RESOLUTION NO. 2015-25

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO AN INTERLOCAL AGREEMENT WITH THE TOWN OF MIAMI LAKES FOR THREE YEARS WITH AN OPTION TO RENEW FOR A TWO YEAR TERM, TO PROVIDE MAINTENANCE, REPAIR AND BUS STORAGE SERVICES TO THE TOWN OF MIAMI LAKES, IN SUBSTANTIAL CONFORMITY WITH THE AGREEMENT ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1"; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Hialeah finds that it is in the best interest of the City and its residents to enter into an interlocal agreement pursuant to section 163.01, Florida Statutes, that allows local governments to make the most efficient use of their powers to enable them to cooperate with other localities on the basis of mutual advantage; and

WHEREAS, the City of Hialeah will receive additional revenue by providing the Town of Miami Lakes with maintenance, repairs and storage services for its buses, while providing a greatly needed and cost-effective service to the Town of Miami Lakes.

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

Section 1: The City of Hialeah, Florida hereby authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to enter into an interlocal agreement with the Town of Miami Lakes for three years with an option to renew for a

two year term, to provide maintenance, repair and bus storage services to the Town of Miami Lakes, in substantial conformity with the agreement attached hereto and made a part hereof as Exhibit "1", providing for an effective date.

PASSED AND ADOPTED this 10 day of February, 2015.

Isis Garcia-Martinez
Council President

Attest:

Approved on this 17 day of February, 2015.

Carmen B. Hernandez
Acting Deputy City Clerk

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

Lorena E. Bravo, City Attorney

Resolution was adopted by a (7-0) unanimous vote with Councilmembers, Caragol, Casáls-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".

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INTERLOCAL AGREEMENT BETWEEN
THE CITY OF HIALEAH AND THE TOWN OF MIAMI LAKES
FOR TRANSIT BUS MAINTENANCE AND REPAIR AGREEMENT

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2014, by and between the City of Hialeah, Florida (the "City"), a Florida municipal corporation, and the Town of Miami Lakes, Florida (the "Town"), a Florida municipal corporation, and jointly referred to herein as the Parties.

WITNESSETH

WHEREAS, the City of Hialeah, Florida and the Town of Miami Lakes, Florida agree to enter into an Interlocal Agreement pursuant to Section 163.01, Florida Statutes, that allows local governments to make the most efficient use of their powers to enable them to cooperate with each other, when mutually advantageous, in providing services and facilities in the best interest of the public; and

WHEREAS, pursuant to Hialeah, Fla., Resolution 15-[redacted] (February [redacted], 2015), the City of Hialeah has authorized and approved the execution of this Agreement; and

WHEREAS, the Town of Miami Lakes has authorized and approved the execution of this Agreement; and

WHEREAS, the City operates a full service fleet maintenance facility; and

WHEREAS, the Town has expressed an interest in contracting with the City to provide maintenance, repair and garaging of transit vehicles to the Town (the "Services"); and

WHEREAS, the City and the Town have established a mutually beneficial proposal that provides for additional resources to the City, while fulfilling the need for maintenance and garaging for transit vehicles for the Town's operations.

NOW THEREFORE, for and in consideration of the terms, conditions and covenants contained herein, the City and the Town agree as follows:

1. Purpose: The City hereby agrees to provide maintenance, repair and bus storage services (the "Scope of Services" or "Services") to the Town, pursuant to the Scope of Services described and attached hereto in Exhibit "A" and incorporated herein, in accordance with the terms and conditions of this Agreement.

2. Term: The City will provide the Services for a period of three (3) years, commencing ten (10) days from the date of approval of this Agreement by both Parties.

3. Option to Renew: The Parties reserve the right to renew this Agreement for a two (2) year term upon the mutual consent and written agreement of the Parties.

4. Cancellation: This Agreement may be canceled by either Party, with or without cause, by providing one-hundred twenty (120) days written notice of the intent to terminate during which time the City shall continue to provide and the Town shall pay for the actual Services provided.

EXHIBIT
"1"

Upon the expiration of one-hundred twenty (120) days, the City shall have no further obligation to provide any Services to the Town, this Agreement shall terminate and the Parties shall be released from all further obligation. It shall be the responsibility of the Town to provide for the garaging, repair, and maintenance of its buses. The City shall transfer all records of inspections, repairs or maintenance for all Town transit buses created or maintained during the term of this Agreement to the Town. Once transferred, it shall be the sole responsibility of the Town to retain all public records and respond to all requests for public records pursuant to the Florida Public Records Act received by the Town of Miami Lakes.

5. Scope of Service: The City agrees to provide the Services as detailed in the "Scope of Services" attached hereto as Exhibit "A" of the Agreement.

6. Neither Party shall be liable for any delay or failure to perform under this Agreement if such delay or failure is neither the fault or the negligence of the Party, its employees or agents, or the delay is due to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond the Party's control, or for any of the foregoing that affects subcontractors or suppliers, if no alternate source of supply is available. In the event of delay from the foregoing causes, the Party shall take all reasonable measures to mitigate any and all resulting delay or disruption in the Party's performance obligation under this Agreement. If the delay or disruption in performance is excusable under this paragraph, the delay will not result in any additional charge or cost under the Agreement to either Party.

7. Town's Program Manager: The Town's Program Manager and primary point of contact under this Agreement is Brandon Schaad, Town Planner for the Town.

8. Insurance: During this Agreement, including the initial term, renewal(s) and extensions, the Parties shall, at each Party's sole expense, maintain insurance coverage of such types and with such terms and limits as may be reasonably associated with the Agreement, including but not limited to commercial general liability, premises liability, casualty, workers' compensation and employers' liability insurance. A self-insurance program established and operating under the laws of the State of Florida may provide such coverage. Providing and maintaining adequate insurance coverage is a material obligation of each Party and failure to maintain such coverage may void the Agreement.

9. Billing and Payment: The City agrees that it will bill the Town on a monthly basis per the schedule of fees detailed in Exhibit "B" (the "Fee Schedule") of the Agreement. The City shall invoice the Town on a monthly basis, using an invoice form provided by the Town, and the Town shall pay an approved invoice within thirty (30) days from the date of the invoice. Approval of any invoice by the Town shall not delay payment beyond thirty (30) days from the date of the invoice, unless the Town disputes or denies the invoice in whole or in part.

10. Ownership and Access to Records and Audits: All records, books, documents, data, deliverables, papers and financial information (the "Records") that result from the City providing the Services to the Town under this Agreement shall be the property of the Town. The Town Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any Records of the City involving transactions related to this Agreement, upon reasonable notice to the City. The Town may cancel and terminate this Agreement immediately for refusal by the City to allow access by the Town Manager or his designee to any Records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes. It shall be the sole responsibility of the Town to respond to all requests for public records received by the Town, made pursuant to the Florida Public Records Act, for any records created as a result of the performance

of the Parties' respective obligations under the Agreement. The City shall fully cooperate with the Town in response to any request for records received by the Town. The City shall be responsible to respond to public records requests where the City maintains custody of the records. Where the City has forwarded the records to the Town, the City shall notify the requestor that the records requested are in the possession of the Town. Upon completion or termination of the Agreement all records, except employee related records, shall be turned over to the Town within thirty (30) calendar days. Any payment due the City shall be held pending receipt of the Records.

11. Mutual Release, Indemnity and Agreement to Defend and Hold Harmless: the City does not indemnify or insure the Town for the Town's negligence. Likewise, the Town does not indemnify or insure the City for the City's negligence, except as provided in paragraph 12.

Subject to the limitations set forth in Florida Statute Section 768.28, the Town shall be fully liable for the actions of its respective officers, elected or appointed, directors, employees, agents, contractors and subcontractors and shall fully indemnify, defend, and hold harmless, the City, its officers, elected or appointed, directors, employees, agents and contractors and subcontractors (collectively referred to as "City's Releases"), from any and all kinds of claims, suits, causes of action, damages, losses, liabilities, costs or expenses, including court costs and attorney's fees at all level of proceedings (including appellate level), and any judgments, orders or decrees entered thereon or resulting therefrom, for any personal injury, loss of life, damage to property, or any other liability, loss, cost or expense of any kind (collectively referred to as "Claims"), alleged to be caused in whole or in part by the Town, its officers, elected or appointed, directors, employees, agents and contractors and subcontractors in the Town's performance of this Agreement.

Subject to the limitations set forth in Florida Statute Section 768.28, and except as provided in paragraph 12, the City shall be fully liable for the actions of its respective officers, elected or appointed, directors, employees, agents, contractors and subcontractors and shall fully indemnify, defend, and hold harmless, the Town, its officers, elected or appointed, directors, employees, agents and contractors and subcontractors, from any and all kinds of claims, suits, causes of action, damages, losses, liabilities, costs or expenses, including court costs and attorney's fees at all level of proceedings (including appellate level), and any judgments, orders or decrees entered thereon or resulting therefrom, for any personal injury, loss of life, damage to property, or any other liability, loss, cost or expense of any kind, alleged to be caused in whole or in part by the City, its officers, elected or appointed, directors, employees, agents and contractors and subcontractors in the City's performance of this Agreement.

12. Town's Release, Indemnity and Agreement to Hold Harmless for Conditions on City's Property. The agreement to waive, release, indemnify and hold the City harmless from any and all claims for conditions on the City's property, is additional consideration to the execution of this Agreement. It is made pursuant to Florida Statutes Section 768.28(19). By entering into this Agreement, the City does not intend to assume any risk of liability for damages, losses or injury suffered by the Town, by anyone claiming by or through the Town, or as a result of a third-party claim asserted, raised, or brought against the Town, as a result of any condition on the City's property. This includes any claim for set-off, contribution or subrogation.

Therefore, subject to the amounts of recovery as provided in Florida Statutes Section 768.28(5), the Town hereby releases, indemnifies, and agrees to hold harmless, the City, its officers, elected or appointed, directors, employees, agents, contractors and subcontractors (collectively referred to as "City's Released Parties" respectively), from any and all kinds of claims, suits, causes of action, damages, losses, liabilities, costs or expenses, including court costs and attorney's fees at

all level of proceedings (including appellate level), and any judgments, orders or decrees entered thereon or resulting therefrom, for any personal injury, loss of life, damage to property, or any other liability, loss, cost or expense of any kind, alleged to be caused in whole or in part from any defect or dangerous condition on the property or facilities used in the performance of this Agreement by the City (regardless of whether such condition was known or unknown, open, obvious, foreseeable or unforeseeable, hidden or not).

13. Notice: All legal notices regarding this agreement must be sent to the following address:

As to the Town:

Town of Miami Lakes
Alex Rey
Town Manager
6601 Main Street
Miami Lakes, FL 33016
reya@miamilakes-fl.gov

As to the City:

City of Hialeah, Florida
Jorge De la Nuez, Transit Director
900 East 56 Street, Building 3
Hialeah, FL 33013
jdelanuez@hialeahfl.gov

Gary Fabrikant
Procurement Manager
6601 Main Street
Miami Lakes, FL 33016
fabrikantg@miamilakes-fl.gov

13. Severability: If any term or provision of this Agreement shall to any extent be held invalid or illegal by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term and provision of this agreement shall be valid and be enforced to the fullest extent permitted by law.

14. Governing Law; Venue: This Agreement shall be construed in accordance with and governed by the laws of the State of Florida, with venue for any action lying solely in Miami-Dade County, Florida.

15. Waiver: The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other, which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

16. Assignment: This agreement is not assignable by either party.

17. Entire Agreement: No statements, representations, warranties, either written or oral, from whatever source arising, except as expressly stated in this Agreement, shall have any legal validity between the Parties or be binding upon any of them. The Parties acknowledge that this Agreement contains the entire understanding and agreement of the Parties. No modifications hereof shall be effective unless made in writing and executed by the Parties hereto.

18. Captions and Paragraph Headings: Captions and paragraph headings contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope and intent of this Agreement, nor the intent of any provisions hereof.

19. Joint Preparation: The preparation of this Agreement has been a joint effort of the Parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. It is the Parties' further intention that this Agreement be construed liberally to achieve its intent. Each Party represents that this Agreement has been duly authorized, executed and delivered by their respective governing body, in the manner and form required by their respective applicable local laws, and that each Party has the required power and authority to perform this Agreement.

20. Exhibits are Inclusionary: All exhibits whether attached hereto or mentioned herein (reference) which contain additional terms shall be deemed to be part of this Agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their duly authorized agents and representatives with all the formalities required by law on the day and year first written above.

CITY OF HIALEAH

_____ _____

Carlos Hernandez, Mayor Date

ATTEST:

_____

Marbelys Fatjo, City Clerk

Approved as to form and legal
Sufficiency:

_____

Lorena E. Bravo, City Attorney

Attest:

_____

Marjorie Tejeda, Town Clerk

TOWN OF MIAMI LAKES

By:_____

Alex Rey, Town Manager

Date:_____

APPROVED AS TO FORM

_____

Town Attorney

EXHIBIT A

SCOPE OF SERVICES

The City shall provide all personnel, equipment, materials and supplies, necessary to perform the Services, in compliance with the Agreement, and in accordance with the following Scope of Services. This shall include but not be limited to mechanics, bus storage and maintenance facility(ies), shop equipment and tools.

1. The City warrants and represents that its employees have the proper skill, training, background, knowledge, experience, integrity, and character necessary to perform the Services in a competent and professional manner.
2. The City agrees that the City will at all times employ, maintain and assign to the performance of the Work a sufficient number of competent and qualified personnel necessary to perform the Services in accordance with the Agreement.
3. All staff assigned by the City to the performance of the Services shall be employees of the City, except as otherwise stated in Exhibit A, or as approved in writing by the Town.

A. Bus Maintenance and Repairs

1. Bus Servicing

   a. The City shall maintain the Buses in accordance with industry standards and warranty requirements to ensure safe, clean, attractive and efficient operation of the buses at all times. At a minimum all Preventive Maintenance (PM) shall be performed in accordance with the bus manufacturer's maintenance manuals, and warranty requirements. Any changes in the PM schedules must be approved in writing in advance by the Program Manager. The City shall provide a separate PM program for each bus.

   b. Servicing should be scheduled to reduce downtime and ensure maximum life and performance of bus components. If the City can reasonably foresee any downtime, the City shall notify the Town immediately of such expected downtime. Nothwithstanding, nothing in this Scope of Services shall be interpreted to require the City perform any inspection, maintenance or repair as contemplated herein afterhours or hours beyond the regular operating hours of the City's Fleet Maintenance Department or the regular working hours of any of the City's employees assigned to perform any services contemplated herein. The regular operating hours of the City's Fleet Maintenance Department are Monday through Friday, from 7:00 a.m. to 2:00 p.m. The City observes 12 holidays throughout the year on which the Fleet Maintenance Department is also closed for business.

   c. The Town shall perform a pre-trip inspection prior to each shift, in accordance with a standard form to be provided by the City.

   d. The City shall check brakes at the time of any preventive maintenance or upon any report by a driver of possible problems with the brakes.

   e. Periodic mechanical and safety inspections by the City's mechanics and

supervisors shall be documented and completed at each scheduled preventive maintenance or more often as reasonably necessary by reported problems.

f. A major Bus mechanical condition inspection and assessment of all Buses shall be conducted annually by the City.

g. The City shall maintain a log of all service or inspections performed on the Buses.

h. Emergency road call service for an inoperative bus on the field shall only be available during hours that the City's maintenance facility is operating. Any service required after hours shall be the Town's responsibility. If the roadside service necessary to address any malfunction of the bus can be performed safely and within the normal hours of operation by a City employee, then the employee shall perform the service. Otherwise, the bus shall be towed for service to the City's fleet maintenance facility. The City may use outside contractors for emergency road call service. The Town shall be responsible at all times for the cost of any towing that may be necessary and the cost of any outside contractor used, except where the need for towing results directly from the work performed or lack thereof by the City.

i. The City shall be responsible to correct any maintenance services not completed in accordance with OEM requirements at no additional cost to the Town.

2. Inspections

While garaged, the City shall not have a duty to inspect the buses on a daily basis prior to their customary operation unless it is associated with scheduled maintenance, repair or specifically requested by the Town pursuant to the terms of this Agreement

3. Mechanical Repairs

a. Within twenty-four hours of learning of damage or the need for any repairs, the City will, prior to obtaining or performing any repairs, notify the Town in writing and obtain written approval of the Town Program Manager prior to proceeding with the repairs. The Town Manager, at its sole discretion, may require the submission of cost proposal(s) prior to approval of the repairs where the Town is to be charged for the repairs. Where the Town is to be charged for the repairs, the Town shall be invoiced separately by the City.

b. Qualified personnel, utilizing appropriate tools and equipment, trained to complete such work shall perform the repairs.

c. Repairs shall be performed to the best industry standards of quality and workmanship.

d. Original Equipment Manufacturers ("OEMs") approved parts must be used to affect the repairs unless approved in writing, in advance by the Program Manager.

e. The City is responsible to perform any repairs caused by the City at no additional cost to the Town.

4. Bus Cleanliness

The City will allow Town buses to be cleaned, washed and waxed within the confines of the storage and parking facilities so long as the person or entity performing the task takes reasonable care not to create any condition on City property that may reasonably result in

injury or damage to any person or property, including but not limited to, the improper disposal of cleaning solutions, runoff water, or equipment, or contamination.

5. Bus Records

   a. The City shall maintain a complete history of inspection, maintenance, repair or other service for each bus. The City is responsible for keeping the bus maintenance file current throughout the term of the Agreement and shall provide complete copies of all files available to the Town at the end of the Agreement.

   b. The City shall maintain records to document the following (but not limited to):

      i. The completion of required inspections;
      ii. The timely execution of scheduled servicing;
      iii. Major repairs and replacement of bus components
      iv. Use of parts and components;
      v. Unscheduled maintenance:
      vi. Accident repairs and body work;
      vii. Warranty work and claims;
      viii. Fuel and oil and fluids consumption on a unit per bus basis (The Town understands that this information, its availability, accuracy and reliability, is dependent upon the driver providing information timely, accurately, reliably and in the manner and format prescribed by the City);
      ix. Tire and brake replacements and useful life.

   The City shall provide the Town access to the records maintained by the City on the Town's buses upon reasonable notice.

6. Bus Defect Records

   The City shall maintain a record of any defect found by the City or reported by Town personnel, regardless of whether any action is taken to correct the defect. Any bus defect that Town personnel or contractors become aware of shall be reported expeditiously to the City, which shall maintain records of any such defect.

7. Incident Reports

   a. The City shall contact the Town and appropriate law enforcement immediately in the event of any reasonably suspected criminal activity of which it has knowledge involving a bus while it is garaged at or is otherwise in the care or possession of the City. The City shall issue a written report to the Program Manager within three (3) business days, and include a copy of the police report, if one has been created and is available.

   b. City supervisory personnel shall immediately notify the Town Manager regarding any and all of the following of which it has knowledge:

      i. Disruptions in service due to mechanical defects or immediate need or repairs; if such disruptions or possible disruptions are foreseeable by the City, the City shall report them in advance.
      ii. Bus breakdowns
      iii. Maintenance Issues
      iv. Buses out of service

v. Any other cause impacting the delivery of Service

8. Reports

The following reports shall be submitted on a monthly basis with the invoice. The parties shall cooperate to create a format and detail that meets the reasonable approval of the Town Manager.

a. Bus Statistics

i. Monthly miles per bus

ii. Number of road/service calls provided by the City

iii. Gallons of fuel provided

iv. Average price per gallon paid for the month as stated in Article 10 below.

b. Preventative Maintenance (PM) Service

i. Provide the Town with a proposed vehicle maintenance schedule for review by the Town.

ii. PM log to reflect when the work was done, where, by whom, and what Work was performed.

c. Repairs

i. Provide copies of all work service tickets for repairs reflecting the details of the work performed and who performed the work.

9. Fuel

Town personnel shall be responsible for fueling of the Buses at the City's facilities, and the City shall provide the Town any access or equipment needed to complete such fueling. The City shall invoice the Town for fuel on a monthly basis based on the fee schedule in Exhibit B and the submission of acceptable supporting documentation. Such documentation shall include fuel delivery tickets and fuel analysis reports reflecting the gallons used per bus and the price incurred for fuel within the billing period. For the basis of determining fuel price, the City's fueling analysis report shall be used as supporting documentation.

10. Bus Storage

The buses shall be stored by the City at the City's facilities, within the City of Hialeah or the Town of Miami Lakes, at the Town's discretion. The City shall provide bus storage and maintenance shop space. The Town staff, contractors, drivers, employees or agents shall be given access to the buses during the hours of 4:00 a.m. until 9:00 p.m. daily. Fees for storage of the buses shall be according to the fee schedule in Exhibit B. No fees for storage shall be paid by the Town when a bus is stored on Town Property.

11. Access to Town Personnel or Contractors

The City shall provide the Town one key necessary for the Town's personnel and/or contractors to access the stored Buses on an emergency basis after hours.

EXHIBIT B

Fee Schedule

Item	Price
Maintenance and Repair Services	$85.00 per hour for labor
Parts	Cost plus 30% stocking fee
Storage of three (3) transit buses	$1,000 per month
Fuel	Cost plus $0.20 per gallon