF RECOMMENDATION

Approval with the following conditions and items to be provided and approved by staff prior to final development order issuance:

1. A corrected version of the Site Plan must be submitted demonstrating compliance with all zoning requirements and the Non-residential Overlay criteria, the concept submitted, and LEED Silver Certification should the variance requests be denied.
2. Prior to the issuance of the first principal building permit the applicant shall post a performance bond of 3 percent of the total cost of the building in order to secure performance and fulfillment of the applicant's obligation to obtain a LEED Silver

Certification. In lieu of the bond required by this section the Town may accept an irrevocable letter of credit from a financial institution authorized to do business in Florida or provide evidence of cash deposited in an escrow account in a financial institution in the State of Florida in the name of the applicant and the Town. The letter of credit or escrow shall be in the same amount of the bond if it were posted. If the project fails to meet the criteria required for Silver Certification by the United States Green Building Council (USGBC) within two (2) years after receiving the Town's certificate of occupancy, the applicant shall forfeit one hundred percent (100%) of the bond.

3. Information regarding access to the area during construction shall be submitted at time of building permit submittal.
4. Provide a runoff plan prior to any site work permits being issued, including demolition, grading or building permits.
5. Applicable Impact Fee's be paid prior to issuance of Building Permit.
6. Provide all FDOT approvals prior to issuance of Building Permit.
7. The development shall be consistent with the following plans as revised and all other building plans and elevations on file in the Town Planning Department:
 - a. Site, construction, and building elevation plans for "City Furniture" (Sheets A-0.0, A-1.1, A-1.2, A-2.1, A-2.2, A-2.3, A-6.1), prepared by Architecture 6400, Inc., and signed, dated and sealed June 25, 2010;
 - b. Landscape Plans for "City Furniture" (Sheets L-1, L-2, L-3), prepared by O'Leary Richards Design Associates; dated June 24, 2010;
 - c. Signage Plans for "City Furniture" (Sheets A-1.2, A-6.1.);
 - d. Lighting Plan, Sheet E-1.1

RESOLUTION NO. 010-_____

A RESOLUTION OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, APPROVING A SITE PLAN FOR CITY FURNITURE, LOCATED AT 18750 & 18760-80 SOUTH DIXIE HIGHWAY, TO PERMIT A 56,558 SQUARE FOOT BUILDING; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, City Furniture (the “Applicant”) has submitted an application for site plan approval for a 56,558 square foot furniture store on property located at 18750 & 18760-80 South Dixie Highway; and

WHEREAS, staff recommended approval of the requested application, in its report dated July 14, 2010, as conditioned herein; 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 Site Plan . The Town Council hereby approves the requested site plan, attached as Exhibit “A,” to this Resolution, subject to the conditions set forth below.

Section 3. Conditions. The approvals granted by this Resolution are subject to the Applicant’s compliance with the following conditions, to which the Applicant stipulated at the public hearing:

1. Prior to the issuance of the first principal building permit the applicant shall post a performance bond of 3 percent of the total cost of the building in order to secure performance and fulfillment of the applicant’s obligation to obtain a LEED Silver Certification. In lieu of the bond required by this section the Town may accept an irrevocable letter of credit from a financial institution authorized to do business in Florida or provide evidence of cash deposited in an escrow account in a financial institution in the State of Florida in the name of the applicant and the Town. The letter of credit or escrow shall be in the same amount of the bond if it were posted. If the project fails to meet the criteria required for Silver Certification by the United States Green Building Council (USGBC) within two (2) years after receiving the

Town's certificate of occupancy, the applicant shall forfeit one hundred percent (100%) of the bond.

2. Information regarding access to the area during construction shall be submitted at time of building permit submittal.
3. Provide a runoff plan prior to any site work permits being issued, including demolition, grading or building permits.
4. Applicable Impact Fee's be paid prior to issuance of Building Permit.
5. Provide all FDOT approvals prior to issuance of Building Permit.
6. The development shall be consistent with the following plans as revised and all other building plans and elevations on file in the Town Planning Department:
 - a. Site, construction, and building elevation plans for "City Furniture" (Sheets A-0.0, A-1.1, A-1.2, A-2.1, A-2.2, A-2.3, A-6.1), prepared by Architecture 6400, Inc., and signed, dated and sealed June 25, 2010;
 - b. Landscape Plans for "City Furniture" (Sheets L-1, L-2, L-3), prepared by O'Leary Richards Design Associates; dated June 24, 2010;
 - c. Signage Plans for "City Furniture" (Sheets A-1.2, A-6.1.);
 - d. Lighting Plan, Sheet E-1.1

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

PASSED and ADOPTED 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 S. Vrooman _____

Vice Mayor Edward P. MacDougall _____

Councilmember Peggy R. Bell _____

Councilmember Timothy J. Meerbott _____

Councilmember Ernest N. Sochin _____

TAB 17



Steven J. Alexander
Town Manager

MEMORANDUM

To: Mayor and Town Council

From: Steven Alexander

Date: July 14, 2010

Re: **Dangerous Intersection safety (red light cameras)**

The Florida Legislature passed CS/CS/HB325 during the 2010 Legislative Session authorizing the use of traffic infraction detectors to enforce certain provisions of Chapter 316 of the Florida Statutes and the Governor of the State of Florida signed it into law on May 13, 2010, resulting in the creation of Chapter 2010-80, Laws of Florida taking effect on July 1, 2010; and

We originally passed the enabling ordinance for this issue last year but due to operational issues caused partly by the States legal situation and some local key property owners, we were unable to achieve establishment of the cameras prior to the legislation passing. As you are aware, the running of red lights continues to be a safety hazard affecting every citizen and traveler in the Town of Cutler Bay.

It now is essential for the town to comply with the requirements of the new legislation in order to establish the system further reduce the running of red lights by amending its Code of Ordinances to implement the Act. The changes to our original ordinance are marked as always by underlining and can readily be seen as essentially technical and conforming to the new state law.

Dangerous Intersection Safety

The purpose of this ordinance is to authorize the use of an unmanned cameras/monitoring system which State law has changed to "traffic infraction detectors" to promote compliance with red light signal directives as proscribed by State law, and to adopt a civil enforcement system for red light signal violations. This ordinance will also supplement law enforcement personnel in the enforcement of red light signal violations and shall not prohibit law enforcement officers from issuing a





citation for a red light signal violation in accordance with other routine statutory traffic enforcement techniques.

The Towns vendor ATS has assured us that upon receiving all necessary and newly created approvals by the State, they will immediately begin anew the process of securing the locations for the poles that support the cameras and subsequently begin installation.

Although not as lucrative for the municipalities due to legislative fine appropriation, this program should not only result in safer intersections but also add to our revenue stream.

The new State established uniform fines are: \$158 for a violation of s.316.074 (1) or s. 316.075(1)(c) 1, when a driver has failed to stop at a traffic signal if enforcement is by a county or municipal traffic infraction enforcement officer. Of such overall amount, \$70 dollars shall be remitted to the Department of Revenue for deposit into the General Revenue Fund, \$10 shall be remitted to the Department of Revenue for deposit into the Department of Health Administrative Trust Fund, \$3 shall be remitted to the Department of Revenue for deposit into the Brain and Spinal Cord Injury Trust Fund, and \$75 shall be retained by the county or municipality enforcing the ordinance.

The Town will conduct a public announcement and a public awareness campaign of the proposed use of traffic infraction detectors at least 90 days before commencing the enforcement program. For the ninety days following the public announcement and public awareness campaigns, unless the driver of a vehicle received a citation from a police officer at the time of a red zone infraction in accordance with routine traffic enforcement techniques, (not cameras) the vehicle owner shall receive a warning in the form of a courtesy notice of the violation.

Recommendation

We urge your approval of this safety conscious revision to our ordinance.



ORDINANCE NO. 10- _____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCES 07-30 AND 08-13 RELATING TO DANGEROUS INTERSECTION SAFETY; PROVIDING FOR RECORDED IMAGE MONITORING AND ENFORCEMENT OF RED LIGHT TRAFFIC CONTROL SIGNALS CONSISTENT WITH GENERAL LAW AS PROVIDED BY CHAPTER 2010-80, LAWS OF FLORIDA; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR INCLUSION WITHIN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Legislature passed CS/CS/HB325 during the 2010 Legislative Session authorizing the use of traffic infraction detectors to enforce certain provisions of Chapter 316 of the Florida Statutes; and

WHEREAS, the Governor of the State of Florida signed CS/CS/HB325 into law on May 13, 2010, resulting in the creation of Chapter 2010-80, Laws of Florida (2010) (the “Mark Wandall Traffic Safety Act” or the “Act”) taking effect on July 1, 2010; and

WHEREAS, the running of red lights continues to be a safety hazard affecting every citizen and traveler in the Town of Cutler Bay; and

WHEREAS, the Town wishes to further reduce the running of red lights by amending its Code of Ordinances to implement the Act; 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. Amendment to Ordinances 07-30 and 08-13. The Town Council of the Town of Cutler Bay hereby amends Ordinances 07-30 and 08-13 as follows:¹

Dangerous Intersection Safety

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.

Sec. 1. Intent.

The purpose of this article is to authorize the use of ~~an unmanned cameras/monitoring system~~ traffic infraction detectors to promote compliance with red light signal directives as proscribed by this article, and to adopt a civil enforcement system for red light signal violations, all in accord with general law, including Chapter 2010-80, Laws of Florida (2010) (the “Mark Wandall Traffic Safety Act” or the “Act”). This article will also supplement law enforcement personnel in the enforcement of red light signal violations and shall not prohibit law enforcement officers from issuing a citation for a red light signal violation in accordance with other routine statutory traffic enforcement techniques.

Sec. 2. Use of Image Capture Technologies.

The Town shall utilize ~~image capture technologies~~ traffic infraction detectors ~~as a supplemental~~ pursuant to general law as a means of monitoring compliance with laws related to traffic control signals, while assisting law enforcement personnel in the enforcement of such laws, which are designed to protect and improve public health, safety and welfare. This section shall not supersede, infringe, curtail or impinge upon state or county laws related to red light signal violations or conflict with such laws. Nothing herein shall conflict with the primary jurisdiction of Miami-Dade County to install and maintain traffic signal devices. This article shall serve to enable the Town to provide enhanced enforcement and respect for authorized traffic signal devices pursuant to Florida Statutes, Sections 316.008 and 316.0083 (2010). The Town may utilize ~~image capture technologies~~ traffic infraction detectors as an ancillary deterrent to traffic control signal violations and to thereby reduce accidents and injuries associated with such violations. ~~Notices of infractions issued pursuant to this article shall be addressed using the Town’s own Special Magistrates pursuant to Ordinance 07-09 of the Town Code and not through uniform traffic citations or county courts. This shall not bar the use of uniform traffic citations and the county courts when Town police personnel decide not to rely on this article as the enforcement mechanism for a specific violation.~~

Sec. 3. Definitions.

The following definitions shall apply to this article:

OWNER/VEHICLE OWNER. The person or entity identified by the Florida Department of Motor Vehicles, or other state vehicle registration office, as the registered owner of a vehicle. ~~Such term shall also mean a lessee of a motor vehicle pursuant to a lease of six months or more.~~

RECORDED IMAGES. Images recorded by a traffic infraction detector which is operated in accordance with the Act. ~~traffic control signal monitoring system/device:~~

(1) ~~On:~~

(a) ~~Two or more photographs;~~

- (b) ~~Two or more electronic images;~~
- (c) ~~Two or more digital images;~~
- (d) ~~Digital or video movies; or~~
- (e) ~~Any other medium that can display a violation; and~~

(2) ~~Showing the rear of a motor vehicle and on at least one image, clearly identifying the license plate number of the vehicle.~~

RED ZONE INFRACTION. A traffic offense whereby a traffic infraction detector indicates a violation of Section 4. ~~traffic control signal monitoring system established that a vehicle entered an intersection controlled by a duly erected traffic control device at a time when the traffic control signal for such vehicle's direction of travel was emitting a steady red signal.~~

SPECIAL MAGISTRATE. ~~The Town's Code Enforcement Special Magistrate, as described in the Town Code.~~

TRAFFIC CONTROL INFRACTION ENFORCEMENT REVIEW OFFICER. The Town police department employee designated, pursuant to Sec. 7 herein, to review recorded images and issue red zone infractions based upon those images.

TRAFFIC CONTROL SIGNAL. A device exhibiting different colored lights or colored lighted arrows, successively one at a time or in combination, using only the colors green, yellow, and red which indicate and apply to drivers of motor vehicles as provided in F.S. § 316.075.

TRAFFIC CONTROL SIGNAL MONITORING SYSTEM/DEVICE. ~~An electronic system consisting of one or more vehicle sensors, working in conjunction with a traffic control signal, still camera and video recording device, to capture and produce recorded images of motor vehicles entering an intersection against a steady red light signal indication.~~

TRAFFIC INFRACTION DETECTOR. A vehicle sensor(s) installed to work in conjunction with a traffic control signal and a camera or cameras synchronized to automatically record two or more sequenced photographic or electronic images or streaming video of only the rear of a motor vehicle at the time the vehicle fails to stop behind the stop bar or clearly marked stop line when facing a traffic control signal steady red light.

Sec. 4. Adherence to Red Light Traffic Control Signals.

(a) Pursuant to general law, ~~M~~motor vehicle traffic facing a traffic control signal's steady red light indication shall stop before entering the crosswalk on the near side of an intersection or, if none, then before entering the intersection and shall remain standing until a green indication is shown on the traffic control signal; however, the driver of a vehicle which is approaching ~~stopped at a clearly marked stop line, but if none, is approaching before entering~~ the crosswalk on the near side of the intersection or, if none, then is approaching ~~at~~ the point nearest the

intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection in obedience of a steady red traffic control signal, may make a right turn in a careful and prudent manner (unless such turn is otherwise prohibited by posted sign or other traffic control device) but shall yield right-of-way to pedestrians and other traffic proceeding as directed by the traffic control signal at the intersection.

(b) Pursuant to general law, motor vehicle traffic facing a traffic control signal that is malfunctioning, inoperable or is emitting a flashing red light shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or if none, then at the point nearest to the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection, and the right to proceed shall be subject to the rules applicable after making a stop at a stop sign. In the event that only some of the traffic control signals within an intersection are malfunctioning, inoperative or emitting a flashing red light the driver of the vehicle approaching the malfunctioning, inoperative or flashing red traffic control signal shall stop in the above prescribed manner.

Sec. 5. Violation.

A violation of this article, known as a red zone infraction, shall occur when a motor vehicle does not comply with the requirements of Sec. 4. Violations shall be enforced pursuant to F.S. § 316.0083~~Sec. 7.~~

Sec. 6. Forty-five (45) day notice; introductory period.

The Police Chief shall notify the Town Manager when the red light camera system is operating correctly at the initial location established. The Town shall conduct a public announcement and a public awareness campaign of the proposed use of traffic infraction detectors at least 45 days before commencing the enforcement program. For the forty-five days following the public announcement and public awareness campaigns~~aid notification~~, unless the driver of a vehicle received a citation from a police officer at the time of a red zone infraction in accordance with routine traffic enforcement techniques, the vehicle owner shall receive a warning in the form of a courtesy notice of the violation. Commencing on the forty-sixth (46) days after the above referenced notification, the vehicle owners ~~are~~ is subject to the enforcement provisions as provided for in this Ordinance and applicable law ~~herein and no warning shall be given pursuant to this article.~~

Sec. 7. Review of Recorded Images.

(A) The owner of the vehicle which is observed by recorded images committing a red zone infraction, shall be issued a notice of violation (hereinafter also known as a “notice”) no later than thirty (30) days after the red zone infraction occurs. The recorded image shall be sufficient grounds to issue a notice.

(B) The Town’s Chief of Police shall designate one or more a Traffic Control ~~Control~~ Infraction Enforcement ~~Review~~ Officers, who shall be a police officers of the Town and ~~or~~ who

shall meet the qualifications set forth in F.S. § 316.640(5)(A), or any other relevant statute. The Traffic ~~Control~~ Infraction Enforcement Review Officer shall review recorded images prior to the issuance of a notice to ensure the accuracy and integrity of the recorded images. Once the Traffic ~~Control~~ Infraction Enforcement Review Officer has verified the accuracy of the recorded images, he or she shall complete a report, and a notice shall be sent to the vehicle owner at the address on record with the Florida Department of Highway Safety and Motor Vehicles or the address on record with the appropriate agency having such information in another state.

(C) If a vehicle owner receiving a notice fails to pay the penalty imposed by F.S. § 316.0083 or to provide an affidavit that complies with the provisions of F.S. § 316.0083 within thirty (30) days of the date the notice is issued, then a Uniform Traffic Citation shall be issued to the vehicle owner as provided by general law. The Uniform Traffic Citation shall be issued no later than sixty (60) days after the red zone infraction occurs.

Sec. 8. Notice of Violation.

The notice of a red zone infraction shall be served via first class mail and shall include: in the form as provided for in Ordinance Number 07-09 of the Town Code but shall also include:

- (A) The name and address of the vehicle owner;
- (B) The license plate number and registration number of the vehicle;
- (C) The make, model, and year of the vehicle;
- (D) Notice that the infraction charged is pursuant to this article;
- (E) The location of the intersection where the infraction occurred;

(F) ~~Notice that there are recorded images relating to the vehicle and a statement that the recorded images are evidence of a red zone infraction~~ A statement that the owner has the right to review the recorded images that constitute a rebuttable presumption against the owner, together with a statement of the time and place or Internet location where the evidence may be observed;

- (G) Images depicting the infraction;

(H) A signed statement by the Traffic ~~Control~~ Infraction Enforcement Review Officer that, based on inspection of recorded images, the vehicle was involved in and was utilized to commit a red zone infraction;:-

- (I) The date and time of the infraction;

- (J) Instructions on all methods of payment of penalty;

(K) A statement specifying the remedies available under F.S. § 318.14; and

(L) A statement that the owner must pay a penalty of \$158 to the Town or provide an affidavit that complies with F.S. § 316.0083 within thirty (30) days of the date the notice is issued in order to avoid court fees, costs, and the issuance of a Uniform Traffic Citation.

Sec. 9. Vehicle Owner Responsibilities

~~(A) A vehicle owner receiving a notice may:~~

~~(1) Pay the assessed civil penalty pursuant to instructions on the notice; or~~

~~(2) Appear before the Special Magistrate to contest the notice.~~

~~(B) The failure to pay the assessed civil penalty and failure to appear before the Special Magistrate to contest the notice will be considered an admission of liability and in such case an order may be entered against the violator for an amount up to the maximum civil penalty, plus any administrative costs.~~

Sec. 10. Hearing before the Special Magistrate.

~~(A) The Town's Code Enforcement Special Magistrates are authorized to hold hearings related to the enforcement of this article. A hearing shall be scheduled for all notices for which the vehicle owner timely requests an administrative hearing.~~

~~(B) Upon receipt of the named violator's timely request for an administrative hearing, the Town shall schedule a hearing before the Special Magistrate pursuant to Ordinance 07-09 of the Town Code. Notice of hearing shall be provided to the vehicle owner pursuant to the notice provisions contained in Ordinance 07-09 of the Town Code.~~

~~(C) The hearing shall be held pursuant to the procedures set forth in Ordinance 07-09 of the Town Code. The Traffic Control Infraction Review Officer may testify at the hearing. The vehicle owner may present testimony and evidence.~~

~~(D) Recorded images indicating a red zone infraction, verified by the Traffic Control Infraction Review Officer, are admissible in any proceeding before the Town's Special Magistrate to enforce the provisions of this article, and shall constitute prima facie evidence of the violation.~~

~~(E) Unless an affidavit is provided pursuant to Section 11, it is presumed that the person registered as the vehicle owner with the Florida Department of Motor Vehicles or any other state vehicle registration office, or an individual having the owner's consent, was operating the vehicle at the time of a red zone infraction.~~

Sec. 11. Vehicle Owner Affidavit of Non-Responsibility.

~~(A) — In order for the vehicle owner to establish that the motor vehicle was, at the time of the red zone infraction, either: (1) in the care, custody, or control of another person without the consent of the registered owner or (2) was subject to a short term (less than six months) car rental agreement entered into between a car rental agency, which is licensed as required by applicable law and is authorized to conduct business in the State of Florida, and the operator of the vehicle, the vehicle owner is required, within 20 days from the date listed on the notice, to furnish to the Town, an affidavit setting forth the circumstances demonstrating, either: (1) that the motor vehicle was not in the vehicle owner's care, custody, or control, and was not in the care, custody or control of another person with the vehicle owner's consent or (2) that the motor vehicle was subject to a short term (less than six months) rental agreement between the car rental agency receiving the notice and the vehicle operator and provide a true and correct copy of the short term car rental agreement, as applicable. The affidavit must be executed in the presence of a notary, and include:~~

- ~~(1) — If known to the vehicle owner, the name, address, and the driver's license number of the person who had care, custody, or control of the motor vehicle, without the vehicle owner's consent, at the time of the alleged red zone infraction; or~~
- ~~(2) — The name, address and drivers license number of the person who rented the motor vehicle from the car rental agency which has received the notice, at the time of the alleged red zone infraction; or~~
- ~~(3) — If the vehicle was stolen, the police report indicating the vehicle was stolen at the time of the alleged red zone infraction; and~~
- ~~(4) — The following language immediately above the signature line: "Under penalties of perjury, I declare that I have read the foregoing affidavit and that the facts stated in it are true."~~
- ~~(5) — Upon timely receipt of a sufficient affidavit pursuant to this section, any prosecution of the notice issued to the vehicle owner shall be terminated. Proceedings may be commenced by the Town against the responsible person identified in the affidavit, and in such event, the responsible person shall be subject to the same process and procedures which are applicable to vehicle owners.~~

~~Sec. 12. Administrative Charges.~~

~~In addition to the penalty pursuant to Sec. 15 herein, administrative charges may be assessed pursuant to Ordinance 07-09 of the Town Code in the event of a hearing and/or the necessity to institute collection procedures arises.~~

~~Sec. 13. Collection of fines.~~

~~Collection of fines shall be accomplished pursuant to Ordinance 07-09 of the Town Code.~~

~~Sec. 14. Exceptions.~~

~~This article shall not apply to red zone infractions involving vehicle collisions or to any authorized emergency vehicle responding to a bona fide emergency; nor shall a notice be issued in any case where the operator of the vehicle was issued a citation for violating the state statute regarding the failure to stop at a red light indication for the same event or incident.~~

Sec. 15. Penalty.

~~A violation of this article shall be deemed a non criminal, non moving violation for which a civil penalty, as proscribed in this Ordinance, shall be assessed. As the violation relates to this article and not to the Florida Statutes, no points as otherwise provided in F.S. § 322.27, shall be recorded on the driving record of the vehicle owner or responsible party.~~

Sec. 16. Enforcement.

~~—————This article may be enforced by any other means available to the Town.~~

Sec. 17. Signage.

~~The Town shall, to the extent practicable, at the primary motor vehicle entry points to the Town, cause to be erected and maintained signs, which substantially meet the design specifications indicated in Exhibit “A”, providing notice of this article. Failure to erect, maintain or create these signs shall not invalidate or impair any enforcement of this article.~~

When the Town installs a traffic infraction detector at an intersection, it shall erect signage at the intersection sufficient to notify the public that a traffic infraction detector may be in use at the intersection and shall include specific notification of intersection safety camera enforcement of violations concerning right turns. Such signage shall meet the specifications for uniform signals and devices adopted by the Department of Transportation pursuant to F.S. § 316.0745.

Sec. 10. Implementation of General Law

Within the Town, the Town Manager is authorized to implement the provisions and requirements of Chapter 2010- 80, Laws of Florida (2010), as may be amended from time to time, and may take any action which is necessary for such purpose.

Section 3. Severability. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 4. Conflict. All Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all Resolutions, or parts of Resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 5. 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 18



Steven J. Alexander
Town Manager

MEMORANDUM

To: Mayor and Town Council

From: Steven Alexander

Date: July 14, 2010

Re: **Town Center Building Purchasing**

As, the Town recently purchased the office building where Town Hall is currently located, we immediately have a need to begin leasing activities which may lead to revisions in office floor plan build out. Therefore, we will need to immediately hire a leasing agent and construction management company to lease vacant space and make tenant improvements. Additionally, certain vendors and contracts are presently in service in the Town Center Building and any delay due to a bidding process may cause a disruption in the operations of the building, which may adversely affect our tenants.

In order to select such companies within a efficient and timely manner, the Town desires to modify the Town's purchasing guidelines to permit the Town Manager to purchase leasing, maintenance, janitorial, and construction management services not to exceed \$100,000 each without formal competitive bidding or Town Council approval specifically for and limited to the Town Center Building.

Recommendation

We urge your approval of this economically sensitive revision to our ordinance.



ORDINANCE NO. 10- _____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCE 06-22 RELATING TO PURCHASING GUIDELINES FOR TOWN HALL; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town recently purchased the office building where Town Hall is currently located; and

WHEREAS, the Town will need to hire a leasing agent and construction management company to lease vacant space and make tenant improvements; and

WHEREAS, in order to select such companies within a efficient and timely manner, the Town Council desires to modify the Town’s purchasing guidelines to permit the Town Manager to purchase leasing, maintenance, janitorial, and construction management services not to exceed \$100,000 without formal competitive bidding or Town Council approval; 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 amends Ordinance 06-22 as follows:¹

II. Purchasing guidelines

(A) Purchases not greater than \$5,000. Purchases of or contracts for materials, supplies, equipment, improvements or services where the total amount expended is not greater than \$5,000 may be made or entered into by the Town Manager without competitive bidding and without Town Council approval.

(B) Purchases of more than \$5,000 but less than \$25,000. Purchases of or contracts for materials, supplies, equipment, improvements or services where the total amount expended is in excess of \$5,000, but which is less than \$25,000, may be made or entered into by the Town

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.

Manager without Town Council approval provided that three competitive quotations are obtained from individual vendors. In all such cases the Town Manager shall retain records of the price quotations received. Single purchases and contracts of greater than \$25,000 shall not be broken down into smaller purchase or contract amounts in order to avoid the competitive bidding requirements of this ordinance.

(C) Purchases of \$25,000 or more. Purchases of or contracts for materials, supplies, equipment, improvements or services where the total amount expended is \$25,000 or more shall be awarded by the Town Council after formal competitive bidding.

(D) Formal competitive bidding shall be deemed to include Invitations to Bid (ITB), Requests for Proposals (RFP), Requests for Qualifications (RFQ), or Requests for Letters of Interest (RLI) in which respondents are evaluated based on a combination of qualitative factors and a dollars and cents bid. The type of competitive solicitation to be used shall be determined by the Town Manager. For purchases or contracts involving the expenditure of \$25,000 or more the Town Manager shall obtain authorization by affirmative vote of the Council to advertise the solicitation prior to advertising the solicitation.

(E) Purchases for Town Hall. Notwithstanding the provisions of (A)-(D) above, single purchases directed related to leasing, maintenance, janitorial, and construction management services for Town Hall where the total amount expended is not greater than \$100,000 may be made or entered into by the Town Manager without competitive bidding and without Town Council approval. Single purchases of greater than \$100,000 shall not be broken down into smaller purchase or contract amounts in order to avoid the competitive bidding requirements 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 19

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. **The Town shall post notice of a vacant board position to give residents an opportunity to serve on the board and such notice shall be posted two weeks prior to the appointment being made.**

(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 **member that appointed the board member. Board members appointed at large 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. **A newly established board shall select a provisional chairperson and vice chairperson at its first meeting for a term of 90 days after which the board shall elect permanent officers to serve for a full term of one year or until removed by**

action of the board or until the officer leaves the board. This section shall prevail over any conflicting provision of Roberts Rules of Order.

(k) **Liaison.** A liaison to a board shall act as a conduit between the Town Council and the board. The liaison shall report to the Town Council on the activities of the board and advise the board as to the priorities, goals and desires of the Town Council and the constituency. A liaison may take an active role in the discussions and debates of the board as well as introduce relevant topics for board discussion.

(l) **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 20

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 16th day of June, 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 21



Steven J. Alexander
Town Manager

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 16th day of June, 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 _____, 2010, 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 or Owner provides Lessee notice of its intention not to renew not less than ninety (90) days only after the Second Renewal Term (15 years), 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 Mitchell Bierman, 2525 Ponce De Leon, Suite 700, Coral Gables, Florida 33134 Telephonic notice to Owner for access purposes shall be made to (305) 854-0800.

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; or (vi) by Owner in the event of a legal challenge to the validity of the lease based on the conveyance of said property pursuant to the Interlocal Agreement between Miami-Dade County and the Town of Cutler Bay approved May 21, 2007, provided however that Lessee shall be permitted, with Owner's written approval, to assume the defense of such legal challenge and to hold the Town harmless from any and all costs, judgments or attorney's fees. Should such defense be undertaken by Lessee, Owner shall allow Lessee to continue to occupy and use the premises under the terms of the agreement, unless directed otherwise by a court, state or federal authority of competent jurisdiction.

(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 _____, 2010

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 _____, 2010

(TOWN SEAL)

WITNESSES:

T-MOBILE SOUTH LLC, a Delaware
limited liability company authorized to do
business in the State of Florida

By: _____
Vice President, Eng. and Ops.

Print Name

Bentley C. Alexander
Print Name

____ day of _____, 2010

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 ___ day of _____, 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.

Notary Public, State of Texas

Print Name: _____

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.

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: _____

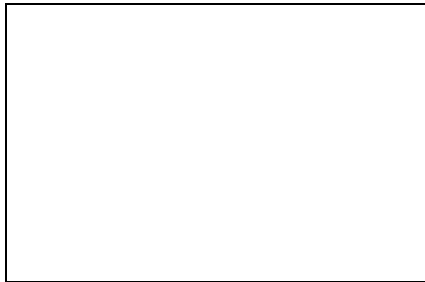
[Notary block for Town of Cutler Bay]

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 _____

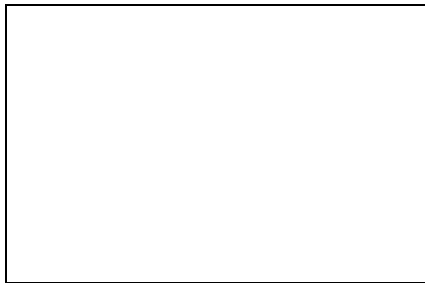
[Notary block for T-Mobile South, LLC]

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