

**CONSTRUCTION AND PARK MAINTENANCE AGREEMENT BETWEEN OLD CUTLER
BAY HOMEOWNERS ASSOCIATION AND THE CIYT OF CORAL GABLES**

This Construction and Park Maintenance Agreement (the “Agreement”) is entered into on this ____ day of March, 2022, between the City of Coral Gables (the “City”) and the Old Cutler Bay Homeowners Corporation, Inc. (the “Association”).

Recitals

WHEREAS, on October 5, 2021, pursuant to Resolution No. 900-21, the Miami-Dade County Board of County Commissioners authorized conveyance to the City of Coral Gables of a property known as Solano Prado Park, containing 13,508 square feet of land located south of 275 Solano Prado, Coral Gables, Florida (Folio No. 03-5105-008-0290) for the purpose of improving and maintaining it as a neighborhood park; and

WHEREAS, on January 18, 2021, such transfer was effectuated pursuant to the County Deed recorded at Official Records Book 32966, Page No. 3716 of the Public Records of Miami-Dade County, Florida and attached as Exhibit A; and

WHEREAS, Solano Prado Park is located within the Old Cutler Bay subdivision; and

WHEREAS, the City, and the Association, consistent with the County Deed, wishes to improve Solano Prado Park and maintain it as a neighborhood park in perpetuity; and

WHEREAS, the City has agreed to allocate up to \$175,000 towards construction and design of the improvements, an amount consistent with funding toward improvements at other new neighborhood parks throughout the City; and

WHEREAS, the City has completed the park design and permits for the improvements have been approved and the design costs total \$38,793.00; and

WHEREAS, construction and design of the improvements shall likely exceed \$175,000 and the Association is interested in undertaking the construction of the improvements, using resources available to the Association and to fund any construction costs and fees in excess of the remaining \$136,207.00; and

WHEREAS, the City believes it would benefit the residents of the City to allow the Association to complete the improvements pursuant to the approved and permitted design and plans and for the Association to be responsible for all maintenance obligations.

NOW THEREFORE, in consideration of the sum of Ten Dollars and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the City and the Association agree to the following:

1. The above stated recitals are incorporated as if fully set forth herein.
2. The park shall be named Solano Prado Park. Any request to rename the park in the future must comply with the City’s Policy for Naming/Renaming City Parks, Open Spaces, and Public Facilities adopted via Resolution No. 2020-237, as may be amended from time to time.

3. The Association agrees to complete the project, pursuant to the approved and permitted design. The Association will coordinate, oversee, and pay for the implementation of the design, including the negotiation and contracting for the construction of improvements and park components. Any general contractor hired by the Association to complete the project shall meet the minimum insurance requirements as established by the City. The Minimum Insurance Requirements are fully incorporated herein by reference and attached hereto as Exhibit "B."

4. The Association agrees to utilize its best efforts to obtain a one-year warranty from any contractor(s) and subcontractor(s) used to perform the work contemplated herein.

5. In exchange for the completion of the project, as stated herein, the City agrees to reimburse the Association up to One Hundred Thirty-Six Thousand Two Hundred Seven Dollars (\$136,207.00) , for the satisfactory completion of the project, pursuant to the approved and permitted design for the construction of improvements and park components and a specific agreed-upon funding and construction schedule. Pursuant to such disbursement schedule, the Association shall submit invoices for payment to the City. Upon receipt of an invoice from the Association, the City shall review and upon the City's approval, payment shall be submitted to the Association within 30 days of approval of the invoice. The City shall notify the Association of any issues, disputes, or concerns regarding the invoice within thirty (30) business days of its receipt and the Association shall be given an opportunity to cure any deficiencies in said invoice. The City's failure to notify the Association of any issues, disputes, or concerns regarding an invoice within thirty (30) business days of its receipt shall constitute the City's acceptance of and agreement to reimburse the Association for said invoice.

6. The Association shall be responsible for and pay for all of the continued maintenance at Solano Prado Park, including repair and/or replacement of damaged or worn components, as well as daily and continued maintenance of the irrigation system and landscaping.

7. The City, as owner of Solano Prado Park, reserves the right to maintain, remove, add, or require that the Association remove or maintain any improvements and park components after providing adequate notice to the Association. This right shall be exercised for just cause and/or upon a determination by the City Manager that it is in the best interests of the City and its residents.

8. At all times, the rules and regulations governing parks in the City of Coral Gables, and as such may be amended by the City Commission or the City Manager, from time to time, shall apply to Solano Prado Park. Additionally, all other applicable provisions of the City Code of Coral Gables shall be in effect and enforceable.

9. If the Association violates any term of this Agreement, the City shall provide a written notice to the Association stating the deficiencies that require immediate action and providing a thirty (30) day opportunity to cure, after which the City will proceed to issue a notice of termination if the deficiency has not been cured. If the deficiency is one that cannot be cured within thirty (30) days, the Association must take steps to begin to cure the deficiency within the thirty (30) day period, failing which the City will proceed to issue a notice of termination. The City may terminate this Agreement for convenience by providing thirty (30) days' written notice.

10. The City retains all of its regulatory authority and will enforce its City Code and Zoning Code and take all action necessary to protect the public safety. The City also retains all of its proprietary authority over Solano Prado Park.

11. To the fullest extent permitted by laws and regulations, the Association shall defend, indemnify, and hold harmless the City, its elected and appointed officials, attorneys, administrators, consultants, agents, and employees by any employee of the Association, any contractor, subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or maintenance obligations or anyone for whose acts any of them may be liable. The parties expressly agree that this provision shall be construed broadly, and the Association's obligations to pay for the City's legal defense hereunder shall arise and be fully enforceable when the Association (or any contractor or subcontractor or any person or organization directly or indirectly employed by the Association) is alleged to have acted willfully, intentionally, recklessly, or negligently in the performance of the work or maintenance obligations required under this Agreement. Any failure of the Association to comply with the terms of this provision shall be deemed a material breach of this Agreement.

In any and all claims against the City or any of its elected and appointed officials, attorneys, administrators, consultants, agents, and employees by any employee of the Association, any contractor, subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or perform any of the maintenance obligations or anyone for whose acts any of them may be liable, the indemnification obligation under the above paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Association or any such contractor or subcontractor or other person or organization under workers' or workman's compensation acts, disability benefit acts, or other employee benefit acts. Moreover, nothing in this Agreement shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes § 768.28, any other sections of the Florida Statutes, case law, or any other source of law as to the Association or any third parties. This indemnification and hold harmless provision shall survive termination of this Agreement.

12. The Association acknowledges that the Florida Doctrine on Sovereign Immunity bars all claims by the Association against the City other than claims arising out of this Agreement. Specifically, the Association acknowledges that it cannot and will not assert any claims against the City, unless the claim is based upon a breach by the City of this Agreement. Further, the Association recognizes the City is a sovereign with regulatory authority that it exercises for the health, safety, and welfare of the public. This Agreement in no way estops or affects the City's exercise of that regulatory authority. In addition, the City retains the full extent of its sovereign immunity in relation to the exercise of its regulatory authority. The Association acknowledges that it has no right and will not make claim based upon any of the following:

- a. Claims based upon any alleged breach by the City of implied warranties or representations not specifically set forth in this Agreement, as the parties stipulate that there are no such implied warranties or representations of the City. All obligations of the City are only as set forth in this Agreement;
- b. Claims based upon negligence or any tort arising out of this Agreement;
- c. Claims upon alleged acts or inaction by the City, its commissioners, attorneys, administrators, consultants, agents, or any City employee;

- d. Claims based upon an alleged waiver of any of the terms of this Agreement unless such waiver is in writing and signed by an authorized representative for the City and the Association.

13. **Public Records Law, Florida Statutes Chapter 119.** Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such statutes. The Association acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the City in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the City for such disclosure and/or production. The Association also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the City. Furthermore, the Association agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated by reference herein.

IF THE ASSOCIATION HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ASSOCIATION'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-460-5210, cityclerk@coralgables.com, 405 Biltmore Way, First Floor, Coral Gables, FL 33134.

14. This Agreement sets forth all covenants, conditions, and promises between the parties concerning the subject matter hereof. There are no covenants, promises, agreements, conditions, or understandings between the parties, either oral or written, concerning the subject matter hereof other than those contained in this Agreement.

15. The terms of this Agreement may only be modified or amended by the written agreement of both parties.

16. This Agreement shall not be assigned by either party without the written consent of the other party, which consent shall not be unreasonably withheld.

17. This Agreement shall in all respects be subject to and construed in accordance with and governed by the laws of the State of Florida. Venue for any action arising out of the terms and conditions of this Agreement shall be proper in the Eleventh Judicial Circuit Court in and for Miami-Dade County, Florida.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have signed this _____ day of December, 2021.

WITNESSES:

Witness Signature

Witness Printed Name

Witness Signature

Witness Printed Name

OLD CUTLER BAY HOMEOWNERS
CORPORATION, INC., a
Florida not-for-profit corporation

By: _____
Toni Schrager, President

CITY OF CORAL GABLES

Peter J. Iglesias, City Manager

ATTEST:

Billy Y. Urquia, City Clerk

Approved as to form and legal
sufficiency:

Miriam Soler Ramos, City Attorney



CFN 2022R0051148
 OR BK 32966 Pgs 3716-3717 (2Pgs)
 RECORDED 01/18/2022 13:56:59
 HARVEY RUVIN, CLERK OF COURT
 MIAMI-DADE COUNTY, FLORIDA

Instrument prepared by:
 Jessica Gutierrez
 Miami-Dade County Internal Services Department
 Real Estate Development Division
 111 N.W. 1 Street, Suite 2460
 Miami, Florida 33128-1907

Folio No.: 03-5105-008-0290

COUNTY DEED

THIS COUNTY DEED, made this 18th day of Jan., 2022 by MIAMI-DADE COUNTY, a political subdivision of the State of Florida (hereinafter "County"), whose address is: Stephen P. Clark Center, 111 N.W. 1 Street, Suite 17-202, Miami, Florida 33128-1963, and the CITY OF CORAL GABLES, a body politic (hereinafter "City"), whose address is 405 Biltmore Way, Coral Gables, Florida 33134.

WITNESSETH: That the County, for and in consideration of the sum of Ten Dollars (\$10.00) to it in hand paid by the City, receipt whereof is hereby acknowledged, has granted, bargained and sold to the City, its successors and assigns forever, the following legally described land lying and being in Miami-Dade County, Florida (hereinafter the "Property"):

PARK, OLD CUTLER BAY SECTION 4, according to the Plat thereof, as recorded in Plat Book 82, at Page 34, of the Public Records of Miami-Dade County, Florida.

THIS CONVEYANCE IS SUBJECT TO all zoning, rules, regulations and ordinances and other prohibitions imposed by any governmental authority with jurisdiction over the Property; existing public purpose utility and government easements and rights of way and other matters of record; taxes for the year of closing and subsequent years and the following restrictions:

The conveyance of the Property to the City is subject to the following restrictions, limitations and provisions. The Property shall be utilized as a public park, open to all residents of Miami-Dade County, in perpetuity. The County hereby reserves unto itself a reverter in the Property, to ensure the permitted use of the Property. If, in the sole discretion of the County, the Property ceases to be used solely for the purpose set forth herein by the City, title to the Property shall revert to the County, at the sole option of the County, upon written notice of such failure to utilize the Property



as a public park, open to all residents of Miami-Dade County. The reverter shall immediately become effective upon the date a written notice from the County to the City, is received by the City (the "Effective Reverter Date"). The County, at its sole option, shall have the right to immediate possession of the Property, with any and all improvements thereon, at no cost to the County, on the Effective Reverter Date, and the County may file a Notice of Reverter. In the event the County exercises the reverter, the City, upon written request from the County, shall immediately provide the County with a deed of conveyance of the Property, with any and all rights, back to the County. However, failure of the City to provide such deed of conveyance shall not impact the County's reverter, which shall become effective immediately upon the County providing the written notice to the City.

This grant conveys only the interest of Miami-Dade County and its Board of County Commissioners in the Property herein described and shall not be deemed to warrant the title or to represent any state of facts concerning the same.

IN WITNESS WHEREOF, the said party of the County has caused these presents to be executed in its name by its Board of County Commissioners, acting by the Chairperson or Vice Chairperson of said Board, the day and year aforesaid.

(OFFICIAL SEAL)

ATTEST:

HARVEY RUVIN, CLERK

By:

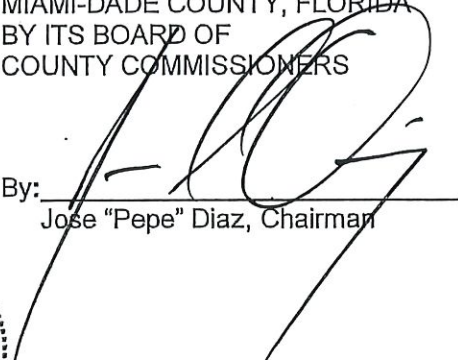
Deputy Clerk



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

By:

Jose "Pepe" Diaz, Chairman



Approved for legal sufficiency:

Monica Rizo Perez
Assistant County Attorney



The foregoing was authorized by Resolution No. R-900-21 approved by the Board of County Commissioners of Miami-Dade County, Florida, on the 5th day of October, 2021.

STATE OF FLORIDA, COUNTY OF MIAMI-DADE
I HEREBY CERTIFY that this is a true copy of the
original filed in this office on 18th day of
Jan, AD 2022
WITNESS my hand and Official Seal.
HARVEY RUVIN, Clerk of Circuit and County Courts
By [Signature] D.C.

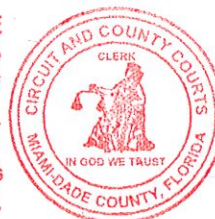


Exhibit B

Minimum Insurance Requirements

INSURANCE REQUIREMENTS

GENERAL CONDITIONS

The Risk Management Division has developed the following insurance requirements to protect the City of Coral Gables to the maximum extent feasible against any and all claims that could significantly affect the ability of the City to continue to fulfill its obligations and responsibilities to the taxpayers and the public.

The Contractor shall procure, and provide the City with evidence of insurance coverage as required herein and name the City as an Additional Insured on a primary and non-contributory basis. The Contractor shall secure and maintain, at its own expense, and keep in effect full during the applicable work the required policy or policies of insurance, and must submit these documents to the Risk Management Division of Human Resources Department for review and approval.

INSURER REQUIREMENTS

The Contractor shall maintain, at its own cost and expense, the following types and amounts of insurance with insurers with rating of "A-" "VI" or better according to the A.M. Best rating guide as a minimum standard. The insurers providing coverage must be approved by the State of Florida and hold all of the required licenses in good standing to conduct business within the State of Florida. In addition, they must be acceptable to the City of Coral Gables Risk Management Division and/or the City Attorney's Office.

TYPE OF COVERAGE & LIMIT OF LIABILITY REQUIREMENT

Workers' Compensation and Employers Liability Insurance covering all employees, subcontractors, and/or volunteers of the Contractor and/or Vendor engaged in the performance of the scope of work associated with this contract and/or agreement. The minimum limits of liability shall be in accordance with applicable state and/or federal laws that may apply to Workers' Compensation insurance, with the following limits:

Workers' Compensation - Coverage A
Statutory Limits (State of Florida or Federal Act)

Employers' Liability - Coverage B
\$1,000,000 Limit - Each Accident
\$1,000,000 Limit - Disease each Employee
\$1,000,000 Limit - Disease Policy Limit

Commercial General Liability Insurance written on an occurrence basis including, but not limited to; Coverage for contractual liability, products and completed operations, personal & advertising injury, bodily injury and property damage liabilities with limits of liability no less than:

Each Occurrence Limit - \$1,000,000
Fire Damage Limit (Damage to rented premises) - \$100,000
Personal & Advertising Injury Limit - \$1,000,000
General Aggregate Limit - \$2,000,000

Products & Completed Operations Aggregate Limit - \$2,000,000

Business Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of work under this Contract, with a combined single limit of liability for bodily injury and property damage of not less than:

Combined Single Limit (Each Accident) - \$1,000,000

Any Auto (Symbol 1)

Hired Autos (Symbol 8)

Non-Owned Autos (Symbol 9)

MINIMUM COVERAGE FORM (SHALL BE AT LEAST AS BROAD AS):

Workers Compensation

The standard form approved by the State of Jurisdiction

Commercial General Liability

ISO (Insurance Services Office, Inc.) Commercial General Liability coverage ("occurrence" Form CG 0001) or its equivalent. "Claims made" form is unacceptable.

Commercial Auto Liability

ISO (Insurance Services Office, Inc.) Commercial Auto Liability coverage (form CA 0001) or its equivalent.

REQUIRED ENDORSEMENTS

The following endorsements with City approved language

Additional insured status provided on a primary & non-contributory basis for general and auto liability.

Waiver of Subrogation for all required coverages.

Notices of Cancellation/Non-renewal/Material Changes must be sent directly to the City of Coral Gables by the Insurance Company. The City only requires the same statutory notice that an insurance company must provide to the insured, however this Notice may not be less than Thirty (30) Days, except a Ten (10) Day Notice of cancellation is acceptable for non-payment of premium.

Notices of Cancellation, Non-renewal or Material Change must be provided to the following address:

CITY OF CORAL GABLES
INSURANCE COMPLIANCE
P.O. Box 100085 – CE
Duluth, GA 30096

All policies shall contain a “severability of interest” or “cross liability” clause without obligation for premium payment of the City.

HOW TO EVIDENCE COVERAGE TO THE CITY

The following documents must be provided to the City;

A Certificate of Insurance containing the following information:

Issued to entity contracting with the City

Evidencing the appropriate Coverage

Evidencing the required Limits of Liability required

Evidencing that coverage is currently in force

Language provided in the Special Provision Section of the Certificate of Insurance affirming that all endorsements required by the City have been endorsed to all of the policies.

A copy of each endorsement that is required by the City

All Certificates of Insurance must be signed by a person authorized by that insurer to bind or amend coverage on its behalf

The City reserves the right to require a complete copy of any insurance policies required by the City. Should the City invoke this right, the policy must be provided directly to the City by the insurance agent or insurance company.

The city reserves the right to require additional insurance requirements **at any time during the course of the agreement.**

All documents evidencing insurance to City of Coral Gables – Insurance Compliance should be sent via email to cityofcoralgables@ebix.com and to Risk Manager David Ruiz at druiz@coralgables.com. Should you require assistance, contact the dedicated Call Service Lines for City of Coral Gables:

Call Service Lines - Insurance Compliance

Phone: (951) 652-2883.

Fax: (770) 325-0417

Email: cityofcoralgables@ebix.com

When Professional, Contractor and/or Vendor evidence insurance to the City of Coral Gables, the Certificate Holder section of the Certificate of Insurance should read as follows:

CITY OF CORAL GABLES
INSURANCE COMPLIANCE
P.O. Box 100085 – CE
Duluth, GA 30096