RESOLUTION NO. 2014-R-108

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 TOWN OF BAY HARBOR ISLANDS, AUTHORIZING THE CITY TO SELL AND DISPENSE DIESEL AND UNLEADED FUEL AS WELL AS COMPRESSED NATURAL GAS FOR SERVICE VEHICLES OWNED BY THE TOWN OF BAY HARBOR ISLANDS; 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 ("Motorpool"), capable of dispensing diesel and unleaded fuel as well as compressed natural gas ("CNG") for the operation of City owned vehicles; and

WHEREAS, the Town of Bay Harbor Islands, Florida, a municipality within Miami-Dade County ("Bay Harbor"), desires to purchase diesel and unleaded fuel as well as CNG from the City's Motorpool, for the operation of Bay Harbor 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 Bay Harbor.

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 Town of Bay Harbor Islands, authorizing the City to sell and dispense diesel and unleaded fuel as well as CNG for service vehicles owned by the Town of Bay Harbor Islands.

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 **25th** day of November, 2014.

DR. SMITH JOSEPH
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: **Galvin**

Seconded by: **Steril**

Vote:

Mayor Dr. Smith Joseph	x (Yes)	_____ (No)
Vice Mayor Philippe Bien-Aime	x (Yes)	_____ (No)
Councilperson Scott Galvin	x (Yes)	_____ (No)
Councilperson Carol Keys, Esq.	x (Yes)	_____ (No)
Councilperson Marie Erlande Steril	x (Yes)	_____ (No)

CITY OF NORTH MIAMI
VEHICLE FUELING SERVICES AGREEMENT

THIS VEHICLE FUELING SERVICES AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2014, between the City of North Miami, a Florida municipal corporation, located at 776 NE 125th Street, North Miami, FL 33161("City") and the Town of Bay Harbor Islands, a Florida municipal corporation, having its principal office at 9665 Bay Harbor Drive, Bay Harbor Islands, FL 33154 ("Bay Harbor"). The City and Bay Harbor 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 as well as compressed natural gas ("CNG") for City owned vehicles ("Motorpool"); and

WHEREAS, Bay Harbor desires to purchase diesel and unleaded fuel as well as CNG from the City for a number of service vehicles owned by Bay Harbor.

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 Bay Harbor, the City shall allow Bay Harbor service vehicles to enter the Motorpool fueling facility and allow Bay Harbor employees to fuel Bay Harbor service vehicles. Fueling shall be permitted according to an agreed schedule approved by the City.

1.2 Bay Harbor 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, 2016, 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 Bay Harbor the actual cost incurred by the City in providing diesel and unleaded fuel to Bay Harbor, plus ten percent (10%) administrative fee. The City shall also bill Bay Harbor the actual costs incurred by the City per British Thermal Units (BTUs) of CNG, plus a thirty percent (30%) administrative fee. In addition, the City reserves the right to pass through to Bay Harbor the apportioned amount of any emergency surcharges for fuels, which are charged to the City by third parties, suppliers or governmental entities. Bay Harbor shall pay all invoices in accordance with the Local Government Prompt Payment Act under Chapter 218, Part VII, Florida Statues (2014).

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 Bay Harbor:	Bay Harbor Town Manager Town of Bay Harbor Islands 9665 Bay Harbor Drive Bay Harbor Islands, FL 33154
With a copy to:	Bay Harbor Town Clerk Town of Bay Harbor Islands 9665 Bay Harbor Drive Bay Harbor Islands, FL 33154
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 Bay Harbor 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 Bay Harbor, its employees, agents, servants, partners, principals or subcontractors.

6.2 Bay Harbor shall pay all claims and losses in connection with 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). Bay Harbor 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, Bay Harbor agrees that the City shall not be liable to Bay Harbor 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 Bay Harbor 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 (2014).

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: _____
Town Clerk

Print Name: _____

Date: _____

Town of Bay Harbor Islands, a Florida municipal corporation: "**Bay Harbor**":

By: _____
Town Manager or Mayor

Print Name: _____

Date: _____

ATTEST:

By: _____
Michael A. Etienne
City Clerk

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

By: _____
Aleem A. Ghany
City Manager

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By: _____
Regine M. Monestime
City Attorney