



# 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 M. Garcia  
Village Manager

John J. Hearn  
Village Attorney

Village Clerk

## AGENDA

### REGULAR COMMISSION 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
2. PLEDGE OF ALLEGIANCE
3. ORDER OF BUSINESS - ADDITIONS, DEFERRALS, OR DELETIONS TO AGENDA
4. PRESENTATIONS
  - A. Presentation by Commissioner Morris
5. PUBLIC COMMENTS RELATED TO AGENDA ITEMS
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

Village of Biscayne Park - Agenda

6. CONSENT AGENDA (Continued)

- B. Approval of State Financial Assistance Agreement for Stormwater Improvement Project.
- C. Approval of State-Funded Subgrant Agreement (Recreation Center/EOC Hardening Grant for \$60,000)

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 ABROGATION 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 REDUCTION; PROVIDING STANDARDS FOR SPECIAL FLOOD HAZARD AREAS WITH ESTABLISHED BASE FLOOD ELEVATIONS AND ALL OTHER IDENTIFIED FLOOD HAZARD AREAS; PROVIDING FOR STANDARDS FOR SUBDIVISION PROPOSALS; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR INCLUSION; PROVIDING FOR AN EFFECTIVE DATE. (2<sup>ND</sup> Reading)

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)

**Village of Biscayne Park - Agenda**

**8. ORDINANCES – FIRST READING (Continued)**

- 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**

**10. OLD BUSINESS - None**

**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)**
- 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)**
- C. Discussion regarding scheduling of meetings so they do not conflict with any religious holidays (Vice-Mayor Anderson)**

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

**13. REPORTS**

**A. Committee Reports**

- 1. Parks & Parkways Advisory Board – Dan Keys, Chairman**
- 2. Recreation Advisory Board – Roxanna Ross, Chairman**
- 3. Pathways Ad Hoc Committee – Gary Kuhl, Chairman**

**B. Village Attorney Comments**

**C. Village Manager Comments**

- 1. Report from Police Chief Glansberg**
- 2. Updates on various projects**

## Village of Biscayne Park - Agenda

### D. Commission Comments

1. Commissioner Bernard
2. Commissioner Mallette
3. Commissioner Morris
4. Vice-Mayor Anderson
5. Mayor Hornbuckle

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

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

### 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.

## village clerk

**From:** Steve Bernard [steve@stevebernardarchitect.com]  
**Sent:** Tuesday, July 07, 2009 8:20 AM  
**To:** VillageClerk@BiscayneParkFl.gov; frspence@bellsouth.net; attyhearn@aol.com  
**Subject:** Review of Minutes fro 7/7/09 Commission Meeting

Hi Ann,

I had a couple of notes on the Minutes to be reviewed tonight, could you please forward to the other Commissioners this morning so we can approve tonight?

Also, there is nothing in the July Meeting Agenda about Commission Directives, please add at least the previous months for status reports, and include new directives from the last 2 meetings.

Thanks,

Steve Bernard

### **Regular Commission Meeting, June 2, 2009**

#### **5. Public Comments related to Agenda Items**

- a. The listing of residents in opposition included Chuck Ross, who spoke in favor of the proposal, and several people who had concerns but were looking for additional information, but who were not necessarily opposed.
- b. A resident named Fecundo stated he was an Urban Designer, and that he was in favor of the proposal. He lives somewhere on 114th Street, on the proposed route.

#### **13.C.2 Commission Directives**

There was no mention of several months of directives, including the status of the tree removal permit, fire alarm installation, Village Goals to be submitted and coordinated by the Manager, ATT work being done around the Village, etc.

#### **13.C.D.4. Commission Comments**

- a. Commissioner Bernard requested that the Commission review the 'Raw Data' provided by the Finance Director to determine if monthly report would be feasible for tighter review of expenses. Commission agreed to review.
- b. Commissioner Bernard requested that all Committees submit Agendas prior to meetings for posting on website and review by the public. Commission agreed.
- c. Commissioner Bernard requested that all Committees submit minutes within 2 months of meetings for posting on website and review by the public. Commission agreed.

### **2nd Preliminary Budget Workshop, June 10, 2009**

#### **2. General Discussion**

- a. When questioned about where new employee health insurance contributions would show in the budget, the answer was given that 'it would show in the revenue'
- b. Vice Mayor Mallette requested a full I.T. Village overview, not just what computers the Police Dept would like to have. This included copiers, stamp machines, and other inventoried equipment.
- c. Commissioner Bernard requested that banked sick and vacation pay be quantified when told that that liability is not usually shown in budgets.
- d. Commissioner Bernard spoke about the general concept of Management advising of savings or additional expenses during the year, instead of making decisions without that advisement

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and balancing out at the end of the year.

**3. Code Enforcement**

a. Salary will now cover 40 hours per week, which could include weekend and/or evening meetings, but no comp time or overtime. The Manager stated the employee was happy with this arrangement.

**4. Executive/Administration**

- a. Manager was asked why the recommended 'regular salaries' was \$7,000 lower than last year, Finance Director was not present, but would be asked.
- b. There was a discussion about Election costs, and staff was asked to investigate previous year's costs and possible savings by combining with county/state/federal elections.

**Special Commission Meeting, June 22, 2009**

**3.a. Agreement between Village and FDOT (6th Ave Project)**

1. Other concerns Commissioner Bernard had included the fact that there has been no cost estimate submitted by FDOT; that FDOT will not pay for any cost overruns so the Village will be responsible for any and all cost overruns (even though we have no control over any aspect of the administration of the work); the Village is obligated to proceed with the work, even if bids come in higher than FDOT originally stated; and that there is nothing in writing that FDOT will install any future landscaping (although they verbally stated they would); and that the Village is being asked to approve \$36,000 before we have completed the 09-10 budget from which the money will come from.

**4.a. Irrigation Maintenance between Village and FDOT (6th Ave Project)**

Commissioner Bernard also explained that we were being asked to pay for maintenance of a system that our P&P Board recommended against.

**3rd Preliminary Budget Workshop, June 22, 2009**

**General**

The backup provided to the Commission was not posted on the Website for resident review, Manager stated full backup would be provided in the future.

**2.A Public Works**

- a. General. The 08-09 estimated "total operating Budget" shall be corrected from 221,200 to approx 266,881 - math error.
- b. There is no funding for tree trimming, tree trimming training, or new trees within the Public Works Budget, the Manager explained there were some funds in the Road Fund, but they were earmarked for matching grants. There was a consensus that new trees and existing tree trimming were important.



# Village of Biscayne Park

## MINUTES

### REGULAR MEETING

Ed Burke Recreation Center – 11400 NE 9<sup>th</sup> Court  
Tuesday, June 2, 2009, 7:00 pm

Mayor Hornbuckle called the meeting to order at 7 p.m. In addition to Mayor Hornbuckle, present were Vice-Mayor Kelly Mallette and Commissioners Bob Anderson, Steve Bernard, and Chester "Doc" Morris. Present from Staff were Frank Spence, Village Manager; John Hearn, Village Attorney; Mitchell Glansberg, Police Chief; Bernard Pratt, Public Works Director; and Ann Harper, Village Clerk.

Commissioner Anderson led the Pledge of Allegiance followed by a moment of silence.

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

Mr. Spence removed items 10A and 10B from the Agenda

### **4. PRESENTATIONS**

#### **A. State Representative Ronald Brisé, Florida House of Representatives, District 108 – Legislative Update**

Representative Brisé was introduced by Mayor Hornbuckle. Mr. Brisé thanked the residents for opportunity to serve them in Tallahassee. He reported on legislative changes which were made during the last session and advised that various fees have been raised, including the cost for operating vehicles in Florida. Many costs will be transferred to taxpayers, and taxpayers will see an increase in millage rates as the cost of public education is being passed to the residents. Town Hall meetings will be held soon to discuss bills which have passed related to growth management issues. Mayor Hornbuckle thanked Mr. Brisé for his report.

#### **B. Presentation of Certificate of Appreciation to "Coach" Joe de Madet**

Mayor Hornbuckle read the Certificate of Appreciate and presented it to Coach Joe, who thanked the Mayor and told the audience about the new sports programs which will be introduced during the summer.

#### **C. Report from Joe Mojica regarding classes and attendance at Miami-Dade College classes in Recreation Center**

Joe Mojica distributed a print-out which outlined the enrollment and areas by zip codes of the students enrolled in the Spring and Summer 2009 Miami-Dade College classes being held in the Recreation Center.

There were 35 students in the Spring classes and so far 50 students have enrolled for summer classes.

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

Mayor Hornbuckle announced that a special Charette or workshop will be held for residents to express their feelings about the "greenways" project proposed for use of the Federal Stimulus Funds which are available to the Village. He invited residents to speak on the subject of the proposal which was submitted for the sidewalks to be installed between Village Hall and the Metro Dade bus route. The following speakers were in opposition to the proposal:

Wayne Whetzel, 767 NE 114<sup>th</sup> Street

Victor Amano, 725 NE 114<sup>th</sup> Street

Rose Van Huvelin, 760 NE 114<sup>th</sup> Street

Loren Gruen, 11401 NE 7<sup>th</sup> Avenue

Barbara Kuhl, 777 NE 111<sup>th</sup> Street

Melinda Gordon, 643 NE 114<sup>th</sup> Street

Michael McGinn, 801 NE 113<sup>th</sup> Street

Chuck Ross, 11166 Griffing Blvd.

Karen Cohen, 11323 NE 8<sup>th</sup> Avenue

Arthur Ehrhardt said he was in favor of the project.

Judi Hamelburg said it was time to install sidewalks and walkways in the Village, and the project should be moved forward.

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

- A. Approval of Minutes – (1) Regular Meeting April 7, 2009  
(revised as directed on May 5, 2009)  
(2) Budget Workshop May 21, 2009  
(3) Special Meeting May 21, 2009**

### **B. Receipt of 2<sup>nd</sup> Quarter Financial Report for period ending 3/31/09**

Motion was made by Commissioner Anderson, seconded by Commissioner Morris, to approve the Consent Agenda. The motion carried by voice vote, 5/0.

## 7. PUBLIC HEARINGS – TAB #7

### A. SECOND READING OF ORDINANCES - None

### B. VARIANCES

Property owners Jose Luis and Dolores Hernandez of 11608 NE 6 Avenue request a variance from the Code provisions:

**10.2.1 Residential sector regulations. No residential building or land shall be used and no residential building shall be erected, constructed, reconstructed or structurally altered for any specific use except according to the regulation contained in Table A, Residential Sectors.**

**Table A Residential Sectors (Residential Sector A) Minimum Setbacks for Side is 10'.**

**11.6.2 (a): The height of any hedge shall not exceed four (4) feet when located between the building and any paved street. When located between the building and other property lines, fences and walls shall not exceed six (6) feet in height, and hedges shall not exceed eight (8) feet in height.**

#### To allow:

#1 - An encroachment of 1' into side setback for existing bathroom constructed without permits; side setback required is 10'; total side setback is currently 9'. Planning and Zoning Board recommended Approval on April 6, 2009, with a vote 5-0.

#2 - To keep 9' 6" free standing outside wall used for racquetball; maximum height permitted is 6' for fence or wall. Planning and Zoning Board recommended Denial on April 6, 2009, with a vote 4-1.

Attorney Hearn read the Variance Requests and asked those people in the audience who would be speaking on the subject to raise their hands to be sworn in as witnesses. Attorney Hearn then read the criteria which should be used for approval of the requests.

The son of the property owner said the bathroom and the wall were both at the house when it was purchased by his parents in 2001.

Vice-Mayor Mallette asked whether or not the bathroom has been inspected. Attorney Hearn said any approval of variances would be conditioned upon the structures receiving inspections. Vice-Mayor Mallette said she did not have a problem with the bathroom being in the setback area, but the wall structure is not appropriate for a home.

Gage Hartung, Chairman of Planning and Zoning Board, said it could not be determined when the bathroom was constructed, and the nine-foot wall encroaches on property lines. The P & Z Board voted to deny the request to keep the wall because the maximum height allowed for a fence or hedge is six feet.

Motion was made by Vice Mayor Mallette, seconded by Commissioner Morris, to approve the encroachment of the existing bathroom into the setback area with the condition that the bathroom is inspected and compliance must be within 90 days. The motion carried by voice vote, 5/0.

Motion was made by Commissioner Morris, seconded by Commissioner Anderson, to deny the request to retain the nine-foot racquetball wall, and the wall must be removed within ninety days. The motion carried by voice vote, 5/0.

**C. UPDATE ON PROPOSED PEDESTRIAN WALK/GREENWAY  
LINKING VILLAGE CENTER WITH METRO-DADE BUS ROUTES,  
2009 FEDERAL TRANSIT (FTA 5307) STIMULUS FUNDS**

Workshop scheduled for Saturday, July 11<sup>th</sup>, 2009, 9 am – noon at Ed Burke Recreation Center.

**8. ORDINANCES – FIRST READING – None**

**9. RESOLUTIONS – NONE**

**10. OLD BUSINESS**

- A. Consideration of Entry Sign Change Order #1 to AAA Sign Solutions in the amount of \$6,218.00 for L.E.D. Lights per Architect Savino/Miller plans and specifications (Manager Recommendation: Approval) – Removed from Agenda**
- B. Consideration of Entry Sign Change Order #2 to AAA Sign Solutions in the amount of \$3,786.00 for Concrete Foundation And Footing per Architect Savino/Miller plans and specifications (Manager Recommendation: Approval) – Removed from Agenda**
- C. Consideration of filling the Alternate Member position on the Planning and Zoning Board to replace Elizabeth Petrowski who was appointed as a Regular Member (Continued from May 5, 2009, meeting. – No action**
- D. Consideration of filling the Alternate Member position on the Parks & Parkways Advisory Board to replace Jane Ansley, who was appointed as a Regular Member (Continued from May 5, 2009, meeting) – Barbara Kiers was appointed to the position of Alternate**
- E. Consideration of activating Ecology Advisory Board**
  - (1) Enabling Ordinance**
  - (2) List of members and appointments by Commissioners**

Mr. Spence said that this Advisory Board was created to replace the original Beautification Committee, and "green" is now at the forefront of both national and local issues. The people who were appointed to this Board when it was created should be contacted to determine their interest, and after contacting the members originally appointed, the Commissioners should inform the Village Clerk of their appointments.

**F. Selection of dates for FEC Workshop and 2<sup>nd</sup> Preliminary Budget Workshop**

The Budget Workshop was scheduled for Wednesday, June 10<sup>th</sup>, at 6:30 p.m.  
The FEC workshop was tentatively scheduled for Saturday, August 1<sup>st</sup>, or Saturday, August 8<sup>th</sup>.  
The Village Clerk will contact FEC representatives and notify them of these dates.

**11. NEW BUSINESS – TAB #11**

**A. Announcement of 2009 Safe Neighborhood Parks Request for Proposals and Availability of Grant Funds for Additional Projects with June 30,2009 Deadline (Vice-Mayor Mallette)**

Vice-Mayor Mallette said money is available for grants, and Mr. Spence has the timeline. The project must be completed in twelve months, and it requires matching funds. The match will be in the next fiscal year. In response to Commissioner Morris' question, Vice-Mayor Mallette said land acquisition and improvements are looked upon favorably when consideration is being given to proposed projects, especially if the land is for a park. June 30 is the deadline for submission of proposals.

Mr. Spence said the Village has two major Boards to ask for input – the Parks & Parkways Board and the Recreation Board.

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

Brett Shinn spoke in favor of allowing metal roofs in the Village

Kelly Romano, 725 NE 114<sup>th</sup> St. , said she hopes that overflow parking at the Church of the Resurrection does not continue to be like it was this past Sunday.

Karen Cohen said she would like the Village to apply for a waiver for more time to submit the project to use Federal Transit Stimulus funds.

**13. REPORTS**

**A. Committee Reports**

- 1. Parks & Parkways Advisory Board – Dan Keys, Chairman – no report**
- 2. Recreation Advisory Board -- Roxanna Ross, Chairman**

Mr. Spence said he and Mrs. Ross met with Miami Fitness representatives regarding Summer Camp. Although sign-up was not up to their expectations, they are optimistic. They have requested Commission approval to rent the Village's bus on two mornings, with the Village furnishing the driver. The Commission approved the rental of the bus.

**B. Village Attorney Comments**

Attorney Hearn updated the Commission on recent legislative changes in the State growth management laws which will affect traffic concurrency and new developments. He also said he has received calls regarding the Village fence ordinance and will be looking into making some revisions.

**C. Village Manager Comments**

**1. Report from Police Chief Glansberg**

Chief Glansberg said Father Cutie's first service at the Church of the Resurrection brought three hundred additional cars and over four hundred additional people.

**2. Updates on various projects and Commission Directives**

Mr. Spence said the County Commission approved the transfer of \$365,000 from Village Hall to the Public Works facility. County Commissioner Heyman sponsored the agenda item. He said a report has been received showing there is no asbestos in the Public Works trailer. The preliminary tax roll for the Village has been received, and it is \$171 million, which is a four percent reduction in value.

**D. Commission Comments**

- 1. Commissioner Anderson
- 2. Vice-Mayor Mallette
- 3. Commissioner Morris
- 4. Commissioner Bernard
- 5. Mayor Hornbuckle

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

- |                    |  |
|--------------------|--|
| *Wednesday, June 3 | Parks & Parkways Advisory Board 6 pm                                 |
| *Tuesday, June 9   | Code Review Committee 7 pm   |
| *Monday, June 15   | Planning & Zoning Board 6:30 pm                                      |
| *Monday, June 15   | Recreation Advisory Board 6:30 pm                                    |
| *Tuesday, June 16  | Code Enforcement Board 7 pm  |
| *Tuesday, June 23  | Code Review Committee 7 pm   |
| *Friday, July 3    | All Departments closed in observance of July 4 <sup>th</sup> Holiday |
| *Monday, July 6    | Planning & Zoning Board 6:30 pm                                      |
| *Tuesday, July 7   | Regular Commission Meeting 7 pm                                      |

There being no further business to come before the Commission, the meeting was adjourned at 9:15 p.m.

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

Attest:

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

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



# Village of Biscayne Park

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

## MINUTES

### 2<sup>nd</sup> PRELIMINARY BUDGET WORKSHOP

Ed Burke Recreation Center – 11400 NE 9<sup>th</sup> Court  
Wednesday, June 10, 2009 – 6:30 pm

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

Mayor Hornbuckle called the 2<sup>nd</sup> Preliminary Budget Workshop to order at 6:35 p.m. In addition to Mayor Hornbuckle, the following were present: Commissioners Bob Anderson, Steve Bernard, and Chester "Doc" Morris, and Vice-Mayor Kelly Mallette. Present from Staff were: Mitch Glansberg, Police Chief; Frank Spence, Village Manager; John Hearn, Village Attorney, and Ann Harper, Village Clerk.

#### 2. DISCUSSION OF PROPOSED FISCAL YEAR 2009-2010 BUDGET

Mayor Hornbuckle said that three departmental budgets would be discussed tonight. He asked the Commissioners whether or not they would like to allow public comments. Commissioner Anderson said that public comments should be offered at later budget meetings, not the preliminary meetings. Commissioner Morris said the meeting should be concluded at 8:30 pm, and if discussion is finished before that time, then the public should be allowed to speak. Commissioner Bernard said if any resident has taken time to look at the budget, they should be permitted to speak. Vice-Mayor Mallette said there are only a few people in the audience, and if there were many more people, then it could be a problem.

Mr. Spence said the first departmental budget to be reviewed is for the Police Department. The budget reflects the same number of personnel, eleven sworn officers and one civilian clerk. It is difficult to predict how many "live" bodies will be on the payroll, and if there are vacancies, then overtime is required, and overtime is unpredictable. Under the PBA contract, overtime must first be offered to full-time officers before being offered to Reserve Officers. This budget is approximately \$64,000 less than the current year.

During the budget review process, the following questions were raised. (1) Mr. Spence was asked to determine which insurance carrier, Miami-Dade or FMIT, is required to pay Workers Compensation benefits when an officer sustains a re-injury of a previous injury. (2) Commissioner Anderson said he would like the expenses related to the Code Enforcement program, such as automobile expenses, to be taken out of the Police Department budget and placed in the separate Code Enforcement budget. He also requested that account 5202, gas and oil, be reduced. (3) Vice-Mayor Mallet said she would like to know the number of computers, work stations, and laptops the Police Department would like to have.

There being no further business to come before the Commission, the meeting was adjourned at 8:15 p.m.

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

Attest:

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

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

# Village of Biscayne Park

## MINUTES

### **SPECIAL COMMISSION MEETING**

**Ed Burke Recreation Center – 11400 NE 9<sup>th</sup> Court  
Monday, June 22, 2009, 6:30 p.m.**

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

Mayor Hornbuckle called the meeting to order at 6:40 p.m. In addition to Mayor Hornbuckle, the following were present: Commissioners Bob Anderson, Steve Bernard, and Chester "Doc" Morris, and Vice-Mayor Kelly Mallette. Present from Staff were Bernard Pratt, Public Works Director, Frank Spence, Village Manager, and Ann Harper, Village Clerk.

#### **2. Consideration of Entry Sign Change Order #1 to AAA Sign Solutions for L.E.D. Lights per Architect Savino/Miller plans and specifications (Manager Recommendation: Approval)**

Mr. Spence said he was advised by the Architect, Barry Miller, that the original contractor for lighting is no longer in business. Mr. Miller solicited bids from other contactors, and he is recommending Color Kinetics. With the \$4,500 added to the cost of the sign, the cost is still under the \$30,000 limit. No labor costs have been estimated. Mr. Spence said he recommended approval of the Change Order subject to Barry Miller's approval that the labor cost is reasonable.

Motion was made by Commissioner Morris, seconded by Commissioner Anderson, to approve the Change Order.

Commissioner Bernard said we do not have a bid from the Contractor; we only have an estimate from the Designer. We can approve it up to a certain amount, but we should not approve it until it is a written Change Order form.

Mr. Spence said if it is within his authority to sign, then he will sign it. This is a proposal to authorize him to sign the Change Order. Our Attorney will draw up the Change Order.

Commissioner Morris accepted a revision to his original motion. Approval of the change order will be subject to the cost for installation of the lights being within the cost limit.

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

#### **3. A. Consideration of Approval of the Locally Funded Agreement (LFA) Between the Village of Biscayne Park and the Florida Department of Transportation (FDOT)**

Mr. Spence read his backup memorandum into the record, and it is attached to these minutes. He said that this revised agreement reflects the changes which the Village requested, and the total cost of the project and the Village's contribution increased to \$36,000. The increased costs are associated with the requirement for an electrical conduit and five service boxes. He recommended approval of the agreement and the Resolution.

Motion was made by Vice-Mayor Mallette, seconded by Commissioner Morris, to approve the agreement.

**TO THE IRRIGATION WITHIN S.R. 915/NE 6<sup>TH</sup> AVENUE FROM NE 113<sup>TH</sup> STREET TO NE 121<sup>ST</sup> STREET TO THE VILLAGE IN PERPETUITY; PROVIDING FOR AN EFFECTIVE DATE**

Mr. Spence read the title of the Resolution.

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

**5. Selection of Project(s) to be submitted to Safe Neighborhood Parks**

Vice-Mayor Mallette recused herself and from this discussion since she is a member of the County Board which will hear this request, and she left the room.

Mr. Spence said this item will be on the agenda of the County Board on July 20<sup>th</sup>.

Commissioner Bernard said that both the Recreation Board and the Parks and Parkways Board made recommendations and commented that the project must have a 25-year life. He also commented that it is hard to know what to discuss since we don't know the actual dollar amount and where it will be in the budget.

Mr. Spence said it will be 2010 before anything happens, and if we do not have the matching funds at that time, we will withdraw from doing the project. The two Advisory Boards are recommending four different projects.

Mayor Hornbuckle asked Mr. Spence to "filter out" the recommendations and get 'ballpark' numbers. Commissioner Bernard asked whether or not we can get trees. Mr. Spence advised that the Village has been awarded \$9,755 from a forestry grant, but we have not received official notification.

There being no further business to come before the Commission, the meeting was adjourned at 7:20 p.m.

**To be followed by 3<sup>rd</sup> Preliminary Budget Workshop**

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

Attest:

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

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



# Village of Biscayne Park

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

## MINUTES

### **3rd PRELIMINARY BUDGET WORKSHOP**

Ed Burke Recreation Center – 11400 NE 9<sup>th</sup> Court  
Monday, June 22, 2009 – 7 pm

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### **IMMEDIATELY FOLLOWING SPECIAL MEETING WHICH BEGAN AT 6:30 PM**

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

Mayor Hornbuckle called the 3rd Preliminary Budget Workshop to order at 7:20 p.m. In addition to Mayor Hornbuckle, the following were present: Commissioners Bob Anderson, Steve Bernard, and Chester "Doc" Morris, and Vice-Mayor Kelly Mallette. Present from Staff were: Bernard Pratt, Public Works Director; Holly Hugdahl, Acting Finance Director; Frank Spence, Village Manager; and Ann Harper, Village Clerk.

#### **2. DISCUSSION OF PROPOSED FISCAL YEAR 2009-2010 BUDGET**

##### **A. Public Works**

Mr. Spence said that the budget being presented for Public Works shows a 6.5% decrease. Operating costs have decreased because of transferring the cost of vehicles to other departments. The prices for gasoline will have to be revised before the final budget figures are presented. There are no more layoffs of personnel proposed.

Commissioner Bernard asked about the liability for banked sick leave and vacation. Mrs. Hugdahl said it is credited in the Long Term Department Group, and Public Works employees do not have a lot of banked sick leave and vacation because the employees are required by their union contract to use the vacation leave, and most of the men use their sick leave.

During the review process, the following changes and requests were made:

- (1) Mr. Spence said that \$1,000 will be added to the overtime account.
- (2) Account #4002 (Training) will be adjusted if the high-lift equipment is purchased.
- (3) The cost of telephone service will be reduced when the service is reduced to one line.
- (4) The cost of the Manager's Nextel will be moved to Department 512.

(5) Vice-Mayor Mallette would like a spread sheet showing the budget for Public Works in the General Fund, Road Fund, and Sanitation Fund.

(6) The Nextel contract is to be reviewed and other phone companies are to be contacted.

(7) Vice-Mayor Mallette would like to know how much the city pays for cell phones city-wide.

(8) Commissioner Bernard asked for details for account 4603 (R & M – Buildings)

(9) Revisit account 5202 (Gas & Oil) and revise

Vice-Mayor Mallette commented that other cities outsource their landscaping work, and we should see about getting a contract to do tree trimming.

Commissioner Bernard said the Village used to have an "amnesty" program for residents so they could trim their trees before hurricane season begins and the Village would not charge them for picking up the clippings. He suggested that this program be offered again.

#### **B. Road Fund**

Commissioner Anderson asked for an explanation of account 3108 (Contract Services) and said the telephone estimates should be revised.

**C. CITT Fund** – will be discussed at next workshop.

#### **D. General Administration**

Commissioner Bernard said the salary estimates should be reduced; account 1201 should be reduced to \$16,740.

After discussion of accounts 3102 and 3103 (Other Professional Services and Legal Outside Services), direction was given to request the attorneys submit timely invoices and to ask Bell-David to provide information on what the Village needs to submit as updates for the Comprehensive Plan.

Commissioner Morris commented on the cost of storage units and suggested that Staff take the time to go through the units and discard things that are no longer needed.

Vice-Mayor Mallette commented that each Department has expenses related to IT and asked that a spread sheet be prepared showing all departments and the costs related to computers.

Commissioner Anderson asked that someone check whether or not the telephone dedicated for Fire Services purposes can be cellular.

**E. Finance** – will be discussed at the next workshop.

There being no further business to come before the Commission, the meeting was adjourned at 8:50 p.m.

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

Attest:

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

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

# Village of Biscayne Park

## MINUTES

### SPECIAL COMMISSION MEETING

Ed Burke Recreation Center – 11400 NE 9<sup>th</sup> Court  
Thursday, July 16, 2009, 6:30 p.m.

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

Mayor Hornbuckle called the meeting to order at 6:40 p.m. In addition to Mayor Hornbuckle, the following were present: Commissioners Steve Bernard, Kelly Mallette, and Chester "Doc" Morris, and Vice-Mayor Bob Anderson. Present from Staff were Holly Hugdahl, Acting Finance Director; Frank Spence, Village Manager, and Ann Harper, Village Clerk.

Mayor Hornbuckle said there will be three meetings tonight: Special Commission Meeting, Foundation meeting, and the fifth preliminary Budget Workshop.

#### 2. Final Selection of Project for Application with MTA Transit Stimulus Funds

Mr. Spence said that late this afternoon he received an email from Lynne Fain at MDT (Miami-Dade Transit) which outlined recommendations and additional requirements for the projects. Mr. Spence read the letter, which is attached to these minutes.

Mayor Hornbuckle commented that the requirements make it sound like it would be impossible to do this project.

Commissioner Bernard asked about the November 9 submission date.

Mr. Spence said that if we don't meet the Monday deadline, the project could be included in the addendum to be filed in November.

Commissioner Mallette said the information she has gathered is that many people felt this is not a great project. She has concerns about taking money from a "transit fund" when we don't have "transit" in the Village. She recommended that the Manager get more information about the November 9 submission and get recommendations from the Parks & Parkways Advisory Board. Vice-Mayor Anderson agreed with Commissioner Mallette.

Commissioner Morris asked whether or not we could come up with answers to the questions by Monday and if not, what would be wrong with waiting until November.

In response to Commissioner Anderson's question, Mr. Spence said this project is on a reimbursable basis. The Village would have to expend \$33,000 and then request reimbursement. Reports are submitted after the fact, usually on a quarterly basis. These are Federal Funds, and requirements include drawing up specifications, going out for bids, and hiring minority contractors. Commissioner Anderson said that the cost of doing this business is the responsibility of the Village.

Motion was made by Commissioner Mallette, seconded by Vice-Mayor Anderson, to withdraw from this project and get more information and ask the Parks & Parkways Board to get public input on

what would be appropriate. The motion failed by voice vote 2/3, with Commissioners Bernard and Morris and Mayor Hornbuckle voting no.

Motion was made by Commissioner Morris, seconded by Commissioner Bernard, to approve the current concept and to develop a document with the assistance of Bryan Cooper to respond to the questions raised and to submit the information by Monday, July 20. The motion carried by voice vote 3/2 with Commissioner Mallette and Vice-Mayor Anderson voting no.

Mr. Spence said he would be delivering the Safe Neighborhood Grant Application on Monday and also delivering the MDT application.

Motion was made by Commissioner Bernard, seconded by Commissioner Morris, that an ad hoc "Parkways" committee be formed.

Dan Keys asked why the Commission would need an ad hoc committee when the Parks & Parkways Advisory Board has already been established.

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

Commissioner Morris suggested using the Parks & Parkways Advisory Board membership.

Mayor Hornbuckle said all Parkways Board members would be members of the ad hoc committee, and each Commissioner would have one additional appointment.

Mayor Hornbuckle recessed the meeting at 7:15 p.m.

## **SPECIAL COMMISSION MEETING TO BE RECONVENED AT 8 PM OR IMMEDIATELY AFTER BUDGET WORKSHOP**

The meeting was reconvened at 8:30 p.m.

3. Discussion of establishing the Tentative Maximum Tax Levy for Fiscal Year 2009-2010 permitted under FS 200.185 as created by Chapter 2007-321, L.O.F., to be Submitted to the County Property Appraiser and to the Department of Revenue.

### RESOLUTION NO. 2009-13

A RESOLUTION OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA; ESTABLISHING A TENTATIVE MILLAGE RATE OF \_\_\_\_ FOR FISCAL YEAR 2009-2010; ESTABLISHING THE CURRENT YEAR ROLLED-BACK RATE TO BE \_\_\_\_ AND ESTABLISHING THE FIRST AND THE SECOND PUBLIC BUDGET HEARINGS AS REQUIRED BY LAW; DIRECTING THE VILLAGE CLERK AND ACTING FINANCE DIRECTOR TO FILE SAID RESOLUTION WITH THE PROPERTY APPRAISER OF MIAMI-DADE COUNTY PURSUANT TO THE REQUIREMENTS OF FLORIDA STATUTES AND THE RULES AND REGULATIONS OF THE DEPARTMENT OF REVENUE OF THE STATE OF FLORIDA; ESTABLISHING THE TIME AND LOCATION OF

THE FIRST AND SECOND PUBLIC HEARINGS; PROVIDING FOR AN  
EFFECTIVE DATE

Mr. Spence read the title of Resolution 2009-13.

Motion was made by Commissioner Morris, seconded by Vice-Mayor Anderson, to keep the current millage (8.8903 mils per \$1,000).

Commissioner Bernard said he is concerned about having the trees in the Village trimmed in preparation for hurricanes, and he thinks the tentative millage should be higher than the current rate.

Mayor Hornbuckle called for a vote on the Resolution to establish the tentative millage rate as the same as the current rate. The motion carried by roll-call vote, as follows:

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

NAYS: None.

There being no further business, the meeting adjourned at 8:35 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, May 5, 2009, 7:00 pm

Mayor Hornbuckle called the meeting to order at 7:10 p.m. In addition to Mayor Hornbuckle, present were Vice-Mayor Kelly Mallette and Commissioners Bob Anderson, Steve Bernard, and Chester "Doc" Morris. Present from Staff were Frank Spence, Village Manager; John Hearn, Village Attorney; Mitchell Glansberg, Police Chief; Bernard Pratt, Public Works Director; Holly Hugdahl, Acting Finance Director, and Ann Harper, Village Clerk.

Commissioner Bernard led the Pledge of Allegiance followed by a moment of silence.

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

Commissioner Bernard added 11- H, committee minutes and agendas and 11- I, North Miami Beach issues.

Commissioner Anderson deferred 10B to the next meeting.

### **4. PRESENTATIONS - None**

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

Dan Keys spoke about the entry sign location.

Bryan Cooper spoke about North Miami land regulations.

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

**A. Approval of Minutes – Regular meeting April 7, 2009 – deferred to next meeting**

**B. Receipt of 2<sup>nd</sup> Quarter Financial Report for period ending 3/31/09**

Commissioner Bernard asked Mrs. Hugdahl to provide explanatory notes on the financial statements when there is a significant difference between budgeted amounts and actual figures.

### **7. PUBLIC HEARINGS**

**A. SECOND READING OF ORDINANCES - None**

**B. VARIANCES - None**

### **8. ORDINANCES – FIRST READING – None**

## 9. RESOLUTIONS – Tab #9

### A. RESOLUTION 2009-9

**A RESOLUTION OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, RATIFYING THE DONATION OF \$2,500 FOR FISCAL YEAR 2007-2008 AND \$2,500 FOR FY 2008-2009 TO THE NORTH MIAMI FOUNDATION FOR SENIOR SERVICES, INC.; PROVIDING FOR AN EFFECTIVE DATE**

**Manager's Recommendation: Approval**

Attorney Hearn read the title of the Resolution

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

## 10. OLD BUSINESS

### A. Discussion of Sanitation rates for FY 2009-2010. Final decision required by the County by June 1, 2009, to be placed on November tax bill (Continued from April 7, 2009, meeting)

**Manager's Recommendation: Approval**

Mr. Spence said this item was carried over from the last meeting. He distributed salary information for the Public Works employees who are paid from the sanitation fund. If the Village is to collect this fee on the tax bills, the new fee must be furnished to the County by June 1<sup>st</sup>.

Commissioner Anderson asked whether or not the Manager had looked into the efficiencies and improvements which were discussed last meeting. Mr. Spence said it was not possible to reduce salaries because of the union contract.

Commissioner Anderson suggested that if residents placed the trash cans on the street, perhaps the Sanitation crews could pick up more cans per day and pick up trash only one day a week.

Mayor Hornbuckle said the question is how much of an increase in fees do we feel comfortable with. Last year there was a ten dollar increase.

Commissioner Bernard said we do not know how much other cities are increasing their sanitation fees. Mrs. Hugdahl said Miami Shores is not increasing their fee because the General Fund will absorb the difference.

Vice-Mayor Mallette said the sanitation fee has been increased every year since she has been on the Commission. She understands the goal of not taking it out of the General Fund. If it is increased this year, it will continue to grow unless we find a way to do it better. She is not comfortable with a \$21 increase, but there is something to be said for making it self-sustaining.

Commissioner Anderson said he wants to see the sanitation fund as self-sufficient. If the full increase had been approved last year, we would be looking at a decrease this year.

Motion was made by Commissioner Anderson, seconded by Commissioner Morris, to approve \$563 (\$21 increase) as the new Sanitation rate.

Mrs. Hugdahl explained how the Sanitation Enterprise Fund is structured and how the sanitation fee could be reduced next year if there were to be funds remaining after the end of the fiscal year.

Mayor Hornbuckle called for a vote on the motion to approve \$563 as the new Sanitation rate. The motion failed by voice vote, 2/3 with Commissioner Bernard, Vice-Mayor Mallette and Mayor Hornbuckle voting no.

Motion was made by Vice-Mayor Mallette, seconded by Commissioner Bernard, to approve a \$16.00 increase in the Sanitation assessment from \$542 to \$558. The motion carried by voice vote, 4/1 with Commissioner Anderson voting no.

- B. Approval of Job Descriptions (Village Manager)  
(Submitted under separate cover) – deferred to next meeting**
- C. Consideration of filling the Alternate Member position on the Planning and Zoning Board to replace Elizabeth Piotrowski who was appointed as a Regular Member (Continued from April 7, 2009, meeting) – no action**
- D. Consideration of filling the Alternate Member position on the Parks & Parkways Advisory Board to replace Jane Ansley, who was appointed as a Regular Member (Continued from April 7, 2009, meeting) – no action**
- E. Notification of FDOT Project to install irrigation system and Limited curbing on median ends on NE 6<sup>th</sup> Avenue/SR-915, Using Federal Stimulus Transportation Funds; authorizing \$25,000 deposit from Road Fund as Village's share.  
Manager's Recommendation: Approval**

Mr. Spence said the Village's allocation based on population is \$74,073. The plans call for irrigation of medians and installation of curbs on NE 6<sup>th</sup> Avenue and all streets entering NE 6<sup>th</sup> Avenue, and replacement of top soil and sod. Landscaping plans are being drafted by FDOT and their consultants. Mr. Spence requested authorization to pay \$25,000 deposit from the Road Fund.

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

Vice-Mayor Mallette asked whether or not there was a similar FDOT median project that we could see in order to determine the condition of the curbing.

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

- F. Location/relocation of new entry sign. Easement documents Executed and received. (Village Manager)  
Manager's Recommendation: Locate sign to current site of the entry sign**

Mr. Spence said there have been changes in the leadership of the Church of the Resurrection. The Bishop has apologized about the manner in which the Church treated the Village with regard to our request to place our new entry sign on the current site. The Bishop assured us of the complete cooperation of the Church. The easement deed has been signed which gives the Village the easement with no restrictions. We now need a motion to install the new sign at the site of the current sign. The sign is being manufactured, and it is 23' long and 6' high.

Mr. Spence said the Archdiocese is interested in selling the Village the two lots across from the church. He suggested the Commission authorize the manager to get appraisals and come back with a proposal.

Motion was made by Commissioner Morris, seconded by Commissioner Anderson, to install the new entry sign at the site of the current sign. The motion carried by voice vote, 5/0.

Motion was made by Commissioner Anderson, seconded by Commissioner Morris, to authorize the Village Manager to research the cost of obtaining the two lots from the Church. The motion carried by voice vote, 5/0.

#### **G. North Miami Code Status and Discussion (Commissioner Bernard)**

Commissioner Bernard reviewed prior discussions and action and said that several key items did not get final resolution. He suggested that our staff continue to negotiate with North Miami staff because North Miami could have a new Council after their upcoming election.

Attorney Hearn reviewed key changes and said that several of the changes were to protect the Village, and most important was the density bonus area. He thought there may be some openness to further changes, but no further action is needed from his office at this time.

### **11. NEW BUSINESS**

#### **A. Appointment of Ron Gwynn to the Recreation Advisory Board to Replace Amy Refeca who resigned (Mayor Hornbuckle's appointment) – appointment was confirmed**

#### **B. Report from Code Review Committee regarding fences in front Yards of homes located on corners. (Al Childress, Chairman)**

Mr. Childress reviewed the April 28 meeting when the Committee discussed fences. The Committee agreed to allow fences on side yards, but not front yards. They also discussed gates in front, and they voted to leave the Code as it is. They also recommended no changes in the provisions for hedges.

Commissioner Bernard said he was concerned that the Committee did not discuss walls and fences. Mr. Childress said anywhere a fence is allowed, a wall is also allowed. Regarding the complete section 11.6 (Fences, Walls and Hedges), Mr. Childress said after extensive discussion of that section, the consensus of the Committee was to leave it as it is.

### **11. NEW BUSINESS (Continued)**

#### **C. Recommend approval of AvMed Health Insurance for employees For June 1, 2009. through May 30, 2010**

Mr. Spence read into the record his memorandum to the Commission in which he recommends awarding the contract for health insurance to AvMed Plan 3704 for the period June 1, 2009 to May 31, 2010. The monthly cost for Plan 3704 is approximately the same as is currently being Paid to Blue Cross.

Motion was made by Commissioner Anderson, seconded by Vice-Mayor Mallette, to accept the bid as recommended (Plan 3704).

Commissioner Bernard said he thought at the last meeting the Commission talked about going to the employees and asking what type of plan (at a lower cost) they would prefer. Vice-Mayor Mallette said she thought the direction was to look at a lower level of benefits.

Mr. Spence said there is no longer an "HMO" as such; the difference is going to be in the amount of the deductible.

Vice-Mayor Mallette said she would like to know what El Portal and Miami Shores have for their employee insurance plans.

After discussion, Commissioner Anderson changed his motion to accept Plan 3705 (which costs less than Plan 3704). Vice-Mayor Mallette seconded the motion. The motion carried by voice vote, 5/0.

**D. Consideration of scheduling a Charette/workshop concerning South Florida East Coast Corridor Transit Study prior to October 12, 2009 (as directed at Commission meeting April 7, 2009)**

After discussion, the Commission agreed to suggest Saturday, June 6, 2009, as the workshop date.

**E. Selection of date for First Budget Workshop for FY 2009-2010.**

The Commission agreed to hold the first Budget Workshop on Thursday, May 21, 2009.

**F. Notice of Application by Miami Country Day School to modify Site plan at 601 NE 107<sup>th</sup> Street**

Mr. Spence said the Village received a notice in the mail about this application. Commissioner Bernard said he would obtain a site plan which the Commission can review.

**G. Renewal of Contract with Miami-Dade College for their use of the Recreation Center  
Manager's Recommendation: Approval**

Mr. Spence said the contract expires June 1<sup>st</sup>, and the College has requested an extension.

Commissioner Bernard asked if we know whether or not the residents use this service and if the programs have been successful.

Mr. Spence said in the beginning only one or two programs were successful, but we are expecting an increase in enrollments since flyers about the classes were delivered to each home in the Village. We will have a report from the college at a future meeting.

Motion was made by Commissioner Anderson, seconded by Commissioner Morris, to approve the renewal of the contract. The motion carried by voice vote, 5/0.

**H. Committee Agendas and Minutes (added at beginning of meeting)**

Commissioner Bernard said the Village has three ongoing committees, and there are no current agendas or minutes posted on the website. He asked for a consensus from the Commission to ask the Chairmen of the committees to prepare and post agendas before meetings and after the meeting to

submit the minutes for posting on the website. The agendas should be posted two days before the meeting, and the minutes within two months. The Commission agreed to ask each Board Chairman to submit the agendas and minutes for posting.

### **I. North Miami Comprehensive Plan (added at beginning of meeting)**

Commissioner Bernard said the amendment to the North Miami Comprehensive Plan is a fifty-page document and includes a water plant and reverse osmosis plant. He suggested putting together a letter from staff to North Miami staff to ask that they contact the Village when they have plan amendments. He asked the Manager to report on this at a future meeting.

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

Barbara Kuhl spoke about comments made by Al Childress earlier in the meeting regarding hedges. She also said the Village no longer needs the vans and buses which were used by the Recreation Department.

Dan Keys spoke about the proposed purchase of lots from the Church.

Bryan Cooper spoke about the issue of fences in the Code.

Roxanna Ross said the financial statements require detail review. For the Recreation Advisory Board report, she said there was a large turnout for the Easter Egg Hunt and the Flea Market.

### **13. REPORTS**

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

- 1. Parks & Parkways Advisory Board -- Dan Keys, Chairman -- two grant applications have been submitted**
- 2. Recreation Advisory Board -- Roxanna Ross, Chairman (see above)**

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

- 1. Update on North Miami rezoning**
- 2. Discussion of Village residential zoning -- this has been drafted as a new ordinance**

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

- 1. Report from Police Chief Glansberg**
- 2. Updates on various projects and Commission Directives**

Mr. Spence said the County is requiring an asbestos survey of the Public Works trailer. He also reviewed and reported on the list of Commission Directives. Discussion was held on scheduling a meeting for the new Foundation to determine goals for fund raising.

**D. Commission Comments**

**1. Commissioner Anderson** – commented on the good work and services provided by the North Miami Senior Citizens Foundation

**2. Commissioner Bernard** – suggested that the Commissioners appoint members to the Ecology Board so it can be activated. He also asked why we are keeping the Recreation Department vans and commented on newsletters and the website. He asked for the cost of the audit of Recreation Department records and was advised the invoice was for approximately \$4,100.

**3. Commissioner Morris** – said he would like for building to begin on the Public Works facility.

**4. Vice-Mayor Mallette** – no comments

**5. Mayor Hornbuckle** – no comments

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

<b>*Wednesday, May 6</b>	<b>Parks &amp; Parkways Advisory Board 6 pm</b>
<b>*Tuesday, May 12</b>	<b>Code Review Committee 6:30 pm</b>
<b>*Monday, May 18</b>	<b>Planning &amp; Zoning Board 6:30 pm</b>
	<b>Recreation Advisory Board 6:30 pm</b>
<b>*Tuesday, May 19</b>	<b>Code Enforcement Board 7 pm</b>
<b>* Monday, May 25</b>	<b>All Departments closed in observance of Memorial Day</b>
<b>*Tuesday, May 26</b>	<b>Code Review Committee 6:30 pm</b>
<b>*Monday, June 1</b>	<b>Planning &amp; Zoning Board 6:30 pm</b>
<b>*Tuesday, June 2</b>	<b>Regular Commission Meeting 7 pm</b>

There being no further business to come before the Commission, the meeting was adjourned at 10:45 p.m.

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

Attest:

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

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

**village clerk**

**From:** Steve Bernard [steve@stevebernardarchitect.com]  
**Sent:** Tuesday, September 01, 2009 8:19 AM  
**To:** VillageClerk@BiscayneParkFl.gov; frspence@bellsouth.net; attyhearn@aol.com  
**Subject:** Notes on August 4, 2009 Minutes

Ann,

After reviewing the video of the Aug 4 Reg Commission Meeting, I'm requesting that the following be forwarded to the other Commissioners for inclusion and approval of the Minutes:

**4.A. Audit issues:**

1. Proper reserve/surplus percentage and amount? We were told that we are now in the same category as larger cities, but we have a healthy unreserved fund balance, and some cities have Hurricane Contingency Fund.
2. Old waste fees - have only decreased by \$8,000, with \$132,000 still outstanding.
3. Some Comments go back to 2000 - inventory, policies/procedures, etc and could affect credit rating if we decide to borrow. Manager Spence stated that the Inventory requirement will be finished by end of August.
4. Are there areas other than the Rec Center cash management that should be discussed? Formal accounting policies and procedures are meant to be checked and tested, the auditor is not aware of anything else, but it is the Village's responsibility to be on top of policies. Finance Director stated that we could do policies manual now, but it might change with new Manager and form of Management, but no rough estimate of how much it would cost to create policies, and would have to re-write if new Management. Commissioner Anderson stated that we're looking at doing nothing until we make a decision, asked how the Commission felt about doing nothing until we make a decision about Management. Commissioner Bernard stated that on 4/1/08, the Commission gave direction to write the policies and procedures, and they still aren't done, even after the audit called for them for 8 years.
5. Commissioner Anderson asked the auditor if they would charge to review detailed questions he had - the answer was "no", and that he could email the questions.

**4.B.** Motion to dispose outdated equipment was made by Vice Mayor Anderson, not Commissioner Mallette. I could not tell who seconded it.

**5. Public Participation**

Bryan Cooper also spoke about the Citizen's Bill of Rights and the Right to Speak.  
 Rose Demerle spoke about negative publicity, was asked to only speak on Agenda items at this portion of the meeting.

**6.B. 3rd Quarter Financials**

Commissioner Bernard stated that we are both \$125K under revenue and \$67K over expenses for a total of about \$200K overbudget, to which the Finance Director thought it would be maybe more like \$100K, less anything we can make up over the last quarter, which would have to come out of the surplus. Commissioner Bernard stated we need to mitigate these losses in the next budget year to protect the surplus, because of this year's shortfall.

Commissioner Bernard requested written details on capital expenses, and the Finance Director stated she was busy doing the budget, and will provide those details as she does the budget workbook, and will analyze each of the numbers, and she understands that the Commissioner needs financial information, even if she can't provide them due to time constraints.

Commissioner Anderson asked why we were at 99.2% of the total finance budget. Finance Director stated it was due to special projects for Police and Public Works, special memos and schedules to be provided to other agencies, as well as lawsuits and special requests. This is why she is doing the minimal amount of work that needs to be done. When asked which special requests, Manager Spence explained about lawsuits, documentations, police grievances, etc. and there's nothing we can do about it.

**10. A.B.C. Manager Selection**

6A(7)

It was agreed that any Manager hired would be on a probationary period.

**12. Good and Welfare**

Bryan Cooper also asked the legality about Commissioner's Mallette's appointment of a spouse on the Safe Pathways Ad Hoc Committee, to which Commissioner Mallette stated that husbands and wives are allowed to serve on the same board, that the Ethics Commission allows it.



# Village of Biscayne Park

## MINUTES

### REGULAR MEETING

Ed Burke Recreation Center – 11400 NE 9<sup>th</sup> Court  
Tuesday, August 4, 2009, 7:00 pm

Vice-Mayor Anderson called the meeting to order at 7:15 p.m. In addition to Vice-Mayor Anderson, present were Commissioners Steve Bernard, Kelly Mallette, and Chester "Doc" Morris. Mayor Hornbuckle arrived at 7:55 p.m. Present from Staff were Frank Spence, Village Manager; John Hearn, Village Attorney; Mitchell Glansberg, Police Chief; Bernard Pratt, Public Works Director; Holly Hugdahl, Acting Finance Director, and Ann Harper, Village Clerk.

Commissioner Morris led the Pledge of Allegiance followed by a moment of silence.

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

Commissioner Bernard added item 11C, Workshop for Pathways project.

### **4. PRESENTATIONS**

**A. Presentation of Certificate of Achievement for Excellence in Financial Reporting for Fiscal Year ending September 30, 2007, and Comprehensive Annual Financial Report (CAFR) For the Fiscal Year ending September 30, 2008, by Alberni, Caballero & Castellanos, C.P.A., LLP (CAFR distributed previously)**

Mr. Caballero made the official presentation of the Certificate of Achievement for Excellence in Financial Reporting for the Comprehensive Annual Financial Report for the fiscal year ended September 30, 2007. He said that this is the first time the Village has received this award. He reviewed the statements for the fiscal year ending September 30, 2008, and responded to questions from Commissioners.

Motion was made by Commissioner Mallette, seconded by Commissioner Morris, to accept the audit report for the fiscal year ended September 30, 2008. The motion carried by voice vote, 5/0.

**B. Announcement of Electronic Waste Collection Event on August 30, 2009 sponsored By Miami-Dade Commissioner Sally A. Heyman, District 4**

Motion was made by Commissioner Mallette, seconded by Commissioner Anderson, to authorize the Village Manager to dispose of outdated equipment of no value which is in the storage areas. The motion carried by voice vote, 5/0.

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

Mille Disanti asked that the Village establish a drop-off place for items which will be taken to the designated disposal place on August 30.

Bryan Cooper spoke about the proposed parkways project.

Chuck Ross spoke about the Citizens Bill of Rights and allowing people to speak at meetings.

Pieter Bockweg urged the Commissioners to hire an individual as Village Manager rather than a management firm.

Roxanna Ross said the RFP for management services did not follow the management duties as outlined in the Charter.

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

- A. Approval of Minutes – (1) Regular Meeting – July 7, 2009**
  - (2) Special Meeting - July 9, 2009**
  - (3) 4<sup>th</sup> Preliminary Budget Workshop – July 9, 2009**
  - (4) Special Meeting – July 16, 2009**
  - (5) 5<sup>th</sup> Preliminary Budget Workshop – July 16, 2009**

### **B. Receipt of 3<sup>rd</sup> Quarter Financial Report for period ending 6/30/09**

### **C. Renewal of FDOT Landscape Maintenance Joint Project Agreement**

Motion was made by Commissioner Morris, seconded by Commissioner Anderson, to approve the Consent Agenda with the exception of 6A4 and 6B. The motion carried by voice vote, 5/0.

Commissioner Bernard said we are looking at \$125,000 under revenue, and how do we make it up. He also asked about returning a \$500 donation for the development of the Dog Park to the resident who donated it.

Motion was made by Commissioner Bernard, seconded by Commissioner Morris, to return the \$500 donation to the donor. The motion carried by voice vote, 5/0.

Motion was made by Commissioner Morris, seconded by Commissioner Anderson, to accept the 3<sup>rd</sup> Quarter Financial Report. The motion carried by voice vote, 5/0.

## **7. PUBLIC HEARINGS - None**

## **8. ORDINANCES – FIRST READING – None**

## **9. RESOLUTIONS - None**

## 10. OLD BUSINESS

- A. **Discussion of how Village Manager selection process will work (Mayor Hornbuckle)**
- B. **Discussion of how we will have resident participation (Mayor Hornbuckle)**
- C. **Process of hiring a new Village Manager (Commissioner Bernard)**

Mayor Hornbuckle said all three agenda items would be discussed at the same time.

Mayor Hornbuckle said the Commission would discuss what kind of rating system would be used and who will decide on the short list and how the residents would be included.

Mr. Spence said as a result of the previous meeting, it was the intent to get the word out that the Village is looking for a manager, and this is being done through the network established by the League of Cities.

Commissioner Bernard said the problem is that we are not doing some things correctly. The RFP which was issued is not accurate for what we are looking for. He objected to the selection date of September 1<sup>st</sup> and said this process was rushed. He said the RFP should be removed from the website; a selection committee of important residents should be set up, and the ad should be changed to give the budget, the number of employees, the salary range depending on qualifications, and to request that applicants submit resumes. The selection committee should send the RFP to candidates which they select from the resumes submitted. The selection committee should also interview staff members to see what they do. The Village Manager should work with the selection committee to make a short list to submit to the new Commission.

Commissioner Mallette said she would like to see all proposals that are submitted, and the Charter designates the Commission with the responsibility for selection of a manager. The candidates for manager could be made available to residents at a public meeting. She said she was not comfortable with appointing a committee to tell her who to hire.

Mr. Spence said we should wait to see the applications that we receive from the first RFP. We can advertise a second time.

Commissioner Bernard said the RFP does not state what we need. We should request resumes to be submitted by the end of August, then give the resumes to the selection committee.

Commissioner Mallette said she was not prepared to appoint someone to a selection committee.

Mayor Hornbuckle reviewed the comments which were made and said the first thing to do is change the ad and include a request for resumes or proposals. The RFP should be removed from the website and rewritten. Contact should be made with the Range Riders organization. He asked the Commissioners whether or not the dates should be changed.

After further discussion, it was decided to extend the date for application submittals From August 17 to August 24. It was also decided to establish a panel of local City Managers to review the applications. Mayor Hornbuckle said Commissioners should designate selection committee members before the next Commission meeting. In addition, the Range Riders should be contacted.

Commissioner Bernard said anyone who is hired should serve a probationary period. He asked at what point residents would be involved.

Mayor Hornbuckle said a public workshop or forum should be held to develop goals and guidelines and to determine the qualifications and ideals we would like to see in a manager. He said at the next meeting a discussion will be held, and everyone should come back with ideas regarding the selection process to be used.

## **11. NEW BUSINESS**

### **A. Appointment of members to Pathways Ad Hoc Committee**

Commissioner Bernard appointed Victor Romano. Commissioner Mallette appointed Gary Kuhl.

### **B. Recommendation to change phone carriers on certain Lines from AT&T to NUVOX**

Mr. Spence read his memorandum in the agenda backup into the record, and it is attached to these minutes.

Motion was made by Commissioner Mallette, seconded by Commissioner Anderson, to approve hanging the telephone carrier from AT&T to NUVOX and approve the contract, subject to review by the Village Attorney. The motion carried by voice vote, 5/0.

### **C. Discussion of Workshop for Pathways Project (added at beginning of meeting)**

Commissioner Bernard said something should be set up in September to start the process on a master plan.

Mr. Spence said that part of the Kimley Horn study addressed the pathways.

It was agreed that the Pathways Ad Hoc Committee should set a date for the workshop.

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

Barbara Kuhl commented on the grant application which the Village submitted for the pathways project.

Bryan Cooper commented on the number of oak trees in the Village and the issue of whether or not to plant more of the same species.

Gary Kuhl commented on a tree survey which was completed several years ago and said it would be all right to plant more oak trees.

Roxanna Ross commented on the discussion held by the Commissioners regarding the RFP process.

Karen Cohen spoke about the parkway proposal and said the Commissioners never voted to turn down the street closures and asked the Commissioners to reject the proposal to close streets.

## **3. REPORTS**

### **A. Committee Reports**

**1. Parks & Parkways Advisory Board – Dan Keys, Chairman** – no report

**2. Recreation Advisory Board – Roxanna Ross, Chairman** - Mrs. Ross commented on the budget for the Recreation Center and reported on the success of the Summerfest event.

**B. Village Attorney Comments** – Attorney Hearn said he will meet with the Code Review Committee at their August 25 meeting to discuss the fence/hedges issue and will prepare an ordinance for review by the Planning & Zoning Board at their next meeting. He will also prepare an ordinance relating to land use for Planning & Zoning Board review. Regarding the "Citizens Bill of Rights" which recent speakers have referenced, most cities have adopted the County's policy. The Miami-Dade policy provides that citizens have the right for "meaningful opportunities" to be heard, not the right to be heard on every item or at every meeting. There have not been any violations of the Village Charter in this regard.

**C. Village Manager Comments**

**1. Report from Police Chief Glansberg** – Chief Glansberg said the Village won the Small Police Department award from the State for citations written. The Village was awarded two new radar units.

**2. Updates on various projects** – Mr. Spence said the pavilion is complete but with a cost over-run. The frame has been poured for the entry sign, and the lights are being installed. Because of the delays in construction of the new public works building, Mr. Spence said he arranged to rent a trailer to be used as the public works office. It will be located in the parking lot of the Police Department. The old trailer was a health hazard, and this one will be used until the public works construction is complete. Commissioner Mallette objected to the trailer being so close to the new entry sign. After further discussion, it was agreed that the trailer should be either camouflaged in some manner or moved to another location.

**D. Commission Comments**

**1. Commissioner Bernard** said the RFP for the new manager should list the Village population, the number of employees, and statements about the Village. He said since the Recreation summer camp is a success, we should consider having an after school program.

**2. Commissioner Mallette** – no comments

**3. Commissioner Morris** said he would like to commend Issa Thornell for his fine work on Summerfest and also commend Sira Ramos for notifying the Police of the break-in at the home of a resident.

**4. Vice-Mayor Anderson** said he and Mr. Spence met with Mr. Patterson, City Manager of North Miami, regarding maintenance of medians.

**5. Mayor Hornbuckle** – no comments

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

<b>*Wednesday, August 5</b>	<b>Recreation Advisory Board 6:30 pm</b>
<b>*Saturday, August 8</b>	<b>FEC Workshop 10 am – 12 noon</b>
<b>*Tuesday, August 11</b>	<b>Code Review Committee 7 pm</b>
<b>*Monday, August 17</b>	<b>Planning &amp; Zoning Board 6:30 pm</b>
<b>*Tuesday, August 18</b>	<b>Code Enforcement Board 7 pm</b>
<b>*Wednesday, August 19</b>	<b>Parks &amp; Parkways Advisory Board 6 pm</b>
<b>*Tuesday, August 25</b>	<b>Code Review Committee 7 pm</b>
<b>*Tuesday, September 1</b>	<b>Regular Commission Meeting 7 pm</b>
<b>*Tuesday, September 8</b>	<b>First Public Hearing on FY 2010 Budget 6:30 pm</b>

There being no further business to come before the Commission, the meeting adjourned at 10:45 p.m.

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

Attest:

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

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



# Village of Biscayne Park

## MINUTES

### SPECIAL COMMISSION MEETING

Ed Burke Recreation Center – 11400 NE 9<sup>th</sup> Court  
Tuesday, September 8, 2009, 6:20 p.m.

#### CALL TO ORDER and ROLL CALL

Mayor Hornbuckle called the meeting to order at 6:20 p.m. In addition to Mayor Hornbuckle, the following were present: Commissioners Steve Bernard, Kelly Mallette and Chester "Doc" Morris, and Vice-Mayor Bob Anderson. Present from Staff were Frank Spence, Village Manager; John Hearn, Village Attorney; Bernard Pratt, Public Works Director, Issa Thornell, Recreation Supervisor, Police Chief Mitchell Glansberg, and Ann Harper, Village Clerk.

#### ORDINANCE – 1<sup>ST</sup> 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 ABROGATION 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 REDUCTION; PROVIDING STANDARDS FOR SPECIAL FLOOD HAZARD AREAS WITH ESTABLISHED BASE FLOOD ELEVATIONS AND ALL OTHER IDENTIFIED FLOOD HAZARD AREAS; PROVIDING FOR STANDARDS FOR SUBDIVISION PROPOSALS; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR INCLUSION; PROVIDING FOR AN EFFECTIVE DATE.**

Attorney Hearn read the title of the Ordinance and said this Ordinance has been reviewed by Sal Annese, Building Official. Mr. Annese advised the Attorney that this Ordinance has been used in other cities, and he believes the Village should adopt this model.

Attorney Hearn continued saying that approval of this Ordinance will allow homeowners in the Village to obtain flood insurance. There may be one small change in the Ordinance at second reading, and that would be a change in the date of existing construction.

Mayor Hornbuckle opened the Public Hearing. No one came forward to speak, and the Public Hearing was closed.

Commissioner Bernard said that this will allow residents to buy flood insurance, and the next step is to make sure the Building Department and Planning and Zoning Board follow certain procedures to allow residents to get discounts on flood insurance. He spoke about construction projects being built below the flood zone and the possibility of getting a flood plain variance.

Attorney Hearn said this Ordinance addresses that type of variance.

Motion was made by Commissioner Mallette, seconded by Vice-Mayor Anderson, to approve the Ordinance on first reading and schedule second reading for October 6, 2009. The motion carried by roll-call vote, as follows:

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

NAYS: None.

There being no further business, the meeting adjourned at 6:30 p.m.

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

Attest:

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

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

**Village of Biscayne Park**  
**MINUTES**  
**SPECIAL COMMISSION MEETING**  
**Ed Burke Recreation Center – 11400 NE 9<sup>th</sup> Court**  
**Thursday, September 17, 2009, 6:00 p.m.**

6:00 p.m. – 7:00 p.m.

**Candidates for Management Services**

**"Meet and Greet" with the public**

**Ana Garcia**

**B. R. (Randy) Witt**

**Municipal Government Management Services (Jordan Leonard) – not present**

7 p.m.

- 1. CALL TO ORDER**
- 2. ROLL CALL**

Mayor Hornbuckle called the meeting to order at 7:04 p.m. In addition to Mayor Hornbuckle, the following were present: Commissioners Kelly Mallette and Chester "Doc" Morris, and Vice-Mayor Bob Anderson . Commissioner Steve Bernard was absent. Present from Staff were Frank Spence, Village Manager; John Hearn, Village Attorney; Police Chief Mitchell Glansberg, Police Captain Tony Sanchez, and Sira Ramos, Code Enforcement Officer.

**3. Interview or questions/answers of the candidates by Village Commissioners**

Mr. Spence read a statement from Commissioner Bernard, as requested by the Commissioner. (The statement is attached to these minutes.)

Mayor Hornbuckle asked the Commissioners for their responses to the request of Commissioner Bernard to postpone this meeting. The consensus was to continue with the meeting.

In response to Vice-Mayor Anderson's question, Mr. Spence explained the method of ranking the managerial candidates after receiving votes of the Commissioners.

Ms. Ana Garcia addressed the Commissioners and responded to their questions.

Mr. Witt addressed the Commissioners and responded to their questions.

There being no further business, the meeting adjourned at 8:20 p.m.

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

Attest:

**GA(9)**

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

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



# Village of Biscayne Park

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

## MINUTES

### 2nd PUBLIC HEARING ON FY 2009-2010

### BUDGET

## Ed Burke Recreation Center

11400 N.E. 9<sup>th</sup> Court

Tuesday, September 22, 2009 - 6:30 p.m.

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE OF ALLEGIANCE

Mayor Hornbuckle called the meeting to order at 6:40 p.m. In addition to the Mayor, the following were present: Commissioners Steve Bernard, Kelly Mallette, and Chester "Doc" Morris; and Vice-Mayor Bob Anderson. Present from Staff were Bernard Pratt, Public Works Director; Mitchell Glansberg, Police Chief; Frank Spence, Village Manager; John J. Hearn, Village Attorney; and Ann Harper, Village Clerk. Holly Hugdahl, Acting Finance Director, arrived at 7:30 p.m.

Commissioner Bernard led the Pledge of Allegiance, followed by a moment of silence.

Mayor Hornbuckle added two items to the Agenda:

- Item 5C-- Presentations to Village Manager Spence and Village Clerk Harper
- Item 5D – Comments from Residents

#### 4. PRESENTATION OF THE FISCAL YEAR 2009-2010 PROPOSED BUDGET

Mr. Spence said this meeting has been advertised as required and the proposed millage rate is 8.8903, the same as the current rate. The two advertised ordinances to approve the millage rate and the budget are being presented for second and final reading. The Commission can make any changes they wish to the budget, and the millage rate can be reduced but cannot be increased.

#### 5. PUBLIC HEARING - ORDINANCES FOR SECOND READING

##### A. ORDINANCE No. 2009-5

**AN ORDINANCE OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, ESTABLISHING THE 2009-2010 MILLAGE RATE OF 8.8903 MILS PER EACH \$1,000 OF ASSESSED VALUATION UPON REAL AND PERSONAL PROPERTY WITHIN THE VILLAGE LIMITS OF THE VILLAGE OF BISCAYNE PARK; AND SETTING AN EFFECTIVE DATE**

Attorney Hearn read the title of the Ordinance and the Mayor opened the public hearing.

6A(10)

Roxanna Ross commented that the budget has undergone few if any changes since it was first presented despite going through workshops and the first public hearing.

Mrs. Ross presented a report from the Recreation Advisory Board which outlined changes that the Board would like to be made in the Village budget.

There were no more speakers, and Mayor Hornbuckle closed the Public Hearing.

**Motion was made by Vice-Mayor Anderson, seconded by Commissioner Mallette, to approve the ordinance establishing the millage rate on second and final reading.**

Commissioner Bernard said the last time the budget was discussed, the Commission was told there could be a deficit. Mr. Spence said there could be a deficit of around fifty thousand dollars, but he could not make a definitive statement at this time. Commissioner Bernard said nothing in this budget addresses a deficit.

Discussion was held regarding whether or not a surplus in the Sanitation Fund should be placed in the General Fund and also on the issue of building up the reserves.

Commissioner Bernard said he had asked for various studies and analyses so the Commissioners could determine whether or not the analyses were corrected and they would not have to take the studies "on faith." He said he would bring his concerns to the attention of the new management.

**Mayor Hornbuckle called for a vote on the motion to approve the Ordinance establishing the millage rate for Fiscal Year 2009-2010, which carried by roll-call vote as follows:**

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

NAYS: Commissioner Bernard.

#### **B. ORDINANCE No. 2009-6**

**AN ORDINANCE OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, ADOPTING A BUDGET FOR FISCAL YEAR 2009-2010 FOR THE VILLAGE OF BISCAYNE PARK, FLORIDA; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE**

Attorney Hearn read the title of the Ordinance and Mayor Hornbuckle opened the Public Hearing.

Chuck Ross spoke about the Sanitation Fund and he said he hoped the new Manager and Finance Director will find efficiencies in the operation of the Village.

There were no more speakers, and the Mayor closed the Public Hearing.

Motion was made by Vice-Mayor Anderson, seconded by Commissioner Morris, to approve the Ordinance adopting the budget for Fiscal Year 2009-2010 on second and final reading. The motion carried by roll-call vote, as follows:

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

NAYS: Commissioner Bernard.

### **C. Presentations to Village Manager Spence and Village Clerk Harper**

Mayor Hornbuckle presented a plaque to Frank Spence in appreciation for serving as the first Village Manager and for his dedication and hard work. Mayor Hornbuckle presented a proclamation to Clerk Harper thanking her for her service to the Village.

### **D. Comments from Residents**

Chuck Ross spoke about the selection of candidates and the method of ranking and commented that the new Manager was selected in nine business days. He suggested the Commissioners hire the new Manager as "interim" and restart the selection process.

Arthur Ehrhardt said it was absurd that the Commissioners decided on a new Manager after only nine days.

## **6. SELECTION OF CANDIDATE TO PROVIDE MANAGEMENT SERVICES**

Commissioner Mallette made a motion to ask Attorney Hearn to negotiate with Ana Garcia for the position of Manager at a compensation rate and benefits comparable to the current Manager's rate and with a six-month probation period and contingent on completion of a background check.

Vice-Mayor Anderson seconded the motion and requested a revision to the motion to provide that each Commissioner send the Attorney his suggestions as to what the contract should be like and then schedule a second Commission meeting for approval of the contract.

Commissioner Bernard explained his objections to the way the candidate was selected.

Mayor Hornbuckle said we took two months in this process and he feels it should be to our credit that we moved along as quickly as we did. A broader search would not necessarily bring a better qualified candidate, and the residents had the opportunity to ask questions.

Commissioner Mallette said it is in the best interest of the Village to have a new Manager.

Vice-Mayor Anderson suggested putting together a committee to develop a new system for the selection of management.

Mayor Hornbuckle called for a vote on the motion to select Ana Garcia as the new Village Manager. The motion carried by roll-call vote as follows:

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

NAYS: Commissioner Bernard.

Commissioner Bernard said he objected to the method used to select the new Manager.

Motion was made by Commissioner Morris, seconded by Commissioner Bernard, to make the selection of Ms. Garcia a unanimous vote. The motion carried by voice vote, 5/0.

There being no further business to come before the Commission, the meeting was adjourned at 8 p.m.

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

Attest:

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

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



# Florida Department of Environmental Protection

Bob Martinez Center  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

John  
Governor  
Rick  
Governor  
Michael W. Cole  
Secretary

September 18, 2009

*Stormwater Grant*

Mr. Frank Spence  
Village Manager  
Village of Biscayne Park  
640 Northeast 114 Street  
Biscayne Park, Florida 33161

Re: LP8904 - Village of Biscayne Park  
Biscayne Park Stormwater Project Phase III

Dear Mr. Spence:

Enclosed are two original copies of the proposed Legislative Project grant agreement for the Village's stormwater improvement project.

Please sign on page 8 of the enclosed two copies. Return both copies to us at 2600 Blair Stone Road, Mail Station 3505, Tallahassee, Florida, 32399-2400. We will arrange for the Deputy Division Director to sign the agreements and mail a fully executed original to the Village.

If you have any questions about the agreement, please call Maura Callahan at 850/245-8358.

Sincerely,

*Robert E. Holmden*  
Robert E. Holmden, P.E., Chief  
Bureau of Water Facilities Funding

*rh*  
9/28/09

RH/mc

Enclosures

cc: Holly Hugdahl - Village of Biscayne Park

6B

STATE FINANCIAL ASSISTANCE AGREEMENT  
VILLAGE OF BISCAYNE PARK  
DEP AGREEMENT NO. LP8904

STATE OF FLORIDA  
GRANT ASSISTANCE  
PURSUANT TO LINE ITEM 1772C OF THE 2008 - 2009 GENERAL APPROPRIATIONS  
ACT

THIS AGREEMENT is entered into between the STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, whose address is 2600 Blair Stone Road, MS 3505, Tallahassee, Florida 32399-2400 (hereinafter referred to as the "Department") and the VILLAGE OF BISCAYNE PARK, whose address is 640 NW 114 Street, Biscayne Park, Florida 33161 (hereinafter referred to as "Grantee" or "Recipient"), a local government under the laws of the State of Florida, to provide funds for the Biscayne Park Stormwater Project Phase III project.

In consideration of the mutual benefits to be derived herefrom, the Department and the Grantee do hereby agree as follows:

1. The Grantee does hereby agree to perform in accordance with the terms and conditions set forth in this Agreement, Attachment A (Project Work Plan), and all attachments and exhibits named herein which are attached hereto and incorporated by reference. For purposes of this Agreement, the terms "Contract" and "Agreement" and the terms "Grantee", "Recipient" and "Contractor" are used interchangeably.
2. This Agreement shall begin upon execution by both parties and shall remain in effect until January 31, 2011. The Grantee shall be eligible for reimbursement for work performed on or after July 1, 2008. This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.
3. A. As consideration for the services rendered by the Grantee under the terms of this Agreement, the Department shall pay the Grantee on a cost reimbursement basis in an amount not to exceed \$200,000 toward the total project cost. The parties hereto agree that the Grantee is responsible for providing a minimum match of \$200,000 toward the project described in Attachment A. Prior written approval from the Department's Grant Manager shall be required for changes between budget categories of up to 10% of the total budget. The Department's Grant Manager will transmit a copy of the written approval and revised budget to the Department's Contracts Disbursements Office for inclusion in the Agreement file. Changes greater than 10% will require a formal amendment to the Agreement. If the Grantee finds, after receipt of competitive bids, that the work described in Attachment A cannot be accomplished for the current estimated project cost, the parties hereto agree to modify the Project Work Plan described in Attachment A to provide for the work that can be accomplished for the funding identified above.

- B. The Grantee shall be reimbursed on a cost reimbursement basis for all eligible project costs upon receipt and acceptance of a properly completed Disbursement Request Package (provided as **Attachment B**). In addition to the Disbursement Request Package, the Grantee must provide from its accounting system, a listing of expenditures charged against this Agreement. The listing shall include, at a minimum, a description of the goods or services purchased, date of the transaction, voucher number, amount paid, and vendor name. All requests for reimbursement of travel expenses shall be in accordance with the travel limits established in Section 112.061, Florida Statutes. The Disbursement Request Package must include:
- (1) A completed Disbursement Request Form signed by the Grantee's Grant Manager. Such requests must be accompanied by sufficiently itemized summaries of the materials, labor, or services to identify the nature of the work performed; the cost or charges for such work; and the person providing the service or performing the work. If payment is based on an authorized advance for incurred costs, invoices reflecting such costs must be included. After receipt of advance funds the Grantee shall provide proof of payment to the Department within thirty (30) days of receipt of the advance funds. If payment is based on reimbursement, proof of payment of the invoices is required.
  - (2) A certification signed by the Grantee's Grant Manager as to the current estimated cost of the Project; that the materials, labor, or services represented by the invoice have been satisfactorily purchased, performed, or received and applied to the project; that all funds received to date have been applied toward completing the Project; and that under the terms and provisions of the contracts, the Grantee is required to make such payments.
  - (3) A certification by the engineer responsible for overseeing construction stating that equipment, materials, labor and services represented by the construction invoices have been satisfactorily invoiced, purchased, or received, and applied to the Project in accordance with construction contract documents; stating that payment is in accordance with construction contract provisions; stating that construction, up to the point of the requisition, is in compliance with the contract documents; and identifying all additions or deletions to the Project which have altered the Project's performance standards, scope, or purpose since the issue of the Department construction permit.
  - (4) Such other certificates or documents by engineers, attorneys, accountants, contractors, or suppliers as may reasonably be required by the Department.
- C. In addition to the invoicing requirements contained in paragraph 3.B. above, the Department will periodically request proof of a transaction (invoice, payroll register, etc.) to evaluate the appropriateness of costs to the Agreement pursuant to State and Federal guidelines (including cost allocation guidelines), as appropriate. This information when requested must be provided within thirty

(30) calendar days of such request. The Grantee may also be required to submit a cost allocation plan to the Department in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). All bills for amounts due under this Agreement shall be submitted in detail sufficient for a proper pre-audit and post-audit thereof.

D. State guidelines for allowable costs can be found in the Department of Financial Services' Reference Guide for State Expenditures at <http://www.fldfs.com/aadir/reference%5Fguide>.

4. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. The parties hereto understand that this Agreement is not a commitment of future appropriations.
5. Progress Reports (**Attachment C**) shall be submitted describing the work performed, problems encountered, problem resolution, schedule updates and proposed work for the next reporting period. Progress reports shall be submitted along with the Disbursement Request Package, described in paragraph 3.B. If advance payment is authorized, the Grantee shall report (and document as required under paragraph 3 above and on **Attachment E**) the amount of funds expended during the reporting period, the Agreement expenditures to date, interest earned during the quarter and clearly indicate the method for repayment of the interest to the Department (see paragraph 16). It is understood and agreed by the parties that the term "reporting period" reflects the period of time for which the invoices submitted in the Disbursement Request Package are covered. The Department's Grant Manager shall have ten (10) calendar days to review deliverables submitted by the Grantee.
6. Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, Florida Statutes.
7.
  - A. The Department may terminate this Agreement at any time in the event of the failure of the Grantee to fulfill any of its obligations under this Agreement. Prior to termination, the Department shall provide thirty (30) calendar days written notice of its intent to terminate and shall provide the Grantee an opportunity to consult with the Department regarding the reason(s) for termination.
  - B. The Department may terminate this Agreement for convenience by providing the Grantee with thirty (30) calendar days written notice.
8. This Agreement may be unilaterally canceled by the Department for refusal by the Grantee to allow public access to all documents, papers, letters, or other material made or received by the Grantee in conjunction with this Agreement, unless the records are exempt from Section 24(a) of Article I of the State Constitution and Section 119.07(1), Florida Statutes.

9.
  - A. The Grantee shall comply with the applicable provisions contained in Attachment D (Special Audit Requirements), attached hereto and made a part hereof. Exhibit 1 to Attachment D summarizes the funding sources supporting the Agreement for purposes of assisting the Grantee in complying with the requirements of Attachment D. A revised copy of Exhibit 1 must be provided to the Grantee for each amendment, which authorizes a funding increase or decrease. If the Grantee fails to receive a revised copy of Exhibit 1, the Grantee shall notify the Department's Grant Manager identified in this Agreement to request a copy of the updated information.
  - B. The Grantee is hereby advised that the Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. The Grantee shall consider the type of financial assistance (federal and/or state) identified in Attachment D, Exhibit 1 when making its determination. For federal financial assistance, the Grantee shall use the guidance provided under OMB Circular A-133, Subpart B, Section \_\_.210 for determining whether the relationship represents that of a subrecipient or vendor. For state financial assistance, the Grantee shall use the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website:

<http://apps.fldfs.com/fsaa>

The Grantee should confer with its chief financial officer, audit director, or contact the Department for assistance with questions pertaining to the applicability of these requirements.

10. The Grantee may subcontract, assign, or transfer any work under this Agreement without the written consent of the Department's Grant Manager. The Grantee shall submit a copy of the subcontract upon the request of the Department's Grant Manager. The Grantee agrees to be responsible for the fulfillment of all work elements included in any subcontract consented to by the Department and agrees to be responsible for the payment of all monies due under any subcontract. It is understood and agreed by the Grantee that the Department shall not be liable to any subcontractor for any expenses or liabilities incurred under the subcontract and that the Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under the subcontract.
11. The Department of Environmental Protection supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Agreement embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State of Florida. A list of minority owned firms that could be offered subcontracting opportunities may be obtained by contacting the Florida Department of Management Services, Office of Supplier Diversity, at 850/487-0915.
12. In accordance with Section 216.347, Florida Statutes, the Grantee is hereby prohibited from using funds provided by this Agreement for the purpose of lobbying the Legislature, the judicial branch or a state agency.

13. The Grantee shall comply with all applicable federal, state and local rules and regulations in providing services to the Department under this Agreement. The Grantee acknowledges that this requirement includes compliance with all applicable federal, state and local health and safety rules and regulations. The Grantee further agrees to include this provision in all subcontracts issued as a result of this Agreement.
14. The Department's Grant Manager for this Agreement is identified below.

**Tommy Williams**  
**Bureau of Water Facilities Funding**  
**Florida Department of Environmental Protection**  
**2600 Blair Stone Road, MS 3505**  
**Tallahassee, Florida 32399-2400**  
Phone: 850-245-8358  
Fax: 850-245-8411  
Email: [thomas.e.williams@dep.state.fl.us](mailto:thomas.e.williams@dep.state.fl.us)

15. The Grantee's Grant Manager for this Agreement is identified below.

**Frank Spence**  
**Village Manager**  
**Village of Biscayne Park**  
**640 Northeast 114 Street**  
**Biscayne Park, Florida 33161**  
Phone: 305-899-8000  
Fax: 305-891-7241  
Email: [villagemanager@biscayneparkfl.gov](mailto:villagemanager@biscayneparkfl.gov)

16. In accordance with Section 216.181(16)(b), Florida Statutes, the Department, upon written request from the Grantee and written approval from the State's Chief Financial Officer, if applicable, may provide an advance to the Grantee. The Grantee must temporarily invest the advanced funds, and return any interest income to the Department, within thirty (30) days of each calendar quarter, or apply said interest income against the Department's obligation to pay, if applicable, under this Agreement. Interest earned must be returned to the Department within the timeframe identified above or invoices must be received within the same timeframe that shows the offset of the interest earned.

Unused funds, and interest accrued on any unused portion of advanced funds that have not been remitted to the Department, shall be returned to the Department within sixty (60) days of Agreement completion.

The parties hereto acknowledge that the State's Chief Financial Officer may identify additional requirements, which must be met in order for advance payment to be authorized. If the State's Chief Financial Officer imposes additional requirements, the Grantee shall be notified, in writing, by the Department's Grant Manager regarding the additional requirements. Prior to releasing any advanced funds, the Grantee shall be

required to provide a written acknowledgement to the Department's Grant Manager of the Grantee's acceptance of the terms imposed by the State's Chief Financial Officer for release of the funds.

If advance payment is authorized, the Grantee shall be responsible for submitting the information requested in the Interest Earned Memorandum (**Attachment E**) and the Advance Payment Justification Form (**Attachment F**) to the Department's Grant Manager quarterly. This information shall be requested by the Grant Manager and submitted by the Grantee on a quarterly basis in conjunction with the invoice/reporting requirements established in paragraphs 3 and 5.

17. To the extent required by law, the Grantee will be self-insured against, or will secure and maintain during the life of this Agreement, Workers' Compensation Insurance for all of his employees connected with the work of this project and, in case any work is subcontracted, the Grantee shall require the subcontractor similarly to provide Workers' Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Grantee. Such self-insurance program or insurance coverage shall comply fully with the Florida Workers' Compensation law. In case any class of employees engaged in hazardous work under this Agreement is not protected under Workers' Compensation statutes, the Grantee shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to the Department, for the protection of those employees not otherwise protected.
18. The Grantee, as an independent contractor and not an agent, representative, or employee of the Department, agrees to carry adequate liability and other appropriate forms of insurance. The Department shall have no liability except as specifically provided in this Agreement.
19. The Grantee covenants that it presently has no interest and shall not acquire any interest that would conflict in any manner or degree with the performance of services required.
20. The purchase of non expendable personal property or equipment costing \$1,000 or more is not authorized under the terms of this Agreement.
21. The Department may at any time, by written order designated to be a change order, make any change in the Project Work Plan within the general scope of this Agreement (e.g., specifications, task timeline within current authorized agreement period, method or manner of performance, requirements, etc.). All change orders are subject to the mutual agreement of both parties as evidenced in writing. Any change order that causes an increase or decrease in the Grantee's cost or time shall require formal amendment to this Agreement.
22.
  - A. No person, on the grounds of race, creed, color, national origin, age, sex, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.
  - B. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or

repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and intends to post the list on its website. Questions regarding the discriminatory vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at 850/487-0915.

23. Land acquisition is not authorized under the terms of this Agreement.
24. This Agreement represents the entire agreement of the parties. Any alterations, variations, changes, modifications or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, duly signed by each of the parties hereto, and attached to the original of this Agreement, unless otherwise provided herein.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

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IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed, the day and year last written below.

VILLAGE OF BISCAYNE PARK

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: \_\_\_\_\_  
Village Manager

By: \_\_\_\_\_  
Deputy Director  
Division of Water Resource Management

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

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

FEID No.: \_\_\_\_\_

\_\_\_\_\_  
Tommy Williams, DEP Grant Manager

\*For Agreements with governmental boards/commissions: If someone other than the Chairman signs this Agreement, a resolution, statement or other document authorizing that person to sign the Agreement on behalf of the governmental board/commission must accompany the Agreement.

List of attachments/exhibits included as part of this Agreement:

Specify Type	Letter/ Number	Description (include number of pages)
<u>Attachment</u>	<u>A</u>	<u>Project Work Plan (5 Pages)</u>
<u>Attachment</u>	<u>B</u>	<u>Disbursement Request Package (3 Pages)</u>
<u>Attachment</u>	<u>C</u>	<u>Progress Report Form (2 Pages)</u>
<u>Attachment</u>	<u>D</u>	<u>Special Audit Requirements (5 Pages)</u>
<u>Attachment</u>	<u>E</u>	<u>Advance Payment - Interest Earned Memorandum (1 Page)</u>
<u>Attachment</u>	<u>F</u>	<u>Advance Payment Justification Form (3 Pages)</u>

**ATTACHMENT A  
GRANT WORK PLAN  
Village of Biscayne Park  
LP8904**

<b>Project Title:</b> <i>Biscayne Park Stormwater Project Phase III</i>
<b>Project Location:</b> <i>Area "B" and Area "C"</i>
<b>Project Background:</b> Phase III will continue installing a drainage system per master plan, which includes; gravel driveway restoration, crossing pavement, irrigation, sod restoration, and the removal of existing catch basin and piping for NE 8 <sup>th</sup> Avenue between NE 115 <sup>th</sup> to 117 <sup>th</sup> Street (Area "B") and NE 116 <sup>th</sup> Street, from NE 8 <sup>th</sup> Avenue to NE 10 <sup>th</sup> Avenue (Area "C"). Phase I and Phase II will be evaluated to guarantee that they are functioning properly and storm drain cleaning and other maintenance will be done where necessary.
<b>Project Objectives:</b> <i>Provide a list of objectives, in bullet format, expected to be achieved as a result of funding/completing this proposed project.</i> <ul style="list-style-type: none"><li>• Objective 1: Stormwater drainage will be constructed in Area "B"</li><li>• Objective 2: Stormwater drainage will be constructed in Area "C"</li><li>• Objective 3: An evaluation of Phase I and II will be completed to ensure that the system is functioning properly.</li></ul>

- Objective 4: Maintenance and repairs will be constructed in Phase I and II where deemed necessary.

**Project Description:** *Provide a detailed description of the work to be performed for the project. Include maps, drawings etc. to support project activities. Project descriptions should include a specific list of tasks/activities for accomplishing the project.*

The project consists on the construction of a new drainage system for two basins:

**Basin B:** Along NE 8 Ave. from NE 115 ST to NE 117 ST. This area is reporting severe flooding due to poor grading and the lack of drainage systems. This area of the project is located in the Village of Biscayne Park, in Miami-Dade County, Sections 29, 30, 31 and 32. Township 52 South, Range 42 East. Proposed Drainage System is based on French Drains Systems located on NE 8 Ave. from NE 115 ST to NE 117 ST. New catch basins will be built in order to convey the runoff generated by this area.

The proposed drainage system is divided into 3 Sub-Basins:

Sub-Basin 1.

NE 8 Ave., from Sta. 207+76.00 to Sta. 211+18.00: The total area of this sub-basin is 1.002 Acres. The proposed drainage will provide 155 L.F of French Drain.

Sub-Basin 2.

NE 8 Ave., from Sta. 211+18.00 to Sta. 212+18.00: The total area of this sub-basin is 0.360 Acres. The proposed drainage will provide 75 L.F of French Drain.

Sub-Basin 3.

NE 8 Ave., from Sta. 212+18.00 to Sta. 214+71.00: The total area of this sub-basin is 0.697 Acres. The proposed drainage will provide 140 L.F of French Drain.

**Basin C:** Along NE 116 ST from NE 8 Ave. to NE 10 Ave. This area is reporting severe flooding due to poor grading and the lack of drainage systems. This area of the project is located in the Village of Biscayne Park, in Miami-Dade County, Sections 29, 30, 31 and 32. Township 52 South, Range 42 East. Proposed Drainage System is based on French Drains Systems located on NE 116 ST from NE 8 Ave. to NE 10 Ave. New catch basins will be built in order to convey the runoff generated by this area.

The proposed drainage system is divided into 3 Sub-Basins:

Sub-Basin 1.

NE 116 ST, from Sta. 120+00.00 to Sta. 122+45.00: The total area of this sub-basin is 0.592 Acres. The proposed drainage will provide 110 L.F of French Drain.

Sub-Basin 2.

NE 116 ST, from Sta. 122+45.00 to Sta. 125+37.00: The total area of this sub-basin is 1.138 Acres. The proposed drainage will provide 330 L.F of French Drain.

Sub-Basin 3.

NE 116 ST, from Sta. 125+37.00 to Sta. 129+00.00: The total area of this sub-basin is 0.681 Acres. The proposed drainage will provide 145 L.F of French Drain.

**Project Milestones/Deliverables/Outputs:** Identify by task/activity (as listed under Project Description), start date, and completion date. Clear cells in table below header row before beginning to add data. Identify outputs/deliverables to result from this project. (Examples include: reports (progress, draft project report, final project report), manuals, videos, maps, BMPs installed, meetings, field days, issued permits, progress reports, quality assurance plans, etc.) Identify dates for providing/completing the outputs/deliverables on a schedule based on the date of agreement execution. Format should appear as follows:

Project will start construction in January 2010 and will be finish by September 2010. Schedule of the project status will be updated by the Village of Biscayne Park.

No.	Task/Activity Description	Start	Complete	Deliverables/Outputs	Deliverable/Output Due Dates
1	Basin B	01/05/2010	09/10/2010	As-Built and Certifications	10/10/2010
1	Basin C	01/05/2010	09/10/2010	As-Built and Certifications	10/10/2010

**Project Budget:** Detailed budgets must be submitted to support the budget information summarized in this section. Detailed budgets should be developed on a task-by-task basis. Budget information supporting all match expected for this project must also be provided.

Project Funding Activity	DEP Grant Funding	Matching Funds and Source	
		Funding	Source of Funds
Professional Services:			
Construction & Demolition:	\$200,000.00	\$200,000.00	Village of Biscayne Park
Land:			
Equipment:			
Other (list):			
Other (list):			
Total:			
Total Project Cost:			
% Match Required:		Amount of Match:	

**Project Budget Narrative:** Provide budget detail for each Project Funding Activity stated above for both DEP Funding and Match.

The budget will be assigned to the construction of proposed drainage improvements of Basins B and C. The Village of Biscayne Park will match the provided funds for these activities.

**Professional Services:** What services will be subcontracted?

Construction and Construction Management

**Construction & Demolition:** What is being constructed, rehabilitated, expanded, etc?

Installation of new drainage system

**Land:** What size is the property? What is its use?

The total project area of Basins B and C is 5.0 Acres

**Equipment:** What equipment will be purchased? Equipment is \$1,000 or more per unit cost.

N/A

**Other:** List the service or category of expenditure. What are the funds for?

The funds are assigned to the installation of drainage systems in Basin B and Basin C as described in page 2.

**NOTE: IF THERE IS MATCH, THE SAME DETAIL MUST BE PROVIDED FOR THE MATCH.**

**Total Budget by Task:** This should correspond with the tasks/activities identified and described above.

Task	DEP Grant Funding	Matching Funds and Source	
		Matching Funds	Source of Funds
1 Basin B	\$ 92,000.00	\$ 92,000.00	Village of Biscayne Park
2 Basin C	\$ 108,000.00	\$ 108,000.00	Village of Biscayne Park
3			
4			
5			
6			
Total:	\$ 200,000.00	\$ 200,000.00	
Project Total:			

**Measures of Success:** Identify factors that can be used to evaluate project performance/outcomes to support project success. Include appropriate timelines for conducting such reviews.

The project will be advertized according to the Village of Biscayne Park procurement procedures. The awarded Contractor will receive the Notice to Proceed to start the construction of the project. Payments will be according to the percentage of completion, which require the acceptance of the Village of Biscayne Park inspectors and the certification of the Engineer of Record.

Note that any changes to the Grant Work Plan Project Budget (of more than 10% in any line item), scope of work, or timelines shall require Department approval and amendment to the grant agreement.

The project area considered under this scope of services is defined as:

For the Comprehensive Standing Water Study:

*Village of Biscayne Park as defined in the Village Map, 2004*

For Construction Documents:

Area "A" (NE 121 ST, From NE 8 AVE to NE 12 CT)  
Area "B" (NE 8 AVE, From NE 115 ST to NE 117 ST)  
Area "C" (NE 116 ST, From NE 8 AVE to NE 10 AVE)  
Area "D" (NE 9 CT, From NE 109 ST to NE 115 ST)  
Area "E" (NE 108 ST, From NE 9 AVE to NE 109 ST)  
Area "F" (Griffin Blvd., From NE 107 ST to NE 112 ST)

See Exhibit A.

Note:

In order to make this contract more flexible, the Village of Biscayne Park could change any of the above mentioned project sites for another site if the Village considers that the drainage improvements for the new sites are more necessary. In this case a new design fee proposal will be submitted for Village approval. APCTE will not perform any design services for the new sites until a Notice To Proceed (NTP) from the Village of Biscayne Park is issued.

## 2 SCHEDULE

Professional Engineering services are to be completed on or before the following dates:

Drainage Master Plan:	December 15, 2004
Areas D and E:	February 15, 2005
Areas A, B, C, and F:	To be Determined

All professional Services are to be completed on or before December 2006.

## 3 ESTIMATE OF MANHOURS

Details attached:

Exhibit C for Design Services

Exhibit D for Geotechnical Exploration

Exhibit E for Survey

## 4 DELIVERABLES

Task 1- Village of Biscayne Park Drainage Master Plan Report  
Task 2- Area "A" Plans and Calculations  
Task 3- Area "B" Plans and Calculations  
Task 4- Area "C" Plans and Calculations  
Task 5- Area "D" Plans and Calculations  
Task 6- Area "E" Plans and Calculations  
Task 7- Area "F" Plans and Calculations

## 5 EXCLUSIONS

Permit Fees

PA. 5 of 5

**ATTACHMENT B**  
**Disbursement Request Package**  
 Legislative Projects (LP) Grants

1. Grantee/Recipient VILLAGE OF BISCAYNE PARK
2. Project Number LP8904 Date of Request \_\_\_\_\_
3. Disbursement Request Number \_\_\_\_\_ Required Match % \_\_\_\_\_
4. Type of Request: Partial  Final
5. Federal Employer Identification Number \_\_\_\_\_
6. Mail  EFT  Send Remittance to: \_\_\_\_\_

**Disbursement Details**

(cumulative amounts rounded to the nearest dollar)

- |  |     |   |
|--|-----|---|
| 1. Professional Services (attach invoices)                 | \$  |   |
| 2. Construction and Demolition (attach invoices)           |     |   |
| 3. Equipment (attach invoices)                             |     |   |
| 4. Land (attach invoices)                                  |     |   |
| 5. Other (list - must be specified in agreement)           |     |   |
|  |     |   |
| 6. Total cumulative to date                                | \$  |   |
| 7. Disbursements previously requested                      | \$( | ) |
| 8. Amount requested for disbursement (line 6 minus line 7) | \$  |   |

**Requests for Invoices already Paid:**

- 1) Copy of Invoice
- 2) Proof of Payment

**Requests for Invoices not yet Paid:**

- 1) Copy of Invoice
- 2) Advance Payment Justification (one per quarter)
- 3) Advance Payment - Interest Earned (after initial advance)

\*If prior Disbursement Request was requested by invoices without proof of payment documentation, proof of the prior payment will be required before this request can be disbursed.

**\*\* SUBMIT ONE ORIGINAL COPY OF THIS FORM AND SUPPORTING DOCUMENTATION TO: \*\***

Florida Department of Environmental Protection  
 Bureau of Water Facilities Funding MS 3505  
 2600 Blair Stone Road  
 Tallahassee, Florida 32399-2400

**Grant Manager's Certification**  
of Disbursement Request

I, \_\_\_\_\_,  
(name of Grantee's Grant Manager designated in the Agreement)

on behalf of \_\_\_\_\_, do hereby certify that:  
(name of Grantee/Recipient)

1. The disbursement amount requested on Page 1 of this form is for allowable costs for the project described in the Agreement;
2. Materials, labor, equipment, and/or services representing costs included in the amount requested have been satisfactorily purchased, performed or received, and applied toward completing the project; such costs are documented by invoices or other appropriate documentation which are filed in the Grantee's permanent records;
3. The Grantee is required to pay such costs under the terms and provisions of contracts relating directly to the project; and the Grantee is not in default of any terms or provisions of the contracts;
4. All funds received to date have been applied toward completing the project; and
5. All permits and approvals required for the construction which is underway have been obtained.

\_\_\_\_\_  
(Signature of Grant Manager)

\_\_\_\_\_  
(Date)

**Engineer's Certification**  
of Disbursement Request

I, \_\_\_\_\_, being the Professional Engineer retained by  
(name of Professional Engineer)

\_\_\_\_\_, am responsible for overseeing construction of the  
(name of Grantee/Recipient)  
project described in the Agreement and do hereby certify that:

1. Equipment, materials, labor, and services represented by the construction invoices have been satisfactorily purchased or received and applied to the project in accordance with construction contract documents filed with and previously approved by the Department of Environmental Protection;
2. Payment is in accordance with construction contract provisions;
3. Adequate construction supervision is being provided to assure compliance with construction requirements and Florida Administrative Code Chapter 62-600 or Chapter 62-604, as appropriate;
4. Construction up to the point of this disbursement is in compliance with the contract documents;
5. All changes, additions, or deletions to the construction contract(s) have been documented by change order and all change orders have been submitted to the Department; and
6. All additions or deletions to the Project which have altered the Project's performance standards, scope, or purpose (since issue of the pertinent Department permit) have been identified in writing to the Department or are identified and attached hereto.

\_\_\_\_\_  
Signature of Professional Engineer

\_\_\_\_\_  
Firm or Affiliation

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(P.E. Number)





## ATTACHMENT D

### SPECIAL AUDIT REQUIREMENTS

The administration of resources awarded by the Department of Environmental Protection (*which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the contract/agreement*) to the recipient (*which may be referred to as the "Contractor", Grantee" or other name in the contract/agreement*) may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

#### MONITORING

In addition to reviews of audits conducted in accordance with OMB Circular A-133 and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by Department staff, limited scope audits as defined by OMB Circular A-133, as revised, and/or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer or Auditor General.

#### AUDITS

##### **PART I: FEDERALLY FUNDED**

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in OMB Circular A-133, as revised.

1. In the event that the recipient expends \$500,000 or more in Federal awards in its fiscal year, the recipient must have a single or program-specific audit conducted in accordance with the provisions of OMB Circular A-133, as revised. EXHIBIT I to this Agreement indicates Federal funds awarded through the Department of Environmental Protection by this Agreement. In determining the Federal awards expended in its fiscal year, the recipient shall consider all sources of Federal awards, including Federal resources received from the Department of Environmental Protection. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by OMB Circular A-133, as revised. An audit of the recipient conducted by the Auditor General in accordance with the provisions of OMB Circular A-133, as revised, will meet the requirements of this part.
2. In connection with the audit requirements addressed in Part I, paragraph 1., the recipient shall fulfill the requirements relative to auditee responsibilities as provided in Subpart C of OMB Circular A-133, as revised.
3. If the recipient expends less than \$500,000 in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, is not required. In the event that the recipient expends less than \$500,000 in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of OMB Circular A-133, as revised, the cost of the audit must be paid from non-Federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other than Federal entities).
4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at <http://12.46.245.173/cfda/cfda.html>.

##### **PART II: STATE FUNDED**

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2)(m), Florida Statutes.

1. In the event that the recipient expends a total amount of State financial assistance equal to or in excess of \$500,000 in any fiscal year of such recipient, the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes; applicable rules of the Department of Financial Services; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit

organizations), Rules of the Auditor General. EXHIBIT 1 to this Agreement indicates State financial assistance awarded through the Department of Environmental Protection by this Agreement. In determining the State financial assistance expended in its fiscal year, the recipient shall consider all sources of State financial assistance, including State financial assistance received from the Department of Environmental Protection, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

2. In connection with the audit requirements addressed in Part II, paragraph 1; the recipient shall ensure that the audit complies with the requirements of Section 215.97(7), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$500,000 in State financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$500,000 in State financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-State entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa> for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at <http://www.leg.state.fl.us/Welcome/index.cfm>, State of Florida's website at <http://www.myflorida.com/>, Department of Financial Services' Website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.state.fl.us/audgen>.

### PART III: OTHER AUDIT REQUIREMENTS

*(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)*

### PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with OMB Circular A-133, as revised, and required by PART I of this Attachment shall be submitted, when required by Section .320 (d), OMB Circular A-133, as revised, by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at the following address:

**Audit Director**  
Florida Department of Environmental Protection  
Office of the Inspector General, MS 40  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

- B. The Federal Audit Clearinghouse designated in OMB Circular A-133, as revised (the number of copies required by Sections .320 (d)(1) and (2), OMB Circular A-133, as revised, should be submitted to the Federal Audit Clearinghouse), at the following address:

Federal Audit Clearinghouse  
Bureau of the Census  
1201 East 10th Street  
Jeffersonville, IN 47132

- C. Other Federal agencies and pass-through entities in accordance with Sections .320 (e) and (f), OMB Circular A-133, as revised.
- 2. Pursuant to Section .320(f), OMB Circular A-133, as revised, the recipient shall submit a copy of the reporting package described in Section .320(c), OMB Circular A-133, as revised, and any management letters issued by the auditor, to the Department of Environmental Protection the following address:

**Audit Director**  
Florida Department of Environmental Protection  
Office of the Inspector General, MS 40  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

- 3. Copies of financial reporting packages required by PART II of this Attachment shall be submitted by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at the following address:

**Audit Director**  
Florida Department of Environmental Protection  
Office of the Inspector General, MS 40  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

- B. The Auditor General's Office at the following address:

State of Florida Auditor General  
Room 401, Claude Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32399-1450

- 4. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at the following address:

**Audit Director**  
Florida Department of Environmental Protection  
Office of the Inspector General, MS 40  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

- 5. Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with OMB Circular A-133, Florida Statutes, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.
- 6. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with OMB Circular A-133, or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the recipient in correspondence accompanying the reporting package.

**PART V: RECORD RETENTION**

The recipient shall retain sufficient records demonstrating its compliance with the terms of this Agreement for a period of 5 years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of 3 years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

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**EXHIBIT - 1**

FUNDS AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

<b>Federal Funds Awarded to the Recipient Pursuant to this Agreement Consist of the Following:</b>					
Federal Program Number	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category

<b>State Funds Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Funds for Federal Programs:</b>					
Federal Program Number	Federal Agency	CFDA	CFDA Title	Funding Amount	State Appropriation Category

<b>State Funds Awarded to the Recipient Pursuant to this Agreement Consist of the Following Funds Subject of Section 215.97, F.S.:</b>						
State Program Number	Funding Source	State Fiscal Year	Catalog of State Financial Assistance Number	CSFA Title or Funding Source Description	Funding Amount	State Appropriation Category
Original Agreement	LI 1772C -- Ecosystem Management & Restoration TF	2008-2009	37.039	Statewide Surface Water Restoration and Wastewater Projects	\$200,000	140047-09

<b>Total Award</b>					<b>\$200,000</b>	
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For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [<http://12.46.245.173/cfda/cfda.html>] and/or the Florida Catalog of State Financial Assistance (CSFA) [<https://apps.fldfs.com/fsaa/searchCatalog.aspx> ]. The services/purposes for which the funds are to be used are included in the Contract scope of services/work. Any match required by the recipient is clearly indicated in the Contract.

**ATTACHMENT E**  
**ADVANCE PAYMENT – INTEREST EARNED MEMORANDUM**  
**WHEN REPORTING OR REMITTING, PLEASE RETURN A COPY OF THIS REQUEST**

TO:

FROM: Darinda McLaughlin, Finance and Accounting Director  
 Bureau of Finance and Accounting, MS 78

DATE:

SUBJECT: Advance Payment - Contract No.  
 Interest Due to DEP:

Pursuant to Section 216.181(16), Florida Statutes, advance payments may be required to be deposited into an interest bearing account until all funds have been depleted. In order to update the status on the **unused portion of the advanced funds and/or interest due**, advance approval of the Chief Financial Officer, and the terms of the above referenced contract, the following information is needed for our records **no later than** \_\_\_\_\_.

Initial advance funding disbursed _____	\$	
1. Advanced funds principle expended or returned by contractor covering period of _____ to _____	\$	
Balance advance funding principle available	\$	
3. Interest earned on advanced funds covering period of _____ to _____	\$	
4. Amount of interest paid to DEP as of _____	\$	
5. Interest balance due to DEP as of _____	\$	

\_\_\_\_\_  
 (Project Manager's Signature) (Date)

**Special Instructions:** If the grant/contract specifies that any accrued interest, which is based upon a grant/contract advance payment(s), will not be paid to DEP until after termination of the grant/contract, the advance fund recipient shall complete report items 1 and 2 only for the first three quarters of the state's fiscal year. The report for the state's fourth fiscal year quarter shall include items 1, 2, 3, 4, and 5. Items 3, 4, and 5 will be the life to date interest

If the contract states that no interest is due, quarterly reports of unexpended advances are required, lines 1 and 2.

In all cases the line 1 and 2 reported amounts are on a cash basis for the advance payment principle. Do not include receivables, payables, or interest previously paid to DEP.

If the grant/contract requires quarterly accrued interest payments to DEP, the fund recipient must complete items 1 through 5 for each quarterly report.

Payments of interest due to DEP shall be paid within the specifications of the contract/grant.

Thank you for your cooperation in providing the above information. If you have questions, please contact Lydia Louis (850) 245-2452 in the Contracts Disbursement Section.

## ATTACHMENT F ADVANCE PAYMENT JUSTIFICATION FORM

Use of this form is not required unless the advance requested requires the prior approval of the State Chief Financial Officer. For advance requests that are equal to or less than the purchasing threshold of category two as defined in Section 287.017, Florida Statutes, and meet one of the advance payment requirements identified in Section 215.422(14), Florida Statutes, use of this form is waived. However, the purchase requisition or contract review form must clearly identify the criteria being met under 215.422(14), Florida Statutes that allows the advance to be made without prior Chief Financial Officer's approval.

Name/Address of the Vendor/Recipient:			
Contact Person/Phone No.:			
Agreement No./Purchase Order No. (if known):	LP8904		
Commodities/Services/Project Description:			
Organizational Structure (i.e. local gov't, non-profit corporation, etc.)			
Value of Purchase or Grant:			
Advance Payment Amount Requested:			
Period Advance Payment to Cover:	<input type="checkbox"/> 90 days startup	<input type="checkbox"/> Full Contract Period	
	<input type="checkbox"/> Quarterly	<input type="checkbox"/> Other (specify):	
Indicate Statutory Authority:	<input type="checkbox"/> 215.422, F.S.	<input type="checkbox"/> 216.181, F.S.	
GAA Year and Line Item Info:	SFY:	Line Item:	
<b>1. Reason advance payment is required:</b>			
<b>2. The following information required for advances requested pursuant to 215.422, Florida Statutes (and the Reference Guide for State Expenditures) which exceed the purchasing threshold of category two as defined in 287.017, Florida Statutes.</b>			
<b>A.</b> Document, if applicable, the cost savings to be incurred as a result of an advance payment that are equal or greater than the amount the State would earn by investing the funds and paying in arrears. Include the percent (%) savings to be realized. In calculating the percent savings as compared to the percent that can be earned by the State, information may be obtained from the Department of Financial Services, Division of Treasury at 850/413-3165 regarding the current Treasury earnings rate.			
<b>B.</b> Document, if applicable, how the goods or services are essential to the operation of the Department and why they are available only if advance payment is made:			

C. Identify the procurement method used to select the vendor.

**3. The following information required for advances to Governmental Entities and Non-Profits pursuant to 216.181, Florida Statutes. (Limited to GAA Authorized, Statutorily Authorized, and Grant & Aid Appropriation Categories 05XXXX or 14XXXX)**

A. The entity acknowledges the requirement to invest advance funds in an interest bearing account and to remit interest earned to the Department on a quarterly basis.

Provide a description of how the entity intends to invest the advanced funds and track the interest earned on the advanced funds:

Remittances must: 1) be identified as interest earnings on advances, 2) must identify the applicable DEP Agreement (or Contract) No., and 3) be forwarded to the following address:

Florida Department of Environmental Protection  
Bureau of Finance and Accounting  
Receipts Section  
P.O. Box 3070  
Tallahassee, Florida 32315-3070

B. A letter requesting advance payment from the recipient, on its letterhead, must be attached.

**3. The recipient must provide an estimated budget for each quarter covered by the agreement. The summary information should include salaries, fringe benefits, overhead, contracts (specify services to be contracted out), equipment, if authorized (specify items to be purchased), supplies, travel, and other costs.**

A sample summary format is provided below. The summary should include the breakdown for each quarter of the agreement period.

Description	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Salaries (identify personnel/titles)				
Fringe Benefits				
Contractual Services (list services and estimated costs)				
Equipment (identify each item and cost)				
Supplies				
Travel				
Other (specify)				
Overhead/Indirect				
<b>Total:</b>				

**Certification Statement**

The forgoing information is presented to the Florida Department of Environmental Protection in support of our request for advance payment. I certify that the information provided accurately reflects the financial issues facing the entity at this time.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Type Name of Signatory: \_\_\_\_\_  
 Title: Chief Financial Officer or designee

**DEP Program Area Review/Approval**

**Recommendation:**  Approve Request  Deny Request

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Type Name of Signatory: \_\_\_\_\_  
 Title: \_\_\_\_\_ Bureau: \_\_\_\_\_ Division: \_\_\_\_\_

The DEP Program Area should forward this information to the Contracts Disbursements Section at M578. The Contracts Disbursements Section will forward requests for advance payment to the State Comptroller for review and legislature consultation, as appropriate.

Bureau of Finance & Accounting Use Only

**PROPERTY REPORTING FORM FOR DEP AGREEMENT NO. LP8904  
(For Property With Grantee Assigned Property Control Numbers)**

**GRANTEE:** List non-expendable equipment/personal property\* costing \$1,000 or more purchased under the above Agreement. Also list all upgrades\* under this Agreement, costing \$1,000 or more, of property previously purchased under a DEP Agreement (identify the property upgraded and the applicable DEP Agreement on a separate sheet). Complete the serial no./cost, location/address and property control number columns of this form. The Grantee shall establish a unique identifier for tracking all personal property purchased under this Agreement and shall report the inventory of said property, on an annual basis, to the Department's Grant Manager, by DEP Agreement number, no later than January 31<sup>st</sup> for each year this Agreement is in effect.

DESCRIPTION	SERIAL NO./COST**	LOCATION/ADDRESS	GRANTEE ASSIGNED PROPERTY CONTROL NUMBER

\*Not including software. \*\*Attach copy of invoice, bill of sale, or other documentation to support purchase.

GRANTEE:	Grantee's Grant Manager:	Date:
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**BELOW FOR DEP USE ONLY**

**DEP GRANT MANAGER:** Maintain this document with a copy of the invoices supporting the cost of each item identified above in your Agreement file. If the Agreement is a cost reimbursement Agreement, make sure to send invoices supporting the cost of the items to Finance and Accounting for the processing of the Grantee's invoice for payment.

DEP Grant Manager Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**DEP FINANCE AND ACCOUNTING:** No processing required by Finance & Accounting as the Grantee is responsible for retaining ownership of the equipment/property upon satisfactory completion of the Agreement.  
**DEP PROPERTY MANAGEMENT:** No processing required by the Property Management section as the Grantee will retain ownership of the equipment/property upon satisfactory completion of the Agreement.

**STATE-FUNDED SUBGRANT AGREEMENT**

THIS AGREEMENT is entered into by the State of Florida, Division of Emergency Management, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Division"), and **Village of Biscayne Park**, (hereinafter referred to as the "Recipient").

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

- A. The Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein; and
- B. The Division has received these grant funds from the State of Florida, and has the authority to subgrant these funds to the Recipient upon the terms and conditions below; and
- C. The Division has statutory authority to disburse the funds under this Agreement; and
- D. Funds used for emergency shelter or critical facility projects are contingent on certification by the Division that the emergency shelter or critical facility complies with, or will comply with after project completion, the structural considerations of ARC 4496, Standards for Hurricane Evacuation Shelter Selection; and
- E. The Division has authority pursuant to the General Appropriations Act, for the State Fiscal Year 2008-2009, Specific Appropriation 1540A, to disburse the funds under this Agreement to eligible recipients under the Local Emergency Management Needs.

THEREFORE, the Division and the Recipient agree to the following:

(1) SCOPE OF WORK.

The Recipient shall perform the work in accordance with the Budget and Scope of Work, Attachment A of this Agreement.

(2) INCORPORATION OF LAWS, RULES, REGULATIONS AND POLICIES

The Recipient and the Division shall be governed by applicable State and Federal laws, rules and regulations, including those identified in Attachment B.

(3) PERIOD OF AGREEMENT.

This Agreement shall begin July 1, 2008, and shall end June 30, 2011, unless terminated earlier in accordance with the provisions of Paragraph (12) of this Agreement.

(4) MODIFICATION OF CONTRACT

Either party may request modification of the provisions of this Agreement. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.

(5) RECORDKEEPING

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(a) As applicable, Recipient's performance under this Agreement shall be subject to the federal Common Rule: Uniform Administrative Requirements for State and Local Governments" (53 Federal Register 8034) or OMB Circular No. A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," and either OMB Circular No. A-87, "Cost Principles for State and Local Governments," OMB Circular No. A-21, "Cost Principles for Educational Institutions," or OMB Circular No. A-122, "Cost Principles for Nonprofit Organizations." If this Agreement is made with a commercial (for-profit) organization on a cost-reimbursement basis, the Recipient shall be subject to Federal Acquisition Regulations 31.2 and 931.2.

(b) The Recipient shall retain sufficient records to show its compliance with the terms of this Agreement, and the compliance of all subcontractors or consultants paid from funds under this Agreement, for a period of five years from the date the audit report is issued, and shall allow the Division or its designee, the State Chief Financial Officer or the State Auditor General access to the records upon request. The Recipient shall ensure that audit working papers are available to them upon request for a period of five years from the date the audit report is issued, unless extended in writing by the Division. The five year period may be extended for the following exceptions:

1. If any litigation, claim or audit is started before the five year period expires, and extends beyond the five year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

2. Records for the disposition of non-expendable personal property valued at \$5,000 or more at the time it is acquired shall be retained for five years after final disposition.

3. Records relating to real property acquired shall be retained for five years after the closing on the transfer of title.

(c) The Recipient shall maintain all records for the Recipient and for all subcontractors or consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of the Budget and Scope of Work - Attachment A - and all other applicable laws and regulations.

(d) The Recipient, its employees or agents, including all subcontractors or consultants to be paid from funds provided under this Agreement, shall allow access to its records at reasonable times to the Division, its employees, and agents. "Reasonable" shall ordinarily mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, on Monday through Friday. "Agents" shall include, but not be limited to, auditors retained by the Division.

#### (6) AUDIT REQUIREMENTS

(a) The Recipient agrees to maintain financial procedures and support documents, in accordance with generally accepted accounting principles, to account for the receipt and expenditure of funds under this Agreement.

(b) These records shall be available at reasonable times for inspection, review, or audit by state personnel and other personnel authorized by the Department or the Division. "Reasonable" shall ordinarily mean normal business hours of 8:00 a.m. to 5:00 p.m., local time, Monday through Friday.

(c) The Recipient shall provide the Department with the records, reports or financial statements upon request for the purposes of auditing and monitoring the funds awarded under this Agreement.

(d) If the Recipient is a nonstate entity as defined by Section 215.97, Fla. Stat., it shall comply with the following:

If the Recipient expends a total amount of State financial assistance equal to or more than \$500,000 in any fiscal year of such Recipient, the Recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, Fla. Stat.; applicable rules of the Executive Office of the Governor and the Chief Financial Officer; and Chapters 10.550 (local government entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT 1 to this Agreement shows the State financial assistance awarded by this Agreement. In determining the State financial assistance expended in its fiscal year, the Recipient shall include all sources of State financial assistance, including State funds received from the Division, other state agencies, and other nonstate entities. State financial assistance does not include Federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.

In connection with the audit requirements addressed in this Paragraph 6(d) above, the Recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Fla. Stat. This includes submission of a reporting package as defined by Section 215.97(2)(e), Fla. Stat. and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.

If the Recipient expends less than \$500,000 in State financial assistance in its fiscal year, an audit conducted in accordance with the provisions of Section 215.97, Fla. Stat., is not required. In the event that the Recipient expends less than \$500,000 in state financial assistance in its fiscal year and elects to have an audit conducted in accordance with the provisions of Section 215.97, Fla. Stat., the cost of the audit must be paid from the nonstate entity's resources (i.e., the cost of such an audit must be paid from the Recipient's resources obtained from other than State entities). Additional information on the Florida Single Audit Act may be found at the following website: <http://www.state.fl.us/fsaa/statutes.html>.

(e) Report Submission

1. The annual financial audit report shall include all management letters and the Recipient's response to all findings, including corrective actions to be taken.

2. The annual financial audit report shall include a schedule of financial assistance specifically identifying all Agreement and other revenue by sponsoring agency and Agreement number.

3. Copies of financial reporting packages required under this Paragraph 6 shall be submitted by or on behalf of the Recipient directly to each of the following:

The Department of Community Affairs at each of the following addresses:

Department of Community Affairs  
Office of Audit Services  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

**[an electronic copy shall also be submitted to [aurilla.parrish@dca.state.fl.us](mailto:aurilla.parrish@dca.state.fl.us)]  
and**

Division of Emergency Management  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

The Auditor General's Office at the following address:

Auditor General's Office  
Room 401, Claude Pepper Building  
111 West Madison Street  
Tallahassee, Florida 32399-1450

4. Any reports, management letter, or other information required to be submitted to the Division or the Department of Community Affairs pursuant to this Agreement shall be submitted on time as required under OMB Circular A-133, Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

5. Recipients, when submitting financial reporting packages to the Division or the Department of Community Affairs for audits done in accordance with OMB Circular A-133 or Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, should indicate the date that the reporting package was delivered to the Recipient in correspondence accompanying the reporting package.

(f) If the audit shows that all or any portion of the funds disbursed hereunder were not spent in accordance with the conditions of this Agreement, the Recipient shall be held liable for reimbursement to the Division of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty days after the Division has notified the Recipient of such non-compliance.

(g) The Recipient shall have all audits completed in accordance with Section 215.97, Fla. Stat. by an independent certified public accountant (IPA) who shall either be a certified public accountant or a public accountant licensed under Chapter 473, Fla. Stat. The IPA shall state that the audit complied with the applicable provisions noted above. The audit must be submitted to the Division no later than nine (9) months from the end of the Recipient's fiscal year.

(7) REPORTS

(a) The Recipient shall provide the Division with quarterly reports and a close-out report. These reports shall include the current status and progress by the Recipient and all subrecipients and subcontractors in completing the work described in the Scope of Work and the expenditure of funds under this Agreement, in addition to any other information requested by the Division.

(b) Quarterly reports are due to the Division no later than 30 days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30 and December 31.

(c) The close-out report is due 60 days after termination of this Agreement or 60 days after completion of the activities contained in this Agreement, whichever first occurs.

(d) If all required reports and copies are not sent to the Division or are not completed in a manner acceptable to the Division, the Division may withhold further payments until they are completed or may take other action as stated in Paragraph (11) REMEDIES. "Acceptable to the Division" means that the work product was completed in accordance with the Budget and Scope of Work.

(e) The Recipient shall provide additional program updates or information that may be required by the Division.

(f) The Recipient shall provide additional reports and information identified in Attachment D.

(8) MONITORING

The Recipient shall monitor its performance under this Agreement, as well as that of its subcontractors and/or consultants who are paid from funds provided under this Agreement, to ensure that time schedules are being met, the Schedule of Deliverables and Scope of Work are being accomplished within the specified time periods, and other performance goals are being achieved. A review shall be done for each function or activity in Attachment A to this Agreement, and reported in the quarterly report.

In addition to reviews of audits conducted in accordance with paragraph (6) above, monitoring procedures may include, but not be limited to, on-site visits by Division staff, limited scope audits, and/or other procedures. The Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Division. In the event that the Division or the Department determines that a limited scope audit of the Recipient is appropriate, the Recipient agrees to comply with any additional instructions provided by the Division or the Department to the Recipient regarding such audit. The Recipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Florida Chief Financial Officer or Auditor General. In addition, the Division will monitor the performance and financial management by the Recipient throughout the contract term to ensure timely completion of all tasks.

(9) LIABILITY

(a) Unless Recipient is a State agency or subdivision, as defined in Section 768.28, Fla. Stat., the Recipient is solely responsible to parties it deals with in carrying out the terms of this Agreement, and shall hold the Division harmless against all claims of whatever nature by third parties arising from the work performance under this Agreement. For purposes of this Agreement, Recipient agrees that it is not an employee or agent of the Division, but is an independent contractor.

(b) Any Recipient which is a state agency or subdivision, as defined in Section 768.28, Fla. Stat., agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in Section 768.28, Fla. Stat. Nothing herein is intended to serve as a waiver of sovereign immunity by any Recipient to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

(10) DEFAULT.

If any of the following events occur ("Events of Default"), all obligations on the part of the Division to make further payment of funds shall, if the Division elects, terminate and the Division has the option to exercise any of its remedies set forth in Paragraph (11). However, the Division may make payments or partial payments after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment:

(a) If any warranty or representation made by the Recipient in this Agreement or any previous agreement with the Division is or becomes false or misleading in any respect, or if the Recipient fails to keep or perform any of the obligations, terms or covenants in this Agreement or any previous agreement with the Division and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;

(b) If material adverse changes occur in the financial condition of the Recipient at any time during the term of this Agreement, and the Recipient fails to cure this adverse change within thirty days from the date written notice is sent by the Division.

(c) If any reports required by this Agreement have not been submitted to the Division or have been submitted with incorrect, incomplete or insufficient information;

(d) If the Recipient has failed to perform and complete on time any of its obligations under this Agreement.

(11) REMEDIES.

If an Event of Default occurs, then the Division may, after thirty calendar days written notice to the Recipient and upon the Recipient's failure to cure within those thirty days, exercise any one or more of the following remedies, either concurrently or consecutively:

(a) Terminate this Agreement, provided that the Recipient is given at least thirty days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address in paragraph (13) herein;

(b) Begin an appropriate legal or equitable action to enforce performance of this Agreement;

(c) Withhold or suspend payment of all or any part of a request for payment;

(d) Require that the Recipient refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.

(e) Exercise any corrective or remedial actions, to include but not be limited to:

1. request additional information from the Recipient to determine the reasons for or the extent of non-compliance or lack of performance,

2. issue a written warning to advise that more serious measures may be taken if the situation is not corrected,

3. advise the Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or

4. require the Recipient to reimburse the Division for the amount of costs incurred for any items determined to be ineligible;

(f) Exercise any other rights or remedies which may be available under law.

(g) Pursuing any of the above remedies will not stop the Division from pursuing any other remedies in this Agreement or provided at law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Recipient, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Recipient.

(12) TERMINATION.

(a) The Division may terminate this Agreement for cause after thirty days written notice. Cause can include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform on time, and refusal by the Recipient to permit public access to any document, paper, letter, or other material subject to disclosure under Chapter 119, Fla. Stat., as amended.

(b) The Division may terminate this Agreement for convenience or when it determines, in its sole discretion, that continuing the Agreement would not produce beneficial results in line with the further expenditure of funds, by providing the Recipient with thirty calendar days prior written notice.

(c) The parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of the Agreement.

(d) In the event that this Agreement is terminated, the Recipient will not incur new obligations for the terminated portion of the Agreement after the Recipient has received the notification of termination. The Recipient will cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. The Recipient shall not be relieved of liability to the Division because of any breach of Agreement by the Recipient. The Division may, to the extent authorized by law, withhold payments to the Recipient for the purpose of set-off until the exact amount of damages due the Division from the Recipient is determined.

(13) NOTICE AND CONTACT.

(a) All notices provided under or pursuant to this Agreement shall be in writing, either by hand delivery, or first class, certified mail, return receipt requested, to the representative named below, at the address below, and this notification attached to the original of this Agreement.

(b) The name and address of the Division contract manager for this Agreement is:

Jenene Helms  
Florida Division of Emergency Management  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100  
Telephone: 850-413-9920  
Fax: 850-488-7842  
Email: [jenene.helms@em.myflorida.com](mailto:jenene.helms@em.myflorida.com)

(c) The name and address of the Representative of the Recipient responsible for the administration of this Agreement is:

Frank Spence  
Village of Biscayne Park  
640 NE 114<sup>th</sup> Street  
Biscayne Park, Florida 33161  
Telephone: 305-899-8000  
Fax: \_\_\_\_\_  
Email: [frspence@bellsouth.net](mailto:frspence@bellsouth.net)

(d) In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the name, title and address of the new representative will be provided as outlined in (13)(a) above.

(14) SUBCONTRACTS

If the Recipient subcontracts any of the work required under this Agreement, a copy of the unsigned subcontract must be forwarded to the Division for review and approval before it is executed by the Recipient. The Recipient agrees to include in the subcontract that (i) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Division and Recipient harmless against all claims of

whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law. The Recipient shall document in the quarterly report the subcontractor's progress in performing its work under this Agreement.

For each subcontract, the Recipient shall provide a written statement to the Division as to whether that subcontractor is a minority vendor, as defined in Section 288.703, Fla. Stat.

(15) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the parties.

(16) ATTACHMENTS

(a) All attachments to this Agreement are incorporated as if set out fully.

(b) In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.

(c) This Agreement has the following attachments:

Exhibit 1 - Funding Sources

Attachment A – Budget and Scope of Work

Attachment B – Program Statutes and Regulations

Attachment C – Reports

Attachment D – Justification of Advance

Attachment E – Warranties and Representations

(17) FUNDING/CONSIDERATION

(a) This is a cost-reimbursement Agreement. The Recipient shall be reimbursed for costs incurred in the satisfactory performance of work hereunder in an amount not to exceed **\$60,000**, subject to the availability of funds.

(b) Any advance payment under this Agreement is subject to Section 216.181(16), Fla.Stat., and is contingent upon the Recipient's acceptance of the rights of the Division under Paragraph (12)(b) of this Agreement. The amount which may be advanced may not exceed the expected cash needs of the Recipient within the first three (3) months of the contract term. For a federally funded contract, any advance payment is also subject to federal OMB Circulars A-87, A-110, A-122 and the Cash Management Improvement Act of 1990. If an advance payment is requested below, the budget data on which the request is based and a justification statement shall be included in this Agreement as Attachment E. Attachment E will specify the amount of advance payment needed and provide an explanation of the necessity for and proposed use of these funds.

An advance payment of \$\_\_\_\_\_ is requested

(c) After the initial advance, if any, payment shall be made on a reimbursement basis as needed. The Recipient agrees to expend funds in accordance with the Budget and Scope of Work, Attachment A of this Agreement.

If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the federal Office of Management and Budgeting, the State Chief Financial Officer or under subparagraph (20)(h) of this Agreement, all obligations on the part of the Division to make any further payment of funds shall terminate, and the Recipient shall submit its closeout report within thirty days of receiving notice from the Division.

(18) REPAYMENTS

All refunds or repayments due to the Division under this Agreement are to be made payable to the order of "Department of Community Affairs", and mailed directly to the following address:

Department of Community Affairs  
Cashier  
Finance and Accounting  
2555 Shumard Oak Boulevard  
Tallahassee FL 32399-2100

In accordance with Section 215.34(2), Fla. Stat., if a check or other draft is returned to the Division for collection, Recipient shall pay the Division a service fee of \$15.00 or 5% of the face amount of the returned check or draft, whichever is greater.

(19) MANDATED CONDITIONS

(a) The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Recipient in this Agreement, in any later submission or response to a Division request, or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations, and materials is incorporated by reference. The inaccuracy of the submissions or any material changes shall, at the option of the Division and with thirty days written notice to the Recipient, cause the termination of this Agreement and the release of the Division from all its obligations to the Recipient.

(b) This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of the conflict, and shall be severable, but shall not invalidate any other provision of this Agreement.

(c) Any power of approval or disapproval granted to the Division under the terms of this Agreement shall survive the term of this Agreement.

(d) This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

(e) The Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and local government services, and telecommunications.

(f) Those who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of \$25,000.00 for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

(g) The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with Chapter 216, Fla. Stat. or the Florida Constitution.

(h) All bills for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper preaudit and postaudit thereof.

(i) Any bills for travel expenses shall be submitted in accordance with Section 112.061, Fla. Stat.

(j) The Division reserves the right to unilaterally cancel this Agreement if the Recipient refuses to allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Fla. Stat., which the Recipient created or received under this Agreement.

(k) If the Recipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to the Division or be applied against the Division's obligation to pay the contract amount.

(l) The State of Florida will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The Division shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the INA. Such violation by the Recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Division.

(m) The Recipient is subject to Florida's Government in the Sunshine Law (Section 286.011, Fla. Stat.) with respect to the meetings of the Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board. All of these meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with Chapter 119, Fla. Stat.

(20) LOBBYING PROHIBITION

(a) No funds or other resources received from the Division under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

(b) The Recipient certifies, by its signature to this Agreement, that to the best of his or her knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying."

3. The Recipient shall require that this certification be included in the award documents for all subawards (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(21) COPYRIGHT, PATENT AND TRADEMARK

**ANY AND ALL PATENT RIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY RESERVED TO THE STATE OF FLORIDA. ANY AND ALL COPYRIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY TRANSFERRED BY THE RECIPIENT TO THE STATE OF FLORIDA.**

(a) If the Recipient has a pre-existing patent or copyright, the Recipient shall retain all rights and entitlements to that pre-existing patent or copyright unless the Agreement provides otherwise.

(b) If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected with it, the Recipient shall refer the

discovery or invention to the Division for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Recipient shall notify the Division. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Recipient to the State of Florida.

(c) Within thirty days of execution of this Agreement, the Recipient shall disclose all intellectual properties relating to the performance of this Agreement which he or she knows or should know could give rise to a patent or copyright. The Recipient shall retain all rights and entitlements to any pre-existing intellectual property which is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under Paragraph (b), have the right to all patents and copyrights which accrue during performance of the Agreement.

(22) PROPERTY MANAGEMENT.

(a) Title to equipment acquired by a Recipient with State funds shall vest in the Recipient, subject to conditions of this section. The Recipient must continue the operation, maintenance, repair and administration of any equipment or other personal property purchased under this Agreement in accordance with the purposes for which the funds were originally appropriated and for the period of time expressly specified in the Agreement or, failing to do so, the Recipient must return to the Division the subgrant funds used to purchase the property.

(b) The Recipient shall not use equipment acquired with State funds to provide services to non-State outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Florida statute, for as long as the State retains an interest in the equipment.

(c) The Recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by State funds and shall not encumber the property without approval of the Division. When no longer needed for the original project or program, the Recipient shall use the equipment in connection with its other State-sponsored activities, in the following order of priority: (i) Activities sponsored by the Division, then (ii) activities sponsored by other State agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the Recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Division; second preference shall be given to projects or programs sponsored by other State agencies. If the equipment is owned by the State of Florida, use on other activities not sponsored by the State of Florida shall be permissible if authorized by the Division. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the Recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Division.

(f) The Recipient's property management standards for equipment acquired with State and State-owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the Recipient or the State of Florida.

(v) Acquisition date (or date received, if the equipment was furnished by the State of Florida) and cost.

(vi) Information from which one can calculate the percentage of State participation in the cost of the equipment (not applicable to equipment furnished by the State of Florida).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a Recipient compensates the Division for its share.

(2) Equipment owned by the State of Florida shall be identified to indicate State ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The Recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the State of Florida, the Recipient shall promptly notify the Division.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the Recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the Recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of \$5000 or more, the Recipient may retain the equipment for other uses provided that compensation is made to the Division. The amount of compensation shall be computed by applying the percentage of State participation in the cost of the original project or program to the current fair market value of the equipment. If the Recipient has no need for the equipment, the Recipient shall request disposition instructions from the Division. The Division shall determine whether the equipment can be used to meet the Division's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the Department of Management Services by the Division to determine whether a requirement for the equipment exists in other State agencies. The Division shall issue instructions to the Recipient no later than 120 calendar days after the Recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Recipient's request, the Recipient shall sell the equipment and reimburse the Federal awarding agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Recipient shall be permitted to deduct and retain from the State share \$500 or ten percent of the proceeds, whichever is less, for the Recipient's selling and handling expenses.

(2) If the Recipient is instructed to ship the equipment elsewhere, the Recipient shall be reimbursed by the State of Florida by an amount which is computed by applying the percentage of the Recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the Recipient is instructed to otherwise dispose of the equipment, the Recipient shall be reimbursed by the Division for such costs incurred in its disposition.

(4) The Division may reserve the right to transfer the title to the State of Florida or to a third party named by the State when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the Recipient in writing.

(ii) The Division shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If the Division fails to issue disposition instructions within the 120 calendar day period, the Recipient shall apply the standards of this section, as appropriate.

(iii) When the Division exercises its right to take title, the equipment shall be subject to the provisions for State-owned equipment.

(23) LEGAL AUTHORIZATION.

The Recipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Recipient also certifies that the undersigned person has the authority to legally execute and bind Recipient to the terms of this Agreement.

(24) ASSURANCES.

The Recipient shall comply with any Statement of Assurances incorporated as Attachment I.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

**RECIPIENT:**

**VILLAGE OF BISCAYNE PARK**

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

Name and title: \_\_\_\_\_

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

FID# \_\_\_\_\_

**STATE OF FLORIDA**

**DIVISION OF EMERGENCY MANGEMENT**

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

Name and Title: Ruben D. Almaguer, Interim Director, Division of Emergency Management

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

**EXHIBIT – 1**

STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

SUBJECT TO SECTION 215.97, FLORIDA STATUTES:

State Project -

State awarding agency – Division of Emergency Management  
Catalog of State Financial Assistance title Specific Appropriation 1540A  
Catalog of State Financial Assistance number 52.010  
\$60,000

COMPLIANCE REQUIREMENTS APPLICABLE TO STATE RESOURCES AWARDED PURSUANT TO THIS AGREEMENT ARE AS FOLLOWS:

1. Sections 215.555(7)(c) and 215.559, Florida Statutes
2. Chapter 252, Florida Statutes
3. Chapter 287, Florida Statutes
4. Chapter 119, Florida Statutes
5. Chapter 60A-1, Florida Administrative Code
6. Chapter 9G-19, Florida Administrative Code
7. Funding under this Grant is limited to projects for the installation of window and door protection and other types of structural projects.

NOTE: Section .400(d) of OMB Circular A-133, as revised, and Section 215.97(5)(a), Florida Statutes, require that the information about Federal Programs and State Projects included in Exhibit 1 be provided to the recipient.

**Attachment A**  
**Budget and Scope of Work**

**I. SCOPE OF WORK**

A. The Recipient shall hurricane "harden" an existing recreation building to be used as a Village Police Department Emergency Operations Center (PD-EOC). Eligible reimbursement costs include, but are not necessarily limited to: architectural, engineering and inspection services and fees; necessary permits and fees; structural remodeling or retrofitting of the building's exterior walls, roof structural assemblies and deck, critical loadpath components, and window and door protection; and necessary finishwork demolition and restoration. If funds are remaining after completion of the building's structural remodeling, such funds may be used to install a standby electrical power system.

B. Due to use as an occupied first responder hurricane shelter, at a minimum the Recreation Building/PD-EOC shall meet the hurricane hazard safety criteria established in *Standards for Hurricane Evacuation Shelter Selection* (ARC 4496).

C. The PD-EOC hardening shall be designed to resist the effects of a major hurricane. Design wind loads shall be in accordance with the *2004 Florida Building Code—Building* and subsequent revisions, to include the High Velocity Hurricane Zone provisions. The minimum wind design shall include:

Design Wind Speed = 146 miles per hour (3 second gust)  
Importance Factor  $I = 1.15$   
Exposure Category = C

Rooftop equipment shall be designed and installed to meet the design wind loads.

D. The PD-EOC shall resist penetration by wind-borne debris impact. At a minimum the opening protection must resist penetration by a nominal 2"x4" lumber plank weighing 9 pounds propelled at 34 miles per hour (50 feet per second) striking end-on and normal to the assembly surface, or equivalent performance as approved by the Division. The Division strongly encourages use of an enhanced large missile impact criteria for buildings with wind designs of 130 mph or greater; the missile test velocity should be increased to a minimum of 55 mph (80 feet per second). As applicable, impact test procedures shall be consistent with recognized state and national standards; such as, American Society of Testing and Materials (ASTM) Standards ASTM E 1886 and ASTM E 1996, and Florida Building Code Testing Protocols TAS 201, TAS 202 and TAS 203. The impact test procedures may be modified as necessary to accommodate the required velocity.

E. The following information related to wind loads shall be shown on the construction drawings: 1. design wind loads determined per *2004 Florida Building Code—Building*; 2. design wind speed; 3. wind load importance factor  $I$ ; 4. wind exposure category; 5. design wind pressures in terms of pounds per square foot (psf) to be used for the design of exterior component and cladding materials; and 6. the opening protection's large missile impact performance criteria.

F. The Recipient shall provide an initial timeline and estimated reimbursement allocation schedule. Table SW-1, "Initial Timeline and Estimated Reimbursement Allocation Schedule" or other similar instrument as approved by the Division may be used.

## **II. PRODUCT ITEMS**

A. Recipient shall prepare an initial timeline with key milestone activities/tasks, including start and end dates for each activity, and an estimate of cost reimbursement allocations. Table SW-1 in Scope of Work item I.F may be used to meet this product item.

B. The Recipient shall provide one (1) set of substantially complete (approximately 70 percent) preliminary design construction drawings and specifications for the PD-EOC for review and comment by the Division. The construction drawings shall include architectural and structural drawings, as applicable.

C. The Recipient shall provide one (1) bid-ready set of construction drawings and specifications for the PD-EOC for review and comment by the Division. The construction drawings shall include architectural and structural drawings, as applicable, and shall be signed by the applicable registered or licensed design professional(s) of record.

D. The construction drawings shall demonstrate that the PD-EOC will meet the hurricane hazard safety criteria of ARC 4496, and the wind load, wind-borne debris impact, and flood requirements set forth in Scope of Work items I.B through I.E. Failure to supply the required documentation, or disapproval of this documentation by the Division, shall result in denial of funds.

E. The Recipient shall provide the Division with copies of construction permits and large missile impact product performance certifications or test reports, as applicable.

F. The Recipient shall provide the Division with a copy of construction drawings and specifications with signature of designer(s) of record, and the certificate of occupancy or completion upon completion of construction.

## **III. SCHEDULE OF WORK**

A. By December 31, 2009, the Recipient shall provide the Division with Product Item A for review and approval.

B. By March 30, 2010 and at least on a quarterly basis thereafter, Recipient shall report on progress in relation to the initial timeline, and submit Product Items B through F in a timely manner as accomplished. The Division shall be provided 30 calendar days to review and provide comments of product items pertaining to compliance with the scope-of-work. The Recipient shall also submit invoices for reimbursement for work accomplished in accordance with the Division approved cost reimbursement allocation schedule referenced in Product Item A. Failure to supply the required documentation, or disapproval of this documentation by the Division, shall result in denial of funds.

C. By May 15, 2011, the Recipient shall provide the Division with Product Item H, close-out documentation and final payment invoice.

Table SW-1. Initial Timeline and Estimated Reimbursement Allocation Schedule

<b>Table SW-1. Initial Timeline and Estimated Reimbursement Allocation Schedule</b> <b>Project Name: <u>Village of Biscayne Park Rec Bldg-Police Dept. EOC</u></b>				
PROJECT PHASE	Start Date	End Date	DEM Funds (FY 08/09 1540A)	Other Funds
Board Contract Approval				
Initial Payment of 20% in first quarter				
A&E Firm Selection				
Preliminary Design, 70% complete				
Preliminary Design, 100% complete				
Regulatory Review, if any				
Bid Document(s) Development & Award				
Notice to Proceed/Mobilization				
Construction Project Management & Special Inspections				
Construction 25% Complete				
Construction 50% Complete				
Construction 100% Complete				
Administrative Fees; maximum of 5%				
Sub-Totals			\$60,000	
TOTAL Estimated Project Cost				

A&E - Architectural and Engineering; DEM – Division of Emergency Management; FY - Fiscal Year

**Attachment B**  
**Program Statutes and Regulations**

1. Section 215.555(7)(c) and 215.559, Florida Statutes
2. Chapter 252, Florida Statutes
3. Chapter 287, Florida Statutes
4. Chapter 119, Florida Statutes
5. Chapter 60A-1, Florida Administrative Code
6. Chapter 9G-19, Florida Administrative Code

**Attachment C**  
**Reports**

1. The Recipient shall provide the Division with quarterly financial reports, semi-annual summary progress reports and a final close-out report, all in a format to be provided by the Division.
2. Quarterly financial reports shall begin with the first quarter of the Agreement period and are due to the Division no later than thirty (30) days after the end of each quarter of the Agreement period; and shall continue to be submitted each quarter until submission of the final close-out report. The ending dates for each quarter of the Agreement period are December 31, March 31, June 30 and September 30.
3. The final close-out report is due sixty (60) days after termination of this Agreement.
4. If all required reports prescribed above are not provided to the Division or are not completed in a manner acceptable to the Division, the Division may withhold further payments until they are completed or may take such other action as set forth in Paragraph 10. "Acceptable to the Division" means that the work product was completed in accordance with generally accepted principles, guidelines and applicable law, and is consistent with the Scope of Work.
5. Upon reasonable notice, the Recipient shall provide such additional program updates or information as may be required by the Division.
6. All report formats provided by the Division shall be made available to the Recipient on the Division's Internet site and a hard copy will be mailed with a fully executed copy of the Agreement.

**Attachment D**  
**JUSTIFICATION OF ADVANCE PAYMENT**

**RECIPIENT:**

Indicate by checking one of the boxes below if you are requesting an advance. If an advance payment is requested, budget data on which the request is based must be submitted. Any advance payment under this Agreement is subject to s. 216.181(16), Florida Statutes. The amount which may be advanced shall not exceed the expected cash needs of the Recipient within the initial three months of the Agreement.

**NO ADVANCE REQUESTED**

No advance payment is requested. Payment will be solely on a reimbursement basis. No additional information is required.

**ADVANCE REQUESTED**

Advance payment of \$ \_\_\_\_\_ is requested. Balance of payments will be made on a reimbursement basis. These funds are needed to pay staff, award benefits to clients, duplicate forms and purchase start-up supplies and equipment. We would not be able to operate the program without this advance.

**ADVANCE REQUEST WORKSHEET**

If you are requesting an advance, complete the following worksheet

		(A) FFY 200__	(B) FFY 200__	(C) FFY 200__	(D) Total
	<b>DESCRIPTION</b>				
<b>1</b>	<b>INITIAL CONTRACT ALLOCATION</b>				
<b>2</b>	<b>FIRST THREE MONTHS CONTRACT EXPENDITURES<sup>1</sup></b>				
<b>3</b>	<b>AVERAGE PERCENT EXPENDED IN FIRST THREE MONTHS (Divide line 2 by line 1.)</b>				

<sup>1</sup> First three months expenditures need only be provided for the years in which you requested an advance. If you do not have this information, call your consultant and they will assist you.

**MAXIMUM ADVANCE ALLOWED CALULATION:**

$$\text{Cell D3} \quad \times \quad \$ \quad = \quad \text{MAXIMUM ADVANCE}$$

DEM Award  
 (Do not include any match)

**REQUEST FOR WAIVER OF CALCULATED MAXIMUM**

- Recipient has no previous DEM/DCA contract history. Complete Estimated Expenses chart and Explanation of Circumstances below.
- Recipient has exceptional circumstances that require an advance greater than the Maximum Advance calculated above.

Complete estimated expenses chart and Explanation of Circumstances below. Attach additional pages if needed.

**ESTIMATED EXPENSES**

<b>BUDGET CATEGORY</b>	<b>2008-2009 Anticipated Expenditures for First Three Months of Contract</b>
<b>ADMINISTRATIVE COSTS</b> (Include Secondary Administration.)	
<b>PROGRAM EXPENSES</b>	
<b>TOTAL EXPENSES</b>	

Explanation of Circumstances:

**Attachment E**  
**Warranties and Representations**

Financial Management

Recipient's financial management system must include the following:

- (1) Accurate, current and complete disclosure of the financial results of this project or program
- (2) Records that identify the source and use of funds for all activities. These records shall contain information pertaining to grant awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.
- (3) Effective control over and accountability for all funds, property and other assets. Recipient shall safeguard all assets and assure that they are used solely for authorized purposes.
- (4) Comparison of expenditures with budget amounts for each Request For Payment. Whenever appropriate, financial information should be related to performance and unit cost data.
- (5) Written procedures to determine whether costs are allowed and reasonable under the provisions of the applicable OMB cost principles and the terms and conditions of this Agreement.
- (6) Cost accounting records that are supported by backup documentation.

Competition

All procurement transactions shall be done in a manner to provide open and free competition. The Recipient shall be alert to conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure excellent contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the Recipient, considering the price, quality and other factors. Solicitations shall clearly set forth all requirements that the bidder or offeror must fulfill in order for the bid or offer to be evaluated by the Recipient. Any and all bids or offers may be rejected when it is in the Recipient's interest to do so.

Codes of conduct.

The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by public grant funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the Recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. The standards of conduct shall provide for disciplinary actions to be applied for violations of the standards by officers, employees, or agents of the Recipient.

Business Hours

The Recipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site, from \_\_\_\_\_

Licensing and Permitting

All subcontractors or employees hired by the Recipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Recipient.

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 ABROGATION 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 REDUCTION; PROVIDING STANDARDS FOR SPECIAL FLOOD HAZARD AREAS WITH ESTABLISHED BASE FLOOD ELEVATIONS AND ALL OTHER IDENTIFIED FLOOD HAZARD AREAS; PROVIDING FOR STANDARDS FOR SUBDIVISION PROPOSALS; PROVIDING FOR SEVERABILITY; REPEALING CONFLICTING ORDINANCES; PROVIDING FOR INCLUSION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on December 1, 1992, the Village Commission adopted Ordinance No. 277, in compliance with federally imposed requirements to protect the public health, safety and general welfare by minimizing flood losses in the flood hazard areas of Biscayne Park; and

WHEREAS, since the adoption of Ordinance No. 277, the State of Florida has updated its Flood Damage Prevention Ordinance; and

WHEREAS, in order to be consistent and in compliance with the State of Florida's Ordinance, the Village Commission of the Village of Biscayne Park believes it to be in the best

interests of its citizenry to repeal the existing sections of the Code addressing flood damage prevention and replace it with a compliant ordinance; now, therefore

BE IT ORDAINED BY THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA:

**Section 1.** Each and all the foregoing Whereas clauses are true and correct and are incorporated herein.

**Section 2.** Sections 6.5-1 through 6.5-7, adopted by the Village Commission of the Village of Biscayne Park on December 1, 1992, are hereby repealed.

**Section 3.** New Section 6.5-1 through 6.5-6 of the Code of Ordinances of the Village of Biscayne Park are hereby created to read as follows:

**Sec. 6-5.1. Statutory authorization; findings of fact; purpose; and objectives.**

**(A) Statutory authorization.**

The Legislature of the State of Florida has authorized and delegated in Chapter 166, Florida Statutes, the responsibility of local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Village Commission of the Village of Biscayne Park does hereby adopt the following floodplain management regulations.

**(B) Findings of fact.**

(1) The flood hazard areas of the Village of Biscayne Park are subject to periodic inundation, which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages.

**(C) Statement of purpose.**

It is the purpose of this ordinance to save lives, promote the public health, safety and general welfare, and minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Restrict or prohibit uses which are dangerous to life, health, safety and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights and velocities;
- (2) Require that uses vulnerable to floods including facilities which serve such uses be protected against flood damage throughout their intended life span;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging and other development which may increase erosion or flood damage; and
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

**(D) Objectives.**

The objectives of this ordinance are to:

- (1) Protect human life, health and to eliminate or minimize property damage;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, roadways, and bridges and culverts located in floodplains;
- (6) Maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and
- (7) Ensure that potential homebuyers are notified that property is in a flood hazard area.

**Sec. 6.5-2. Definitions.**

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

**Accessory structure** (Appurtenant structure) means a structure that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal investment, may not be used for human habitation, and be designed to have minimal

flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.

**Appeal** means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.

**Area of shallow flooding** means a designated AO or AH Zone on the community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**Area of special flood hazard** is the land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This term is synonymous with the phrase "special flood hazard area."

**Base flood** means the flood having a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood" and the "regulatory flood"). Base flood is the term used throughout this ordinance.

**Base Flood Elevation** means the water-surface elevation associated with the base flood.

**Basement** means any portion of a building having its floor sub-grade (below ground level) on all sides.

**Building** – see **Structure**.

**Datum** A reference surface used to ensure that all elevation records are properly related. The current national datum is the National Geodetic Vertical Datum (NGVD) of 1929, which is expressed in relation to mean sea level, or the North American Vertical Datum (NAVD) of 1988.

**Development** means any man-made change to improved or unimproved real estate, including, but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or storage of materials or equipment.

**Elevated building** means a non-basement building built to have the lowest floor elevated above the ground level by foundation walls, posts, piers, columns, pilings, or shear walls.

**Encroachment** means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

**Existing Construction** means, for the purposes of floodplain management, structures for which "the start of construction" commenced before January 4, 1993. Existing construction means, for the purposes of determining rates structures for which the "start of construction" commenced before September 29, 1972. This term may also be referred to as "existing structures".

**Existing manufactured home park or subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before October 6, 2009.

**Expansion to an existing manufactured home park or subdivision** means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**Flood or flooding** means:

(a) A general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters.

(2) The unusual and rapid accumulation or runoff of surface waters from any source.

(3) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a) (2) of this definition and are akin to a river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

(b) The collapse or subsidence of land along a shore of a lake or other body of water as the result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a) (1) of this definition.

**Flood Boundary and Floodway Map (FBFM)** means the official map of the community on which the Federal Emergency Management Agency (FEMA) has delineated the areas of special flood hazard and regulatory floodways.

**Flood Hazard Boundary Map (FHBM)** means an official map of the community, issued by FEMA, where the boundaries of the areas of special flood hazard have been identified as only Approximate Zone A.

**Flood Insurance Rate Map (FIRM)** means an official map of the community, issued by FEMA, which delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

**Flood Insurance Study (FIS)** means the official hydrology and hydraulics report provided by FEMA. The study contains an examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an

examination, evaluation, and determination of mudslide (i.e., mudflow) and other flood-related erosion hazards. The study may also contain flood profiles, as well as the FIRM, FHBM (where applicable), and other related data and information.

**Floodplain** means any land area susceptible to being inundated by water from any source (see definition of "flooding").

**Floodplain management** means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

**Floodplain Administrator** is the individual appointed to administer and enforce the floodplain management regulations of the community.

**Floodplain management regulations** means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance, and erosion control ordinance), and other applications of police power which control development in flood-prone areas. This term describes Federal, State of Florida, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

**Floodproofing** means any combination of structural and non-structural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**Floodway** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**Floodway fringe** means that area of the one-percent (base or 100-year) floodplain on either side of the regulatory floodway.

**Freeboard** means the additional height, usually expressed as a factor of safety in feet, above a flood level for purposes of floodplain management. Freeboard tends to compensate for many unknown factors, such as wave action, blockage of bridge or culvert openings, and hydrological effect of urbanization of the watershed, which could contribute to flood heights greater than the heights calculated for a selected frequency flood and floodway conditions.

**Free of Obstruction** means any type of lower area enclosure or other construction element will not obstruct the flow of velocity water and wave action beneath the lowest horizontal structural member of the lowest floor of an elevated building during a base flood event. This requirement applies to the structures in velocity zones (V-Zones).

**Functionally dependent use** means a use that cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port

facility necessary for the loading and unloading of cargo or passengers, shipbuilding or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

**Hardship** as related to variances from this ordinance means the exceptional difficulty associated with the land that would result from a failure to grant the requested variance. The community requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

**Highest adjacent grade** means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

**Historic Structure** means any structure that is:

- a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register:
- b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic or a district preliminarily determined by the Secretary to qualify as a registered historic district:
- c) Individually listed on the Florida inventory of historic places, which has been approved by the Secretary of the Interior; or
- d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  1. By the approved Florida program as determined by the Secretary of the Interior, or
  2. Directly by the Secretary of the Interior.

**Lowest adjacent grade** means the lowest elevation, after the completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

**Lowest floor** means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design standards of this ordinance.

**Manufactured home** means a building, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

**Manufactured home park or subdivision** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Market value** means the building value, which is the property value excluding the land value and that of the detached accessory structures and other improvements on site (as agreed to between a willing buyer and seller) as established by what the local real estate market will bear. Market value can be established by an independent certified appraisal (other than a limited or curbside appraisal, or one based on income approach), Actual Cash Value (replacement cost depreciated for age and quality of construction of building), or adjusted tax-assessed values.

**Mean Sea Level** means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this ordinance, the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929, or North American Vertical Datum (NAVD) of 1988.

**National Geodetic Vertical Datum (NGVD) of 1929** means a vertical control used as a reference for establishing varying elevations within the floodplain.

**New Construction** means, for floodplain management purposes, any structure for which the "start of construction" commenced on or after January 4, 1993. The term also includes any subsequent improvements to such structures. For flood insurance rates, structures for which the start of construction commenced on or after December 31, 1974, and includes any subsequent improvements to such structures.

**New manufactured home park or subdivision** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the first floodplain management code, ordinance or standard.

**North American Vertical Datum (NAVD) of 1988** means a vertical control used as a reference for establishing varying elevations within the floodplain.

**Principally above ground** means that at least 51 percent of the actual cash value of the structure is above ground.

**Program deficiency** means a defect in the community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations or of the standards required by the National Flood Insurance Program.

**Public safety and nuisance** means anything which is injurious to safety or health of the entire community or a neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

**Reasonably safe from flooding** means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

**Recreational vehicle** means a vehicle that is:

- a) Built on a single chassis;
- b) 400 square feet or less when measured at the largest horizontal projection;
- c) Designed to be self-propelled or permanently towable by a light duty truck; and
- d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**Regulatory floodway** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**Remedy a deficiency or violation** means to bring the regulation, procedure, structure or other development into compliance with State of Florida, Federal, or local floodplain management regulations; or if this is not possible, to reduce the impacts of its noncompliance. Ways the impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

**Repetitive loss** means flood related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

**Riverine** means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

**Sand dune** means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

**Shallow flooding** – see **area of shallow flooding**.

**Special flood hazard area** – see **area of special flood hazard**.

**Start of construction** means, for other than new construction and substantial improvements under the Coastal Barrier Resources Act P. L. 97-348, includes substantial

improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main building. For substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**Storm cellar** means a place below grade used to accommodate occupants of the structure and emergency supplies as a means of temporary shelter against severe tornadoes or similar windstorm activity.

**Structure** means, for floodplain management purposes, a walled and roofed building, including gas or liquid storage tank that is principally above ground, as well as a manufactured home.

**Substantial damage** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. This term also includes "repetitive loss" structures as defined herein.

**Substantial improvement** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "substantial damage" regardless of the actual repair work performed. This term does not, however, include any repair or improvement of a structure to correct existing violations of State of Florida or local health, sanitary, or safety code specifications, which have been identified by the local code enforcement official prior to the application for permit for improvement, and which are the minimum necessary to assure safe living conditions. This term does not include any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

**Substantially improved existing manufactured home parks or subdivisions** is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

**Variance** is a grant of relief from the requirements of this ordinance.

**Violation** means the failure of a structure or other development to be fully compliant with the requirements of this ordinance. A structure or other development without the

elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

**Watercourse** means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

**Water surface elevation** means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 or the North American Vertical Datum (NAVD) of 1988, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

**Sec. 6.5-3. General provisions.**

**(A) Lands to which this ordinance applies.**

This ordinance shall apply to all areas of special flood hazard within the jurisdiction of the Village Commission of the Village of Biscayne Park.

**(B) Basis for establishing the areas of special flood hazard.**

The areas of special flood hazard identified by the Federal Emergency Management Agency in the Flood Insurance Study (FIS) for the Village of Biscayne Park, dated October 6, 2009, with the accompanying maps and other supporting data, and any subsequent revisions thereto, are adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study and Flood Insurance Rate Map are on file at the Village of Biscayne Park Village Hall.

**(C) Designation of floodplain administrator.**

The Village Commission of the Village of Biscayne Park, Florida, hereby appoints the Village Building Official to administer and implement the provisions of this ordinance and is herein referred to as the Floodplain Administrator.

**(D) Establishment of development permit.**

A development permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities.

**(E) Compliance.**

No structure or land shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

**(F) Abrogation and greater restrictions.**

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**(G) Interpretation.**

In the interpretation and application of this ordinance all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under State of Florida statutes.

**(H) Warning and disclaimer of liability.**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Village Commission of the Village of Biscayne Park or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

**(I) Penalties for violation.**

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall be punishable for a non-criminal violation. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon adjudication therefore, be fined not more than \$500, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Floodplain Administrator from taking such other lawful actions as are necessary to prevent or remedy any violation.

**Sec. 6.5-4. Administration.**

**(A) Permit procedures.**

Application for a Development Permit shall be made to the Floodplain Administrator on forms furnished by him or her prior to any development activities, and may include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing

and proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

(1) Application Stage:

- a) Elevation in relation to mean sea level of the proposed lowest floor (including basement) of all buildings;
- b) Elevation in relation to mean sea level to which any non-residential building will be flood-proofed;
- c) Certificate from a registered professional engineer or architect that the non-residential flood-proofed building will meet the flood-proofing criteria in Section 6.5-4(A)(2) and Section 6.5-5(B)(2);
- d) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development; and
- e) Elevation in relation to mean sea level of the bottom of the lowest horizontal structural member of the lowest floor and provide a certification from a registered engineer or architect indicating that they have developed and/or reviewed the structural designs, specifications and plans of the construction and certified that are in accordance with accepted standards of practice in Coastal High Hazard Areas.

(2) Construction Stage:

Upon placement of the lowest floor, or flood-proofing by whatever construction means, or bottom of the lowest horizontal structural member it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the NGVD or NAVD elevation of the lowest floor or flood-proofed elevation, or bottom of the lowest horizontal structural member of the lowest floor as built, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When flood proofing is utilized for a particular building said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work undertaken prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the lowest floor and flood-proofing elevation survey data submitted. The permit holder immediately and prior to further progressive work being permitted to proceed shall correct violations detected by such review. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project.

**(B) Duties and responsibilities of the floodplain administrator.**

Duties of the Administrator shall include, but are not be limited to:

- (1) Review permits to assure sites are reasonably safe from flooding;

- (2) Review all development permits to assure that the permit requirements of this ordinance have been satisfied;
- (3) Require copies of additional Federal, State of Florida, or local permits, especially as they relate to Chapters 161.053; 320.8249; 320.8359; 373.036; 380.05; 381.0065; and 553, Part IV, Florida Statutes, be submitted along with the development permit application and maintain such permits on file with the development permit;
- (4) Notify adjacent communities, the Florida Department of Community Affairs – Division of Emergency Management – NFIP Coordinating Office, South Florida Water Management District, the Federal Emergency Management Agency, and other Federal and/or State of Florida agencies with statutory or regulatory authority prior to any alteration or relocation of a watercourse;
- (5) Assure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained;
- (6) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (A-Zones) or bottom of the lowest horizontal structural member of the lowest floor (V-Zones) of all new and substantially improved buildings, in accordance with Section 6.5-5(B)(1) and (2) and Section E (2), respectively;
- (7) Verify and record the actual elevation (in relation to mean sea level) to which the new and substantially improved buildings have been flood-proofed, in accordance with Section 6.5-5(B)(2);
- (8) Review certified plans and specifications for compliance. When flood-proofing is utilized for a particular building, certification shall be obtained from a registered engineer or architect certifying that all areas of the building, together with attendant utilities and sanitary facilities, below the required elevation are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy in compliance with Section 6.5-5(B)(2) of this ordinance. In Coastal High Hazard Areas, certification shall be obtained from a registered professional engineer or architect that the building is designed and securely anchored to pilings or columns in order to withstand velocity waters and hurricane wave wash. Additionally in Coastal High Hazard Areas, if the area below the lowest horizontal structural member of the lowest floor is enclosed, it may be done so with open wood lattice and insect screening or with non-supporting breakaway walls that meet the standards of Section 6.5-5(E)(6) of this ordinance;
- (9) Interpret the exact location of boundaries of the areas of special flood hazard. When there appears to be a conflict between a mapped boundary and actual field conditions, the Floodplain Administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Section;
- (10) When base flood elevation data and floodway data have not been provided in accordance with Section 6.5-3(B), the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal,

State of Florida, or any other source, in order to administer the provisions of Section 6.5-5;

(11) Coordinate all change requests to the FIS, FIRM and FBFM with the requester, State of Florida, and FEMA, and

(12) Where Base Flood Elevation is utilized, obtain and maintain records of lowest floor and floodproofing elevations for new construction and substantial improvements in accordance with Section 6.5-5(B)(1) and (2), respectively.

**Sec. 6.5-5. Provisions for flood hazard.**

**(A) General standards.**

In all areas of special flood hazard, all development sites including new construction and substantial improvements shall be reasonably safe from flooding, and meet the following provisions:

(1) New construction and substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(2) Manufactured homes shall be anchored to prevent flotation, collapse, and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable State of Florida requirements for resisting wind forces;

(3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;

(4) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage;

(5) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems;

(7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;

(8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;

(9) Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this ordinance shall meet the requirements of “new construction” as contained in this ordinance;

(10) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this ordinance, shall be undertaken only if said non-conformity is not furthered, extended, or replaced;

(11) All applicable additional Federal, State of Florida, and local permits shall be obtained and submitted to the Floodplain Administrator along with the application for development permit. Copies of such permits shall be maintained on file with the development permit. State of Florida permits may include, but not be limited to, the following:

(a) South Florida Water Management District: in accordance with Chapter 373.036 Florida Statutes, Section (2) (a) – Flood Protection and Floodplain Management;

(b) Department of Community Affairs: in accordance with Section 380.05, Florida Statutes - Areas of Critical State Concern, and Chapter 553, Part IV, Florida Statutes, Florida Building Code;

(c) Department of Health: in accordance with Section 381.0065, Florida Statutes - Onsite Sewage Treatment and Disposal Systems; and

(12) Standards for Subdivision Proposals and other new Proposed Development (including manufactured homes):

(a) Such proposals shall be consistent with the need to minimize flood damage;

(b) Such shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage; and

(c) Such proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(13) When proposed new construction and substantial improvements are partially located in an area of special flood hazard, the entire structure shall meet the standards for new construction.

(14) When proposed new construction and substantial improvements are located in multiple flood hazard risk zones or in a flood hazard risk zone with multiple base flood elevations, the entire structure shall meet the standards for the most hazardous flood hazard risk zone and the highest base flood elevation.

**(B) Specific standards.**

In all A-Zones where base flood elevation data have been provided (Zones AE, A1-30, A (with base flood elevation), and AH), as set forth in Section 6.5-3(B), the following provisions, in addition to those set forth in Section 6.5-5(A), shall apply:

(1) *Residential Construction.* All new construction and substantial improvement of any residential building (including manufactured home) shall have the lowest floor, including basement, elevated to no lower than one foot above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, there must be a minimum of two openings on different sides of each enclosed area sufficient to facilitate automatic equalization of flood hydrostatic forces in accordance with standards of Section 6.5-5(B)(3).

(2) *Non-Residential Construction.* All new construction and substantial improvement of any commercial, industrial, or non-residential building (including manufactured home) shall have the lowest floor, including basement, elevated to no lower than one foot above the base flood elevation. All buildings located in A-Zones may be flood-proofed, in lieu of being elevated, provided that all areas of the building components, together with attendant utilities and sanitary facilities, below the base flood elevation plus one foot are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied using the FEMA Floodproofing Certificate. Such certification along with the corresponding engineering data, and the operational and maintenance plans shall be provided to the Floodplain Administrator.

(3) *Enclosures below the Lowest Floor.* New construction and substantial improvements that include fully enclosed areas formed by foundation and other exterior walls below the lowest floor shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.

(a) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet or exceed the following minimum criteria:

(i) Provide a minimum of two openings on different sides of each enclosed area having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;

(ii) The bottom of all openings shall be no higher than one foot above adjacent interior grade (which must be equal to or higher in elevation than the adjacent exterior grade); and

(iii) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they provide the required net area of the openings and permit the automatic flow of floodwaters in both directions.

(b) Fully enclosed areas below the lowest floor shall solely be used for parking of vehicles, storage, and building access. Access to the enclosed area shall be minimum necessary to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in connection with the premises (standard exterior door), or entry to the living area (stairway or elevator); and

(c) The interior portion of such enclosed area shall not be finished or partitioned into separate rooms.

(4) Standards for Manufactured Homes and Recreational Vehicles

(a) All manufactured homes that are placed, or substantially improved within Zones A1-30, AH, and AE, on sites (i) outside of an existing manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, the lowest floor be elevated on a permanent foundation to no lower than one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(b) All manufactured homes to be placed or substantially improved in an existing manufactured home park or subdivision that are not subject to the provisions of paragraph 4 (a) of this Section, must be elevated so that either:

(i) The lowest floor of the manufactured home is elevated to no lower than one foot above the base flood elevation, or

(ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength that are no less than 36 inches in height above the grade and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(c) Placement of manufactured homes is prohibited within the regulatory floodway, except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of Section 6.5-5(A)(2), the elevation standards of Section 6.5-5(B)(1) and (2), and the encroachment standard of Section 6.5-5(B)(7)(a), are met.

(d) All recreational vehicles must either:

(i) Be on the site for fewer than 180 consecutive days,

(ii) Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions), or

(iii) Meet all the requirements for new construction, including anchoring and elevation standards in accordance with Section 6.5-5(B)(4)(a) and (b).

(5) Adequate drainage paths around structures shall be provided on slopes to guide water away from structures within Zone AH.

(6) Standards for waterways with established Base Flood Elevations, but without Regulatory Floodways

Located within the areas of special flood hazard established in Section 6.5-3(B), where streams exist for which base flood elevation data has been provided by the Federal Emergency Management Agency without the delineation of the regulatory floodway (Zones AE and A1-30), the following provisions, in addition to those set forth in Section 6.5-5(B)(1) through (5), shall apply:

(a) Until a regulatory floodway is designated, no new construction, substantial improvements, or other development including fill shall be permitted within the areas of special flood hazard, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(b) Development activities which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the developer or applicant first applies – with the community’s endorsement – for a conditional FIRM revision, and receives the approval of the Federal Emergency Management Agency (FEMA).

(7) Standards for waterways with established Base Flood Elevations and Floodways.

Located within areas of special flood hazard established in Section 6.5-3(B), are areas designated as floodways. Since the floodway is an extremely hazardous area due to the high velocity of flood waters which carry debris, potential projectiles and have significant erosion potential, the following provisions, in addition to those set forth in Section 6.5-5(B)(1) through (5), shall apply:

(a) Prohibit encroachments, including fill, new construction, substantial improvements and other developments within the regulatory floodway unless certification (with supporting technical data) by a registered professional engineer is provided through hydrologic and hydraulic analyses performed in accordance with standard engineering practice demonstrating that encroachments would not result in any increase in flood levels during occurrence of the base flood discharge.

(b) Placement of manufactured homes is prohibited within the regulatory floodway, except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of Section 6.5-5(A)(2), the elevation standards of Section 6.5-5(B)(1) and (2), and the encroachment standard of Section 6.5-5(B)(7)(a), are met.

(c) Development activities including new construction and substantial improvements within the regulatory floodway that increase the base flood elevation may be allowed, provided that the developer or applicant first applies – with the community’s endorsement – for a conditional FIRM revision, and receives the approval of FEMA.

(d) When fill is proposed, in accordance with the permit issued by the Florida Department of Health, within the regulatory floodway, the development permit shall be issued only upon demonstration by appropriate engineering analyses that the proposed fill will not increase the water surface elevation of the base flood in accordance with Section 6.5-5(B)(7)(a).

**(C) Specific standards for A-zones without base flood elevations and regulatory floodways.**

Located within the areas of special flood hazard established in Section 6.5-3(B), where there exist A Zones for which no base flood elevation data and regulatory floodway have been provided or designated by the Federal Emergency Management Agency, the following provisions shall apply:

- (1) Require standards of Section 6.5-5(A).
- (2) Require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood elevation data. Standards set forth in Section 6.5-5(B) shall apply.
- (3) The Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State of Florida, or any other source, in order to administer the provisions of this ordinance. When such data is utilized, provisions of Section 6.5-5(B) shall apply. The Floodplain Administrator shall:
  - a) Obtain the elevation (in relation to the mean sea level) of the lowest floor (including the basement) of all new and substantially improved structures,
  - b) Obtain, if the structure has been floodproofed in accordance with the requirements of Section 6.5-5(B)(2), the elevation in relation to the mean sea level to which the structure has been floodproofed, and
  - c) Maintain a record of all such information.
- (4) Notify, in riverine situations, adjacent communities, the Florida Department of Community Affairs – NFIP Coordinating Office, and the South Florida Water Management District prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA.
- (5) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- (6) Manufactured homes shall be installed using methods and practices that minimize flood damage. They must be elevated and anchored to prevent flotation, collapse, and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State of Florida and local anchoring requirements for resisting wind forces.

(7) When the data is not available from any source, in accordance with standard set forth in Section 6.5-5(C)(2) of this Section, the lowest floor of the structure shall be elevated to no lower than three feet above the highest adjacent grade. Standards set forth in Section 6.5-5(B) shall apply.

**(D) Standards for AO-zones.**

Located within the areas of special flood hazard established in Section 6.5-3(B), are areas designated as shallow flooding areas. These areas have flood hazards associated with base flood depths of one to three feet, where a clearly defined channel does not exist and the path of flooding is unpredictable and indeterminate; therefore, the following provisions, in addition to Section 6.5-5(A), apply:

(1) All new construction and substantial improvements of residential structures in all AO Zones shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the Flood Insurance Rate Map plus one. If no flood depth number is specified, the lowest floor, including basement, shall be elevated to no less than two feet above the highest adjacent grade.

(2) All new construction and substantial improvements of non-residential structures shall:

(a) Have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the Flood Insurance Rate Map. If no flood depth number is specified, the lowest floor, including basement, shall be elevated to at least two feet above the highest adjacent grade, or

(b) Together with attendant utility and sanitary facilities be completely floodproofed to no less than one foot above that level to meet the floodproofing standard specified in Section 6.5-5(D)(2)(a).

(3) Adequate drainage paths around structures shall be provided on slopes to guide water away from structures.

(4) Fully enclosed areas below the lowest floor that are subject to flooding shall meet the non-elevation design requirements of Section 6.5-5(B).

**Sec. 6.5-6. Variance procedures.**

**(A) Designation of variance and appeals board.**

The Planning and Zoning Board as established by the Village Commission of the Village of Biscayne Park shall hear and decide appeals and requests for variances from the requirements of this ordinance.

**(B) Duties of variance and appeals board.**

The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Management Administrator in the enforcement or administration of this ordinance. Any person aggrieved by the decision of the board may appeal such decision to the Circuit Court.

**(C) Variance procedures.**

In acting upon such applications, the Planning and Zoning Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger of life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, where applicable;
- (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) The expected heights, velocity, duration, rate of rise, and sediment of transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

**(D) Conditions for variances.**

- (1) Variances shall only be issued when there is:
  - a) A showing of good and sufficient cause;

b) A determination that failure to grant the variance would result in exceptional hardship; and

c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(2) Variances shall only be issued upon a determination that the variance is the minimum necessary deviation from the requirements of this ordinance.

(3) Variances shall not be granted after-the-fact.

(4) The Floodplain Administrator shall maintain the records of all variance actions, including justification for their issuance or denial, and report such variances in the community's NFIP Biennial Report or upon request to FEMA and the State of Florida, Department of Community Affairs, NFIP Coordinating Office.

**(E) Variance notification.**

Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

(1) The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and

(2) Such construction below the base flood level increases risks to life and property.

A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the Clerk of Court and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

**(F) Historic structures.**

Variances may be issued for the repair or rehabilitation of "historic" structures – meeting the definition in this ordinance – upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a "historic" structure.

**(G) Structures in regulatory floodway.**

Variances shall not be issued within any designated floodway if any impact in flood conditions or increase in flood levels during the base flood discharge would result.

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

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.

**Section 7:** This Ordinance shall become effective on adoption.

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

PASSED AND ADOPTED upon first reading this \_\_8th\_\_ day of \_\_September\_\_, 2009.

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

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

**ATTEST:**

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

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

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

ORDINANCE NO. 2009-07

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2  
3 AN ORDINANCE OF THE VILLAGE COMMISSION OF THE  
4 VILLAGE OF BISCAYNE PARK, FLORIDA, GRANTING AND  
5 RENEWING PEOPLES GAS SYSTEM, A DIVISION OF TAMPA  
6 ELECTRIC COMPANY, A FRANCHISE FOR THE PURPOSE OF  
7 SUPPLYING NATURAL, MANUFACTURED, AND OTHER GAS TO  
8 THE VILLAGE; PROVIDING FOR CONFLICTS; PROVIDING FOR  
9 SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE  
10

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 \_\_\_\_ day of \_\_\_\_\_, 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").

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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.

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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.

### **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

**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**

**WHEREAS**, the Village of Biscayne Park utilizes the State Board of Administration Investment Account for its surplus operating funds; and

**WHEREAS**, the Village recently hired a new Village Manager; and

**WHEREAS**, in order to ensure security on this account, it is necessary to update the signatory information; and

**WHEREAS**, the Village Commission has found it to be in the best interests of the Village and its residents to update the signatory information on the State Board of Administration Investment Account by granting authority to Ana M. Garcia as Village Manager to serve as a signatory along with the members of the Village Commission on all banking documents related to this account for the Village of Biscayne Park;

**NOW THEREFORE IT IS HEREBY RESOLVED BY THE MAYOR AND VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AS FOLLOWS:**

**Section 1.** The foregoing "WHEREAS" clauses are hereby ratified as true and correct and incorporated herein by this reference.

**Section 2.** Ana M. Garcia as Village Manager is hereby granted the authority to serve as a signatory along with the Village Commission on all banking documents related to the State Board of Administration Investment Account for the Village of Biscayne Park.

**Section 3.** Consistent with previous Commission action, two (2) signatories for the transfer of funds and updating account information for the State Board of Administration Investment Account are required.

**Section 4.** This Resolution shall take effect immediately upon its 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 Anderson \_\_\_\_\_  
Commissioner Bernard \_\_\_\_\_  
Commission Mallette \_\_\_\_\_  
Commissioner Morris \_\_\_\_\_

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

Approved as to form:

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



**VILLAGE OF BISCAYNE PARK**

**Office of the Village Manager  
Frank R. Spence**

**MEMORANDUM**

**TO: Mayor Hornbuckle and  
Commission Members**

**FROM: Frank R. Spence  
Village Manager**

**DATE: September 10, 2009**

**SUBJECT: NOTIFICATION OF INCIDENT BY AUDITORS**

The attached letter from Nestor Caballero, CPA, of the Village's auditing firm, has been received and reviewed by Financial Consultant Holly Hugdahl and me. A named partner in the firm, Elias Castellanos, is under investigation for acts performed outside of his employment with the audit firm. Mr. Castellanos has not had an active roll in the audits of Biscayne Park and has resigned from the firm.

In our conversation with Nestor Caballero, he was very straightforward with us and told us the whole story. He did not try to hide anything and we thanked him for that. He came to us about the on-going investigation of Mr. Castellanos as quickly as possible to notify us, and all of his clients, that there had been a problem and that they were dealing with it. Those of us who have known Nestor for over 15 years have come to expect such honesty.

Because of the resignation of a named partner the firm is changing its name. As such, under our contract with them, the Commission will have to approve the assignment to the new company, "Alberni Caballero & Company, LLP". This will be on your next agenda.

**Cc: Village Attorney  
Village Clerk**

# ACC

Alberni, Caballero  
& Company, L.L.P.

CERTIFIED PUBLIC ACCOUNTANTS  
& CONSULTANTS

September 9, 2009

Frank R. Spence, Village Manager  
Village of Biscayne Park, Florida  
640 Northeast 114th Street  
Biscayne Park, Florida 33161

Dear Mr. Spence:

Because of both my long standing professional relationship and that of Alberni, Caballero & Castellanos, LLP with the Village of Biscayne Park, I feel strongly that it is incumbent upon me to inform you as to a legal situation involving Elias Castellanos, CPA.

On August 31, 2009, Mr. Castellanos became the subject of a Bill of Information issued by the United States Attorney for the Eastern District of Louisiana. In particular, the U.S. Attorney's Office has charged that Mr. Castellanos, who had been serving as Chief Financial Officer for the Housing Authority of New Orleans, (HANO), under a separate contract with the U.S. Department of Housing Development (HUD), deliberately overcharged HANO during his tenure. Alberni, Caballero & Castellanos, LLP, was never a party to the contract with HANO, nor at any time, provided any services to HANO.

The allegations stem apparently from an ongoing investigation by the United States Attorney's Office and HUD's Inspector General. Specifically, it involves excessive financial reimbursement for certain employees and independent contractors under Mr. Castellanos's supervision and control from 2006 to the present.

While disputing the Government's substantive claims and the amount of any alleged over-billing, it is nevertheless understood that Mr. Castellanos is cooperating in good faith with the government to expeditiously resolve this matter. In the interim, Mr. Castellanos has resigned from the firm of Alberni, Caballero & Castellanos, LLP, and there is no longer any association between Elias Castellanos and Alberni, Caballero & Castellanos, LLP, or any of its partners. We have now changed the name of the firm to Alberni Caballero & Company, LLP.

Mr. Castellanos was never directly nor indirectly involved with any of the audits or any other services provided to the Village of Biscayne Park.

I look forward to continuing to provide a high level of professional accounting services and of course, would welcome the opportunity to respond to any questions or concerns that you may have.

Very truly yours,



Nestor Caballero, CPA  
Partner

4649 PONCE DE LEON BLVD.  
SUITE 404  
CORAL GABLES, FL 33146  
TEL: 305-662-7272  
FAX: 305-662-4266  
ACC-CPA.COM

Copy:

Mayor + Commissioners  
John Hearn  
Ann Hoyer

NS  
9/10

11A