

# Village of Biscayne Park

640 NE 114<sup>th</sup> Street  
Biscayne Park, FL 33161  
(305) 899-8000

## Mayor and Commission

John R. Hornbuckle  
Mayor

Robert "Bob" Anderson  
Vice-Mayor

Steve Bernard  
Commissioner

Kelly Mallette  
Commissioner

Chester H. Morris, M.D.  
Commissioner

Ana Garcia  
Village Manager

John J. Hearn  
Village Attorney

Kim Prenter  
Village Clerk

## AGENDA

### REGULAR COMMISSION MEETING

Ed Burke Recreation Center – 11400 NE 9<sup>th</sup> Court  
Tuesday, December 8, 2009 - 7:00 pm

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE
4. PUBLIC COMMENTS RELATED TO AGENDA ITEMS
5. PRESENTATIONS

- A. **Canvassing Board Election Results of the December 1, 2009, Village Election\*** *The unofficial count is listed on the resolution, as the official count transpired after agenda publish date- count will be determined based upon acceptance of provisional and ballot certification 12.3.2009*

#### Resolution #2009-19

A RESOLUTION OF THE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, CANVASSING RETURNS AND CERTIFYING THE RESULTS OF THE GENERAL MUNICIPAL ELECTION OF THE VILLAGE OF BISCAYNE PARK, MIAMI-DADE COUNTY, FLORIDA, HELD DECEMBER 1, 2009, DESIGNATING THE PERSONS ELECTED TO OFFICE AND LENGTH OF TERMS; SETTING AN EFFECTIVE DATE

- B. Installation of New Commissioners
  - C. Reorganization meeting to select the Mayor and Vice-Mayor
6. ADDITIONS, DELETIONS OR WITHDRAWALS TO AGENDA
  7. CONSENT AGENDA (Motion to be made for all as one or remove for discussion)
    - A. Approval of Minutes  
September 30, 2009 Special Meeting  
October 6, 2009 Regular Meeting

October 28, 2009 Joint Meeting  
November 3, 2009 Regular Meeting

- B. Contract for Disaster Debris
- C. Contract for Emergency Services
- D. Landscape Maintenance Memorandum
- E. Receipt of 4<sup>th</sup> Quarter Financial Report for period ending 9/30/09
- F. Approval of Expedition of forfeiture of funds for complex investigation
- G. Five Year Capital Projects Plan Resolution (Draft & Adopt)

**8. PUBLIC HEARINGS**

**9. ORDINANCES – 1<sup>st</sup> reading**

**A. ORDINANCE 2009-7**

AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA GRANTING AND RENEWING PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, A FRANCHISE FOR THE PURPOSE OF SUPPLYING NATURAL, MANUFACTURED, AND OTHER GAS TO THE VILLAGE, PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE

**B. ORDINANCE 2009-9**

AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA PURSUANT TO SECTION 166.041, FLORIDA STATUTES, TO AMEND ORDINANCE 2008-06 ADOPTED ON SEPTEMBER 23, 2008 FINALIZING AND ADOPTING THE ANNUAL OPERATING BUDGET AND CAPITAL IMPROVEMENT PROGRAM FOR FISCAL YEAR 2008-2009, BY AMENDING VARIOUS PARTS OF THE BUDGET CONSISTENT WITH EXHIBIT "A", ATTACHED HERETO; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE

Capital Improvement amendment – TBS  
Police Forfeiture amendment – TBS

**10. RESOLUTIONS**

**RESOLUTION #2009-20**

A RESOLUTION OF THE MAYOR AND VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA GRANTING AUTHORITY TO MEMBERS OF THE VILLAGE COMMISSION TO SERVE AS SIGNATORIES ON ALL BANKING DOCUMENTS RELATED TO THE VILLAGE OF BISCAYNE PARK; REQUIRING TWO SIGNATURES FOR THE TRANSFER OF FUNDS AND UPDATING ACCOUNT INFORMATION; PROVIDING FOR AN EFFECTIVE DATE

**11. OLD BUSINESS- None**

**12. NEW BUSINESS**

- A. Discussion of the Ecology Board and its purpose (Commissioner Bernard)**  
*Backup documents of ordinance and minutes attached*
- B. Discussion of Committee Agendas and Minutes, including when and how they should be made public (Commissioner Bernard)**
- C. Discussion on Village Clerk contract**

**13. GOOD AND WELFARE (PUBLIC)**

**14. REPORTS**

- A. Committee Reports**
- B. Village Attorney Comments**
  - 1. Discussion of One Time Use of Capital Improvement Fees- Water ("CIF-Water")**
- C. Village Manager Comments**
- D. Comments**
  - 1. Commissioner Bernard**
  - 2. Commissioner Cooper**
  - 3. Commissioner Ross**
  - 4. Commissioner Anderson**
  - 5. Commissioner Childress**

**15. ANNOUNCEMENTS -All public meetings are held at the Ed Burke Recreation Center 11400 NE 9<sup>th</sup> Court**

- Monday, December 7, 2009 Rec. Advisory Committee, 6:30 p.m.**
- Monday, December 7, 2009 Planning & Zoning Board, 6:30 p.m.**
- Wednesday, December 16, 2009 Parks & Parkways Committee, 6:00 p.m.**
- Saturday, December 19, 2009 Winter Festival 11:00am – 3:00pm .**
- Monday, December 21, 2009 Planning & Zoning Board, 6:30 p.m.**
- Friday, December 25, 2009 Village Hall Closed for the Christmas Holiday**
- Friday, January 1, 2010 Village Hall Closed for New Year's Day**

**16. ADJOURNMENT**

In accordance with the provisions of F.S. Section 286.0105, should any person seek to appeal any decision made by the Commission with respect to any matter considered at this meeting, such person will need to ensure that a verbatim record of the proceedings is made; which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act of 1990, persons needing special accommodation to participate in the proceedings should call Village Hall at (305) 899-8000 no later than (4) days prior to the proceeding for assistance.

**DECORUM**

Any person making impertinent or slanderous remarks, or who becomes boisterous while addressing the Commission, shall be barred from further audience before the Commission by the presiding officer, unless permission to continue or again address the commission is granted by the majority vote of the Commission members present. No clapping, applauding, heckling or verbal outbursts in support or in opposition to a speaker or his/her remarks shall be permitted. No signs or placards shall be allowed in the Commission Chambers. Please mute or turn off your cell phone or pager at the start of the meeting. Failure to do so may result in being barred from the meeting. Persons exiting the Chamber shall do so quietly.

**FIFTH ORDER OF BUSINESS**

**5A**

**RESOLUTION NO. 2009-19**

**A RESOLUTION OF THE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, CANVASSING RETURNS AND CERTIFYING THE RESULTS OF THE GENERAL MUNICIPAL ELECTION OF THE VILLAGE OF BISCAYNE PARK, MIAMI-DADE COUNTY, FLORIDA, HELD DECEMBER 1, 2009; DESIGNATING THE PERSONS ELECTED TO OFFICE AND LENGTH OF TERMS; SETTING AN EFFECTIVE DATE**

**WHEREAS,** a general municipal election was held in the Village of Biscayne Park for the purpose of electing three (3) Commissioners, and

**WHEREAS,** the Supervisor of Elections of Miami-Dade County, Florida has duly counted the ballot and has, as set forth in **Exhibit "A"** to be incorporated, certified the returns of said election to the Village Commission to be as follows:

<b>CANDIDATE</b>	<b>PRECINCT 151-177</b>	<b>ABSENTEE</b>	<b>TOTAL</b>
<b>ALBERT CHILDRESS</b>	<b>231</b>	<b>48</b>	<b>279</b>
<b>BRYAN COOPER</b>	<b>325</b>	<b>15</b>	<b>340</b>
<b>Ronald D. COYLE JR.</b>	<b>142</b>	<b>12</b>	<b>154</b>
<b>Rose DE MERLE</b>	<b>85</b>	<b>16</b>	<b>101</b>
<b>John R. HORNBUCKLE</b>	<b>220</b>	<b>34</b>	<b>254</b>
<b>KELLY MALLETE</b>	<b>201</b>	<b>69</b>	<b>270</b>
<b>ROXANNA ROSS</b>	<b>297</b>	<b>30</b>	<b>327</b>

**WHEREAS,** the Village Commission has duly canvassed the returns of said election, as certified by the Supervisor of Elections of Miami-Dade County, Florida, and has found the actual vote to be as follows:

<b>CANDIDATE</b>	<b>TOTAL</b>
<b>ALBERT CHILDRESS</b>	<b>279</b>
<b>BRYAN COOPER</b>	<b>340</b>
<b>Ronald D. COYLE JR.</b>	<b>154</b>
<b>Rose DE MERLE</b>	<b>101</b>
<b>John R. HORNBUCKLE</b>	<b>254</b>
<b>KELLY MALLETE</b>	<b>270</b>
<b>ROXANNA ROSS</b>	<b>327</b>

**NOW, THEREFORE**, be it resolved by the Commission of the Village of Biscayne Park, Florida that:

**Section 1.** The following candidates have been duly elected to the Office of Commissioner of the Village of Biscayne Park, Florida for a term of four (4) and two (2) years respectively, as set forth hereinafter:

**Four year Commissioner BRYAN COOPER**

**Four year Commissioner ROXANNA ROSS**

**Two year Commissioner ALBERT CHILDRESS**

**Section 2.** The results of the General Municipal Election, held **Tuesday, December 1, 2009** are hereby certified and confirmed.

**Section 3.** This resolution shall become effective upon its adoption.

**PASSED AND ADOPTED** this 8<sup>th</sup> day of December 2009

**Attest:**

\_\_\_\_\_  
, Mayor

\_\_\_\_\_  
Kim M Prenter , Village Clerk

**Approved as to form:**

\_\_\_\_\_  
John J. Hearn, Village Attorney

**The foregoing resolution upon being put to a vote, the vote was as follows:**

Mayor:

Commissioner

Commissioner

Commissioner:

Vice Mayor

**SEVENTH ORDER OF BUSINESS**

**7A**



# Village of Biscayne Park

## MINUTES

### SPECIAL MEETING

Ed Burke Recreation Center – 11400 NE 9<sup>th</sup> Court  
Wednesday, September 30, 2009, 6:30 pm

#### 1. Call to Order and Roll Call

Mayor Hornbuckle called the meeting to order at 6:35 p.m. In addition to Mayor Hornbuckle, present were Commissioners Steve Bernard, Kelly Mallette, Chester "Doc" Morris and Vice-Mayor Bob Anderson. Present from Staff were John Hearn, Village Attorney and Ann Harper, Village Clerk. Also present was Ana M. Garcia, Manager Designate.

#### 2. REVIEW AND APPROVAL OF THE PROPOSED CONTRACT WITH MANAGER DESIGNATE ANA M. GARCIA

Mayor Hornbuckle said this meeting is to discuss and approve the proposed contract with manager designate Ana Garcia and requested Attorney Hearn give an overview of the contract.

Commissioner Bernard pointed out there is nothing on the agenda about public participation. People showed up at 6:30 p.m. on a week day and should be asked whether there are any public comments.

Mayor Hornbuckle noted he was planning on doing this after Mr. Hearn spoke.

Attorney Hearn noted this is a standard contract. He has met with Ms. Garcia to review the contract and he proceeded to outline the redlined changes.

##### Section 1. Duties:

Commissioner Bernard asked if there is a need to state in the contract that there will be out-of-the norm hours since there is going to be after hour meetings. Attorney Hearn noted in his opinion it is not necessary because the contract states *work as required in order to carry out the responsibilities*.

##### Section 2. Term of Agreement

There is a six-month probationary period, a termination clause and an evaluation to be done after the probationary period. There will be a review of performance with an option for an increase given based on performance. There will also be an annual review. It was requested the word *written* be added before the word review.

It was agreed reference to a *decrease in salary* in Section 4.C be deleted.

## Section 5. Termination by the Village and Severance Pay

A discussion on severance pay ensued.

Commissioner Bernard noted three months severance is too much. He did not want a new commission to be tied to the decisions made by a previous commission. It was noted that three months notice can be given.

Ms. Garcia noted in the event a new commission takes over and wants to bring in a new Village Manager without reason she needs to protect herself. She also noted that a six month probation period for a senior manager is excessive.

The discussion concluded with the decision to keep three months severance pay and the six month probationary period would also remain. If termination is without cause and subsequent to Manager's probationary period the Village shall provide 90 days notice; if termination is to take place immediately the Village Manager will be paid a lump sum severance pay equal to three months salary.

## Section 6: Termination by the Village Manager

During the probationary period the Village Manager would be given the ability to leave with a 30 day notice. There was concern that this may not be enough time to find a replacement. Ms. Garcia noted it is her intention to not only develop herself but also her staff so there is another individual who can step in when she goes on vacation, etc. Subsequent to the probation the Village Manager may terminate at any time with a written 90-day notice of termination.

There was consensus the 30 day notice is acceptable.

## Section 7. Cell Phone:

It was agreed the Village Manager may use her own cell phone and be reimbursed the *reasonable* actual cost of the telephone. Ms. Garcia noted she wants to be accessible to the residents at all times.

## Section 9. Professional Development

It was noted it is important for the Manager to stay abreast of current topics in addition to maintaining a network and it was agreed the Village will pay for travel and attendance at conferences.

## Section 11. Time off - 18 days vacation, 12 days sick leave

The requested number of days was approved but to avoid a cash-out burden in the future the maximum vacation days carried over into the next fiscal year is 50% of annual accrual. Sick days at cash out would be valued at 50% of pay rate. The use of vacation time will not exceed three days during the six month probation period.

## Section 12. Health and Dental Insurance

Insurance coverage and co pays were discussed. It was decided the Village will pay 100% of the premium for the Manager.

#### Section 14. Life Insurance

Life insurance will be provided at one times the annual salary.

#### Section 13. Retirement

Retirement will be set according to the State of Florida Retirement System - Senior Management.

#### Section 15. Other Customary Benefits

It was noted the Manager has the right to participate in any other benefits as provided to management employees.

#### Section 16. Indemnification

The Village shall indemnify the Manager against any liability or legal action occurring in connection with her duties as long as she is acting within the scope of her employment. Attorney Hearn noted the only exemption is if the employee has intentionally violated a person's rights.

A question was raised on indemnity and an intentional event. Attorney Hearn said that if they were sued they would show it was outside the scope of employment. Additionally it was noted the Village is still covered by its own insurance.

#### Section 17. Bonding

A discussion on bonding of officers ensued. The Village Charter states the Manager has to be bonded.

#### Section 18. Code of Ethics

The Village Manager will be an active full member of the International City/County Management Association (ICMA) and her conduct will be governed by their "Code of Ethics".

The inclusion of a non solicitation clause whereby the Manager cannot actively solicit employees for a period of one year if she leaves was discussed. This may be difficult to enforce and may affect other employees and their ability to get jobs through this indirectly. The Village does not want to be put in the position where all employees leave at the same time. It was decided to place a 90 day notice for the first year of employment.

Rewording of Section 4C was distributed and approved.

#### Section 7. Car Allowance

Ms. Garcia noted the Commissioners requested a very active individual who would be out and about the Village. A \$400.00 per month allowance was set based on a four day pay week. Days per week worked is set at five including one Saturday each month. Additionally Manager Garcia will drive to the town commission meetings and will be working with neighboring municipalities. There will also be the necessity to travel outside Dade County which justifies the need for the fuel allowance.

After discussion it was decided to take out the reimbursement section and accept the \$400 per month allowance for use of a private vehicle. The Village Manager will be responsible for the vehicle and not put in for reimbursement for mileage unless she travels to a distant conference.

Salary Discussion:

Ms. Garcia noted she analyzed the compensation based on the salary range average rate of comparable cities and the experience she brings which resulted in an average range of \$118,000. Pay range usually goes up or down 4 to 5 %. Taking the high at \$90,000 and the low at \$82,000 she came up with an average of \$86,000. With an average of \$118,000 for cities that are comparable to Biscayne with the experience she brings to the table and giving five day plus work weeks and a six month probation period she knows she can prove herself and feels the \$86,000 is fair. The Village is getting a person who is going to be a CEO and represent the city 24/7.

Commissioner Mallette noted after review of the survey presented and other information she is comfortable with a salary of \$86,000.

Vice-Mayor Anderson noted the El Portal Manager who was paid \$75,000 was new and just out of college and that Ms. Garcia had more experience but he also noted it is hard for him to be comfortable with Ms. Garcia starting at the same salary as the previous Village Manager who had more experience than her. He suggests a salary of \$82,500 or \$83,000.

Commissioner Bernard noted he understands the logic in the salary surveys and looking at her salary compared to others but he is not comfortable putting Mr. Spence's salary in relation to Ms. Garcia. He noted that Biscayne Park is like no other city on the survey. There are no businesses here which work a manager hard. Also the issues are few in this city. It involves getting a few things done and then staying the course. Salaries are lower here because it is not a complex city. He does not think the Village can pay someone with limited manager experience the same as it was paying someone with four years experience. After the probation period is complete, and improvements such as expense reduction have occurred then an increase may be warranted. \$75,000 is the maximum he is comfortable with. He would want to start lower so that she can prove herself and there is that incentive.

Ms. Garcia noted she knew the fact she has not been a City Manager was going to come up. Experience is gained managing large departments. She was not just responsible for parks and recreation; she was responsible for grant development, public information and overseeing capital projects. The Village is getting a very well rounded individual. She can work with the commission on the salary amount but must stay true to herself and what she believes she can bring to the table with her experience of 24 years and the last 4 years as a Senior Manager.

Commissioner Morris noted he understands the logic behind the numbers in the survey but those cities have commercial property and expensive homes. His recommendation is \$80,000 to start, an increase of \$3,000 after three months if the Village has been able to obtain additional savings and grant opportunities and at the one year mark after an evaluation \$86,000. He has nothing against paying somebody money if they have

provided the service that is saving the Village money and making it money. In the situation we are dealing with right now he would start at \$80,000.

Ms. Garcia suggested \$82,000 and then a yearly review. There is no need for a six month review as she will be working hard to prove herself regardless.

Commissioner Mallette noted she thinks we are judging Ms. Garcia at a different time than we were judging Mr. Spence when he started. Budgets at different levels have been cut and the situation of the economy and the grant schedule is different and she does not know if three months is enough time to show how much she brings in.

Vice-Mayor Anderson agreed and suggested a start at \$82,000. Upon the one year mark an evaluation will be made and with both savings and grant opportunities being guidelines, \$86,000 would be possible at that time.

Mayor Hornbuckle noted grants are important but expenses need to be lowered.

Commissioner Mallette suggested \$83,500.

Mayor Hornbuckle suggested \$83,000 and a one year evaluation be conducted.

Ms. Garcia noted during her 12 years she has never run into the red and has been creative and that is her pledge to the Village.

There was general consensus for the \$83,000 annual salary with a six month probationary term and an annual review of performance. Any salary increase will be based on performance.

The meeting was opened for public comment.

There was no public comment.

**Motion** was made by Commissioner Mallette, seconded by Commissioner Anderson to accept the Village Manager Employment Agreement as amended, the motion carried by voice vote, 5/0.

### 3. ADJOURNMENT

There being no further business, the meeting adjourned at 8:04 p.m.

Commission approved \_\_\_\_\_

Attest:

\_\_\_\_\_  
John Hornbuckle, Mayor

\_\_\_\_\_  
Village Clerk



# Village of Biscayne Park

## MINUTES

### REGULAR MEETING

Ed Burke Recreation Center – 11400 NE 9<sup>th</sup> Court

Tuesday, October 6, 2009, 7:00 pm

#### 1. CALL TO ORDER and ROLL CALL

Mayor Hornbuckle called the meeting to order at 7:00 p.m. In addition to Mayor Hornbuckle, present were Commissioners Steve Bernard, Kelly Mallette, Chester "Doc" Morris and Vice-Mayor Bob Anderson. Present from Staff were Ana Garcia, Village Manager; John Hearn, Village Attorney; Mitchell Glansberg, Police Chief; Tony Sanchez Police Captain, Holly Hugdahl, Acting Finance Director and Kim Prenter, Acting Village Clerk.

#### 2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

#### 3. ORDER OF BUSINESS – ADDITIONS, DEFERRALS, OR DELETIONS TO AGENDA

#### 4. PRESENTATIONS

**A. Presentation by Commissioner Morris** – Gave a list of his accomplishments; reorganization of charter from commission run to a manager run city, the ribbon cutting ceremony for the Village of Biscayne Park sign, the groundbreaking for the new public works building, obtaining a grant from the Rotary Club and assisting in the accumulating of \$1Million in the reserve account; and tendered his resignation so that he could take more time to spend with his family.

**B. Presentation by Police Department** - An award was presented to Police Chief Glansberg for his leadership, management, hard work and dedication to the Biscayne Park Police Department. An award was presented to Police Captain Sanchez for his hard work and dedication.

Recreation Advisory Board presented their recommendation on after school camp requesting the following be added to the agenda: review of the proposal for after school care Monday thru Friday and school holiday camp devoted to the educational, physical, emotional and social support of children; approve contract with Golden Gate and the standard 30% fee be reduced to 10% in order to allow the program to grow.

A short presentation was given by Mr. Gate regarding the after school camp. A handout was distributed summarizing the program.

Ms. Garcia noted the plan is to meet with the Gates and review the proposal including their background and report back to the commission for further discussion. Mayor Hornbuckle agreed with this approach.

Commissioner Mallette questioned if the Recreation Advisory Board spoke to any other providers. The Board had not, but noted the Village has the option to go out for RFPs.

## **5. PUBLIC COMMENTS RELATED TO AGENDA ITEMS**

Linda Dillon, 712 NE 114 Street thanked everyone for giving her the opportunity to speak but she is very uncomfortable talking about items on the agenda before she has the chance to hear what the commission has to say. She welcomed Ms. Garcia and would like to thank whoever was responsible for changing the contract signing date from the Monday of that week to the Wednesday. She hopes in the future there will be no scheduling conflicts and will be glad to furnish calendars which list religious holidays.

Regarding 11B, items being placed on the website, she feels they have a very competent person in Maria and does not think it is necessary to have the commission voting to determine what is placed on the website.

Chuck Ross, 11166 Griffing Blvd. stated for the record he is a member of the Pathways Ad Hoc Committee. He welcomed Ms. Garcia and noted there was a vote at a Pathways Ad Hoc Committee meeting last Wednesday 6 to 4 against the pedestrian pathways project. The holding of a workshop and conducting a survey of the community was never accomplished. Professionals had not been consulted for advice on the feasibility of the project. The commission should recede on the scaled down concept of the original project which the committee was working on prior to the vote.

Dan Keys, 1107 NE 118 Street noted that he was one of those who voted against that project. He requested the commission look at the entire record in the minutes and make their decision accordingly.

The public comment section was closed.

## **6. CONSENT AGENDA (Motion to be made for all as one or remove for discussion) Tab #6**

### **A. Approval of Minutes -**

**Continued from Comm. Mtg. 7/7/09**

**Email 7/7/09 from Commissioner Bernard**

- (1) Regular Meeting – June 2, 2009**
- (2) 2<sup>nd</sup> Preliminary budget Workshop June 10, 2009**
- (3) Special Meeting June 22, 2009**
- (4) 3<sup>rd</sup> Preliminary Budget Workshop June 22, 2009**  
**Continued from Comm. Mtg. 8/4/09**
- (5) Special Meeting July 16, 2009**  
**Continued from Comm. Mtg. 9/1/09**
- (6) Regular Meeting May 5, 2009**
- (7) Email 9/1/09 from Commissioner Bernard**  
**Regular Meeting – August 4, 2009**  
**New Minutes for Approval**

- (8) Special Meeting – September 8, 2009
- (9) Special Meeting – September 17, 2009
- (10) Special Meeting – September 22, 2009

**Motion** was made by Commissioner Mallette, seconded by Vice-Mayor Anderson, to approve the consent agenda.

Commissioner Bernard noted there were items regarding the stormwater and the hardening of the rec center he wanted to request be added to the minutes.

Commissioner Morris noted minutes are in summary form and are supposed to be a synopsis of what happens at a meeting. It does not have to be word for word. The only thing that is important in the minutes is the result of a vote.

Commissioner Bernard said there were notes he sent to the clerk which were distributed regarding the July 16th and the May 5th meetings and he wants to make sure they are part of the minutes that are being approved.

Commissioner Mallette said she made a motion to approve the consent agenda as is.

Mayor Hornbuckle said we have a motion to accept the consent agenda as is.

Commissioner Bernard asked if he could amend the motion to include those minutes.

Mayor Hornbuckle said we can approve the minutes as is which is what the motion is right now, as well as the two other items on the consent agenda.

Commissioner Bernard asked can we discuss this?

Attorney Hearn said you have a motion to approve the consent agenda. Anyone can pull whatever they want. Commission Bernard can pull B & C and proceed on discussions of any minutes at issue.

Commissioner Bernard pulled items 6A5, 6A6 and 6B & C.

Attorney Hearn noted those items have been pulled so your meeting is 6A 1, 2, 3, 4, 7, 8, 9, 10. The consent agenda is without discussion if you want to move forward and wish to approve the consent agenda that remains, you have a second, you take that vote and move forward and discuss those that are pulled.

Mayor Hornbuckle asked if Commissioner Mallette still wanted to move forward with the motion.

Commissioner Mallette said she wanted to move forward with the motion.

Mayor Hornbuckle asked Mayor Anderson if he still seconded.

Vice-Mayor Anderson said he just wants to make sure what we are voting on is to approve what the clerk has given us as far as her minutes.

Mayor Hornbuckle said that is correct.

Commissioner Bernard said July 7th he had notes on the minutes that are part of this document and assumes that is part of what we are approving as well as the September 1 notes for the August 4th meeting.

Commissioner Mallette proceeded with her motion.

Commissioner Bernard asked whether his notes had been included in the package to be approved.

Attorney Hearn noted this commission has to make the motion on including your minutes or not including your minutes. The motion is to include the minutes for 6A 1, 2, 3, 4, 7, 8, 9, 10 without any modifications.

Commissioner Mallette said correct that is the motion.

Attorney Hearn said Commissioner Bernard can pull whatever he wants to pull.

Commissioner Bernard requested with the exception of 8, 9 and 10, and all other remaining minutes be pulled.

Mayor Hornbuckle said the only ones that would be approved as they were dictated or written would be 8, 9 and 10.

Commissioner Bernard said correct.

**Motion** was made by Commissioner Mallette, seconded by Vice-Mayor Anderson to approve consent agenda items 8, 9 and 10. The motion carried by voice vote, 5/0.

**Motion** was made by Commissioner Mallette, seconded by Vice-Mayor Anderson to approve the remaining minutes as is.

Commissioner Bernard noted by approving minutes that are inaccurate then the record of actions are inaccurate from that point on. He noted that when an action is stated in the minutes, the direction of that action should also be stated.

Commissioner Mallette noted a motion was made, the items in there are referenced and an audio tape is available for the record for verbatim type transcriptions. On occasions when legislature feels it is important for clarity it is sometimes requested certain parts of minutes be typed verbatim. Perhaps in instances such as that the commission should request a verbatim accounting be made for the record. At this point we cannot have a backlog of unapproved minutes.

It was noted there is a resolution approving summary minutes but if during the meeting there was something that needed further documenting the clerk would be made aware of it.

It was noted according to Robert's Rules once a motion and a second were made the action is complete.

**Motion** was made by Vice-Mayor Anderson seconded by Commissioner Morris, to call the motion. The motion carried by voice vote, 4/1 with Commissioner Bernard voting no.

Mayor Hornbuckle said now we will have the original motion which is to accept the minutes as they were originally written, items 6A 1 through 7.

Mayor Hornbuckle called for a voice vote on the motion, which carried 4/1 with Commissioner Bernard voting no.

**B. Approval of State Financial Assistance Agreement for Stormwater Improvement Project**

Commissioner Bernard asked if there is a map of this project and it was noted there is. He stated that the required work may cost more than the Village has available. He would like to ensure there are adequate funds and a valid permit.

Attorney Hearn noted it is a three year agreement until 2011 and he is unaware of any deadline.

A discussion on the timeframe of funding the project ensued. It was noted the funds were given in 2008 the deadline is nearing and it is approaching termination and they will take the money back. The funding is on a reimbursement basis; money is reimbursed based on what is accomplished. The Village should move forward with this.

It was decided to move forward with the project. Commissioner Mallette and the Village Manager will research to see if there is any flexibility regarding the full amount of the match.

**Motion** was made by Commissioner Mallette, seconded by Vice Mayor Anderson to approve the agreement and if there are any issues or items of concern the Manager will bring it back at the next meeting.

It was noted this is a continuation of a process that has already begun, Phase I and Phase II have already been completed.

Mayor Hornbuckle called for a voice vote on the motion, which carried 5/0.

**C. Approval of State-Funded Subgrant Agreement (Recreation Center/EOC Hardening Grant for \$60,000)**

Commissioner Bernard asked if there were plans available. It was noted this is direct funds provided by the legislature. The structural integrity of the building was approved by an engineer and the next step for the project can begin.

A discussion on the agreement and funding ensued. The Village Manager will be reviewing all grants and available funding for work planned. At the November meeting she will present an overall assessment on the status of the grant programs.

**Motion** was made by Commissioner Morris, seconded by Commissioner Mallette, to approve the State-Funded Subgrant Agreement. The motion carried by voice vote 5/0.

## 7. PUBLIC HEARINGS – ORDINANCES – SECOND READING

### Ordinance No. 2009-8

AN ORDINANCE OF THE MAYOR AND VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, REPEALING SECTIONS 6.5-1 THROUGH 6.5-7 OF THE VILLAGE OF BISCAYNE PARK CODE OF ORDINANCES; CREATING NEW SECTIONS 6.5-1 THROUGH 6.5-6 ADDRESSING FLOOD PREVENTION AND PROTECTION IN THE VILLAGE OF BISCAYNE PARK, FLORIDA; PROVIDING FINDINGS OF FACT; PROVIDING A SHORT TITLE; PROVIDING A STATEMENT OF PURPOSE; PROVIDING OBJECTIVES; PROVIDING DEFINITIONS; PROVIDING JURISDICTION; PROVIDING A BASIS FOR ESTABLISHING AREAS OF SPECIAL FLOOD HAZARD; PROVIDING FOR ESTABLISHMENT OF DEVELOPMENT PERMITS; PROVIDING FOR COMPLIANCE; PROVIDING FOR ARROGATION AND GREATER RESTRICTIONS; PROVIDING FOR INTERPRETATION; PROVIDING FOR A WARNING AND DISCLAIMER OF LIABILITY; PROVIDING PENALTIES FOR VIOLATION; PROVIDING FOR DESIGNATION OF LOCAL ADMINISTRATOR; PROVIDING PERMIT PROCEDURE; PROVIDING DUTIES AND RESPONSIBILITIES OF THE BUILDING OFFICIAL; PROVIDING PROCEDURES FOR VARIANCES FROM THIS ORDINANCE; PROVIDING GENERAL AND SPECIFIC STANDARDS FOR HAZARD REDUCITON; PROVIDING STANDARDS FOR SPECIAL FLOOR HAZARD AREAS WITH ESTABLISHED BASE FLOOD ELEVATIONS AND ALL OTHER IDENTIFIED FLOOD HAZARD AREAS; PROVIDING FOR STANDARDS FOR SUDIVISION PROPOSALS; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR INCLUSION; PROVIDING FOR AN EFFECTIVE DATE (2<sup>nd</sup> Reading)

Attorney Hearn read the title of the Resolution.

Mayor Hornbuckle opened the public hearing. No one came forward to speak, and the public hearing was closed.

**Motion** was made by Commissioner Morris and Vice Mayor Anderson, seconded by Commissioner Mallette to accept the 2<sup>nd</sup> reading of Ordinance No 2009-8.

Mayor Hornbuckle called for a roll-call vote. The motion carried as follows:

AYES: Mayor Hornbuckle, Vice-Mayor Anderson,  
Commissioners Bernard, Mallette and Morris.

NAYS: None

## 8. ORDINANCES – FIRST READING

### A. ORDINANCE 2009-7

**AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA GRANTING AND RENEWING PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, A FRANCHISE FOR THE PURPOSE OF SUPPLYING NATURAL, MANUFACTURED, AND OTHER GAS TO THE VILLAGE, PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE (1<sup>st</sup> Reading)**

**B. Approval of Non-Exclusive Franchise Agreement Between the Village of Biscayne Park and Peoples Gas System, a Division of Tampa Electric Company**

## 9. RESOLUTIONS

### RESOLUTION #2009-15

**A RESOLUTION OF THE MAYOR AND VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA GRANTING AUTHORITY TO ANA M. GARCIA AS VILLAGE MANAGER TO SERVE AS A SIGNATORY ALONG WITH THE VILLAGE COMMISSION ON ALL BANKING DOCUMENTS RELATED TO THE STATE BOARD OF ADMINISTRATION INVESTMENT ACCOUNTS FOR THE VILLAGE OF BISCAYNE PARK; PROVIDING FOR AN EFFECTIVE DATE**

Attorney Hearn read the title of the Resolution.

**Motion** was made by Vice Mayor Anderson, seconded by Commissioner Morris to approve the Resolution. The motion carried by voice vote, 5/0.

## 10. OLD BUSINESS - None

A finance report was added to the agenda based on information received late yesterday. Due to a change of 1.14% in property values the option of increasing millage by \$16 per household or taking the funds from reserves was discussed. A decision must be sent to the property appraiser by noon on Friday. It is less than 1%.

The Finance Director stated that the shortfall is an increase of \$16 per household, or a total of \$16,669, and we already have \$23,809 coming out of surplus for the adopted budget.

The dollar amount previously voted on for revenue coming in on property taxes (the trim) and by raising the millage rate will bring back the same dollar amount that was approved on the budget. The millage rate needs to be changed to get back to what had been approved during the budget cycle.

It was discussed to raise the millage to balance it out and if in the next two days staff can come up with savings then looking forward to the next budget year the residents may realize the savings at that point.

Mayor Hornbuckle opened it up for public comment.

Fred Jonas, 918 NE 119 Street said we live in a specialized quiet neighborhood, there is no business here and we like it that way. It seems we should be willing to go a little bit of a distance to keep this neighborhood the way we like it, to keep it functional and if it costs each of us an extra \$16 for the year to keep things the way they are now it will allow us to have the advantages we have it seems to me a very small price to pay and cannot imagine it will be a problem with anybody.

Gary Kuhl, 777 NE 111 Street concurred and thinks trying to come up with savings in the budget before Friday is not going to happen.

Bob Kopcsik, 720 NE 116 Street questioned why the budget we propose and submit does not coincide with what they tell us. It was noted they must have updated their projections in the Property Appraiser's office.

Commissioner Bernard stated that based on his review of the budget, there is about \$50,000 that we could save, including \$10,000 in the new phone contract, but since there is likely a shortfall for 2008-09, it would be long gone if there is a deficit of greater than \$50,000.

**Motion** was made by Vice Mayor Anderson, seconded by Commissioner Morris to change the millage rate to 8.9933.

Mayor Hornbuckle would like to leave the millage where it is and ask the Village Manager to find the additional money.

Mayor Hornbuckle called for a voice vote on the motion, which carried 4/1 with Mayor Hornbuckle voting no.

## **11. NEW BUSINESS**

### **A. Assignment of Contract for Auditing Services from Alberni, Caballero & Castellanos, LLP to Alberni, Caballero & Company, LLP Due to Change in the Name of the Firm. (Village Manager)**

Attorney Hearn noted due to the resignation of a named partner, Elias Castellanos, the firm is changing its name. Correspondence from Nestor Caballero detailing the circumstances is attached. Under its contract with them the commission will have to approve the assignment to the new company.

**Motion** was made by Vice-Mayor Anderson, seconded by Commissioner Morris, to approve the assignment of auditing services to the new company. The motion carried by voice vote, 5/0.

**B. Authorization to Prepare a Resolution Stating that Nothing Will Be Placed on the Village Website Without Prior Approval of the Village Manager or a Majority of the Commissioners (Vice-Mayor Anderson)**

Vice-Mayor Anderson noted this was placed on the agenda in order to proceed with a resolution of policy that the Village should have a chain of command on what is placed on the website. There presently is no written policy. Information needs to go through the Village Manager or the commission before it goes on the website.

**Motion** was made by Vice-Mayor Anderson, seconded by Commissioner Morris to authorize preparation of the resolution.

Maria has done a good job and it was noted this is just a policy it is not a reflection of the person who is taking care of it.

After discussion there was general consensus that the Village Manager will be sure everything placed on the website has her approval or would be of minor consequence.

Vice-Mayor Anderson withdrew his motion and Commissioner Morris withdrew his second. It was requested the Clerk or Manager research meeting minutes to see if a motion was previously made on this issue.

**C. Discussion Regarding Scheduling of Meetings So They Do Not Conflict with any Religious Holidays (Vice-Mayor Anderson)**

Vice-Mayor Anderson noted there are numerous religious holidays and before meetings are scheduled a calendar should be reviewed to ensure no meetings are scheduled to coincide with a religious holiday.

Mayor Hornbuckle said we need to be more sensitive to that. There was an issue with a previous meeting and apologies were made.

**12. GOOD AND WELFARE (PUBLIC)**

Fred Jonas voiced favor in reopening the after school program.

Dan Keys suggested the resolution designating responsibilities could be prepared prior to the meeting for presentation. If facts are incorrect in the minutes they can be corrected at the meeting and made part of the new minutes. He questioned where the generator will be placed in this facility and it was noted it will be a portable generator.

Karen Cohen, 11323 NE 8 Avenue welcomed the new Village Manager and said everyone is very excited. She introduced herself as the secretary to the Ad Hoc Committee and stated the minutes of their meeting will be forthcoming. The committee is trying to get information, have access to the information and be able to ask questions of those who may have the answers. She urges the commission to listen to what the committee has to say.

### **13. REPORTS**

#### **A. Committee Reports**

##### **1. Parks & Parkways Advisory Board – Dan Keys, Chairman**

Mr. Keys said he did not believe the commission received the minutes of their last meeting but there was a motion in those minutes requesting that the Parks Department be able to work with the Manager to plant oak trees specifically in three areas; 14th street along the right-of-way; the north east section of the community on the right-of-way; as well as filling in empty spaces.

**Motion** was made by Vice Mayor Anderson, seconded by Commissioner Mallette to permit the Committee Chairperson to work directly with the Manager (rather than the advisory board itself) and proceed with planting the oak trees.

Commissioner Bernard noted that a committee should bring their recommendation forward to the commission and the commission should direct the Manager. The committee is now requesting to work directly with the Manager leaving out the commission. It is not the Advisory Board's role, responsibility, authority or liability to do so.

Mr. Keys stated absolutely, that is why we will work through the Manager who runs the Village and directs the day-to-day operation.

Commissioner Bernard said he thinks it takes it out of the sunshine.

Commissioner Morris noted a Committee is supposed to report to the commission, the commission decides whether they want to accept that or negate that and then they direct the Manager what to do.

A discussion on the planting of the trees ensued and it was requested Mr. Keys state the general locations.

NE 11th Court between 111 Street and 114 Street for as long as it last; East of 11<sup>th</sup> Place between the rail track and 11<sup>th</sup> Place, 90<sup>th</sup> Street and 124 Street.

Commissioner Mallette noted the sooner we get the trees planted, the sooner they beautify the community. Perhaps a precise list can be given to the Manager and if the Manager agrees we can move forward.

Mayor Hornbuckle stated part of the past discussion has been to plant oak trees. The Village has trees that should be planted rather than left to die. Should a citizen have a particular concern about a street they can convey to the Manager and she can work with the Committee to finalize the locations.

Commissioner Mallette noted it is her understanding that we are letting the Manager go ahead and accept those recommendations and plant the trees at her discretion.

Vice-Mayor Anderson said correct. He is concerned about those trees once they start construction over at public works it is going to be a little more difficult to pull these trees out and they are in a shady environment now which is not conducive for the trees.

Commissioner Bernard asked if there was consideration on the impact the oaks are going to have on the power lines, about how far they are going to be and whether they will be replacing trees. This is a plan you provide that we can say yes or no.

Mr. Keys noted it is very cumbersome to do it the way we have been. The vote was 4 to 1 by the Parks & Parkways Advisory Board.

Ms. Garcia noted she went to check out the trees and they are being well maintained. They need to be planted in locations where they have room to grow to 25 to 30 ft. and we are looking for your direction to proceed.

Commissioner Morris noted the Manager has much experience with this and he feels comfortable that Manager Garcia take over assigning the areas as our Manager.

Mayor Hornbuckle called for a voice vote, the motion carried 4/1, with Commissioner Bernard voting nay.

## **2. Recreation Advisory Board – Roxanna Ross, Chairman**

Ms. Ross noted she reviewed the contract signed with Lane Fitness Connection and although the contract only speaks about summer camp there was discussion with them about winter break and spring break camp. She expects them to present a proposal to the Village before the next commission meeting.

Recreation Advisory Committee recommendations:

1. Website and recreation center operating - we recommend that a link be posted on the village website to Lane Fitness Connection and to any other regular contracting service vendor and they would also have a link to the village website to possibly encourage people to move here.

2. Halloween - we ask that no official meeting be scheduled to take place in this meeting room between October 23rd and November 2nd to allow setting up and breaking down of the Halloween process. We also request Closing down NE 9<sup>th</sup> Avenue and 9th Court between 113<sup>th</sup> and 115<sup>th</sup> Street to make it a safe environment for the children between the hours of 6:30 p.m. and 8:00 p.m. We are asking for volunteers for this event.

3. We have a vendor contract approved by the Attorney. It was brought to our attention by former Village Manager Mr. Spence that contracts should have a finite term of no longer than a year. We have a contract with the Aikido Club which is over five years old and has to be brought up to term.

Fourth recommendation is the Recreation Advisory Board support for the development of a pedestrian greenway connecting the recreation center with other park lands throughout the village.

Flea market Update – \$647 from donations and concession vendors who have paid for a spot has been received. Three volunteer high school students were on hand to help with this event.

Coordination of meetings in this location – suggested in addition to further coordinate with the numerous events scheduled at the rec center have all events posted on a master calendar for reference.

The Recreation Advisory Board received an invitation from Miami Dade County offering to put on ethic seminars. Board consensus was to request this seminar for all commissioners and community members to review sunshine laws and other ethics.

**Motion** was made by Vice-Mayor Anderson to proceed with suggestions 1 through 3 to have the Manager pursue those actions.

Mayor Hornbuckle noted we should ask the Manager or the Attorney, especially about item 3.

Attorney Hearn recommends a one year term regarding the contract in item 3 and to post links on website. He would like to have some language that represents the Village is not endorsing those vendors.

The prior motion was seconded by Commissioner Mallette. The motion carried by voice vote, 5/0.

Ms. Ross noted it was brought to our attention that in the pavilion that goes with the 800 Park Lane an allocation for art in public places needs to be made. The Board will work with the Manager on a solution

It was noted there are many artists in the community and either an RFP or a request in the newsletter be made. A discussion on funding ensued.

### **3. Pathways Ad Hoc Committee – Gary Kuhl, Chairman**

Mr. Kuhl noted there is general consent approaching the pathways as proposed in the grant application. The idea was to widen the road to provide a shoulder. The vote was not in favor of widening the road. Until further information is received regarding approval of the grant funds, this matter will be put on hold.

A discussion on the pathway and grant application ensued. Ms. Garcia will follow up on this item.

Gary Kuhl noted previously, in the public participation portion and in emails that the Pathways Ad Hoc Committee voted 6 to 4 against the proposal that was submitted to Miami Dade Transit with an amendment to request from them what changes can be made, but Chairman Kuhl stated “We haven’t nixed anything”.

Commissioner Bernard said he was at the meeting and that is not what he heard and until the minutes are posted he will give the benefit of the doubt. At this point he would like to

say the committee has been in effect for a couple of months and there are no minutes on the website and they have not been distributed to the commissioners. Minutes that have been approved need to be on the website and part of the public record.

A discussion ensued regarding Mr. Cooper representing the Village. It is the understanding that the official spokesperson for the Village is the Manager.

Commissioner Mallette suggested the Manager meet with the county to review what has been submitted, review the documents, have a clear understanding and then come back to the commission to advise on the parameters and what changes can be made.

**Motion** was made by Vice-Mayor Anderson to make the Manager spokesperson for this project dealing with the county, seconded by Commissioner Mallette with the stipulation that the project does not move forward until the Manager comes back with a report on exactly what is submitted and what the parameters are.

Vice-Mayor Anderson amended his motion to include the stipulation made by Commissioner Mallette.

Mayor Hornbuckle said a motion is not necessary. Direction is clear; we want a report from the Manager before we move forward.

Commissioner Bernard noted that if we are not going to meet until November than we are not going to make a decision in a timely manner and it may be too late to proceed with the project. Comprehensive traffic study update was received and a recommendation made. He noted the point of the Ad Hoc Committee was to get public input and Commissioner Mallette disagreed.

A discussion on the purpose of the Ad Hoc Committee ensued and concern was voiced on the issue of different information being received by commissioners.

There was general consensus that the project will be turned over to the Manager. If direction is needed by the commission prior to the scheduled November meeting a special meeting will be called.

#### **B. Village Attorney Comments**

Attorney Hearn updated the commission on the vehicle used to facilitate a robbery. With the help of the Police Department the jeep is in the Village's possession and the department is working with the State to get the title changed over to the Village.

This past month the command staff of the Police Department along with Attorney Hearn met with the PBA and explained that their participation is welcome but officers who are not doing their job will not be tolerated.

The Clerk and the Attorney will review and revise Village email policies. Some policies have been provided but not formalized or finalized and it is important to do that with email. He suggested the policies be formalized and then we bring in the Ethics Commission for a presentation. It would be appropriate to do this after the elections.

He thanked Commissioner Morris and wished him luck.

### **C. Village Manager Comments**

Ms. Garcia noted the hope is that there will be a ribbon cutting ceremony next month for the Village entry sign. There is a new City Clerk and she hopes that we can come up with a proposal to forward to the commission. She met with Bernard and one of our projects will be to enhance the medians. She met with the Chief and we want to implement community policing. Staff has expressed the willingness to take the Village to the next level and organization is the key.

#### **1. Report from Police Chief Glansberg**

Chief Glansberg welcomed Ms. Garcia and the level of excitement she has brought to the job. Reflecting on his award he thanked the commission for their help during the past four years.

He reported there were seven crimes during the month of September. Police Officers handled 151 calls for service, a total of 12 arrests, 4 felonies, 8 traffic arrests and officers donated 134 hours. There were no burglaries in September. There were 256 citations issued and traffic crashes are down from last year by almost 50%. The parking issues throughout the Village are being addressed. The Police Department is going to close 9<sup>th</sup> Avenue on Halloween so there will be limited parking.

There will be AD training on October 17<sup>th</sup> at 9:00 a.m.

#### **2. Updates on Various Projects**

##### **D. 1. Commissioner Bernard**

Commissioner Bernard said the commission will miss "Doc". He thanked all the residents and people on committees. He thanked Ms. Ross for her work with the flea market and selling her personal possessions for the benefit of the village recreation center.

##### **2. Commissioner Mallette**

Commissioner Mallette votes no on Commissioner Morris leaving.

##### **3. Commissioner Morris**

Commissioner Morris noted he would like to see the sign completed and for the dirt to be dug out for the public works building.

##### **4. Vice-Mayor Anderson**

Vice-Mayor Anderson commended Ms. Garcia for getting her hands on things in the short time she has been here. He thanked Issa for the hand sanitizers. He commended the Chief for learning accounting and knows he will pass his certification. The flea market was a success and it would be beneficial to continue this as an ongoing event. He agrees with Commissioner Mallette and votes no on Commissioner Morris leaving.

**5. Mayor Hornbuckle**

Mayor Hornbuckle noted the school the Chief went to is the premier certification a Police Officer can get and he continues to upgrade his education which benefits us and the City and wished him luck on his test.

He again welcomed Ms. Garcia and noted already people can tell by her enthusiasm, energy and pro-active approach that the commission made the right decision and she really will be a benefit for the Village, thank you.

He thanked "Doc" for his service and said it really was appreciated.

**14. ANNOUNCEMENTS – All public meetings are held at the Ed Burke Recreation Center 11400 NE 9<sup>th</sup> Court**

- Monday, October 12** All Departments closed in observance of Columbus Day
- Tuesday, October 13** Code Review Committee 7 p.m.
- Thursday, October 15** Qualification for Village Commission Candidates begins at noon
- Monday, October 19** Planning & Zoning Board 6:30 p.m.
- Tuesday, October 20** Code Enforcement Board 7 p.m.
- Tuesday, October 27** Code Review Committee 7 p.m.
- Friday, October 30** Qualification for Village Commission Candidates ends at noon

**Additional Meetings were noted:**

- Wednesday, October 21 – Parks & Parkways Advisory Board at 6:00 p.m.**
- Monday, November 2 – Recreation Advisory Board at 6:30 p.m.**

**15. ADJOURNMENT**

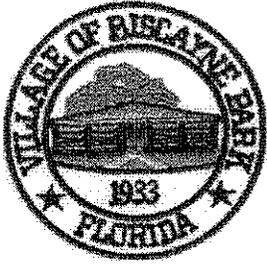
There being no further business, the meeting adjourned at 9:40 p.m.

Commission approved \_\_\_\_\_

Attest:

\_\_\_\_\_  
John Hornbuckle, Mayor

\_\_\_\_\_  
Village Clerk



# Village of Biscayne Park

## MINUTES

### **SPECIAL COMMISSION MEETING AND JOINT MEETING WITH PATHWAYS AD HOC COMMITTEE**

**Ed Burke Recreation Center – 11400 NE 9<sup>th</sup> Court  
Wednesday, October 28, 2009, 7:00 pm**

#### **1. CALL TO ORDER AND ROLL CALL**

Mayor Hornbuckle called the meeting to order at 7:05 p.m. In addition to Mayor Hornbuckle, present were Commissioners Steve Bernard, Kelly Mallette, Chester “Doc” Morris and Vice-Mayor Bob Anderson. Present from Staff were Ana Garcia, Village Manager, John Hearn, Village Attorney and Kim Prenter, Acting Village Clerk. Also present was Stuart Robinson of Kimley Horn and numerous residents.

Mayor Hornbuckle said he would like to move the Order of Business - Additions, Deferrals or Deletions up to item 2A. Public Comments and the Good and Welfare we do not need two separate items so after the committee speaks and Kimley Horn and then the Commissioners have an opportunity to speak before we vote we will have the public speak.

#### **2. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was recited followed by a moment of silence in memory of Commissioner Bernard’s stepfather.

#### **2A. ORDER OF BUSINESS –ADDITIONS, DEFERRALS, OR DELETIONS TO AGENDA**

Mayor Hornbuckle said we will start out as we have it on the agenda with a report from the Pathways Committee by Chairman, Garrett Kuhl and then Mr. Stuart Robinson from Kimley Horn, our traffic consultants, will give us an update and then we will continue from there.

#### **3. PRESENTATIONS**

##### **A. Report from Pathways Ad Hoc Committee – Garrett Kuhl**

Gary Kuhl gave a brief overview of what has transpired to date. Earlier this year an application was made for federal stimulus transfer funds proposing connecting the rec center to the village hall via walk and bikeway and the term *greenway* was also used. The concept involved some segments of roadways to vehicular traffic providing medians to provide access to homes on the closed streets. The administrative agency, Miami Dade County Transit questioned the justification of sidewalk bike way connectivity to the Miami Dade Transportation bus stops and a reply was provided. The commission appointed an Ad Hoc Committee to explore alternatives. The committee held several meetings to discuss concepts and the concept which received the most support involved

lighting the roadway, an area out of the swale and pond pathways. A number of concerns were raised with that concept and the majority of the committee did not support the idea. An alternative was discussed concerning traffic augment in lieu of a pathway. We were subsequently informed that funds could only be used for pathways. At our last meeting two weeks ago Commissioner Bernard proposed a new concept.

The idea which is illustrated in the package distributed would be to keep the existing pavement as it is, reduce the drive lane by adding stripes leaving a non paved area by the side of the road which would be a walkway. On 114<sup>th</sup> Street there would be a slight widening required. The committee took no action on that proposal but did agree to notify the residents of the proposed pathway, so there is no vote of the committee. Mr. Romano the vice chair of the committee solicited some comments in his neighborhood.

Victor Romano said he surveyed his neighbors on 114<sup>th</sup> Street who would be most impacted by this project. He went around with a letter and asked them what they felt about the idea; whether they were for it, opposed, or uncertain. Overwhelmingly the response was that they were opposed to it. There was one person who was definitively in support of it, two who were uncertain and did not want to make a decision either way; about 20 signatures of people who were opposed to it. So overwhelmingly people on 114<sup>th</sup> Street are opposed to it.

Mayor Hornbuckle said at this time he would like to ask Mr. Stuart Robinson to present his concepts on this idea.

#### **B. Kimley Horn –Sidewalk Widening Project**

#### **C. ARRA Grant Interlocal Agreement with Miami-Dade County**

Stuart Robinson thanked the commission for having him there and stated that Kimley Horn as the transportation consultant to the village has been asked to review a concept and in working with village staff it is our understanding that the village would like to explore the possibility of creating eight shoulders on certain streets within the village. Primarily this consists of re-striping 12 ft. roadways as 9 ft. travel lanes and 3 ft. paved shoulders. We reviewed the information provided by the village, the boards that are presented on either side of the room are the information that we have reviewed and I understand that also is material that was provided to the commission and the ad hoc committee as well. Basically re-striping a 12 ft. travel lane to provide a 9 ft. travel lane plus a 3 ft. paved shoulder would in itself represent a safety village enhancement when compared to the existing condition. Now we have pedestrians, bicyclists and motorists all using the same space on the roadway and transportation agents have found that the provision of facilities is safer than not providing facilities at all when it comes to trying to accommodate bicyclists and pedestrians. In general the striped shoulder would create a divisional illusion of a narrower travel space which should help to contribute to lower travel of these by automobiles; basically a form of traffic halting. Lower travel speeds are also considered an enhancement. The lower the speed at the point of collision the greater the chance the pedestrian will have to survive a crash. DOT has found that the provision of bicycle facilities based on that to be the safest place for bicyclists to be. In fact, it is now part of the state statutes that FDOT will add bicycle facilities to all state roadways. Also the proposed 9 ft. travel lane is a minimum width to meet standards for a local street. The lane can go down to as narrow as 9 ft. and still meet standards that are laid out by the American Association of Safe Highway and Transportation Officials also known as

ASTO. Eight shoulders are consistent with the concept recommended in the comprehensive traffic study update as a form of both traffic calming as well as a provision of a facility for pedestrians. That particular plan recommended the roadways that have medians such as 113<sup>th</sup> Street and 8<sup>th</sup> Avenue be considered for this type of treatment because the traveling themselves on those roadways were wider basically 12 ft. already and would not require additional asphalt be provided. The paved shoulder could be made to be consistent with the DOT striping standards with just a few minor modifications that he would recommend to the plan that has been developed. He would recommend that the striping be made consistent with FDOT design index 17346 and 17347. Also Miami Dade County Traffic engineering division which is a division of the county public works department because the county does maintain authority over all traffic control devices and this would be considered a traffic control project.

Mayor Hornbuckle thanked Mr. Robinson for the update and said he thought one of the biggest things in people's minds is that this mostly consists of striping and is basically a traffic calming measure that is serving and creating the illusion of narrowing the road. He thinks a lot of people are wondering would it give people a false sense of security that now they have this pathway next to the road to walk on so they will not be paying as much attention, maybe the drivers are not paying as much attention or is that just a separate take on it. You did say it is a safer situation not only considered by most traffic professionals but that is one of the things and concerns we have heard at other meetings that people might have a false sense of security.

Mr. Robinson noted that pedestrians and bicyclists in the roadway would still have to exercise the standard of care that they would have to exercise otherwise whether the facility is provided or not and when FDOT was studying whether or not to have bicycle lanes they included as part of their design plan that they had to ask themselves similar questions; would providing a bicycle lane in and of itself be false security or would it encourage bicyclists to not exercise the standard of care they otherwise would have and in their studies they ended up finding the bicycle lanes were the safest way to provide the bicycle transportation. He would draw an analogy from that conclusion to this one that the provision of a facility is the safer condition than not providing the facility at all. Of course it does not rule out the chance that there will still be crashes but perhaps it could prevent crashes that otherwise would have occurred when all the users of the roadway were using the same space.

Mayor Hornbuckle said the other issue was more of a legal issue and perhaps we could ask our attorney by us providing these lanes does it open up us to additional lawsuits and additional chances for us being sued.

Mr. Robinson noted he would defer to the village attorney for a legal perspective but he thinks if you design the road consistent with DOT standards then as a village you are meeting your obligation to provide safe sufficient facilities that meet standards.

Attorney Hearn said from a liability point of view there is Chapter 750 of the Florida Statutes that municipalities are given sovereign immunity and he does not see this as being an issue of liability for the village. Of course you can always have lawsuits but he thinks either way the way it is now it is not a liability issue as long as you give the

standards where the caution is on the drivers and the people are using standard care. The actual facility would not impact the liability so from a liability point of view it is not an issue. Where you get liability on your streets is usually if there is flooding occurring and on the south side that are covered up by branches and you usually do not get lawsuits and if you do they cannot be successful.

Mayor Hornbuckle said this is only the second meeting conducted with the new staff and he introduced the new Village Manager, Ms. Ana Garcia, noting she is a very dynamic and proactive person and also introduced the Acting Village Clerk, Ms. Kim Prenter. He then opened it up for questions.

Commissioner Morris asked if it would be better to put the pathway next to the median rather than next to the swale way area because a lot of people have plantings in that swale that are going to pose a problem. Also, is it better to use the word *alternate way* rather than *safe way* so it does not imply a person can be in the area and be perfectly safe.

Mr. Robinson responded he would add, being asphalt it may be required on the median side rather than the swale side to alleviate those concerns, however if your question was about where the 3 ft. by the swale on the asphalt but on the swale side rather than on the median side. It is most expected from a driver's expectancy point to find a slower moving vehicle on the south and as a driver we would most likely expect to find a pedestrian or a bicyclist on the right side of the vehicle. So he would propose the striping on the right side basically the south side. As to your other question he would use potentially a terminology of just *a shoulder* which would basically call it what it is rather than *safe pathway*. Pathway by itself implies safe and separated from the travel lane by a trail. He would be intended to call it a *safe shoulder*.

Vice-Mayor Anderson asked is the 3 ft. area going to be shared with pedestrians and bicyclists?

Mr. Robinson responded that is his understanding.

Vice-Mayor Anderson asked who has the right-of-way, the pedestrian or the bicycle rider?

Mr. Robinson responded a bicyclist would have to yield the right-of-way to a pedestrian.

Vice-Mayor Anderson asked if a vehicle was driving down the street they need to be aware that a bicycle rider that is in the walkway may swerve out in front of them to go around the pedestrian. Is that going to cause any type of liability for us or safety to anybody? Right now this does not happen.

Mr. Robinson responded that would not cause the village additional liability because by State Statute bicyclists are legal users of all roadways except limited access highways such as I-95. So a driver even today with the situation you have on the street would have to be cognizant that a bicyclist may need to take a lane in order to go around a slower moving person, like someone walking a dog. He said if that condition occurs in the future

there would also be a possibility that if that condition occurs today or if the roadways are not as they are.

Vice-Mayor Anderson asked right now the way people are walking is if they have to be walking their dog they usually are walking by the median and if they are not walking the dog obviously they forget and walk on either side of the street and a bicyclist is usually riding down the street. In other words, in the middle of the street and we feel you should always walk your dog in the swale area no longer in the median. Everybody is always going to be on one side of the street and there is concern somebody is going to step out of that theoretical safety zone hanging on the side of the street. He is concerned about that now and as those pavement areas get worn what happens. There are a lot of intersections with no stop bars and a lot of intersections that are completely worn away and if that happens; what effect to us.

Mr. Robinson responded the proposed concept would not preclude people from walking their dogs in the median if they still chose to do that. As far as the striping goes, it will have to become part of an overall maintenance program for the Village for things like re-striping, stop bars and replacing broken stop signs. This striping if it were to become worn would become a part of that as well. What would be more likely to become worn would be the crosswalks at the intersections sooner than the striping of the paved road.

Vice Mayor Anderson said we would need to make sure we have all foliage cleared out including for the width of the mirrors 6 to 7.5 ft. and we have a 9 ft. walkway. There will not be a liability or pedestrian problems as long as they stay within the line. **Inaudible - noise**

Mayor Hornbuckle said we do not want to make this into a full blown workshop. Mr. Robinson answered the question it is a safer condition and if people are not stopping or going over traffic marks then we have the police department. This is a discussion on concept and not to pick apart every point.

Vice Mayor Anderson said he was concerned we do not go down the route that is unsafe for our citizens. So your answer is by having this painted line it is definitely safer.

Mr. Robinson responded the provision of the facilities has been found to be safer than not providing facilities for bicycle paths. But I do observe as a transportation engineer, the concerns you are making are real and that a motorist may pull up behind a stop bar and enter the crossbar. The same condition does not always apply for the same shoulder because vehicles momentum carries them forward across the stop bar to the cross bar.

Commissioner Mallette asked if our engineer tells us it is safer to have these lines and we pay for them on this portion of the roadway, will we have a future obligation to paint them throughout the rest of the city. Since we designated that this is a safer area are we thereby saying that the rest of our city that does not have them is not a safe area. Have we committed ourselves in any way or opened ourselves up to any potential liability if we do not in the future provide this?

Attorney Hearn responded there is no duty to make the road safer because arguably you could always make the road safer and so the courts do not put that on municipalities. You

as a legislature body determine there is going to be risk no matter how safe you try to make a roadway, how wide or how steep you make the roadway there is always risk.

Commissioner Bernard asked as a village do we have an obligation to maintain our roads, stripes, stop signs and cross walks whether we do this project or not?

Mr. Robinson responded yes, you have a basic level of public works type of ongoing maintenance.

Commissioner Bernard asked well if you think we have to paint these stripes again in five years don't we have to do that now for the stop lines we have paint around the curbs or making sure our median landscaping does not come into our roadways. Just because this village failed to repaint the stop colors for at least two years because we knew it was a problem didn't we still have the obligation to do it?

Attorney Hearn responded when you put a facility in you have the obligation to maintain it. Yes whatever you decide to do when you go from the planning stage to the operational stage that is where the sovereign immunity is no longer there.

Commissioner Bernard asked just as we have an obligation to maintain our streets, don't people whether they are driving, riding their bikes or pushing a stroller have an obligation to follow the rules of the road?

Attorney Hearn responded yes.

Commissioner Bernard said if by designating a space for a car to be which happens to have traffic calming and slows down cars according to the report and which reduces fatalities according to the studies, is there a chance that if somebody decides to walk in the shoulder facing traffic and sees a car coming towards them and sees it is not staying within the lines are we keeping them from getting off the road in any way if they see there is danger of a truck that might be wider then 9 ft. Are we by putting these lines in saying to any pedestrian you are not allowed to go out of these lines one way or the other.

Mr. Robinson responded no, in my opinion and you are not modifying the swale in any way either so if they did have to get off of the road to allow a larger vehicle to pass in the present condition you are not inhibiting that.

Commissioner Bernard said if they can get off the road now, they can get off the road if there is a designated car. Commissioner Morris asked the question should we put the shoulder lane on the median side or the swale side. By putting it on the swale side and by directing the vast majority of our cars because we do have a law which says no thru trucks so for the most part except for some deliveries and our garbage and recycling trucks that work for the village is it not true that by putting that 3 ft. buffer from where the majority of the vehicles are to go from the swale area where someone may or may not park their car that we are further enhancing the safety of somebody walking after their car if they happen to park in a parallel position, open their door and run the risk of a car that has no designated area possibly hitting them with a car door.

Mr. Robinson responded in the sense that you would be providing them with space to format getting in their car then yes you could be seen as enhancing that type of activity.

Commissioner Bernard said and likewise if somebody does not have a parallel space but they have a driveway where they pull into a garage or a circular driveway when they come out or go in because of that extra 3 ft. buffer zone is it not safer for the car to be able to see, have that higher visibility because they have that extra 3 ft., if their car nudges out into it, most vehicles are in that 9 ft. designated lane so they are not immediately coming out possibly into the path of the car. He is thinking of a condition where there is both a parallel and perpendicular driveway where there may be a car in the parallel position and the car is backing out there would still be a 3 ft. buffer outside the swale area that the car could come and have some higher visibility and therefore enhance the safety for the car pulling up and into the traffic.

Mr. Robinson responded in a normal case you could say they would have higher visibility in that sort of condition.

Commissioner Bernard said when you look at the plan as described here could it be any clearer, could it have been described a little better to say that there are not swales that are being affected. In other words where these stripes go on the existing roadway but there is no existing parking or swale that is being affected, there is no landscape that is on the swale being affected that it is solely starting from the edge of the existing asphalt going out toward the median. He noticed from something that Mr. Romano said that we were adding asphalt on two sides of the roadway, greenway; but on one side of the roadway. So the swale area, the area that is outside of the property line of every homeowner. The property line is not being touched; the swale is not being touched. It is only on 114<sup>th</sup> Street the median that is being touched. He wants to make sure that it is understood we are not even touching the swale area of a resident's property but is truly the beginning of the asphalt side.

Mr. Robinson said the plan does indicate untouched for the swale and the way he understands it does apply to 113<sup>th</sup> Street and 8<sup>th</sup> Avenue. The way he reads the plan there is a small section of 114<sup>th</sup> Street that does require asphalt on both sides instead of only on the median side because of the narrow nature of the existing road. It is basically a 13 ft. road today which allows two way traffic and cars do have to watch that no one is entering one side of 14<sup>th</sup> Street where they enter.

Commissioner Bernard said and creating a one way street, it is not really a part of this project necessarily but as he was measuring roads he saw that and was concerned about it. Would you recommend that we take the course of action and take that existing non-conforming two-way street and make it a one-way street?

Mr. Robinson responded you are talking about just a small piece of 114<sup>th</sup> Street that next to the large median area over to a 8<sup>th</sup> Avenue and if you want to designate that as part of this paved shoulder network he would ask that you consider making that one-way. That is the only way you would be able to maintain a 9 ft. travel lane.

Commissioner Bernard asked can you talk about the cost?

Mr. Robinson responded he reviewed a cost table provided by village staff. He came up with a cost using estimates of pay items from the Florida Department Of Transportation (FDOT) and those are typically used on much larger jobs. However the only difference he would make is to the cost on the asphalt area. He found the FDOT cost to be higher for the asphalt than what was shown on the table. The village did pursue smaller contractors to try to get the costs down over what FDOT uses. If he was to prepare an engineer estimate on this project today it would probably be \$35,000 with a contingency of 15%. It also includes some items that were in addition to the shoulder project that he found on the estimate provided by the village such as improvements to the rec center and amenities along the corridor, bike racks etc which he brought forward into it.

Commissioner Mallette noted shed understands there is going to be some paving in medians that exists and asked if someone could show her exactly where medians are going to be paved.

Mr. Robinson responded the streets that would have median paving would be 8<sup>th</sup> Avenue between 114<sup>th</sup> Street and 113<sup>th</sup> Street.

Commissioner Mallette asked what portion of the median would be paved?

Mr. Robinson responded the first one foot on the inside of the median from the travel lane, the southbound and the northbound. It would be 114<sup>th</sup> Street not 8<sup>th</sup> Avenue.

Commissioner Mallette asked there will be no paving of the median on 8<sup>th</sup> Avenue?

Mr. Robinson responded hat is correct.

Commissioner Mallette asked would the median on 114<sup>th</sup> Street have paving?

Mr. Robinson responded the median would have paving from village hall all the way to where the wide median ends and the narrow section of 114<sup>th</sup> Street begins. It is probably about 800 ft. from village hall to the mini round-about area.

Vice-Mayor Anderson asked are you going to pave it on the median side?

Mr. Robinson responded yes.

Commissioner Morris asked are you taking into account surveying this area because we do not know what is under that area. It has been many years since that road has been built, have you taken that into account?

Mr. Robinson responded he surveyed and marked the utilities by the facility. The pavement design of 114<sup>th</sup> Street calls for a 6 inch asphalt base and a 1 1/2 asphalt surface.

Commissioner Morris said you are talking about \$39,000 and we do not have \$39,000 in this grant.

Mr. Robinson responded the estimate is \$39,000. The grant amount is \$32,000.

Vice-Mayor said we have to take out a couple of thousand dollars for your work so now we are talking about coming up with \$9,000 or \$10,000; correct?

Mr. Robinson responded the \$39,000 includes the contingency fee and the soft cost for the designing survey.

Vice-Mayor Anderson said we would have to take \$5,000 out of reserve.

Attorney Hearn said the amount of the grant is \$32,896.09 with a 5% fee of the award of \$1,644.80 for a total net to the village of \$31,251.29.

Commissioner Bernard said Mr. Robinson is using FDOT standards which are much larger. When he looked at the cost he got three bids for asphalt for this specific job from companies who do that type of work and those estimates had about \$3,500 remaining for contingent fees including design and service.

Vice Mayor Anderson asked can you point out where the bus stop is?

Mr. Robinson responded the bus stop is at village hall and is mounted to a parking sign on one of these diagonal parking spots on the north side.

Vice Mayor Anderson asked will this pathway actually go to the bottom line.

Mr. Robinson responded yes, the other one is at the rec center. The concept is it is tapped into the sidewalk network. There is nothing from a statute standpoint that prohibits bicyclist from using sidewalks.

Vice-Mayor Anderson said so his understanding is the bicyclist and pedestrians use the walkway and what we did to the rec center is divide the road and the pedestrians will be sharing the sidewalk.

Mr. Robinson said in his observation bicyclist themselves tend to use the roadways in the area around the rec center. It could be because they feel comfortable riding in the street because low traffic volume; it could be because there are so many pedestrians and walkers and joggers on the sidewalk that they find it inconvenient for themselves to use the sidewalk. He does not think that condition will necessarily change as part of this project.

Vice-Mayor Anderson said it is his understanding the whole project is to make things safer for the bicyclist and the pedestrians and he wants to make sure that we will be safe from bus stop to bus stop.

Mr. Robinson said the path itself connects the two bus stops. If you are talking about accessibility to the two bus stops for people who live along the route the network of paved shoulders would be how they access the bus stop or the area around the circumference of the park. He does not necessarily think it is going to make the bicyclist use the sidewalk because this condition around the park will not actually change. So if people are riding their bike in the street today they probably will continue to do that under the proposed conditions.

Vice-Mayor Anderson said he wanted to make sure the village is physically connected to those bus stops by the grant for the bicyclist and pedestrians.

Mr. Robinson said you are connecting the two because the sidewalk is your facility connecting the two. At places where people gather or access the bus he would recommend that be where you place the bicycle parking.

Mayor Hornbuckle said the grant is contingent upon an interlocal agreement with Miami Dade County. He is sensing in general people like the concept of additional pathways for pedestrians and bikes but they are just not certain that this particular plan does what they want to do in the manner in which they want it done. He asked when do we need to have something to the county to fit their time line?

Village Manager Garcia said she spoke to the county. The county deals with the procurement so we do not have room for negotiation. If the county tells us that it is going to cost "x" amount and it doesn't she wants to make sure from the budget component we get the support to have the additional funding to finish the project.

Mayor Hornbuckle said we would not move forward if the bids did not come in right. People have always asked for additional places to walk, it is part of our master vision plan to add spaces like that as well as part of the traffic study but this plan in its current form might not be popular with the residents. He feels the plan could perhaps be adjusted for people to really embrace it and questioned what the timeframe was to respond to the county.

Village Manager Garcia said they do not start the process until they receive the signed interlocal agreement from the Village. She questioned if this project could happen without making 114<sup>th</sup> Street a one-way?

Mr. Robinson said yes. It could happen if you provide a *share the road* bicycle sign and you can say this is a provision for multi mobile on this section of the street. This is one option to reduce the cost of providing asphalt on that narrow section on 114<sup>th</sup> Street. This option would need to go through the Traffic and Safety Division of the County of Public Works for approval.

Commissioner Mallette said if you are telling me that this project can be accomplished on the narrowest part of the roadway continuing to be a two-way with simply striping and a sign that says *shares the road*, why can't the whole project be accomplished with signs saying *share the road*?

Mr. Robinson said because of the narrow nature of that one small stretch of route.

Commissioner Mallette said that is the narrowest part of the route and it can still be two-way, we can put striping and signs that say *share the road* and you feel that that would accomplish something but then again on the wider street that does not make any sense.

Mayor Hornbuckle said you could do that but his recommendation was to make it a one-way.

Commissioner Mallette said if it simply can be accomplished on the most narrow part of the roadway with striping and still be two-way with a sign that says *share the road* she is not sure why safer conditions would make this everywhere with a sign.

Commissioner Bernard said there is also the issue of combining traffic on that road. Right now to say lets not do anything on 113<sup>th</sup> Street because we put up a sign it will be safer, will it still be safer, yes to calm the traffic on that one stretch because very few people use it. He does not particularly agree that *share the road* sign is safe as it can be but certainly turning into a one way is.

Mayor Hornbuckle said everyone should keep in mind this is one of those not in my backyard things. Everyone likes the idea as long as it does not go in front of their house. This project is going to be an additional amenity with an additional place for people to walk, push their strollers and ride their bike. It is not some big change over night. The chairman of the ad hoc committee said that they did not vote on this. He asked the commissioners if they would like to ask the ad hoc committee to give their vote on this particular plan or just hear the residents give their opinions on the plan.

Vice Mayor Anderson said the commissioners asked the 11 members of the ad hoc committee to advise us on a bicyclist/walkway for a grant and also to a master plan and he would like to hear since we are discussing this part of the plan which is to do with the money for the stimulus package their recommendation on this plan.

Mr. Bloomfield said he was sure that some of the members would like to make some comments so maybe we can get the consent of the sub committee by allowing them to speak or if not simply give us a vote.

Mayor Hornbuckle asked how would the committee feel, we have conflicting reports about different people taking surveys, different people doing petitions, can we hear some comments from the public first.

Dan Keys asked you said that 9 ft. and 3 ft. were the minimal requirements. You are recommending today that someone create a shoulder roadway system, that is a new situation, planning a new city he would recommend 10 ft. travel lanes 4 ft. wide because it gives you space that is beyond the minimum and is safer.

Mayor Hornbuckle each resident will have two minutes to make their comments or ask a question.

Tanya Myer, 175 NE 114<sup>th</sup> Street thanked the commissioners and said this project has been something that has been worked on for years and she understands they are looking for opportunities for grants and funding but has great concern that we are talking about safety and a path for pedestrians and bicyclists when in fact the grant is a transportation improvement grant. No one ever gets off of that stop at 114<sup>th</sup> Street. She questions our integrity for voting on creating under the pretense of something else. If we want to explore pathways that is a separate subject and perhaps a grant opportunity will become available in a few years. She does solidly oppose the plan and overwhelmingly a number of her neighbors agree with that.

Ray Figueroa, 114<sup>th</sup> Street said he has been a resident of this street for over 20 years and primarily opposes the plan because he does not foresee the cost as being realistic. He feels that even adding 1 ft. of paved area to 800 ft. of asphalt is an expensive undertaking. He is in the construction industry and guarantees this will cost more money than the grant allows. He does not see anyone using this bus stop and all this is unnecessary. He thinks signage to reduce traffic is needed. He feels the streets the way they are right now are safe and does not see a problem with 114<sup>th</sup> Street. He questioned why 113<sup>th</sup> Street was picked instead of 115<sup>th</sup> Street because 113<sup>th</sup> Street has faster moving traffic and he would put a stop sign to slow it.

Kris Hodges, 751 114<sup>th</sup> Street said the work of the ad hoc committee is appreciated. Regarding safety and the need for this, he does not see a lot of people walking that route and does not see a pedestrian problem. He is on the bottleneck part, the two way 114<sup>th</sup> without the median and he does not think it would work. It will never work as a two-way, the plan uses 61/2 ft. and many vehicles are larger than this.

Albert Fine, 715 NE 113<sup>th</sup> Street said he and his wife are walkers and there is heavy traffic in the morning on 113<sup>th</sup> Street. When he walks in the evening he uses a flashlight to try to slow the traffic. We should not put a band aide on something and is not sure what we are talking about is going to be safe. Perhaps a light or stop sign would work just as well. Something as a temporary measure should not be done; we should do something to really make the walkways safe.

Dr. Dee Berguron, 225 NE 114<sup>th</sup> Street said one of her concerns was that police officers have to go down 114<sup>th</sup> Street when they leave the police station to go out on a call and to have that narrowed to a point that they are moving fast and not being able to have anymore than 9 ft. of space, she thinks the city requires 12 ft. for a driveway so why would you have 9 ft. for a roadway that people have to travel on. She is totally opposed to this plan, partly because she lives on the street and it does not make sense to spend this kind of money. There is no set cost for it yet or funding and we have already been told it is going to cost more than the grant.

Wayne Whetzel 767 NE 114<sup>th</sup> Street said he has lived here for 37 years and is totally opposed to this plan. It is peaceful and quiet now and to come in to make it busier and more confusing with no signs is very upsetting to him. The money should be spent somewhere else.

Mr. Charles 325 NE 114<sup>th</sup> Street said he does not want 114<sup>th</sup> Street to be one way. He has never seen anyone get off the bus at the city hall. He suggested running the bus down 113<sup>th</sup> Street coming up 6<sup>th</sup> Avenue affecting only one house. It is a peaceful quiet neighborhood and he likes to walk the median. He feels no one will slow down because of a stripe on the road.

Michael Glen, 801 NE 113<sup>th</sup> Street said he would be affected on both sides of his property by this proposed plan. He is concerned about the safety of proposing a 9 ft. walkway. Why not use 115<sup>th</sup> Street which is a smaller road and smaller access. He feels the whole plan is not a good one. It was indicated Miami Dade will use larger vendors and their cost will be consistent with what the engineer indicated. In addition it was indicated we

will not have a choice over what the cost will be and if we commit to this will be able to stop the process if it came in at \$50,000 or \$60,000. There are still questions going forward regarding the master plan. His recommendation is for everyone to vote negative against this project.

Mayor Hornbuckle asked if there were any other public comments. There being none he closed the public comment section. He asked if Mr. Kuhl would like to have the committee vote.

Mr. Kuhl said he would like to have the committee voice their opinions but first he has a question for the engineer. By state law bicycles are required to go in the direction of traffic and by state law pedestrians are required to walk safely in the direction of traffic so if we had this lane we have a conflict of bicycles going one way and pedestrians going the other, is that not correct?

Mr. Robinson said bicyclist have to yield to pedestrians.

Commissioner Bernard said Kimley Horn said that this is not a designated bike lane. The bicyclists use the road; this is a shoulder lane for pedestrians.

Mayor Hornbuckle said anyone on the committee who would like to make a statement is welcome to do so, please keep it under two minutes.

Bryan Cooper, NE 115<sup>th</sup> Street said it really comes down to safety and it was stated by our engineer that we will have a safer environment if we do this. He has seven names of people who are for it. He noted Mr. Romano had 20 people who were against it on 114<sup>th</sup> Street. At one meeting it was reported it looked like a 50-50 split on 114<sup>th</sup> Street so you will find the community is fairly divided on this but he does not think this will make any more pedestrian traffic than we currently have. Statistics indicate 10 people per day use the North Miami shuttle. He spoke to Jeff Cohen, the engineer, who felt the city would approve this and it was an excellent idea and would lessen the village's liability. Mr. Cooper said if a child gets hit between these two points and we do not take these federal dollars another attorney will make payable even though there is sovereign immunity the village could be liable for \$250,000.

Victor Romano, 114<sup>th</sup> Street said if you are going to walk between village hall to the rec center this is not the shortest route. Pedestrians tend to take the shortest route. The shortest route would be to go up 114<sup>th</sup> Street turn left on 8<sup>th</sup> Avenue and then go down 115<sup>th</sup> Street. Pedestrians are not going to go out of their way because of a stripe in the road. We can spend all this time, energy and money and people are not going to use it because they are going to take the shortest route. There is also concern among the residents of 114<sup>th</sup> Street about the negative impact on the greenway. Those who live on the greenway pay a premium to live there and we want to make sure that is not negatively impacted and without question this will impact the greenway. Another concern is construction and we do not want to deal with the noise, or people walking their dogs or joggers running in front of our houses.

Barbara Kuhl said we are supposed to be linking the path to the 6<sup>th</sup> Avenue bus so the fact that it is stopping at village hall still needs an area. A traffic study was done not so long ago and it mentions pedestrians need a place to walk and a shoulder, they considered 113<sup>th</sup> Street, 115<sup>th</sup> Street, 8<sup>th</sup> and 10<sup>th</sup> avenue. They chose 10<sup>th</sup> avenue because on the other streets if they made the roads narrower and increased the swale area they would have to remove some trees. No one has spoken about the effects of moving the traffic over and having trees removed. We have lanes that are two different sizes, on 8<sup>th</sup> Avenue and 113 Street there is road striping on the median and the swale, on the north lane 11 ft. 4 inches, she measured four different locations and that is the lane width; the south lane is 12 ft. 3 inches so if we were to use 113<sup>th</sup> Street the 11 ft. 4 inches we would have to add asphalt.. She realizes a complete study was not done but in the report she thinks the lanes were mixed up. The Kimely Horn report listed 115<sup>th</sup> Street as having 11 ft. lanes so it probably figured 113<sup>th</sup> Street which said to have the 12 ft lane would not have to affect the asphalt. Neither the commissioners or the planners want to call this a bikeway or a walkway because neither one of those really fit the criteria. If you call it a bikeway or a walkway everybody worries about liability. Everywhere you have cars next to pedestrians I do not care what the engineer says I would not feel safe. This commission is negligent if they move forward with this and tell people this is a safe place to walk. Another thing brought up at one of our meetings is why do something when so many people are in opposition. Let's do a comprehensive plan and do a really good job where everybody is in agreement.

John Ise said he is in favor of everything and anything that goes towards enhancing the pedestrian fomentation of this community, that promotes pedestrian public safety and promotes traffic volume. Kimely Horn has stated that this proposal while it may be imperfect promotes a more pedestrian fomentation of this community, promotes a safer environment for pedestrians and has the effect of traffic calming. He thinks this is essential and a very important point. His concern is if we say no to this and wait for the next plan there will be opposition to that plan and as we take any proposal that makes us a more pedestrian oriented community that there will be opposition to it at every stage.

Chuck Ross, 1166 Griffin Boulevard said he echoes what Mr. Ise said and agrees you have to start somewhere and be sensitive to the people who might be impacted but to him this is something he would like to see done throughout the village if possible. He would like to see it in front of his house. There is safety, cost and liability and will the county allow us to do this. It is safer, the attorney said liability is not an issue and it will have to be approved by the county. Funding is an issue but if we are getting \$31,200 it is free money for a plan that will hopefully make the village safer and hopefully the beginning of extending it throughout the whole village and perhaps we can find the needed funds possible from the CITT funds.

Karen Cohen thanked Mr. Kuhl for his leadership on the committee. She feels the process was too flawed from the beginning. There has been no study of how this will affect the values of homes on the route. She understands the general study by Kimley Horn is that it is safer to have a pathway then a roadway but she does not think there is a study of the safety of this particular path including the fact that many people park on those swales and there are cars and trucks that back up. It is hard to see children and people walking there and she does not think we have that safety information. If you read the first proposal it was to attach the North Miami bus to the metro bus. She worries

about people going onto the swales. She thinks we can get further grants and does not think we can come together on this plan and let's move on to something we all can agree on.

Dan Keys, 1107 NE 118<sup>th</sup> Street said he has lived in the village 41 years and has walked the community as a 10 and 15 year old and has always felt it is his responsibility and duty to keep himself and the other people on the road safe. He believes that walking in this perceived safety zone will not be as safe as him seeing cars coming and getting out of the way. He does not believe this is a safe plan. We are creating the minimal acceptable facility that has some additional variables such as our trees that make it less safe. He does not want to see white lines down the avenues. He is against it because he does not believe it is safe.

Gary Kuhl, 777 NE 111<sup>th</sup> Street thanked the commissioners and Bryan Cooper for the time and effort they have put in. The original concept was a green light but we are far from that. The grant proposals specifically talked of providing a bikeway and a walkway and a connection to mass transit Miami Dade public transit and this does not accomplish that. As a practical matter it does not allow people to walk side by side. As a practical matter he does not think this works and we are just taking money and squandering it and possibly getting ourselves further in debt. He would like to pursue this and likes the idea of master planning and is in favor of pathways in appropriate areas and creating a safe isolated walkway for pedestrians.

Jane Ansley said she really loves this plan and thinks it is a minimally invasive way to improve the experience of pedestrians of Biscayne Park. The money is there, we have to use the parameters of the grant and that is what was designed but if we can get passed that and you think we are a community that needs to do something for their pedestrians this is a simple small place to start. However I accept Mr. Romano's data for the residents on 114<sup>th</sup> Street and if you have people on the route who do not want to do this I do not see how the commission can force them to do it. It is just not the way to proceed. Like Mayor Hornbuckle said it just does not seem like it is the thing to do at this time.

Mayor Hornbuckle asked if anyone else had comments. There being none he asked the committee to vote on whether or not they are recommending this plan as presented or if they are not recommending this plan.

Commissioner Bernard said an issue has not been mentioned. This flyer was sent to over 60 houses with a clear indication it was for public interest to hear from people who were on the route and a few beyond the route and how they felt. It was on the website. Of those 63 houses that were on the route 16 of them according to Victor Romano surveyed are opposed to it. There are people who sent emails that are on the route that have said that they do want it including someone on 114<sup>th</sup> Street who is an urban planner and trusts what it is and has a child he pushes in a stroller and several other families who also have little children. In addition to that there were 20 people throughout the village who were not on the route that we all saw the emails from that said not only do they think it is a good idea but they wish it would be in front of their house too. In addition there were people on the route that did agree with it but were not invited personally to come to a meeting because they thought their indication on their email was worth it. So when you

heard from 8 residents tonight and their opinions are very valid and their passion is clear but it is not just the people who are here that are speaking against it there are people we saw on an email that are on the route that said they do want it. So it is not a matter of forcing it on anyone. Of the 63 people that were given flyers according to Victor Romano and the emails we got 16 out of the 60 said that they did not want it. In the September 30<sup>th</sup> committee meeting there was a unanimous decision to come up with a survey and the purpose of the survey was to determine what the people on the route and the people not on the route thought about this project. The way a survey works with a committee and as it did with the recreation board and as their minutes say that it would be designed, it would be discussed, it would be vetted, it would be agreed upon and then it would be issued to the community at large. What Mr. Romano has done and he is no way near denying the accuracy of people who said yes or no, but it is not a part of this committee and it should not be seen as part of this committee because the survey that was suggested and unanimously approved was not whatever survey that was taken it was to be designed and vetted, we all saw the value of that in the recreation board and that did not happen here. He does not think we can consider this map as an official city document. Obviously we can look at the 16 houses that are on here and say those people on the route did not want it but he knows personally of several on the route that do want it that were not approached.

Mayor Hornbuckle said we are going to get into nit picking and trying to split hairs here. He thinks everyone here will be willing to accept that the survey is a survey that is an unofficial one that was done by a lay person who was not vetted but the results of the survey are fairly clear and he does not think they have been skewed in any way and let us take it for what it is.

Commissioner Mallette said we can all interpret the information we received from the public and from the committee.

Commissioner Bernard said the committee did not get the package and emails we got, is that correct? So if Ms. Ansley said she came here thinking she liked the plan but after seeing everybody on the route did not want it she is feeling a little differently, he is here to say they did not get this packet of emails with all the people who said they did want it, including people on the route and to think because this room is filled with people who do not want it and 8 people said please do not do this in front of my house this committee is not aware of emails we got from other people who are on the route who absolutely said they wanted it but were told that they did not have to come to the meeting because these emails would be heard. He thinks it is important dissention because if Ms. Ansley thinks there is no one on this route that wants it that is an incorrect assessment.

Mr. Romano said he never told anyone they did not have to come to this meeting and he does not believe the commission should be telling the committee to go ahead and say what they should or should not do. We have a chairman on the committee.

Commissioner Mallette said the emails were sent to the commission because ultimately the commission does make a vote on whatever the committee presents.

Mayor Hornbuckle said we are going to hear the recommendation of the committee we appointed and then we are going to vote. We have all talked enough.

Mr. Cooper said the interlocal agreement essentially is just asking us to commit to connecting points A and B. We do not have to stick with this plan, this was crafted at the last meeting but we can put it on 115<sup>th</sup> Street or all the way up 113<sup>th</sup> Street and cut it over. He thought this meeting was about approving the interlocal and that there still was time to discuss what plan could be created. So to do a thumbs up or thumbs down vote on just this particular plan, when he thought the issue was more about the interlocal agreement. We can still continue to be somewhat flexible.

**Motion** was made by Mr. Keys, seconded by Ms. Cohen to defeat this plan as presented. The motion carried by voice vote, 6/4.

Mayor Hornbuckle said the recommendation of the committee by a vote of 6 to 4 is to defeat the plan as presented and also not to move forward with the interlocal agreement. Since there is time he asked the commissioners if they wanted to vote on this plan, funding and project or do you want to vote and discuss whether or not we can try to have any other discussion in the time frame to November when we have to get to the county about another proposed plan.

Commissioner Bernard moved we vote on the contractor to be signed so we can stay in the process because once we sign that contract and according to what our manager said the deadline to complete the job is 2012 but if you sign this interlocal agreement then we can proceed with more engineering and a tweak plan so the people fully understand it or can accept whatever changes have to be done. This is a reimbursement grant so if we proceed and we pay our engineer to create a plan and then to get the bids and if those bids come in high and we do not get the funds, we put the plan on the shelf until we do find the money and we are not committed to anything on the grant. If on the other hand we bid it and it comes within the budget then we can proceed and we have until 2012, is that accurate?

Attorney Hearn said the way the grant is set up is the plans obligation is if you cannot complete the grant all plans you are obligated for you will be accountable for your costs.

Commissioner Bernard said which at this point is less than \$3,500 because he understands that includes construction administration and those funds can come from CITT road funds and he points out the 6<sup>th</sup> Avenue project which this commission approved was for \$75,000. THE DOT said by their estimates it is going to be \$36,000 more than that and this commission approves \$36,000 over what we were getting on that federal stimulus for that project. After the bids were done and after they came in much lower maybe as much as \$20,000 lower we are still committed to the funds but it is \$20,000 less which means because we are getting it from the CITT we have \$20,000 that the commission approved for a beautification project that we can put directly towards a safety project and if \$3,000 goes toward the engineering we are not out any money at all.

**Motion** was made by Commissioner Bernard to approve the interlocal agreement knowing it is a reimbursement type project.

Mayor Hornbuckle said ultimately if we approve that project and it does not come in at cost or if we decide for any reason we do not want to continue with it we do not have to.

Attorney Hearn said the earlier in the process the less the cost.

Mayor Hornbuckle asked for a second to the motion. Motion died for lack of a second.

**Motion** was made by Commissioner Morris Anderson to turn down the grant, seconded by Commissioner Mallette.

Mayor Hornbuckle said the motion is to go ahead and turn down this particular grant and basically end this project in this format.

Vice Mayor Anderson said and then the ad hoc committee can continue along as they have been charged with the master plan.

Mayor Hornbuckle said the commissioners had not really had a chance to comment so we will allow them time to make comments.

Commissioner Morris said this is a bad idea. We are accepting money that is for transportation and it is not being used for transportation. You are putting a walking path and he thinks that is wrong. \$8,000 over budget and he does not think it is safe and thinks it has to be 10 ft. and 4 ft.

Vice Mayor Anderson said we are rushing and we need to get the community involved and let the committee do their job to see if we have safe pathways within the village. Come forward with a good plan and the engineer study it. He is against using the CITT funds except for what they were for putting in drains. We have a grant and we are waiting until we get enough money again to do the next phase, we have a master plan and are doing it in phases. This is the way we should do anything that is going to be costing a lot of money.

Commissioner Mallette thanked the committee for their time and effort. She thinks the people bought their property with the expectation of being on the median as it is. She was hit by a car as a child and striping would not have helped her, she was not paying attention. She has to consider those who bought their property with a certain expectation and is opposed to the plan.

Commissioner Bernard said he is also representing the dozens of people out there that say we need to have safer streets and he understands everyone is here because they disagree with it but he has gotten more emails than are in this package from people saying we should do it. We came up with a concept and the federal people approved it. Several other cities came up with a concept and we answered these questions and the federal government said we are approved. It is not to link one station to another station; it is to shorten the distance of un-striped unsafe streets. As far as using 114<sup>th</sup> or 115<sup>th</sup> Streets it is exactly the same, the station is in the middle of the street and is the same whether you go north or south. We are doing a project on 6<sup>th</sup> Avenue spending \$36,000 for beautification, there is construction there, removal of trees, curves where there were no curves before and we had not one meeting, workshop or committee so to say lets get public input

because we want to see what the people say that we did not do. When a couple of years ago we were looking to hire another police officer and you had 5 petitions of 100 people it was disregarded. When a resident wrote a letter about the management selection process and how terrible it was and 30 residents signed it not only was there no action taken, there was no response. The only time we had people speak on the manager selection process was on September 1 when everyone said please do not do this, please re-advertise and they were completely disregarded.

Mayor Hornbuckle said please stay on the topic.

Commissioner Bernard said Commissioner Anderson said he wanted more public input, we had public input. We had three months of committee meetings that came up with not one plan. CITT funds, he truly does not understand why they were prepared to spend \$36,000 on beautification and not one penny on safety, not one. Our engineer has said that what we have now can be enhanced safety wise by painting stripes on the street and calming the traffic. If someone thinks that they do not want to walk on the 3 ft. walkway they are not forced to do so but the very act of barreling the roads is a proven try and true traffic calming procedure and if we did it on 113<sup>th</sup> Street and 8<sup>th</sup> Avenue because the roads are already 12 ft. wide and we can do it on 8<sup>th</sup> Avenue from Griffin all the way up to 121 Street the people he spoke to on those roads said they want a 3 ft. barrier between their house and a vehicle. They want a place where if they are walking and they see a car coming towards them that is not against the line they will get off. Two little kids were hit by a car two years ago. If you had two little kids that were hit by a car you would do everything you could to make the street safer and that is what this commission did. A group of residents got together and they said how can we make that street safer and we came up with short and long term goals and this commission voted to support that. You also agreed to long term goal commitment, a traffic study and you did it. The traffic study was done and no one looked at it or you could have seen that a shoulder was acceptable but more important you agreed to provide dedicated protected paths for pedestrians, bikers, strollers, dog walkers and children playing to the maximum extent that it can throughout the village to reach the most residents and homes. The long term solution being to separate cars and people from the same right of ways to the greatest extent possible and what is likely the best way to provide for long term safety of our residents and our children. This is what this committee did. We have not done for 2 ½ years because we do not have the money, we do not have the ability. We do not have the people that are ready to do it, well it is all right here. The county says we can do it, the engineer says we can do it, the lawyer says we can do it, the federal grant people say we can do it and we are throwing it away. He thinks that our first responsibility to our residents is safety and we have the ability to make it safer and he understands Doc, you do not think it is safer, but the engineer says it is.

Mayor Hornbuckle said he is dismayed at how intensive this has become. Sometimes in these different projects we have said we need to find creative ways to bring amenities to the village without spending a lot of money and by finding grants. Here some folks went ahead and did that and folks are against it. He thinks they are being a little shortsighted. If you remember we did several street closings mostly along 5<sup>th</sup> and 6<sup>th</sup> avenues as an experiment and as a temporary measure for about six months and then we went and saw how it worked. It turned out all of it worked great except for one which seemed to make

things worst and did not help the homeowners along there and everyone said that did not work lets take it out. That was the corner of Griffin and 6<sup>th</sup> Avenue. Nothing we do is set in stone and we are being emotional and not looking at a long sighted approach to this. The other thing is if you remember there is always opposition to every project we do. We talked about putting a sidewalk in around the rec center and the park. We had a very similar outcry and at least as many people were opposed to that as were for it and now you see it is probably one of the most used and loved amenities that we have in the park. So we could look at this as an experiment, try it and see how it works for our community. It is safer than it is now and it is a start of making our community more pedestrian friendly. We could do this as an experimental project and see how it works out and if it works use it and maybe expand it, if it did not take it out. That being said he is not in agreement with the way the motion was said especially because it was to kill the grant and he thinks if we do have a little time where we could move forward and try to come up with some other ideas, he is going to be opposing the vote to kill the grant. He thinks we should try to move forward and come up with some ideas and have a start to making our community more pedestrian friendly.

Commission Bernard said before we vote he would like to hear the manager's recommendation.

Mayor Hornbuckle said considering the short amount of time she has been here, the amount of time she has had to digest a lot of different things, he thinks you are really asking her for a personal opinion at this point because she is taking into consideration not much more than we have and the committee and the community has. That being said he asked Ms. Garcia to answer for herself if she would like to make any comments or what she thinks about the plan.

Ms. Garica said since she is from the Department of Recreation she is all for safe pathways and walkways. As a matter of fact she just got her second quote on trying to finish the walking path around the community center because she sees a lot of people using it. She is also about not doing minimum standards but exceeding standards. She would hope that is what they want from her. There has been talk about making 114<sup>th</sup> street a one way . To rely on the county to make that a one way to make this work may not be the option. She is starting to hear the 08-09 budget is in the hole from what she has been told by the finance director. She realizes the Commission is going to have an expectation of her and other department directors to come in and deliver a budget next year that is acceptable even though she is starting in the hole. That concerns her we may be \$7,000 or 8,000 over. She took this job knowing that the Commission may not always like what she is going to say but she cannot compromise her integrity and what she thinks would be the safe thing to do. What she sees right now as safe, for the safest possible thing we are doing right now is a walkway that we have along the rec center. She is looking forward to completing this project and she would like to continue the envisioning process to be able to have safe walkways and perhaps do something with the medians. Additionally, possibly looking at a national plan that ties our parks and amenities and other grant opportunities like that.

Mayor Hornbuckle called for a roll-call vote. The motion carried 3/2 as follows:

AYES: Commissioner Morris, Vice-Mayor Anderson,  
Commissioner Mallette

Nays: Commissioner Bernard and Mayor Hornbuckle

**5. PUBLIC COMMENTS RELATED TO AGENDA ITEMS**

**6. GOOD AND WELFARE (PUBLIC)**

**7. REPORTS**

**A. Village Attorney Comments**

**B. Village Manager Comments**

**8. ADJOURNMENT**

There being no further business, the meeting adjourned.

Commission approved \_\_\_\_\_

Attest:

\_\_\_\_\_  
John Hornbuckle, Mayor

\_\_\_\_\_  
Kim Prenter, Acting Village Clerk



# Village of Biscayne Park

## MINUTES

### REGULAR MEETING

Ed Burke Recreation Center – 11400 NE 9<sup>th</sup> Court  
Tuesday, November 3, 2009, 7:00 pm

#### 1. CALL TO ORDER and ROLL CALL

Mayor Hornbuckle called the meeting to order at 7:00 p.m. In addition to Mayor Hornbuckle, present were Commissioners Steve Bernard, Kelly Mallette, Chester “Doc” Morris and Vice-Mayor Bob Anderson. Present from Staff were Ana Garcia, Village Manager; John Hearn, Village Attorney; Mitchell Glansberg, Police Chief; and Kim Prenter, Village Clerk.

#### 2. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

#### 3. PRESENTATIONS

##### A. Proclamation to Honor Doc Chester Morris Day

Mayor Hornbuckle read the proclamation honoring Commissioner Morris and proclaiming Tuesday, November 3, 2009 Chester “Doc” Morris Day.

Commissioner Morris thanked the Village of Biscayne Park, the commissioners, employees, the police department, friends and family for the honor to serve the Village and be on the commission.

Mayor Hornbuckle presented Commissioner Morris with the official *Key to the City*. Commissioner Morris thanked everyone.

#### 4. ORDER OF BUSINESS – ADDITIONS, DEFERRALS, OR DELETIONS TO AGENDA

Vice-Mayor Anderson called on the commissioners to see what could be pulled from the agenda to keep the meeting short so Commissioner Morris can celebrate his anniversary.

Items 11A, 11C, and 11D were deferred to next month.

#### 5. PUBLIC COMMENTS RELATED TO AGENDA ITEMS

Dan Keys said regarding Item 11E he would not like to see micro management and the commission should allow their competent administration to function.

Roxanna Ross said committee board members should be added to Item 9A to receive the proposed ethics training.

Rose De Merle said goodbye to Commissioner Morris, wished all the commissioners good luck and noted it is time for a change.

Bryan Cooper said he is in support of Item 9A, expanding the ethics training effort and he would like to see an Ethics Review Board for issues having to do with the Village charter and bill of rights. Regarding Item 11E it is important to remove trees in violation of county law.

The public comment section was closed.

**6. CONSENT AGENDA (Motion to be made for all as one or remove for discussion)**

**A. Approval of Minutes - September 30, 2009 Special Meeting and October 6, 2009 Regular Meeting**

**Motion** was made by Commissioner Bernard, seconded by Commissioner Mallette to move the minutes on the consent agenda to the December meeting. The motion carried by voice vote, 5/0.

**7. PUBLIC HEARINGS**

There being none, the next item followed.

**8. ORDINANCES – SECOND READING**

**A. ORDINANCE 2009-7**

**AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA GRANTING AND RENEWING PEOPLES GAS SYSTEM, A DIVISION OF TAMPA ELECTRIC COMPANY, A FRANCHISE FOR THE PURPOSE OF SUPPLYING NATURAL, MANUFACTURED, AND OTHER GAS TO THE VILLAGE, PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE (1<sup>st</sup> Reading)**

Attorney Hearn requested this item be deferred to the December meeting.

It was requested the December 1 meeting be moved to December 8 due to the election.

**Motion** was made by Commissioner Morris, seconded by Commissioner Bernard to move the December meeting from December 1 to December 8.

Vice-Mayor Anderson said he wanted to make sure they would still be able to have a recording done by Comcast .

Mayor Hornbuckle said he was sure Ms. Garcia could arrange that and called for a voice vote on the motion, which carried 5/0.

**Motion** was made by Commissioner Mallette, seconded by Commissioner Morris to defer Ordinance 2009-7 to the December 8<sup>th</sup> meeting. The motion carried by voice vote 5/0.

## 9. RESOLUTIONS

### A. Consideration of Resolution 2009-18 requiring all commissioners and city staff at the department level participate in Village of Biscayne Park sponsored ethics training

Commissioner Morris said he has no objection to adding the boards to this resolution. He said when he became a commissioner he went to Hialeah for two or three hours and listened to speakers and also took a course with the League of Cities which was beneficial.

Vice-Mayor Anderson said instead of saying *boards* can we say *anything that falls under the sunshine laws*.

Attorney Hearn said it will be a public workshop that anyone can attend and he can change the language to say all advisory boards or any meeting that falls under the sunshine law.

Commissioner Bernard questioned the wording *requirement for all commissioners* and asked what happens if they do not attend. Can we require it for the city staff and encourage it for the board members?

Attorney Hearn said he thought that would be the best way to word it.

Mayor Hornbuckle said we will leave it as *required* and he called for a voice vote on the motion, which carried 5/0.

### B. Consideration of Resolution 2009-16 authorizing the appropriate village officials to apply for the federal drug control and system improvement program grant

Chief Glansberg said this is a federal drug control and improvement program grant for funds in the amount of \$2,922 to improve communication in the field for police officers for the records department. The funds will be used to purchase a laptop and software.

**Motion** was made by Commissioner Morris, seconded by Commissioner Mallette to accept resolution 2009-16. On voice vote motion carried 5/0.

## 10. OLD BUSINESS - None

## 11. NEW BUSINESS

### A. Consideration of Maintenance Memorandum Agreement with Florida Department of Transportation

This item was deferred to the December meeting.

### B. Consideration of a request of the Commission that "VOTE THIS TUESDAY" signs be allowed on Village property (medians & swales) in the last week before the Commission Election

Mayor Hornbuckle said we spoke about this before and always decided it was okay because it was for public purpose. Do we have consensus for it.

Vice-Mayor Anderson said he appreciated Commissioner Bernard's efforts to encourage people to get involved and vote but feels the signs cause pollution and could be a tripping hazard. He feels this is not necessary at this time.

Commissioner Bernard said the signs are not going to be placed where they will be a tripping hazard and it is tradition to try to get people out to vote.

**Motion** was made by Commissioner Bernard, seconded by Commissioner Morris to allow *Vote This Tuesday* signs be placed in safe areas on Village property. The motion carried 4/1 with Vice Mayor Anderson voting no.

Mayor Hornbuckle said Election Day is Tuesday, December 1 from 7:00 a.m. to 7:00 p.m. in the rec center. He is sure everyone will be well aware of it but it never hurts to keep people abreast of the situation.

Commissioner Mallette said we need to be cautious in the future about signs on public property to comply with the sign ordinance.

**C. Discussion of the Ecology Board and its purpose**

This item was deferred to the December meeting.

**D. Discussion of Committee Agendas and Minutes, including when and how they should be made public**

This item was deferred to the December meeting.

**E. Discussion of the tree removal permit, how it has changed since it was originally approved by the Commission and how it must come before the Commission again prior to it's submittal**

Commissioner Bernard said about a year ago there was discussion about adding new trees to the medians and part of that plan was tree removal. We have to abide by the county rules for tree removal and that permit was supposed to be submitted a year ago but was not. It has changed since the original submittal and he wants to make sure before it is submitted it gets brought before the commission to follow tree removal properly. He wants to make sure the manager understands not to make that submittal before the commission has an opportunity to review any changes.

Attorney Hearn said the plan was approved but never acted upon and removal items have changed.

Vice-Mayor Anderson said the village manager should make the decision and micro managing is not needed.

Mayor Hornbuckle said he feels Ms. Garcia will handle it correctly and will make sure it is done according to the law.

Commissioner Bernard said that plan for new trees and tree removal was brought before the commission over a year ago and approved, it was never acted upon by the manager. Since then the removal has changed and before it goes to the county for that removal permit the procedure to come back to the commission, show residents as a public document what trees are being removed is the process. The reason we have advisory boards, they report to us and we review and approve it. This is the system in place and he is asking it be continued.

**Motion** was made by Commissioner Bernard, seconded by Commissioner Morris that before the permit for tree removal is submitted it comes before the commission for approval. On voice vote motion failed 4/1.

Commissioner Bernard said then we are going to submit it without the commission understanding what is being done.

Mayor Hornbuckle said Ms. Garcia is going to implement the plan the way it stands so it does not have to come back again to the commission.

Commissioner Bernard said no commissioner has seen the plan which has been changed since the first submittal and has not been approved by the commission. There are trees slated to be removed that we are not aware of. There is a serious problem of trees being removed without permits. The revised plan should be brought before the commission for approval before it is submitted.

Mayor Hornbuckle said we have a plan and a person in place who is going to implement that plan and we do not need to revisit it again.

Commissioner Bernard said the plan has changed if you read the Path & Parkway committee minutes you will see some trees have been added to be removed. He is not comfortable not knowing what additional trees are going to be removed.

Vice Mayor Anderson suggested the commissioners check with the village manager for an update on the trees that are going to be removed.

Ms. Garcia said she will review the original plan that was approved by the commission and see where the new plan deviates from that.

Mayor Hornbuckle said please revisit this and have a report for next month and right now we will move forward with what is in place.

## **12. GOOD AND WELFARE (PUBLIC)**

Gary Kuhl, 777 NE 111 Street said in the past when we had elections we held a benefit night. This was previously sponsored by the civic club but they are no longer active and he suggests the Village Manager initiate this.

Chuck Ross thanked Commissioner Morris for his dedication and said he will be missed.

Ms. Rose De Merle said it took five years for the sign and hopes it does not take another five years for additional signs.

Mr. Keys suggested that regarding the tree removal an informal survey of local cities be taken to see whether or not other commissions find it necessary to approve the tree removal applications to the county. He congratulated Commissioner Morris.

Roxanna Ross thanked Mr. Morris for his service and efforts and the public works project.

Mr. Bryan Cooper thanked Commissioner Morris for his service and said that the Parks & Pathway Committee is an advisory board to the commission and he cannot understand how they would give up their responsibility to make the review and give up what is in the charter. He appreciates Roxanna Ross and what she did to initiate a survey for the rec center and that is the kind of outreach he wants to make to the public in his campaign. He invites everyone to visit his website, [www.bryancooper.org](http://www.bryancooper.org) and complete a survey to help him craft his platform.

Barbara Kuhl said when we did the original plan and had trees identified some of the trees were dead and public works removed them which they were entitled to do without a permit. She is not aware of any good trees being removed without a permit.

### **13. REPORTS**

#### **A. Committee Reports**

There being no reports, the next item followed.

#### **B. Village Attorney Comments**

Attorney Hearn suggested the village not get involved in meet and greets and instead they should be hosted by outside entities.

#### **1. Consideration to move December meeting from December 1 to December 8 or thereafter as determined, due to conflict with election date**

This item was previously discussed.

#### **C. Village Manager Comments**

Ms. Garcia said it has been an honor and a pleasure to work with Commissioner Morris in the short time she has been with the village. She reviewed the items listed on her report a copy of which was distributed to the commission.

She requested a date for the ribbon cutting ceremony for the entry sign and recreation pavilion. It was decided the ribbon cutting ceremony will take place Saturday, November 21, 2009 at 11:00 a.m. on site at the entry sign and then at noon in the pavilion for the ribbon cutting at the Ed Burke rec center.

She requested a portion of the December 8<sup>th</sup> meeting be dedicated to financial discussions with outgoing Director Hugdahl to get a clear understanding of the 2009-2010 budget, completion of the audit and amendments to the budget.

Ms. Garcia acknowledged and commended the village staff for their coming together as a team regarding the recent events.

#### **D. Comments**

##### **1. Commissioner Bernard**

Commissioner Bernard wished the seven candidates running in the election good luck. He thanked Doc Morris for always being the voice of reason. He said that he previously spoke with the attorney about candidates writing something for the newsletter and asked for Attorney Hearn's thoughts on this.

Attorney Hearn said there is the issue of article size, how you edit what they say and treating people unfairly. He understands the purpose is getting information out but a lot of times that information is seen as an attack on others and if you try to edit that you are now being seen as getting involved in the personal rights of candidates which is an issue that should be avoided.

Commissioner Bernard suggested holding off on the deadline for submittal until after the election so the new commission can be announced. Keeping it from being political and use it as a means of notification.

Mayor Hornbuckle said there are a lot of events coming up quickly including Winterfest and he thinks we have to trust the folks that are incumbent to use their judgement and use this opportunity in a fair manner to just write about information that is happening in the village as we always do.

##### **2. Commissioner Mallette**

Commissioner Mallette thanked Commissioner Morris and is sorry to see him leave. She hopes the village will be able to have a ribbon cutting on NE 6<sup>th</sup> Avenue in a short period of time. She takes special pride in this project.

##### **3. Commissioner Morris**

Commissioner Morris requested the commission let the manager manage. He thinks she is doing an excellent job. He said it is a privilege to vote and requested everyone do so. He would like to see everything moved out of village hall and into a new administrative building and feels this can be accomplished by applying for grants.

##### **4. Vice-Mayor Anderson**

Vice-Mayor Anderson said it has been a real privilege serving with Commissioner Morris. He said we should take you up on the challenge on the historic site of the cabin and a new administrative building and then we could use the log cabin for recreation. He appreciates holding tight on the budget. He thanked the Village Manager for all of her efforts.

##### **5. Mayor Hornbuckle**

Mayor Hornbuckle thanked Commissioner Morris for his service and for many times being the *voice of reason*; it is greatly appreciated. The ground breaking ceremony for the new public works building was held and he thanked Vice-Mayor Anderson and

former Mayor Richard Eader noting the whole idea and project started with these two gentlemen. He thanked the Village Manager for her enthusiasm.

**14. ANNOUNCEMENTS – All public meetings are held at the Ed Burke Recreation Center 11400 NE 9<sup>th</sup> Court**

<b>Wednesday, November 4</b>	<b>Special Mtg. of Parks &amp; Parkways Board, 5:30 p.m.</b>
<b>Tuesday, November 10</b>	<b>Code Review Committee, 7:00 p.m.</b>
<b>Monday, November 9 &amp; 23</b>	<b>Planning &amp; Zoning Board, 6:30 p.m.</b>
<b>Tuesday, November 17</b>	<b>Code Enforcement Board, 7:00 p.m.</b>
<b>Wednesday, November 18</b>	<b>Parks &amp; Parkways Advisory Board, 6:00 p.m.</b>

**Additional Meetings and Events were noted:**

<b>Monday, November 23</b>	<b>Rec. Advisory Board 6:00 p.m.</b>
<b>Tuesday, December 8</b>	<b>Regular Commission Meeting 7:00 p.m.</b>
<b>Saturday, December 19</b>	<b>Winterfest 11:00 a.m. – 3:00 p.m.</b>
<b>Saturday, November 21</b>	<b>Unveiling of New Sign 11:00 a.m. 12 noon pavilion ceremony</b>

**15. ADJOURNMENT**

There being no further business, the meeting adjourned at 8:05 p.m.

Commission approved \_\_\_\_\_

Attest:

\_\_\_\_\_  
John Hornbuckle, Mayor

\_\_\_\_\_  
Kim Prenter Village Clerk

**7B**

**CONTRACT FOR THE PROVISION  
OF DISASTER DEBRIS MONITORING SERVICE**

This contract for the Provision of Disaster Debris Monitoring Services ("Contract") is entered into this \_\_\_ day of \_\_\_\_, 2009 ("Effective Date"), by and between Village of Biscayne Park ("Village") and Barnes, Ferland and Associates, Inc. ("Contractor or "BFA"), each of which may be referred to individually as "Party" or collectively as the "Parties".

The Parties agree to the following:

1. **Engagement.** The Village hereby engages Contractor, and Contractor hereby accepts such engagement, to provide Disaster Debris Monitoring Services (as defined herein) in accordance with the terms, and subject to the conditions, of this Contract.
2. **Services/Scope of Work.** During the Term (as defined herein), the Contractor shall provide the Village with disaster debris monitoring services that shall include those services described in Attachment "A", which is incorporated herein ("Disaster Debris Monitoring Services" or "Services") in addition to other professional services as described in the original BFA proposal dated June 5, 2009, incorporated by reference herein. The Village shall create a scope of work when it desires to purchase from the Contractor, and the scope of work shall be incorporated into a task order that shall be issued to Contractor ("Task Order"). The Task Order shall set forth a timetable for the Services, the compensation in accordance with the Contract, and any special conditions.
3. **Term.** The term of this Contract shall commence on the Effective Date, and shall be in effect for a period of three (3) years from the Effective Date ("Term"), unless otherwise terminated earlier as provided herein. At the end of the Term, the Parties may mutually agree to renew the Contract provided the renewal is in writing and signed by both Parties.
4. **Independent Contractor.** It is expressly acknowledged by the Parties that Contractor is an "independent contractor" and nothing contained in this Contract is intended, or shall be construed, to create a partnership between the Parties, to cause either Party to be responsible in any way for the debts, liabilities, or obligations of the other Party, or to constitute an employer-employee relationship between the Parties.

5. Compensation. The Village shall pay Contractor for rendering Services upon the satisfactory completion of each work assignment as accepted and approved by the Village. The compensation for each work assignment shall be in accordance with the fee schedule in Attachment "B", which is incorporated herein. The compensation for Services may not be modified, unless otherwise agreed upon by the Parties in writing. The estimated hours required to complete each work assignment shall be itemized by task and total time. The Village shall render payment to Contractor which payment shall be made upon receipt of an invoice ("Invoice") from Contractor, and in compliance with Section 218.70, F.S., otherwise known as the "Florida Prompt Payment Act". The Invoice shall contain the Contract number, and the Task Order number. The Village may request, and the Contractor shall provide to the Village, any information that is reasonable and necessary to verify any Task Order placed under Contract. Unless as otherwise agreed to by the Parties in writing, no additional expenses shall be charged to the Village for rendering of Services.
6. Insurance. During the Term, Contractor agrees to maintain at its sole cost and expense, a policy of commercial general liability insurance with limits of not less than \$500,000 per occurrence, and workers' compensation in accordance with statutory limits as required by law. Further, Contractor agrees to maintain automobile liability insurance with limits of not less than \$500,000 per occurrence; \$500,000 per accident for bodily injury, and \$500,000 per accident for property damage. The Contractor agrees to submit to the Village, prior to the signing of the Contract, a certificate of insurance naming the Village as an additional insured.
7. Notice. All notices from the Contractor to the Village, or from the Village to the Contractor must be in writing, and, shall be deemed duly served if mailed by the U.S. mail, e-mailed, or faxed to the other Party at the following:

Village: Village of Biscayne Park, Florida  
Tom Benton  
Village Manager  
10050 N.E. Second Avenue  
Village of Biscayne Park, Florida 33138-2382  
Telephone: (305) 795-2207  
Fax Number: (305) 756-8972

Contractor: BFA Environmental Consultants  
Barnes, Ferland and Associates, Inc.  
Patrick A. Barnes, P.G., President  
1230 Hillcrest Street  
Orlando, Florida 32803  
Telephone: (407) 896-8608  
Fax Number: (407) 896-1822

The Parties may change the above addresses or fax numbers at any time upon giving the other Party a written notice.

8. Termination.

8.1 For Cause.

8.1.1 Failure to Perform. The Village may terminate the Contract if (1) Contractor fails to perform under the terms of this Contract, (2) Village provides Contractor with a written notice of the default, and (3) Contractor fails to cure the default within (30) days. Upon termination, the Contractor shall continue work on any Task Orders not terminated.

8.1.2 Bankruptcy/Insolvency. The Village may terminate the Contract by providing written notice to the Contractor in the event the Contractor files any petition or proceeding for bankruptcy relief, or is adjudicated to be bankrupt or insolvent or fails to pay just debts as ordinarily due.

8.1.3 Village Vendor List. If the Contract is terminated for cause, the Village shall remove the name of the Contractor from the Village's vendor list.

8.2 Without Cause. The Village may terminate this Contract without cause by providing Contractor with 7 days written notice of the termination.

8.3 Effects of Termination. Upon receipt of any notice of termination, Contractor shall discontinue providing Services except as otherwise provided in Section 8.1.1. To the extent that the termination of this Contract is not due to Contractor's breach of its obligations under the Contract, Village shall reimburse Contractor for all Services properly furnished in accordance with the requirements of this Contract up and through the date of the notice

of termination (or such other time specified in the notice). Notwithstanding any other provisions in the Contract to the contrary, the Contractor shall have no further obligations under this Contract after the effective date of the termination.

9. Indemnification/Liability

9.1 Contractor agrees to indemnify and hold the Village harmless, and pay on behalf of the Village, for any liability and legal costs arising out of claims and litigation related to the rendering of Services, including any actions that may arise from allegations regarding determinations of appropriateness or inappropriateness of care or any acts, errors, or omissions related to the Services, by Contractor and its officers, partners, agents, or employees; provided, however, that Contractor shall not indemnify for that portion of any loss or damages caused by the negligent or intentional acts or wrongful omissions of the Village, and its officers, partners, agents, or employees.

9.2 For all claims against Contractor under an individual Task Order, and regardless of the basis on which the claim is made, the Contractor's liability under a purchase order for direct damages shall be limited to the greater of \$100,000, the dollar amount of the Task Order, or the amount of the charges rendered by Contractor under the Task Order. This limitation shall not apply to claims arising under Section 9.1 of this Contract. Unless otherwise specifically enumerated in the Contract, or in the Task Order, no Party shall be liable to the other for any special, indirect, punitive or consequential damages, including lost data or records (unless the Task Order requires Contractor to back-up data or records), even if a Party has been advised that such damages are possible. No Party shall be liable for lost profits, lost revenue, or lost institutional operating savings.

10. Force Majeure. The Contractor shall not be responsible for any delay resulting from its failure to perform if neither the fault nor the negligence of Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing if no alternate source of supply is available to Contractor. In case of any delay Contractor believes is excusable, Contractor shall notify the Village in writing of the delay or potential delay and describe the cause of the delay either (1) within 10 days after the cause that creates or will create the delay first arose, if

Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within 5 days after the date contractor first had reason to believe that a delay could result. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist Contractor shall continue to perform in accordance with the Contract. The Parties shall mutually determine whether additional compensation is warranted.

## **11. General Provisions.**

**11.1 Agreement:** Except as otherwise provided in this Section 11.1, this Contract constitutes the entire agreement between the Parties. The content of the Request for Proposal ("RFP") issued by the Village, and all written provisions of the Contractor relating to the rendering of Services under this Contract deemed pertinent by the Village, may be incorporated into this agreement and become legally binding. This Contract may not be terminated by Contractor unless as provided for in this Contract.

**11.2 Assignment:** The Contractor shall not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Village.

**11.3 Dispute Resolution:** Any dispute concerning performance of the Contract shall be decided by the Village's designated contract manager, who shall reduce the decision to writing and serve a copy on the Contractor. The Parties may employ the alternative dispute resolution procedures, as outlined in Chapter 120 of the Florida Statutes. Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Miami-Dade County, Florida. In any such action, Florida law shall apply and the Parties waive any right to jury trial.

**11.4 Safety:** The Contractor agrees that it shall comply with all Occupational Safety and Health Administration (OSHA), State and City Safety and Occupational Health Standards and any other applicable rules and regulations relating to occupational safety, or otherwise applicable to the Services.

- 11.5 Modification of Terms:** The Contract contains all the terms and conditions agreed upon by the Parties, which terms and conditions shall govern all transactions between the Village and Contractor. The Contract may only be modified or amended upon mutual written agreement of the Parties. No other agreements or representations shall be valid upon the Parties.
- 11.6 Execution in Counterparts:** The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 11.7 Severability:** If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.
- 11.8 Authority:** Each person signing the Contract represents that he or she is duly authorized to do so and to bind the respective Party to the Contract.

**-SIGNATURE PAGE FOLLOWS-**

**AGREEMENT FOR DISATER DEBRIS MONITORING SERVICES  
BETWEEN VILLAGE OF BISCAYNE PARK AND BARNES, FERLAND  
AND ASSOCIATES, INC**

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement for Disaster Debris Monitoring Services on the respective dates under each signature: Village of Biscayne Park, signing by and through its Village Manager, authorized to execute same by Village Council action on \_\_date of \_\_, 2009; and Patrick A. Barnes authorized to execute the same.

**Village of Biscayne Park, Florida  
Inc.**  
Tom Benton  
Village Manager

**Barnes, Ferland and Associates,**  
Patrick A. Barnes  
President

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

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

**ATTEST:**

**WITNESS:**

\_\_\_\_\_  
Barbara Estep, MMC  
Village Clerk

\_\_\_\_\_  
For the Corporation

Approved as to form:

\_\_\_\_\_  
Richard Sarafan  
Village Attorney

**(Village Seal)**

**(Corporate Seal)**

## **ATTACHMENT A** **SERVICES**

BFA is fully capable of providing all the items described in the scope of work of the RFP, and will not require the service of any subcontractors to complete Village of Biscayne Park's project under any circumstances. BFA hereby guarantees that all management and supervisory personnel will respond to Notice to Proceed orders issued by Village of Biscayne Park within 12 hours and that all other required staff will be on-site within 18 hours. BFA is prepared to provide any or all of the following services to Village of Biscayne Park.

### **1. TASK AND SERVICES TO PERFORMED; PRE-DISASTER**

Prior to a disaster's impact, BFA personnel will meet with Village of Biscayne Park's Debris Manager to begin planning personnel deployment and confirming necessary supplies and time tables. Upon activation, BFA staff will begin response operations that will include the following:

#### **A. Debris Management Training**

BFA will provide debris management training to Village staff in all tasks associated with a debris removal and monitoring program. The training will ensure that all agencies involved in the recovery process interact efficiently and effectively.

#### **B. Temporary Debris Storage and Reduction Site (TDSR) Selection and Permitting**

BFA will provide the services of an Operation Specialist to assist the Village with selection, evaluation and permitting of additional TDSR locations. BFA will review a Village-supplied listing of public and/or private locations for TDSR. Each site will be evaluated for suitability and a list of sites will be provided. Where required, BFA will assist Village of Biscayne Park in obtaining the required environmental permits.

#### **C. Contractor Invoicing Requirements**

A thorough and efficient reconciliation process requires that invoices and supporting documentation have complete and accurate information. Accordingly, BFA's reconciliation process begins in advance of the debris removal contractor's work, by providing each contractor with detailed specifications of all information required to be included with each invoice from the contractor.

#### **D. Locating and Establishing a Temporary Field Office**

Within three days of landfall, BFA will obtain a temporary office location for all monitoring staff which will also serve as a staging area for all monitors prior to daily deployment to the field.

### **II. TASKS AND SERVICES TO BE PREPARED; POST-DISASTER.**

The BFA Disaster Debris Management Team includes professionals experienced and trained in debris removal and disposal monitoring and staffing disposal sites for federally declared disasters. Deployment of staff will be customized according to the severity of the event and the Village's requirements. The Disaster Debris Management Team provides scalability, crew oversight, a successful project management structure with a cohesive organizational framework and immediate responsiveness; complete post-disaster coverage, flexibility and independence to serve the Village's debris removal and disposal monitoring needs.

#### **A. Daily Meetings**

BFA will facilitate daily meetings between Village of Biscayne Park, BFA staff, and the debris removal contractors' management staff to review collection strategies, coordinate efforts, resolve problematic issues and make any necessary adjustments to the operational procedures.

#### **B. Debris Removal Program Management**

BFA will provide core management personnel responsible for all facets of debris management and will provide a Project Manager to be in constant contact with the Village's Debris Manager, Emergency Operation Center, collection contractors, field monitors and work crews. The accurate recording of information on load tickets is crucial, as the majority of errors tend to occur in the beginning of a project.

BFA generally assigns Quality Control staff to each TDSR tower at the beginning of a project, who have the responsibility of reviewing each load ticket that comes in for accuracy, legibility and completeness. Field supervisors and roadway monitors are immediately contacted in the event load ticket errors are identified, in order to quickly rectify them with the correct information, alert field monitors to performance deficiencies and ensure overall ticket accuracy is maintained. All load tickets will be scanned and catalogued in sequential order for storage and archival purposes.

#### **C. Equipment Certification**

The measurement, certification and placarding of the debris removal contractor's trucks and other equipment will begin as soon as the machinery has been

mobilized to Village of Biscayne Park. BFA will initiate the truck certification program in coordination with the debris removal contractor(s) to accurately measure the volumetric capacity of each truck. The Equipment Certification Specialist will photograph each truck showing the certification number and type of equipment (side view), attach a certification placard to it and inspect the trucks to make sure they comply with all local, State and Federal standards. The BFA Equipment Certification Specialist will also perform random spot-checks and re-certify trucks on a weekly basis at the TDSR in order to prevent alteration of the volumetric capacity of the trucks by subcontractors post-certification.

#### **D. Temporary Debris Staging and Reduction Site (TDSR) & Residential Debris Drop-off Site (RDDS) Monitoring**

BFA will manage the monitoring of the TDSR, RDDS and/or final disposal sites by providing monitors qualified to verify load volume in order to ensure accurate documentation and record keeping. At least two disposal site monitors will be assigned to each entrance tower at all TDSR/RDDS or final disposal sites the Village designates. All monitoring staff will be acquired from either BFA's listing or selected from local residents of Village of Biscayne Park. TDSR services include:

- Provide disposal site monitoring and inspector personnel;
- Perform random volume capacity certifications on collection vehicles, and once every two weeks on all vehicles;
- Verify each truck that delivers debris to the TDSR matches its manifest load ticket including truck number, type of debris and truck volume;
- Accurately complete and sign each load ticket before permitting a truck to proceed from the check-in/inspection to the tipping area;
- Ensure that each truck bed has been fully emptied prior to departure from the TDSR;
- Identify, address and troubleshoot any questions or problems that could impact work area safety and eligibility for cost reimbursement;
- Maintain accurate daily logs of tickets inventoried and/or voided;
- Assist the debris removal contractor with the opening and closing of TDSR and/or RDDS ensuring proper documentation of restoration requirements;
- Perform quality control and assurance checks on all load tickets; and
- Immediately contact field monitors and supervisors when errors are detected at the TDSR, in order to promptly remedy the errors and maintain satisfactory field monitor performance.

#### **E. Field Monitoring**

BFA will perform on-site, street-level work area inspection and documentation of the debris cleanup and collection crews. BFA will provide an adequate number of field monitors to inspect and control debris removal (dependent on the severity of

the event) utilizing load tickets, field logs and other documentation as required. Field monitoring services include:

- Provide loading site monitors for each debris removal crew;
- Monitor the daily collection activity of trucks and other equipment ;
- Issue load tickets at loading sites or choke points for each load;
- Properly monitor and record performance and productivity of debris removal crews;
- Verify and sign each load ticket, certifying that truck is fully loaded with eligible storm debris before allowing truck to proceed to temporary or final disposal site;
- Survey and record the 'special needs' areas in which larger items such as stumps and root balls, hazard trees, leaners and hangers, hazardous materials, construction and demolition debris that require specialized removal equipment and documentation;
- Prepare reports for the Village on the "special needs' areas; and
- Perform additional duties as directed by the Village's Debris Manager.

#### **F. Field and TDSR/RDDS Monitor Supervisors**

BFA will provide Village of Biscayne Park with experienced Field and TDSR/RDDS Supervisors to oversee and coordinate the activities of all BFA Field and TDSR/RDDS monitors. Supervisory staff will provide the following services:

- Verify that only eligible debris, as defined by FEMA policy guidelines, is being collected by the debris removal contractor from the public rights-of-way and public property within the Village's legal jurisdiction;
- Coordinate the daily activities between BFA field monitors and the debris removal contractor;
- Coordinate and manage the mapping of debris collection activities;
- Compile all necessary and requested reports from the field;
- Document, report and track damages caused by debris removal contractor crews;
- Respond to any issues regarding complaints, damages, accidents or incidents involving BFA or debris removal contractors' personnel and ensure that they are fully documented and reported to the Village;
- Ensure that all monitors and the debris removal contractor crews maintain positive public relations and that all citizen complaints are followed up and resolutions achieved in a timely fashion;
- Make recommendations to the Village's Debris Manager about how best to resolve issues arising from damage complaints and follow up to ensure all repairs are completed as soon as possible;
- Verify that the removal of stumps, hangers and leaners are adequately documented and photographed, and that eligibility criteria and contracted agreements regarding their removal are adhered to;
- Act as Quality Control and Assurance officers;
- Ensure that first pass debris collection from FHWA-ER eligible roads is documented accurately; and

- Assist in setting up TDSR/RDDS sites.

### **G. Damage Claim Reporting**

BFA will assist Village of Biscayne Park in the establishment of a Contractor Damage Reporting and Remediation Program. Our monitors are trained to document and immediately report any damages that occur during the removal of debris. Each incident is documented with photographs, logged on field reports and called into BFA Field Supervisors, who in turn alert the debris removal contractor(s) and the Village to the incident. A report of each incident will be given to the Village and the debris removal contractor(s); and Field Supervisors will follow up to verify that remedial action was taken by the contractor in a timely fashion. All damage complaints and corresponding photographs will be placed in a GIS geodatabase and provided to Village of Biscayne Park staff for confirmation that all issues have been resolved.

### **H. Debris Mapping**

All BFA monitors and Field Supervisors can greatly facilitate the debris removal program by mapping out where debris remains, locating 'hot spots' for immediate collection, making ineligible debris piles and tracking progress for pass completions and zone closures. This information will be entered into a GIS geodatabase and provided to Village of Biscayne Park staff to track the progress of the debris removal operations.

### **I. Special Debris Assistance**

Certain types of hazardous debris, such as hanging tree limbs, leaning trees and tree stumps require special validation and documentation procedures in order to be eligible for cost reimbursement from FEMA. BFA is experienced in these procedures and employs the latest FEMA methodologies and guidelines to ensure maximum cost reimbursements to our clients. BFA staff are also experienced in FEMA and NRCS canal debris removal programs and criteria. BFA also has extensive familiarity with administering the removal of storm debris from private roads and gated communities, Right-of-Entry programs and can guide our clients through the often complex maze of gaining FEMA authorization for these locations.

### **J. Ineligible Debris Notification**

BFA is also prepared to initiate a program of notification and documentation of all ineligible debris in a collection area. Field monitors and Supervisors may document, photograph, map and mark ineligible debris, providing detailed reasoning for its ineligibility, and if requested, may place 'door hanger'

notification of the ineligible debris at the residence in conjunction with the roving monitors (if activated).

#### **K. Data Management and Reporting**

As fieldwork is completed, BFA will produce, collect, and organize all paperwork such as load tickets and daily logs and then enter all data into the BFA Debris Tracker database. This will occur throughout the project but with particular focus early in the project to establish good practices of field personnel and a superior process. BFA will implement and maintain a Debris Tracker Database that is self-reconciling, and provides quality assurance/quality control as its unique capabilities to:

- Ensure proper storage and organization of debris collection debris data;
- Links loads tickets to any parameter-contractors, trucks, TDSR information, etc.;
- Streamlines record reconciliation of each load of eligible debris; and
- Provides daily, weekly, monthly and project-wide customized reports as required by Village of Biscayne Park's Project Manager showing recovery status, schedule updates, and project completion forecasts.

#### **L. Invoice Reconciliation Process for Initial Payment Approval**

- All contractor invoices received are date/time stamped, a hard copy file folder is created, an electronic record of the invoice is created and the invoice can also be scanned for electronic viewing ( optional).
- Invoices are screened to ensure that all required information is present and that all work is within the contracted scope-of-work.
- If information is missing, the contractor is advised that the invoice will be held pending receipt of the missing information.
- Supporting details, such as load tickets, are electronically matched to identify and create a report of duplicates, overcharges and other discrepancies.
- Costs, invoices and supporting documentation are reviewed and compared against original work orders to ensure accuracy. A quality review of the documents is completed by our invoicing specialist.
- An invoice pre-approval summary report is prepared, including any retainage and submitted to the Village.
- The target dates for invoice initial payment approval and reconciliation are established based on applicable payment terms and monitored to ensure timely completion.
- A Pre- Approval Report is provided to Village of Biscayne Park.
- The debris removal contractor is provided a detailed discrepancy report in addition to the amount of the partial payment for the invoice.

**ATTACHMENT B  
FEE SCHEDULE FOR SERVICES**

<u>Positions *</u>	<u>Hourly Rates</u>
On-Site Project Manager	\$100.00
Site or Area Supervisor	\$65.00
Tower Monitor	\$42.00
Administrative Support Staff	\$32.50
Billing/Invoice/Data Manager	\$55.00
Scheduling/Routing Manager	\$60.00
Field Supervisor	\$60.00
GIS Operator	\$75.00
Field Monitor	\$37.00

\* For the positions referenced above, the Contractor shall select personnel that it determines are appropriately trained and qualified to perform the duties and responsibilities of positions; provided that Contractor complies in such selection with applicable federal and state laws, rules, and regulations, and with the terms and conditions of this Contract.

**7C**

**CONTRACT FOR THE PROVISION OF  
EMERGENCY MANAGEMENT SERVICES**

This Contract is between the Village of Biscayne Park ("Client" or "Village") and Solid Resources, Inc. ("Contractor" or "SRI") for the Provision of Emergency Management Services (the Village and SRI may be referred to herein individually as "Party" or collectively as "Parties").

The Parties agree to the following:

1. **Engagement.** The Client hereby engages Contractor, and Contractor hereby accepts such engagement, to provide Emergency Management Services (as defined herein) in accordance with the terms, and subject to the conditions, of this Contract.
2. **Services.** During the Term (as defined herein), the Contractor shall provide the Client with emergency management services that shall include those services described in Attachment A, which is incorporated herein ("Emergency Management Services" or "Services").
3. **Term.** The term of this Contract shall commence on the day the Contract is signed by the Client, provided both Parties have signed the Contract ("Effective Date") and shall be in effect for a period of two years ("Term"), unless otherwise terminated earlier as provided herein. At the end of the Term, the Parties may mutually agree to renew the Contract provided the renewal is in writing and signed by both Parties.
4. **Independent Contractor.** It is expressly acknowledged by the Parties that Contractor is an "independent contractor" and nothing contained in this Contract is intended, or shall be construed, to create a partnership between the Parties, to cause either Party to be responsible in any way for the debts, liabilities, or obligations of the other Party, or to constitute an employer-employee relationship between the Parties.
5. **Insurance.** During the Term, Contractor agrees to maintain at its sole cost and expense, a policy of commercial general liability insurance and automobile liability insurance in such amounts as reasonable for this Contract. Further, Contractor agrees to maintain Workers' Compensation insurance in the statutory amounts required under law.
6. **Notice.** All notices from the Contractor to the Client, or from Client to the Contractor must be in writing, and, shall be deemed duly served if mailed by U.S. mail, e-mailed, or faxed to the other Party at the following:

**Village of Biscayne Park**

Attn: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
City/State: \_\_\_\_\_  
Zip Code: \_\_\_\_\_  
Tel: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**Solid Resources, Inc.**

Gary Stankovich, President  
555 Winderley Place  
Suite 220  
Maitland, Florida  
32751  
Tel: (407) 702-1172  
Fax: (407) 702-1764  
gstankovich@solid-resources.com

The Parties may change the above addresses or fax numbers at any time upon giving the other Party written notice.

7. **Compensation.** The Contractor shall provide an invoice ("Invoice") to Client on a monthly basis that shall include the Services rendered for Contractor's personnel who are rendering Services.

7.1 The compensation for Services shall be in accordance with the schedule provided in Attachment B, which is incorporated herein. The compensation for Services may not be modified, unless otherwise agreed upon by the Parties in writing. The Client may request, and the Contractor shall provide to the Client, any information that is reasonable and necessary to verify any Services rendered under the Contract.

7.2 Pursuant to the terms and conditions of this Contract, SRI shall provide Emergency Management Services to the Client in accordance with federal, state, and local laws, rules, and regulations; and FEMA Policy and Guidance. Federal laws and regulations do not permit that payment for services rendered under this type of contract be contingent upon the receipt of federal funds. As such, the Parties agree that Client shall pay for services provided upon receipt of invoices from SRI, and payment for Services shall not be contingent upon the receipt of federal funds, or upon any funding determination by any government agency, including FEMA and FHWA. The Parties agree that SRI shall provide Client with a monthly invoice detailing the services provided under this Contract, and payment for such invoice shall be due thirty (30) days upon receipt.

8. **Termination.**

8.1 **For Cause.** The Client may terminate the Contract if (1) Contractor fails to perform under the terms of this Contract, (2) Client provides Contractor with a written notice of the default, and (3) Contractor fails to cure the default within a reasonable period of time. Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from events completely beyond the control of, and without the fault or negligence of, the Contractor.

8.2 **Without Cause.** Either Party may terminate this Contract without cause by providing the other Party with ten (10) days written notice of the termination.

8.3 **Effects of Termination.** Upon receipt of any notice of termination, Contractor shall discontinue providing Services except as otherwise provided in Section 8.1. To the extent that the termination of this Contract is not due to Contractor's breach of its obligations under the Contract, Client shall reimburse Contractor for all Services properly furnished in accordance with the requirements of this Contract up and through the date of the notice of termination (or such other time specified in the notice). Notwithstanding any other provisions in the Contract to the contrary, the Contractor shall have no further obligations under this Contract after the effective date of the termination.

9. **Indemnification/Liability.**

9.1 Contractor agrees to indemnify and hold harmless the Client, for any claims, losses, or damages arising out of personal injury or property damage resulting from the negligence, or intentional acts or wrongful omissions of the Contractor and its officers, partners, agents, or employees in the performance of Emergency Management Services; provided, however, that Contractor shall not indemnify or hold harmless the Client for that portion of any claims, losses or damages caused by the negligence, or intentional acts or wrongful omissions of the Client, and its officers, partners, agents, or employees.

9.2 For all claims against Contractor relating to Services, and regardless of the basis on which the claim is made, the Contractor's liability for direct damages shall be limited to the greater of \$100,000 or the amount of the

charges rendered by Contractor under the Contract. This limitation shall not apply to claims arising under Section 9.1 of this Contract. Unless otherwise specifically enumerated in the Contract, no Party shall be liable to the other for any special, indirect, punitive, or consequential damages, including lost data or records, even if a Party has been advised that such damages are possible. No Party shall be liable for lost profits, lost revenue, or lost institutional operating savings.

10. **Force Majeure.** The Contractor shall not be responsible for any delay resulting from its failure to perform if neither the fault nor the negligence of Contractor or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Contractor's control, or for any of the foregoing if no alternate source of supply is available to Contractor. In case of any delay Contractor believes is excusable, Contractor shall notify the Client in writing of the delay or potential delay and describe the cause of the delay either (1) within 10 days after the cause that creates or will create the delay first arose, if Contractor could reasonably foresee that a delay could occur as a result, or (2) if delay is not reasonably foreseeable, within 5 days after the date Contractor first had reason to believe that a delay would result. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist, Contractor shall continue to perform in accordance with the Contract.

11. **General Provisions.**

11.1 **Agreement.** This Contract constitutes the entire agreement between the Parties. No oral agreements or representations shall be valid or binding upon the Parties.

11.2 **Assignment** The Contractor may not sell, assign or transfer any of its rights, duties or obligations under the Contract, or under any purchase order issued pursuant to the Contract, without the prior written consent of the Client.

11.3 **Dispute Resolution.** The Parties may agree to engage in alternative dispute resolution procedures, as outlined in Chapter 120, F.S. Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to the Contract shall be the appropriate state court in Miami-Dade County, Florida. In any such action, Florida law shall apply and the Parties waive any right to jury trial.

11.4 **Safety.** The Contractor agrees that it shall comply with all Occupational Safety and Health Administration (OSHA), State and City Safety and Occupational Health Standards and any other applicable rules and regulations relating to occupational safety.

11.5 **Modification of Terms.** The Contract contains all the terms and conditions agreed upon by the Parties, which terms and conditions shall govern all transactions between the Client and Contractor. The Contract may only be modified or amended upon mutual written agreement of the Parties.

11.6 **Execution in Counterparts.** The Contract may be executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

11.7 **Severability.** If a court deems any provision of the Contract void or unenforceable, that provision shall be enforced only to the extent that it is not in violation of law or is not otherwise unenforceable and all other provisions shall remain in full force and effect.

11.8 **Authority.** Each person signing the Contract represents that he or she is duly authorized to do so and to bind the respective Party to the Contract.

**IN WITNESS WHEREOF**, the Parties have executed this Contract as written above.

**Village of Biscayne Park**

**Solid Resources, Inc.**

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

By: Gary Stankovich

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

Title: President

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

**ATTACHMENT A**  
**EMERGENCY MANAGEMENT SERVICES**

**A. PRE-DISASTER PLANNING SERVICES**

Solid Resources provides integrated emergency management services to assist with preparation, response, and recovery from emergency situations or events. The preparatory stages in anticipation of an emergency or disaster allow for a controlled response, which leads to a successful recovery that maximizes reimbursement from each federal grant program regardless of the event type or magnitude. Local municipalities receive the majority of their disaster recovery assistance from the FEMA-PA and FHWA-ER programs. The following services offered by SRI are available as needed:

**Policy and Plan Review** – SRI begins its pre-disaster planning services by performing a comprehensive review of our Client’s internal policies, guidelines, regulations and recovery plans. This review familiarizes us with our Client’s level of preparedness for an emergency or disaster. The findings are presented in an analysis of changes and impacts to recovery reimbursement which includes steps necessary to develop, review or revise our Client’s Debris Management Plan, Comprehensive Emergency Management Plan, Continuity of Operations Plan and Cost Estimating Matrices which may include cost and activity tracking tools.

**Training Exercises** – Tabletop training exercises are highly recommended to develop a sense of familiarity with internal response policies and local or regional coordinating agencies. Typical exercises involve response and recovery scenarios for Hurricanes (Categories 1 through 5) beginning with activities starting from 72 hours out to 7 days post storm. These activities include communication exercises, PDA preparation, mobilization, managing evacuations and emergency shelters.

**Emergency and Response Training** – Familiarity with the FEMA-PA and FHWA-ER programs is essential for all levels of municipal responders. Our training sessions may be tailored to the specific needs of management or field personnel. A thorough understanding of the 404 and 406 Hazard Mitigation programs ensures that potential for mitigation within each program is immediately identified. We also provide response and recovery training for the Fire Management Assistance Grant Program.

**Debris Management** – The location, size and operation of Debris Management Sites (DMS) can have a significant impact on the post-disaster cleanup efforts of any municipality. The extensive debris management experience of our team enables SRI to assist with the selection and pre-authorization of new and/or existing sites. In conjunction with DMS selection, we provide training on the management and monitoring of debris removal operations with focus on the subtle differences between the FEMA-PA and FHWA-ER programs.

**Emergency Contracts** – SRI may provide the service of reviewing the Client’s emergency contracts to make recommendations concerning stipulations in the contract and/or scope of work that may affect recovery, response, and reimbursement. Wherever possible recommendations will be made to mitigate financial risk and provide audit protection. We may assist with the development of requests for proposals, scopes of work, bidding process, and procurement of Emergency Contracts for activities such as debris operations, sign repair, signalization, Maintenance of Traffic (MOT), evacuation, emergency shelters, and rental equipment as needed.

## **B. MOBILIZATION**

Once an event reaches the mobilization threshold, our recovery and response teams would deploy to their designated location in support of the Client. In the event of a disaster of catastrophic nature, response personnel may mobilize to both the Emergency Operations Center (EOC) and the surrounding impacted areas. Wherever a Team is placed, the Team may begin tracking, documenting, and assisting in the response effort. A typical scope of support services available to our Clients during this phase may include but not be limited to:

### **Pre-Event (72 Hours Out)**

**Activity Tracking** – In order to maximize reimbursement from federal grant programs, activity and cost tracking is essential. This process must be effective and accurate from the earliest stages of the response effort, which may be as early as 72 hours out. Activities include assistance to personnel who man the EOC, or any effort taken to save lives, reduce the risk to public health and safety and prevent damage to improved public and private property.

**Coordinating Debris Operations** – An anticipated debris-generating event will trigger coordinating activities of debris monitoring and debris removal firms. Approximately 70 percent of the total cost of hurricane recovery is associated with debris operations therefore coordinating debris operations efforts are critical to a successful response.

**Documentation Review and Preparation** – Pre-event activities must include the review and preparation of documentation such as truck certifications, load tickets, truck placards, and project files for each activity that should be organized by federal grant program.

## **C. ACTIVATION**

Once a hurricane has made landfall the response effort becomes focused on performing emergency operations primarily by police and fire department personnel. The local EOC is fully staffed for the duration of the storm, which may last up to 24 hours. Immediately following a hurricane, PDA activities commence and SRI personnel may provide support services that include:

**Preliminary Damage Assessment (PDA)** – The determining factor for an impacted area to receive a federal declaration for grant assistance is the PDA. Damages must exceed the per-capita dollar threshold for that municipality or region in order to receive a federal declaration, costs for which include preparatory measures up to 72 hours prior to a predicted event. The PDA is coordinated by personnel manning the local EOC. The total estimated cost of recovering from a disaster can only be completed after the event has passed. The final cost must be reasonably accurate and involved the participation of key personnel within all impacted areas. The final PDA is submitted to the State EOC in request of financial assistance for the recovery efforts. The State either provides assistance directly, or requests assistance from the various Federal agencies that participate in disaster recovery.

**Initial Debris Operations** – Immediately following a disaster, the debris removal efforts focus on clearing roads (“cut and toss”) to allow emergency access to critical facilities. SRI personnel have extensive knowledge of the reimbursement requirements of the FHWA On-system, Off-system for FHWA-ER reimbursement and FEMA-PA reimbursement for debris operations on local roads. Our staff may be involved with the coordination efforts and the collection of documentation necessary to draft DDIRs or PWs following current federal policies and guidelines to maximize reimbursement between the federal grant programs.

**Initial Grant Program Procedures** – After a federally declared event, FEMA and the State conduct applicant briefings and kick-off meetings for the purpose of educating an applicant regarding the FEMA-PA program, and to identify and respond to specific needs or special circumstances, or to communicate special procedures that may have been recently adapted for the program. SRI would serve to be present at these meetings to ensure all needs are communicated and any modifications to the PA program are implemented.

**Federal Grant Program Coordination** – Federal agencies may provide reimbursement to local government agencies or municipalities for costs resulting from recovery efforts after a declared disaster depending on the type of damages. SRI provides complete grant management on the respective assigned and regulated areas of responsibility. SRI may coordinate with other funding sources for disaster assistance from federal agencies such as FEMA, FHWA, HUD, USDA, USACE, and NRCS. Reimbursements channeled through the State are primarily based on actual costs but the PDA may be used to provide immediate needs funding.

**FEMA-PA Program Grant Coordination** – SRI can assist with the efforts required to prepare documentation and estimate costs for the repair and overall recovery from a federally declared event under all categories of work as identified by the FEMA-PA program, which include Debris Removal operations (Cat A), Emergency Work (Cat B), Roads/Bridges (Cat C), Water Control facilities (Cat D), Buildings, Structures and/or Equipment (Cat E), Utilities (Cat F), and other facilities (Cat G). This documentation will be gathered and presented for the purpose of writing Project Worksheets (PWs) in a manner that complies with all policies and procedures, identifies opportunities for Hazard Mitigation, avoids the need to submit appeals, and facilitates reimbursement during work completion through project final inspection and disaster closeout.

**FHWA-ER Program Grant Coordination** – SRI can assist with the efforts required to prepare documentation that estimates the cost to recover from a federally declared event under the FHWA-ER program that will be used to generate a DDIR. The experience and knowledge of the SRI professionals regarding the guidelines and eligibility criteria of the FHWA-ER program assists to protect against duplication of funding from other federal agencies such as FEMA while maximizing the eligible amount of reimbursement and providing audit protection.

**Insurance Claim Adjusting** – The FEMA-PA program is designed to reimburse eligible applicants for non-insured expenses resulting from a federally declared event. This process requires a thorough review of the applicant's insurance policy to clearly identify coverage amounts for each damaged facility, and to estimate anticipated insurance proceeds. Final settlement with an insurance provider may take several years, and during the interim, deductions imposed by FEMA for anticipated insurance proceeds may be overestimated. SRI can assist with determining accurate insurance proceeds deductions in order to maximize the federal grant funding.

**Mutual Aid** – Track Mutual Aid assignments and related costs and documentation by Federal Program according to the form and structure defined by the EMAC or the stipulations of inter-local mutual aid agreements.

#### **D. LONG TERM RECOVERY**

The process of transitioning from Response to Recovery will be determined by the nature of the event. In a catastrophic event, or an event that may have a far-reaching impact, it may be determined that an area will be staffed for an extended period of time. Generally, the transition will occur as the EOC returns to monitoring status, or Level 3, at which point long-term recovery will begin. A typical scope of support services available to our Clients during this phase may include but not be limited to:

**Reconcile and Submit Documentation** – Reconcile back-up documentation and submit to corresponding federal agencies that may be involved with the recovery effort to ensure that all eligible funds have been captured

between the Federal Programs. Documentation that may require review includes procurement policies, contracts, scopes of work, invoices, purchase orders, proof of payments, Human Resources policies pertaining to emergency pay, Force Account daily activity logs, payroll registers, equipment logs, emergency call logs, and generator logs.

**Small PWs** – Small projects are funded using an initial estimate of costs prepared by either FEMA or the PA program applicant. SRI staff would prepare small projects in the manner most beneficial to the Client, taking into consideration insurance reimbursements and departmental budgetary needs.

**PW Versions** – Large and small PWs are usually based on estimated costs to repair damages identified during a field inspection conducted by the FEMA PA applicant. It is not unusual for damages to be omitted or unforeseen, or for actual repair costs to be significantly in excess of the estimated amounts. The most desirable option for correcting scopes of work or project costs is for FEMA to issue a version of the original PW.

**Alternate or Improved Projects** – The funding provided by the PA program to repair a facility damaged by a disaster is typically intended to restore the facility to its pre-disaster design and function. There are times, however, when the public welfare would be best served by restoring the facility with improvements, or by utilizing the funds for a different purpose. SRI personnel have served applicants to the PA program by requesting alternate or improved projects through the FDEM.

**Hazard Mitigation** – The Stafford Act allows for provisions to reduce or eliminate long-term risk to people and property from natural hazards and their effects as defined under sections 404 and 406. Hazard mitigation measures restore a facility beyond its pre-disaster design. SRI personnel have the program knowledge to provide Hazard Mitigation support for damaged infrastructure and prepare funding proposals to FEMA and the State for reimbursement under the 404 and 406 Hazard Mitigation Programs as applicable state agency utilizing the State and FEMA forms and systems.

**Final Inspection and Close Out** – Once all project work as identified in the Scope of Work of a PW has been completed, projects are subject to final inspection audit and close out. The final inspection process begins when the applicant submits a Request for Final Inspection (RFI). The final inspection and close out process may not happen for several years after the declaration date of a disaster. SRI personnel has provided final inspection and project close out support throughout the State of Florida since hurricane Andrew and most recently for all the 2004 and 2005 storms.

**Audit Support** – PA program grant recipients are subject to audits by the Office of Management and Budget (OMB) or the Department of Homeland Security (DHS) Office of Inspector General (OIG) depending on the amount of grant funding received. SRI services include project support throughout the response and recovery effort in anticipation of audits to ensure full compliance with all aspects of the PA program as well as all the technical support during the audit process.

**Overall Grants Management Support** – SRI services include overall grants management support from the earliest stages prior to the receipt of grant funding, inception of each project, to final inspection and project close out. The services provided cover all possible aspects of emergency and grants management.

**Reporting** – SRI Recovery Teams shall provide weekly reports to Client staff, as requested, with information including field activities, employee activities, project progress, and issue resolution. Other reports shall be provided as requested.

## **E. CONCLUSION OF SERVICES**

In a catastrophic or far reaching high impact event, it may be determined that an area will be staffed for an extended period of time. The process and timing of the Team's eventual demobilization will be determined by the nature of the event, together with collaboration between the Client and Team Project Manager. A sample scope of support services available to our Clients during this phase may include but not be limited to:

**Pre-Demobilization meeting** – Open issues remaining until the demobilization phase will be defined and the resolution of these issues will be planned and tracked until actual demobilization.

**Consolidate Documentation** – All project documents will be consolidated, prepared and submitted by project and by Federal funding program for the long-term storage per State and Federal guidelines of (3 years after disaster close out for Federal and 5 years for the State of Florida).

**Final Summary report** – After open issues have been either resolved or identified for resolution, and project documentation has been prepared for storage, a final summary report will be issued for Client review and acceptance.

**ATTACHMENT B**  
**COMPENSATION**

Public Assistance Specialist (PAS)	\$145
PAC Coordinator (PAC-C)	\$120
Public Assistance Coordinator	\$115
Project Officer	\$98

\*For the positions referenced above, the Contractor shall select personnel that it determines are appropriately trained and qualified to perform the duties and responsibilities of the positions; provided that Contractor complies in such selection with applicable federal and state laws, rules, and regulations, and with the terms and conditions of this Contract.

**7D**

**FLORIDA DEPARTMENT OF TRANSPORTATION  
LANDSCAPE  
MAINTENANCE MEMORANDUM OF AGREEMENT  
WITH THE  
VILLAGE OF BISCAYNE PARK**

This **AGREEMENT**, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the **FLORIDA DEPARTMENT OF TRANSPORTATION**, a component agency of the State of Florida, hereinafter called the **DEPARTMENT**, and the **VILLAGE OF BISCAYNE PARK**, a municipal corporation of and existing under the Laws of the State of Florida, hereinafter called the **VILLAGE**.

**RECITALS:**

**WHEREAS**, the **DEPARTMENT** has jurisdiction over **State Road (S.R.) 915/NE 6<sup>th</sup> Avenue from NE 113<sup>th</sup> Street to NE 121<sup>st</sup> Street**, within the limits of the **VILLAGE**, as part of the State of Florida Highway System; and

**WHEREAS**, the **DEPARTMENT** has drafted design plans for improvements on S.R. 915/NE 6<sup>th</sup> Avenue in accordance with **DEPARTMENT** Contract # E-6F04, the limits of which, hereinafter **PROJECT LIMITS**, are described in the attached Exhibit 'A', which by reference hereto shall become a part hereof; 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 **VILLAGE**, by Resolution No. \_\_\_\_\_, dated \_\_\_\_\_, attached hereto as Exhibit 'B', which by reference hereto shall become a part hereof, desires to enter into this **AGREEMENT** and authorizes its officers to do so.

**NOW, THEREFORE**, for and in consideration of the mutual benefits to flow each to the other, the parties covenant and agree as follows:

**1. DEPARTMENT RESPONSIBILITIES**

a. Assignment

The **DEPARTMENT** and the **VILLAGE** agree that, by executing this **AGREEMENT**, all maintenance responsibilities pertaining to the landscape within the **PROJECT LIMITS** will be assigned to the **VILLAGE** in perpetuity.

## 2. VILLAGE'S MAINTENANCE RESPONSIBILITIES

The **VILLAGE** shall be solely responsible for the maintenance and preservation of the landscape within the **PROJECT LIMITS**.

- 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 trees, shrubs and ground covers, in accordance with the latest edition of the "Maintenance Rating Program" and the International Society of Arboriculture. Prune, trim and/or edge such parts thereof which may present a visual or other safety hazard for those using or intending to use the right of way including growth around street lights and traffic signals.
- c. Keep plants as free as possible from disease and harmful insects. Remove and properly dispose of dead, diseased or otherwise deteriorated plants in their entirety, and replacing those that fall below original project standards. All replacement material shall be replaced, at minimum, by plants of the same size and grade as specified in the **PLANS AND SPECIFICATIONS**, incorporated herein by reference.
- d. Properly mulch all plant beds and tree rings.
- e. Properly remove and dispose of all undesirable vegetation including but not limited to weeding of plant beds and removal of invasive exotic plant materials.
- f. Water and fertilize all plants properly.
- g. Remove and properly dispose of litter from roadside and median strips.
- h. Remove and dispose of all trimmings, roots, branches, litter, etc., resulting from the activities described by 2.A through 2.G inclusively as described above.

The above-named functions to be performed by the **VILLAGE** may be subject to periodic inspections by the **DEPARTMENT** at its sole discretion. Such inspection findings will be shared with the **VILLAGE** and shall be the basis of all decisions regarding reworking or agreement termination. The **VILLAGE** shall not change or deviate from said plans without written approval of the **DEPARTMENT**.

### **3. MAINTENANCE DEFICIENCIES**

If, at any time while the terms of this **AGREEMENT** are in effect, it shall come to the attention of the **DEPARTMENT** that the **VILLAGE's** responsibility as established herein or a part thereof is not being properly accomplished pursuant to the terms of this **AGREEMENT**, the **DEPARTMENT** may, at its option, issue a written notice, in care of the **VILLAGE MANAGER**, to place the **VILLAGE** on notice regarding its maintenance deficiencies. Thereafter, the **VILLAGE** 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 landscape, or a part thereof, with **DEPARTMENT** or contractor's personnel and invoice the **VILLAGE** for expenses incurred; or
- b. Terminate the **AGREEMENT** in accordance with Section 6 of this **AGREEMENT** and remove, by **DEPARTMENT** or contractor's personnel, all of the landscape installed under this **AGREEMENT** or any preceding agreements and charge the **VILLAGE** the reasonable cost of such removal.

### **4. NOTICES**

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

**To the DEPARTMENT:** Florida Department of Transportation  
1000 Northwest 111 Avenue, Room 6205  
Miami, Florida 33172-5800  
Attention: District Maintenance Engineer

To the **VILLAGE**: Village of Biscayne Park  
640 NE 114<sup>th</sup> Street  
Biscayne Park, Florida 33161  
Attention: Village Manager

## **5. LANDSCAPE**

- a. It is understood between the parties hereto that the landscape 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**. The **VILLAGE** shall be given sixty (60) calendar days notice to remove said landscape after which time the **DEPARTMENT** may remove same.
- b. The **VILLAGE** may construct additional landscape within the **PROJECT LIMITS** identified as a result of this document, subject to the following conditions:
  - i. Plans for any new and/or additional materials shall be subject to approval by the **DEPARTMENT**. The **VILLAGE** shall not change or deviate from said plans without written approval by the **DEPARTMENT**.
  - ii. All landscape shall be developed and implemented in accordance with appropriate state safety and road design standards.
  - iii. The **VILLAGE** agrees to comply with the requirements of this **AGREEMENT** with regard to any additional materials installed.

## **6. TERMINATION**

This **AGREEMENT** is subject to termination under any one of the following conditions:

- a. By the **DEPARTMENT**, if the **VILLAGE** fails to perform its duties under Section 2, following thirty (30) days written notice.
- b. In accordance with Section 287.058(1)(c), **Florida Statutes**, the **DEPARTMENT** shall reserve the right to unilaterally cancel this **AGREEMENT** if the **VILLAGE** refuses

to allow public access to any or all documents, papers, letters, or other materials made or received by the **VILLAGE** pertinent to this **AGREEMENT**, which are subject to provisions of Chapter 119, of the Florida Statutes.

- c. Only if mutually agreed to by both parties with a six (6) month written notice.

**7. TERMS**

- a. The terms of this **AGREEMENT** shall only commence upon execution by all parties. This **AGREEMENT** shall continue in perpetuity or until termination as set forth in Section 6.
- b. This writing embodies the entire **AGREEMENT** and understanding between the parties hereto and there are no other agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein.
- c. The **DEPARTMENT's** District Secretary shall decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of this **AGREEMENT**, the prosecution or fulfillment of the service hereunder and the character, quality, amount and value thereof; and his decision upon all claims, questions and disputes shall be final and conclusive upon the parties hereto.
- d. This **AGREEMENT** is nontransferable and nonassignable in whole or in part without the prior written consent of the **DEPARTMENT**.
- e. This **AGREEMENT**, regardless of where executed, shall be governed by and constructed in accordance with the laws of the State of Florida.

**IN WITNESS WHEREOF**, the parties hereto have caused these presents to be executed the day and year first above written.

**VILLAGE OF BISCAYNE PARK:**

**STATE OF FLORIDA**

**DEPARTMENT OF TRANSPORTATION:**

BY: \_\_\_\_\_  
VILLAGE Mayor

BY: \_\_\_\_\_  
District Secretary

ATTEST: \_\_\_\_\_ (SEAL)  
VILLAGE Clerk

ATTEST: \_\_\_\_\_  
Executive Secretary

LEGAL REVIEW:

BY: \_\_\_\_\_  
VILLAGE Attorney

BY: \_\_\_\_\_  
District Chief Counsel

**EXHIBIT 'A'**

**PROJECT LIMITS**

Below are the limits of the landscape to be maintained under this AGREEMENT.

State Road Number: 915/ NE 6<sup>th</sup> Avenue  
Agreement Limits: From NE 113<sup>th</sup> Street to NE 121<sup>st</sup> Street  
County: Miami-Dade

**EXHIBIT 'B'**

**VILLAGE OF BISCAYNE PARK RESOLUTION**

To be herein incorporated once ratified by the VILLAGE Board of Commissioners.

**7 E**

**VILLAGE OF BISCAYNE PARK  
CASH BALANCES  
AS OF 9/30/2009**

<b>FUND NAME</b>	<b>ACCOUNT #</b>	<b>BALANCE</b>
<b>GENERAL FUND</b>	801.0000.101.01.00	<b>81,343.72</b>
<b>PAYROLL</b>	801.0000.101.02.00	<b>(12,217.76)</b>
<b>ROAD FUND</b>	101.0000.101.04.00	<b>40,212.39</b>
<b>FORFEITURE FUND</b>	105.0000.101.05.02	<b>23,747.84</b>
<b>FORFEITURE FEDERAL</b>	105.0000.101.05.01	<b>3,079.22</b>
<b>BANKED SICK LEAVE</b>	001.0000.105.00.00	
<b>STATE POOL INVEST. A</b>	001.0000.151.01.00	<b>786.08</b>
<b>STATE POOL INVEST. B</b>	001.0000.151.01.01	<b>9,781.11</b>
<b>TRANSIT SURTAX</b>	301.0000.101.04.00	<b>37,715.12</b>
<b>STORMWATER PROJECT</b>	401.0000.101.07.00	<b>504.81</b>
<b>PETTY CASH</b>	001.0000.102.00.00	<b>300.00</b>
<b>CRIME WATCH</b>	105.0000.101.03.00	<b>3,664.87</b>
<b>CAPITAL PROJECT</b>	601.0000.101.04.00	<b>114.85</b>
<b>MONEY MARKET</b>	001.0000.151.02.00	<b>455,558.34</b>
<b>DOG PARK RESERVE</b>	001-0000-106-00-00	
<b>TOTAL</b>		<b>\$ 644,590.59</b>

VILLAGE OF BISCAYNE PARK  
BUDGET VS ACTUAL  
AS OF 9/30/2009 (PERIOD 12)



GENERAL FUND REVENUES:	FISCAL 2008-2009 YEAR TO DATE AUGUST 2009	ADOPTED BUDGET FY 2009	VARIANCE	% ACTUAL/ BUDGET
<b>BY CATEGORIES:</b>				
AD VALOREM TAXES	1,568,449.90	1,504,156	-64,293.90	104.27%
FRANCHISE FEES	115,271.62	125,000	9,728.38	92.22%
UTILITY SERVICE TAXES	104,080.16	106,000	1,919.84	98.19%
COMMUNICATION SERVICE TAXES	140,177.72	117,050	-23,127.72	119.76%
LICENSES & PERMITS	112,233.28	146,800	34,566.72	76.45%
INTERGOVERNMENTAL REVENUE	251,786.01	278,745	26,958.99	90.33%
SERVICE REVENUES	47,049.70	148,000	100,950.30	31.79%
FINES & FORFEITURES	38,931.97	60,000	21,068.03	64.89%
MISCELLANEOUS REVENUES	205,962.25	34,000	-171,962.25	605.77%
<b>TOTAL REVENUES</b>	<b>2,583,942.61</b>	<b>2,519,751</b>	<b>-64,191.61</b>	<b>102.55%</b>
<b>EXPENSES BY DEPARTMENT:</b>				
VILLAGE COMMISSION	24,603.93	19,768	-4,835.93	124.46%
EXECUTIVE/ADMINISTRATION	223,829.03	200,165	-23,664.03	111.82%
FINANCE	154,527.18	123,755	-30,772.18	124.87%
GENERAL GOVERNMENT	331,468.41	270,494	-60,974.41	122.54%
POLICE	1,387,388.85	1,208,632	-178,756.85	114.79%
BUILDING DEPARTMENT	108,883.38	134,077	25,193.62	81.21%
CODE ENFORCEMENT	70,156.57	66,255	-3,901.57	105.89%
PUBLIC WORKS	213,503.76	268,461	54,957.24	79.53%
RECREATION	197,760.47	228,144	30,383.53	86.68%
<b>TOTAL GENERAL FUND EXPENSES</b>	<b>2,712,121.58</b>	<b>2,519,751</b>	<b>-192,370.58</b>	<b>107.63%</b>
<b>TOTAL REVENUES</b>	<b>2,583,942.61</b>	<b>2,519,751</b>	<b>-64,191.61</b>	<b>102.55%</b>
<b>NET REVENUES (EXPENDITURES)</b>	<b>-128,178.97</b>		<b>128,178.97</b>	
<b>ROAD FUND</b>				
<b>TOTAL REVENUE</b>	<b>146,753.90</b>	<b>167,690</b>	<b>20,936.10</b>	<b>87.51%</b>
<b>TOTAL DEPARTMENT EXPENSE</b>	<b>145,999.72</b>	<b>167,690</b>	<b>21,690.28</b>	<b>87.07%</b>
<b>NET REVENUES (EXPENDITURES)</b>	<b>754.18</b>		<b>(754.18)</b>	
<b>SANITATION FUND</b>				
<b>TOTAL REVENUE</b>	<b>705,889.14</b>	<b>712,310</b>	<b>6,420.86</b>	<b>96.60%</b>
<b>TOTAL DEPARTMENT EXPENSE</b>	<b>687,884.52</b>	<b>712,310</b>	<b>24,425.48</b>	<b>96.57%</b>
<b>NET REVENUES (EXPENDITURES)</b>	<b>18,004.62</b>	<b>0.00</b>	<b>-18,004.62</b>	

VILLAGE OF BISCAYNE PARK  
 BUDGET VS ACTUAL AS OF 9/30/2008 (PERIOD 12)

FUND	GENERAL FUND REVENUES	FY 08-09 YEAR TO DATE 9/30/08	FY 08-09 ADOPTED BUDGET	VARIANCE				
	<b>OBJECT:</b>							
311.01.00	Real & Personal Property	1,568,449.90	1,504,156	-64,293.90	104.27%			
	<b>Total Ad Valorem Taxes:</b>	<b>1,568,449.90</b>	<b>1,504,156</b>	<b>-64,293.90</b>	<b>104.27%</b>			Int and late payment w/no discount
313.10.00	Electric	112,916.01	125,000	12,083.99	90.33%			
313.40.00	Gas/Propane	2,355.61		-2,355.61				
	<b>Total Franchise Fees:</b>	<b>115,271.62</b>	<b>125,000</b>	<b>9,728.38</b>	<b>92.23%</b>			Reclass from Utility to Franchise
314.10.00	Electric	98,840.73	100,000	1,159.27	98.84%			
314.40.00	Gas/Propane	5,239.43	6,000	760.57	87.32%			
	<b>Total Utility Service Taxes:</b>	<b>104,080.16</b>	<b>106,000</b>	<b>1,919.84</b>	<b>98.19%</b>			
315.10.01	Communications Service Tax	140,177.72	117,050	-23,127.72	119.76%			State audit, underpayment in prior years
	<b>Total Communications Service Tax:</b>	<b>140,177.72</b>	<b>117,050</b>	<b>-23,127.72</b>	<b>119.76%</b>			
322.10.00	Building Permits	67,546.98	85,000	27,453.02	67.70%			
322.20.00	Electrical Permits	7,297.00	9,000	1,703.00	81.08%			
322.30.00	Plumbing Permits	12,310.60	13,000	689.40	94.70%			
322.40.00	Air Conditioning/Mechanical Permits	7,040.00	8,000	960.00	88.00%			
322.60.00	Paint Permits	1,836.80	2,800	963.20	65.60%			
322.70.00	Garage Sale	735.00	900	165.00	81.67%			
322.80.00	Plan Review	600.00	1,000	400.00	60.00%			
322.89.00	Permit Administrative Fee	13,468.00	20,000	6,532.00	67.34%			
322.90.01	Variance Application Fee	500.00	500	0.00	100.00%			
322.90.10	Variance Advertisement	774.00	500	-274.00	154.80%			
322.90.20	Variance Mailing Fees	69.90		-69.90				
323.10.00	Re-Occupancy	3,250.00	2,100	-1,150.00	154.76%			
323.11.00	Contractor Registration	1,155.00	2,000	845.00	57.75%			
323.12.00	Landlord Permit Fees	4,800.00	1,500	-3,300.00	306.67%			
323.13.00	Home Occupational Fees	1,050.00	500	-550.00	210.00%			
	<b>Total (Village) Licenses &amp; Permits:</b>	<b>112,233.28</b>	<b>146,800</b>	<b>34,566.72</b>	<b>76.46%</b>			



VILLAGE OF BISCAYNE PARK  
 BUDGET VS ACTUAL AS OF 9/30/2009 (PERIOD 12)

FUND	GENERAL FUND	FY 08-09	FY 08-09						
OBJECT:	REVENUES	YEAR TO DATE	ADOPTED	VARIANCE					
		9/30/09	BUDGET						
	<b>DEPARTMENT:</b>								
	<b>EXECUTIVE/VILLAGE COMMISSION</b>								
511.11.01	Salaries / Reimbursements	12,000.00	12,000	0.00	100.00%				
511.21.01	FICA Taxes	930.00	744	-186.00	125.00%				Did not accrue tax prior fiscal year
511.21.02	Medicare	217.50	174	-43.50	125.00%				Did not accrue tax prior fiscal year
511.25.01	Unemployment Compensation	920.91		-920.91					
	<b>ALL PERSONAL SERVICES:</b>	<b>14,068.41</b>	<b>12,918</b>	<b>-1,150.41</b>	<b>108.91%</b>				
511.40.01	Travel Conferences & Meetings	2,514.64	1,000	-1,514.64	261.46%				\$964.64 Village Membership, \$250 Mayor's Ball Miami Shores, \$1,400 BOD Meetings
511.47.01	Printing & Binding	381.00	750	369.00	50.80%				
511.54.01	Dues, Subscriptions & Memberships	460.00	1,200	740.00	38.33%				
511.55.01	Special Events	7,079.88	3,900	-3,179.88	161.54%				75th Anniversary
	<b>MATERIALS, SUPPLIES, SERVICES:</b>	<b>10,535.62</b>	<b>6,850</b>	<b>-3,685.62</b>	<b>163.80%</b>				
	<b>TOTAL OPERATING EXPENSES/BUDGET:</b>	<b>24,503.93</b>	<b>19,768</b>	<b>-4,835.93</b>	<b>124.46%</b>				

VILLAGE OF BISCAYNE PARK  
 BUDGET VS ACTUAL AS OF 9/30/2008 (PERIOD 12)

FUND	GENERAL FUND	FY 08-09	FY 08-09						
OBJECT:	REVENUES	YEAR TO DATE	ADOPTED	VARIANCE					
		9/30/09	BUDGET						
	<b>DEPARTMENT:</b>								
	<b>EXECUTIVE/ADMINISTRATION</b>								
512.12.01	Regular Salaries	165,110.98	139,293	25,817.98	118.54%				Village Manager pay out by contract, Village Clerk final pay \$3,219
512.21.01	FICA Taxes	10,236.68	8,636	1,600.68	118.54%				Additional expense related to pay out
512.21.02	Medicare	2,394.11	2,020	374.11	118.52%				Additional expense related to pay out
512.22.01	Retirement	18,806.51	16,551	2,255.51	113.63%				Additional expense related to pay out
512.23.01	Life, Health & Dental Insurance	6,173.35	6,904	730.65	89.42%				Additional expense related to pay out
512.24.01	Workers Compensation	782.40	669	113.40	116.95%				Additional expense related to pay out
512.26.01	Liability Insurance	3,618.61	3,092	526.61	117.03%				Additional expense related to pay out
	<b>ALL PERSONAL SERVICES:</b>	<b>207,122.84</b>	<b>177,165</b>	<b>(29,957.84)</b>	<b>116.91%</b>				
512.40.01	Travel, Conferences & Meetings	1,898.43	3,000	1,101.57	63.28%				
512.40.02	Travel/Auto Allowance	4,800.00	4,800	0.00	100.00%				
512.46.02	R&M - Equipment	875.07	700	175.07	125.15%				Manager's printer
512.49.02	Legal Advertising	6,390.50	8,000	1,609.50	79.88%				
512.49.04	Ordinance Codification		2,500	2,500.00	0.00%				
512.49.06	Election	218.22	500	281.78	43.64%				
512.51.01	Office Supplies	590.77	1,000	409.23	59.08%				
512.52.12	Special Departmental Supplies		500	500.00	0.00%				
512.54.01	Dues, Subscriptions & Memberships	1,932.20	1,800	132.20	107.34%				increases in membership
512.54.02	Education & Training		200	200.00	0.00%				
	<b>TERIALS, SUPPLIES, SERVICES:</b>	<b>16,706.19</b>	<b>23,000</b>	<b>6,293.81</b>	<b>72.64%</b>				
	<b>TOTAL DEPARTMENT EXPENSES/BUDGET:</b>	<b>223,829.03</b>	<b>200,166</b>	<b>-23,664.03</b>	<b>111.82%</b>				

VILLAGE OF BISCAYNE PARK  
 BUDGET VS ACTUAL AS OF 9/30/2008 (PERIOD 12)

FUND	GENERAL FUND	FY 08-09 YEAR TO DATE 9/30/09	FY 08-09 ADOPTED BUDGET	VARIANCE	91.66%			
OBJECT:	REVENUES							
DEPARTMENT:	FINANCE							
513.12.01	Regular Salaries	0.00		0.00				
	<b>TOTAL PERSONAL SERVICES:</b>							
513.32.01	Accounting & Audit Services	32,170.00	30,500	-1,670.00	105.48%			
513.34.01	Consulting Services	103,713.75	75,000	-28,713.75	138.29%			
513.34.02	Contract Services-HTE	17,932.00	17,500	-432.00	102.47%			
513.40.01	Travel, Conferences & Meetings	203.00	150	-53.00	135.33%			
513.46.02	R&M - Equipment	209.40		-209.40				Printer
513.51.01	Office Supplies	274.03	500	225.97	54.81%			
513.54.01	Dues, Subscriptions & Memberships	25.00	105	80.00	23.81%			
513.54.02	Education & Training							
	<b>TOTALS, SUPPLIES, SERVICES:</b>	<b>164,627.18</b>	<b>123,766</b>	<b>-30,772.18</b>	<b>124.87%</b>			
	<b>TOTAL OPERATING EXPENSES/BUDGET:</b>	<b>164,627.18</b>	<b>123,766</b>	<b>-30,772.18</b>	<b>124.87%</b>			

VILLAGE OF BISCAYNE PARK  
 BUDGET VS ACTUAL AS OF 9/30/2009 (PERIOD 12)

FUND	GENERAL FUND REVENUES	FY 08-09 YEAR TO DATE 9/30/09	FY 08-09 ADOPTED BUDGET	VARIANCE			
<b>DEPARTMENT:</b>	<b>GENERAL GOVERNMENT</b>						
519.12.01	Regular Salaries	16,749.40	18,935	2,185.60	88.46%		
519.14.01	Overtime	117.04	-	-117.04		Special events coordination	
519.21.01	FICA Taxes	1,062.10	1,174	111.90	90.47%		
519.21.02	Medicare	248.46	275	26.54	90.35%		
519.22.01	Retirement	1,656.12	1,865	208.88	88.80%		
519.23.01	Life, Health & Dental Insurance	5,668.76	6,584	915.24	86.10%		
519.24.01	Workers' Compensation	82.00	91	9.00	90.11%		
519.25.01	Unemployment Compensation	6,865.00	5,000	-1,865.00	137.30%	Former Finance Clerk, UC April 1, 2009 extension	
519.26.01	Liability Insurance	352.00	420	68.00	83.81%		
	<b>TOTAL PERSONAL SERVICES:</b>	<b>32,800.88</b>	<b>34,344</b>	<b>1,543.12</b>	<b>95.61%</b>		
519.31.01	Attorney Legal Fees	110,831.14	60,000	-50,831.14	184.72%	Outside counsel, Police Matters	
519.31.02	Legal - Other	17,509.89	15,000	-2,509.89	116.73%	Outside counsel, Police Matters	
519.31.03	Other Professional Services	12,357.25	20,200	7,842.75	61.17%		
519.31.04	Contract Services	0.00	750	750.00	0.00%		
519.41.01	Telephone	14,848.52	12,500	-2,348.52	118.79%	reallocation of phone lines	
519.42.01	Postage, Freight & Express Charges	3,165.19	2,000	-1,165.19	158.26%		
519.43.01	Electric Utility Service	32,341.46	30,000	-2,341.46	107.80%		
519.43.02	Water Utility Services	580.57	1,500	919.43	38.70%		
519.44.02	Equipment Rental & Lease	16,485.92	14,500	-1,985.92	113.70%		
519.45.01	Insurance	22,601.00	31,000	8,399.00	72.91%		
519.46.02	Repair & Maintenance - Equipment	8,737.10	5,400	-3,337.10	161.80%		
519.47.01	Printing & Binding	1,673.15	1,000	-673.15	167.32%		
519.48.01	Communications - Newsletter/ Website	2,455.98	1,500	-955.98	163.73%		
519.48.02	Legislative Representative						
519.49.01	Miscellaneous - FDMS Fees	3,346.58	8,000	4,653.42	41.83%		
519.49.02	Miscellaneous - Dog Park	500.00		500.00			
519.51.01	Office Supplies - General	5,059.41	3,500	-1,559.41	144.55%	Supplies for other departments	
519.52.01	Operating Supplies	2,798.92	1,500	-1,298.92	186.59%	Supplies for other departments	
519.54.01	Dues, Subscriptions & Memberships	835.00	1,200	365.00	69.58%		
519.55.01	Contingency		15,000	15,000.00	0.00%		
	<b>TOTALS, SUPPLIES, SERVICES:</b>	<b>266,127</b>	<b>224,550</b>	<b>-31,577.08</b>	<b>114.06%</b>		
	<b>TOTAL OPERATING EXPENSES/BUDGET:</b>	<b>288,927.96</b>	<b>286,894</b>	<b>-30,033.96</b>	<b>111.80%</b>		
519.64.03	Capital Outlay	40,040.45	9,100	-30,940.45	440.00%	Transfer to Cap Projects for Pavilion, Entry Sign, Rec Center	
	<b>TOTAL CAPITAL OUTLAY</b>	<b>40,040.45</b>	<b>9,100.00</b>	<b>-30,940.45</b>	<b>440.00%</b>		
519.82.01	Aids to Private Organizations	2,500.00	2,500	0.00	100.00%		
	<b>GRANTS &amp; AIDS:</b>	<b>2,500.00</b>	<b>2,500</b>	<b>0.00</b>	<b>100.00%</b>		
	<b>TOTAL DEPARTMENT EXPENSES/BUDGET:</b>	<b>331,468.41</b>	<b>270,494</b>	<b>-60,974.41</b>	<b>122.84%</b>		

VILLAGE OF BISCAYNE PARK  
BUDGET VS ACTUAL AS OF 9/30/2009 (PERIOD 12)

FUND	GENERAL FUND	FY 08-09 YEAR TO DATE 9/30/09	FY 08-09 ADOPTED BUDGET	VARIANCE	
OBJECT:	REVENUES				
DEPARTMENT:	POLICE				
521.12.01	Regular Salaries	565,506.65	483,779	-81,727.65	116.89%
521.13.01	Other Salaries & Wages	59,073.28	104,397	45,323.72	56.59%
521.14.01	Overtime	56,583.76	55,000	-1,583.76	102.88%
521.15.01	Special Pay - Officer Incentive	7,425.00	8,000	575.00	92.81%
521.16.01	Court Time	6,000.28	5,000	-1,000.28	120.01%
521.17.01	Holiday Pay				
521.19.01	Banked Sick Leave				
521.21.01	FICA Taxes	43,579.60	40,683	-2,896.60	107.12%
521.22.01	Medicare	10,071.34	9,515	-556.34	105.85%
521.22.02	Retirement	131,476.95	134,389	2,912.05	97.83%
521.23.01	Life, Health & Dental Insurance	73,717.13	79,013	3,295.87	95.53%
521.24.01	Workers Compensation	144,440.66	79,867	-64,573.66	180.85%
521.25.01	Unemployment Compensation	5,017.45		-5,017.45	
521.26.01	Liability Insurance	18,135.73	27,421	8,285.27	69.78%
	<b>AL PERSONAL SERVICES:</b>	<b>1,124,027.83</b>	<b>1,027,064</b>	<b>-96,963.83</b>	<b>109.44%</b>
521.31.04	Contract Services - Other	1,420.42	1,200	-220.42	118.37%
521.34.01	Contract Services	3,054.06	1,000	-2,054.06	305.41%
521.40.01	Travel, Conferences & Meetings	419.00	1,500	1,081.00	27.93%
521.41.01	Telephone & Cellular Air Time	4,414.97	6,000	1,585.03	123.58%
521.44.01	Rental & Lease - Beepers	917.95	1,500	582.05	61.20%
521.45.01	Insurance - Auto	9,283.10	21,700	12,416.90	42.78%
521.46.01	R&M - Vehicles	19,852.63	15,000	-4,852.63	132.35%
521.46.02	R&M - Equipment	3,830.42	5,000	1,169.58	76.61%
521.46.03	R&M - Radio	3,997.80	4,000	2.20	99.95%
521.47.01	Printing & Binding	685.33	1,000	314.67	68.53%
521.51.01	Office Supplies	4,338.36	4,500	161.64	96.41%
521.52.02	Gas & Oil	31,712.84	50,000	18,287.16	63.43%
521.52.03	Tires & Tire Repair	3,934.75	4,500	565.25	87.44%
521.52.04	Uniforms	6,025.57	5,000	-1,025.57	120.51%
521.52.05	Vests - Body Armor	1,195.78	1,200	1.22	99.99%
521.52.06	Dry Cleaning - Uniforms	2,643.00	1,800	-843.00	146.83%
521.52.07	Ammunition	784.55	3,000	2,215.45	26.15%
521.52.08	Photography	165.31	200	34.69	82.66%
521.52.12	Special Department Supplies	2,710.11	4,500	1,789.89	60.22%
521.54.01	Dues, Subscriptions & Memberships	3,136.08	3,000	-136.08	104.60%
512.54.02	Education & Training	1,539.80	4,000	2,460.20	38.50%
	<b>TOTAL MATERIALS, SUPPLIES, SERVICES:</b>	<b>109,065.83</b>	<b>139,600</b>	<b>30,534.17</b>	<b>78.13%</b>
	<b>TOTAL OPERATING EXPENSES/BUDGET:</b>	<b>1,233,094.66</b>	<b>1,166,664</b>	<b>-66,430.66</b>	<b>105.85%</b>
521.64.01	Vehicles-Debt Service	25,484.19	41,988	16,483.81	60.72%
521.64.02	Machinery & Equipment - Vehicles	128,810.00		-128,810.00	
	<b>TOTAL CAPITAL OUTLAY</b>	<b>154,294.19</b>	<b>41,988</b>	<b>-112,306.19</b>	<b>367.86%</b>
	<b>TOTAL DEPARTMENT EXPENSES/BUDGET:</b>	<b>1,387,388.86</b>	<b>1,208,652</b>	<b>-178,736.86</b>	<b>114.79%</b>

VILLAGE OF BISCAYNE PARK  
 BUDGET VS ACTUAL AS OF 9/30/2009 (PERIOD 12)

FUND	GENERAL FUND	FY 08-09	FY 08-09	FY 08-09					
OBJECT:	REVENUES	YEAR TO DATE	ADOPTED	VARIANCE	91.65%				
		9/30/09	BUDGET						
<b>DEPARTMENT:</b>									
<b>BUILDING</b>									
524.12.01	Regular Salaries	28,401.44	27,502	-899.44	103.27%			Salary adjustment	
524.13.01	Other Salaries & Wages	21,704.82	24,020	2,315.18	90.36%				
524.14.01	Overtime	96.86	495	398.14	19.57%				
524.21.01	FICA Taxes	3,530.60	3,040	-490.60	116.14%			additional expense related to payroll	
524.21.02	Medicare	825.74	710	-115.74	116.30%			additional expense related to payroll	
524.22.01	Retirement	3,137.30	2,758	-379.30	113.75%			additional expense related to payroll	
524.23.01	Life, Health & Dental Insurance	5,249.83	6,584	1,034.17	84.29%				
524.24.01	Workers Compensation	1,749.93	1,480	-269.93	118.24%			additional expense related to payroll	
524.26.01	Liability Insurance	1,256.52	1,088	-168.52	115.49%			additional expense related to payroll	
	<b>TOTAL PERSONAL SERVICES:</b>	<b>66,263.04</b>	<b>67,877</b>	<b>1,423.96</b>	<b>97.90%</b>				
524.31.07	Inspectors Fees	40,383.07	60,000	19,616.93	67.31%			decrease of permits, see related decrease in revenue	
524.31.08	Structural Engineer	525.00	1,200	675.00	43.75%				
524.46.02	R&M Equipment	1,195.00	1,200	2.00	99.83%				
524.47.01	Printing & Binding	10.00	250	240.00	4.00%				
524.49.03	Special Departmental Supplies		500	500.00	0.00%				
524.51.01	Office Supplies	414.27	2,000	1,585.73	20.71%				
524.54.01	Subscriptions, Memberships, Books	100.00	250	150.00	40.00%				
524.54.02	Education & Training		1,000	1,000.00	0.00%				
524.64.02	Machinery & Equipment								
	<b>TOTAL MATERIALS, SUPPLIES, SERVICES:</b>	<b>42,630.34</b>	<b>66,400</b>	<b>23,769.66</b>	<b>64.20%</b>				
	<b>TOTAL OPERATING EXPENSES/BUDGET:</b>	<b>108,883.38</b>	<b>134,077</b>	<b>25,193.62</b>	<b>81.21%</b>				

VILLAGE OF BISCAYNE PARK  
 BUDGET VS ACTUAL AS OF 9/30/2008 (PERIOD 12)

FUND	GENERAL FUND	FY 08-09	FY 08-09						
OBJECT:	REVENUES	YEAR TO DATE	ADOPTED	VARIANCE	91.66%				
		9/30/09	BUDGET						
<b>DEPARTMENT:</b>	<b>CODE ENFORCEMENT</b>								
529.12.01	Regular Salaries	43,559.17	42,552	-1,007.17	102.37%				
529.13.01	Other Salaries & Wages	2,127.63	614	-2,127.63	287.39%			Union requirement	
529.14.01	Overtime	1,641.78	2,876	-1,027.78	110.41%			Code Review meetings	
529.21.01	FICA Taxes	2,954.65	628	-2,785.65	110.38%			Additional expense related	
529.21.02	Medicare	691.00	4,252	-442.15	110.40%			Additional expense related	
529.22.01	Retirement	4,694.15	6,584	-442.15	88.55%			Additional expense related	
529.23.01	Life, Health & Dental Insurance	5,830.24	2,767	-2,563.27	109.26%			Additional expense related	
529.24.01	Workers Compensation	3,023.27	959	-88.06	109.18%			Additional expense related	
529.26.01	Liability Insurance	1,047.06	61,030	-4,538.95	107.44%				
	<b>TOTAL PERSONAL SERVICES:</b>	<b>65,668.95</b>	<b>61,030</b>	<b>-4,538.95</b>	<b>107.44%</b>				
529.33.01	Court/Hearing Reporter	0.00	850	850.00	0.00%				
529.41.01	Telephone & Cellular Air Time	1,424.09	650	-774.09	219.09%			Per implementation of policies and procedure	
529.42.01	Postage	12.25	1,000	987.75	1.23%			computer and auto repairs	
529.46.01	R&M Equipment	2,022.00	1,200	-922.00	168.50%				
529.47.01	Printing	11.52	150	138.48	7.68%				
529.51.01	Office Supplies & Misc.	584.76	750	165.24	77.97%				
529.52.02	Gas & Oil	0.00	100	100.00	0.00%				
529.52.03	Tires & Tire Repair	0.00	275	275.00	0.00%				
529.52.04	Uniforms	98.00	250	152.00	39.20%				
529.54.02	Education & Training	435.00		-435.00				Code IV classification	
	<b>TOTAL MATERIALS, SUPPLIES, SERVICES:</b>	<b>4,587.62</b>	<b>6,225</b>	<b>637.39</b>	<b>87.90%</b>				
529.64.02	Machinery & Equipment								
	<b>TOTAL DEPARTMENT EXPENSES / BUDGET:</b>	<b>70,166.57</b>	<b>66,255</b>	<b>-3,901.57</b>	<b>105.89%</b>				

VILLAGE OF BISCAYNE PARK  
BUDGET VS ACTUAL AS OF 9/30/2009 (PERIOD 12)

FUND	GENERAL FUND	FY 08-09	FY 08-09						
OBJECT:	REVENUES	YEAR TO DATE	ADOPTED	VARIANCE					
DEPARTMENT:		9/30/09	BUDGET						
OBJECT/ACCOUNT NAME:	PUBLIC WORKS								91.66%
534.12.01	Regular Salaries	99,318.59	114,909	15,590.41					86.43%
534.13.01	Other Salaries & Wages	4,956.76	5,745	788.24					86.28%
534.14.01	Overtime	929.74	1,500	570.26					61.98%
534.19.01	Banked Sick Leave								
534.21.01	FICA Taxes	6,522.72	7,574	1,051.28					86.12%
534.21.02	Medicare	1,525.47	1,771	245.53					86.14%
534.22.01	Retirement	10,473.95	12,032	1,558.05					87.05%
534.23.01	Life, Health & Dental Insurance	21,278.86	27,654	6,375.12					76.95%
534.24.01	Workers' Compensation	8,430.90	11,534	3,103.10					73.10%
534.25.01	Unemployment Compensation	998.52		-998.52					
534.26.01	Insurance - Liability	1,698.42	2,712	1,013.58					62.63%
	<b>TOTAL PERSONAL SERVICES:</b>	<b>166,133.96</b>	<b>186,431</b>	<b>29,297.05</b>					<b>84.20%</b>
534.40.02	Education & Training	75.00		-75.00					
534.41.01	Telephone	2,484.24	4,900	2,415.76					50.70%
534.43.01	Electric	1,821.15	4,000	2,178.85					45.53%
534.43.02	Water	745.36	2,000	1,254.64					37.27%
534.44.02	Equipment Rental	2,801.77	4,000	1,198.23					70.04%
534.45.01	Insurance - Auto	601.00	2,400	1,799.00					25.04%
534.46.01	R&M Vehicles	274.43	1,500	1,225.57					18.30%
534.46.02	R&M Equipment	3,354.32	2,800	-554.32					119.80%
534.46.03	R&M Buildings	18,289.34	3,000	-15,289.34					609.64%
534.46.05	R&M Field	10,335.18	17,180	6,844.82					60.16%
534.49.05	Truck Washing		250	250.00					0.00%
534.51.01	Office Supplies	1,398.83	1,500	101.17					93.26%
534.52.01	Operating Supplies	8,874.54	10,000	1,125.46					88.75%
534.52.02	Gas & Oil	1,948.78	16,000	14,051.22					12.18%
534.52.03	Tires & Tire Repair		1,500	1,500.00					0.00%
534.52.04	Uniform Rental	2,065.87	2,000	-65.87					103.29%
	<b>TOTAL MATERIALS, SUPPLIES, SERVICES:</b>	<b>65,069.81</b>	<b>73,030</b>	<b>17,960.19</b>					<b>76.41%</b>
	<b>TOTAL OPERATING EXPENSES / BUDGET:</b>	<b>211,203.76</b>	<b>268,461</b>	<b>47,257.24</b>					<b>81.72%</b>
534.62.01	Buildings			0.00					
534.63.02	Landscaping		10,000	10,000.00					0.00%
534.64.02	Machinery & Equipment	2,300.00		-2,300.00					
	<b>TOTAL CAPITAL OUTLAY:</b>	<b>2,300.00</b>	<b>10,000</b>	<b>7,700.00</b>					<b>23.00%</b>
	<b>TOTAL NON-OPERATING BUDGET:</b>	<b>2,300.00</b>	<b>10,000</b>	<b>7,700.00</b>					<b>23.00%</b>
	<b>TOTAL DEPARTMENT EXPENSES / BUDGET:</b>	<b>213,503.76</b>	<b>268,461</b>	<b>64,967.24</b>					<b>79.63%</b>

VILLAGE OF BISCAYNE PARK  
BUDGET VS ACTUAL AS OF 9/30/2009 (PERIOD 12)

FUND	GENERAL FUND REVENUES	FY 08-09 YEAR TO DATE 9/30/09	FY 08-09 ADOPTED BUDGET	VARIANCE	91.66%
DEPARTMENT:	RECREATION				
572.12.01	Regular Salaries	45,153.66	72,303	27,149.34	62.45%
572.13.01	Other Salaries/Wages	26,984.85	55,280	28,295.15	48.81%
572.14.01	Overtime	3,486.23		-3,486.23	
572.19.01	Compensated Absences	37,500.00		-37,500.00	
572.21.01	FICA Taxes	4,750.56	7,910	3,159.45	60.06%
572.21.02	Medicare	1,111.01	1,850	738.99	60.05%
572.22.01	Retirement	4,782.37	7,122	2,339.63	67.15%
572.23.01	Life, Health & Dental Insurance	7,452.71	13,169	5,716.29	56.39%
572.24.01	Workers Compensation	4,448.48	8,178	3,729.52	54.40%
572.25.01	Unemployment Compensation	11,174.86		-11,174.86	
572.26.01	Liability Insurance	2,041.03	2,832	790.97	72.07%
	<b>TOTAL PERSONAL SERVICES:</b>	<b>148,885.76</b>	<b>168,644</b>	<b>19,768.25</b>	<b>88.28%</b>
572.31.08	Professional Services		300.00	300.00	0.00%
572.41.01	Telephone	3,876.87	3,500	-376.87	110.77%
572.43.01	Electric Utility Services	8,452.98	7,500	-952.98	112.70%
572.43.02	Water Utility Services	608.10	1,100	491.90	55.28%
572.44.02	Equipment Rental & Lease	844.19	1,000	155.81	84.42%
572.45.01	Insurance - Auto	3,353.00	2,670	-683.00	125.68%
572.46.01	R&M Vehicles	50.00	1,500	1,450.00	3.33%
572.46.02	R&M Equipment	2,095.00	800	-1,295.00	261.88%
572.47.01	Printing & Binding		100	100.00	0.00%
572.51.01	Office Supplies - General		500	500.00	0.00%
572.52.01	Operating Supplies	3,849.34	4,000	150.66	96.23%
572.52.02	Gas & Oil	828.11	2,000	1,171.89	41.41%
572.52.09	Concession - Resale	3,781.06	10,000	6,218.94	37.81%
572.52.10	Games - Indoor		2,000	2,000.00	0.00%
572.52.11	Games - Outdoor	106.00	1,500	1,394.00	7.07%
572.54.01	Dues, Subscriptions & Memberships	165.00	100	-65.00	165.00%
572.55.01	Special Events	7,951.27	8,000	48.73	99.39%
	<b>TOTAL MATERIALS, SUPPLIES, SERVICES:</b>	<b>35,960.62</b>	<b>46,670</b>	<b>10,609.48</b>	<b>77.22%</b>
	<b>TOTAL OPERATING EXPENSES / BUDGET:</b>	<b>184,846.27</b>	<b>216,214</b>	<b>30,367.73</b>	<b>85.89%</b>
572.63.01	Improvements other than Buildings				
572.64.02	Machinery & Equipment				
572.74.01	Lease/Purchase	12,914.20	12,930	15.80	99.88%
	<b>TOTAL CAPITAL OUTLAY</b>	<b>12,914.20</b>	<b>12,930</b>	<b>15.80</b>	<b>99.88%</b>
	<b>TOTAL DEPARTMENT EXPENSES / BUDGET:</b>	<b>197,760.47</b>	<b>228,144</b>	<b>30,383.63</b>	<b>86.68%</b>
	<b>TOTAL EXPENSES</b>	<b>2,712,121.68</b>	<b>2,519,751</b>	<b>(192,370.68)</b>	<b>107.63%</b>
	<b>TOTAL REVENUE</b>	<b>2,663,942.61</b>	<b>2,519,761</b>	<b>(64,191.61)</b>	<b>102.66%</b>
	<b>TOTAL REVENUES/TOTAL EXPENSES</b>	<b>(128,179.97)</b>	<b>-</b>	<b>128,179.97</b>	

VILLAGE OF BISCAYNE PARK  
 BUDGET VS ACTUAL AS OF 9/30/2009 (PERIOD 12)

FUND	GENERAL FUND	FY 08-09	FY 08-09						
OBJECT:	REVENUES	YEAR TO DATE	ADOPTED	VARIANCE					
FUND	ROAD FUND	9/30/09	BUDGET						
	REVENUE:								
312.40.10	Local Option Gas Tax -Capital Improvements	21,827.45	22,620	792.55					
312.40.20	Local Option Gas Tax (6 Cents)	56,916.22	59,230	3,311.78					
334.10.00	Forestry Grant	11,100.00	11,000	-100.00					
334.20.00	DOT Landscaping Grant	3,960.00	3,960	0.00					
335.12.00	State Revenue Sharing	22,648.94	25,477	2,828.06					
335.14.00	Fuel Tax Rebate	2,417.68	2,000	-417.68					
361.00.00	Interest	111.61	363	251.39					
391.91.00	CIT Road Improvements	28,750.00	43,000	14,250.00					
	<b>TOTAL REVENUES/BUDGET:</b>	<b>145,753.90</b>	<b>167,690</b>	<b>20,936.10</b>					
534.12.01	Regular Salaries	72,879.71	76,972	4,092.29					
534.13.01	Other Salaries/Wages	2,929.59	8,078	5,148.41					
534.14.01	Overtime	3,051.86	1,000	-2,051.86					
534.19.01	Banked Sick Leave								
534.21.01	FICA Taxes	4,889.39	4,833	-56.39					
534.21.02	Medicare	1,143.49	1,730	-13.49					
534.22.01	Retirement	7,826.13	7,680	-146.13					
534.23.01	Life, Health & Dental Insurance	14,283.08	17,120	2,836.92					
534.24.01	Workers Compensation	5,687.04	7,075	1,387.96					
534.25.01	Unemployment Compensation								
534.26.01	Insurance - Liability	1,145.66	1,730	584.34					
534.31.08	Contract Services		2,000	2,000.00					
534.45.01	Auto Insurance	1,443.00	2,372	929.00					
534.46.01	R&M Vehicles	1,102.64	3,200	2,097.36					
534.46.02	R&M Equipment	881.87	2,500	1,618.13					
534.62.01	Operating Supplies	1,455.55	2,500	1,044.45					
534.62.02	Gas & Oil	3,891.31	3,000	-891.31					
534.62.04	Uniforms	1,464.40	1,000	-464.40					
534.63.01	Road Materials	325.00	3,500	3,175.00					
534.63.01	Improvements other than Buildings	21,600.00	22,000	400.00					
	<b>TOTAL DEPARTMENT EXPENSES/BUDGET</b>	<b>145,995.72</b>	<b>167,690</b>	<b>21,695.28</b>					
	<b>TOTAL EXPENSES</b>	<b>145,995.72</b>	<b>167,690</b>	<b>21,695.28</b>					
	<b>TOTAL REVENUE</b>	<b>146,763.90</b>	<b>167,690</b>	<b>20,936.10</b>					
	<b>TOTAL REVENUES/TOTAL EXPENSES</b>	<b>764.18</b>	<b>-</b>	<b>-764.18</b>					

VILLAGE OF BISCAYNE PARK  
BUDGET VS ACTUAL AS OF 9/30/2009 (PERIOD 12)

FUND	GENERAL FUND	FY 08-09	FY 08-09						
OBJECT:	REVENUES	YEAR TO DATE	ADOPTED	VARIANCE	91.66%				
FUND	SANITATION FUND	9/30/09	BUDGET						
343.40.01	REVENUE:	683,259.14	707,310	24,050.86	96.60%				Net of 4%
343.40.03	Special Pick-up / Lot Clearing	22,630.00	5,000	-17,630.00	452.60%				Based on pick ups
	<b>TOTAL REVENUES/BUDGET:</b>	<b>706,889.14</b>	<b>712,310</b>	<b>6,420.86</b>	<b>99.10%</b>				
	<b>EXPENSES</b>								
	<b>OBJECT/ACCOUNT NAME:</b>								
534.12.01	Regular Salaries	243,372.44	214,747	-28,625.44	113.33%				Proper allocation of employee hours
534.13.01	Other Salaries & Wages	5,974.15	14,287	8,312.85	41.82%				Proper allocation of employee hours
534.14.01	Overtime	1,130.70	1,000	-130.70	113.07%				Proper allocation of employee hours
534.19.01	Banked Sick Leave	(2,893.97)	1,635	4,528.97	-177.00%				Proper allocation of employee hours
534.21.01	FICA Taxes	15,525.59	13,314	-2,211.59	116.64%				Related expense to allocation of payroll
534.21.02	Medicare	3,631.92	3,114	-517.92	116.63%				Related expense to allocation of payroll
534.22.01	Retirement	24,771.58	21,153	-3,618.58	117.11%				Related expense to allocation of payroll
534.23.01	Life, Health & Dental Insurance	53,074.79	53,991	916.21	98.30%				Related expense to allocation of payroll
534.24.01	Workers' Compensation	33,208.08	30,009	-3,199.08	110.66%				Related expense to allocation of payroll
534.26.01	Insurance - Liability	4,734.17	4,767	32.83	99.31%				Related expense to allocation of payroll
	<b>TOTAL PERSONAL SERVICES:</b>	<b>382,633.45</b>	<b>368,017</b>	<b>-24,616.46</b>	<b>106.88%</b>				
534.34.02	Dump-Garbage/Waste	153,267.27	190,500	37,232.73	80.46%				
534.34.03	Dump-Recycling	35,000.00	35,000.00	0.00	100.00%				
534.41.01	Telephone	2,484.24	1,295	-1,189.24	191.83%				
534.41.02	Radio's		1,060	1,060.00	0.00%				
534.43.01	Electric	1,721.14	1,135	-586.14	151.64%				
534.43.02	Water	745.36	370	-375.36	201.45%				
534.45.01	Insurance - Auto	3,011.00	5,856	2,845.00	51.42%				
534.46.01	R&M Vehicles	13,287.84	7,000	-6,287.84	189.83%				Hydraulic repairs
534.48.05	Truck Washing		1,000	1,000.00	0.00%				
534.52.01	Operating Supplies	3,545.68	2,000	-1,545.68	177.28%				
534.52.02	Gas & Oil	16,166.19	26,504	10,337.81	61.00%				
534.52.03	Tires & Tire Repair	1,031.69	2,000	968.31	51.58%				
534.52.04	Uniform Rental	3,062.72	2,700	-362.72	113.43%				
534.59.00	Depreciation	12,517.90	20,327	7,809.10	61.58%				
534.53.02	Administration Fee-Miami-Dade	7,073.10	35,366	28,292.90	20.00%				Actual 1%
534.53.03	Administration Fee-Biscayne Park	50,000.00	-	-50,000.00	0.00%				Transfer of Overhead Cost
	<b>TOTAL MATERIALS, SUPPLIES, SERVICES:</b>	<b>302,914.13</b>	<b>332,113</b>	<b>29,198.87</b>	<b>91.21%</b>				
534.75.01	Lease/Purchase Interest	2,436.94	22,180	19,743.06	10.99%				Actual
	<b>TOTAL DEBT SERVICE</b>	<b>2,436.94</b>	<b>22,180</b>	<b>19,743.06</b>	<b>10.99%</b>				
	<b>TOTAL DEPARTMENT EXPENSES/BUDGET</b>	<b>687,884.62</b>	<b>712,310</b>	<b>24,425.48</b>	<b>96.67%</b>				
	<b>TOTAL EXPENSES</b>	<b>687,884.62</b>	<b>712,310</b>	<b>24,425.48</b>	<b>96.67%</b>				
	<b>TOTAL REVENUE</b>	<b>706,889.14</b>	<b>712,310</b>	<b>6,420.86</b>	<b>99.10%</b>				
	<b>TOTAL REVENUES/TOTAL EXPENSES</b>	<b>18,004.62</b>	<b>-</b>	<b>(18,004.62)</b>					

**7 F**

**BISCAYNE PARK POLICE DEPARTMENT**

**M E M O R A N D U M**

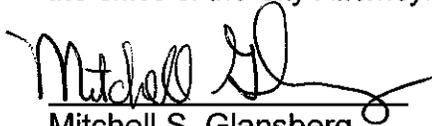
TO: Ms. Ana M. Garcia, Village Manager  
FROM: Chief Mitchell Glansberg  
DATE: November 30, 2009  
CC: Mayor John Hornbuckle, Village Commission, Mrs. Kim Prenter,  
Village Clerk  
RE: Agenda Item: Federal Forfeiture Funds Expenditure

**Federal Forfeiture Funds Expenditure:**

The Village of Biscayne Park Police Department is seeking expenditure of \$2500.00 which is needed to pay for costs associated with a protracted and complex investigation as authorized by Chapter 932 Florida Statutes.

**CERTIFICATION:**

*I, Mitchell S. Glansberg, Chief of Police, certify that all funds from the above request(s) will be utilized for law enforcement purposes and comply with the requirements of the State of Florida Forfeiture Guidelines and The Department of Justice/Treasury Forfeiture Guidelines, where applicable. The above request has been reviewed and approved by the office of the City Attorney.*

  
Mitchell S. Glansberg  
Chief of Police

**NINTH ORDER OF BUSINESS**

**9A**

MEMORANDUM

**TO:** Honorable Village Commission  
Ana M. Garcia, Village Manager  
Kim Prenter, Village Clerk

**FROM:** John J. Hearn, Village Attorney 

**RE:** Renewal of TECO Gas Franchise Agreement

**DATE:** December 3, 2009

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Attached please find a proposed Ordinance and Agreement with People's Gas System, a division of Tampa Electric Company, to renew a non-exclusive franchise agreement allowing the franchisee to maintain and operate a gas system facility in the Village of Biscayne Park. The proposed Agreement is for a three-year period with automatic three-year renewals, unless the Village or the franchisee provides sixty days notice of termination. The Franchise Agreement, consistent with the previous Agreement and with other municipalities, provides for a six percent franchise fee.

There are currently 257 Village of Biscayne Park residents who receive natural gas from the franchisee. The Village Finance Director has found that last year, the Village received a franchise fee of \$2,718.49, six percent of the gross revenue.

There will be a representative from the franchisee at the Commission meeting to answer any further questions. I have been informed that any Village resident that would like to receive services from the franchisee can contact their residential customer's division at 1-800-235-4427.

JJH:dlw



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may be re-numbered or re-lettered and the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intentions.

**Section 5.** All Ordinances or parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be, and the same are hereby repealed to the extent of such conflict.

**Section 6.** If any clause, section, or other part or application of this Ordinance shall be held by any court of competent jurisdiction to be unconstitutional or invalid, such unconstitutional or invalid part or application shall be considered as eliminated and so not affecting the validity of the remaining portions or applications remaining in full force and effect.

The foregoing Ordinance was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by \_\_\_\_\_.

PASSED AND ADOPTED upon first reading this \_\_6th\_\_ day of \_\_October\_\_, 2009.

PASSED AND ADOPTED upon second reading this \_\_3<sup>rd</sup>\_\_ day of \_\_November\_\_, 2009.

\_\_\_\_\_  
John Hornbuckle, Mayor

**ATTEST:**

\_\_\_\_\_  
Village Clerk

**APPROVED AS TO LEGAL FORM  
AND SUFFICIENCY:**

\_\_\_\_\_  
John J. Hearn, Village Attorney

## **NON-EXCLUSIVE FRANCHISE AGREEMENT**

This NON-EXCLUSIVE FRANCHISE AGREEMENT (the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2009 between the Village of Biscayne Park, Florida, a Florida municipal corporation ("Village") and Peoples Gas System, a division of Tampa Electric Company, a Florida corporation ("Franchisee"). (Village and Franchisee shall sometimes be collectively referred to as the "Parties" and, individually, as a "Party").

### WITNESETH

WHEREAS, the Village and Franchisee were parties to a franchise agreement that expired in December, 2005; and

WHEREAS, the Village desires to grant a non-exclusive franchise to permit the construction, maintenance and operation of gas facilities within the Village; and

WHEREAS, the Franchisee has expressed its capability to provide such services.

NOW, THEREFORE, the Parties agree as follows:

### **SECTION 1. DEFINITIONS**

- a. "Village" shall mean the Village of Biscayne Park, Miami-Dade County, Florida.
- b. "Franchise" shall mean this Agreement and the rights granted to Franchisee hereunder.
- c. "Franchisee" shall mean Peoples Gas System, a division of Tampa Electric Company, its successors, assigns, contractors, subcontractors and agents.

d. "Gas system facilities" or "facilities" shall mean and include, but not be limited to, gas mains, pipes, supply pipes, conduits, ducts and any other hardware or other means of conveying gas for the purpose of supplying natural, manufactured and other gas to the meter of the Customer, constructed both prior to and during the term of this Agreement.

e. "Customers" shall mean all residences, businesses, governmental entities and industrial establishments located within the Village purchasing gas from Franchisee.

f. "Fiscal Year" shall mean October 1<sup>st</sup> through September 30<sup>th</sup> of each year.

g. "Franchise Fee" shall mean the fees described in Section 8 of this Agreement.

h. "Franchise Fee Factor" shall mean the value of compensation as computed in Section 8 as if it had been calculated as six percent (6%) of Franchisee's Gross Revenues (as defined by the Florida Public Service Commission ("FPSC")) from the sale, transportation, distribution and delivery of natural gas to Customers in the Village.

i. "Uncollectible accounts" shall mean any account which has been closed and the deposit applied and is sixty (60) days past due.

## **SECTION 2. FRANCHISE**

The Franchisee is given the non-exclusive right, privilege and franchise to construct, maintain and operate only gas system facilities in, under, upon, over and across the present and future streets, alleys, bridges, easements and other public places of the Village. The Franchise shall be exercised in accordance with established

industry practices regarding gas system construction and maintenance and the orders, rules and regulations of the FPSC or any other regulatory body having jurisdiction over the Franchisee and, to the extent permitted by law, the Village's installation and maintenance standards for the purpose of supplying natural, manufactured and other gas to the Village, its successors and the citizens of the Village and Miami-Dade County. The Franchise term shall be the period of time commencing as of the effective date of this Agreement and continuing in full force and effect until expiring at midnight on December 31, 2012; provided, however, that the Franchise will automatically renew for successive three (3) year terms until such time as one of the parties notifies the other, with no less than sixty (60) days written notice, prior to the expiration of the then-current term, that it does not want the Franchise to automatically renew. If either Party elects not to renew the Franchise, then the Franchise shall expire upon the conclusion of the then current term.

This grant of authority to Franchisee is strictly limited to the provision of natural gas service only. It is explicitly recognized that this Franchise does not limit the Franchisee's ability to operate a liquefied petroleum (commonly referred to as LP gas, bottled gas, or propane) business within the incorporated limits of the Village, similar to any other liquefied petroleum business nor does it limit the Village's ability to assess utility tax upon the liquefied petroleum business within the limits permitted under Florida Statutes. In the event Franchisee desires to use its existing facilities or to construct new facilities for the purpose of providing other utility or non-utility services to existing or potential Customers, including but not limited to providing public communications, leased fiber optic capacity, video services, telecommunication services or any other

services other than the provision of gas, or providing any other use to existing or potential Customers, Franchisee shall seek additional and separate permission from the Village for such activities.

The Franchisee shall not sell, assign, lease or otherwise alienate and transfer this Franchise without the prior consent of the Village provided that such consent shall not be unreasonably withheld or delayed by the Village. Notwithstanding the foregoing, Franchisee shall have the right, without obtaining the Village's consent, to transfer or assign this Franchise as a result of a total or complete merger or consolidation of Franchisee with a third party, or sale of the Peoples Gas division assets. Any sale, assignment, lease or other alienation and transfer of this Franchise shall be subject to the conditions that (i) the successor-in-interest to the facilities and/or the rights under this Franchise shall have agreed in writing to be bound by the terms and conditions of this Agreement, and (ii) at least sixty (60) days prior to the effective date of any such transfer, all Franchise Fees owing the Village hereunder shall have been paid and any material Franchise compliance issues shall have been resolved. Any dispute relating to or arising out of the provisions of this paragraph shall be subject to the arbitration provisions set forth below in Section 22 of this Agreement.

Franchisee may, without obtaining the Village's consent, pledge this Franchise and/or the facilities as security, provided, however, in the event of a foreclosure of the pledge, the Village shall have the right to revoke the Franchise under Section 14 below.

Franchisee shall submit to the Village, upon request, a copy of its audited financials published in annual reports of Franchisee or Franchisee's affiliate or its successor.

### **SECTION 3. USE AND MAINTENANCE OF PUBLIC RIGHTS-OF-WAY**

Franchisee's gas system facilities shall be located or relocated and so constructed as not to interfere with, including but not limited to, existing sanitary sewers, existing drainage systems, water pipes, electrical conduits, communications cables or other public utility service facilities. The Franchisee's facilities shall not obstruct or interfere with, including but not limited to, the public uses of streets, roads, highways or alleys. The location or relocation of all facilities shall be made after Franchisee has received all applicable permits, approvals and permissions from the Village and such other governmental entities as may be necessary, and the location(s) or relocation(s) shall be subject to the Village's supervision and approval. In consideration for the Franchise Fee paid under this Agreement, the Franchisee will not be assessed any permit fees associated with the installation of, or the construction of, any gas system facilities. In the event that Franchisee is acting in its proprietary function as a retail provider of gas equipment or appliances, Franchisee shall seek the appropriate permits from the Village. Franchisee shall cooperate with the Village at all times by providing timely and complete information regarding the exact location of its facilities including, but not limited to, maps, geographical information systems, plats, construction documents and drawings as may exist or be created from time to time. Franchisee and the Village shall cooperate and coordinate their efforts to make the most efficient and economical use of the gas system facilities.

If any street, highway or avenue is to be paved by the Village, the Village shall give written notice to the Franchisee not less than sixty (60) days prior to the commencement of paving. Provided the Franchisee does not already have a main in

the street, highway or avenue to provide natural gas service to the surrounding houses and other structures, Franchisee shall survey the surrounding houses and other structures to determine whether, in its sole discretion, construction of gas system facilities in the street, highway or avenue in question is economically feasible. Where such construction is determined to be economically feasible, the Franchisee shall construct such gas system facilities in the street, highway or avenue in question prior to paving by the Village. However, in the event the Company believes that such construction may not be completed prior to the Village's planned paving schedule, the Parties agree to negotiate a revised paving schedule satisfactory to both Parties.

The Franchisee shall, at its own expense, replace, repair and restore without delay any sidewalk, street, alley, pavement, water, sewer or other utility line or appurtenance, soil, landscaping, dirt or other improvement, property or structure of any nature, that may be damaged or displaced by the Franchisee in the conduct of its operations, and shall, at a minimum, restore all property to a condition equivalent to the condition immediately prior to the work and/or changes made by the Franchisee. Franchisee shall consider alternatives to open cutting of streets prior to the Village considering the issuance of any permit(s). Franchisee shall notify the Village when repair, replacement or other work is being conducted and completed. Franchisee shall take safety precautions to alert the public of work, which may include, but is not limited to, the use of barricades and signs. In the event that Franchisee fails to (a) take safety precautions to alert the public of work in accordance with the preceding paragraph or (b) repair, replace and restore any sidewalk, street, alley, pavement, water, sewer or other utility line or appurtenance, soil, landscaping, dirt or other improvement, property or

structure of any nature in accordance with the preceding paragraph, then the Village shall, upon no less than five (5) days written notice to Franchisee, be entitled to pursue any of the following remedies at its discretion:

(A) Withhold the issuance of further permits to the Franchisee or its contractor; or

(B) Perform the work reasonably necessary to cure Franchisee's breach utilizing Village employees, agents or contractors, charge any and all reasonable costs, plus a sum equal to ten percent (10%) of the cost against the Franchisee, and require reimbursement within ten (10) days after the Franchisee's receipt of the bill(s) forwarded for reimbursement by the Village.

Failure of Franchisee to act or reimburse the Village shall constitute a material failure triggering the notice, cure and recourse provisions of Section 14 below.

Notwithstanding any provision to the contrary in this Agreement, the Village may not pursue any of the above remedies until such time as Franchisee has received written notice from the Village advising Franchisee of such breach and providing Franchisee with sufficient opportunity to cure such breach.

Franchisee shall, at its own expense, notify residents or businesses within the area where the work is designated to be performed, by door hanger or U.S. mail (with a copy to the Village Manager), for any main extension work in the right-of-way that will exceed forty eight (48) hours.

The Village shall reimburse the Franchisee for any cost or expense of any nature in connection with the location or relocation of Franchisee's gas system facilities made necessary by the Village's improvement of any present or future Village-controlled public rights-of-way used or occupied by the Franchisee. The Franchisee and the Village shall not be liable for any cost or expense in connection with the location or relocation of its gas system facilities at the request of any non-governmental third party.

Such requests shall not be honored until such non-governmental third party has made arrangements to reimburse the Franchisee and/or the Village, as the case may be in a manner satisfactory to such party(ies).

#### **SECTION 4. INSURANCE**

The Franchisee, at all times during the exercise of its Franchise, shall carry general liability insurance in the amount of Five Million Dollars (\$5,000,000.00) to indemnify any persons sustaining personal injury or property damage as a result of the actions of the Franchisee in the construction, operation or maintenance of its facilities.

The Village shall be named as an additional insured. A certificate of insurance (including additional insured status) shall be filed with the Village Manager.

Notwithstanding the foregoing, the Franchisee may meet the insurance minimum using, in part or whole, self-insurance. In the event Franchisee elects to meet the insurance minimum using, in part or whole, self-insurance, the Franchisee shall provide the Village with documentation attesting to its self-insured status.

#### **SECTION 5. INSTALLATION OF GAS MAINS; MAP ON GAS LINES**

Before the commencement of the construction of any gas system facilities, the Franchisee shall provide a survey to the Village establishing the location, lines, grade elevations or any other information requested by the Village in connection with the gas system facilities. The laying of such facilities shall conform exactly to the designated locations, lines, grade elevations or other conditions of the Village. After completion of any work, two copies of complete "As-Built" plans will be furnished to the Village. No street or other public way or place shall be excavated without Franchisee securing a permit from the Village. All expenses necessarily and reasonably incurred by the

Village in connection with the provisions of this section shall be paid by the Franchisee. Franchisee agrees that the materials to be used in the construction, operation and maintenance of the gas system facilities and the service to be rendered shall be equivalent to those provided to the Franchisee's other franchised communities.

The Franchisee shall, at all times, keep an accurate map showing the location of all gas system facilities laid and maintained by Franchisee under this Franchise, which shall be accessible for inspection by Village officials at all times during reasonable hours.

#### **SECTION 6. ACCIDENTS OR DAMAGES**

The Village shall not be liable or responsible in any manner whatsoever for any accident, personal injury, property damage or any claim or damage that may occur in the course of the construction, operation or maintenance by Franchisee, its employees, agents, contractors, sublessees or licensees of any of its facilities, except for damages specifically caused by or arising out of the negligence, strict liability, intentional torts or criminal acts of the Village. Nothing in this Agreement shall be construed to affect in any way the Village's rights, privileges, and immunities under the doctrine of "sovereign immunity" as set forth in Section 768.28, Florida Statutes.

#### **SECTION 7. INDEMNIFICATION**

Franchisee agrees to indemnify, defend and hold harmless the Village, its officers, agents and employees from and against any and all claims, suits, actions, and causes of action arising during the term of this Franchise and resulting in personal injury, loss of life or damage to property sustained by any person or entity, caused by or arising out of Franchisee's negligent construction, operation or maintenance of its gas

system facilities within the Village, including all costs, reasonable attorneys fees, expenses, including any appeal, and including the investigations and defense of any action or proceeding and any order, judgment or decree which may be entered in any such action or proceeding, except for damages specifically caused by or arising out of the negligence, strict liability, intentional torts or criminal acts of the Village, its officers, agents, employees or contractors. Nothing in this Agreement shall be construed to affect in any way the Village's rights, privileges, and immunities under the doctrine of "sovereign immunity" as set forth in Section 768.28, Florida Statutes. The provisions of this Section shall survive the termination of this Agreement.

#### **SECTION 8. FRANCHISE FEE**

Within thirty (30) days after the close of the first full billing month following the effective date of this Franchise Agreement, and each month thereafter during the term of this Franchise Agreement, the Company, its successors or assigns, shall pay to the Village, or its successors, a sum of money which, when added to the amount of all taxes, licenses, permits, or other impositions levied or assessed by the Village and actually paid by Company, is equal to six percent (6%) of the Company's Gross Revenue, less any adjustments for uncollectible accounts, from the sale, transportation, distribution or delivery of natural gas to customers within the corporate limits of the Village. In the event any uncollectible account becomes collectable and/or is collected, an adjustment in amount due the Village shall be made in the next quarterly payment. The franchise fee payment shall be deemed paid on time if post-marked within thirty (30) days of the close of the preceding billing month. For purposes of this Section, Gross Revenues collected by the Franchisee shall include the portion of any customer

deposits that are applied to amounts owed under customer accounts within the Village's corporate limits.

### **SECTION 9. PARITY**

In the event the Franchisee enters into a franchise agreement with another Florida governmental entity in Miami-Dade, Broward or Palm Beach County, under which franchise fees are based upon a percentage of Gross Revenue that is higher than six percent (6%) of Franchisee's sales of natural gas to customers under such franchise, then the percentage basis of the Franchise Fee used in this Franchise shall be adjusted to provide for a Franchise Fee that equals the value of franchise fees that would result in the event that the percentage used in such other franchise agreement were applied to the gross revenues from sales of natural gas to customers in the Village and such adjustment shall be effective as of the first day of the month following the commencement date of the franchise for such other Florida governmental entity.

In the event the Franchisee enters into a franchise agreement with another Florida governmental entity in Miami-Dade, Broward or Palm Beach County, under which franchise fees are upon a volumetric calculation, then the Village shall be entitled to elect to continue to receive Franchise Fees based on a percentage of Gross Revenues or to receive Franchise Fees calculated on the basis of six and eighty-eight one hundredths cents (\$0.0688) per therm for residential customers, three and twenty-five one hundredths cents (\$0.0325) per therm for commercial customers and one cent (\$0.01) per therm for industrial customers. An election to convert calculations of Franchise Fees payable to the Village hereunder to a per therm approach shall be

effective as of the first day of the month following the Village's election to convert hereunder.

If, during the term of this Franchise Agreement, the Grantor, by franchise agreement or ordinance, allows other gas providers, gas consumers or gas transporters ("Alternate Gas Providers") the right, privilege or franchise to construct, maintain, operate or use gas facilities in, under, upon, over or across the present or future streets, alleys, bridges, easements or other public rights-of-way of the Village, for the purpose of supplying or delivering natural gas to customers located within the corporate limits of the Village or receiving such gas from a person other than the Grantee within such corporate limits, and imposes a franchise compensation obligation or an equivalent on such Alternate Gas Provider for any customer or class of customers that is less than that imposed with respect to the same customer or class of customers under this Franchise Agreement, the franchise compensation rate and/or base to which such rate is applied with respect to the same class of customers shall be reduced under this Franchise Agreement so that the franchise compensation paid hereunder for such customer class is no greater than the franchise compensation payable by such Alternate Gas Provider under the franchise agreement or ordinance applicable to it, when compared on a dollars-per-therm basis. In the event that the Grantor determines not to impose any franchise compensation by agreement, ordinance or otherwise on any such Alternate Gas Provider, the Grantee's obligation to pay a franchise fee under this Franchise Agreement with respect to revenues derived from the provision of service by the Grantee to the comparable class of customers served by such Alternate Gas Provider thereafter shall be extinguished.

## **SECTION 10. PERFORMANCE BOND**

At the time of its acceptance of the terms and conditions of this Agreement, the Franchisee shall file with the Village Clerk, after approval by the Village, an annual bond in the minimum sum of Fifty Thousand Dollars (\$50,000.00) having as a surety a company qualified to do business in the State of Florida and acceptable to the Village. The bond shall be conditioned on the full and faithful performance by the Franchisee of all requirements, duties and obligations imposed upon Franchisee by the provisions of this Agreement. The bond shall be furnished annually and shall provide a continuing guarantee of Franchisee's full and faithful performance at all times throughout the effective term of this Agreement.

## **SECTION 11. RIGHT OF VILLAGE OF BISCAYNE PARK TO INTERVENE**

The Village reserves the right to intervene in any suit, action or proceeding involving any provision of this Agreement. Franchisee agrees to advise the Village of any such suits.

## **SECTION 12. ACCOUNTS AND RECORDS; RIGHTS TO AUDIT**

The Franchisee shall establish and maintain appropriate accounts in accordance with generally accepted accounting methods, and shall maintain records in such detail that revenues within the limits of the Village are consistently declared and identified separately from all other revenues. All records shall be maintained for a minimum of three (3) years, or longer if required by applicable regulatory bodies. The Franchisee further agrees that the Village, by any duly authorized representative, shall have the right during business hours, and with prior notice, to inspect and/or audit the books and records of the Franchisee that evidence the Franchise Fees and computations of

Franchise Fee payments made by the Franchisee to the Village. If the Village decides to inspect and/or audit Franchisee's books and records, specifically Franchise Fee payments made to the Village and Franchise Fee computations, the Franchisee shall permit a Village representative to review the pertinent portion of the Franchisee's books and records including billing records at the Franchisee's office where these records are housed, during normal business hours. In the event that an audit of Franchisee's books determines that Franchisee made underpayment in any quarter and that the underpayment exceeded five percent (5%) of the amount actually due in such quarter, Franchisee shall pay interest at the rate of twelve percent (12%) per annum on the amount underpaid or not paid calculated from the date the amount was due to the date it was finally paid. Both the underpayment and interest shall be paid within thirty (30) days after receipt of demand by the Village.

### **SECTION 13. ANNEXATION BY VILLAGE**

Upon the Village's annexation of any property and reasonable notice to Franchisee thereof, the portion of Franchisee's gas system that may be located within such annexed territory, and upon the streets, alleys or public grounds, shall be subject to all the terms of this Franchise.

### **SECTION 14. FORFEITURE OR REVOCATION OF FRANCHISE**

The Franchisee's material failure to comply in any respect with any of the provisions of this Franchise after written notice from the Village and a reasonable opportunity, no less than sixty (60) days, to cure shall be grounds for forfeiture of this Franchise pursuant to which the Village shall have the right to revoke and cancel all franchise rights granted in this Agreement; provided, however, that Franchisee's failure

to comply with any provision of this Franchise as the result of a strike, lockout, or any other cause beyond the reasonable control of the Franchisee (collectively, "Force Majeure") shall not constitute grounds for the Village's revocation and cancellation of any rights hereunder. In the event Franchisee in good faith disputes the Village's determination of the Franchisee's material non-compliance with the provision(s) of this Franchise specified in the Village's notice, or the Village disputes the Franchisee's assertion that its failure to comply with the provision(s) of this Franchise was or is the result of Force Majeure, the Franchisee and the Village shall negotiate in good faith to resolve the dispute prior to submitting the dispute to arbitration as provided below. If any dispute remains unresolved thirty (30) days after the commencement of negotiations pursuant to this Section, such dispute shall be settled by binding arbitration pursuant to the provisions of Section 22 of this Agreement. Nothing in this Section 14 shall be construed as obligating a party to negotiate or arbitrate a renewal or extension of this Franchise.

Notwithstanding any provisions to the contrary, Franchisee acknowledges that nothing contained in this Agreement shall constitute a waiver by the City of any rights it may possess at law (including but not limited to the power of eminent domain), or as afforded under Chapter 180, Florida Statutes.

#### **SECTION 15. DESIGNATED REPRESENTATIVES**

The following individuals are designated to represent the Village and Franchisee respectively on all matters concerning the Franchise. All written communication shall be given by mail, either regular or certified with return receipt requested, to the addresses provided, or at such other address as either Party may advise the other in writing:

For the Village: Village Manager  
Village of Biscayne Park  
640 NE 114 Street  
Biscayne Park, Florida 33161

With a copy to: Village Attorney  
Village of Biscayne Park  
640 NE 114 Street  
Biscayne Park, Florida 33161

For the Franchisee: General Manager  
TECO People Gas  
P.O. Box 2562  
Tampa, Florida 33601-2562

**SECTION 16. NO WAIVER**

Nothing in this Agreement shall be construed as a surrender or waiver by the Village of its police powers or the authority to regulate the use of the public streets and/or other public places, provided no passage contravenes the material terms of this Franchise.

**SECTION 17. RIGHT TO ENFORCE**

Either Party shall have the right to enforce its rights in the event of a material breach of any obligation or either Party's failure to perform any substantial obligation pursuant to this Franchise or to comply in any substantial respect with any material provision.

**SECTION 18. ATTORNEY FEES**

Except as otherwise provided, the Village and Franchisee agree that if litigation or arbitration becomes necessary to enforce any of the obligations, terms and conditions of this Franchise, the prevailing Party shall be entitled to recover a reasonable amount of attorney's fees and court costs, including fees and costs on appeal, from the non-prevailing party.

## **SECTION 19. ENTIRETY**

This writing embodies the entire agreement and understanding between the Parties, and there are no other agreements and understandings, oral or written, with reference to this subject matter that are not merged and superseded.

## **SECTION 20. GOVERNING LAW**

This Agreement shall be governed by and construed according to the laws of the State of Florida, and venue shall be in Miami-Dade County, Florida.

## **SECTION 21. ARBITRATION**

The Parties agree that any dispute to which this Section applies shall be settled by binding arbitration. Either Party to this Agreement shall have the right to submit a covered dispute to binding arbitration pursuant to this Section by notifying the other Party of such election in writing. Within fifteen (15) days following the giving of such a notice by a Party, each Party shall furnish the other Party with the name, address and telephone number of a person designated by that Party to participate with a person designated by the other Party in selecting an individual to act as the sole arbitrator of the dispute. If a Party fails to designate to the other Party a person to participate in the selection of the sole arbitrator, or if the persons so designated by the Parties fail, within thirty (30) days following the giving of notice of the dispute by the Party invoking the provisions of this Section, to agree on a sole arbitrator of the dispute, either Party to this Agreement shall have the right to apply to the Circuit Court for the Eleventh Judicial Circuit of the State of Florida for the appointment of such sole arbitrator. The Parties agree that the timing of, and rules governing the conduct of, the arbitration proceeding shall, unless otherwise agreed, be determined by the sole arbitrator. Unless otherwise

agreed, the place of the arbitration shall be Biscayne Park, Florida. In making any award, the arbitrator shall be subject to any provisions of this Franchise which expressly limit remedies or damages. The award of the arbitrator shall be final and binding, and judgment upon such award may be entered by any court having jurisdiction thereof. The Parties shall share equally the compensation and expenses of the arbitrator and the expense of any hearing, and each Party shall bear the compensation and expenses of its own counsel and other representatives (if any). Each Party shall continue to perform its obligations under this Franchise pending final resolution of any dispute submitted to arbitration pursuant to this Section, unless to do so would be impossible or impracticable under the circumstances. Notwithstanding the pendency of any arbitration proceeding hereunder, a Party, without prejudice to the above procedures, may file a complaint for statute of limitations or venue reasons, or seek a preliminary injunction or other provisional judicial relief, if in its sole judgment such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such action, the Parties will continue to participate in good faith in the arbitration provided for above.

## **SECTION 22. EFFECTIVE DATE**

This Franchise Agreement shall become effective upon its acceptance by the Company, which acceptance must be evidenced in writing by signature of this document within thirty (30) days of the Village's passage and adoption hereof.

WHEREFORE, the Parties have caused their duly authorized representatives to execute this Agreement on the date first written above.

PEOPLES GAS SYSTEM

VILLAGE OF BISCAYNE PARK, FLORIDA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: President

\_\_\_\_\_  
Ana M. Garcia, Village Manager

ATTEST:

\_\_\_\_\_  
Village Clerk

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY:

\_\_\_\_\_  
John J. Hearn, Village Attorney

**9B**

**ORDINANCE NO. 2009-9**

**AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA PURSUANT TO SECTION 166.041, FLORIDA STATUTES, TO AMEND ORDINANCE 2008-06 ADOPTED ON SEPTEMBER 23, 2008 FINALIZING AND ADOPTING THE ANNUAL OPERATING BUDGET AND CAPITAL IMPROVEMENT PROGRAM FOR FISCAL YEAR 2008-2009, BY AMENDING VARIOUS PARTS OF THE BUDGET CONSISTENT WITH EXHIBIT "A," ATTACHED HERETO; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE**

WHEREAS, in accordance with the Village of Biscayne Park's Charter and all laws of the State of Florida, on September 23, 2008, the Village Commission finalized and adopted its operating budget for Fiscal Year 2008-2009, which is incorporated herein; and

WHEREAS, the Village Commission acknowledges that amendments are required to the Annual Operating Budget for Fiscal Year 2008-2009, as designated in Exhibit "A," attached hereto;

**NOW, THEREFORE BE IT ORDAINED BY THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA:**

**Section 1.** Each and all the foregoing Whereas clauses are true and correct and are incorporated herein.

**Section 2.** That the Annual Operating Budget Fiscal Year 2008-2009, approved by the Village Commission on September 23, 2008, is amended as designated in Exhibit "A," attached hereto.

**Section 3.** The Village Commission hereby ratifies and confirms all other provisions of Ordinance 2008-6.

**Section 4.** **Conflicts.** That all Ordinances or parts of Ordinances, Resolutions or parts thereof in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

**Section 5.** **Severability.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**Section 6.** **Effective Date.** This Ordinance shall be effective upon adoption on second reading.

The foregoing Ordinance was offered by Commissioner \_\_\_\_\_, who moved its adoption. The motion was seconded by \_\_\_\_\_ and upon being put to a vote, the vote was as follows:

**The foregoing ordinance upon being put to a vote, the vote was as follows:**

\_\_\_\_\_  
John Hornbuckle, Mayor

Attest:

\_\_\_\_\_  
Kim M Prenter, Acting Village Clerk  
Approved as to form:

\_\_\_\_\_  
John J. Hearn, Village Attorney

Mayor Hornbuckle: \_\_\_\_\_

Vice Mayor Mallett: \_\_\_\_\_

Commissioner Anderson: \_\_\_\_\_

Commissioner Bernard: \_\_\_\_\_

Commissioner Morris: \_\_\_\_\_

1st Reading – December 8, 2009

2<sup>nd</sup> Reading – January 5, 2010

VILLAGE OF BISCAYNE PARK  
BUDGET AMENDMENT 9/30/2008-2009

FUND	GENERAL FUND REVENUES	FY 08-09 YEAR TO DATE 09/30/09	FY 08-09 ADOPTED BUDGET	FY 08-09 BUDGET CHANGE	FY 08-09 AMENDED BUDGET	EXPLANATION
	<b>GENERAL FUND REVENUES</b>					
315.10.01	Communications Service Tax	140,178	117,050	23,128	140,178	State audit, underpymt in prior yrs
380.00.00	Fund Balance / Carryover	128,200		128,200	128,200	Transfer from fund balance to cover expenses over budget
380.01.00	Proceeds from Capital Lease	128,810		128,810	128,810	Lease proceeds to purchase police cars
381.00.00	Administration Fees	50,000		50,000	50,000	
	<b>Total Revenues</b>	<b>447,188</b>	<b>117,050</b>	<b>330,138</b>	<b>447,188</b>	
	<b>DEPARTMENT: EXECUTIVE/VILLAGE COMMISSION</b>					
511.40.01	Travel Conferences & Meetings	2,615	1,000	1,700	2,700	Membership dues, Mayor's Ball, Dinners
511.55.01	Special Events	7,080	3,900	3,300	7,200	75th Birthday
	<b>DEPARTMENT: EXECUTIVE/ADMINISTRATION</b>					
512.12.01	Regular Salaries	165,111	139,293	25,000	164,293	Spence & Harper payout
	<b>DEPARTMENT: FINANCE</b>					
513.32.01	Accounting & Audit Services	32,170	30,500	2,000	32,500	Add'l auditing
513.34.01	Consulting Services	103,714	75,000	29,000	104,000	Add'l required hours
	<b>DEPARTMENT: GENERAL GOVERNMENT</b>					
519.31.01	Attorney Legal Fees	110,831	60,000	31,000	91,000	Outside Counsel, Police matters
519.64.03	Capital Outlay	40,040	9,100	31,000	40,100	Trans to Cap Projects for Pavilion, Entry Sign, Rec Ctr
	<b>DEPARTMENT: POLICE</b>					
521.12.01	Regular Salaries	585,507	483,779	41,263	525,042	Marchese reinstatement
521.24.01	Workers' Compensation	142,459	79,867	23,000	102,867	Self-insured payments
521.64.02	Machinery & Equipment - Police Vehicles	128,810		128,810	128,810	Purchase of police cars
	<b>DEPARTMENT: CODE ENFORCEMENT</b>					
529.13.01	Other Salaries & Wages	2,128		2,128	2,128	Union requirements
529.14.01	Overtime	1,642		1,642	1,642	Meetings
529.46.01	R&M Equipment	2,022	1,200	800	2,000	Computer & auto repairs
	<b>DEPARTMENT: PUBLIC WORKS</b>					
534.12.01	Regular Salaries	99,319	114,909	(15,000)	99,909	Correct allocation of employee hours
534.23.01	Life, Health & Dental Insurance	21,279	27,654	(6,000)	21,654	Correct allocation of employee ins
534.52.02	Gas & Oil	1,949	16,000	(14,000)	2,000	Correct allocation of gas by dept
534.63.02	Landscaping		10,000	(10,000)	-	Not used
534.64.02	Machinery & Equipment	2,300		2,300	2,300	Ice machine
	<b>DEPARTMENT: RECREATION</b>					
572.14.01	Overtime	3,486		3,500	3,500	Thornell Overtime
572.19.01	Compensated Absences	37,500	-	37,500	37,500	Rec Director payout
572.25.01	Unemployment Compensation	11,175		11,175	11,175	Rec Director
572.74.01	Lease/Purchase	12,914	12,930	20	12,950	Interest allocation
	<b>Total Expenses</b>	<b>1,494,051</b>	<b>1,065,132</b>	<b>330,138</b>	<b>1,395,270</b>	

VILLAGE OF BISCAYNE PARK  
BUDGET AMENDMENT 9/30/2008-2009

OBJECT:	FY 08-09 YEAR TO DATE 09/30/09	FY 08-09 ADOPTED BUDGET	FY 08-09 BUDGET CHANGE	FY 08-09 AMENDED BUDGET	EXPLANATION
<b>FUND 402</b>					
					<b>SANITATION FUND</b>
534.12.01	243,372	214,747	24,900	239,647	Correct allocation of employee hours
534.34.02	153,267	190,500	(37,200)	153,300	Cost cutting measures
534.52.02	16,166	26,504	(10,300)	16,204	Correct allocation of gas by dept
534.53.01	12,578	20,327	(7,800)	12,527	Calculated amount
534.53.03	50,000		50,000	50,000	Transfer of Overhead Cost
534.75.01	2,437	22,120	(19,600)	2,520	Calculated amount
<b>FUND 301</b>					
					<b>CITT-SURTAX</b>
519.34.02	20,532		20,532	20,532	Kimley Horn & Audit
531.90.02		84,590	(20,532)	64,058	

**TENTH ORDER OF BUSINESS**

**RESOLUTION NO. 2009-20**

**A RESOLUTION OF THE MAYOR AND VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA GRANTING AUTHORITY TO MEMBERS OF THE VILLAGE COMMISSION TO SERVE AS SIGNATORIES ON ALL BANKING DOCUMENTS RELATED TO THE VILLAGE OF BISCAYNE PARK; REQUIRING TWO SIGNATURES FOR THE TRANSFER OF FUNDS AND UPDATING ACCOUNT INFORMATION; PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the Village of Biscayne Park utilizes certain financial institutions to handle its banking needs; and

**WHEREAS**, in order to ensure security on the Village's accounts, it is necessary to update the signatory information; and

**WHEREAS**, the Village Commission has found it to be in the best interests of the Village and its residents to update the signatory information by granting authority to members of the Village Commission to serve as signatories on all banking documents related to the Village of Biscayne Park and to require two (2) signatories for the transfer of funds and updating account information;

**NOW THEREFORE IT IS HEREBY RESOLVED BY THE MAYOR AND VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AS FOLLOWS:**

**Section 1.** The foregoing "WHEREAS" clauses are hereby ratified as true and correct and incorporated herein by this reference.

**Section 2.** The Village Commission is hereby granted the authority to serve as signatories on all banking documents related to the Village of Biscayne Park.

**Section 3.** This Resolution shall require two (2) signatories for the transfer of funds and updating account information.

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

PASSED AND ADOPTED this 8th day of December, 2009.

**The foregoing resolution upon being  
Put to a vote, the vote was as follows:**

\_\_\_\_\_  
, Mayor

**Attest:**

Commissioner Childress  
Vice Mayor Anderson  
Commissioner Cooper  
Commission Ross  
Commissioner Bernard

\_\_\_\_\_  
Kim M Prenter , Village Clerk

Approved as to form:

\_\_\_\_\_  
John J. Hearn, Village Attorney

**TWELFTH ORDER OF BUSINESS**

12A

ORDINANCE NO. 2007- 3

**AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, CREATING A NEW CHAPTER OF THE VILLAGE'S CODE OF ORDINANCES ENTITLED "ECOLOGY BOARD;" PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION; PROVIDING FOR RENUMBERING; PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, it is the intent of the Village Commission to create an advisory board to identify existing and potential environmental problems and recommend appropriate actions to the Commission with a view towards minimizing adverse external influences; and

WHEREAS, the Village Commission has reviewed this ordinance and found that the creation of this Board is in the best interests of the citizens of the Village;

NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA:

**Section 1.** A new Chapter of the Village of Biscayne Park Code of Ordinances entitled "Ecology Board," shall be created to read as follows:

**ECOLOGY BOARD**

**Board created.**

The Ecology Board shall consist of five members appointed by each member of the Commission for staggered three-year terms. Members shall be qualified electors of the Village. Upon the expiration of a Board member's term, the Village Commission member making the original appointment, or the Village Commission member's successor in office shall appoint the Board member to serve during the new Board term. If, for any reason, an appointment should not be made to fill an expired term, the incumbent will continue to serve until his successor has been appointed. No Board member shall serve on any other Board or Commission of the Village while holding this office. No Board member who shall have served three consecutive terms in office shall be eligible to serve an additional term of office for two years thereafter, unless the appointment for any additional term shall be confirmed by a majority of the Commission.

\_\_\_\_\_ **Vacancies.**

In the event of the death, removal or resignation of a member, a successor shall be appointed to fill the unexpired term by the Commission member making the original appointment. In the event the original Commission member is no longer in office, his successor shall fill the unexpired term.

\_\_\_\_\_ **Chairman.**

The Board shall elect its own Chairman, who shall serve as Chairman at the will of the Board.

\_\_\_\_\_ **Rules and regulations.**

The Ecology Board shall prescribe and adopt rules and regulations for proceedings hereunder.

(a) Meetings of the Board shall be open to the public;

(b) The Ecology Board shall keep minutes of its proceedings showing the vote of each member on each question or, if absent or failing to vote, indicating that fact, and shall keep records of its proceedings and other official actions, all of which shall be immediately filed with the Village Clerk and shall be a public record.

(c) The majority vote of those present is deemed necessary to act with a quorum consisting of three members.

\_\_\_\_\_ **Authorization for consultant or support services.**

The Board shall act as an advisory board to the Commission and all consultant or support services to be furnished to the Board must be requested from and approved by the Village Commission or their designee prior to the services being secured.

\_\_\_\_\_ **Duties and responsibilities.**

The Board's duties and responsibilities shall be as follows:

(a) To be receptive to ideas and desires of the residents of the Village as to the beauty and quality of life in their Village;

(b) To make special studies and surveys as requested by the Village Manager or Commission and advise and make recommendations accordingly;

(c) To enlist and encourage public support, the assistance of civic, technical, scientific and educational organizations, and cooperation of other businesses or organizations in order to implement programs and projects approved by the Village

Commission. Also, to render all possible cooperation to the state, federal, county or other government agencies in order to implement any program or project approved by the Village Commission;

(d) To represent the Village before any type of board or forum where it is necessary for that board to inquire about the public opinion of the environment of the Village;

(e) To maintain all information, data and exhibits which may be gathered relating to the quality of life within the Village for use and benefit of any and all Village residents; and

(f) To identify existing and potential environmental problems and recommend appropriate actions, with a view towards minimizing adverse external influences by cooperating with the adjacent municipalities and the county to protect common natural resources.

**Section 2.** Severability. Should any section, provision, paragraph, sentence, clause or word of this Ordinance or portion hereof be held or declared by any court of competent jurisdiction to be unconstitutional or invalid, in part or application, it shall be considered as eliminated and shall not affect the validity of the remaining portions or applications of this Ordinance.

**Section 3.** Codification. It is the intention of the Village Commission of the Village of Biscayne Park, that the provisions of this Ordinance shall become and made a part of the Code of Ordinances of the Village of Biscayne Park, Florida, and that the Sections of this Ordinance may be renumbered, re-lettered and the word "Ordinance" may be changed to "Section," "Article" or other word or phrase in order to accomplish such intention.

**Section 4.** Conflicts. That all Ordinances or parts of Ordinances, Resolutions or parts thereof in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

**Section 5. Effective Date.** This Ordinance shall become effective immediately upon its passage and adoption.

The foregoing Ordinance was offered by Commissioner Anderson, who moved its adoption. The motion was seconded by Vice Mayor Walker and upon being put to a vote, the vote was as follows:

**The foregoing ordinance upon being put to a vote, the vote was as follows:**

John Hornbuckle  
John Hornbuckle, Mayor

Attest:

Ann Harper  
Ann Harper, Village Clerk

Approved as to form:  
John J. Hearn  
John J. Hearn, Village Attorney

Mayor Hornbuckle: yes  
Vice Mayor Walker: yes  
Commissioner Mallette: absent  
Commissioner Morris: yes  
Commissioner Anderson: yes

First reading – February 13, 2007  
Second reading – March 6, 2007

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REFERENCING ECOLOGY BOARD

FOR DEFINITIONS OF "SEXUAL OFFENDER" AND "SEXUAL PREDATOR" THAT ARE CONSISTENT WITH SECTION 943.0435, FLORIDA STATUTES, AND SECTION 775.21, FLORIDA STATUTES; PROVIDING A TIMEFRAME IN WHICH A SEXUAL OFFENDER OR SEXUAL PREDATOR MUST VACATE A PREMISES AFTER BEING NOTIFIED OF A VIOLATION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION; PROVIDING FOR AN EFFECTIVE DATE

Attorney Hearn read the title of the Ordinance and stated that most cities have adopted similar ordinances in definitions consistent with Florida statutes. This Ordinance extends definitions of sexual predators to those who committed crimes in other states.

Motion was made by Commissioner Walker, seconded by Commissioner Anderson, to approve the Ordinance on first reading and schedule second reading for March 6, 2007. The motion carried by roll-call vote, as follows:

AYES: Commissioners Anderson, Morris, and Walker; Vice-Mayor Mallette, and Mayor Hornbuckle.

NAYS: None.

B. ORDINANCE 2007-2

AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, CREATING A NEW CHAPTER OF THE VILLAGE'S CODE OF ORDINANCES ENTITLED "BOARD OF PARKS AND PARKWAYS;" PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION; PROVIDING FOR RENUMBERING; PROVIDING FOR AN EFFECTIVE DATE

Attorney Hearn read the title of the Ordinance.

Mr. Spence said the next two ordinances are patterned after those in Miami Springs where he was formerly City Manager. The Parkways Board would replace Median Advisory Board and expand the Board's responsibilities. The appointments one for each Commissioner. Both of these Committees will be instrumental in involving the public in the grant application process and input for recreational and urban forestry grants. The Village needs the Ecology Advisory Board to become a "Tree City USA".

Motion was made by Commissioner Walker, seconded by Commissioner Morris, to approve the Ordinance on first reading and schedule second reading for March 6, 2007. The motion passed by roll-call vote, as follows:

AYES: Commissioners Anderson, Morris, and Walker; Vice-Mayor Mallette, and Mayor Hornbuckle.

NAYS: None.

C.

ORDINANCE NO. 2007- 3

AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, CREATING A NEW CHAPTER OF THE VILLAGE'S CODE OF ORDINANCES ENTITLED "ECOLOGY BOARD;" PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION; PROVIDING FOR RENUMBERING; PROVIDING FOR AN EFFECTIVE DATE

Attorney Hearn read the title of the Ordinance.

Motion was made by Commissioner Anderson, seconded by Commissioner Walker, to approve the Ordinance on first reading and schedule second reading for March 6, 2007. The motion carried by voice vote, as follows:

AYES: Commissioners Anderson, Morris, and Walker; Vice-Mayor Mallette, and Mayor Hornbuckle.

NAYS: None.

Mayor Hornbuckle asked that residents apply for membership on these new Advisory Boards.

6. OLD BUSINESS – Tab #6

A. Rotation of the Office of Vice-Mayor

Mayor Hornbuckle commented that it is time to rotate the position of the Office of Vice-Mayor.

Motion was made by Vice-Mayor Mallette, seconded by Commissioner Morris, for Commissioner Walker to serve as Vice-Mayor from March 1, 2007, to July 30, 2007, and Commissioner Anderson will serve from August 1, 2007 to December 2007. The motion carried by voice vote, 5/0.

7. NEW BUSINESS – Tab #7

A. Authorization to use Federal Forfeiture Funds to purchase an additional Kustom Signal SMART Radar Trailer for \$6,875 plus accessories using Florida State Bid #7253/99 for a grand total of \$7,911.

Mr. Spence said that since use of the first radar trailer has been so successful, Staff is recommending that a second unit be purchased at a slight increase in price. The new unit will be solar powered, which would eliminate having to charge the battery every two days.

Motion was made by Commissioner Walker, seconded by Commissioner Anderson, to approve the purchase using Federal Forfeiture Funds. The motion carried by voice vote, 5/0.

3-6-07 MINUTES

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REFERENCING ECOLOGY BOARD

C.

ORDINANCE NO. 2007- 3

AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, CREATING A NEW CHAPTER OF THE VILLAGE'S CODE OF ORDINANCES ENTITLED "ECOLOGY BOARD;" PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION; PROVIDING FOR RENUMBERING; PROVIDING FOR AN EFFECTIVE DATE (2<sup>nd</sup> Reading)

Attorney Hearn read the title of the Ordinance. Mayor Hornbuckle opened the Public Hearing.

The following residents spoke about the Ordinance:

Dan Keys  
Mike Kopsick  
Art Pyle  
David Twitchell

There were no more speakers, and the Public Hearing was closed.

Motion was made by Commissioner Anderson, seconded by Vice-Mayor Walker, to approve the Ordinance on second and final reading. The motion carried as follows:

AYES: Commissioners Anderson and Morris, Vice-Mayor Walker, and Mayor Hornbuckle

NAYS: None.

ABSENT: Commissioner Mallette.

Commissioner Anderson appointed Dan Keys to the Parks and Parkways Advisory Board. Commissioner Morris appointed Casto Fuen-Mayor to the Parks and Parkways Advisory Board. Art Pyle was appointed to the Ecology Board by Commissioner Morris. Scott Steger was appointed to the Ecology Advisory Board by Commissioner Anderson.

**5. OLD BUSINESS – Tab #5**

- A. Discussion of City of North Miami's proposed Comprehensive Plan revisions and their impact on the Village (Mayor Hornbuckle)

Village Manager Spence gave a brief description of the workshop held in North Miami, which he attended along with other Staff members and four Commissioners. The meeting was relative to proposed amendments to the North Miami Comprehensive Plan, which are of concern to residents on the South side of 121<sup>st</sup> Street because of the possibility of having five to ten story buildings on the north side of the street. Mayor Hornbuckle read a proposed letter to the North Miami Mayor and Commissioners from the Village Commissioners expressing concerns about the shared border. Attorney Hearn explained the steps involved in amending a Comprehensive Plan.