

RESOLUTION No. 2009-36-981

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, SELECTING ALCALDE & FAY AS THE CITY'S FEDERAL LOBBYIST AND AUTHORIZING THE CITY MANAGER AND CITY ATTORNEY TO NEGOTIATE AN AGREEMENT WITH ALCALDE & FAY; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AND ATTEST, RESPECTIVELY, SAID AGREEMENT; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, City staff prepared specifications to retain the services of a firm or individual for Federal Lobbying Services, and

WHEREAS, RFP 08-09-021 was advertised on December 12, 2008, and

WHEREAS, six (6) proposals were received and publicly read, and

WHEREAS, the City received responses from six (6) respondents, and

WHEREAS, on February 11, 2008, the City Council held a special meeting and shortlisted three (3) firms, and

WHEREAS, the City Council has determined that it would like to select Alcalde & Fay to serve as its Federal Lobbyist,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORIZATION: The City Council of the City of Miami Gardens hereby selects Alcalde & Fay to serve as the City's Federal Lobbyist. Further, the City Council authorizes the City Manager and City Attorney to negotiate an Agreement with

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Alcalde & Fay for the provision of lobbying services. The City Council also authorizes the Mayor and City Clerk to execute and attest, respectively, that certain Agreement with Alcalde & Fay for Federal Lobbying Services.

Section 3. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON FEBRUARY 25, 2009.

  
SHIRLEY GIBSON, MAYOR

ATTEST:

  
RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ.  
City Attorney

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Councilman Bratton  
SECOND BY: Councilman Campbell

**VOTE:** 6-0

Mayor Shirley Gibson	<u>    </u> (Yes)	<u>    </u> (No) (out of town)
Vice Mayor Barbara Watson	<u>X</u> (Yes)	<u>    </u> (No)
Councilman Melvin L. Bratton	<u>X</u> (Yes)	<u>    </u> (No)
Councilman Aaron Campbell	<u>X</u> (Yes)	<u>    </u> (No)
Councilman Oliver Gilbert, III	<u>X</u> (Yes)	<u>    </u> (No)
Councilwoman Sharon Pritchett	<u>X</u> (Yes)	<u>    </u> (No)
Councilman André Williams	<u>X</u> (Yes)	<u>    </u> (No)

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**AGREEMENT FOR FEDERAL LOBBYING SERVICES**

THIS AGREEMENT, made as of the 35 day of FEBRUARY, 2009, by and between the CITY OF MIAMI GARDENS, Miami-Dade County, Florida, a municipal corporation organized and existing under the laws of the State of Florida ("CITY"), and ALCALDE & FAY ("CONSULTANT").

WITNESSETH:

WHEREAS, the CITY issued Request for Proposal #08-09-21 ("RFP") seeking federal governmental representation and consulting services, and

WHEREAS, the City Council has selected the CONSULTANT to provide the services,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the legal sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **TERMS AND CONDITIONS:** The terms and conditions of RFP #08-09-21 and CONSULTANT's response thereto are hereby incorporated by reference and made a specific part hereof.

2. **SCOPE OF SERVICES:** CITY has retained the services of CONSULTANT to provide legislative consulting services relating to federal matters before the U.S. Congress, federal administrative agencies and the Executive branch. CONSULTANT shall provide the services as set forth in the Scope of Work, attached hereto as Exhibit "A", and incorporated herein.

3. **CITY RESPONSIBILITIES:** The CITY shall have the following responsibilities:

- a. CITY shall designate the City Manager as the lead staff person to coordinate with CONSULTANT; however, other individuals may be designated by City Manager.

- b. CITY shall have appropriate staff available as required to discuss issues with CONSULTANT.
- c. CITY shall use its best efforts in cooperating with CONSULTANT in providing the information and documentation necessary in the performance of the lobbying services under this agreement.

4. **RETAINER:**

a. The CITY hereby retains the CONSULTANT, and the CONSULTANT hereby accepts a retainer from the CITY in the amount of Seventy Two Thousand Dollars (\$72,000) annually ("RETAINER.")

b. The retainer shall be paid in monthly installments of Six Thousand Dollars (\$6,000) per month upon presentation of an invoice outlining services rendered during the preceding month, payable in arrears.

c. The retainer shall cover all out-of-pocket expenses incurred by CONSULTANT, including travel expenses.

5. **TERM:** The CONSULTANT is retained for a term commencing March 1, 2009 through February 28, 2011 ("initial term"). The CONSULTANT and the CITY retain the right to extend this Agreement for additional one-year periods upon expiration of the two (2) year initial term.

6. **EARLY TERMINATION:** The CITY reserves the right to terminate this Agreement at the CITY's convenience, upon providing thirty (30) days written notice to CONSULTANT. If the Agreement is terminated, CITY agrees to pay CONSULTANT for all services rendered through the date of termination.

7. **OFFICE SPACE:** CONSULTANT has and will retain office space in the Washington, D.C. area during the course of this Agreement, which will be accessible to

the CITY and its staff while in Washington D.C., if needed. CONSULTANT shall also provide any staff necessary to assist the CITY and its staff while in the Washington, D.C. area.

8. **COMPLIANCE WITH RULES AND REGULATIONS:** CONSULTANT acknowledges that it is licensed and qualified to perform the services contemplated in this Agreement. CONSULTANT agrees to abide by any and all local, state and federal regulations that relate to the services provided pursuant to this Agreement.

9. **CONFLICT OF INTEREST:** CONSULTANT agrees that it shall not support a position in opposition to a position of the CITY, unless the CITY grants a specific waiver for a specific lobbying activity. The failure to comply with this provision shall result in either or both of the following:

- (i) This Agreement shall be voidable by the CITY or
- (ii) CONSULTANT shall be prohibited for a period of up to three (3) years as determined by the City Council in its sole discretion from entering into a lobbying contract with the CITY.

10. **NOTIFICATION:**

a. CONSULTANT shall have an affirmative obligation to notify the City Manager, in writing, of any position in opposition that of the CITY, taken by the selected CONSULTANT and at the CITY's discretion, this may require that a request of waiver of such conflict be taken before the City Council. A position in opposition to a position of the CITY may take the form of an adverse policy position or something having adverse fiscal impact on the CITY, either directly or indirectly. A position in opposition to a position of the CITY is not limited to a position that conflicts with an expressed provision of the legislative package adopted by the City Council. It may also arise in other areas. Not every CITY interest can be anticipated or enumerated in the CITY's legislative package, and issues

arise and change over the course of the legislative process. It is incumbent upon the CONSULTANT to remain mindful of the CITY's policy and fiscal interests and positions. If an actual or perceived conflict arises, CONSULTANT shall advise the City Manager immediately, in writing, and seek a waiver of the conflict before the City Council, as necessary.

b. Once a conflict waiver has been received by the CITY, the City Manager reserves the right to determine whether CONSULTANT may continue representing the CITY and the other party's interest until the City Council can consider the conflict issue. The City Council may take, in its sole discretion, any action regarding a waiver request, including but not limited to the following:

(i) Grant a waiver and allow the CONSULTANT to continue to represent the both the CITY and the other party;

(ii) Refuse to grant a waiver and require the CONSULTANT to choose between representing the CITY or the other party, or to discontinue representing the other party;

(iii) Refuse to grant a waiver and void this Agreement;

(iv) Grant a limited waiver and allow the CONSULTANT to continue to represent both the CITY and the other party under whatever limitations or restrictions the CITY, in its sole discretion, determines to be proposed appropriate.

11. **AUDIT:** CONSULTANT shall maintain all records produced as a result of this Agreement for at least three (3) years from the date of final payment. The CITY shall have access to such books, records, and documents for the purpose of inspection or audit during normal business hours at a place convenient and agreeable to the CONSULTANT and the CITY.

12. **KEY PERSONNEL:** CONSULTANT agrees that the key personnel who will be providing services to the CITY are: Danielle McBeth, Andrew Wahlquist,

Shantrel Brown Fields and Nancy Englehardt. CITY understands that it may be necessary for CONSULTANT to replace certain key personnel. However, the City shall be consulted and shall have input prior to the replacement of any Key Personnel.

13. **INDEMNIFICATION:** CONSULTANT shall indemnify and hold harmless the CITY, its officers, employees, representatives and agents, from any and all liability arising out of claims and litigation related to the services to be provided, including any errors or omissions related to the services to be provided.

14. **INSURANCE:** CONSULTANT shall maintain during the term hereof, comprehensive automobile liability insurance in the minimum amount of one million (\$1,000,000.00) dollars, combined single-limit for bodily injury and property damage liability to protect CONSULTANT and CITY from claims of damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use or maintenance of owned and non-owned automobiles, including rented automobiles, whether such operations be by CONSULTANT or anyone directly or indirectly employed by CONSULTANT. As well, CONSULTANT shall maintain, during the term hereof, comprehensive general liability insurance in the amount of one million (\$1,000,000.00) dollars per occurrence, to protect CONSULTANT and CITY from claims for damages for bodily and personal injury including wrongful death, as well as from claims of property damages which may arise from any operations in connection herewith, whether such operations be by CONSULTANT or by anyone directly employed by or contracting with CONSULTANT. All insurance required hereunder be maintained by PROVIDER shall be subject to the CITY's reasonable approval as to ratings of the insurer, and such policies, as evidenced by a certificate thereof, shall specifically include CITY an additional insured and provide thirty (30) days written notice to CITY prior to any adverse changes, cancellation or non-renewal coverage there under.

15. **BAR ON CONTINGENCY FEES:** No remuneration or reimbursement described herein shall be based upon a "contingency factor" connected with the success

or failure of the CONSULTANT's efforts.

16. **ATTORNEY'S FEES:** Should any dispute arise hereunder, CITY shall be entitled to recover against CONSULTANT all costs, expenses and attorney's fees incurred by CITY in such dispute, whether or not suit be brought, and such right shall include all of the costs, expenses and attorney's fees through all appeals or other actions.

17. **WAIVER:** No waiver by CITY of any provision of this Agreement shall be deemed to be a waiver of any other provisions hereof or of any subsequent breach by CONSULTANT of the same, or any other provision or the enforcement thereof. CITY's consent to or approval of any act by CONSULTANT requiring CITY's consent or approval shall not be deemed to render unnecessary the obtaining of CITY's consent to or approval of any subsequent consent or approval of CONSULTANT, whether or not similar to the act so consented to or approved.

18. **NON-ASSIGNABILITY:** This Agreement or any portion hereof shall not be assigned or transferred by either party without the written consent of the other party.

19. **NOTICE:** The delivery of any items and the giving of notice in compliance with the terms of this Agreement shall be accomplished by making same, in writing, and by the delivery thereof to the party intended to receive it or by mailing the same to the address of such party as hereinafter set forth. In the event such notice is made by mail, the same shall be given via U.S. mail, Return Receipt Requested and, unless otherwise provided herein, notice or delivery by mail shall be effective when mailed to:

**CITY of Miami Gardens  
1515 NW 167th Street  
Building 5, Suite 200  
Miami Gardens, Florida 33169  
Phone: 305-622-8000  
Attention: City Manager**

**ALCALDE & FAY  
2111 Wilson Blvd., 8<sup>th</sup> Floor**

**Arlington, VA 22201**  
**Attention: Danielle McBeth**  
**Phone: 703-841-0626**

20. **BINDING EFFECT:** All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective assigns, successors, legal representatives, heirs and beneficiaries, as applicable.

21. **CONSTRUCTION:** This Agreement and the terms hereof shall be construed in accordance with the laws of the State of Florida and venue for all actions in a court of competent jurisdiction shall lie in Miami-Dade County, Florida.

22. **SEVERABILITY:** Should any word, phrase or provision hereof be declared illegal or invalid by a court of competent jurisdiction, such declaration of illegality and/or invalidity shall not affect the remainder hereof.

23. **ENTIRE AGREEMENT; MODIFICATION:** 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 with the same formalities as this Agreement is executed.

24. **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.

25. **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.

26. **COUNTERPARTS:** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

27. **EXHIBITS ARE INCLUSIONARY:** All exhibits attached hereto or mentioned herein which contain additional terms shall be deemed incorporated herein by reference. Typewritten or handwritten provisions inserted in this form or attached hereto shall control all printed provisions in conflict therewith.

(Signatures to follow)

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals the day and year set forth below their respective signatures.

CITY OF MIAMI GARDENS

  
SHIRLEY GIBSON, MAYOR

Date: 3/27/09

ATTEST:

  
CITY Clerk,  
RONETTA TAYLOR, CMC

Approved As To Form and Legal Sufficiency:

  
SONJA K. KNIGHTON, CITY ATTORNEY

ALCALDE & FAY

By: 

HECTOR ALCALDE, CEO

Date: 3-20-09

## Exhibit A

### SCOPE OF SERVICES

- A. CONSULTANT is expected to attend all scheduled, extended, or special legislative sessions and meetings; federal administrative and agency hearings, meetings, or rule making proceedings; and legal and legislative consulting services, in accordance with terms, conditions and specifications contained in the RFP and consistent with the Legislative program or as directed by the City Manager or his designee .
- B. CONSULTANT shall review on a continuing basis all existing and proposed Federal policies, programs and legislation; identify those issues that may affect the CITY or its citizens, and regularly inform the CITY as to these matters, both written and orally; and to provide legal and legislative expertise and consulting services.
- C. CONSULTANT shall assist the City Council and staff in the coordination and development of the CITY's legislative program. These issues may include: public safety, law enforcement, business attraction and retention, infrastructure improvements, telecommunications, transportation, environmental, affordable housing, economic development, revenue enhancement, mandates and other issues.
- D. CONSULTANT shall monitor federal legislative committee meetings, agencies hearings and meetings prior to and during the regular and special legislative session(s) at which specific issues within the CITY's adopted legislative program are considered, as well as others that may arise that affect the CITY.
- E. CONSULTANT shall work with the City Council and staff to develop special or general legislation in keeping with, or that are supportive of, the CITY's adopted legislative program.
- F. CONSULTANT shall develop strategies to obtain and maximize funding for all areas of City services including but not limited to public works, law enforcement, transportation infrastructure, water resources, housing, appropriations and grant programs administered by the Federal government.
- G. CONSULTANT shall coordinate funding, legislation and policy related activities with the United States Congress and Federal agencies; Securing appropriate authorizations and funding from the United States Congress and Federal agencies to implement the CITY'S projects.

- H. CONSULTANT shall maintain direct and frequent contact with key United States Senators and Representatives, and advocate for the CITY'S interests during the United States legislative and regulatory process.
- I. CONSULTANT shall, upon request, coordinate appointments/meetings between the City Council or other CITY staff, and appropriate federal officials and legislators.
- J. CONSULTANT shall prepare and submit reports that may included but not limited to: personal briefings and information bulletins pertinent to any legislation, rules or regulations, and other federal policies or programs that affect the CITY and its citizens either directly or indirectly. Written summary report shall be submitted quarterly detailing legislative action taken during the quarter, status of legislative issues, anticipated action during the upcoming quarter, and suggested action plan that CITY staff or Council may implement. A report summarizing the status of the CITY's legislative priorities shall be provided within one week of the closing of the session and a more detailed final written report on specific legislation and new requirements affecting the CITY shall be provided within a reasonable time period, not to exceed thirty days from the close of session.
- K. CONSULTANT shall upon request by the CITY, assist the CITY in coordinating applications and obtaining Federal grants. The CONSULTANT is not expected to prepare grant applications.
- L. This scope of services shall not be deemed to be all-inclusive and may be changed from time to time as authorized by City Council.