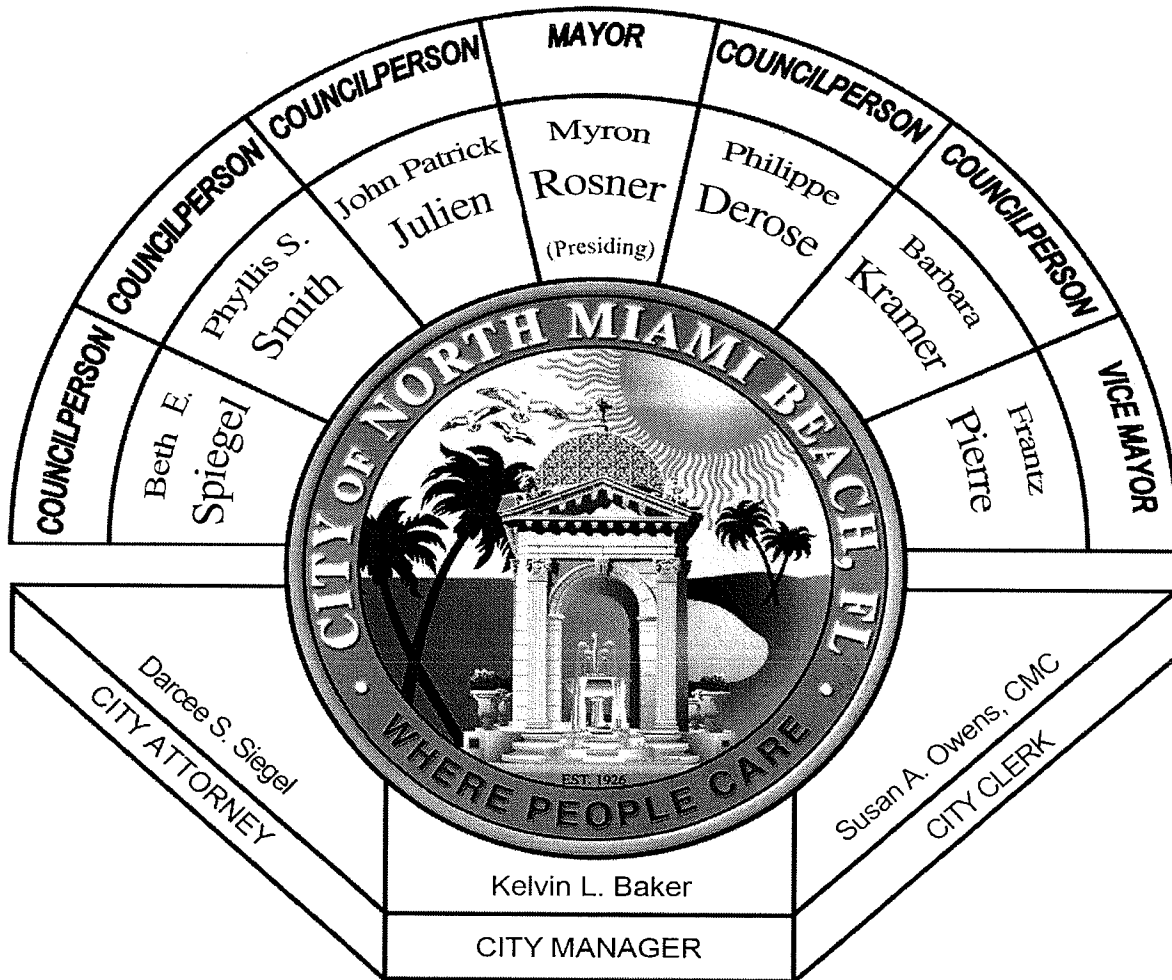


Welcome
To A Meeting of the
City of North Miami Beach City Council
Your City Officials



AGENDA

REGULAR MEETING OF THE CITY COUNCIL
CITY OF NORTH MIAMI BEACH, FLORIDA

DATE and TIME: TUESDAY, NOVEMBER 3, 2009, 7:30 P.M.

LOCATION: CITY HALL, 17011 NE 19th AVENUE
2ND FLOOR, COUNCIL CHAMBERS

NEXT REGULAR CITY COUNCIL MEETING: TUESDAY, NOVEMBER 17, 2009

AGENDA ITEMS

1. ROLL CALL OF THE CITY OFFICIALS

2. INVOCATION

RABBI DAVID LEHRFIELD, YOUNG ISRAEL OF GREATER MIAMI

3. SALUTE TO THE AMERICAN FLAG

4. REQUESTS FOR WITHDRAWALS, DEFERMENTS AND ADDITIONS TO AGENDA

A. STAFF IS REQUESTING DEFERRAL OF ITEM 14(C) *ORDINANCE NO. 2009-18*

5. PRESENTATIONS

A. PRESENTATION OF SEPTEMBER 2009 C.A.R.E. SUGGESTION AWARD BY COUNCILWOMAN PHYLLIS S. SMITH AND KELVIN L. BAKER, CITY MANAGER, TO PATRICK ROSIAK FOR HIS SUGGESTION TO ENCOURAGE BUSINESS AT THE NMB CAFÉ BY OFFERING EMPLOYEES/PATRONS A FREQUENT CUSTOMER PUNCH CARD INCENTIVE TO RECEIVE A FREE LUNCH OR MONETARY VALUE CREDIT AFTER PURCHASING FIVE (5) LUNCHES. (SUBJECT OF THE CONSIDERATION AND CONSENT OF THE NMB CAFÉ MANAGEMENT.)

6. APPOINTMENTS:

A. MULTI-CULTURAL COMMITTEE (*Councilman John Patrick Julien*)

MICHAEL BROWN

B. COMMISSION ON AGING-SENIOR CITIZENS ADVISORY BOARD (*Councilwoman Phyllis S. Smith*)

ESTHER PAHL

C. BEAUTIFICATION COMMITTEE (*Councilman Philippe Derosé*)

RONIT SINGER

D. RECREATION COMMITTEE (*Councilwoman Barbara Kramer*)

MARLEN MARTELL

7. CONSENT AGENDA

A. APPROVAL OF MINUTES

OCTOBER 6, 2009

OCTOBER 20, 2009 (Deferred)

B. RESOLUTIONS:

Resolution No. R2009-68

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH TRAN CONSTRUCTION, INC. FOR THE N.E. 19TH AVENUE ROADWAY IMPROVEMENT PROJECT.

COUNCIL MEETING

November 3, 2009

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AGENDA ITEMS

8. CITY MANAGER'S REPORT
KELVIN L. BAKER

9. CITY ATTORNEY'S REPORT
DARCEE S. SIEGEL

10. PUBLIC COMMENT

TO ALL CITIZENS APPEARING UNDER PUBLIC COMMENT

THE COUNCIL HAS A RULE WHICH DOES NOT ALLOW DISCUSSION ON ANY MATTER WHICH IS BROUGHT UP UNDER PUBLIC COMMENT. WE ARE, HOWEVER, VERY HAPPY TO LISTEN TO YOU. THE REASON FOR THIS IS THAT THE COUNCIL MUST HAVE STAFF INPUT AND PRIOR KNOWLEDGE AS TO FACTS AND FIGURES SO THAT THEY CAN INTELLIGENTLY DISCUSS A MATTER. THE COUNCIL MAY WISH TO ASK QUESTIONS REGARDING THIS MATTER BUT WILL NOT BE REQUIRED TO DO SO. AT THE NEXT OR SUBSEQUENT COUNCIL MEETING YOU MAY, IF YOU SO DESIRE, HAVE ONE OF THE COUNCILPERSONS INTRODUCE YOUR MATTER AS HIS OR HER RECOMMENDATION. WE WISH TO THANK YOU FOR TAKING THE TIME TO BRING THIS MATTER TO OUR ATTENTION. UNDER NO CIRCUMSTANCES WILL PERSONAL ATTACKS, EITHER FROM THE PUBLIC OR FROM THE DAIS, BE TOLERATED.

SPEAKING BEFORE THE CITY COUNCIL

THERE IS A THREE (3) MINUTE TIME LIMIT FOR EACH SPEAKER DURING PUBLIC COMMENT AND A THREE (3) MINUTE TIME LIMIT FOR EACH SPEAKER DURING ALL PUBLIC HEARINGS. YOUR COOPERATION IS APPRECIATED IN OBSERVING THE THREE (3) MINUTE TIME LIMIT POLICY. IF YOU HAVE A MATTER YOU WOULD LIKE TO DISCUSS WHICH REQUIRES MORE THAN THREE (3) MINUTES, PLEASE FEEL FREE TO ARRANGE A MEETING OR AN APPOINTMENT WITH THE APPROPRIATE ADMINISTRATIVE OR ELECTED OFFICIAL.

NOTE: IN THE COUNCIL CHAMBERS, CITIZEN PARTICIPANTS ARE ASKED TO COME FORWARD TO THE PODIUM, GIVE YOUR NAME AND ADDRESS, AND NAME AND ADDRESS OF THE ORGANIZATION YOU ARE REPRESENTING, IF ANY. IF YOU ARE SPEAKING ON A PUBLIC HEARING ITEM, PLEASE SPEAK ONLY ON THE SUBJECT FOR DISCUSSION. THANK YOU VERY MUCH, IN ADVANCE, FOR YOUR COOPERATION.

NOTICE TO ALL LOBBYISTS

ANY PERSON WHO RECEIVES COMPENSATION, REMUNERATION OR EXPENSES FOR CONDUCTING LOBBYING ACTIVITIES IS REQUIRED TO REGISTER AS A LOBBYIST WITH THE CITY CLERK PRIOR TO ENGAGING IN LOBBYING ACTIVITIES BEFORE CITY BOARDS, COMMITTEES OR THE CITY COUNCIL. A COPY OF THE APPLICABLE ORDINANCE IS AVAILABLE IN THE OFFICE OF THE CITY CLERK WHICH IS LOCATED ON THE GROUND FLOOR OF CITY HALL OR ON THE CITY'S WEBSITE.

PLEDGE OF CIVILITY

A RESOLUTION WAS ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH RECOGNIZING THE IMPORTANCE OF CIVILITY, DECENCY AND RESPECTFUL BEHAVIOR IN PROMOTING CITIZEN PARTICIPATION IN A DEMOCRATIC GOVERNMENT. THE CITY OF NORTH MIAMI BEACH CALLS UPON ALL RESIDENTS, EMPLOYEES, AND ELECTED OFFICIALS TO EXERCISE CIVILITY TOWARD EACH OTHER. (RESOLUTION NO. R2007-57, 11/06/07)

AGENDA ITEMS

11. MISCELLANEOUS ITEMS

NONE

12. WAIVER OF FEE

NONE

13. BUSINESS TAX RECEIPT MATTERS CITY CLERK

NONE

14. LEGISLATION

ADMINISTRATION OF TESTIMONY OATH

PLEASE BE ADVISED THAT, DUE TO RECENT SUPREME COURT RULINGS REGARDING CERTAIN TYPES OF LEGISLATION, INDIVIDUALS WISHING TO SPEAK ON THE FOLLOWING ITEMS **MUST** BE SWORN IN PRIOR TO PROVIDING ANY TESTIMONY:

Resolution No. R2009-20A

Ordinance No. 2009-24

Ordinance No. 2009-25

A. RESOLUTIONS (SERIATIM NO. 2009-68)

Reconsideration of Resolution No. R2009-57 (passed September 22, 2009)

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, ELIMINATING CITY PAID HEALTH CARE BENEFITS FOR ALL CURRENT AND FUTURE ELECTED OFFICIALS OF THE CITY OF NORTH MIAMI BEACH; ELIMINATING CITY PAID HEALTH INSURANCE DEDUCTIBLES AND COINSURANCE FOR CURRENT AND FUTURE ELECTED OFFICIALS OF THE CITY OF NORTH MIAMI BEACH; INCREASING LIFE INSURANCE BENEFITS FOR ALL CURRENT AND FUTURE ELECTED OFFICIALS OF THE CITY OF NORTH MIAMI BEACH AND INCREASING THE SALARY PAID TO ALL CURRENT AND FUTURE ELECTED OFFICIALS OF THE CITY OF NORTH MIAMI BEACH.

Proposed Resolution No. R2009-57A

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, ELIMINATING CITY PAID HEALTH CARE BENEFITS FOR ALL CURRENT AND FUTURE ELECTED OFFICIALS OF THE CITY OF NORTH MIAMI BEACH; ELIMINATING CITY PAID HEALTH INSURANCE DEDUCTIBLES AND COINSURANCE FOR CURRENT AND FUTURE ELECTED OFFICIALS OF THE CITY OF NORTH MIAMI BEACH; ELIMINATING CITY PAID OUT OF POCKET MEDICAL REIMBURSEMENTS FOR ALL CURRENT AND FUTURE ELECTED OFFICIALS OF THE CITY OF NORTH MIAMI BEACH; INCREASING LIFE INSURANCE BENEFITS FOR ALL CURRENT AND FUTURE ELECTED OFFICIALS OF THE CITY OF NORTH MIAMI BEACH AND INCREASING THE SALARY PAID PROVIDING FOR A TOTAL BENEFIT PACKAGE FOR MAYOR AND CITY COUNCIL WHICH WILL INCLUDE SALARY, EXECUTIVE EXPENSE, HEALTH INSURANCE, GROUP LIFE INSURANCE, ACCIDENTAL DEATH INSURANCE, CAR ALLOWANCE AND WORKERS' COMPENSATION INSURANCE TO ALL CURRENT AND FUTURE ELECTED OFFICIALS OF THE CITY OF NORTH MIAMI BEACH.

COUNCIL MEETING

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AGENDA ITEMS

Resolution No. R2009-20A

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING RESOLUTION NO. R2009-20, COLUMBUS NETWORKS' SITE PLAN APPROVAL, BY REVISING AND CHANGING THE CONFIGURATION OF THE BUILDINGS ON THE SITE AND REDUCING THE PREVIOUSLY APPROVED FLOOR AREA FROM 10,759 SQUARE FEET TO 8,129 SQUARE FEET; REVOKING APPROVAL OF THE SITE PLAN NUMBERED A-1.00 DATED FEBRUARY 27, 2009 AND REPLACING IT WITH SITE PLAN A-1.00 DATED OCTOBER 6, 2009, AS PROPOSED, ON PROPERTY LEGALLY DESCRIBED AS:

LOTS 1-9 AND LOTS 22-30, BLOCK 5 "FULFORD VILLAS AMENDED" AND A 16' WIDE ALLEY LYING BETWEEN SAID LOTS, PLAT BOOK 21, PAGE 24, PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA.

A/K/A
15950 WEST DIXIE HIGHWAY
North Miami Beach, Florida

Resolution No. R2009-67

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH SHARPTON BRUNSON & COMPANY FOR INDEPENDENT AUDITING SERVICES.

B. ORDINANCES – FIRST READING, BY TITLE ONLY (SERIATIM NO 2009-28)

Ordinance No. 2009-24

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING CHAPTER 24, SECTION 22, ENTITLED "DEFINITIONS", OF THE ZONING AND LAND DEVELOPMENT CODE TO CHANGE THE DEFINITIONS OF HOTEL AND MOTEL AND TO ADD DEFINITIONS FOR PUBLIC LODGING ESTABLISHMENTS; RESORT CONDOMINIUM; NON-TRANSIENT APARTMENT OR ROOMING HOUSE; TRANSIENT APARTMENT OR ROOMING HOUSE; ROOMING HOUSE, AND RESORT DWELLING; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE CODIFICATION OF THIS ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE.

Ordinance No. 2009-25

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, CREATING A NEW SECTION OF THE ZONING AND LAND DEVELOPMENT CODE, MAKING IT UNLAWFUL FOR OWNERS OF SINGLE FAMILY HOMES AND TOWNHOUSES, EXCEPT IN THE MH-1 ZONING DISTRICT, TO RENT OR LEASE A DWELLING FOR LESS THAN THREE MONTHS OR MORE THAN THREE TIMES IN A TWELVE MONTH PERIOD; PROVIDING PENALTIES FOR VIOLATIONS; PROVIDING FOR THE CONTINUATION OF CERTAIN SHORT TERM RENTALS THAT EXISTED PRIOR TO THE EFFECTIVE DATE OF THIS ORDINANCE; REQUIRING EXISTING SHORT TERM RENTALS TO APPLY FOR A BUSINESS TAX RECEIPT FOR EACH PROPERTY PURSUANT TO SECTION 12-31(87)(b) OF THE CITY CODE; ESTABLISHING REQUIREMENTS FOR OBTAINING AND CONTINUING A BUSINESS TAX RECEIPT; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH;

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AGENDA ITEMS

PROVIDING FOR SEVERABILITY; PROVIDING FOR THE CODIFICATION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

Ordinance No. 2009-26

AN ORDINANCE OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, CREATING AND ENACTING SECTION 2-61 OF THE CITY OF NORTH MIAMI BEACH CODE OF ORDINANCES TO PROVIDE FOR THE CREATION, MEMBERSHIP, QUORUM, AND TERMS OF THE PENSION BOARD FOR THE POLICE OFFICERS AND FIREFIGHTERS OF THE CITY OF NORTH MIAMI BEACH IN ACCORDANCE WITH STATE LAW AND CITY RETIREMENT PLAN FOR POLICE OFFICERS AND FIREFIGHTERS EFFECTIVE JANUARY 1, 1990 AND ADOPTED BY ORDINANCE NO. 89-18; PROVIDING COUNCILPERSONS WITH EX-OFFICIO DUTIES; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE CODIFICATION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

Ordinance No. 2009-27

AN ORDINANCE OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, CREATING AND ENACTING SECTION 2-62 OF THE CITY OF NORTH MIAMI BEACH CODE OF ORDINANCES TO PROVIDE FOR THE CREATION, MEMBERSHIP, QUORUM, AND TERMS OF THE PENSION BOARD FOR THE GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH IN ACCORDANCE WITH STATE LAW AND CITY RETIREMENT PLAN FOR GENERAL EMPLOYEES EFFECTIVE JANUARY 1, 1990 AND ADOPTED BY ORDINANCE NO. 89-19; PROVIDING COUNCILPERSONS WITH EX-OFFICIO DUTIES; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE CODIFICATION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

C. ORDINANCES - SECOND AND FINAL READING

Ordinance No. 2009-18

AN ORDINANCE AMENDING CHAPTER X OF THE CODE OF THE ORDINANCES OF THE CITY OF NORTH MIAMI BEACH ENTITLED SUBDIVISION AND FLOODPLAIN STANDARDS; UPDATING THE LANGUAGE TO BE CONSISTENT WITH THE FLORIDA MODEL FLOOD DAMAGE PREVENTION ORDINANCE AND TITLE 44, CODE OF FEDERAL REGULATIONS; DESIGNATING THE COMMUNITY DEVELOPMENT DIRECTOR OR DESIGNEE AS THE FLOODPLAIN ADMINISTRATOR; ESTABLISHING INTERDEPARTMENTAL ADMINISTRATIVE REQUIREMENTS, DEFINING TERMS; PROVIDING FOR ONE FOOT OF FREEBOARD IN REQUIRED FLOOR ELEVATIONS; UPDATING THE BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD TO THE CURRENT FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAPS; AND MAKING SUCH OTHER AMENDMENTS AS MAY IMPROVE THE CITY'S STANDING IN THE COMMUNITY RATING SYSTEM, AND ENSURE COMPLIANCE WITH FEDERAL REGULATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR THE CODIFICATION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

ITEM TO BE DEFERRED, PER STAFF REQUEST

AGENDA ITEMS

15. CITY COUNCIL COMMITTEE REPORTS

16. ADJOURNMENT

17. NEXT REGULAR CITY COUNCIL MEETING

TUESDAY, NOVEMBER 17, 2009

MINUTES

OF THE
REGULAR
CITY COUNCIL MEETING

OCTOBER 6, 2009



PREPARED BY:
SUSAN A. OWENS, CMC, CITY CLERK

* * * * *

MINUTES

(CNMB-CC MINUTES TAPE #427)

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1. ROLL CALL OF THE CITY OFFICIALS:

MAYOR	MYRON ROSNER, PRESIDING
VICE MAYOR	FRANTZ PIERRE
COUNCILWOMAN	BETH E. SPIEGEL
COUNCILWOMAN	PHYLLIS S. SMITH
COUNCILMAN	PHILIPPE DEROSE
COUNCILWOMAN	BARBARA KRAMER
COUNCILMAN	JOHN PATRICK JULIEN
CITY MANAGER	KELVIN L. BAKER
CITY ATTORNEY	DARCEE S. SIEGEL
CITY CLERK	SUSAN A. OWENS

2. INVOCATION: REVEREND MARTA BURKE, FULFORD UNITED METHODIST CHURCH

3. SALUTE TO THE AMERICAN FLAG

4. REQUESTS FOR WITHDRAWALS, DEFERMENTS, AND ADDITIONS TO AGENDA ITEMS:

ADDITION(S): *ITEM #5*
PRESENTATION OF APPRECIATION BY THE NORTH MIAMI BEACH SUN DEVILS YOUTH FOOTBALL AND CHEERLEADING LEAGUE TO POLICE CHIEF RAFAEL P. HERNANDEZ FOR THE CITY'S CONTINUED SUPPORT OF THE PROGRAM TO BE MADE AT BEGINNING OF AGENDA.

ITEM #11
PRESENTATION BY COUNCILMAN JULIEN TO BE MADE AT THE CONCLUSION OF PUBLIC COMMENT.

PRESENTATION OF APPRECIATION BY THE NORTH MIAMI BEACH SUN DEVILS YOUTH FOOTBALL AND CHEERLEADING LEAGUE TO POLICE CHIEF RAFAEL P. HERNANDEZ FOR THE CITY'S CONTINUED SUPPORT OF THE PROGRAM.

PRESENTATION WAS MADE BY LEAGUE COMMISSIONER IYANNA HARRIS, BOARD MEMBER GEORGE GABRIEL, AND REPRESENTATIVES OF LEAGUE STAFF AND YOUTH PARTICIPANTS.

5. **PRESENTATIONS**

- A. PRESENTATION OF PROCLAMATION BY MAYOR MYRON ROSNER PROCLAIMING OCTOBER 10, 2009 AS *PUT THE BRAKES ON FATALITIES DAY*.

PRESENTATION WAS MADE BY MAYOR MYRON ROSNER.

- B. PRESENTATION OF CERTIFICATE OF APPRECIATION BY COUNCILMAN JOHN PATRICK JULIEN TO J & S PROCUTS BARBERSHOP.

PRESENTATION WAS MADE BY COUNCILMAN JOHN PATRICK JULIEN.

- C. PRESENTATION OF CERTIFICATE OF APPRECIATION BY COUNCILMAN JOHN PATRICK JULIEN TO EDMIR WATTS.

PRESENTATION WAS MADE BY COUNCILMAN JOHN PATRICK JULIEN.

6. **APPOINTMENTS:**

- A. PLANNING & ZONING BOARD (*Councilwoman Spiegel*)

HECTOR MARRERO

MOTION by COUNCILWOMAN SPIEGEL, seconded by COUNCILWOMAN SMITH to APPOINT HECTOR MARRERO to the PLANNING & ZONING BOARD. MOTION CARRIED.

- B. CODE ENFORCEMENT BOARD (*Councilman Julien*)

DR. THOMAS K. PINDER

MOTION by COUNCILWOMAN SMITH, seconded by COUNCILMAN JULIEN to APPOINT DR. THOMAS K. PINDER to the CODE ENFORCEMENT BOARD. MOTION CARRIED.

- C. MULTI-CULTURAL COMMITTEE (*Councilman Julien*)

DR. THOMAS K. PINDER

MOTION by COUNCILMAN JULIEN, seconded by VICE MAYOR PIERRE to APPOINT DR. THOMAS K. PINDER to the MULTI-CULTURAL COMMITTEE. MOTION CARRIED.

7. **MAYOR'S DISCUSSION**

- A. ROBERT'S RULES OF ORDER

- B. PUBLIC DISCUSSION

- C. COUNCIL DISCUSSION

MAYOR ROSNER STATED THAT IN LIGHT OF SEVERAL COMPLAINTS ABOUT THE LENGTH OF THE COUNCIL MEETINGS, NEW PARAMETERS WERE ADOPTED. THE MAYOR LISTED THESE PARAMETERS AND PROVIDED A SUMMARY OF THE APPLICABLE RULES FROM ROBERT'S RULES OF ORDER.

COUNCILWOMAN SPIEGEL REQUESTED THAT THIS ITEM BE PLACED ON THE NEXT COUNCIL CONFERENCE FOR FURTHER DISCUSSION AND THAT THE CITY ATTORNEY

PREPARE A MEMO ON WHAT IS MANDATED BY THE STATE AND WHAT IS NOT. COUNCIL AGREED.

8. CONSENT AGENDA

A. **APPROVAL OF MINUTES:**

SEPTEMBER 8, 2009

B. **RESOLUTIONS:**

Resolution No. R2009-64

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AUTHORIZING THE COMMUNITY REDEVELOPMENT AGENCY (CRA) TO PROVIDE MATCHING FUNDS IN THE AMOUNT OF \$550,000.00 FOR ALLOCATION OF AWARDED FUNDS FROM THE MIAMI-DADE COUNTY SAFE NEIGHBORHOODS PARKS (SNP) BOND PROGRAM GRANT IN THE AMOUNT OF \$183,375.00 FOR IMPROVEMENTS TO MISHCON PARK.

Resolution No. R2009-65

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER TO NEGOTIATE AGREEMENTS WITH TRAN CONSTRUCTION INCORPORATED, JERRY'S CUSTOM LANDSCAPING INCORPORATED, AND VILA & SON LANDSCAPING FOR THE PURCHASE, DELIVERY, INSTALLATION, AND REMOVAL OF TREES AND PALMS FOR THE CITY; PROVIDING FOR AN EFFECTIVE DATE.

MOTION by COUNCILMAN DEROSE, seconded by COUNCILWOMAN KRAMER to ADOPT THE CONSENT AGENDA AS PRESENTED. MOTION CARRIED.

9. CITY MANAGER'S REPORT

KELVIN L. BAKER

- A. REQUEST APPROVAL FOR EXPENDITURE OF \$922,500.00 FROM THE FEDERAL LAW ENFORCEMENT TRUST FUND AND \$673,610.00 FROM THE STATE/LOCAL LAW ENFORCEMENT TRUST FUND (*POLICE CHIEF P. HERNANDEZ*).

MOTION by COUNCILWOMAN SMITH, seconded by VICE MAYOR PIERRE to APPROVE THE REQUESTED EXPENDITURES FROM THE FEDERAL AND STATE/LOCAL LAW ENFORCEMENT TRUST FUNDS. MOTION CARRIED.

Names of Party(ies) Appearing:

1. MICHAEL NOZILLE , Executive Director for Weed & Seed
1528 N.E. 152 TER
North Miami Beach, FL

2. LAURA KALLIS, Executive Director for Panzou Project
1541 N.E. 167 ST
North Miami Beach, FL
-

10. CITY ATTORNEY'S REPORT
DARCEE S. SIEGEL

- A. THE CITY ATTORNEY STATED THAT COUNCILWOMAN SMITH HAD ASKED HER AT THE LAST COUNCIL MEETING ABOUT INSURANCE BENEFITS. THE CITY ATTORNEY STATED THAT SHE MET WITH ELLEN SNOW, ASSISTANT DIRECTOR OF HUMAN RESOURCES, AND RESIDENT MURIEL KEMP ON OCTOBER 1ST TO ADDRESS MRS. KEMP'S CONCERNS REGARDING THE CITY'S GROUP HEALTH INSURANCE COVERAGE, SPECIFICALLY THE MEDICARE SUPPLEMENT COVERAGE FOR EMPLOYEES OVER THE AGE OF 65. THE CITY ATTORNEY STATED THAT SHE PROVIDED MRS. KEMP WITH INFORMATION FROM THE CENTERS OF MEDICARE AND MEDICAID SERVICES. THE CITY ATTORNEY STATED TO THE COUNCIL THAT SHE TOLD MRS. KEMP THAT THE CENTER FOR MEDICARE AND MEDICAID STATES THAT AN EMPLOYER CANNOT OFFER, SUBSIDIZE, OR BE INVOLVED IN THE ARRANGEMENT OF A MEDICARE SUPPLEMENT POLICY WHERE THE LAW MAKES MEDICARE THE SECONDARY PAYOR. MEDICARE IS SECONDARY TO A GROUP HEALTH PLAN FOR INDIVIDUALS AGE 65 IF THE EMPLOYER HAS TWENTY OR MORE EMPLOYEES. THE CITY ATTORNEY STATED THAT THE BOTTOM LINE IS THAT THE CITY LEGALLY CANNOT OFFER OR EVEN MENTION TO THE EMPLOYEE THE OPTION. THE CITY ATTORNEY FURTHER STATED THAT NOW, BY THE FACT THAT SHE IS REPORTING TO THE COUNCIL AND THIS IS ON TELEVISION, IF AN EMPLOYEE ON THEIR OWN ELECTS TO GO THAT ROUTE OR THEY WANT TO GET THAT KIND OF COVERAGE, THAT'S ONE THING. THE CITY ATTORNEY REITERATED THAT THE EMPLOYER CANNOT OFFER IT, OR SUBSIDIZE IT, OR ANYTHING OF THAT NATURE. EMPLOYEES CAN GO GET THEIR OWN PRIVATE THING AND DO THAT; BUT, THE CITY CANNOT LEGALLY DO THAT. THE CITY ATTORNEY STATED THAT THE MEDICARE HANDBOOK STATES THAT AN EMPLOYER IS REQUIRED TO OFFER TO THEIR EMPLOYEES AGE 65 OR OVER, AND TO THE AGE 65 OR OVER SPOUSES OF EMPLOYEES OF ANY AGE, THE SAME COVERAGE THAT THEY OFFER TO EMPLOYEES AND EMPLOYEES' SPOUSES UNDER AGE 65. THE CITY CANNOT HAVE DIFFERENT TREATMENT. THOSE EMPLOYEES HAVE TO BE OFFERED THE SAME EXACT BENEFIT OR COVERAGE AS THE OTHER INDIVIDUALS. THIS EQUAL RULE APPLIES TO COVERAGE OFFERED TO ALL ELIGIBLE EMPLOYEES. THE CITY ATTORNEY STATED THAT THE MEDICARE BENEFICIARIES ARE FREE TO REJECT THE EMPLOYER PLAN COVERAGE; IT IS THEIR OPTION. IN WHICH CASE, THEY WOULD RETAIN MEDICARE AS THEIR PRIMARY COVERAGE. THE CITY ATTORNEY STATED THAT, UNDER THE LAW, THE EMPLOYERS MAY NOT SPONSOR OR CONTRIBUTE TO INDIVIDUAL MEDIGAP OR MEDICARE SUPPLEMENT POLICIES FOR BENEFICIARIES WHO HAVE, OR WHOSE SPOUSE HAS, CURRENT EMPLOYMENT STATUS. IN TERMS

OF MEDICARE COVERAGE FOR FORMER EMPLOYEES AGE 65 OR OVER, THEY ARE ELIGIBLE TO CONTINUE COVERAGE UNDER THE CITY'S GROUP HEALTH PLAN. AVMED, THE CITY'S CURRENT CARRIER, HAS A MEDICARE ADVANTAGE PPO AND HMO PLAN AVAILABLE; HOWEVER, SINCE THIS PLAN IS ONLY AVAILABLE TO RESIDENTS OF MIAMI-DADE AND BROWARD COUNTIES, THE CITY IS EXPLORING AVAILABILITY OF OTHER MEDICARE PLANS. THE CITY ATTORNEY STATED THAT SHE BELIEVES THAT THAT PLAN EXPIRES IN JANUARY; AND, CURRENTLY, THE CITY STAFF IS LOOKING FOR OTHER OPTIONS TO PROVIDE FOR CITY RETIREES.

- B.** THE CITY ATTORNEY PROVIDED NOTICE OF A MEETING AND ATTORNEY-CLIENT SESSION. THE CITY ATTORNEY STATED THAT THIS NOTICE WILL BE PUBLISHED IN THE PAPER; BUT, IS ALSO REQUIRED BY LAW, UNDER FLORIDA STATUE 286.011, TO BE STATED AT A PUBLIC MEETING. THE CITY ATTORNEY REMINDED THE COUNCIL THAT THERE ARE ONLY TWO CIRCUMSTANCES IN WHICH AN ATTORNEY-CLIENT SESSION CAN BE HELD; ONE IS TO DISCUSS PENDING LITIGATION AND THE OTHER IS TO DISCUSS LABOR NEGOTIATIONS. THE CITY ATTORNEY STATED THAT NOTICE IS HEREBY GIVEN THAT ON TUESDAY, OCTOBER 20TH, 2009 AT 5:00 P.M., OR AS SOON AS POSSIBLE THEREAFTER, THERE SHALL BE CONVENED AN ATTORNEY-CLIENT SESSION OF THE CITY OF NORTH MIAMI BEACH. THE PURPOSE OF THE SESSION SHALL BE TO MEET WITH LEGAL COUNSEL TO DISCUSS SETTLEMENT STRATEGY IN THE MAFTER OF NATIVIDAD HERNANDEZ, KRYSTLE HERNANDEZ, AND DANNY D. HERNANDEZ, INDIVIDUALLY AND AS CO-PERSONAL REPRESENTATIVES, OF THE ESTATE OF DANNY HERNANDEZ VERSUS THE CITY OF NORTH MIAMI BEACH, FLORIDA, MAYOR OF CITY OF NORTH MIAMI BEACH, FL, POLICE CHIEF OF CITY OF NORTH MIAMI BEACH, FL, AND RUBEN V. VASQUEZ, ESQ. AS PERSONAL REPRESENTATIVE OF THE ESTATE OF EVENS JANVIER, DECEASED. THE CASE NUMBER IS 08-20724-CIV-GOLD. THE MEETING SHALL BE HELD IN THE COUNCIL CONFERENCE ROOM, 4TH FLOOR, AT CITY OF NORTH MIAMI BEACH CITY HALL LOCATED AT 17011 NE 19 AVENUE, NORTH MIAMI BEACH, FLORIDA. IT IS ANTICIPATED THAT THE ATTORNEY-CLIENT SESSION SHALL BE APPROXIMATELY THIRTY (30) MINUTES IN LENGTH. IN ATTENDANCE WILL BE THE FOLLOWING INDIVIDUALS: MAYOR MYRON ROSNER, VICE MAYOR FRANTZ PIERRE, COUNCILMAN JOHN PATRICK JULIEN, COUNCILMAN PHILIPPE DEROSE, COUNCILWOMAN PHYLLIS SMITH, COUNCILWOMAN BARBARA KRAMER, COUNCILWOMAN BETH SPIEGEL, CITY MANAGER KELVIN BAKER, AND CITY ATTORNEY DARCEE SIEGEL.
- C.** THE CITY ATTORNEY GAVE A SHOUT OUT TO HER SON ADAM, WHO IS AT THE UNIVERSITY OF ROCHESTER, WHO HE AND HIS FRIENDS RIGHT NOW SHOULD BE LISTENING TO THEIR PROFESSOR AT THEIR CHEMISTRY CLASS. THEY HAVE LAB REVIEW EVERY TUESDAY EVENING; AND, HE IS WATCHING THE COUNCIL MEETING ON THE COMPUTER. HE JUST INFORMED HER THAT HE IS HAVING A HARD TIME HEARING IT THIS EVENING. THE CITY ATTORNEY ASKED IF ANYONE CAN CHANGE THAT. THE CITY ATTORNEY

STATED THAT SHE JUST WANTED TO SAY HI, AND THAT SHE APPRECIATES HIM LISTENING.

11. **PUBLIC COMMENT**

- A. BERT KEHREN
3302 N.E. 171 ST
North Miami Beach, FL
RE: COUNCIL SALARIES
- B. SAMANTHA SUAYA
16570 N.E. 35 AVE
North Miami Beach, FL
RE: PUBLIC COMMENT AND COUNCIL SALARIES
- C. CHARLES LOEB
16800 N.E. 15 AVE
North Miami Beach, FL
RE: COUNCIL SALARIES AND CHARITY DONATIONS, FUNDING FOR PANZOU, FREE DAYCARE PROGRAM, UPCOMING TRANSPORTATION AND TRANSIT MEETINGS, TIMING OF COUNCIL REPORTS, AND MAVERICKS HIGH CEREMONY
- D. MURIEL KEMP
1479 N.E. 178 ST
North Miami Beach, FL
RE: COUNCIL OUT OF POCKET HEALTH EXPENSE REIMBURSEMENTS
- E. MARILYN BAUMOEHL
18635 N.E. 20 CT
North Miami Beach, FL
RE: COUNCIL SALARIES
- F. BARBARA FALSEY
3660 N.E. 166 ST
North Miami Beach, FL
RE: COUNCIL SALARIES
- G. JULIUS LITTMAN
3545 N.E. 166 ST
North Miami Beach, FL
RE: CITY BUDGET AND EASTERN SHORES FIRE RESCUE STATION AGREEMENT, COUNCIL SALARIES, INVITATION TO GRAND OPENING OF FREE CHILDREN'S CLINIC, AND SECURITY DOWNSTAIRS

- H.** RICHARD RIESS
23 N.W. 169 ST
North Miami Beach, FL
RE: RECENT CHARTER AMENDMENTS AND COUNCIL SALARIES
- I.** BRUCE LAMBERTO
3420 N.E. 165 ST
North Miami Beach, FL
RE: COUNCIL SALARIES AND TRAVEL BENEFITS
- J.** MARIA HAUCK
2023 N.E. 179 ST
North Miami Beach, FL
RE: COUNCIL SALARIES
- K.** SANDY VALLEJO
2940 N.E. 174 ST
North Miami Beach, FL
RE: COUNCIL SALARIES
- L.** GEORGE VALLEJO
2940 N.E. 174 ST
North Miami Beach, FL
RE: COUNCIL SALARIES
- M.** MUBARAK KAZAN
2940 N.E. 174 ST
North Miami Beach, FL
RE: RUNNING OF MEETINGS, ROBERT'S RULES OF ORDER, PUBLIC PARTICIPATION, CHARTER AMENDMENT 5, AND COUNCIL SALARIES
- N.** ALLISON ROBIE
2131 N.E. 179 ST
North Miami Beach, FL
RE: COUNCIL SALARIES, COUNCIL OUT OF POCKET HEALTH EXPENSE REIMBURSEMENTS, AND POSSIBLE REFERENDUM FOR THESE ITEMS
- O.** NORMAN EDWARDS
1640 N.E. 175 ST
North Miami Beach, FL
RE: COUNCIL SALARIES AND JOB DUTIES

P. ROBERT TAYLOR
1951 N.E. 157 TER
North Miami Beach, FL

RE: RUNNING OF MEETINGS

Q. COUNCILMAN JOHN PATRICK JULIEN
17011 N.E. 19 AVE
North Miami Beach, FL

COUNCILMAN JULIEN STATED THAT HE REQUESTED TO SPEAK IN ORDER TO CLEAR UP A COUPLE OF THINGS. THE COUNCIL LOOKED INTO THE ISSUE OF SIMPLY RESCINDING BENEFITS, BUT THERE WERE ISSUES OF VESTED RIGHTS AND POTENTIAL LITIGATION. BASED UPON INFORMATION REQUESTED FROM STAFF, THE COUNCILMAN MADE A PRESENTATION ON WHAT THIS AND PREVIOUS COUNCILS HAVE COST THE CITY AND HOW MUCH WOULD HAVE BEEN SAVED OVER THE YEARS IF THE \$35,000 AND \$40,000 SALARIES HAD BEEN IMPLEMENTED THEN. WHAT THE COUNCILMAN STATED THAT HE WANTED TO SHOW HERE IS WHAT HAPPENS WITH AN UNLIMITED AMOUNT THAT YOU CAN GET REIMBURSED.

12. MISCELLANEOUS ITEMS

NONE

13. WAIVER OF FEE

NONE

14. BUSINESS TAX RECEIPT MATTERS
CITY CLERK

A. DOUGLAS GARDENS CMHC MIAMI BEACH, INC.
d/b/a DOUGLAS GARDENS A.C.L.F.
17000-17030 N.E. 21 AVENUE
NORTH MIAMI BEACH, FL

DANIEL T. BRADY, EXECUTIVE DIRECTOR

RE: REQUEST APPROVAL OF A BUSINESS TAX RECEIPT FOR A RESIDENTIAL TREATMENT FACILITY AS PER RESOLUTION NO. R86-26, R86-26A, AND R86-26B (ANNUAL APPROVAL)

MOTION by VICE MAYOR PIERRE, seconded by COUNCILMAN DEROSE, to APPROVE THE ISSUANCE OF A BUSINESS TAX RECEIPT. MOTION CARRIED.

Names of Party(ies) Appearing:

1. DANIEL BRADY, Executive Director of Douglas Gardens
17000 N.E. 21 AVENUE
NORTH MIAMI BEACH, FL

-
- B. PLATINUM SOUTH, INC., A FLORIDA CORP.**
d/b/a DEAN'S GOLD
2355 N.E. 163 STREET
NORTH MIAMI BEACH, FL

ALAN ROSENTHAL, ATTORNEY

RE: APPROVAL OF BUSINESS TAX RECEIPT FOR EXTENSION OF HOURS –
4:00 A.M. TO 6:00 A.M. (ANNUAL APPROVAL)

MOTION by COUNCILMAN DEROSE, seconded by COUNCILWOMAN SMITH, to APPROVE THE
ISSUANCE OF A BUSINESS TAX RECEIPT FOR AN EXTENSION OF HOURS.

MOTION CARRIED.

WITH VICE MAYOR PIERRE VOTING IN THE NEGATIVE.

Names of Party(ies) Appearing:

1. ALAN ROSENTHAL, Attorney for Platinum South
20900 N.E. 30 AVE
Aventura, FL

-
- C. SMG ENTERTAINMENT, INC. and SMG ENTERTAINMENT, INC.**
d/b/a SWEET DREAMS d/b/a ENCORE
17450 BISCAYNE BOULEVARD 17450 BISCAYNE BOULEVARD
NORTH MIAMI BEACH, FL NORTH MIAMI BEACH, FL

NORMAN POWELL, ATTORNEY

RE: APPROVAL OF BUSINESS TAX RECEIPT FOR EXTENSION OF HOURS –
4:00 A.M. TO 6:00 A.M. (INITIAL 6 MONTH APPROVALS)

MOTION by COUNCILMAN DEROSE, seconded by COUNCILWOMAN SMITH, to APPROVE AN
INITIAL 6 MONTH ISSUANCE OF A BUSINESS TAX RECEIPT FOR AN EXTENSION OF HOURS,
SUBJECT TO FINAL APPROVAL BY THE MIAMI-DADE COUNTY FIRE DEPARTMENT AND
SALE OF THE PROPERTY.

MOTION CARRIED.

WITH VICE MAYOR PIERRE VOTING IN THE NEGATIVE.

Names of Party(ies) Appearing:

1. NORMAN POWELL, Attorney for SMG Entertainment
17100 N.E. 19 AVE
North Miami Beach, FL
-

COUNCILWOMAN SMITH WISHED TO NOTE FOR THE RECORD THAT ALAN ROSENTHAL AND NORMAN POWELL HAVE BOTH REGISTERED AS LOBBYISTS FOR THEIR CLIENTS' RESPECTIVE ITEMS.

15. LEGISLATION

A. ADMINISTRATION OF TESTIMONY OATH (CITY CLERK)

RECENT FLORIDA SUPREME COURT RULINGS REGARDING MUNICIPAL ZONING MATTERS REQUIRE ALL CITIZENS WHO WILL BE PRESENT BEFORE THE LEGISLATIVE BODY OR CITY COUNCIL TO FOLLOW THE RULE OF TESTIMONY OATH. (CITY CLERK TO ADMINISTER OATH)

B. RESOLUTIONS - (SERIATIM NO. R2002-66):

Resolution No. R2009-49 entitled "A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO NEGOTIATIONS WITH SHARPTON BRUNSON & COMPANY, P.A., AS THE FIRST RANKED FIRM; KEEFE, MCCULLOUGH & CO. LLP, AS THE SECOND RANKED FIRM; AND MCGLADERY & PULLEN, LLP, AS THE THIRD RANKED FIRM, FOR INDEPENDENT FINANCIAL AUDITING SERVICES", was introduced by MOTION of COUNCILMAN DEROSE, seconded by COUNCILMAN JULIEN. MOTION CARRIED.

MOTION by COUNCILMAN DEROSE, seconded by COUNCILWOMAN SMITH, to ADOPT RESOLUTION NO. R2009-49. MOTION CARRIED.

COUNCILWOMAN SMITH REQUESTED THE RECORD REFLECT THAT THERE WOULD BE NO CONFLICT OF INTEREST IN MR. TONY BRUNSON SERVING AS THE CITY AUDITOR.

Names of Party(ies) Appearing:

1. TONY BRUNSON, Senior Partner at Sharpson Brunson & Company
1 S.E. 3 AVE, SUITE 2100
Miami, FL
 2. SUSAN GOODING-LIBURD, City of North Miami Beach Finance Director
17011 N.E. 19 AVE
North Miami Beach, FL
-

3. BRIAN O'CONNOR, City of North Miami Beach Chief Procurement Officer
17011 N.E. 19 AVE
North Miami Beach, FL
-

C. ORDINANCES – FIRST READING, BY TITLE ONLY:

NONE

D. ORDINANCES - SECOND AND FINAL READING:

ORDINANCE NO. 2009-17 entitled “AN ORDINANCE CORRECTING THE LEGAL DESCRIPTION OF A PROPERTY REZONED BY CITY OF NORTH MIAMI BEACH ORDINANCE NO. 96-1 ON FEBRUARY 6, 1996”, was introduced by MOTION of COUNCILMAN DEROSE, seconded by COUNCILMAN JULIEN ON ITS SECOND AND FINAL READING. MOTION CARRIED.

MOTION by VICE MAYOR PIERRE, seconded by COUNCILMAN JULIEN, to ADOPT ORDINANCE NO. 2009-17 ON ITS SECOND AND FINAL READING.

MOTION CARRIED.

WITH THE FOLLOWING ROLL CALL VOTE:

VICE MAYOR PIERRE	YES	
COUNCILWOMAN SPIEGEL	YES	
COUNCILWOMAN SMITH	YES	(VOTE: 7 YES;
COUNCILMAN JULIEN	YES	0 NO)
COUNCILMAN DEROSE	YES	
COUNCILWOMAN KRAMER	YES	
MAYOR ROSNER	YES	

Names of Party(ies) Appearing:

1. ROBERT NIX, City of North Miami Beach Community Development Director
17011 N.E. 19 AVE
North Miami Beach, FL
2. MUBARAK KAZAN
15564 N.E. 12 AVE
North Miami Beach, FL
-

ORDINANCE NO. 2009-18 entitled “AN ORDINANCE AMENDING CHAPTER X OF THE CODE OF THE ORDINANCES OF THE CITY OF NORTH MIAMI BEACH ENTITLED SUBDIVISION AND FLOODPLAIN STANDARDS; UPDATING THE LANGUAGE TO BE CONSISTENT WITH THE FLORIDA MODEL FLOOD DAMAGE PREVENTION ORDINANCE AND TITLE 44, CODE OF FEDERAL REGULATIONS; DESIGNATING THE COMMUNITY DEVELOPMENT DIRECTOR OR DESIGNEE AS

THE FLOODPLAIN ADMINISTRATOR; ESTABLISHING INTERDEPARTMENTAL ADMINISTRATIVE REQUIREMENTS, DEFINING TERMS; PROVIDING FOR ONE FOOT OR FREEBOARD IN REQUIRED FLOOR ELEVATIONS; UPDATING THE BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD TO THE CURRENT FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAPS; AND MAKING SUCH OTHER AMENDMENTS AS MAY IMPROVE THE CITY'S STANDING IN THE COMMUNITY RATING SYSTEM, AND ENSURE COMPLIANCE WITH FEDERAL REGULATIONS PROVIDING FOR REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR THE CODIFICATION OF THIS ORDINANCE, AND PROVIDING FOR AN EFFECTIVE DATE, was introduced by MOTION of COUNCILMAN DEROSE, seconded by COUNCILMAN JULIEN ON ITS SECOND AND FINAL READING. MOTION CARRIED.

AT THIS TIME MAYOR ROSNER PASSED THE GAVEL TO VICE MAYOR PIERRE IN ORDER TO MAKE THE FOLLOWING MOTION.

MOTION by MAYOR ROSNER, seconded by COUNCILMAN JULIEN to TABLE ORDINANCE NO. 2009-18. MOTION CARRIED.

BY THE FOLLOWING ROLL CALL VOTE:

VICE MAYOR PIERRE	YES	
COUNCILWOMAN SPIEGEL	YES	
COUNCILWOMAN SMITH	YES	(VOTE: 7 YES;
COUNCILMAN JULIEN	YES	0 NO)
COUNCILMAN DEROSE	YES	
COUNCILWOMAN KRAMER	YES	
MAYOR ROSNER	YES	

Name of Party (ies) Appearing:

1. ROBERT NIX, City of North Miami Beach Community Development Director
17011 N.E. 19 AVE
North Miami Beach, FL

 2. MARLEN MARTELL
17374 S. Glades DR
North Miami Beach, FL

 3. MUBARAK KAZAN
15564 N.E. 12 AVE
North Miami Beach, FL
-

AT THIS TIME THE VICE MAYOR PIERRE PASSED THE GAVEL BACK TO MAYOR ROSNER.

16. CITY COUNCIL COMMITTEE REPORTS

A. VICE MAYOR PIERRE:

1. VICE MAYOR PIERRE GREETED EVERYONE A GOOD EVENING. FIRST AND FOREMOST HE STATED THAT HE WOULD LIKE TO WISH A HAPPY AND HEALTHY HOLIDAY TO ALL HIS JEWISH FRIENDS. HE DID NOT KNOW HOW TO SAY IT IN THEIR LANGUAGE, BUT THEY KNOW WHAT HE MEANS.

2. VICE MAYOR PIERRE THANKED THE MEMBERS OF THE COMMUNITY THAT SHOWED UP TONIGHT TO SHARE THEIR CONCERNS. THE VICE MAYOR STATED THAT HE WANTED TO GET THE RECORD STRAIGHT. HE IS ALL IN FAVOR OF HAVING THE PUBLIC PARTICIPATING IN OUR RESOLUTIONS OR ORDINANCES, EVEN THOUGH WE DON'T HAVE TO. HE STATED THAT HE THINKS IT IS PART OF THE PROCESS; AND, HE THINKS EVERYBODY, INCLUDING THE RESIDENTS, BENEFIT FROM THE DISCUSSION. HE ALSO LEARNED FROM TONIGHT THAT FOR MANY YEARS OUR RESIDENTS HAVE BEEN KEPT IN THE DARK; AND, THE NUMBERS THAT WERE PUBLISHED BY COUNCILMAN JULIEN JUST PROVE IT. THE VICE MAYOR STATED THAT THE PUBLIC IS WELCOME EVERY TIME WE HAVE AN OPEN DISCUSSION. EVERY TIME WE HAVE A RESOLUTION, HE WOULD URGE HIS COLLEAGUES TO ADOPT THE PRINCIPLE OF INVITING OUR PEOPLE TO OUR DEBATE. WHEN IT CAME TO THE CITY MANAGER, NO DISCUSSION. WHEN IT CAME TO ADJUSTING THE SALARIES, NO DISCUSSION. THE VICE MAYOR STATED THAT HE PERSONALLY DOES NOT FEEL COMFORTABLE WITH THAT. VICE MAYOR PIERRE ALSO STATED THAT HE PERSONALLY FEELS THAT HE DID THE RIGHT THING, THAT WE DID THE RIGHT THING. HE DOES NOT THINK HE WOULD HAVE CHANGED HIS MIND BASED ON THE NUMBERS. THE VICE MAYOR STATED THAT THE MORE HE STUDIED, THE MORE HE FELT WE DID THE RIGHT THING. HE FURTHER STATED THAT BY INVITING THE COMMUNITY TO PARTICIPATE THEY WILL BE MORE EDUCATED, THEY WILL LEARN MORE. THOSE NUMBERS PROVE THAT THEY WERE KEPT IN THE DARK FOR SO MANY YEARS; ONLY GOD KNOWS FOR HOW LONG. HE STATED THAT HE WAS GLAD THAT IT IS OVER. VICE MAYOR PIERRE STATED GOD BLESS YOU; AND, HE LOVES YOU ALL.

B. COUNCILWOMAN SPIEGEL:

1. COUNCILWOMAN SPIEGEL STATED THAT THERE ARE COPIES OF HER LETTER FROM SEPTEMBER 23RD IN CITY HALL IF ANYONE WANTS TO SEE IT OR UNDERSTAND HER MOTIVATIONS FOR NOT ACCEPTING THE FULL \$35,000. SHE STATED THAT SHE HOPES THAT MAYBE WE CAN HAVE A FULLER AIRING OR DISCUSSION WITH RESIDENTS AT SOME POINT.

2. COUNCILWOMAN SPIEGEL STATED THAT SINCE WE WERE LAST HERE, THERE WAS A RALLY IN CHALLENGER PARK WHICH INCLUDED SUPPORT OF THE DREAM ACT. SHE THANKED HER FELLOW COUNCILMEMBERS FOR HAVING VOTED UNANIMOUSLY FOR HER FIRST RESOLUTION. THE COUNCILWOMAN ALSO THANKED THE CITY CLERK FOR SENDING IT OFF TO SCOTT ELFENBEIN WHO, THREE OR FOUR YEARS AGO, SPEARHEADED THE EFFORT DOWN HERE ON THE DREAM ACT.
3. COUNCILWOMAN SPIEGEL STATED THAT SHE HAD THE DISTINCT PLEASURE OF GOING TO THE OPENING OF THE MAVERICKS HIGH SCHOOL. WHEN SHE TALKED TO LAURA KALLIS FROM THE PANZOU PROJECT, MS. KALLIS TOLD HER THAT SOME OF HER STUDENTS ARE AT MAVERICKS HIGH SCHOOL. THE COUNCILWOMAN STATED THAT IT IS NICE TO SEE THE SYNERGY THAT IS WORKING WITHIN OUR CITY.
4. COUNCILWOMAN SPIEGEL STATED ONE OF THE THINGS THAT SHE HAS DONE FOR YEARS, AND WOULD URGE OUR CONSTITUENTS TO DO, IS TO DONATE BUSINESS CLOTHES. WHEN WOMEN HAVE TO LEAVE THEIR HOMES SUDDENLY BECAUSE OF DOMESTIC VIOLENCE, THEY LEAVE WITHOUT THEIR POSSESSIONS, WITHOUT THEIR CLOTHES; AND, THEY HAVE TO GO OUT INTO THE REAL WORLD AND LOOK FOR JOBS. COUNCILWOMAN SPIEGEL URGED THAT IF YOU HAVE BUSINESS CLOTHES, SUITS, DONATE THEM. IT IS REALLY VERY IMPORTANT.
5. COUNCILWOMAN SPIEGEL STATED THAT SHE WAS WEARING PINK TONIGHT BECAUSE IT IS NATIONAL BREAST CANCER MONTH. THE COUNCILWOMAN URGED WOMEN, AND MEN, TO GO OUT AND DO WHAT YOU ARE SUPPOSED TO DO.
6. COUNCILWOMAN SPIEGEL WISHED TO WARN EVERYBODY THAT AT THE NEXT COUNCIL MEETING SHE WILL BE LEAVING EARLY BECAUSE SHE CANNOT FIGURE OUT ANY OTHER WAY TO FULFILL HER DUTIES AS A TRUSTEE ON THE PENSION & FIRE BOARD AND COMPLETE THE CONTINUING EDUCATION REQUIREMENTS WHICH ARE MANDATED BY STATE. THIS MEANS THAT SHE HAS TO ATTEND THE POLICE & FIRE PENSION SCHOOL, STARTING THE MORNING OF OCTOBER 23RD. THE COUNCILWOMAN STATED THAT WE HAVE TO BE IN ORLANDO AT 8:30; SO, FAIR WARNING, YOU ARE GOING TO SEE ME LEAVE EARLY AND SHE APOLOGIZES NOW. COUNCILWOMAN SPIEGEL WISHED EVERYONE A GOOD NIGHT AND A GOOD TWO WEEKS UNTIL WE ARE ALL TOGETHER AGAIN.

C. COUNCILWOMAN SMITH:

1. COUNCILWOMAN SMITH STATED THAT THE WOMEN AGAINST VIOLENCE WALK IS THIS SATURDAY. IF YOU CAN GET IN TOUCH WITH THE POLICE DEPARTMENT; IF YOU CAN'T WALK, IF YOU COULD AGAIN GIVE A SMALL CHECK OR A LARGE CHECK. SHE READ IN THE PAPER ALSO THAT THERE ARE TWO DROP-OFFS; ONE OF THEM IS RIGHT HERE IN NORTH MIAMI AND THE OTHER IS IN BROWARD COUNTY FOR WOMEN'S SUITS. THE COUNCILWOMAN STATED THAT IF YOU CAN'T GET THERE, PERHAPS WE COULD, MR. MANAGER, HAVE SOMEPLACE HERE WHERE PEOPLE COULD BRING THAT KIND OF THING. THE COUNCILWOMAN STATED THAT THEY WANT THINGS THAT PEOPLE CAN USE, OR IN RELATIVELY NEW CONDITION.
2. COUNCILWOMAN SMITH STATED THAT EVERY SINGLE ONE OF US ARE AFFECTED BY BREAST CANCER. IF IT IS NOT US, NOT A RELATIVE, THEN IT IS A NEIGHBOR. THIS IS SOMETHING THAT EVEN TRAVELING LAST NIGHT AT 11 O'CLOCK ON THE PLANE, DELTA IS COLLECTING THIS MONTH FOR DONATIONS FOR BREAST CANCER. THIS IS SOMETHING, YOU KNOW WE HAVE A LOT OF ISSUES, AND IF WE CAN ALL DO OUR LITTLE PART, IT ALL ADDS UP.
3. COUNCILWOMAN SMITH STATED THAT TONIGHT WE SAW A LOT OF YOUTH HERE, A LOT OF PROGRAMS, THE FOOTBALL PROGRAM, FROM ALLEN PARK, AND WASHINGTON PARK, THE PEOPLE VOLUNTEERING THEIR TIME, AND LAURA CRYING. THE COUNCILWOMAN STATED THAT SHE HOPES THE PUBLIC RECOGNIZES THAT THAT IS THE NEXT GENERATION; TWENTY YEARS FROM NOW, THAT WILL BE SITTING UP HERE TAKING CARE OF YOU IN YOUR OLD AGE. ANYTHING THAT WE CAN DO FOR THAT, SHE THINKS WE ALL NEED TO DO OUR PART.
4. COUNCILWOMAN SMITH STATED THAT SHE ALSO WANTED TO MENTION THAT WE DO TALK A LOT UP HERE; BUT, THE SUNSHINE LAW. THE COUNCILWOMAN ASKED WHEN ARE WE SUPPOSED TO DISCUSS IT. COUNCILWOMAN SMITH ASKED, AS 600 EMPLOYEES AND AS THE PUBLIC, WOULD YOU LIKE US JUST TO COME UP HERE AND VOTE YES VOTE NO AND NOT TRY TO HAVE A CONVICTION AND HAVE THE FELLOW COUNCILMEN THINKING THE OTHER WAY AND TRY TO GET THEM TO SEE WHY YOU FEEL SO STRONGLY ABOUT IT. EITHER WE HAVE TO FINALLY DO WHAT SHE SAID AND HAVE WORKSHOPS OR WE ARE GOING TO BE UP HERE DISCUSSING IT. THE COUNCILWOMAN STATED THAT SHE DOES NOT SEE ONE OF US IN THIS COUNCIL THAT DOES NOT WANT TO MAKE A BETTER CITY. THEY HAVE THEIR CONVICTIONS THAT MAY BE TOTALLY DIFFERENT FROM WHAT SOMEBODY ELSE BELIEVES.
5. COUNCILWOMAN SMITH STATED THAT SHE DOES ALSO WANT TO THANK THE PUBLIC. THE COUNCILWOMAN STATED THAT SHE

THINKS THAT THE PUBLIC HAS EVERY RIGHT TO, AND SHE SAID IT WHEN SHE RAN. THAT WAS WHAT SHE STOOD UP AND SAID WHEN SHE MADE THE DECISION THAT NIGHT TO RUN; THAT IT IS A VERY SIMPLE THING. IT IS OUR CITY AND OUR MONEY; AND, THAT INCLUDES EVERY SINGLE RESIDENT AND THE EMPLOYEES THAT HAVE A VESTED INTEREST AND THE BUSINESSES THAT HAVE A VESTED INTEREST. COUNCILWOMAN SMITH STATED THAT SHE BELIEVES WE WILL TOGETHER AS A COUNCIL, WITH THE MAYOR AS OUR CHAIR BUT AS A COUNCIL, MAKE DECISIONS THAT WILL MAKE IT BETTER FOR THE PUBLIC TO BE A PART OF IT. COUNCILWOMAN SMITH THANKED EVERYONE VERY MUCH AND WISHED THEM A GOOD NIGHT AND A WONDERFUL NEXT TWO WEEKS.

AT THIS TIME, VICE MAYOR PIERRE REQUESTED TO MAKE A CORRECTION. IT IS NOT GOING TO BE A WOMEN'S MARCH AGAINST VIOLENCE; IT IS GOING TO BE A MARCH AGAINST DOMESTIC VIOLENCE PERIOD.

D. COUNCILMAN JULIEN:

1. COUNCILMAN JULIEN GREETED EVERYONE A GOOD EVENING. COUNCILMAN JULIEN STATED TO ALL OF THE MEMBERS OF THE JEWISH COMMUNITY, HAPPY HOLIDAYS TO YOU. THE COUNCILMAN STATED THAT HE WAS NOT GOING TO TRY TO SAY IT IN HEBREW EITHER AND EMBARRASS HIMSELF. COUNCILMAN JULIEN STATED THAT, AS COUNCILWOMAN SMITH JUST BROUGHT UP, WE KNOW THAT THE MONTH OF OCTOBER IS BREAST CANCER AWARENESS MONTH. COUNCILMAN JULIEN ANNOUNCED THAT THE COMMISSION ON THE STATUS OF WOMEN, ON OCTOBER 24TH, WILL BE HAVING A BREAST CANCER AWARENESS EVENT. THAT IS A SATURDAY; IT IS GOING TO BE HELD FROM 10 A.M. TO 12 NOON RIGHT HERE AT THE MCDONALD CENTER AND EVERYBODY IS WELCOME. AT THAT POINT IN TIME, WE ARE GOING TO BE TAKING A COLLECTION OF FOOD. ANY CANNED FOODS THAT YOU HAVE, WE ASK YOU TO PLEASE BRING IT, BECAUSE EVERY YEAR WE DO A THANKSGIVING BASKET THAT WE GIVE AWAY. AS MUCH FOOD AS WE CAN COLLECT, WE TRY TO GIVE IT TO AS MANY NEEDY FAMILIES AS HUMANLY POSSIBLE. UNLIKE OTHER THANKSGIVING EVENTS WE ACTUALLY PILE INTO THE CAR, DRIVE TO PEOPLE'S HOMES AND KNOCK ON THE DOOR AND GIVE THEM A BASKET. WE DO NOT PUBLICIZE THEIR NAME AND DO NOT TAKE PICTURES BECAUSE WE JUST DO NOT DO THAT SORT OF STUFF.

2. COUNCILMAN JULIEN STATED THAT HE WANTED TO POINT OUT A COUPLE OF THINGS THAT HE NOTICED AFTER WE PAST OUR BUDGET. THE COUNCILMAN STATED THAT THE CITY OF MIAMI, MR. MANAGER, IS ACTUALLY DOING SOMETHING THAT WE DID LAST

YEAR; WELL, THEY ARE CONSIDERING DOING IT, WHICH IS THEY ARE ELIMINATING THE LEAVE PAYOUTS. WE DID THAT. WE SAVED THE RESIDENTS MILLIONS OF DOLLARS BY DOING AWAY WITH THE LEAVE PAYOUTS LAST YEAR. THE COUNCILMAN STATED THAT WE COULD BE A MOTLEY CREW PERHAPS; BUT, WE ARE, AND HE SAYS THAT VERY AFFECTIONATELY, WE ARE PROGRESSIVE, WE THINK. HE STATED THAT HE THINKS THAT, ON ANY GIVEN DAY, SOMEBODY IS GOING TO BE UPSET AT THE WAY HE VOTES AND THAT IS OKAY. HE WELCOMED ALL THE RESIDENTS THAT CAME HERE AND VOICED THEIR OPINION. THAT WAS ABSOLUTELY THEIR RIGHT TO DO THAT. HE TRULY BELIEVES, UNFORTUNATELY, WHEN PEOPLE ARE MISINFORMED OR THEY ARE NOT GIVEN ALL THE FACTS, THEY TEND TO REACT; AND, THAT IS GREAT. COUNCILMAN JULIEN STATED THAT HE LOVES TO SEE THE FACT THAT THERE IS SO MUCH PASSION HERE IN THE CITY OF NORTH MIAMI BEACH AND THAT IS A WONDERFUL THING.

3. COUNCILMAN JULIEN STATED THAT LAST WEEK, ON THURSDAY, HE WENT TO THE MIAMI-DADE LEAGUE OF CITIES MEETING. HE WAS SURROUNDED, THE CITY ATTORNEY SAW HIM INVOLVED IN A VERY HEATED CONVERSATION WITH THE CITY OF MIAMI GARDENS AND ALSO WITH THE CITY OF NORTH MIAMI. THE COUNCILMAN STATED THAT, BASICALLY, A LOT OF THEM ARE APPLAUDING US FOR DOING THINGS THAT THEY CANNOT DO. THEY ARE LOOKING TO US; THEY ARE SAYING TO US THAT WE ARE THE EXAMPLES THAT THEY WANT TO FOLLOW. NORTH MIAMI RIGHT NOW IS TRYING TO REVISIT SOMETHING THAT THEY DID. ON TOP OF WHATEVER SALARIES THAT THEY ARE MAKING IN NORTH MIAMI, THEY ARE STILL GETTING THEIR CAR ALLOWANCES, THEY ARE STILL GETTING THEIR MEDICAL INSURANCE, AND THEY ARE STILL GETTING ALL THESE PERKS THAT WE HAVE DONE AWAY WITH HERE IN NORTH MIAMI BEACH.
4. COUNCILMAN JULIEN STATED THAT HE THINKS THAT IF WE GET A POSITIVE MESSAGE OUT THERE AND WE LET THE RESIDENTS KNOW THAT WE ARE NOT DERELICT IN OUR RESPONSIBILITIES, THAT WE ARE ACTUALLY DOING OUR JOBS, THAT EVERYTHING WILL BE JUST FINE. THE COUNCILMAN STATED THAT HE WAS REALLY PROUD OF WHAT IT IS THAT WE ARE DOING HERE. WE ARE NOT PERFECT; BUT, HE THINKS THAT ALL SEVEN OF US, WITHIN OUR OWN MEANS AND WAYS, WE ARE DOING THE RIGHT THING FOR THE RESIDENTS OF NORTH MIAMI BEACH. COUNCILMAN JULIEN THANKED EVERYONE AND WISHED THEM AND GOOD NIGHT.

E. COUNCILMAN DEROSE:

1. COUNCILMAN DEROSE GREETED EVERYONE GOOD EVENING. HE STATED THAT HE WANTED TO TAKE THIS OPPORTUNITY TO THANK ALL OUR CITIZENS WHO CAME HERE THIS EVENING TO VOICE THEIR

OPINION AND OPPOSE THE INCREASE ON THE MAYOR AND COUNCIL COMPENSATION. IF YOU LOOK AT OUR LAST ELECTION, WE PUT SEVEN AMENDMENTS ON THE BALLOT AND THE CITIZENS TURNED OUT IN LARGE NUMBERS. THEY VOTED. THEY PASSED SIX AND THEY REJECTED ONE. THE ONE THAT THEY REJECTED IS THE AMENDMENT 5, WHERE WE ASK CAN THE VOTER VOTE TO AUTHORIZE US TO INCREASE OUR SALARY. THEY VOTED IT DOWN. IN LESS THAN SIX MONTHS, WE TURN AROUND AND VOTE TO INCREASE OUR SALARY. COUNCILMAN DEROSE STATED THAT HE THINKS IT IS IRRESPONSIBLE ON OUR PART, AND THIS IS WHY HE VOTED AGAINST THIS RESOLUTION. SINCE HE WAS NOT ON THE PREVAILING SIDE, HE WOULD LIKE TO SEE ONE OF THE COUNCIL ON THE PREVAILING SIDE TO RE-INTRODUCE THIS RESOLUTION. THIS IS WHAT HE WOULD LIKE TO SEE. BECAUSE, BASED ON WHAT WE SAW THIS EVENING, WE HAVE SEEN THE CITIZENS CAME IN LARGE NUMBERS AND OPPOSE THIS INCREASE. THE COUNCILMAN STATED THAT HE WOULD LIKE TO SEE OUR COLLEAGUES RECONSIDER. IT IS UP TO THE COUNCIL; BUT, THIS IS WHAT HE HAS BEEN ASKED. HE CANNOT ASK TO RESCIND THIS RESOLUTION; BUT, ANY MEMBER ON THE PREVAILING SIDE CAN DO SO. THIS IS WHAT HE WOULD LIKE TO SEE. FOR ONE OF OUR COLLEAGUES TO DO. COUNCILMAN DEROSE STATED THAT THIS IS HIS POSITION.

F. COUNCILWOMAN KRAMER:

1. COUNCILWOMAN KRAMER ASKED IF, SINCE SHE HAS THE MIKE HERE, IF THIS IS SOMETHING THAT SHE COULD ENTERTAIN, COUNCILMAN DEROSE'S QUESTION. HE WOULD LIKE US TO RESCIND THE RESOLUTION TO GIVE IT THOUGHT. COUNCILWOMAN KRAMER ASKED IF THIS IS SOMETHING WE WANT TO DO NOW. THE COUNCILWOMAN ASKED IF WE WANT TO GIVE THOUGHT TO IT; IF THIS CAN BE A DISCUSSION, OR IF SHE SHOULD JUST DO HER COMMITTEE REPORT. COUNCILMAN DEROSE OPENED UP SOMETHING; AND, SHE DOES NOT KNOW THAT WE NEED TO ADDRESS IT THIS MINUTE.

AT THIS TIME, COUNCIL WOMAN KRAMER MADE THE FOLLOWING MOTION:

MOTION by COUNCILWOMAN KRAMER, seconded by COUNCILMAN DEROSE TO RECONSIDER RESOLUTION NO. R2009-57. MOTION CARRIED,
WITH VICE MAYOR PIERRE AND MAYOR ROSNER VOTING IN THE NEGATIVE.

AFTER MUCH DISCUSSION, THE FOLLOWING MOTION WAS MADE:

MOTION by COUNCILWOMAN SPIEGEL, seconded by COUNCILWOMAN KRAMER to TABLE THE RECONSIDERATION OF RESOLUTION NO. R2009-57 UNTIL NOVEMBER 3, 2009. MOTION CARRIED.

2. COUNCILWOMAN KRAMER REMINDED EVERYONE THAT SHE IS THE LIAISON TO THE LEISURE SERVICES COMMITTEE; AND, LAST NIGHT, WE HAD A COMMITTEE MEETING. IN THAT COMMITTEE MEETING WE DISCUSSED THE NEED FOR MORE COMMITTEE MEMBERS. COUNCILWOMAN KRAMER ASKED THE CITIZENS OF NORTH MIAMI BEACH, THOSE OF YOU THAT ARE INTERESTED, TO PLEASE LOOK INTO JOINING OUR COMMITTEE. YOU COULD ALWAYS GIVE HER A CALL OR E-MAIL HER AND SHE CAN GIVE YOU AN IDEA OF WHAT WE DO; OR, YOU CAN CALL OUR LEISURE SERVICES DEPARTMENT, THE DIRECTOR IS PAULETTE MURPHY. THE COUNCILWOMAN STATED THAT ONE OF THE THINGS THAT WE SPOKE ABOUT WAS THAT WE DO HAVE AN ADOPT-A-PARK SPONSORSHIP PROGRAM. WE ARE ALSO LOOKING FOR SPONSORSHIP PROGRAMS TO DIFFERENT DIVISIONS IN THE CITY, SUCH AS THE TINY ONES, TEEN TIME PROGRAMS, AGED TO PERFECTION PROGRAMS, FAMILY FUN PROGRAMS, AND SO FORTH. WE ARE LOOKING TO THE COMMUNITY, TO THE RESIDENTS, AND TO THE BUSINESS OWNERS. COUNCILWOMAN KRAMER ASKED IF THEY COULD DO SOMETHING TO HELP OUR RECREATION DEPARTMENT AND OUR LEISURE SERVICES BECAUSE WE ARE LOOKING. WE NEED MORE FUNDS. COUNCILWOMAN KRAMER WISHED EVERYONE A GOOD NIGHT.

G. MAYOR ROSNER:

1. MAYOR ROSNER GREETED EVERYONE A GOOD EVENING. MAYOR ROSNER STATED THAT LAST NIGHT HE HAD THE HONOR OF MEETING THE COUNSEL GENERAL OF CHINA. THIS IS ALL IN OUTREACH TO RESIDENTS. THERE IS A VERY HEAVY ASIAN POPULATION IN OUR CITY; AND, PART OF THE 2010 CENSUS EFFORT IS TO, BASICALLY, REACH THOSE RESIDENTS. THE MAJORITY OF THEM ARE AMERICAN CITIZENS, A LOT OF THEM NOT PARTICIPATING WITHIN THE CITY. THE MAYOR STATED THAT SO FAR HE HAS MET WITH THE COUNSEL GENERAL OF TAIWAN, WHO HAS BEEN INSTRUMENTAL IN HELPING US TO GET OUTREACH TO THE CITIZENS IN OUR CITY FROM TAIWAN. LAST NIGHT HE MET WITH A WHOLE GROUP OF BUSINESS LEADERS THAT ARE A PART OF OUR CITY; AND, HE IS VERY PLEASED TO SAY THAT WE ARE REALLY DOING A GREAT JOB IN OUTREACH TO CITIZENS THAT HAVE NOT REALLY BEEN PART OF OUR CITY, WHO SHOULD BE. OUR RESIDENTS, OUR BUSINESS ARE A BIG PART OF IT. MAYOR ROSNER STATED THAT HE KNOWS THAT COUNCILMAN JULIEN HAS REACHED OUT TO SOME OF THE MEMBERS OF THAT COMMUNITY TO BE ON HIS MULTI-CULTURAL BOARD. THE MAYOR STATED THAT HE WAS TOLD LAST NIGHT THAT THEY HAVE A COUPLE OF IDEAS TO BRING A COUPLE OF MEMBERS FORWARD; THAT WOULD BE GREAT TO HAVE THEIR INPUT AS WELL. THE MAYOR THANKED JEFF VERY MUCH FOR SENDING HIM. THE MAYOR STATED THAT MOST OF THE DISCUSSION WAS IN CHINESE; AND HE DID NOT QUITE UNDERSTAND. THE MAYOR MADE JEFF COME AND

SIT NEXT TO HIM SO THAT HE COULD HAVE SOMEONE WHO UNDERSTOOD AND TRANSLATE FOR HIM A LITTLE MORE CLEARLY. THE CUSTOMS ARE VERY INTERESTING AND IT WAS A GREAT TREAT TO BE PART OF IT. THEY HAD CELEBRATIONS IN HAULOVER PARK; THEY HAVE HAD CELEBRATIONS NEXT DOOR IN THE MCDONALD CENTER. THROUGHOUT THIS NEXT EFFORT, WE ARE GOING TO CONTINUOUSLY REACH OUT TO THAT COMMUNITY. THE MAYOR STATED THAT WE ARE GLAD THAT THEY ARE INTERESTED IN GETTING INVOLVED IN OUR CITY, ESPECIALLY IN OUR GOVERNMENT.

2. MAYOR ROSNER WISHED HAPPY HOLIDAYS TO EVERYBODY IN OUR COMMUNITY. HAPPY SUKKOS; SIMCHAS TORAH IS COMING UP.
3. MAYOR ROSNER STATED THAT IN AN EFFORT TO BE TRANSPARENT, IS BASICALLY WHAT WE HAVE BEEN DOING. THE CHALLENGES OF RUNNING THESE MEETINGS ARE INTERESTING AND HE IS GLAD THAT WE ARE BRINGING THE DISCUSSION FORWARD SO THAT WE CAN ESTABLISH HOW IT IS EXACTLY THAT WE ARE GOING TO INTERACT WITH THE PUBLIC, THE ORDINANCES, THE RESOLUTIONS; SAME THING ON THE DAIS. HE WAS GLAD THAT WE ARE GOING TO SET SOMETHING UP SO THAT WE KNOW, WITH THE BANTERING, THAT WE CAN GO THROUGH THE CHAIR; WE CAN FIGURE OUT EXACTLY WHAT POLICY WE WANT TO SET IN PLACE SO THAT WE DO NOT HAVE MAYHEM AND WE HAVE ORDER.
4. MAYOR ROSNER STATED THAT WHEN HE FIRST CAME ON BOARD THERE WERE NOT A LOT OF WORKSHOPS; THERE ARE MORE WORKSHOPS TODAY. ONE OF THE THINGS WAS A BUDGET WORKSHOP. THE MAYOR STATED THAT HE REMEMBERS WHEN COUNCILMAN JULIEN INSISTED THAT WE DO A LINE BY LINE. HE HAS NOT SEEN AS MANY WORKSHOPS AS WE HAVE DONE IN THE LAST COUPLE OF YEARS, THAN WE HAVE EVER DONE BEFORE; SPECIFICALLY, WE DID BUDGET WORKSHOPS.
5. MAYOR ROSNER REMINDED EVERYONE THAT WE DID A PRE-COUNCIL WHERE WE DID THE SALARY ANALYSIS OF ALL THE CITIES. WE DID THAT AT THE BUDGET HEARING SO IT IS NOT LIKE WE JUST BROUGHT FORWARD A RESOLUTION; IT HAD BEEN DISCUSSED. WE KNEW THAT WE NEEDED TO FINALLY BRING IT FORWARD AS A COUNCIL. IT WAS LEAD BY VICE MAYOR PIERRE, TO FINALLY BRING IT FORWARD AS A RESOLUTION AND BASICALLY END THE BLEEDING. MAYOR ROSNER STATED THAT THE MANAGER HAD ASKED US TO TRY TO END THE BLEEDING BY THE BUDGET PERIOD. THE MAYOR STATED THAT HE THOUGHT THAT WE HAD ADDRESSED IT. COUNCILMAN JULIEN DID A GREAT PRESENTATION TONIGHT TO SHOW THAT THERE WERE HEAVY SAVINGS TO THE CITY. THE

MAYOR REQUESTED TO READ THE MANAGER'S LETTER TO THE EMPLOYEES. THE MAYOR READ, "THE RESOLUTION ADOPTED TO ELIMINATE THE MAYOR AND CITY COUNCIL'S PAID HEALTH BENEFITS AND INCREASE THE SALARIES, THIS CHANGE WILL RESULT IN A NET REDUCTION IN THE EXPENSES TO THE CITY AND WILL EQUITABLY COMPENSATE THE ELECTED OFFICIALS FOR THE DEMANDS OF THEIR POSITIONS." MAYOR ROSNER STATED THAT THE PROBLEM THAT HE SEES IS THAT SOMETIMES THE TRUTH HURTS. HE DOES NOT WANT TO HIDE BEHIND HIPPA OR PREVIOUSLY WHAT HAD BEEN DONE. THE ANALYSIS THAT COUNCILMAN JULIEN DID OBVIOUSLY SHOWS THAT THE MAYOR IS ONE OF THE ONES WHO IS OBVIOUSLY MEDICALLY CHALLENGED AND POSSIBLY COULD HAVE HIGHER MEDICAL EXPENSES. THE MAYOR STATED THAT WHEN HE RAN IN THE LAST ELECTION, ONE OF THE THINGS THAT A LOT OF PEOPLE DID NOT UNDERSTAND IS THAT HE PUT UP HIS MEDICAL FOR LIFE AT RISK IF HE LOST; BUT, HE WAS WILLING TO DO THAT IN ORDER TO DO THAT, TO COME HERE AND TAKE THE RISK. HE SUPPORTED THIS ORDINANCE LAST TIME BECAUSE IT TOOK A 5-2 VOTE. THE MAYOR STATED THAT FOR HIM, BEING DISABLED AND TAKING THE RISK OF NOW TAKING ON ALL, OBVIOUSLY THE BENEFIT PACKAGE WAS MUCH BETTER FOR HIM BEFORE. IT IS A RISK FOR HIM TO BE UNDER A FIXED AMOUNT.

MAYOR ROSNER STATED THAT HE UNDERSTOOD, UNDER FISCAL RESPONSIBILITY, ACCORDING TO THE MANAGER, THAT IT WAS THE RIGHT THING TO DO SO HE VOTED FOR IT. HE STATED THAT HE WAS A LITTLE DISAPPOINTED WE ARE RECONSIDERING IT BECAUSE WE REALLY HAVE DISCUSSED THIS, HASHED THIS OUT. WE HAVE BEEN DOING THIS FOR MONTHS, BETWEEN THE WORKSHOPS, BETWEEN THE PRE-COUNCIL, SO IT IS NOT A SURPRISE. WE DID THE ANALYSIS. AT THE LAST MEETING WE DID THE REDUCTION. VICE MAYOR PIERRE TRIED TO BRING IT FORWARD BASED ON THE \$42,000, \$48,000. THE MAYOR STATED THAT HE BELIEVED IT WAS COUNCILWOMAN KRAMER THAT THEN SUGGESTED A MID-GROUND; AND, WE VOTED A 5-2.

MAYOR ROSNER STATED THAT THE PROBLEM IS, IS SOMETIMES, AND TO QUOTE FROM A MOVIE, SOMETIMES PEOPLE CAN NOT HANDLE THE TRUTH. THIS COUNCIL HAS BEEN DEALING WITH IT; WE DEALT WITH A TON OF THINGS THAT HAVE NOT BEEN DEALT WITH BEFORE. SO SOMETIMES TRANSPARENCY AND TRUTH, WE HAVE PUT IT OUT THERE. THE SALARIES FOR THE MANAGER, THE SALARIES FOR THE ATTORNEY; EVERYTHING WE HAVE TRIED TO MAKE TRANSPARENT. THE MAYOR STATED THAT HE BELIEVES THAT IS WHAT WE HAVE BEEN DOING; AND, HE BELIEVES WE CONTINUE TO DO THAT. TONIGHT WE FOUND OUT ABOUT THE AUDITORS. THEY WERE HERE 30 YEARS; ENOUGH WAS ENOUGH. IT WAS TIME TO REVISIT AND

LOOK AT ALL THE DEPARTMENTS; WE HAVE BEEN DOING THAT AND IT IS UNBELIEVABLE HOW MUCH FARTHER AHEAD WE ARE. WE HAVE HEARD HOW WE ARE NOT GETTING FARTHER AHEAD. THAT IS NOT THE CASE. THE MAYOR STATED THAT HE WAS VERY PROUD OF WHAT WE HAVE ACCOMPLISHED; HE WAS VERY PROUD TO BE HERE AS THE MAYOR. HE THINKS WE ARE DEALING WITH THE ISSUES ONE BY ONE. THE MANAGER'S C.A.R.E. TEAM, EVERYTHING THAT HE HAS BROUGHT FORWARD HAS BEEN PHENOMENAL. WE ARE AN EXAMPLE TO THE COMMUNITY.

MAYOR ROSNER COMMENTED ON THE RALLY. THE LAST TIME WE HAD A RALLY WAS WHEN WE MADE A MOTION TO FIRE OUR PREVIOUS CITY MANAGER. HE STATED THAT HE MADE THE MOTION AND FIVE OF THE COUNCIL AGREED WITH IT. TONIGHT WHEN HE FOUND OUT THERE WAS GOING TO BE A RALLY, HE REALIZED THAT WE MUST BE DOING THE RIGHT THING; BECAUSE, WE DID IT LAST TIME AND IT WAS ALL BECAUSE WE DECIDED THAT IT WAS TIME. DOOM AND GLOOM WAS UPON US. WE WERE LETTING EMPLOYEES GO, WE WERE CLOSING PARKS AND RECREATION. MAYOR ROSNER ASKED THE COUNCIL IF THEY REALIZE HOW FAR WE HAVE COME. WE HAVE MASTER PLANS FOR OUR PARKS, WE HAVE A CRA THAT IS GOING TO MOVE FORWARD, AND THERE IS AGAIN THAT WHOLE BEHIND THE SCENES THING PUSHING FORWARD. THE MAYOR STATED THAT WE REALLY HAVE TO REALIZE HOW FAR WE HAVE COME. OUR CITY ATTORNEY'S OFFICE IS BEING REBUILT; OUR CLERK'S OFFICE IS BEING REBUILT. YOU HAVE HEARD OF COST SAVINGS TONIGHT. THERE IS SO MUCH GOOD THAT HAS HAPPENED WITH THIS GROUP; THAT IS WHAT WE REALLY NEED TO LOOK AT. MAYOR ROSNER ANNOUNCED THAT WE ARE GOING TO HAVE A LIGHT AGENDA NEXT TIME, AND HE WISHED EVERYONE GOOD NIGHT.

THERE BEING NO FURTHER BUSINESS TO COME BEFORE THE CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, THE REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH WAS ADJOURNED AT 11:55 PM ON A MOTION by COUNCILWOMAN SMITH, seconded by COUNCILMAN JULIEN. MOTION CARRIED.

CERTIFICATION

I, SUSAN A. OWENS, CITY CLERK OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, DO
HEREBY CERTIFY THAT THE FOREGOING MINUTES, PAGES ONE (1) THROUGH PAGE
TWENTY-THREE (23) INCLUSIVE, TO BE THE OFFICIAL RECORD OF THE CITY COUNCIL
PROCEEDINGS AS TAPE RECORDED AT THE REGULAR CITY COUNCIL MEETING OF THE
CITY OF NORTH MIAMI BEACH, FLORIDA, HELD ON THE SIXTH (6TH) DAY OF OCTOBER, 2009.

(SEAL)

SUSAN A. OWENS, CMC, CITY CLERK
CITY OF NORTH MIAMI BEACH

MEMORANDUM

**TO: MAYOR AND CITY COUNCIL
 CITY CLERK
 CITY MANAGER**

**FROM: DARCEE S. SIEGEL
 CITY ATTORNEY**

DATE: NOVEMBER 3, 2009

**RE: RESOLUTION NO. R2009-68
 Agreement for the N.E. 19th Avenue Roadway Improvement Project**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL
OF THE CITY OF NORTH MIAMI BEACH, FLORIDA,
AUTHORIZING THE CITY MANAGER TO EXECUTE AN
AGREEMENT WITH TRAN CONSTRUCTION, INC. FOR
THE N.E. 19TH AVENUE ROADWAY IMPROVEMENT
PROJECT.**



**CITY OF NORTH MIAMI BEACH
INTER-OFFICE MEMORANDUM**

City Manager's Office

TO: Honorable Mayor & Council
FROM: Kelvin L. Baker, City Manager
DATE: October 15, 2009

RE: Bid # 2009-17 NE 19th Ave Roadway Improvement Project

BACKGROUND:

The Public Services Department has obtained funding through the American Recovery and Reinvestment Act to eliminate local flooding, to reduce traffic speeding, to re-organize on-street parking, and to provide beautification on the City's main street.

RECOMMENDATION:

It is the evaluation committee's recommendation that the Bid be awarded to the lowest most responsive responsible vendor, being **Tran Construction** for the NE 19th Avenue Roadway Improvement Project, from a source of supply that will give prompt and efficient service.

Bid Notices were e-mailed out to 1491 potential, local and national vendors via Demandstar. Additionally, all local and registered City of North Miami Beach vendors under the commodity(s) matching this project's scope were notified via email. Advertisements were placed in the Miami Review and Miami Herald. Signs and Bid Notices were posted in the City Hall Lobby under Public Notices. The Bid (available for download) and a brief description were posted on the City's website.

Fiscal Impact:

Expenditure: \$ 549,028.49
Fund: American Recovery and Reinvestment Act
Account Name: NE 19 Avenue Roadway Improvement Project
Account #: 347850-541830

Contact Persons:

Hiep Huynh, Project Manager
Brian O'Connor, Chief Procurement Officer

CC: Darcee S. Siegel, City Attorney
Susan Owens, City Clerk

BID #2009-17

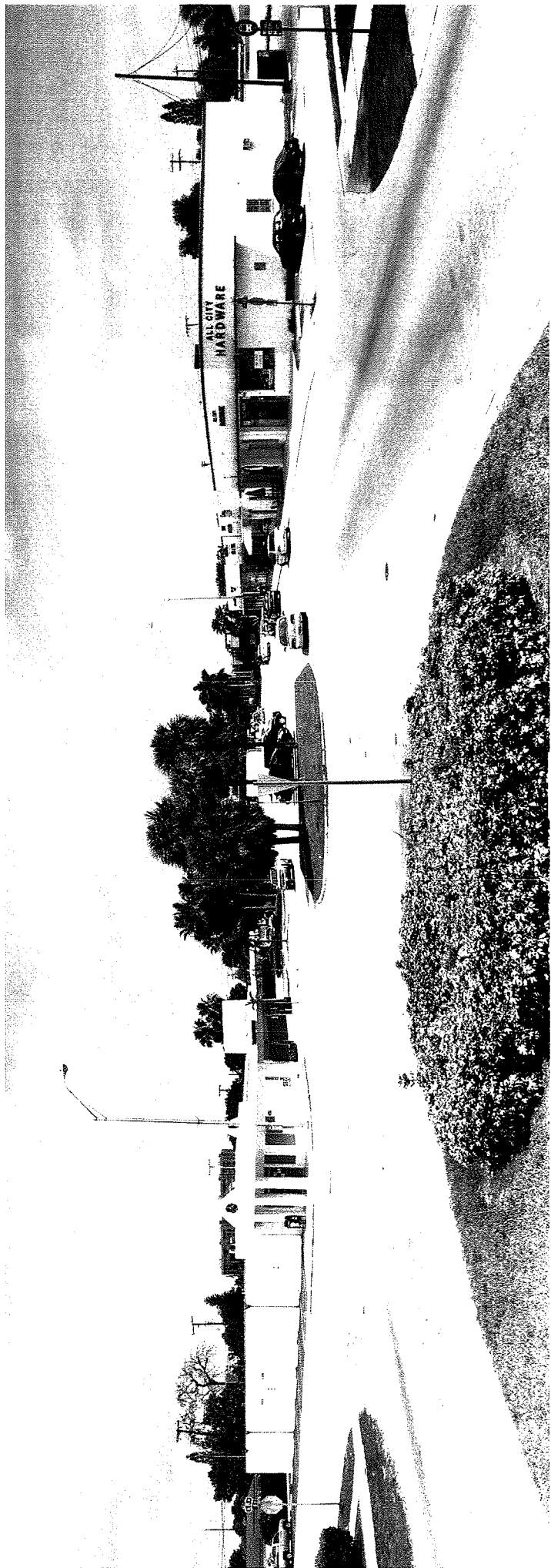
October 6, 2009

N.E. 19th AVENUE ROADWAY IMPROVEMENT PROJECT FOR THE CITY OF NORTH MIAMI BEACH

Description	Tran Construction		Maggole, Inc.		Budget Construction Co., Inc.		Southeastern Engineering Contractors, Inc.		CEB Construction, Inc.		Team Contracting		M. Vila & Associates, Inc.		H.A. Contracting Corporation	
	Total		Total		Total		Total		Total		Total		Total		Total	
Base Bid	\$418,813.43		\$441,925.00		\$467,415.25		\$528,470.93		\$517,749.50		\$558,808.00		\$586,234.19		\$511,960.00	
Alternate Bid	\$130,215.07		\$135,840.00		\$110,730.00		\$118,602.00		\$141,350.00		\$135,840.00		\$108,480.00		\$185,040.00	
Grand Total	\$549,028.49		\$577,765.00		\$578,145.25		\$647,072.93		\$659,109.50		\$694,728.00		\$696,714.19		\$697,000.00	

Description	Horizon Contractors, Inc.		Florida Engineering & Development Corp.		Solo Construction Corporation		Tenex Enterprises, Inc.		Tasco Engineering Group, Inc.		Miguel Lopez Jr., Inc.		Unitech Builders, Corp.	
	Total		Total		Total		Total		Total		Total		Total	
Base Bid	\$546,936.00		\$579,958.50		\$612,433.25		\$616,566.00		\$661,749.10		\$666,320.10		\$661,967.50	
Alternate Bid	\$160,684.80		\$142,170.00		\$145,200.00		\$167,880.00		\$148,014.00		\$157,290.00		\$170,400.00	
Grand Total	\$707,620.80		\$722,128.50		\$757,633.25		\$784,446.00		\$809,763.10		\$823,610.10		\$832,367.50	





RESOLUTION NO. R2009-68

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL
OF THE CITY OF NORTH MIAMI BEACH, FLORIDA,
AUTHORIZING THE CITY MANAGER TO EXECUTE AN
AGREEMENT WITH TRAN CONSTRUCTION, INC. FOR
THE N.E. 19TH AVENUE ROADWAY IMPROVEMENT
PROJECT.**

WHEREAS, the City of North Miami Beach has obtained full funding through the American Recovery and Reinvestment Act to conduct the N.E. 19th Avenue Roadway Improvement Project; and

WHEREAS, at no cost to the City of North Miami Beach, the N.E. 19th Avenue Roadway Improvement Project will eliminate local flooding, reduce the speed of vehicles, re-organize on-street parking, and provide beautification on N.E. 19th Avenue; and

WHEREAS, the City of North Miami Beach issued an Invitation to Bid #2009-17 for the roadway improvement for N.E. 19th Avenue; and

WHEREAS, fifteen firms submitted proposals to the City, and Tran Construction, Inc. submitted the lowest bid; and

WHEREAS, after an evaluation committee was convened to review "all" of the submitted proposals, the committee determined that Tran Construction, Inc. was the lowest, responsive and responsible bidder and recommended to award bid #2009-17 to Tran Construction, Inc.; and

WHEREAS, the City Council of North Miami Beach desires to award bid #2009-17, and authorizes the City Manager to execute an agreement between the City of North Miami Beach

RESOLUTION R2009-68

and Tran Construction, Inc., as provided in Exhibit "A", attached hereto and incorporated herein by reference.

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of North Miami Beach

Section 1. The foregoing recitals are true and correct.

Section 2. The Mayor and Council of the City of North Miami Beach, Florida, hereby award bid #2009-17 to Tran Construction, Inc., in the amount of \$549,028.49, for the N.E. 19th Avenue Roadway Improvement Project.

Section 3. The Mayor and Council of the City of North Miami Beach, Florida, hereby authorize and direct the City Manager and the City Clerk to execute the agreement between the City and Tran Construction, Inc., attached hereto as Exhibit "A" and incorporated herein by reference.

APPROVED AND ADOPTED by the City of North Miami Beach City Council at the regular meeting assembled this ___ day of _____, 2009.

ATTEST:

SUSAN A. OWENS
CITY CLERK

(CITY SEAL)

MYRON ROSNER
MAYOR

APPROVED AS TO FORM:

DARCEE S. SIEGEL
CITY ATTORNEY

SPONSORED BY: Mayor and Council

RESOLUTION R2009-68



NE 19th AVENUE ROADWAY IMPROVEMENT PROJECT BID #2009-17

THIS AGREEMENT made and entered into as of this _____ day of _____, 2009 by and between Tran Construction, Inc, a corporation organized and existing under the laws of the State of Florida, having its principal office at 1000 NW 54 Street, Miami, Florida 33127 (hereinafter referred to as the "Contractor"), and the City of North Miami Beach, a political subdivision of the State of Florida, having its principal office at 17011 NE 19 Avenue, North Miami Beach, Florida 33162 (hereinafter referred to as the "City"),

WITNESSETH:

WHEREAS, the Contractor has offered to furnish all labor, equipment, and materials for the improvements of N.E. 19th Avenue between N.E. 171 Street and N.E. 183 Street in North Miami Beach, Florida, that shall conform to the Scope of Services (Appendix A); North Miami Beach's Invitation to Bid (ITB) No. 2009-17 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated October 6, 2009, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the City desires to procure from the Contractor such labor, equipment, and materials for the N.E. 19th Avenue improvement project for the City, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE I. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), ITB No. 2009-17 and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.

- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean North Miami Beach's Chief Procurement Officer, Procurement Management Division, or the duly authorized representative designated to manage the Contract.
- d) The word "Contractor" to mean Tran Construction, Inc. and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the City's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the City's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the City's Project Manager.
- h) The words "Change Order" or "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the City.
- i) The words "Project Cost" means the sum of the construction costs, allowances for contingencies, the total cost of design professional and related services provided by consultant, and allowances for such other items as charges of all other professionals and consultants.
- j) The words "Project Manager" to mean the City Manager or the duly authorized representative designated to manage the Project.
- k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- l) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- m) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Appendix A), 3) the City of North Miami Beach's ITB No. 2009-17 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.

- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.
- b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the City's Project Manager.
- e) The Contractor acknowledges that the City shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the City. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the City with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM AND TIME FOR COMPLETION

The Contract shall become effective on _____ and the work shall be substantially complete within one hundred fifty (150) consecutive calendar days for the base bid and one hundred eighty (180) consecutive calendar days for the base bid and alternate bid.

- a) Work shall commence immediately upon Notice to Proceed, which may be in the form of a signed Purchase Order, as time is of the essence for completion.

- b) Liquidated Damages. City and Contractor recognize that time is of the essence of this Agreement and that the City will suffer financial loss if the Work is not completed within the time specified above, plus any extensions thereof allowed in accordance with the General Conditions. Both parties recognize the delays, expense and difficulties involved in proving in an arbitration proceeding, the actual loss suffered by the City is the Work is not completed on time. Accordingly instead of requiring any such proof, the City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City one thousand four hundred twenty-three dollars (\$1423.00) for each day that expires after the time specified above for Substantial Completion and one hundred (\$100.00) for each day that expires after the time specified for Completion and ready for final payment until the Work is complete.

ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the City

- a) to the Project Manager:
City of North Miami Beach
Attention: Hiep Huynh
Phone: (305) 948-2925
Fax: (305) 957-3502

and,

- b) to the Contract Manager:
Brian K. O'Connor, C.P.M. A.P.P
Chief Procurement Officer
Procurement Management Division
17011 NE 19 Avenue, Suite 315
North Miami Beach, FL 33162
Phone: (305) 948-2946
Fax: (305) 957-3522

(2) To the Contractor

Attention: Henry T. Loudon, President
Phone: (305) 756-7756
Fax: (305) 756-7780
E-mail: hlouden@tranconstruction.com

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 7. BASIS OF COMPENSATION (NOT APPLICABLE)

The Contractor agrees to perform the work defined in Exhibit A for either:

- a) The Hourly Rates as set forth in Exhibit B, with a negotiated upset limit, not to exceed a percentage of estimated construction cost based on the Department of General Services Fee Curve attached hereto as Exhibit C. The Contractor shall be entitled to receive

reimbursement for expenses at the Contractor's exact cost, which costs have been included in Contractor's fee proposal for project and approved by the CITY; or,

- b) A negotiated lump sum fee based on the rates set forth in Exhibit B, aforementioned, not to exceed a percentage of estimated construction cost attached hereto as Exhibit C, plus approved Reimbursable Expenses.
- c) Approved Reimbursable Expenses shall be paid to the Contractor at exact cost, and upon proof of payment by Contractor. Anticipated Reimbursable Expenses shall be included with Contractor's original fee proposal.
- d) Contractor agrees to keep, furnish, and support statements with copies of invoices, statements of times expended, and other supporting documentation as the City may require. Statements for fees based on Hourly Rates will be rendered monthly as the work progresses or as otherwise agreed upon. Reimbursable expenses will be invoiced monthly at cost, as the work progresses, or as otherwise agreed upon. Such documentation and records will be available at all reasonable times for examination and audit by the City. Incomplete or incorrect entries in such books and records shall be immediately corrected or completed upon being called to the attention of the Contractor. Any loss caused to the City by such incorrect or incomplete entries will be grounds for disallowance by the City of any fees or expenses based upon such entries. Said books and records for each project shall be kept for a period of five years after the completion of all work to be performed on such project, pursuant to this agreement.
- e) Compensation to the Contractor shall include the following. No claim for reimbursement for these expenses shall be made to the CITY.
 - i. All travel and vehicle expenses within South Florida.
 - ii. Three sets of signed and sealed permitting plans.
 - iii. Computer usage, telephone expenses, postage.
- f) A copy of the invoice for each reimbursable expense shall be attached to Contractor's invoice.

ARTICLE 8: PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the City's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in the total amount of five hundred forty nine thousand twenty-eight dollars and forty nine cents (\$549,028.49). The City shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the City and the Contractor.

All Services undertaken by the Contractor before City's approval of this Contract shall be at the Contractor's risk and expense.

With respect to travel costs and travel related expenses, the Contractor agrees to adhere to

Section 112.061 of the Florida Statutes as they pertain to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous cost-and fees. The City shall not be liable for any such expenses that have not been approved in advance, in writing, by the City.

ARTICLE 9. PRICING

Prices shall remain firm and fixed for the term of the Contract, including any option or extension periods; however, the Contractor may offer incentive discounts to the City at any time during the Contract term, including any renewal or extension thereof.

ARTICLE 10. METHOD AND TIMES OF PAYMENT

Payments shall be made as per the following **Progress Payments Section** of the bid specifications

“2.13 PROGRESS PAYMENTS

Based on Applications for Payment submitted to the City by the Contractor, and Certificates for Payment issued by the Architect/Engineer or City, the City shall make progress payments to the Contractor based on the Schedule of Values and percentage of completion, or units completed. 10% shall be retained from each progress payment until the point of substantial completion, at which time retainage shall be reduced to 5% until final completion.

Applications for Payment shall indicate the percentage of completion of each portion of the work, or the volume, area, or linear measurement of work completed as of the end of the period covered by the Application for Payment. The period covered by each Application for Payment shall be one calendar month or as otherwise agreed upon at the Pre-construction Conference.”

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the City as follows:

City of North Miami Beach
Financial Services Department
17011 NE 19th Avenue, Suite 316
North Miami Beach, Florida 33162
Attention: Accounts Payable

The City may at any time designate a different address and/or contact person by giving written notice to the other party.

ARTICLE 11. INDEMNIFICATION AND INSURANCE

In accordance with Chapter 725, Florida Statutes, the Contractor shall indemnify and hold harmless the City and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, in an amount not less than \$1,000,000 per occurrence which shall include attorneys' fees and costs of defense, which the City or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. Furthermore, the Contractor shall pay all claims and losses in an amount not less than \$1,000,000 per occurrence in connection therewith and shall investigate and defend all

claims, suits or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall cover the City, its officers, employees, agents and instrumentalities and shall include claims, or damages resulting from and/or caused by the negligence, recklessness or intentional wrongful misconduct of the indemnifying party and persons employed by or utilized by the indemnifying party in the performance of the contract.

Upon City's notification, the Contractor shall furnish to the Procurement Management Division, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440. Should the Contractor be exempt from this Statute, the Contractor and each employee shall hold the City harmless from any injury incurred during performance of the Contract. The exempt contractor shall also submit a written statement detailing the number of employees and that they are not required to carry Worker's Compensation insurance, and do not anticipate hiring any additional employees during the term of this contract or a copy of a Certificate of Exemption.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage. **The City of North Miami Beach must be shown as an additional insured with respect to this coverage. The mailing address of City of North Miami Beach 17011 NE 19 Avenue, Suite 315, North Miami Beach, Florida 33162, as the certificate holder, must appear on the certificate of insurance.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$300,000 per person and \$500,000 per occurrence and property damage limits of \$300,000; or a comprehensive single limit of liability for bodily injury and property damage combined, with minimum limits of \$500,000 per occurrence, covering all owned, non-owned, and hired vehicles used by the contractor while performing operations in connection with this contract.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the City's Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the City.

NOTE: CITY OF NORTH MIAMI BEACH CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after City notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the City. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after City notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the City.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the City. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the City at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the City shall suspend the Contract until such time as the new or renewed certificates are received by the City in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the City may, at its sole discretion, terminate this contract.

ARTICLE 12. GUARANTEE

The Contractor shall be responsible for technically deficient designs, reports, or studies due to his errors and omissions, and shall promptly correct or replace all such deficient work due to his errors and omissions without cost to City upon the request of the City for five years after the date of acceptance of the project by the City, which judged to have been in error by a court of competent jurisdiction. Contractor shall also be responsible for the cost of correcting deficient construction which was built from technically deficient designs. Payment in full by the City for work performed does not constitute a waiver of this guarantee.

ARTICLE 13. MANNER OF PERFORMANCE

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the City in accordance with the terms and conditions of this Agreement. The City shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in

all aspects of the Services. At the request of the City, the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.

- b) The Contractor agrees to defend, hold harmless and indemnify the City and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the City, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the City. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the City, should the City make a determination, in its sole discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the City and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 14. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the City. The Contractor shall supply competent employees. The City of North Miami Beach may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on City property is not in the best interest of the City. Each employee shall have and wear proper identification.

ARTICLE 15. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the City. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the City shall be that of an independent contractor and not as employees and agents of the City.

The Contractor does not have the power or authority to bind the City in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 16. AUTHORITY OF THE CITY'S PROJECT MANAGER

- a) The Contractor hereby acknowledges that the City's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d) In the event of such dispute, the parties to this Agreement authorize the City Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the City Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the City Manager within 10 days of the occurrence, event or act out of which the dispute arises.
- e) The City Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the City Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the City Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the City Manager is entitled to exercise discretion or judgment or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The City Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the

Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

ARTICLE 17. MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the City may, at its expense, elect to participate in the defense if the City should so choose. Furthermore, the City may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

ARTICLE 18. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 19. AUDITS

The City, or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the City. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

The Contractor agrees to grant access to the City's Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 20. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the City in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

ARTICLE 21. CONSENT OF THE CITY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the City.

ARTICLE 22. SUBCONTRACTUAL RELATIONS

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the City the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the City may require. The City will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the City.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the City, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the City that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the City that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The City shall have the right to withdraw its consent to a subcontract if it appears to the City that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the City's and City's proprietary and confidential information. Contractor shall furnish to the City copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the City permitting the City to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the City finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the City to any subcontractor hereunder as more fully described herein.

ARTICLE 23. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the City were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the City makes no representations or guarantees; and the City shall not be responsible for the accuracy of the assumptions presented; and the City shall not be responsible for conclusions to be drawn there from; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

ARTICLE 24. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 25. TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK

- a) The City may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the City through fraud, misrepresentation or material misstatement.
- b) The City may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the City and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the City through fraud, misrepresentation or material misstatement may be debarred from City contracting in accordance with the City debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Chapter 3 of the City's Purchasing Policies and Procedures Manual.

In addition to cancellation or termination as otherwise provided in this Agreement, the City may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

- d) The Contractor shall, upon receipt of such notice, unless otherwise directed by the City:
 - i. stop work on the date specified in the notice ("the Effective Termination Date");
 - ii. take such action as may be necessary for the protection and preservation of the City's materials and property;
 - iii. cancel orders;
 - iv. assign to the City and deliver to any location designated by the City any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
 - v. take no action which will increase the amounts payable by the City under this Agreement; and
- e) In the event that the City exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:
 - i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and

- ii. non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this greement but not incorporated in the Services.
- f) All compensation pursuant to this Article are subject to audit.

ARTICLE 26. EVENT OF DEFAULT

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:
- i. the Contractor has not delivered Deliverables on a timely basis.
 - ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
 - v. the Contractor has failed to obtain the approval of the City where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;
 - vii. the Contractor has failed in the representation of any warranties stated herein.
- b) When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the City may request that the Contractor, within the time frame set forth in the City's request, provide adequate assurances to the City, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the City receives such assurances the City may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the City the requested assurances within the prescribed time frame, the City may:
- i. treat such failure as a repudiation of this Agreement;
 - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the City shall terminate this Agreement for default, the City or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 27. NOTICE OF DEFAULT - OPPORTUNITY TO CURE TERMINATION

If an Event of Default occurs, in the determination of the City, the City may so notify the

Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the City may be terminated. Notwithstanding, the City may, in its sole discretion, allow the Contractor to rectify the default to the City's reasonable satisfaction within a thirty (30) day period. The City may grant an additional period of such duration as the City shall deem appropriate without waiver of any of the City's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the City prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 28. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the City for reprourement of Services, including procurement and administrative costs; and,
- c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The City may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 29. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.
- b) The Contractor shall be liable and responsible for any and all claims made against the City for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the City's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the City and defend any action brought against the City with respect to any claim, demand, cause of action, debt, or liability.
- c) In the event any Deliverable or anything provided to the City hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the City's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the City, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- d) The Contractor shall be solely responsible for determining and informing the City

whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The City may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the City's judgment, use thereof would delay the Work or be unlawful.

- e) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

ARTICLE 30. CONFIDENTIALITY

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the City in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the City holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the City, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the City, unless required by law. In addition to the foregoing, all City employee information and City financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the City. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the City, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the City in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the City shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the City, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the City all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the City. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 31. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, the City of North Miami Beach is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledges that all computer software in the City's possession may constitute or contain information or materials which the City has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the City has developed at its own expense, the disclosure of which could harm the City's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the City's property, any computer programs, data compilations, or other software which the City has developed, has used or is using, is holding for use, or which are otherwise in the possession of the City (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the City and, if the Computer Software has been leased or purchased by the City, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the City any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the City's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

ARTICLE 32. PROPRIETARY RIGHTS

- a) The Contractor hereby acknowledges and agrees that the City retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the City to the Contractor hereunder or furnished by the Contractor to the City and/or created by the Contractor for delivery to the City, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the City, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the City's copyrights or other proprietary rights.
- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the City, hereinafter referred to as "Developed Works" shall become the property of the City.
- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or

suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the City, except as required for the Contractor's performance hereunder.

- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the City so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the City or entities controlling, controlled by, under common control with, or affiliated with the City, or organizations which may hereafter be formed by or become affiliated with the City. Such license specifically includes, but is not limited to, the right of the City to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the City or entities controlling, controlled by, under common control with, or affiliated with the City, or organizations which may hereafter be formed by or become affiliated with the City. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 33. BUSINESS APPLICATION AND FORMS

Vendor Application The Contractor shall be a registered vendor with the City – Procurement Management Division, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any City employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with the City or any person or agency acting for the City from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with the City of North Miami Beach or any person or agency acting for the City and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 34. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions

of any and all applicable Federal, State, County and City orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Small Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) North Miami Beach Purchasing Policies and Procedures Manual Policy 3.6 "Debarment and Suspension".

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

ARTICLE 35. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training. By entering into this Contract with the City, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts). If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the City to be in violation of the Act, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit or the Contractor violates the Act during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 36. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the City or a member of the immediate family or household of the aforesaid has directly or indirectly received or

been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.

- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the City, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the City, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the City's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the City's Project Manager. Contractor shall thereafter cooperate with the City's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 37. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the City:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the City, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the City. Such approval may be withheld if for any reason the City believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, council or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the City; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product

or service provided by the Contractor or such parties has been approved or endorsed by the City.

ARTICLE 38. BANKRUPTCY

The City reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the City, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 39. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida.

ARTICLE 40. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists the City of North Miami Beach with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, including but not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to the City of North Miami Beach for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to the City of North Miami Beach for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

ARTICLE 41. SURVIVAL

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the City under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Contractor

City of North Miami Beach

By: _____

By: _____

Kelvin L. Baker
Title: City Manager

Name: _____

Date: _____

Title: _____

Attest: _____

Susan A. Owens, City Clerk

Date: _____

Attest: _____
Corporate Secretary/Notary Public

Approved as to form
and legal sufficiency

Corporate Seal/Notary Seal

Darcee S. Siegel, City Attorney



ADDENDUM TO BID DOCUMENTS

PROJECT NAME NE 19TH AVENUE ROADWAY IMPROVEMENT PROJECT

PROJECT No. 2009-17 BID OPENING DATE 10/6/09 @ 2:00 p.m. ADDENDUM No. 1

To All Bidders:

This addendum is issued to modify the previously issued bid documents and/or given for informational purposes, and is hereby made a part of the bid documents. Please attach this addendum to the documents in your possession and acknowledge receipt of this addendum in the space provided on the bid form.

=====

CLARIFICATION: Item 3.2 below supersedes Item 3.2 found in the original bid documents and reflects a change in the liquidated damages to be paid to the owner by the contractor.

3.2 CONTRACT TIME/LIQUIDATED DAMAGES

The work shall be substantially complete within one hundred fifty (150) consecutive calendar days from the date of the notice to proceed for the Base Bid and one hundred eighty (180) consecutive calendar days for the Base Bid and Alternate Bid. The project shall be complete and ready for final payment within fourteen (14) consecutive calendar days of the date of substantial completion.

The City and the Contractor shall recognize that time is of the essence and that the City will suffer financial loss if the work is not completed within the times specified in the above paragraph, plus any extensions thereof approved by the City in writing. They shall also recognize the delays, expense, and difficulties involved in proving in an arbitration proceeding the actual loss suffered by the City if the work is not completed on time. Accordingly, instead of requiring such proof, the city and the Contractor agree that as liquidated damaged for delay (but not as a penalty) the Contractor shall pay the owner **one thousand four hundred twenty-three dollars (\$1423.00)** for each day that expires after the time specified above for Substantial Completion and one hundred Dollars (\$100.00) for each day that expires after the time specified above for Completion and ready for final payment until the Work is Complete.

Q.: Is there an engineer's estimate available on this project?

A.: Yes. It is \$700,000.00

Reviewed by:



Chief Procurement Officer
Procurement Management Division

Acknowledged by:

Name (*Printed*)

Signature

Date



ADDENDUM TO BID DOCUMENTS

PROJECT NAME NE 19TH AVENUE ROADWAY IMPROVEMENT PROJECT

PROJECT No. 2009-17 BID OPENING DATE 10/6/09 @ 2:00 p.m. ADDENDUM No. 2

To All Bidders:

This addendum is issued to modify the previously issued bid documents and/or given for informational purposes, and is hereby made a part of the bid documents. Please attach this addendum to the documents in your possession and acknowledge receipt of this addendum in the space provided on the bid form.

=====

CLARIFICATION: Item 2.4 below supersedes Item 2.4 found in the original bid documents. The Public Liability Insurance clause and Builders Risk Complete Value Form have been deleted.

2.4 INDEMNIFICATION AND INSURANCE

In accordance with Chapter 725, Florida Statutes, the Contractor shall indemnify and hold harmless the City and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, in an amount not less than \$1,000,000 per occurrence which shall include attorneys' fees and costs of defense, which the City or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. Furthermore, the Contractor shall pay all claims and losses in an amount not less than \$1,000,000 per occurrence in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall cover the City, its officers, employees, agents and instrumentalities and shall include claims, or damages resulting from and/or caused by the negligence, recklessness or intentional wrongful misconduct of the indemnifying party and persons employed by or utilized by the indemnifying party in the performance of the contract.

Upon City's notification, the Contractor shall furnish to the Procurement Management Division, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

- I. Worker's Compensation Insurance for all employees of the Contractor as required by Florida

Statute 440. Should the Contractor be exempt from this Statute, the Contractor and each employee shall hold the City harmless from any injury incurred during performance of the Contract. The exempt contractor shall also submit a written statement detailing the number of employees and that they are not required to carry Worker's Compensation insurance, and do not anticipate hiring any additional employees during the term of this contract or a copy of a Certificate of Exemption.

2. Public Liability Insurance on a comprehensive basis in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage. **The City of North Miami Beach must be shown as an additional insured with respect to this coverage. The mailing address of City of North Miami Beach 17011 NE 19 Avenue, Suite 315, North Miami Beach, Florida 33162, as the certificate holder, must appear on the certificate of insurance.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$300,000 per person and \$500,000 per occurrence and property damage limits of \$300,000; or a comprehensive single limit of liability for bodily injury and property damage combined, with minimum limits of \$500,000 per occurrence, covering all owned, non-owned, and hired vehicles used by the contractor while performing operations in connection with this contract.

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the City's Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to

modify the insurance coverage without thirty (30) days written advance notice to the City.

NOTE: CITY OF NORTH MIAMI BEACH CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after City notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the City. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after City notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the City.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the City. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the City at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the City shall suspend the Contract until such time as the new or renewed certificates are received by the City in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the City may, at its sole discretion, terminate this contract.

Reviewed by:



Chief Procurement Officer
Procurement Management Division

Acknowledged by:

Name (Printed)

Signature

Date



ADDENDUM TO BID DOCUMENTS

PROJECT NAME NE 19TH AVENUE ROADWAY IMPROVEMENT PROJECT
PROJECT No. 2009-17 BID OPENING DATE 10/6/09 @ 2:00 p.m. ADDENDUM No. 3

To All Bidders:

This addendum is issued to modify the previously issued bid documents and/or given for informational purposes, and is hereby made a part of the bid documents. Please attach this addendum to the documents in your possession and acknowledge receipt of this addendum in the space provided on the bid form.
=====

Q.: What is the name and City location of engineer of record?

A.: The name and City location of the engineer of record can be found on the cover sheet of the plans. Log on to our website at www.citynmb.com/purchasing and click on **Bid #2009-17**. The bid document will be found in the **Documents** field.

Q.: Is the design performed in-house?

A.: No. The design is not done by in-house staff.

Q.: Can you provide the list of the mandatory pre-bid attendees?

A.: That list is available on the City's website at www.citynmb.com/purchasing

Reviewed by:

Chief Procurement Officer
Procurement Management Division

Acknowledged by:

Name (<i>Printed</i>)

Signature

Date

RESOLUTION NO. R2009-57

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, ELIMINATING CITY PAID HEALTH CARE BENEFITS FOR ALL CURRENT AND FUTURE ELECTED OFFICIALS OF THE CITY OF NORTH MIAMI BEACH; ELIMINATING CITY PAID HEALTH INSURANCE DEDUCTIBLES AND COINSURANCE FOR CURRENT AND FUTURE ELECTED OFFICIALS OF THE CITY OF NORTH MIAMI BEACH; INCREASING LIFE INSURANCE BENEFITS FOR ALL CURRENT AND FUTURE ELECTED OFFICIALS OF THE CITY OF NORTH MIAMI BEACH AND INCREASING THE SALARY PAID TO ALL CURRENT AND FUTURE ELECTED OFFICIALS OF THE CITY OF NORTH MIAMI BEACH.

WHEREAS, on May 5, 2009, the voters of the City of North Miami Beach passed a Charter Amendment to eliminate lifetime health insurance benefits for all Council Members newly elected after October 1, 2008; and

WHEREAS, even though all members of the City Council are entitled to health benefits, only four members participate in the City Plan; and

WHEREAS, the 14th Amendment to the U.S. Constitution guarantees similarly situated individuals to be treated equally; and

WHEREAS, in order to comply with the Constitution, the Mayor and City Council do not want to give different treatment to each member of the City Council; and

WHEREAS, in keeping with the spirit of the voters of the City of North Miami Beach, the Mayor and Council believe that City paid health care benefits, health insurance deductibles

and coinsurance should be paid for by each elected official and not the City of North Miami Beach, and

WHEREAS, due to rising costs of funeral expenses, the Mayor and City Council wish to raise the life insurance benefits available to current and future Council members, should they die in office; and

WHEREAS, in 1961, the City Charter created a \$2,400.00 a year salary for the Mayor and City Council of the City of North Miami Beach, allowing for periodic increases by the affirmative vote of five members of the Council; and

WHEREAS, the Mayor and City Council recognize that even though individuals run for office because they want to do community service, many cannot afford the financial impact; and

WHEREAS, being a member of the City Council is a serious position which requires individuals to devote much of their time to the City; and

WHEREAS, the Mayor and City Council acknowledge that current elected officials and future ones may lose a portion of their livelihood to promote public service and to be a part of it; and

WHEREAS, since the position of Mayor and City Council member may include many of the demands of a full time job, and due to inflation since 1961, the Mayor and City Council should receive appropriate compensation.

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of North Miami Beach

Section 1. The foregoing recitals are true and correct.

Section 2. City paid health care benefits for all current and future elected officials shall be eliminated.

Section 3. City paid health insurance deductibles and coinsurance for all current and future elected officials shall be eliminated.

Section 4. Life insurance benefits to the City's Mayor and Council members through the City group life insurance plan shall be increased from \$15,000.00 coverage to \$30,000.00.

Section 5. All current and future City Council members shall receive an annual salary of \$35,000.00 per year, and may be entitled to receive a cost of living increase annually.

Section 6. All current and future City Mayors shall receive an annual salary of \$40,000.00 per year, and may be entitled to receive a cost of living increase annually.

APPROVED AND ADOPTED by the City of North Miami Beach City Council at the regular meeting assembled this **22nd day of September, 2009.**

ATTEST:



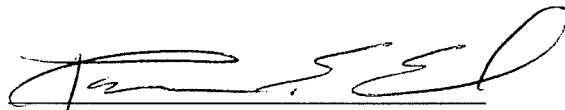
SUSAN A. OWENS
CITY CLERK

(CITY SEAL)



MYRON ROSNER
MAYOR

APPROVED AS TO FORM:



DARCEE S. SIEGEL
CITY ATTORNEY

SPONSORED BY: Councilman Frantz Pierre
Mayor and Council

RESOLUTION NO. R2009-57A

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, ELIMINATING CITY PAID HEALTH CARE BENEFITS FOR ALL CURRENT AND FUTURE ELECTED OFFICIALS OF THE CITY OF NORTH MIAMI BEACH; ELIMINATING CITY PAID HEALTH INSURANCE DEDUCTIBLES AND COINSURANCE FOR CURRENT AND FUTURE ELECTED OFFICIALS OF THE CITY OF NORTH MIAMI BEACH; ELIMINATING CITY PAID OUT OF POCKET MEDICAL REIMBURSEMENTS FOR ALL CURRENT AND FUTURE ELECTED OFFICIALS OF THE CITY OF NORTH MIAMI BEACH; INCREASING LIFE INSURANCE BENEFITS FOR ALL CURRENT AND FUTURE ELECTED OFFICIALS OF THE CITY OF NORTH MIAMI BEACH AND ~~INCREASING THE SALARY PAID~~ PROVIDING FOR A TOTAL BENEFIT PACKAGE FOR MAYOR AND CITY COUNCIL WHICH WILL INCLUDE SALARY, EXECUTIVE EXPENSE, HEALTH INSURANCE, GROUP LIFE INSURANCE, ACCIDENTAL DEATH INSURANCE, CAR ALLOWANCE AND WORKERS' COMPENSATION INSURANCE TO ALL CURRENT AND FUTURE ELECTED OFFICIALS OF THE CITY OF NORTH MIAMI BEACH.

WHEREAS, on September 22, 2009, the Mayor and City Council passed Resolution No. R2009-57, which eliminated City paid health care benefits and City paid health insurance deductibles and coinsurance for current and future elected officials; increased life insurance benefits for all current and future elected officials and increased the salary paid to all current and future elected officials, without specifying which benefits were included in the total benefit package; and

WHEREAS, the Mayor and City Council feels that clarification of the total benefit package is needed to inform the public and to adhere to transparency in the government's operation; and

WHEREAS, on May 5, 2009, the voters of the City of North Miami Beach passed a Charter Amendment to eliminate lifetime health insurance benefits for all Council Members newly elected after October 1, 2008; and

WHEREAS, even though all members of the City Council are entitled to health benefits, only four members participate in the City Plan; and

WHEREAS, the 14th Amendment to the U.S. Constitution guarantees similarly situated individuals to be treated equally; and

WHEREAS, in order to comply with the Constitution, the Mayor and City Council do not want to give different treatment to each member of the City Council; and

WHEREAS, in keeping with the spirit of the voters of the City of North Miami Beach, the Mayor and Council believe that City paid health care benefits, health insurance deductibles and coinsurance should be paid for by each elected official and not the City of North Miami Beach, and

WHEREAS, due to rising costs of funeral expenses, the Mayor and City Council wish to raise the life insurance benefits available to current and future Council members, should they die in office; and

WHEREAS, in 1961, the City Charter created a \$2,400.00 a year salary for the Mayor and City Council of the City of North Miami Beach, allowing for periodic increases by the affirmative vote of five members of the Council; and

WHEREAS, the Mayor and City Council recognize that even though individuals run for office because they want to do community service, many cannot afford the financial impact; and

WHEREAS, being a member of the City Council is a serious position which requires individuals to devote much of their time to the City; and

WHEREAS, the Mayor and City Council acknowledge that current elected officials and future ones may lose a portion of their livelihood to promote public service and to be a part of it; and

WHEREAS, since the position of Mayor and City Council member may include many of the demands of a full time job, and due to inflation since 1961, the Mayor and City Council should receive appropriate compensation.

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of North Miami Beach

Section 1. The foregoing recitals are true and correct.

Section 2. City paid health care benefits for all current and future elected officials shall be eliminated.

Section 3. City paid health insurance deductibles and coinsurance for all current and future elected officials shall be eliminated.

Section 4. City paid out of pocket medical reimbursements for all current and future elected officials shall be eliminated.

Section 5. Life insurance benefits to the City's Mayor and Council members through the City group life insurance plan shall be increased from \$15,000.00 coverage to \$30,000.00.

Section 6. All current and future City Council members shall receive an annual salary

total benefit package of \$35,000.00 per year and may be entitled to receive a cost of living increase annually. Out of that total amount, salary, executive expense, health insurance, group life insurance, accidental death insurance, car allowance and workers' compensation insurance shall be paid. Council members shall have the option of opting into any of the above insurances, with the cost to be borne by the individual council member.

Section 7. All current and future City Mayors shall receive an annual salary total benefit package of \$40,000.00 per year, and may be entitled to receive a cost of living increase annually. Out of that total amount, salary, executive expense, health insurance, group life insurance, accidental death insurance, car allowance and workers' compensation insurance shall be paid. Council members shall have the option of opting into any of the above insurances, with the cost to be borne by the individual council member.

APPROVED AND ADOPTED by the City of North Miami Beach City Council at the regular meeting assembled this ____ **day of November, 2009.**

ATTEST:

SUSAN A. OWENS
CITY CLERK

(CITY SEAL)

MYRON ROSNER
MAYOR

APPROVED AS TO FORM:

DARCEE S. SIEGEL
CITY ATTORNEY

SPONSORED BY: Councilman Frantz Pierre
Mayor and Council

MEMORANDUM

**TO: MAYOR AND CITY COUNCIL
CITY CLERK
CITY MANAGER**

**FROM: DARCEE S. SIEGEL
CITY ATTORNEY**

DATE: November 3, 2009

**RE: RESOLUTION NO. R2009-20A
Amending Resolution No. R2009-20
Columbus Networks' Site Plan Approval**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING RESOLUTION NO. R2009-20, COLUMBUS NETWORKS' SITE PLAN APPROVAL, BY REVISING AND CHANGING THE CONFIGURATION OF THE BUILDINGS ON THE SITE AND REDUCING THE PREVIOUSLY APPROVED FLOOR AREA FROM 10,759 SQUARE FEET TO 8,129 SQUARE FEET; REVOKING APPROVAL OF THE SITE PLAN NUMBERED A-1.00 DATED FEBRUARY 27, 2009 AND REPLACING IT WITH SITE PLAN A-1.00 DATED OCTOBER 6, 2009, AS PROPOSED, ON PROPERTY LEGALLY DESCRIBED AS:

LOTS 1-9 AND LOTS 22-30, BLOCK 5 "FULFORD VILLAS AMENDED" AND A 16' WIDE ALLEY LYING BETWEEN SAID LOTS, PLAT BOOK 21, PAGE 24, PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA

**A/K/A
15950 West Dixie Highway
North Miami Beach, Florida**

**City of North Miami Beach
Interoffice Memorandum**



City Manager's Office

TO: Mayor & Council
FROM: Kelvin L. Baker, City Manager
DATE: November 3, 2009

A handwritten signature in black ink, appearing to be "Kelvin L. Baker", written over the "FROM:" line.

RE: Approval of Resolution 2009- approving a revised site plan for an addition to the Columbus Networks Office Building at 15950 West Dixie Highway

BACKGROUND

Columbus Network operates out of an existing office building at 15950 West Dixie Highway. The company provides internet access to the Caribbean Basin.

On April 7, 2009, the City Council approved Resolution R2009-20 granting site plan approval for the construction of 10,759 square feet in additions to the existing 17,879 square foot facility, for a total building gross floor area of 28,638 square feet. Three separate additions were proposed: a long rectangular building west of and parallel to the existing office facility that would be one-story over existing at-grade parking, a two story connector building linking the proposed existing and new office buildings and a nearly freestanding Network Operations Center (NOC) building.

The total proposed 28,638 square feet of buildings required 66 parking spaces and provided 73 parking spaces.

Under the current proposal for site plan modification, the size of the proposed office building would be slightly increased, the two story connector building would remain the same, and the Network Operations Center building would not be constructed at this time. Construction of the Network Operations Center is anticipated in a second phase, probably within four to five years.

The new project would contain 8,129 additional square feet of floor area, for a total of 26,008 square feet of building area. This represents a net reduction in building gross floor area of 2,630 square feet. The new project requires only 59 parking spaces, with 81 parking spaces provided.

PREVIOUSLY APPROVED

Connector: 2,575 sq. ft.
Office: 4,123 sq. ft.
NOC: 4,061 sq. ft.
TOTAL: 10,759 SQ. FT.

PROPOSED REVISION

Connector: 2,575 sq. ft.
Office: 5,554 sq. ft.
NOC: 0 sq. ft.
TOTAL 8,129 SQ. FT.

RECOMMENDATION

Staff recommends that the Mayor and City Council hear testimony on the proposed site plan revision, and approve the proposed revision with the conditions recommended by staff in the recommended Resolution, or approve the proposed revision with such additional or amended conditions as the Council deems to be appropriate following the testimony and discussion at a duly noticed public hearing.

FISCAL IMPACT

None.

CONTACT PERSON

Bob Nix, AICP, Director of Community Development and Planning

CC: Darcee S. Siegel, City Attorney
Susan Owens, City Clerk

RESOLUTION NO. R2009-20A

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING RESOLUTION NO. R2009-20, COLUMBUS NETWORKS' SITE PLAN APPROVAL, BY REVISING AND CHANGING THE CONFIGURATION OF THE BUILDINGS ON THE SITE AND REDUCING THE PREVIOUSLY APPROVED FLOOR AREA FROM 10,759 SQUARE FEET TO 8,129 SQUARE FEET; REVOKING APPROVAL OF THE SITE PLAN NUMBERED A-1.00 DATED FEBRUARY 27, 2009 AND REPLACING IT WITH SITE PLAN A-1.00 DATED OCTOBER 6, 2009, AS PROPOSED, ON PROPERTY LEGALLY DESCRIBED AS:

LOTS 1-9 AND LOTS 22-30, BLOCK 5 "FULFORD VILLAS AMENDED" AND A 16' WIDE ALLEY LYING BETWEEN SAID LOTS, PLAT BOOK 21, PAGE 24, PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA

A/K/A

**15950 West Dixie Highway
North Miami Beach, Florida**

WHEREAS, the property described herein is zoned B-3 Intensive Business District; and

WHEREAS, the applicant requests an amended site plan approval in order to replace the site plan approved by Resolution No. 2009-20, said site plan by Shulman + Associates dated February 27, 2009 to construct a 10,586 square foot addition to an existing 18,461 square foot office building with a new site plan by Shulman + Associates dated October 6, 2009, to replace the approved 10,586 square foot addition with a smaller 8,129 square foot addition to the existing office building located at 15950 West Dixie Highway; and

WHEREAS, the City of North Miami Beach Planning and Zoning Board on March 29, 2009 recommended approval of the proposed more intense site plan pursuant to Section 24-172(H)(2) of the Code of Ordinances of the City of North Miami Beach, Florida, following a duly noticed public hearing with conditions of approval; and

RESOLUTION NO. R2009-20A

WHEREAS, the Mayor and Council of the City of North Miami Beach, as the local Governing Body of the City of North Miami Beach, held on April 7, 2009, pursuant to Section 24-172(H)(2) of the Code of Ordinances of the City of North Miami Beach, Florida, a public meeting at which time the staff report and Planning and Zoning Board recommendations regarding the proposed 10,586 square foot addition to the existing office building at 15950 West Dixie Highway were considered and approved with conditions; and

WHEREAS, the Mayor and Council of the City of North Miami Beach have determined that there would be little impact by reducing the size of the building from 10,586 square feet to 8,129 square feet such that no additional formal impact evaluation need be presented; and

WHEREAS, the Mayor and City Council of the City of North Miami Beach have determined that all of the conditions of the site plan approval granted by Resolution No. R2009-20 are relevant and should remain in full force and effect; and

WHEREAS, the Mayor and City Council of the City of North Miami Beach desire to support the employment growth and economic development of the city during a time of national and worldwide economic stress.

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of North Miami Beach

Section 1. The foregoing recitals are true and correct.

Section 2. Amend the previous site plan approval in order to construct a 8,129 square foot addition to an existing 18,461 square foot office building, on property legally described as:

**LOTS 1-9 AND LOTS 22-30, BLOCK 5 "FULFORD VILLAS AMENDED"
AND A 16' WIDE ALLEY LYING BETWEEN SAID LOTS, PLAT BOOK
21, PAGE 24, PUBLIC RECORDS OF MIAMI-DADE COUNTY,
FLORIDA**

A/K/A
15950 West Dixie Highway
North Miami Beach, Florida

be and the same be granted pursuant to site plans presented to the Department of Community Development, said site plan prepared by Shulman + Associates Sheet Number A-1.00 and dated October 6, 2009 with the title "Proposed", and attached hereto as Exhibit 1, subject to the following conditions:

- 1. The prior approval by Resolution No. 2009-20 of the site plan sheet prepared by Shulman + Associates for the same property and also numbered Sheet Number A-1.00 dated February 27, 2009 and labeled "Approved" on the attached Exhibit 1 is hereby revoked; and**
- 2. The conditions of approval of the prior site plan by Resolution 2009-20 remain in force as conditions of approval of this revised site plan, and are incorporated herein by reference.**

Section 3. Pursuant to Section 24-172(I) of the Code of Ordinances of the City of North Miami Beach, Florida, the applicant shall submit the final building plans within six (6) months of the date of the Resolution or the site plan approval granted shall be deemed null and void and the applicant shall be required to reinstate the site plan review process unless the term is extended by the City Council prior to its expiration.

APPROVED AND ADOPTED by the City of North Miami Beach City Council at the regular meeting assembled this _____ day of November, 2009.

ATTEST:

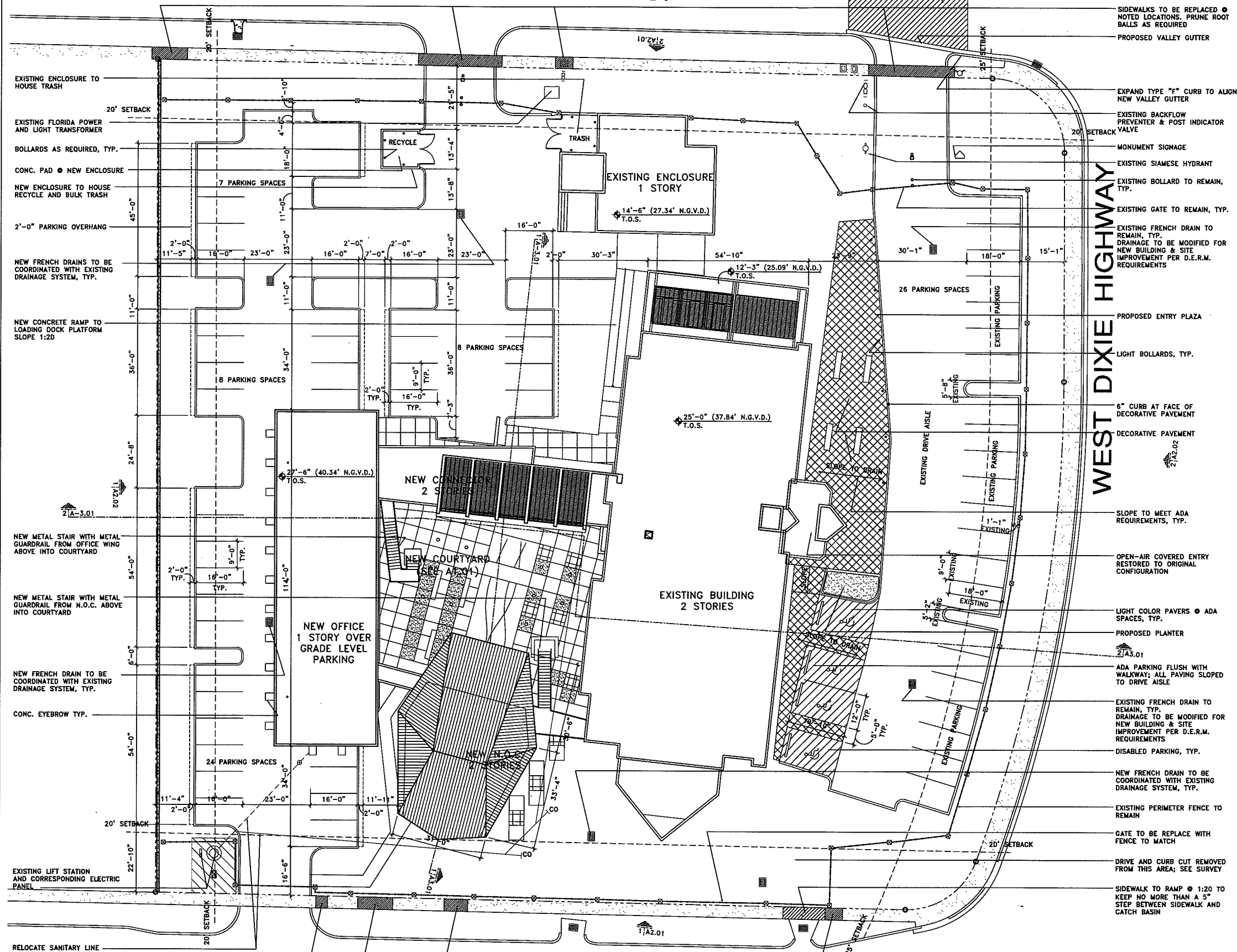
SUSAN A. OWENS
CITY CLERK
(CITY SEAL)

MYRON ROSNER
MAYOR

APPROVED AS TO FORM:

DARCEE S. SIEGEL
CITY ATTORNEY

N.E. 160TH STREET



- EXISTING ENCLOSURE TO HOUSE TRASH
- EXISTING FLORIDA POWER AND LIGHT TRANSFORMER
- BOLLARDS AS REQUIRED, TYP.
- CONC. PAD @ NEW ENCLOSURE
- NEW ENCLOSURE TO HOUSE RECYCLE AND BULK TRASH
- 2'-0" PARKING OVERHANG
- NEW FRENCH DRAINS TO BE COORDINATED WITH EXISTING DRAINAGE SYSTEM, TYP.
- NEW CONCRETE RAMP TO LOADING DOCK PLATFORM SLOPE 1:2D
- NEW METAL STAIR WITH METAL GUARDRAIL FROM OFFICE WING ABOVE INTO COURTYARD
- NEW METAL STAIR WITH METAL GUARDRAIL FROM N.O.C. ABOVE INTO COURTYARD
- NEW FRENCH DRAIN TO BE COORDINATED WITH EXISTING DRAINAGE SYSTEM, TYP.
- CONC. EYEBROW TYP.
- EXISTING LIFT STATION AND CORRESPONDING ELECTRIC PANEL
- RELOCATE SANITARY LINE

- RESURFACE TO RESTORE DEPRESSION ON PAVEMENT
- SIDEWALKS TO BE REPLACED @ NOTED LOCATIONS. PRUNE ROOT BALLS AS REQUIRED
- PROPOSED VALLEY GUTTER
- EXPAND TYPE "F" CURB TO ALIGN NEW VALLEY GUTTER
- EXISTING BACKFLOW PREVENTER & POST INDICATOR VALVE
- MONUMENT SIGNAGE
- EXISTING SIAMESE HYDRANT
- EXISTING BOLLARD TO REMAIN, TYP.
- EXISTING GATE TO REMAIN, TYP.
- EXISTING FRENCH DRAIN TO REMAIN, TYP. DRAINAGE TO BE MODIFIED FOR NEW BUILDING & SITE IMPROVEMENT PER D.E.R.M. REQUIREMENTS
- PROPOSED ENTRY PLAZA
- LIGHT BOLLARDS, TYP.
- 6" CURB AT FACE OF DECORATIVE PAVEMENT
- DECORATIVE PAVEMENT
- SLOPE TO MEET ADA REQUIREMENTS, TYP.
- OPEN-AIR COVERED ENTRY RESTORED TO ORIGINAL CONFIGURATION
- LIGHT COLOR PAVERS @ ADA SPACES, TYP.
- PROPOSED PLANTER
- ADA PARKING FLUSH WITH WALKWAY; ALL PAVING SLOPED TO DRIVE AISLE
- EXISTING FRENCH DRAIN TO REMAIN, TYP. DRAINAGE TO BE MODIFIED FOR NEW BUILDING & SITE IMPROVEMENT PER D.E.R.M. REQUIREMENTS
- DISABLED PARKING, TYP.
- NEW FRENCH DRAIN TO BE COORDINATED WITH EXISTING DRAINAGE SYSTEM, TYP.
- EXISTING PERIMETER FENCE TO REMAIN
- GATE TO BE REPLACE WITH FENCE TO MATCH
- DRIVE AND CURB CUT REMOVED FROM THIS AREA; SEE SURVEY
- SIDEWALK TO RAMP @ 1:20 TO KEEP NO MORE THAN A 5" STEP BETWEEN SIDEWALK AND CATCH BASIN
- SIDEWALKS TO BE REPLACED @ NOTED LOCATIONS. PRUNE ROOT BALLS AS REQUIRED

N.E. 159TH STREET

SITE PLAN
SCALE: 1/16"=1'-0"

COLUMBUS NETWORKS PROJECT ZONING	
LEGAL DESCRIPTION	OWNER
FOLIO NO: 07 2216 011 0180 PLAT BOOK 1 PG24 LOTS 1-9 & 22-30 BLK 5	COLUMBUS NETWORKS USA, INC 15950 WEST DIXIE HIGHWAY NORTH MIAMI BEACH FLORIDA 33162

GENERAL	
ZONING DISTRICT:	B-3 Intensive Business District
LOT AREA:	84,602 SQUARE FEET
ALLOWABLE BUILDING AREA:	MINIMUM = 1,000 SF MAXIMUM = UNLIMITED

EXISTING CONDITIONS	
EXISTING FLOOR AREA	
FIRST:	10,527
SECOND:	8,514
TOTAL:	18,841
PROPOSED NEW:	BUSINESS WAREHOUSE

PROPOSED FLOOR AREA*				
	EXISTING STRUCTURE		ADDITION STRUCTURE	
	BUSINESS	WAREHOUSE	BUSINESS	WAREHOUSE
LEVEL 1:	6,983	2,865	2,748	0
LEVEL 2:	760	7,271	8,011	0
SUBTOTAL:	7,743	10,136	10,759	0
TOTAL:	17,879		28,538	

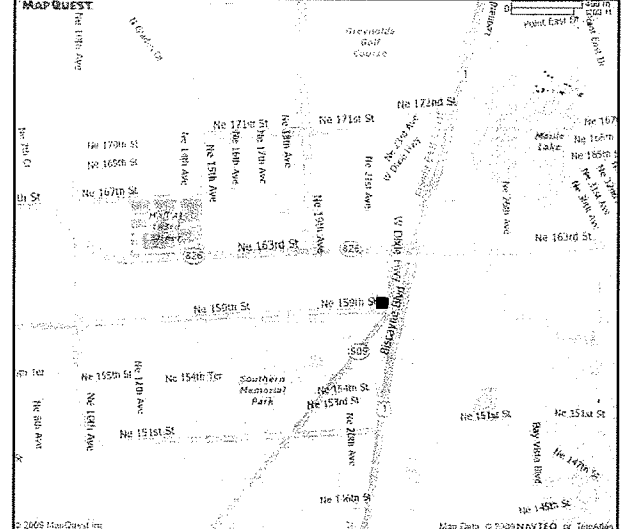
*AREA CALCULATIONS DO NOT INCLUDE EXISTING GENERATOR ENCLOSURE (1,880 SF)

BUILDING HEIGHT		
	ALLOWED	PROVIDED
MAXIMUM BUILDING HEIGHT:	15'	39'-2" (TOP OF MECH ENCLOSURE)
MAXIMUM NUMBER OF STORIES:	15	2

OPEN SPACE RATIO		
	REQUIRED	PROVIDED
MINIMUM PERVIOUS (GREEN) SPACE	20% X 84,602 SF = 16,920 SF	26,136 SF (30.9% OF SITE)

MINIMUM PARKING		
	REQUIRED	TOTAL PROVIDED SPACES
GENERAL OFFICE:	3/1000 SF = 56 SPACES	73 SPACES (INCLUDING ADA)
WAREHOUSE:	1/1000 SF = 10 SPACES	
TOTAL:	66 SPACES	
HANDICAPPED REQUIREMENT:	3 SPACES	4 SPACES

SETBACK REQUIREMENTS		
	REQUIRED	PROVIDED
FRONT:	25'	70'-6" Existing
SIDE CORNER:	20'	North = 68'-0" South = 20'-0"
REAR:	20'	39'-10" NEW PROPOSED

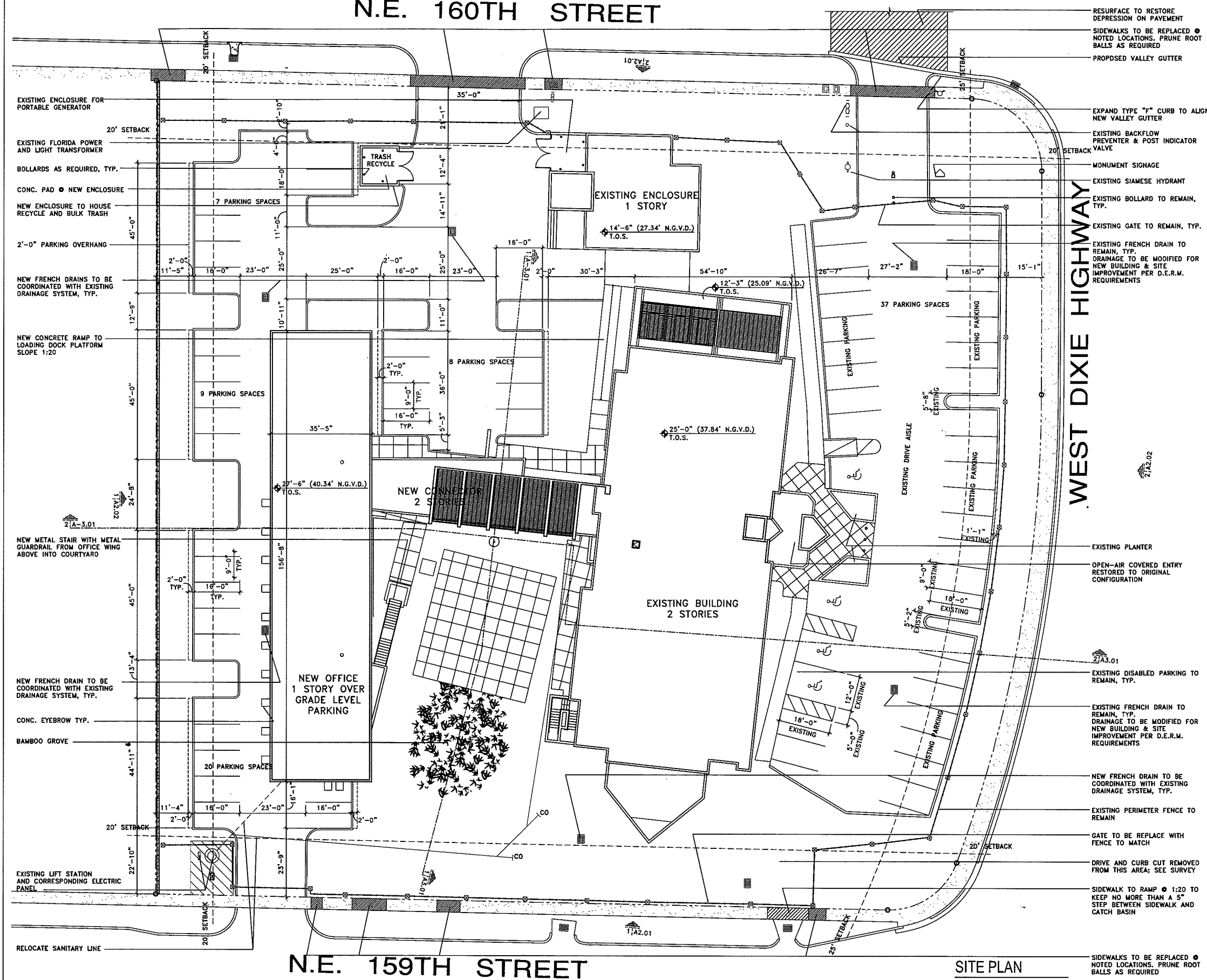


CONTEXT MAP
NTS

APPROVED

A-1.00

N.E. 160TH STREET



N.E. 159TH STREET

WEST DIXIE HIGHWAY

- RESURFACE TO RESTORE DEPRESSION ON PAVEMENT
- SIDEWALKS TO BE REPLACED @ NOTED LOCATIONS. PRUNE ROOT BALLS AS REQUIRED
- PROPOSED VALLEY GUTTER
- EXPAND TYPE "F" CURB TO ALIGN NEW VALLEY GUTTER
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- EXISTING PLANTER
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- EXISTING ENCLOSURE FOR PORTABLE GENERATOR
- EXISTING FLORIDA POWER AND LIGHT TRANSFORMER
- BOLLARDS AS REQUIRED, TYP.
- CONC. PAD @ NEW ENCLOSURE
- NEW ENCLOSURE TO HOUSE RECYCLE AND BULK TRASH
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- CONC. EYEBROW TYP.
- BAMBOO GROVE
- EXISTING LIFT STATION AND CORRESPONDING ELECTRIC PANEL
- RELOCATE SANITARY LINE

COLUMBUS NETWORKS PROJECT ZONING

LEGAL DESCRIPTION	OWNER
FOUJIO NO: 07 2216 0110190	COLUMBUS NETWORKS USA, INC
PLAT BOOK 1 PG24	19950 WEST DIXIE HIGHWAY
LOTS 1-9 & 22-30 BLK 5	NORTH MIAMI BEACH
	FLORIDA 33162

GENERAL	
ZONING DISTRICT:	B-3 Inclusive Business District
LOT AREA:	84,602 SQUARE FEET
ALLOWABLE BUILDING AREA:	MINIMUM = 1,000 SF MAXIMUM = UNLIMITED

EXISTING CONDITIONS	
EXISTING FLOOR AREA	
FIRST:	10,527
SECOND:	8,314
TOTAL:	18,841
PROPOSED NEW:	BUSINESS/ WAREHOUSE

	EXISTING STRUCTURE		ADDITION STRUCTURE	
	BUSINESS	WAREHOUSE	BUSINESS	WAREHOUSE
LEVEL 1:	6,983	2,865	1,061	0
LEVEL 2:	760	7,271	7,068	0
SUBTOTAL:	7,743	10,136	8,129	0
TOTAL:		17,879		8,129

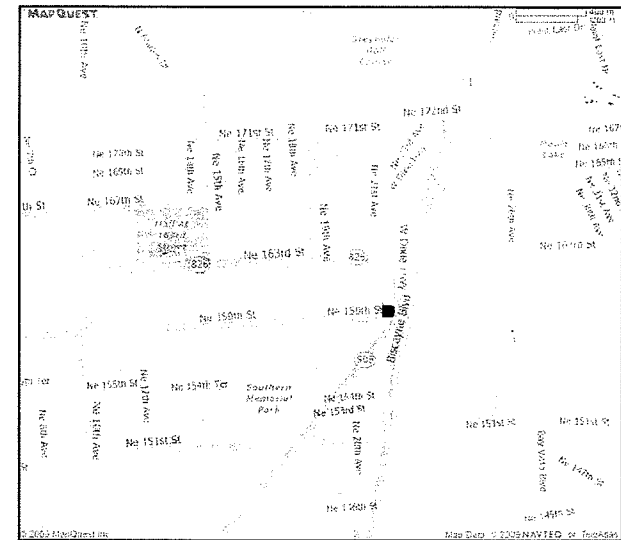
*AREA CALCULATIONS DO NOT INCLUDE EXISTING GENERATOR ENCLOSURE (1,880 SF)

	ALLOWED	PROVIDED
	MAXIMUM BUILDING HEIGHT:	150'
MAXIMUM NUMBER OF STORIES:	15	2

	REQUIRED	PROVIDED
	MINIMUM PERVIOUS (GREEN) SPACE	20% X 84,602 SF = 16,920 SF

	REQUIRED	TOTAL PROVIDED SPACES
	GENERAL OFFICE:	3/1000 SF = 48 SPACES
WAREHOUSE:	1/1000 SF = 11 SPACES	
TOTAL:	59 SPACES	
HANDICAPPED REQUIREMENT:	3 SPACES	4 SPACES

	REQUIRED	PROVIDED
	FRONT:	25
SIDE CORNER:	20	North = 68'-0" South = 21'-2"
REAR:	20	39'-10" NEW PROPOSED



CONTEXT MAP
NTS

SITE PLAN
SCALE: 1/16"=1'-0"

MEMORANDUM

**TO: MAYOR AND CITY COUNCIL
 CITY CLERK
 CITY MANAGER**

**FROM: DARCEE S. SIEGEL
 CITY ATTORNEY**

DATE: NOVEMBER 3, 2009

**RE: RESOLUTION NO. R2009-67
 Agreement for Auditing Services**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL
OF THE CITY OF NORTH MIAMI BEACH, FLORIDA,
AUTHORIZING THE CITY MANAGER TO EXECUTE AN
AGREEMENT WITH SHARPTON BRUNSON & COMPANY
FOR INDEPENDENT AUDITING SERVICES.**



**CITY OF NORTH MIAMI BEACH
MEMORANDUM**

TO: Honorable Mayor & Council *City Manager's Office*
FROM: Kelvin L. Baker, City Manager
DATE: November 3, 2009

RE: Approval of Contract for RFP# 2009-13 Independent Auditing Services

Background:

On June 22nd 2009 the City released a Request for Proposals (RFP) for Independent Auditing Services. After receiving a total of 7 proposals an evaluation committee was formed to review these proposals. The evaluation committee then short-listed three firms for presentation purposes after which they recommended to City Manager that Sharpton Brunson & Company be the 1st ranked firm, Keefe McCullough & Company, LLP 2nd ranked firm and McGladrey & Pullen 3rd ranked firm. This recommendation was then brought forth to the City Council on October 6th, 2009.

Recommendation:

It is staff's recommendation that the City Council authorize the City Manager or his designee to enter into a contract with Sharpton Brunson & Company, P.A., for the Independent Auditing Services. At the October 6, 2009 City Council Meeting it was approved by Resolution No. 2009-49 to enter into negotiations with the top ranked firm, Sharpton Brunson & Company, P.A. A contract was successfully negotiated and is presented here for approval.

FISCAL IMPACT:

Expenditure:

FY09 \$98,000 + \$12,000 (OMB Circular A-133)

FY10 \$102,000 + \$12,500(OMB Circular A-133)

FY11 \$105,000 + \$12,800(OMB Circular A-133)

Account Number:010-400513320 & 410-900533320

Account Name: Auditing & Accounting

Contact Persons:

Susan Gooding-Liburd, Director of Financial Services

Brian O'Connor, Chief Procurement Officer

CC: Darcee S. Siegel, City Attorney

Susan Owens, City Clerk

RESOLUTION NO. R2009-67

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL
OF THE CITY OF NORTH MIAMI BEACH, FLORIDA,
AUTHORIZING THE CITY MANAGER TO EXECUTE AN
AGREEMENT WITH SHARPTON BRUNSON &
COMPANY FOR INDEPENDENT AUDITING SERVICES.**

WHEREAS, the City of North Miami Beach issued a Request for Proposal #2009-13 for Independent Auditing Services; and

WHEREAS, seven firms submitted proposals to the City; and

WHEREAS, an evaluation committee comprised of the City's Director of Financial Services, the City's Chief Procurement Officer, and a Director of Financial Services from a neighboring municipality short-listed three firms to give presentations before the committee; and

WHEREAS, at the conclusion of the three firms' presentations before the committee, the committee ranked the three firms and recommended to the City Manager that Sharpton, Brunson & Company be the 1st ranked firm, Keefe McCullough & Company, LLP be the 2nd ranked firm, and McGladrey & Pullen be the 3rd ranked firm; and

WHEREAS, the Mayor and Council at the October 6, 2009 City Council Meeting by Resolution No. 2009-49, authorized the City Manager to negotiate an Agreement with the 1st ranked firm, Sharpton, Brunson & Company; and

WHEREAS, the City Council of North Miami Beach desire to award request for proposal #2009-13, and authorize the City Manager to execute an agreement between the City of North Miami Beach and Sharpton, Brunson & Company, as provided in Exhibit "A", attached hereto and incorporated herein by reference.

NOW, THEREFORE,

RESOLUTION R2009-67

BE IT RESOLVED by the City Council of the City of North Miami Beach

Section 1. The Mayor and Council of the City of North Miami Beach, Florida, hereby award request for proposal #2009-13 to Sharpton, Brunson & Company for a three-year contract, for independent auditing services for the years ending September 30, 2009 through September 30, 2011, with the option of auditing the City's financial statements for each of the two subsequent fiscal years.

Section 2. The Mayor and Council of the City of North Miami Beach, Florida, hereby award request for proposal #2009-13 to Sharpton, Brunson & Company, in the amount of \$110,000.00 for fiscal year 2009; \$114,500.00 for fiscal year 2010; and \$117,800.00 for fiscal year 2011 for independent auditing services, including Federal or Florida Single Audit Act requirements.

Section 3. The Mayor and Council of the City of North Miami Beach hereby authorize and direct the City Manager and the City Clerk to execute the agreement between the City and Sharpton, Brunson & Company, attached hereto as Exhibit "A" and incorporated herein by reference.

APPROVED AND ADOPTED by the City of North Miami Beach City Council at the regular meeting assembled this ___ day of _____, 2009.

ATTEST:

SUSAN A. OWENS
CITY CLERK

(CITY SEAL)

MYRON ROSNER
MAYOR

APPROVED AS TO FORM:

DARCEE S. SIEGEL
CITY ATTORNEY

SPONSORED BY: Mayor and Council

RESOLUTION R2009-67



CONTRACT TITLE AND NUMBER

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between Sharpton Brunson & Company, P.A. , a corporation organized and existing under the laws of the State of Florida, having its principal office at One Southeast Third Avenue Suite 2100 Miami, Florida 33131 (hereinafter referred to as the "Contractor"), and the City of North Miami Beach, a political subdivision of the State of Florida, having its principal office at 17011 NE 19 Avenue, North Miami Beach, Florida 33162 (hereinafter referred to as the "City"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide Independent Auditing Services, that shall conform to the Scope of Services (Appendix A); North Miami Beach's Request for Proposals (RFP) No. 2009-13 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated July 17th 2009, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the City desires to procure from the Contractor such Independent Auditing Services for the City, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE I. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), RFP No. 2009-13 and all associated addenda and attachments, the Contractor's Proposal, and all other

attachments hereto and all amendments issued hereto.

- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean North Miami Beach's Chief Procurement Officer, Procurement Management Division, or the duly authorized representative designated to manage the Contract.
- d) The word "Contractor" to mean Sharpton Brunson & Company, P.A. and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the City's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the City's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the City's Project Manager.
- h) The words "Change Order" or "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the City.
- i) The words "Project Cost" means the sum of the construction costs, allowances for contingencies, the total cost of design professional and related services provided by consultant, and allowances for such other items as charges of all other professionals and consultants.
- j) The words "Project Manager" to mean the City Manager or the duly authorized representative designated to manage the Project.
- k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- l) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- m) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Appendix A),

3) the City of North Miami Beach's RFP No. 2009-13 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.
- b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the City's Project Manager.
- e) The Contractor acknowledges that the City shall be responsible for making all policy

decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the City. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the City with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM AND TIME FOR COMPLETION

The Contract shall become effective on _____ and shall be for the duration of one (1) years. The City, at its sole discretion, reserves the right to exercise the option to renew this Contract for a period for four (4) additional years on a year-to-year basis. The City reserves the right to exercise its option to extend this Contract for up to two (2) additional years on a year to year basis beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial two (2) additional years on a year to year basis extension period by mutual agreement between the City and the Contractor.

ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the City

- a) to the Project Manager:
City of North Miami Beach
Attention: Susan Gooding-Liburd
Phone: 305-948-2946
Fax: 305-948-2996

and,

- b) to the Contract Manager:
Brian K. O'Connor, C.P.M. A.P.P
Chief Procurement Officer
Procurement Management Division
17011 NE 19 Avenue, Suite 315
North Miami Beach, FL 33162
Phone: (305) 948-2946
Fax: (305) 957-3522

(2) To the Contractor

Attention: Anthony Brunson
Sharpton, Brunson & Company, P.A.
One Southeast Third Avenue, Suite 2100
Miami, FL 33131
Phone: 305-374-1574

Fax: 305-372-8161
E-mail: ab@sbccpa.com

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 7. BASIS OF COMPENSATION

The Contractor agrees to perform the work defined in Exhibit A for either:

- a) A negotiated lump sum fee based on the rates set forth in Exhibit A,

ARTICLE 8. PRICING

Prices shall remain firm and fixed for the term of the Contract, including any option or extension periods; however, the Contractor may offer incentive discounts to the City at any time during the Contract term, including any renewal or extension thereof.

ARTICLE 9. INDEMNIFICATION AND INSURANCE

In accordance with Chapter 725, Florida Statutes, the Contractor shall indemnify and hold harmless the City and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, in an amount not less than \$1,000,000 per occurrence which shall include attorneys' fees and costs of defense, which the City or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. Furthermore, the Contractor shall pay all claims and losses in an amount not less than \$1,000,000 per occurrence in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall cover the City, its officers, employees, agents and instrumentalities and shall include claims, or damages resulting from and/or caused by the negligence, recklessness or intentional wrongful misconduct of the indemnifying party and persons employed by or utilized by the indemnifying party in the performance of the contract.

Upon City's notification, the Contractor shall furnish to the Procurement Management Division, Certificates of Insurance that indicate that insurance coverage has been obtained,

which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440. Should the Contractor be exempt from this Statute, the Contractor and each employee shall hold the City harmless from any injury incurred during performance of the Contract. The exempt contractor shall also submit a written statement detailing the number of employees and that they are not required to carry Worker's Compensation insurance, and do not anticipate hiring any additional employees during the term of this contract or a copy of a Certificate of Exemption.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$500,000 combined single limit per occurrence for bodily injury and property damage. **The City of North Miami Beach must be shown as an additional insured with respect to this coverage. The mailing address of City of North Miami Beach 17011 NE 19 Avenue, Suite 315, North Miami Beach, Florida 33162, as the certificate holder, must appear on the certificate of insurance.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$300,000 per person and \$500,000 per occurrence and property damage limits of \$300,000; or a comprehensive single limit of liability for bodily injury and property damage combined, with minimum limits of \$500,000 per occurrence, covering all owned, non-owned, and hired vehicles used by the contractor while performing operations in connection with this contract.
4. Professional Liability Insurance in an amount not less than \$300,000 with a deductible per claim not to exceed ten percent (10%) of the limit of liability. Professional liability insurance coverage must be maintained for 5 years after the completion of the contract if the policy is based on "claims made".

The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operation of the Contractor. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, according to the latest edition of Best's Insurance Guide published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the City's Risk Management Division.

Certificates of Insurance must indicate that for any cancellation of coverage before the expiration date, the issuing insurance carrier will endeavor to mail thirty (30) day written advance notice to the certificate holder. In addition, the Contractor hereby agrees not to modify the insurance coverage without thirty (30) days written advance notice to the City.

NOTE: CITY OF NORTH MIAMI BEACH CONTRACT NUMBER AND TITLE MUST APPEAR ON EACH CERTIFICATE OF INSURANCE.

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after City notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the City. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after City notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the City.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the City. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the City at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the City shall suspend the Contract until such time as the new or renewed certificates are received by the City in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the City may, at its sole discretion, terminate this contract.

Article 10 – Reserved.

Article 11- Reserved.

Article 12 - Reserved.

ARTICLE 13. MANNER OF PERFORMANCE

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the City in accordance with the terms and conditions of this Agreement. The City shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the City, the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the City and shall be

liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the City, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the City. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.

- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the City, should the City make a determination, in its sole discretion that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the City and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 14. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the City. The Contractor shall supply competent employees. The City of North Miami Beach may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on City property is not in the best interest of the City. Each employee shall have and wear proper identification.

ARTICLE 15. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the City. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the City shall be that of an independent contractor and not as employees and agents of the City.

The Contractor does not have the power or authority to bind the City in any promise,

agreement or representation other than specifically provided for in this Agreement.

ARTICLE 16. RESERVED

ARTICLE 17. MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the City may, at its expense, elect to participate in the defense if the City should so choose. Furthermore, the City may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

ARTICLE 18. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 19. AUDITS

The City, or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the City. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

The Contractor agrees to grant access to the City's Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 20. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the City in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

ARTICLE 21. CONSENT OF THE CITY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the City.

ARTICLE 22. SUBCONTRACTUAL RELATIONS

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the City the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the City may require. The City will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the City.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the City, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the City that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the City that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The City shall have the right to withdraw its consent to a subcontract if it appears to the City that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the City's and City's proprietary and confidential information. Contractor shall furnish to the City copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the City permitting the City to request completion of performance by the Subcontractor of its

obligations under the subcontract, in the event the City finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the City to any subcontractor hereunder as more fully described herein.

ARTICLE 23. RESERVED

ARTICLE 24. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 25. TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK

- a) The City may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the City through fraud, misrepresentation or material misstatement.
- b) The City may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the City and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the City through fraud, misrepresentation or material misstatement may be debarred from City contracting in accordance with the City debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Chapter 3 of the City's Purchasing Policies and Procedures Manual.

In addition to cancellation or termination as otherwise provided in this Agreement, the City may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

- d) The Contractor shall, upon receipt of such notice, unless otherwise directed by the City:
 - i. stop work on the date specified in the notice ("the Effective Termination Date");
 - ii. take such action as may be necessary for the protection and preservation of the City's materials and property;
 - iii. cancel orders;

- iv. assign to the City and deliver to any location designated by the City any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services:
 - v. take no action which will increase the amounts payable by the City under this Agreement; and
- e) In the event that the City exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:
- i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
 - ii. non-cancelable Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement but not incorporated in the Services.
- f) All compensation pursuant to this Article are subject to audit.

ARTICLE 26. EVENT OF DEFAULT

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances referred to herein as a breach, an Event of Default, shall include the following:
- i. the Contractor has not delivered Deliverables on a timely basis.
 - ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
 - v. the Contractor has failed to obtain the approval of the City where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;
 - vii. the Contractor has failed in the representation of any warranties stated herein.

- b) When, in the opinion of the City, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the City may request that the Contractor, within the time frame set forth in the City's request, provide adequate assurances to the City, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the City receives such assurances the City may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the City the requested assurances within the prescribed time frame, the City may:
- i. treat such failure as a repudiation of this Agreement;
 - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the City shall terminate this Agreement for default, the City or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 27. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION

If an Event of Default occurs, in the determination of the City, the City may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the City may be terminated. Notwithstanding, the City may, in its sole discretion, allow the Contractor to rectify the default to the City's reasonable satisfaction within a thirty (30) day period. The City may grant an additional period of such duration as the City shall deem appropriate without waiver of any of the City's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the City prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 28. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the City for reprourement of Services, including procurement and administrative costs; and,
- c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The City may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 29. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.
- b) The Contractor shall be liable and responsible for any and all claims made against the City for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the City's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the City and defend any action brought against the City with respect to any claim, demand, cause of action, debt, or liability.
- c) In the event any Deliverable or anything provided to the City hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the City's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the City, at the Contractor's expense, the rights provided under this Agreement to use the item(s).
- d) The Contractor shall be solely responsible for determining and informing the City whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The City may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the City's judgment, use thereof would delay the Work or be unlawful.
- e) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

ARTICLE 30. CONFIDENTIALITY

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the City in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the City holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the City, be

used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the City, unless required by law. In addition to the foregoing, all City employee information and City financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the City. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the City, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.

- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the City in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the City shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the City, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the City all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the City. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 31. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, the City of North Miami Beach is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledges that all computer software in the City's possession may constitute or contain information or materials which the City has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the City has developed at its own expense, the disclosure of which could harm the City's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the City's property, any computer programs, data compilations, or other software which the City has developed, has used or is using, is holding for use, or which are otherwise in the possession of the City (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the City and, if the Computer

Software has been leased or purchased by the City, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the City any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the City's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

ARTICLE 32. PROPRIETARY RIGHTS

- a) The Contractor hereby acknowledges and agrees that the City retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the City to the Contractor hereunder or furnished by the Contractor to the City and/or created by the Contractor for delivery to the City, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the City, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the City's copyrights or other proprietary rights.
- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the City, hereinafter referred to as "Developed Works" shall become the property of the City.
- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the City, except as required for the Contractor's performance hereunder.
- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the City so desires, a perpetual, irrevocable and

unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the City or entities controlling, controlled by, under common control with, or affiliated with the City, or organizations which may hereafter be formed by or become affiliated with the City. Such license specifically includes, but is not limited to, the right of the City to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the City or entities controlling, controlled by, under common control with, or affiliated with the City, or organizations which may hereafter be formed by or become affiliated with the City. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 33. BUSINESS APPLICATION AND FORMS

Vendor Application The Contractor shall be a registered vendor with the City – Procurement Management Division, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any City employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with the City or any person or agency acting for the City from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with the City of North Miami Beach or any person or agency acting for the City and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 34. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State, County and City orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Small Business Development Participation Provisions, as applicable to this Contract.

- c) RESERVED.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) North Miami Beach Purchasing Policies and Procedures Manual Policy 3.6 "Debarment and Suspension".

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

ARTICLE 35. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract with the City, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts). If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the City to be in violation of the Act, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit or the Contractor violates the Act during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 36. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the City or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or

intangible, in connection with the grant of this Agreement.

- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the City, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the City, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the City's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the City's Project Manager. Contractor shall thereafter cooperate with the City's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 37. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the City:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the City, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the City. Such approval may be withheld if for any reason the City believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, council or other organization or any person whether governmental or private in connection with

the Services to be performed hereunder except upon prior written approval and instruction of the City; and

- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the City.

ARTICLE 38. BANKRUPTCY

The City reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the City, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 39. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida.

ARTICLE 40. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists the City of North Miami Beach with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, including but not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to the City of North Miami Beach for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to the City of North Miami Beach for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

ARTICLE 41. SURVIVAL

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the City under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Contractor

City of North Miami Beach

By: _____

By: _____

Kelvin L. Baker
Title: City Manager

Name: _____

Date: _____

Title: _____

Attest: _____

Susan A. Owens, City Clerk

Date: _____

Attest: _____
Corporate Secretary/Notary Public

Approved as to form
and legal sufficiency

Corporate Seal/Notary Seal

Darcee S. Siegel, City Attorney

Exhibit A

Mr. Kelvin Baker,
City Manager, City of North Miami Beach
17100 NE 19th Avenue North Miami Beach, Florida 33162

Dear Mr. Baker:

As part of our engagement with the City of North Miami Beach, Florida (the City), we are pleased to confirm our understanding of the services we are to provide to the City for the years ended September 30, 2009 through September 30, 2011 with the option of auditing the City's financial statements for each of the two subsequent fiscal years. We will audit the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information, which collectively comprise the entity's basic financial statements, of the City of North Miami Beach as of and for the years ended September 30, 2009 through September 30, 2011. Accounting standards generally accepted in the United States provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to accompany the City's basic financial statements. As part of our engagement, we will apply certain limited procedures to the City's RSI. These limited procedures will consist principally of inquiries of management regarding the methods of measurement and presentation, which management is responsible for affirming to us in its representation letter. Unless we encounter problems with the presentation of the RSI or with procedures relating to it, we will disclaim an opinion on it. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

1. Management's Discussion and Analysis.
2. Statistical Section.

Supplementary information other than RSI also accompanies the City's basic financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the basic financial statements and will provide an opinion on it in relation to the basic financial statements.

1. Schedule of expenditures of federal awards and state financial assistance, as applicable.
2. Combining and individual fund statements and schedules.

Audit Objectives

The objective of our audit is the expression of an opinion as to whether your financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the additional information referred to in the first paragraph when considered in relation to the financial statements taken as a whole. The objective also includes reporting on:

- Internal control related to the financial statements and compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Internal control related to major programs and an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on each major program, as applicable, in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations* and the Florida Single Audit Act and Chapter 10.550, Rules of the Auditor General of the State of Florida, as applicable.

The reports on internal control and compliance will each include a statement that the report is intended for the information and use of the City Council, management, specific legislative or regulatory bodies, federal or state awarding agencies, and if applicable, pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

If applicable, our audit will be conducted in accordance with U.S. generally accepted auditing standards; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of OMB Circular A-133, the Florida Single Audit Act and Chapter 10.550, Rules of the Auditor General of the State of Florida, and will include tests of accounting records, a determination of major program(s) in accordance with Circular A-133, and the Florida Single Audit Act, and other procedures we consider necessary to enable us to express such an opinion and to render the required reports. If our opinion on the financial statements or the Single Audit compliance opinion is other than unqualified, we will fully discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed an opinion, we may decline to express an opinion or to issue a report as a result of this engagement.

Management Responsibilities

Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. Management is also responsible for preparation of the schedule of expenditures of federal awards in accordance with the requirements of OMB Circular A-133. As part of the audit, we will assist with preparation of your financial statements, schedule of expenditures of federal awards, and related notes. You are responsible for making all management decisions and performing all management functions relating to the financial statements, schedule of expenditures of federal awards, and related notes and for accepting full responsibility for such decisions. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statements and the schedule of expenditures of federal awards and that you have reviewed and approved the financial statements, schedule of expenditures of federal awards, and related notes prior to their issuance and have accepted responsibility for them. Further, you are required to designate an individual with suitable skill, knowledge, or experience to oversee any nonaudit services we provide and for evaluating the adequacy and results of those services and accepting responsibility for them.

Management is responsible for establishing and maintaining effective internal controls, including internal controls over compliance, and for monitoring ongoing activities, to help ensure that appropriate goals and objectives are met. You are also responsible for the selection and application of accounting principles; for the fair presentation in the financial statements of the respective financial position of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the City and the respective changes in financial position and, where applicable, cash flows in conformity with U.S. generally accepted accounting principles; and for compliance with applicable laws and regulations and the provisions of contracts and grant agreements

Management is also responsible for making all financial records and related information available to us and for ensuring that management and financial information is reliable and properly recorded. Your responsibilities also include identifying significant vendor relationships in which the vendor has the responsibility for program compliance and for the accuracy and completeness of that information. Your responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

The City is responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud or illegal acts affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud or illegal acts could have a material effect on the financial statements. Your responsibilities also include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In

addition, you are responsible for identifying and ensuring that the entity complies with applicable laws, regulations, contracts, agreements, and grants. Additionally, as required by OMB Circular A-133, it is management's responsibility to follow up and take corrective action on reported audit findings and to prepare a summary schedule of prior audit findings and a corrective action plan. The summary schedule of prior audit findings should be available for our review no later than November 15, 2009.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying for us previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

Audit Procedures-General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse. As required by the Single Audit Act Amendments of 1996 and OMB Circular A-133, and the Florida Single Audit Act and Chapter 10.550 Rules of the Auditor General, our audit will include tests of transactions related to major federal award programs for compliance with applicable laws and regulations and the provisions of contracts and grant agreements.

Because an audit is designed to provide reasonable, but not absolute assurance and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by us. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or major programs. However, we will inform you of any material errors and any fraudulent financial reporting or misappropriation of assets that comes to our attention. We will also inform you of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to matters that might arise during any later periods for which we are not engaged as auditors. Our liabilities for this engagement are limited to the fees paid for the work performed.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, creditors, and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of our audit, we will also require certain written representations from you about the financial statements and related matters.

Audit Procedures-Internal Controls

In planning and performing our audit, we will consider the internal control sufficient to plan the audit in order to determine the nature, timing, and extent of our auditing procedures for the purpose of expressing our opinions on the City's financial statements and on its compliance with requirements applicable to major programs.

We will obtain an understanding of the design of the relevant controls and whether they have been placed in operation, and we will assess control risk. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Tests of controls relative to the financial statements are required only if control risk is assessed below the maximum level. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As applicable, as required by OMB Circular A-133 and Chapter 10.550 Rules of the Auditor General, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal or state award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to OMB Circular A-133 and Chapter 10.550 Rules of the Auditor General.

An audit is not designed to provide assurance on internal control or to identify reportable conditions. However, we will inform the governing body or audit committee of any matters involving internal control and its operation that we consider to be reportable conditions under standards established by the American Institute of Certified Public Accountants. Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the internal control that, in our judgment, could adversely affect the entity's ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements. We will also inform you of any non-reportable conditions or other matters involving internal control, if any, as required by *Government Auditing Standards*, OMB Circular A-133, and Chapter 10.550 Rules of the Auditor General.

Audit Procedures-Compliance

Our audit will be conducted in accordance with the standards referred to in the section titled Audit Objectives. As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City's compliance with applicable laws and regulations and the provisions of contracts and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

OMB Circular A-133 and Chapter 10.550 Rules of the Auditor General require that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with applicable laws and regulations and the provisions of contracts and grant agreements applicable to major programs. As applicable, our procedures will consist of the applicable procedures described in the *OMB Circular A-133 Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the City's major programs. The purpose of those procedures will be to express an opinion on the City's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to OMB Circular A-133 and the Florida Single Audit Act.

Audit Administration, Fees, and Other

We understand that your employees will prepare all cash, accounts receivable, or other confirmations we request and will locate any documents selected by us for testing.

At the conclusion of the engagement, we will complete the appropriate sections of and sign the Data Collection Form (required under the Federal Single Audit Act only) that summarizes our audit findings. We will provide our reports to the City; however, it is management's responsibility to submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditors' reports, and a corrective action plan) along with the Data Collection Form to the designated federal clearinghouse and, if appropriate, to pass-through entities. The Data Collection Form and the reporting package must be submitted within the earlier of 30 days after receipt of the auditors' reports or nine months after the end of the audit period, unless a longer period is agreed to in advance by the cognizant or oversight agency for audits. At the conclusion of the engagement, we will provide information to management as to where the reporting packages should be submitted and the number to submit.

The audit documentation for this engagement is the property of Sharpton Brunson & Company (Vendor) and constitutes confidential information. However, pursuant to authority given by law or regulation, we may be requested to make certain audit documentation available to regulatory agencies or its designee, a federal or state agency providing direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Financial Services personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of three years after the date the auditors' report is issued or for any additional period requested by any regulatory agency. If we are aware that a federal or state awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

We estimate that our fees for the fiscal year ended September 30, 2009 will be \$98,000 (excluding Federal or Florida Single Audit Act requirements -see below). We estimate our fees for the fiscal year ended September 30, 2010 will be \$102,000 (excluding Federal or Florida Single Audit Act requirements see below).

We estimate our fees for the fiscal year ended September 30, 2011 will be \$105,000 which includes implementation of new auditing standards (excluding Federal or Florida Single Audit Act requirements -see below). Our hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to the audit. The above fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If additional time is required because of unexpected circumstances or for changes in the requirements of the Governmental Accounting Standards Board or our professional auditing standards or changes in the funds structure of the

City, we will discuss these circumstances with you and arrive at a new fee estimate before we incur the additional costs.

In addition, if the City of North Miami Beach is required to undergo an audit in accordance with the Federal Single Audit Act and OMB Circular A-133, *Audits of States, Local Governments, and Not-for-Profit Organizations Receiving Federal Awards* during any year of this contract, the additional fee will be \$12,000 for the fiscal year ended September 30, 2009; \$12,500 for the fiscal year ended September 30, 2010 and \$12,800 for the fiscal year ended September 30, 2011. This fee is dependent on the number of federal programs that have to be tested as a major program in accordance with the requirements of the Federal Single Audit Act and OMB Circular A-133.

If, during any year of this contract, the City of North Miami Beach is subject to the Florida Single Audit Act and Chapter 10.550 Rules of the Auditor General, the additional fee will be \$6,500 for the fiscal year ended September 30, 2009; \$6,000 for the fiscal year ended September 30, 2010 and \$6,800 for the fiscal year ended September 30, 2011. This fee is dependent on the number of state programs that have to be tested as a major program in accordance with the requirements of the Florida Single Audit Act and the Rules of the Auditor General, Chapter 10.550.

Our invoices for these fees will be rendered as the work progresses, and are payable on presentation. In accordance with our firm policies, should any invoices remain unpaid for more than thirty days, we reserve the right to defer providing any additional services until all outstanding invoices are paid. You agree that we are not responsible for the impact on the City of any delay that results from such nonpayment by you.

We acknowledge your right to terminate our services at any time, and you acknowledge our right to resign at any time (including instances where in our judgment, our independence has been impaired or we can no longer rely on the integrity of management), subject in either case to our right to payment for charges incurred to the date of termination or resignation.

Government Auditing Standards require that we provide you with a copy of our most recent quality control review report. Our most recent peer review report is enclosed.

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 certified mail addressed to the other party at the address indicated or as may be changed from time to time. Such notices shall be deemed given on the day on which personally served, or if by mail, on the date of actual receipt.

City:
City of North Miami Beach
17100 NE 19th Avenue North Miami Beach, FL 33162
Attn: City Manager

With a copy to:
City Attorney
17100 NE 19th Avenue, 4th floor
North Miami Beach, FL 33162

Anthony Brunson, Partner

Date

Kelvin L. Baker, City Manager

Date

Darcee A. Siegel, City Attorney

Date

Attest: _____
Susan Owens, City Clerk

City Seal

MEMORANDUM

**TO: MAYOR AND CITY COUNCIL
CITY CLERK
CITY MANAGER**

**FROM: DARCEE S. SIEGEL
CITY ATTORNEY**

DATE: November 3, 2009

**RE: ORDINANCE NO. 2009-24
Amending Definitions of Hotel/Motel**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING CHAPTER 24, SECTION 22, ENTITLED "DEFINITIONS", OF THE ZONING AND LAND DEVELOPMENT CODE TO CHANGE THE DEFINITIONS OF HOTEL AND MOTEL AND TO ADD DEFINITIONS FOR PUBLIC LODGING ESTABLISHMENTS; RESORT CONDOMINIUM; NON-TRANSIENT APARTMENT OR ROOMING HOUSE; TRANSIENT APARTMENT OR ROOMING HOUSE; ROOMING HOUSE, AND RESORT DWELLING; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR THE CODIFICATION OF THIS ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE.

**City of North Miami Beach
Interoffice Memorandum**



City Manager's Office

TO: Mayor & Council

FROM: Kelvin L. Baker, City Manager

DATE: November 3, 2009

A handwritten signature in black ink, appearing to be "K. Baker", written over the printed name of the City Manager.

RE: First Reading of Ordinance No. 2009-24 establishing new definitions in the Zoning and Land Development Code for Public Lodging Establishments of different types.

BACKGROUND

The short term rental of single family dwellings for periods that required the owners to obtain public lodging establishment licenses from the state led to the development of an ordinance to regulate these activities. Staff discovered that the definitions in the Zoning and Land Development Code do not cover all types of public lodging establishments, and are different from the statutory definitions that apply to those businesses.

Therefore, staff incorporated the statutory definitions of the various types of public lodging establishments into a proposed Zoning and Land Development Code text amendment. Since these definitions incorporate explicit statutory language into the Zoning and Land Development Code, the existence of or requirement for a state public lodging establishment license establishes a clear relationship to the zoning requirements for such facilities in our code.

Although the definitions were originally included in a single ordinance with the proposed short term rental regulations, they have since been placed into a separate ordinance.

PLANNING AND ZONING BOARD RECOMMENDATION

At a regularly scheduled meeting on October 13, 2009, the Planning and Zoning Board held a public hearing and voted unanimously to support the ordinance in its original form as one ordinance.

To: Mayor and Council
November 3, 2009
Re: Ordinance 2009-24
Page Two of Two

RECOMMENDATION

Hear the proposed ordinance regulating short term rentals on first reading, and set the second reading and adoption public hearing for November 17, 2009 at 7:30 PM or as soon thereafter as possible.

FISCAL IMPACT

None, this proposed ordinance would create a change in definitions only.

CONTACT PERSON

Bob Nix, Director of Community Development and Planning

CC: Darcee S. Siegel, City Attorney
Susan Owens, City Clerk

ORDINANCE NO. 2009-24

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING CHAPTER 24, SECTION 22, ENTITLED "DEFINITIONS", OF THE ZONING AND LAND DEVELOPMENT CODE TO CHANGE THE DEFINITIONS OF HOTEL AND MOTEL AND TO ADD DEFINITIONS FOR PUBLIC LODGING ESTABLISHMENTS; RESORT CONDOMINIUM; NON-TRANSIENT APARTMENT OR ROOMING HOUSE; TRANSIENT APARTMENT OR ROOMING HOUSE; ROOMING HOUSE, AND RESORT DWELLING; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR THE CODIFICATION OF THIS ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of North Miami Beach Planning and Zoning Board, as the local planning agency, held on October 13, 2009, a duly noticed public hearing at which time it recommended amendments to the Code of Ordinances of the City of North Miami Beach, in order to conform to state statutes to change the definitions of hotels and motels and to add definitions for public lodging establishments, resort condominiums, non-transient apartments or rooming houses, and resort dwellings; and

WHEREAS, the City of North Miami Beach Planning and Zoning Board, as the local planning agency, held on October 13, 2009 a duly noticed public hearing at which time it unanimously approved the amended definitions of hotels and motels and approved adding definitions of public lodging establishments, resort condominiums, non-transient apartments or rooming houses, transient apartments or rooming houses, and resort dwellings, in order to correct, clarify and update the Code regarding land development definitions in the City of North Miami Beach, Florida; and

ORDINANCE NO. 2009-24

WHEREAS, the Mayor and City Council of the City of North Miami Beach, Florida, after review and discussion, have determined that it is in the best interest of the residents, citizens, and business community of the City of North Miami Beach to amend the City Code of Ordinances to reflect correct, update and amend Chapter 24, Zoning and Land Development Code, of the Code of Ordinances of the City of North Miami Beach, Florida.

NOW, THEREFORE,

BE IT ORDAINED by the City Council of the City of North Miami Beach, Florida.

Section 1. The foregoing recitals are true and correct.

Section 2. The definitions section of the Land Development Code is proposed to be amended by changing the definitions of the terms "Hotel" and "Motel" and adding new definitions to the Zoning and Land Development Code, Article II, Sec. 24-22, as follows:

Public lodging establishment: A hotel, motel, resort condominium, non-transient apartment, transient apartment, rooming house, bed and breakfast inn, or resort dwelling offering to the public or to members of an organization rooms, suites, apartments, or single family dwellings for rent or lease for time periods less than three months, and which may require licensing from an agency of the State of Florida.

Hotel: A commercial establishment which provides overnight sleeping accommodations for the public. Principal access to all rental rooms shall be through an inside lobby or office supervised by a person in charge at all hours. A hotel is any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the industry.

Motel: A commercial establishment which provides overnight sleeping accommodations for the public. Principal access to all rental rooms shall be from the outside and parking spaces shall be oriented in such a manner so as to facilitate direct access from such units to the automobiles of the renters. A motel is any public lodging establishment which offers rental units with an exit to the outside of each rental unit, daily, weekly, or monthly rates, off-street parking for each unit, a central office on the property with specified hours of operation, a bathroom or connecting bathroom for each rental unit, and at

least six rental units, and which is recognized as a motel in the community in which it is situated or by the industry.

Resort Condominium: A resort condominium is any unit or group of units in a condominium, cooperative, or timeshare plan which is rented more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented for periods of less than 30 days or 1 calendar month, whichever is less.

Non-transient apartment or rooming house: A non-transient apartment or rooming house is a building or complex of buildings in which 75 percent or more of the units are available for rent to non-transient tenants.

Transient apartment or rooming house: A transient apartment or rooming house is a building or complex of buildings in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy.

Rooming house: A rooming house is any public lodging establishment that may not be classified as a hotel, motel, resort condominium, non-transient apartment, bed and breakfast inn, or transient apartment under this section. A rooming house includes, but is not limited to, a boarding house.

Resort dwelling: A resort dwelling is any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit which is rented more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented for periods of less than 30 days or 1 calendar month, whichever is less.

Section 3. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 4. If any section, subsection, clause or provision of this ordinance is held invalid the remainder shall not be affected by such invalidity.

Section 5. It is the intention of the City Council of the City of North Miami Beach and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of North Miami Beach, Florida. The Sections of this Ordinance may be

renumbered or relettered to accomplish this intention and the word "Ordinance" may be changed to "Section", "Article" or other appropriate word as the codifier may deem fit.

APPROVED BY TITLE ONLY on first reading this ___ day of _____, 2009.

APPROVED AND ADOPTED on second reading this ___ day of _____, 2009.

ATTEST:

SUSAN A. OWENS
CITY CLERK

(CITY SEAL)

MYRON ROSNER
MAYOR

APPROVED AS TO FORM

DARCEE S. SIEGEL
CITY ATTORNEY

Sponsored by: Mayor and City Council

ORDINANCE NO. 2009-24

MEMORANDUM

**TO: MAYOR AND CITY COUNCIL
CITY CLERK
CITY MANAGER**

**FROM: DARCEE S. SIEGEL
CITY ATTORNEY**

DATE: November 3, 2009

**RE: ORDINANCE NO. 2009-25
Short Term Residential Rentals**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, CREATING A NEW SECTION OF THE ZONING AND LAND DEVELOPMENT CODE, MAKING IT UNLAWFUL FOR OWNERS OF SINGLE FAMILY HOMES AND TOWNHOUSES, EXCEPT IN THE MH-1 ZONING DISTRICT, TO RENT OR LEASE A DWELLING FOR A PERIOD OF LESS THAN THREE MONTHS OR MORE THAN THREE TIMES IN A TWELVE MONTH PERIOD; PROVIDING PENALTIES FOR VIOLATIONS; PROVIDING FOR THE CONTINUATION OF CERTAIN SHORT TERM RENTALS THAT EXISTED PRIOR TO THE EFFECTIVE DATE OF THIS ORDINANCE; REQUIRING EXISTING SHORT TERM RENTALS TO APPLY FOR A BUSINESS TAX RECEIPT FOR EACH PROPERTY PURSUANT TO SECTION 12-31(87)(b) OF THE CITY CODE; ESTABLISHING REQUIREMENTS FOR OBTAINING AND CONTINUING A BUSINESS TAX RECEIPT; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE CODIFICATION OF THIS ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE.

**City of North Miami Beach
Interoffice Memorandum**



City Manager's Office

TO: Mayor & Council

FROM: Kelvin L. Baker, City Manager

DATE: November 3, 2009

A handwritten signature in black ink, appearing to be "KL Baker", written over the "FROM:" line.

RE: First Reading of Ordinance No. 2009-25 establishing zoning requirements for the short term rental of single family homes, and providing conditions for the continuation of existing short term rentals in single family zoning districts.

BACKGROUND

The rental of single family homes for periods of one month or less recently came to the attention of the staff. The Director of Community Development determined that the Zoning and Land Development Code does not permit continuous short term rental activity in single family zoning districts. Having determined that the activity is a violation of the code, the city staff provided notice to those who were in the business of providing single family homes for short term rentals requiring state licenses as public lodging establishments that they were operating in violation of the land use restrictions in the Zoning and Land Development Code.

After discussion of the issues with the affected property owners, their attorneys, the City Attorney, and relevant city staff, an ordinance was developed regulating the activity of short term rentals within the city. After the Planning and Zoning Board public hearing, the ordinance was simplified and divided into two separate ordinances.

PLANNING AND ZONING BOARD RECOMMENDATION

At a regularly scheduled meeting on October 13, 2009, the Planning and Zoning Board held a public hearing and voted unanimously to support the ordinance in its original form as one ordinance.

RECOMMENDATION

Hear the proposed ordinance regulating short term rentals on first reading, and set the second reading and adoption public hearing for November 17, 2009 at 7:30 PM or as soon thereafter as possible.

To: Mayor and Council
November 3, 2009
Re: Ordinance 2009-25
Page Two of Two

FISCAL IMPACT

A small amount of revenue will be generated by the creation of a Business Tax Receipt requirement for the existing short term rental units.

CONTACT PERSON

Bob Nix, Director of Community Development and Planning

CC: Darcee S. Siegel, City Attorney
Susan Owens, City Clerk

ORDINANCE NO. 2009-25

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, CREATING A NEW SECTION OF THE ZONING AND LAND DEVELOPMENT CODE, MAKING IT UNLAWFUL FOR OWNERS OF SINGLE FAMILY HOMES AND TOWNHOUSES, EXCEPT IN THE MH-1 ZONING DISTRICT, TO RENT OR LEASE A DWELLING FOR A PERIOD OF LESS THAN THREE MONTHS OR MORE THAN THREE TIMES IN A TWELVE MONTH PERIOD; PROVIDING PENALTIES FOR VIOLATIONS; PROVIDING FOR THE CONTINUATION OF CERTAIN SHORT TERM RENTALS THAT EXISTED PRIOR TO THE EFFECTIVE DATE OF THIS ORDINANCE; REQUIRING EXISTING SHORT TERM RENTALS TO APPLY FOR A BUSINESS TAX RECEIPT FOR EACH PROPERTY PURSUANT TO SECTION 12-31(87)(b) OF THE CITY CODE; ESTABLISHING REQUIREMENTS FOR OBTAINING AND CONTINUING A BUSINESS TAX RECEIPT; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE CODIFICATION OF THIS ORDINANCE; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, within the City of North Miami Beach, some residences are being used as tourism or resort businesses by providing rentals to the public more than three times in a twelve month period for periods of less than three months; and

WHEREAS, after review of the City Code of Ordinances it has become evident that the City Code is silent as to short term rentals in single family homes and townhouses; and

WHEREAS, the Mayor and City Council recognize that clarification of the zoning ordinance regarding continued short term rentals of less than three months is needed; and

WHEREAS, the Mayor and City Council find that the City's zoning regulations never permitted short term residential land use in its residential zoning districts as a specific permitted

ORDINANCE NO. 2009-25

use, and the City's zoning regulations state that only those land uses listed as specifically permitted are allowed, while those not listed are prohibited, some citizens instituted in residential areas short term rental businesses simply because short term rental was not mentioned at all in the permitted use regulations; and

WHEREAS, while the Mayor and City Council recognize that individuals who have established short term rentals of single-family residents as of the effective date of this ordinance acted in good faith, and should not be penalized for their actions; and

WHEREAS, the Mayor and City Council wish to ensure that those who acted in good faith are treated fairly by providing a transitional provision in this ordinance to allow the temporary continuation of their short term rentals and apply for a business tax receipt; and

WHEREAS, having a record of those participating in short term rentals, will be in the best interest for the health and safety of its citizens and will ensure a better quality of life for its citizens and residents; and

WHEREAS, the City of North Miami Beach Planning and Zoning Board, as the local planning agency, held on October 13, 2009, a duly noticed public hearing and the Board, voted unanimously to approve this short term rental ordinance.

NOW, THEREFORE,

BE IT ORDAINED by the City Council of the City of North Miami Beach, Florida.

Section 1. The foregoing recitals are true and correct.

Section 2. Section 24-90.1 is proposed to be added to the Zoning and Land Development Code, as follows:

Section 24-90.1 Short-Term Rentals in Residential Zoning Districts

(A) It shall be unlawful for the owner of one or more single family dwelling units, including town houses but excluding mobile homes in the MH-1 zoning district, to rent or lease a dwelling to another person(s) more than three times in a twelve month period for a period of three months or less. The lease or rental of a single-family residential dwelling, including town houses, more than three times within a twelve-month period shall create a presumption that the owner is acting in violation of this section.

(B) This section shall not apply to duly licensed group homes listed in the zoning district regulations as either permitted or conditional uses.

(C) Violations of this section shall be subject to enforcement as provided by Section 166.0415, Florida Statutes. In addition to any penalty herein provided, or otherwise provided by law or the Code of Ordinances of the City of North Miami Beach, Florida for the violation of any provision of this Code or any condition duly imposed by the City, the City may bring suit in the Circuit Court to enjoin, restrain, or otherwise prevent the violation of any provision of this Code or any condition duly imposed by the City.

(D) In order to be fair to those who acted in good faith and instituted short term rentals in residential zoning districts without first obtaining a code interpretation from the Director of Community Development, the properties that were engaged in short term rentals more than three times in a twelve month period of less than three months duration prior to the effective date of this section shall be permitted to apply for a Business Tax Receipt, pursuant to Section 12.31(87)(b) for each property, engaging in short term rentals.

(1) The Business Tax Receipt shall specifically state that it is issued to allow rentals of less than three months duration, only so long as: 1) the property is not rented for a duration of less than seven (7) days; and 2) the ownership of the property or the business renting the property does not change. Upon change of ownership of either the property or the business, or upon the lease of the property for less than seven (7) days duration, the Business Tax Receipt allowing rentals for periods of less than three months shall expire, and the property shall be subject to the terms of this section.

(2) No business tax receipt shall be issued until the owner/applicant shows proof of compliance with state and county requirements, and provides sufficient proof that the short-term rentals were established prior to the effective date of this section.

Section 3. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 4. If any section, subsection, clause or provision of this ordinance is held invalid the remainder shall not be affected by such invalidity.

Section 5. It is the intention of the City Council of the City of North Miami Beach and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of North Miami Beach, Florida. The Sections of this Ordinance may be renumbered or relettered to accomplish this intention and the word "Ordinance" may be changed to "Section", "Article" or other appropriate word as the codifier may deem fit.

APPROVED BY TITLE ONLY on first reading this ___ day of _____, 2009.

APPROVED AND ADOPTED on second reading this ___ day of _____, 2009.

ATTEST:

SUSAN A. OWENS
CITY CLERK

(CITY SEAL)

MYRON ROSNER
MAYOR

APPROVED AS TO FORM

DARCEE S. SIEGEL
CITY ATTORNEY

Sponsored by: Mayor and City Council

ORDINANCE NO. 2009-25

MEMORANDUM

**TO: MAYOR AND CITY COUNCIL
 CITY CLERK
 CITY MANAGER**

**FROM: DARCEE S. SIEGEL
 CITY ATTORNEY**

DATE: November 3, 2009

**RE: ORDINANCE NO. 2009-26
 Police & Firefighters Pension Board**

AN ORDINANCE OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, CREATING AND ENACTING SECTION 2-61 OF THE CITY OF NORTH MIAMI BEACH CODE OF ORDINANCES TO PROVIDE FOR THE CREATION, MEMBERSHIP, QUORUM, AND TERMS OF THE PENSION BOARD FOR THE POLICE OFFICERS AND FIREFIGHTERS OF THE CITY OF NORTH MIAMI BEACH IN ACCORDANCE WITH STATE LAW AND CITY RETIREMENT PLAN FOR POLICE OFFICERS AND FIREFIGHTERS EFFECTIVE JANUARY 1, 1990 AND ADOPTED BY ORDINANCE NO. 89-18; PROVIDING COUNCILPERSONS WITH EX-OFFICIO DUTIES; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE CODIFICATION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

ORDINANCE NO. 2009-26

AN ORDINANCE OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, CREATING AND ENACTING SECTION 2-61 OF THE CITY OF NORTH MIAMI BEACH CODE OF ORDINANCES TO PROVIDE FOR THE CREATION, MEMBERSHIP, QUORUM, AND TERMS OF THE PENSION BOARD FOR THE POLICE OFFICERS AND FIREFIGHTERS OF THE CITY OF NORTH MIAMI BEACH IN ACCORDANCE WITH STATE LAW AND CITY RETIREMENT PLAN FOR POLICE OFFICERS AND FIREFIGHTERS EFFECTIVE JANUARY 1, 1990 AND ADOPTED BY ORDINANCE NO. 89-18; PROVIDING COUNCILPERSONS WITH EX-OFFICIO DUTIES; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE CODIFICATION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, while the membership and terms for many City of North Miami Beach boards are stated in the City of North Miami Beach Code of Ordinances, such does not exist for the Police Officers and Firefighters Pension Board (“Police and Fire Pension Board”) of the City of North Miami Beach; and

WHEREAS, the City of North Miami Beach Police Officers and Firefighters Plan effective January 1, 1990 requires that the Retirement Committee for the Plan (“Board of Trustees”) shall consist of five members with two being elected officials or original appointment designees, two being police officers, including participants in the DROP, and one being an individual chosen by a majority of the other four members; and

WHEREAS, it has been the policy and procedure of the Plan to appoint two council persons to serve as members of the Police and Fire Pension’s Board of Trustees as part of the five members; and

ORDINANCE NO. 2009-26

WHEREAS, pursuant to Attorney General Opinion 2004-05, a member of the City Council may serve on a City Police and Fire Pension Board if the City Code of Ordinances provide for a City Councilperson to serve on that Pension Board, without violating the prohibition on dual office holding as provided in Article II, section 5(a), Florida Constitution; and

WHEREAS, the City of North Miami Beach finds that by providing for additional or ex-officio duties for the City councilpersons as members of the Pension Board, that the Mayor and City Council will continue to gain a deeper understanding and appreciation of the pension issues confronting the Board of Trustees, and will be better able to serve the residents of the City, and members of the Police and Firefighters Pension Plan; and

WHEREAS, the Mayor and City Council recognize that outlining the purpose, membership, role of councilpersons on the Board, quorum, and the terms of the Police and Firefighters Pension Board would be in the best interest of the health, safety and welfare of the citizens and residents of the City of North Miami Beach, as well as the Police and Firefighters Pension Fund, members of the Police and Firefighters Plan, and the City.

NOW, THEREFORE,

BE IT ORDAINED by the City Council of the City of North Miami Beach, Florida.

Section 1. The foregoing recitals are true and correct.

Section 2. Section 2-61 entitled "Police and Fire Pension Board" is proposed to be added to the Code of North Miami Beach, as follows:

Section 2-61.1 Creation; Purpose

There is hereby created, pursuant to the Police Officers and Firefighters Retirement Plan, a Retirement Committee ("Board of Trustees") for the Police and Fire Pension Board, which shall be solely responsible for administering the Plan. The Board shall be a legal entity with, in addition to other

powers and responsibilities outlined in the Plan, the power to bring and defend lawsuits of every kind, nature and description.

Section 2-61.2 Membership

The Board of Trustees shall consist of five members. Two of whom, unless otherwise prohibited by law, shall be legal residents of the City who shall be elected officials or original appointment designees. Two of whom shall be police officers, including participants in the DROP, and/or firefighters, as defined in Article II who shall be elected by a majority of the police officers, including DROP participants and firefighters who are members of the Plan. One of whom shall be chosen by a majority of the previous four members. Upon receipt of the fifth person's name, the City Council shall, as a ministerial duty, appoint such person to the Board as its fifth member.

Section 2-61.3 Councilpersons as Ex-Officio Members.

The two City councilpersons who are appointed as members to this Board shall serve as an ex-officio duty of their office as City councilperson. The City councilpersons appointed to the City of North Miami Beach Police and Fire Pension Board shall perform their ex-officio duties as members of the City of North Miami Beach Police Officers' and Firefighters' Pension Board, as authorized by law.

Section 2-61.4 Terms.

Each resident member shall serve as trustee for a period of two (2) years, unless sooner replaced by the City Council at whose pleasure he/she shall serve, and may succeed himself/herself as a board member. Each police officer and/or firefighter member shall serve as board member for a period of two (2) years, unless he/she sooner leaves the employment of the City as a police officer and/or firefighter, whereupon the City Council shall choose his/her successor in the same manner as an original appointment. Each police officer and/or firefighter may succeed himself/herself in office. The fifth member shall also serve for a two (2) year term.

Section 2-61.5 Quorum.

Each member of the Retirement Committee shall be entitled to one vote on the Committee. Three (3) concurring

votes shall be necessary for a decision by the members of any meeting of the Board and three (3) members shall constitute a quorum of the Police and Fire Pension Board.

Section 3. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 4. If any section, subsection, clause or provision of this ordinance is held invalid the remainder shall not be affected by such invalidity.

Section 5. It is the intention of the City Council of the City of North Miami Beach and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of North Miami Beach, Florida. The Sections of this Ordinance may be renumbered or relettered to accomplish this intention and the word "Ordinance" may be changed to "Section", "Article" or other appropriate word as the codifier may deem fit.

APPROVED BY TITLE ONLY on first reading this ___ day of _____, 2009.

APPROVED AND ADOPTED on second reading this ___ day of _____, 2009.

ATTEST:

**SUSAN A. OWENS
CITY CLERK**

(CITY SEAL)

**MYRON ROSNER
MAYOR**

APPROVED AS TO FORM

**DARCEE S. SIEGEL
CITY ATTORNEY**

**Sponsored by: Councilman John Patrick Julien
Mayor and City Council**

ORDINANCE NO. 2009-26

MEMORANDUM

**TO: MAYOR AND CITY COUNCIL
CITY CLERK
CITY MANAGER**

**FROM: DARCEE S. SIEGEL
CITY ATTORNEY**

DATE: November 3, 2009

**RE: ORDINANCE NO. 2009-27
General Employees Pension Board**

AN ORDINANCE OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, CREATING AND ENACTING SECTION 2-62 OF THE CITY OF NORTH MIAMI BEACH CODE OF ORDINANCES TO PROVIDE FOR THE CREATION, MEMBERSHIP, QUORUM, AND TERMS OF THE PENSION BOARD FOR THE GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH IN ACCORDANCE WITH STATE LAW AND CITY RETIREMENT PLAN FOR GENERAL EMPLOYEES EFFECTIVE JANUARY 1, 1990 AND ADOPTED BY ORDINANCE NO. 89-19; PROVIDING COUNCILPERSONS WITH EX-OFFICIO DUTIES; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE CODIFICATION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

ORDINANCE NO. 2009-27

AN ORDINANCE OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, CREATING AND ENACTING SECTION 2-62 OF THE CITY OF NORTH MIAMI BEACH CODE OF ORDINANCES TO PROVIDE FOR THE CREATION, MEMBERSHIP, QUORUM, AND TERMS OF THE PENSION BOARD FOR THE GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH IN ACCORDANCE WITH STATE LAW AND CITY RETIREMENT PLAN FOR GENERAL EMPLOYEES EFFECTIVE JANUARY 1, 1990 AND ADOPTED BY ORDINANCE NO. 89-19; PROVIDING COUNCILPERSONS WITH EX-OFFICIO DUTIES; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY; PROVIDING FOR THE CODIFICATION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, while the membership and terms for many City of North Miami Beach boards are stated in the City of North Miami Beach Code of Ordinances, such does not exist for the General Employees Pension Board of the City of North Miami Beach; and

WHEREAS, the City of North Miami Beach General Employees Pension Plan effective January 1, 1990 and amended as of February 2008, requires that the Retirement Committee for the Plan ("Board of Trustees") shall consist of five members with three appointed by the Mayor and ratified by the City Council, at least two of whom shall be elected officials and the third may be an elected official and/or designee, and two being general employees elected by the majority of the general employees; and

WHEREAS, it has been the policy and procedure of the Plan to appoint councilpersons to serve as members of the General Employees Pension's Board of Trustees as part of the five members; and

WHEREAS, pursuant to Attorney General Opinion 2004-05, a member of the City Council may serve on a City General Employees Pension Board if the City Code of Ordinances provides for a City councilperson to serve on that Pension Board, without violating the prohibition on dual office holding as provided in Article II, section 5(a), Florida Constitution; and

WHEREAS, the City of North Miami Beach finds that by providing for additional or ex-officio duties for City councilpersons as members of the Pension Board, that the Mayor and City Council will continue to gain a deeper understanding and appreciation of the pension issues confronting the Board of Trustees, and will be better able to serve the residents of the City, and members of the General Employees Pension Plan; and

WHEREAS, the Mayor and City Council recognize that outlining the purpose, membership, role of councilpersons on the Board, quorum, and the terms of the General Employees Pension Board would be in the best interest of the health, safety and welfare of the citizens and residents of the City of North Miami Beach, as well as the General Employees Pension Fund, members of the General Employees Plan, and the City.

NOW, THEREFORE,

BE IT ORDAINED by the City Council of the City of North Miami Beach, Florida.

Section 1. The foregoing recitals are true and correct.

Section 2. Section 2-62 entitled "General Employees Pension Board" is proposed to be added to the Code of North Miami Beach, as follows:

Section 2-62.1 Creation; Purpose

There is hereby created, pursuant to the General Employees Retirement Plan, a Retirement Committee ("Board of Trustees") for the General Employees Board, which shall be solely responsible for administering the Plan. The Board shall be a legal entity with, in addition to other powers and

responsibilities outlined in the Plan, the power to bring and defend lawsuits of every kind, nature and description.

Section 2-62.2 Membership

The Board shall consist of five members. Three individuals appointed by the Mayor and ratified by the City Council, at least two of whom shall be elected officials, and two members from employees participating in the Plan elected by a majority, unless otherwise prohibited by law.

Section 2-62.3 Councilpersons as Ex-Officio Members.

The City councilpersons who are appointed as members to this Board shall serve as an ex-officio duty of their office as City councilperson. The City councilpersons appointed to the City of North Miami Beach General Employees Pension Board shall perform their ex-officio duties as members of the City of North Miami Beach General Employees Pension Board, as authorized by law.

Section 2-62.4 Terms.

Each elected official member shall serve as trustee until his/her successor shall be appointed. Each general employee member shall serve as Board member for a period of four (4) years, unless he/she sooner leaves the employment of the City, whereupon the City Council shall choose his/her successor in the same manner as an original appointment. Each employee may succeed himself/herself in office. The designee of the elected officials shall serve for a period of two (2) years).

Section 2-62.5 Quorum.

A quorum of the General Employee Pension Board shall constitute three (3) members of the Board of Trustees, whose number shall include at least two (2) elected officials and/or the designee. Each member of the Board shall be entitled to one vote on the Board.

Section 3. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 4. If any section, subsection, clause or provision of this ordinance is held invalid the remainder shall not be affected by such invalidity.

Section 5. It is the intention of the City Council of the City of North Miami Beach and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of North Miami Beach, Florida. The Sections of this Ordinance may be renumbered or relettered to accomplish this intention and the word "Ordinance" may be changed to "Section", "Article" or other appropriate word as the codifier may deem fit.

APPROVED BY TITLE ONLY on first reading this ___ day of _____, 2009.

APPROVED AND ADOPTED on second reading this ___ day of _____, 2009.

ATTEST:

SUSAN A. OWENS
CITY CLERK

(CITY SEAL)

MYRON ROSNER
MAYOR

APPROVED AS TO FORM

DARCEE S. SIEGEL
CITY ATTORNEY

Sponsored by: Councilman John Patrick Julien
Mayor and City Council

ORDINANCE NO. 2009-27

TO: Mayor and City Council
FROM: Darcee S. Siegel, City Attorney
DATE: November 3, 2009

LITIGATION LIST

I. Wrongful Deaths: (2)

Graham Donald/Smith Sylvia vs. CNMB
Wrongful Death

Hernandez, Estate of v. CNMB
Wrongful Death

SETTLED

Kelly, Estate of v. CNMB
Wrongful Death

II. Civil Rights: (2)

Madura, Maryla vs. CNMB, Antonio Marciante and Tony Sanchez, individually
Civil Rights Violation/False Arrest **PARTIAL SUMMARY JUDGMENT**

Nelson, Travis v. CNMB, et al
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Smith, Louis v. John Richard Renaud, NMBPD, & CNMB
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III. Personal Injury: (6)

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Korakakos, Christian v. City of North Miami Beach
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Martell, Erlinda v. CNMB
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IV. Land Use Litigation: (1)

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Seay Towing v. CNMB

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Ameriquet Funding vs. CNMB (Caraballo)
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Aurora Loan Services, LLC v. CNMB (George)
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* Horowitz v. CNMB (Marcellus, et al)
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* Primary Residential Mortgage v. CNMB (Miranda, et al.)
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* Transatlantic Bank v. CNMB (Andor Expressway Corp., et al.)
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* U.S. Bank NA v. CNMB (Torres, et al.)
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VIII. Bankruptcies:

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Porter, Michael and Shanda
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SMG Entertainment
South Pointe Family and Children Center
Sunny Isles Unicenter
Tweeter Intellectual Property (Sound Advice)
Vartec Telecom, Inc.
Verestar, Inc.
Veliz, Orestes & Sury
Villaverde, Olga
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***New Cases**