RESOLUTION NO. 2019-33

A RESOLUTION OF THE VILLAGE COMMISSION OF THE VILLAGE OF BISCAYNE PARK, FLORIDA, AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO AN AGREEMENT BETWEEN THE VILLAGE OF BISCAYNE PARK AND THE STATE OF FLORIDA, OFFICE OF THE STATE ATTORNEY FOR THE ELEVENTH JUDICIAL CIRCUIT COURT OF FLORIDA TO REIMBURSE THE STATE ATTORNEY'S OFFICE FOR THE COST OF STATE PROSECUTION OF CERTAIN CRIMINAL VIOLATIONS OF THE MUNICIPAL CODE OF THE VILLAGE OF BISCAYNE PARK; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village of Biscayne Park (the "Village") finds that in order to maintain and improve the health, safety, and welfare of this community, it is necessary to adequately enforce and prosecute violations of the Village's Municipal Code; and

WHEREAS, the violation of some of these ordinances actually represent criminal violations enforceable by prosecution in the judicial system; and

WHEREAS, Section 27.02, Florida Statutes, authorizes the Office of the State Attorney in each county to prosecute municipal ordinance violations punishable by incarceration if ancillary to state prosecution or, if not ancillary to state prosecution, when the State Attorney contracts with the local government for reimbursement; and

WHEREAS, the Village finds that it is more effective and efficient to contract with the Office of the State Attorney for the Eleventh Judicial Circuit Court of Florida to prosecute violations of the ordinances of the Village;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMISSION OF THE VILLAGE OF BISCAYNE PARK, THAT:

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

Section 2. The Village Manager is authorized to execute the agreement between the State of Florida, Office of the State Attorney for the Eleventh Judicial Circuit of Florida and the Village of Biscayne Park, to reimburse the State for the cost of state attorney prosecution of certain criminal violations of the municipal code of the Village of Biscayne Park, attached hereto and incorporated herein as Exhibit "1."

Section 3: This resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 3rd day of December, 2019.

Tracy Truppman, Mayor

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

Mayor Truppman: Yes
Vice Mayor Tudor: Yes
Commissioner Samaria: Yes

Attest:

Roseann Prado, Village Clerk

Approved as to form:

Rebecca A. Rodriguez, Village Attorney

STATE ATTORNEY

ELEVENTH JUDICIAL CIRCUIT OF FLORIDA
E. R. GRAHAM BUILDING
1350 N.W. 12TH AVENUE
MIAMI, FLORIDA 33136-2111

KATHERINE FERNANDEZ RUNDLE
STATE ATTORNEY

TELEPHONE (305) 547-0100

October 25, 2019

Ms. Roseann Prado
Village Clerk
Village of Biscayne Park
640 NE 114 Street
Biscayne Park FL 33161

Dear Ms. Prado:

Legislation passed in 2004 to implement Revision 7 to Article V of the Florida Constitution provides that the State Attorney may prosecute municipal ordinances only if (1) the ordinance violation is ancillary to a felony prosecution (s. 27.02(1), Florida Statutes), or (2) the county/municipality has entered into a contract with the State Attorney for these prosecutions (s. 27.34(1), Florida Statutes).

Enclosed please find the proposed agreement for the prosecution of ordinance violations for the period of October 1, 2019 to September 30, 2020. Please sign three originals and return to this office as soon as possible. If you desire to make changes to the contract and want an electronic version of this document, please contact me at donlhorn@miamisao.com and I will forward you a copy. This contract is for the prosecution of ordinances only; the State Attorney's Office has no statutory authority to handle appeals relating to the constitutionality of ordinances. If you choose to not have the Office of the State Attorney prosecute municipal ordinance violations in accordance with sections 4 &5 of Chapter 2004-265, Laws of Florida, you are requested to send a letter to that effect to the above address as soon as possible.

You will be billed at the statutorily prescribed rate of $50 per hour. Our estimate is that, on average, it takes approximately 20 minutes per case; therefore, you will be charged at the rate of $16.67 per case. Please note that this is the charge for ordinance prosecution only. Pursuant to state law, there are separate charges for indigent defense from the Public Defender and filing fees from the Clerk of the Court.

If you have any questions about the contract or if I can provide any other information, please do not hesitate to contact me at 305-547-0562 or at donlhorn@miamisao.com.

Sincerely,

KATHERINE FERNANDEZ RUNDLE
State Attorney

By: _____
Don L. Horn
Chief Assistant State Attorney for Administration

DLH/cj

Enclosures

AGREEMENT BETWEEN VILLAGE OF BISCAYNE PARK AND THE STATE OF FLORIDA, OFFICE OF THE STATE ATTORNEY FOR THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA TO REIMBURSE THE STATE FOR THE COST OF STATE ATTORNEY PROSECUTION OF CERTAIN CRIMINAL VIOLATIONS OF THE Village of Biscayne Park CODE

This agreement is entered into this 3rd day of December, 2019, by and between Village of Biscayne Park, a political subdivision of the State of Florida (hereinafter referred to as the "City") and the Office of the State Attorney for the Eleventh Judicial Circuit of Florida (hereinafter referred to as "State Attorney").

WHEREAS, the City finds that in order to maintain and improve the health, safety, and welfare of this community, it is necessary to adequately enforce and prosecute violations of the City's Municipal Code; and

WHEREAS, Section 27.02, Florida Statutes, authorizes the State Attorney to prosecute municipal ordinance violations punishable by incarceration if ancillary to state prosecution or, if not ancillary to state prosecution, when the State Attorney contracts with the City for reimbursement.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I
Services

The State Attorney agrees to prosecute municipal ordinance violations as authorized in Sections 27.02, and 27.34, Florida Statutes. The City agrees to remit, subject to the terms outlined in Article III of this agreement, to the State Attorney the required funds to reimburse for costs associated with the prosecution of violations of the Municipal Code for the period of October 1, 2019 to September 30, 2020. The State Attorney shall provide such clerical and professional personnel as may be required for the performance of any of the functions of the State Attorney as set forth in this agreement. This agreement does not commit the City to pay for the prosecution of Municipal Code violations ancillary to state prosecution or for the prosecution of municipal ordinance violations not punishable by incarceration. This agreement specifically does not authorize the State to handle appeals of municipal ordinances on constitutional grounds, which shall remain the responsibility of the municipality that passed the ordinance.

ARTICLE II
Terms

This agreement shall expire on September 30, 2020, unless terminated earlier pursuant to Article VII of this agreement. Under no circumstances shall the City be liable to continue or extend this agreement beyond this date. This agreement may only be amended in writing, through a document executed by duly authorized representatives of the signatories to this agreement.

ARTICLE III
Payment Schedule

The City agrees to reimburse the State Attorney on an hourly basis for services rendered at a rate of Fifty dollars ($50) per hour. On a quarterly basis, the State Attorney shall provide the City with an invoice including, but not limited to, the hours of services rendered, number of cases prosecuted as set forth in this agreement, and the total amount due for payment for the previous month. The City shall remit each payment within ten (10) days after receiving said invoice from the State Attorney.

ARTICLE IV
Responsibilities

The City does not delegate any of its responsibilities or powers to the State Attorney other than those enumerated in this agreement. The State Attorney does not delegate any of its responsibilities or powers to the City other than those enumerated in this agreement.

ARTICLE V
Reporting

All required reports shall be submitted to the Village Manager at villageManager@BiscayneParkFL.gov.

ARTICLE VI
Indemnification

It is expressly understood and intended that the State Attorney is only a recipient of the reimbursements paid by the City and is not an agent of the City. The respective parties agree, subject to the provisions of Chapter 768.28 (17), Florida Statutes, that they will hold each other harmless from any claims arising from this agreement.

ARTICLE VII
Termination

Either party may terminate this agreement at any time with or without cause by furnishing written notice to the other party with no less than ninety (90) days notice.

ARTICLE VIII
Service Charges

This agreement is contingent upon all City funding provided, and any interest earned thereon, not being subject to any State service charges or administrative assessments.

ARTICLE IX
Non-Discrimination

The State Attorney agrees to abide and be governed by Title II of the Americans with Disabilities Act of 1990, Title VI and VII, Civil Rights Act of 1964 (42 USC 200d, e) and Title Viii of the Civil Rights Act of 1968, as amended, which provides in part that there will not be discrimination of race, color, sex, religious background, ancestry, or national origin in performance of this contract, in regard to persons served, or in regard to employees or applicants for

employment and it is expressly understood that upon receipt of evidence of discrimination, the City shall have the right to terminate said agreement.

IN WITNESS THEREOF, the parties have caused this agreement to be executed by their respective and duly authorized officers the day and year first above written.

ATTEST:

Krishan Manners, Village Manager

Tracy Truppman, Mayor

ATTEST:

Roseann Prado, Village Clerk

State Attorney's Office

Eleventh Judicial Circuit

Don L. Horn

Chief Assistant State Attorney

for Administration

ATTEST:

Rebecca Rodriguez, Village Attorney