

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA, URGING AND ENCOURAGING THE FLORIDA STATE LEGISLATURE TO ENACT LEGISLATION BANNING THE MARKETING, POSSESSION, TRAFFICKING AND FURNISHING OF "BATH SALTS" CONTAINING DANGEROUS SYNTHETIC DRUGS; PROVIDING FOR TRANSMITTAL; AND SETTING AN EFFECTIVE DATE. (INTRODUCED BY MAYOR CONNIE LEON-KREPS)

WHEREAS, certain synthetic hallucinogenic drugs marketed as "bath salts" are powerful stimulant drugs that are suspected to have been designed to avoid prosecution; and

WHEREAS, "Ivory Wave", "Purple Wave", "Vanilla Sky" and "Bliss" are all among the many street names of a so-called designer drug known as "bath salts"; and

WHEREAS, with recent developments involving individuals' use of "bath salts" containing dangerous synthetic drugs, stricter measures must be taken to stop the growing prevalence of this designer drug; and

WHEREAS, dangerous drugs like "bath salts" containing dangerous synthetic drugs are terrorizing our communities and destroying lives; and

WHEREAS, citing an "imminent threat to public safety", the U.S. Drug Enforcement Administration ("DEA") made illegal the possession or sale of all known chemicals used to make "bath salts" for a one-year period; and

WHEREAS, the City Commission urges the DEA to make the ban permanent, in order to protect our communities; and

WHEREAS, by marketing these products as "bath salts" and labeling them "not for human consumption", specific enumeration of the substances as illegal has been avoided; and

WHEREAS, in recent years, the abuse of "bath salts" has been increasing and have become increasingly popular due to the perception that they pose a seemingly safer alternative to illegal methods of getting "high"; and

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WHEREAS, "bath salts" are readily available at a variety of retail outlets throughout the state; and

WHEREAS, the City Commission believes that legislation banning the marketing, possession, trafficking and furnishing of "bath salts" containing dangerous synthetic drugs will give law enforcement the tools they need to keep our streets safe from this new and emerging drugs that ruins lives and causes havoc in communities across the country.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA, AS FOLLOWS:

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

Section 2. Commission Action. The Mayor and City Commissioners of the City of North Bay Village, Florida urge and encourage the State Legislature to enact legislation that bans the marketing, possession, trafficking and furnishing of "bath salts" containing dangerous synthetic drugs within the State of Florida.

Section 3. Transmittal. The City Clerk is hereby directed and authorized to send a copy of this resolution to Governor Rick Scott, and to the Town's State Representatives and State Senators, the Mayor of the governing bodies of the County and municipalities in Miami-Dade County, and to Richard Kuper, Esquire, Executive Director of the Miami-Dade County League of Cities.

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

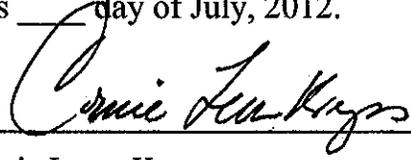
The motion to adopt the foregoing Resolution was offered by _____, seconded by _____.

FINAL VOTE AT ADOPTION:

Mayor Connie Leon-Kreps	_____
Vice Mayor Eddie Lim	_____
Commissioner Stuart Blumberg	_____
Commissioner Richard Chervony	_____

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PASSED AND ADOPTED this _____ day of July, 2012.



Connie Leon-Kreps
Mayor

ATTEST:

Yvonne P. Hamilton
City Clerk

**APPROVED AS TO FORM FOR USE ONLY BY
THE CITY OF NORTH BAY VILLAGE:**

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.

City of North Bay Village Resolution: Urging Legislature to ban the marketing, possession, trafficking and furnishing of "Bath Salts".

9A(3)



City of North Bay Village

Administrative Offices

1700 Kennedy Causeway, Suite #132 North Bay Village, FL 33141

Tel: (305) 756-7171 Fax: (305) 756-7722 Website: www.nbvillage.com

MEMORANDUM City of North Bay Village

DATE: June 29, 2012

TO: Dennis Kelly
City Manager

FROM: 
Connie Leon-Kreps
Mayor

SUBJECT: Introduction of Resolution

Pursuant to Section 3.08 of the City Charter, I hereby introduce the following Resolution:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA, URGING AND ENCOURAGING THE FLORIDA STATE LEGISLATURE TO ENACT LEGISLATION BANNING THE MARKETING, POSSESSION, TRAFFICKING AND FURNISHING OF "BATH SALTS" CONTAINING DANGEROUS SYNTHETIC DRUGS; PROVIDING FOR TRANSMITTAL; AND SETTING AN EFFECTIVE DATE.

Accordingly, please place the item on the next available agenda.

CLK:yph

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Mayor
Connie Leon-Kreps

Vice-Mayor
Eddie Lim

Commissioner
Stuart Blumberg

Commissioner
Dr. Richard Chervony



City of North Bay Village

Administrative Offices

1700 Kennedy Causeway, Suite #132 North Bay Village, FL 33141

Tel: (305) 756-7171 Fax: (305) 756-7722 Website: www.nbvillage.com

MEMORANDUM City of North Bay Village

DATE: July 10, 2012

TO: Mayor Connie Leon-Kreps
Vice Mayor Eddie Lim
Commissioner Stuart Blumberg
Commissioner Richard Chervony
Commissioner Paul Vogel

FROM: _____
Dennis Kelly, City Manager

SUBJECT: Fourteen Ceramic Pots Plantings on Bridge

RECOMMENDATION:

It is recommended that the City Commission approve the attached Resolution authorizing the City Manager to expend \$455 to General Mow, LLC for installing plantings inside the ceramic pots on the flat bridge between North Bay Island and Treasure Island as per the request of the Community Enhancement Board.

BACKGROUND:

Contractor

General Mow, LLC purchased Groundkeepers, Inc. on February 8, 2012. Groundkeepers, Inc. assigned the City's landscaping services agreement to General Mow, LLC at the time of the purchase and General Mow, LLC has been providing the City's landscaping services since that date. Copies of the Purchase and Sale Agreement, Assignment and current insurance documents are attached as Exhibit "1".

Mayor
Connie Leon-Kreps

Vice-Mayor
Eddie Lim

Commissioner
Stuart Blumberg

Commissioner
Dr. Richard Chervony

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MEMO TO CITY COMMISSION
JULY 10, 2012
PAGE 2 OF 2

Plantings

The first and last ceramic pots on the flat bridge between North Bay Island and Treasure Island have sample dwarf oleanders as per the request of the Community Enhancement Board. The Board Members selected the colors of the fourteen (14) proposed plantings to be Violet for the first pot and every other pot East of it and for the second pot to be White dwarf oleanders and every other pot East of it. The total cost of \$455 will include six (6) Violet dwarf oleanders and seven (7) White dwarf oleanders to be planted in the existing pots to beautify the proposed area.

General Mow, LLC currently performs landscaping maintenance services for the City, but this project is not within the scope of the existing contract.

BUDGETARY IMPACT

The funds for this project are available in the Street Maintenance Budget, Account No. 12-018-541-5434.

CONTACT:

Dennis Kelly, City Manager
Sam Zamacona, Director of Public Works

ATTACHMENTS:

- 1) Purchase and Sale Agreement, Assignment, Insurance Documents
- 2) Resolution
- 3) Estimate
- 4) Sample plantings photographs

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PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made and entered into on this 8th day of February 2012, by and between Groundkeepers, Inc. a Florida corporation, by and through its authorized representative, Andrew Gonzalez, hereinafter sometimes referred to as "Seller" and General Mow, LLC, by and through its authorized representative, Alek Muelle, hereinafter sometimes referred to as "Buyer".

WITNESSETH:

WHEREAS, Seller is a corporation that owns and operates a landscaping/lawn maintenance business known as Groundkeepers, Inc., hereinafter sometimes referred to as the "Business", located at 8004 NW 154th Street, Miami, Miami-Dade County, Florida, hereinafter sometimes referred to as the "Business Premises"; and,

WHEREAS, Seller is desirous of selling and Buyer is desirous of purchasing specific assets of the Business, including equipment and accounts and other assets more specifically set forth herein and in schedules attached hereto.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the respective parties under the provisions of this Agreement, together with other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **PURCHASE AND SALE OF ASSETS.** Subject to the terms and conditions herein and upon the representations set forth herein, Seller agrees to sell and transfer to Buyer and/or its assigns, and Buyer and/or its assigns, agrees that it will purchase from Seller scheduled assets hereto attached.

A. **EQUIPMENT.** Seller shall transfer title and possession of its equipment listed in Schedule "A" cumulatively sometimes referred to herein as "Equipment".

B. **ACCOUNTS.** Seller shall transfer to Buyer all rights to any and all accounts it currently services including but not limited to the accounts listed in Schedule B attached and incorporated hereto, cumulatively sometimes referred to herein as "Accounts".

C. **PREPAYMENTS.** Any payments received by Seller as advanced payments for services to be performed after Closing Date shall be transferred to Buyer at Closing.

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2. THE PURCHASE PRICE. The Buyer and Seller agree the consideration for the purchase of scheduled assets shall be as per terms and conditions of Schedule "C" attached hereto.

3. PAYMENT OF PURCHASE PRICE. The payment of the Purchase Price shall be made pursuant to the Schedule "C" attached hereto.

4. DUE DILIGENCE. Seller acknowledges and agrees that Buyer shall have 30 days from effective date of February 8, 2012, to perform its due diligence and physical review of the business and its assets, equipment, and accounts. Seller shall fully cooperate with Buyer in this effort. The Buyer may cancel this Agreement for any reason, prior to the expiration of the due diligence review period by providing written notice of cancellation to Seller, whereupon, Buyer will have no further obligation to the Seller, and this agreement will become null and void.

5. CLOSING. The Closing (the "Closing") shall take place on or before March 29, 2012.

6. TIME IS OF THE ESSENCE. Time and timely performance are of the essence of this agreement and of the covenants and provisions hereunder.

7. REPRESENTATION AND WARRANTIES OF SELLER. Seller represents, warrants, covenants and agrees with Buyer that the following statements, conditions and facts are true and correct as of the date of this Agreement and shall continue to be true and correct as of the date of Closing:

A. Title to Assets and Status. Seller is the owner of and has good and marketable title to all of the Assets as set forth in Schedule A. Buyer agrees to acquire ownership of said Assets in "AS-IS" conditions.

B. Seller is the rightful owner of the accounts as per Schedule "B" attached hereto.

C. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida and is registered to do business and is in good standing in the State of Florida. The Corporation has all requisite power to own, lease and license its properties and assets and to carry on the Business in the manner and in the places where such properties and assets are owned, leased, licensed or operated or such Business is conducted.

D. No statement, representation or warranty made by Seller in this Agreement or in any certificate, statement, list, schedule or other document furnished or to be furnished to Buyer hereunder contains, or when so furnished will contain, any untrue statement of a material fact, or fails to state, or when so furnished will fail to state, a material fact necessary

to make the statements contained herein or therein, in light of the circumstances in which they are made, not misleading.

E. Seller represents and warrants that neither Seller, nor Seller's principals, shareholders, officers or directors, are under the protection of any of the provisions of Bankruptcy as afforded under Title 11, U.S.C.A.

8. REPRESENTATIONS AND WARRANTIES OF BUYER. Buyer represents, warrants, covenants and agrees with Seller that the following statements, conditions and facts are true and correct as of the date of this Agreement and shall continue to be true and correct as of the date of Closing:

A. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Florida and is registered to do business and is in good standing in the State of Florida. The Company has all requisite power to own, lease and license its properties and assets and to carry on the Business in the manner and in the places where such properties and assets are owned, leased, licensed or operated or such Business is conducted.

B. No statement, representation or warranty made by Buyer in this Agreement or in any certificate, statement, list, schedule or other document furnished or to be furnished to Seller hereunder contains, or when so furnished will contain, any untrue statement of a material fact, or fails to state, or when so furnished will fail to state, a material fact necessary to make the statements contained herein or therein, in light of the circumstances in which they are made, not misleading.

9. BILL OF SALE. The Bill of Sale and instruments of assignment to be delivered at Closing will transfer the assets to the Buyer, free of all encumbrances and liabilities.

10. DOCUMENTS TO BE DELIVERED AT CLOSING. At Closing, Seller shall deliver the following documents to Buyer:

A. Bill of Sale dated as of the Closing covering all of the Assets and Accounts to be transferred, transferring all rights, title and interest;

B. All other documents reasonably required to effectuate the Closing;

C. A corporate resolution attesting to unanimous consent of the shareholders and members of the Board of Directors to the execution of this Agreement and the Closing of this transaction, together with a Certificate of Good Standing and a certified copy of all Articles of Incorporation bearing the stamp and seal of the Secretary of State, State of Florida

D. An Owner's Affidavit and Non Lien Affidavit, dated as of the Closing.

covering all of the Assets to be transferred hereunder.

E. Assignments of any and all contracts from Seller to Buyer.

11. COVENANT NOT TO COMPETE. For and in consideration of mutual covenants made in this agreement, for a period of two (2) years following the Closing Date, neither Seller nor Seller's principals, shareholders, officers, or directors shall attempt to contact, solicit business from any of the existing customers of this business listed as accounts in Schedule "B" attached hereto.

12. INCORRECT STATEMENTS. Seller agrees that, if prior to Closing, it shall discover that any representation, covenants, or warranties of Seller contained herein are incorrect or erroneous, it shall promptly notify Buyer, in writing of such incorrect or erroneous statement. Buyer, after the expiration of a five (5) day cure period in favor of Seller, shall have the right to either terminate this Agreement or proceed with the terms and conditions of this Agreement. Similarly, Buyer agrees that, if prior to Closing, it shall discover that any representation, covenants, or warranties of Buyer contained herein are incorrect or erroneous, it shall promptly notify Seller, in writing of such incorrect or erroneous statement. Seller, after the expiration of a five (5) day cure period in favor of Buyer, shall have the right to keep the Buyer's deposit and terminate the agreement or proceed with the terms and conditions of this Agreement.

13. BINDING EFFECT AND ASSIGNABILITY. This Agreement shall be binding upon the respective parties. This Contract is NOT assignable.

14. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The parties agree that any legal proceedings brought by either party in connection with or arising out of this Agreement shall be brought in Miami-Dade County, Florida.

15. ATTORNEYS' FEES. In the event either party shall have to enforce this Agreement, through litigation, the prevailing party shall be entitled to receive reasonable attorneys' fees and all costs incurred in connection with such enforcement, including all fees and costs of appeal.

16. WAIVER. No indulgences, expanded by any party hereto, or any other party, shall be construed as a waiver of any breach on the part of such other party, nor shall any waiver of one breach be construed as a waiver of any right or remedy with respect to any subsequent breach.

17. COUNTERPART. This Agreement may be executed in counterpart and be fully binding as if signed by both parties.

18. SEVERABILITY. The provisions of this Agreement are severable and, if any court of competent jurisdiction determines that any provision contained in this Agreement shall, for any reason, be invalid, illegal or unenforceable in any respect (including because its duration, subject matter or geographical scope is too broad), such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be reformed and construed so that such invalid or illegal or unenforceable provision would be valid, legal and enforceable to the maximum extent possible (including the maximum duration, subject matter and geographical scope allowable under Applicable Law).

19. ENTIRE AGREEMENT. This Agreement (including the Schedules and Exhibits referred to herein, which are hereby incorporated by reference) constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior oral and written and all contemporaneous oral agreements, understandings and negotiations between the parties with respect to the subject matter of this Agreement.

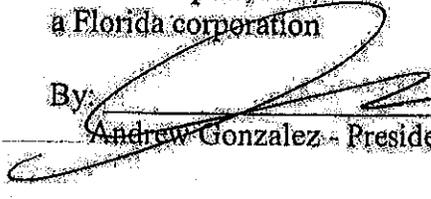
20. CONSTRUCTION. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. All references to an Article or Section include all subparts thereof. Neither party hereto, nor its respective counsel shall be deemed the drafter of this Agreement, and all provisions of this Agreement shall be construed in accordance with their fair meaning, and not strictly for or against either party hereto. Matters disclosed on one or more schedules attached hereto and made a part hereof shall be deemed to have been disclosed on each and every relevant schedule to the extent necessary to make any other statement, representation or warranty contained herein not misleading.

21. THIRD PARTY BENEFICIARIES AND ASSIGNABILITY. No provision of this Agreement shall create any third party beneficiary rights in any Person, including any employee or former employee or creditor of Seller (including any beneficiary or dependent thereof). This Agreement is in no way assignable.

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

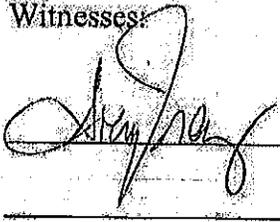
SELLER:

Groundkeepers, Inc.,
a Florida corporation

By: 
Andrew Gonzalez - President

Date: 2/8/2012

Witnesses:



Buyer Initials

Seller Initials



QB(7)

Witnesses:

[Signature]
[Signature]

BUYER:

General Mow, LLC

By:

[Signature]
Alek Muelle - President

Date:

2/8/12

Buyer Initials

[Signature]

Seller Initials

[Signature]

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SCHEDULE "B"
ACCOUNTS

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LAWN MAINTENANCE SERVICE AGREEMENT
BETWEEN THE
CITY OF NORTH BAY VILLAGE
AND
Groundkeepers, Inc.

I SCOPE OF WORK

To provide complete landscape maintenance of public lands/right of ways of the City of North Bay Village. Services will be performed in a professional manner by uniformed employees in order to achieve a quality objective which will maintain all plant material in a healthily, growing, clean and aesthetically attractive form throughout the year. Specifically, the areas of service in this proposal include all of the public lands/right of ways within the City limits of the City of North Bay Village and those public lands adjacent to the City for which the City has contractual maintenance obligation under existing agreements between the City of North Bay Village and the Florida Department of Transportation and as described in Section VIII of this agreement.

II CONTRACTOR INSURANCE REQUIREMENTS

The contractor shall maintain, on file in the City Clerk's Office, during the term of this contract the following minimum insurance coverage and limits. The City of North Bay Village shall be an additional named insured on all policies.

- A. Workmen's Compensation Insurance, as required by law.
- B. Comprehensive General Liability, Automobile and/or Truck Insurance.
 - 1. Bodily Injury and Death Insurance with limits of \$300,000
 - 2. Automobile with limits of \$1,000,000/\$300,000.
 - 3. Property Damage with a limit of \$100,000 per occurrence.
 - 4. Additionally all employees working for the contractor will be required to obtain police I.D. cards from the North Bay Village Police Department prior to commencement of work and a complete criminal background check and verification of legal United States residency.

III QUALIFICATIONS OF CONTRACTOR

The contractor must demonstrate qualifications to complete the work subject to the approval of the City's Public Works Department. These qualifications include but are not limited to, similar past work experience, available equipment, available manpower, and a client reference list of five of the most recent past projects of similar scope and size.

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IV PUBLIC SAFETY AND CONVENIENCE

- A. The contractor shall, at all times, conduct the work in such manner as to ensure the least practicable obstruction to the public and the residents along and adjacent to the area of work. The contractor must adhere to all city codes. Access to fire hydrants, for City-related work shall be provided at all times. Work conducted within the State of Florida Department of Transportation (F.D.O.T.) right-of-way on John F. Kennedy Causeway (79th Street) shall be performed in accordance with the F.D.O.T. safety guidelines.
- B. The contractor will be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work. Contractor must have the capability to communicate via two-way radio and/or phone. The contractor will take all necessary precautions for the safety of, and will provide the necessary protection, to prevent damage, injury, or loss to:
1. All employees on the work site and other persons who may be affected thereby,
 2. All the work and materials or equipment to be incorporated therein, whether in storage on or off the site, and
 3. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities, in the course of work.

V SPECIFICATIONS OF BASIC SERVICES: SCOPE OF WORK

A. Turf Care

1. Mowing
 - a.) Mowing will be performed in a workmanlike manner utilizing rotary power mowers.
 - b.) — All turf areas shall be mowed once every two weeks during the growing season of May, June, July and August, and once every three weeks during the months of September, October, November, December, January, February, March and April.

9B(11)

2. **Edging**

- a.) Mechanical edging will be performed using a hard blade vertical edger.
- b.) Surfaces adjacent to asphalt, concrete curbs, sidewalks and planted beds will be edged in conjunction with the mowing operation at every visit.

3. **Trimming of Grass**

- a.) Grass will be trimmed in conjunction with the mowing operation at each visit.
- b.) Particular attention will be given to trimming around sprinkler systems to ensure their adequate water delivery. Contractor will be responsible for the repair and replacement of broken or damaged sprinklers.

4. **Raking**

Grass clippings caused by mowing, edging, and trimming will be removed from curbs, storm drains, parking lots, streets, walkways, planted beds, and all other adjacent surfaces on the same day mowed.

B. Shrub, Hedge and Ground Cover Care

1. **Shrubs and Hedges**

- a.) Shrubs and hedges are to be maintained by manual or mechanical hedge clippers. (NO MACHETES)
- b.) Dead or broken branches will be removed from shrubs and hedges.

2. **Ground Cover and Planted Beds**

- a.) Ground cover and planted beds will be trimmed or pruned as necessary to maintain a desired bed height and to encourage plants to flow out to provide complete coverage.
- b.) Separation of ground cover varieties will be made so that there is no spread to areas occupied by other ground cover varieties.

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C. Trees and Palms

1. Maintenance Pruning

- a.) Suckers and new sprouts will be removed from tree trunks on a routine basis.
- b.) Low limbs and branches will be pruned and maintained to provide a ten foot ~~(10)~~ clearance over walkways, sidewalks, parking lots and other areas which would interfere with vehicles and/or pedestrians. Overall ten foot ~~(10)~~ clearance will be maintained on all trees unless certain varieties dictate a lower branch height. Limbs and branches which obstruct the view of street signage will be trimmed to afford a reasonable view of the signage. Limbs and branches which interfere with street lighting shall be trimmed back to ensure adequate lighting of roadways and sidewalks.

D. Annual Pruning of All City Palms - ~~(10)~~

(Sabal, Royal, Coconut, and other palms) Prune yearly in May removing all boots, fruit stems and fronds hanging below horizontal.

E. Weed Control

1. Beds

- a.) Weed control will be performed on planted beds and in tree wells by means of manual, mechanical and/or chemical means.
- b.) Where chemical weed control is feasible, application of a systematic herbicide will be made for post emergency control.

F. Weed Control

- a.) Weed (crack grass) control will be performed on streets, curbs, and sidewalks by means of manual, mechanical and/or chemical means.

9BL13)

- b.) Where chemical weed control is feasible, application of a systematic herbicide (Roundup Pro) will be made for post emergence control. (Contractor to supply herbicide)

G. Plantings - Replacement

Plantings - Replacements

- a.) The contractor shall provide City a quote to replace seasonal plants, at least 2 times per year.

H. Litter

1. Litter to be picked up City wide along City right-of-ways and other City-owned property every day Contractor is working.
2. Contractor-generated litter and debris resulting from landscape maintenance functions will be removed by the contractor.
3. Contractor specifically agrees that under no circumstances will landscape debris or litter be blown into storm water inlets.
4. The contractor has the option of transporting to the City's Public Works facility litter and debris (excluding the annual pruning of all City palms) generated under the provisions of the contract. Litter and debris so transported shall be placed in proper receptacles as determined by the Public Works Department.

F. Fertilizing

1. All landscape areas covered under this contract will receive the indicated applications per year. (Fertilizers to be provided by contractor). The types of fertilizers to be used are as follows:
 - a.) Grass - 24-5-11 granular slow release twice per year.
 - b.) Shrubs and ground cover - Three applications per year, April, July, and November with one (1) lb. of Lesco 8-10-10 fertilizer per one hundred (100) sq. ft.
 - c.) Trees - Two applications per year, April and September, with one-half lb. of 6-6-6 or 8-10-10 Lesco fertilizer per 1" caliper measured 24" above root ball.

9B(14)

d.) Palms - Three applications per year, as per schedule for tree fertilization, as follows:

- 1.) Palms 4'-6' overall height- one-half lb. of Improved Palm Special fertilizer per application.
- 2.) Palms 8'-12' overall height - one (1) lb. of Improved Palm Special Fertilizer per application.
- 3.) Palms 14'-50' overall height - three (3) lbs. of Improved Palm fertilizer per application.

e.) Seasonal - One initial and one mid-term application of Nuricote total seventy (70) day 13-3-13 fertilizer for each seasonal color planting.

f.) Trace Element Deficiency - Shrubs and ground cover- If plants begin to show symptoms of chlorosis, drench root-ball area, as needed, with Minor-gro Mix, 798-C, by Vigoro. Following manufacturer's instructions.

g.) Contractor shall maintain, repair city-wide irrigation system as needed. Prior approval must be obtained by the Public Works Department. City will pay for materials used.

h.) Mulching - All those areas now having mulch will be maintained by the contractor and new areas as designed by the City. The mulch will be supplied by the contractor.

Please note: At the time Groundkeepers took this contract there was no mulch anywhere, therefore, the Manager at the time paid us to add mulch.

VI AREAS SPECIFICALLY COVERED BY THIS CONTRACT

A. Treasure Island

1. All grass areas on each side of Hispanola and Adventure Avenues.
2. All grass areas at the Public Works Building, Tot Lot.
3. All medians on Adventure Avenue, Hispanola Avenue, and North Treasure Drive.
4. All sidewalks and curbs.
5. Pirates Alley.
6. Hedge trimming and weed control, city parking lot adjacent to the nursing home at the intersection of North Treasure Drive and Mutiny Avenue.

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7. Company assumes responsibility for all damage, including irrigation components that occur because of the maintenance process.
8. Company is not responsible for the condition of the landscape due to drought freeze, irrigation deficiencies or storm damage. However, under separate contract, the company will provide the following services: a) Replacement of turf, plant life, or irrigation components. The removal of storm or freeze-related debris.
9. *The maintenance of trees exceeding seven (7) feet in height. Company assumes no liability for damages or consequential damages caused by conditions beyond their control.*
10. Litter to be picked up City wide every day Contractor is working along the right of way and other City properties.

B. North Bay Island

1. Fountain area at entrance to island.
2. All shrubs and hedges along wall fronting the Island.
3. Mowing and trimming of all areas within the public right-of way along Kennedy Causeway.
4. Median surrounding Guardhouse.
5. All trees, shrubs, and hedges within any public right-of-way on the Island for trimming purposes only.
6. Company assumes responsibility for all damage, including irrigation components that occur because of the maintenance process.
7. Company is not responsible for the condition of the landscape due to drought freeze, irrigation deficiencies or storm damage.
8. However, under separate contract, the company will provide the following services: a) Replacement of turf, plant life, or irrigation components. The removal of storm or freeze-related debris.
9. *The maintenance of trees exceeding seven (7) feet in height. Company assumes no liability for damages or consequential damages caused by conditions beyond their control.*
10. Litter to be picked up City wide every day Contractor is working along the right of way and other City properties.

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C. Harbor Island

1. Entrance median to island.
2. All mini-islands located on City's right-of-way.
3. All grass areas located on City's right-of-way.
4. All grass, trees, and shrubs around municipal complex.
5. All grass, trees, and shrubs at West Drive Community Park.
6. Company assumes responsibility for all damage, including irrigation components that occur because of the maintenance process.
7. Company is not responsible for the condition of the landscape due to drought freeze, irrigation deficiencies or storm damage.
8. However, under separate contract, the company will provide the following services: a) Replacement of turf, plant life, or irrigation components. The removal of storm or freeze-related debris.
9. The maintenance of trees exceeding seven (7) feet in height. Company assumes no liability for damages or consequential damages caused by conditions beyond their control.
10. Litter to be picked up City wide every day Contractor is working along the right of way and other City properties.

D. John F. Kennedy Causeway

1. All medians from the middle of the west flat bridge to the east drawbridge.
2. All areas within the public right-of-way along Kennedy Causeway, more specifically those areas on both sides just west of the east drawbridge, the area in front of Channel 7/WIOD and that area on the north side of the east and west flat bridges.
3. Company assumes responsibility for all damage, including irrigation components that occur because of the maintenance process.
4. Company is not responsible for the condition of the landscape due to drought freeze, irrigation deficiencies or storm damage.
5. However, under separate contract, the company will provide the following services: a) Replacement of turf, plant life, or irrigation components. The removal of storm or freeze-related debris.
6. The maintenance of trees exceeding seven (7) feet in height. Company assumes no liability for damages or consequential damages caused by conditions beyond their control.
7. Litter to be picked up City wide every day Contractor is working along the right of way and other City properties.

VII. EMERGENCY SERVICES

9B(17)

The successful bidder shall provide labor and equipment to the City in event of a hurricane emergency or other natural disaster requiring additional manpower beyond the City's capability.

A. Manpower and Equipment

Successful bidder agrees to provide a minimum of three (3) workers, three (3) chainsaws and vehicles for any emergency situation as designated by the City Manager or his designated agent.

B. Hours Worked

Payment will be made for actual hours worked in the City and does not include travel time getting to and from the City.

C. Authorization

Activation of an **EMERGENCY SERVICES** situation shall be made by the City Manager or his designated agent.

D. General Availability and Procedures

In general, it is the intent of this **EMERGENCY SERVICES** section to have the contractor in the City for a short period of time prior to any hurricane emergency or other natural disaster. In addition, it is anticipated the contractor would return to the City immediately after the storm for a period of work substantially in excess of the pre-storm services. By way of procedures, it is possible that after an emergency, there would be no telephone service within the City limits. Accordingly, the contractor will proceed to the City and survey the condition of the City roads, seeking verbal authority from the City Manager or his designated agent to commence work activities.

In the unlikely event that formal authority is not obtained quick enough to deal with the public emergency, the contractor is authorized to use sound judgment and proceed to initiate the work on his own.

However, this self-initiated clean-up procedure cannot exceed more than four (4) hours of charges to the City without express approval of an appropriate City representative.

E. Contractor shall be required to keep accurate records of all manpower and equipment used during emergency services.

F. No Minimum Call Out

9B(18)
9

Other than expressly stated above, there is to be no minimum time of call out.

G. Disposal of Debris

It is the intent of the City that in most instances debris will be cut up by the contractor's workers into segments no larger than four (4) feet in length, and placed neatly at roadside locations for pickup by the City. However, it is possible that the contractor will find it necessary to load his vehicles and haul off debris to a dumping facility. In such an event, the City will pay or reimburse for all dumping fees.

H. Payment

Items A through G are to be compensated on a flat hourly basis.

**VIII SERVICES FOR KENNEDY CAUSEWAY STATE ROAD 934- OUTSIDE
THE NORTH BAY VILLAGE LIMITS (PELICAN HARBOR)**

- A. The mowing of all turf areas throughout the property for the medians/swale areas between Intracoastal Bridge and North Bay Island, per the schedule shown below.
- B. The edging of all walk and curb areas in concurrence with each mowing.
- C. The edging of all plant beds in concurrence with every mowing or as inspection requires.
- D. The weeding of all plant beds are often as plan health and the highest level or order requires.
- E. *The selective pruning, one time per contract period, of all woody ornamentals and trees less than eight (8) feet in height to balance infiltrating light, to remove dead wood harboring insects and disease and to promote maximum health and growth.*
- F. Small ornamental palm trees will be trimmed once per year during the non-growing season.
- G. The shearing of qualifying shrubs and hedges to maintain desired shape and appearance.
- H. The power clipping of grass areas littered in the maintenance process.
- I. The blowing of all walks and paved areas littered in the maintenance process.
- J. Company assumes responsibility for any and all damage, including irrigation components that occur as a result of the maintenance process. Company is not responsible for the condition of the landscape due to drought, freeze, irrigation deficiencies or storm damage. However, under separate contract, company will provide the following services:
 - 1. Replacement of turf, plant life, or irrigation components.
 - 2. The removal of storm or freeze related debris.

9B(19)

3. *The maintenance of trees exceeding seven (7) feet in height. Company assumes no liability for damages or consequential damages caused by conditions beyond their control.*

IX. TERM OF AGREEMENT AND COMPENSATIONS:

The term of this Agreement shall be three (3) calendar years from the date of City's approval and shall be compensated for the total annual sum of \$ 83,964.00 per year Total 3 calendar years contract \$ 251,892.00 (to be typed in by bidder)

Payment to be processed by the city on a monthly basis upon receipt of Contractor's invoice.

The City shall review the Contractor's performance each year on the anniversary of the date of the City approval.

The City reserves the right to terminate contract after thirty (30) day notice sent via certified mail.

9.B(20)

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/24/2012

PRODUCER (954) 966-9993
Gulfstream Insurance Agency, Inc.
5823 Johnson Street

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

Hollywood FL 33021-
INSURED
General Mow LLC,
dba Groundkeepers
255 University Dr
Coral Gables FL 33134-

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: American Safety Indemnity	
INSURER B: Diamond State Ins. Co.	
INSURER C: Commerce & Industry Inc.	
INSURER D:	
INSURER E:	

COVERAGES

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

INSR APPL LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Contractual Liab. GEN'L AGGREGATE LIMIT APPLIES PER: POLICY: <input checked="" type="checkbox"/> PBD- <input type="checkbox"/> BOT <input type="checkbox"/> LOO	CBC10000315400	05/22/2012	05/22/2013	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS & COMP/OP AGG \$ 2,000,000
B		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	BAP000789	10/29/2011	10/29/2012	COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ GARAGE LIABILITY <input type="checkbox"/> ANY AUTO AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC AGG \$
C		EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$	959372549	05/22/2012	05/22/2013	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$ \$ \$
		WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER		/ /	/ /	IWC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYER \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATION/LOCATION/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

CERTIFICATE HOLDER

() = () =

CANCELLATION

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

RESOLUTION NO: _____

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXPEND \$455 FOR PLACEMENT OF PLANTINGS IN THE CERAMIC POTS ON THE FLAT BRIDGE BETWEEN NORTH BAY ISLAND AND TREASURE ISLAND; SETTING AN EFFECTIVE DATE. (INTRODUCED BY CITY MANAGER DENNIS KELLY)

WHEREAS, the City's Community Enhancement Board recommended the planting of dwarf oleanders in the ceramic pots on the flat bridge on the causeway between North Bay Island and Treasure Island to beautify the City (the "Project"); and

WHEREAS, General Mow, LLC provides the City's landscape maintenance services; and

WHEREAS, General Mow, LLC, has submitted a proposal of \$455 for the Project, as identified on the attached Exhibit "1"; and

WHEREAS, the City Commission finds that installation of the landscaping will improve the aesthetic appearance of the area.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA:

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

Section 2. **Authorization of City Manager.** The City Manager is authorized to expend \$455 to General Mow, LLC for the purpose set forth herein, as identified on Exhibit "1" attached hereto.

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

9B(23)

The motion to adopt the foregoing Resolution was offered by _____, seconded by _____.

FINAL VOTE AT ADOPTION:

Mayor Connie Leon-Kreps _____
Vice Mayor Eddie Lim _____
Commissioner Stuart Blumberg _____
Commissioner Richard Chervony _____

DULY PASSED AND ADOPTED this ____ day of July, 2012.

Connie Leon-Kreps
Mayor

ATTEST:

Yvonne P. Hamilton, CMC
City Clerk

**APPROVED AS TO FORM FOR USE BY
THE CITY OF NORTH BAY VILLAGE ONLY:**

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
City Attorney

City of North Bay Village Resolution: Installation of plantings in the Ceramic Pots on the causeway-\$455.

QB(24)



255 University Drive
Coral Gables, FL 33134

Estimate

Date	Estimate #
7/3/2012	512036

Name / Address
North Bay Village 1700 Kennedy Causeway Suite 132 North Bay Village, FL 33141

Project

Description	Qty	Cost	Total
Ref Ceramic Pots (12) new installation ✓			
Delivery and Installation - 6 (7 gallon) Violet Dwarf Oleanders ✓	6	35.00	210.00
Delivery and Installation - 6 (7 gallon) White Dwarf Oleanders ✓	6	35.00	210.00
Delivery and Installation - 24 (3 gallon) Violet Dwarf Oleanders	24	9.00	216.00
Delivery and Installation - 24 (3 gallon) White Dwarf Oleanders	24	9.00	216.00
Labor and Materials included			
Ceramic Pots (2) replacements			
Delivery and Installation - 1 (7 gallon) White Dwarf Oleanders ✓	1	35.00	35.00
Delivery and Installation - 4 (3 gallon) Violet Dwarf Oleanders	4	9.00	36.00
Delivery and Installation - 4 (3 gallon) White Dwarf Oleanders	4	9.00	36.00
Thank you for considering us for your Landscaping needs		Total	\$969.00

Phone #	Fax #	E-mail
305-529-0401	305-665-4644	general@generalmow.com

9B(25)



City of North Bay Village

Administrative Offices

1700 Kennedy Causeway, Suite #132 North Bay Village, FL 33141

Tel: (305) 756-7171 Fax: (305) 756-7722 Website: www.nbvillage.com

CITY OF NORTH BAY VILLAGE RECOMMENDATION MEMORANDUM

DATE: July 10, 2012

TO: Mayor Connie Leon-Kreps
Vice Mayor Eddie Lim
Commissioner Stuart Blumberg
Commissioner Richard Chervony

FROM: Dennis Kelly
City Manager 

SUBJECT: Florida Department of Transportation Maintenance Agreement --
Turf and Landscaped Areas on the 79th Street Causeway

RECOMMENDATION:

It is recommended that the City Commission approve the attached Resolution and authorize the appropriate City officials to execute the attached agreement with the Florida Department of Transportation (FDOT), for maintenance of the turf and landscaped areas on the 79th Street Causeway in the City.

The City of North Bay Village first entered into a Memorandum of Agreement with Florida Department of Transportation in 1999 for providing landscape maintenance on the department's right-of-way from the Intracoastal Waterway on the west to the eastern City limits of State Road 934 (79th Street Causeway). Most recently, a Turf and Landscape Maintenance Joint Participation Agreement between FDOT and the City, was approved by the City Commission on September 20, 2011 for a term of one year, with two one-year renewals.

Mayor
Connie Leon-Kreps

Vice-Mayor
Eddie Lim

Commissioner
Stuart Blumberg


Commissioner
Dr. Richard Chervony

MEMO TO CITY COMMISSION
JULY 10, 2012
PAGE 2 OF 2

The existing agreement will expire on September 30, 2012, and the City wishes to renew the agreement for a period of one year, with the same terms and conditions of the original agreement.

The limits of maintenance include cutting the grass and removing debris from all of FDOT turfed and/or landscaped areas.

Florida Department of Transportation reimburses the City an annual fee of Five Thousand Two Hundred Ninety-Four Dollars and Three Cents (\$5,294.03) for providing the standard highway landscape maintenance.

BUDGETARY IMPACT:

There will be a positive budget impact, since the funds will be provided for the service.

PERSONNEL IMPACT:

No additional personnel are required for maintaining the FDOT areas.

CONTACT:

Dennis Kelly, City Manager
Sam Zamacona, Public Works Director

9C(2)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA, AUTHORIZING THE RENEWAL OF A HIGHWAY LANDSCAPING AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR MAINTENANCE OF THE TURF AND LANDSCAPED AREAS ON THE 79TH STREET CAUSEWAY AND PROVIDING FOR COMPENSATION TO THE CITY FOR SUCH SERVICES; PROVIDING FOR AN EFFECTIVE DATE. (INTRODUCED BY CITY MANAGER DENNIS KELLY)

WHEREAS, the City has continually maintained roadside areas, median strips and right-of-way areas included as part of the State Highway System on State Road 934, also referred to as the 79th Street Causeway, from the Intracoastal Waterway as boundary on the west to the eastern city limits; and

WHEREAS, on September 20, 2011, the City Commission approved Resolution No. 2011-39 approving a "Turf and Landscape Maintenance Joint Participation Agreement Between the Florida Department of Transportation and the City of North Bay Village" (the "Agreement"), which Agreement is scheduled to expire on September 30, 2012; and

WHEREAS, the City and the Florida Department of Transportation ("FDOT") wish to renew the Agreement (the "Renewal Agreement") for a period of one year effective October 1, 2012 through September 30, 2013 for continued maintenance of the turf and landscaped areas on the 79th Street Causeway, a copy of which is attached hereto as Exhibit "2"; and

WHEREAS, FDOT agrees to compensate the City in an annual amount of Five Thousand Two Hundred Ninety-Four Dollars and Three Cents (\$5,294.03) to be paid on a quarterly basis for the City's performance of maintaining the turf and landscaped areas on the 79th Street Causeway.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA, AS FOLLOWS:

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

Section 2. Approval of Agreement. The Renewal Agreement between the City of North Bay Village and the Florida Department of Transportation for turf and landscape maintenance attached hereto as Exhibit "2", is hereby approved.

Section 3. Authorization of City Officials. The City Manager is authorized to take all actions necessary to implement the terms and conditions of the Renewal Agreement.

Section 4. Execution of Agreement. The City Manager is authorized to execute the Renewal Agreement on behalf of the City subject to the approval as to form and legality by the City Attorney.

Section 5. Effective Date. This Resolution shall take effect immediately upon adoption.

The motion to adopt the foregoing Resolution was offered by _____,
seconded by _____.

FINAL VOTE AT ADOPTION:

Mayor Connie Leon-Kreps _____
Vice Mayor Eddie Lim _____
Commissioner Stuart Blumberg _____
Commissioner Richard Chervony _____

PASSED AND ADOPTED this ____ day of July, 2012.

Connie Leon-Kreps, Mayor

ATTEST:

Yvonne P. Hamilton, CMC
City Clerk

**APPROVED AS TO FORM FOR THE USE OF
THE CITY OF NORTH BAY VILLAGE:**

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
City Attorney

City of North Bay Village Resolution: Florida Department of Transportation Turf and Landscape Agreement/2012-2013



City of North Bay Village

Administrative Offices

1700 Kennedy Causeway, Suite #132 North Bay Village, FL 33141

Tel: (305) 756-7171 Fax: (305) 756-7722 Website: www.nbvillage.com

MEMORANDUM
City of North Bay Village

DATE: June 29, 2012

TO: Yvonne P. Hamilton, CMC
City Clerk

FROM: Dennis W. Kelly 
City Manager

SUBJECT: Introduction of Resolution

Pursuant to Section 3.08 of the City Charter, I hereby introduce the following Resolution:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA, AUTHORIZING THE RENEWAL OF A HIGHWAY LANDSCAPING AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR MAINTENANCE OF THE TURF AND LANDSCAPED AREAS ON THE 79TH STREET CAUSEWAY AND PROVIDING FOR COMPENSATION TO THE CITY FOR SUCH SERVICES; PROVIDING FOR AN EFFECTIVE DATE.

Accordingly, please place the item on the next available agenda.

DK:yph

Mayor
Connie Leon-Kreps

Vice-Mayor
Eddie Lim

Commissioner
Stuart Blumberg


Commissioner
Dr. Richard Chervony



Florida Department of Transportation

RICK SCOTT
GOVERNOR

1000 NW 111 Avenue
Miami, FL 33172

ANANTH PRASAD, P.E.
SECRETARY

June 8, 2012

Mr. Dennis Kelly, City Manager
City of North Bay Village
1700 Kennedy Causeway, Suite 132
North Bay Village, FL 33141

RE: Turf and Landscape Maintenance Joint Participation Agreement
Contract No.: **AQE 94 Renewal# 1**
Financial No.: **252473-2-78-01**

Subject: **RENEWAL# 1**

Dear Mr. Kelly :

The Agreement referenced above will expire on September 30th, 2012. The Department wishes to renew this agreement for a period of one year starting on October 1st, 2012, and ending on September 30th, 2013. If the City agrees on this renewal, enclosed are two (2) new contract renewal documents to execute. Please leave the date blank on the first page and return the executed documents back to the Department before **June 29, 2012**.

Should you have any questions concerning this agreement, please contact me at telephone number (305) 470-5426.

Sincerely,

Shany Ianotti
Project Manager Assistant

cc: R. Marrero, K. Al-Said, A. Perez, file.

9cc(7)

CONTRACT RENEWAL

Contract No.: AQE 94 Renewal: (1st, 2nd, etc.) 1st
Financial Project No(s): 252473-2-78-01
County(ies): Miami-Dade

This Agreement made and entered into this _____ day of _____, by and between the State of Florida Department of Transportation, hereinafter called "Department", and City of North Bay Village hereinafter called "Contractor".

WITNESSETH:

WHEREAS, the Department and the Contractor heretofore on this 30th day of September, 2011 entered into an Agreement whereby the Department retained the Contractor to perform Maintenance of all Landscape and/or turfed areas within the Department's Right of Way, having the limits described on Exhibit "B" of the original contract.

WHEREAS, said Agreement has a renewal option which provides for a renewal if mutually agreed to by both parties and subject to the same terms and conditions of the original Agreement;

NOW, THEREFORE, this Agreement witnesseth that for and in consideration of the mutual benefits to flow each to the other, the parties agree to a renewal of said original Agreement for a period beginning the 1st day of October, 2012 and ending the 30th day of September, 2013 at a cost of \$ 5,294.03

All terms and conditions of said original Agreement shall remain in force and effect for this renewal.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers on the day, month, and year set forth above.

City of North Bay Village
Name of Contractor

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION

Contractor Name and Title

BY: _____
District Secretary or Designee (Signature)

BY: _____
Authorized Signature

Title: _____

Name of Surety

(SEAL)

Legal: _____

City State

Fiscal: _____
Approval as to Availability of Funds

By: _____
Florida Licensed Insurance Agent or Date
Attorney-In-Fact (Signature)

Countersigned: _____
Florida Licensed Insurance Agent Date

9008



Florida Department of Transportation

**RICK SCOTT
GOVERNOR**

1000 NW 111 Avenue
Miami, FL 33172

**ANANTH PRASAD, P.E.
SECRETARY**

September 30, 2011

Mr. Robert Daniels, Interim City Manager
City of North Bay Village
1700 Kennedy Causeway, Suite 132
North Bay Village, FL 33141

RE: NOTICE TO PROCEED
Contract: AQE 94 Turf and Landscape Maintenance Joint Participation
Agreement
FIN# 252473-2-78-01

Dear Mr. Daniels:

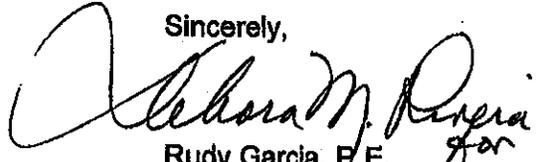
The Department and the City of North Bay Village have executed the Memorandum of Agreement noted above for a period of one year, starting October 1st, 2011.

The City may invoice the Department after the end of each quarter according to the schedule below.

1 st Quarter-	October 1 st , 2011 thru December 31 st , 2011
2 nd Quarter	January 1 st , 2012 thru March 31 st , 2012
3 rd Quarter	April 1 st , 2012 thru June 30 th , 2012
4 th Quarter	July 1 st , 2012 thru September 30 th , 2012

If you have any questions concerning the agreement, please contact me at telephone number (305) 470-5354.

Sincerely,


Rudy Garcia, P.E.
District Maintenance Engineer

RG/si

cc: R. Marrero, R. Kenney, K. Al-Said, S. Perez, Procurement.

QC(9)

**TURF AND LANDSCAPE MAINTENANCE
JOINT PARTICIPATION AGREEMENT
BETWEEN THE
FLORIDA DEPARTMENT OF TRANSPORTATION
AND THE
CITY OF NORTH BAY VILLAGE**

This Agreement, is made and entered into this 30th day of September, 2011, by and between the State of Florida Department of Transportation, a component agency of the State of Florida, hereinafter referred to as the 'DEPARTMENT', and the City of North Bay Village, a municipal corporation of the State of Florida, existing under the Laws of the State of Florida, hereinafter referred to as the 'CITY'.

RECITALS:

WHEREAS, the DEPARTMENT has jurisdiction and maintains the State Road (S.R.) 934/Kennedy Causeway corridor in the CITY; and

WHEREAS, the DEPARTMENT, as part of the continual updating of the State of Florida Highway System and for the purpose of safety, has created roadside areas and median strips on the State Highway System within the corporate limits of the CITY; and

WHEREAS, the DEPARTMENT, at the CITY's request, has agreed to reimburse the CITY for the maintenance of turf and landscape, hereinafter referred to as the 'PROJECT', and

WHEREAS, the CITY recognizes that said median strips and roadside areas contain turf and landscape, which shall be maintained in accordance with Exhibit "A", 'Maintenance Responsibilities', which is herein incorporated by reference; and

WHEREAS, the DEPARTMENT has programmed funding for the PROJECT under Financial Project Number 252473-2-78-01, and has agreed to reimburse the CITY for turf and landscape maintenance elements which are outlined in the attached Exhibit "B", 'Project Limits & Financial Summary', which is herein incorporated by reference; and

WHEREAS, the parties hereto mutually recognize the need for entering into an Agreement designating and setting forth the responsibilities of each party; and

WHEREAS, the parties are authorized to enter into this Agreement pursuant to Section 339.08(e) and 339.12, Florida Statutes (F.S.);

NOW, THEREFORE, in consideration of the premises, the mutual covenants and other valuable considerations contained herein, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. INCORPORATION OF RECITALS

The foregoing recitals are true and correct and are incorporated into the body of this Agreement, as if fully set forth herein.

2. GENERAL REQUIREMENTS

- a. The CITY shall submit this Agreement to its CITY Commission for ratification or approval by resolution. A copy of said resolution is attached hereto as Exhibit "C", 'City of North Bay Village's Resolution', and is herein incorporated by reference.
- b. The CITY:
 - i. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the CITY during the term of this Agreement; and
 - ii. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Agreement term.
- c. The CITY shall not commence the PROJECT until a Notice to Proceed has been provided from the DEPARTMENT, which shall become the effective date of this Agreement and shall not precede the date provided on page one (1) of the Agreement.
- d. The CITY shall be responsible for the maintenance of all areas that have turf and landscape within the DEPARTMENT's right-of-way as described in Exhibit "A", 'Maintenance Responsibilities'.
- e. The CITY shall be responsible for performing the required maintenance with a minimum frequency of twelve (12) times per year.
- f. All turf and landscape maintenance shall be in accordance with the latest edition of the State of Florida "Guide for Roadside Mowing" and the latest edition of the "Maintenance Rating Program".
- g. The CITY shall submit a work schedule to the DEPARTMENT. In addition, before the CITY starts the work, the DEPARTMENT shall be notified, via fax, of the state road(s) and the day(s) in which the CITY will be working. The fax shall be sent to the attention of the North Miami-Dade Maintenance Engineer, at 305-640-7197.
- h. The CITY shall not be responsible for the clean-up, removal and disposal of

9c(11)

debris from the DEPARTMENT's right of way following a natural disaster (i.e. hurricane, tornados, etc.). However, the cost of any cycle or part thereof impaired by any such event may be deducted from the DEPARTMENT's affected quarterly payment to the CITY.

- i. It is understood between the parties hereto that all the landscaping covered by this Agreement may be removed, relocated or adjusted at any time in the future as found necessary by the DEPARTMENT in order that the adjacent state road be widened, altered or otherwise changed and maintained to meet with future criteria or planning of the DEPARTMENT.

3. FINANCIAL PROVISIONS

- a. Eligible PROJECT costs may not exceed FIVE THOUSAND TWO HUNDRED NINETY FOUR DOLLARS AND THREE CENTS (\$5,294.03), as outlined in Exhibit "B", 'Project Limits & Financial Summary'.
- b. The DEPARTMENT agrees to pay the CITY for the herein described services at a compensation as detailed in this Agreement.
- c. The CITY shall provide the following quantifiable, measurable and verifiable units of deliverables. Each deliverable must specify the required minimum level of service to be performed and the criteria for evaluating successful completion. Said deliverables consists of:
 - i. Mowing Small Machine
 - ii. Edging & Sweeping
 - iii. Landscape Maintenance
 - iv. Litter Removal
- d. Invoices shall be submitted by the CITY in detail sufficient for a proper pre-audit and post audit thereof, based on the quantifiable, measurable and verifiable units of deliverables as established in Section c above and Exhibit "B". Deliverables must be received and accepted in writing by the DEPARTMENT's Project Manager prior to payments.
- e. Supporting documentation must establish that the deliverables were received and accepted in writing by the CITY and that the required minimum level of service to be performed based on the criteria for evaluating successful completion as specified in Section c has been met.
- f. Travel costs will not be reimbursed.
- g. The CITY providing goods and services to the DEPARTMENT should be aware of the following time frames. Upon receipt, the DEPARTMENT has five (5)

90012

working days to inspect and approve the goods and services. The DEPARTMENT has twenty (20) days to deliver a request for payment (voucher) to the Department of Financial Services. The twenty (20) days are measured from the latter of the date the invoice is received or the goods or services are received, inspected, and approved.

- h. If a payment is not available within forty (40) days, a separate interest penalty at a rate as established pursuant to **Section 55.03(1), F.S.**, will be due and payable, in addition to the invoice amount, to the CITY. Interest penalties of less than one (1) dollar will not be enforced unless the CITY requests payment. Invoices have to be returned to the CITY because of CITY preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the DEPARTMENT.
- i. A Vendor Ombudsman has been established within the Department of Financial Services. The Duties of this individual include acting as an advocate for the CITY who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at 850-413-5516.
- j. Records of costs incurred under the terms of this Agreement shall be maintained and made available upon request to the DEPARTMENT at all times during the period of this Agreement and for five (5) years after final payment is made. Copies of these documents and records shall be furnished to the DEPARTMENT upon request. Records of costs incurred include the CITY's general accounting records and the project records, together with supporting documents and records, of the contractor and all subcontractors performing work on the project, and all other records of the contractor and subcontractors considered necessary by the DEPARTMENT for a proper audit of costs.
- k. In the event this contract is for services in excess of \$25,000.00 and a term for a period of more than 1 year, the provisions of **Section 339.135(6)(a), F.S.**, are hereby incorporated:

"The DEPARTMENT, during any fiscal year, shall not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The DEPARTMENT shall require a statement from the Comptroller of the DEPARTMENT that such funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained shall prevent the making of contracts for periods exceeding 1 year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years; and this paragraph shall be incorporated verbatim in all contracts of the DEPARTMENT which are for an amount in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) and which have a term for a period of more than 1 year."

QC(13)

1. The DEPARTMENT's obligation to pay is contingent upon an annual appropriation by the Florida Legislature.

4. COMMUNICATIONS

- a. All notices, requests, demands, consents, approvals and other communications which are required to be served or given hereunder, shall be in writing and hand-delivered or sent by either registered or certified U.S. mail, return receipt requested, postage prepaid, addressed to the party to receive such notices as follows:

To DEPARTMENT: Florida Department of Transportation
1000 NW 111th Avenue, Room 6205
Miami, FL 33172-5800
Attention: District Maintenance Engineer

To CITY: City of North Bay Village
1700 Kennedy Causeway, Suite 132
North Bay Village, FL 33141
Attention: Robert Daniels, Interim City Manager

5. INVOICING

- a. The CITY shall submit quarterly invoices for DEPARTMENT review, approval, and payment in accordance with this Agreement. Quarterly payments will be made upon invoice approval in an amount not to exceed one fourth of the eligible PROJECT costs. All costs charged to the PROJECT, including any approved services contributed by the CITY or others, shall be supported by properly executed payroll, time records, invoices, contracts or vouchers evidencing in proper detail the nature and propriety of the charges.
- b. In the event temporary work by the DEPARTMENT's forces or by other Contractors temporarily prevent the CITY from performing the work described in this Agreement, the DEPARTMENT shall deduct from the affected quarterly payment(s) the acreage affected area and only compensate the CITY for the actual work it performs.
 - i. The DEPARTMENT shall initiate this procedure only if the temporary work prevents the CITY from performing it work for a period of one (1) month or longer.
- c. In the event this Agreement is terminated as established in Section 8 herein, no payment will be prorated for the quarter in which termination occurs.

6. MAINTENANCE DEFICIENCIES

If the District Maintenance Engineer determines that the CITY is not accomplishing its

9C(14)

responsibilities under this Agreement, said District Maintenance Engineer may issue written notice, in care of the CITY on notice thereof. Thereafter, the CITY shall have a period of thirty (30) calendar days within which to correct the cited deficiency or deficiencies. If said deficiencies are not corrected within this time period the DEPARTMENT may, at its option, proceed as follows:

- a. Maintain the median or roadside area(s) declared deficient with DEPARTMENT and/or a Contractor's material, equipment and personnel. The actual cost for such work will be deducted from the DEPARTMENT's affected quarterly payment to the CITY; or
- b. Terminate this Agreement.

7. EXPIRATION/RENEWAL

This Agreement is for a term of one (1) year beginning on the date provide in the Notice to Proceed; and may be renewed twice, only if mutually agreed to in writing by the DEPARTMENT and the CITY. Any such renewal shall be subject to the same terms and conditions set forth in this Agreement, and shall be contingent upon both satisfactory CITY performance evaluations by the DEPARTMENT and the availability of funds.

This Agreement may be extended if mutually agreed in writing by both parties, for a period not to exceed six (6) months and shall be subject to the same terms and conditions set forth in this Agreement. There shall be only one (1) extension of this Agreement.

8. TERMINATION

This Agreement, or part hereof, is subject to termination under any one of the following conditions:

- a. In the event the DEPARTMENT exercises the option identified by Section 6 of this Agreement.
- b. As mutually agreed by both parties.
- c. In accordance with Section 287.058(1)(c), F.S., the DEPARTMENT shall reserve the right to unilaterally cancel this Agreement if the CITY refuses to allow public access to any or all documents, papers, letters, or other materials made or received by the CITY pertinent to this Agreement which are subject to provisions of Chapter 119, of the F.S.

9. ENTIRE AGREEMENT

This Joint Participation Agreement is the entire Agreement between the parties hereto, and it may be modified or amended only by mutual consent of the parties in writing.

9c(15)

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

CITY OF NORTH BAY VILLAGE:

STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION:

BY: [Signature]
CITY MAYOR

BY: [Signature]
DISTRICT SECRETARY

ATTEST: [Signature]
(SEAL) CITY CLERK

ATTEST: [Signature]
(SEAL) EXECUTIVE SECRETARY

LEGAL REVIEW:

[Signature]
CITY ATTORNEY

[Signature]
DISTRICT CHIEF COUNSEL

9c. (16)

Exhibit "A"
Maintenance Responsibilities

The CITY shall be responsible for the maintenance of all turf and landscape areas within the DEPARTMENT's right of way on S.R. 934/Kennedy Causeway, as described below:

- a. Mow, cut and/or trim, and edge the grass or turf in accordance with the latest edition of the State of Florida "Guide for Roadside Mowing" and the latest edition of the "Maintenance Rating Program".
- b. Properly prune all plants, which include, but not limited to, plant and tree trimmings, in accordance with the latest edition of the "Maintenance Rating Program". Pruning such parts thereof which may present a visual or other safety hazard for those using or intending to use the right-of-way.
- c. Remove and properly dispose of litter from roadside and median strips.
- d. Remove and properly dispose of dead, diseased or otherwise deteriorated plants in their entirety.
- e. All work by the CITY shall be executed on the roadway under a traffic control plan in accordance with DEPARTMENT's latest edition of the "FDOT Design Standards".

FDOT Financial Project Number: 252473-2-78-01

County: Miami-Dade

FDOT Project Manager: Guy Gladson, P.E. 305-640-7197

CITY Project Manager: Robert Daniels, Interim City Manager

9C(17)

Exhibit "B"

Project Limits & Financial Summary

Below are the PROJECT limits and acreage of the areas to be maintained by the CITY under this Agreement.

934	Kennedy Causeway	Intercoastal Waterway	West City Limits
934	Kennedy Causeway	West City Limits	East City Limits

Mowing Small Machine (E104 4 3)	0.301	12	3.61	\$ 245.00
Edging & Sweeping (E 110 32 1)	0.24	12	2.88	\$ 323.25
Landscape Maintenance (E580 3 2)	0.105	12	1.26	\$ 449.49
Litter Removal (E110 30)	0.406	24	9.74	\$ 299.00

TOTAL ANNUAL AMOUNT ELIGIBLE FOR REIMBURSEMENT: \$ 5,294.03

9C(18)

Exhibit "C"
City of North Bay Village's Resolution

To be herein incorporated once approved by the CITY Commission.

9c(19)

RESOLUTION NO. 2011-39

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA, AUTHORIZING A HIGHWAY LANDSCAPING AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION FOR MAINTENANCE OF THE TURF AND LANDSCAPED AREAS ON THE 79TH STREET CAUSEWAY AND PROVIDING FOR COMPENSATION TO THE CITY FOR SUCH SERVICES; PROVIDING FOR AN EFFECTIVE DATE. (INTRODUCED BY INTERIM CITY MANAGER ROBERT DANIELS)

WHEREAS, the City has continually maintained roadside areas, median strips and right-of-way areas included as part of the State Highway System on State Road 934, also referred to as the 79th Street Causeway, from the Intracoastal Waterway as boundary on the west to the eastern city limits; and

WHEREAS, the City and the Department of Transportation wish to enter into a new agreement for a period of one year effective October 1, 2011 through September 30, 2012 for continued maintenance of the turf and landscaped areas; and

WHEREAS, Florida Department of Transportation agrees to compensate the City in an annual amount of Five Thousand Two Hundred Ninety-Four Dollars and Three Cents (\$5,294.03) to be paid on a quarterly basis for the City's performance of maintaining the turf and landscaped areas on the 79th Street Causeway.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing whereas clauses are hereby ratified and confirmed as being true; and the same are hereby made a specific part of this Resolution.

Section 2. Approval Agreement. The Agreement between the City of North Bay Village and the Florida Department of Transportation for turf and landscape maintenance is hereby approved, a copy of which is attached hereto as Exhibit 1.

Section 3. Authorization of City Officials. The City Manager is authorized to take all actions necessary to implement the terms and conditions of the agreement. For purposes of this Resolution, references to the City Manager shall include the Interim City Manager.

Section 4. Execution of Agreement. The City Manager is authorized to execute the agreement on behalf of the City subject to the approval as to form and legality by the City Attorney.

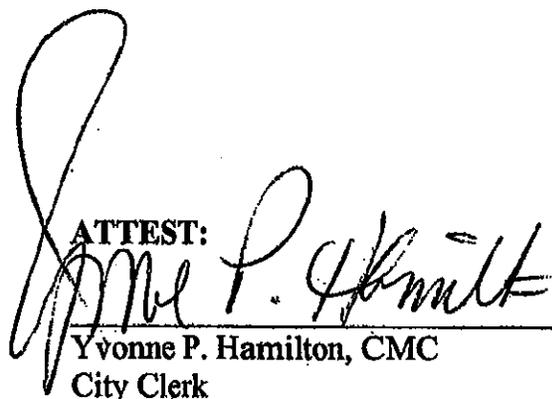
Section 5. Effective Date. This Resolution shall take effect immediately upon adoption.

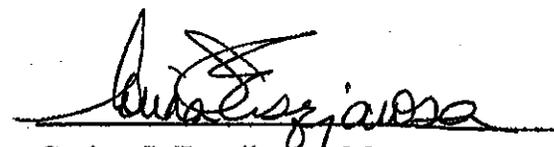
The motion to adopt the foregoing Resolution was offered by Mayor Corina S. Esquijarosa, seconded by Vice Mayor Connie Leon-Kreps.

FINAL VOTE AT ADOPTION:

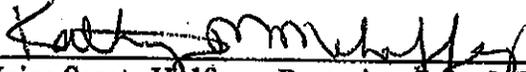
Mayor Corina S. Esquijarosa	<u>Yes</u>
Vice Mayor Connie Leon-Kreps	<u>Yes</u>
Commissioner Eddie Lim	<u>Yes</u>
Commissioner Frank Rodriguez	<u>Yes</u>
Commissioner Paul Vogel	<u>Absent</u>

PASSED AND ADOPTED this 20th day of September, 2011.

ATTEST:

Yvonne P. Hamilton, CMC
City Clerk


Corina S. Esquijarosa, Mayor

**APPROVED AS TO FORM FOR THE USE OF
THE CITY OF NORTH BAY VILLAGE:**



Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
City Attorney

City of North Bay Village Resolution: Florida Department of Transportation Turf and Landscape Agreement/2011-2012

QC(22)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA, APPROVING AN AGREEMENT IN FORM BETWEEN THE CHILDREN'S TRUST AND THE CITY OF NORTH BAY VILLAGE PROVIDING FOR GRANT FUNDING FOR A CITY AFTER-SCHOOL CARE PROGRAM FOR THE 2012-13 SCHOOL YEAR AND A SUMMER CAMP FOR SUMMER 2013; AUTHORIZING CITY OFFICIALS TO TAKE ALL NECESSARY STEPS TO ENTER INTO AND IMPLEMENT THE AGREEMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AUTHORIZING THE EXPENDITURE OF BUDGETED FUNDS; PROVIDING FOR AN EFFECTIVE DATE. (INTRODUCED BY CITY MANAGER DENNIS KELLY)

WHEREAS, the City of North Bay Village (the "City") has developed an afterschool care program for the 2012-2013 school year to care for students after the close of the school day and a summer 2013 summer day camp program for area children; and

WHEREAS, the Children's Trust provides grant funding to assist in providing services for the benefit of children; and

WHEREAS, the Children's Trust awarded the City a grant for the 2011-2012 school year renewable for up to two years; and

WHEREAS, the City, working with the Children's Trust grant, developed and operated an afterschool program for the 2011-2012 school year and a summer camp during the summer of 2012; and

WHEREAS, the City is seeking to renew the grant funding from the Children's Trust for the operation of the City's afterschool program for the 2012-2013 school year and for a summer camp program for 2013; and

WHEREAS, the Children's Trust Agreement, (the "Agreement") provides the terms and conditions for the 2012-2013 grant funding from the Children's Trust; and

WHEREAS, the City Commission finds that approval of the form of this Agreement is in the best interest of the City.

9D(1)

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA:

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

Section 2. Approval of Form of Agreement. The Agreement between The Children's Trust and the City of North Bay Village (the "Agreement"), a copy of which is attached as Exhibit "A", together with such changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, is approved in form, for execution and implementation.

Section 3. Authorization of City Officials. The City Manager and/or his designee and the City Attorney are authorized to take all actions necessary to enter into the Agreement with the Children's Trust and to take all necessary steps to implement the terms and conditions of the Agreement.

Section 4. Execution of the Agreement. The City Manager is authorized to execute the Agreement on behalf of the City, to execute any required agreements and/or documents to implement the terms and conditions of the Agreement and to execute any extensions and/or amendments to the Agreement, subject to the approval as to form and legality by the City Attorney.

Section 5. Authorization of Fund Expenditure. The City Manager is authorized to expend budgeted funds to implement the terms and conditions of the grant application.

Section 6. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this _____ day of July, 2012.

The motion to adopt the foregoing Resolution was offered by _____, seconded by _____. The votes were as follows:

FINAL VOTE AT ADOPTION:

Mayor Connie Leon-Kreps _____
Vice Mayor Eddie Lim _____
Commissioner Stuart Blumberg _____
Commissioner Richard Chervony _____

9D(2)

CONNIE LEON-KREPS
MAYOR

ATTEST:

YVONNE P. HAMILTON, CMC
CITY CLERK

APPROVED AS TO FORM FOR USE BY
THE CITY OF NORTH BAY VILLAGE ONLY:

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
City Attorney

City of North Bay Village Resolution: Agreement with Children's Trust for Afterschool Care
and Summer Camp Program 2012-2013.



City of North Bay Village

Administrative Offices

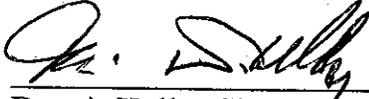
1700 Kennedy Causeway, Suite #132 North Bay Village, FL 33141

Tel: (305) 756-7171 Fax: (305) 756-7722 Website: www.nbvillage.com

MEMORANDUM
City of North Bay Village

DATE: June 29, 2012

TO: Yvonne P. Hamilton, CMC
City Clerk

FROM: 
Dennis Kelly, City Manager

SUBJECT: Introduction of Resolution

Pursuant to Section 3.08 of the City Charter, I hereby introduce the following Resolution:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA, APPROVING AN AGREEMENT IN FORM BETWEEN THE CHILDREN'S TRUST AND THE CITY OF NORTH BAY VILLAGE PROVIDING FOR GRANT FUNDING FOR A CITY AFTER-SCHOOL CARE PROGRAM FOR THE 2011-12 SCHOOL YEAR AND A SUMMER CAMP FOR SUMMER 2013; AUTHORIZING CITY OFFICIALS TO TAKE ALL NECESSARY STEPS TO ENTER INTO AND IMPLEMENT THE AGREEMENT; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; PROVIDING FOR AN EFFECTIVE DATE.

Accordingly, please place the item on the next available agenda.

Mayor
Connie Leon-Kreps

Vice-Mayor
Eddie Lim

Commissioner
Stuart Blumberg


Commissioner
Dr. Richard Chervony

FY 2012-2013
CONTRACT NO. ####-####
BETWEEN THE CHILDREN'S TRUST
AND AGENCY NAME
FOR Prevention/ Service Partnership / Youth Development/ HClOC

THIS CONTRACT is between **The Children's Trust** whose address is 3150 S.W. 3rd Avenue, 8th Floor, Miami, Florida 33129 and **Agency Name** hereafter "Provider" whose address is _____, Miami, Florida 331__.

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 _____ through _____, 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.

9D(4)(A)

D. TOTAL FUNDING

Subject to the availability of funds, the maximum amount payable for Services rendered under this Contract shall not exceed \$_____, with a required match of \$_____. Provider agrees 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 is 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 691-73.001, 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 all of 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.

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-contracts with Provider must be executed within 90 days of Provider's execution date. All subcontractors must agree to be monitored by Provider and/or 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. Provider shall be solely liable for any expenses or liabilities incurred 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.

8. Compliance

Provider agrees to maintain and ensure its compliance, as applicable, with federal, state, county, and local laws. This includes, but is not limited to, adherence to IRS rules and regulations requiring timely filing of tax returns to retain tax-exempt status and payment of payroll taxes, as applicable, throughout the term of the contract.

Provider further agrees to provide agency and site(s) information to Switchboard of Miami 2-1-1, The Children's Trust 24 hour helpline.

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 sub contractors, 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; included, but not limited to budgets, invoices, and amendments in Services & Activities Management System (SAMIS).
- 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.
- p. Fails to submit an Annual Financial Statement Audit Package and Program Specific Audit, as applicable, in accordance with Section O and Attachment D of 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. 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. 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

Prior to, or on the date commencing the effective term of this Contract, Provider's insurance agent(s) shall provide to The Children's Trust the following, as applicable: 1) Certificates of Insurance naming The Children's Trust as an additional insured and the certificate holder on all applicable policies; and all applicable policies shall be maintained in full force and effect for the entire term of this Contract.

Or, 2) 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.

Failure by Provider to comply with Section K, shall be a material breach of this Contract.

The Children's Trust will not disburse any funds under this contract until all required Certificates of Insurance, or letter(s) of self-insurance have been provided to and have been approved by The Children's Trust.

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 financial statements to support a higher deductible. The Children's Trust must be designated and shown as an additional insured and the certificate holder 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 and the certificate holder 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 of making any material changes to the insurance coverage 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, lapsed or expired during the effective period of this Contract, The Children's Trust shall withhold all payments to 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, if applicable;
- 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 (GAAP). 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

Within 180 days of the close of its fiscal year, Provider agrees to electronically submit the following documents to The Children's Trust, which together comprise an Annual Financial Statement Audit Package; they are: (a). an annual financial statement audit, performed by an independent certified public accounting firm that is registered to do business with the Florida Department of Business and Professional Regulation; (b). an audit report on internal control over financial reporting and on compliance and other matters based on an audit of financial statements performed in accordance with *Government Auditing Standards (GAS Report)*; (c). a management letter; if no report or management letter is prepared by the independent certified public accounting firm, then Provider must confirm in writing to The Children's Trust that no such report was submitted to Provider; (d). 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, if applicable; (e). Auditors communication with those charged with governance (SAS 114 Report), if no SAS 114 Report is prepared by the the independent certified public accounting firm, then Provider must confirm in writing to The Children's Trust that no such report was submitted to Provider.

If a Provider's financial statement audit is prepared by the Florida Auditor General, then the due date for submitting an Annual Financial Statement Audit Package, as defined, is 270 days after the close of a Provider's fiscal year.

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

Electronic filing of the Annual Financial Statement Audit Package, as defined, must be sent to the following e-mail address: audits@thechildrenstrust.org.

Providers that are required to have a Single Audit 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.

3. Program specific audit

Within 180 days of the close of its fiscal year, a Provider who is contracted for a combined total of \$100,000 or more from The Children's Trust from this or any other Children's Trust contract(s), related to the fiscal year under audit, must electronically submit a Program Specific Audit related to The Children's Trust contract(s), in addition to the Annual Financial Statement Audit Package. The Program Specific Audit shall be performed by an independent certified public accounting firm that is registered to conduct business with the Florida Department of Business and Professional Regulation, can perform audits under Government Auditing Standards i.e. "Yellow Book", and is either a member of the AICPA or FICPA Peer Review Program to include engagement reviews. 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.

Electronic filing of the Program Specific Audit must be sent to the following e-mail address: audits@thechildrenstrust.org

4. Audit Extensions

Audit extensions may be granted in writing by The Children's Trust 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 independent certified public accounting 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 Annual Financial Statement Audit Package and other financial information will be used in the evaluation of Provider's performance and Provider's overall fiscal health.

In the event that either the Annual Financial Statement Audit Package or the Program Specific Audit is not received in a timely manner and in accordance with the previously stated due dates, and an audit extension has not been approved, then The Children's Trust shall withhold all payments to Provider until said documents are received and determined to be acceptable by The Children's Trust.

5. 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.

6. 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 assessments 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.

7. Client Records

Pursuant to Florida Statute 119.071(5), The Children's Trust collects the last four digits of 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 participant. 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.

8. 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.

9. 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.

10. Data Security Obligation

Provider shall maintain an appropriate level of data security for the personally identifiable information (PII) Provider is collecting or using in the performance of this Contract. PII is information that can uniquely identify, contact, or locate a single person or can be used with other sources to uniquely identify individuals. Provider shall maintain and adhere to a written Data Security Policy that addresses requirements regarding the protection of PII from unauthorized access and protection against data breaches and ensures Provider is in compliance with applicable federal and state standards with respect to transmission, receipt and storage of PII on Provider's computing network and as paper records. This policy shall address the topics of computer passwords, screensavers that lock computers, securing physical facilities, storing data, data use, data confidentiality agreements, and staff training related to the policy. Additionally, Provider is responsible for 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.

11. 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 law 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 430, 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 prior to commencing work pursuant to this Contract.

For purposes of this section, the term "direct service provider" means a person 18 years of age or older, including a volunteer, who provides services to children, youth and their families. The term does not include volunteers who assist on an intermittent basis for less than 20 hours per month.

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 Attachment E: "Affidavit for Level 2 Background Screenings" each for contract term. The Affidavit will cover employees,

volunteers, and 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 sub-contractors files. 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, 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. (Refer to http://www.miamidadeethics.com/Publications/code_of_ethics2010.pdf for the Code of Ethics Ordinance).

4. Compliance with Sarbanes-Oxley Act of 2002

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

- 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:

Provider Program Name 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:

Provider Program Name 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:

Provider Program Name finanse pa "The Children's Trust". Trust la, se yon sous lajan ke gouveman amerikin vote an referendum 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.

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

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.

PROVIDER NAME
MIAMI DADE COUNTY FLORIDA

THE CHILDREN'S TRUST
MIAMI-DADE COUNTY, FLORIDA

By: _____
(Signature of Authorized Representative)

by: _____
(Signature)

Modesto E. Abety-Gutierrez

(Type/Print Title)

President and CEO

Date: _____

Date: _____

Provider Federal ID# _____

Approved as to form and legal sufficiency

_____ Date: _____
County Attorney

This contract is not valid until signed by both parties.

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA, PROVIDING FOR THE SUBMISSION TO THE ELECTORS PROPOSED AMENDMENTS TO THE CITY CHARTER AS PROVIDED BY THE ADVISORY CHARTER REVIEW BOARD IN ACCORDANCE WITH SECTION 10.13 OF THE CITY CHARTER; PROVIDING REQUISITE BALLOT LANGUAGE FOR SUBMISSION TO THE ELECTORATE; CALLING A SPECIAL ELECTION ON THE PROPOSED AMENDMENTS TO THE CITY CHARTER TO BE HELD ON TUESDAY, NOVEMBER 6, 2012; PROVIDING FOR NOTICE OF ELECTION; PROVIDING FOR INCLUSION IN THE CHARTER PROVIDING FOR SEVERABILITY; PROVIDING FOR RELATED MATTERS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 10.13 of the City Charter, the City Commission convened an Advisory Charter Review Board (the "Board") and the Board submitted proposed revisions to the City Charter in its report to the City Commission on June 12, 2012 (the "Charter Amendments"); and

WHEREAS, pursuant to Section 9.02 of the City Charter and Section 166.031, Florida Statutes, the City Commission is authorized to provide for the submission of the proposed Charter Amendments to the electorate of the City; and

WHEREAS, the City Commission desires to submit to the electors of the City the following proposed Charter Amendments.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA, AS FOLLOWS:

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

11A(1)

Section 2. Charter Amendments. That pursuant to Section 9.02 of the City Charter and Section 166.031, Florida Statutes, if the Charter Amendments are adopted by the electorate, the following sections of the Charter of the City of North Bay Village are amended to read as follows:¹

CITY OF NORTH BAY VILLAGE CHARTER

2.01. - Corporate limits.

The municipal corporation of the City shall comprise and have full municipal jurisdiction, powers, rights and privileges over the territory and persons now and ~~from time to time hereafter~~ in the future within the following boundaries in Miami-Dade County, Florida, to wit:

3.01. - City Commission.

A. *City Commission; powers and composition.* There shall be a city Commission with all legislative powers of the City vested therein, consisting of five (5) members: a mayor, a vice-mayor and three (3) Commissioners. Each Commission member must be a qualified elector of the City.

B. *Appointments by Commission.* The Commission shall appoint the city manager, city clerk, city attorney and all consultants.

3.04. - Compensation.

Each Commission member will be compensated ~~six thousand dollars (\$6,000.00)~~ six thousand three hundred Dollars (\$6,300) per year payable at five hundred ~~twenty-five~~ twenty-five dollars ~~(\$500.00)~~ \$525.00 per month. The Mayor will be compensated ~~seven thousand five hundred dollars (\$7,500.00)~~ seven thousand eight hundred dollars (\$7,800) per year payable at six hundred and ~~twenty-five~~ fifty dollars ~~(\$625.00)~~ \$650.00 per month. ~~Compensation will be adjusted at the applicable Consumer Price Index as provided by the Department of Labor, effective each year commencing October 1, 2007.~~

¹ / Proposed additions to the existing Town Charter text are indicated by underline; proposed deletions from the existing Town Charter text are indicated by ~~strikethrough~~.

3.06. - Limitations of powers of the Commission.

All powers of the City and the determination of all matters of policy shall be vested in the Commission with the following limitations:

A. *Acquisition of real property.* The Commission may acquire property within or without the corporate limits of the City for any municipal purpose, in fee simple or any lesser interest or estate, by purchase, gift, devise, or lease provided such amount of expenditure for real property shall not exceed twenty (20) percent of the current **total operating budget annual-fiscal-budget** of the City.

B. *Capital improvement projects.* The Commission may, through proper procedure, propose, undertake and finance capital improvement projects to fulfill the necessary needs of the City, provided that the amount of total expenditures for all such projects shall not exceed twenty (20) percent of the current **total operating budget annual-budget** of the City in any one fiscal year.

C. *Excess of 20 percent of current total operating annual-budget.* In the event that the proposed purchase(s) of property and/or total expenditure(s) do exceed twenty (20) percent of the current **total operating budget annual-budget** of the City in any fiscal year, then a referendum will be held of the qualified electors of the city and it shall require a majority of those voting in such election to authorize such projects.

G. *Appointments or removal of city personnel prohibited.* Neither the Commission nor any of its members shall in any manner dictate the appointment, retention, or removal of any city employee (other than the City Manager, the City Clerk and the City Attorney, as provided herein), or any person who is duly appointed by the city manager, in accordance with Section 4.01(G)(2) of this Charter; except that the City Manager shall submit appointments of all department heads to the Commission for approval.

11A(3)

J. *Other Commissioner remunerative position.* No Commissioner shall be appointed to any other remunerative position with the City during his term of office **and for a term of two (2) years thereafter.**

K. *Nepotism.* No person related **up** to the second degree of consanguinity **or affinity** to a Commissioner shall be eligible to hold a remunerative position with the City. Any Commissioner who shall knowingly make such an appointment may be deemed guilty of misfeasance or malfeasance in office and subject to removal. The person so employed may be subject to dismissal.

3.07. - Vacancies; forfeiture of office; filling of vacancies on the Commission.

D. *Filling of vacancies on City Commission.* Any vacancy occurring for a City Commissioner shall be filled by the vote of the majority of the remaining members of said City Commission with the appointee serving until the remainder of the unexpired term until the next succeeding general City election and with any further remainder of said unexpired term to be filled by a Commissioner elected at said general election. If the remaining members of the City Commission shall fail or refuse to fill such vacancy within 30 days after it occurs, and if no general City election will be held within 90 days after the expiration of said 30 days, then a special election shall be called and held to elect a Commissioner to fill such vacancy for the remainder of the unexpired term. In the event that the position is that of Mayor, it must be filled from among the remaining Commissioners in accordance with the ~~procedures set forth above~~ **City Charter.**

E. In the event of the death, resignation, or removal of the Mayor, the Vice Mayor shall forthwith commence to serve as interim Mayor until the Mayor's position is filled by election or appointment.

(a) When the Vice Mayor becomes interim Mayor, the Commission, by majority vote shall appoint an interim Commissioner from the Vice Mayor's vacant district to fill the Vice Mayor's vacant seat until the required election or appointment of the Mayor and **then** the Commission shall, by majority vote, appoint one (1) of the Commissioners to serve as interim Vice Mayor.

11A(4)

(b) The Commissioner serving as interim Mayor or interim Vice Mayor shall serve as Mayor or Vice Mayor until the newly elected or appointed Mayor **and/or** Vice Mayor is sworn in as Mayor or Vice Mayor. The interim Mayor **and/or** interim Vice Mayor shall return to the position of Commissioner previously held to serve the remainder of his or her unexpired term.

F. In the event of the death, resignation, or removal of the Vice Mayor, the Commission shall, by majority vote, elect one (1) of the Commissioners to serve as Vice Mayor.

G. *Extraordinary vacancies.* In the event that a majority of the members of the Commission are removed by death, disability, law or forfeiture of office, the governor shall make interim Commission appointments and the Commission shall call a special election as provided in ~~§ Section 3.07(D) above and such election shall be held in the same manner as the election held pursuant to the previous of this Charter.~~

3.08. - Ordinances and resolutions.

B. *Emergency ordinances.* To meet a public emergency affecting life, health, property or the public peace, the Commission may adopt one or more emergency ordinances, but the ordinances may not levy taxes; set service or user charges for any municipal services; amend or repeal any ordinance adopted by the people at the polls or by the Commission in compliance with an initiative petition; or authorize the borrowing of money except as provided under the emergency appropriations provisions of this Charter, if applicable.

2. *Procedure.* An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but at least three ~~(3)~~ **four (4)** affirmative votes shall be required for adoption. After its adoption, the ordinance shall be published and printed as prescribed for other adopted ordinances.

11A(5)

C. *Procedures for adoption of ordinances and resolutions.*

2. Each ordinance or resolution shall be introduced by a member of the Commission or the City Manager, the City Attorney or the City Clerk, so long as the information is provided within ~~48 hours~~ **three (3) business days prior to the** scheduled meeting, in writing and shall embrace but one subject and matters properly connected therewith. The subject shall be clearly stated in the title. No ordinance shall be revised or amended by reference to its title only. Ordinances to revise or amend shall set out in full the revised or amended act or section or subsection or paragraph of a section or subsection. The enacting clause of every ordinance shall be as follows: "Be it enacted, by the Commission of the City of North Bay Village . . . "

4.01. - City mManager.

G. *Powers and duties of the City Manager.* The City Manager shall be responsible for the proper administration of all the affairs of the City, except as otherwise provided herein. His powers and duties shall be to:

1. See that all laws, provisions of this Charter and acts of the Commission, subject to enforcement by him or by officers subject to his direction and supervision, are faithfully executed;
2. Appoint, and when he deems it necessary for the good of the City, suspend or remove all city employees (except the City Attorney, the City Clerk and all personnel in the Legal Department, including outside counsel representing the City) and appointive administrative officers provided for by or under this Charter, except as otherwise provided by law, this Charter or personnel rules adopted pursuant to this Charter. He may authorize any administrative officer who is subject to his direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency. He will submit appointments of new department heads to the Commission for confirmation;

H. Outside employment by the City Manager shall be approved by the City Commission prior to commencement.

4.03. - Nepotism.

No person related up to the second degree of consanguinity or affinity to an elected or appointed City official (department head and above) shall be eligible to hold a remunerative position with the City. Any appointed City official who shall knowingly make such an appointment may be deemed guilty of misfeasance or malfeasance in office and subject to removal. The person so employed may be subject to dismissal. This provision may be waived during conditions deemed as emergencies by the City Commission.

5.04. - Commission Members—Residency requirements and terms of office.

The City shall be governed by a Commission of five (5) members, all of whom shall be qualified electors of the City. There shall be a Harbor Island Commissioner, a North Bay Island Commissioner, and a Treasure Island Commissioner, each of whom shall be a resident of their respective islands for a period of not less than ~~six (6) months~~ one (1) year prior to the date of the subject candidate's initial filing of qualifying papers for the Commission and shall also be and remain during their respective terms of office, permanent residents of their respective islands; however, this shall not apply to any mere temporary relocation within the City. The Mayor and Commissioner-at-large, the two (2) remaining positions, shall reside on any of the said islands of the City for a period of not less than ~~six (6) months~~ one (1) year prior to the date of the subject candidate's initial filing of qualifying papers for the Commission and shall also be and remain during their respective terms of office, permanent residents of the City. The term of the Mayor will be for two (2) years, and commencing with the November 2002 general election, the term of each City Commissioner will be for four years, on a staggered basis to be established as follows:

Notwithstanding any other provisions of this Charter, no later than December 15, 2000, the City Clerk shall publicly draw lots to determine which City Commissioners' term of office (specifically, the seat they each represent) will expire in November 2004 and which remaining two City Commissioners' terms of office (specifically, the seat they each represent) will expire in November 2006. All subsequent City Commissioner seats shall be elected for four (4) year terms.

All of the Commissioners and the Mayor shall be elected by the voters at large of the City.

5.05. - Nomination of Commission members and Mayor.

A. Any citizen who can qualify for the office of Commissioner or Mayor of the City as provided herein may be nominated for Commissioner or ~~m~~Mayor by a petition provided by the City Clerk for this purpose signed by not less than fifty (50) electors and filed with the City Clerk no sooner than seventy-five (75) days prior to the election date and no later than forty-five (45) days prior to the election date.

C. The signatures on the nominating petition need not all be subscribed on one paper, but to each separate paper there shall be attached a signed statement of the circulator thereof, stating the number of signers of such paper and that each signature appended thereto was made in his presence and is the genuine signature of the person whose name it purports to be. With each signature, including the signature of the circulator, shall be stated the place of residence of the signer, giving the street and number or other description sufficient to identify it. The form of nominating petition provided by the City Clerk shall be substantially as follows:

5.07. - Filing fee.

A. A nonrefundable filing fee of ~~one~~ two hundred and fifty dollars (~~\$100.00~~) \$250 must be deposited with the City Clerk at the time each petition is presented, and upon so submitting, concurrently therewith, the sworn statement of his or her name, address, occupation and willingness to serve shall also be filed. The name of each nominee for Commissioner or Mayor, who has complied with all requirements hereinbefore prescribed, shall be printed on the ballot as a candidate for the office of Commissioner or Mayor of the City.

5.14. - City employees soliciting votes.

It shall be unlawful for any paid non-elective employees of the City, while on duty or off duty and wearing any type of uniform or other definitive identification indicating that they are employees of the City, to solicit votes, coerce directly or

indirectly any elector or engage in any political activity in any municipal election or referendum in the City or use his or her official authority or influence for the purpose of interfering with an election or a nomination of office or coercing or influencing another person's vote or affecting the result thereof. Any employee violating the provisions of this section shall be subject to immediate dismissal.

6.01. - Advisory boards.

The Commission may by ordinance establish advisory boards to assist the Commission or the City. Advisory board members must be either residents of the City or owners of businesses located within the confines of the City, or designees of such business owners. Advisory Board members shall serve a two (2) year term concurrent with the regular scheduled election of the Commission. No individual shall serve more than two (2) consecutive terms on the same advisory board. A majority of the members of each advisory board must be residents of the City. The Commission may appoint ex officio non-voting members to the board who do not meet the requirements set forth above. The members of advisory boards shall serve without compensation and may be removed at any time by a majority vote of the entire Commission.

7.03. - Preparation and submission of budget.

H. *Notice of final budget meeting.* At the meeting of the Commission at which the budget and budget message are submitted, the Commission shall determine the place and time of the two public hearings and the final meeting on the budget and shall cause to be posted on the designated official bulletin board of the City a notice of the places and times not less than ten (10) days prior to the dates on which the Commission will hold the meetings.

~~If the budget calls for any increase in taxes by the City, the City shall endeavor to send a notice of the date of the final budget meeting to each property owner in the city files and also to those who submit requests to be so notified. With such notice the anticipated increase of taxes shall also be mentioned.~~ The City Manager shall comply with all provisions of state law relative to procedures in the event of property tax increases.

11A(9)

9.05. - Bonds of officers and employees.

Any officers or employees of the City who have check signing authority or access to City accounts shall post bond in such amount and with such surety as may be approved by the Commission. The premiums of such bonds shall be paid by the City.

9.06. - Oath of office/employment.

Every officer and employee of the City shall, before entering upon the duties of his office, take and subscribe to the following oath or affirmation, to be filed and kept in the office of the city clerk:

I _____, **a legal resident of the State of Florida**, and being employed by or an officer of the City of North Bay Village, Florida and a recipient of public funds as such employee or officer, do hereby solemnly swear or affirm that I will support **and obey** the Constitution **and the laws** of the United States and of the State of Florida, **and that I will, in all respects, observe the provisions of the Charter and Ordinances of the City.**

10.13. - Revision provision.

A. This Charter of the City must be reviewed six (6) years from November 8, 2000 and each sixth year thereafter by an Advisory Charter Review Board Appointed by the Commission with a minimum of five (5) members with at least one (1) representative from each island; any proposed revisions to the Charter must meet the approval of the qualified electors of the City at an election to be held at the same time as the regularly scheduled municipal Commission election immediately following each sixth year Charter review.

B. It shall be the duty of the Planning & Zoning Board, in cooperation with the City Attorney, to continuously review the provisions of the zoning regulations, the Comprehensive Master Plan and the Zoning District Map and offer recommendations for the improvement thereof to the City Commission at maximum intervals of five years commencing in 2013.

10.14. - Violation.

City officials and employees shall follow the provisions of this Charter.

11A(10)

Section 3. Election Called.

That a special election is hereby called, to be held on Tuesday, the 6th day of November, 2012, to present to the qualified electors of the City of North Bay Village, Florida, the ballot question(s) provided in Section 4 of this Resolution.

Section 4. Form of Ballot.

That the form of ballot for the Charter Amendment(s) provided for in Section 2 of this Resolution shall be substantially, as follows:

1. Corporate Limits of the City

The City Charter currently provides that the jurisdiction of the City shall now and from "time to time hereafter" fall within the City's specified boundaries. Shall the Charter be amended to replace "time to time hereafter" with "in the future?"

- Yes
 No

2. Appointment and removal of City Clerk

The City Charter currently provides for the position of a City Clerk and further provides that the City Clerk shall be appointed and removed by the City Commission. Shall the Charter be corrected for consistency to specify that under the City Commission's powers that appointment, retention or removal of the City Clerk falls within the purview of the City Commission?

- Yes
 No

3. Limitations on acquisition of real property and capital improvement projects

The City Charter currently limits the acquisition of real property or expenditures for capital improvement projects to 20 percent of the "annual fiscal budget" or "annual budget" of the City without a referendum. Shall the Charter be amended to specify that the 20 percent spending limitation for acquisition of real property or capital improvement projects be based upon the City's current annual "total operating budget"?

- Yes
 No

11A(11)

4. Reduction of Mayor and City Commissioners compensation

The City Charter currently authorizes an annual adjustment to the Mayor and City Commissioners compensation based upon the Consumer Price Index. Shall the Charter be amended to delete the annual Consumer Price Index adjustment and freeze the Mayor's compensation at \$7,800.00 and the Commissioners compensation at \$6,300.00 starting with the officials elected in the November 2012 election?

- Yes
- No

5. Two year prohibition on paid employment of City Commissioners post term

The City Charter currently prohibits sitting City Commissioners from serving in a paid City position during their term of office. Shall the Charter be amended to prohibit a Mayor or Commissioner from serving in a paid City position for 2 years after the date of expiration of their term?

- Yes
- No

6. Outside employment by the City Manager

Shall the Charter be amended to include a requirement that outside employment by the City Manager shall be approved by the City Commission prior to commencement?

- Yes
- No

7. Expanding existing anti nepotism policy

The City Charter currently prohibits employment of relatives of elected or appointed city officials (department heads and up) related up to the second degree of consanguinity (related by blood). Shall the Charter be amended to expand the existing anti nepotism policy to include a prohibition of the employment of relatives of elected or appointed city officials (department heads and up) up to the second degree of affinity (related by marriage)?

- Yes
- No

11A.(12)

8. Filling of Vacancies on the Commission pertaining to Interim Vice Mayor

The City Charter currently provides that an interim Mayor and Vice Mayor shall serve until the newly elected or appointed Mayor or Vice Mayor is sworn into office. Shall the Charter be amended to clarify that the word "interim" also applies to the position of the Vice Mayor as well as the Mayor?

- Yes
- No

9. Clarification of procedures for filling of Commission vacancy and extraordinary vacancy

The City Charter currently provides that the filling of a vacancy for City Commission shall be pursuant to the procedures "set forth above." Shall the Charter be amended to provide that the procedures for filling of a vacancy are those specified in the Charter, and that for the filling of an extraordinary vacancy, the Commission shall call a special election in the same manner as set forth for filling a Commission vacancy?

- Yes
- No

10. Procedure for adoption of emergency ordinances

The City Charter currently provides for an emergency ordinance to be adopted by at least three affirmative votes. Shall the Charter be amended to provide that an emergency ordinance shall be adopted by at least four affirmative votes consistent with state law?

- Yes
- No

11. Procedures for adoption of ordinances and resolutions

The City Charter currently provides for the submission of all written information for proposed ordinances or resolutions within 48 hours of a City Commission meeting. Shall the Charter be amended to require the submission of all written information on proposed ordinances or resolutions 3 business days prior to the City Commission meeting?

- Yes
- No

12. Increase Residency Requirements for Mayor and Commissioners from six months to one year

11A(13)

The City Charter currently requires a six month City residency for a candidate for the office of Mayor and Commissioner-at-large and a six month residency on their particular island for a candidate for the Harbor Island, North Bay Island and Treasure Island Commissioner seats. Shall the Charter be amended to increase the residency requirement from six months to one year for candidates for the office of the Mayor and all Commission seats?

- Yes
- No

13. Nomination for office of Commissioners and Mayor by petition

The City Charter currently provides that a candidate for office of Commissioner or Mayor may qualify for candidacy by petition. Shall the Charter be amended to specify that the petition shall be in a form provided by the City Clerk?

- Yes
- No

14. Increase of filing fee for candidates for office of Commissioner and Mayor

The City Charter currently provides for a filing fee of \$100.00 for a candidate for the office of Commissioner or Mayor. Shall the Charter be amended to increase the filing fee to \$250.00 for the office of the Mayor and all Commissioners?

- Yes
- No

15. City employees soliciting votes or engaging in political activity while off duty

The City Charter currently prohibits City employees from soliciting votes or engaging in political activity while on duty. Shall the Charter be amended to prohibit a City employee while off duty from soliciting votes or engaging in political activity while wearing a City uniform or identification or using his or her official authority or influence for the purpose of interfering with an election or a nomination of office or coercing or influencing another person's vote?

- Yes
- No

16. Term limits on membership on City Advisory Boards

The City Charter currently allows advisory board members to serve for two year terms with no term limits. Shall the Charter be amended to prohibit an advisory board member from serving for more than two consecutive terms on the same advisory board?

11A (14)

- Yes
- No

17. Notice of final budget meeting

The City Charter currently provides that if the budget includes a tax increase, the City shall endeavor to send a notice of the date of the final budget meeting to each property owner and to those who submit a request for the notice. Shall the Charter be amended to delete this requirement as state law requires the County to provide the same information to each property owner in the TRIM (Truth in Millage) notice ?

- Yes
- No

18. Bonds of officers and employees

The City Charter currently requires the posting of a surety bond for officers or employees of the City, but does not specify which positions are subject to this requirement. Shall the Charter be amended to specify that any officers or employees who have check signing authority or access to City accounts shall post a bond?

- Yes
- No

19. Oath of office/employment

The City Charter currently requires every officer and employee to take an oath of office. Shall the Charter be amended to include in the oath of office that the officer or employee is a legal resident of the State of Florida and will obey the laws of the United States, the State of Florida and observe the provisions of the Charter and Ordinances of the City?

- Yes
- No

20. Review of zoning regulations, zoning district maps, and comprehensive master plan

Shall the Charter be amended to include a requirement that the Planning and Zoning Board continuously review the City's zoning regulations, comprehensive master plan and zoning district maps and offer recommendations to the City Commission at maximum intervals of five years commencing in 2013?

- Yes
- No

11A. (15)

21. Charter Violations

Shall the Charter be amended to include a provision that City officials and employees shall follow the provisions of the Charter?

- Yes
- No

Section 5. Balloting. That balloting shall be conducted on Tuesday, November 6, 2012, between the hours of 7:00A.M, and 7:00 P.M. at the regular polling places provided for City elections. Absentee balloting shall be available as authorized by law. Early voting pursuant to Sec. 101.657, F.S. shall be provided. All qualified City electors who are timely registered in accordance with law shall be entitled to vote. The City Clerk is authorized to obtain any necessary election administration services from the Miami-Dade County Supervisor of Elections. The County registration books shall remain open at the Office of the County Supervisor of Elections until the date at which the registration books shall close in accordance with the provisions of the general election laws. The City Clerk, with necessary assistance from the Miami-Dade County Supervisor of Elections, is hereby authorized to take all appropriate actions necessary to carry into effect and accomplish the electoral provisions of this Resolution. This Special Election shall be canvassed by the County Canvassing Board in accordance with any applicable provisions of the general election laws of the State or County. The City Clerk is hereby authorized to take any action which is necessary or expedient to implement this section or to comply with any applicable law.

11A(16)

Section 6. Notice of Election. That notice of said election shall be published in accordance with Section 100.342, Florida Statutes, in a newspaper of general circulation within the City at least 30 days prior to said election, the first publication to be in the fifth week prior to the election, and the second publication to be in the third week prior to the election, and shall be in substantially the following form:

“NOTICE OF ELECTION.

PUBLIC NOTICE IS HEREBY GIVEN THAT PURSUANT TO RESOLUTION NO. ____ DULY ADOPTED BY THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA, (THE "CITY") A SPECIAL ELECTION HAS BEEN CALLED AND ORDERED TO BE HELD WITHIN THE CITY ON TUESDAY, THE 6TH DAY OF NOVEMBER, 2012, BETWEEN THE HOURS OF 7:00 A.M. AND 7:00 P.M., AT WHICH TIME THE FOLLOWING CHARTER AMENDMENT PROPOSALS SHALL BE SUBMITTED TO THE QUALIFIED ELECTORS OF THE CITY:

1. Corporate Limits of the City

The City Charter currently provides that the jurisdiction of the City shall now and from “time to time hereafter” fall within the City’s specified boundaries. Shall the Charter be amended to replace “time to time hereafter” with “in the future?”

- Yes
- No

2. Appointment and removal of City Clerk

The City Charter currently provides for the position of a City Clerk and further provides that the City Clerk shall be appointed and removed by the City Commission. Shall the Charter be corrected for consistency to specify that under the City Commission’s powers that appointment, retention or removal of the City Clerk falls within the purview of the City Commission?

- Yes
- No

11A(17)

3. Limitations on acquisition of real property and capital improvement projects

The City Charter currently limits the acquisition of real property or expenditures for capital improvement projects to 20 percent of the "annual fiscal budget" or "annual budget" of the City without a referendum. Shall the Charter be amended to specify that the 20 percent spending limitation for acquisition of real property or capital improvement projects be based upon the City's current annual "total operating budget?"

- Yes
- No

4. Reduction of Mayor and City Commissioners compensation

The City Charter currently authorizes an annual adjustment to the Mayor and City Commissioners compensation based upon the Consumer Price Index. Shall the Charter be amended to delete the annual Consumer Price Index adjustment and freeze the Mayor's compensation at \$7,800.00 and the Commissioners compensation at \$6,300.00 starting with the officials elected in the November 2012 election?

- Yes
- No

5. Two year prohibition on paid employment of City Commissioners post term

The City Charter currently prohibits sitting City Commissioners from serving in a paid City position during their term of office. Shall the Charter be amended to prohibit a Mayor or Commissioner from serving in a paid City position for 2 years after the date of expiration of their term?

- Yes
- No

6. Outside employment by the City Manager

Shall the Charter be amended to include a requirement that outside employment by the City Manager shall be approved by the City Commission prior to commencement?

- Yes
- No

11A(18)

7. Expanding existing anti nepotism policy

The City Charter currently prohibits employment of relatives of elected or appointed city officials (department heads and up) related up to the second degree of consanguinity (related by blood). Shall the Charter be amended to expand the existing anti nepotism policy to include a prohibition of the employment of relatives of elected or appointed city officials (department heads and up) up to the second degree of affinity (related by marriage)?

- Yes
 No

8. Filling of Vacancies on the Commission pertaining to Interim Vice Mayor

The City Charter currently provides that an interim Mayor and Vice Mayor shall serve until the newly elected or appointed Mayor or Vice Mayor is sworn into office. Shall the Charter be amended to clarify that the word "interim" also applies to the position of the Vice Mayor as well as the Mayor?

- Yes
 No

9. Clarification of procedures for filling of Commission vacancy and extraordinary vacancy

The City Charter currently provides that the filling of a vacancy for City Commission shall be pursuant to the procedures "set forth above." Shall the Charter be amended to provide that the procedures for filling of a vacancy are those specified in the Charter, and that for the filling of an extraordinary vacancy, the Commission shall call a special election in the same manner as set forth for filling a Commission vacancy?

- Yes
 No

10. Procedure for adoption of emergency ordinances

The City Charter currently provides for an emergency ordinance to be adopted by at least three affirmative votes. Shall the Charter be amended to provide that an emergency ordinance shall be adopted by at least four affirmative votes consistent with state law?

- Yes
 No

11A(19)

11. Procedures for adoption of ordinances and resolutions

The City Charter currently provides for the submission of all written information for proposed ordinances or resolutions within 48 hours of a City Commission meeting. Shall the Charter be amended to require the submission of all written information on proposed ordinances or resolutions 3 business days prior to the City Commission meeting?

- Yes
- No

12. Increase Residency Requirements for Mayor and Commissioners from six months to one year

The City Charter currently requires a six month City residency for a candidate for the office of Mayor and Commissioner-at-large and a six month residency on their particular island for a candidate for the Harbor Island, North Bay Island and Treasure Island Commissioner seats. Shall the Charter be amended to increase the residency requirement from six months to one year for candidates for the office of the Mayor and all Commission seats?

- Yes
- No

13. Nomination for office of Commissioners and Mayor by petition

The City Charter currently provides that a candidate for office of Commissioner or Mayor may qualify for candidacy by petition. Shall the Charter be amended to specify that the petition shall be in a form provided by the City Clerk?

- Yes
- No

14. Increase of filing fee for candidates for office of Commissioner and Mayor

The City Charter currently provides for a filing fee of \$100.00 for a candidate for the office of Commissioner or Mayor. Shall the Charter be amended to increase the filing fee to \$250.00 for the office of the Mayor and all Commissioners?

- Yes
- No

11A(20)

15. City employees soliciting votes or engaging in political activity while off duty

The City Charter currently prohibits City employees from soliciting votes or engaging in political activity while on duty. Shall the Charter be amended to prohibit a City employee while off duty from soliciting votes or engaging in political activity while wearing a City uniform or identification or using his or her official authority or influence for the purpose of interfering with an election or a nomination of office or coercing or influencing another person's vote?

- Yes
- No

16. Term limits on membership on City Advisory Boards

The City Charter currently allows advisory board members to serve for two year terms with no term limits. Shall the Charter be amended to prohibit an advisory board member from serving for more than two consecutive terms on the same advisory board?

- Yes
- No

17. Notice of final budget meeting

The City Charter currently provides that if the budget includes a tax increase, the City shall endeavor to send a notice of the date of the final budget meeting to each property owner and to those who submit a request for the notice. Shall the Charter be amended to delete this requirement as state law requires the County to provide the same information to each property owner in the TRIM (Truth in Millage) notice ?

- Yes
- No

18. Bonds of officers and employees

The City Charter currently requires the posting of a surety bond for officers or employees of the City, but does not specify which positions are subject to this requirement. Shall the Charter be amended to specify that any officers or employees who have check signing authority or access to City accounts shall post a bond?

- Yes
- No

11A(21)

19. Oath of office/employment

The City Charter currently requires every officer and employee to take an oath of office. Shall the Charter be amended to include in the oath of office that the officer or employee is a legal resident of the State of Florida and will obey the laws of the United States, the State of Florida and observe the provisions of the Charter and Ordinances of the City?

- Yes
- No

20. Review of zoning regulations, zoning district maps, and comprehensive master plan

Shall the Charter be amended to include a requirement that the Planning and Zoning Board continuously review the City's zoning regulations, comprehensive master plan and zoning district maps and offer recommendations to the City Commission at maximum intervals of five years commencing in 2013?

- Yes
- No

21. Charter Violations

Shall the Charter be amended to include a provision that City officials and employees shall follow the provisions of the Charter?

- Yes
- No

Polling place information and the full text of the proposed Charter Amendments is available at the Office of the City Clerk located at 1700 Kennedy Causeway, Suite 132, North Bay Village, Florida 33142.

CITY CLERK

Section 7. Copies. That copies of this Resolution proposing the Charter Amendments are on file at the offices of the City Clerk located at 1700 Kennedy Causeway, Suite 132, North Bay Village, Florida 33142 , and are available for public inspection during regular business hours.

11A(22)

Section 8. Effectiveness of Charter Amendment.

A. That each of the Charter Amendments which are provided for in Sections 2 and 4 above shall become effective only if the majority of the qualified electors voting on the specific Charter Amendment vote for its adoption, and each shall be considered adopted and effective upon certification of election results. The Charter Amendments adopted by the electors shall apply prospectively.

B. That the City Attorney is authorized to revise the Charter to the extent necessary to assure that any amendments adopted conform to one another and are properly included in the publication of the revised City Charter. Further, that in the event that some, but not all, of the Charter amendments are approved by the electors, conforming amendments shall be deemed to be adopted and the City Attorney is authorized to reflect and implement such revisions of the Charter, including the revision of transitional provisions, to the extent necessary to assure that all amendments adopted conform to one another and to all remaining Charter provisions. If conflicting Charter amendments are adopted at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

C. That following the adoption of the Charter Amendments, the City Clerk shall file the adopted Charter Amendments with the Clerk of the Circuit Court of Miami-Dade County, Florida.

Section 9. Inclusion In The Charter. Subject to the requirements of Section 8 above, it is the intention of the City Commission and it is hereby provided that the Charter Amendments shall become and be made a part of the Charter of the City of North Bay Village; that the Sections of this Resolution may be renumbered or re-lettered to accomplish such intention.

11A(23)

Section 10. Severability. That the provisions of this Resolution are declared to be severable, and if any section, sentence, clause or phrase of this Resolution shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Resolution but they shall remain in effect, it being the legislative intent that this Resolution shall stand notwithstanding the invalidity of any part.

Section 11. Effective date. That this Resolution shall become effective immediately upon adoption hereof.

PASSED AND ADOPTED this ____ day of _____, 2012.

Motion to adopt by _____, second by _____.

The motion to adopt the foregoing Resolution was offered by _____, seconded by _____.

FINAL VOTE AT ADOPTION:

Mayor Connie Leon-Kreps _____
Vice Mayor Eddie Lim _____
Commissioner Stuart Blumberg _____
Commissioner Richard Chervony _____

PASSED AND ADOPTED this ____ day of July, 2012.

Connie Leon-Kreps
Mayor

ATTEST:

Yvonne P. Hamilton
City Clerk

11A(24)

**APPROVED AS TO FORM FOR USE ONLY BY
THE CITY OF NORTH BAY VILLAGE:**

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.

City of North Bay Village Resolution: 2012 Charter Amendments.

11A(25)

ADVISORY CHARTER REVIEW BOARD RECOMMENDATION

MEMORANDUM

To: Mayor Connie Leon-Kreps
Vice-Mayor Eddie Lim
Commissioner Stuart Blumberg
Commissioner Richard Chervony
Commissioner Paul Vogel

From: Charter Review Advisory Board:

Robert Pushkin, Chairman
Alvin Blake, Vice Chairman
Max Crown
Jorge Gonzalez
Roy Martayan
Tony Crapp (public member)

Date: June 8, 2012

Subject: Advisory Charter Review Board Recommended Revisions

It is with pleasure and delight that we present the revised Charter to the City Commission well within the date guidelines requested by the Mayor and Commissioners.

We have reviewed the entire Charter, which was last revised in November 2006 with several amendments voted on by the electors of the City. We reviewed each section of the Charter individually and made several recommendations and changes that we felt were in the best interest of the City.

With the excellent assistance of our legal representative Nina Boniske and our wonderful City Clerk, Yvonne P. Hamilton, we agreed on some important changes to the Charter and confirmed that all Florida Statutes, county codes, etc. were being adhered to. We would also like to give special thanks to Mr. Tony Crapp, the public member, for his participation.

11A(26)

Memo to Mayor and Commissioners
June 8, 2012
Page 2

We wish to thank the Mayor and Commissioners for the opportunity to serve the City by being part of the Advisory Charter Review Board of the City of North Bay Village.

Respectfully Submitted,

Robert Pushkin,
Chairman, Advisory Charter Review Board

11A(27)

Advisory Charter Review Board Meeting
RECOMMENDATIONS FOR REVISIONS TO THE CITY CHARTER

2.01. - Corporate limits.

The municipal corporation of the City shall comprise and have full municipal jurisdiction, powers, rights and privileges over the territory and persons now and ~~from time to time hereafter~~ **in the future** within the following boundaries in Miami-Dade County, Florida, to wit:

3.01. - City Commission.

A. *City Commission; powers and composition.* There shall be a city Commission with all legislative powers of the City vested therein, consisting of five (5) members: a mayor, a vice-mayor and three (3) Commissioners. Each Commission member must be a qualified elector of the City.

B. *Appointments by Commission.* The Commission shall appoint the city manager, **city clerk**, city attorney and all consultants.

3.04. - Compensation.

Each Commission member will be compensated ~~six thousand dollars (\$6,000.00)~~ **six thousand three hundred Dollars (\$6,300)** per year payable at five hundred ~~twenty-five~~ **\$525.00** dollars ~~(\$500.00)~~ per month. The Mayor will be compensated ~~seven thousand five hundred dollars (\$7,500.00)~~ **seven thousand eight hundred dollars (\$7,800)** per year payable at six hundred and ~~twenty-five~~ **fifty** dollars ~~(\$625.00)~~ **\$650.00** per month. ~~Compensation will be adjusted at the applicable Consumer Price Index as provided by the Department of Labor, effective each year commencing October 1, 2007.~~

3.06. - Limitations of powers of the Commission.

All powers of the City and the determination of all matters of policy shall be vested in the Commission with the following limitations:

A. *Acquisition of real property.* The Commission may acquire property within or without the corporate limits of the City for any municipal purpose, in fee simple or any lesser interest or estate, by purchase, gift, devise, or lease provided such amount of expenditure for real property shall not exceed twenty (20) percent of the current **total operating budget annual fiscal budget** of the City.

11A(28)

B. *Capital improvement projects.* The Commission may, through proper procedure, propose, undertake and finance capital improvement projects to fulfill the necessary needs of the City, provided that the amount of total expenditures for all such projects shall not exceed twenty (20) percent of the current **total operating budget annual-budget** of the City in any one fiscal year.

C. *Excess of 20 percent of current total operating annual-budget.* In the event that the proposed purchase(s) of property and/or total expenditure(s) do exceed twenty (20) percent of the current **total operating budget annual budget** of the City in any fiscal year, then a referendum will be held of the qualified electors of the city and it shall require a majority of those voting in such election to authorize such projects.

G. *Appointments or removal of city personnel prohibited.* Neither the Commission nor any of its members shall in any manner dictate the appointment, retention, or removal of any city employee (other than the City Manager, **the City Clerk** and the City Attorney, as provided herein), or any person who is duly appointed by the city manager, in accordance with Section 4.01(G)(2) of this Charter; except that the City Manager shall submit appointments of all department heads to the Commission for approval.

J. *Other Commissioner remunerative position.* No Commissioner shall be appointed to any other remunerative position with the City during his term of office **and for a term of two (2) years thereafter.**

K. *Nepotism.* No person related **up** to the second degree of consanguinity or **affinity** to a Commissioner shall be eligible to hold a remunerative position with the City. Any Commissioner who shall knowingly make such an appointment may be deemed guilty of misfeasance or malfeasance in office and subject to removal. The person so employed may be subject to dismissal.

3.07. - **Vacancies; forfeiture of office; filling of vacancies on the Commission.**

D. *Filling of vacancies on City Commission.* Any vacancy occurring for a City Commissioner shall be filled by the vote of the majority of the remaining members of said City Commission with the appointee serving until the remainder of the unexpired term until the next succeeding general City election and with any further remainder of said unexpired term to be filled by a Commissioner elected at said general election.

11A(29)

If the remaining members of the City Commission shall fail or refuse to fill such vacancy within 30 days after it occurs, and if no general City election will be held within 90 days after the expiration of said 30 days, then a special election shall be called and held to elect a Commissioner to fill such vacancy for the remainder of the unexpired term. In the event that the position is that of Mayor, it must be filled from among the remaining Commissioners in accordance with the ~~procedures set forth above~~ City Charter.

E. In the event of the death, resignation, or removal of the Mayor, the Vice Mayor shall forthwith commence to serve as interim Mayor until the Mayor's position is filled by election or appointment.

(a) When the Vice Mayor becomes interim Mayor, the Commission, by majority vote shall appoint an interim Commissioner from the Vice Mayor's vacant district to fill the Vice Mayor's vacant seat until the required election or appointment of the Mayor and then the Commission shall, by majority vote, appoint one (1) of the Commissioners to serve as interim Vice Mayor.

(b) The Commissioner serving as interim Mayor or interim Vice Mayor shall serve as Mayor or Vice Mayor until the newly elected or appointed Mayor and/or Vice Mayor is sworn in as Mayor or Vice Mayor. The interim Mayor and/or interim Vice Mayor shall return to the position of Commissioner previously held to serve the remainder of his or her unexpired term.

F. In the event of the death, resignation, or removal of the Vice Mayor, the Commission shall, by majority vote, elect one (1) of the Commissioners to serve as Vice Mayor.

G. *Extraordinary vacancies.* In the event that a majority of the members of the Commission are removed by death, disability, law or forfeiture of office, the governor shall make interim Commission appointments and the Commission shall call a special election as provided in Section 3.07(D) ~~above and such election shall be held in the same manner as the election held pursuant to the previous~~ of this Charter.

3.08. - Ordinances and resolutions.

B. *Emergency ordinances.* To meet a public emergency affecting life, health, property or the public peace, the Commission may adopt one or more emergency ordinances, but the ordinances may not levy taxes; set service or user charges for any municipal services; amend or repeal any ordinance adopted by the people at the polls or by the Commission in compliance with an initiative petition; or authorize the borrowing of money except as provided under the emergency appropriations provisions of this Charter, if applicable.

2. *Procedure.* An emergency ordinance may be adopted with or without amendment or rejected at the meeting at which it is introduced, but at least ~~three (3)~~ **four (4)** affirmative votes shall be required for adoption. After its adoption, the ordinance shall be published and printed as prescribed for other adopted ordinances.

C. *Procedures for adoption of ordinances and resolutions.*

2. Each ordinance or resolution shall be introduced by a member of the Commission or the City Manager, the City Attorney or the City Clerk, so long as the information is provided within ~~48 hours~~ **three (3) business days prior** to the scheduled meeting, in writing and shall embrace but one subject and matters properly connected therewith. The subject shall be clearly stated in the title. No ordinance shall be revised or amended by reference to its title only. Ordinances to revise or amend shall set out in full the revised or amended act or section or subsection or paragraph of a section or subsection. The enacting clause of every ordinance shall be as follows: "Be it enacted, by the Commission of the City of North Bay Village . . . "

4.01. - City manager.

G. *Powers and duties of the City Manager.* The City Manager shall be responsible for the proper administration of all the affairs of the City, except as otherwise provided herein. His powers and duties shall be to:

1. See that all laws, provisions of this Charter and acts of the Commission, subject to enforcement by him or by officers subject to his direction and supervision, are faithfully executed;

11A(31)

2. Appoint, and when he deems it necessary for the good of the City, suspend or remove all city employees (except the City Attorney, **the City Clerk** and all personnel in the Legal Department, including outside counsel representing the City) and appointive administrative officers provided for by or under this Charter, except as otherwise provided by law, this Charter or personnel rules adopted pursuant to this Charter. He may authorize any administrative officer who is subject to his direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency. He will submit appointments of new department heads to the Commission for confirmation;

H. Outside employment by the City Manager shall be approved by the City Commission prior to commencement.

4.03. - Nepotism.

No person related **up** to the second degree of consanguinity **or affinity** to an elected or appointed City official (department head and above) shall be eligible to hold a remunerative position with the City. Any appointed City official who shall knowingly make such an appointment may be deemed guilty of misfeasance or malfeasance in office and subject to removal. The person so employed may be subject to dismissal. This provision may be waived during conditions deemed as emergencies by the City Commission.

5.04. - Commission Members—Residency requirements and terms of office.

The City shall be governed by a Commission of five (5) members, all of whom shall be qualified electors of the City. There shall be a Harbor Island Commissioner, a North Bay Island Commissioner, and a Treasure Island Commissioner, each of whom shall be a resident of their respective islands for a period of not less than ~~six (6) months~~ **one (1) year** prior to the date of the subject candidate's initial filing of qualifying papers for the Commission and shall also be and remain during their respective terms of office, permanent residents of their respective islands; however, this shall not apply to any mere temporary relocation within the City. The Mayor and Commissioner-at-large, the two (2) remaining positions, shall reside on any of the said islands of the City for a period of not less than ~~six (6) months~~ **one (1) year** prior to the date of the subject candidate's initial filing of qualifying papers for the Commission and shall also be and remain during their respective terms of office, permanent residents of the City. The term of the Mayor will be for two (2) years, and commencing with the November 2002 general election, the term of each City Commissioner will be for four years, on a staggered basis to be established as follows:

Notwithstanding any other provisions of this Charter, no later than December 15, 2000, the City Clerk shall publicly draw lots to determine which City Commissioners' term of office (specifically, the seat they each represent) will expire in November 2004 and which remaining two City Commissioners' terms of office (specifically, the seat they each represent) will expire in November 2006. All subsequent City Commissioner seats shall be elected for four (4) year terms.

All of the Commissioners and the Mayor shall be elected by the voters at large of the City.

5.05. - Nomination of Commission members and Mayor.

A. Any citizen who can qualify for the office of Commissioner or Mayor of the City as provided herein may be nominated for Commissioner or ~~m~~Mayor by a petition **provided by the City Clerk** for this purpose signed by not less than fifty (50) electors and filed with the City Clerk no sooner than seventy-five (75) days prior to the election date and no later than forty-five (45) days prior to the election date.

C. The signatures on the nominating petition need not all be subscribed on one paper, but to each separate paper there shall be attached a signed statement of the circulator thereof, stating the number of signers of such paper and that each signature appended thereto was made in his presence and is the genuine signature of the person whose name it purports to be. With each signature, including the signature of the circulator, shall be stated the place of residence of the signer, giving the street and number or other description sufficient to identify it. The form of nominating petition **provided by the City Clerk** shall be substantially as follows:

5.07. - Filing fee.

A. A nonrefundable filing fee of ~~one~~ **two hundred and fifty** dollars ~~(\$100.00)~~ **\$250** must be deposited with the City Clerk at the time each petition is presented, and upon so submitting, concurrently therewith, the sworn statement of his or her name, address, occupation and willingness to serve shall also be filed. The name of each nominee for Commissioner or Mayor, who has complied with all requirements hereinbefore prescribed, shall be printed on the ballot as a candidate for the office of Commissioner or Mayor of the City.

5.14. - City employees soliciting votes.

It shall be unlawful for any paid non-elective employees of the City, while on duty or off duty and wearing any type of uniform or other definitive identification indicating that they are employees of the City, to solicit votes, coerce directly or indirectly any elector or engage in any political activity in any municipal election or referendum in the City or use his or her official authority or influence for the purpose of interfering with an election or a nomination of office or coercing or influencing another person's vote or affecting the result thereof. Any employee violating the provisions of this section shall be subject to immediate dismissal

6.01. - Advisory boards.

The Commission may by ordinance establish advisory boards to assist the Commission or the City. Advisory board members must be either residents of the City or owners of businesses located within the confines of the City, or designees of such business owners. Advisory Board members shall serve a two (2) year term concurrent with the regular scheduled election of the Commission. No individual shall serve more than two (2) consecutive terms on the same advisory board. A majority of the members of each advisory board must be residents of the City. The Commission may appoint ex officio non-voting members to the board who do not meet the requirements set forth above. The members of advisory boards shall serve without compensation and may be removed at any time by a majority vote of the entire Commission.

7.03. - Preparation and submission of budget.

H. *Notice of final budget meeting.* At the meeting of the Commission at which the budget and budget message are submitted, the Commission shall determine the place and time of the two public hearings and the final meeting on the budget and shall cause to be posted on the designated official bulletin board of the City a notice of the places and times not less than ten (10) days prior to the dates on which the Commission will hold the meetings.

~~If the budget calls for any increase in taxes by the City, the City shall endeavor to send a notice of the date of the final budget meeting to each property owner in the city files and also to those who submit requests to be so notified. With such notice the anticipated increase of taxes shall also be mentioned.~~ The City Manager shall comply with all provisions of state law relative to procedures in the event of property tax increases.

11A(34)

9.05. - Bonds of officers and employees.

Any officers or employees of the City who have check signing authority or access to City accounts shall post bond in such amount and with such surety as may be approved by the Commission. The premiums of such bonds shall be paid by the City.

9.06. - Oath of office/employment.

Every officer and employee of the City shall, before entering upon the duties of his office, take and subscribe to the following oath or affirmation, to be filed and kept in the office of the city clerk:

I _____, a legal resident of the State of Florida, and being employed by or an officer of the City of North Bay Village, Florida and a recipient of public funds as such employee or officer, do hereby solemnly swear or affirm that I will support and obey the Constitution and the laws of the United States and of the State of Florida, and that I will, in all respects, observe the provisions of the Charter and Ordinances of the City.

10.13. - Revision provision.

B. It shall be the duty of the Planning & Zoning Board, in cooperation with the City Attorney, to continuously review the provisions of the zoning regulations, the Comprehensive Master Plan and the Zoning District Map and offer recommendations for the improvement thereof to the City Commission at maximum intervals of five years commencing in 2013.

(WHILE NOT VOTED ON BY THE BOARD IT IS SUGGESTED THAT THE REVIEW BEGIN IN MARCH 2013)

10.14. - Violation.

City officials and employees shall follow the provisions of this Charter.

11A(35)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF NORTH BAY VILLAGE, FLORIDA, AMENDING CHAPTER 35 "TAXATION AND FINANCE," OF THE CITY CODE OF ORDINANCES TO REVISE THE REQUIREMENTS AND PROCEDURES RELATED TO GENERAL AND ENTERPRISE FUND RESERVES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE. (INTRODUCED BY CITY COMMISSIONER RICHARD CHERVONY)

WHEREAS, the City Commission of the City of North Bay Village (the "City") recognizes that changes to the adopted Code of Ordinances are periodically necessary in order to ensure that the City's regulations are current and consistent with the requirements of Florida Law; and

WHEREAS, the City Commission desires to strengthen its emergency reserve funding program to address such emergencies as Hurricanes and other natural disasters; and

WHEREAS, the City desires to update current finance provisions to conform to new regulatory guidelines including GASB 54; and

WHEREAS, the City Commission has reviewed this Ordinance at a duly noticed hearing and determined that it is consistent with State Law; and

WHEREAS, the City Commission hereby finds and declares that adoption of this Ordinance is necessary, appropriate, and advances the public interest.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. Each of the above stated recitals is true and correct and incorporated herein by this reference.

113(1)

Section 2. City Code Amended. That Chapter 35 "Taxation and Finance" of the City of North Bay Village Code of Ordinances is hereby amended to read as follows:¹

§ 35.20 - Expenditures to be made in accordance with budget.

Except where formal contracting, bidding, or other procedures are required by law as a condition precedent to the expenditures of funds, the City Manager is authorized to expend city funds in accordance with the city's annual adopted budget as it may exist from time to time, including all mid-year adjustments, without further action of the City Commission.

§ 35.21 - Amendments to budget.

The city's annual budget may be amended from time to time in the following manner:

- (A) Minor amendments. Transfers between line items within a departmental budget, or decreases in line items, not amounting to more than 5% of the total budget of each department, may be made by the City Manager by written statement describing the transfers and the reasons therefore. A copy of such statement shall be filed with the City Clerk and delivered to the Mayor and each of the City Commissioners. A copy shall also be posted at a conspicuous place in City Hall. The transfers shall become effective 14 days after posting, unless within that time, the Mayor or any City Commissioner shall notify the City Clerk that they wish the transfer placed upon the City Commission agenda for consideration by the City Commission. Any transfer considered by the Commission must be approved by majority vote of the Commission.
- (B) Other amendments. All other budgetary transfers shall be approved by resolution of the City Commission.
- (C) Nothing in this section shall authorize the City Manager to expend unanticipated revenues which may accrue to the city during the course of the fiscal year, unless and until the unanticipated revenues have been budgeted by the City Commission.

¹ Additions to existing city code text are shown by underline; deletions from existing city code text are shown by ~~strikethrough~~.

§ 35.22 - Creation of Fund Balance/Retained Earnings Reserves.

A. Definitions. The following terms used in this Section shall be used in conformance with the definitions contained in GASB Statement #54:

1. Nonspendable fund balance;
2. Restricted fund balance;
3. Committed fund balance;
4. Assigned fund balance;
5. Unassigned fund balance.

B. General Fund Reserve. The City shall maintain within the ~~General governmental fund and enterprise fund~~ of the City, a ~~reservation of fund balance/retained earnings balance~~ equal to the following: equal to

1. ~~General Fund. The city shall maintain 20% of the current fiscal year general fund, as a reserved fund balance/retained earnings balance. For the purposes of this calculation, the current fiscal year budget shall be the budget as originally adopted by ordinance in September of the applicable fiscal year. This reserved fund balance shall be classified as Assigned, for the specific purposes as delineated in Section D of Section 35.22 of the Code, in addition to all other reserves or designations of fund balance, including, but not limited to, reservations of uncollected receivables and reservations of funds which have expenditure authority limited to specific purposes (i.e. proceeds from the sale or conversion of judicially forfeited properties).~~

C.2. Enterprise Funds Reserves. The city shall maintain within each of the enterprise funds now, or hereafter created by the Commission, a Restricted Net Assets reservation of fund balance/retained earnings/balance equal to 20% of the current water, sewer, sanitation and storm water fiscal year budget for that fund. For the purposes of this calculation, the fiscal year budget shall be the total water, sewer, sanitation and storm water budget for these four utilities or segments as originally adopted by ordinance in September of the current fiscal year. ~~These is~~ Restricted Net Assets reserve shall be in addition to all other designations reservations of retained earnings, including but not limited to amounts reserved in current liabilities for debt service and/or amounts reserved for renewal and replacement of long-lived assets. Any utilization of the Restricted Net Assets shall be pursuant to Section D of Section 35.22.

~~Purposes for which Fund Balance/Retained Earnings may be used.~~

DB. Use of Fund Balance/Net Assets. The Assigned Ffund Bbalance in the General Fund and the Restricted Net Assets in any Enterprise Fund /retained earnings may be utilized, and therefore the fund balance/~~retained earnings balance~~ of 20% of the annual budget may be decreased, for the following purposes:

(1) Non-emergency uses limited to unanticipated capital improvements and infrastructure needs and unforeseen contingent liabilities.

(2) Emergency uses including unscheduled natural disasters/emergencies, acts of God or war, and for the emergency health, safety and welfare needs of the city.

~~(1) — Unscheduled natural disasters/emergencies~~

~~(2) — Unanticipated capital improvements and infrastructure needs.~~

~~(3) — Unforeseen contingent liabilities.~~

~~(4) — Acts of God or war.~~

~~(5) — For the emergency health, safety and welfare needs of the city.~~

EC. Utilization of Assigned Fund Balance and Restricted Net Assets. Funds and assets reserved pursuant to this Section may be used only in accordance with the following requirements:

(1) Expenditures for Non-emergency uses shall not exceed 50% of the balance.

(2) Any expenditure from the Assigned Fund Balance or Restricted Net Assets shall require approval by the City Commission by a super-majority vote of those present prior to expenditure of the funds.

FC. Replenishment of Fund Balances/Retained Earnings Reserve Deficits. In any fiscal year when the city is unable to maintain the 20% balances reservation of fund balance required by this section, the city in the subsequent fiscal years shall not be entitled to appropriate any portion of the remaining Assigned Ffund Balance or Restricted Net Assets until the denoted reserves again reach 20%.

If, at the end of any fiscal year, the actual amounts required by this Section ~~of unreserved, undesignated fund balance or unrecovered retained earnings~~ falls below the required levels as established in this Section, the City Manager shall prepare and submit a plan for expenditure or expense reductions and/or revenue increases to the City Commission in order to replenish the required 20% fund balance/retained earnings reserve. As a part of the annual budget review, the City Commission shall review and amend the plan submitted by the City Manager for restoring the balance(s) ~~amount of unreserved, undesignated fund balance, or unreserved retained earnings~~ to the required levels. Any deficit in the required amount must be restored no later than the end of the second fiscal year following its occurrence.

~~D Utilization of Surplus Reserves. In the event that the unreserved undesignated fund balance or unreserved, retained earnings balance exceeds the minimum reservation of retained earnings established under this section, the excess may be utilized for any lawful purpose. The excess reserves shall first be utilized within the fund in which it was generated in order to address and fund and be used for: (1) one time expenditures or expenses which do not result in recurring operating costs; and (2) capital improvements and maintenance.~~

Section 3. Repeal. That all ordinances or parts of ordinances, resolutions or parts of resolutions in conflict herewith are repealed to the extent of such conflict.

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

Section 5. Inclusion in the Code. That it is the intention of the City Commission, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the City of City of North Bay Village; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

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

The motion to approve the foregoing Ordinance on first reading was made by _____, seconded by _____.

THE VOTES WERE AS FOLLOW:

Mayor Connie Leon-Kreps _____
Vice Mayor Eddie Lim _____
Commissioner Stuart Blumberg _____
Commissioner Richard Chervony _____

APPROVED ON FIRST READING during a regular session of the City Commission of North Bay Village this ____ day of _____.

FINAL VOTE ON ADOPTION:

Mayor Connie Leon-Kreps _____
Vice Mayor Eddie Lim _____
Commissioner Stuart Blumberg _____
Commissioner Richard Chervony _____

PASSED AND ENACTED by the City Commission of North Bay Village, Florida, this ____ day of _____.

Connie Leon-Kreps
Mayor

Yvonne Hamilton, City Clerk, CMC

**APPROVED AS TO FORM FOR THE USE OF
THE CITY OF NORTH BAY VILLAGE ONLY:**

City Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.

City of North Bay Village Resolution: Amending Reserve Fund Requirements

11B(6)



City of North Bay Village

Administrative Offices

1700 Kennedy Causeway, Suite #132 North Bay Village, FL 33141

Tel: (305) 756-7171 Fax: (305) 756-7722 Website: www.nbvillage.com

MEMORANDUM City of North Bay Village

DATE: July 3, 2012

TO: Dennis Kelly
City Manager

FROM: Richard Chervony
Commissioner

SUBJECT: Introduction of Ordinance

Pursuant to Section 3.08 of the City Charter, I hereby introduce the following Resolution:

AN ORDINANCE OF THE CITY OF NORTH BAY VILLAGE, FLORIDA, AMENDING CHAPTER 35 "TAXATION AND FINANCE," OF THE CITY CODE OF ORDINANCES TO REVISE THE REQUIREMENTS AND PROCEDURES RELATED TO GENERAL AND ENTERPRISE FUND RESERVES; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

Accordingly, please place the item on the next available agenda.

RC:yph

11B(7)

Mayor
Connie Leon-Kreps

Vice-Mayor
Eddie Lim

Commissioner
Stuart Blumberg

Commissioner
Dr. Richard Chervony

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA PROVIDING MONTHLY FINANCIAL EXPENDITURE REPORTING REQUIREMENTS FOR ALL PURCHASES OVER ONE THOUSAND FIVE HUNDRED DOLLARS; AMENDING THE COMMISSION MEETING AND AGENDA PROCEDURES TO PROVIDE REQUIREMENTS FOR FINANCIAL EXPENDITURE REPORTING; AND PROVIDING AN EFFECTIVE DATE. (INTRODUCED BY CITY COMMISSIONER RICHARD CHERVONY)

WHEREAS, Section 3.09 A., "Meeting Procedures", of the Charter of the City of North Bay Village, Florida ("City") provides that the City Commission may establish its own rules of procedure and order of business; and

WHEREAS, Section 30.05, "Agenda Meeting procedures", of the City's Code of Ordinances provides that the "City Commission shall establish meeting and agenda procedures by Resolution"; and

WHEREAS, the City Commission adopted Resolution No. 2011-17 providing for such City Commission Meeting and Agenda Procedures; and

WHEREAS, pursuant to Section 4.01 G. 10. of the City Charter the City Manager shall provide such other reports as the Commission may require concerning the operations of City departments, offices and agencies, subject to his direction and supervision; and

WHEREAS, Section 7.04 of the City Charter requires the City Manager to present a detailed report of the expenditures for the prior month at the first Commission meeting of each month; and

WHEREAS, the City Commission finds that disclosure and awareness of operations and expenditures will ensure greater transparency; and

WHEREAS, to provide additional definition for the expenditure report required pursuant to Section 7.04 of the City Charter, the City Commission desires that said expenditure report include identification of all expenditures over \$1500.00; and

WHEREAS, pursuant to Section 4.01 G. 10. of the City Charter, the City Commission desires that the City Manager provide said report of all expenditures over \$1500.00 to increase transparency at the first City Commission meeting of each month; and

WHEREAS, the City Commission desires to amend the City Commission Meeting and Agenda Procedures to reflect said reporting requirements; and

WHEREAS, the City Commission finds that the adoption of this resolution is in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA AS FOLLOWS:

Section 1. **Recitals.** The foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are made a specific part of this Resolution.

Section 2. **Financial Expenditure Report.** The City Manager shall provide a financial expenditure report at the first City Commission meeting of each month, which report shall identify every expenditure over \$1500.

Section 3. **Amendment of City Commission Procedures.** The City Commission Meeting and Agenda Procedures are amended as follows¹:

North Bay Village City Commission Meeting and Agenda Procedures

* * *

8. Order of business.

* * *

B. *Order of Agenda.* The City Commission shall convene on the day and time of each regular meeting, and take up the business of the Commission in the following order unless changed by action of a majority of the Commission. Certain matters may be given a certain time for consideration.

- (1) Call to Order, Pledge of Allegiance, Roll Call.
- (2) A. Proclamations and Awards.
B. Special Presentations.
- (3) Board Reports.
- (4) Public Safety Discussion.
- (5) Commissioners' Reports.
- (6) City Attorney's Report.
- (7) City Manager's Report.
- (8) City Financial Report.
- (9) Good and Welfare.
- (109) Consent Agenda.
- (110) Planning & Zoning Consent Agenda.
- (121) Ordinances for First Reading and Resolutions.

¹ Additions to the City Commission Meeting and Agenda Procedures are shown in underline. Deletions to the City Commission Meeting and Agenda Procedures are shown in ~~strikethrough~~.

- (132) Public Hearings Including Ordinances for Second Reading.
- (143) Unfinished Business.
- (154) New Business.
- (165) Good and Welfare.
- (176) Approval of Minutes.
- (187) Adjournment.

* * *

16. City Financial Report.

The City Financial Report shall be prepared by, or at the direction of the City Manager and, pursuant to Sections 4.01 G. 10. and 7.04 of the City Charter, shall, at a minimum, include a detailed report of the City expenditures for the prior month which shall identify separately all expenditures over \$1,500.00.

176. Public hearings.

As provided in Section 30.06 of the Code of Ordinances, whenever a public hearing is held pursuant to the Charter or ordinance or by direction of the City Commission, the presiding officer shall read the title of the item on which the public hearing will be held. The presiding officer shall then recognize any interested persons or their authorized representatives, who may address the Commission in regard to the matter then under consideration. During the public hearing there shall be no debate by the Commission, although questions may be asked of the persons making such presentation by commissioners. Upon the conclusion of the presentation of the views by the public, the presiding officer shall declare the public hearing closed and the Commission may take action upon the subject matter of the public hearing.

187. Maintenance of records; parliamentarian.

The City Manager shall maintain time records, and the City Attorney shall serve as parliamentarian.

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

The motion to adopt the foregoing Resolution was offered by _____, seconded by _____.

FINAL VOTE AT ADOPTION:

Mayor Connie Leon-Kreps _____
 Vice Mayor Eddie Lim _____
 Commissioner Stuart Blumberg _____
 Commissioner Richard Chervony _____

110(3)

PASSED AND ADOPTED this ____ day of July, 2012.

Connie Leon-Kreps, Mayor

ATTEST:

Yvonne P. Hamilton, CMC
City Clerk

**APPROVED AS TO FORM FOR THE USE OF
THE CITY OF NORTH BAY VILLAGE:**

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
City Attorney



City of North Bay Village

Administrative Offices

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Tel: (305) 756-7171 Fax: (305) 756-7722 Website: www.nbvillage.com

MEMORANDUM City of North Bay Village

DATE: July 2, 2012

TO: Dennis Kelly
City Manager

FROM:


Richard Chervony
Commissioner

SUBJECT: Introduction of Resolution

Pursuant to Section 3.08 of the City Charter, I hereby introduce the following Resolution:

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA PROVIDING MONTHLY FINANCIAL EXPENDITURE REPORTING REQUIREMENTS FOR ALL PURCHASES OVER ONE THOUSAND FIVE HUNDRED DOLLARS; AMENDING THE COMMISSION MEETING AND AGENDA PROCEDURES TO PROVIDE REQUIREMENTS FOR FINANCIAL EXPENDITURE REPORTING; AND PROVIDING AN EFFECTIVE DATE.

Accordingly, please place the item on the next available agenda.

Mayor
Connie Leon-Kreps

Vice-Mayor
Eddie Lim

Commissioner
Stuart Blumberg

Commissioner
Dr. Richard Chervony

11C(5)

CITY OF NORTH BAY VILLAGE
MEMORANDUM

DATE: July 10, 2012

TO: Mayor and City Commission Members

FROM: Dennis Kelly, City Manager
Jim LaRue, Interim City Planner
Susan L. Trevarthen, City Attorney's Office
Kathryn M. Mehaffey, City Attorney's Office

SUBJECT: Zoning Regulations of Adult Entertainment Establishments (Section 152.111 of the Code of Ordinances)

The attached proposed Ordinance, Exhibit A (the "Ordinance"), is for public hearing and your review and approval on first reading. It addresses several aspects of the City's current zoning regulations related to adult entertainment establishments. The Ordinance is intended to improve clarity of the regulations, while continuing to provide for the appropriate location of such uses consistent with all controlling laws.

I. Background

Adult entertainment establishments have limited protection under the freedom of expression clause of the First Amendment of the United States Constitution, because courts have concluded that "adult entertainment" includes an element of expression or speech. The United States Supreme Court has determined that adult entertainment establishments may be regulated by "content-neutral" regulations. A content-neutral regulation does not regulate the actual speech, but instead regulates the secondary effects associated with the speech.

One of the most common and effective ways to regulate adult entertainment establishments is through zoning and distancing requirements that address the location of these establishments. Under the First Amendment case law, such regulations are considered lawful content-neutral limitations on the time, place, and manner of the activity which achieve the City's substantial government interest in reducing the negative secondary effects associated with adult entertainment establishments. *See City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Daytona Grand, Inc. v. City of Daytona Beach, Florida*, 490 F.3d 860, 870 (11th Cir. 2007).

11D(1)

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II. Proposed Regulations

The City's current zoning and location requirements for adult entertainment establishments were adopted in 2009. The existing regulations are in need of revision to provide clarity and updates consistent with current law.

The Ordinance moves the majority of the definitions to the proposed adult entertainment establishment business regulations also on your agenda this evening, where they are more extensively used.¹

Under the Ordinance, adult entertainment establishments are permitted in the CG, General Commercial, zoning district. In addition, the application and approval procedures and criteria have been updated, including removal of the current requirement for a conditional use.

The Ordinance adds a distance requirement for adult entertainment establishments from uses licensed to serve alcohol. The Ordinance does not otherwise substantively change the previously existing distance requirements or method of calculating those distances as originally adopted in 2009, but it does streamline the text in order to provide clarity. The revisions specifically *prohibit* variances to these location (distance) standards.

The Ordinance provides that an adult entertainment establishment must be located:

- (i) At least five hundred (500) feet from any residentially zoned district as designated on the City's official zoning district map, and at least five hundred (500) feet from any property on which over twenty-five (25) percent of the floor area is devoted to residential use; and
- (ii) At least five hundred (500) feet from any parcel of land upon which a religious facility, public school, private school, public park, public playground, library, daycare center or nursery for children is located; and
- (iii) At least five hundred (500) feet from any hotel or motel; and
- (iv) At least one thousand (1,000) feet from any parcel of land upon which another adult entertainment establishment is located.

The ordinance also provides that an adult entertainment establishment must be located at

¹ The business regulations require a business license for all adult entertainment establishments, and establish application requirements and procedures as well as structural and operational criteria for approval and maintenance of such licenses.

least three hundred fifty (350) feet from a building that contains a business that sells or dispenses alcohol.

The method for calculating the distance requirements provided in the proposed regulations is not substantively changed from the current code, but is revised to eliminate the confusion that has arisen as the City has attempted to apply and interpret the current wording. The Ordinance provides that distance shall be calculated by following a straight line from any portion of the building used for an adult entertainment establishment, or any building located on the property of the adult entertainment establishment to:

- (i) the nearest point of the property designated as residential on the City's official zoning district map; or
- (ii) the residential area of any property on which over twenty-five (25) percent of the floor area is devoted to residential use; or
- (iii) any area used for a religious facility, public school, private school, public park, public playground, library, daycare center or nursery for children, hotel or motel.

In cases where a minimum distance is required between an adult entertainment establishment, and another adult entertainment establishment or an establishment licensed to serve or sell alcohol, the Ordinance provides that the distance is to be measured from the building line of the existing licensee to the building line of the proposed licensee, using the airline distance between the two (2) buildings.

Section 152.111.01(b) of the proposed Code lists the governmental studies which serve as evidence and testimony in support of the City's substantial government interest in adopting the Ordinance and the business regulations. Copies of the studies, which analyze the negative secondary effects of sexually-oriented businesses on the community, and a cover memorandum which summarizes each study, have been provided for your review (Exhibit B). The studies are attached as Exhibit C.

III. Planning and Zoning Board Recommendation

The Planning and Zoning Board reviewed the proposed regulations and conducted a public hearing on May 29, 2012. It recommended approval of the attached Ordinance. The minutes of the Planning and Zoning Board are included as Exhibit D.

Attachments:

- Exhibit A: Zoning Ordinance, for public hearing and first reading
- Exhibit B: Memorandum summarizing secondary effects studies

11D(4)

Exhibit C: Studies

Exhibit D: Planning and Zoning Board May 29, 2012 Minutes