RESOLUTION NO. 2012-

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SUNNY ISLES BEACH, FLORIDA, RATIFYING THE CONSULTANT AGREEMENT WITH ALAN J. COHEN TO PROVIDE THE CITY WITH PROFESSIONAL SERVICES, AND SEPARATION AGREEMENT; PROVIDING THE CITY MANAGER AND CITY ATTORNEY WITH THE AUTHORITY TO DO ALL THINGS NECESSARY TO EFFECTUATE THIS RESOLUTION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, our present City Manager, Alan J. Cohen, has submitted his letter of resignation and departed on Wednesday, June 19, 2012; and

WHEREAS, the City is in need of a consultant for professional services during the transitional period until such time as a permanent City Manager is appointed; and

WHEREAS, the former City Manager Alan J. Cohen is able and willing to provide these services during the transitional period; and

WHEREAS, the City Commission hereby ratifies the approval of the Consultant Agreement and Separation Agreement with Alan J. Cohen to provide professional services for a period of up to three (3) months, attached hereto as Exhibit “A”.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF SUNNY ISLES BEACH, FLORIDA, AS FOLLOWS:

Section 1. Ratifying the Approval of Consultant and Separation Agreements. The City Commission hereby ratifies the approval of the Consultant and Separation Agreements with Alan J. Cohen to provide professional services through the transitional period for up to three (3) months, attached hereto as Exhibit “A”.

Section 2. Authorization of City Manager and City Attorney. The City Manager and City Attorney are hereby authorized to do all things necessary to effectuate this Resolution.

Section 3. Effective Date. This Resolution will become effective upon adoption.

PASSED and ADOPTED this 19th day of July 2012.

_______________________________________________________________
Norman S. Edelcup, Mayor

R2012- Alan J Cohen Consultant Agent
ATTEST:

Jane A. Hines, CMC, City Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

Hans Oothot, City Attorney

Moved by:____________________
Second by:___________________

VOTE AS FOLLOWS:

Mayor Edelcup ____________________________ (Yes)  (No)
Vice Mayor Thaler ____________________________ (Yes)  (No)
Commissioner Aelion ____________________________ (Yes)  (No)
Commissioner Gatto ____________________________ (Yes)  (No)
Commissioner Scholl ____________________________ (Yes)  (No)
CONSULTANT AGREEMENT

THIS CONSULTANT AGREEMENT, made this 20\textsuperscript{th} day of June, 2012 by and between ALAN J. COHEN (hereinafter "Consultant") and the CITY OF SUNNY ISLES BEACH (hereinafter "City"): 

WITNESSETH:

WHEREAS, Consultant has been employed by City for approximately one (1) year and has held the position of City Manager; and

WHEREAS, during his tenure, Consultant has gained extensive knowledge of the City's administrative operations and current capital improvement projects; and

WHEREAS, the City wishes to retain Consultant's services on an as needed basis throughout the term of this Consultant Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements as hereinafter set forth, Consultant and City agree as follows:

1. Services: Consultant shall assist on an as needed basis with capital projects that were commenced during his employment with the City.

2. Term: The Agreement is effective June 20, 2012. The initial term of this Agreement shall be for six (6) months commencing June 20, 2012 and shall expire on December 20, 2012. At the conclusion of this initial six month term, the Agreement shall automatically renew for a three (3) month term unless this Agreement is terminated earlier pursuant to Section 4 herein.

3. Compensation: Consultant shall be paid his regular salary as City Manager, minus the customary benefits, based on the payment schedule set forth in the General Acknowledgement, Waiver and Release. If this Agreement is terminated, Consultant shall be entitled to full payment of any funds due under the General Acknowledgement, Waiver and Release. All payments to the Consultant shall be made through the City's payroll system except the lump sum payment which maybe paid by other means. During the renewal term of three (3) months, Consultant shall be paid only his regular salary subject to all applicable taxes. No other payment shall be made to the Consultant for the renewal term.

4. Termination: This Consultant Agreement may be terminated by either party upon 15 (fifteen) days written notice to the other party.

5. Indemnification: Consultant agrees to indemnify, defend and hold harmless the City, and its officers, agents, representatives, volunteers and employees from any and all loss or damage, and from any and all suits, actions and claims filed or brought by any person or persons, however caused, arising out of Consultant's negligent performance or failure to perform, any and all things necessary to and required to be done by Consultant, pursuant to the specifications in this Agreement.

Exhibit "A"

Cohen Consultant Agreement
6. **Entire Understanding.** The parties acknowledge that this Consultant Agreement, together with the General Acknowledgement, Waiver and Release, contains the entire understanding of the parties and that it may not be modified without the express written consent of both parties hereto.

**IN WITNESS WHEREOF,** the parties hereto have caused this Consultant Agreement to be signed as of the first date written above.

**For the City:**

CITY OF SUNNY ISLES BEACH, FLORIDA  
A municipal corporation of the State of Florida

By: 

[Signature]

Norman S. Edelcup, Mayor

**For the Consultant:**

[Signature]

Alan J. Cohen

ATTEST:
By: 

Jane A. Hines, CMC, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Hans Othot, City Attorney
GENERAL ACKNOWLEDGMENT, WAIVER, AND RELEASE AGREEMENT

THIS GENERAL ACKNOWLEDGMENT, WAIVER, AND RELEASE AGREEMENT made this 20th day of June 2012 by and between ALAN J. COHEN (hereinafter referred to as “Employee”), and the CITY OF SUNNY ISLES BEACH (hereinafter referred to as the “City”), is attached to and made a part of the Consultant Agreement between the parties.

WITNESSETH THAT:

WHEREAS, Employee is employed with the City as the City Manager on an at-will basis; and

WHEREAS, the parties to this Agreement desire to enter into an agreement in order to settle all issues including benefits to Employee as a result of his separation from employment with the City effective June 20, 2012.

NOW, THEREFORE, in consideration of the premises and in consideration of the mutual covenants and promises hereinafter provided and of the actions taken pursuant thereto, the parties agree as follows:

1. Effective on June 20, 2012, Employee has agreed to separate from his employment with the City.

2. Upon the expiration of the Consideration Period as defined in Paragraph 9 and the execution of the Agreement, as severance compensation and compensation for consultant services, the City shall pay Employee due wages which equal to nine (9) months salary of Employee’s annual wages, subject to all applicable taxes. The City shall also pay Employee for vacation and floating holiday hours earned in the amount of $16,295.53, subject to all applicable tax withholding requirements and other deductions. City shall pay Employee $8,946.69 for sick leave earned, subject to all applicable taxes. Vacation and sick leave compensation shall be paid in a lump sum no later than June 22, 2012. Except for leave time payment, the payment herein shall be paid based on a bi-weekly payment schedule unless a lump sum payment is provided by the City. Employee shall also receive a $500 monthly car allowance during the six (6) months severance period, which commences on June 20, 2012. Severance compensation herein is limited to the applicable amount under state law and all other compensation is for consultant services.

3. Employee shall receive a medical stipend of $500.00 on a monthly basis during the six (6) month severance period. Except for a whole life policy for a one year period, group vision and dental benefits, life and long term disability insurance benefits shall continue until June 30, 2012, Employee will no longer be eligible to participate in the following Employee benefit programs offered by the City, including but not limited to: (i) vacation benefits; (ii) retirement benefits; (iii) medical insurance and related benefits, (iv) travel and accident benefits, or (v) accidental death benefits. Employee will receive corporate notification pursuant to COBRA continuation of benefits. Employee acknowledges that Employee’s medical insurance coverage
under COBRA shall in no way be deemed to extend the Employee’s last date of employment with the City.

4. Employee agrees and acknowledges that all payments provided under this Agreement are in support of all of the provisions contained herein and for the execution of this Agreement, and are discretionary benefits given to certain retired or terminated Employees. Except as otherwise provided herein, Employee specifically waives any and all rights to any other payments or benefits that may be given to any other Employees of the City.

5. Employee agrees that he will return to the City property including but not limited to identification card, keys, cell phone, and other electronic data instruments, all documents, confidential records, Employee information, financial information, plans, projections, data, formula, specification and equipment owned by the City prior to the receipt of any compensation under this Agreement, except for the vehicle provided to the Employee. The vehicle shall be returned no later than 3 pm June 22, 2012. All property, records, files, data Employee information, drawings, documents, models, equipment, and the like relating to the businesses of the City, which Employee has used, prepared or came in contact with during his employment by the City, shall be and remain the sole property of the City and shall not be removed from the premises of the City without its written consent.

6. Employee, for himself, his family, representatives, successors and assigns, except for the undertakings provided for herein, covenants to forever refrain from instituting, maintaining, pressing, collecting or in any way aiding and proceeding upon, and releases and forever discharges the City and its commissioners, representatives, agents, and Employees from any and all claims, demands, debts, damages, injuries, actions or rights of action of any nature whatsoever, whether known or unknown, which Employee had, now has or may have against the City, its commissioners, agents, and Employees, from the beginning of the Employee’s employment to and including the date of separation from full time employment with the City, on account of, or arising out of, any matter related to Employee’s employment with the City or the termination of such employment. Nothing herein, however, shall prevent Employee from enforcing the provisions of this Agreement.

7. Employee will not seek to challenge the validity of this Agreement and will hold the City, and its commissioners, agents, and Employees harmless from and against any and all claims for damages, judgments, court costs, attorneys fees, or expenses asserted against the City, its commissioners, agents, and Employees, as a result of or in connection with any proceeding brought by Employee, his heirs, representatives, successors, assigns, attorneys, or other persons under his control contrary to this paragraph.

8. The parties expressly understand and agree that this Agreement is in full accord, satisfaction and discharge of any and all claims by Employee against the City, its commissioners, agents, or Employees of the City and that this Agreement has been executed with the express intention of extinguishing all obligations the City has to Employee, except as provided herein, and all claims and rights that Employee has or could assert against the City and/or its commissioners, agents or Employees of the City.

9. (A) Employee acknowledges that he has read each and every paragraph of this Agreement and that he understands his respective rights and obligations and has been advised that he can consult an attorney of his choice. Further, Employee acknowledges that he has the

Page 2 of 4

GENERAL ACKNOWLEDGMENT, WAIVER, AND RELEASE AGREEMENT
opportunity to consider and review this Agreement for a period of at least twenty-one (21) calendar days ("Consideration Period") and has the opportunity to waive this provision or reject this Agreement within the Consideration Period. During the Consideration Period Employee may reject this Agreement, without reason, but he may only do so by delivering a written statement of rejection to Hans Ottinot, City Attorney. In signing this Agreement, the Employee agrees to waive the Consideration Period.

(B) Employee further acknowledges and affirms that he has been advised that, following the execution of this Agreement, there will be a revocation period of seven (7) days during which he may revoke this Agreement, and that this Agreement shall not become effective or enforceable until the seven (7) day revocation period has expired. Employee may revoke this Agreement by submitting written revocation notice to the City Attorney, Hans Ottinot. In order to be effective, Employee’s revocation notice must be received prior to the expiration of the seven (7) day revocation period, after or concurrent with the conclusion of the time period set forth in Paragraph 9(A) hereinabove. Any revocation of this Agreement shall cause the termination of the Consultant Agreement.

10. Employee declares that he has completely read this Agreement, consisting of four (4) pages, fully understands the terms and contents and freely, voluntarily, and without coercion enters into this Agreement. Further, Employee agrees and acknowledges that the waiver or release by any rights he may have under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§1981, 1983, 1986 and 1988; the Age Discrimination and Employment Act of 1967, as amended; the Vocational Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act; the Employee Retirement Income Security Act, as amended; the Equal Pay Act of 1963, as amended; the Immigration Reform and Control Act of 1986, as amended; the Labor Management Relations Act, as amended; the Fair Labor Standards Act, as amended; the Occupation Safety and Health Act, as amended; Federal Common Law; the Florida Police Officer’s Bill of Rights set forth in Sections 112.531-112.535; the Florida Civil Rights Act, as amended; the Florida Equal Rights Law, as amended; the Florida General Labor Regulations, as amended; Workers’ Compensation; Charges before the Equal Employment Opportunity Commission (EEOC) or any comparable agency; Miami-Dade County Ordinance Chapter 11A; Tort Breach of express or implied employment contract; Wrongful discharge; Tortious interference with contractual relations; or the common law of the State of Florida; and/or any other local, state or federal law is knowing and voluntary and that it shall be a breach of this Agreement to institute any action or to recover any damages which would be in conflict with or contrary to this acknowledgment.

11. The City’s current elected officials agree that if they are contacted by a prospective employer of Employee, they shall provide the prospective employer with a positive recommendation. The elected officials reserve the right not to provide any recommendation.

12. This Agreement together with the Consultant Agreement constitutes the entire agreement of the parties and all prior negotiations or representations are merged herein or replaced hereby. This Agreement may only be amended by a written amendment signed by both parties to this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs and legal representatives, but neither this Agreement nor any rights hereunder shall be assignable by Employee without written consent of the
City. In addition, except as provided herein, it is understood that this Agreement supersedes and terminates any prior employment or compensation agreements between Employee and the City, which prior agreements, whether written, oral or implied in law or in fact, are hereby terminated. Further, that except as provided herein, the City has no other legal obligation to Employee.

13. If, for any reason whatsoever, any one or more of the provisions of this Agreement shall be held or deemed to be inoperative, unenforceable or invalid by a court of competent jurisdiction in a particular case or in all cases, such circumstances shall not have the effect of rendering such provision invalid in any other case or rendering any other provisions of this Agreement inoperative, unenforceable or invalid. This Agreement shall be interpreted in accordance with the laws of the State of Florida.

14. The parties hereto agree and acknowledge that the payment to Employee and the terms and conditions of said payment by the City is not to be construed as an admission of liability by City. Employee specifically agrees that City’s payment is not intended to be and will not be offered in evidence or argued in any proceeding as an admission of liability. City specifically disclaims any liability to Employee or to any other person or entity.

15. This Agreement shall be governed by Florida law and venue for any action arising out of this Agreement shall be in Miami-Dade County, Florida.

16. In the event any party is required to institute litigation to enforce this agreement or in the event that any party brings a suit or files a charge or claim in violation of this Agreement, the prevailing party shall be entitled to reasonable attorneys’ fees and costs, including appeal.

IN WITNESS HEREOF, the parties hereunto set their hands and seals as of the date first above written.

Witness:  

[Signature]

Witness:  

[Signature]

[Signature]  

By:  

[Signature]  

Employee  

City of Sunny Isles Beach, Florida  

By:  

[Signature]  

Norman S. Edelcup, Mayor  

Approval As To Legal Form And Sufficiency:  

By:  

[Signature]  

Hans Ohmert, City Attorney