

RESOLUTION NO. R-2013-102

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, APPROVING THE SELECTION OF COUNTRY BILL'S LAWN MAINTENANCE, INC., IN ACCORDANCE WITH THE TERMS, CONDITIONS AND SPECIFICATIONS CONTAINED IN THE INVITATION FOR BID NO. 16-12-13 LAWN MAINTENANCE SERVICES, TO PROVIDE LAWN, LANDSCAPING, AND IRRIGATION MAINTENANCE SERVICES, INCLUDING THE APPLICATION OF FERTILIZERS AND PESTICIDES AT VARIOUS LOCATIONS THROUGHOUT THE CITY; AND FURTHER AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT, IN SUBSTANTIALLY THE ATTACHED FORM, AT A COST NOT TO EXCEED TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) PER YEAR; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.

WHEREAS, on February 20, 2013, the City of North Miami ("City") advertised *Invitation for Bid No. 16-12-13 Lawn Maintenance Services* ("IFB"), for the purpose of obtaining sealed bids from licensed and insured contractors to provide the City with the labor, materials, equipment, and services necessary for the maintenance of groundcovers, perennials, shrubs, and trees, including the application of fertilizers, herbicides and pesticides, watering, pruning, weeding, replacement plantings, trash and leaf removal, at various locations throughout the City, in accordance with the terms, conditions and specifications contained in the IFB ("Services"); and

WHEREAS, in response to the IFB, Country Bill's Lawn Maintenance, Inc. ("Contractor"), submitted its sealed bid and was subsequently evaluated by City administration as the lowest responsive, responsible bidder whose bid, qualifications and references demonstrated to be the most advantageous to the City in the procurement of Services; and

WHEREAS, the Contractor has expressed its capability, expertise and willingness to perform the Services pursuant to IFB requirements, for a term of three (3) years, at a cost not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) per year; and

WHEREAS, the Mayor and City Council have determined that it is in the City's best interests to approve the selection of Contractor and authorize the City Manager to execute an

agreement, in substantially the attached form, for the provision of Services at various locations throughout the City.

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

Section 1. **Selection Approval and Authority of City Manager.** The Mayor and City Council of the City of North Miami, Florida, hereby approve the selection of Country Bill's Lawn Maintenance, Inc., in accordance with the terms, conditions and specifications contained in the Invitation for Bid No. 16-12-13 Lawn Maintenance Services, to provide lawn, landscaping, and irrigation maintenance services, including the application of fertilizers and pesticides to various locations throughout the City; and further authorize the City Manager to execute a professional services agreement, in substantially the attached form, at a cost not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00) per year.

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

PASSED AND ADOPTED by a 5-0 vote of the Mayor and City Council of the City of North Miami, Florida, this 27 day of August, 2013.

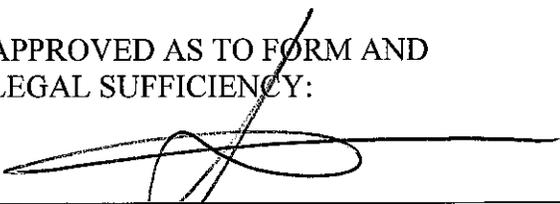

LUCIE M. TONDREAU
MAYOR

ATTEST:



MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



REGINE M. MONESTIME
CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: Councilman Galvin

Seconded by: Councilwoman Keys

Vote:

Mayor Lucie M. Tondreau	<u> x </u>	(Yes)	<u> </u>	(No)
Vice Mayor Marie Erlande Steril	<u> x </u>	(Yes)	<u> </u>	(No)
Councilperson Scott Galvin	<u> x </u>	(Yes)	<u> </u>	(No)
Councilperson Carol F. Keys, Esq.	<u> x </u>	(Yes)	<u> </u>	(No)
Councilperson Philippe Bien-Aime	<u> x </u>	(Yes)	<u> </u>	(No)

CITY OF NORTH MIAMI
PROFESSIONAL SERVICES AGREEMENT
(IFB No. 16-12-13/ Lawn Maintenance Services)

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is made and entered into this ____ day of September, 2013, by and between the **City of North Miami**, a Florida municipal corporation, located at 776 NE 125th Street, North Miami, FL ("City") and **Country Bill's Lawn Maintenance, Inc.**, a for-profit corporation organized and existing under the laws of the State of Florida, having its principal business office at 13363 NE 16th Avenue, North Miami, FL 33161 ("Contractor"). The City and Contractor shall collectively be referred to as the "Parties", and each may individually be referred to as a "Party".

RECITALS

WHEREAS, on February 20, 2013, the City of North Miami ("City") advertised *Invitation for Bid No. 16-12-13 Lawn Maintenance Services* ("IFB"), for the purpose of obtaining sealed bids from licensed and insured contractors to provide the City with the labor, materials, equipment, and services necessary for the maintenance of groundcovers, perennials, shrubs, and trees, including the application of fertilizers, herbicides and pesticides, watering, pruning, weeding, replacement plantings, trash and leaf removal, at various locations throughout the City, in accordance with the terms, conditions and specifications contained in the IFB ("Services"); and

WHEREAS, in response to the IFB, Contractor submitted its sealed bid and was subsequently evaluated by City administration as the lowest responsive, responsible bidder whose bid, qualifications and references demonstrated to be the most advantageous to the City in the procurement of Services; and

WHEREAS, the Contractor has expressed its capability, expertise and willingness to perform the Services pursuant to the requirements of Contract Documents; and

WHEREAS, the Mayor and City Council have determined that it is in the City's best interest to approve the selection of Contractor and authorize the City Manager to execute this Agreement for the provision of Services at various locations throughout the City.

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:

ARTICLE 1 - RECITALS

1.1 The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

ARTICLE 2 - CONTRACT DOCUMENTS

2.1 The following documents, collectively referred to as the "Contract Documents", are incorporated into and made part of this Agreement:

2.1.1 City's *Invitation for Bid No. 16-12-13 Lawn Maintenance Services*, attached hereto by reference;

2.1.2 Contractor's response to the IFB, attached hereto as "Exhibit A";

2.1.3 City's Tabulation of Bids in response to IFB, attached hereto as "Exhibit B";

2.1.4 City's list of lowest to highest Bidders, attached hereto as "Exhibit C"; and

2.1.5 Any additional documents which are required to be submitted by Contractor in the provision of Services, pursuant to this Agreement.

2.2 In the event of any conflict between the Contract Documents or any ambiguity or missing specification or instruction, the following priority is hereby established:

2.2.1 Specific written direction from the City Manager or City Manager's designee.

2.2.2 This Agreement.

ARTICLE 3 – TERM

3.1 The Parties agree that, subject to authorized adjustments, the Term of this Agreement shall be a period of three (3) years commencing on September 1, 2013, and ending on August 31, 2016.

3.2 Contractor agrees that the performance of Services shall be pursued on schedule, diligently and uninterrupted at a rate of progress which will reasonably ensure full completion within the agreed time for performance. Failure to achieve timely final completion shall be regarded as a material breach of this Agreement and shall be subject to the appropriate remedies available at law.

3.3 When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Contractor's ability to timely perform Services or any portion thereof, the City may request that the Contractor, within a reasonable period of time, provide adequate assurances to the City in writing, of Contractor's ability to perform in accordance with terms of this Agreement. In the event that the Contractor fails to provide the City the requested assurances within the prescribed time frame, the City may treat such failure as a repudiation or breach of this Agreement, and resort to any remedy for breach provided for in this Agreement or at law.

ARTICLE 4 - COMPENSATION

4.1 Contractor shall be paid an amount not to exceed Two Hundred Fifty Thousand and 00/100 Dollars (\$250,000.00) for Services, per year.

4.2 Funding for this Agreement is contingent on the availability of funds and the Agreement is subject to amendment or termination due to lack of funds or a reduction of funds, upon ten (10) days written notice to Contractor.

ARTICLE 5 - SCOPE OF SERVICES

5.1 Contractor shall provide all required labor, supervision, materials, equipment, tools and services necessary for the provision of Services at the designated areas, to the City's satisfaction. Contractor shall perform the Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession. The City reserves the right to issue directives as necessary to facilitate the flow of Services or to minimize any conflict with public operations of the City property.

5.2 Contractor shall provide and pay for competent, suitably qualified personnel to perform the Services as required by the Contract Documents. Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

5.3 Contractor warrants that any and all work, materials, services or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result, will be supplied by the Contractor at its own cost, whether or not specifically called for.

5.4 Contractor warrants and accepts that any and all work, materials, services or equipment necessitated by the inspections of City and/or County agencies, or other regulatory agencies as applicable, to bring the project into conformity with the Contract Documents and all applicable laws, codes, regulations, procedures, or considered inside the contemplation of the Contract Documents, shall be deemed the responsibility of the Contractor at no additional cost to the City.

5.5 Contractor represents and warrants to the City that: (i) Contractor possesses all qualifications, licenses and expertise required for the provision of Services, with personnel fully licensed by the State of Florida; (ii) Contractor is not delinquent in the payment of any sums due the City, including payment of permit fees, local business taxes, or in the performance of any obligations to the City; (iii) all personnel assigned to perform work shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) the Services will be performed in the manner and at such times and locations as described by the City for the budgeted amount; and (v) the person executing this Agreement on behalf of Contractor is duly authorized to execute same and fully bind Contractor as a party to this Agreement.

5.6 Contractor agrees and understands that: (i) any and all subcontractors used by Contractor shall be paid by Contractor and not paid directly by the City; and (ii) any and all liabilities regarding payment to or use of subcontractors for any of the work related to this Agreement shall be borne solely by Contractor.

5.7 Contractor shall ensure that the public roadways and any improvements or appurtenants in the vicinity of worksite remain open to the public whenever and wherever possible, and that sufficient signage is provided to direct the public or other invitees during performance of the Services. The Contractor shall comply with all applicable minimum safety standards required by local, county, state and federal regulations.

5.8 Any material or waste generated by Contractor or its employees, agents and subcontractors shall be removed and disposed of by the Contractor at its expense, to the satisfaction of the City.

5.9 Contractor shall restore in an acceptable manner or replace all property, both public and private, which has been displaced or damaged by the Contractor during the performance of Services, and shall leave the worksite unobstructed and in a neat and presentable condition. The term "property" shall include, but is not limited to, roads, sidewalks, curbs, driveways, walls, fences, landscaping, awnings, utilities, footings and drainage structures.

5.10 The Services shall be completed by the Contractor to the satisfaction of the City. The City shall make decisions on all claims regarding interpretation of the Agreement and on all other matters relating to the execution, progress and quality of the Services.

ARTICLE 6 - CHANGES IN SERVICES

6.1 One or more changes to Services within the general scope of this Agreement may be ordered by a Change Order. The Contractor shall proceed with any such changes, and they shall be accomplished in strict accordance with the Contract Documents and with the terms and conditions described in this Article.

6.2 A Change Order shall mean a written order to the Contractor executed by the Parties following execution of this Agreement, directing a change in Services, and may include a change in the agreed compensation and/or the time for Contractor's performance.

6.3 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement with the ordered changes in Services and the Contractor, by executing the Change Order, waives and forever releases any claim against the City for additional time or compensation for matters relating to or arising out of or resulting from, the work included within or affected by the executed Change Order.

ARTICLE 7 - ENVIRONMENTAL AND SAFETY REQUIREMENTS

7.1 Contractor shall comply and shall secure compliance by its employees, agents, and subcontractors, with all applicable environmental, health, safety and security laws and regulations pertaining to the Services provided under this Agreement. Contractor agrees to utilize protective devices as required by applicable laws, regulations, and any industry standards, and to ensure that such protective devices are properly used by its employees, agents and subcontractors in the provision of Services.

7.2 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Services to prevent damage, injury or loss to any affected person.

7.3 Contractor shall be solely responsible for pedestrian and vehicular safety within the vicinity of the worksite. Contractor shall provide the necessary warning devices, cones, markers, flags, barricades and other control devices, in addition to ground personnel needed for directing

traffic and maintaining safety, protection and warning to all persons and vehicular traffic within the worksite area.

7.4 Contractor represents, with full knowledge that the City is relying upon these representations when entering into this Agreement with the Contractor, that the Contractor has the professional expertise, ability, capacity, skill, licenses, financial resources, and experience to perform the Services under the requirements of this Article.

ARTICLE 8 - INDEPENDENT CONTRACTOR

8.1 Contractor has been procured and is being engaged by the City as an independent contractor, and not as an agent or employee of the City. Accordingly, Contractor shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the City, nor any rights generally afforded classified or unclassified employees of the City. Contractor further understands that Florida workers' compensation benefits available to employees of the City, are not available to Contractor. Therefore, Contractor agrees to provide workers' compensation insurance for any employee or agent of Contractor rendering services to the City under this Agreement.

ARTICLE 9 - CONFLICTS OF INTEREST

9.1 Contractor represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

9.2 Contractor covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interest, directly or indirectly, with contractors or vendors providing professional services on projects assigned to the Contractor, except as fully disclosed and approved by the City. Contractor further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

ARTICLE 10 - DEFAULT

10.1 If Contractor fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Contractor shall be in default. The City shall have the right to terminate this Agreement, in the event Contractor fails to cure a default within five (5) business days after receiving notice of default. Contractor understands and agrees that termination of this Agreement under this section shall not release Contractor from any obligations accruing prior to the effective date of termination.

ARTICLE 11 - CITY'S TERMINATION RIGHTS

11.1 The City shall have the right to terminate this Agreement, in its sole discretion at any time, with or without cause, upon ten (10) days written notice to Contractor. In such event, the City shall pay Contractor compensation for Services rendered prior to the effective date of termination. The City shall not be liable to Contractor for any additional compensation, or for any consequential or incidental damages.

ARTICLE 12 - NOTICES

12.1 All notices, demands, correspondence and communications between the City and Contractor shall be deemed sufficiently given under the terms of this Agreement when dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

To Contractor: Country Bill's Lawn Maintenance, Inc.
Attn: John Allred
13363 NE 16th Avenue
North Miami, FL 33161
Phone: (305) 785- 0180
Fax: (305) 891-5916

To City: City of North Miami
Attn: City Manager
776 N.E. 125th Street
North Miami, Florida 33161

With a copy to: City Attorney
City of North Miami
776 N.E. 125th Street
North Miami, Florida 33161

12.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

12.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

ARTICLE 13 - PUBLIC RECORDS

13.1 Contractor understands that the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.

ARTICLE 14 - INDEMNIFICATION

14.1 The Contractor shall defend, indemnify and hold harmless the City, its officers and employees from and against any and all claims, costs, losses and damages including, but not limited to reasonable attorney's fees, caused by the negligent acts or omissions of the Contractor, its officers, directors, agents, partners, subcontractors, employees and managers in the performance of the Services under this Agreement.

14.2 The Contractor shall be fully responsible to City for all acts and omissions of the Contractor, its employees, subcontractors, suppliers, or other persons directly or indirectly employed by its subcontractors or suppliers, and any other persons or organizations performing or furnishing supplies under a direct or indirect agreement with Contractor. Nothing in the Contract Documents

shall create any contractual relationship between City and any such subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of City to pay or to cause the payment of any money due any subcontractor, supplier, employee or agent except as may otherwise be required by law.

14.3 The Contractor shall assume full responsibility for any damage to any mangroves, protected lands or areas, or to the owner or occupant of any contiguous land or areas, resulting from the performance of this Agreement.

14.4 Contractor has visited the worksite and is familiar with the local conditions under which the Services are to be performed, and relieves the City from any liability in regard to any matter not immediately brought to the attention of the City.

14.5 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

ARTICLE 15 - INSURANCE

15.1 Prior to the execution of this Agreement, the Contractor shall submit certificate(s) of insurance evidencing the minimum required coverage specified in the IFB and provide that the City is an additional named insured, with respect to the required coverage and the operations of the Contractor under this Agreement. Contractor shall not commence work under this Agreement until after Contractor has obtained all of the minimum insurance described herein, and the policies of such insurance detailing the provisions of coverage have been received and approved by the City. Contractor shall not permit any subcontractor to begin work until after similar minimum insurance to cover subcontractor has been obtained and approved. In the event the insurance certificate provided indicates that the insurance shall terminate and lapse during the term of this Agreement, Contractor shall furnish, at least thirty (30) calendar days prior to expiration of the date of the insurance, a renewed certificate of insurance as proof that equal and like coverage and extension is in effect. Contractor shall not continue to perform the Services required by this Agreement unless all required insurance remains in full force and effect.

15.2 All insurance policies required of the Contractor shall be written by a company with a Best's rating of B+ or better and duly authorized and licensed to do business in the State of Florida and be executed by duly licensed managers upon whom service of process may be made in Miami-Dade County, Florida.

ARTICLE 16 - FORCE MAJEURE

16.1 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.

ARTICLE 17 – COMMUNITY BENEFITS

17.1 The City believes in doing business with persons and business entities which adhere to corporate principles confirming a commitment for being good corporate citizens, and which value the goals and importance of community goodwill by providing tangible benefits back to the community in which they do business. As such, the City will seek from Contractor the establishment of a Community Benefits Plan, as defined and approved by the City Manager, in the amount of Five Thousand Dollars (\$5,000.00) per year, for the benefit of the local community. This Community Benefits Plan shall be incorporated into and shall become a part of this Agreement.

17.2 As an inducement for the City to enter into this Agreement, Contractor hereby represents its willingness and financial capacity to provide the City with the Community Benefits Plan, pursuant to this Article. The City has relied upon these representations, in entering into this Agreement with Contractor, and such Community Benefits shall be exclusive of the City of North Miami's Local Preference requirement, under Section 7-151 of the City Code of Ordinances.

ARTICLE 18 - MISCELLANEOUS PROVISIONS

18.1 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.

18.2 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

18.3 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.

18.4 This Agreement and Contract Documents constitute 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.

18.5 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.

18.6 The City reserves the right to audit the records of the Contractor covered by this Agreement at any time during the provision of Services and for a period of three years after final payment is made under this Agreement.

18.7 The Contractor agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

18.8 Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City.

18.9 The City of North Miami is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request.

18.10 The professional Services to be provided by Contractor pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

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

18.12 The Contractor agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this Agreement.

18.13 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.

18.14 All other terms, conditions and requirements contained in the Contract Documents, which have not been modified by this Agreement, shall remain in full force and effect.

18.15 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.

(The remainder of this page is intentionally left blank)

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

ATTEST: Country Bill's Lawn Maintenance, Inc., a for-profit Florida Corporation

Corporate Secretary or Witness: "Contractor":

By: _____

By: _____

Print Name: _____

Print Name: _____

Date: _____

Date: _____

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

By: _____
Michael A. Etienne
City Clerk

By: _____
Stephen E. Johnson
City Manager

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Regine M. Monestime
City Attorney