RESOLUTION NO. 2017-30

A RESOLUTION OF THE MAYOR AND VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AUTHORIZING THE APPROPRIATE VILLAGE OFFICIALS TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF NORTH MIAMI AND THE VILLAGE OF BISCAYNE PARK, AUTHORIZING THE CITY TO SELL AND DISPENSE DIESEL AND UNLEADED FUEL FOR SERVICE VEHICLES OWNED BY THE VILLAGE OF BISCAYNE PARK; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of North Miami ("City") has a fueling facility located at 1855 NE 142nd Street, North Miami ("Motorpool"), capable of dispensing diesel and unleaded fuel for the operation of City owned vehicles; and

WHEREAS, the Village of Biscayne Park, Florida ("Village") desires to purchase diesel and unleaded fuel from the City's Motorpool, for the operation of Village owned service vehicles; and

WHEREAS, the Village Commission finds it to be in the best interests of the Village and its citizens to authorize the appropriate Village officials to execute the Vehicle Fueling Services Agreement between the City of North Miami and the Village of Biscayne Park, attached hereto and incorporated herein as Exhibit "1";

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND VILLAGE COMMISSION:

Section 1. The appropriate Village officials are hereby authorized to execute the Vehicle Fueling Services Agreement between the City of North Miami and the Village of Biscayne Park, attached hereto and incorporated herein as Exhibit "1", authorizing the City to sell and dispense diesel and unleaded fuel for service vehicles owned by the Village of Biscayne Park.

Section 2. **Effective Date.** This Resolution shall be effective upon adoption.

PASSED AND ADOPTED this 6th day of June, 2017.

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

Tracy Truppman, Mayor

Mayor Truppman: Yes
Vice Mayor Johnson-Sardella: Yes
Commissioner Bilt: Yes
Commissioner Ross: Yes
Commissioner Tudor: Yes

Attest:

Marlen D. Martell, Village Clerk

Approved as to form:

John J. Hearn, Village Attorney

RESOLUTION NO. 2017-R-30

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO EXECUTE AN AGREEMENT, IN SUBSTANTIALLY THE ATTACHED FORM, BETWEEN THE CITY OF NORTH MIAMI AND THE VILLAGE OF BISCAYNE PARK, AUTHORIZING THE CITY TO SELL AND DISPENSE DIESEL AND UNLEADED FUEL FOR SERVICE VEHICLES OWNED BY THE VILLAGE OF BISCAYNE PARK; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

WHEREAS, the City of North Miami ("City") has a fueling facility located at 1855 NE 142nd Street, North Miami ("Motor Pool"), capable of dispensing diesel and unleaded fuel for the operation of City owned vehicles; and

WHEREAS, the Village of Biscayne Park, Florida, our neighboring municipality ("Village"), desires to purchase diesel and unleaded fuel from the City's Motor Pool, for the operation of Village owned service vehicles; and

WHEREAS, the City administration respectfully requests that the Mayor and City Council authorize the execution of an agreement, in substantially the attached form, authorizing vehicle fueling services to the Village.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. **Authority to execute agreement.** The Mayor and City Council of the City of North Miami, Florida, hereby authorize the City Manager and City Attorney to execute an agreement, in substantially the attached form, between the City of North Miami and the Village of Biscayne Park, authorizing the City to sell and dispense diesel and unleaded fuel for service vehicles owned by the Village of Biscayne Park.

Section 2. **Effective Date.** This Resolution shall be effective upon adoption.

PASSED AND ADOPTED by a 5 - 0 vote of the Mayor and City Council of the City of North Miami, Florida, this 14th day of March, 2017.

SMITH JOSEPH
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

JEFF P. H. CAZEAU, ESQ.
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: Galvin

Seconded by: Desulme

Vote:

Mayor Smith Joseph, D.O., Pharm. D.	X (Yes)	____ (No)
Vice Mayor Scott Galvin	X (Yes)	____ (No)
Councilman Alix Desulme	X (Yes)	____ (No)
Councilwoman Carol Keys, Esq.	X (Yes)	____ (No)
Councilman Philippe Bien-Aime	X (Yes)	____ (No)

CITY OF NORTH MIAMI
VEHICLE FUELING SERVICES AGREEMENT

THIS VEHICLE FUELING SERVICES AGREEMENT ("Agreement") is made and entered into this 3 day of MAY, 2017, between the City of North Miami, a Florida municipal corporation, located at 776 NE 125th Street, North Miami, FL 33161 ("City") and the Village of Biscayne Park, a Florida municipal corporation, having its principal office at 640 NE 114th Street, Biscayne Park, FL 33161 ("Village"). The City and Village shall collectively be referred to as the "Parties", and each may individually be referred to as a "Party".

RECITALS

WHEREAS, the City has a fueling facility located at 1855 NE 142nd Street, North Miami, capable of dispensing diesel and unleaded fuel for City owned vehicles ("Motor Pool"); and

WHEREAS, the Village desires to purchase diesel and unleaded fuel from the City for a number of service vehicles owned by the Village.

NOW THEREFORE, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

1. SCOPE OF AGREEMENT

1.1 Upon request by the Village, the City shall allow Village service vehicles to enter the Motor Pool fueling facility and allow Village employees to fuel Village service vehicles. Fueling shall be permitted according to an agreed schedule approved by the City.

1.2 The Village and the City shall each designate a representative to carry out the responsibilities for the direction and administration of this Agreement.

2. TERM OF THE AGREEMENT

2.1 This Agreement shall become effective upon execution by both Parties and shall remain in effect through December 31, 2019, unless sooner terminated pursuant to Section 3 below. The Parties shall have three (3) options to renew this Agreement in writing, on a year-by-year basis.

3. TERMINATION

3.1 Either Party may terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to the other Party.

4. BILLING/METHOD OF PAYMENT

4.1 The City shall bill Village the actual cost incurred by the City in providing diesel and unleaded fuel to the Village, plus ten percent (10%) administrative fee. In addition, the City reserves the right to pass through to the Village the apportioned amount of any emergency surcharges for fuels, which are charged to the City by third parties, suppliers or governmental entities. The Village shall pay all invoices in accordance with the Local Government Prompt Payment Act under Chapter 218, Part VII, Florida Statues (2016).

5. NOTICES

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

To the Village:

Village Manager
Village of Biscayne Park
640 N.E. 114th Street
Biscayne Park, FL 33161

With a copy to:

Village Clerk
Village of Biscayne Park
640 N.E. 114th Street
Biscayne Park, FL 33161

To the City:

City Manager
City of North Miami
776 N.E. 125th Street
North Miami, FL 33161

With a copy to:

City Attorney
City of North Miami
776 North East 125th Street
North Miami, FL 33161

With a copy to:

Capital Project Manager
City of North Miami
776 North East 125th Street
North Miami, FL 33161

6. INDEMNIFICATION

6.1 The Village shall, to the extent allowed by law, indemnify, defend and hold harmless the City, its officers, employees and agents from any and all liability, losses or damages, including attorney's fees and costs of defense, which the City, its officers, employees, or agents may suffer as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Village, its employees, agents, servants, partners, principals or subcontractors.

6.2 Each Party shall pay all claims and losses in connection with their negligence or responsibilities concerning this Agreement and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the City where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue.

7. LIMITATION OF LIABILITY

7.1 The City desires to enter into this Agreement only if in so doing the City can place a limit on its liability for any cause of action for money damages arising out of this Agreement, so that its liability for any such breach never exceeds the sum of One Hundred Dollars ($100.00). The Village expresses it willingness to enter into this Agreement with recovery from the City for any damage action for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of One Hundred Dollars ($100.00).

7.2 Accordingly, and notwithstanding any other term or condition of this Agreement, the Village agrees that the City shall not be liable to the Village for damages in an amount in excess of One Hundred Dollars ($100.00), which amount shall be reduced by the amount actually paid to the City by Village pursuant to this Agreement, for any action or claim for breach of contract or for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes (2016).

8. FORCE MAJEURE

8.1 A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation pursuant to or required by the Agreement by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to

the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

9. MISCELLANEOUS PROVISIONS

9.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

9.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, shall survive final payment, completion and acceptance of the fueling services and termination or completion of this Agreement.

9.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

9.4 This Agreement constitutes the sole and entire agreement between the Parties. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.

9.5 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

9.6 This Agreement shall be biding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

9.7 In the event of any dispute arising under or related to this Agreement, the prevailing party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

9.8 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

9.9 This Agreement contains the entire Agreement between the Parties. The Parties represent that in entering into this Agreement, they have not relied on any previous oral or implied representation, inducements or understandings of any kind or nature. No modifications shall be effective unless in writing and signed by both Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:

By: _____
Village Clerk

Print Name: Marlen Mantell

Date: 5/3/17

Village of Biscayne Park, a Florida municipal corporation: "**Village**":

By: _____
Village Manager or Mayor

Print Name: KEISHA MANNERS

Date: May 3, 2017

ATTEST:

By: _____
Michael A. Etienne
City Clerk

City of North Miami, a Florida municipal Corporation: "**City**"

By: _____
Larry M. Spring, Jr., CPA
City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Jeff P. H. Cazeau, Esq.
City Attorney