RESOLUTION NO.: 10-52

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, AUTHORIZING THE MAYOR AND THE CITY CLERK, ON BEHALF OF THE CITY, TO ENTER INTO AN AGREEMENT WITH TOM THUMB FOOD STORES, INC., A FLORIDA CORPORATION, TO MAKE AVAILABLE AT LEAST TWO GAS PUMPS FOR THE EXCLUSIVE USE OF CITY EMPLOYEES AS PROVIDED IN THE SCOPE OF SERVICES FROM JUNE 1, 2010 THROUGH MAY 31, 2013.

WHEREAS, the Mayor and the City Council of the City of Hialeah realize the need to provide fuel to its employees during a disaster or emergency situation; and

WHEREAS, Hurricane Wilma made landfall in South Florida on October 24, 2005, and created a crisis throughout the region and a demand and dire need for the City of Hialeah to put most of its employees on duty in order to direct traffic and keep the peace and order in the City streets; and

WHEREAS, protection of this community requires that the City of Hialeah be prepared and able to provide fuel to its employees if a situation like the one created by Hurricane Wilma should occur again; and

WHEREAS, fuel is an essential basic necessity, two gas pumps must be made available in the event there is no power as they are outfitted with generators for the exclusive use of City employees for up to four weeks if need be. If resources are available, the City will provide the necessary law enforcement support to ensure that at least two gas pumps are available for the exclusive us of City employees.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1. The foregoing facts and recitations in the preamble of the resolution are hereby adopted and incorporated by reference as if fully set forth herein.

Section 2. The City of Hialeah, Florida, hereby authorizes the Mayor and the City Clerk, on behalf of the City, to enter into an agreement with Tom Thumb Food

Stores, Inc., a Florida corporation, to make available at least two gas pumps for the exclusive use of City employees as provided in the Scope of Services, from June 1, 2010 through May 31, 2013.

PASSED AND ADOPTED this 25th day of May, 2010.

Carlos Hernandez
Council President

Attest:

Rafael E. Granado
City Clerk

Approved on this 27th day of May, 2010.

Mayor Julio Robaina

Approved as to legal sufficiency and form:

William M. Grodnick
City Attorney

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Resolution was adopted by a unanimous vote with Councilmembers, Caragol, Casals-Muñoz, Cue, Garcia-Martinez, Gonzalez, Hernandez, and Yedra voting "Yes.

SERVICE AGREEMENT BETWEEN TOM THUMB FOOD STORES, INC. AND THE CITY OF HIALEAH

This agreement is entered into this 17 day of May, 2010, by and between the City of Hialeah, Florida, ("City"), 501 Palm Avenue, Hialeah, Florida 33010 and Tom Thumb Food Stores, Inc. ("Contractor"), a gas station and a Florida corporation, having its principal place of business at 97 West Okeechobee Road, Hialeah, Florida 33010.

NOW, THEREFORE, in consideration of the mutual covenants and obligations herein contained, and subject to the terms and conditions hereinafter stated, the parties hereto understood and agree as follows:

I. DURATION

Subject to all the terms and conditions contained in this Agreement, and compliance with all applicable state, federal and local law, the City hereby grants Contractor permission to make available at least two gas pumps for the exclusive use of City employees as provided in the Scope of Services for a period commencing on June 1, 2010 and expiring on May 31, 2013.

II. SCOPE OF SERVICES

In the event of a disaster or emergency situation, the Contractor will, within 24 hours of notification either by phone or facsimile, make available at least two gas pumps for the exclusive use of City employees. The Contractor can make available at least two gas pumps in the event there is no power as they are outfitted with generators. The Contractor will make available at least two gas pumps for the exclusive use of City employees for up to four weeks if need be. If resources are available, the City will provide the necessary law enforcement support to ensure that at least two gas pumps are available for the exclusive use of City employees. The City will provide the Contractor with 24-hour notice when services are to be modified, extended or ceased.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

The parties shall comply with all applicable laws, ordinances, codes, rules and regulations of federal, state and local governments.

IV. GENERAL CONDITIONS

All notices or other communications which shall or may be given pursuant to this Agreement shall be in writing and shall be delivered by personal service, or by registered mail addressed to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which

personally served; or if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

CITY OF HIALEAH	**CONTRACTOR**
Michael Flores	Tom Thumb Food Stores, Inc.
Purchasing Director	James McCarthy, Jr., President
501 Palm Avenue, 4th Floor	97 West Okeechobee Road
Hialeah, FL 33010	Hialeah, FL 33010

V. NON-DELEGABLE

The duties and obligations undertaken by the Contractor pursuant to this agreement shall not be delegated or assigned to any person or firm unless the City shall first consent in writing to the performance or assignment of such service or any part thereof by another person or firm.

VI. AWARD OF AGREEMENT

The Contractor warrants that it has not employed or retained any person 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 employed by the City any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or resulting from the award of this agreement.

VII. CONSTRUCTION OF AGREEMENT

This agreement shall be construed and enforced according to the laws of the State of Florida. Venue for any litigation, which may arise in connection with this Agreement, shall be in Miami-Dade County, Florida. The Contractor agrees to be subject to the jurisdiction (subject matter and in personam) of the courts in Miami-Dade County, Florida and amenable to process.

VIII. SUCCESSORS AND ASSIGNS

This agreement shall be binding upon the parties herein, their heirs, executors, legal representatives, successors and assigns.

IX. INDEMNIFICATION

Contractor shall indemnify and save the City, its officials, employees, agents, representatives and attorneys, from and against any and all claims, liabilities, losses and causes of action which arise out of or in connection with Contractor's activities under this agreement, including all other acts or omissions to act on the part of the Contractor or any person acting for or on its behalf, and from and against any orders, judgments, or decrees which may be entered and from and against all costs, attorney's fees, expenses incurred at

the trial, appellate or administrative level or proceedings and liabilities insured in the defense of any such claims or in the investigation thereof.

X. CONFLICT OF INTEREST

A. Contractor 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 interests, direct or indirect, with the Contractor. Contractor further covenants that, in the performance of the agreement, no person having such conflicting interest shall be employed. Any such interest on the part of the Contractor or its employees must be disclosed in writing to the City.

B. Contractor is aware of the conflict of interest laws of the City. Hialeah Code, Chapter 26, Articles I and II; Code of Miami-Dade County § 2-11.1 et seq.; and the State of Florida Chapter 112, Part III, Florida Statutes and agrees that it shall fully comply in all respects with the terms of said laws.

XI. INDEPENDENT CONTRACTOR

Contractor, its employees, agents or representatives, shall be deemed to be independent contractors and not agents or employees of the City and shall not attain any rights or benefits under the civil service or pension ordinances of the City, or any rights generally afforded classified or unclassified employed. Contractor, its employees, Agents or representatives, shall not be entitled to Florida Workers' Compensation benefits as an employee of the City.

XII. INSURANCE

A. Contractor shall provide, pay for and maintain in force at all times during the services to be performed, such insurance, including Workers' Compensation Insurance, Employer's Liability Insurance, Comprehensive General Liability Insurance, Business Automobile Liability Insurance and Excess Liability Insurance, in such amounts acceptable to the Risk Manager of the City.

B. Such policy or policies shall be issued by the United States Treasury-approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in the State of Florida. Contractor shall specifically protect City by naming City as additional insured under the Comprehensive General Liability Insurance Policy.

C. All policies shall provide a notice of cancellation or restriction: the policy or policies must be endorsed to provide City with 30 days notice of cancellation and/or restriction.

1. Worker's Compensation Insurance to apply for all employees in compliance with the state worker's compensation law and all applicable federal law.

2. Comprehensive General Liability Insurance with minimum limits of $1,000,000 per occurrence combines single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include: (1) Premises and/or Operations; (2) Independent Contractors; and (3) Personal Injury Coverage with Employee and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

3. Business Automobile Liability Insurance with minimum liability limits of $1,000,000 per occurrence combines single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include: (1) Owned vehicle; and (2) Hired and non-owned vehicles.

4. Contractor shall provide City with a Certificate of Insurance or a copy of all insurance policies required in this article. City reserves the right to require a certified copy of such policies upon request. All endorsements and certificates shall state that City shall be given 30 days notice prior to expiration or cancellation of the policy.

XIII. TERMINATION

The City retains the right to terminate this Agreement without notice for any reason or no reason at all.

It is hereby understood that any payment made to the Contractor in accordance with this section shall be made only if the Contractor is not in default under the terms of this agreement. If Contractor is in default, then the City shall in no way be obligated to pay and shall not pay the Contractor any sum.

XIV. NONDISCRIMINATION

The Contractor agrees that it shall not discriminate as to race, color, creed, national origin, religion, age or disability in connection with its performance hereunder.

XV. DEFAULT

If the Contractor fails to comply with the terms and conditions of this agreement, or fails to perform hereunder, or files for bankruptcy or provides assignment or transfer to creditors, then the City, at its sole option upon written notice, may cancel and terminate this agreement, and all payments, advances, or other compensation paid to the Contractor. Payments made to the Contractor while the Contractor is in default of the provisions contained herein, shall be returned forthwith to the City.

XVI. ENTIRE AGREEMENT

This agreement and its attachments and exhibits constitute the sole and only agreement of the parties and accurately set forth the rights, duties, and obligations of each to the other. Any prior agreements, promises, negotiations, or representations not expressly set forth in this agreement is of no force and effect.

XVII. AMENDMENT

No amendments to this agreement shall be binding on either party unless in writing and signed by both parties.

XVIII. MISCELLANEOUS

A. Captions, title and paragraph headings are for convenient reference and are not a part of this agreement. Such captions, title or paragraph headings shall not be deemed in any manner to modify, explain, enlarge or restrict any of the provisions contained in this agreement.

B. In the event of conflict between the terms of this agreement and any terms or conditions in any attached document; the terms in this agreement shall prevail.

C. 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.

D. Should any provisions, paragraphs, sentences, work 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 or the City of Hialeah, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, 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.

E. Further Assurances. All parties hereto upon the request of any other party shall execute such further instruments or documents as may be reasonably required by the requesting party to implement the terms, conditions and provisions of this agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by the respective officials thereunto duly authorized, this the day and year first above written.

City of Hialeah, Florida
501 Palm Avenue
Hialeah, Florida 33010-0040

Attest:

Authorized signature on behalf of
City of Hialeah

Rafael E. Granado
City Clerk

Mayor Julio Robaina Date

(SEAL)

Approved as to legal sufficiency and form:

William M. Grodnick
City Attorney

Attest:

Tom Thumb Food Stores, Inc.
97 West Okeechobee Road
Hialeah, FL 33010

5/17/2010

Corporate Secretary
(SEAL)

James McCarthy, ~~Jr.~~ Vice President Date

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