



# 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, November 3, 2009 - 7:00 pm

1. CALL TO ORDER AND ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. PRESENTATIONS
  - A. Proclamation to Honor Doc Chester Morris Day
4. ORDER OF BUSINESS - ADDITIONS, DEFERRALS, OR DELETIONS TO AGENDA
5. PUBLIC COMMENTS RELATED TO AGENDA ITEMS
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
7. PUBLIC HEARINGS
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

## Village of Biscayne Park - Agenda

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

### 10. OLD BUSINESS- None

### 11. NEW BUSINESS

- A. Consideration of Maintenance Memorandum Agreement with Florida Department Of Transportation
- 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
- C. Discussion of the Ecology Board and it's purpose
- D. Discussion of Committee Agendas and Minutes, including when and how they should be made public
- 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

### 12. GOOD AND WELFARE (PUBLIC)

### 13. REPORTS

- A. Committee Reports
- B. Village Attorney Comments
  - 1. Consideration to move December meeting from December 1 to December 8 or thereafter as determined, due to conflict with election date
- C. Village Manager Comments
- D. Comments
  - 1. Commissioner Bernard
  - 2. Commissioner Mallette
  - 3. Commissioner Morris
  - 4. Vice-Mayor Anderson
  - 5. Mayor Hornbuckle

## Village of Biscayne Park - Agenda

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

Monday, November 2	Rec. Advisory Committee, 6:30 p.m.
Wednesday, November 4	Special Mtg. of Parks & Parkways Board, 5:30p.m.
Tuesday, November 10	Code Review Committee, 7:00 p.m.
Monday, November 9 & 23	Planning & Zoning Board, 6:30 p.m.
Tuesday, November 17	Code Enforcement Board, 7:00 p.m.
Wednesday, November 18	Parks & Parkways Advisory Board, 6:00 p.m.

### 15. 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.

**THIRD ORDER OF BUSINESS**

**3A**

**Village of Biscayne Park  
Proclamation  
Declaring Chester "Doc" Morris Day**

**WHEREAS**, Chester "Doc" Morris, MD moved to the Village of Biscayne Park in 1969.

**WHEREAS**, Over the last 40 years, Chester "Doc" Morris has been a steward of the Village and has championed many causes which has benefited the Village and the larger community; and

**WHO** brought a high level of enthusiasm and dedication to the Village of Biscayne Park Commission; His commitment was always foremost for the betterment of our Village

He always provided helpful and timely opinions;  
He did so with much poise and dignity; and  
His approach brought much calmness and composure to our meetings; and

**WHEREAS**, The Village of Biscayne Park recognizes the achievements made by Chester "Doc" Morris, MD such as 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 \$1 Million in the reserve account; and

**WHEREAS**, The Village of Biscayne Park encourages everyone to honor Chester "Doc" Morris, MD by becoming involved and by doing so, build a better community; and

**WHEREAS**, The Mayor and City Council recognizes these contributions and call upon the residents of The Village of Biscayne Park to help in honoring Chester "Doc" Morris, MD a "Fine gentleman" for his 7 years of dedication as a commissioner to The Village of Biscayne Park and wish him well in his future endeavors; and

**WHEREAS**, We do hereby proclaim our great appreciation and gratitude for his service to the Village of Biscayne Park and wish him much happiness and success in his next endeavor!

**NOW, THEREFORE**, I Mayor John R. Hornbuckle, Mayor of The Village of Biscayne Park, do hereby proclaim Tuesday, November 3, 2009, *Chester "Doc" Morris Day* in The Village of Biscayne Park.

**In witness whereof, I have hereunto set my hand  
and caused the Seal of the Village of Biscayne  
Park to be affixed.**

**John R. Hornbuckle  
Mayor**

**SIXTH ORDER OF BUSINESS**

**6A**



# 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 and people showed up at 6:30 p.m. on a week day and we might want to ask if someone wants to say something.

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 this 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 will be done after the probationary period. There will be a review of performance and if merited a raise 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. We could be in a position where a new commission takes over and if they do not like the way things are going and decide to bring in someone else I do not want a future commission to be tied to a three month severance and possibly a new one. It was noted they could give three months notice.

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.

It was agreed that three months severance pay is fair in light of the six month probationary period. 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**

It was noted there is no problem with the requested number of days but so we do not end up with a cash-out burden sometime 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. It was agreed this is fair. 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. Commissioner Bernard is not comfortable paying co-payments for employees, the budget may not be able to handle that. 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 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 15. 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.

It was questioned if there was something intentional, and the village does not indemnify are they still obligated. Attorney Hearn said that if they were sued they would show it was outside the scope of employment. 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 Loan**

Ms Garcia noted the Commissioners requested a very active individual who would be out and about the Village. The \$400 per month was agreed based on a four day pay week. She will work a five day work week including one Saturday each month so the Village will have her five plus days. She will be going to town commission meetings and

working with neighboring municipalities. Anything outside of Dade County will be basically on her and that is why she feels it should be left as is.

After discussion it was decided to take out the reimbursement section and accept the \$400 per month allowance for use of her 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. Pay range usually goes up or down 4 to 5 %, she took the \$86,000 and going up or down on the low end it is \$82,000 and on the high end it is \$90,000 she came up with an average of \$86,000. She then took only the five cities that were comparable, basically single digit small cities, and got an average pay of \$126,000. She then averaged six cities including a low salary of \$78,000 which resulted in \$118,000. 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 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. 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 and we see you have saved a lot of expenses and made it so the residents want to start coming back he will be the first one to say *this is great lets talk about salary* but until that happens he is not comfortable even going as high as \$75,000. 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 when you manage 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. He would personally like to see where she starts out with \$80,000 and in three months if she has proved herself and brought in some grants and saved the Village some money he would bump it up maybe \$3,000. Then after about six months if she really has proved herself and has done something positive for this park he would raise it up to the \$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, forget the six months she has to work hard the six months to prove herself.

Ms. 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 starting at \$82,000 and then in a year if you prove yourself and saved us money and made us money through grants then put you up to \$86,000.

Mayor Hornbuckle noted we would like to see grants come in but they are not going to lower expenses.

Ms. 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.

It was noted she will be someone who is going to be extremely proactive and efficient in what is going on all around.

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 Huggdahl, 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

Chief Glansberg welcomed the new Village Manager Ana Garcia.

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. They have not, but it was noted the Village has the option to go out for RFPs.

## 5. PUBLIC COMMENTS RELATED TO AGENDA ITEMS

Linda Gillen, 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 does or does not go 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.

John Ise 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 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. Commissioner Bernard can pull B & C and if those are pulled, vote on the minutes and any minutes you want to discuss, they also get pulled.

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 said she thought she has been clear about her motion. We need to approve the minutes for the city. We can all take notes, we can all listen to the tapes but your interpretation of what someone said can be different than mine.

Commissioner Bernard asked if the clerk includes my letter with my notes as part of this package does that mean it is going 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 said if that is the case than with the exception of 8, 9 and 10, I want to pull the rest.

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 6A 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 if we approve minutes that are inaccurate than the record of what we are doing is 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 restrictions and we can always refer to those. On occasions when legislature feels it is important for clarity it is sometimes requested certain parts of minutes be typed verbatim and perhaps we need to have something like that on this commission. You can state I would like the comments I just made in the minutes.

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 we felt there was something important we make sure the clerk is aware of it.

It was noted according to Robert's Rules when you call a motion that is it.

**Motion** was made by Mayor Hornbuckle, seconded by Commissioner Morris, to recall 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. It seems like we are asking a contractor to perform more work than we have money for. He wants to make sure funds are available and the permit is still valid.

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 and it is approaching termination and they will take the money back. It is on a reimbursement basis; what we get done we ask reimbursement for. We need to move forward with this.

It was decided to move forward and 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 is a concern the Manager can bring it back to the next meeting.

It was noted this is a continuation of a process we have already been involved in with the completion of phase 1 and phase 2.

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 we can now move forward with the project.

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 dollar amount previously voted on for revenue coming in on property taxes (the trim) and by raising the millage rate will get us back to the same dollar amount that was approved on the budget. We have to change the millage to get back to what we 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.

A resident 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.

Another resident concurred and thinks trying to come up with savings in the budget before Friday is not going to happen.

Another resident 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.

**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 we should have a chain of command to what is placed on the website. There presently is no written policy. Information needs to go through our 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 to 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 we schedule meetings we need to look at calendars so they do not 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)**

A resident voiced favor in reopening the after school program.

A resident 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 portable generator.

Karen Cohen welcomed the new Village Manager and said everyone is very excited. She is the secretary to the Ad Hoc Committee and 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 I don't believe you received the minutes of our last meeting but we had a motion in those minutes requesting that the Parks Department be able to work with the Manager to plant oak trees in specifically 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 Commissioner Morris, seconded by Commissioner Mallette to permit Parks & Parkways Advisory Board to work with the Manager and proceed with planting the oak trees.

Commissioner Bernard noted what you are asking is different than what you have done before which is as a Committee you said here is where we think you should plant the

trees, brought that before us and we had the opportunity to discuss it and remark on it and change it; then we gave the direction to the Manager. What you are saying now is you do not want to create the plan for commission to approve you just want to work directly with the Manager. I have a problem with that. You are an Advisory Board and it is not your responsibility, authority or your liability to do it, it is ours.

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 I think 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 whether we wanted to plant oak trees. We have these trees sitting there and I would prefer to have them planted then die. We have a general knowledge of where they are going and know that area needs more canopy. I think if we have a particular concern about a street we can convey that to the manager and she can work with the Committee to finalize the locations.

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

Vice-Mayor Anderson said correct. I am 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. Is there a reason why you are doing it differently?

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 I have no problem telling you that we want you to place these in appropriate places because you have a lot of experience and have been dealing with this for many years. I would feel comfortable if you would take over assigning the areas because you are 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 we had discussion with them about winter break and spring break camp. I expect them to present a proposal to us 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 9<sup>th</sup> 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 to help with the event.

Coordination of meetings in this location – suggested looking at the religious holiday calendar and notes we also have numerous events scheduled in this location. Put together a calendar for posting of events.

We 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.

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 we need to make some allocation for art in public places. Work with the Manager on a solution.

It was noted there are many artists in the community and perhaps we can do a local RFP or another option would be to place a request in the newsletter. 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.

It was noted 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.

Commissioner Bernard said he was at the meeting and that is not what he heard and until we see the minutes 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 and let us know whether we can change it and what the parameters are.

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 we do not move forward at all until the Manager comes back with a report on exactly what is submitted and what the perimeters 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 our possession and we are working with the State to get the title changed over to us.

This past month the command staff of the Police Department along with myself met with the PBA telling them we are happy to work with them but we will not tolerate officers not doing their job.

The Clerk and the Attorney will review and revise our email policies. We have some policies that have been provided, not formalized or finalized and it is important we do that with our 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 our 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. We are going to close 9<sup>th</sup> Avenue on Halloween so there will be limited parking.

We are having 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 work.

#### **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 the 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 we 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**

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

**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

## **EIGHTH ORDER OF BUSINESS**

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ORDINANCE NO. 2009-07

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 CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

11           WHEREAS, the Village Commission of the Village of Biscayne Park finds it to be  
12 in the best interests of the residents of the Village to grant and renew a franchise for the  
13 purpose of supplying natural, manufactured, and other gas to Peoples Gas System, a  
14 division of Tampa Electric Company; now, therefore

15           **BE IT ORDAINED BY THE VILLAGE COMMISSION OF THE VILLAGE**  
16 **OF BISCAYNE PARK, FLORIDA THAT:**

17           Section 1.    The foregoing "WHEREAS" clauses are hereby ratified and  
18 confirmed as being true and correct, and are hereby incorporated herein and made a part  
19 hereof.

20           Section 2.    There is hereby granted to Peoples Gas System, a division of Tampa  
21 Electric Company a non-exclusive Franchise Agreement for purpose of supplying natural,  
22 manufactured and other gas to the Village and its residents pursuant to the Agreement,  
23 attached hereto and incorporated herein as Exhibit "1."

24           Section 3.    This ordinance, as well as the Franchise Agreement (Exhibit "1")  
25 shall take effect upon adoption.

26           Section 4.    It is the intention of the Village Commission of the Village of  
27 Biscayne Park, Florida that the provisions of this ordinance shall become and be made a  
28 part of the Village of Biscayne Park Code of Ordinances. The sections of this ordinance  
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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 November 1, 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 Franchisee 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.

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### **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 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. PARTY**

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: William Cantrell  
Title: President

\_\_\_\_\_  
Frank R. Spence, Village Manager

ATTEST:

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

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY:

\_\_\_\_\_  
Village Attorney

## **NINTH ORDER OF BUSINESS**

**9A**

**RESOLUTION NO. 2009-18**

**A RESOLUTION OF THE MAYOR AND VILLAGE  
COMMISSION OF THE VILLAGE OF BISCAYNE PARK,  
FLORIDA, REQUIRING MEMBERS OF THE VILLAGE  
COMMISSION AS WELL AS ALL VILLAGE  
DEPARTMENTAL LEVEL STAFF TO PARTICIPATE IN  
ETHICS TRAINING; PROVIDING FOR AN EFFECTIVE  
DATE**

WHEREAS, at the October 6, 2009 Village Commission meeting, the topic of having ethics training for the Village Commission and Village departmental level staff was discussed; and

WHEREAS, the Village Attorney recommended that ethics training and public records training be scheduled subsequent to the Village election in December; and

WHEREAS, the Village Commission finds that it is in the best interests of the citizens of the Village to require members of the Village Commission as well as all Village departmental level staff to participate in ethics training; now, therefore

**BE IT RESOLVED BY THE COMMISSION OF THE VILLAGE OF BISCAYNE  
PARK, FLORIDA, THAT:**

**Section 1.** The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and hereby made a specific part of this Resolution upon adoption hereof.

**Section 2.** The members of the Village Commission as well as all Village departmental level staff are hereby required to participate in ethics training which will be sponsored by the Village and held in January upon the swearing in of the new Commission.

**Section 3.** This Resolution shall become effective upon adoption.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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

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

Attest:

Mayor Hornbuckle \_\_\_\_\_  
Vice Mayor Mallette \_\_\_\_\_  
Commissioner Bernard \_\_\_\_\_  
Commission Morris \_\_\_\_\_  
Commissioner Anderson \_\_\_\_\_

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

Approved as to form:

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

**9B**

**RESOLUTION NO. 2009-16**

**A RESOLUTION OF THE MAYOR AND VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AUTHORIZING THE APPROPRIATE VILLAGE OFFICIALS TO APPLY FOR THE FEDERAL DRUG CONTROL AND SYSTEM IMPROVEMENT PROGRAM GRANT AVAILABLE THROUGH MIAMI-DADE COUNTY TO APPLY FOR, RECEIVE, EXPEND AND AMEND BYRNE/JAG FORMULA PROGRAM FUNDS AND TO EXECUTE AGREEMENTS WITH THE PURPOSE OF CREATING A CRIMINAL JUSTICE RECORDS IMPROVEMENT PROGRAM; PROVIDING FOR AN EFFECTIVE DATE**

WHEREAS, Miami-Dade County has been awarded federal funds from the Drug Control and System Improvement Formula Grant Program under Public Law 100-690, the Federal Anti-Drug Abuse Act of 1988; and

WHEREAS, the Village is desirous of utilizing a portion of these funds to create a Criminal Justice Records Improvement Program; and

WHEREAS, the County is desirous of supporting the creation of a Criminal Justice Records Improvement Program by providing a portion of the federal funds awarded to it to the Village; and

WHEREAS, the Village Commission of the Village of Biscayne Park finds that it is in the best interests of the citizens of the Village to authorize the appropriate Village officials to apply for the Federal Drug Control and System Improvement Program Grant available through Miami-Dade County to apply for, receive, expend and amend Byrne/JAG Formula Program funds and to execute agreements with the purpose of creating a Criminal Justice Records Improvement Program; now, therefore

**BE IT RESOLVED BY THE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, THAT:**

**Section 1.** The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and hereby made a specific part of this Resolution upon adoption hereof.

**Section 2.** The appropriate Village officials are hereby authorized to apply for the Federal Drug Control and System Improvement Program Grant available through Miami-Dade County for funds in the approximate amount of \$2,922.00; authorizing the appropriate Village

officials to execute such contracts and agreements as are required by this governmental body following their approval by the Village Attorney's office; to execute such other contracts as will serve to further the purposes described in the funding request, following their approval by the Village Attorney's office; to expend any and all monies received for the purpose described in the funding request; to receive and expend any additional funds that might become available during the term of the grant; to file and execute necessary amendments to the application for and on behalf of the Village of Biscayne Park, Florida; and to exercise amendment, modification, renewal, cancellation and termination clauses of any contracts and agreements on behalf of the Village of Biscayne Park, Florida.

**Section 3.** This Resolution shall become effective upon adoption.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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

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

Attest:

Mayor Hornbuckle \_\_\_\_\_  
Vice Mayor Mallette \_\_\_\_\_  
Commissioner Bernard \_\_\_\_\_  
Commission Morris \_\_\_\_\_  
Commissioner Anderson \_\_\_\_\_

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

Approved as to form:

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

# MIAMI-DADE COUNTY

## CONTRACT

This Contract, made this \_\_\_\_\_ day of \_\_\_\_\_ 2009, by and between Miami-Dade County, a political subdivision of the State of Florida (hereinafter referred to as "County") through its Office of Grants Coordination (hereinafter referred to as "Department"), located at 111 N.W. First Street, 19<sup>th</sup> Floor Miami, FL 33128, and the VILLAGE of Biscayne Park a municipality located in Miami-Dade County, Florida (hereinafter referred to as "Provider"). This Contract provides the terms and conditions pursuant to which the Provider shall provide a **Records Improvement Project**.

WHEREAS, the County has been awarded federal funds from the Drug Control and System Improvement Formula Grant Program under Public Law 100-690, the Federal Anti-Drug Abuse Act of 1988, hereinafter referred to as the ACT; and

WHEREAS, the Provider warrants and represents that it possesses the legal authority to enter into this Contract by way of resolution, motion or similar action that has been duly adopted or passed as an official act of the Provider's governing body, authorizing the execution of the Contract, including all understandings and assurances contained herein, and authorizing the person identified as the official representative of the Provider to carry out on behalf of the Provider all of the duties and responsibilities set forth in this Contract; and

WHEREAS, this Contract shall be deemed effective upon award of grant funds by the State of Florida Department of Law Enforcement, Office of Criminal Justice Grants to Miami-Dade County or when this Contract has been duly executed by both parties, whichever is later; and

WHEREAS, the County is desirous of supporting an expansion of the services provided by the **Records Improvement Project** by providing a portion of the federal funds awarded to Miami-Dade County to the **Records Improvement Project**; and

WHEREAS, the County as contractor/grantee for the State of Florida is authorized to purchase said services for the **Records Improvement Project** as an allowable activity under the ACT; and

WHEREAS, the County requires the above-mentioned services from the Provider in order to fulfill its contractual obligations under the aforementioned grant,

NOW, THEREFORE, for and in consideration of the mutual covenants recorded herein, the parties hereto agree as follows:

I. **AMOUNT PAYABLE** Subject to available funds, the maximum amount payable for services rendered under this Contract, shall not exceed **\$2,922**. Both parties agree that should available County funding be reduced, the amount payable under this Contract may be proportionately reduced at the option of the County.

II. **SCOPE OF SERVICES.** The Provider agrees to render services in accordance with the Scope of Services incorporated herein and attached hereto as Attachment A.

III. **EFFECTIVE TERM.** The effective term of this Contract shall be from **October 1, 2009** through **September 30, 2010**.

IV. **CASH MATCH REQUIREMENT.** The Provider shall maintain sufficient financial resources to meet the expenses incurred during the period between the provision of services and payment by the County; however a **Cash Match is not required for this grant term.**

V. **REQUIREMENTS RELATED TO USE OF ANTI-DRUG ABUSE FUNDS UNDER THE DRUG CONTROL AND SYSTEM IMPROVEMENT PROGRAM**

A. **Requirements of the Anti-Drug Abuse Act.** The Provider agrees to abide by all of the requirements of the Anti-Drug Abuse Act of 1988 under the Drug Control and System Improvement Formula Grant Program, including Rule Chapter 11D-9 of the Florida Administrative Code. Furthermore, the Florida Department of Law Enforcement, Business Support Program, Office of Criminal Justice Grants, Edward Byrne Memorial Justice Assistance Grant Program Application for Funding Assistance and all laws, rules, regulations relating thereto are incorporated herein by reference as if fully set forth. Furthermore, this award is subject to all applicable rules, regulations, and conditions as contained in the Financial and Administrative Guide for Grants, Guideline Manual 7100 1D, Office of Justice Programs, Common Rule for State and Local Governments and A-87, or OMB Circulars A-110 or A-102, as applicable, and A-21, in their entirety. It is also subject to such further rules, regulations and policies as may be reasonably prescribed by the State or Federal Government consistent with the purposes and authorization of Public Law 90-351, as amended, and Public Law 100-690.

B. **Supplanting.** The Provider agrees that funds received under this Contract shall be utilized to supplement, not supplant state or local funds, and will be used to increase the amounts of such funds that would, in the absence of grant funds, be made available for anti-drug law enforcement activities, in accordance with Rule Chapter 11D-9, Florida Administrative Code.

VI. **CONTINUITY OF SERVICES.** Provider agrees to provide optimal continuity of services by assuring that services are provided by the same person whenever possible and, if not, by a qualified replacement when necessary.

VII. **PROGRAM CONTACT.** Provider shall designate a contract coordinator who shall be responsible for: 1) monitoring the Provider's compliance with the terms of this Contract and; 2) whenever the County so requests, meeting with County staff to review such compliance.

VIII. **INDEMNIFICATION BY THE PROVIDER.** The Provider shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Contract by the Provider or its employees, agents, servants, partners, principals or subcontractors. Provider shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Provider expressly

understands and agrees that any insurance protection required by this Contract or otherwise provided by Provider shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided. The provisions of this section or indemnification shall survive the expiration or termination of this Contract. Nothing herein shall be construed to extend any party's liability beyond that provided in section 768.28, Florida Statutes.

**IX. INSURANCE.** If Provider is an agency or a political subdivision of the State as defined by section 768.28, Florida Statutes, the Provider shall furnish the County, upon request, written verification of liability protection in accordance with section 768.28, Florida Statutes.

**X. LICENSURE AND CERTIFICATION.** The Provider shall ensure that all other licensed professionals providing **School Resource Officer** services shall have appropriate licenses, training and experience in the field in which he/she practices and abide by all applicable State and Federal laws and regulations and ethical standards consistent with those established for his/her profession. Ignorance on the part of the Provider shall in no way relieve it from any of its responsibilities in this regard.

**XI. CONFLICT OF INTEREST.** The Provider agrees to abide by and be governed by Miami-Dade County Ordinance No. 72-82 (Conflict of Interest Ordinance codified at Section 2-11.1 et al. of the Code of Miami-Dade County), as amended, which is incorporated herein by reference as if fully set forth herein, in connection with its Contract obligations hereunder.

**Nepotism.** Notwithstanding the aforementioned provision, no relative of any officer, board of director, manager, or supervisor employed by the Provider shall be employed by the Provider unless the employment preceded the execution of this Contract by one (1) year. No family member of any employee may be employed by the Provider if the family member is to be employed in a direct supervisory or administrative relationship either supervisory or subordinate to the employee. The assignment of family members in the same organizational unit shall be discouraged. A conflict of interest in employment arises whenever an individual would otherwise have the responsibility to make, or participate actively in making decisions or recommendations relating to the employment status of another individual if the two individuals (herein sometimes called "related individuals") have one of the following relationships:

1. By blood or adoption: Parent, child, sibling, first cousin, uncle, aunt, nephew, or niece;
2. By marriage: Current or former spouse, brother- or sister-in-law, father- or mother-in-law, son- or daughter-in-law, step-parent, or step-child; or
3. Other relationship: A current or former relationship, occurring outside the work setting that would make it difficult for the individual with the responsibility to make a decision or recommendation to be objective, or that would create the appearance that such individual could not be objective. Examples include, but are not limited to, personal relationships and significant business relationships.

For purposes of this section, decisions or recommendations related to employment status include decisions related to hiring, salary, working conditions, working responsibilities, evaluation, promotion, and termination.

An individual, however, is not deemed to make or actively participate in making decisions or recommendations if that individual's participation is limited to routine approvals and the individual plays no role involving the exercise of any discretion in the decision-making processes. If any question arises whether an individual's participation is greater than is

permitted by this paragraph, the matter shall be immediately referred to the Miami-Dade County Commission on Ethics and Public Trust.

This section applies to both full-time and part-time employees and voting members of the Provider's Board of Directors.

No person, including but not limited to any officer, board of directors, manager, or supervisor employed by the Provider, who is in the position of authority, and who exercises any function or responsibilities in connection with this Contract, has at the time this Contract is entered into, or shall have during the term of this Contract, received any of the services, or direct or instruct any employee under their supervision to provide such services as described in the Contract. Notwithstanding the before mentioned provision, any officer, board of directors, manager or supervisor employed by the Provider, who is eligible to receive any of the services described herein may utilize such services if he or she can demonstrate that he or she does not have direct supervisory responsibility over the Provider's employee(s) or service program.

**XII. CIVIL RIGHTS.** The Provider agrees to abide by Chapter 11A of the Code of Miami-Dade County ("County Code"), as amended, which prohibits discrimination in employment, housing and public accommodations; Title VII of the Civil Rights Act of 1968, as amended, which prohibits discrimination in employment and public accommodation; the Age Discrimination Act of 1975, 42 U.S.C., §2000d as amended, which prohibits discrimination in employment because of age; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, as amended, which prohibits discrimination on the basis of disability; and the Americans with Disabilities Act, 42 U.S.C. §12103 et seq., which prohibits discrimination in employment and accommodation because of disability.

It is expressly understood that upon receipt of evidence of discrimination under any of these laws, the County shall have the right to terminate this Contract. It is further understood that the Provider must submit an affidavit attesting that it is not in violation of the Americans with Disability Act, the Rehabilitation Act, the Federal Transit Act, 49 U.S.C. §1612, and the Fair Housing Act, 42 U.S.C. §3601 et seq. If the Provider or any owner, subsidiary, or other firm affiliated with or related to the Provider, is found by the responsible enforcement agency, the Courts or the County to be in violation of these Acts, the County will conduct no further business with the Provider. Any contract entered into based upon a false affidavit shall be voidable by the County. If the Provider violates any of the Acts during the term of any Contract the Provider has with the County, such contract shall be voidable by the County, even if the Provider was not in violation at the time it submitted its affidavit.

The Provider agrees that it is in compliance with the Domestic Violence Leave Ordinance, codified as § 11A-60 et seq. of the Miami-Dade County Code, which requires an employer, who in the regular course of business has fifty (50) or more employees working in Miami-Dade County for each working day during each of twenty (20) or more calendar work weeks to provide domestic violence leave to its employees. Failure to comply with this local law may be grounds for voiding or terminating this Contract or for commencement of debarment proceedings against Provider.

**XIII. NOTICES.** Notice under this Contract shall be sufficient if made in writing and delivered personally or sent by mail or by facsimile to the parties at the following addresses or to such other address as either party may specify:

If to the COUNTY:

Miami-Dade County  
Office of Grants Coordination  
111 NW First St., 19<sup>th</sup> Floor  
Miami, Florida 33128  
Attention: Ms. Michaela Doherty

If to the PROVIDER:

Biscayne Park Police Department  
640 Northeast 114<sup>th</sup> Street  
Biscayne Park, Florida 33161  
Attention: Chief Mitchell Glansberg

**XIV. AUTONOMY.** Both parties agree that this Contract recognizes the autonomy of and stipulates or implies no affiliation between the contracting parties. It is expressly understood and intended that the Provider is only a recipient of funding support and is not an agent or instrumentality of the County. Furthermore, the Provider's agents and employees are not agents or employees of the County.

**XV. BREACH OF CONTRACT: COUNTY REMEDIES.**

A. Breach. A breach by the Provider shall have occurred under this Contract if: (1) The Provider fails to provide services outlined in the Scope of Services (Attachment A) within the effective term of this Contract; (2) the Provider ineffectively or improperly uses the funds allocated under this Contract; (3) the Provider fails to submit, or submits incorrect or incomplete proof of expenditures to support reimbursement requests or fails to submit or submits incomplete or incorrect detailed reports of expenditures or final expenditure reports; (4) the Provider does not submit or submits incomplete or incorrect required reports; (5) the Provider refuses to allow the County access to records or refuses to allow the County to monitor, evaluate and review the Provider's program; (6) the Provider discriminates under any of the laws outlined in Section XII of this Contract; (7) the Provider fails to provide Domestic Violence Leave to its employees pursuant to local law; (8) the Provider falsifies or violates the provisions of the Drug Free Workplace Affidavit (Attachment E); (9) the Provider attempts to meet its obligations under this Contract through fraud, misrepresentation or material misstatement; (10) the Provider fails to correct deficiencies found during a monitoring, evaluation or review within the specified time; (11) the Provider fails to meet any of the terms and conditions of the Miami-Dade County Affidavits (Attachment E); (12) the Provider fails to meet any of the terms and conditions of any obligation under any contract or otherwise or any repayment schedule to any of its agencies or instrumentalities; or (13) the Provider fails to fulfill in a timely and proper manner any and all of its obligations, covenants, agreements and stipulations in this Contract. Waiver of breach of any provisions of this Contract shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Contract.

B. County Remedies. If the Provider breaches this Contract, the County may pursue any or all of the following remedies:

1. The County may terminate this Contract by giving written notice to the Provider of such termination and specifying the effective date thereof at least five (5) days

before the effective date of termination. In the event of termination, the County may: (a) request the return of all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports prepared and secured by the Provider with County funds under this Contract; (b) seek reimbursement of County funds allocated to the Provider under this Contract; (c) terminate or cancel any other contracts entered into between the County and the Provider. The Provider shall be responsible for all direct and indirect costs associated with such termination, including attorney's fees;

2. The County may suspend payment in whole or in part under this Contract by providing written notice to the Provider of such suspension and specifying the effective date thereof, at least five (5) days before the effective date of suspension. If payments are suspended, the County shall specify in writing the actions that must be taken by the Provider as condition precedent to resumption of payments and shall specify a reasonable date for compliance. The County may also suspend any payments in whole or in part under any other contracts entered into between the County and the Provider. The Provider shall be responsible for all direct and indirect costs associated with such suspension, including attorney's fees;

3. The County may seek enforcement of this Contract including but not limited to filing action with a court of appropriate jurisdiction. The Provider shall be responsible for all direct and indirect costs associated with such enforcement, including attorney's fees;

4. The County may debar the Provider from future County contracting;

5. If, for any reason, the Provider should attempt to meet its obligations under this Contract through fraud, misrepresentation or material misstatement, the County shall, whenever practicable terminate this Contract by giving written notice to the Provider of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. The County may terminate or cancel any other contracts which such individual or entity has with the County. Such individual or entity shall be responsible for all direct or indirect costs associated with such termination or cancellation, including attorney's fees. Any individual or entity who attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be disbarred from County contracting for up to five (5) years;

6. Any other remedy available at law or equity.

C. The County Mayor or Mayor's designee is authorized to terminate this Contract on behalf of the County.

D. Damages Sustained. Notwithstanding the above, the Provider shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Contract, and the County may withhold any payments to the Provider until such time as the exact amount of damages due the County is determined. The Provider shall be responsible for all direct and indirect costs associated with such action, including attorney's fees.

**XVI. TERMINATION BY EITHER PARTY.** Both parties agree that this Contract may be terminated by either party hereto by written notice to the other party of such intent to terminate at least thirty (30) days prior to the effective date of such termination. The County Mayor or Mayor's designee is authorized to terminate this Contract on behalf of the County.

**XVII. PROJECT BUDGET AND PAYMENT PROCEDURES.** The Provider agrees that all expenditures or costs shall be made in accordance with the Budget which is attached herein and incorporated hereto as Attachment B.

A. Budget Variance. Funds may be shifted between approved line items, not to exceed ten percent (10%) of the total budget, without a written amendment. Variances greater than ten percent (10%) in any approved line item shall require a written amendment approved by the Department.

B. Recapture Funds. At the conclusion of the third quarter and upon submission of the Quarterly Performance Report and Invoice, the County will review the Provider's Year-To-Date expenditures.

1. Municipalities reporting remaining balances which exceed expenditure levels for normal program operations must submit a plan with the Third Quarter Report which documents those steps the municipality will take in the Fourth Quarter to fully expend the contract by the end of the program year.

2. This expenditure plan must be approved by the County.

3. Where the municipality does not anticipate full expenditures by the end of the program year, the County will recapture the anticipated unexpended amount for use in another program, without a formal amendment process.

C. Payment Procedures. The County agrees to pay the Provider for services rendered under this Contract based on the line item budget incorporated herein and attached hereto as Attachment B. The parties agree that this is a cost-basis Contract and the Provider shall be paid through reimbursement payment for allowable expenses on the budget approved under this Contract (see Attachment B). The Provider agrees to invoice the County for each **Records Improvement Project** using the Quarterly Expenditure Report as it appears in Attachment D, and to do so on a quarterly basis, as stated in Section XIX. B.2. The Quarterly Expenditure Report shall be prepared in a manner in accordance with the form provided in Attachment D. The final Quarterly Expenditure Report shall be submitted by October 15, 2010.

D. The Provider agrees to mail all Quarterly Expenditure Reports to the address listed above, Section XIII.

E. The County agrees to review Quarterly Expenditure Reports and to inform the Provider of any questions. Payments shall be mailed to the Provider by the County's Finance Department.

F. No payment of subcontractors. In no event shall County funds be advanced directly to any subcontractor hereunder.

**XVIII. INVENTORY - CAPITAL EQUIPMENT AND REAL PROPERTY.**

A. Acquisition of Property. The Provider is required to be prudent in the acquisition and management of property with federal funds. Expenditure of funds for the acquisition of new property, when suitable property required for the successful execution of projects is

already available within the Provider organization, will be considered an unnecessary expenditure.

B. Screening. Careful screening should take place before acquiring property in order to ensure that it is needed with particular consideration given to whether equipment already in the possession of the Provider organization can meet identified needs. While there is no prescribed standard for such review, the Provider procedures may establish levels of review dependent on factors such as the cost of the proposed equipment and the size of the Provider organization. The establishment of a screening committee may facilitate the process; however, the Provider may utilize other management techniques which it finds effective as a basis for determining that the property is needed and that it is not already within the Provider's organization. The County must ensure that the screening referenced above takes place and that the Provider has an effective system for property management. The Provider is hereby informed that if the County is made aware that the Provider does not employ an adequate property management system, project costs associated with the acquisition of the property may be disallowed.

C. Loss, Damage or Theft of Equipment. The Provider is responsible for replacing or repairing the property which is willfully or negligently lost, stolen, damaged or destroyed. Any loss, damage, or theft of the property must be investigated and fully documented and made part of the official project records.

D. Equipment Acquired with Crime Control Act Block/Formula Funds. Equipment acquired shall be used and managed to ensure that the equipment is used for criminal justice purposes.

E. Management. The Provider's procedures for managing equipment (including replacement), whether acquired in whole or in part with project funds, will, at a minimum, meet the following requirements: 1) Property records must be maintained which include description of property, serial number or other identification number, source of the property, identification of who holds the title, acquisition date, costs of the property, percentage of County participation in the cost of the property (Federal funds), location of property, use and condition of the property, disposition data including the date of disposal and sale price; 2) a physical inventory of the property must be taken and the results reconciled with the property records at least once every two (2) years; 3) a control system must exist to ensure adequate safeguards to prevent loss, damage or theft of the property. Any loss, damage, or theft shall be investigated by the Provider as appropriate; 4) adequate maintenance procedures must exist to keep the property in good condition; and 5) if the Provider is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

F. Retention of Property Records. Records for equipment, nonexpendable personal property, and real property shall be retained for a period of three (3) years from the date of the disposition or replacement or transfer at the discretion of the County. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

#### **XIX. RECORDS, REPORTS, MONITORING AUDITS, AND EVALUATION STUDIES.**

The Provider shall keep records of program services in sufficient detail to provide any reports that may be requested by the County.

A. Records. All program records will be retained by the Provider for not less than three (3) years beyond the term of this Contract. In accordance with contract requirements from the State of Florida, records for the **Records Improvement Project** services must reflect:

1. The names of staff providing services as described in Attachment A.
2. The dates and number of hours the staff provided services.
3. The dates of services and activities and the names of program participants in attendance to such as described in Attachment A.
4. The records of all other program services provided under this Contract.

B. Reporting Requirements.

1. Quarterly Project Performance Report. The Provider shall submit the Quarterly Project Performance Report to the Office of Grants Coordination by January 5, April 5, July 5, and October 5, 2010 covering the Contract activity for the previous quarter. The Quarterly Project Performance Report shall be submitted in the format and using the form attached hereto as Attachment C.

2. Quarterly Expenditure Report. The provider shall submit the Quarterly Expenditure Report with supporting documentation to the Office of Grants Coordination by January 15, April 15, July 15, and October 15, 2010 covering the expenditures to be reimbursed for the previous quarter. The Quarterly Expenditure Report shall be submitted in the format and using the form attached hereto as Attachment D.

3. Other Required Reports. The Provider shall submit other reports as may be required by the Office of Grants Coordination during the program year.

C. Changes to Reporting Requirements. The Provider understands that the County may at any time require changes in data collected, records or reporting, as may be necessary and agrees to comply with any such modifications.

D. Monitoring and Audit. The Provider shall make available for review, inspection, monitoring or audit by the County without notice during normal business hours all financial records and other program records and documents which relate to or have been produced or created as a result of this Contract. The Provider shall provide assistance as may be necessary to facilitate a financial/program audit when deemed necessary by the County to ensure compliance with applicable accounting and financial standards. The County reserves the right to require the Provider to submit to an audit of the County's choosing. Furthermore, the Provider understands, it may be subject to an audit, random or otherwise, by the Office of the Dade County Inspector General or independent private sector inspector general retained by the Office of the Inspector General.

E. Office of Miami-Dade County Inspector General. Miami-Dade County has established the Office of the Inspector General, which is empowered to perform random audits on all County contracts throughout the duration of each contract. Grant recipients are exempt from paying the cost of the audit, which is normally 1/4 of 1% of the total contract amount.

The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust Programs, contracts, transactions, accounts, records, and programs. In addition, the Inspector General has the power to subpoena witness, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in compliance with plans, specifications and applicable law.

The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, proposal submittals, activities of the Provider, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption

Upon ten (10) days prior written notice to the Provider from the Inspector General or IPSIG retained by the Inspector General, the Provider shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Provider's possession, custody or control which, in the Inspector General or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and Contracts from and with successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

The provisions in this section shall apply to the Provider, its officers, agents, employees, subcontractors and suppliers. The Provider shall incorporate the provisions in this section in all subcontracts and all other Contracts executed by the Provider in connection with the performance of the contract.

Nothing in this contract shall impair any independent right of the County to conduct audit or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the County by the Provider or third parties.

F. Independent Private Sector Inspector General Reviews. Pursuant to Miami-Dade County Administrative Order 3-20, the Provider is aware that the County has the right to retain the services of an Independent Private Sector Inspector General ("IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Provider shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Contract for inspection and copying. The County shall be responsible for the payment of these IPSIG services, and under no circumstances shall the Provider's budget and any changes thereto approved by the County, be inclusive of any changes relating to these IPSIG services.

The terms of this provision herein, apply to the Provider, its officers, agents, employees, subconsultants and assignees. Nothing contained in this provision shall impair any

independent right of the County to conduct an audit or investigate the operations, activities and performance of the Provider in connection with this Contract. The terms of this Section shall not impose any liability on the County by the Provider or any third party.

G. Evaluation Studies. The Provider agrees to participate in evaluation studies sponsored by the administrative agent for these funds from the Florida Department of Law Enforcement, Business Support Program, and Office of Criminal Justice Grants. This participation shall at a minimum include access to the Provider's premises and records.

## **XX. PROHIBITED USE OF FUNDS.**

A. Adverse Actions or Proceeding. The Provider shall not utilize County funds to retain legal counsel for any action or proceeding against the County or any of its agents, instrumentalities, employees or officials. The Provider shall not utilize County funds to provide legal representation, advice or counsel to any client in any action or proceeding against the County or any of its agents, instrumentalities, employees or officials.

B. Religious Purposes. County funds shall not be used for religious purposes.

C. Commingling Funds. The Provider shall not commingle funds provided under this Contract with funds received from any other funding sources.

D. Double Payments. Provider costs claimed under this Contract may not also be claimed under another contract or grant from the County or any other agency. Any claim for double payment by Provider shall be considered a material breach of this Contract.

## **XXI. MISCELLANEOUS.**

A. Contract. This Contract is the complete and exclusive statement of all the arrangements between the County and the Provider regarding provision of the services described in Attachments A and B. Nothing herein shall alter, affect, modify, change or extend any other agreement between the Provider and the County unless specifically stated herein.

B. Amendments and Modifications. Except as otherwise enumerated herein, no amendment to this Contract shall be binding on either party unless reduced to writing, signed by both parties, and approved by the County Mayor or Mayor's designee. Provided, however, that the County may effect amendments to this Contract without the written consent of the Provider, to conform this Contract to changes in the laws, directives, guidelines, and objectives of County, State and Federal Governments.

Any alterations, variations, amendments, or other modifications of this Contract, including but not limited to amount payable and effective term, shall only be valid when they have been reduced to writing, duly approved and signed by both parties and attached to the original of this Contract.

The County and Provider mutually agree that amendments of the Scope of Service, line item budget of more than ten percent (10%) of the total budget set forth herein and other such revisions may be negotiated as written amendment to this Contract between the parties. The County Mayor or Mayor's designee is authorized to make amendments to this Contract as described herein on behalf of the County.

C. Ownership of Data and Other Material. All reports, information documents, tapes and recordings, maps and other data and procedures developed, prepared, assembled or completed by the Provider in connection with the duties and responsibilities undertaken by the Provider in accordance with the terms of this Contract shall become the property of the County without restriction, reservation or limitation of their use and shall be made available to the County by the Provider at any time upon request by the County. Upon completion of all work contemplated under this Contract, copies of all of the above data shall be delivered to the County upon request.

D. Contract Guidelines. This Contract is made in the State of Florida and shall be governed according to the laws of the State of Florida. Proper venue for this Contract shall be Miami-Dade County, Florida.

E. Publicity. It is understood and agreed between the parties hereto that this Provider is funded by Miami-Dade County. Further, by acceptance of these funds, the Provider agrees that events and printed documents funded by this Contract shall recognize the funding source as follows:

This program was supported by a grant awarded to Miami-Dade County, the Florida Department of Law Enforcement (FDLE) and the U.S. Department of Justice, Bureau of Justice Assistance (BJA).

F. Subcontracts. The Provider agrees not to enter into subcontracts, retain consultants, or assign, transfer, convey, sublet, or otherwise dispose of this Contract, or any or all of its rights, title or interest herein, or its power to execute such Contract without the prior written approval of the County and that all subcontractors or assignees shall be governed by the terms and conditions of this Contract. If this Contract involves the expenditure of \$100,000 or more by the County and the Provider intends to use subcontractors to provide the services listed in the Scope of Services (Attachment A) or suppliers to supply the materials, the Provider shall provide the names of the subcontractors and suppliers on the form attached as Attachment F. The Provider agrees that it will not change or substitute subcontractors or suppliers from those listed in Attachment F without prior written approval of the County.

G. Review of this Contract. Each party hereto represents and warrants that they have consulted with their own attorney concerning each of the terms contained in this Contract. No inference, assumption, or presumption shall be drawn from the fact that one party or its attorney prepared this Contract. It shall be conclusively presumed that each party participated in the preparation and drafting of this Contract.

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

I. Total of Contract/Severability of Provisions. This fourteen (14) page Contract with its recitals on the first page of the Contract and with its attachments as referenced below contain all the terms and conditions agreed upon by the parties:

Attachment A:	Scope of Services
Attachment B:	Budget
Attachment C:	Quarterly Project Performance Report
Attachment D:	Quarterly Expenditure Report
Attachment E:	Miami-Dade County Affidavits
Attachment E1:	Code of Business Ethics
Attachment E2:	Miami-Dade County Debarment Disclosure Affidavit
Attachment E3:	State Public Entities Crime Affidavit
Attachment F:	Provider's Disclosure of Subcontractors and Suppliers

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

**INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, the parties hereto have caused this Contract, along with all of its Attachments, to be executed by their respective and duly authorized officers, the day and year first above written.

Ana M. Garcia  
Signature

Village Manager  
Title

Ana M Garcia  
Name (typed)

ATTEST:

By: Kimberly

By: \_\_\_\_\_  
(Corporate Seal)

ATTEST:

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
DEPUTY CLERK

MIAMI-DADE COUNTY, FLORIDA

By: \_\_\_\_\_  
GEORGE M. BURGESS  
COUNTY MANAGER

## SUMMARY OF ATTACHMENTS

ATTACHMENT A	Scope of Services
ATTACHMENT B	Program Budget
ATTACHMENT C	Quarterly Project Performance Report
ATTACHMENT D	Quarterly Expenditure Report
ATTACHMENT E	Miami-Dade County Affidavits
ATTACHMENT E1	Code of Business Ethics
ATTACHMENT E2	Miami-Dade County Debarment Disclosure Affidavit
ATTACHMENT E3	State Public Entities Crime Affidavit
ATTACHMENT F	Provider's Disclosure of Subcontractors and Suppliers

ATTACHMENT A

## ATTACHMENT A

### PROGRAM NARRATIVE

Jurisdiction Name: Biscayne Park

Contact Person: Chief Mitchell Glansberg

Address: 640 Northeast 114<sup>th</sup> Street  
Biscayne Park, Florida 33161

Contact Numbers: O (305) 899-8000 x228  
F (305) 891-7241

Program Area: Records Improvement

Program Dates: 10/01/09 through 09/30/10

Program Name: Investigations Section Records  
Improvement

Target Population: Village Residents

#### Problem Identification

The Village of Biscayne Park Police Department Investigative Unit does not have mobile data terminal laptop computers. Therefore, requiring the police investigator to drive to the police station to write a police report each time on a station computer. This is an inefficient and time consuming way by which to accomplish an important and routine task. The current practice because we do not have a portable lap top takes the police officer off the road thereby reducing police visibility. The secondary adverse impact of the police officer having to come to the police station to write the report causes lack of police visibility which has been associated with an increase in certain crime. Use of a mobile data terminal will facilitate a seamless transfer of information, data, and reports from the field to our records section with minimal disruption of police services

#### Program Description

The Biscayne Park Police Department wishes to purchase a computer laptop for officers in the patrol unit. This will enable officers to remain in their patrol vehicles while writing and transmitting reports, as opposed to returning to the station for this task. It will provide efficient reporting by staff and facilitates the mainstreaming of shared data department-wide. This process will in turn result in quicker response time in both identifying criminal suspects; locating criminal suspects and effecting arrests in the field utilizing the NCIC/FCIC data systems. In the upcoming grant year, the department will use JAG funds to purchase a laptop and air card for officers in the department.

Jurisdiction Name: Biscayne Park

Contact Person: Chief Mitchell Glansberg

Address: 640 Northeast 114<sup>th</sup> Street  
Biscayne Park, Florida 33161

Contact Numbers: O (305) 899-8000 x228  
F (305) 891-7241

Program Area: Records Improvement

Program Dates: 10/01/09 through 09/30/10

Program Name: Investigations Section Records  
Improvement

Target Population: Village Residents

Required Activities	Planned Measures	Monitoring Plan
To automate criminal justice records system during the grant year	The provider shall be responsible for:  Purchase equipment and software to enable an information exchange between the police department and NCIC/ FCIC data systems.	The provider is to submit the following documentation to the County in a complete and timely manner:  Program Plan and Activity Schedule.  Copies of invoices for materials purchased.  Computerized reports from new reporting system  Copies of Invoices for contractual services and expenses

ATTACHMENT B

**PROGRAM BUDGET**

Jurisdiction Name: BISCAYNE PARK

Program Area: Records Improvement

Program Name: Records Improvement

**ATTACHMENT B**

Contact Person: Chief Mitch Glansb

O (305) 899-8000 X 228 F (305) 89

Program Dates: 10/01/09 - 09/30/10

<b>Salaries and Benefits, Total</b>		<b>\$0</b>
<b>Contractual Services, Total</b>		<b>\$0</b>
<b>Operating Capital Outlay</b>		<b>\$2,200</b>
Laptop Computer and Software	\$2,200	
<b>Expenses, Total</b>		<b>\$722</b>
Wireless service (aircard) for 1 year	\$722	
<b>Total Budget</b>		<b><u>\$2,922</u></b>

Miami Dade County will reimburse an amount not to exceed: \$2,922

ATTACHMENT C



**FY2010 Quarterly Project Report  
Criminal Justice Records Improvement  
Biscayne Park**

Please answer the highlighted questions that correspond to your project

How many local initiatives were planned? (Refers to your entire program)

How many local initiatives were implemented?

How much of JAG funds was used for equipment and/or supplies?

How many types of equipment and/or supplies were purchased?

What type of equipment was purchased? \_\_\_\_\_

How many departments will use JAG funds to make improvements to information systems this quarter?

How many program participants in total received services this quarter? \_\_\_\_\_ Goal for the entire grant period? \_\_\_\_\_

Number of personnel paid with JAG funds this quarter?

How many overtime hours were paid with JAG funds this quarter? \_\_\_\_\_ Goal for the entire grant period? \_\_\_\_\_

How many hours for contractual support services were paid using JAG funds this quarter?

What type of contractual support services were provided this quarter using JAG funding?

How many manual records were converted to an electronic records retention system this quarter?

How many overtime hours were used to convert manual records to an electronic records retention system?

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**PROGRAM NARRATIVE**

In accordance with FDLE, all projects must include a detailed description of program activities for each quarter. Jurisdictions failing to complete this portion of the report will be "Out of Compliance" in addition to a denial of denial of reimbursement requests.

ATTACHMENT D

## Edward Byrne Memorial Justice Assistance Grant

### Quarterly Expenditure Report

Report Number	Quarterly Period	Report Due Date
1	October 1 – December 31	January 15
2	January 1 – March 30	April 15
3	April 1 – June 30	July 15
4	July 1 – September 30	October 15

Report Number	Quarterly Period	Report Due Date

**Edward Byrne Memorial Justice Assistance Grant Program**

**SUMMARY STATEMENT OF QUARTERLY PROJECT COSTS  
(To Be Copied on Jurisdiction Letterhead)**

City: _____	Date of Claim: _____
Project Name: _____	Claim Number: _____
Telephone: _____	Claim Period: _____
Name of Person Completing Form: _____	

1. Total Federal Budget \$ \_\_\_\_\_      2. Amount This Invoice \$ \_\_\_\_\_
3. Amount of Previous Invoices \$ \_\_\_\_\_      4. Remaining Budget Balance \$ \_\_\_\_\_  
(Subtract lines 2 & 3 from line 1)

Sub Object Code	Budget Categories	Line Item Disallowed	Exceeds Budget	Federal Funds	Category Totals
_____	Salaries & Benefits	_____	_____	_____	_____
_____	Contractual Services	_____	_____	_____	_____
_____	Operating/ Capital Equipment	_____	_____	_____	_____
_____	Expenses	_____	_____	_____	_____
_____	Total Claim	_____	_____	_____	_____

We request payment in accordance with our contract agreement in the amount of 100% of the Total Costs for this Claim \$ \_\_\_\_\_.

Attached, please find the records which substantiate the above expenditures. I certify that all of the costs have been paid and none of the items have been previously reimbursed. All of the expenditures comply with the authorized budget and fall within the contractual scope of services and all of the goods and services have been received, for which reimbursement is requested.

Respectfully submitted,

\_\_\_\_\_  
Chief of Police/Other City Official

\_\_\_\_\_  
Payment Approved, Miami Dade County

SUMMARY STATEMENT OF QUARTERLY PROJECT COSTS- Payroll Expenses

City: \_\_\_\_\_ Date of Claim: \_\_\_\_\_

Project Name: \_\_\_\_\_ Claim Number: \_\_\_\_\_

<u>Name Officer/Staff</u>	<u>Date of Activity</u>	<u>Type of Activity*</u>	<u>Total Hours</u>

\*(Presentation, Parent Meeting, Field trip, etc.)

TOTAL HOURS \_\_\_\_\_ AT \$ \_\_\_\_\_ PER HOUR = \$ \_\_\_\_\_

I CERTIFY THAT PAYMENT FOR THE AMOUNT OF \$ \_\_\_\_\_ IS CORRECT.

OFFICER/STAFF SIGNATURE: \_\_\_\_\_

OFFICER/STAFF SOCIAL SECURITY NUMBER: \_\_\_\_\_

CHIEF OF POLICE/CITY OFFICIAL SIGNATURE: \_\_\_\_\_

I VERIFY THAT THE ABOVE SERVICES WERE PROVIDED: \_\_\_\_\_

**Note: Payroll registers, time sheets and OT slips, documenting payroll expenses, must be attached to process this payment.**



ATTACHMENT E

JAG/BYRNE GRANT ADMINISTRATION

MIAMI-DADE COUNTY AFFIDAVITS

The contracting individual or entity (governmental or otherwise) shall indicate by an "X" all affidavits that pertain to this contract and shall indicate by an "N/A" all affidavits that do not pertain to this contract. All blank spaces must be filled.

The MIAMI-DADE COUNTY OWNERSHIP DISCLOSURE AFFIDAVIT; MIAMI-DADE COUNTY EMPLOYMENT DISCLOSURE AFFIDAVIT; MIAMI-DADE CRIMINAL RECORD AFFIDAVIT; DISABILITY NONDISCRIMINATION AFFIDAVIT; and the PROJECT FRESH START AFFIDAVIT shall not pertain to contracts with the United States or any of its departments or agencies thereof, the State or any political subdivision or agency thereof or any municipality of this State. The MIAMI-DADE FAMILY LEAVE AFFIDAVIT shall not pertain to contracts with the United States or any of its departments or agencies or the State of Florida or any political subdivision or agency thereof. However, they shall, however, pertain to municipalities of the State of Florida. All other contracting entities or individuals shall read carefully each affidavit to determine whether or not it pertains to this contract.

I, \_\_\_\_\_ sworn state:  
Affiant

The full legal name and business address of the person(s) or entity contracting or transacting business with Miami-Dade County are (Post Office addresses are not acceptable):

59-6000277

Federal Employer Identification Number (If none, Social Security)

VILLAGE OF BISCAYNE PARK, FL.

Name of Entity, Individual(s), Partners, or Corporation

Doing Business As (if same as above, leave blank)

640 NE 114th STREET, BISCAYNE PARK, FL 33161

Street Address

City

State

Zip Code

N/A MIAMI-DADE COUNTY OWNERSHIP DISCLOSURE AFFIDAVIT (Sec. 2-8.1 of the County Code)

- 1. If the contract or business transaction is with a corporation, the full legal name and business address shall be provided for each officer and director and each stockholder who holds directly or indirectly five percent (5%) or more of the corporation's stock. If the contract or business transaction is with a partnership, the foregoing information shall be provided for each partner. If the contract or business transaction is with a trust, the full legal name and address shall be provided for each trustee and each beneficiary. The foregoing requirements shall not pertain to contracts with publicly traded corporations or to contracts with the United States or any department or agency thereof, the State or any political subdivision or agency thereof or any municipality of this State. All such names and addresses are (Post Office addresses are not acceptable):

Full Legal Name	Address	Ownership
		%
		%
		%

- 2. The full legal names and business address of any other individual (other than subcontractors, material men, suppliers, laborers, or lenders) who have, or will have, any interest (legal, equitable

beneficial or otherwise) in the contract or business transaction with Dade County are (Post Office addresses are not acceptable):

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3. Any person who willfully fails to disclose the information required herein, or who knowingly discloses false information in this regard, shall be punished by a fine of up to five hundred dollars (\$500.00) or imprisonment in the County jail for up to sixty (60) days or both.

N/A MIAMI-DADE COUNTY EMPLOYMENT DISCLOSURE AFFIDAVIT (County Ordinance No. 90-133, Amending sec. 2.8-1; Subsection (d)(2) of the County Code).

Except where precluded by federal or State laws or regulations, each contract or business transaction or renewal thereof which involves the expenditure of ten thousand dollars (\$10,000) or more shall require the entity contracting or transacting business to disclose the following information. The foregoing disclosure requirements do not apply to contracts with the United States or any department or agency thereof, the State or any political subdivision or agency thereof or any municipality of this State.

1. Does your firm have a collective bargaining agreement with its employees?  
\_\_\_ Yes \_\_\_ No
2. Does your firm provide paid health care benefits for its employees?  
\_\_\_ Yes \_\_\_ No
3. Provide a current breakdown (number of persons) of your firm's work force and ownership as to race, national origin and gender:

White:	___ Males ___ Females	Asian:	___ Males ___ Females
Black:	___ Males ___ Females	American Indian:	___ Males ___ Females
Hispanics:	___ Males ___ Females	Aleut (Eskimo):	___ Males ___ Females
_____:	___ Males ___ Females	_____:	___ Males ___ Females

N/A AFFIRMATIVE ACTION/NONDISCRIMINATION OF EMPLOYMENT, PROMOTION AND PROCUREMENT PRACTICES (County Ordinance 98-30 codified at 2-8.1.5 of the County Code.)

In accordance with County Ordinance No. 98-30, entities with annual gross revenues in excess of \$5,000,000 seeking to contract with the County shall, as a condition of receiving a County contract, have: i) a written affirmative action plan which sets forth the procedures the entity utilizes to assure that it does not discriminate in its employment and promotion practices; and ii) a written procurement policy which sets forth the procedures the entity utilizes to assure that it does not discriminate against minority and women-owned businesses in its own procurement of goods, supplies and services. Such affirmative action plans and procurement policies shall provide for periodic review to determine their effectiveness in assuring the entity does not discriminate in its employment, promotion and procurement practices. The foregoing notwithstanding, corporate entities whose boards of directors are representative of the population make-up of the nation shall be presumed to have non-discriminatory employment and procurement policies, and shall not be required to have written affirmative action plans and procurement policies in order to receive a County contract. The foregoing presumption may be rebutted.

The requirements of County Ordinance No. 98-30 may be waived upon the written recommendation of the County Manager that it is in the best interest of the County to do so and upon approval of the Board of County Commissioners by majority vote of the members present.

The firm does not have annual gross revenues in excess of \$5,000,000.  
 The firm does have annual revenues in excess of \$5,000,000; however, its Board of Directors is representative of the population make-up of the nation and has submitted a written, detailed listing of its Board of Directors, including the race or ethnicity of each board member, to the County's Department of Business Development, 175 N.W. 1st Avenue, 28th Floor, Miami, Florida 33128.

The firm has annual gross revenues in excess of \$5,000,000 and the firm does have a written affirmative action plan and procurement policy as described above, which includes periodic reviews to determine effectiveness, and has submitted the plan and policy to the County's Department of Business Development 175 N.W. 1st Avenue, 28th Floor, Miami, Florida 33128;

The firm does not have an affirmative action plan and/or a procurement policy as described above, but has been granted a waiver.

**MIAMI-DADE COUNTY CRIMINAL RECORD AFFIDAVIT (Section 2-8.6 of the County Code)**

The individual or entity entering into a contract or receiving funding from the County \_\_\_ has  has not as of the date of this affidavit been convicted of a felony during the past ten (10) years.

An officer, director, or executive of the entity entering into a contract or receiving funding from the County \_\_\_ has  has not as of the date of this affidavit been convicted of a felony during the past ten (10) years.

**MIAMI-DADE EMPLOYMENT DRUG-FREE WORKPLACE AFFIDAVIT (County Ordinance No. 92-15 codified as Section 2-8.1.2 of the County Code)**

That in compliance with Ordinance No. 92-15 of the Code of Miami-Dade County, Florida, the above named person or entity is providing a drug-free workplace. A written statement to each employee shall inform the employee about:

1. danger of drug abuse in the workplace
2. the firm's policy of maintaining a drug-free environment at all workplaces
3. availability of drug counseling, rehabilitation and employee assistance programs
4. penalties that may be imposed upon employees for drug abuse violations

The person or entity shall also require an employee to sign a statement, as a condition of employment that the employee will abide by the terms and notify the employer of any criminal drug conviction occurring no later than five (5) days after receiving notice of such conviction and impose appropriate personnel action against the employee up to and including termination.

Compliance with Ordinance No. 92-15 may be waived if the special characteristics of the product or service offered by the person or entity make it necessary for the operation of the County or for the health, safety, welfare, economic benefits and well-being of the public. Contracts involving funding which is provided in whole or in part by the United States or the State of Florida shall be exempted from the provisions of this ordinance in those instances where those provisions are in conflict with the requirements of those governmental entities.

XVI.

MIAMI-DADE EMPLOYMENT FAMILY LEAVE AFFIDAVIT (County Ordinance No. 142-91 codified as Section 11A-29 et. seq of the County Code)

That in compliance with Ordinance No. 142-91 of the Code of Miami-Dade County, Florida, an employer with fifty (50) or more employees working in Dade County for each working day during each of twenty (20) or more calendar work weeks, shall provide the following information in compliance with all items in the aforementioned ordinance:

An employee who has worked for the above firm at least one (1) year shall be entitled to ninety (90) days of family leave during any twenty-four (24) month period, for medical reasons, for the birth or adoption of a child, or for the care of a child, spouse or other close relative who has a serious health condition without risk of termination of employment or employer retaliation.

The foregoing requirements shall not pertain to contracts with the United States or any department or agency thereof, or the State of Florida or any political subdivision or agency thereof. It shall, however, pertain to municipalities of this State.

XVII.

DISABILITY NON-DISCRIMINATION AFFIDAVIT (County Resolution R-385-95)

That the above named firm, corporation or organization is in compliance with and agrees to continue to comply with, and assure that any subcontractor, or third party contractor under this project complies with all applicable requirements of the laws listed below including, but not limited to, those provisions pertaining to employment, provision of programs and services, transportation, communications, access to facilities, renovations, and new construction in the following laws: The Americans with Disabilities Act of 1990 (ADA), Pub. L. 101-336, 104 Stat 327, 42 U.S.C. 12101-12213 and 47 U.S.C. Sections 225 and 611 including Title I, Employment; Title II, Public Services; Title III, Public Accommodations and Services Operated by Private Entities; Title IV, Telecommunications; and Title V, Miscellaneous Provisions; The Rehabilitation Act of 1973, 29 U.S.C. Section 794; The Federal Transit Act, as amended 49 U.S.C. Section 1612; The Fair Housing Act as amended, 42 U.S.C. Section 3601-3631. The foregoing requirements shall not pertain to contracts with the United States or any department or agency thereof, the State or any political subdivision or agency thereof or any municipality of this State.

N/A  
XVIII.

MIAMI-DADE COUNTY REGARDING DELINQUENT AND CURRENTLY DUE FEES OR TAXES (Sec. 2-8.1(c) of the County Code)

Except for small purchase orders and sole source contracts, that above named firm, corporation, organization or individual desiring to transact business or enter into a contract with the County verifies that all delinquent and currently due fees or taxes -- including but not limited to real and property taxes, utility taxes and occupational licenses -- which are collected in the normal course by the Dade County Tax Collector as well as Dade County issued parking tickets for vehicles registered in the name of the firm, corporation, organization or individual have been paid.

XIX.

CURRENT ON ALL COUNTY CONTRACTS, LOANS AND OTHER OBLIGATIONS

The individual entity seeking to transact business with the County is current in all its obligations to the County and is not otherwise in default of any contract, promissory note or other loan document with the County or any of its agencies or instrumentalities.

N/A

PROJECT FRESH START (Resolutions R-702-98 and 358-99)

Any firm that has a contract with the County that results in actual payment of \$500,000 or more shall contribute to Project Fresh Start, the County's Welfare to Work Initiative. However, if five percent (5%) of the firm's work force consists of individuals who reside in Miami-Dade County and who have lost or will lose cash assistance benefits (formerly Aid to Families with Dependent Children) as a result of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the firm may request waiver from the requirements of R-702-98 and R-358-99 by submitting a waiver request affidavit. The foregoing requirement does not pertain to government entities, not for profit organizations or recipients of grant awards.

N/A  
XI

DOMESTIC VIOLENCE LEAVE (Resolution 185-00; 99-5 Codified At 11A-60 Et. Seq. of the Miami-Dade County Code).

The firm desiring to do business with the County is in compliance with Domestic Leave Ordinance, Ordinance 99-5, codified at 11A-60 et. seq. of the Miami Dade County Code, which requires an employer which has in the regular course of business fifty (50) or more employees working in Miami-Dade County for each working day during each of twenty (20) or more calendar work weeks in the current or proceeding calendar years, to provide Domestic Violence Leave to its employees.

I have carefully read this entire five (5) page document entitled, "Miami-Dade County Affidavits" and have indicated by an "X" all affidavits that pertain to this contract and have indicated by an "N/A" all affidavits that do not pertain to this contract.

By: [Signature]  
(Signature of Affiant)

10/27/09  
(Date)

SUBSCRIBED AND SWORN TO (or affirmed) before me this 27<sup>th</sup> day of October

2009 by Ana m Garcia. He/She is personally known to me or has presented Personally known as identification.  
(Type of Identification)

[Signature]  
(Signature of Notary)

DD0669797  
(Serial Number)

Kim m Prenter  
(Print or Stamp of Notary)

5/3/2011  
(Expiration Date)

Notary Public - Stamp State of Florida  
(State)

-Notary Seal



**ATTACHMENT E1**

**Form A-12**  
**Code of Business Ethics**

**In accordance with Resolution R-994-99 each person or entity that seeks to do business with Miami-Dade County shall adopt the Miami-Dade County/Greater Miami Chamber of Commerce Code of Business Ethics as follows:**

The Miami-Dade County/Greater Miami Chamber of Commerce seeks to create and sustain an ethical business climate for its members and the community by adopting a Code of Business Ethics. Miami-Dade County/Greater Miami Chamber of Commerce encourages its members to incorporate the principles and practices outlined here in their individual codes of ethics, which will guide their relationships with customers, clients and suppliers. This Model Code can and should be prominently displayed at all business locations and may be incorporated into marketing materials. Miami-Dade County/Greater Miami Chamber of Commerce believes that its members should use this Code as a model for the development of their organizations' business codes of ethics.

This Model Code is a statement of principles to help guide decisions and actions based on respect for the importance of ethical business standards in the community. Miami-Dade County/Greater Miami Chamber of Commerce believes the adoption of a meaningful code of ethics is the responsibility of every business and professional organization.

**By affixing a signature in the Proposal signature page, Form A-12, the Proposer hereby agrees to comply with the principles of Miami-Dade County/Greater Miami Chamber of Commerce Code of Business Ethics. If the Proposer firm's code varies in any way the Proposer must identify the difference(s) on a separate document attached to Form A-12.**

**Compliance with Government Rules and Regulations**

- We the undersigned Proposer will properly maintain all records and post all licenses and certificates in prominent places easily seen by our employees and customers;
- In dealing with government agencies and employees, we will conduct business in accordance with all applicable rules and regulations and in the open;
- We, the undersigned Proposer will report contract irregularities and other improper or unlawful business practices to the Ethics Commission, the Office of Inspector General or appropriate law enforcement authorities.

**Recruitment, Selection and Compensation of Contractors, Consulting, Vendors, and Suppliers**

- We, the undersigned Proposer will avoid conflicts of interest and disclose such conflicts when identified;
- Gifts that compromise the integrity of a business transaction are unacceptable; we will not kick back any portion of a contract payment to employees of the other contracting party or accept such kickback.

Business Accounting

- All our financial transactions will be properly and fairly recorded in appropriate books of account, and there will be no "off the books" transactions or secret accounts.

Promotion and Sales of Products and Services

- Our products will comply with all applicable safety and quality standards;
- We, the undersigned Proposer will promote and advertise our business and its products or services in a manner that is not misleading and does not falsely disparage our competitors;
- We, the undersigned Proposer will conduct business with government agencies and employees in a manner that avoids even the appearance of impropriety. Efforts to curry political favoritism are unacceptable;
- Our proposal will be competitive, appropriate to the request for proposals/qualifications documents and arrived at independently;
- Any changes to contracts awarded will have a substantive basis and not be pursued merely because we are the successful Proposer.
- We, the undersigned Proposer will, to the best of our ability, perform government contracts awarded at the price and under the terms provided for in the contract. We will not submit inflated invoices for goods provided or services performed under such contracts, and claims will be made only for work actually performed. We will abide by all contracting and subcontracting regulations.
- We, the undersigned Proposer will not, directly or indirectly, offer to give a bribe or otherwise channel kickbacks from contracts awarded, to government officials, their family members or business associates.
- We, the undersigned Proposer will not seek or expect preferential treatment on proposals based on our participation in political campaigns.

Public Life and Political Campaigns

- We, the undersigned Proposer encourage all employees to participate in community life, public service and the political process to the extent permitted by law;
- We, the undersigned Proposer encourage all employees to recruit, support and elect ethical and qualified public officials and engage them in dialogue and debate about business and community issues to the extent permitted by law;
- Our contributions to political parties, committees or individuals will be made only in accordance with applicable laws and will comply with all requirements for public disclosure. All contributions made on behalf of the business must be reported to senior company management;
- We, the undersigned Proposer will not contribute to the campaigns of persons who are convicted felons or those who do not sign the Fair Campaign Practices Ordinance.

- We, the undersigned Proposer will not knowingly disseminate false campaign information or support those who do.

Pass-through Requirements

- This Code prohibits pass-through payments whereby the prime firm requires that the MBE firm accepts payments as an MBE and passes through those payments to another entity;

Rental Space, Equipment and Staff Requirements or Flat Overhead Fee Requirements

- This Code prohibits rental space requirements, equipment requirements, staff requirements and/or flat overhead fee requirements, whereby the prime firm requires the MBE firm to rent space, equipment and/or staff from the prime firm or charges a flat overhead fee for the use of space, equipment, secretary, etc;

MBE Staff Utilization

- This Code prohibits the prime firm from requiring the MBE firm to provide more staff than is necessary and then utilizing the MBE staff for other work to be performed by the prime firm.

This Code also requires that on any contract where MBE participation is purported, the contract shall specify essential terms including, but not limited to, a specific statement regarding the percent of participation planned for MBEs, the timing of payments and when the work is to be performed.

By: *Ana M Garcia*  
(Signature of Affiant)

10/27/09  
(Date)

SUBSCRIBED AND SWORN TO (or affirmed) before me this 27<sup>th</sup> day of October

2009 by Ana M Garcia. He/She

is personally known to me or has presented Personally known  
(Type of Identification)

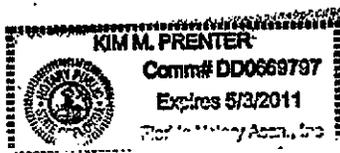
as identification.

*Kim Prenter*  
(Signature of Notary)

DD0669797  
(Serial Number)

\_\_\_\_\_  
(Print or Stamp of Notary)

5/3/2011  
(Expiration Date)



ATTACHMENT E2

MIAMI-DADE COUNTY DEBARMENT DISCLOSURE AFFIDAVIT  
(Ordinance 93-129, Section 1)

I, being duly first sworn, upon oath deposes and says that the bidder of this contract or his agents, officers, principals, stockholders, subcontractors or their affiliates are not debarred by Miami-Dade County.

By: *Ana M Garcia*  
(Signature of Affiant)

10/27/09  
(Date)

SUBSCRIBED AND SWORN TO (or affirmed) before me this 27<sup>th</sup> day of October

2009 by Ana M Garcia. He/She

is personally known to me or has presented Personally known  
(Type of Identification)

as identification.

*Kim M Prenter*  
(Signature of Notary)

DD0669797  
(Serial Number)



5/3/2011  
(Expiration Date)

Notary Public – Stamp State of Florida  
(State)

Notary Seal

ATTACHMENT E3

SWORN STATEMENT PURSUANT TO SECTION 287.133 (3) (a),  
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS

1. This sworn statement is submitted to Miami-Dade County

by [Signature]  
(print individual's name and title)

for Village of BISCAYNE PARK  
(print Name of entity submitting sworn statement)

whose business address is 640NE 114TH STREET, BISCAYNE PARK, FL 33161

and if applicable its Federal Employer Identification Number (FEIN) is 59-600277  
If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement:

2. I understand that a "public entity crime" as defined in paragraph 287.133 (1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transactions of business with any public entity or with an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to public entity or agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misinterpretation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133 (1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non jury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that an "affiliate" as defined in paragraph 287.133(1)(a), Florida Statutes, means:  
1. A predecessor or successor of a person convicted of a public entity crime; or 2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

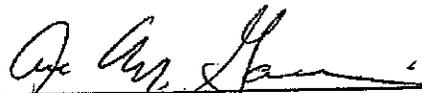
5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States within the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

6. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (Please indicate which statement applies.)

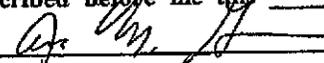
Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (attach a copy of the final order).

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

  
(Signature)

Sworn to and subscribed before me this 27<sup>th</sup> day of October, 2009.

Personally known 

OR Produced Identification Pers Notary Public - State of Florida

PERSON My commission expires 5/3/2011

(Type of Identification)



Kim M Prenter  
(Printed typed or stamped commissioned name of notary public)

ATTACHMENT F

## JAG/BYRNE GRANT ADMINISTRATION

PROVIDER'S DISCLOSURE OF SUBCONTRACTORS AND SUPPLIERS  
(Ordinance 97-104)

Name of Organization: \_\_\_\_\_ Address: \_\_\_\_\_

## REQUIRED LISTING OF SUBCONTRACTORS ON COUNTY CONTRACT

In compliance with Miami-Dade County Ordinance 97-104, the Provider must submit the list of first tier subcontractors or sub-consultants who will perform any part of the Scope of Services Work, if this Contract is for \$100,000 or more.

The Provider must complete this information. If the Provider will not utilize subcontractors, then the Provider must state "No subcontractors will be used"; do not state "N/A".

NAME OF SUBCONTRACTOR OR SUB-CONSULTANT	ADDRESS	CITY AND STATE
---	---------	----------------

**No subcontractors will be used.**

## REQUIRED LIST OF SUPPLIERS ON COUNTY CONTRACT

In compliance with Miami-Dade County Ordinance 97-104, the Provider must submit a list of suppliers who will supply materials for the Scope of Services to the Provider, if this Contract is \$100,000 or more.

The Provider must fill out this information. If the Provider will not use suppliers, the Provider must state "No suppliers will be used", do not state "N/A".

NAME OF SUPPLIER	ADDRESS	CITY AND STATE
------------------	---------	----------------

**No suppliers will be used.**

*I hereby certify that the foregoing information is true, correct and complete:*

Signature of Authorized Representative: Ute M. Laine

Title: Village Manager Date: \_\_\_\_\_

Firm Name: VILLAGE OF BISCAYNE PARK Fed. ID No. 59-600277

Address: 640 NE 114TH STREET City/State/Zip: BISCAYNE PARK, FL 33161

Telephone: (305) 899-8000 Fax: (305) 891-7241 E-mail: VILLAGEMANAGER@BISCAYNEPARK.FL.GOV

## **ELEVENTH ORDER OF BUSINESS**

11A

**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.