

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2011-_____

A RESOLUTION OF THE CORAL GABLES CITY COMMISSION, WITH ATTACHMENT, AUTHORIZING CITY MANAGER TO EXECUTE A CONSTRUCTION AND MAINTENANCE AGREEMENT WITH OLD CUTLER BAY HOMEOWNERS ASSOCIATION FOR REMOVAL OF PALM TREES FROM THE OLD CUTLER BAY NEIGHBORHOOD AND RELOCATION UPON CITY RIGHTS-OF-WAY; TO LOAD CERTAIN COCONUT PALM TREES UPON CITY TRUCKS; TO RELOCATE OAK TREES ON PONCE DE LEON BOULEVARD TO THE ENTRANCE OF OLD CUTLER BAY AT NO COST TO THE CITY.

WHEREAS, Resolution No. 2010-275, approved on December 14, 2010, authorized that the existing oak trees on Ponce de Leon Boulevard between Sevilla Avenue and Alcazar Avenue be removed and replanted to the rights-of way at the entrance to the Old Cutler Bay neighborhood; and

WHEREAS, the Homeowners Association for Old Cutler Bay agrees to remove Palm Trees currently planted at the entrance of the Old Cutler Bay neighborhood, through a contractor approved by the City, and replant eight (8) trees upon other City rights-of-way; and

WHEREAS, the Homeowners Association for Old Cutler Bay further agrees to load onto City trucks nine (9) Coconut Palm trees to be re-planted by City forces upon City rights-of-way within the City of Coral Gables; and

WHEREAS, the Homeowners Association for Old Cutler Bay further agrees to relocate all existing Oak trees planted in the median on Ponce de Leon Boulevard between the intersections of Sevilla Avenue to the south to Alcazar Avenue to the north and to replant said trees in the rights-of-way located at the entrance of the Old Cutler Bay neighborhood; and

WHEREAS, the Old Cutler Bay Homeowners Association agrees to provide for the relocation and removal of the aforementioned trees at no cost to the City.

WHEREAS, the City Commission of Coral Gables finds that it is in the best interest of the City to enter into this Construction and Maintenance Agreement.

BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

(1) That the above recitals are true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

(2) That the City Manager is hereby authorized to execute the attached Construction and Maintenance Agreement with the Old Cutler Bay Homeowners Association.

(3) That this resolution shall become effective upon the date of its adoption herein.

PASSED AND ADOPTED THIS _____ day of February, 2011.

DONALD D. SLESNICK II
MAYOR

ATTEST:

WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

LOURDES ALFONSIN RUIZ
INTERIM CITY ATTORNEY

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

THIS AGREEMENT IS ENTERED INTO THIS ____ DAY OF ___, 2011 between the City of Coral Gables, a municipal corporation of the State of Florida (hereinafter referred to as "CITY"), and Old Cutler Bay Home Owners Association (hereinafter referred to as "HOA"):

RECITALS

WHEREAS, resolution No. 2010-275 approved on December 14, 2010, authorized that the existing oak trees on Ponce de Leon Boulevard between Sevilla Avenue and Alcazar Avenue be removed and replanted to the rights-of-way at the entrance to Old Cutler Bay Neighborhood; and

WHEREAS, The Board of Governors of the HOA, through a contractor approved by the City, agree to remove (3) existing Coconut Palm Trees and (8) small Solitaire and Roebellini Palm Trees currently planted at the entrance to Old Cutler Bay Neighborhood; and

WHEREAS, The HOA, through a contractor approved by the City, further agrees to replant (8) of the Coconut Palm Trees to other rights-of-way, as approved by the City, within the Neighborhood, and to load onto City trucks the remaining (9) Coconut Palm Trees to be replanted by City Forces, within other rights-of-way or City property within the City; and

WHEREAS, The HOA, through a contractor approved by the City, further agrees to relocate all of the existing Oak trees currently planted in the median of Ponce de Leon Boulevard between the intersections of Sevilla Avenue to the South and Alcazar Avenue to the North and to replant said Oak Trees in the rights-of-way at the entrance to Old Cutler Bay Neighborhood; and

WHEREAS, The HOA has agreed to relocate the aforementioned Oak Trees and Palm Trees at no cost to the City; and

NOW, THEREFORE, in consideration of the property and mutual promises contained herein, the parties agree that:

- (1) The above stated recitals are incorporated as if fully set forth herein.
- (2) The Board of Governors of the HOA, through a contractor approved by the City, agree to remove (3) existing Coconut Palm Trees and (8) small Solitaire and Roebellini Palm Trees currently planted at the entrance to Old Cutler Bay Neighborhood. The HOA, through a contractor approved by the City, further agrees to replant (8) of the Coconut Palm Trees to other rights-of-way, as approved by the City, within the Neighborhood, and to load onto City trucks the remaining (9) Coconut Palm Trees to be replanted by City Forces, within other rights-of-way or City property within the City (see plan attached as Exhibit "A" which shall be incorporated into this agreement as if fully set forth herein).

- (3) The HOA, through a contractor approved by the City, further agrees to relocate all of the existing Oak trees currently planted in the median of Ponce de Leon Boulevard between the intersections of Sevilla Avenue to the South and Alcazar Avenue to the North and to replant said Oak trees in the rights-of-way at the entrance to Old Cutler Bay Neighborhood.
- (4) All construction activity required for the removal and relocation of all of the aforementioned trees, excepting the replanting of the trees to be placed on City trucks, shall be fully the responsibility of the HOA. This includes but is not limited to; traffic control, root pruning, transportation, damaged irrigation repairs, excavation and backfill, and tree staking. All planned construction activities and staging plans must be pre-approved and permitted by the City prior to commencement of any work activity within the rights-of-way.
- (5) All work shall be performed using horticultural standards approved by the City.
- (6) The association further agrees to stake all replanted trees and to maintain staking in a sound structural condition for a period of not less than six months and to assure that replanted trees are maintained and provided adequate water to assure healthy established growth during this same period. At the discretion of the City, any trees transplanted within Old Cutler Bay development by the HOA, which die or are not in good, healthy, growing condition at six (6) months after transplanting, shall be replaced by trees of similar size and species, at the HOA's expense, by a Contractor approved by the City.
- (7) This agreement sets forth all the covenants, conditions, and promises between the parties. There are no covenants, promises, agreements, conditions, or understandings between the parties, either oral or written, other than those contained in this agreement.
- (8) Upon completed execution of this Agreement, including Exhibit "A", the Agreement shall be filed and recorded with Miami-Dade Public Records.
- (9) City-approved Contractor, on behalf of the HOA, must obtain all Public Works and Public Service permits approval, including but not limited to, proof of insurance and indemnification meeting all City requirements, otherwise, this Agreement is null and void.
- (10) All costs associated with the responsibilities under this Agreement shall be borne by the HOA.
- (11) The terms of this agreement may only be modified or amended by the written agreement of both parties.
- (12) This agreement shall not be assigned by either party without the written consent of the other party, which consent shall not be unreasonably withheld.

- (13) 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 Circuit Court for the 11th Judicial Circuit, Miami-Dade County, FL.
- (14) The parties hereby warrant that this agreement is executed by the respective parties in accordance with resolutions or ordinances of the City of Coral Gables.
- (15) This Agreement shall be effective as of the date it is fully executed herein.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date and year first above written.

AS TO OLD CUTLER BAY:

Toni Schrager
HOA President, Old Cutler Bay

ATTEST:

Old Cutler Bay
Secretary

APPROVED BY DEPARTMENT
DIRECTOR OR HEAD OF
NEGOTIATIONS TEAM AS TO
THE NEGOTIATED BUSINESS TERMS:

Glenn R. Kephart
Public Works Director

AS TO CITY:

Patrick Salerno
City Manager

ATTEST:

Walter J. Foeman
City Clerk

APPROVED AS TO FORM AND
AND LEGAL SUFFICIENCY:

Lourdes Alfonsin Ruiz
Interim City Attorney