

CITY OF NORTH MIAMI
PROPERTY MANAGEMENT SERVICES
AGREEMENT

THIS PROPERTY MANAGEMENT SERVICES AGREEMENT ("Agreement") is entered into this 20 day of May, 2011, between the **City of North Miami**, a Florida municipal corporation with a principal address of 776 N.E. 125th Street, North Miami, FL 33161 ("City"), and **Joe Celestin Civil Engineer & General Builder, LLC**, a limited liability company organized and existing under the laws of the State of Florida, having its principal business office at 396 NW 159th Street, Miami, FL 33169 ("Property Manager"). The City and Property Manager shall collectively be referred to as the "Parties".

RECITALS

WHEREAS, on March 31, 2011, the Eleventh Judicial Circuit Court for Miami-Dade County ("Court"), discharged Charles W. De Santi as Receiver for the Court and ordered the possession of the property otherwise known as Biscayne Landing ("City Property"), back to the City of North Miami ("City") on April 13, 2011; and

WHEREAS, commencing on April 13, 2011, the City will be responsible for the continued-overall operation, repair and maintenance of the City Property; and

WHEREAS, on May 2, 2011, the City advertised *Request for Proposal #46-10-11 Property Management Services for Vacant Commercial Property* ("RFP"), to select a property management company experienced with commercial, environmentally challenged land to manage the vacant site located at Biscayne Boulevard between Northwest 137th Street and Northwest 151st Street ("Management Services"); and

WHEREAS, in accordance with the RFP, Property Manager submitted its proposal, expressing the capability, willingness and expertise to perform Management Services pursuant to City requirements; and

WHEREAS, on May 17, 2011, the Mayor and City Council, passed and adopted Resolution No. R-2011-64, authorizing the City Manager and City Attorney to negotiate and execute a management agreement with Property Manager, in accordance with the terms and conditions of the RFP.

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

ARTICLE 1 - RECITALS

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

ARTICLE 2 - CONTRACT DOCUMENTS

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

2.1.1 City of North Miami *Request for Proposal #46-10-11 Property Management Services for Vacant Commercial Property*, attached hereto as "Exhibit A";

2.1.2 Property Manager's response to RFP dated May 10, 2011 ("Proposal"), attached hereto by reference; and

2.1.3 Any additional documents which are required to be submitted by Property Manager pursuant to Contract Documents.

ARTICLE 3 – TERM

3.1 The Parties agree that, subject to authorized adjustments, the Initial Term of this Agreement shall be Four (4) months, commencing on the date the Notice to Proceed is issued by the City.

3.2 Following the Initial Term of Four (4) months, the Agreement shall revert to a month-to-month Term-basis, until terminated by either Party.

ARTICLE 4 - COMPENSATION

4.1 The Property Manager shall be paid an amount not to exceed Nineteen Thousand Five Hundred and no/100 Dollars (\$19,500.00) per month, as full compensation for the provision of monthly Management Services.

ARTICLE 5 – SCOPE OF MANAGEMENT SERVICES

5.1 Property Manager shall provide all required labor, supervision, materials, equipment, tools, transportation, services and expertise necessary for the provision of Management Services. Property Manager shall perform Management Services in accordance with that degree of care and skill ordinarily exercised by reputable members of its profession.

5.2 At its own expense, Property Manager will procure, maintain in effect and comply with all permits, licenses and other governmental and regulatory approvals required to be obtained by Property Manager in the provision of Management Services on City Property.

5.3 Property Manager represents and warrants to the City that: (i) Property Manager possesses all qualifications, licenses and expertise required in the provision of Management Services, including but not limited to full qualification and good standing to do business in Florida with personnel fully licensed, as may be required by law; (ii) Property Manager is not delinquent in the payment of any sums due the City, including payment of permit fees, local business taxes, or in the performance of any obligations to the City; (iii) all personnel assigned to perform work shall be, at all times during the term hereof, fully qualified and trained to perform the tasks assigned to each; (iv) the Management Services will be performed in the manner as described in the Contract Documents for the budgeted amounts, rates and schedules; and (v) the person executing this Agreement on behalf of Property Manager is duly authorized to execute same and fully bind Property Manager as a party to this Agreement.

5.4 Property Manager shall immediately notify the City of any existing conditions on City Property which is foreseeable to cause harm or damage to any person, or to real or personal property situated within the City Property.

5.5 Property Manager shall ensure that suitable and sufficient guards, barriers and lighting which shall be provided by the City, are placed for the prevention of accidents. The Property Manager shall comply with all applicable minimum safety standards required by local, county, state and federal regulations.

5.6 Lawful Entry: Property Manager shall limit entry upon the City Property and allow only those officers, directors, agents, subcontractors, entities, employees or invitees which are authorized by the City to enter the City Property.

5.7 Property Manager shall be subject to the Cone of Silence provisions of the City Code of Ordinances upon the issuance of any Request for Qualifications, Request for Proposals, Invitation for Bids, or any other procurement method initiated by the City concerning in any way, the City Property.

ARTICLE 6 – INDEPENDENT PROPERTY MANAGER

6.1 Property Manager and its employees and agents shall be deemed to be independent contractors and not City agents or employees. Accordingly, Property Manager shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the City, nor any rights generally afforded classified or unclassified employees of the City. Property Manager further understands that Florida workers' compensation benefits available to employees of the City are not available to Property Manager, and agrees to provide workers' compensation insurance for any employee or agent of Property Manager rendering Management Services to the City under this Agreement.

ARTICLE 7 – DEFAULT

7.1 If Property Manager fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Property Manager shall be in default. The City shall have the right to terminate this Agreement, in the event Property Manager fails to cure a default within fifteen (15) business days after receiving notice of default. Property Manager understands and agrees that termination of this Agreement under this section shall not release Property Manager from any obligations accruing prior to the effective date of termination.

7.1 When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to Property Manager's ability to perform any portion of Management Services, the City may request that the Property Manager, within a reasonable time frame set forth in the City's request, provide adequate assurances to the City in writing, of Property Manager's ability to perform in accordance with terms of this Agreement. In the event that the Property Manager fails to provide the City the requested assurances within the prescribed time frame, the City will treat such failure as a breach of this Agreement.

ARTICLE 8 – CITY’S TERMINATION RIGHTS

8.1 The City shall have the right to terminate this Agreement, in its sole discretion at any time, without cause, including the availability of funds by the City, upon thirty (30) days written notice to Property Manager. In such event, the City shall pay the Property Manager compensation for Management Services rendered prior to the effective date of termination. The City shall not be liable to Property Manager for any additional amounts or damages, including but not limited to, anticipated profits, or consequential or incidental damages.

ARTICLE 9 –CONFLICTS OF INTEREST

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

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

ARTICLE 10 –NOTICE

10.1 All notices, demands, correspondence and communications between the City and Property Manager shall be deemed sufficiently given under the terms of this Agreement when dispatched by phone, mail, or fax addressed as follows:

To Property Manager: Joe Celestin Civil Engineer & General Builder, LLC
Attn: Josaphat Celestin
396 NW 159th Street
Miami, FL 33169
Telephone: (786) 237-1504
Fax: (305) 696-6050

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

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

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

10.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice. Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 11 – PUBLIC RECORDS

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

ARTICLE 12 – INSURANCE

12.1 Prior to the execution of this Agreement, the Property Manager shall submit certificate(s) of insurance evidencing the required coverage: (1) Workers' Compensation Insurance with statutory limits, including coverage for Employer's Liability - \$1,000,000 limit (2) General Liability – preferably written on an occurrence form, with minimum limits of \$1,000,000/occurrence, to include contractual liability, personal/advertising injury and products completed operations (3) Automobile Liability with minimum limits of \$1,000,000/occurrence (combined single limit) for bodily injury and property damage; coverage shall be included for all owned, hired and non-owned autos or equipment utilized in the execution of duties relative to this agreement (4) Property Management Professional Liability \$1,000,000 minimum limit. (5) Umbrella liability policy with minimum limits of \$2,000,000. The City shall be included as an additional insured under general liability, umbrella, and automobile liability policies. Property Manager shall not commence work under this Agreement until after Property Manager has obtained all of the minimum insurance described by the City's Risk Manager. Property Manager shall not permit any subcontractor to begin any work on City Property until subcontractor's minimum insurance coverage is obtained and approved.

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

ARTICLE 13 – INDEMNIFICATION

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

13.2 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Section 768.28, Florida Statutes. Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

ARTICLE 14 - FORCE MAJEURE

14.1 A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation pursuant to or required by the Agreement by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

ARTICLE 15 - MISCELLANEOUS PROVISIONS

15.1 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

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

15.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

15.4 This Agreement and Contract Documents constitute the sole and entire agreement between the Parties. No modification or amendments to this Agreement shall be binding on either Party unless in writing and signed by both Parties.

15.5 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

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

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

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

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

15.10 The professional Services to be provided by Property Manager pursuant to this Agreement shall be exclusive.

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

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

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

15.14 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

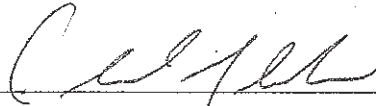
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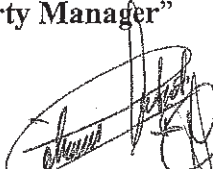
IN WITNESS WHEREOF, the Parties have executed this Agreement by their respective proper officers duly authorized the day and year first written above.

ATTEST:

Corporate Secretary or Witness:

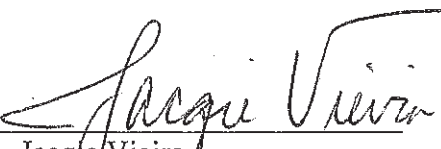
Joe Celestin Civil Engineer & General Builder,
LLC, a Florida limited liability company:
"Property Manager"


By: 
Print Name: Roland Gallos
Date: 5/20/11

By: 
Print Name: Josaphat Celestin
Date: 05-20-2011

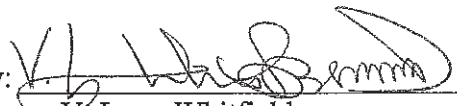
ATTEST:

City of North Miami, a Florida municipal
corporation: "City"

By: 
Jacque Vieira
Acting City Clerk

By: 
Russell Benford
City Manager

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: 
V. Lynn Whitfield
City Attorney