



***The Crossroads of South Florida,
We envision a sustainable economy, Let Us Grow
Together***

**CITY OF SOUTH BAY
CITY COMMISSION MEETING AGENDA
COMMISSION CHAMBER
335 SW 2ND AVENUE, SOUTH BAY FL 33493**

**TUESDAY, NOVEMBER 21, 2017
7:00 P.M.**

**www.southbaycity.com
Phone: 561-996-6751 Fax: 561-996-7950**

Mayor:	Joe Kyles Sr.
Vice Mayor:	John Wilson
Commissioner:	Esther Berry
Commissioner:	Taranza McKelvin
Commissioner:	Shanique Scott
City Manager:	Leondrae D. Camel
City Attorney:	Burnadette Norris-Weeks
City Clerk:	Jessica Figueroa

RULES OF PROCEDURE

WHO MAY SPEAK

Meetings of the City Commission are open to the public. They are not; however, public forums. Any resident who wishes to address the commission on any subject within the scope of the Commission's authority may do so, providing it is accomplished in an orderly manner and in accordance with the procedures outlined below.

SPEAKING ON AGENDA ITEM

- **Consent Agenda Item** – These are items, which the Commission does not need to discuss individually, and which are voted on as a group. Any Commissioner who wishes to discuss any individual item on the consent agenda may request the Mayor to pull such item from the consent agenda. Those items pulled will be discussed and voted upon individually.
- **Regular Agenda Items** – These are items, which the Commission will discuss individually in the order listed on the agenda. By majority vote, the City Commission may permit any person to be heard on an item at a non-public hearing.
- **Public Hearing Items** – This portion of the agenda is to obtain input from the public on some ordinances, resolutions and zoning applications. The chair will permit any person to be heard on the item during formal public hearings.

SPEAKING ON SUBJECTS NOT ON THE AGENDA

Any resident may address the Commission on any items pertaining to City business during the Opportunity For The Public To Address the Commission portion of the agenda. Persons wishing to speak must sign in with the City Clerk before the start of the meeting.

ADDRESSING THE COMMISSION, MANNER AND TIME

By majority vote the City Commission may invite citizen discussion on any agenda item. In every case where a citizen is recognized by the Mayor to discuss an agenda item, the citizen shall step to the podium/microphone, state his or her name and address for the benefit of the city clerk, identify any group or organization he or she represents and shall then succinctly state his or her position regarding the item before the city commission. Any question, shall be related to the business of the City and deemed appropriate by the Mayor, shall be directed to the Mayor and the Mayor shall then re-direct the question to the appropriate Commissioner or City Staff to answer the citizen question which shall be related to the business of the City.

All comments or questions of the public are to be directed to the Mayor as presiding officer only. There shall be no cross conversations or questions of any other persons. The length of time each individual may speak should be limited in the interest or order and conduct of the business at hand. Comments to the Commission by individual citizens shall be limited to three (3) minutes during the citizens request period. The City clerk shall be charged with the responsibility of

notifying each citizen thirty (30) seconds before said time shall elapse and when said time limit has expired.

APPEALS

If a person decides to appeal any decision made by the board, agency, or commission with respect to any matter considered at such hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

DECORUM

If a member of the audience becomes unruly, the Mayor has the right to require the person to leave the room. If a crowd becomes unruly, the Mayor may recess or adjourn the meeting. Please silence all cell phones and pagers.

CONTACT INFORMATION

If anyone has questions or comments about anything on the meeting agenda, please contact the City Manager at 561-996-6751.

AMERICANS WITH DISABILITY ACT

In accordance with the Americans with Disability Act and Florida Statute 286.26, persons with disabilities needing special accommodations to participate in this proceeding should contact the city clerk no later than three (3) days prior to the meeting at 561-996-6751 for assistance.

**AGENDA
CITY OF SOUTH BAY
CITY WORKSHOP
CITY COMMISSION CHAMBERS
NOVEMBER 21, 2017 @ 6:30 P.M.**

*South Bay, the Crossroads of South Florida,
We envision a sustainable economy, Let Us Grow Together*

NOTICE: If any person decides to appeal any decision of the City Commission at this meeting, he/she will need a record of the proceedings and for that purpose, he/she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based, pursuant to F.S. 286.01055. The City of South Bay does not prepare or provide such records.

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- 1. CALL TO ORDER**
 - 2. ROLL CALL**
 - 3. DISCUSSION**
 - 3a.** Strategic Planning – Commissioner Berry
 - 3b.** Discussion & Consideration – ITB for city owned surplus real estate
 - 3b.** Agenda Items – November 21, 2017
 - 4. ADJOURNMENT**

CITY OF SOUTH BAY
INVITATION TO BIDS ON
CITY OWNED SURPLUS REAL ESTATE

BID No. 2017 - 06

See, Attached List of City Owned Surplus Real Estate which is Available

Bid Opening Date: December 29, 2017 at 2:00 p.m.

It is the responsibility of the bidder to ensure that all pages are included. Therefore, all bidders are advised to closely examine this package. Any questions regarding the completeness of this package should be immediately directed to City of South Bay, Jessica Figueroa (561) 996-6751 ext. 119.

BIDDERS SHALL SUBMIT, IN A SEALED PACKAGE OR CONTAINER, AT LEAST ONE ORIGINAL, SIGNED IN INK BY AN AGENT OF THE COMPANY HAVING AUTHORITY TO BIND THE COMPANY OR FIRM. FAILURE TO DO SO SHALL BE CAUSE FOR REJECTION OF YOUR BID.

Protests can be accepted only during the five (5) business day posting period.

CAUTION

It is the Bidder's sole responsibility to routinely check for any amendments that may be issued prior to the deadline for receipt of bids.

In accordance with the provisions of the ADA,
This document may be requested in an alternative format.

City of South Bay
335 SW 2nd Avenue
South Bay, FL. 33493

**City of South Bay
Palm Beach County**

Invitation to Bid

BID NO. 2017 – 06 BID TITLE: City Owned Surplus Real Estate

PROCUREMENT CONTACT: Jessica Figueroa TEL. # (561) 996-6751

FAX NO. (561) 996-7950 **EMAILADDRESS:** sbcityclerk@southbaycity.com

All bid responses must be received on or before December 29, 2017 before 2:00 p.m., Palm Beach County local time at which time all bids shall be publicly opened and read. SUBMIT BID TO: Jessica Figueroa

This invitation for Bid, General Conditions, Instructions to Bidders, Attachments, Amendments (if issued), and/or any other referenced document form a part of this bid solicitation and response thereto, and by reference are made a part thereof. The selected awardee shall be bound by all terms, conditions and requirements in these documents.

PURPOSE AND EFFECT: It is the purpose and intent of this invitation to secure bids for the City Owned Real Estate (Surplus), set forth on Exhibit "A". The selected awardee is hereby placed on notice that acceptance of its bid by the City shall constitute a binding contract.

**GENERAL CONDITIONS, INSTRUCTIONS AND
INFORMATION FOR BIDDERS**

1. GENERAL INFORMATION

Bidders are advised that this packages constitutes the complete set of specifications, terms, and conditions which forms the binding contract between the City of South Bay and the successful bidder. Changes to this invitation for bid may be made only by written amendment issued by the City of South Bay. Bidders are further advised to closely examine every section of this document, to ensure that it is fully understood. Questions or requests for explanations or interpretations of this document must be submitted to the Department contact in writing in sufficient time to permit a written response and, if required, will be provided to all prospective bidders, prior to the bid opening. Oral explanations or instructions given by any person or agent are not binding and should not be interpreted as altering any provision of this document. Bidder certifies that this bid is made without reliance on any oral representations made by the City.

2. LEGAL REQUIREMENTS

- a. **COMPLIANCE WITH LAWS AND CODES:** Federal, State, County and local laws, ordinances, rules and regulations that in any manner affect the items covered herein apply. Lack of knowledge by the bidder shall in no way be a cause for relief from responsibility.
- b. **DISCRIMINATION PROHIBITED.** South Bay is committed to assuring equal opportunity in the award of its contracts and complies with all laws prohibiting discrimination. The successful bidder is prohibited from discriminating against any employee, applicant, or client because of race, color, religion, disability, sex, age, national origin, ancestry, marital status, sexual orientation, or gender identity and expression.
- c. **AWARD OF CONTRACT.** The highest qualified bid that exceeds the minimum purchase price listed shall be awarded the bid. The City will Quit Claim the property to the successful bidder within ten (10) days of receipt of the Purchase Price. The Purchase Price shall be paid to the City within five (5) days of award of the bid in cash or immediately available funds satisfactory to the City. The City does not represent or guarantee the property is suitable for bidder's purposes. Bidders are required to undertake their own due diligence on each parcel and not rely on any presumption regarding the property whatsoever. Bidders take the property "As Is Where Is", in its existing condition.
- d. **PUBLIC ENTITY CRIMES.** F.S. 287.133 requires the City to notify all bidders of the following: "A person or affiliate who has been placed on the convicted vendor list following the conviction for a public entity crime may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in F.S. 287.017 for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list."
- e. **NON COLLUSION.** Bidder certifies that it has entered into no agreement to commit a fraudulent, deceitful, unlawful, or wrongful act, or any act which may result in unfair advantage for one or more bidders over other bidders. Conviction for the Commission of any fraud or act of collusion in connection with any sale, bid, quotation, proposal or other act incident to doing business with the City of South Bay may result in permanent debarment. No premiums, rebates or gratuities are permitted, either with, prior to or after delivery of material or provision of services. Any such violation may result in award cancellation, return of materials, discontinuation of services, and removal from the vendor bid list(s), and/or debarment or suspension from doing business with the City of South Bay.

- f. **LOBBYING.** Bidders are advised that the City prohibits a bidder or anyone representing the bidder from communicating with any City Commissioner, or any employee authorized to act on behalf of the Commission to award a particular contract regarding its bid, i.e., a "Cone of Silence".

The "Cone of Silence" is in effect from the date/time of the deadline for submission of the bid, and terminates at the time that the Commissioners or a City Department authorized to act on their behalf, awards or approves a contract, rejects all bids, or otherwise takes action which ends the solicitation process.

Bidders may, however, contact any Commissioner, Commissioner's staff, or any employee authorized to act on behalf of the Commission to award a particular contract, via written communication, i.e., facsimile, e-mail or U.S. Mail.

Violations of the "Cone of Silence" are punishable by a fine of \$250.00 per violation.

- g. **CONFLICT OF INTEREST.** All bidders shall disclose with their bid the name of any officer, director, or agent who is also an employee or a relative of an employee of the City. Further, all bidders shall disclose the name of any employee or relative of an employee who owns, directly or indirectly, an interest of ten percent or more in the bidder's firm or any of its branches.
- h. **SUCCESSORS AND ASSIGNS.** The City and the successful bidder each binds itself and its successors and assigns to the other party in respect to all provisions of this Contract. Neither the City nor the successful bidder shall assign, sublet, convey or transfer its interest in this Contract without the prior written consent of the other.
- i. **INDEMNIFICATION.** Regardless of the coverage provided by any insurance, the successful bidder shall indemnify, save harmless and defend the City, its agents, servants or employees from and against any and all claims, liability, losses and/or causes of action which may arise from any negligent act or omission of the successful bidder, its subcontractors, agents, servants or employees.
- j. **PUBLIC RECORDS.** Any material submitted in response to this invitation for bid is considered a public document in accordance with Section 119.07, F.S. This includes material which the responding bidder might consider to be confidential or a trade secret. Any claim of confidentiality is waived upon submission, effective after opening pursuant to Section 119.07, F.S.
- k. **INCORPORATION, PRECEDENCE, JURISDICTION.** This invitation for bid shall be included and incorporated in the final award. The order of contractual precedence shall be the bid document (original terms and conditions), bid response, and purchase order or term contract order. Any and all legal action necessary to enforce the award or the resultant contract shall be held in Palm

Beach County and the contractual obligations shall be interpreted according to the laws of Florida.

1. **LEGAL EXPENSES.** The City shall not be liable to a bidder for any legal fees, court costs, or other legal expenses arising from the interpretation or enforcement of this contract, or from any other matter generated by or relating to this contract.

3. **BID SUBMISSION**

- a. **SUBMISSION OF RESPONSES.** All bid responses must be submitted on the provided Invitation for Bid "Response" Form. Bid responses on vendor letterhead/quotation forms shall not be accepted. Responses must be typewritten or written in ink, and must be signed in ink by an agent of the company having authority to bind the company or firm. **FAILURE TO SIGN THE BID RESPONSE FORM AT THE INDICATED PLACES SHALL BE CAUSE FOR REJECTION OF THE BID.** Bid responses are to be submitted to **Jessica Figueroa, City Clerk at 335 SW 2nd Avenue, South Bay, FL. 33493** no later than the time indicated on the solicitation preamble, and must be submitted in a sealed envelope or container bearing the bid number for proper handling.
 - b. **CONDITIONED OFFERS.** Bidders are cautioned that any condition, qualification, provision, or comment in their bid, or in other correspondence transmitted with their bid, which in any way modifies, takes exception to, or is inconsistent with the specifications, requirements, or any of the terms, conditions or provisions of this solicitation is sufficient cause for the rejection of their bid as non-responsive.
 - c. **ACCEPTANCE/REJECTION OF BIDS.** City reserves the right to accept or to reject any or all bids. City also reserves the right to (1) waive any non-substantive irregularities and technicalities; (2) reject the bid of any bidder who has previously failed in the proper performance of a contract of a similar nature, who has been suspended or debarred by another governmental entity, or who is not in a position to perform properly under this award.
4. **BID OPENING / AWARD OF BID.**
 - a. **OBSERVING THE PUBLISHED BID OPENING TIME.** The published bid opening time shall be scrupulously observed. It is the sole responsibility of the bidder to ensure that their bid arrives prior to the published bid opening time. Any bid delivered after the precise time of bid opening shall not be considered, and shall be returned to the bidder unopened if bidder identification is possible without opening. Bid responses by telephone, electronics, or facsimile shall not be accepted. Bidders shall not be allowed to modify their bids after the published bid opening time.

- b. **POSTING OF AWARD RECOMMENDATION.** Recommended awards shall be publicly posted for review at the City prior to final approval. Bidders desiring a copy for the bid posting summary may request same by enclosing a self-addressed, stamped envelope with their bid.

5. **PALM BEACH COUNTY OFFICE OF INSPECTOR GENERAL AUDIT REQUIREMENTS.**

Pursuant to Palm Beach County Code, Section 2-421 – 2.440, as amended, Palm Beach County's Office of Inspector General is authorized to review past, present and proposed City contracts, transactions, accounts, and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the City, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 – 2-440 and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

Discussion

CITY OWNED SURPLUS REAL ESTATE
(CORE)

This is a list of surplus City Owned Real Estate (CORE) that is being marketed for immediate economic development opportunities in South Bay. The proposed purchaser shall be able to demonstrate the ability to develop the CORE within the specified time frame.

<i>BID No.</i>	<i>Parcel Control No.</i>	<i>Acres</i>	<i>Name/Description</i>	<i>Address</i>	<i>Minimum Bid Amount</i>
001	58364414070000341	0.0493	Vacant Residential	SW 4 th Ave	
002	58364414110010230	0.07	Vacant Residential	NW 9 th Ave	
003	58364414020000231	0.1344	Vacant Residential	135 NW 11 th Ave	
004	58364414130000150	0.04	Commercial	US Hwy 27	
005	58364414150010080	0.33	• Old Am Legion Bldg	22 NW 1 st Ave	
006	58364411020040000	3.00	Bldg w/Easement	241 Azucana Rd.	
007	58364414160020130	0.19	Vacant Residential	121 NW 10 th Ave	
008	58364414160020110	0.15	Vacant Residential	NW 10 th Ave	
009	58364414050010060	0.15	Vacant Residential	135 SW 10 th Ave	



Name of Bidder: _____

Parcel Control Number: _____

Phone Number: _____

Fax Number: _____

Submitted: _____, 20____

STATE PRICE IN WORDS AND FIGURES

TOTAL BASE BID: _____ DOLLARS
(\$ _____)

BIDDER: _____ DATE: _____

Name of Contractor Service Representative:

Phone Number: _____ Fax Number: _____

E-Mail Address: _____

Company Name: _____

Street Address: _____

City, State, and Zip Code: _____

Telephone No: _____ Fax No: _____

Federal I. D. #: _____

***South Bay, the Crossroads of South Florida,
We envision a sustainable economy, Let Us Grow Together***

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA, AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE THE ENGAGEMENT LETTER FOR AUDIT SERVICES WITH HCT CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS, LLC (HCT), FOR COMPLETION OF THE ANNUAL INDEPENDENT AUDIT FOR THE CITY OF SOUTH BAY FOR FISCAL YEAR 2016-2017; PROVIDING FOR EFFECTIVE DATE.

6b. RESOLUTION 112-2017

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA, APPROVING A SPECIAL EVENT APPLICATION FOR A CHRISTMAS PARADE AT TANNER PARK AND AUTHORIZING THE CITY MANAGER TO TAKE ALL NECESSARY AND EXPEDIENT ACTION TO EFFECTUATE THE INTENT OF THIS RESOLUTION; PROVIDING FOR AN EFFECTIVE DATE

6c. RESOLUTION 113-2017

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NUMBER TWO TO THE ATTACHED ECONOMIC DEVELOPMENT TRANSPORTATION PROJECT FUND AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION; PROVIDING FOR AN EFFECTIVE DATE

6d. RESOLUTION 114-2017

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA AUTHORIZING THE CITY MANAGER TO EXECUTE A CARNIVAL AGREEMENT BETWEEN THE CITY OF SOUTH BAY AND PREMIUM SHOWS OF AMERICA, LLC FOR THE PROVISION OF CARNIVAL RELATED SERVICES; PROVIDING FOR AN EFFECTIVE DATE.

6e. RESOLUTION 115-2017

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE THE ATTACHED AMENDMENT TO THE AGREEMENT (R2016-0567) BETWEEN THE CITY OF SOUTH BAY AND PALM BEACH COUNTY; PROVIDING FOR AN EFFECTIVE DATE

6f. RESOLUTION 116-2017

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE PALM BEACH COUNTY SUPERVISOR OF ELECTIONS (SOE) FOR VOTING PROCESSING EQUIPMENT USE AND ELECTION SERVICES FOR THE CITY'S MARCH 13, 2018 ELECTION AND OTHER ELECTIONS CALLED DURING THE 2018 CALENDAR YEAR; ESTABLISHING A CANVASSING BOARD; PROVIDING AN EFFECTIVE DATE.

7. ORDINANCE (SECOND AND FINAL READING)

7a. ORDINANCE 11-2017

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA, RELATING TO COMMUNICATIONS FACILITIES IN PUBLIC-RIGHTS-OF-WAY; AMENDING THE CITY OF SOUTH BAY'S CODE OF ORDINANCES TO

CREATE CHAPTER 33 TO BE ENTITLED "COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY"; PROVIDING FINDINGS AND INTENT; PROVIDING DEFINITIONS; PROVIDING FOR REGISTRATION OF COMMUNICATION SERVICE PROVIDERS; PROVIDING FOR RULES AND REGULATIONS FOR COMMUNICATION SERVICE PROVIDERS; WIRELESS SERVICE PROVIDERS AND SMALL WIRELESS SERVICE PROVIDERS AND THEIR FACILITIES; PROVIDING FOR A DUTY TO NOTIFY; PROVIDING FOR RENOVATION AND SUSPENSION; PROVIDING FOR TERMINATION; PROVIDING FOR APPEALS; PROVIDING FOR APPLICATION OF THESE RULES TO EXISTING COMMUNICATION FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR INSURANCE; PROVIDING FOR INDEMNIFICATION; PROVIDING FOR CONSTRUCTION BOND; PROVIDING FOR ABANDONMENT OF A COMMUNICATIONS FACILITY; PROVIDING FOR PASS-THROUGH PROVIDER FEES AND FEES FOR USE OF CITY UTILITY POLES; PROVIDING FOR RESERVATION OF RIGHTS AND REMEDIES; PROVIDING FOR THIS ORDINANCE TO CONTROL IN THE EVENT OF CONFLICT WITH OTHER ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

8. ROSENWALD ELEMENTARY SCHOOL

9. FINANCE REPORT

9a. Accounts Payable Report

10. CITY CLERK REPORT

10a. Next City Commission Meeting – December 05, 2017

11. CITY MANAGER REPORT

11a. Brownfield Status Update

11b. Park of Commerce

12. CITY ATTORNEY REPORT

13. FUTURE AGENDA ITEMS

14. COMMISSIONER COMMENTS/FOR THE GOOD OF THE ORDER

15. ADJOURNMENT

Proclamation

A proclamation of the City of South Bay

WHEREAS, world-wide an estimated 36.7 million people are living with HIV/AIDS, and an estimated 1.8 million new infections occur each year, yet only 19.5 million people who are living with HIV are currently accessing life-saving antiretroviral therapy (ART); and

WHEREAS, the global spread of HIV infection and AIDS necessitates a worldwide effort to increase communication, education and action to stop the spread of HIV; and

WHEREAS, the Joint United Nations Program on HIV/AIDS (UNAIDS) observes December 1 of each year as “**World AIDS Day**”, and leads and inspires the world to achieve its shared vision of zero new HIV infections, zero discrimination and zero AIDS-related deaths; and

WHEREAS, the 2017 World AIDS Day theme is “**My Health, My Right**” and focuses on the right to health and explores the challenges people around the world face in exercising their rights; and

WHEREAS, in the United States, more than 1.2 million people are infected with HIV and every 13 minutes a new infection occurs resulting in an estimated 39,500 new annual infections; and

WHEREAS, the Palm Beach County HIV Community Prevention Partnership and the Palm Beach County HIV CARE Council, through its partners are working together to renew HIV/AIDS awareness and to expand and strengthen the local effort to stop the spread of HIV in Palm Beach County on World AIDS Day.

NOW, THEREFORE, the City Commission of the City of South Bay does hereby proclaim “**World AIDS Day**” on December 1, 2017; and urge all residents of the City of South Bay to take part in activities and observances designed to increase awareness and understanding of HIV/AIDS as a global challenge and urge residents to join the global effort to prevent further spread of HIV/AIDS.

ATTEST:

Joe Kyles, Mayor

Jessica Figueroa, City Clerk

RESOLUTION 108-2017

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA, AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE THE ENGAGEMENT LETTER FOR AUDIT SERVICES WITH HCT CERTIFIED PUBLIC ACCOUNTANTS AND CONSULTANTS, LLC (HCT), FOR COMPLETION OF THE ANNUAL INDEPENDENT AUDIT FOR THE CITY OF SOUTH BAY FOR FISCAL YEAR 2016-2017; PROVIDING FOR EFFECTIVE DATE.

WHEREAS, on July 2, 2013 South Bay City Commission adopted Resolution 43-2013 entering into an agreement with HCT Certified Public Accounts and Consultants, LLC ("HCT") to perform the annual independent audit for fiscal years 2013-2016; and

WHEREAS, on February 7, 2017 South Bay City Commission adopted Resolution 70-2017 entering into an extension agreement with HCT Certified Public Accounts and Consultants, LLC ("HCT") to perform the annual independent audit for fiscal year 2016-2017; and

WHEREAS, HCT is contracted to provide auditing services for the fiscal year ending September 30, 2017; and

WHEREAS, following execution of an engagement letter, HCT will begin the auditing of the City's financial statements in accordance with auditing standards generally accepted in the United States of America and Government Auditing Standard; and

WHEREAS, the City is required to complete a single audit for State appropriations received during the previous fiscal year; and the City and HCT desire to revise the HCT Engagement Letter to provide for a cost of Five Thousand Dollars (\$5,000.00) for each single audit cost related to a major program; and

WHEREAS, HCT, upon completion of the audit, will issue an opinion on the City's financial statements.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF SOUTH BAY, AS FOLLOWS:

Section 1. **Adoption of Representations.** The foregoing "Whereas" clauses are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. **Authorization of Mayor and City Manager.** The Mayor and the City Manager of the City of South Bay are hereby authorized to execute the Engagement Letter for Audit Services with HCT Certified Public Accounts and Consultants, LLC for completion of the Annual Independent Audit for the City of South Bay for fiscal year 2016-2017, attached hereto as Exhibit "A" and take all necessary and expedient action to carry out the intent of this Resolution.

Section 3. **Effective Date.** This Resolution shall be effective immediately upon its passage and adoption.

PASSED AND ADOPTED this 21st day of November, 2017.

Joe Kyles, Mayor

Attested

By: _____
Jessica Figueroa, City Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

Burnadette Norris-Week, Esquire
City Attorney

Moved by: _____

Seconded by: _____

VOTE:

Commissioner Berry

_____ (Yes)

_____ (No)

Commissioner McKelvin

_____ (Yes)

_____ (No)

Commissioner Scott

_____ (Yes)

_____ (No)

Vice-Mayor Wilson

_____ (Yes)

_____ (No)

Mayor Kyles

_____ (Yes)

_____ (No)

October 11, 2017

To the Honorable Mayor and Members of the City Council and Management
City of South Bay
335 SW 2nd Avenue
South Bay, Florida 33493

We are pleased to confirm our understanding of the services we are to provide the City of South Bay, Florida (the 'City') for the year ended September 30, 2017. We will audit the financial statements of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information, including the related notes to the financial statements, which collectively comprise the basic financial statements of the City as of and for the year ended September 30, 2017. Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement the City's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the City's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance. The following RSI is required by U.S. generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

- 1) Management's Discussion and Analysis.
- 2) Budgetary Comparison Schedules

We have also been engaged to report on supplementary information other than RSI that accompanies the City's financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America, and we will provide an opinion on it in relation to the financial statements as a whole, in a report combined with our auditor's report on the financial statements:

- 1) Combining and individual nonmajor fund financial statements
- 2) Schedule of expenditures of federal award and state financial assistance

Audit Objective

The objective of our audit is the expression of opinions as to whether your financial statements are fairly presented, in all material respects, in conformity with generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. The objective also includes reporting on ---

- Internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Internal control over compliance related to major programs and an opinion (or disclaimer of opinion) on compliance with federal statutes, regulations, and the terms and conditions of federal awards that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance).

The *Government Auditing Standards* report on internal control over financial reporting and on compliance and other matters will include a paragraph that states that (1) the purpose of the report is solely to describe the scope of testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance, and (2) the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. The Uniform Guidance report on internal control over compliance is solely to describe the scope of testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance. Both reports will state that the report is not suitable for any other purpose.

The objective of our audit is the expression of opinion as to whether your financial statements are fairly presented, in all material respects, in conformity with generally accepted accounting principles and to report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. Our audit will be conducted in accordance with auditing standards generally accepted in the United States of America; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of the Uniform Guidance, and will include tests of the accounting records, a determination of major program(s) in accordance with the Uniform Guidance, and other procedures we consider necessary to enable us to express such opinions. We will issue a written report upon completion of our audit of the City's financial statements and Single Audit. Our report will be addressed to the Honorable Mayor and Members of the City Council of the City. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or may withdraw from this engagement.

Audit Procedures—General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the government or to acts by management or employees acting on behalf of the government. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements, or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or major programs. However, we will inform the appropriate level of management of any material errors, fraudulent financial reporting, or misappropriation of assets that comes to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential, and of any material abuse that comes to our attention. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, funding sources, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will require certain written representations from you about your responsibilities for the financial statements; schedule of expenditures of federal awards; federal award programs; compliance with laws, regulations, contracts, and grant agreements; and other responsibilities required by generally accepted auditing standards.

Audit Procedures—Internal Control

Our audit will include obtaining an understanding of the government and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by the Uniform Guidance, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to the Uniform Guidance.

An audit is not designed to provide assurance on internal control or to identify deficiencies in internal control. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, and the Uniform Guidance.

Audit Procedures—Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City's compliance with the provisions of applicable laws, regulations, contracts, and agreements, including grant agreements. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

The Uniform Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with federal statutes, regulations, and the terms and conditions of federal awards applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the *OMB Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the City's major programs. The purpose of these procedures will be to express an opinion on the City's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to the Uniform Guidance.

Management Responsibilities

Management is responsible for (1) designing, implementing, and maintaining effective internal controls, including internal controls over federal awards, and for evaluating and monitoring ongoing activities to help ensure that appropriate goals and objectives are met; (2) following laws and regulations; (3) ensuring that there is reasonable assurance that government programs are administered in compliance with compliance requirements; and (4) ensuring that management and financial information is reliable and properly reported. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements. You are also responsible for the selection and application of accounting principles; for the preparation and fair presentation of the financial statements, schedule of expenditures of federal awards, and all accompanying information in conformity with U.S. generally accepted accounting principles; and for compliance with applicable laws and regulations (including federal statutes) and the provisions of contracts and grant agreements (including award agreements). Your responsibilities also include identifying significant contractor relationships in which the contractor has responsibility for program compliance and for the accuracy and completeness of that information.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, (2) access to personnel, accounts, books, records, supporting documentation, and other information as needed to perform an audit under the Uniform Guidance, (3)

additional information that we may request for the purpose of the audit, and (4) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence.

Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws, regulations, contracts, agreements, and grants. Management is also responsible for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements, or abuse that we report. Additionally, as required by the Uniform Guidance, it is management's responsibility to evaluate and monitor noncompliance with federal statutes, regulations, and the terms and conditions of federal awards; take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings; promptly follow up and take corrective action on reported audit findings; and prepare a summary schedule of prior audit findings and a separate corrective action plan.

You are responsible for identifying all federal awards received and understanding and complying with the compliance requirements and for the preparation of the schedule of expenditures of federal awards (including notes and noncash assistance received) in conformity with the Uniform Guidance. You agree to include our report on the schedule of expenditures of federal awards in any document that contains and indicates that we have reported on the schedule of expenditures of federal awards. You also agree to include the audited financial statements with any presentation of the schedule of expenditures of federal awards that includes our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the schedule of expenditures of federal awards in accordance with the Uniform Guidance; (2) you believe the schedule of expenditures of federal awards, including its form and content, is stated fairly in accordance with the Uniform Guidance; (3) the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the schedule of expenditures of federal awards.

You are also responsible for the preparation of the other supplementary information, which we have been engaged to report on, in conformity with U.S. generally accepted accounting principles. You agree to include our report on the supplementary information in any document that contains, and indicates that we have reported on, the supplementary information. You also agree to include the audited financial statements with any presentation of the supplementary information that includes our report thereon. Your responsibilities include acknowledging to us in the written representation letter that (1) you are responsible for presentation of the supplementary information in accordance with GAAP; (2) you believe the supplementary information, including its form and content, is fairly presented in accordance with GAAP; (3) the methods of measurement or presentation have not changed from those used in the

prior period (or, if they have changed, the reasons for such changes); and (4) you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

Engagement Administration, Fees, and Other

We may from time to time and depending on the circumstances, use third-party service providers in serving your account. We may share confidential information about you with these service providers, but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers.

We understand that your employees will prepare all cash, accounts receivable, or other confirmations we request and will locate any documents selected by us for testing.

At the conclusion of the engagement, we will complete the appropriate sections of the Data Collection Form that summarizes our audit findings. It is management's responsibility to electronically submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditors' reports, and corrective action plan) along with the Data Collection Form to the federal audit clearinghouse. We will coordinate with you the electronic submission and certification. The Data Collection Form and the reporting package must be submitted within the earlier of 30 calendar days after receipt of the auditors' reports or nine months after the end of the audit period.

The audit documentation for this engagement is the property of HCT Certified Public Accountants & Consultants LLC and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to the Auditor General or its designee. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of HCT Certified Public Accountants & Consultants LLC personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the Auditor General or its designee. The Auditor General or its designee may intend or decide to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release date or for any additional period requested by the Auditor General or its designee. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

We expect to begin our audit on approximately February 2018 and to issue our reports no later than May 30, 2018. Roderick Harvey, CPA, CVA, is the engagement partner and is responsible for supervising the engagement and signing the report or authorizing another individual to sign it.

Our fee for these services will be at our standard hourly rates plus out-of-pocket costs (such as report reproduction, word processing, postage, travel, copies, telephone, etc.) except that we agree that our gross fee, including expenses will not exceed \$23,760, with an additional \$5,000 for each major program tested under the single audit. Our standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your audit. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if your account becomes 30 days or more overdue and may not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our report. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket costs through the date of termination. The above fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

Employee Retention

Any such employee of HCT Certified Public Accountants & Consultants LLC hired by the City within two years after end of this engagement (issuance of reports) will be subject to a placement fee payable to HCT Certified Public Accountants & Consultants LLC in the amount equal to the greater of \$75,000.

Arbitration and Equitable Relief

(a) Arbitration. Except as provided in subsection (b) below, this entity agrees that any dispute, claim or controversy concerning this engagement or the termination of this contract or any dispute, claim or controversy arising out of or relating to any interpretation, construction, performance or breach of this Agreement, shall be settled by arbitration to be held in South Bay, Florida in accordance with the rules then in effect of the American Arbitration Association. The arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the arbitrator shall be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court having jurisdiction. HCT Certified Public Accountants & Consultants LLC and this entity shall each pay one-half of the costs and expenses of such arbitration, and each of us shall separately pay our counsel fees and expenses.

(b) Equitable Remedies. This governmental entity agrees that it would be impossible or inadequate to measure and calculate HCT Certified Public Accountants & Consultants LLC's damages from any breach of the covenants. Accordingly, this entity agrees that if this entity breaches any of the covenants, HCT Certified Public Accountants & Consultants LLC will have available, in addition to any other right or remedy available, the right to obtain an injunction from a court of competent jurisdiction restraining such breach or threatened breach and to specific performance of any such provision of this Agreement.

This entity further agree that no bond or other security shall be required in obtaining such equitable relief and this entity hereby consent to the issuance of such injunction and to the ordering

We appreciate the opportunity to be of service to the City of South Bay, Florida and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return it to us.

Very truly yours,

HCT Certified Public Accountants & Consultants, LLC

RESPONSE:

This letter correctly sets forth the understanding of the City of South Bay, Florida

Management signature: _____

Title: _____

Date: _____

Governance signature: _____

Title: _____

Date: _____

RESOLUTION NO. 112- 2017

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA, APPROVING A SPECIAL EVENT APPLICATION FOR A CHRISTMAS PARADE AT TANNER PARK AND AUTHORIZING THE CITY MANAGER TO TAKE ALL NECESSARY AND EXPEDIENT ACTION TO EFFECTUATE THE INTENT OF THIS RESOLUTION; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City of South Bay has developed an application process for approving Special Events within the City limits which includes Parades; and

WHEREAS, applicant Kings Tutoring and Mentoring Foundation, Inc., desires to hold a Christmas Parade and Holiday in the Park activity within Tanner Park on December 16, 2017; and

WHEREAS, the applicant has submitted a Special Event application attached hereto as Exhibit "A"; and

WHEREAS, the details of the event include the use of: Law Enforcement; Public Works; Parks and Recreation; Risk Management and Palm Beach County Rescue and are included in an email addendum attached as Exhibit "B"; and

WHEREAS, City Commission of the City of South Bay desires to approve the Special Event Application attached hereto as Exhibit "A" as in the best interests of the residents of the City.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA, AS FOLLOWS:

Section 1. Adoption of Representations. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and the same are hereby made a specific part of this Resolution.

Section 2. Approval of Special Event Application and Authorization of City Manager. The City Commission of the City of South Bay hereby approves the Special Event Application submitted by Kings Tutoring and Mentoring Foundation, Inc. for a Christmas Parade and Holiday in the Park event attached hereto as Exhibit "A". The

City Manager is authorized to take all necessary and expedient action to effectuate the intent of this Resolution.

Section 3. Effective Date. This Resolution shall be effective immediately upon its passage and adoption.

PASSED and ADOPTED this 21st day of November 2017.

Joe Kyles, Mayor

Attested

By: _____
Jessica Figueroa, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Burnadette Norris-Week, Esquire
City Attorney

Moved by: _____

Seconded by: _____

VOTE:

Commissioner Berry	_____ (Yes)	_____ (No)
Commissioner McKelvin	_____ (Yes)	_____ (No)
Commissioner Scott	_____ (Yes)	_____ (No)
Vice-Mayor Wilson	_____ (Yes)	_____ (No)
Mayor Kyles	_____ (Yes)	_____ (No)



Exhibit(A)

**CITY OF SOUTH BAY
SPECIAL EVENT APPLICATION**

Applicant and Host Organization Information

Host Organization Name - The Host Organization is legally and financially responsible for the overall organization, management, and implementation of an event and its related activities.

Host Organization Name: Kings Tutoring and Mentoring Foundation Inc

Chief Officer - The Chief Officer of the Host Organization must be identified and sign the permit application. Typically, the Chief Officer is the Chief Executive Officer, President, Executive Director or Board Chair of the Host Organization.

Chief Officer: Barbara King
Host Organization website: KingsTM.org
Address: 206 SW 12th Ave
City: South Bay State: FL Zip Code: 33493
Phone: (561) 449-3793 Cell: _____ Fax: _____
Email: kingsstarttutoringmentoring@gmail.com

For Profit: _____

Non-Profit: X

If yes, you must attach to this application a copy of your Florida Consumer's Certificate of Exemption or your IRS 501(c) 3 Determination Letter.

Applicant/Primary Contact - Please list any person, professional event organizer, event service provider hired by you that is authorized to work on your behalf to plan this event.

First: Chikyeria Simpson Last: Simpson
Mailing Address: _____
City: South Bay State: FL Zip Code: 33493
Phone: (561) 449-3793 Cell: (561) 986-0006
Email: belegant_events@yahoo.com

A written communication from the Chief Officer of the Host Organization authorizing the applicant to apply for this Special Event Permit on their behalf must be submitted with your permit application.

Nov 17

Event Information

Name of Event: Christmas Parade + Holiday in The Park
Is this an annual event? ☐ No ☒ Yes If yes, how many years has it been held? 1

Anticipated Attendance - The estimated number of people who will attend or watch your event.

Total 500 Per Day x 1 Number of event days = 500 Grand Total

Anticipated Participants - The estimated number of participants (staff, volunteers, vendors, etc.) should be based on the number of the total number of people you anticipate will participate in the event or provide support services to the event.

Total _____ Per Day x _____ Number of event days = _____ Grand Total

Event Description - Information you provide in this section of your permit application may be used for promotional purposes by the City of South Bay.

Event Category

☐ Organized Run/Walk ☐ Neighborhood Block Party ☒ Festival/Celebration
☐ Street Festival ☐ Concert/Performance ☐ Cycling Event
☐ Parade/Procession/March ☐ Other, please specify: _____

Event Location

☒ Tanner Park
☐ Cox Park

☐ Streets or ROW, please specify: _____

☐ Other, please specify: Parade: Line up at NW 2nd street travel down NW 1st Ave to Milk Blvd, Rt on NW 42nd to SW 2nd Ave, Lf on NW 1st Ave and end at Tanner Park

Date/Time

Setup

Date: 12/16/17 Start Time: _____ End Time: _____

Event Date

Date: _____ Start Time: _____ End Time: _____

Move-out

Date: _____ Start Time: _____ End Time: _____



Site Plan/Route Map Information & Event Components

Site Plan/Route Map

Your site plan/route map must be submitted along with your completed application. Applications without site plans/route maps are incomplete and will be rejected and returned to the applicant.

Please attach a clear and legible site plan or map with the following indicated:

1. North, indicated by a directional arrow symbol.
2. An outline of the entire event venue including the names of all streets or areas that are part of the venue and the surrounding area. If the event involves a moving route of any kind, indicate the direction of travel and all street or lane closures.
3. The location and dimensions of all physical equipment being placed, including, but not limited to, any stage(s), merchandize vendors, food concessions, food trucks, sponsors, tents, signs, barricades, portable restrooms, vehicles, picnic shelters, fireworks shoot site, etc.
4. Location of temporary alcohol sales including where both sales and consumption occur, plus dimensions and type of fencing to be used.
5. Indicate 20' wide fire lane clearances in all areas and the location of all fire hydrants.
6. Generator locations and/or source of electricity.
7. Placement of vehicles and/or trailers.
8. Exit locations for outdoor events that are fenced.
9. Accessible viewing area.
10. Parking and Disabled parking areas.

Is the event open to the public?

☒ Yes
☐ No

Is there an admission fee? If yes, please provide amounts:

☐ Yes _____
☐ Yes _____

Does your event involve the use of alcoholic beverages?

☒ No

If yes, please check all that apply:

☐ Beer Sales ☐ Beer & Wine Sales
☐ Beer, Wine & Distilled Spirits Sales ☐ Host & Alcohol Sales

Please Note: Alcoholic beverages cannot be sold, distributed, nor consumed on City property without appropriate zoning. If you answered yes to any of the above, please also complete and attach an Alcoholic Beverages (Temporary)

Sales Form and submit it along with this application

Are there musical entertainment features related to your event? ☐ Yes ☒ No

If yes, complete the following information and attach a listing of all stage performance schedules

Size and Number of Stage(s) _____

How much electric (in amps) does your stage need? _____

Will a sound check be conducted prior to the event? ☐ Yes ☒ No

If yes, Start time: _____ Finish time: _____

Will there be merchandise vending at your event?

____ Yes ____ No

If yes, please complete the following information and attach a list of all vendors and be sure to indicate vending and electrical requirements on your site plan.

How many vendors? _____

How many will need electric? _____

How much electric (in amps) does your vending area need? _____

Will you hire a private security company?

____ Yes ☒ No

If yes, please provide the name of the company and the schedule:

Please Note: Palm Beach County Sheriff's Office will review your special event application to make a final determination as to the as to the number of officers, vehicles and/or equipment you will be required to have in order to make sure your event is conducted safely.

Does your event require overnight security?

____ Yes ☒ No

Does your event require the use of picnic shelters (if applicable)?

____ Yes ____ No

Will inflatable's (moon bounce) be used at your event?

☒ Yes ____ No

If yes, please provide the name of company: Busy Bee Party Rentals

Will your event include fireworks or other pyrotechnics?

____ Yes ☒ No

If yes, please describe: _____

Name of company: _____

Does your event include food concession and/or preparation areas? ____ Yes ____ No

If yes, please describe how food will be served and/or prepared on site:

Please note: Temporary food service for events must meet all State and local guidelines and requirements

Do you intend to cook food at your event?

☒ Yes ☒ No

If yes, please specify method

☒ Gas

____ Electric

____ Fryers - Name of grease removal contractor: _____

Date & time of pickup: _____

____ Other, please specify: _____

Do you intend to have food trucks at your event?

☒ Yes ____ No

If yes, how many?

NOT sure yet, once secure approval then I will
solicit vendors & participants



Do you plan to provide portable rest room facilities at your event?

If yes, Total number of toilets: _____

Number of ADA accessible toilets: _____

Number of hand sinks: _____

Restroom Company: _____

Equipment Setup Date: _____

Time: _____

Equipment Pickup Date: _____

Time: _____

Will your event involve the use of a parking and/or shuttle plan? ☐ Yes ☒ No

If yes, please describe: _____

Will your event be marketed, promoted or advertised? ☒ Yes ☐ No

If yes, please describe: Social Media, Flyers, Local Newspaper

Will there be live media coverage during the event?

If yes, please describe where you plan on parking the media: _____

Accessibility Plan

Please describe your plan for people with special needs participation, parking, and viewing:

Sanitation & Recycling

You are responsible for leaving the venue clean and clear of debris. Please describe your plan for cleanup and removal of waste, recyclable goods and garbage during and after your event.

Number of trash cans: _____

Number of recycling containers: _____

Number of dumpsters: _____

Sanitation Company: _____

Equipment Setup Date: _____

Time: _____

Recycling Company: _____

Equipment Setup Date: _____

Time: _____

Mitigation of Impact

Due to the nature of your event, the City of South Bay may require you, at your expense, to officially notify residents, business; places of worship, schools and other entities that may be directly impact by your event.

Insurance Requirements

You are required to procure and maintain commercial general liability insurance with a minimum of \$1,000,000 per occurrence and a \$2,000,000 general aggregate. Proof of insurance must be submitted minimum of 30 days prior to the first day of the rental period through the move-out activities. This insurance must name the City of South Bay as an additional insured in any and all policies. Due to the nature of your event, additional insurance may be required.

Affidavit of Applicant & Hold-Harmless Acknowledgement

By signing this application, you are certifying that you understand the information in this application to be true and correct to the best of your knowledge, and that you agree to comply with City of South Bay Code of Ordinances (Code: 28-51) and all City rules, regulations and policies. Should the City grant approval and a Special Event Permit be issued, you also agree to comply with any other rules and requirements provided by law.

In consideration of the privileges that may be granted by issuance of a Special Event permit, the Host Organization shall, to the fullest extent permitted by law, indemnify, defend and hold harmless the City, and all officials, agents and employees of the City, from and against all claims which may result from allowing Applicant to utilize the public right-of-way or City owned park. "Claim" as used in this agreement means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease or death, or injury to or destruction of tangible property including loss of use resulting there from.

The Host Organization's obligation to indemnify, defend, and hold harmless includes any claim by Host Organization's agents, employees, representatives or any subcontractor or its employees. The Host Organization acknowledges that the provisions of this paragraph apply to and include any liability resulting for incidents involving the streetcar electrified cables. Said indemnification shall not include claims resulting solely from the act, omission, negligence, or other fault on the part of the City, its official, agents, or employees.

I further certify that I, on behalf of the Host Organization, am also authorized to commit that organization, and therefore agree to be financially responsible for any costs and fees that may be incurred by or on behalf of the event to the City of South Bay.

Print Name of Host Organization: Kings Tutoring and Mentoring Foundation Inc.

Printed Name of Chief Officer: Barbara King

Title: President

Signature: [Signature] Date: _____

Print Name of Primary Contact: Barbara King

Title: President

Signature: [Signature] Date: _____

Thank you for completing your Special Event Application.

Please submit your completed application along with a detailed site plan to the City Clerk's Office
335 SW 2nd Avenue, South Bay, FL 33493 or fax to: 561-996-7950

Incomplete, illegible, and/or unsigned applications will not be accepted.

Submission of a Special Event Application constitutes a request to use City property
for the purpose of an event and does not guarantee event approval.



FOR INTERNAL USE ONLY

Date Received: _____

Reviewed By: _____

Department: _____

Reviewed By: _____ Phone# _____

Department: _____ Phone# _____

Reviewed By: _____

Department: _____ Phone# _____

Reviewed By: _____

Department: _____ Phone# _____

City Commission Approval: _____

City Manager Approval: _____

Applicant Contacted Regarding Fees: ☐ YES ☐ NO Date Contacted: _____

Deposit Received: ☐ YES ☐ NO Date Deposit Received: _____

Facility Inspected: ☐ YES ☐ NO Date Inspected: _____




Facility Damaged: ☐ YES ☐ NO

List Damages: _____

Damages Charges: _____

Refund Request to Finance: ☐ YES ☐ NO Refund Request Date: _____

Refund check to Applicant: ☐ YES ☐ NO Date Applicant Refund Sent: _____

From:  Leondrae Camel
Subject: Special Event Parade departmental Notes
To:  paralegal  Bumadette Norris-Weeks

Wednesday, November 15, 2017 2:57:05 PM 

Mrs. Norris-Weeks,

Exhibit B

The notes below are from each respective department that would be presented to the Commission for consideration during the November 21st meeting for the Special Event Holiday parade:

These notes were also shared with the organizing entity.

Re: King's Tutoring Holiday Parade

Law Enforcement:

PBSO will need the following:

Five (5) Deputies at the standard permit rate of \$46.00 per hour with a four (4) hour minimum. A Sergeant at the standard rate of \$64.00 per hour with a four hour minimum this request would be to assist with maintain road closures along US HWY 27 and Martin Luther King Jr. Blvd.

The approximate total is \$1,536.00.

Public Works:

Please be advised that this Event is scheduled on Saturday December 16, that means any work scheduled from the Public Works Department is considered OVERTIME. With that said, the cost for the Public Works department will be \$1466.24 which include overtime.

Parks and Recreation

Tanner Park is rented that day.

Due to the rental of Tanner park no tables and chairs can be provided.

Risk Management:

Safety of the children crossing HWY 27

Bounce Houses with adequate staffing and will generators be provided?

Parking Lot concerns

Bathrooms?

Will any vendors serve food and are they license and registered?

Current Certificate of Insurance must be provided from Busy Bee Rental and requesting organization.

PBC Fire Rescue:

Fire Rescue would have a fire enging available for the event.

Management's recommendation would be to utilize Cox Park for a Holiday Family Fun Day

and have Santa arrive on the Fire Truck. That would reduce the cost significantly.
Nevertheless, I am presented your initial request to the Commission for full consideration.

Leondrae D. Camel
City Manager
City of South Bay
PH: 561-996-6751
Fax: 561-996-7950
camell@southbaycity.com

PLEASE NOTE: Under Florida law, email addresses are public records. If you do not want your email address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing. Florida Statute 668.6076

RESOLUTION NO. 113- 2017

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENT NUMBER TWO TO THE ATTACHED ECONOMIC DEVELOPMENT TRANSPORTATION PROJECT FUND AGREEMENT WITH THE FLORIDA DEPARTMENT OF TRANSPORTATION; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on April 5, 2016 the State of Florida Department of Transportation and the City of South Bay ("City") entered into an Economic Development Transportation Project Fund Agreement, hereinafter referred to as the Agreement, wherein the City agreed to provide certain improvements in connection with Financial Management 437691-3-54-01 for Glades Area Street Resurfacing and Reconstruction, Phase 2 and hereinafter referred to as the Project; and

WHEREAS, the parties amended the Agreement on September 9, 2016 (Amendment No. 1); and

WHEREAS, the parties hereto desire to further amend the Agreement; and

WHEREAS, the parties hereto mutually agree that this Amendment is in their best interest.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA, AS FOLLOWS:

Section 1. **Adoption of Representations.** The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and the same are hereby made a specific part of this Resolution.

Section 2. **Authorization of City Manager.** The City Commission of the City of South Bay hereby authorizes the City Manager to execute Amendment Number Two to the Economic Development Transportation Project Fund Agreement with the Florida Department of Transportation, attached hereto as Exhibit "A", and take all necessary and expedient action to effectuate the intent of this Resolution.

Section 3. **Effective Date.** This Resolution shall be effective immediately upon its

passage and adoption.

PASSED and **ADOPTED** this 21st day of November 2017.

Joe Kyles, Mayor

Attested

By: _____
Jessica Figueroa, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Burnadette Norris-Week, Esquire
City Attorney

Moved by: _____

Seconded by: _____

VOTE:

Commissioner Berry	_____ (Yes)	_____ (No)
Commissioner McKelvin	_____ (Yes)	_____ (No)
Commissioner Scott	_____ (Yes)	_____ (No)
Vice-Mayor Wilson	_____ (Yes)	_____ (No)
Mayor Kyles	_____ (Yes)	_____ (No)

DUNS No.: 80-939-7102
CSFA No.: 55.009

Contract No.: G-0A03
FM No: 437691-3-54-01
Vendor No: VF 596-000-429-002

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
AND
CITY OF SOUTH BAY
ECONOMIC DEVELOPMENT TRANSPORTATION PROJECT FUND AGREEMENT
AMENDMENT NUMBER TWO

THIS Amendment, made and entered into this _____ day of _____, 20____, by and between the State of Florida Department of Transportation, an agency of the State of Florida, hereinafter called the DEPARTMENT, and City of South Bay, 335 SW 2nd Avenue, South Bay, Florida 33493, hereinafter called the AGENCY.

WITNESSETH

WHEREAS, on April 5, 2016 the parties entered into an Economic Development Transportation Project Fund Agreement, hereinafter referred to as the Agreement, wherein the AGENCY agreed to provide certain improvements in connection with Financial Management 437691-3-54-01 for Glades Area Street Resurfacing and Reconstruction, Phase 2 and hereinafter referred to as the Project; and

WHEREAS, the parties amended the Agreement on September 9, 2016 (Amendment No. 1); and

WHEREAS, the parties hereto desire to further amend the Agreement; and

WHEREAS, the parties hereto mutually agree that this Amendment is in their best interest;

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the parties agree to amend that certain Economic Development Transportation Project Fund dated April 5, 2016 as follows:

1. The recitals set forth above are true and correct and are deemed incorporated herein.
2. This Amendment extends the term of this Agreement. Paragraph 2.0 TERM of the Agreement is amended to read as follows:

The term of this Agreement shall commence upon full execution by both Parties ("Effective Date") and continue through June 30, 2018, unless terminated at an earlier date as provided in this Agreement. If the Agency does not complete the Project within the time period allotted, this Agreement will expire on the last day of the scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by FDOT prior to the expiration of the Agreement. Expiration of this Agreement will be considered termination of the Project. Only Project costs incurred on or after the Commencement Date of this Agreement (as defined in paragraph 3.0 below) and on or prior to the termination date of the Agreement are eligible.

3. Paragraph 3.0 COMMENCEMENT of the Agreement is amended to read as follows:

Unless terminated earlier, work on the Project shall commence no later than: the 5th day of April, 2016 or the issuance of the Notice to Proceed, whichever date is earlier ("Commencement Date"), and shall be completed on or before June 30, 2018. FDOT shall have the immediate right to terminate this Agreement should the Agency fail to meet either of the above-required dates.

If work on the Project does not commence within four (4) years of the date Chapter 2015-232, Laws of Florida, became effective, this Agreement and the Project are immediately terminated.

All provisions, covenants, terms and conditions of the Agreement between the parties theretofore entered on April 5, 2016, as originally set forth therein, and amended on September 9, 2016, which are not hereby expressly amended or modified and not in conflict with terms hereof, are hereby ratified and confirmed and shall remain the same and be unaffected by these presents.

IN WITNESS WHEREOF, this AMENDMENT is executed by the parties below for the purposes specified herein. Authorization has been given to enter into and execute this Amendment by Resolution No. _____, hereto attached.

FDOT

State of Florida, Department of Transportation

By: _____

Print Name: STACY L. MILLER, P.E.

Title: Director of Transportation Development

Date: _____

Legal Review:

See attached Encumbrance Form for date of
funding approval by Comptroller

AGENCY

City of South Bay

By: _____

Print Name: _____

Title: _____

As approved by the Board on:

Attest: _____

Legal Review:

City Attorney

RESOLUTION 114-2017

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA AUTHORIZING THE CITY MANAGER TO EXECUTE A CARNIVAL AGREEMENT BETWEEN THE CITY OF SOUTH BAY AND PREMIUM SHOWS OF AMERICA, LLC FOR THE PROVISION OF CARNIVAL RELATED SERVICES; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of South Bay ("City") is in need of a qualified firm to provide carnival related services and concessions; and

WHEREAS, the City desires to enter into a Carnival Agreement ("Agreement") for the provision of said services with Premium Shows of America, LLC ("Carnival Operator") attached hereto as Exhibit "A"; and

WHEREAS, the term of the Agreement shall begin on November 22, 2017 and end on November 25, 2017; and

WHEREAS, the parties have agreed that the Carnival Operator shall pay the City twenty percent of the gross revenues from ticket sales for amusement rides and concessions on the day of departure.

WHEREAS, the execution of the Agreement is in the best interests of the residents of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA AS FOLLOWS:

Section 1. Adoption of Representations. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and the same are hereby made a specific part of this Resolution.

Section 2. Authorization of City Manager. The City Commission of the City of South Bay hereby authorizes the City Manager to execute a Carnival Agreement between the

City of South Bay and Premium Shows of America, LLC attached hereto as Exhibit "A" for the provision of carnival related services. The City Manager is further authorized to take all necessary and expedient action to effectuate the intent of this Resolution.

Section 3. Effective Date. This Resolution shall be effective immediately upon its passage and adoption.

PASSED and ADOPTED this 21st day of November 2017.

Joe Kyles, Mayor

Attested

By: _____
Jessica Figueroa, City Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

Burnadette Norris-Week, Esquire
City Attorney

Moved by: _____

Seconded by: _____

VOTE:

Commissioner Berry	_____ (Yes)	_____ (No)
Commissioner Scott	_____ (Yes)	_____ (No)
Commissioner McKelvin	_____ (Yes)	_____ (No)
Vice-Mayor Wilson	_____ (Yes)	_____ (No)
Mayor Kyles	_____ (Yes)	_____ (No)

CARNIVAL AGREEMENT

This Agreement to provide amusement rides and concessions (hereinafter the "Agreement") is made this ____ day of _____, 2017, between City of South Bay (hereinafter the "City") and Premium Shows of America, LLC (hereinafter the "Carnival Operator").

The purpose of this Agreement is for Carnival Operator to provide rides and a carnival environment and atmosphere at _____ (hereinafter the "Event").

NOW THEREFORE, in consideration of the monies received pursuant to this Agreement and the mutual covenants hereinafter described, City and Carnival Operator agree as follows:

Section 1. Premises. City hereby grants to Carnival Operator, on a non-exclusive basis, the revocable privilege to use _____ (hereinafter the "Premises") located in the City of South Bay, State of Florida, more particularly described as follows:

Section 2. Term. The term of this Agreement shall begin on November 22, 2017 and end on November 25, 2017.

FOR THE PURPOSE OF PRE-EVENT MOVE-IN, Carnival Operator's use of the aforementioned premises shall commence on _____, 2017, at _____ a.m./p.m.

2.1 MOVE-IN AND MOVE-OUT must take place during the designated times stipulated in this Agreement.

Section 3. Amusement Rides and Concessions. Carnival Operator hereby agrees to furnish the following amusement rides and concessions:

Amusement rides, professional games and food concessions.

Carnival Operator may not furnish any other rides or concessions without the prior consent of City.

Section 4. Ticket Sale Revenue. City and Carnival Operator hereby agree that revenues from ticket sales for amusement rides and concessions will be divided as follows:

Twenty percent of gross revenues shall be paid to City on the day of departure.

City reserves the right to review any and all financial documents necessary to validate the revenues

Section 5. Carnival Operator Representative. At all times Carnival Operator or any of Carnival Operator's personnel are present on the premises, there shall also be present a "Representative" of Carnival Operator who shall be responsible for Carnival Operator's operations under this Agreement and the conduct of its personnel.

Section 6. Shows. Absolutely no shows of any type shall be permitted.

Section 7. No Interest in Property. Carnival Operator's use of the Premises shall not constitute a tenancy of any kind, and this Agreement is not a lease. The parties further agree that Carnival Operator's rights hereunder shall not be construed as an easement, or any other interest in real property.

Section 8. Operation of Amusement Rides and Concessions. During the term of this Agreement, Carnival Operator shall erect and operate the aforementioned amusement rides and concessions. Carnival Operator will operate such rides as are provided for this Agreement on a daily basis for the period each day as set by City.

Section 9. Ownership of Premises. City covenants that it is authorized to enter into this agreement and that said Premises are to the best knowledge and belief of City in good repair and suitable for Carnival Operator's purposes described herein. Thereby, Carnival Operator agrees to restrict its use to the furnishing of the aforementioned amusement rides and concessions, and not to use, or permit the use of, the Premises for any other purpose without first obtaining the express written consent of the City.

Section 10. Status of Name, Address, and Guaranty. The Carnival Operator represents and warrants that the legal name as contained in this Agreement along with all other information in this Agreement are accurate and correct in all respects and makes this warranty as of the date of this Agreement and continuing through its duration. Carnival Operator further represents and warrants that the representative who has signed the Agreement has full, complete and absolute authority to bind the Carnival Operator. If the Carnival Operator is a corporation, it warrants and represents that it is in good standing and active, and if it is not a Florida Corporation, it warrants and represents that it is authorized to do business in the State of Florida. Any change in the Carnival Operator's legal name, fictitious or trade name, address, or telephone number shall be forwarded to the City as provided in the notice provision of this Agreement, in writing, within twenty-four hours after the change. Furthermore, the individual executing this Agreement on behalf of the Carnival Operator absolutely, personally, unconditionally, and continually warrants and guarantees Carnival Operator's full and faithful performance and payment of all obligations under this License.

Section 11. Condition of Premises. Carnival Operator agrees to quit and surrender the Premises and all equipment therein to City at the end of the term of this Agreement in the same condition as the date of the commencement of this Agreement, ordinary use and wear thereof only excepted.

Section 12. Rules and Regulations. Carnival Operator agrees to abide by and conform to all rules and regulations from time to time adopted or prescribed by City, for the governance and management of Premises.

Section 13. Alcoholic Beverages. Carnival Operator agrees to not cause or allow alcoholic beverages of any kind to be sold, given away, upon Premises except after obtaining the express written consent of City. In such event, Carnival Operator shall possess the necessary liquor license and permit.

Section 14. Improvements. Carnival Operator agrees to make only those alterations, additions, or improvements, in, to, or about Premises which have been approved in advance and in writing by City.

Section 15. Damage to Premises. Carnival Operator agrees to not injure, nor mar, nor in any manner deface Premises or any equipment contained therein, and to not cause or permit anything to be done whereby Premises or equipment therein shall be in any manner injured, marred or defaced; and to not drive or permit to be driven nails, hooks, tacks or screws into any part of said building or equipment contained therein and to not make nor allow to be made any alterations of any kind to said building or equipment contained therein; that if said premises or any portion of said building or any equipment contained therein during the term of this Agreement shall be altered in any manner and/or damaged by the act, default or negligence of Carnival Operator, or of the Carnival Operator's agents, employees, admitted to premises, Carnival Operator shall cause Premises and/or equipment to be returned to their condition as existed upon the execution hereof. The Carnival Operator hereby assumes full responsibility for the character, acts and conduct of all employees admitted to said premises or to any portion of said building by the consent of the said Carnival Operator or by or with the consent of any person acting for or in behalf of said Carnival Operator.

Section 16. Ride Operators. Carnival Operator agrees to furnish competent, qualified ride operators on each ride.

Section 17. Dogs and other animals. Carnival Operator shall not allow any of its

employees, agents or any person associated with Carnival Operator to bring, or keep on the City's premises, any dogs or other animals.

Section 18. Tickets. Carnival Operator agrees to provide ticket sellers and change for ride ticket booths as well as the actual tickets for amusement rides and concessions.

Section 19. Removal of Amusement Rides and Concessions. Carnival Operator shall furnish at its own expense all personnel required to erect, operate, dismantle and remove all amusement rides and concessions and other equipment on the premises.

Section 20. Ordinances and Statutes. Carnival Operator shall comply and shall require its employees to comply with all laws, ordinances and regulations adopted or established by Federal, State or Local Governmental agencies or bodies, with the terms of this Agreement, all relevant health and fire codes and all trademark, copyright and other intellectual property laws. Carnival Operator agrees that at all times it will conduct its activities with full regard for public safety. Carnival Operator also shall not use, store or permit to be used or stored in or on any part of Premises covered by this Agreement any substance or item prohibited by law, ordinance or standard policies of fire insurance companies operating or insuring in the State of Florida.

Section 21. Licenses and Permits. It shall be the full and sole responsibility of Carnival Operator to obtain and pay for all Federal, State, County, local and other licenses, permits and inspections that may be required to operate their amusement rides and concessions and, furthermore, Carnival Operator shall provide proof to the City that all appropriate licenses, permits and inspections have been obtained and the City shall thereafter, forward a copy to the City Manager for the City.

Section 22. Assignment and Sublicensing. This Agreement is personal between City and Carnival Operator. Carnival Operator shall not assign any portion of this Agreement or sublicense any portion of Premises or assign responsibility for provision of amusement rides and concessions without the express written consent of City.

Section 23. Lien. City shall have the first lien against all property of Carnival Operator

for all unpaid fees, expenses, damages to property and any taxes due to the Agreement. City is empowered to impound any and all property of License. City shall have the right to sell said property at public auction and to apply the proceeds from such auction to the unpaid fees or charges due City. Carnival Operator agrees to waive any and all claims for damages against City or its agents for the seizure, prevention, or removal of the Carnival Operator or Carnival Operator's property from being removed from premises.

Section 24. Entry and Inspection. Carnival Operator's use of Premises is non-exclusive, and City may enter at any time and for any purpose while Carnival Operator is utilizing Premises or at any other time.

Section 25. Liability Indemnification of the City. It is expressly understood and agreed by and between the parties hereto that in no case shall the City be liable to the Carnival Operator, or any other person or persons, for any injury, loss and/or damage to any person or property on the Premises or on the amusement rides provided by the Carnival Operator or by virtue of any act, error, or omission of Carnival Operator, whether same is caused by or results from the carelessness, negligence, or improper conduct of the Carnival Operator, its agents or employees or otherwise, said Carnival Operator hereby taking all risk and indemnifying City for any such damage or injury. Carnival Operator agrees to hold City harmless from any claims for damages, caused by the act, error, or omission of Carnival Operator, its agents, employees, assigns, invitees or otherwise regardless of whether the claim for damages arises out of an occurrence occurring before, during, or after the time set forth in this Agreement for providing amusement rides and concessions. This provision shall survive the termination of the Agreement.

Section 26. Independence of Carnival Operator. It is expressly understood and agreed by and between the parties hereto that Carnival Operator is not owned, operated, sponsored, affiliated, or otherwise under the direction or control of City. City has no authority or control over any aspect of Carnival Operator's operations, except as provided in this Agreement. Carnival Operator is an entity entirely independent of City related only by the independent contractual terms of this Agreement.

Section 27. Warranties by the City. It is further expressly understood and agreed by and

between the parties hereto that this Agreement does not contain or embody, and shall not be construed to contain or embody any implied covenant, warranty or agreement on the part of the City, and there are no verbal agreements whatsoever between the City and Carnival Operator, and no agreements nor covenants exist between them except those representations, warranties and agreements expressed in writing in this instrument.

Section 28. Insurance. The Carnival Operator, at its cost, shall provide to the City the following forms of insurance, to be provided no less than thirty (30) days prior to the event:

Commercial General Liability including coverage for Bodily Injury, Property Damage, Contractual Liability, Personal Injury - encompassing libel, slander, false arrest, malicious prosecution, wrongful entry or eviction, advertisers liability, including violation of Trademark or copyright and discrimination.

Such policy will contain the provision that the City is named as additional insured and that "coverage provided herewith shall be primary over any other insurance or self-insurance program available to the City for any liabilities arising in connection with this Agreement.

The minimum limits acceptable for General Liability are \$1,000,000 per occurrence and \$3,000,000 annual aggregate.

In addition, the Carnival Operator shall have an Automobile Insurance policy providing coverage of not less than \$1,000,000 combined single limit for bodily injury and property damage for at least all owned, non-owned and hired vehicles.

Carnival Operator shall also have Statutory Worker's Compensation Insurance as well as Employer's liability with limits of not less than \$500,000 per occurrence and shall indemnify and hold harmless the Owner/City for any and all claims arising from the Carnival Operator's employees.

All insurance shall be placed with companies approved to do business in the State of Florida which shall have an AM Best rating at least an "A", and Financial Category of at least "VII". The Carnival Operator shall furnish the City with an originally signed Certificate of Insurance clearly demonstrating the above coverage requirements. Such certificate shall indicate not less than 30 days advance notice shall be provided to the City prior to cancellation, expiration or material alteration of any policy of insurance. The City is entitled to receive a copy of any policy of insurance covered by this Agreement within 30 days of such policy being issued. The City shall then provide a copy of all such coverages to the City Manager for the City.

Should said insurance fail to provide a defense to City within ten (10) days of receiving Notice of Claim, irrespective of any rights of City hereunder, Carnival Operator agrees to pay all of City's attorneys' fees and costs together with liquidated damages of One Hundred and No Cents (\$100.00) Dollars, per day.

Section 29. Water fees. Carnival Operator shall pay Water Fee of \$380.00 on the day of opening. The City will open an account with Palm Beach County Utilities and cover \$1,035.00 deposit.

Section 30. Underground Utilities. Carnival Operator shall not, nor will Carnival Operator allow any of its agents or employees to drive any stake, instrument or object of any kind into the asphalt or grassy area of Premises without the written consent of City. It shall be the sole responsibility of the Carnival Operator to enforce this provision and should any damages occur City will look to Carnival Operator to return the premises to original condition with minimal disruption of adjacent property owners.

Section 31. Storage. Carnival Operator assumes all responsibility for all goods, materials, exhibits, displays, articles and other tangible personal property in or on the Premises before, during or after the event and City assumes no responsibility for said items. Carnival Operator agrees to assume all risk or loss of said property and will defend, indemnify and hold Owner/City harmless from any and all loss.

Section 32. Safety Standards. Carnival Operator agrees to comply with any safety standards expressed in Florida Statutes or the rules promulgated thereby or required by the Commissioner of Agriculture and to operate all rides and amusement devices according to the safety standards, rules and regulations therein prescribed and any other safety standards including the County's in which the premises are located which may be applicable and to furnish City with all safety inspection forms and reports as may be required.

Section 33. Personnel.

- A. It shall be the obligation of Carnival Operator that all personnel employed by Carnival Operator will be appropriately uniformed, will keep themselves in a neat and clean condition, will deal

courteously with patrons of City, and will not use rough or profane language, drink alcoholic beverages or use non-prescription drugs at any time while on the Premises. Carnival Operator, upon request from the City Manager for the City, will furnish a list, including names, date of birth and social security number of all personnel who will assemble, disassemble or operate the rides, whether such request occurs before, during or after the event.

- B. Carnival Operator acknowledges and agrees that City is committed to providing for the safety and well-being of its youth, its elderly and aged, and its disabled. Carnival Operator represents and warrants that all persons affiliated or associated with the Carnival Operator who have access to the Premises by virtue of this Agreement, shall meet the minimum level 2 screening requirements of Section 435.04, Florida Statutes, and Carnival Operator shall perform all necessary background investigations to assure such compliance and provide copies upon request by the City Manager for the City. If City is not satisfied that this requirement has been met, Licensor may request that Carnival Operator or any person affiliated with Carnival Operator be prohibited from accessing the Premises, and Carnival Operator shall immediately prohibit such person in violation from accessing the Premises; or in the alternative, City may immediately terminate this Agreement and require Carnival Operator to vacate the Premises. Carnival Operator shall be strictly liable for any injury, loss and/or damage to any person, and shall indemnify and hold City and its entities, employees and agents harmless from any claims, resulting from Carnival Operator's failure to comply with these requirements. Carnival Operator agrees to provide security services for the oversight of the organized event.

Section 34. Cancellation. City reserves the unilateral right to cancel this Agreement for the public good in the Event of an act of God, inclement weather, natural disaster, bomb or threat or for other reasons as determined in the sole and arbitrary opinion of City, or in the event of any request by any Federal, State or County agency for use of the Premises under such circumstances, it being understood and agreed by Carnival Operator that its rights hereunder are subordinate and inferior to the right of use by any Federal, State or County agency or department. Should the City exercise its rights to cancel this License, Carnival Operator agrees to forego any and all claims for damages against the Carnival Operator and further agrees to waive any and all rights which might arise by reason of the terms of this License and the Carnival Operator shall have no recourse of any kind against City.

Section 35. Carnival Operator Failure to Appear. Should the Carnival Operator fail to timely appear and set up for the event or fail to perform the conditions and requirements set forth in the Agreement, this Agreement shall be canceled and shall in all respects be deemed null and void, and City shall be entitled to Thirty-Five Hundred Dollars and No Cents (\$3,500.00) Dollars from Carnival Operator as agreed upon liquidated damages and not as penalty, it being understood and agreed by all parties that actual damages would be extremely difficult to ascertain. Furthermore, should the Carnival Operator default in the performance of any of the terms and conditions of this Agreement, City, at its option, may cancel this Agreement and the relation of the parties shall be in all respects as if said terms had fully expired. Should City exercise its right to cancel this Agreement, Carnival Operator agrees to forego any and all claims for damages against City and further agrees to waive any and all rights which might arise by reason of this Agreement and the Carnival Operator shall have no recourse of any kind against City and the relation of the parties shall be in all respects as if said terms had fully expired. Additionally, Carnival Operator hereby waives any and all claims for compensation for any and all loss or damage sustained by reasons or any defect, deficiency or impairment of the premises including, but not limited to electrical, telephone, plumbing, sewer and water or any part thereof furnished by City.

Section 36. Toxic Waste. Carnival Operator agrees, at all material times Carnival Operator is on the Premises, not to have in its possession, collect, distribute, dispose, release or otherwise discharge any toxic or hazardous waste including but not limited to port-o-lets as defined by Florida and Federal law.

Section 37. Electrical Equipment. Carnival Operator shall furnish sufficient electrical generating equipment for all rides at no charge to the City. City agrees to provide electrical service to Carnival Operator where available as needed. Carnival Operator agrees to reimburse City for such direct electrical use cost, at the conclusion of the Event.

Section 38. Nuisance. Carnival Operator shall not use the Premises for any unlawful purpose or in any way which will constitute a nuisance or interfere with City's use of the Premises.

Section 39. Removal of Objectionable Amusement Rides. City shall have complete discretion to remove from the Premises, or not permit within Premises, any and all rides, persons or events under the employ of or under contract with Carnival Operator or any other activity of Carnival Operator which in his opinion are detrimental to the public morals or which would adversely reflect on City. Should City exercise its rights thereof, Carnival Operator agrees to forego, any and all claims for damages against City as a result of City's actions.

Section 40. Default. If Carnival Operator fails to abide by and perform all covenants, stipulations and conditions of this Agreement, City may, at its option, immediately terminate and end this Agreement and the license hereby granted, and all rights and interest of the Carnival Operator thereunder forthwith.

Section 41. Notices. Any notice which either party may or is required to give, shall be given in writing and shall be given by mailing the same, postage prepaid, to Carnival Operator at the address shown below or City at the address shown below, or at such other places as may be designated by the parties from time to time.

Carnival Operator:

Steve Lisko, Owner
Premium Shows of America
1158 Bedford Road
Masury, OH 44438

City:

Leondrae Camel, City Manager
City of South Bay
335 SW 2nd Avenue
South Bay, FL 33493

City Attorney:

Burnadette Norris-Weeks, Esquire
Burnadette Norris-Weeks, PA
401 North Avenue of the Arts (NW 7th Avenue)
Fort Lauderdale, Florida 33311

Section 42. Method of Giving Notice. All notices or other communications permitted or required to be given under this License shall be given in writing, and delivered to City or to the Carnival Operator in one of the following ways, at the option of the party giving the notice: (i) by hand delivery; (ii) by certified or registered mail, return receipt requested and proper postage prepaid; (iii) by a nationally recognized overnight courier service such as Federal Express; or (iv)

by telecopy.

Section 43. Effective Date of Notices. Notices delivered by hand delivery or by a nationally recognized overnight courier service such as Federal Express shall be effective on the date delivered to the recipient. Notices delivered by certified or registered mail shall be effective upon receipt, or three (3) business days after deposit in the United States mails, whichever shall first occur. Notices sent by telecopy shall be effective on the date transmitted and received, provided that the receipt occurs prior to 5:00 p.m. eastern standard time.

Section 44. Venue. The venue of any legal proceeding brought in connection with this Agreement shall be in the county in which the City is situated.

Section 45. Applicable Law. This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of Florida and no other.

Section 46. Time. Time is of the essence of all of the provisions and terms of this Agreement.

Section 47. Waive of Trial by Jury. City and Carnival Operator hereby mutually, knowingly, willingly and voluntarily waive their right to a trial by jury and no party nor any assignee, successor, heir, or legal representative of the parties (all of who are collectively referred to below as the "parties") shall seek a jury trial in any suit, proceeding, counterclaim, or any other litigation or proceeding based upon or arising out of this Agreement or any related agreement or instrument, or any course of action, course of dealing, statements, (whether verbal or written) or actions relating to this Agreement, including any tort claim or claims for fraud, misrepresentation, breach of fiduciary, antitrust, etc. The parties also waive any rights to consolidate any action in which a jury trial has not been waived. The provisions of this paragraph have been fully negotiated by the parties, and the parties acknowledge that the inclusion of this provision is a material inducement for entering into this Agreement. The waiver contained in this paragraph is irrevocable, constitutes a knowing and voluntary waiver, and shall be subject to no exceptions.

Section 48. Pre-suit Mediation. Prior to bring any lawsuit under this Agreement, the parties

hereto agree to submit any and all disputes to pre-suit mediation under the Florida Rules of Civil Procedure. Accordingly, the parties agree to strictly follow said rules and abide by any agreement made as the result of mediation. Good faith compliance with this provision shall be a condition precedent to the right of any party hereto to bring a lawsuit under this Agreement. This provision is a material inducement to the City entering into this Agreement. This provision shall survive termination of this Agreement.

Section 49. Severability and Enforceability. The terms of this Agreement are severable, and in the event that any specific term herein is determined to be unenforceable the remainder of the Agreement shall remain in full force and effect.

Section 50. Waiver. The failure of City to insist on the strict performance of any one or more of the covenants, terms and conditions of this Agreement, shall not be construed as a waiver of such covenants, terms or conditions, but the same shall continue in full force and effect, and that no waiver by City of any of the provisions hereof shall in any event be deemed to have been made unless the same be expressed in writing by City.

Section 51. Singular and Plural. Whenever used in this Agreement, the singular number shall include the plural, the plural number shall include the singular, and the use of any gender shall include all genders where the context permits.

Section 52. Attorney's Fees. Any reference to attorney's fees in this Agreement applies only to the indemnity given by Carnival Operator to City and not to any other term, provision and condition thereof.

Section 53. Matters That Survive Terminations. Unless otherwise provided in this Agreement, all of the terms provisions, representations and warranties, all remedies available to any party, shall survive termination of the Agreement.

Section 54. Entire Agreement. The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties. Any and all prior agreements, understandings, and representation are hereby terminated and canceled in their entirety and are of

no further force or effect.

Section 55. Termination. City reserves the right to cancel this Agreement at any time without cause upon thirty (30) days advance notice or immediately if for cause as determined by City in its sole discretion.

Section 56. Construction of Agreement. Each party has relied upon its own examination of this License and the advice of its own counsel and other advisors in connection with this Agreement. This Agreement was negotiated at arm's length. Carnival Operator and City agree to the terms of the Agreement and have executed this Agreement freely and voluntarily. Thus, this Agreement shall not be construed more strictly against the City notwithstanding that it has been drafted by the City and the City's counsel. Furthermore, the money, property, insurance or services which are the subject of this Agreement are for commercial purposes and not for personal, family or household purposes.

Section 57. Paragraph Headings. The paragraph headings used in this Agreement are for convenience only, and shall not be used in interpreting or construing any provision of this Agreement.

Section 58. Other Conditions. It is mutually agreed that any and all matters not expressly provided for in this License will be at the sole discretion of the City.

IT WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Witnesses

City:

Leondrae Camel, City Manager, City
of South Bay, Florida

Carnival Operator:

Print name and title: _____

ATTEST:

SECRETARY

STATE OF FLORIDA)
)SS:
COUNTY OF PALM BEACH)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared _____ as _____, of _____, a Florida corporation, and acknowledged executed the foregoing Agreement as the proper official of _____, for the use and purposes mentioned in it and affixed the official seal of the corporation, and that the instrument is the act and deed of that corporation.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this __ day of _____, 2017.

NOTARY PUBLIC

My Commission Expires:



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/03/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Allied Specialty Insurance, Inc. 10451 Gulf Blvd Treasure Island, FL 33706-4814	CONTACT NAME:	FAX (A/C, No):	
	PHONE (A/C, No, Ext):	E-MAIL ADDRESS:	
INSURED Premium Shows of America, Premium Events & Premium Concessions Steve Lisko Jr & Amy Lisko 1158 Bedford Road Masury, OH 44438	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: T.H.E. Insurance Company		12866
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	<input checked="" type="checkbox"/>		CPP0102436-06	5/1/2017	5/1/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 10,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000 \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input type="checkbox"/> N	N/A	WCP0004683-006	10/30/2016	10/30/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

EFFECTIVE FROM 11/20/2017 -11/26/2017

ADDITIONAL INSURED: THE CITY OF SOUTH BAY, FLORIDA IS ADDITIONAL INSURED AS RESPECTS TO THE GENERAL LIABILITY PERTAINING TO THE NEGLIGENCE OF THE NAMED INSURED ONLY

CERTIFICATE HOLDER

City of South Bay, Florida
335 SW 2nd Ave
South Bay, FL 33493

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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RESOLUTION NO. 115- 2017

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE THE ATTACHED AMENDMENT TO THE AGREEMENT (R2016-0567) BETWEEN THE CITY OF SOUTH BAY AND PALM BEACH COUNTY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Palm Beach County entered into an Agreement (R2016-0567) with the City of South Bay ("City") on May 3, 2016 to provide Four Hundred Fifty-Six One Hundred One Dollars (\$456,101.00) of Community Development Block Grant funds for project design and construction improvements for Cox Park and Tanner Park; and

WHEREAS, the parties wish to identify the improvements, modify both the project completion date and performance requirements associated with the project; and

WHEREAS, both parties desire to amend the original Agreement in accordance with the terms and conditions set forth herein.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA, AS FOLLOWS:

Section 1. Adoption of Representations. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and the same are hereby made a specific part of this Resolution.

Section 2. Authorization of City Manager. The City Commission of the City of South Bay hereby authorizes the City Manager to execute the attached Amendment to the Agreement (R2016-0567) between the City of South Bay and Palm Beach County related to a Community Economic Development Block Grant award, attached hereto as Exhibit "A", and take all necessary and expedient action to effectuate the intent of this Resolution.

Section 3. Effective Date. This Resolution shall be effective immediately upon its passage and adoption.

PASSED and ADOPTED this 21st day of November 2017.

Joe Kyles, Mayor

Moved by: _____

Seconded by: _____

Attested

By: _____
Jessica Figueroa, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Burnadette Norris-Week, Esquire
City Attorney

VOTE:

Commissioner Berry	_____ (Yes)	_____ (No)
Commissioner McKelvin	_____ (Yes)	_____ (No)
Commissioner Scott	_____ (Yes)	_____ (No)
Vice-Mayor Wilson	_____ (Yes)	_____ (No)
Mayor Kyles	_____ (Yes)	_____ (No)

**AMENDMENT 001 TO THE AGREEMENT
WITH
CITY OF SOUTH BAY**

Amendment 001 entered into on _____ by and between Palm Beach County and the City of South Bay.

W I T N E S S E T H:

WHEREAS, Palm Beach County entered into an Agreement (R2016-0567) with the City of South Bay on May 3, 2016 to provide \$456,101 of Community Development Block Grant (CDBG) funds for project design and construction improvements to Cox Park and Tanner Park; and

WHEREAS, the parties wish to identify the improvements, modify both the project completion date and performance requirements associated with the project; and

WHEREAS, both parties desire to amend the original Agreement in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and various other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

A. INCORPORATION OF RECITALS

The foregoing recitals are true and correct and incorporated herein by reference. Terms not defined herein shall have the same meaning as ascribed to them in the Agreement.

B. SECTION 6: MAXIMUM COMPENSATION

Replace "December 31, 2017" with "December 31, 2018".

C. SECTION 7: TIME OF PERFORMANCE

Replace "December 31, 2017" with "December 31, 2018".

D. SECTION 9 (D): CONDITIONS ON WHICH PAYMENT IS CONTINGENT: PURCHASING

Delete the current language and replace it with the following:

"All purchasing for services and goods, including capital equipment, shall be made by purchase order or by a written contract and in conformity with the Municipality's Purchasing Code, with the procedures prescribed by the Palm Beach County Purchasing Code, as well as 2 CFR 200.501 through 2 CFR 200.507 which are incorporated herein by reference".

E. SECTION 19: INSURANCE BY MUNICIPALITY

Delete the language in this Section and replace it with the following:

"Without waiving the right to sovereign immunity as provided by s.768.28 F.S., the Municipality acknowledges to be self-insured for General Liability and Automobile Liability under Florida sovereign immunity statutes with coverage limits of \$200,000 Per Person and \$300,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. In the event the Municipality maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance of self insurance under s.768.28 F.S., the Municipality shall agree to maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage.

The Municipality agrees to maintain, or be self-insured for Workers' Compensation & Employer's Liability insurance in accordance with Florida Statute, Chapter 440.

When requested, the Municipality shall agree to provide an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which County agrees to recognize as acceptable for the above mentioned coverage. Compliance with the foregoing requirements shall not relieve the Municipality of its liability and obligations under this Agreement.

Certificate(s) of Insurance Prior to execution of this Agreement, the Municipality shall deliver to the COUNTY via the Insurance Company/Agent a signed Certificate(s) of Insurance evidencing that all types and amounts of insurance coverages required by this Agreement have been obtained and are in full force and effect. During the term of the Agreement and prior to each subsequent renewal thereof, the Municipality shall provide this evidence to ITS at bbc@instracking.com or fax (562) 435-2999, which is Palm Beach County's insurance management system, prior to the expiration date of each and every insurance required herein. Said Certificate(s) of Insurance shall, to the extent allowable by the insurer, include a minimum thirty (30) day endeavor to notify due to cancellation (10 days for nonpayment of premium) or non-renewal of coverage

Palm Beach County
c/o Insurance Tracking Services, Inc. (ITS)
P. O. Box 20270
Long Beach, CA 90801

In the event COUNTY discontinues its use of the insurance tracking system named herein, the COUNTY shall provide written notice to the Municipality with instructions regarding a substitute delivery address".

F. SECTION 35: INCORPORATION BY REFERENCE

Delete the language in this Section and replace it with the following:

"Exhibits attached hereto and referenced herein or in Exhibit "A" shall be deemed to be incorporated into this Agreement by reference".

G. NEW SECTION 38: Insert this language as Section 38.

38. PUBLIC RECORDS

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the MUNICIPALITY: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the MUNICIPALITY shall comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The MUNICIPALITY is specifically required to:

- A. Keep and maintain public records required by the County to perform services as provided under this Agreement.
- B. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The MUNICIPALITY further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.
- C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement, if the MUNICIPALITY does not transfer the records to the County.
- D. Upon completion of the Agreement the MUNICIPALITY shall transfer, at no cost to the County, all public records in possession of the MUNICIPALITY unless notified by County's representative/liaison, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the MUNICIPALITY transfers all public records to the County upon completion of the Agreement, the MUNICIPALITY shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the MUNICIPALITY keeps and maintains public records upon completion of the Agreement, the MUNICIPALITY shall meet all applicable requirements for retaining public records. All records stored electronically by the MUNICIPALITY must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

Failure of the MUNICIPALITY to comply with the requirements of this article shall be a material breach of this Agreement. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. MUNICIPALITY acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE MUNICIPALITY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE MUNICIPALITY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

H. **EXHIBIT A – WORK PROGRAM NARRATIVE: SECTION I.B (I) and (II) – PROJECT CONSTRUCTION:**

Delete the language in these two Sections and replace with the following:

I. **Proposed Scope of Work: Cox Park**

Improvements, subject to the availability of funds, may include, but not be limited to the following:

- o Restroom painting and door replacement
- o Resurface/restripe basketball courts
- o New equipment for basketball courts
- o New playground equipment
- o BBQ grilles (2), benches and litter receptacles
- o Sidewalk and grading improvements
- o Gazebo
- o Fencing

II. **Proposed Scope of Work: Tanner Park**

Improvements, subject to the availability of funds, may include, but not be limited to the following:

- o Community Center exterior safety improvements
- o Resurface/restripe basketball and tennis courts
- o New equipment for tennis and basketball courts
- o New playground equipment
- o Restroom building renovations including ADA compliance
- o Fencing
- o Benches and litter receptacles
- o Gazebos (2)
- o Grading improvements and sidewalks

I. **EXHIBIT A: WORK PROGRAM NARRATIVE: SECTION 1. B (2)**

Delete the current language and replace it with the following:

"The Municipality shall submit its bid packages/drawings/specifications along with a certification that the procurement documents are in conformity with the Municipality's Purchasing Code and with the procedures prescribed by the Palm Beach County Purchasing Code, as well as 2 CFR 200.501 through 2 CFR 200.507. The Municipality shall also submit an itemized opinion of probable construction costs, prepared by its consultant, to DES and obtain a letter of approval prior to bidding the construction contract. Furthermore, the Municipality shall obtain HES approval prior to issuing any addenda to its bid documents for either contract".

J. EXHIBIT A: WORK PROGRAM NARRATIVE: SECTION 1. B (6)

Delete the current language and replace it with the following:

"Should the amount of eligible costs exceed the amount to be funded by the County through this Agreement, then the Municipality shall fund all amounts in excess of the amount to be funded by the County. The Municipality may request the HES Department Director to participate with a portion of the County's funding for eligible costs first prior to participating with its funds. Under such a scenario, the HES Director, or his/her designee, will make the determination. The Municipality would then disburse an amount up to 75% of the County's funding amount made available for the project through this Agreement for eligible costs and request reimbursement from the County for such amount, then disburse its portion of funding for the project (without being reimbursed by the County for such amount), and finally, the Municipality would disburse an amount equivalent to the County's remaining funding amount made available for the project through this Agreement for construction costs and request reimbursement from the County for such amount.

Unless otherwise approved by the HES Director, or by his/her designee, the Municipality shall first disburse 100% of their funds toward the contract amount, and shall provide HES with satisfactory documentation in this regard. HES will then fund the contract amount contained herein and as presently available in this project's budget in the form of a reimbursement to the City.

K. EXHIBIT A: WORK PROGRAM NARRATIVE: SECTION 1. B (7)

Delete the current language and replace it with the following:

"The Municipality may request reimbursement for payments made for eligible costs for materials and/or equipment stored on the Premises or in a bonded warehouse provided that such materials are securely stored, properly inventoried, and clearly stenciled or otherwise marked to indicate that they are the property of the Municipality, and provided that the County shall have received, reviewed, and approved documentation from the Municipality evidencing that for the life of the project:

- the Municipality's Insurance policy includes a sublimit of coverage for the full replacement value of supplies that are awaiting installation, and that said policy includes the County as an additional insured, or
- the Municipality has insurance coverage in place in the form of an Installation Floater or Inland Marine coverage for the full replacement value of supplies that are awaiting installation, with an endorsement showing the County as an additional insured.

L. EXHIBIT A – WORK PROGRAM NARRATIVE: SECTION 1. H – PERFORMANCE REQUIREMENTS

Replace "December 31, 2017" with "December 31, 2018" and

Delete the Performance Requirements and replace them with the following:

Advertise, Accept bids, Award Contract by	February 2018
Start Construction by	March 2018
Complete Construction by	October 2018
Submit Final Reimbursement by	November 2018

If unforeseen circumstances occur that impact the accuracy of the performance dates and require revisions thereto, the Municipality shall request, in writing, that the dates be revised. The HES Director, or his/her designee may, at his/her sole discretion, revise the performance dates via written notification to the sub-recipient. The Completion Date for all activities may be revised only by an Amendment to this Agreement.

50% of the CDBG funds awarded must be expended by July 1, 2018 and all necessary reimbursement documentation to meet this expenditure requirement must be submitted to HES, no later than June 15, 2018.

The Municipality may forfeit all funds not expended during the term of this Agreement unless otherwise approved in writing by the HES Director or his/her designee, based on circumstances not under the Municipality's control.

Except as modified by this Amendment 001, the Agreement remains unmodified and in full force and effect in accordance with the terms thereof. This Amendment 001 is expressly contingent upon the approval of the County and shall become effective only when signed by all parties.

IN WITNESS WHEREOF, the Municipality and the County have caused this Amendment 001 to be executed on the date first above written.

(MUNICIPALITY SEAL BELOW)

CITY OF SOUTH BAY

By: _____
Joe Kyles, Mayor

By: _____
Jessica Figueroa, City Clerk

By: _____
Attorney for Municipality (Optional)

(COUNTY SEAL BELOW)

**PALM BEACH COUNTY, FLORIDA, a
Political Subdivision of the State of Florida
BOARD OF COUNTY COMMISSIONERS**

By: _____
Mayor
Palm Beach County

ATTEST: Sharon R. Bock,
Clerk & Comptroller

By: _____
Deputy Clerk

Document No.: _____

Approved as to Form and
Legal Sufficiency

Approved as to Terms and Conditions
Department of Housing & Economic Sustainability

By: _____
James Brako
Assistant County Attorney

By: _____
Sherry Howard
Deputy Director

S:\CapImprv\MUNICIPAL\SouthBay\CoxParkTannerPark\Amend 001_10_18_16.docx

RESOLUTION 116-2017

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE PALM BEACH COUNTY SUPERVISOR OF ELECTIONS (SOE) FOR VOTING PROCESSING EQUIPMENT USE AND ELECTION SERVICES FOR THE CITY'S MARCH 13, 2018 ELECTION AND OTHER ELECTIONS CALLED DURING THE 2018 CALENDAR YEAR; ESTABLISHING A CANVASSING BOARD; PROVIDING AN EFFECTIVE DATE.

WHEREAS, a general election for the City of South Bay ("City") is scheduled for March 13, 2018; and

WHEREAS, other elections may be required throughout the 2018 calendar year for the City; and

WHEREAS, the City of South Bay and the Palm Beach County Supervisor of Elections ("SOE") desire to work together to provide for municipal elections and allocate certain responsibilities and expenses between the two parties to ensure that the provisions of the City Code and Florida law are followed for municipal elections; and

WHEREAS, the SOE and the City wish to enter into an agreement to set out the terms of the coordinated election program consistent with Exhibit "A" hereto; and

WHEREAS, the Code of Ordinances of the City of South Bay, Chapter 10, provides for composition, designation and duties of the Canvassing Board for City Elections; and

WHEREAS, the City Commission desires to appoint the Palm Beach County Supervisor of Elections and/or her designee, a member of the City Commission and the City Clerk and/or her designee to serve as the City Election Canvassing Board; and

WHEREAS, in consideration of the mutual covenants and promises hereafter contained to be kept and performed by the parties hereto, and for the mutual benefit of

the City, its constituents and the SOE, it is agreed that the City Commission does hereby authorize the Mayor and City Manager to enter into an agreement for vote processing equipment use and election services with the SOE.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF SOUTH BAY, AS FOLLOWS:

Section 1. Adoption of Representations. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. Approval of Canvassing Board. The City Commission hereby appoints the Palm Beach County Supervisor of Elections and/or her designee, a member of the City Commission and the City Clerk and/or her designee and to serve as the members of the City Election Canvassing Board for the City Election being held March 13, 2018.

Section 3. Authorization of City Manager. The City Manager of the City of South Bay is hereby authorized to execute the Agreement with Palm Beach County Supervisor of Elections for voting processing equipment use and election services for the City's March 13, 2018 election and other elections called during the calendar year consistent with the agreement attached hereto as Exhibit "A"; and take all necessary and expedient action to carry out the intent of this Resolution.

Section 4. Effective Date. This Resolution shall be effective immediately upon its passage and adoption.

PASSED and ADOPTED this 21st day of November 2017.

Joe Kyles, Mayor

Attested

By: _____
Jessica Figueroa, City Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

Burnadette Norris-Week, Esquire
City Attorney

Moved by: _____

Seconded by: _____

VOTE:

Commissioner Berry	_____ (Yes)	_____ (No)
Commissioner Scott	_____ (Yes)	_____ (No)
Commissioner McKelvin	_____ (Yes)	_____ (No)
Vice-Mayor Wilson	_____ (Yes)	_____ (No)
Mayor Kyles	_____ (Yes)	_____ (No)

**AGREEMENT FOR VOTE PROCESSING EQUIPMENT USE AND ELECTION SERVICES
BY AND BETWEEN
THE PALM BEACH COUNTY SUPERVISOR OF ELECTIONS AND THE "INSERT
MUNICIPALITY NAME"**

THIS AGREEMENT, is made and entered into this day of _____, 2017, effective January 1, 2018, by and between the Palm Beach County Supervisor of Elections, an elected county officer pursuant to Article VIII, Sec.1(d) of the *Florida Constitution*, hereinafter referred to as the "SOE", and the City of South Bay, a municipal corporation, chartered and organized in accordance with the laws of the State of Florida, hereinafter referred to as the "Municipality".

WITNESSETH:

WHEREAS, Chapters 97 to 106, *Florida Statutes*, constitute the Florida Election Code (the "Code") which applies to municipalities where expressly so stated; and

WHEREAS, Sec 100.3605, *Florida Statutes*, states that "[T]he Florida Election Code, chapters 97-106 shall govern the conduct of a municipality's election in the absence of an applicable special act, charter, or ordinance provision"; and

WHEREAS, the Municipality and the SOE desire to work together to provide for municipal elections and to allocate certain responsibilities and expenses between the two parties to ensure that the provisions of the Code are followed during municipal elections; and

WHEREAS, the SOE and the Municipality wish to enter into this Agreement to set out the terms of this coordinated program.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter contained to be kept and performed by the parties hereto, and for the mutual benefit of the Municipality, its constituents and the SOE, it is agreed as follows:

1. PURPOSE:

The purpose of this Agreement is to set forth the terms and conditions under which services will be provided by the SOE and staff to the Municipality for municipal elections and to set forth the responsibilities of both parties so that there is a clear understanding of the rights and responsibilities of all parties. Such rights and responsibilities shall apply to the General, Run-Off, ~~Special~~ and Recount elections as necessary as well as the Post Election Audit, unless otherwise stated herein below.

2. DATE OF GENERAL MUNICIPAL ELECTION:

The date of the City of South Bay's General Municipal election is March 13, 2018. It is hereby acknowledged and agreed that if the date listed is the same as most other municipalities in March or November, there will be a cost sharing among municipalities for costs incurred by the SOE. Such costs shall be allocated on a pro-rata share basis; otherwise, it is hereby acknowledged and agreed upon by the municipality that it is responsible for all costs of the election, incurred by the office of the SOE.

3. FEES AND CHARGES TO BE PAID BY THE MUNICIPALITY:

The SOE hereby agrees not to charge Municipalities for taxpayer purchased equipment and supplies; (i.e. voting machines, tables, chairs, etc.) and associated maintenance and contract fees related to such equipment in return for which the Municipality hereby agrees not to charge the SOE for polling places or poll worker training facilities and allow their use for any training, within its dominion and control. Examples of municipal elections charges related to certain services performed by the SOE to be passed through to the Municipality on a shared pro rata basis for all municipalities holding elections on a general election day (i.e. 2nd Tuesday in March or November) are attached hereto as Exhibit A. All items to be paid or reimbursed to the SOE will be paid by the Municipality within thirty (30) days of receipt of an invoice from the SOE with documentation verifying the charges. Examples of total costs to small, medium and large municipalities are attached hereto as Exhibit B.

4. RESPONSIBILITIES OF BOTH THE MUNICIPALITY AND THE SOE FOR MUNICIPAL ELECTIONS:

A. Notice and Advertisement

(1) Municipality

- (a) Properly call and advertise the election according to statutes and charter at its own expense.
- (b) Issue a resolution or ordinance to the SOE requesting that the Supervisor of Elections conduct the municipality's election, provide ballot language for any ballot questions within the resolution if applicable and appoint at least 3 members of the Municipality's Canvassing Board, which may or may not include the SOE, at the SOE's discretion.
- (c) certify that the registered voter information provided by the SOE to the municipality reflects the proper boundaries of the city and notify the SOE of any changes.

(2) SOE

- (a) Publish legal notices for Logic & Accuracy testing, absentee ballot canvass, Post Election Audit and news releases on book closing.

B. Qualifying Candidates and Petition Initiatives

(1) Municipality

- (a) Provide qualifying packets to candidates and accept and process all qualifying papers and fees.
- (b) Collect Name and Pronunciation Guides from the candidates at the time of qualifying and submit to SOE.
- (c) Respond to all candidate inquiries and questions.
- (d) Respond to all legal inquiries and questions.
- (e) Respond to all media inquiries.
- (f) Provide all necessary information and materials for petition initiative process

(2) SOE

- (a) Verify signatures on any qualifying petitions submitted by candidates or for petition initiatives and notify the municipality of such results upon the close of the candidate qualifying or petition initiative deadlines as applicable.

C. Ballots

(1) Municipality

- (a) Review, amend (if necessary) and approve ballot proof prepared by SOE.
- (b) Place an order with the SOE for a sufficient quantity of ballots as applicable.
- (c) Pay ballot design costs to the SOE as incurred.
- (d) Pay the ballot printer directly for the cost of said ballots.
- (e) Reimburse the SOE for costs incurred for translation and audio recording of ballot.
- (f) Reimburse SOE for preparation of Absentee Ballot, Edge layout and Sample Ballot.

(2) SOE

- (a) Layout, check, proof and deliver ballot layout to the printer.
- (b) Receive, securely store and account for all ballots until disbursed to polling places.
- (c) Contract to have audio recorded for Touch Screen ballot.
- (d) Control all access to unvoted ballots while in the possession of the SOE.

D. Equipment Testing

(1) Municipality

- (a) Provide that a representative will be present during the Logic and Accuracy testing as noticed by SOE.

(2) SOE

- (a) Develop a unique test script and manually mark ballots to be used in public Logic & Accuracy test.
- (b) Conduct public Logic & Accuracy test.

E. Early Voting – Optional

(1) Municipality

- (a) Reimburse the SOE for staff overtime hours due to weekend and/or evening hours for Early Voting.
- (b) Pay SOE for Early Voting supplies.
- (c) Contract with, schedule and pay poll workers directly.
- (d) Deliver voted ballots to SOE daily at a location designated by SOE.
- (e) Designate Early Voting sites 120 days prior to each Election and notify SOE in writing of the locations.

(2) SOE

- (a) Prepare and provide all supplies needed for each Early Voting site.
- (b) Provide the Municipality with a list of poll workers.
- (c) Train poll workers.
- (d) Provide staffing to accept voted ballots daily at a location designated by SOE.

F. Absentee Voting

(1) Municipality

- (a) Reimburse SOE for all postage costs incurred at the current postal rate.
- (b) Pay SOE for materials and handling of each absentee ballot.
- (c) Pay SOE \$.10 per absentee ballot for verifying signatures on returned voted ballot certificates.
- (d) Refer all requests for absentee ballots to SOE.

(2) SOE

- (a) Determine eligibility and compile Absentee Ballot file.
- (b) Accept all requests for Absentee Ballots by telephone, mail or in person.
- (c) Prepare and mail Absentee Ballots.
- (d) Deliver Absentee Ballots to the Post Office.
- (e) Receive voted Absentee Ballots.
- (f) Verify signatures on returned voted Absentee Ballot certificates.
- (g) Prepare and open Absentee Ballots for tabulation.
- (h) Account for all Absentee Ballots.
- (i) Notify Absentee Ballot voter and provisional voters of the disposition of the Canvassing Board as required by law.
- (j) Record Absentee Ballot returns to voter history.
- (k) Conduct public testing of Logic and Accuracy for Absentee Ballot tabulating equipment.
- (l) Provide qualified staff to operate tabulation equipment to count Absentee Ballots.

G. Polling Places

(1) Municipality

- (a) Arrange for the use of an adequate number of polling places.
- (b) Confirm polling place accessibility and ADA compliance.
- (c) Notify SOE in writing thirty (30) days prior to election of the need for tables and chairs if necessary.
- (d) Notify SOE of polling locations to be used no later than noon the Friday after the municipal candidate qualifying deadline.
- (e) Notify the SOE not less than 30 days prior to the election that a polling place will be moved to another site.
- (f) Notify voters, as required by law, if their regular polling place is to be temporarily relocated.

(2) SOE

- (a) Provide the Municipality with a list of polling places and SOE contract.
- (b) Provide tables and chairs upon written notice from the Municipality when required.
- (c) Provide polling place supplies, i.e. signs, cones, etc.
- (d) Notify voters and the Municipality of permanent polling place change(s).

H. Precinct Supplies

(1) Municipality

- (a) Pay SOE for precinct supplies provided.

- (b) Provide a secure place for precinct clerks to return supplies and voted ballots on election night.
- (c) Pay SOE for the production of Precinct Registers or for programming electronic poll books and related communication fees.
- (d) Pay directly to the SOE's contracted moving company to have voting equipment delivered and picked up from polling place no later than the day before the election and returned after the election.

(2) SOE

- (a) Provide Precinct Registers or electronic poll books for each polling place location.
- (b) Provide Master CD compilation of registered voters for precinct advisors or provide up to date electronic poll books.
- (c) Provide certification of registered voters after book closing.
- (d) Prepare equipment, cabinets and routing of voting equipment delivery.
- (e) Provide laptop computer at each polling place or electronic poll books.
- (f) Provide CD of voter file database for each polling place or up to date electronic poll books.
- (g) Provide poll worker Clerks with cell phones.
- (h) Provide Provisional Ballot envelopes and affidavit forms for each polling place.
- (i) Provide secrecy sleeves in a number and amount appropriate for each polling place.

I. Poll Workers

(1) Municipality

- (a) Contact, contract with and pay poll workers directly (using only poll workers who are currently on the SOE list, or individuals who have successfully completed required training).
- (b) Schedule and notify poll workers of training classes.
- (c) Reimburse SOE for expenses incurred for delivery and pick up of equipment to training locations.
- (d) Reimburse SOE for expenses incurred in printing training material.
- (e) Reimburse SOE for expenses incurred for trainers to train poll workers.
- (f) Reimburse SOE for expenses incurred for contracted training locations.

(2) SOE

- (a) Provide the Municipality with a list of current poll workers.
- (b) Develop poll worker training schedule.
- (c) Plan and contract for training classes and locations.
- (d) Contract with and pay trainers to train poll workers.
- (e) Provide printed training materials for poll workers.

J. Election Day Support

(1) Municipality

- (a) Verify that all polling places are available to poll workers no later than 6:00 a.m. and open for voting promptly at 7:00 a.m. on Election Day.
- (b) Ensure that all polling places remain open until 7:00 p.m. or until all voters who are in line to vote at 7:00 p.m. have completed voting.
- (c) Reimburse SOE for all phone bank costs.

(2) SOE

- (a) Provide an additional list of poll worker replacements if needed.
- (b) Provide technical support personnel as needed.
- (c) Provide phone bank support to respond to poll workers and voters on Election Day.

K. Ballot Tabulation/Counting of Election Results

(1) Municipality

- (a) Deliver all voted ballots and other necessary election related items to a place designated by the SOE after the polling places have closed on Election Day.
- (b) Deliver **all** voting machine cartridges to a place designated by the SOE after the polling places have closed on Election Day.
- (c) Reimburse the SOE for any staff overtime and other expenses in relation to the tabulation and processing of ballots on Election Day.
- (d) Act as member of Canvassing Board.

(2) SOE

- (a) Provide technical staff and required equipment to administer tabulation and election results.
- (b) Assist and act, or appoint a designee to assist and act on the SOE's behalf, as a member of the Municipality's Canvassing Board if desired by the municipality and approved by the SOE or act as a member of the County Canvassing Board if it canvasses the municipality's election, if allowed by law.
- (c) Post election results on SOE WEB site and provide the same to Channel 20.
- (d) Provide the Municipal Clerk with unofficial election results upon conclusion of tabulation and canvassing of ballots cast on Election Day.

L. Post Election Day

(1) Municipality

(2) SOE

- (a) Provide the Municipal Clerk with an official certification of election results if allowed by law.
- (b) Store all necessary election records and ballots until the expiration of retention period prescribed by statutes.
- (c) Process polling place affirmation forms.
- (d) Sort, inventory, pack and store all election materials for retention and disposition.
- (e) Notify voters of the disposition of their Absentee or Provisional Ballots after the determination by the Canvassing Board, as required by law.
- (f) Respond to public records requests regarding records kept on behalf of the Municipality.
- (g) Record voting history for each voter who voted on Election Day.

M. Audit

(1) Municipality

- (a) Provide that the Municipal Clerk will be responsible for the administration of the

audit.

(b) Reimburse SOE for any staff time or other related expenses as may result from conducting the manual audit.

(2) SOE

(a) Organize precinct information to allow the Municipal Clerk to randomly select the race and precinct(s) that shall be audited.

(b) Organize and prepare ballots for manual audit.

(c) Provide SOE staff to conduct manual audit.

(d) Ascertain and publically post manual audit result to SOE WEB site.

N. Recount

(1) Municipality

(a) Provide that the Municipal Clerk will be responsible for the administration of the Recount, with support and guidance from the SOE.

(b) Act as a member of the Canvassing Board.

(c) Notify the candidates of the time and date of the Recount.

(d) Post public notice(s) of the Recount with the time and location.

(e) Cause to have the Recount recorded and minutes kept and approved by the Canvassing Board.

(f) Review with the Canvassing Board and the counting teams the statutes and rules of the Division of Elections, specifically Rule 1S-2.031. Recount Procedures; and Rule 1S-2.027. Standards for Determining Voter's Choice on a Ballot.

(g) Reimburse the SOE for all staff salaries/overtime, facility and other expenses required to conduct the Recount.

(2) SOE

(a) Post public notice(s) of the Recount with the time and location.

(b) Test tabulating equipment as required by Sec. 101.5612, *Florida Statutes*.

(c) Provide counting teams for examining out stacked ballots.

(d) Prepare and organize ballots for Recount processing.

(e) Tabulate ballots and provide professional staff for equipment operations.

(f) Provide official certification as determined by the Canvassing Board.

5. INDEMNITY:

Each party to this agreement shall be liable for its own actions and negligence. To the extent permitted by law, the Municipality shall indemnify, defend and hold harmless SOE against any actions, claims or damages arising out of the Municipality's negligence in connection with performance under this Agreement; and the SOE shall indemnify, defend and hold harmless the Municipality against any actions, claims or damages arising out of the negligence of SOE in connection with its performance under this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth at Sec. 768.28, *Florida Statutes*. In no case shall such limits for the Municipality extend beyond \$200,000 for any one person or beyond \$300,000 for any judgment which, when totaled with all other judgments, arises out of the same incident or occurrence. These provisions shall not be construed to constitute agreement by either party to indemnify the other for such other's negligent, willful or intentional

acts or omissions. In the event of litigation, trial or appellate, between the Municipality and the SOE relating to a municipal election governed by this Agreement, or otherwise in connection with the interpretation or application of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Notwithstanding the above, the municipality shall defend legal challenges relating to its municipal election and shall be fully responsible for all legal costs including attorneys' fees for such defense of the Municipality and the SOE. The municipality shall be responsible for damages, if any, assessed by virtue of such lawsuit, up to the monetary limits provided for hereinabove without recourse to the SOE.

6. In the event of a Special Election, the municipality shall enter into a separate contract and receive the approval of the Supervisor of Elections for the actual election date at least 90 days prior to a Special Election. The expense of any Special Election shall include all actual costs incurred by the Supervisor of Elections, including hourly and salaried staff costs and other related election expenses as documented.

7. Any municipal annexations must be submitted to the Supervisor of Elections Office in full on or before January 1, in order to be included within the municipal boundaries for the March elections or at least 90 days prior to any other election.

8. **TERM:**

This Agreement shall begin on the effective date January 1, 2018 and continue for a term of one year in order to cover the municipal election cycle of Municipal Election Day and a run-off election, and may be modified by mutual agreement of the parties. Any proposed changes to this Agreement shall be provided to the municipalities no later than August 1 of the applicable year, or as soon as practicable. All other requested services to be provided by the Supervisor of Elections Office shall be by separate contract.

9. **CHANGE IN LAW:**

In the event any change in law abrogates or modifies any provisions or applications of this Agreement, the parties hereto agree to enter into good faith negotiations and use their best efforts to reach a mutually acceptable modification of this Agreement.

10. **NOTICES:**

All formal notices affecting the provisions of this Agreement may be delivered in person or be sent by facsimile, registered mail, or by a recognized overnight courier such as FedEx, to the individual designated below, until such time as either party furnishes the other party written instructions to contact another individual.

For the SOE:	For the Municipality:
Supervisor of Elections 240 S. Military Trail West Palm Beach, Florida 33415 Attention: Susan Bucher	City of South Bay 335 SW 2 nd Avenue South Bay, FL 33493 Attention: City Clerk

11. **SEVERABILITY:**

If any clause, section, or provision of this Agreement shall be declared to be unconstitutional, invalid or unenforceable for any cause or reason, or is abrogated or negated by a change in law, the same shall be eliminated from this Agreement, and the remaining portion of this Agreement shall be in full force and effect and be valid as if such invalid portions thereof had not been incorporated herein.

12. By signing this contract, you and your municipality approve the contract as a form of legal sufficiency and certify that this contract has met all of the legal requirements of your Municipal Charter and all other related laws.

13. **NO MODIFICATION EXCEPT IN WRITING:**

This is the complete and final agreement between the parties. No representations other than those set forth herein shall be binding upon the parties. No modification of this agreement shall be effective unless submitted in writing and signed by both parties, or their duly authorized representatives.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement effective January 1, 2018.

As to the SOE:

WITNESSES:

SUPERVISOR OF ELECTIONS
PALM BEACH COUNTY

Susan Bucher

Date: _____

As to the MUNICIPALITY:

ATTEST:

CITY OF SOUTH BAY

_____, Municipal Clerk
(Affix Municipal Seal)

_____, Mayor
Date: _____

Exhibit A

Supervisor of Elections Municipal Elections Charges

	----- 2018 COSTS -----	
	Single Election	Uniform Elections
<u>ABSENTEE BALLOTS</u>		
Set up AB fee	0.40	0.03
On Call Support - Pitney Bowes		0.16
Prepare and mail Absentee Ballots (machine use, voter file, postage) - materials and postage	2.20	2.20
Provide absentee voting - prep and mailing; staff time	0.88	0.66
Process absentee ballot requests; staff time	1.17	1.17
Recording/verification of Absentee Ballot returns - staff time	1.17	1.17
Ballots on the disposition of Canvassing Board	0.12	0.12
TOTAL ABSENTEE BALLOT SERVICES	5.94	5.50
<u>MUNICIPAL PACKAGE</u>		
Arrange for translating, printing and recording of audio ballot	TBD	TBD
Provide polling place supplies – signs, cones, tables, chairs, etc.	25.00	25.00

Publish legal notices (L&A testing, AB canvassing)	941.83	59.74
L&A test development (unique test script, manual ballot marking, pretesting for comparisons and pulling equipment for public tests)	156.71	156.71
Election Day support (all staff available & phone bank for voters)	3,977.32	714.14
Election Morning and Night OT staff	1,559.19	599.69
Assist the municipality with canvass of Absentee Ballots	367.75	367.75
Post of election results on WEB site and on Channel 20	104.19	104.19
Interface with candidates, press, city staff, city attorneys regarding Election Law	200.95	200.95
Assist in finding poll worker replacements	54.31	54.31
Prepare to conduct mandatory audit days after election	120.08	120.08
Store all ballots for mandatory 12 months		
Provide certification of registered voters after book closing	71.66	71.66
Provide certification of election results	71.66	71.66
Prepare information for upload to ePollBooks_Jeff D	85.05	85.05
Prepare Absentee Ballot, Edge layout and Sample Ballot - EC	143.32	143.32
Prepare Absentee Ballot, Edge layout and Sample Ballot - IT	170.09	170.09

TOTAL MUNICIPAL PACKAGE SERVICES	8,049.11	2,944.34
<u>PRECINCT SERVICES</u>		
Prepare Clerk bags incl Ipad, cell phones and election materials - IT and PW Staff time	13.65	13.65
Delivery and Pick up of voting equipment to training locations	12.92	4.84
Prepare equipment cabinets and routing of voter equipment	22.60	22.60
Prepare precinct scanners and ADA Touch screen equipment	22.60	22.60
Management of voting history (post elections)	26.87	26.87
Plan training class locations/trainers payroll/printed training materials	43.35	43.35
iPAD programming and prep time _IT staff	10.28	10.28
iPADs Data Service	144.00	144.00
Notification to provisional voters re: the disposition of Canvassing Board	4.97	4.97
Copy of current polling place contract	0.15	0.15
Copy of current poll workers	0.15	0.15
TOTAL PRECINCT SERVICES	301.54	293.46

Translation services incurred will be included in the SOE invoice to the municipalities that required the service.

EXHIBIT B

**PALM BEACH COUNTY SUPERVISOR OF ELECTIONS
Municipal Elections Charges**

2018 Uniform Election Costs *

MUNICIPALITY	MUNICIPAL PACKAGE	ABSENTEE BALLOTS		PRECINCTS	
		# ballots @	\$5.50	# precincts @	\$293.46
HAVERHILL	\$2,944	40	\$220	4	\$1,174
RIVIERA BEACH	\$2,944	1,209	\$6,650	17	\$4,989
BOCA RATON	\$2,944	3,304	\$18,172	47	\$13,793

2018 One Municipal *

MUNICIPALITY	MUNICIPAL PACKAGE	ABSENTEE BALLOTS		PRECINCTS	
		# ballots @	\$5.94	# precincts @	\$301.54
HAVERHILL	\$8,049	40	\$238	4	\$1,206
RIVIERA BEACH	\$8,049	1,209	\$7,181	17	\$5,126
BOCA RATON	\$8,049	3,304	\$19,626	47	\$14,172

* Costs exclude expenses absorbed by municipalities, i.e., pollworker payroll, precinct rentals, precinct ballot printing, advertising and precinct security . In addition, translation services incurred for municipalities are not included in these costs, and will be included in the SOE invoice to only the municipalities that required the service.

ORDINANCE NO. 11-2017

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA, RELATING TO COMMUNICATIONS FACILITIES IN PUBLIC-RIGHTS-OF-WAY; AMENDING THE CITY OF SOUTH BAY'S CODE OF ORDINANCES TO CREATE CHAPTER 33 TO BE ENTITLED "COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY"; PROVIDING FINDINGS AND INTENT; PROVIDING DEFINITIONS; PROVIDING FOR REGISTRATION OF COMMUNICATION SERVICE PROVIDERS; PROVIDING FOR RULES AND REGULATIONS FOR COMMUNICATION SERVICE PROVIDERS; WIRELESS SERVICE PROVIDERS AND SMALL WIRELESS SERVICE PROVIDERS AND THEIR FACILITIES; PROVIDING FOR A DUTY TO NOTIFY; PROVIDING FOR RENOVATION AND SUSPENSION; PROVIDING FOR TERMINATION; PROVIDING FOR APPEALS; PROVIDING FOR APPLICATION OF THESE RULES TO EXISTING COMMUNICATION FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR INSURANCE; PROVIDING FOR INDEMNIFICATION; PROVIDING FOR CONSTRUCTION BOND; PROVIDING FOR ABANDONMENT OF A COMMUNICATIONS FACILITY; PROVIDING FOR PASS-THROUGH PROVIDER FEES AND FEES FOR USE OF CITY UTILITY POLES; PROVIDING FOR RESERVATION OF RIGHTS AND REMEDIES; PROVIDING FOR THIS ORDINANCE TO CONTROL IN THE EVENT OF CONFLICT WITH OTHER ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF SOUTH BAY, FLORIDA:

Section 1. Adoption of Representations.

The foregoing "Whereas" clauses are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

Section 2. Creation of Chapter 33 entitled "Communications Facilities in Public Rights-of-Way" is hereby adopted as follows:

Chapter 33 - COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY

Sec. 33-01 - Short Title.

This Chapter shall be known, and may be cited as, the "South Bay Communications Facilities in Public Rights-of Way Ordinance"

Sec. 33.02 - Findings, Intent and Scope.

(a) The City hereby makes and declares the following findings and declares its legislative intent as follows:

(1) The Public Rights-of-Way within the City of South Bay are a unique and physically limited resource and important amenity that are critical to the travel and transport of persons and property in the City.

(2) The demand for telecommunications services has grown exponentially in recent years, requiring the continual upgrading of telecommunications equipment and services to satisfy such demand.

(3) The placement of telecommunications equipment and facilities in the public rights-of way to satisfy the demand for telecommunications services raises important issues with respect to the City's responsibility to manage its Public Rights-of Way.

(4) The public right-of-way must be managed and controlled in a manner that enhances the health, safety and general welfare of the City and its citizens.

(5) The use and occupancy of the Public Rights-of-Way by providers of communication services must be subject to regulation which can ensure minimal inconvenience to the public, coordinate users, maximize available space, reduce maintenance and costs to the public, and facilitate entry of an optimal number of providers cable, telecommunications and other services.

(6) Section 166.041, Florida Statutes, provides for procedures for adoption of an ordinance which is regulation of general and permanent nature and enforceable as local law.

(7) Section 337.401, Florida Statutes, provides that because federal and State law require the non-discriminatory treatment of providers of telecommunications services and because of the desire to promote competition among providers of communications services, it is the intent of the Florida Legislature that municipalities and counties treat providers of communications services in a non-discriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of Communications Facilities in the Public Rights-of-Way.

(8) The City finds that to promote the public health, safety and general welfare, it is necessary to: (i) provide for the placement or maintenance of Communications Facilities

in the Public Rights-of-Way within the City limits; (ii) adopt and administer reasonable rules, regulations and general conditions not consistent with applicable State and federal law; (iii) manage the placement and maintenance of Communication Facilities in the Public Rights-of-Way by all Communications Services Providers; (iv) minimize disruption to the Public Rights-of-Way; and, (v) require the restoration of the Public Rights-of-Way to original condition.

(9) The City's intent is that these rules and regulations must be generally applicable to all providers of communications services and, notwithstanding any other law, may not require a provider of communications services to apply for a or enter into an individual license, franchise or other agreement with the City as a condition of placing or maintaining Communications Facilities in its roads or rights-of-way.

(10) It is also the City's intent to exercise the City's retained authority to regulate and manage the roads and rights-of-way in exercising its police power over Communications Services Providers placement and maintenance of facilities in the Public Rights-of-Way on a non-discriminatory and competitively neutral manner.

(b) This Chapter shall apply to any public or private entity who seeks to construct, place, install, maintain or operate a Communications System of Facilities, as such terms are defined herein, in the Public Rights-of-Way, unless otherwise exempt by operation of applicable State or federal law. This Chapter shall equally apply to a City owned or controlled Communications System except to the extent such facilities are utilized on an internal, non-commercial basis by the City or any of its agencies, departments or bureaus.

Sec. 33-03 - Definitions

(a) For purposes of this Chapter, the following terms, phrases, words and their derivations shall have the meanings ascribed herein. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural. The words "shall," "will" and "must" are mandatory, and "may" is permissive. Words not otherwise defined herein shall have the meaning ascribed thereto under Chapters 202 or 337, Florida Statutes, as amended, or where none is ascribed shall be construed to mean the common and ordinary meaning.

(1) *Abandonment* means the permanent cessation of all uses of a Communications Facility; provided that this term shall not include cessation of all use of a Facility within a physical structure where the physical structure continues to be used. By way of example, and not limitation, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be "Abandonment" of a Facility in the Public Rights-of-Way.

(2) *Affiliate* means each person, directly or indirectly, controlling, controlled by, or under common control with a Communications Services Provider that is Registered with the City; provided that Affiliate shall in no event mean any limited partner, member, or shareholder holding an interest of less than 15 percent in such Communications Services Provider.

(3) *Antenna* means communications equipment that transmits or receives electromagnetic radio frequency signals used in providing Wireless Services or other Communications Services.

(4) *Applicable Codes* means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, or local codes or ordinances adopted to implement this subsection. The term includes objective design standards adopted by ordinance which may require that a new utility pole replacing an existing utility pole be of substantially similar design, material, and color, or that ground-mounted equipment meet reasonable spacing requirements. The term includes objective design standards adopted by ordinance which may require a Small Wireless Facility to meet reasonable location context, color, stealth, and concealment requirements; however, the City may waive the design standards upon a showing that the design standards are not reasonably compatible for the particular location of a Small Wireless Facility or that the design standards impose an excessive expense. The waiver must be granted or denied within 45 days after the date of the waiver request.

(5) *Applicant* means a person who submits an Application and is a Wireless Provider.

(6) *Application* means a request submitted by an Applicant to the City for a permit to collocate Small Wireless Facilities.

(7) *As-Built Surveys* means the final and complete drawings in hard copy signed and sealed by a Professional Surveyor and Mapper (as defined in § 472.005, Florida Statutes) and the final and complete electronic overview map (in autocad, microstation, mapinfo or ESRI format) presented in computer input medium such as cd-rom, dvd or zip100/250. As-Built Surveys, in both the drawings and the electronic overview map, must show the present state of a Communications Services Provider's Facilities in the Public Rights-of-Way, including, but not limited to, the horizontal and vertical location of Facilities located at least every 100 feet and at any alignment change. Horizontal locations on all points of Facilities shall be from street centerline, or section or quarter section lines or corners. Vertical locations on all points of Facilities shall consist of elevations in either City datum or United States Geological Survey datum.

(8) *Cable Service* means the one-way transmission to subscribers of video programming or any other programming service; and subscriber interaction, if any, that is required for the selection or use of such video programming or other programming service.

(9) *Cable Service Provider* means a person that provides cable service over a cable system.

(10) *Cable System* means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service that includes video programming and that is provided to multiple subscribers within a community, but such term does not include: a facility that serves only to retransmit the television signals of one or more television broadcast stations; a facility that serves only subscribers in one or more multiple-unit dwellings under common ownership, control, or management, unless such facility or facilities use any public right-of-way; a facility that serves subscribers without using any public right-of-way; a facility of a common carrier that is subject, in whole or in part, to the provisions of Title II of the federal Communications Act of 1934 except such facility shall be considered a cable system other than for purposes of 47 U.S.C. Section 541(c) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; any facilities of any electric utility used solely for operating its electric utility systems; or an open video system that complies with 47 U.S.C. Section 573.

(11) *Chapter* means the South Bay Communications Facilities in Public Rights-of-Way Utilization Ordinance, codified as Chapter 33 of the City Code pursuant to that Ordinance enacted by City Commission effective on July 1, 2017, as may be amended or supplemented from time to time.

(12) *City* means the City of South Bay, Florida, a municipal corporation organized and existing under the laws of the State of Florida.

(13) *City Code* means the municipal code of ordinances of the City of South Bay, Florida.

(14) *City Commission* means the governing body for the City.

(15) *City Utility Pole* means a utility pole owned by the City in the right-of-way.

(16) *Collocate* or *Collocation* means the shared use of Facilities, such as poles, ducts or conduit, including but not limited to the placement of conduit owned by more than one user of the Public Rights-of-Way in the same trench or boring and the placement of equipment owned by more than one user in the same conduit. Collocation does not include interconnection of Facilities or the sale or purchase of capacity (whether bundled or unbundled).

(17) *Communications Facility, Facility* or *Facilities* means any portion of a Communications System located in the Public Rights-of-Way.

(18) *Communications Services* means the definition ascribed thereto in Section 202.11(1), Florida Statutes, as may be amended, and also includes but is not limited to Wireless Services as defined herein.

(19) *Communications Services Provider* means (i) any Person, municipality or county providing Communications Services through the use and operation of a Communications System or Communications Facilities installed, placed and maintained in the Public Rights-of-Way, regardless of whether such System or Facilities are owned or leased by such Person, municipality or county and regardless of whether such Person, municipality or county has registered with the Florida Department of Revenue as a provider of Communications Services in Florida pursuant to Chapter 202, Florida Statutes and (ii) any Person, municipality or county who constructs, installs, places, maintains or operates Communications Facilities in the Public Rights-of-Way but who does not provide Communications Services, including for example a company that places "dark fiber" or conduit in the Public Rights-of-Way and leases or otherwise provides those facilities to another company that does provide Communications Services.

(20) *Communications System or System* means any permanent or temporary plant, equipment and property placed or maintained in the Public Rights-of-Way that is occupied or used, or is capable of being occupied or used, by a Communications Services Provider for the purpose of producing, conveying, routing, transmitting, receiving, amplifying, distributing, providing or offering Communications Services including, but not limited to cables, wires, lines, conduits, fiber optics, antennae, radios and any associated poles, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, and other plant, equipment and pathway.

(21) *Dealer* means any Person, municipality or county providing Communications Services to an end user in South Bay through the use and operation of Communications Facilities installed, placed and maintained in the Public Rights-of-Way, whether owned or leased, and who has registered with the Florida Department of Revenue as a provider of Communications Services pursuant to Chapter 202, Florida Statutes. This definition of "Dealer" is intended to include any "Reseller."

(22) *Department* means the Florida Department of State.

(23) *Division 2 Permit* means the right-of-way utilization permit required under Chapter 33, City of South Bay Code of Ordinances prior to commencement of any placement or maintenance of Facilities in the Public Rights-of-Way.

(24) *Excavation* or other similar formulation of that term means the cutting, trenching or other disturbance to the Public Rights-of-Way intended to change the grade or level of land or which causes any cavity, gap, depression, penetration or hole in the surface of the Public Rights-of-Way.

(25) *FCC* means the Federal Communications Commission.

(26) *Franchise* means an initial authorization or renewal of an authorization, regardless of whether the authorization is designated as a franchise, permit, license,

resolution, contract, certificate, agreement, or otherwise, to construct and operate a cable system or video service provider network facilities in the public right-of-way.

(27) *Franchise Authority* means any governmental entity empowered by federal, state, or local law to grant a franchise.

(28) *Government* means the United States of America, the State of Florida, counties, municipalities, and any of their respective agencies, departments or bureaus.

(29) *In the Public Rights-of-Way* means in, along, on, over, under, across or through the
Public Rights-of-Way.

(30) *Micro Wireless Facility* means a Small Wireless Facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.

(31) *Pass-Through Facilities* means the Facilities for a Communication System that merely pass through the City from one point to another point and from which no revenues are directly attributable to subscribers or other carriers within the City.

(32) *Pass-through Provider* means any Person, municipality or county that places or maintains a Communications System or Communications Facilities in the Public Rights-of-Way but who does not provide Communications Services, including for example a company that places "dark fiber" or conduit In The Public Rights-of-Way and leases or otherwise provides those facilities to another company that does provide Communications Services to an end user. This definition of "Pass-through Provider" is intended to include any Person that places or maintains "Pass-Through Facilities" in the Public Rights-of-Way, but does not provide Communications Services to an end user within the corporate limits of the City.

(33) *Person* means any individual, firm, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, association, corporation, company, organization or legal entity of any kind, including any Affiliate, successor, assignee, transferee or personal representative thereof, and all other groups or combinations, and shall include the City to the extent that the City acts as a Communications Services Provider.

(34) *Placement or maintenance or placing or maintaining* or other similar formulation of that term means the named actions interpreted broadly to encompass, among other things, erection, construction, reconstruction, installation, inspection, maintenance, placement, replacement, extension, expansion, repair, removal, operation, occupation, location, relocation, grading, undergrounding, trenching or excavation. Any Communications Services Provider that owns, leases or otherwise controls the use of a Communications System or Facility in the Public Rights-of-Way, including the physical control to maintain and repair, is "placing or maintaining" a Communications System or Facility. A Person providing service only through buying wholesale and then reselling is not "placing or maintaining" the Communications Facilities through which such service is provided. The transmission and receipt of radio frequency signals

through the airspace of the Public Rights-of-Way does not constitute "placing or maintaining" Facilities in the Public Rights-of-Way.

(35) *Public Rights-of-Way* means a road, street, highway, bridge, tunnel or alley that is owned by the City, publicly held by the City or dedicated to the City for public use and over which the City has jurisdiction and control and may lawfully grant access pursuant to applicable law, and includes the space above, at or below the surface of such right-of-way. "Public Rights-of-Way" shall not include (a) county, state or federal rights-of-way, (b) property owned by any Person other than the City, (c) service entrances or driveways leading from the road or street onto adjoining property or (d) except as described above, any real or personal property of the City, such as, but not limited to, City parks, buildings, fixtures, conduits, sewer lines, facilities or other structures or improvements, regardless of whether they are situated in the Public Rights-of-Way.

(36) *Public Service Commission* or *PSC* means the agency for the State of Florida charged with the powers and duties conferred upon it by Chapter 364, Florida Statutes.

(37) *Record Drawings* means a final and complete drawing accurately depicting the improvements as constructed. Record Drawings are not required to be signed and sealed by a Professional Surveyor and Mapper.

(38) *Registration* or *Register* other similar formulation of that term means the process described in Section 23.04 herein whereby a Communications Services Provider provides certain information to the City.

(39) *Reseller* means any Person providing Communications Services within the City over a Communications System, or portion thereof, for which a separate charge is made, where that Person does not place or maintain, nor own or control, any of the underlying Facilities in the Public Rights-of-Way used for transmission. Instead such Person purchases the Service, usually at wholesale, from a Communications Services Provider and then resells it at retail or such Person uses the Public Rights-of-Way by either interconnecting with the Facilities of a Communications Services Provider utilizing the Public Rights-of-Way or by leasing excess capacity from a facility-based Communications Services Provider.

(40) *Small Wireless Facility* means a wireless facility that meets the following qualifications: (a) each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and (b) all other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer

switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

(41) *Utility Pole* means a pole or similar structure used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights, but does not include any horizontal structures upon which are attached signal lights or other traffic control devices and does not include any pole or similar structure 15 feet in height or less unless the City grants a waiver for the pole.

(42) *Video Programming* means programming provided by, or generally considered comparable to programming provided by, a television broadcast station as set forth in 47 U.S.C. s. 522(20).

(43) *Video Service* means video programming services, including cable services, provided through wireline facilities located at least in part in the public rights-of-way without regard to delivery technology, including Internet protocol technology. This definition does not include any video programming provided by a commercial mobile service provider as defined in

47 U.S.C. s. 332 (d), video programming provided as part of and via a service that enables end users to access content, information, electronic mail, or other services offered over the public Internet.

(44) *Video Service Provider* means an entity providing video service.

(45) *Wireless Facilities* means equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include (a) the structure or improvements on under within, or adjacent to the structure on which the equipment is collocated, or (b) wireline backhaul facilities, or (c) coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

(46) *Wireless Infrastructure Provider* means a person who has been certificated to provide telecommunications service in the state, and who builds or installs wireless communication transmission equipment, Wireless Facilities, or Wireless Support Structures, but is not a Wireless Services Provider.

(47) *Wireless Provider* means a wireless infrastructure provider or a Wireless Services Provider.

(48) *Wireless Services* means any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using Wireless Facilities.

(49) *Wireless Services Provider* means a person who provides Wireless Services.

(50) *Wireless Support Structure* means a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a Utility Pole.

Sec. 33-04. - Registration.

Every Communications Services Provider that desires to place or maintain a Communications System or any Communications Facilities in the Public Rights-of-Way, including any Pass Through Facilities, shall first Register with the City in accordance with this Section 33-04. Subject to the provisions prescribed in this Chapter, a

Communications Services Provider that has properly Registered may apply for Division 2 Permits to place or maintain a Communications System or Facilities in the Public Rights-of-Way.

(a) Every Communications Services Provider that desires to place or maintain Communications Facilities in the Public Rights-of-Way, including any Pass Through Facilities, shall Register with the City Manager's Office and shall submit the following information and documentation:

(1) the name of the applicant under which it will transact business in the City and, if different, in the State of Florida; and

(2) the address and telephone number of the applicant's principal place of business in the State of Florida and any branch office located in the City or, if none, the name, address and telephone number of the applicant's national headquarters and its Registered Agent in Florida; and

(3) the name, address and telephone number of the applicant's primary contact person and the person to contact in case of an emergency; and

(4) the type of Communications Services that the applicant intends to provide within the corporate limits of the City (if more than one, state all that apply), or, if none, state that the applicant is a Pass-through Provider or is intending only to place and maintain Pass Through Facilities, as the case may be; and

(5) for Registrations submitted on or after October 1, 2017, a copy of both the applicant's resale certificate and certificate of registration issued by the Florida Department of Revenue to engage in the business of providing communications services in the State of Florida; and

(6) a copy of the applicant's certificate of authorization, public convenience and necessity or other similar certification issued by the Florida Public Service Commission; and

(7) the number of the applicant's certificate of authorization or license to provide Communications Services issued by the Florida Public Service Commission, the Department, the FCC, or other Federal authority, if any; and

(8) for an applicant that is a Pass-through Provider, in lieu of paragraphs (5), (6) and (7) above, the applicant shall provide a certified copy of the certificate or license issued by the Florida Department of State, or other appropriate state agency or department, authorizing the company to do business in the State of Florida; and

(9) evidence of the applicant's insurance coverage as required under this Chapter.

(b) The City shall review the information submitted by the applicant. Such review shall be by the City Manager or his or her designee. If it is found that the applicant complied with the requirements in subsection (a) above, the Registration shall be effective and the City shall notify the applicant of the effectiveness of Registration in writing. If the City determines that the applicant is not in compliance, the City shall notify the applicant in writing of the non-effectiveness and denial of Registration and the reasons therefor. The City shall so reply to an applicant within thirty (30) days after receipt of the Registration and required information from the applicant. Non-effectiveness and denial of Registration shall not preclude an applicant from reapplying or filing subsequent applications for Registration under the provisions of this Section.

(c) An effective Registration does not, and shall not be construed to, convey equitable or legal title in the Public Rights-of-Way to any Communications Services Provider. Registration under this Ordinance governs only the placement or maintenance of a Communications System or Communications Facilities in the Public Rights-of-Way. Other ordinances, codes or regulations may apply to the placement or maintenance in the Public Rights-of-Way of facilities that are not part of a Communications System. Registration does not excuse a Communications Services Provider from obtaining appropriate access or pole attachment agreements before locating its Facilities on those facilities or property belonging to the City or another Person. Registration does not excuse a Communications Services Provider from complying with all other applicable City ordinances, codes or regulations, including the rules, regulations and general conditions set forth in this Chapter.

(d) A Communications Services Provider may cancel a Registration upon written notice to the City stating that it will no longer place or maintain a Communications System or any Communications Facilities in the Public Rights-of-Way and will no longer have a need to apply for Division 2 Permits to perform construction or other work in the Public Rights-of-Way. A Communications Services Provider cannot cancel a Registration if it intends to continue placing or maintaining a Communications System or any Communications Facilities in the Public Rights-of-Way.

(e) Registration, in and of itself, does not establish a right to place or maintain or a priority for the placement or maintenance of a Communications System or any Facility in the Public Rights-of-Way, but shall establish for the Communications Services Provider a right to apply for a Division 2 Permit from the City. Registrations are expressly subject to any future amendment to or replacement of this Chapter and further subject to any additional City ordinances, as well as any State or Federal laws that may be enacted. Registration does not excuse or exempt a Communications Services Provider from having to obtain an Occupational License from the City in accordance with the City Code.

(f) A Communications Services Provider shall renew its Registration with the City by April 1 of even numbered years in accordance with the Registration requirements in this Chapter, except that any Communications Services Provider that initially Registers during the even numbered year when renewal would be due

or the odd numbered year immediately preceding such even numbered year shall not be required to renew its Registration until the next even numbered year. Within thirty (30) days of any change in the information required to be submitted pursuant to subsection (1), a Communications Services Provider shall provide updated information to the City. If no information in the then-existing Registration has changed, the renewal may state that no information has changed. Failure to renew a Registration may result in the City restricting the issuance of additional Division 2 Permits until the Communications Services Provider has complied with the Registration requirements of this Chapter.

(g) In accordance with applicable City ordinances, codes or regulations, a Division 2 Permit is required for a Communications Services Provider to place or maintain a Communications Facility in the Public Rights-of-Way. An effective Registration shall be a condition of obtaining such a permit. Notwithstanding an effective Registration, all permitting requirements shall apply, including the requirement to pay for any such permits unless otherwise provided by resolution or ordinance of the City. A permit may be obtained by or on behalf of the Communications Services Provider having an effective Registration if all permitting requirements of the City and other provisions of this Chapter are met.

(h) A Reseller, which by definition does not place or maintain Communications Facilities in the Public Rights-of-Way, is not required to Register with the City.

Sec. 33-05. - Notice of Transfer, Sale or Assignment of Assets.

If a Communications Services Provider transfers, sells or assigns its System or any Facilities located in the Public Rights-of-Way incident to a transfer, sale or assignment of the Communications Services Provider's assets, the transferee, buyer or assignee shall be obligated to comply with the provisions set forth in this Chapter. Written notice of any such transfer, sale or assignment shall be provided by the Communications Services Provider to the City within thirty (30) days after the effective date of such transfer, sale or assignment. If the transferee, buyer or assignee is not currently Registered with the City, then the transferee, buyer or assignee must Register as provided in Section 33-04 within sixty (60) days of the effective date of such transfer, sale or assignment. If any applications for Division 2 Permits are pending under the Communications Services Provider's name as of the date the City receives written notice of the transfer, sale or assignment, then the City shall consider the transferee, buyer or assignee as the new applicant unless otherwise notified by the Communications Services Provider.

Sec. 33-06. - Rules, Regulations and General Conditions to Placement of Communications Systems and Facilities in the Public Right-of-Way.

As a condition of allowing the placement or maintenance of a Communications System or any Communications Facility in the Public Rights-of-Way, and under

additional authority granted pursuant to Chapter 337, Florida Statutes, the City hereby imposes the following rules, regulations and general conditions. Unless otherwise provided in this Chapter 33, these rules, regulations and general conditions shall apply to all Communications Services Providers, including those that are Pass-through Providers irrespective of whether they place and maintain only conduit, dark fiber or Pass-Through Facilities.

(a) *Rules on Utilization of the Public Rights-of-Way.*

(1) *Compliance with Laws.* A Communications Services Provider shall at all times be in full compliance with and abide by all applicable Federal, State and local laws, codes and regulations in placing or maintaining a Communications System and Facilities in the Public Rights-of-Way.

(2) *Due Care.* A Communications Services Provider shall use and exercise due caution, care and skill in performing work in the Public Rights-of-Way and shall take all reasonable steps to safeguard work site areas.

(3) *Permits.* A Communications Services Provider shall not commence to place or maintain a Communications Facility in Public Rights-of-Way until all applicable permits have been issued by the City and other appropriate authority, except in the case of an emergency. The term "emergency" shall mean a condition that affects the public's health, safety or general welfare, which includes an unplanned out-of-service condition of a pre-existing service. The Communications Services Provider shall provide prompt notice to the City of the placement or maintenance of a Communications Facility in the Public Rights-of-Way in the event of an emergency and shall, after-the-fact, be required to submit plans and Record Drawings and As-Built Surveys, if required by the City, showing the placement or relocation of a Communications Facility undertaken in connection with the emergency.

(4) *Application for Division 2 Permit.* Prior to the issuance of a Division 2 Permit to allow the placement or maintenance of a Communications System or Facility in the Public Rights-of-Way, the City has the right to first review and consider and the Communications Services Provider shall provide all of the following:

a. The expected dates and times when the Facility will be installed and the estimated time needed for construction and placement of the proposed Facility;

b. The location of the proposed Facility, the Public Rights-of-Way affected and a description of the Facility, including the type of Facility (e.g. conduit, fiber, twisted pair, etc.), the number of fibers or other cable being installed, and the approximate size of the Facility (e.g. length, height, width and diameter); and

c. Plans, drawings, photographs, and schematics (including cross section layout) prepared by a qualified engineer or technician showing where the Facility is proposed to be located in the Public Rights-of-Way and showing any known Communications Facilities or utility facilities in such Public Rights-of-Way.

(5) *Revised Plans.* If the plans or drawings submitted showing the proposed location for installation of the Facility in the Public Rights-of-Way require revision for

any reason prior to commencing construction, the Communications Services Provider shall promptly submit revised plans and drawings to the City Engineer.

(6) *Power to Restrict Area.* To the extent not otherwise prohibited by State or Federal law, the City shall have the power to prohibit or limit the placement of new or additional Communications Facilities within a particular area of the Public Rights-of-Way and deny the issuance of a Division 2 Permit.

(7) *Limited Purpose of Division 2 Permit.* A Division 2 Permit issued by the City constitutes authorization to undertake only certain activities in Public Rights-of-Way in accordance with this Chapter, and does not create any property right or other vested interest, or grant authority to impinge upon the rights of others who may have an interest in the Public Rights-of-Way. Division 2 Permits shall be granted only for specific routes or locations in the Public Rights-of-Way and for such term as described in the permit. The City's issuance of a Division 2 Permit shall not be construed as a warranty that the placement of any Communications Facility is in compliance with applicable codes, regulations or laws.

(8) *Responsibility for Contractors.* Every Communications Services Provider that is Registered with the City shall be liable for the actions of contractor(s) hired by them to perform the placement or maintenance of Facilities in the Public Rights-of-Way and shall be responsible for making sure that such contractor meets and complies fully with the rules, regulations and general conditions set forth in this Chapter.

(b) *Regulations on the Placement or Maintenance of Communications Facilities.*

(1) *Provision and Form of Record Drawings and As-Built Surveys.* Within forty-five (45) days after completion of any placement or maintenance of a Communications Facility in the Public Rights-of-Way, the Communications Services Provider shall provide the City with Record Drawings showing the final location of such Facility in the Public Rights-of-Way. Upon request by the City, the Communications Services Provider shall also provide the City with As-Built Surveys within forty-five (45) days after completion of any placement or maintenance of a Communications Facility in the Public Rights-of-Way. The Record Drawings and As-Built Surveys shall be provided to the City at no cost.

(2) *Production and Filing of As-Builts.* Every Communications Services Provider that is Registered with the City shall produce and keep on file at its principal place of business an accurate and complete set of As-Builts of all Facilities placed and maintained in the Public Rights-of-Way. The location and identification of Facilities and the production of As-Builts shall be at the sole expense of the Communications Services Provider. Within thirty (30) days of any written request by the City, the Communications Services Provider must provide to the City, at no cost, copies of complete sets of As-Builts for the indicated Public Rights-of-Way. The failure of the Communications Services Provider to produce, keep on file, or provide to the City As-Builts as required under this Chapter is sufficient grounds for the City to deny the issuance of Division 2 Permits in the future.

(3) *Removal of Facilities Placed Without Permit.* Any Communications Facilities placed in the Public Rights-of-Way by the Communications Services Provider without first having obtained the required Division 2 Permits shall be removed within thirty (30) days of written notice by the City to remove the same and in default of compliance with such notice, such Facilities may be removed by order of the City and the cost of removal shall be borne and paid by the Communications Services Provider upon demand.

(4) *Underground.* The placement or maintenance of all Communications Facilities shall be underground unless otherwise approved in writing by the City. Communications Facilities shall be placed between the property line and the curb line of all streets and avenues and shall not be within the roadway or the roadway recovery area unless specifically approved in writing by the City. All Communications Facilities shall have consistent alignment parallel with the edge of pavement, a thirty-six inch (36") depth of cover for and shall have two feet (2') of horizontal clearance from other underground utilities and their appurtenances. Where approved by the City, Facilities to be placed in the street shall be laid according to the permanent grade of the street and at a depth below the surface of the permanent grade as each is determined by the City.

(5) *Above-Ground Approval.* The placement or maintenance of Facilities above-ground, including new poles and aerial wires, is subject to written approval by the City. Attachment to any pole or other above-ground structure must be pursuant to a valid and effective pole attachment agreement or similar instrument. Location on any pole or other above-ground structure shall not be considered a vested interest of the Communications Services Provider and such poles or structures, if owned by the Communications Services Provider, shall be removed or modified by the Communications Services Provider at its own expense whenever the City or other governmental authority determines that the public convenience would be enhanced thereby. The lowest placement of any Communications Facility on any pole or other above-ground structure in the Public Rights-of-Way shall not be less than eighteen (18) feet from the ground. The Communications Services Provider shall, at such time as the electric utility facilities or other Communications Facilities are placed underground or are required by the City to be placed underground, concurrently place its Communications Facilities underground without cost to the City.

(6) *New Poles or Above-Ground Structures.* The placing of any new pole or other above-ground structure to support Communications Facilities is subject to the approval of the City and shall be done under the supervision of the City Engineer or his designee. No such pole or other above-ground structure shall be placed in any gutter or drainage area and must be behind the curb to avoid damage to any sidewalk. In areas of the City where either electric utility wires or other Communications Facilities are above ground and such facilities are moved, either voluntarily or at the direction of the City, to a new pole or other above-ground structure, the Communications Services Provider shall likewise move all its above-ground Facilities on such poles or

structures to such new pole or structure within thirty (30) days after receipt of written notice from either the City or the owner of the new pole or structure, without cost to the City.

(7) *Placement and Maintenance Standards.* The placement or maintenance of Communications Facilities in the Public Rights-of-Way shall be performed in accordance with standards and requirements of the following, as is applicable and as each is in force at the time of the respective placement or maintenance of a Communications System or Facility:

- a. the Florida Department of Transportation Utilities Accommodation Guide;
- b. the State of Florida Manual of Uniform Minimum Standards for Design
- c. the Trench Safety Act (Chapter 553, Florida Statutes);
- d. the Underground Facility Damage Prevention and Safety Act (Chapter 556, Florida Statutes);
- e. the National Electrical Code or the ANSI National Electrical Safety Code; and
- f. the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States.

(8) *Sunshine State One-Call.* Every Communications Services Provider shall utilize, and if permissible, maintain membership in the utility notification one call system administered by Sunshine State One-Call of Florida, Inc.

(9) *Safety and Minimal Interference.* All placement and maintenance of Communication Facilities in the Public Rights-of-Way shall be subject to the City Code and other regulations of the City pertaining thereto, and shall be performed with the least possible interference with the use and appearance of the Public Rights-of-Way and the rights and reasonable convenience of the property owners who abut or adjoin the Public Rights-of-Way and in compliance with the rules and regulations of the Florida Department of Transportation. The Communications Services Provider shall at all times employ reasonable care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injury or be a nuisance to the public. Suitable barricades, flags, lights, flares, or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. All placement and maintenance shall be done in such a manner as to minimize to the greatest extent any interference with the usual travel on such Public Rights-of-Way. The use of trenchless technology (i.e., micro-tunneling and horizontal directional drilling techniques) for the installation of Communications Facilities in the Public Rights-of-Way as well as joint trenching or the co-location of facilities in existing conduit is strongly encouraged, and should be employed wherever and whenever feasible.

(10) *Correction of Harmful Conditions.* If, at any time, the City or other authority of competent jurisdiction reasonably determines that any Communications Facility is, or has caused a condition that is, harmful to the health, safety or general welfare of any Person, then the Communications Services Provider shall, at its own expense, promptly correct or eliminate all such Facilities and conditions. In an emergency, as determined by the City, when the Communications Services Provider is not immediately available or is unable to provide the necessary immediate repairs to any Communications Facility that is damaged or malfunctioning, or has caused a sunken area or other condition and, in the City's sole discretion, is deemed a threat to public safety, then the City, when apprised of such an emergency, shall have the right to remove, make repairs to or eliminate same with the total cost being charged to and paid for by the Communications Services Provider upon demand.

(11) *Remedy of Hazardous Conditions.* If, at any time, a condition exists that the City or other authority of competent jurisdiction reasonably determines is an emergency that is potentially hazardous or life threatening to any person or is a threat to the health or safety of the general public, and to remedy such condition the City or other authority of competent jurisdiction reasonably determines that a Communications Services Provider must temporarily relocate or temporarily shut off service or transmissions through a specific Facility, then the City, as an appropriate exercise of its police powers, may order the Communications Services Provider to immediately perform such temporary relocation or shut off until the condition has been remedied, and to do so at its own expense and without liability to or recourse against the City. In such an emergency, when the Communications Services Provider is not immediately available or is unable to provide the necessary immediate relocation or shut off of the specific Communications Facility, then the City shall have the right to perform, or cause to be performed, such temporary relocation or shut off until the condition has been remedied with the total cost being charged to and paid for by the Communications Services Provider upon demand.

(12) *Interference with Other Facilities.* A Communications Services Provider shall not, in violation of any applicable laws or regulatory standards, design, place or maintain its Communications Facilities in a manner that will interfere with the signals or facilities of any municipal or county police, fire or rescue department, the facilities of any public utility, or the Communications Facilities of another Communications Service Provider, including any cable service provider.

(13) *Relocation or Removal of Facilities.* Except in cases of emergency, a Communications Services Provider, at its own expense, shall:

a. Upon thirty (30) days written notice, relocate or remove, as specified in said notice, its Communications Facility in the event the City finds that the particular Facility is unreasonably interfering in some way with the convenient, safe or continuous use, or the maintenance, improvement, extension or expansion of any Public Rights-of-Way. The City shall provide the Communications Services Provider with a notice and

order as provided for in Section 337.404 of the Florida Statutes, or any subsequently enacted law of the State of Florida, in the event it charges the Communications Services Provider for the cost and expense of relocating or removing such Facility pursuant to this paragraph.

b. Within a reasonable period of time from the date of written notice from the City, but not more than one hundred twenty (120) days thereafter, relocate or remove, as specified in said notice, its Communications Facility in the event the City determines it necessary for the construction, completion, repair, relocation or maintenance of a City project, because the particular Communications Facility is interfering with or adversely affecting the proper operation of street light poles, traffic signals, or any communications system belonging to the City or an agency thereof or because the particular Communications Facility is interfering with the signals or facilities of any municipal public utility. In the event the City issues any such written notice to the Communications Services Provider pursuant to this paragraph, and the Communications Services Provider fails to cause the aforementioned relocation or removal as required herein, the City shall be entitled to relocate or remove such Facilities without further notice to the Communications Services Provider and the total cost and expense shall be charged to the Communications Services Provider. In the event the City issues any such written notice to the Communications Services Provider pursuant to this paragraph, and the Communications Services Provider fails to cause the aforementioned relocation or removal as required herein, the City shall be entitled to relocate or remove such Facilities without further notice to the Communications Services Provider and the total cost and expense shall be charged to the Communications Services Provider.

(14) *Temporary Raising or Lowering of Facilities.* A Communications Services Provider, upon request of any Person holding a validly issued building or moving permit from the City to temporarily encroach on or perform moving operations in or across the Public Rights- of-Way, shall temporarily raise or lower its Communications Facilities to accommodate such temporary encroachment or move. The expense of such temporary raising or lowering of Facilities shall be paid by the Person requesting the same, and the Communications Services Provider shall have the authority to require such payment in advance. The Communications Services Provider shall be given not less than twenty (20) days advance written notice from such Person to arrange for the temporary relocation, which notice must detail the time and location of the permitted activity, and not less than twenty-four (24) hours advance notice from the permit holder advising of the actual operation. The City is not subject to, nor shall it be liable for, any such expense or notice requirement for the moving of houses or structures performed by the City or its contractors.

(15) *Coordination.* In an effort to minimize the adverse impact on the Public Rights- of-Way and other municipal improvements, a Communications Services Provider may be required by the City to coordinate the placement or maintenance of

its Facilities with any work, construction, installation in or repairs of the subject Public Rights-of-Way or other Facilities therein that is occurring or is scheduled to occur within a reasonable time from application for a Division 2 Permit as determined by the City. Every Communications Services Providers shall make space in its trench and/or conduit within the Public Rights-of-Way available to other providers consistent with the federal requirements of 47 U.S.C. 224. Every Communications Services Provider shall utilize existing conduits, pathways and other Facilities whenever possible, and shall not place or maintain any new, different, or additional poles, conduits, pathways or other Facilities, whether in the Public Rights-of-Way or on privately- owned property, until written approval is obtained from the City or other appropriate governmental authority, and, where applicable, from the private property owner.

(16) *Co-location and Joint Use.* A Communications Services Provider, in an effort to minimize the adverse impact on the useful life of the Public Rights-of-Way, shall, whenever possible, enter into joint use agreements with the City and other parties who have Registered with, or who are expressly authorized by, the City to use its Public Rights-of-Way; provided that the terms of such agreements are satisfactory to the Communications Services Provider. Nothing herein contained shall mandate that the Communications Services Provider enter into joint use agreements with parties other than the City or an agency of the City. However, prior to placement of any new or additional underground conduit in the Public Rights-of-Way, a Communications Services Provider is required to certify in writing to the City that it has made appropriate inquiry to all existing utilities and other entities possessing a right to occupy the Public Rights-of-Way as to the availability of existing or planned conduit that the particular Communications Services Provider could reasonably utilize to meet its needs, and that no such conduit is available or planned at a reasonable cost by any other entity on the time schedule reasonably needed. The Communications Services Provider shall not be permitted to perform any placement or maintenance of Facilities in those segments of the Public Rights-of- Way where there exists vacant or available conduit, dark fiber or surplus fiber owned by the City, an agency of the City or another governmental body which is or, through a reasonable amount of effort and expense, can be made compatible with the Communications Services Provider's System or network. Under such circumstances the Communications Services Provider shall have the opportunity to enter into a use agreement or lease arrangement with the City or an agency of the City at or below reasonable and prevailing market rates for such conduit or fiber or, where owned by another governmental body, shall, in good faith, first exhaust all means of obtaining use of such conduit or fiber before applying for a Division 2 Permit from the City.

(17) *Maintenance-of-Traffic.* In the event that placement or maintenance of Communications Facilities conducted by the Communications Services Provider requires streets or traffic lanes to be closed or obstructed, the Communications Services Provider must, pursuant to the requirements of existing or subsequently enacted City

ordinances, obtain all necessary permits from City, and shall obtain approval of its maintenance-of-traffic plan from the City.

(18) *Restoration of the Public Rights-of-Way.* After completion of any placement or maintenance of a Communications Facility in the Public Rights-of-Way or each phase thereof, the Communications Services Provider shall, at its own expense and in a manner reasonably acceptable to the City, restore without delay the Public Rights-of-Way so disturbed to its original condition immediately prior to the placement or maintenance work. If the Communications Services Provider fails to make such restoration within thirty (30) days following the completion of such placement or maintenance, the City may perform such restoration and charge the costs of the restoration to the Communications Services Provider in accordance with Section 337.402, Florida Statutes, as it may be amended. The Communications Services Provider shall, to the satisfaction of the City, maintain and correct any restorations made pursuant hereto for a period of twelve (12) months following the date of its completion. Failure to comply with this subsection shall be deemed sufficient grounds for denial of any future Division 2 Permits for the placement or maintenance of Communications Facilities.

(19) *Disruption or Destruction of Other Facilities or Property.* A Communications Services Provider shall not knowingly place or maintain any Facility in a manner that shall in any way disrupt, displace, damage or destroy any sewer line, gas line, water main, pipe, conduit, wires, fiber-optics or other Facilities, or property belonging to the City or any other Person lawfully occupying the Public Rights-of-Way, without first obtaining the consent of the City. The Communications Services Provider shall bear all responsibility and costs for any such conduct where City consent has not been obtained and shall pay such costs upon demand.

(c) *General Conditions on the Utilization of the Public Rights-of-Way and the Placement or Maintenance of Communications Facilities.*

(1) *City Not Liable.* Except for acts of willful misconduct or gross negligence and to the extent permitted by applicable law, neither the City nor its officials, boards, commissions, consultants, agents, employees or independent contractors shall have any liability to the Communications Services Provider for any claims for any damages, costs, expenses or losses resulting from the City's breakage, removal, alteration or relocation of any Facilities of any Communications Services Provider which arose out of or in connection with any emergency or disaster situation or was, in the sole discretion of the City, deemed necessary to facilitate any public works project, public improvement, alteration of a City structure, change in the grade or line of any Public Rights-of-Way, or the elimination, abandonment or closure of any Public Rights-of-Way or was found by City Commission to be in the best interest of the health, safety or general welfare of the public; nor shall any charge be made by the Communications Services Provider against the City for any damages, costs, expenses or losses related thereto.

(2) *No Exemption from Permits.* Nothing in this Chapter shall exempt any Communications Services Provider from obtaining Division 2 Permits for work done within the Public Rights-of-Way.

(3) *Subject to Police Powers.* The rights of the Communications Services Provider shall be subject to all lawful exercise of police power by the City, and to such other reasonable regulation of the Public Rights-of-Way as the City shall hereafter by resolution or ordinance provide in the interest of the health, safety and general welfare of the public. Any inconsistency or ambiguity between the provisions of this Chapter 33 and any lawful exercise of the City's police power shall be resolved in favor of the latter.

(4) *City Inspection.* The City shall have the right to make such inspections of a Communications System or Facilities placed or maintained in the Public Rights-of-Way as it finds necessary to ensure compliance with this Chapter. This Chapter shall not be construed to create or hold the City responsible or liable for any damage to persons or property by reason of any inspection by the City of the placement or maintenance of a Communications System or Facility as authorized herein or failure by the City to so inspect.

(5) *Access to Manholes.* The City, in the proper exercise of its municipal powers and duties with respect to the Public Rights-of-way, shall have access at any time to all hand holes and manholes in the City belonging to a Communications Services Provider. Before accessing any manhole, the City will make a reasonable good faith effort to provide the Communications Services Provider prior notice to afford an opportunity to have trained personnel present, unless determined by the City to be an emergency situation.

(6) *Compatibility, Capacity and Interference Issues.* To properly manage and control the use of the Public Rights-of-Way, and to protect the health, safety and general welfare of the public, the City, in its legislative and regulatory role, shall be the final authority on permitting a Communications System or Facility to be placed in the Public Rights-of-Way and shall exercise such authority in a non-discriminatory manner. It shall be in the sole discretion of the City Attorney whether an easement is compatible with or allows for its use by a Communications System or Facility. It shall be in the sole discretion of the City, based on the nature, design, size, configuration or proposed location of any Communications System or Facility, whether there is sufficient capacity in a particular section of the Public Rights-of-Way or whether such System or Facility will interfere with the Facilities or equipment of any municipality, county, public utility, cable operator, or other Communications Service Provider.

(7) *No Warranty of Fitness or Suitability.* The City makes no express or implied warranties or representations regarding the fitness, suitability, or availability of the Public Rights-of-Way for any Communications System or Facility or its right to authorize the placement or maintenance of any Communications System or Facility in the Public Rights-of- Way. Any performance of work, costs incurred or

services rendered by a Communications Services Provider shall be at such Provider's sole risk. Nothing in this Chapter shall affect the City's authority to acquire or add Public Rights-of-Way, or to vacate or abandon Public Rights-of-Way as provided for in the City Code or applicable law. The City makes no express or implied warranties or representations regarding the availability of any acquired, added, vacated or abandoned Public Rights-of-Way for a Communications System or Facility.

(8) *Annexations.* Upon the annexation of any territory to the City of South Bay, the provisions of this Chapter and the rules, regulations and general conditions contained herein shall extend to the territories so annexed; and all Facilities placed, maintained, owned or operated by any Communications Services Provider extending into or already located in the Public Rights-of-Way of the territory so annexed, shall thereafter be subject to all terms hereof, as the same may be amended from time to time.

Sec. 33-07. - Duty to Notify City of Resellers; Conditional Use of Public Rights-of-Way. Within thirty (30) days of any Registered Communications Services Provider using its Facilities to carry the Communication Services of any Reseller, such Communications Services Provider shall notify the City of the name and address of such Reseller. A Reseller's lease, interconnection or other use of Facilities belonging to a Communications Services Provider duly Registered in accordance with Section 33-04 and properly permitted to place or maintain its Facilities in the Public Rights-of-Way, does not, and shall not, afford such Reseller any right, claim or cause of action to impede the lawful exercise of the City's rights or police powers, including, but not limited to, requiring the Registered Communications Services Provider to remove such Facilities from the Public Rights-of-Way.

Sec. 33-08. - Wireless Facilities.

(a) *Generally.* The placement of telecommunication towers and antennae anywhere in the corporate limits of the City shall in all cases be subject to the City's zoning and land use regulations as allowed pursuant to State law. Where placement of a wireless antenna in the Public Rights-of-Way has been approved by the City and to the extent not inconsistent with any City zoning and land use regulations, a wireless antenna attached to a permitted and legally maintained vertical structure in the Public Rights-of-Way, such as a light pole or utility pole, shall, unless otherwise agreed to by the City in writing:

- (1) not extend more than 10 feet above the highest point of the vertical structure;
- (2) not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, state, or local rule, regulation or law;
- (3) comply with any applicable Federal Communications Commission Emissions Standards;
- (4) comply with any applicable local building codes in terms of design, construction and installation; and

(5) not contain any commercial advertising thereon.

(b) *Small Wireless Facilities in Public Rights-of Way.* The City hereby adopts the following rules that will apply to the Collocation of Small Wireless Facilities In Public Rights-of-Way for all Applications filed on or after July 1, 2017:

(1) *General Conditions.* Applicants seeking permission to Collocate or install Small Wireless Facilities within Public Rights-of-Way shall comply with the registration, insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, City liability, and City warranties provisions contained in this Chapter 33; provided, however, that the review timeframes and denial criteria of this Subsection 33-08(b) shall control.

(2) *Filing, Review, and Processing of Applications.* The City shall accept Applications for permits and shall process and issue permits for the Collocation of Small Wireless Facilities In Public Rights-Of-Way subject to the following requirements:

a. The Applicant shall as a part of its Application provide information necessary to demonstrate the applicant's compliance with the applicable provisions of Chapter 33 for the placement of Small Wireless Facilities in the locations identified in the Application, and shall bear the burden of demonstrating compliance therewith.

b. Within 14 days after the date of filing the Application, the City may request that the proposed location of a Small Wireless Facility be moved to another location in the right-of-way and placed on an alternative City Utility Pole or support structure or may place a new Utility Pole. The City and the Applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days after the date of the request. At the conclusion of the negotiation period, if the alternative location is accepted by the Applicant, the Applicant must notify the City of such acceptance and the Application shall be deemed granted for any new location for which there is agreement and all other locations in the Application. If an agreement is not reached, the Applicant must notify the City of such non-agreement and the City must grant or deny the original Application within 90 days after the date the Application was filed. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.

c. The City hereby limits the height of a Small Wireless Facility to 10 feet above the Utility Pole or structure upon which the Small Wireless Facility is to be collocated. Unless waived by the City, the height for a new Utility Pole is limited to the tallest existing Utility Pole as of July 1, 2017, located in the same Public Right-Of-Way, other than a Utility Pole for which a waiver has previously been granted, measured from grade in place within 500 feet of the proposed location of the Small Wireless Facility. If there is no Utility Pole within 500 feet, the City shall limit the height of the Utility Pole to 50 feet.

d. Within 14 days after receiving an Application, the City must determine and notify the Applicant by electronic mail as to whether the Application is complete. If an Application is deemed incomplete, the City must specifically identify the missing information. An Application is deemed complete if the City fails to provide notification to the Applicant within 14 days.

e. The City shall process all Applications on a nondiscriminatory basis. If the City fails to approve or deny a complete application within 60 days after receipt of the Application, the Application is deemed approved. If the City does not use the 30-day negotiation period provided herein., the parties may mutually agree to extend the 60-day Application review period. The City shall grant or deny the Application at the end of the extended period.

f. A permit issued pursuant to an approved application shall remain effective for 1 year unless extended by the City.

g. The City shall notify the Applicant of approval or denial by electronic mail. The City shall approve a complete Application unless it does not meet the applicable provisions of this Chapter 33.

h. If the Application is denied, the City shall specify in writing the basis for denial, including the specific code provisions on which the denial is based, and shall send the documentation to the Applicant by electronic mail on the day the City denies the Application.

i. The Applicant may cure the deficiencies identified by the City and resubmit the Application within 30 days after notice of the denial is sent to the Applicant. Failure by the Applicant to timely resubmit the Application shall result in a final denial of the Application. The City shall approve or deny a timely filed revised Application within 30 days after receipt or the Application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

j. An Applicant seeking to Collocate Small Wireless Facilities within the City's boundaries may, at the Applicant's discretion, file a consolidated application with the City and receive a single permit for the Collocation of up to 30 Small Wireless Facilities. If the Application includes multiple Small Wireless Facilities, the City may separately address Small Wireless Facility Collocations for which incomplete information has been received or which are denied.

k. The City may deny a proposed Collocation of a Small Wireless Facility In The Public Rights-of-Way if the proposed Collocation:

1. Materially interferes with the safe operation of traffic control equipment.
2. Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.

3. Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.
4. Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual.
5. Fails to comply with applicable codes and the applicable provisions of this Chapter 33.

l. Notwithstanding anything to the contrary contained herein, the City may reserve space on City Utility Poles for future public safety uses. If replacement of a City utility pole is necessary to accommodate the collocation of the Small Wireless Facility and the future public safety use, the pole replacement is subject to the make-ready provisions of this ordinance and the replaced pole shall accommodate the future public safety use.

m. A structure granted a permit and installed pursuant to this subsection 33-08 (b) shall comply with chapter 333, Florida Statutes, and federal regulations pertaining to airport airspace protections.

n. The City does not require approval or fees for (i) routine maintenance, (ii) replacement of existing Wireless Facilities with substantially similar Wireless Facilities, or (iii) installation, placement, maintenance, or replacement of Micro Wireless Facilities that are suspended on cables strung between existing Utility Poles in compliances with applicable codes by or for a Communications Services Provider authorized to occupy the Public Rights of-Way and who is remitting taxes under Chapter 202, Florida Statutes.

(3) *Collocation of Small Wireless Facilities on City Utility Poles.* Collocation of small wireless facilities on City utility poles is subject to the following requirements:

a. The City shall not enter into an exclusive arrangement with any Person for the right to attach equipment to City Utility Poles.

b. The rates and fees for Collocations on City Utility Poles must be nondiscriminatory, regardless of the services provided by the collocating person.

c. The City hereby levies, establishes, and sets an annual rate that shall be paid by all those Applicants who file an Application to Collocate Small Wireless Facilities on City Utility Poles in the amount of \$150 per pole per year. The initial payment shall be made as a condition of the granting of the permit, with remaining annual payments to be made in all subsequent years on the same date.

d. Agreements between the City and Wireless Providers that are in effect on July 1, 2017, and that relate to the Collocation of Small Wireless Facilities in the right-of-way, including the Collocation of Small Wireless Facilities on City Utility Poles, remain in effect, subject to applicable termination provisions. The Wireless Provider may accept

the rates, fees, and terms established under this subsection for Small Wireless Facilities and Utility Poles that are the subject of an application submitted after the rates, fees, and terms become effective.

e. For a City Utility Pole that supports an aerial facility used to provide Communications Services or Electric Service by another, the parties shall comply with the process for make-ready work under 47 U.S.C. s. 224 and implementing regulations. The good faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.

f. For an City utility pole that does not support an aerial facility used to provide communications services or electric service by another, the City shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested Collocation, including necessary pole replacement, within 60 days after receipt of a complete Application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the Applicant. Alternatively, the City may require the Applicant seeking to collocate a Small Wireless Facility to provide a make-ready estimate at the Applicant's expense for the work necessary to support the Small Wireless Facility, including pole replacement, and perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a Utility Pole that is substantially similar in color and composition. The City may not condition or restrict the manner in which the Applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the right-of-way. The replaced or altered Utility Pole shall remain the property of the City.

g. The City may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to Communications Services Providers other than Wireless Services Providers for similar work and may not include any consultant fee or expense.

(4) *Placement of Utility Poles In the Public Rights-of-Way In Support of Collocation of Small Wireless Facilities.* A Wireless Infrastructure Provider may apply to the City to place Utility Poles In The Public Rights-of-Way to support the Collocation of Small Wireless Facilities. The Application must include an attestation that Small Wireless Facilities will be collocated on the Utility Pole or structure and will be used by a Wireless Services Provider to provide service within 9 months after the date the Application is approved by the City. The City shall accept and process the Application in accordance with Subsection 33-08(b) and any applicable codes and other local codes governing the placement of Utility Poles In The Public Rights-of-Way.

(5) *Application and Enforcement of Historic Preservation Zoning Regulations.* Consistent with preservation of local zoning authority under 47 U.S.C. s. 332(c)(7), the requirements for facility modifications under 47 U.S.C. s. 1455(a), and the National Historic Preservation Act of 1966, as amended, this Subsection 33-08(b) is subject to the provisions of Chapter 38, City Code, Historic Preservation.

(6) *Prohibited Collocations, Attachments, Installations, and Services Not Authorized by Subsection 23-08(b).* This subsection 33-08(b) does not authorize, and the City hereby prohibits, the following:

a. This Subsection 33-08(b) does not authorize a Person to Collocate or attach Wireless Facilities, including any Antenna, Micro Wireless Facility, or Small Wireless Facility, on a privately owned Utility Pole, a Utility Pole owned by an electric cooperative or a municipal electric utility, a privately owned Wireless Support Structure, or other private property without the consent of the property owner.

b. The approval of the installation, placement, maintenance, or operation of a Small Wireless Facility pursuant to this Subsection 33-08(b) does not authorize the provision of any voice, data, or Video Services or the installation, placement, maintenance, or operation of any Communications Facilities other than Small Wireless Facilities In The Public Right-of-Way.

c. This Subsection 33-08(b) does not affect provisions relating to Pass-Through Providers contained in this Ordinance and contained in Section 337.401(6), Florida Statutes.

d. This Subsection 33-08(b) does not apply to the installation, placement, maintenance, or replacement of Micro Wireless Facilities on any existing and duly authorized aerial communications facilities, provided that once aerial facilities are converted to underground facilities, any such Collocation or construction shall be only as provided by the City's underground utilities ordinance.

e. This Subsection 33-08(b) does not authorize a Person to Collocate Small Wireless Facilities or Micro Wireless Facilities on a City Utility Pole or erect a Wireless Support Structure in a location subject to covenants, conditions, restrictions, articles of incorporation, and bylaws of a homeowners' association. This paragraph does not apply to the installation, placement, maintenance, or replacement of Micro Wireless Facilities on any existing and duly authorized aerial communications facilities.

Sec. 33-09. - Revocation or Suspension of Division 2 Permits.

Subject to Section 33-11, the City may revoke any Division 2 Permit currently issued to a Communications Services Provider for work in the Public Rights-of-Way or suspend the issuance of Division 2 Permits in the future to a Communications

Services Provider for, in addition to any other circumstances provided for in this Chapter, one or more of the following reasons:

- (a) a violation of permit conditions, including conditions set forth in the permit, this Chapter 33, and other applicable codes or regulations governing the placement or maintenance of Communications Facilities in the Public Rights-of-Way;
- (b) a misrepresentation or fraud made or committed on the part of the Communications Services Provider in the Registration process or in the application for a Division 2 Permit;
- (c) the failure to properly renew the Registration or the ineffectiveness of Registration; or
- (d) the failure to relocate or remove Communications Facilities as may be required by the City pursuant to this Chapter 33.

The City shall provide notice and an opportunity to cure any violation of (a) through (d) above, each of which shall be reasonable under the circumstances.

Sec. 33-10. - Involuntary Termination of Registration.

(a) The City may terminate a Registration if:

- (1) a Federal or State authority suspends, denies, or revokes a Communications Services Provider's certification or license to provide Communications Services;
- (2) the Communications Services Provider's placement or maintenance of a Communications Facility in the Public Rights-of-Way presents an extraordinary danger to the general public or other users of the Public Rights-of-Way and the Communications Services Provider fails to remedy the danger promptly after receipt of written notice;
- (3) the Communications Services Provider ceases to use all of its Communications Facilities in the Public Rights-of-Way and has not complied with Section 33-21 herein; or
- (4) the Communications Services Provider fails to comply with any of the rules, regulations or general conditions set forth in Section 33-06 herein.

(b) Prior to termination of a Registration, the Communications Services Provider shall be notified by the City with a written notice setting forth all matters pertinent to the proposed termination, including which of (1) through (4) above is applicable as the reason therefore. The Communications Services Provider shall have thirty (30) days after receipt of such notice within which to eliminate the reason or within which to present a plan, satisfactory to the City, to accomplish the same. If not eliminated or if the plan presented is rejected, the City shall provide written notice of such rejection to the Communications Services Provider and a final determination to terminate Registration. A final determination to terminate Registration may be appealed in accordance with the procedures set forth in Section 33-11.

(c) In the event of termination, following any appeal period, the Communications Services Provider formerly Registered shall: (1) notify the City of the assumption or anticipated assumption by another registrant of ownership of the Communications Services Provider's Facilities in Public Rights-of-Way or (2) provide the City with an acceptable plan for disposition of its Communications Facilities in the Public Rights-of-Way. If a Communications Services Provider fails to comply with this subsection (c), which determination of non-compliance is subject to appeal as provided in Section 23-11, the City may exercise any remedies or rights it has at law or in equity, including but not limited to taking possession of the Facilities where another Person has not assumed the ownership or physical control of the Facilities or requiring the Communications Services Provider within 90 days of the termination, or such longer period as may be mutually agreed to between the City and the Communications Services Provider, to remove some or all of the Communications Facilities from the Public Rights-of-Way and restore the Public Rights-of-Way to their original condition prior to such removal.

(d) In any event, a Communications Services Provider whose Registration has been terminated shall take such steps as are necessary to render safe every portion of the Communications Facilities remaining in the Public Rights-of-Way.

(e) In the event of termination of a Registration, this Section does not authorize the City to cause the removal of Communications Facilities used to provide another service for which the Communications Services Provider or another Person who owns or exercises physical control over the Communications Facilities holds a valid certification or license with the governing Federal or State agency, if required for provision of such service, and who is Registered with the City, if required.

(f) The City's right to terminate a Registration shall be in addition to all other rights of the City, whether reserved in this Chapter, or authorized by other law, and no action, proceeding or exercise of the right to terminate Registration will affect or preclude any other right the City may have.

Sec. 33-11. - Appeals.

Final determinations by appropriate City staff denying an initial Registration; denying an application for renewal of a Registration; terminating a Registration; or denying, revoking or suspending any Division 2 Permit are subject to appeal. A notice of appeal of such decision may be filed with the City's Manager within thirty (30) days of the date of the final, written decision to be appealed. The City Manager shall have thirty (30) days from the date the appeal is filed to review the matter and render a written decision to uphold or reverse the final decision made by staff. If the City Manager upholds the final decision of staff, the appellant may file a notice of appeal with the City Clerk within thirty (30) days of the date of the written decision of the City Manager. The City Clerk shall set the matter for hearing before the City Commission at any regular meeting of City Commission scheduled within forty-five (45) days of the date that the notice of appeal is filed with the City Clerk, unless waived by the

Communications Services Provider. A ruling may be made at the hearing or at the next regularly scheduled City Commission meeting and the Communications Services Provider shall be notified of the decision in writing within thirty (30) days thereof. Where a notice of appeal to the City Manager or the City Clerk is not timely filed as provided herein, such right to appeal shall be waived. Upon correction by the Communications Services Provider of the circumstances that gave rise to a suspension or denial of a Division 2 Permit, the suspension or denial shall be lifted (the same does not apply to the revocation of a Division 2 Permit).

Sec. 33-12. – Fees Applicable to Those Not Subject to Communications Services Tax.

While the Florida Legislature has prohibited municipalities from requiring providers of communications services who have registered with the Florida Department of Revenue from having to enter into franchise agreements or license arrangements as a condition to placing or maintaining Communications Facilities in the Public Rights-of-Way, the City expressly reserves the right to require the payment of consideration or regulatory fees by Persons using or occupying the Public Rights-of-Way in other capacities. The City reserves the right to require such payments based on the type of user and to the extent as follows:

(a) *Dealer.* Except as provided in paragraph (16) of subsection 33-06.(b), a Communications Services Provider who meets the definition of Dealer as set forth in this Chapter 33 and who has Registered in accordance with Section 33-04 is not required to enter into a franchise agreement or license arrangement with the City as a condition to placing or maintaining Communications Facilities in the Public Rights-of-Way, nor is a Dealer required to make payment of any franchise fees, license fees or other user fees to the City as consideration for the use or occupancy of the Public Rights-of-Way for the provision of Communication Services.

(b) *Pass-through Provider and Pass Through Facilities.* A Communications Services Provider who meets the definition of Pass-through Provider as set forth in this Chapter 33 and who is not subject to the City of South Bay's Local Communications Services Tax imposed pursuant to Sections 202.19 and 202.20, Florida Statutes shall pay the city the maximum annual amount allowed under Section 337.401(6)(b), Florida Statutes, as amended. For purposes of calculating payments hereunder, each separate pole or tower installed or maintained by a Pass-through Provider for purposes of supporting Antennas for other over-the-air radio transmission or reception equipment In The Public Rights-of-Way shall comprise a separate Communications Facility subject to assessment of a separate permit fee in the amount of five hundred dollars (\$500.00) per linear mile, or portion thereof, up to the maximum amount allowed under Section 337.401(6)(b), Florida Statutes, whichever is higher. The annual amount referred to above shall

be due and payable on October 1 of every year beginning on October 1, 2017. Fees not paid within ten (10) days after the due date shall bear interest at the rate of one percent per month from the date due until paid. The acceptance of any payment required hereunder by the City shall not be construed as an acknowledgment that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the City may have for additional sums due and payable or authorization to install any facilities In The Public Rights-of- Way.

(c) *Other Persons.* All other Persons, except Government, are required to pay the City, as consideration for the use or occupancy of the Public Rights-of-Way for the placement or maintenance of Communications Facilities, an amount based on and in accordance with Section 33-12(b) of the City Code.

(d) *Government.* A Government is not required to pay the City consideration for the use or occupancy of the Public Rights-of-Way for the placement or maintenance of Communications Facilities, unless such Facilities are being used by such Government or a Communications Services Provider, including Resellers, to offer or provide Communication Services other than for such Government's internal non-commercial use, in which event the Government, where not subject to the City of South Bay's Local Communications Services Tax imposed pursuant to Sections 202.19 and 202.20, Florida Statutes is required to pay the City, as consideration for the use or occupancy of the Public Rights-of-Way by or through its Facilities placed therein after October 1, 2017, an amount based on and in accordance with Section 33-12(b) of the City Code or such other amount or rate of compensation as mutually agreed to in writing by the Government and the City.

Sec. 33-13. - Existing Communications Facility.

A Communications Services Provider with a Facility in the Public Rights-of-Way as of the effective date of this Chapter 33 has until October 1, 2017 to comply with the provisions of this Chapter, including, but not limited to, Registration, or be in violation thereof.

Sec. 33-14. - Insurance.

(a) At all times during the use or occupancy of the Public Rights-of-Way, including any time during placement or maintenance of Communications Facilities, the Communications Services Provider shall obtain, pay all premiums for, and maintain satisfactory to the City the types of insurance policies and coverage limits described in this Section 33-14. Nothing contained in this Chapter shall limit a Communications Services Provider's liability to the City to the limits of insurance certified or carried.

(1) Commercial general liability insurance valid in the State of Florida, including contractual liability and products completed operations liability coverage on an

occurrence basis, which policy limit shall be in an amount not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit, for bodily injury, personal injury or death, or property damage and in an amount not less than Two Million Dollars (\$2,000,000) policy aggregate for each personal injury liability, broad form property damage (without XCU exclusions), contractual liability and products-completed operations liability. (2) Business automobile liability insurance valid in the State of Florida which policy limit shall be in an amount not less than One Million Dollars (\$1,000,000) combined single limit, including bodily injury and property damage covering owned, leased, hired and non-owner vehicles.

(2) Business automobile liability insurance valid in the State of Florida which policy limit shall be in an amount not less than One Million Dollars (\$1,000,000) combined single limit, including bodily injury and property damage covering owned, leased, hired and non-owner vehicles.

(3) Workers' Compensation valid in the State of Florida which policy limit shall be in an amount not less than the Statutory limit for Workers' Compensation.

(4) Employer's liability insurance valid in the State of Florida which policy limit shall be in an amount not less than One Million Dollars (\$1,000,000) each accident for employer's liability.

(a) At all times during the use or occupancy of the Public Rights-of-Way, including any time during placement or maintenance of Communications Facilities, the Communications Services Provider shall obtain, pay all premiums for, and maintain satisfactory to the City the types of insurance policies and coverage limits described in this Section 23-14. Nothing contained in this Chapter shall limit a Communications Services Provider's liability to the City to the limits of insurance certified or carried.

(1) Commercial general liability insurance valid in the State of Florida, including contractual liability and products completed operations liability coverage on an occurrence basis, which policy limit shall be in an amount not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit, for bodily injury, personal injury or death, or property damage and in an amount not less than Two Million Dollars (\$2,000,000) policy aggregate for each personal injury liability, broad form property damage (without XCU exclusions), contractual liability and products-completed operations liability.

(2) Business automobile liability insurance valid in the State of Florida which policy limit shall be in an amount not less than One Million Dollars (\$1,000,000) combined single limit, including bodily injury and property damage covering owned, leased, hired and non-owner vehicles.

(3) Workers' Compensation valid in the State of Florida which policy limit shall be in an amount not less than the Statutory limit for Workers' Compensation.

(b) All insurance providers used shall be admitted and duly authorized to do business in the State of Florida and shall have assigned by A. M. Best Company a minimum Financial Strength Rating of "A" and a minimum Financial Size Category of "IX" (i.e., a size of \$250,000,000 to \$500,000,000 based on capital, surplus, and conditional reserve funds). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable. All liability policies shall name the City, its council members, officers, and employees as additional insureds with respect to any covered liability arising out of the placement or maintenance of Communications Facilities in the Public Rights-of-Way or other activities under this Chapter. Each Communications Services Provider shall furnish annually to the City certificates showing proof of all required insurance coverage. All liability coverage must be in occurrence form and in accordance with the limits specified. Claims made policies are not acceptable. No insurance policy shall be canceled, nor shall the occurrence or aggregate limits set forth herein be reduced, until the City has received at least thirty (30) days' advance written notice by registered, certified or regular mail or facsimile of any cancellation, intent not to renew or reduction in policy coverage. Each Communications Services Provider shall be responsible for notifying the City of such cancellation, intent not to renew or reduction in coverage. All Certificate(s) of Insurance, including all endorsements and riders, evidencing insurance coverage shall be submitted to the City within thirty (30) days after the date of registration with the City in order for a Communications Services Provider to obtain Division 2 Permits required for construction in the Public Rights-of-Way. Each Communications Services Provider shall, in the event of any such notice described above, obtain, pay all premiums for, and file with the City, written evidence of the issuance of replacement policies within thirty (30) days following receipt by the City or the Communications Services Provider of such notice.

(c) The Certificate(s) of Insurance forms must be properly executed by the authorized representative of the insurance provider and must include all endorsements, riders and notices. Each Communications Services Provider shall file and maintain with the City on an annual basis the required Certificate(s) of Insurance. The Certificate(s) of Insurance must indicate the following:

- (1) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; that the policy coverage "pertains the requirements of Section 23.14 of the South Bay Communications Facilities in Public Rights-of-Way Ordinance;" policy expiration date; and specific coverage amounts; and

- (2) any applicable deductibles or self-insured retentions; and

- (3) that the City, its council members, officers and employees are additional insureds; and

(4) that the City shall receive thirty (30) days' advance written notice of cancellation, intent not to renew or reduction in coverage; and

(5) that the commercial general liability insurance policy is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance.

(d) Under extraordinary circumstances a Communications Services Provider may satisfy the insurance requirements of this Chapter by providing documentation of self-insurance that, in the sole discretion of the City Manager, demonstrates incontrovertibly the adequacy to defend and cover claims of any nature that might arise from the placement and maintenance of Facilities in the Public Rights-of-Way. The Communications Services Provider must be authorized as a self-insurer by the Department of Insurance under the laws of the State of Florida.

Sec. 33-15. - Indemnification.

(a) Except with respect to the willful misconduct, negligence or gross negligence of the City, a Communications Services Provider, by act of Registering with the City as such, shall be obligated, at its sole cost and expense, to defend, indemnify and hold harmless the City, its officials, commissioners, agents and employees from and against any and all claims, suits, causes of action, proceedings, liabilities and judgments for damages or equitable relief, and costs and expenses arising out of or in connection with the placement or maintenance of its Communications Facilities in the Public Rights-of-Way by the Communications Services Provider or its agent or hired contractor. This indemnification provision shall include, but not be limited to, such damages and penalties arising out of claims (1) by any Person whatsoever on account of (i) bodily injury to a person or persons, (ii) death of a person or persons or (iii) property damage, where any of the foregoing is occasioned by the operations of the Communications Services Provider, or alleged to have been so caused or occurred or (2) involving the Communications Services Provider's violation of any easement or private property rights.

(b) Nothing in this Section shall prohibit the City from participating in the defense of any litigation by its own counsel if in the City's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict.

(c) Indemnified costs and expenses shall include, but not be limited to, all out-of-pocket expenses and reasonable attorneys' fees in defending against any such claim, suit or proceeding, and shall also include the reasonable value of any services rendered by the City Attorney or his assistants or any consultants, agents and employees of the City. The City will attempt to notify the Communications Services Provider, in writing, within a reasonable time of the City's receiving notice of any issue it determines may require indemnification.

(d) Nothing contained in this subsection shall be construed or interpreted: (1) as denying the City, the Communications Services Provider or any Person any remedy or defense available to them under the laws of the State of Florida; or (2) as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes, as it may be amended.

(e) The indemnification requirements shall survive and be in effect after the termination or cancellation of a Registration.

Sec. 33-16. - Construction Bond.

(a) Prior to issuance of any Division 2 Permit where the type of work allowed under the permit will require restoration of the Public Rights-of-Way, the Communications Services Provider or the contractor performing such work on its behalf shall obtain, pay for and file with the City a construction bond. The construction bond shall serve to guarantee the timeliness and quality of the construction and restoration work and to secure, and enable the City to recover, all costs related to the restoration of the Public Rights-of-Way in the event the Communications Services Provider or its contractor fails to make such restoration to the City's satisfaction or causes damage to the Public Rights-of-Way during construction. The construction bond must name the City as South Bay and be in the face amount of Fifteen Thousand Dollars (\$15,000) conditioned upon the full and faithful completion of construction and restoration of the Public Rights-of-Way to its original condition. Six (6) months following completion and inspection of the restoration of the Public Rights-of-Way satisfactory to the City, the Communications Services Provider or its contractor, as the case may be, may reduce the face amount of the construction bond to Five Thousand Dollars (\$5,000) and, thereafter, may allow the bond to lapse in accordance with its terms. However, for any subsequent work in the Public Rights-of-Way, the Communications Services Provider or its contractor will be required to replenish any existing construction bond or provide a new construction bond in the face amount of Fifteen Thousand Dollars (\$15,000). The construction bond shall be in a form acceptable to the City Attorney and must be issued by a surety having a rating reasonably acceptable to the City and authorized by the Florida Department of Insurance to issue surety bonds in this State.

(b) The construction bond must be issued as non-cancelable and be for a term of not less than twelve (12) months. In the event the term of any construction bond expires, or is reasonably expected to expire, prior to the completion of construction, restoration and City inspection, the Communications Services Provider, or the contractor acting on its behalf, shall immediately obtain, pay for, and file with the City a replacement bond

(c) The City's requirement of a construction bond is not in lieu of any additional bonds that may be required under this Chapter or through the permitting process. The City's right to recover under the construction bond shall be in addition to all other rights of the City, whether reserved in this Chapter, or authorized by other

law, and no action, proceeding or exercise of a right with respect to the construction bond will affect or preclude any other right the City may have.

Sec. 33-17. - Performance Bond.

(a) Before any Communications Services Provider is permitted to begin the placement or maintenance of an initial build, any substantial rebuild, upgrade or extension of its Communications System, or when construction plans show that there would be at least one thousand (1,000) feet of open trenching in the Public Rights-of-Way at any given time, the Communications Services Provider is required to obtain, pay for, and file with the City a performance bond. The performance bond must name the City as South Bay and be in the face amount of Two Hundred Fifty Thousand Dollars (\$250,000) conditioned upon the full and faithful compliance by the Communications Services Provider with all requirements, duties and obligations imposed by the provisions of the South Bay Communications Right-of-Way Utilization Ordinance during, and through completion of, the placement or maintenance project. The performance bond shall be in a form acceptable to the City Attorney and must be issued by a surety having a rating reasonably acceptable to the City and authorized by the Florida Department of Insurance to issue performance bonds in this State.

(b) The performance bond must be issued as non-cancelable and be for a term consistent with the reasonably expected duration of the particular placement or maintenance project (including restoration and City inspection), but in no event less than eighteen (18) months. In the event the term of any performance bond expires, or is reasonably expected to expire, prior to the completion of such placement or maintenance project, including restoration and City inspection, the Communications Services Provider shall immediately obtain, pay for, and file with the City a replacement bond.

(c) The City's requirement of a performance bond is not in lieu of any additional bonds that may be required under this Chapter or through the permitting process. The City's right to recover under the performance bond shall be in addition to all other rights of the City, whether reserved in this Chapter, or authorized by other law, and no action, proceeding or exercise of a right with respect to the performance bond will affect or preclude any other right the City may have. Any proceeds recovered under the performance bond may be used to reimburse the City for such additional expenses as may be incurred by the City as a result of the Communications Services Provider's failure to comply with the responsibilities imposed by this Chapter, including, but not limited to, attorney's fees and costs of any action or proceeding, and the cost of removal or abandonment of any property.

Sec. 33-18. - Security Fund.

Every Communications Services Provider shall make a Twenty-Five Thousand Dollar (\$25,000) cash deposit, or shall file with the city an irrevocable letter of credit or acceptable equivalent in the same amount, which shall serve, and be referred to, as the "Security Fund." The Security Fund shall be conditioned upon the full and faithful compliance with and performance by the Communications Services Provider of all requirements, duties and obligations imposed by the provisions of the South Bay Communications Right-of-Way Utilization Ordinance at all times. The letter of credit shall be in a form and issued by an institution acceptable to the City's Chief Financial Officer. Should the City draw upon the Security Fund, it shall promptly notify the Communications Services Provider, and the Communications Services Provider shall promptly restore the cash deposit or letter of credit to the full amount. The Security Fund shall be maintained until the later of (a) the effective date of transfer, sale or assignment by the Communications Services Provider of all its Facilities In The Public Rights-of-Way, (b) twelve (12) months after the removal or abandonment by the Communications Services Provider of all of its Facilities in the Public Rights-of-Way or (c) six (6) months after the termination of Registration, including any appeals undertaken pursuant to Section 33.11 herein. Upon the later of these events the cash deposit will be returned without interest or the letter of credit may be cancelled. In the event a Communications Services Provider fails to perform any requirement, duty or obligation imposed upon it by the provisions of this Chapter, there shall be recoverable, jointly and severally from the Security Fund, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal, relocation or abandonment of any Facilities in Public Rights-of-Way, plus a reasonable allowance for attorneys' fees, up to the full amount of the Security Fund.

Sec. 33-19. - Enforcement Remedies.

(a) No provision of this Chapter shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provisions of this Chapter, the Registration provisions, or any rule, regulation or general condition provided for hereunder, whether administratively, judicially or both. Neither the existence of other remedies identified in this Chapter nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover fines, penalties or monetary damages (except where liquidated damages are otherwise prescribed) for such violation by the Communications Services Provider. The remedies available to the City shall be cumulative and in addition to any other remedies provided by law or equity. The laws of the State of Florida shall govern with respect to any proceeding in law or equity pertaining to the enforcement of this Chapter or any cause of action arising out of or in connection herewith.

(b) A Communications Services Provider's failure to comply with provisions of this Chapter shall constitute a City Code violation and shall subject the Communications Service Provider to the code enforcement provisions of the City

and may be punishable as provided in Section 162.22, Florida Statutes, as it may be amended.

(c) In any proceeding before the City Commission where there exists an issue with respect to a Communications Services Provider's performance of its obligations pursuant to this Chapter, the Communications Services Provider shall be given the opportunity to provide such information as it may have concerning its compliance with the terms and conditions of this Ordinance. The City may find a Communications Services Provider that does not demonstrate compliance with the terms and conditions of this Chapter in default and apply any appropriate remedy or remedies as authorized by this Ordinance. In determining which remedy is appropriate, the City Commission shall take into consideration the nature of the violation, the Person bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the City Commission determines are appropriate to the public interest.

(d) Failure of the City to enforce any requirements of this Chapter shall not constitute a waiver of the City's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

Sec. 33-20. - Abandonment of a Communications Facility.

(a) Upon Abandonment of any Facility owned by a Communications Services Provider in the Public Rights-of-Way, the Communications Services Provider shall notify the City within sixty (60) days.

(b) The City may direct the Communications Services Provider, by written notice, to remove all or any portion of such Abandoned Communications Facility at the Communications Services Provider's sole expense if the City determines that the Abandoned Communications Facility's presence interferes with the public health, safety or welfare, which shall include, but shall not be limited to, a determination that such Communications Facility: (1) compromises safety at any time for any Public Rights-of-Way user; (2) compromises the safety of other Persons performing placement or maintenance of Communications Facilities in the Public Rights-of-Way; (3) prevents another Person from locating other facilities in the area of the Public Rights-of-Way where the Abandoned Communications Facility is located when other alternative locations are not reasonably available; or (4) creates a maintenance condition that is disruptive to the use of the Public Rights-of-Way. In the event of (2), the City may require the third Person to coordinate with the Communications Services Provider that owns the existing Communications Facility for joint removal and placement, where agreed to by the Communications Services Provider.

(c) If the Communications Services Provider fails to remove all or any portion of an Abandoned Communications Facility as directed by the City within the time period specified in the written notice, which time period must be reasonable under the

circumstances, the City may perform such removal and charge the cost of the removal against the Communications Services Provider.

(d) In the event that the City does not direct the removal of the Abandoned Communications Facility, the Communications Services Provider, by its notice of Abandonment to the City, shall be deemed to consent to the alteration or removal of all or any portion of such abandoned Facility by the City or other Person, provided that the cost of the alteration or removal is not borne by the Communications Services Provider.

Sec. 33-21. - Reservation of Rights.

The City hereby expressly reserves all of the following rights:

(a) To exercise its municipal home rule powers, now or hereafter, to the fullest extent allowed by law with regard to the access, use and regulation of the Public Rights-of-Way.

(b) To amend this Chapter as it shall find necessary in the lawful exercise of its municipal authority.

(c) To adopt or enact by resolution or ordinance, in addition to the provisions contained herein and in any existing applicable ordinances, such additional reasonable regulations as City Commission finds necessary in the exercise of the City's police powers.

(d) To exercise the power of eminent domain, consistent with applicable federal and state law, to acquire property that may include that property owned or leased by a Communications Services Provider.

(e) As and when deemed necessary by City Commission to be in the interest of the City or its residents, to abandon portions of the Public Rights-of-Way within the proper exercise of its municipal authority and without notice to or the consent of any Communications Services Provider. The City shall not be responsible for any costs, damages, loss or other expense to the Communications Services Provider as a result of the City's abandonment of any Public Rights-of-Way.

(f) To place and maintain, and franchise or permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other types of facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the City in the Public Rights-of-Way occupied by any Communications Services Provider.

(g) Without limitation, the right to alter, change, or cause to be changed, the grading, installation, relocation, or width of any Public Rights-of-Way within the City limits and within said limits as the same may from time to time be altered.

(h) To require a Reseller to Register in accordance with Section 33-04 to the extent such Reseller wants the right to place or maintain Facilities in the Public Rights-

of-Way. Any Person using or leasing Facilities owned by a Registered Communications Services Provider is not, therefore, entitled to any rights to place or maintain Communications Facilities in the Public Rights-of-Way, unless such Person themselves Registers with the City.

Section 3. Conflict and Repealer.

Any and all ordinances and regulations in conflict herewith are hereby repealed to the extent of any conflict.

Section 4. Inclusion into the Code of Ordinances.

It is the intent of the City Commission that the provisions of this ordinance shall become and be made a part of the City of South Bay's Code of Ordinances, and that the sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

Section 5. Severability.

If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

Section 6. Effective Date.

This Ordinance shall take effect immediately upon final passage and adoption.

PASSED FIRST READING this 21st day of November 2017.

PASSED SECOND READING this ____ day of _____ 2017.

Joe Kyles, Mayor

Attested

By: _____
Jessica Figueroa, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

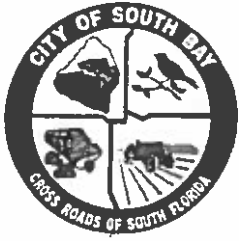
Burnadette Norris-Week, Esquire
City Attorney

Moved by: _____

Seconded by: _____

VOTE:

Commissioner Berry	_____ (Yes)	_____ (No)
Commissioner McKelvin	_____ (Yes)	_____ (No)
Commissioner Scott	_____ (Yes)	_____ (No)
Vice-Mayor Wilson	_____ (Yes)	_____ (No)
Mayor Kyles	_____ (Yes)	_____ (No)



City of South Bay

South Bay City Hall
335 SW 2nd Avenue
South Bay, FL 33493
Telephone: 561-996-6751
Facsimile: 561-996-7950

www.southbaycity.com

Commission

Joe Kyles Sr.
Mayor

John Wilson
Vice Mayor

Esther E. Berry

Shanique S. Scott

Taranza McKelvin

Leondrae Camel,
City Manager

Jessica Figueroa, City Clerk

Bernadette Norris Weeks
City Attorney

"An equal Opportunity
Affirmative Action Employer"

To: Honorable Mayor and Commissioners
From: Massih Saadatmand, Finance Director
Thru: Mr. Leondrae Camel, City Manager
Date: November 17, 2017
Ref: Weekly check register

Enclosed, please find the summary of check register as of November 17, 2017:

General Fund

- Utility:

FPL	\$ 6,896.04
DeltaCom	1,302.57
PBC Water	1,838.94
Comcast	60.42

• CAP Government	5,153.50
• Coastal Network	1,500.00
• Marathon Fleet	1,860.93
• Deposit refund	300.00
• FL Insurance Trust	1,695.10
• Purchased of supplies, materials and parts	940.16 A
• Payment for various services	649.00 B
• Payroll deductions	999.23 C
• Other	<u>3,392.22</u> D

Total	\$ <u>26,588.11</u>
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Sanitation Fund

Waste Management	\$ <u>3,076.44</u>
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AP Check Register Report

City Of South Bay (CSBFND)

11/3/2017 10:41:20 AM

Page 1

Check Number	Vendor Number	Vendor Name	Check Date	Check Amount
10345	ALLY	ALLY	11/3/2017	502.52
10346	BRENDA THOMAS	BRENDA THOMAS	11/3/2017	300.00
10347	CAP GOVERNMENT	CAP GOVERNMENT	11/3/2017	5,153.50
10348	COASTAL NETWORK SOL	COASTAL NETWORK SOLUTIONS, LLC	11/3/2017	1,500.00
10349	DELTACOM 1058	EARTHLINK	11/3/2017	1,302.57
10350	LAKE HARDWARE	LAKE HARDWARE	11/3/2017	58.07
10351	LEGALSHIELD	PRE PAID LEGAL SERVICES INC	11/3/2017	25.90
10352	LIBERTY NATIONAL	LIBERTY NATIONAL	11/3/2017	667.05
10353	ORIGINAL EQUIPMENT	ORIGINAL EQUIPMENT	11/3/2017	80.74
10354	PBC WATER UTILITIES	PALM BEACH COUNTY WATER UTILITIES	11/3/2017	1,838.94
Non-Electronic Transactions:				11,429.29
Total Transactions				11,429.29

AP Check Register Report

City Of South Bay (CSBFND)

11/13/2017 3:47:21 PM

Page 1

Check Number	Vendor Number	Vendor Name	Check Date	Check Amount	
10355	COMCAST	COMCAST	11/13/2017	60.42	
10356	EVERGLADES FARM EQU	EVERGLADES EQUIPMENT GROUP	11/13/2017	28.66	A
10357	FLORIDA LEAGUE 2	FLORIDA LEAGUE OF CITIES	11/13/2017	350.00	D
10358	FLORIDA MUNICIPAL IN	FLORIDA MUNICIPAL INSURANCE TRUST	11/13/2017	1,695.10	
10360	FPL	FPL	11/13/2017	6,896.04	
10361	HOME DEPOT CREDIT SE	HOME DEPOT CREDIT SERVICES	11/13/2017	210.87	A
10362	JOE KYLES	JOE KYLES	11/13/2017	233.00	D
10363	JOHN WILSON	JOHN WILSON	11/13/2017	233.00	J
10364	LARRY'S AC APPLIANCE	LARRY'S AC & APPLIANCE	11/13/2017	150.00	B
10365	LYONS PRINTING	LYONS PRINTING	11/13/2017	49.00	J
10366	MARTHON FLEET	WEX BANK	11/13/2017	1,860.93	
10367	MATTIE J. WILLIAMS	Mattie J. Williams	11/13/2017	9.00	D
10368	MITCH BOCOOK	MITCH BOCOOK	11/13/2017	45.50	J
10369	NEW YORK LIFE INS	NEW YORK LIFE INSURANCE COMPANY	11/13/2017	176.28	C
10370	OFFICE DEPOT CREDIT	OFFICE DEPOT CREDIT PLAN	11/13/2017	211.49	A
10371	PERFORMANCE NAPA	PERFORMANCE NAPA	11/13/2017	315.22	J
10372	ROBBIE TIRE	ROBBIE TIRE	11/13/2017	20.00	B
10373	ROLFE & LOBELLO, P.A.	ROLFE & LOBELLO, P.A.	11/13/2017	130.00	C
10374	SEMINOLE SUPPLY CO	SEMINOLE SUPPLY CO	11/13/2017	35.11	A
10375	UNITED FIRE PROTECTIC	UNITED FIRE PROTECTION, INC.	11/13/2017	250.00	B
10376	UNITED SITE SERVICES C	UNITED SITE SERVICES OF FLORIDA INC	11/13/2017	180.00	J
10377	WESTIN CHARLOTTE	WESTIN CHARLOTTE	11/13/2017	1,009.60	D
				Non-Electronic Transactions:	14,149.22
				Total Transactions:	14,149.22

AP Check Register Report

City Of South Bay (CSBFND)

11/13/2017 4:23:14 PM

Page 1

Check Number	Vendor Number	Vendor Name	Check Date	Check Amount
10378	WESTIN CHARLOTTE	WESTIN CHARLOTTE	11/13/2017	D 1,009 60
Non-Electronic Transactions:				1,009 60
Total Transactions:				1,009 60

AP Check Register Report

City Of South Bay (CSBFND)

11/13/2017 4:05:48 PM

Page 1

Check Number	Vendor Number	Vendor Name	Check Date	Check Amount
153	WASTE MANAGEMENT	WASTE MANAGEMENT	11/13/2017	3,076.44
Non-Electronic Transactions:				3,076.44
Total Transactions:				3,076.44