



CITY OF NORTH MIAMI BEACH
City Council Meeting
Council Chambers, 2nd Floor
City Hall, 17011 NE 19th Avenue
North Miami Beach, FL 33162
Tuesday, August 17, 2010
7:30 PM

Mayor Myron Rosner
Vice Mayor Philippe Derose
Councilman John Patrick Julien
Councilwoman Barbara Kramer
Councilman Frantz Pierre
Councilwoman Phyllis S. Smith
Councilwoman Beth E. Spiegel

City Manager Kelvin L. Baker
City Attorney Darcee S. Siegel
City Clerk Susan A. Owens, CMC

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.

AGENDA

1. **ROLL CALL OF THE CITY OFFICIALS**
2. **INVOCATION** - Reverend Jonas Georges, All Nations Presbyterian Church
3. **PLEDGE OF ALLEGIANCE**
4. **REQUESTS FOR WITHDRAWALS, DEFERMENTS AND ADDITIONS TO AGENDA**
5. **PRESENTATIONS /DISCUSSIONS** - *None*
6. **APPOINTMENTS** - *None*
7. **CONSENT AGENDA**
 - 7.1 **Meeting Minutes of July 20, 2010**
 - 7.2 **Motion to Reschedule the September 21, 2010 Regular City Council Meeting for September 28, 2010**
 - 7.3 **Resolution No. R2010-53**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, SUPPORTING AND URGING THE PASSAGE OF LOCAL, STATE AND FEDERAL LEGISLATION TO TARGET THE USE AND POSSESSION OF ILLEGAL GUNS.
 - 7.4 **Resolution No. R2010-54**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTER-LOCAL AGREEMENT WITH MIAMI-DADE COUNTY TO PROVIDE CURBSIDE COLLECTION OF RECYCLABLE MATERIALS FROM SINGLE-FAMILY RESIDENCES WITHIN THE CITY.
 - 7.5 **Resolution No. R2010-55**

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 SOUTHEASTERN ENGINEERING CONTRACTORS, INC. FOR THE INSTALLATION OF A NEW DRAINAGE SYSTEM WITH THE STORMWATER PUMPING STATION AND DEEP INJECTION WELLS FROM N.E. 172ND STREET TO N.E. 170TH STREET BETWEEN N.E. 23RD AVENUE AND WEST DIXIE HIGHWAY IN NORTH MIAMI BEACH, FLORIDA.
 - 7.6 **Resolution No. R2010-56**

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, TO APPROVE A CHANGE ORDER REQUEST FOR ADDITIONAL WORK BY TRAN CONSTRUCTION, INC. ON N.E. 19TH AVENUE IN NORTH MIAMI BEACH, FLORIDA, UNDER

ROADWAY IMPROVEMENT PROJECT BID #2009-17.

7.7 Resolution No. R2010-57

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AUTHORIZING THE SALE OF CITY OWNED VACANT SURPLUS LAND LOCATED AT 13900 BISCAYNE BOULEVARD TO NK GROUP, INC., THE HIGHEST RESPONSIVE, RESPONSIBLE BIDDER.

7.8 Resolution No. R2010-58

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDED AGREEMENT WITH NEW CINGULAR WIRELESS PSC, LLC TO LEASE CITY-OWNED PROPERTY BEHIND THE POLICE DEPARTMENT PARKING GARAGE TO CONSTRUCT, MAINTAIN AND OPERATE A CELLULAR COMMUNICATIONS FACILITY

7.9 Resolution No. R2010-59

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, RATIFYING THE EXECUTION OF A CONTRACT WITH MIAMI-DADE COUNTY REGARDING A GRANT IN THE AMOUNT OF \$11,200.00 FOR THE CITY'S SPORTS PROGRAMS .

8. CITY MANAGER'S REPORT

8.1 Forfeiture (LETF) Appropriation Request

9. CITY ATTORNEY'S REPORT

9.1 Litigation List

10. MAYOR'S DISCUSSION

11. 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 the 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 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 with the appropriate administrative or elected official. In the Council Chambers, citizen participants are asked to come forward to the podium, give your name and address, and the 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.

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)

12. MISCELLANEOUS ITEMS - None

13. WAIVER OF FEE - None

14. BUSINESS TAX RECEIPTS

14.1 SMG Entertainment, Inc. d/b/a Queen of Diamonds Gentlemen's Club

17450 Biscayne Boulevard North Miami Beach, FL 33160

Approval of a 4:00 a.m.-6 :00 a.m Extension of Hours Business Tax Receipt. *(Initial 6 month approval)*

15. LEGISLATION

Administration of Testimony Oath - None needed for this evening's proceedings

15.1 Ordinance No. 2010-20 (First Reading, By Title Only) -Tabled from July 20, 2010

AN ORDINANCE OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, MERGING THE RETIREMENT PLAN AND TRUST FOR THE GENERAL MANAGEMENT EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH INTO THE RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH; REPEALING ORDINANCE NO. 2002-30 AND ALL SUBSEQUENT AMENDMENTS THERETO; PROVIDING FOR THE TRANSFER OF ALL ASSETS AND LIABILITIES OF THE RETIREMENT PLAN AND TRUST FOR THE GENERAL MANAGEMENT EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH TO THE RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH; DIRECTING THAT THE ADOPTION AGREEMENT WITH FLORIDA LEAGUE OF CITIES, INC. FOR ADMINISTRATION OF THE RETIREMENT PLAN AND TRUST FOR THE GENERAL MANAGEMENT EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH, DATED JANUARY 24, 2003, AND ALL SUBSEQUENT AMENDMENTS THERETO, BE TERMINATED; AMENDING ARTICLE II THE RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH, ENTITLED "DEFINITIONS"; AMENDING SECTION 3.01 OF THE RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH, ENTITLED "ELIGIBILITY; PARTICIPATION"; AMENDING SECTION 4.01 OF THE RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH, ENTITLED "PARTICIPANT'S CONTRIBUTION ACCOUNT"; CREATING A NEW SECTION 6.15 OF THE RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH, ENTITLED "BENEFITS OF GENERAL MANAGEMENT EMPLOYEES"; 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 AN EFFECTIVE DATE.

15.2 Ordinance No. 2010-21 (First Reading By Title Only)

AN ORDINANCE AMENDING CHAPTER III OF THE CODE OF ORDINANCES OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, ENTITLED PURCHASING AND IN PARTICULAR SECTIONS 3-3.11c. AND 3-3.11d. TO INCREASE FROM TEN YEARS TO TWENTY YEARS THE CONTRACT TERM AND PERIOD FOR PAYMENTS FOR GUARANTEED ENERGY SAVINGS CONTRACTS; 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.

15.3 Ordinance No. 2010-13 (Second and Final Reading)- Tabled from July 20, 2010

AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF AN OTHER POST-EMPLOYMENT BENEFIT TRUST FOR THE EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH; AUTHORIZING THE JOINING AS A PARTY THE FLORIDA MUNICIPAL PENSION TRUST FUND MASTER TRUST AGREEMENT AND THE PARTICIPATION OF SAID TRUST IN THE OTHER POST-EMPLOYMENT BENEFIT PLAN TRUST UNDER THE FLORIDA MUNICIPAL PENSION TRUST FUND MASTER TRUST AGREEMENT; PROVIDING FOR PUBLICATION; 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.

15.4 Ordinance No. 2010-15 (Second and Final Reading) - Tabled from July 20, 2010

AN ORDINANCE OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING THE RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH; AMENDING SECTION 1.05, CONCERNING AMENDMENT OF THE PLAN; 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.

15.5 Ordinance No. 2010-16 (Second and Final Reading) - Tabled from July 20, 2010

AN ORDINANCE OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING THE RETIREMENT PLAN AND TRUST FOR GENERAL MANAGEMENT EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH; AMENDING SECTION 6 OF ORDINANCE 2002-30, CONCERNING AMENDMENT OF THE PLAN; 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.

15.6 Ordinance No. 2010-17 (Second & Final Reading) -Tabled from July 20, 2010

AN ORDINANCE OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING THE POLICE OFFICERS AND FIREFIGHTERS' RETIREMENT PLAN OF THE CITY OF NORTH MIAMI BEACH; AMENDING SECTION 1.05, CONCERNING AMENDMENT OF THE PLAN; 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.

15.7 Ordinance No. 2010-18 (Second and Final Reading)

AN ORDINANCE AMENDING CHAPTER XIV OF THE CODE OF ORDINANCES OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, ENTITLED BUILDING AND HOUSING, AND IN PARTICULAR SUBSECTION (e) OF SECTION 14-1.3, ENTITLED "BUILDING INFORMATION REQUESTED IN WRITING"; DELETING THE STANDARD SEARCH/RESEARCH FEES; ADDING A PROVISION FOR A SPECIAL SERVICE CHARGE ALSO KNOWN AS AN "EXTENSIVE USE FEE" ASSOCIATED WITH PROCESSING BUILDING PERMIT APPLICATIONS AND RELATED ACTIVITIES PURSUANT TO FLORIDA STATUTE 119.07; 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.

15.8 Ordinance No. 2010-19 (Second and Final Reading)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING THE CITY OF NORTH MIAMI BEACH RETIREMENT PLAN FOR POLICE OFFICERS AND FIREFIGHTERS; CREATING A NEW SECTION 4.02(c) PROVIDING A DIFFERENT SUPPLEMENTAL CONTRIBUTION THROUGH THE 2019 PLAN YEAR, BUT REQUIRING A 70% FUNDED RATIO FOR THE OCTOBER 1, 2020 ACTUARIAL VALUATION (TO DETERMINE THE EMPLOYER CONTRIBUTION FOR THE FISCAL YEAR STARTING OCTOBER 1, 2021); PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

16. CITY COUNCIL COMMITTEE REPORTS

17. NEXT REGULAR CITY COUNCIL MEETING - Tuesday, September 7, 2010

18. ADJOURNMENT



City of North Miami Beach
17011 NE 19 Avenue
North Miami Beach, FL 33162
305-947-7581
www.citynmb.com

MEMORANDUM

 Print

TO: Mayor and City Council
FROM: Susan A. Owens, CMC, City Clerk
DATE: Tuesday, August 17, 2010

RE: Meeting Minutes of July 20, 2010

BACKGROUND: Attached for your review are the July 20, 2010 City Council meeting minutes.
RECOMMENDATION: Approval
FISCAL IMPACT: None
CONTACT PERSON(S): Susan A. Owens, CMC, City Clerk

ATTACHMENTS:

 [Meeting Minutes of July 20, 2010](#)

JULY 20, 2010 MEETING MINUTES
(CNMB-CC MINUTES TAPE #445)

1. ROLL CALL OF THE CITY OFFICIALS

The meeting was called to order at 7:38 p.m. Present at the meeting were Mayor Myron Rosner, Vice Mayor Philippe Derose, and Council Members Beth E. Spiegel (*arrived 10:27 p.m.*), Phyllis S. Smith, John Patrick Julien, Barbara Kramer, and Frantz Pierre. Also present were City Manager Kelvin L. Baker, City Attorney Darcee S. Siegel, and City Clerk Susan A. Owens.

2. INVOCATION

Rabbi Heshy Riesel was unable to attend, so the invocation was given by City Manager Kelvin L. Baker.

3. PLEDGE OF ALLEGIANCE

Mayor Rosner led the City Council in the Pledge of Allegiance.

Mayor Rosner recognized State House of Representatives-District 104 candidates, Dominique Simon and John Patrick Julien. Later in the meeting, Mayor Rosner also recognized State House of Representatives-District 108 candidate Daphne Campbell.

4. REQUESTS FOR WITHDRAWALS, DEFERMENTS AND ADDITIONS TO AGENDA

Item #15.1 was tabled.

Motion made by Councilman Julien, seconded by Councilwoman Smith, to table Item #15.3. In a roll call vote, with Councilwoman Spiegel absent, Vice Mayor Derose, Councilwoman Smith, Councilman Julien, Councilwoman Kramer and Councilman Pierre voted yes; Mayor Rosner voted no. **(Motion carried 5-1-1)**

Motion made by Councilman Julien, seconded by Vice Mayor Derose, to table Item #15.4. In a roll call vote, with Councilwoman Spiegel absent, Vice Mayor Derose, Councilwoman Smith, Councilman Julien, Councilwoman Kramer and Councilman Pierre voted yes; Mayor Rosner voted no. **(Motion carried 5-1-1)**

Motion made by Councilman Julien, seconded by Vice Mayor Derose, to table Item #15.5. In a roll call vote, with Councilwoman Spiegel absent, Vice Mayor Derose, Councilwoman Smith, Councilman Julien, Councilwoman Kramer and Councilman Pierre voted yes; Mayor Rosner voted no. **(Motion carried 5-1-1)**

Motion made by Councilwoman Smith to table Item #15.8. *(Motion died for lack of second)*

5. **PRESENTATIONS** – *None*

6. **APPOINTMENTS** – *None*

7. **CONSENT AGENDA**

Motion made by Vice Mayor Derose, seconded by Councilman Julien, to introduce the Consent Agenda. By consensus, with Councilwoman Spiegel absent, the rest of the Council voted in favor. **(Motion carried 6-0-1)**

7.1 June 15, 2010 Meeting Minutes

7.2 July 6, 2010 Meeting Minutes

7.3 Resolution No. R2010-50

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, URGING LOCAL AND STATE GOVERNMENTS TO ENACT LEGISLATION CREATING PROTOCOLS AND PROCEDURES TO RESCUE ANIMALS ABANDONED IN VACANT HOMES.

7.4 Resolution No. R2010-51

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, URGING PRESIDENT OBAMA AND DEPARTMENT OF HOMELAND SECURITY SECRETARY JANET NAPOLITANO TO PROMPTLY PAROLE INTO THE UNITED STATES ALL HAITIAN BENEFICIARIES OF APPROVED IMMIGRANT VISA PETITIONS AND TO PERMIT THEM TO WORK LEGALLY IN THE UNITED STATES, AND TO EXPEDITE CONSIDERATION AND APPROVAL OF ALL PENDING BUT NOT YET APPROVED IMMIGRANT VISA PETITIONS.

7.5 Resolution No. R2010-52

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 FLORIDA DETROIT DIESEL-ALLISON, INC. FOR THE PURCHASE OF THE 275 KW GENERATOR AT MASTER LIFT STATION OF WASTEWATER COLLECTION SYSTEM.

Motion made by Councilman Julien, seconded by Councilwoman Smith, to approve the Consent Agenda. In a voice vote, with Councilwoman Spiegel absent, the rest of the Council voted in favor. **(Motion carried 6-0-1)**

8. **CITY MANAGER'S REPORT** – Kelvin L. Baker

8.1 Miscellaneous Updates

Gulf Coast Cleanup Jobs. City Manager Baker reported that the City is on a waiting list for jobs that may be available to unemployed residents to assist with the Gulf Coast area oil spill cleanup efforts; and, once a determination is made, the City will issue a press release.

9. CITY ATTORNEY'S REPORT – Darcee S. Siegel

Forfeiture Funds. City Attorney Siegel reported that on July 14th and July 15th the City and the Federal Drug Enforcement Agency successfully seized \$1.9 million; and, that her office has already filed to obtain forfeiture funds from the seizure.

Surplus Property Sale. City Attorney Siegel reported a resolution is being prepared to sell surplus property at 13900 Biscayne Boulevard. A buyer is interested in acquiring the property, and no City departments have expressed interest.

Red Light Camera Litigation. City Attorney Spiegel reported that the City has been served with a class action suit regarding use of red light cameras. Per the agreement with the camera company, the camera company will pay a portion of the attorneys' fees, and litigation will be handled in-house.

10. MAYOR'S DISCUSSION

“Principles over Politics.” Mayor Rosner read aloud several posts from a police blog site. The posts were from both employees and residents. Some requested that the City Council not touch employee pensions; and, others requested that the Council implement pension reforms. Mayor Rosner also stated that the union distributed flyers attacking the City Council and urging residents to attend the next City Council meeting. Mayor Rosner then read aloud a portion of a response to the blogs from Police Chief Hernandez, where he mandated that his officers remain respectful and control their personal feelings. The Chief also stated that he will not tolerate disrespectful behavior or personal attacks from his officers.

Mayor Rosner then spoke regarding the pension reform ordinances that were before the City Council. He explained that three of these ordinances would reinstate the Council's right to vote on pension amendments and remove the delegation the City had given of that right to the pension members. He explained that another ordinance would allow the City to stretch out the payments necessary to fund the Police and Firefighters' pension plan until 2020, and thereby lower the yearly costs. He stated that we are not taking away any benefits from vested employees. The last pension ordinance would merge the Management pension plan into the General Employees pension plan.

The Mayor stated that when he came on board in 2003 the Police Department's costs were 33% of the City's budget, today it is 70% of our budget. The City and the Police union are at impasse and have been without a contract for over a year. He further stated that this is all about the residents and the City Council dealing with a difficult issue head-on, and it's principles over politics.

11. PUBLIC COMMENT

Bert Kehren, 3302 NE 171 Street, North Miami Beach, FL, spoke regarding the Police Department and pension issues.

Marise Hayden, 16415 NE 32 Avenue, North Miami Beach, FL, spoke regarding the budget.

Charles Loeb, 16800 NE 15 Avenue, #112, North Miami Beach, FL, spoke regarding Little League, driver licenses, libraries, FDOT plans, the Census, and school opening.

Orlando Loli, 3384 NE 167 Street, North Miami Beach, FL, spoke regarding the Police Department.

George Vallejo, 2940 NE 164 Street, North Miami Beach, FL, spoke regarding pension issues.

Janice Coakley, 19681 NW 33 Avenue, North Miami Beach, FL, spoke regarding pension issues.

Mary Hilton, 1950 NE 157 Terrace, North Miami Beach, FL, spoke regarding the budget.

Richard Riess, 23 NW 169 Street, North Miami Beach, FL, spoke regarding pension issues and the budget.

Mike Pons, PO Box 600124, North Miami Beach, FL, spoke regarding police pension issues.

Mubarak Kazan, 15564 NE 12 Avenue, North Miami Beach, FL, spoke regarding the minutes, the Police Department, and the City Council.

Joseph Romero, PO Box 600124, North Miami Beach, FL, spoke regarding the Police Department.

Sergio Garcia, 16901 NE 19 Avenue, North Miami Beach, FL, spoke regarding police pension issues.

Jason Ochoa, 16901 NE 19 Avenue, North Miami Beach, FL, spoke regarding police pension issues.

Carlos Castillo, 16901 NE 19 Avenue, North Miami Beach, FL, spoke regarding police pension issues.

Margie Love, 1579 NE 169 Street, North Miami Beach, FL, spoke regarding police pension issues.

Bruce Lamberto, 3420 NE 165 Street, North Miami Beach, FL, spoke regarding police pension issues and the budget.

Marlen Martell, 17374 South Glades Drive, North Miami Beach, FL, spoke regarding the budget, spending, and employee pensions.

Mike DeMarcus, 16901 NE 19 Avenue, North Miami Beach, FL, spoke regarding police pension issues.

Allison Robie, 2131 NE 179 Street, North Miami Beach, FL, spoke regarding police pension issues and the budget.

Jimmy Randazzo, 16901 NE 19 Avenue, North Miami Beach, FL, spoke regarding the Police Department.

Chief Hernandez addressed the City Council with several issues he wished to bring to the attention of the community. He noted that the overall crime rate in the City is down 5-6%. Chief Hernandez pointed out the dangers of the job, comparing it to military service. With regard to allegations of police intimidation and threats, Chief Hernandez stated he has personally addressed those concerns. He stated that the North Miami Beach Police Department has been recognized and accredited by the Florida Commission on Accreditation. He further assured that the police officers would continue to work hard, and asked that the community try to understand the difficulties and hazards of the officers' jobs.

12. **MISCELLANEOUS ITEMS** – *None*
13. **WAIVER OF FEE** – *None*
14. **BUSINESS TAX RECEIPTS** – *None*

15. LEGISLATION

15.1 Ordinance No. 2010-13 (Second and Final Reading) - Item was tabled. (See Item #4)

Motion made by Councilman Julien, seconded by Vice Mayor Derose, to introduce Ordinance No. 2010-14 (Second and Final Reading). By consensus, with Councilwoman Spiegel absent, the rest of the Council voted in favor. **(Motion carried 6-0-1)**

15.2 Ordinance No. 2010-14 (Second and Final Reading)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING ORDINANCE 2009-31 ENTITLED THE NORTH MIAMI BEACH DANGEROUS INTERSECTION SAFETY ACT; PROVIDING FOR RECORDED IMAGE MONITORING AND ENFORCEMENT OF RED LIGHT TRAFFIC CONTROL DEVICES CONSISTENT WITH GENERAL LAW OF THE STATE OF FLORIDA, CHAPTER 2010-80 (THE MARK WANDALL TRAFFIC SAFETY ACT); PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

(Mayor Rosner passed the gavel to Vice Mayor Derose at 9:30 p.m. and briefly left the meeting.)

The following individuals came before the City Council:

Mubarak Kazan, 15564 NE 12 Avenue, North Miami Beach, FL

Richard Riess, 23 NW 169 Street, North Miami Beach, FL

Allison Robie, 2131 NE 179 Street, North Miami Beach, FL

Motion made by Councilman Julien, seconded by Vice Mayor Derose, to adopt Ordinance No. 2010-14 (Second and Final Reading). In a roll call vote, with Mayor Rosner and Councilwoman Spiegel absent, Councilwoman Smith, Councilman Julien, Councilwoman Kramer, and Councilman Pierre voted yes; Vice Mayor Derose voted no. **(Motion carried 4-1-2)**

15.3 Ordinance No. 2010-15 (Second and Final Reading) - Item was tabled. (See Item #4)

15.4 Ordinance No. 2010-16 (Second and Final Reading) - Item was tabled. (See Item #4)

15.5 Ordinance No. 2010-17 (Second and Final Reading) - Item was tabled. (See Item #4)

Motion made by Councilman Julien, seconded by Councilwoman Smith, to introduce Ordinance No. 2010-18 (First Reading, By Title Only). By consensus, with Mayor Rosner and Councilwoman Spiegel absent, the rest of the Council voted in favor. **(Motion carried 5-0-2)**

15.6 Ordinance No. 2010-18 (First Reading, By Title Only)

AN ORDINANCE AMENDING CHAPTER XIV OF THE CODE OF ORDINANCES OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, ENTITLED BUILDING AND HOUSING, AND IN PARTICULAR SUBSECTION (e) OF SECTION 14-1.3, ENTITLED "BUILDING INFORMATION REQUESTED IN WRITING"; DELETING THE STANDARD SEARCH/RESEARCH FEES; ADDING A PROVISION FOR A SPECIAL SERVICE CHARGE

ALSO KNOWN AS AN "EXTENSIVE USE FEE" ASSOCIATED WITH PROCESSING BUILDING PERMIT APPLICATIONS AND RELATED ACTIVITIES PURSUANT TO FLORIDA -STATUTE §119.07; 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.

The following individuals came before the City Council:

Mubarak Kazan, 15564 NE 12 Avenue, North Miami Beach, FL
Allison Robie, 2131 NE 179 Street, North Miami Beach, FL

Motion made by Councilman Julien, seconded by Councilwoman Smith, to adopt Ordinance No. 2010-18 (First Reading, By Title Only). In a roll call vote, with Mayor Rosner and Councilwoman Spiegel absent, the rest of the Council voted in favor. **(Motion carried 5-0-2)**

Motion made by Councilman Julien, seconded by Councilwoman Kramer, to introduce Ordinance No. 2010-19 (First Reading, By Title Only). By consensus, with Mayor Rosner and Councilwoman Spiegel absent, the rest of the Council voted in favor. **(Motion carried 5-0-2)**

15.7 Ordinance No. 2010-19 (First Reading, By Title Only)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING THE CITY OF NORTH MIAMI BEACH RETIREMENT PLAN FOR POLICE OFFICERS AND FIREFIGHTERS; CREATING A NEW SECTION 4.02(c) PROVIDING A DIFFERENT SUPPLEMENTAL CONTRIBUTION THROUGH THE 2019 PLAN YEAR, BUT REQUIRING A 70% FUNDED RATIO FOR THE OCTOBER 1, 2020 ACTUARIAL VALUATION (TO DETERMINE THE EMPLOYER CONTRIBUTION FOR THE FISCAL YEAR STARTING OCTOBER 1, 2021); PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

The following individual came before the City Council:

Charles Loeb, 16800 NE 15 Avenue, #112, North Miami Beach, FL

(Vice Mayor Derose passed the gavel back to Mayor Rosner, who returned to the meeting at 9:59 p.m.)

Motion made by Councilman Julien, seconded by Councilman Pierre, to adopt Ordinance No. 2010-19 (First Reading, By Title Only). In a roll call vote, with Councilwoman Spiegel absent, the rest of the Council voted in favor. **(Motion carried 6-0-1)**

Motion made by Councilman Julien, seconded by Vice Mayor Derose, to introduce Ordinance No. 2010-20 (First Reading, By Title Only). By consensus, with Councilwoman Spiegel absent, the rest of the Council voted in favor. **(Motion carried 6-0-1)**

15.8 Ordinance No. 2010-20 (First Reading, By Title Only)

AN ORDINANCE OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, MERGING THE RETIREMENT PLAN AND TRUST FOR THE GENERAL MANAGEMENT EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH INTO THE RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH; REPEALING ORDINANCE NO. 2002-30 AND ALL SUBSEQUENT AMENDMENTS THERETO; PROVIDING FOR THE TRANSFER OF ALL ASSETS AND LIABILITIES OF THE RETIREMENT PLAN AND TRUST FOR THE GENERAL MANAGEMENT EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH TO THE RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH; DIRECTING THAT THE ADOPTION AGREEMENT WITH FLORIDA LEAGUE OF CITIES, INC. FOR ADMINISTRATION OF THE RETIREMENT PLAN AND TRUST FOR THE GENERAL MANAGEMENT EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH, DATED JANUARY 24, 2003, AND ALL SUBSEQUENT AMENDMENTS THERETO, BE TERMINATED; AMENDING ARTICLE II THE RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH, ENTITLED "DEFINITIONS"; AMENDING SECTION 3.01 OF THE RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH, ENTITLED "ELIGIBILITY; PARTICIPATION"; AMENDING SECTION 4.01 OF THE RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH, ENTITLED "PARTICIPANT'S CONTRIBUTION ACCOUNT"; CREATING A NEW SECTION 6.15 OF THE RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH, ENTITLED "BENEFITS OF GENERAL MANAGEMENT EMPLOYEES"; 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 AN EFFECTIVE DATE.

(Councilwoman Spiegel arrived at 10:27 p.m.)

The following individuals came before the City Council:

James Linn, Lewis Longman & Walker, P.A., Tallahassee, FL, City's outside counsel

Hupert Rose, 415 NW 192 Street, North Miami Beach, FL

Janice Coakley, 19681 NW 33 Avenue, North Miami Beach, FL

Mary Hilton, 1950 NE 157 Terrace, North Miami Beach, FL

Richard Riess, 23 NW 169 Street, North Miami Beach, FL

Mubarak Kazan, 15564 NE 12 Avenue, North Miami Beach, FL

Charles Loeb, 16800 NE 15 Avenue, #112, North Miami Beach, FL

Lori Helton, 17011 NE 19 Avenue, North Miami Beach, FL

Allison Robie, 2131 NE 179 Street, North Miami Beach, FL

Victor Espinal, 4851 NW 21 Street, Lauderhill, FL

Motion made by Councilman Julien, seconded by Councilwoman Kramer, to adopt Ordinance No. 2010-20 (First Reading, By Title Only).

Motion made by Councilwoman Smith, seconded by Councilwoman Kramer, to table Ordinance No. 2010-20. In a roll call vote, Vice Mayor Derose, Councilwoman Smith, Councilman Julien, Councilwoman Kramer, and Mayor Rosner voted yes; Councilwoman Spiegel and Councilman Pierre voted no. **(Motion carried 5-2)**

16. CITY COUNCIL COMMITTEE REPORTS

VICE MAYOR DEROSE

Vice Mayor Derose expressed his sympathy to Councilwoman Spiegel and her family for the loss of her aunt, and relayed to the City Manager the positive feedback he received from the citizens of Highland Village regarding the renovations to the resource center.

COUNCILWOMAN SPIEGEL – *Left the meeting at 10:49 p.m.*

COUNCILWOMAN SMITH

Councilwoman Smith expressed her sympathy to Councilwoman Spiegel; thanked Margie Love for her Crime Watch; stated that she was also trying to get Crime Watches going in other areas of the City; announced that the Economic Development Committee meeting is tomorrow night at 5:30 p.m. on the 4th floor and urged people to attend; and thanked everyone that came out to speak tonight and told them that she is listening and doing her research.

COUNCILMAN JULIEN

Councilman Julien stated that he did not vote to table the pension ordinances out of intimidation, he further stated that, after last week's emergency pension board meeting, he saw that the officers have questions that need to be answered; stated that he also voted to table the merger ordinance because he had questions on whether or not merging the pension plans would be beneficial; and reminded everyone that school will be opening next month.

COUNCILWOMAN KRAMER

Councilwoman Kramer stated that those who complained about Councilwoman Spiegel coming to the meeting late owe her an apology as she was coming from her aunt's funeral; in response to comments that the Council doesn't care, she stated that she does and that she makes the best decisions she can; and announced that the City will be hosting a free Ethics Training Seminar on July 29th, from 7:00 p.m. to 9:00 p.m. at the McDonald Center and encouraged board members and residents to attend.

COUNCILMAN PIERRE

Councilman Pierre thanked everyone who contacted him regarding the pension issues and stated that he understands the apprehension the employees feel when the rules are changed after all of their commitment to their jobs; stated that we are acting in good faith by tabling it to get more information so that we can make the best decision; and reminded students and parents to have a safe summer and that the library is still open.

MAYOR ROSNER – *Waived report*

At the conclusion of the reports, Councilwoman Smith spoke again to announce that the City will be hosting its annual Health Fair on August 14th at the McDonald Center, and that back-to-school supplies will also be collected at the event for needy children.

- 17. **NEXT REGULAR CITY COUNCIL MEETING** - Mayor Rosner announced that the next regular City Council meeting will be Tuesday, August 17, 2010.

- 18. **ADJOURNMENT** - There being no further business to come before the City Council, the meeting was adjourned at 10:57 p.m. on a motion made by Vice Mayor Derosé and seconded by Councilman Pierre. By consensus, with Councilwoman Spiegel absent, the rest of the Council voted in favor. **(Motion carried 6-0-1)**

ATTEST:

(S E A L)

Susan A. Owens, CMC
City Clerk



City of North Miami Beach
17011 NE 19 Avenue
North Miami Beach, FL 33162
305-947-7581
www.citynmb.com

MEMORANDUM

 Print

TO: Mayor and City Council
FROM: Susan A. Owens, CMC, City Clerk
DATE: Tuesday, August 17, 2010

RE: Motion to Reschedule the September 21, 2010 Regular City Council Meeting for September 28, 2010

BACKGROUND: In order to accommodate the statutory requirements necessary for municipal budget hearings, the City's first budget hearing cannot be held on September 7, 2010 as the County School Board's budget hearing is already scheduled to be held at that time. The City is recommending that the first budget hearing be held on the following Tuesday, September 14, 2010. To further remain in compliance with the City's statutory requirements, the second budget hearing cannot be held on September 21, 2010. The city is planning on holding the second budget hearing on September 28, 2010, and wishes to cancel the September 21, 2010 Regular City Council meeting and to reschedule it to be held directly after the September 28, 2010 budget hearing. The cancellation and rescheduling of this meeting requires an affirmative vote of the City Council.

RECOMMENDATION: Approval

FISCAL IMPACT: None

CONTACT PERSON(S): Susan A. Owens, CMC, City Clerk

ATTACHMENTS:

No Attachments Available



City of North Miami Beach
17011 NE 19 Avenue
North Miami Beach, FL 33162
305-947-7581
www.citynmb.com

MEMORANDUM

 Print

TO: Mayor & City Council
FROM: Darcee S. Siegel, City Attorney
DATE: Tuesday, August 17, 2010

RE: Resolution No. R2010-53

BACKGROUND: The purpose of this resolution is to show the City's support for the passage of Local, State, and Federal legislation targeting the use and possession of illegal guns.

RECOMMENDATION: Approval

FISCAL IMPACT: None

CONTACT PERSON(S): Mayor Myron Rosner

ATTACHMENTS:

 [Resolution No. R2010-53](#)

RESOLUTION NO. R2010-53

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL
OF THE CITY OF NORTH MIAMI BEACH, FLORIDA,
SUPPORTING AND URGING THE PASSAGE OF LOCAL,
STATE AND FEDERAL LEGISLATION TO TARGET THE
USE AND POSSESSION OF ILLEGAL GUNS.**

WHEREAS, Mayors across the United States have formed a coalition called "Mayors Against Illegal Guns" with the goal to inform members and the public about initiatives to target the use and possession of illegal guns; and

WHEREAS, approximately 30,000 Americans across our country are killed every year as a result of gun violence, destroying families and posing threats to many communities; and

WHEREAS, every year, thousands of criminals use guns that have been lost by or stolen from legitimate owners, thereby placing law enforcement at a disadvantage in tracking down those guns and the criminals who use them; and

WHEREAS, studies and statistics have shown that people who carry illegal guns pose a very high risk of recidivism, thereby prompting the passage of gun offender registry throughout the country; and

WHEREAS, while many state and local governments may already have crime gun trace data, ballistics data, and debriefing data that could assist law enforcement efforts, regional data sharing programs would connect data from multiple jurisdictions to reveal patterns that could not be detected from any one set of data; and

RESOLUTION R2010-53

WHEREAS, the Mayor and City Council recognize that in order to target the use and possession of illegal guns, there is a need to work with residents more directly to locate and collect the illegal guns by asking citizens to send the police anonymous tips about illegal guns and offering financial incentives to encourage residents to turn in unwanted guns; and

WHEREAS, the Mayor and City Council of the City of North Miami Beach believe that all elected officials are duty bound to do everything in their power to protect the residents in their community, especially the children, from the threat of the use and possession of illegal guns.

NOW, THEREFORE,

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

Section 1. The foregoing recitals are true and correct.

Section 2. The Mayor and City Council of the City of North Miami Beach, Florida, hereby support and urge the passage of local, state and federal legislation to punish those who use or possess illegal guns, and gun dealers who knowingly sell guns to straw purchasers; allow law enforcement to use, share, and access data through regional data sharing programs; and work to develop and use technology that aids in the detection and tracing of illegal guns.

Section 3. The City Clerk is hereby directed and authorized to send a copy of this resolution to President Barack Obama; the United States House of Representatives; the United States Senate; the Florida House of Representatives; the Florida State Senate; the Honorable Sally A. Heyman, Miami-Dade County Commissioner; the Mayors Against Illegal Guns Coalition; Michael Sittig, Executive Director of the Florida League of Cities; and to Richard Kuper, Esquire, Executive Director of the Miami-Dade County League of Cities.

APPROVED AND ADOPTED by the City of North Miami Beach City Council at the regular meeting assembled this ____ day of August, 2010.

ATTEST:

SUSAN A. OWENS
CITY CLERK

(CITY SEAL)

MYRON ROSNER
MAYOR

APPROVED AS TO FORM:

DARCEE S. SIEGEL
CITY ATTORNEY

SPONSORED BY: Mayor Myron Rosner
City Council

RESOLUTION R2010-53



MEMORANDUM

 Print

TO: Mayor and City Council
FROM: Kelvin L. Baker, City Manager
DATE: Tuesday, August 17, 2010

RE: Resolution No. R2010-54

BACKGROUND: The city has four drop-off centers where residents can drop off their recyclables. The use of drop-off centers is not as convenient as curbside recycling and keeps the City from reaching an optimum level of recycling. If this interlocal agreement is approved, the City will be able to contract with the County to provide curbside recycling services to the residents of the City of North Miami Beach.

RECOMMENDATION: Approval

FISCAL IMPACT: The provision of these services will cost approximately \$210,000.

CONTACT PERSON(S): Shari Kamali, Interim Public Services Director
Esmond K. Scott, Assistant Director Public Services

ATTACHMENTS:

- [Resolution No. R2010-54](#)
- [Memo of Understanding & Interlocal Agreement- Curbside Recycling Program](#)

RESOLUTION NO. R2010-54

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL
OF THE CITY OF NORTH MIAMI BEACH, FLORIDA,
AUTHORIZING THE CITY MANAGER TO ENTER INTO
AN INTER-LOCAL AGREEMENT WITH MIAMI-DADE
COUNTY TO PROVIDE CURBSIDE COLLECTION OF
RECYCLABLE MATERIALS FROM SINGLE-FAMILY
RESIDENCES WITHIN THE CITY.**

WHEREAS, the Mayor and City Council of the City of North Miami Beach unanimously approved Resolution No. 2010-43 authorizing the City Manager to enter into negotiations with Miami-Dade County to provide curbside collection of recyclable materials from single-family residences within the City; and

WHEREAS, by entering into an Inter-local Agreement with Miami-Dade County for curbside recycling, the City will meet its goal of going green and the citizens will realize the cost savings and efficiency, which other local municipalities have experienced; and

WHEREAS, the County has a proven record of providing recycling programs and is best situated to handle this program on behalf of the City of North Miami Beach; and

WHEREAS, the City of North Miami Beach desires to enter into an Inter-local Agreement with Miami-Dade County, whereby all residents of single-family housing within the City of North Miami Beach will be provided with curbside collection service of recyclable materials every other week beginning on October 1, 2010; and

WHEREAS, during the first fiscal year from October 1, 2010 to September 30, 2011, the monthly cost per single family home will be \$2.48; and

WHEREAS, during the second fiscal year from October 1, 2011 to September 30, 2012, the monthly fee paid by the City to the County for the curbside recycling program will be adjusted in an amount not to exceed 3% of the cost from the previous year; and

WHEREAS, the Mayor and City Council of the City of North Miami Beach have determined that entering into an Inter-local Agreement (attached hereto as Exhibit "A") and a Memorandum of Understanding to clarify and/or to amend the terms of the Inter-local Agreement (attached hereto as Exhibit "B") will preserve our environment and community today and for all future generations to come.

NOW, THEREFORE,

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

Section 1. The foregoing recitals are true and correct.

Section 2. The Mayor and Council of the City of North Miami Beach, Florida, approve the Inter-local Agreement between the City of North Miami Beach and Miami-Dade County for the curbside recycling program, and authorize the City Manager to execute the Agreement and Memorandum of Understanding and to exercise the provisions contained therein, copies of which are attached hereto 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 **August, 2010**.

ATTEST:

SUSAN A. OWENS
CITY CLERK

(CITY SEAL)

MYRON ROSNER
MAYOR

APPROVED AS TO FORM:

DARCEE S. SIEGEL
CITY ATTORNEY

Sponsored by: Councilwoman Beth E. Spiegel
Mayor & Council



City Manager's Office

July 30, 2010

Mrs. Kathleen Woods-Richardson
Director, Department of Solid Waste Management
2525 N.W. 62nd Street, 5th Floor
Miami, FL 33147

Via: US Mail, electronic mail

Re: Memorandum of Understanding (MOU) to the Interlocal Agreement between Miami-Dade County (County) and the City of North Miami Beach (City) for inclusion in the Miami-Dade County Curbside Recycling Program.

Dear Mrs. Woods:

This MOU between the City and County is further intended to clarify and/or amend the terms and conditions of the above-referenced Interlocal Agreement. As allowed by section XIII, other recycling options may be negotiated at a cost and scope agreeable to both parties. The relevant terms addressed by this MOU are set forth below as follows:

Section III: Agreement Governs; Entire Agreement

Line 2 – Delete the word “previously”.

Section IV: Recycling Service

This is further clarified to stipulate that the County will share its log of all 3-1-1 calls from the City of North Miami Beach’s residents regarding recycling services provided to them on a weekly, monthly or quarterly basis.

Section V: Authorization/Responsibilities

Paragraph 2 is further clarified and amended to provide the following:

The City shall not be required to comply or be liable for, on the County’s behalf, any non-scope related terms in the Contracts (including, without limitation, insurance, indemnification, and other non-scope related requirements) which are solely the

responsibility of the contracting parties (i.e. the County and/or the Contractor, as the case may be)

Section VI: Payments

Line 2: reference to the “Monthly Fee” shall refer to the monthly fee set forth in paragraph 2 thereof.

Line 7 – Delete the word “consisting”. Replace with “consistent.”

Paragraph 2: The first fiscal year will be October 1, 2010 and September 30, 2011 of this Interlocal Agreement. The monthly fee will be \$2.48 per household per month.

Paragraph 3: The second fiscal year will be October 1, 2011 and September 30, 2012 of this Interlocal Agreement.

Paragraph 4: line 2: delete the word “twenty”. Replace with “thirty”.

Section VII: Containers

Paragraph 1, line 7: the phrase “through the life of any contracts and/or subsequent extensions” is intended to refer to the term of this Interlocal Agreement and any extensions thereof.

Section VII is further clarified and amended to provide the following:

It is agreed that participating residents of the City, at no additional expense to either the resident or the City may request an exchange of a larger (approximately 95 gallons) or smaller (approximately 35 gallons) container from the County.

It is agreed that any recycling containers that are damaged will be repaired or replaced at the discretion of the County, at no expense to participating residents or to the City.

It is agreed that in the event new recycling containers are required, or repaired/replaced containers are necessary, such action shall be completed by the County with fourteen (14) days of notification by the City or the participating resident, whichever notice is earlier.

It is agreed that in the event a participating resident requests an additional recycling container it shall be provided at a flat rate, as established by the County for all Program participants (as set forth annually in the Department’s fee schedule as part of the annual budget). Stolen containers will only be replaced if a City of North Miami Beach Police case number is provided by the resident to the County.

Section VII, Paragraph 4, is clarified to provide that the cost of the recycling containers shall be amortized over a ten (10) year period, commencing upon the effective date of the Agreement:

The City’s portion for payment of the recycling containers is already included in the Monthly Fee (\$.40 of the Fee)

Section X: Program Revisions

Further clarified and amended to provide the following:

It is agreed by the parties that this Section is intended to mean that no changes to the terms of Program service provided to the City shall be made without the prior written approval of the City of the North Miami Beach.

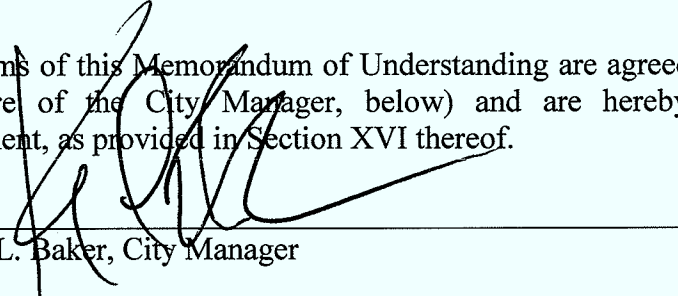
Section XI: Service Initiation Schedule

Delete XI. Replace with XII.

Section XXIII: Time is of Essence

Line 2 – Delete the word “of.” Replace with “to.”

The terms of this Memorandum of Understanding are agreed to by the City (as indicated by the signature of the City Manager, below) and are hereby incorporated into the Interlocal Agreement, as provided in Section XVI thereof.




Kelvin L. Baker, City Manager



Date

The terms of this Memorandum of Understanding are agreed to by Miami-Dade County (as indicated by the signature of the Director of the Department of Solid Waste Management, below) and are hereby incorporated into the Interlocal Agreement, as provided in Section XVI thereof.



County Mayor or Designee

Date 

Cc: Darcee Siegel, City Attorney
Maria Santovenia, Assistant City Attorney
Shari Kamali, Director of Public Services
Esmond K. Scott, Assistant Director of Public Services



Carlos Alvarez, Mayor

Solid Waste Management
Dr. Martin Luther King, Jr. Office Plaza
2525 NW 62nd Street • Suite 5100
Miami, Florida 33147
T 305-514-6666

miamidade.gov

August 6, 2010

Mr. Kelvin L. Baker, City Manager
City of North Miami Beach
17011 NE 19 Avenue
North Miami Beach, Florida 33162

RE: Memorandum of Understanding (MOU) to the Interlocal Agreement between Miami-Dade County (County) and the City of North Miami Beach (City) for inclusion in the Miami-Dade County Curbside Recycling Program.

Dear Mr. Baker:

This letter will further clarify the above stated MOU, specifically Section VI: Payments.

Paragraph 2: The first fiscal year of this Interlocal Agreement will be October 1, 2010 through September 30, 2011. The monthly fee will be the same as all other municipalities participating in the program and will not increase by more than 3 percent in any given year. The monthly fee is expected to be \$2.48 per household per month but is subject to change according to the consumer pricing index in October 2010 as delineated in Section VI of the interlocal agreement.

We are looking forward to your participation in this program. Please feel free to call me or our Recycling Manager, Jeanmarie Massa at 305-514-6631 should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Woods-Richardson". The signature is fluid and cursive.

Kathleen Woods-Richardson
Director

**INTERLOCAL AGREEMENT FOR
INCLUSION IN THE MIAMI-DADE COUNTY
CURBSIDE RECYCLING PROGRAM**

MUNICIPALITY: _____

This Interlocal Agreement ("Agreement") is made and entered into this ____ day of _____, _____, by and between Miami-Dade County ("County") and _____ ("Municipality") in order that the Municipality may be included as a portion of the COUNTY SERVICE AREA to be provided with curbside collection of recyclable materials under the terms and conditions agreed to between the County and any Contractors that the County enters into contracts with for the provision of Recycling Collection Services, Recycling Processing Services, Recycling Container Manufacturing and Delivery Services, or other Recycling Services as necessary.

Section I: Definitions

In all instances, terms used in this Agreement shall have the definitions as contained in any Contracts that the County enters into for the provision of Recycling Collection Services, Recycling Processing Services, Recycling Container Manufacturing and Delivery Services, or other Recycling Services as necessary ("Contracts").

Section II: County Services Area – Municipality's Portion

The Municipality's portion of the entire County Services Area is designated on the attached map (Exhibit "A"), incorporated herein by reference).

Section III: Agreement Governs; Entire Agreement

This Agreement supersedes any previous agreements that the County and the Municipality may have previously had for recycling services.

Section IV: Recycling Service

Residents of single-family housing within the Municipality will be provided with curbside collection service of recyclable materials in the manner provided for in the Contracts. All residents included in the program will be responsible for preparation and placement of materials in the manner specified pursuant to the Contracts. All participating residents of the Municipality will be eligible to call the County's 3-1-1 Answer Center to receive assistance and information regarding recycling services provided to them.

Collection of materials will take place on a schedule consistent with the hours and days provided for the unincorporated area. Days or hours differing from the unincorporated area collection service but coinciding with regular garbage or trash service within the Municipality (e.g., Wednesday and Saturdays) may be provided subject to negotiation and agreement with Contractor and approval by the County.

Section V: Authorization/Responsibilities

The Municipality hereby authorizes the County to act on its behalf in the administration of the contract for this recycling service in the areas of municipal jurisdiction. However, the Municipality will be responsible for monitoring all aspects (collection days, hours, equipment, personnel etc.) of any Contractor's performance within its jurisdiction and reporting any problems or violations to the County in order to initiate corrective action in accord with the Contracts.

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**INTERLOCAL AGREEMENT FOR
INCLUSION IN THE MIAMI-DADE COUNTY
CURBSIDE RECYCLING PROGRAM**

The Municipality agrees to abide by all those terms and conditions that the County agrees to meet as contained in the Contracts except as modified herein.

The Municipality agrees to provide the County with an update of additions and deletions to this list each month in a format to be specified by the County. This update shall be delivered to the County on the first day of the month. Any discrepancies between the Municipality's monthly house count and the Contractor's monthly billing allocated to the Municipality shall be reconciled through a field inspection to be performed by the County within 60 days, with any corrections to be reflected in the subsequent month's billing to the Municipality.

Section VI: Payments

In compensation for provision of this recycling collection service on a regular basis, the Municipality will make monthly payments to the County in an amount equal to the Monthly Fee or such other fee, as negotiated subject to approval by the County and the Municipality, times the average number of Residential Properties serviced during that month within the Municipality's portion of the entire County Service Area. This payment will not be dependent upon the number of households participating in the program, but will be a flat rate for each household. The County will charge the Municipality consisting with the costs to the residents within the unincorporated area of the County.

During the first fiscal year (between October 1, 2008 and September 30, 2009) of this Interlocal Agreement, the monthly fee will be \$2.47 per household per month. This fee is consistent with the cost that residents of the unincorporated area are paying for the same period.

During the second fiscal year (between October 1, 2009 and September 30, 2010) of this Interlocal Agreement and annually thereafter through the final year of Agreement, the monthly fee paid by the Municipality to the County for the services to be provided will be adjusted by the percent change in the Consumer Price Index (CPI), All Urban Consumers, South Urban, All items, annual average during the previous Service Year, not to exceed three percent (3%) based on the change in such Index from October 1 through September 30 of the previous year. The source of the consumer price indices applied in the annual adjustment to the Collection Payment shall be the U. S. Bureau of Labor Statistics. Each adjustment shall be in effect for the following 12-month period. The Amount paid per Household shall be extended to all Households served based on the Household counts provided by the County in accordance with provisions of this Agreement.

The Municipality shall be responsible for delivering payment for recycling collection services to the County within twenty (30) days of the date of an invoice from the County. The County shall be responsible for making the total Monthly Payment for the entire Service Area, including the Municipality's portion, to the Contractor in accord with all the Contracts.

Section VII: Containers

The County shall be responsible for purchase of a sufficient number of containers to provide a container to each Residential Property in the program. All containers delivered within the incorporated area shall be the property of the Miami-Dade County Recycling Program and will be printed with the County's information, not the municipality's. These containers are for the permanent use of the household to which they are delivered for the specific purpose of participation in the curbside recycling program. The containers are intended to remain with each property through the life of any contracts and/or any subsequent extensions. In the event that a unit's residents vacate the property, the containers shall remain at that location for use by

**INTERLOCAL AGREEMENT FOR
INCLUSION IN THE MIAMI-DADE COUNTY
CURBSIDE RECYCLING PROGRAM**

the subsequent residents. The Municipality shall not mark or label the containers in any fashion.

Additional or "new" containers shall be placed at newly constructed and occupied Residential Properties added into the program by the County at no cost to the resident or the Municipality.

Lost or stolen containers will be reported to the County and will be replaced by the County within a timeframe consistent with the timeframes provided to residents of the unincorporated area.

In the event that the Municipality withdraws from this Interlocal Agreement prior to the final debt payment for recycling containers, the Municipality will pay the remaining amortized cost of those containers in the Municipality within one year of withdrawal.

Section VIII: Reporting

The County shall send the Municipality correspondence in a manner and on a schedule mutually agreed upon by the Municipality and the County. The Municipality shall also be sent a copy of any Annual Reports required by the contracts.

Staff of the Municipality will also be notified of all, and may attend any, regular meetings held with the Contractor to review performance.

Section IX: Enforcement

The Municipality agrees to take such steps as may reasonably be necessary to protect the County's ownership of all recyclable materials placed at curbside for collection under the terms of the Contracts, including the preparation and submission of an anti-scavenging ordinance for the Municipality. The staff of the Municipality shall propose anti-scavenging laws as agreed upon between the Municipality and the County.

Unless provided otherwise by County ordinance, the Municipality shall be responsible for enforcement of this recycling program in that portion of the service area within its incorporated limits.

Section X: Program Revisions

Minor program adjustments affecting the entire Service Area may be made from time to time as agreed to by the County and the Contractors. Such minor adjustments could include, but would not be limited to, such items as variations in the required preparation of materials by the resident or hours of collection. In the event that such changes will require notice to the residents, the County and the Contractors shall jointly take full responsibility for providing adequate notice to all of the residents.

Any major program changes having a material impact on the financial relationship among the parties or resulting in substantial variation in the amount and type of Recyclables collected shall be subject to review by the Municipality.

Section XI: Liquidated Damages

In the event that the Contractor fails to perform in accord with the Contract, liquidated damages will be imposed by the County as provided for in the Contracts.

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**INTERLOCAL AGREEMENT FOR
INCLUSION IN THE MIAMI-DADE COUNTY
CURBSIDE RECYCLING PROGRAM**

Section XI: Service Initiation Schedule

Contractor will initiate delivery of containers and pickup of Recyclable Materials to the Municipality within 60 days of execution of this Agreement. Service will commence within two weeks of receipt of each household's receipt of a container.

Section XIII: Other Recycling Program Options

The Municipality and the County may negotiate any other recycling options at a cost and scope agreeable to both parties.

Section XIV: Default/Termination

Failure of the Municipality to make payment to the County in accord with the provisions of Section VI of this Agreement shall constitute default. In the event that such default occurs, the County shall provide written notice to the Municipality concerning the nature of this default. The Municipality shall have thirty (30) days from the date of the notice in which to resolve the default, the County shall have option to terminate this agreement and/or withhold local revenue that the County distributes to the Municipality in an amount sufficient to pay for all recycling services provided to date for which the Municipality has failed to make payment.

Either party may terminate this Agreement without cause by communicating the desire to do so in writing 30 days prior to the termination date.

Section XV: Grant Funds

The Municipality may choose to utilize any grant funding available to pay all or part of the monthly payments due to the County.

Section XVI: Amendment to Agreement

Except as otherwise provided for herein, this Agreement may be modified, altered or amended only by a written amendment duly executed by the parties hereto. Any oral representations or modifications concerning this Agreement shall be of no force or effect.

Section XVII: Headings

Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.

Section XVIII: Approvals

Whenever approval of a Party is required by this Agreement, such approval shall not be unreasonably withheld.

Section XIX: Performance by Parties

Except as otherwise provided in this Agreement, in the event of any dispute arising over the provisions of this Agreement, the parties shall proceed with the timely performance of their obligations during the pendency of any legal or other similar proceedings to resolve such dispute.

Section XX: Rights of Others

Nothing in the Agreement express or implied is intended to confer upon any person other than the parties hereto any rights or remedies under or by reason of this Agreement.

**INTERLOCAL AGREEMENT FOR
INCLUSION IN THE MIAMI-DADE COUNTY
CURBSIDE RECYCLING PROGRAM**

Section XXI: Counterparts

This Agreement may be executed in one or more counterpart(s), each of which shall be deemed an original.

Section XXII: Waiver

There shall be no waiver of any right related to this Agreement unless in writing signed by the party waiving such right. No delay or failure to exercise a right under this Agreement shall impair such right or shall be construed to be a waiver thereof. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time, or of any other right under this Agreement.

Section XXIII: Time is of Essence

It is mutually agreed that time is of the essence in the performance of all terms and conditions to be kept and performed pursuant of this Agreement.

Section XXIV: Representations of the County

The County represents that

- (1) this Agreement has been duly authorized, executed and delivered by the Board of County Commissioners as the governing body of the County, and
- (2) it has the required power and authority to perform this Agreement.

Section XXV: Representations of the Municipality

The Municipality represents that

- (1) this Agreement has been duly authorized, executed and delivered by the Board of Commissioners as the governing body of the Municipality, and
- (2) it has the required power and authority to perform this Agreement.

Section XXVI: Approvals and Notices

Notices and approvals required or contemplated by this Agreement shall be written and personally served or mailed, registered or certified United States mail, with return receipt requested, addressed to the parties as follows:

To the County:

Miami-Dade County Department of Solid Waste Management
2525 NW 62nd Street, Suite 5100
Miami, Florida 33147
Attn: Department Director
305-514-6628

To the Municipality:

_____, Florida _____
Attn.: _____
_____-_____-_____

Section XXVII: Term

The initial term of this Agreement shall begin on the date of execution of this Agreement and end within 30 days of either party requesting termination. Upon any and all renewal(s) of the

**INTERLOCAL AGREEMENT FOR
INCLUSION IN THE MIAMI-DADE COUNTY
CURBSIDE RECYCLING PROGRAM**

Contracts in accordance with Article 1 thereof, this Agreement shall automatically be extended without separate written amendment for the term(s) of any and all such renewal period(s).

IN WITNESS WHEREOF, Miami-Dade County, Florida, has caused this Agreement to be executed in its name by the County Manager or this designee, attested by the Clerk of the Board of County Commissioners and has caused the seal of the Board of County Commissioners to be hereto attached; and the Municipality _____, Florida has caused this Agreement to be executed in its name by the Municipal Mayor or designee, attested by the Clerk of the Municipal Council and has caused the seal of the Council to be hereto attached, all on the day and year first written above.

MIAMI-DADE COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

Attest: Miami-Dade County:

Attest: _____ (municipality)

By: _____
County Clerk

By: _____
Municipal Clerk

By: _____
County Mayor or Designee

By: _____
Municipal Mayor or Designee

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

10



MEMORANDUM

 Print

TO: Mayor and City Council
FROM: Kelvin L. Baker, City Manager
DATE: Tuesday, August 17, 2010

RE: Resolution No. R2010-55

BACKGROUND: The project consists of the installation of a new drainage system with the storm water pumping station and deep injection wells to minimize the flooding problems in NE 170 Street and NE 172 Street between NE 23 Avenue and West Dixie Highway.

RECOMMENDATION: It is the evaluation committee's recommendation that the Bid be awarded to the lowest most responsive responsible bidder, being Southeastern Engineering Contractors, Inc. for the above mentioned project. A Bid Tabulation and an Administrative Review have been attached.

FISCAL IMPACT: Expenditure: \$ 1,394,767 Fund: FY 2010
CDBG Grant: \$ 737,410 FY 2011
FEMA Grant: \$ 500,000
City CIP: \$ 157,357

CONTACT PERSON(S): Hiep B. Huynh, P.E., Project Manager
Brian O'Connor, Chief Procurement Officer

ATTACHMENTS:

- [Bid Tabulation](#)
- [Administrative Review](#)
- [Resolution No. R2010-55](#)
- [Contract](#)

Section 4.0 Bid Page

NE 172 STREET/NE 170 STREET DRAINAGE IMPROVEMENT PROJECT PHASE II

BID No 2010-10

BID TABULATION

VENDOR		SOUTHEASTERN ENGINEERING CONTRACTORS, INC.		JVA ENGINEERING CONTRACTOR, INC.		METRO EXPRESS, INC.		R & G ENGINEERING, INC.		METRO EQUIPMENT SERVICE, INC.		ACOSTA TRACTORS, INC.		HORIZON CONTRACTORS, INC.	
Item No.	Item Description	Unit	Quantity	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount	Unit Price	Total Amount
Schedule A: Common Payment Items															
1	Bonds and Insurance	LS	1	\$14,000.00	\$14,000.00	\$25,000.00	\$25,000.00	\$22,000.00	\$22,000.00	\$70,000.00	\$70,000.00	\$60,000.00	\$60,000.00	\$22,222.23	\$22,222.23
2	Indemnification	LS	1	\$10.00	\$10.00	\$5,000.00	\$5,000.00	\$100.00	\$100.00	\$50.00	\$50.00	\$10.00	\$10.00	\$10.00	\$10.00
Total Schedule A					\$14,010.00		\$30,000.00		\$22,100.00		\$70,050.00		\$60,010.00		\$22,232.23
															\$26,050.00

Schedule B: NE 170th Street, and Partial 1 Pump Station and Forcemain															
3	General Conditions/Contract Administration	LS	1	\$4,500.00	\$4,500.00	\$44,200.00	\$44,200.00	\$12,000.00	\$12,000.00	\$20,000.00	\$20,000.00	\$25,000.00	\$25,000.00	\$1,111.12	\$1,111.12
4	Mobilization	LS	1	\$500.00	\$500.00	\$8,000.00	\$8,000.00	\$6,000.00	\$6,000.00	\$10,000.00	\$10,000.00	\$25,000.00	\$25,000.00	\$3,811.12	\$3,811.12
5	Survey	LS	1	\$4,800.00	\$4,800.00	\$5,000.00	\$5,000.00	\$7,000.00	\$7,000.00	\$4,500.00	\$4,500.00	\$4,000.00	\$4,000.00	\$3,555.56	\$3,555.56
6	Demolition	LS	1	\$1,000.00	\$1,000.00	\$20,000.00	\$20,000.00	\$8,000.00	\$8,000.00	\$13,000.00	\$13,000.00	\$2,500.00	\$2,500.00	\$3,333.34	\$3,333.34
7	Maintenance of Traffic	LS	1	\$8,000.00	\$8,000.00	\$12,000.00	\$12,000.00	\$8,000.00	\$8,000.00	\$5,000.00	\$5,000.00	\$30,000.00	\$30,000.00	\$1,666.67	\$1,666.67
8	Pump Station Wet Well Foundation	LS	1	\$120,600.00	\$120,600.00	\$207,000.00	\$207,000.00	\$12,000.00	\$12,000.00	\$65,000.00	\$65,000.00	\$125,000.00	\$125,000.00	\$156,944.45	\$156,944.45
9	Wet Well and Valve Vault Reinforced Concrete	CY	162	\$340.00	\$55,080.00	\$20.00	\$3,240.00	\$800.00	\$129,600.00	\$950.00	\$153,900.00	\$2,800.00	\$453,600.00	\$1,143.35	\$185,222.70
10	Pump Station Equipment and Appurtenances	LS	1	\$568,000.00	\$568,000.00	\$538,800.00	\$538,800.00	\$610,000.00	\$610,000.00	\$550,000.00	\$550,000.00	\$400,000.00	\$400,000.00	\$634,389.19	\$634,389.19
11	30" DIP Forcemain and Fittings	LF	250	\$321.00	\$80,250.00	\$340.00	\$85,000.00	\$260.00	\$65,000.00	\$150.00	\$37,500.00	\$225.00	\$56,250.00	\$384.83	\$96,207.50
12	Electronic as-built Drawings and GPS Data	LS	1	\$3,300.00	\$3,300.00	\$5,000.00	\$5,000.00	\$22,000.00	\$22,000.00	\$5,000.00	\$5,000.00	\$4,500.00	\$4,500.00	\$3,177.78	\$3,177.78
13	Unidentified Utility Allowance	LS	1	\$ 10,000	\$ 10,000	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
14	Demobilization	LS	1	\$500.00	\$500.00	\$5,000.00	\$5,000.00	\$10,000.00	\$10,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$1,900.00	\$1,900.00
Total Schedule B					\$856,530.00		\$943,240.00		\$899,600.00		\$878,900.00		\$1,140,850.00		\$1,101,319.43
															\$991,860.00

Schedule C: Partial 2 Pump Station and Forcemain															
15	General Conditions/Contract Administration	LS	1	\$4,500.00	\$4,500.00	\$3,000.00	\$3,000.00	\$25,000.00	\$25,000.00	\$10,000.00	\$10,000.00	\$25,000.00	\$25,000.00	\$1,111.12	\$1,111.12
16	Mobilization	LS	1	\$500.00	\$500.00	\$1,000.00	\$1,000.00	\$18,000.00	\$18,000.00	\$10,000.00	\$10,000.00	\$25,000.00	\$25,000.00	\$3,811.12	\$3,811.12
17	Survey	LS	1	\$4,800.00	\$4,800.00	\$5,000.00	\$5,000.00	\$12,000.00	\$12,000.00	\$4,500.00	\$4,500.00	\$3,500.00	\$3,500.00	\$3,088.89	\$3,088.89
18	Demolition	LS	1	\$1,000.00	\$1,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$8,028.89	\$8,028.89
19	Maintenance of Traffic	LS	1	\$8,000.00	\$8,000.00	\$3,000.00	\$3,000.00	\$8,000.00	\$8,000.00	\$5,000.00	\$5,000.00	\$30,000.00	\$30,000.00	\$3,333.34	\$3,333.34
20	12" RCP	LF	20	\$49.00	\$980.00	\$8.00	\$1,600.00	\$50.00	\$1,000.00	\$125.00	\$2,500.00	\$25.00	\$500.00	\$277.64	\$5,552.80
21	15" RCP	LF	20	\$35.50	\$710.00	\$92.00	\$1,840.00	\$50.00	\$1,000.00	\$150.00	\$3,000.00	\$25.00	\$500.00	\$255.37	\$5,107.40
22	18" RCP	LF	20	\$42.60	\$852.00	\$100.00	\$2,000.00	\$60.00	\$1,200.00	\$225.00	\$4,500.00	\$25.00	\$500.00	\$261.19	\$5,223.80
23	18" N-12 HP Pipe	LF	220	\$50.60	\$11,132.00	\$88.00	\$19,360.00	\$70.00	\$15,400.00	\$65.00	\$14,300.00	\$35.00	\$7,700.00	\$57.35	\$12,617.00
24	30" N-12 HP Pipe	LF	140	\$114.00	\$15,960.00	\$122.00	\$17,080.00	\$80.00	\$11,200.00	\$100.00	\$14,000.00	\$90.00	\$12,600.00	\$158.99	\$22,258.60
25	36" N-12 HP Pipe	LF	272	\$117.00	\$31,824.00	\$133.00	\$36,176.00	\$120.00	\$32,640.00	\$150.00	\$40,800.00	\$100.00	\$27,200.00	\$118.27	\$32,169.44
26	48" N-12 HP Pipe	LF	14	\$289.00	\$4,046.00	\$183.00	\$2,562.00	\$200.00	\$2,800.00	\$150.00	\$2,100.00	\$125.00	\$1,750.00	\$225.55	\$3,157.70
27	Type D Catch Basin 4X6	EA	6	\$2,445.00	\$14,670.00	\$5,125.00	\$30,750.00	\$3,500.00	\$21,000.00	\$1,500.00	\$9,000.00	\$2,000.00	\$12,000.00	\$5,206.68	\$31,240.08
28	Type D Catch Basin 4X8	EA	1	\$3,334.00	\$3,334.00	\$9,200.00	\$9,200.00	\$4,000.00	\$4,000.00	\$1,850.00	\$1,850.00	\$3,100.00	\$3,100.00	\$6,789.07	\$6,789.07
29	ø72" Manhole	EA	1	\$3,578.00	\$3,578.00	\$6,300.00	\$6,300.00	\$5,000.00	\$5,000.00	\$4,500.00	\$4,500.00	\$4,000.00	\$4,000.00	\$5,776.02	\$5,776.02
30	ø96" Manhole	EA	1	\$6,700.00	\$6,700.00	\$10,200.00	\$10,200.00	\$12,000.00	\$12,000.00	\$9,000.00	\$9,000.00	\$8,000.00	\$8,000.00	\$11,811.92	\$11,811.92
31	Conflict Manhole	EA	1	\$4,000.00	\$4,000.00	\$7,500.00	\$7,500.00	\$12,000.00	\$12,000.00	\$12,000.00	\$12,000.00	\$4,000.00	\$4,000.00	\$10,516.15	\$10,516.15
32	Asphalt milling and Resurfacing	SY	660	\$7.70	\$5,082.00	\$19.00	\$12,540.00	\$12.00	\$7,920.00	\$19.00	\$12,540.00	\$20.00	\$13,200.00	\$45.27	\$29,718.00
33	20" DI Forcemain and Fittings	LF	100	\$165.00	\$16,500.00	\$478.00	\$47,800.00	\$400.00	\$40,000.00	\$90.00	\$9,000.00	\$150.00	\$15,000.00	\$135.36	\$13,536.00
34	24" DI Forcemain and Fittings	LF	100	\$303.00	\$30,300.00	\$485.00	\$48,500.00	\$400.00	\$40,000.00	\$125.00	\$12,500.00	\$201.00	\$20,100.00	\$254.43	\$25,443.00
35	30" DI Forcemain and Fittings	LF	100	\$321.00	\$32,100.00	\$125.00	\$12,500.00	\$700.00	\$70,000.00	\$200.00	\$20,000.00	\$225.00	\$22,500.00	\$386.24	\$38,624.00
36	Drainage Well	EA	5	\$39,000.00	\$195,000.00	\$30,000.00	\$150,000.00	\$40,000.00	\$200,000.00	\$75,000.00	\$375,000.00	\$20,000.00	\$100,000.00	\$43,328.86	\$216,644.30
37	Water Quality Structure	LS	1	\$68,000.00	\$68,000.00	\$73,500.00	\$73,500.00	\$16,000.00	\$16,000.00	\$25,000.00	\$25,000.00	\$90,000.00	\$90,000.00	\$11,581.12	\$11,581.12
38	24" N-12 HP Pipe	LF	425	\$47.00	\$19,975.00	\$75.00	\$31,875.00	\$60.00	\$25,500.00	\$190.00	\$80,750.00	\$60.00	\$36,000.00	\$75.12	\$31,926.00
39	36" Manhole	EA	1	\$1,784.00	\$1,784.00	\$4,900.00	\$4,900.00	\$7,000.00	\$7,000.00	\$5,000.00	\$5,000.00	\$1,000.00	\$1,000.00	\$2,242.94	\$2,242.94
40	Weir Structure	LS	1	\$9,100.00	\$9,100.00	\$8,800.00	\$8,800.00	\$18,000.00	\$18,000.00	\$18,500.00	\$18,500.00	\$10,000.00	\$10,000.00	\$10,662.69	\$10,662.69
41	Control Structure	LS	1	\$16,000.00	\$16,000.00	\$16,200.00	\$16,200.00	\$25,000.00	\$25,000.00	\$6,500.00	\$6,500.00	\$7,500.00	\$7,500.00	\$16,392.99	\$16,392.99
42	Electronic as-built Drawings and GPS Data	LS	1	\$3,300.00	\$3,300.00	\$2,000.00	\$2,000.00	\$22,000.00	\$22,000.00	\$5,000.00	\$5,000.00	\$3,500.00	\$3,500.00	\$3,222.23	\$3,222.23
43	Unidentified Utility Allowance	LS	1	\$ 10,000	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
44	Demobilization	LS	1	\$500.00	\$500.00	\$1,000.00	\$1,000.00	\$10,000.00	\$10,000.00	\$3,000.00	\$3,000.00	\$5,000.00	\$5,000.00	\$1,900.00	\$1,900.00
Total Schedule C					\$524,227.00		\$75,073.00		\$674,700.00		\$731,570.00		\$493,650.00		\$668,707.71
															\$911,565.00

GRAND TOTAL				\$ 1,394,767.00		\$1,548,313.00		\$1,596,400.00		\$1,680,520.00		\$1,694,510.00		\$1,792,259.37		\$1,929,475.00
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* Item 32 based on Qty 330

** Corrected Total

** \$1,554,583

** \$1,600,360

** \$1,683,790

** \$1,807,198

ADMINISTRATIVE REVIEW

VENDOR	SOUTHEASTERN ENGINEERING CONTRACTORS, INC	JVA ENGINEERING CONTRACTOR, INC	METRO EXPRESS, INC
Sunbiz	Active	Active	Active
Better Business Bureau	✓	✓	✓
Insurance	✓	✓	✓
BusinessTax Receipt	✓	✓	✓
References	✓	✓	✓
5%Bid Bond	✓	✓	✓
General Contractor's License	✓	✓	✓
Addenda	✓	✓	✓
CDBG Requirements	✓	✓	✓
BID AMOUNT	\$1,394,767.00	\$1,548,313.00	\$1,596,400.00

Administrative review of the first three lowest bidders

RESOLUTION NO. R2010-55

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 SOUTHEASTERN ENGINEERING CONTRACTORS, INC. FOR THE INSTALLATION OF A NEW DRAINAGE SYSTEM WITH THE STORMWATER PUMPING STATION AND DEEP INJECTION WELLS FROM N.E. 172ND STREET TO N.E. 170TH STREET BETWEEN N.E. 23RD AVENUE AND WEST DIXIE HIGHWAY IN NORTH MIAMI BEACH, FLORIDA.

WHEREAS, the City of North Miami Beach issued Invitation to Bid No. 2010-10 for the furnishing of all labor, equipment, and materials for the N.E. 172nd Street/N.E. 170th Street Drainage Improvement Project located on N.E. 172nd Street through N.E. 170th Street between N.E. 23rd Avenue and West Dixie Highway in North Miami Beach, Florida ("Project") and

WHEREAS, the Project consists of the installation of a new drainage system with the stormwater pumping station and deep injection wells in the location outlined above; and

WHEREAS, the purpose of the Project is to minimize the flooding problems that exist in the location outlined above; and

WHEREAS, the Project is half funded by a CDBG Grant, a FEMA Grant, and the City's Capital Improvement Project; and

WHEREAS, bid notices were electronically mailed to 2,076 potential local and national vendors, as well as advertised in The Miami Herald, the Daily Business Review, and posted in the lobby of City Hall; and

RESOLUTION R2010-55

WHEREAS, a total of seven companies responded to the City's Invitation to Bid by the published deadline; and

WHEREAS, an Evaluation Committee was convened to rank the responses to Bid No. 2010-10; and

WHEREAS, the Evaluation Committee recommended that Bid No. 2010-10 be awarded to the lowest most responsive responsible bidder, Southeastern Engineering Contractors, Inc.; and

WHEREAS, the City Council of North Miami Beach desires to award Bid No. 2010-10 and authorizes the City Manager to execute an Agreement between the City of North Miami Beach and Southeastern Engineering Contractors, Inc. for the furnishing of all labor, equipment, and materials for Phase II of the N.E. 172nd Street/N.E. 170th Street Drainage Improvement Project located from N.E. 172nd Street to N.E. 170th Street, between N.E. 23rd Avenue and West Dixie Highway in the City of North Miami Beach, Florida.

NOW, THEREFORE,

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

Section 1. The foregoing recitals are true and correct.

Section 2. The Mayor and Council of the City of North Miami Beach hereby award Bid No. 2010-10 to Southeastern Engineering Contractors, Inc. in the amount of \$1,394,767.00 for Phase II of the N.E. 172nd Street/N.E. 170th Street Drainage Improvement Project located from N.E. 172nd Street to N.E. 170th Street between N.E. 23rd Avenue and West Dixie Highway in the City of North Miami Beach.

Section 23 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 an agreement, in a form

RESOLUTION R2010-55

acceptable to the City Attorney, between the City and Southeastern Engineering Contractors, 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 **August, 2010**.

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



**AGREEMENT No 2010-10
BETWEEN THE CITY OF NORTH MIAMI BEACH AND
SOUTHEASTERN ENGINEERING CONTRACTORS, INC**

THIS AGREEMENT is made and entered into as of this ____ day of _____, **2010** by and between **Southeastern Engineering Contractors, Inc.**, a corporation organized and existing under the laws of the **State of Florida**, having its principal office at **12054 NW 98th Street, Hialeah, FL 33018** (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 19th Avenue, North Miami Beach, Florida 33162 (hereinafter referred to as the "City"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide all labor, equipment, and materials for the NE 172 Street / NE 170 Street Drainage Improvement Project that shall conform to the Scope of Services (Appendix A); North Miami Beach's **Invitation to Bid (ITB) No.2010-10**, all associated addenda and attachments, which are incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated **July 15, 2010**, 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 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), **ITB No. 2010-10** 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.

CAO _____
VENDOR _____

- 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 **Southeastern Engineering Contractors, 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" mean 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. 2010-10** and any associated addenda and attachments thereto, 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.

CAO _____
 VENDOR _____



- 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 City 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 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

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.

The Work shall be substantially complete within **90** calendar days for phase II A and **90** calendar days for phase II B from the date of the Notice to Proceed. ("Substantial Completion").

The Work will be complete as follows: The Project shall be complete and ready for Final Payment within **14** calendar days of the date of Substantial Completion.

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The bid will be awarded together for both phases; however the authorization to proceed for phase II B will not be issued until the FEMA Grant is received within **90** calendar days of the date of Substantial Completion ("Completion").

Liquidated Damages: City and Contractor recognize that time is of the essence in 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 the actual loss suffered by the City if 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 **\$1,423.00** for each day that expires after the time specified above for Substantial Completion and **\$500** for each day that expires after the time specified for Completion 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 B Huynh
Phone: 305-948-2925
E-mail: hiep.huynh@citynmb.com
and,

b) to the Contract Manager:

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

(2) To the Contractor

Attention: Eduardo Dominguez
Phone: 305-557-4226
Fax: 305-557-8568
E-mail: ed.sec@comcast.net

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) The hourly rates as set forth in Exhibit B, with a negotiated 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

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the Contractor's exact cost, which costs have been included in Contractor's fee proposal for the 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 the 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 time 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 One million, three hundred ninety-four thousand, seven hundred sixty-seven (\$1,394,767)**. 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 outside of South Florida, the Contractor agrees to adhere to Section 112.061 of the Florida Statutes as it pertains to out-of-pocket expenses including employee lodging, transportation, per diem, and all miscellaneous costs and fees. The City shall not be liable for any such expenses that have not been approved in advance, in writing, by the City.

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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

All invoices should be sent to:
City of North Miami Beach, Finance Department,
17011 NE 19th Avenue, 3rd Floor,
North Miami Beach, Florida 33162.

In accordance with Florida State Statutes, Chapter 218, payment will be made within 45 days after receipt of merchandise and a proper invoice. The City cannot make advance payments, make deposits in advance of receipt of goods, or pay C.O.D. Bidders should state any payment discount in the space provided on the proposal form.

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. General Liability Insurance on a comprehensive basis in an amount not less than \$1,000,000 per person, \$2,000,000 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.**

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The mailing address of the City of North Miami Beach, 17011 NE 19th 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 \$1,000,000 per person and \$2,000,000 per occurrence.
4. Builders Risk Complete Value Form including fire, extended coverage, vandalism, and malicious mischief for the full value of the Contract amount. The Contractor, all subcontractors, and the City are to be named insured, as their interests may appear. This insurance is to be kept in force until the property has received final acceptance by the City. This policy shall include a provision that the premises may be occupied and used by the City. Material and equipment theft is included in this coverage.

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;

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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. 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 and 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 at the behest of the City of any Contractor's personnel performing services hereunder. 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 of its personnel 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 13. 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 14. 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

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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 15. 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, 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 the 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. The parties agree that 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 deemed 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

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provisions of this Article.

ARTICLE 16. MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendices 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 hereof 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 or defense 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 damages, costs and attorney's fees from the Contractor.

ARTICLE 17. 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 18. AUDITS

The City, or its duly authorized representatives or governmental agencies shall have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and those of its subcontractors and suppliers which apply to all matters of the City, until the expiration of three (3) years after the expiration of this Agreement and any extension thereof. Such records shall substantially 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 19. 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 effectuating such substitution.

ARTICLE 20. 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.

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ARTICLE 21. 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 thereby discharged in any manner 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 are 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 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, and 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 22. ASSUMPTIONS, 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, the City shall not be responsible for the accuracy of the assumptions presented, the City shall not be responsible for conclusions to be drawn therefrom, 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.

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ARTICLE 23. 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 24. 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. 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 which have 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.
- 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 which have been specifically developed for the sole purpose of this Agreement but not incorporated in the Services.
- f) All compensation pursuant to this Article is subject to audit.

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ARTICLE 25. 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 any 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; and
 - 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 26. 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

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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 27. 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.
- c) 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 28. 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 a portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation, at the City's option, to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at the Contractor's 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.

CAO _____
VENDOR _____

- 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 29. CONFIDENTIALITY

- a) All Developed Works (defined in Article 31.b below) 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 to which the City holds the proprietary rights, all City employee information, and City financial information constitute Confidential Information. Confidential Information 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. 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 its 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.

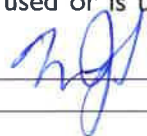
ARTICLE 30. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, the City of North Miami Beach is subject to the provisions 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

CAO _____
VENDOR _____



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 Contractor and its employees, except as authorized by the City and, if the Computer Software has been leased or purchased by the City, all third party license agreements must also be honored by the Contractor's employees with the approval of the lessor or Contractor 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 31. PROPRIETARY RIGHTS

- a) The Contractor hereby acknowledges and agrees that the City retains all rights, title and interest 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 with 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 any source code provided hereunder, to any person or entity outside the City for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for

CAO _____
VENDOR _____

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 licensed 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 32. 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 the 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 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 Ethics 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 33. 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 a 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".

CAO _____
VENDOR _____

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 34. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees not to 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 be 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) ("The Act"). 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 35. 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 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, agent, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligations under this Agreement; provided that the City, in its sole discretion, may consent in writing to such a relationship, and provided the Contractor provides the City 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

CAO _____
VENDOR _____

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 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor, its employees, agents, subcontractors and suppliers, 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) Represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the City, except as may be required by law.

ARTICLE 37. 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 38. 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. Venue shall be in Miami-Dade County.

ARTICLE 39. 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, include, but are 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;

CAO _____
VENDOR _____

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 40. 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 the City, upon the request of the City, for five years after the date of acceptance of the Project by the City, which are 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 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: _____
(Signature)

By: _____
Kelvin L. Baker
Title: City Manager

Name: _____
(Print)

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

CAO
VENDOR _____




MEMORANDUM

 **Print**

TO: Mayor and City Council
FROM: Kelvin L. Baker, City Manager
DATE: Tuesday, August 17, 2010

RE: Resolution No. R2010-56

BACKGROUND: The City received \$ 813,438 from the Federal Stimulus (ARRA) for the construction of NE 19 Avenue Roadway Improvement Project; however the bid received from the lowest responsive contractor Tran Construction Company, Inc. for the original scope of work is \$ 549,029. Instead of returning the surplus balance of \$ 264,409 back to Federal, the Department of Transportation has allowed the City to use up the funding for the additional roadwork consists of milling & resurfacing, stamped concrete crosswalks, irrigation, landscape and pavement markings.

RECOMMENDATION: It is staff's recommendation that the proposed Change Order # 1 with the amount of \$264,409 to Tran Construction Company, Inc. be approved by the City Council, so that the addition work can be constructed and completed prior to the deadline of October 30, 2010

FISCAL IMPACT: None

CONTACT PERSON(S): Brian O'Connor, Chief Procurement Officer
Hiep B. Huynh, P.E., Project Manager

ATTACHMENTS:

- [Change Order Spreadsheet](#)
- [Resolution No. R2010-56](#)

City of North Miami Beach
 NE 19th Avenue Roadway Improvement (ARRA # 426507-1)
 CONTRACTOR: TRAN CONSTRUCTION, INC
 7/12/2010

ORIGINAL BASE BID

ADDITIONAL WORK / CHANGE ORDER

Item #	Description	Quantity	Unit	Unit Price	Total	Description	Quantity	Total
101-1	Mobilization	1	LS	\$ 8,034.00	\$ 8,034.00			
102-1	Maintenance of traffic	1	LS	\$ 16,068.00	\$ 16,068.00		1	\$ 6,000.00
102-4	Dust Control	1	LS	\$ 5,356.00	\$ 5,356.00			
103-1	Cleaning and Grubbing	1	LS	\$ 5,249.00	\$ 5,249.00			
104-1	ASBUILT Plan (per city's requirements)	1	LS	\$ 3,214.00	\$ 3,214.00			
110-3	Remove existing structure	3	EA	\$ 294.58	\$ 883.74			
110-4	Removal of existing pavement	3,027	SY	\$ 2.41	\$ 7,295.68			\$ -
110-4-1	Remove and dispose of existing curb and sod	2,858	LF	\$ 3.00	\$ 8,572.17			
160-4	Type B siltation (12" thick LBR=40)	680	SY	\$ 9.48	\$ 6,446.48		600	\$ 5,688.00
210-1-2	Limerock base (8" thick) Single coarse primed	735	SY	\$ 11.43	\$ 8,400.83		780	\$ 8,915.40
327-70-01	Milling existing asphalt pavement 1" depth	13,340	SY	\$ 1.72	\$ 23,006.59		5,000	\$ 8,600.00
331-2-1	Type SP-12 Asphaltic concrete (1" thick)	790	TN	\$ 95.34	\$ 75,316.07		1,600	\$ 152,544.00
425-1	Type "P" catch basins (including structure, inlet, frame & grate and baffle)	5	EA	\$ 1,726.77	\$ 8,633.87			\$ -
430-15	15" Diameter pipe	37	LF	\$ 11.31	\$ 418.54			\$ -
443-7-24	Exfiltration trench (24" perforated pipe)	100	LF	\$ 127.47	\$ 12,747.28			\$ -
520-1-10	Type "F" curb & gutter (including cost of limerock and drainage flume per FDOT Index (#284)	4,553	LF	\$ 13.82	\$ 62,915.54			\$ -
520-2-1	Type 'A' concrete curb	795	LF	\$ 14.14	\$ 11,241.17			\$ -
520-2-4	Type 'D' concrete curb	1,344	LF	\$ 10.71	\$ 14,396.93			\$ -
520-3	Concrete valley gutter	457	LF	\$ 10.71	\$ 4,895.38			\$ -
522-1	preparation & concrete handicap ramps	611	SY	\$ 24.10	\$ 14,726.32			\$ -
522-2	6" concrete driveways	133	SY	\$ 32.14	\$ 4,274.09			\$ -
522-3	2' concrete extension flume	31	SY	\$ 15.00	\$ 464.90			\$ -
523-1-2	Concrete stamped (crosswalk & traffic circle)	1,458	SY	\$ 25.71	\$ 37,483.43		800	\$ 20,568.00
527	Curb ramp detectable warning surface	460	SF	\$ 17.41	\$ 8,007.22			\$ -
575-2	Sod (St.Augustine) including watering & maintenance	2,037	SY	\$ 2.12	\$ 4,320.43			\$ -
590-32	2" P.V.C. Sch. 40 (irrigation & electrical sleeve)	1,546	LF	\$ 2.41	\$ 3,726.17			\$ -
700-40-1	Roadside sign (Keep Right)	22	AS	\$ 224.95	\$ 4,948.94			\$ -

City of North Miami Beach
 NE 19th Avenue Roadway Improvement (ARRA # 426507-1)
 CONTRACTOR: TRAN CONSTRUCTION, INC
 7/12/2010

ORIGINAL BASE BID

Item #	Description	Quantity	Unit	Unit Price	Total	Description	Quantity	Total
700-42-1	Roadside sign	4	AS	\$ 321.36	\$ 1,285.44			\$ -
700-72	Relocate existing signs	44	EA	\$ 117.83	\$ 5,184.61			\$ -
706-1-12	Reflective pavement & marker (bi-directional Amber/Amber)	455	EA	\$ 4.07	\$ 1,852.10			\$ -
711-11-120	Solid traffic stripe (4" white thermoplastic)	325	LF	\$ 0.43	\$ 139.26		12,000	\$ 5,160.00
711-11-121	Solid traffic stripe (6" yellow thermoplastic)	7,565	LF	\$ 0.48	\$ 3,646.63		10,000	\$ 4,800.00
711-11-125	Solid traffic stripe (24" white thermoplastic)	299	LF	\$ 2.14	\$ 640.58		1,500	\$ 3,210.00
711-11-270	Directional arrow (white thermoplastic)	22	EA	\$ 48.20	\$ 1,060.49			
L.R.	Litter receptacles	30	EA	\$ 1,465.40	\$ 43,962.05			
	TOTAL				\$ 418,813.93			
						Irrigation in circles	LS	\$ 27,228.74
						Landscape in circles	LS	\$ 15,026.00
						Temp 6" Yellow stripping	5,000	\$ 6,668.86
ALTERNATE BID								
520-1-10A	Type F curb & gutter (between all intersections, both sides of the street)	7,680	LF	\$ 12.85	\$ 98,721.79			
520-2-4 A	Type D curb (at the driveways between all intersections)	3,000	LF	\$ 10.50	\$ 31,493.28			
	ALTERNATE BID TOTAL				\$ 130,215.07			
	TOTAL				\$ 549,029.00			\$ 264,409.00

GRAND TOTAL
\$ 813,438.00

RESOLUTION NO. R2010-56

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, TO APPROVE A CHANGE ORDER REQUEST FOR ADDITIONAL WORK BY TRAN CONSTRUCTION, INC. ON N.E. 19TH AVENUE IN NORTH MIAMI BEACH, FLORIDA, UNDER ROADWAY IMPROVEMENT PROJECT BID #2009-17.

WHEREAS, the Mayor and City Council on November 3, 2009 approved Resolution No. R2009-68 authorizing the City Manager to execute an agreement with Tran Construction, Inc. for the N.E. 19th Avenue Roadway Improvement Project; and

WHEREAS, the purpose of the N.E. 19th Avenue Roadway Improvement Project was to eliminate local flooding, reduce the speed of vehicles, reorganize on-street parking, and provide beautification of N.E. 19th Avenue; and

WHEREAS, the City awarded the bid to Tran Construction, Inc. as the lowest responsive, responsible bidder; and

WHEREAS, the City entered into an Agreement with Tran Construction, Inc. for \$549,029.00 to complete the original scope of work; and

WHEREAS, instead of receiving only \$549,029.00, the City received \$813,438.00 in federal stimulus money through the American Recovery and Reinvestment Act ("Stimulus Funds") to complete the work under Bid No. 2009-17; and

WHEREAS, as a result, the City is holding a surplus of \$264,409.00 from the Stimulus

RESOLUTION R2010-56

Funds for the additional work that is being requested and which must be completed by October 30, 2010; and

WHEREAS, instead of returning the surplus amount, the Department of Transportation has allowed the City to use the surplus funding for additional road work on N.E. 19th Avenue, including the milling and resurfacing of the roadway, creating stamped concrete crosswalks and pavement markings and upgrading irrigation and landscaping along N.E. 19th Avenue; and

WHEREAS, the Mayor and City Council desire to approve the change order request under bid #2009-17 for additional work to be completed by Tran Construction, Inc. for the N.E. 19th Avenue Roadway Improvement Project.

NOW, THEREFORE,

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

Section 1. The foregoing recitals are true and correct.

Section 2. The Mayor and Council of the City of North Miami Beach, Florida, hereby approve a change order to Tran Construction, Inc. in the amount of \$264,409.00 for additional work on 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 to execute the change order between the City and Tran Construction, Inc. for additional work to be completed under Bid No. 2009-17 for the N.E. 19th Avenue Roadway Improvement Project.

APPROVED AND ADOPTED by the City of North Miami Beach City Council at the

regular meeting assembled this ____ day of **August, 2010**.

ATTEST:

SUSAN A. OWENS
CITY CLERK

MYRON ROSNER
MAYOR

(CITY SEAL)

APPROVED AS TO FORM:

DARCEE S. SIEGEL
CITY ATTORNEY

Sponsored by: Mayor and Council

RESOLUTION R2010-56



MEMORANDUM

 Print

TO: Mayor and City Council
FROM: Kelvin L. Baker, City Manager
DATE: Tuesday, August 17, 2010

RE: Resolution No. R2010-57

BACKGROUND: The City is selling a vacant surplus parcel of City-owned land at 13900 Biscayne Boulevard, in the B-2, General Business Zoning District. The parcel is triangular in shape, and contains 4,783 square feet (0.11 acre), and measures 33.35 feet on the south and is 439 feet in length. The parcel has no development capacity in and of itself, as the minimum lot size in the B-2 Zoning District on Biscayne Boulevard is three acres. However, adding this parcel to the adjacent property to the south would increase the development potential, and make possible the construction of a proposed three story office building increasing the property taxes paid to the City.

RECOMMENDATION: It is the evaluation committee's recommendation that the Bid be awarded to NK Group, Inc. This is the only vendor that responded to the Solicitation. Copy of proposal and copy of deposit are attached.

FISCAL IMPACT: Revenue: \$ 48,800

CONTACT PERSON(S): Shari Kamali, Interim Director of Public Services
Brian O'Connor, Chief Procurement Officer

ATTACHMENTS:

- [ITB 2010-13 Vendor Bid](#)
- [ITB 2010-13 Supporting Documents](#)
- [Resolution No. R2010-57](#)

SECTION 4.0 BID PROPOSAL FORM

4.1 SALE OF REAL PROPERTY-PARCEL

The undersigned bidder proposes to purchase City-Owned land at 13900 Biscayne Boulevard in the B-2, General Business Zoning District for the following amount of cash:

\$ 48,800.⁰⁰

MINIMUM BID PRICE: \$48,730

No offer will be accepted if it's lower than the minimum price.

NAME OF COMPANY: NK GROUP, INC.

(Name of company submitting bid)

SIGNATURE: _____

[Handwritten Signature]
(Sign in Ink)

Gustavo Bobado

(Print Name)

TITLE: Agent

E-MAIL ADDRESS: construKomuse@hotmail.c

ADDRESS: 1234 Chinaberry Drive, Weston, Florida. 33327

TELEPHONE NO.: 786.260.2825

FAX NO.: 866.610.4414

By signing and submitting this bid proposal, we acknowledge having read and agreeing to all times and conditions of these specifications, including, but not limited to, agreeing to indemnify and hold the City harmless from any and all claims, suits, actions, damages, causes of action, or attorney's fees arising from any personal injury, loss of life, or damage to person or property sustained by reason of or as a result of the products or services supplied, or negligence of contractor supplier, his employees, agents, or assigns.

By signing and submitting this bid proposal, we certify that this company has current insurance coverage specified herein. The insurance policy number(s) and expiration date(s) are provided below, or copies of the insurance certificate(s) are enclosed. If awarded the bid, we will provide the City with proof of the required insurance and include the City as an additional insured on our general liability coverage.

INSURANCE POLICY NO(S): _____

EXPIRATION DATE(S): _____

INSURANCE CERTIFICATE(S) ENCLOSED:

YES

NO

My Home



miamidade.gov

ACTIVE TOOL: SELECT



Show Me:

Property Information

Search By:

Select Item

[Text only](#)

[Property Appraiser Tax Estimator](#)

Summary Details:

Folio No:	07-2221-002-0260
Property:	
Mailing Address:	CITY OF NO MIAMI BEACH 17011 NE 19 AVE NO MIAMI BEACH FL 33162-3111

Property Information:

Primary Zone:	6400 COMMERCIAL, MEDIUM INTENSITY
CLUC:	0040 MUNICIPAL
Beds/Baths:	0/0
Floors:	0
Living Units:	0
Adj Sq Footage:	0
Lot Size:	4.873 SQ FT
Year Built:	0
Legal Description:	ARCH CREEK HIGHLANDS PB 15-3 PORTS OF LOTS 1 & 2 DESC BEG SW COR OF LOT 2 THEN NELY AD 441.33FT S 15 DEG W 439.44FT N 75 DEG W 33.35FT TO POB LOT SIZE 4873 SQ FT

Sale Information:

Sale O/R	
Sale Date:	0/0
Sale Amount:	\$0

Assessment Information:

Year:	2008	2007
Land Value	\$48,730	\$48,730
Building Value:	\$0	\$0
Market Value	\$48,730	\$48,730
Assessed Value:	\$48,730	\$48,730

Taxable Value Information:

Year:	2008	2007
Taxing Authority:	Applied Exemption/ Taxable Value:	Applied Exemption/ Taxable Value:
Regional:	\$48,730/\$0	\$48,730/\$0
County:	\$48,730/\$0	\$48,730/\$0



Digital Orthophotography - 2007

0 131 ft

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If you experience technical difficulties with the Property Information application, or wish to send us your comments, questions or suggestions please email us at [Webmaster](#).

Web Site
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581439 (100/pkg Rev 02)

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK



WACHOVIA

WACHOVIA
CASHLER'S CHECK

HOLD DOCUMENT UP TO THE LIGHT TO VIEW TRUE WATERMARK

64-7002
2611

1602146087

0009071

05/18/2010

Pay To The
Order Of

CITY OF NORTH MIAMI BEACH

\$

4,880.00

*FOUR THOUSAND EIGHT HUNDRED EIGHTY DOLLARS AND 00 CENTS

Wachovia Bank, a division of Wells Fargo Bank, N.A.

NK GROUP INC

Remitter

Dollars

Miley Boggs
Authorized Signature

⑆ 1602146087⑆ ⑆ 26 1 700 25⑆ 50 799000009 16⑆

ITB #2010-13

Advertisement Date: 06/08/10*****Closing Date: 06/21/10

ADMINISTRATIVE REVIEW

SALE OF REAL PROPERTY-PARCEL

NK GROUP INC

VENDOR

REPORTS

SUNBIZ

BBB

Bid > \$48,730

Deposit

✓

✓

\$48,800

\$4,880

RESOLUTION NO. R2010-57

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL
OF THE CITY OF NORTH MIAMI BEACH, FLORIDA,
AUTHORIZING THE SALE OF CITY OWNED VACANT
SURPLUS LAND LOCATED AT 13900 BISCAYNE
BOULEVARD TO NK GROUP, INC., THE HIGHEST
RESPONSIVE, RESPONSIBLE BIDDER.**

WHEREAS, due to eminent domain proceedings by the Florida Department of Transportation in the early 1990's, the City of North Miami Beach was able to acquire surplus land located at 13900 Biscayne Boulevard, in the B-2 General Business Zoning District; and

WHEREAS, the surplus land consists of 4,783 square feet (0.11 acre) and measures 33.35 feet on the south and is 439 feet in length; and

WHEREAS, since the minimum lot size in the B-2 General Business Zoning District on Biscayne Boulevard is three (3) acres, the vacant surplus land has no development capacity; and

WHEREAS, all City departments were contacted and it was determined that the vacant surplus land was not needed for any City department; and

WHEREAS, pursuant to Section 3-3.3 of the City of North Miami Beach Code of Ordinances entitled Sale of Property, Invitation to Bid 2010-13 was issued for the vacant surplus parcel of City owned land at 13900 Biscayne Boulevard; and

WHEREAS, Bid Notices were electronically mailed to 1,568 potential local and national vendors, as well as advertised in the Daily Business Review and posted in the lobby of City Hall; and

WHEREAS, NK Group, Inc., the adjacent property owner to the south of the vacant surplus land was the only one to respond to the City's Invitation to Bid by the published deadline; and

RESOLUTION R2010-57

WHEREAS, by selling the vacant surplus land to NK Group, Inc. the adjacent property owner to the south, would increase taxes received by the City and would allow for the construction of a proposed three story office building; and

WHEREAS, the Mayor and City Council of the City of North Miami Beach desire to authorize the sale of vacant City owned land located at 13900 Biscayne Boulevard to NK Group, Inc.

NOW, THEREFORE,

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

Section 1. The foregoing recitals are true and correct.

Section 2. The Mayor and Council of the City of North Miami Beach, Florida, hereby authorize the sale of vacant City owned surplus land to NK Group, Inc., in accordance with Invitation to Bid 2010-13 in the amount of \$48,800.00.

Section 3. The Mayor and Council of the City of North Miami Beach hereby authorize the City Manager to execute a Quit-Claim Deed for the property located at 13900 Biscayne Boulevard, North Miami Beach to NK Group, Inc.

APPROVED AND ADOPTED by the City of North Miami Beach City Council at the regular meeting assembled this ___ day of August, 2010.

ATTEST:

SUSAN A. OWENS
CITY CLERK

(CITY SEAL)

MYRON ROSNER
MAYOR

APPROVED AS TO FORM:

Sponsored by: Mayor & Council

DARCEE S. SIEGEL
CITY ATTORNEY

RESOLUTION R2010-57



MEMORANDUM

 Print

TO: Mayor and City Council
FROM: Kelvin L. Baker, City Manager
DATE: Tuesday, August 17, 2010

RE: Resolution No. R2010-58

BACKGROUND: In 1996 the City of North Miami Beach entered into a Cell Tower Agreement with Bellsouth Mobility for a land lease behind the Police Department parking garage. The City selected at that time to accept 27 cellular phones with 500 minutes of air time in lieu of an annual payments of \$19,000.00 per year. The City has recently renegotiated with Crown Castle South LLC. who is the management company for New Cingular Wireless PCS LLC, to convert the cell phones and minutes into an annual revenue of \$27,000.00 per year. In return, New Cingular Wireless PCS LLC will get approximately an additional 207 square ft. of space to place a generator for emergency backup power and extend the term of the lease agreement until August 5th, 2051. The City will also receive a \$10,000.00 signing bonus at the onset of the renewal.

RECOMMENDATION: It is the staff's recommendation that the City Manager be authorized to enter into the contract amendment agreement with Crown Castle South LLC., and New Cingular Wireless PCS LLC., for the above mentioned terms.

FISCAL IMPACT: Revenue: \$27,000 per year, w/CPI increase not to exceed 4%.
\$10,000 initial signing bonus

CONTACT PERSON(S): Brian K. O'Connor, Chief Procurement Officer
Rafael P. Hernandez Jr., Chief of Police

ATTACHMENTS:

- [Resolution No. R2010-58](#)
- [Memorandum of First Amendment to Lease Agreement](#)
- [First Amendment to Lease Agreement](#)

RESOLUTION NO. R2010-58

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDED AGREEMENT WITH NEW CINGULAR WIRELESS PSC, LLC TO LEASE CITY-OWNED PROPERTY BEHIND THE POLICE DEPARTMENT PARKING GARAGE TO CONSTRUCT, MAINTAIN AND OPERATE A CELLULAR COMMUNICATIONS FACILITY.

WHEREAS, on August 1, 1996, the City of North Miami Beach ("City"), as Lessor, entered into a Lease Agreement with Bellsouth Mobility, Inc., as Lessee, with an expiration date of August 31, 2021, for the use of approximately 1,375 square feet of City-owned land located behind the City Police Department parking garage ("Agreement"), which allowed for the construction, maintenance and operation of a cellular communications facility; and

WHEREAS, as part of that Agreement, the City was allowed the free use of twenty-seven (27) cellular telephones and five hundred (500) minutes of free air time per month for each cellular phone, for a total of 13,500 minutes of free monthly air time, in lieu of receiving an annual payment of \$19,000.00 per year; and

WHEREAS, with a recent Internal Revenue Service ruling requiring the tracking of personal and business calls, the use of free cellular telephones is no longer economically feasible or advantageous to the City; and

WHEREAS, Crown Castle South LLC, who is the management company for New Cingular Wireless PSC, LLC, ("New Cingular") (formerly Bellsouth Mobility) approached the City to amend the current Agreement by requesting that the City lease an additional 207 square

RESOLUTION R2010-58

feet of City property to New Cingular to place a generator for emergency backup power and to extend the term of the original Agreement until August 31, 2051; and

WHEREAS, in exchange for the above request from Crown Castle South, LLC, the City would be allowed to convert the use of the 27 cellular telephones and free monthly minutes into an annual revenue of \$27,000.00 with an annual consumer price index increase not to exceed 4%, along with a one-time \$10,000.00 signing bonus to be received within sixty (60) days of the full execution of the Amended Agreement; and

WHEREAS, the Mayor and City Council of North Miami Beach desire to amend the Agreement between New Cingular Wireless PSC, LLC and the City of North Miami Beach, 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, Florida.

Section 1. The foregoing recitals are true and correct.

Section 2. The Mayor and Council of the City of North Miami Beach, Florida, hereby authorize the City Manager to execute an amendment to the Agreement between New Cingular Wireless PSC, LLC and the City of North Miami Beach allowing New Cingular to lease an additional 207 square feet of City-owned property and extending the Agreement to August 31, 2051 and, in exchange, the City will receive \$27,000.00 per year with a consumer price index increase not to exceed 4%, along with a one-time \$10,000.00 signing bonus to be received within sixty (60) days of the full execution of the Amended Agreement.

Section 3. The Mayor and Council of the City of North Miami Beach hereby authorize and direct the City Manager to execute the Amended Agreement between the City and New Cingular Wireless PSC, LLC, attached hereto and incorporated herein by reference.

RESOLUTION R2010-58

Section 4. This resolution shall be effective immediately upon adoption.

APPROVED AND ADOPTED by the City of North Miami Beach City Council at the regular meeting assembled this ____ day of August, 2010.

ATTEST:

SUSAN A. OWENS
CITY CLERK

MYRON ROSNER
MAYOR

(CITY SEAL)

APPROVED AS TO FORM:

DARCEE S. SIEGEL
CITY ATTORNEY

SPONSORED BY: Mayor and Council

PREPARED OUT-OF-STATE BY:

Joshua W. Golden
Singleton Cooksey LLP
6363 Woodway, Suite 610
Houston, Texas 77057

**RECORDING REQUESTED BY AND
AFTER RECORDING RETURN TO:**

Tax Parcel #: _____
Cross Reference: Instrument No. 96R354623
Book 17309, Page 2442
Dade County, FL

MEMORANDUM OF FIRST AMENDMENT TO LEASE AGREEMENT

THIS MEMORANDUM OF FIRST AMENDMENT TO LEASE AGREEMENT (this "Memorandum") dated as of the latter of the signature dates below (the "Effective Date") by and between **CITY OF NORTH MIAMI BEACH** ("Lessor"), having a mailing address of 17011 NE 19TH Ave, North Miami Beach, Florida 33162 and **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company (the successor by December 31, 2004 merger with BellSouth Mobility, LLC) ("Tenant"), having a mailing address of 12555 Cingular Way, Suite 1300, Alpharetta, Georgia 30004.

W I T N E S S E T H:

WHEREAS, Lessor and Tenant entered into that certain Agreement Agreement dated August 1, 1996 and recorded August 19, 1996 under Instrument No. 96R354623, Official Records Book 17309, Page 2442 of the Official Records of Miami-Dade County, Florida (the "Agreement"), wherein Tenant leased from Lessor certain real property, containing approximately 1,375 square feet, together with access and utility easement interests related thereto, and located in North Miami Beach, Miami-Dade County, Florida, as more particularly described in the Agreement (the "Property"); and

WHEREAS, the Agreement has an initial term and extended terms that will expire on August 5, 2021 ("Existing Term"), and Lessor and Tenant desire to enter into this Amendment in order to amend the Agreement to provide for, among other things, additional extended terms for a period of thirty (30) years beyond the Existing Term, upon the terms and conditions more fully set forth herein.

NOW THEREFORE, for the mutual covenants and premises herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the undersigned parties, intending to be bound, hereby agreed in the Amendment as follows:

1. **Recitals.** The foregoing recitals are true and correct and are hereby made a part hereof for all purposes.

2. **Initial Term Commencement Date.** The parties ratified and affirmed in the Amendment that the commencement date for the initial term of the Agreement was August 1, 1996.

3. **Capitalized Terms.** Capitalized terms not otherwise defined herein shall have the meaning set forth for such term in the Agreement (as amended).

4. **Additional Property.** Lessor leased to Tenant approximately 207 square feet of real property in addition to the Property (“Additional Property”), as generally described in the crude sketch attached hereto as Exhibit A and made a part hereof for all purposes. Lessor further granted to Tenant the right to survey the Property, Additional Property, and any easement rights related thereto, and such survey shall replace Exhibit A to the Amendment, this Memorandum, and the Agreement for all purposes.

5. **Extension of Terms.** Paragraph 5 of the Agreement was modified in the Amendment to provide for six (6) additional terms of five (5) years each [the final such renewal term, unless terminated sooner, will expire August 5, 2051], upon the terms and conditions set forth in the Agreement (as amended).

6. **Remainder of Agreement Unaffected.** Except as expressly amended or modified by the Amendment, the Agreement remains unchanged and in full force and effect.

7. **Entire Agreement.** This Memorandum summarizes, for purposes of the public record, certain rights granted to Tenant in the Agreement by virtue of the Amendment, and this Memorandum does not and it should not be interpreted to amend, amplify or diminish any of the terms and provisions contained in the Agreement (as amended). The parties agree and intend that the terms and provisions contained in the Agreement (as amended) shall control in the event of any conflict between any sentence contained in this Memorandum and the terms and provisions contained in the Agreement (as amended).

8. **Counterparts.** This Memorandum may be executed in separate and multiple counterparts, each of which shall be deemed an original but all of which taken together shall be deemed to constitute one and the same instrument.

9. **Recordation.** Tenant, at its cost and expense, shall have the right to record this Memorandum in the public records of Miami-Dade County, Florida, upon the terms and conditions set forth in the Amendment.

[EXECUTION SIGNATURES BEGIN ON FOLLOWING PAGE

Signed, sealed and delivered in the presence of:

Print Name: _____

Print Name: _____

TENANT:

NEW CINGULAR WIRELESS PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation,
a Delaware corporation,
its Manager

By: _____

Name: Nellie Jabbari

Title: Area Manager Real Estate Transactions

Date: _____

STATE OF _____ :

: ss

COUNTY OF _____ :

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by Nellie Jabbari, Area Manager Real Estate Transactions, AT&T Mobility Corporation, a Delaware corporation, the Manager of **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company, for and on behalf of said entities and for the consideration, intent and purposes set forth in the foregoing instrument. She is personally known to me or has produced _____ as identification.

Signature of Notary Public

Printed Name of Notary Public:

[Seal]

My Commission Expires:

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO LEASE AGREEMENT (this "Amendment") dated as of the latter of the signature dates below (the "Effective Date") by and between **CITY OF NORTH MIAMI BEACH** ("Lessor"), having a mailing address of 17011 NE 19th Ave, North Miami Beach, Florida 33162 and **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company (the successor by December 31, 2004 merger with BellSouth Mobility, LLC) ("Tenant"), having a mailing address of 12555 Cingular Way, Suite 1300, Alpharetta, Georgia 30004.

WITNESSETH:

WHEREAS, Lessor and Tenant entered into that certain Lease Agreement dated August 1, 1996 and recorded August 19, 1996 under Instrument No. 96R354623, Official Records Book 17309, Page 2442 of the Official Records of Miami-Dade County, Florida (the "Agreement"), wherein Tenant leased from Lessor certain real property, containing approximately 1,375 square feet, together with access and utility easement interests related thereto, and located in North Miami Beach, Miami-Dade County, Florida, as more particularly described in the Agreement (the "Property"); and

WHEREAS, the Agreement has an initial term and extended terms that will expire on August 5, 2021 ("Existing Term"), and Lessor and Tenant desire to enter into this Amendment in order to amend the Agreement to provide for, among other things, additional extended terms for a period of thirty (30) years beyond the Existing Term, upon the terms and conditions more fully set forth herein.

NOW THEREFORE, for the mutual covenants and premises herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the undersigned parties, intending to be bound, hereby agree as follows:

1. **Recitals**. The foregoing recitals are true and correct and are hereby made a part hereof for all purposes.
2. **Initial Term Commencement Date**. The parties hereby ratify and affirm that the commencement date for the initial term of the Agreement was August 1, 1996.
3. **Extension of Terms**. Paragraph 5 of the Agreement is hereby amended by deleting the current text contained therein and substituting in its place the following:

"TENANT shall have the option to extend the term of this Agreement for ten (10) additional and consecutive five (5)-year terms, and such extensions shall automatically occur unless TENANT gives LESSOR written notice of its intention not to extend this Agreement at least six (6) months prior to the end of the current term."

The parties acknowledge that pursuant to this Amendment, the lease term, as amended herein, exceeds the Existing Term by thirty (30) years and, unless terminated sooner, the final extension of the Agreement will expire on July 31, 2051. The parties further agree that the initial term and all renewal terms are hereafter collectively referred to herein and in the Agreement as the "Lease Term".

4. **Paragraph 6 Amendment.** Paragraph 6 of the Agreement is hereby amended by deleting each occurrence of the phrase "fourth (4th) five (5) year extension term" and substituting in lieu thereof the phrase "Lease Term".

5. **Conversion to Cash Rent.** Paragraph 6.a. of the Agreement is hereby deleted in its entirety and is void and of no further force or effect. Furthermore, notwithstanding anything contained in the Agreement to the contrary, on the first (1st) day of the second (2nd) full month following the Effective Date hereof and on the anniversary of that date each year thereafter, Tenant shall pay to Lessor annual rent in the amount of Twenty Seven Thousand and No/100 Dollars (\$27,000.00) ("Rent"), which Rent shall adjust pursuant to the terms of the Agreement, as amended herein.

6. **Annual CPI Rent Escalations.** On August 1, 2011, and on the anniversary of that date each year thereafter (the "Adjustment Date"), the annual rent shall increase based on the Consumer Price Index published by the Bureau of Labor and Statistics of the United States Department of Labor for all Urban Consumers, US City Average, All Items, Not Seasonally Adjusted, Base Period 1982-84=100 ("CPI-U") indicator and shall be determined by dividing the CPI-U indicator, published three (3) months prior to the Adjustment Date, by the CPI-U indicator published one (1) year and three (3) months prior to the Adjustment Date, and multiplying the resultant number by the annual lease rental amount of the most recent rent. In no event shall the increase in rent calculated for any one (1) period exceed four percent (4%) of the most recent rent. In the event of a decrease in the CPI-U indicator, the rent will not decrease but will remain the same as in the previous term. Lessor acknowledges and agrees that the CPI-U escalations described herein shall permanently replace any other rent escalations scheduled to occur under the Agreement on the Adjustment Date or on any date thereafter.

7. **Additional Property.** As part of the consideration to Tenant for entering into this Amendment, Lessor hereby leases to Tenant at no additional cost, certain real property containing approximately 207 square feet in addition to the Property previously leased to Tenant, as generally described in the crude sketch attached hereto as Exhibit A and made a part hereof for all purposes ("Additional Property"). Lessor grants to Tenant the right to survey the Property, including the Additional Property, and any easement rights related thereto, and such survey shall replace Exhibit A to this Amendment and to the Agreement.

5. **Notice Address.** Paragraph 18 of the Agreement is hereby amended by deleting the Tenant notice address contained therein and substituting the following therefor:

TENANT: New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site 812118 – EGOX BRA145
Fixed Asset No.: _____
12555 Cingular Way, Suite 1300
Alpharetta, GA 30004

With a copy to: New Cingular Wireless PCS, LLC
Attn: AT&T Legal Department
Re: Cell Site 812118 – EGOX BRA145
Fixed Asset No.: _____
1025 Lenox Park Blvd., 5th Floor
Atlanta, GA 30319-5309

And a copy to: Crown Castle South LLC
c/o Crown Castle USA Inc.
Attn: Legal Department
Re: Cell Site 812118 – EGOX BRA145
2000 Corporate Drive
Canonsburg, PA 15317

7. **Representations, Warranties and Covenants of Lessor.** Lessor represents, warrants and covenants to Tenant as follows:

- (a) The Property is owned by Lessor free and clear of any mortgage, deed of trust, lien, or right of any individual, entity or governmental authority arising under any option, right of first refusal, lease, license, easement or other instrument, except for the rights of Tenant arising under the Agreement as amended hereby and the rights of utility providers under recorded easements.
- (b) Upon Tenant's request, Lessor agrees to discharge and cause to be released (or, if approved by Tenant, subordinated to Tenant's rights under the Agreement as amended hereby) any mortgage, deed of trust, lien or other encumbrance that may now or hereafter exist against the Property.
- (c) Upon Tenant's request, Lessor agrees to cure any defect in Lessor's title to the Property which in the reasonable opinion of Tenant has or may have an adverse effect on Tenant's use or possession of the Property.
- (d) Lessor agrees to execute such further documents and provide such further assurances as may be reasonably requested by Tenant to effect any release or cure referred to in this paragraph, to evidence the full intention of the parties, and to assure Tenant's use, possession and quiet enjoyment of the Property under the Agreement as amended hereby.

8. **IRS Form W-9.** Lessor agrees to provide Tenant with a completed IRS Form W-9, or its equivalent, upon execution of this Amendment and at such other times as may be reasonably requested by Tenant. In the event Lessor's property on which the Property is located and/or Lessor's interest in the Agreement (as amended) are/is transferred, the succeeding Lessor shall have a duty at the time of such transfer to provide Tenant with a completed IRS Form W-9, or its equivalent, and other related paper work to effect a transfer in rental to the new Lessor. Lessor's failure to provide the IRS Form W-9 within thirty (30) days after Tenant's request shall be considered a default and Tenant may take any reasonable action necessary to comply with IRS regulations including, but not limited to, withholding applicable taxes from rent payments.

9. **One-Time Payment.** As additional consideration to Lessor for entering into this Amendment, Tenant agrees to pay to Lessor a one-time payment in the amount of Ten Thousand and No/100 Dollars (\$10,000.00) (the "Amendment Consideration"), within sixty (60) days of the full execution of this Amendment and a memorandum of lease and/or amendment. Lessor acknowledges that the Payment may be paid by Crown Castle South LLC, a Delaware limited liability company ("Crown") on behalf of Tenant. Lessor agrees to accept the Payment from Crown and Lessor further agrees that the acceptance by Lessor of the Payment shall be a complete accord and satisfaction of this obligation. Upon payment of the Amendment Consideration, Lessor waives and releases Tenant and Crown from any and all claims Lessor may have pursuant to the Agreement (or otherwise) related to or arising out of the Amendment Consideration. The rent and other consideration will continue to be paid by Tenant pursuant to the terms of the Agreement and this Amendment.

10. **Capitalized Terms.** Capitalized terms not otherwise defined herein shall have the meaning set forth for such term in the Agreement.

11. **Construction of Documents.** Each party hereto acknowledges that this Amendment shall not be construed in favor of or against the drafter hereof.

12. **Remainder of Agreement Unaffected.** In all other respects, the remainder of the Agreement shall remain in full force and effect. Any portion of the Agreement that is inconsistent with this Amendment shall be construed to be consistent.

13. **Counterparts.** This Amendment may be executed in separate and multiple counterparts, each of which shall be deemed an original but all of which taken together shall be deemed to constitute one and the same instrument.

14. **Recordation.** Tenant, at its cost and expense, shall have the right to record a memorandum of this Amendment in the public records of Miami-Dade County, Florida, at any time following the execution of this Amendment by all parties hereto. In furtherance of the foregoing, Lessor hereby appoints Tenant as Lessor's attorney-in-fact to execute such a memorandum of this Amendment on Lessor's behalf.

[EXECUTION SIGNATURES BEGIN ON FOLLOWING PAGE]

Signed, sealed and delivered in the presence of:

Print Name: _____

Print Name: _____

TENANT:

NEW CINGULAR WIRELESS PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation,
a Delaware corporation,
its Manager

By: _____

Name: Nellie Jabbari

Title: Area Manager Real Estate Transactions

Date: _____

STATE OF _____ :

: ss

COUNTY OF _____ :

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by Nellie Jabbari, Area Manager Real Estate Transactions, AT&T Mobility Corporation, a Delaware corporation, the Manager of **NEW CINGULAR WIRELESS PCS, LLC**, a Delaware limited liability company, for and on behalf of said entities and for the consideration, intent and purposes set forth in the foregoing instrument. She is personally known to me or has produced _____ as identification.

Signature of Notary Public

Printed Name of Notary Public:

[Seal]

My Commission Expires:



City of North Miami Beach
17011 NE 19 Avenue
North Miami Beach, FL 33162
305-947-7581
www.citynmb.com

MEMORANDUM

 Print

TO: Mayor & City Council
FROM: Kelvin L. Baker, City Manager
DATE: Tuesday, August 17, 2010

RE: Resolution No. R2010-59

BACKGROUND: The department has received this grant for the past 5 years.
RECOMMENDATION: Approval
FISCAL IMPACT: None
CONTACT PERSON(S): Paulette Murphy, Director of Leisure Services

ATTACHMENTS:

- [Resolution No. R2010-59](#)
- [MDC Sports Equipment Agreement](#)

RESOLUTION NO. R2010-59

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL
OF THE CITY OF NORTH MIAMI BEACH, FLORIDA,
RATIFYING THE EXECUTION OF A CONTRACT WITH
MIAMI-DADE COUNTY REGARDING A GRANT IN THE
AMOUNT OF \$11,200.00 FOR THE CITY'S SPORTS
PROGRAMS .**

WHEREAS, the City of North Miami Beach ("City") applied for and received through the Office of Grants Coordination a Miami-Dade County grant in the amount of \$11,200.00 for the City's sports programs for sports equipment and uniforms for the period October 1, 2009 through September 30, 2010; and

WHEREAS, the funding will provide uniforms for youths ages 8 through 18 participating in the City of North Miami Beach's intramural sports, traveling basketball and afterschool programs; and

WHEREAS, the City has been awarded Contract # 10-NMBE-CB by Miami-Dade County, Fiscal Year 2009-2010, in the total amount of \$ 11,200.00 ("the Contract"), a copy of which is attached; and

WHEREAS, the City, through the City Manager as its duly authorized representative, has executed the Contract with Miami-Dade County in connection with the grant; and

WHEREAS, the County requires a resolution from the City ratifying the City's execution of the Contract; and

WHEREAS, the City of North Miami Beach wishes to comply with the County's requirement and ratify the execution of the Contract by the City Manager.

NOW, THEREFORE,

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

RESOLUTION R2010-59

Section 1. The foregoing recitals are true and correct.

Section 2. The Contract which was previously executed by the City Manager is hereby approved.

Section 3. The City ratifies the execution of the Contract by and between the City and the County.

APPROVED AND ADOPTED by the City of North Miami Beach City Council at the regular meeting assembled this ____ **day of August, 2010.**

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

AGREEMENT

This Agreement made and entered into as of this _____ day of _____, 2009, by and between Miami-Dade County, a political subdivision of the State of Florida (hereinafter referred to as "County"), having its principal office at 111 N.W. 1st Street, 19th Floor, Miami, Florida 33128 and City of North Miami Beach a corporation organized and existing under the laws of the State of Florida, having its principal office at 17051 N.E. 19th Avenue, North Miami Beach, Florida 33162 (hereinafter referred to as "Provider"), states conditions and covenants for the rendering of human and social services (hereinafter referred to as "Services") for the County.

WHEREAS, the Home Rule Charter authorizes the County to provide for the uniform health and welfare of the residents throughout the County and further provides that all functions not otherwise specifically assigned to others under the Charter shall be performed under the supervision of the Mayor or the Mayor's designee; and

WHEREAS, the Provider provides or will develop services of value to the County and has demonstrated an ability or desire to provide these services; and

WHEREAS, the County is desirous of assisting the Provider in providing those services and the Provider is desirous of providing such services; and

WHEREAS, the County has appropriated funds for the proposed services;

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

ARTICLE 1. 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 "Agreement" "Contract" or "Contract Documents" shall mean collectively these terms and conditions, the Scope of Services (Attachment A) and the Budget Documents (Attachment B) and all other attachments hereto, as well as all amendments or budget revisions issued hereto.
- b) The words "Contract Manager" shall mean Miami-Dade County's Director of the Office of Grants Coordination ("OGC") or the Director's designee, or the duly authorized representative designated to manage the Contract.
- c) The word "Days" shall mean Calendar Days, unless otherwise specifically noted.
- d) The word "Deliverables" shall mean all documentation and any items of any nature submitted by the Provider to the County's Contract Manager for review and approval pursuant to the terms of this Agreement.

- e) 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 County's Contract 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 sole discretion of the County's Contract Manager.
- f) The words "Effective Term" shall mean the date on which this Agreement is effective, including start date and end date.
- g) The words "Extra Work" or "Change Order" or "Additional Work" shall mean resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Agreement, as directed and/or approved by the County.
- h) "HIPAA" means Health Insurance Portability and Accountability Act of 1996.
- i) The words "Scope of Services" shall mean the document appended hereto as Attachment A, which details the work to be performed by the Provider.
- j) The word "subcontractor" or "subconsultant" shall mean any person, entity, firm or corporation, other than the employees of the Provider, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Provider and whether or not in privity of Agreement with the Provider.
- k) The words "Work", "Services" "Program", or "Project" shall mean all matters and things required to be done by the Provider in accordance with the provisions of this Agreement.
- l) "Service Authorization Agreement" (Attachment K) shall mean the previous Agreement signed by the Provider, which included initial draft Scope(s) of Service and Budget Documents. This Service Authorization Agreement was designed to allow for the continuity of services and for the payment of an advance to the Provider. Any funds that were forwarded under the Service Authorization Agreement shall be accounted for and subtracted from any funds due under this Contract. The terms of this executed Contract shall supersede the terms of the Service Authorization Agreement.

ARTICLE 2. AMOUNT PAYABLE. Subject to available funds, the maximum amount payable for services rendered under this contract shall not exceed:

City of North Miami Beach Sports Program \$11,200

The Provider acknowledges that the above amount reflects the original contract amount and that any funds paid out pursuant to the Service Authorization Agreement previously executed by the Provider shall be subtracted from the amount(s) above.

Both parties agree that should available County funding be reduced, the amount payable under this Contract may be proportionately reduced at the sole discretion and option of the County.

All services undertaken by the Provider before the County's execution of this Contract shall be at the Provider's risk and expense.

It is the responsibility of the Provider to maintain sufficient financial resources to meet the expenses incurred during the period between the provision of services and payment by the County.

ARTICLE 3. SCOPE OF SERVICES

The Provider shall render services in accordance with the Scope of Services incorporated herein and attached hereto as Attachment A.

The Provider shall implement the Scope of Services as described in Attachment A in a manner deemed satisfactory to the County. Any modification or amendment to the Scope of Services shall not be effective until approved by the County and Provider in writing.

ARTICLE 4. BUDGET SUMMARY

The Provider agrees that all expenditures or costs shall be made in accordance with the Budget, which is attached herein and incorporated hereto as Attachment B.

The Provider may shift funds between existing line items: 1) without a budget revision, if the change to the line item does not exceed fifteen percent (15%); or 2) with a budget revision requested by the Provider's President, Vice President, Executive Director, or other designated representative as stated on the Authorized Signature Form attached hereto, and approved by the OGC, if the changes to a line item exceed fifteen percent (15%). A budget revision is also required in order to add new line items. Please note: In no event shall expenditures in any approved budget line item exceed fifteen (15) percent of that line item. The approved Budget Revision shall replace Attachment B in its entirety.

In no event shall the budget include a line item for indirect costs in excess of fifteen percent (15%) of the total budget. If the budget includes a line item for indirect costs of less than fifteen percent (15%) of the total budget, then the Provider must clearly describe the line item in the budget narrative.

The Provider may request a budget revision to amend the budget no more than twice during the term of this Agreement. A request for a budget revision must be submitted to OGC no later than forty-five (45) days prior to the expiration of this Agreement.

ARTICLE 5. EFFECTIVE TERM

Both parties agree that the effective term of this Agreement shall commence on October 1, 2009 and terminate at the close of business on September 30, 2010.

ARTICLE 6. INDEMNIFICATION BY PROVIDER

A. **Government Entity.** Government entity shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County 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 government entity or its employees, agents, servants, partners, principals or subcontractors. Government entity shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Provided, however, this indemnification shall only be to the extent and within the limitations of Section 768.28, Fla. Stat., subject to the provisions of that Statute whereby the government entity shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$100,000, or any claim or judgment or portions thereof, which, when totaled with all other claims or judgment paid by the government entity arising out of the same incident or occurrence, exceed the sum of \$200,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise as a result of the negligence of the government entity.

B. All Other Providers. Provider shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County 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 Provider or its employees, agents, servants, partners principals or subcontractors. Provider shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Provider expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Provider shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

C. Term of Indemnification. The provisions of Article 6 shall survive the expiration or termination of this Contract.

ARTICLE 7. INSURANCE

If the total dollar value of all County contracts with the Provider exceeds \$25,000 then the following insurance coverage is required:

A. Government Entity. If the Provider is the State of Florida or an agency or political subdivision of the State as defined by section 768.28, Florida Statutes, the Provider shall furnish the County, upon request, written verification of liability protection in accordance with section 768.28, Florida Statutes. Nothing herein shall be construed to extend any party's liability beyond that provided in section 768.28, Florida Statutes. The provider shall also furnish the County, upon request, written verification of Workers Compensation protection in accordance with Florida Statutes, Chapter 440.

B. All Other Providers.

1. **Minimum Insurance Requirements: Certificates of Insurance.** The Provider shall submit to Miami-Dade County, c/o Office of Grants Coordination (OGC), 111 N.W. 1st Street, 19th Floor, Miami, Florida 33128-1994, original Certificate(s) of Insurance

indicating that insurance coverage has been obtained which meets the requirements as outlined below:

- A. All insurance certificates must list the COUNTY as "Certificate Holder" in the following manner:

Miami-Dade County
111 N.W. 1st Street, Suite 2340
Miami, Florida 33128

- B. Worker's Compensation Insurance for all employees of the SERVICE PROVIDER as required by Florida Statutes, Chapter 440.
- C. Commercial General Liability Insurance in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- D. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Work provided under this Agreement, in an amount not less than \$300,000* combined single limit per occurrence for bodily injury and property damage.

*NOTE: For SERVICE PROVIDERS supplying vans or mini-buses with seating capacities of fifteen (15) passengers or more, the limit of liability required for Auto Liability is \$500,000.

- E. Professional Liability Insurance in the name of the SERVICE PROVIDER, when applicable, in an amount not less than \$250,000.
- F. 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:
 - 1. 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 COUNTY's Risk Management Division.

OR

- 2. 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 must be a member of the Florida Guaranty Fund.
- G. Certificates will indicate that no modification or change in insurance shall be made without thirty (30) days advance written notice to the Certificate Holder.

- H. Compliance with the foregoing requirements shall not relieve the SERVICE PROVIDER of its liability and obligations under this Section or under any other section of this Agreement.
- I. The COUNTY reserves the right to inspect the SERVICE PROVIDER'S original insurance policies at any time during the term of this Agreement.
- J. Applicability of Article XI of this Agreement affects SERVICE PROVIDERS whose combined total award for all services funded under this Agreement exceed a \$25,000 threshold. In the event that the SERVICE PROVIDER whose original total combined award in less than \$25,000, but receives additional funding during the contract period which makes the total combined award exceed \$25,000, then the requirements in Article XI shall apply.
- K. **Failure to Provide Certificates of Insurance.** 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 effective term of this Agreement. If insurance certificates are scheduled to expire during the effective term, the Provider shall be responsible for submitting new or renewed insurance certificates to the County prior to expiration.

In the event that expired certificates are not replaced with new or renewed certificates which cover the effective term, the County may suspend the Agreement until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this Agreement.

ARTICLE 8. PROOF OF LICENSURE/CERTIFICATION AND BACKGROUND SCREENING

A. **Licensure.** If the Provider is required by the State of Florida or Miami-Dade County to be licensed or certified to provide the services or operate the facilities outlined in the Scope of Services (Attachment A), the Provider shall maintain a copy of all required current licenses or certificates. This documentation should remain on file at the Provider agency and shall be made available to the County for on-site review and audit. Examples of services or operations requiring such licensure or certification include but are not limited to child care, day care, nursing homes, and boarding homes.

If the Provider fails to furnish the County with the licenses or certificates requested under this Section, the County shall not disburse any funds until it is provided with such licenses or certificates. Failure to provide the licenses or certificates within forty-five (45) days of the County's request may result in termination of this Agreement.

B. **Background Screening.** In the event criminal background screening is required by law, the State of Florida and/or the County, only employees and subcontracted personnel with a satisfactory national criminal background check through an appropriate screening agency (i.e., the Florida Department of Juvenile Justice, Florida Department of Law Enforcement or Federal Bureau of Investigation) may work in direct contact with juveniles.

Unless specifically requested by the County in writing, the Provider is not required to submit any background screening information to the County. This documentation should remain on file at the Provider agency and shall be made available to the County for on-site review and audit. When applicable, if the Provider fails to furnish the County with proof of the satisfactory background screening required under this Article, the County shall not disburse any funds until the County is provided with documented proof that the required background screening was initiated.

The County requires that only employees and subcontracted personnel with a satisfactory background check as described in Section 39.001 (2), Florida Statutes and through an appropriate screening agency (i.e., the Florida Department of Juvenile Justice, Florida Department of Law Enforcement, Federal Bureau of Investigation) work with direct contact with juveniles.

Pursuant to Section 985.01 2(a) Florida Statutes, "each contract entered into...for services delivered on an appointment or intermittent basis by a provider that does not have regular custodial responsibility for children... must ensure that the owners, operators, and all personnel who have direct contact with children are of good moral character..." In order to ensure this condition "(b) The Department of Juvenile Justice... shall require employment screening pursuant to chapter 435, using the level 2 standards set forth in that chapter for personnel in programs for children or youths."

Pursuant to the above passages from Florida Statutes, it is required that all provider agency personnel working directly with children must have a completed Level 1 Screening response from the Florida Department of Law Enforcement that indicates that there has been no prior involvement in any of the disallowed conditions, before beginning work with client youths. Level 1 Screenings can be accomplished electronically on line with the Florida Department of Law Enforcement: www.fdle.state.fl.us/CriminalHistory/. In addition, recognizing that Level 2 Screening can take several weeks, Level 2 Screening must be initiated prior to beginning work directly with clients.

Any employee receiving positive response/responses to any of the enumerated charges as defined in Level 1 and Level 2 background checks must immediately cease working with children or youths. All employee personnel files shall reflect the initiation and completion of the required background screening checks.

From the date of execution of this contract, Provider shall furnish the County with proof that background screening Level 1 was completed. If the Provider fails to furnish to the County proof that background screening Level 1 was completed and Level 2 was initiated prior to working directly with client youths, the County shall not disburse any further funds and this Contract may be subject to termination at the sole discretion of the County.

The County requires that only employees and subcontracted employees with a satisfactory background check as described in Section 435.03(3)(a), and through an appropriate screening agency (i.e. Florida Department of Law Enforcement, Federal Bureau of Investigation) work in direct contact with the elderly, disabled and persons with mental illness, in settings such as but not limited to adult day care center, assisted living facilities, home equipment screening nursing homes, home health agencies (facilities for developmentally disabled, and mental health treatment facilities.

Within thirty (30) days of execution of this contract, Provider shall furnish the County with proof that background screening was initiated/completed. If the Provider fails to furnish to the County proof that background screening was initiated within thirty (30) days of execution of this contract, the County shall not disburse any further funds and this Contract may be subject to termination at the sole discretion of the County.

ARTICLE 9. CONFLICT OF INTEREST

A. The Provider agrees to abide by and be governed by Miami-Dade County Ordinance No. 72-82 (Conflict of Interest Ordinance codified at Section 2-11.1 et al. of the Code of Miami-Dade County), as amended, which is incorporated herein by reference as if fully set forth herein, in connection with its contract obligations hereunder.

B. No person under the employ of the COUNTY, who exercises any function or responsibilities in connection with this Agreement, has at the time this Agreement is entered into, or shall have during the term of this Agreement, any personal financial interest, direct or indirect, in this Agreement. 1

C. No person, including but not limited to any officer, board of directors, manager, or supervisor employed by the Provider, who is in the position of authority, and who exercises any function or responsibilities in connection with this Agreement, has at the time this Agreement is entered into, or shall have during the term of this Agreement, received any of the services, or direct or instruct any employee under their supervision to provide such services as described in the Agreement. Notwithstanding the before mentioned provision, any officer, board of directors, manager or supervisor employed by the Provider, who is eligible to receive any of the services described herein may utilize such services if he or she can demonstrate that he or she does not have direct supervisory responsibility over the Provider's employee(s) or service program.

D. In accordance with County Ordinance No. 08-113, and the Code of Miami-Dade County Section 2-8.1.1, collusion in bidding for County contracts is prohibited. Two (2) or more related parties shall be presumed collusive if each submits a bid or proposal for any County purchases of supplies, materials and services (including professional services, other than professional architectural, engineering and other services subject to Sec. 2-10.4 and Sec. 287.055 Florida Statutes), lease, permit, concession or management agreements regardless of the value of the contract being solicited. The Provider is required to submit an affidavit (see Attachment C of this Agreement) regarding their relation to other bidders for similar purchases or services, except those excluded from this provision.

ARTICLE 10. CIVIL RIGHTS

The Provider agrees to abide by Chapter 11A of the Code of Miami-Dade County ("County Code"), as amended, which prohibits discrimination in employment, housing and public accommodations on the basis of race, creed, religion, color, sex, familial status, marital status, sexual orientation, pregnancy, age, ancestry, national origin or handicap; Title VII of the Civil Rights Act of 1968, as amended, which prohibits discrimination in employment and public accommodation; the Age Discrimination Act of 1975, 42 U.S.C. §6101, as amended, which

prohibits discrimination in employment because of age; the Rehabilitation Act of 1973, 29 U.S.C. §794, as amended, which prohibits discrimination on the basis of disability; the Americans with Disabilities Act, 42 U.S.C. §12101 et seq., which prohibits discrimination in employment and public accommodations because of disability; the Federal Transit Act, 49 U.S.C. §1612, as amended; and the Fair Housing Act, 42 U.S.C. §3601 et seq. It is expressly understood that the Provider must submit an affidavit attesting that it is not in violation of the Acts. If the Provider or any owner, subsidiary, or other firm affiliated with or related to the Provider is found by the responsible enforcement agency, the Courts or the County to be in violation of these acts, the County will conduct no further business with the Provider.

Any contract entered into based upon a false affidavit shall be voidable by the County. If the Provider violates any of the Acts during the term of any contract the Provider has with the County, such contract shall be voidable by the County, even if the Provider was not in violation at the time it submitted its affidavit.

The Provider agrees that it is in compliance with the Domestic Violence Leave, codified as § 11A-60 et seq. of the Miami-Dade County Code, which requires an employer, who in the regular course of business has fifty (50) or more employees working in Miami-Dade County for each working day during each of twenty (20) or more calendar work weeks to provide domestic violence leave to its employees.

Failure to comply with this local law may be grounds for voiding or terminating this Agreement or for commencement of debarment proceedings against Provider.

ARTICLE 11. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT:

Any person or entity that performs or assists Miami-Dade County 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, include but are 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 Provider 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 client for review and amendment; and incorporating any amendments requested by the client;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books, and records related to PHI available to Miami-Dade County 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 Provider must give its clients 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.

CB

Provider must post, and distribute upon request to service recipients, a copy of the County's Notice of Privacy Practices.

ARTICLE 12. NOTICE REQUIREMENTS

Notice under this Agreement shall be sufficient if made in writing, delivered personally or sent via U.S. mail, electronic mail, facsimile, or certified mail with return receipt requested and postage prepaid, to the parties at the following addresses (or to such other party and at such other address as a party may specify by notice to others) and as further specified within this Agreement. If notice is sent via electronic mail or facsimile, confirmation of the correspondence being sent will be maintained in the sender's files.

If to the COUNTY:

Miami-Dade County
Office of Grants Coordination
111 N.W. 1st Street, 19nd Floor
Miami, Florida 33128
Attention: Daniel T. Wall, Director
Electronic mail: dtw@miamidade.gov

If to the PROVIDER:

Naomi Legagneur
Recreation Supervisor II
City of North Miami Beach
17051 N.E. 19th Avenue
North Miami Beach, FL 33162
Electronic mail: Naomi.legagneur@citynmb.com

Either party may at any time designate a different address and/or contact person by giving written notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 13. AUTONOMY

Both parties agree that this Agreement recognizes the autonomy of the contracting parties and implies no affiliation between the contracting parties. It is expressly understood and intended that the Provider is only a recipient of funding support and is not an agent or instrumentality of the County. Furthermore, the Provider's agents and employees are not agents or employees of the County.

ARTICLE 14. SURVIVAL

The parties acknowledge that any of the obligations in this agreement, including but not limited to Provider's obligation to indemnify the County, will survive the term, termination, and cancellation hereof. Accordingly, the respective obligations of the Provider under this agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

ARTICLE 15. BREACH OF AGREEMENT: COUNTY REMEDIES

A. **Breach.** A breach by the Provider shall have occurred under this Agreement if: (1) the Provider fails to provide the services outlined in the Scope of Services (Attachment A) within the effective term of this Agreement; (2) the Provider ineffectively or improperly uses the County funds allocated under this Agreement; (3) the Provider does not furnish the Certificates of Insurance required by this Agreement or as determined by the County's Risk Management Division; (4) if applicable, the Provider does not furnish upon request by the County proof of licensure/certification or proof of background screening required by this Agreement; (5) the Provider fails to submit, or submits incorrect or incomplete, proof of expenditures to support disbursement requests or advance funding disbursements or fails to submit or submits incomplete or incorrect detailed reports of expenditures or final expenditure reports; (6) the Provider does not submit or submits incomplete or incorrect required reports; (7) the Provider refuses to allow the County access to records or refuses to allow the County to monitor, evaluate and review the Provider's program; (8) the Provider discriminates under any of the laws outlined in Article 10 of this Agreement; (9) the Provider, attempts to meet its obligations under this Agreement through fraud, misrepresentation, or material misstatement; (10) the Provider fails to correct deficiencies found during a monitoring, evaluation, or review within the specified time as described and defined in a Corrective Action Plan (CAP); (11) the Provider fails to issue prompt payments to small business subcontractors or follow dispute resolution procedures regarding a disputed payment; (12) the Provider fails to submit the Certificate of Corporate Status, Board of Directors requirement, or proof of tax status; and (13) the Provider fails to fulfill in a timely and proper manner any and all of its obligations, covenants, agreements, and stipulations in this Agreement.; (14) the Provider fails to meet any of the terms and conditions of the Miami-Dade County Affidavits (Attachment D) or the State Affidavit (Attachment E); or (15) the Provider fails to fulfill in a timely and proper manner any and all of its obligations, covenants, agreements and stipulations in this Contract. Waiver of breach of any provisions of this Contract shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

B. **County Remedies.** If the Provider breaches this Agreement, the County may pursue any or all of the following remedies:

1. The County may terminate this Agreement by giving written notice to the Provider of such termination and specifying the effective date thereof. In the event of termination, the County may: (a) request the return of all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, reports prepared and secured by the Provider with County funds under this Agreement (b) seek reimbursement of County funds allocated to the Provider under this Agreement; (c) terminate or cancel any other contracts entered into between the County and the Provider. The Provider shall be responsible for all direct and indirect costs associated with such termination, including attorney's fees;

2. The County may suspend payment in whole or in part under this Agreement by providing written notice to the Provider of such suspension and specifying the effective date thereof, at least five (5) days before the effective date of suspension. If payments are suspended, the County shall specify in writing the actions that must be taken by the Provider as condition precedent to resumption of payments and shall specify a reasonable date for compliance. The County may also suspend any payments in whole or in part under any other contracts entered into between the County and the Provider. The Provider shall be responsible for all direct and indirect costs associated with such suspension, including attorney's fees;

3. The County may seek enforcement of this Agreement including but not

limited to filing an action in a court of appropriate jurisdiction. The Provider shall be responsible for all direct and indirect costs associated with such enforcement, including attorney's fees;

4. The County may debar the Provider from future County contracting;

5. If, for any reason, the Provider should attempt to meet its obligations under this Agreement through fraud, misrepresentation or material misstatement, the County shall, whenever practicable terminate this Agreement by giving written notice to the provider of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. The County may terminate or cancel any other contracts which such individual or entity has with the County. Such individual or entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees. Any individual or entity who attempts to meet its contractual obligations with the County through fraud, misrepresentation, or material misstatement may be debarred from county contracting for up to five (5) years;

6. Any other remedy available at law or equity.

C. **Authorization to Terminate Agreement.** The Mayor or the Mayor's designee is authorized to terminate this Agreement on behalf of the County.

D. Failures or waivers to insist on strict performance of any covenant, condition, or provision of this Contract by the County shall not be deemed a waiver of any rights or remedies, nor shall it relieve the Provider from performing any subsequent obligations strictly in accordance with the term of this Contract. No waiver shall be effective unless in writing and signed by the parties. Such waiver shall be limited to provisions of this Contract specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

E. **Damages Sustained.** Notwithstanding the above, the Provider shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Agreement, and the County may withhold any payments to the Provider until such time as the exact amount of damages due the County is determined. The County may also pursue any remedies available at law or equity to compensate for any damages sustained by the breach. The Provider shall be responsible for all direct and indirect costs associated with such action, including attorney's fees.

ARTICLE 16. TERMINATION BY EITHER PARTY

Both parties agree that this Agreement may be terminated by either party hereto by written notice to the other party of such intent to terminate at least thirty (30) days prior to the effective date of such termination. The Mayor or the Mayor's designee is authorized to terminate this Agreement on the behalf of the County.

ARTICLE 17. PAYMENT PROCEDURES

The County agrees to pay the Provider for services rendered under this Agreement based on the payment schedule, the line item budget, or both, which are incorporated herein and attached hereto as Attachment B. Payment shall be made in accordance with procedures outlined below and if applicable, the Sherman S. Winn Prompt Payment Ordinance (Ordinance 94-40).

A. **Reimbursement and Advances.** The parties agree that this is a cost-basis Agreement and that the Provider shall be paid through reimbursement payment based on the budget approved under this Contract (See Attachment B) and when complete and proper documentation of service delivery and incurred expenses are provided to the County. Upon proper and complete execution of the Service Authorization Agreement or this Contract (to include proof of insurance), whichever comes first, the County will provide the Provider with twenty-five percent (25%) of the Contract amount. An advance of more than twenty-five percent (25%) may be paid to the Provider if approved in writing by the Mayor or the Mayor's designee.

The Provider's request for advance payment must be submitted in writing and must specify the reasons and justifications for such advance payment. It need not be accompanied by a detailed expenditure report. The County shall have the sole discretion in choosing whether or not to provide any advance payments and is not obligated to do so under any circumstances.

B. **Monies Owed to the County.** The County reserves the right, in its sole discretion, to reduce payments to the Provider in order to recapture any monies owed to the County. In accordance with County Administrative Order No. 3-29, the Provider that is in arrears to the County is prohibited from obtaining new County contracts or extensions of contracts until such time as the arrearage has been paid in full or the County has agreed in writing to an approved payment plan.

C. **No Payment of Subcontractors.** In no event shall County funds be advanced or paid by the County directly to any subcontractor hereunder. Payment to approved subcontractors shall be made by Provider following requirements and limitations as detailed in Article 21 of this Agreement.

D. **Requests for Payment.** The County agrees to pay all budgeted costs incurred by the Provider that are allowable under the County guidelines. In order to receive payment for allowable costs, the Provider shall submit a Monthly Summary of Expenditures Report and a Monthly Performance Report on forms provided by the OGC. The OGC must receive the Monthly Summary of Expenditures Report and the Monthly Performance Report no later than the 21st day of the month following the month in which services were provided. The Monthly Summary of Expenditures Report shall reflect the expenses incurred by the Provider for the month services were rendered and documented in the Monthly Performance Report. Upon submission of satisfactory required monthly reports, the OGC shall make payment.

The County will not approve payments for in-kind or volunteer services provided by the Provider on behalf of the project. The OGC shall accept originals of invoices, receipts and other evidence of indebtedness as proof of expenditures. When original documents cannot be produced, the Provider must adequately justify their absence in writing and furnish copies as proof of the expenditures.

E. **Processing the Request for Payment.** After the OGC reviews and approves the payment request, the OGC will submit a check request to the County's Finance Department. The County's Finance Department will issue and mail the check directly to the Provider at the address listed on page one (1) of this Agreement, unless otherwise directed by the Provider in writing. The parties agree that the processing of a payment request from date of submission shall take a minimum of forty-five (45) days from receipt, if support documentation/invoices are properly documented. It is the responsibility of the Provider to maintain sufficient financial

resources to meet the expenses incurred during the period between the provision of services and payment by the County.

Failure to submit monthly reimbursement requests with supporting documentation in a manner deemed correct and acceptable by the County, by the 21st day of each month following the month in which the service was delivered, shall be considered a breach of this Agreement and may result in termination of this Agreement.

F. **Final Request for Payment.** A final request for payment from the Provider will be accepted by the OGC up to thirty (30) days after the expiration of this Agreement. If the Provider fails to comply, all rights to payment shall be forfeited. The request for the final payment may include accruals of the personnel costs listed in Attachment B, which the Provider is obligated to pay after the close of the period for services provided within the term of the Agreement.

G. **Closeout Reporting Process/Recapture of Funds.** Upon the expiration of this Contract, the Provider shall submit Closeout Report documents to the OGC no more than thirty (30) days after the expiration of this Contract. These documents shall include a cumulative year-end summary of Provider's program performance, the Year-End Closeout Report and the Property Inventory Report. If after receipt of these documents, the OGC determines that the Provider has been paid funds not in accordance with the Contract, and to which it is not entitled, the Provider shall return such funds to the County or submit appropriate documentation. The County shall have the sole discretion in determining whether the Provider is entitled to such funds and the County's decision on this matter shall be binding. Additionally, any unexpended or unallocated funds shall be recaptured by the County.

ARTICLE 18. PROHIBITED USE OF FUNDS

A. **Adverse Actions or Proceeding.** The Provider shall not utilize County funds to retain legal counsel for any action or proceeding against the County or any of its agents, instrumentalities, employees, or officials. The Provider shall not utilize County funds to provide legal representation, advice, or counsel to any client in any action or proceeding against the County or any of its agents, instrumentalities, employees, or officials.

B. **Religious Purposes.** County funds shall not be used for religious purposes.

C. **Commingling Funds.** The Provider shall not commingle funds provided under this Agreement with funds received from any other funding sources. The Provider shall establish a separate account exclusively for receipt of the funds received pursuant to this Agreement.

ARTICLE 19. REQUIRED DOCUMENTS, RECORDS, REPORTS, AUDITS, MONITORING AND REVIEW

A. **Certificate of Corporate Status.** The Provider must submit to the OGC, within thirty (30) days from the date of execution of this Agreement, a certificate of corporate status in the name of the Provider, which certifies the following: that the Provider is organized under the laws of the State of Florida; that all fees and penalties have been paid; that the Providers most recent annual report has been filed; that its status is active; and that the Provider has not filed Articles of Dissolution.

B. Board of Director Requirements. The Provider shall insure that the Provider's Board of Directors is apprised of the programmatic, fiscal, and administrative obligations under this agreement funded through County Funds by passage of a formal resolution authorizing execution of this Agreement with the County. A current list of the Provider's Board of Directors and officers must be included with the submission. Said resolution shall at a minimum list the name(s) of the Board's President, Vice President and any other persons authorized to execute this Agreement on behalf of the Provider, and reference the service categories and dollar amounts in the award, as may be amended. A copy of this corporate resolution must be submitted to the County prior to contract execution.

C. Proof of Tax Status. The Provider is required to submit to the County the following documentation: (a) The I.R.S. tax exempt status determination letter; (b) the most recent I.R.S. form 990; (c) the annual submission of I.R.S. form 990 within (6) months after the Provider's fiscal year end; (d) IRS form 941 - Quarterly Federal Tax Return Reports within thirty-five (35) days after the quarter ends and if the form 941 reflects a tax liability, proof of payment must be submitted within forty-five (45) days after the quarter ends.

D. Business Application. The Provider shall be a registered vendor with the County's Department of Procurement Management, for the duration of this Agreement. It is the responsibility of the Provider 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.

E. Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County 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 Miami-Dade County or any person or agency acting for Miami-Dade County 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) 579-9093.

F. Accounting Records. The Provider shall keep accounting records which conform to generally accepted accounting principles. All such records will be retained by the Provider for not less than three (3) years beyond the term of this Agreement, and shall be made available for review upon request from County authorized personnel.

G. Financial Audit. If the Provider has or is required to have an annual certified public accountant's opinion and related financial statements, the Provider agrees to provide these documents to the OGC no later than one hundred eighty (180) days following the end of the Provider's fiscal year, for each year during which this Agreement remains in force or until all funds received pursuant to this Agreement have been so audited, whichever is later.

H. Access to Records: Audit. The County reserves the right to require the Provider to submit to an audit by an auditor of the County's choosing or approval. The Provider shall provide access to all of its records which relate to this Agreement at its place of business

during regular business hours. The Provider agrees to provide such assistance as may be necessary to facilitate their review or audit by the County to insure compliance with applicable accounting and financial standards.

I. **Quarterly Reviews of Expenditures and Records.** The County Commission Auditor may perform quarterly reviews of Provider expenditures and records. Subsequent payments to the provider shall be subject to a satisfactory review of Provider records and expenditures by the County Commission Auditor, including but not limited to, review of supporting documentation for expenditures and the existence of sufficient documentation to support eligible expenditures. The Provider agrees to reimburse the County for ineligible expenditures as determined by the County Commission Auditor.

J. **Quality Assurance / Recordkeeping.** The Provider shall maintain, and shall require that the Provider's subcontractors and suppliers maintain, complete and accurate program and fiscal records to substantiate compliance with the requirements set forth in the Attachment A, Scope of Services, of this Agreement. The Provider 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 five (5) years from the expiration date of this Agreement. †

The Provider agrees to participate in evaluation studies, quality management activities, Corrective Action Plan activities, and analyses carried out by or on behalf of the County to evaluate the effectiveness of client service(s) or the appropriateness and quality of care/service delivery. Accordingly, the Provider shall permit authorized staff involved in such efforts the right of access to the Provider's premises and records

K. **Confidentiality Requirements.** To establish and implement policies and procedures that ensures compliance with the following security standards and any and all applicable State and Federal statutes and regulations for the protection of confidential client records and electronic exchange of confidential information. The policies and procedures must ensure that:

- (1) There is a controlled and secure area for storing and maintaining active confidential information and files, including but not limited to medical records;
- (2) Confidential records are not removed from the Provider's premises, unless otherwise authorized by law or upon written consent from the County;
- (3) Access to confidential information is restricted to authorized personnel of the Provider, the County, the United States Department of Health and Human Services, the United States Comptroller General, and/or the United States Office of the Inspector General;
- (4) Records are not left unattended in areas accessible to unauthorized individuals;
- (5) Access to electronic data is controlled;

- (6) Written authorization, signed by the client, is obtained for release of copies of client records and/or information. Original documents must remain on file at the originating provider site;
- (7) An orientation is provided to new staff persons, employees, and volunteers. All employees and volunteers must sign a confidentiality pledge, acknowledging their awareness and understanding of confidentiality laws, regulations, and policies;
- (8) Procedures are developed and implemented that address client chart and medical record identification, filing methods, storage, retrieval, organization and maintenance, access and security, confidentiality, retention, release of information, copying, and faxing.

L. **Progress Reports.** The Provider shall furnish the OGC with monthly progress/performance reports in accordance with the activities and goals detailed in Attachment F of this Agreement. The reports shall explain the Provider's progress for the month. The data should be quantified when appropriate. The final progress report shall be due no later than thirty (30) days after the expiration or termination of this Agreement.

M. **Monitoring: Management Evaluation and Performance Review.** This section shall pertain only to Providers whose funding allocation under this Agreement is \$10,000 or more or whose funding allocation becomes \$10,000 or more during the term of this Agreement.

The Provider agrees to permit County authorized personnel to monitor, review and evaluate the program/work which is the subject of this Agreement. The OGC shall monitor both fiscal and programmatic compliance with all the terms and conditions of the Agreement. The Provider shall permit the OGC to conduct site visits, client assessment surveys, and other techniques deemed reasonably necessary to fulfill the monitoring function. A report of the OGC's findings will be delivered to the Provider and the Provider will rectify all deficiencies cited within the period of time specified in the report. If such deficiencies are not corrected within the specified time, the County may suspend payments or terminate this Agreement. The OGC may conduct one or more formal management evaluation and performance reviews of the Provider. Continuation of this Agreement or future funding is dependent upon satisfactory evaluation conclusions by the County.

N. **Client Records.** The Provider shall maintain a separate individual client chart for each client/family served, where appropriate. This client chart shall include all pertinent information regarding case activity. At a minimum, the client chart shall contain referral and intake information, treatment plans, and case notes documenting the dates services were provided and the type of service provided. These client charts shall be subject to the audit and inspection requirements under Article 19, Sections F, G, and H of this Agreement.

O. **Disaster Plan/Continuity of Operations Plan (COOP).** The Provider shall develop and maintain an Agency Disaster Plan/COOP. At a minimum, the Plan will describe how the Provider establishes and maintains an effective response to emergencies and disasters, and must comply with any Emergency Management related Florida Statutes applicable to the Provider. The Disaster Plan/COOP must be submitted to the OGC no later than April 1st of the contract term and is also subject to review and approval of the County in its sole discretion. The Provider will review the Plan annually, revise it as needed, and maintain a

written copy on file at the Provider's site.

ARTICLE 20. Office of Miami-Dade County Inspector General and the Commission Auditor

The Provider understands that it may be subject to an audit, random or otherwise, by the Office of Miami-Dade County Inspector General or an Independent Private Sector Inspector General retained by the Office of the Inspector General, or the County Commission Auditor.

Independent Private Sector Inspector General Reviews. The attention of the Provider is hereby directed to the requirements of Miami-Dade County Code Section 2-1076; in that the Office of the Miami-Dade County Inspector General (IG) shall have the authority and power to review past, present and proposed County programs, accounts, records, contracts and transactions. The IG shall have the power to subpoena witnesses, administer oaths and require the production of records. Upon ten (10) days written notice to the Provider from IG, the Provider shall make all requested records and documents available to the IG for inspection and copying.

The IG shall have the power to report and/or recommend to the Board of County Commissioners whether a particular project, program, contract or transaction is or was necessary and, if deemed necessary, whether the method used for implementing the project or program is or was efficient both financially and operationally. Monitoring of an existing project or program may include reporting whether the project is on time, within budget and in conformity with plans, specifications, and applicable law. The IG shall have the power to analyze the need for, and reasonableness of, proposed change orders.

The IG may, on a random basis, perform audits on all County contracts throughout the duration of said contract (hereinafter "random audits"). This random audit is separate and distinct from any other audit by the County. To pay for the functions of the Office of the Inspector General, any and all payments to be made to the Provider under this contract will be assessed one quarter (1/4) of one percent of the total amount of the payment, to be deducted from each progress payment as the same becomes due unless this Contract is federally or state funded where federal or state law or regulations preclude such a charge. The Provider shall in stating its agreed prices be mindful of this assessment, which will not be separately identified, calculated or adjusted in the proposed budget form.

The IG shall have the power to retain and coordinate the services of an independent private sector inspector general (IPSIG) who may be engaged to perform said random audits, as well as audit, investigate, monitor, oversee, inspect, and review the operations, activities and performance and procurement process including, but not limited to, project design, establishment of bid specifications, bid submittals, activities of the contractor, its officers, agents and employees, lobbyists, County staff and elected officials in order to ensure compliance with contract specifications and detect corruption and fraud.

ARTICLE 21. SUBCONTRACTORS and ASSIGNMENTS

A. **Subcontracts.** The parties agree that no assignment or subcontract will be made or let in connection with this Agreement without the prior written approval of the OGC in its sole discretion, which shall not be unreasonably withheld, and that all subcontractors or assignees shall be governed by all of the terms and conditions of this Agreement.

- 1) If the Provider will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Agreement will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Provider; and the Provider 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 Provider. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Provider.
- 2) The Provider, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to perform, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Provider not to award any subcontract to a person, firm, or corporation disapproved by the County in its sole discretion.
- 3) Before entering into any subcontract hereunder, the Provider 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 Agreement.
- 4) In order to qualify as a Subcontractor satisfactory to the County in its sole discretion, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County 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 County in its sole discretion that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- 5) The County shall have the right to withdraw its consent to a subcontract if it appears to the County 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 County's and County's proprietary and confidential information. Provider shall furnish to the County copies of all subcontracts between Provider and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County 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 County to any subcontractor hereunder as more fully described herein.

B. If this Agreement involves the expenditure of \$100,000 or more by the County and the Provider intends to use subcontractors to provide the services listed in the Scope of Service (Attachment A) or suppliers to supply the materials, the Provider shall provide the names of the subcontractors and suppliers on the form attached as Attachment I. Provider agrees that it will not change or substitute subcontractors or suppliers from those listed in Attachment I without prior written approval of the County.

C. **Prompt Payments to Subcontractors.** The Provider shall issue prompt payments to subcontractors that are small businesses (annual gross sales of \$750,000 or less with its principal place of business in Miami-Dade County) and shall have a dispute resolution procedure in place to address disputed payments. Pursuant to the County's Sherman S. Winn Prompt Payment Ordinance (Ordinance 94-40), Section 2-8.1.4 of the Code of Miami-Dade County, Administrative Order No. 3-19, and the Florida Prompt Payment Act, payments must be made within thirty (30) days of receipt of a proper invoice. Failure to issue prompt payments to small business subcontractors or adhere to dispute resolution procedures may be grounds for suspension or termination of this Agreement or debarment.

ARTICLE 22. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

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

- a) Miami-Dade County Florida, Department of Business Development Participation Provisions, as applicable to this Agreement.
- b) Miami-Dade County Code, Chapter 11A, Article 3. All Providers and subcontractors performing work in connection with this Agreement shall provide equal opportunity for employment and services without regard to race, creed, religion, color, sex, familial status, marital status, sexual orientation, pregnancy, age, ancestry, national origin or handicap. 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 Provider agrees to post in a conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Equal Opportunity Board or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- c) "Conflicts of Interest" Section 2-11 of the Code of Miami-Dade County, and Ordinance 01-199.
- d) Miami-Dade County Code Section 10-38 "Debarment".
- e) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. Code of Miami-Dade County pertaining to complying with the County's Domestic Leave Ordinance.
- f) Miami-Dade County Ordinance 99-152, prohibiting the presentation,

maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this Agreement, Provider 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 23. MISCELLANEOUS

A. **Publicity.** It is understood and agreed between the parties hereto that this Provider is funded by Miami-Dade County. Further, by the acceptance of these funds, the Provider agrees that events funded by this Agreement shall recognize and adequately reference the County as a funding source. The Provider shall ensure that all publicity, public relations, advertisements and signs recognizes and references the County for the support of all contracted activities. This is to include, but is not limited to, all posted signs, pamphlets, wall plaques, cornerstones, dedications, notices, flyers, brochures, news releases, media packages, promotions, and stationery. The use of the official County logo is permissible for the publicity purposes stated herein. Provider shall submit sample or mock up of such publicity or materials to the County for review and approval. The Provider shall ensure that all media representatives, when inquiring about the activities funded by this contract, are informed that the County is its funding source.

B. **Governing Law and Venue.** This Agreement is made in the State of Florida and shall be governed according to the laws of the State of Florida. Venue for this Agreement shall be Miami-Dade County, Florida.

C. **Modifications.** Any alterations, variations, modifications, extensions, or waivers of provisions of this Agreement including, but not limited to, amount payable and effective term shall only be valid when they have been reduced to writing, duly approved and signed by both parties and attached to the original of this Agreement.

The County and Provider mutually agree that modification of the Scope of Service, schedule of payments, billing and cash payment procedures, set forth herein and other such revisions may be made as a written amendment to this Agreement executed by both the parties.

The Mayor or the Mayor's designee is authorized to make modifications to this Agreement as described herein on behalf of the County.

The Office of the Inspector General shall have the power to analyze the need for, and the reasonableness of proposed modifications to this Agreement.

D. **Counterparts.** This Agreement is executed in three (3) counterparts, and each counterpart shall constitute an original of this Agreement.

E. **Headings, Use of Singular and Gender.** Paragraph headings are for convenience only and are not intended to expand or restrict the scope or substance of the provisions of this Agreement. Wherever used herein, the singular shall include the plural and plural shall include the singular, and pronouns shall be read as masculine, feminine, or neuter as the context requires.

F. **Review of this Agreement.** Each party hereto represents and warrants that they have consulted with their own attorney concerning and participated in the drafting of each of the terms contained in this Agreement. No inference, assumption, or presumption shall be drawn from the fact that one party or its attorney prepared this Agreement. It shall be conclusively presumed that each party participated in the preparation and drafting of this Agreement.

G. **Totality of Agreement / Severability of Provisions.** This Agreement and Attachments, with its recitals on the first page of the Agreement and with its attachments as referenced below contain all the terms and conditions agreed upon by the parties:

- Attachment A: Scope of Services
- Attachment B: Budget
- Attachment C: Collusion Affidavit
- Attachment D: Miami-Dade County Affidavits
- Attachment E: State Public Entities Crime Affidavit
- Attachment F: Monthly Payment Request
- Attachment G: Monthly Progress Report
- Attachment H: Final Year-End Closeout Report
- Attachment I: List of Subcontractors and Suppliers (*NOTE: Attachment I must be completed and included with this Agreement only if the accompanying contract award totals \$100,000 or more.*)
- Attachment J: Authorized Signature Form
- Attachment K: Service Authorization Agreement

No other Agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind any of the parties hereto. If any provision of this Agreement is held invalid or void, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law and ordinance.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

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

CITY OF NORTH MIAMI BEACH

By: [Signature]
Name: Kevin L. Baker
Title: City Manager
Date: July 2, 2010

Attest: [Signature]
Authorized Person OR
Notary Public

Print Name: Kanika Stamp
Title: Secretary

Corporate Seal OR Notary Seal/Stamp:

NOTARY PUBLIC-STATE OF FLORIDA
Kanika Stamp
Commission #DD917531
Expires: **AUG. 17, 2013**
BONDED THRU ATLANTIC BONDING CO., INC.

MIAMI-DADE COUNTY

By: _____
Name: Jennifer Glazer-Moon
Title: Spec Asst/Director OSBM
Date: _____

Attest: HARVEY RUVIN, Clerk
Board of County Commissioners

By: _____
Print Name: _____



MEMORANDUM

 Print

TO: Mayor and City Council
FROM: Kelvin L. Baker, City Manager
DATE: Tuesday, August 17, 2010

RE: Forfeiture (LETF) Appropriation Request

BACKGROUND: The asset forfeiture program is a process to deprive the criminals from the proceeds of their crime, and offset any investigative expenses of law enforcement. Police departments are allowed to utilize the proceeds from these investigations to offset the costs of certain allowed expenses as provided by federal guidelines and State Statutes. Usually the investigations are long-term and are conducted as part of a task force operation. These task forces may be entirely comprised of NMB Police Officers or they may include other local, state and federal agencies. The specific nature of processing the case determines which forfeiture fund the proceeds are to be recorded.

The Police Department has three separate funds to account for the revenues and expenditures as required by the State of Florida, U.S. Department of Justice and U.S. Department of Treasury. The police department is requesting appropriation approval of \$1,163,000 from the Federal (Justice) LETF and \$94,000 from the State/Local LETF. Please refer to the attached LETF request dated July 27, 2010 for a description of expenditure requests from each of the three Law Enforcement Trust Funds (LETF).

RECOMMENDATION: It is respectfully requested that the funding requests be approved for the expenditures described in the attached document.

FISCAL IMPACT: This request will not affect the City's General Fund, but will reduce the available balance in each corresponding LETF.

CONTACT PERSON(S): Rafael P. Hernandez Jr., Chief of Police

ATTACHMENTS:

 [LETF Request Supporting Docs](#)

File
7.27.10


CITY OF NORTH MIAMI BEACH, FLORIDA

INTER-OFFICE MEMORANDUM

TO: Dr. Kelvin L. Baker
City Manager

DATE: July 27, 2010

SUBJECT: Use of LETF Funds

FROM: 
Rafael R. Hernandez Jr.
Chief of Police

REFERENCES: City Council Agenda:

ENCLOSURES:

I respectfully request that you place on the agenda for the next City Council meeting the attached appropriation requests totaling **\$1,257,000.00** for expenditure from the Law Enforcement Trust Accounts. We will ask for **\$1,163,000.00** from the Federal Justice Law Enforcement Trust Fund (Fund 172), **\$0.00** from the Federal Treasury Law Enforcement Trust Fund (Fund 177), and **\$94,000.00** from the State/Local Law Enforcement Trust Fund (Fund 173).

As Chief of Police, I certify that the items requested below are in compliance with applicable Federal Guidelines and Florida Statute Chapter 932.7055, subsection 4, regarding the disposition of lien, seized, and forfeited property.

If you have any questions concerning this request, please contact Chief Hernandez at extension 2911 or Mac Serda at extension 2932.

cc: Admin. Police Captain
Betty Kennedy, Police Finance

Federal (Justice) LETF (Fund 172):

The above requested amount will be used for the following law enforcement related purpose(s):

- 1. Police Task Force Expenses \$750,000.00

This request provides partial funding for police task force units conducting protracted, long-term investigations. These task forces that include but are not limited to the DEA and IRS are dedicated to investigating criminal activity related to illegal narcotic activity, robberies and gang related activities.

- 2. Police Training \$75,000.00

The Police Department is committed to further educating its personnel, and therefore requests funding for training programs. These programs will allow police employees to develop additional expertise in specific areas related to their job duties.

- 3. Communication Consoles: \$75,000.00

This request will provide communication consoles to the police dispatcher area. This new equipment is designed to enable dispatchers to better view the police monitors and allow better access to the FCIC/NCIC information. With the acquisition of these consoles, the dispatchers will have easier access to the backup communication system during hurricanes and other unusual occurrences.

- 4. Fleet Equipment: \$17,000.00

The Police Department requests funding for the purchase of a specialized diagnostic computer to be used on crime prevention and forfeited vehicles to help identify engine and electrical system problems. This item will allow the Police Garage to expand its expertise beyond Crown Victorias to include other vehicle makes and models.

- 5. Domestic Violence Walk \$6,000.00

This request will provide funding for the Domestic Violence Walk held in North Miami Beach. This walk has been immensely successful in bringing attention and awareness to domestic violence and prevention related issues.

6. Youth and Senior Programs \$ 240,000.00

Continuing our commitment to youth and senior programs, the Police Department, requests funds to provide programs including various intramural programs and summer camp programs.

Federal LETF Status Report (as of 7/8/2010):

Surplus Carryover - 10/1/09 \$ 6,265,639

FY 2010 to Date:

Revenues 339,033

Expenditures (2,748,230)

Balance Available for Expenditure .. \$ 3,856,442

Federal (Treasury) LETF (Fund 177) :

The above requested amount will be used for the following law enforcement related purpose(s):

No Requests.

Federal (Treasury) Status Report (as of 7/8/10) :

Surplus Carryover - 10/01/09 \$ 520,951

FY 2010 to Date:

Revenues 109,940
Expenditures -0-

Balance Available for Expenditure .. \$ 630,892

State and Local LETF (Fund 173):

The above requested amount will be used for the following law enforcement related purpose(s):

- 1. Crime Prevention Unit \$ 75,000.00

This request will partially fund the Crime Prevention Unit and their programs to educate residents about various issues and to solve community problems as they occur.

- 2. Donation to the Center for Family Empowerment \$ 10,000.00

Funding is requested to provide a donation to the 501c3 organization as it embarks on its Project TRUST mission to create safe, happy, healthy families in and around NMB.

- 3. Donation to the Social Harmony Club \$ 4,000.00

This item will provide funding for the purpose of funding a mentoring and soccer program for young adults. These funds will be used for the purchase of insurance and team equipment.

- 4. Crime Prevention Display Unit \$ 5,000.00

This request will provide for the purchase of an enclosure in the Police Lobby that will host a variety of crime prevention materials and police information.

State and Local LETF Status Report (as of 7/8/2010):

Surplus Carryover - 10/1/09 \$ 1,154,313

FY 2009 to Date:

Revenues	339,604
Expenditures	(798,806)

Balance Available for Expenditure .. \$ 695,111



City of North Miami Beach
17011 NE 19 Avenue
North Miami Beach, FL 33162
305-947-7581
www.citynmb.com

MEMORANDUM

 Print

TO: Mayor and City Council
FROM: Darcee S. Siegel, City Attorney
DATE: Tuesday, August 17, 2010

RE: Litigation List

BACKGROUND: Attached is the Litigation List as of August 17, 2010
RECOMMENDATION: None
FISCAL IMPACT: None
CONTACT PERSON(S): Darcee S. Siegel, City Attorney

ATTACHMENTS:

 [Litigation List as of August 17, 2010](#)

TO: Mayor and City Council
FROM: Darcee S. Siegel, City Attorney
DATE: August 17, 2010

LITIGATION LIST

I. Wrongful Deaths: (1)

Kelly, Estate of v. CNMB
Wrongful Death

II. Civil Rights: (5)

Mack v. CNMB
Civil Rights Violation/False Arrest

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

Smith, Louis v. John Richard Renaud, NMBPD, & CNMB
Civil Rights Violation/False Arrest

Joseph, Johnny v. CNMB and City of Aventura
Civil Rights Violation/False Arrest

Ruggerio v. CNMB
Civil Rights Violation/False Arrest

III. Personal Injury: (7)

Adams, Loretta v. CNMB
Slip & Fall/Personal Injury

Garcia, Benjamin v. CNMB
Personal Injury

Jones, Zettie & Earnest v. CNMB, et al
Slip & Fall/Personal Injury

Korakakos, Christian v. CNMB
Automobile Accident/Personal Injury

Rathjens, Margaret v. CNMB
Slip & Fall/Personal Injury

Robinson, Waverly v. CNMB
Slip & Fall/Personal Injury

Rogers, Ethel Mathis v. CNMB
Automobile Accident/Personal Injury

IV. Land Use Litigation: (1)

Donahue, John, et al. v. CNMB, Sol Odenz and Miami-Dade County
Petition Protest (Height and Density)

V. Other Litigation: (15)

CACV of Colorado v. Lubin and CNMB
Writ of Garnishment

City of Miami Gardens v. William J. Washuta, as Trustee of
Stuart Enterprises Profit Sharing Plan, CNMB, and Miami-Dade County
Petition in Eminent Domain

Eastern Financial Florida Credit Union v. Flores and CNMB
Writ of Garnishment

Grouper Partners, Inc. v. Miami-Dade County and CNMB
Water/Sewer Fees

* Leme v. CNMB and American Traffic Solutions, LLC
Ordinance No. 2007-13 "Dangerous Intersection Safety Act"
Class Action for Civil Damages

Nationwide Insurance Company a/s/o Gloria Arboleda and CNMB
Property Damage

Pierre, Frantz v Kenneth De Fillipo, Lester Sola, and Solomon Odenz
Declaratory and Injunctive Relief

Precast Depot, Inc. v. BMA Construction d/b/a TRAN Construction, CNMB, et al.

Unjust Enrichment/Breach of Contract

Precast Depot, Inc. v. TRAN Construction d/b/a BMA Construction, CNMB, et al.

Unjust Enrichment/Breach of Contract

Seay Towing v. CNMB

State Case-Emergency Motion for Temporary Injunction

Seay Towing v. CNMB

Writ of Certiorari (Appeal of City Council's Revocation of BTR)

Seay Towing v CNMB

Federal Case-1983 Civil Rights Violation and Injunctive Relief

Shannon, Brian Palmer v. Lauren Walsh, CNMB and Cora Mann

Negligence/Negligent Hiring and Supervision

Tropical Chevrolet v. CNMB, et al.

High Speed Chase/Property Damage

Troutman v. North Miami Beach Police Department

Replevin

VI. Forfeitures: (22)

CNMB v. Almendral/Rodriguez/Garcia

Forfeiture

CNMB v. Amayaquintero/Valle/Smith

Forfeiture

DEFAULT ENTERED/CLOSED

* CNMB v. Arciniegas-Garcia/Finney/Shelton

Forfeiture

CNMB v. Clerveau/Bryant

Forfeiture

DEFAULT ENTERED/CLOSED

CNMB v. Garbino

Forfeiture

- * CNMB v. Gardiner/Bullard
Forfeiture

- CNMB v. Goodman
Forfeiture

- CNMB v. Guerby
Forfeiture

- CNMB v. Hurtado
Forfeiture

- * CNMB v. Jean/Salomon
Forfeiture

- CNMB v. Johnson/Ford/Johnson
Forfeiture

- CNMB v. Kipnis/Nunez/Rosendo
Forfeiture

- CNMB v. Milord
Forfeiture

- CNMB v. Morales
Forfeiture

- CNMB v. Morales-Perez/Villanueva/Johnson/Blue/Quiroz/Sanchez
Forfeiture

- CNMB v. Moreno/Moreno
Forfeiture

- CNMB v. Perez/Chil
Forfeiture

- CNMB v. Romero/Rivera/Perdomo
Forfeiture

- CNMB v. Sirdar-Kanhai-Aguirre-Villanueva/Valdez
Forfeiture

- CNMB v. St Hilaire/Mazard/Donaldson
Forfeiture

CNMB v. Valdes
Forfeiture

CNMB v. Willis
Forfeiture

VII. Mortgage Foreclosures: (174)

Aegis Mortgage Corp v. CNMB (Galina Pikh, et al.)
Mortgage Foreclosure

Aurora Loan Services, LLC v. CNMB (Garcia, et al.)
Mortgage Foreclosure

Aurora Loan Services, LLC v. CNMB (George)
Mortgage Foreclosure

Aurora Loan Services, LLC v. CNMB (Gomez, et al)
Mortgage Foreclosure

Aurora Loan Services, LLC v. CNMB (Hernandez)
Mortgage Foreclosure

Aurora Loan Services, LLC v. CNMB (Martinez, et al)
Mortgage Foreclosure

Aurora Loan Services, LLC v. CNMB (Perez, et al.)
Mortgage Foreclosure

Aurora Loan Services, LLC v. CNMB (Rodriguez, et al)
Mortgage Foreclosure

BAC Home Loans v. CNMB (Alberto, et al.)
Mortgage Foreclosure

BAC Home Loans v. CNMB (Berger, et al)
Mortgage Foreclosure

BAC Home Loans v. CNMB (Jacobi et al)
Mortgage Foreclosure

BAC Home Loans v. CNMB (Morales, et al)
Mortgage Foreclosure

BAC Home Loans v. CNMB (Nakash, et al)
Mortgage Foreclosure

BAC Home Loans v. CNMB (Prado, et al)
Mortgage Foreclosure

BAC Home Loans v. CNMB (Sigler)
Mortgage Foreclosure

BAC Home Loans v. CNMB (Temirao, et al)
Mortgage Foreclosure

BAC Home Loans v. CNMB (Torain, et al)
Mortgage Foreclosure

BAC Home Loans v. CNMB (Torres, et al)
Mortgage Foreclosure

BAC Home Loans v. CNMB (Zephir, et al.)
Mortgage Foreclosure

Bank of America v. CNMB (Alvarez, et al)
Mortgage Foreclosure

Bank of America v. CNMB (Coffey, et al)
Mortgage Foreclosure

* Bank of America v. CNMB (Dempster, et al)
Mortgage Foreclosure

Bank of America v. CNMB (Escalante, et al)
Mortgage Foreclosure

Bank of America v. CNMB (Failer, et al)
Mortgage Foreclosure

Bank of America v. CNMB (Failer, et al)
Mortgage Foreclosure

Bank of America v. CNMB (Fortun, et al.)
Mortgage Foreclosure

Bank of America v. CNMB (Gonzalez, et al.)
Mortgage Foreclosure

Bank of America v. CNMB (Jimenez, et al.)
Mortgage Foreclosure

DISMISSED/CLOSED

Bank of America v. CNMB (Miller, et al.)
Mortgage Foreclosure

Bank of America v. CNMB (Otero, et al.)
Mortgage Foreclosure

Bank of America v. CNMB (Pasmanter, et al)
Mortgage Foreclosure

Bank of America v. CNMB (Peck, et al)
Mortgage Foreclosure

Bank of America v. CNMB (Tamir, et al)
Mortgage Foreclosure

Bank of New York v. CNMB (Egued, et al)
Mortgage Foreclosure

Bank of New York v. CNMB (Apiau, et al.)
Mortgage Foreclosure

DISMISSED/CLOSED

Bank of New York v. CNMB (Ben-Dov, et al)
Mortgage Foreclosure

DISMISSED/CLOSED

Bank of New York v. CNMB (Burkhead, et al)
Mortgage Foreclosure

Bank of New York v. CNMB (Conley/Williams)
Mortgage Foreclosure

Bank of New York v. CNMB (Fiallo, et al)
Mortgage Foreclosure

Bank of New York v. CNMB (Jean, et al)
Mortgage Foreclosure

Bank of New York v. CNMB (Le)
Mortgage Foreclosure

Bank of New York v. CNMB (Mellian, et al)
Mortgage Foreclosure

Baron, Marylin S., et al v. CNMB (Campbell, et al)
Mortgage Foreclosure

* Bayview Loan v. CNMB (Bells Bicycles)
Mortgage Foreclosure

Beal Bank v. CNMB (Ramos, et al.)
Mortgage Foreclosure

Biberman v. CNMB (Philadelphia Church of God)
Mortgage Foreclosure

Brown Bark III, L.P. v CNMB (2001, LLC)
Mortgage Foreclosure

Chase Home Finance LLC v. CNMB (Bolufer, et al)
Mortgage Foreclosure

Chase Home Finance LLC v. CNMB (Cohen, et al)
Mortgage Foreclosure

Chase Home Finance LLC v. CNMB (Marc, et al)
Mortgage Foreclosure

Chase Home Finance LLC v. CNMB (Rua, et al)
Mortgage Foreclosure

Chase Home Finance LLC v. CNMB (Santiago et al)
Mortgage Foreclosure

Citibank, N.A. v. CNMB (Anglade, et al)
Mortgage Foreclosure

Citibank, N.A. v. CNMB (Austin, et al)
Mortgage Foreclosure

Citimortgage v. CNMB (Guzman, et al.)
Mortgage Foreclosure

Citifinancial Equity Services, Inc. v. CNMB (Morales)
Mortgage Foreclosure

Citimortgage v. CNMB(Anchava)
Mortgage Foreclosure

Citimortgage v. CNMB (Bilgoray)
Mortgage Foreclosure

Citimortgage v. CNMB (Dmiczak)
Mortgage Foreclosure

CLOSED/SOLD AT AUCTION

Citimortgage v. CNMB (Garcia)
Mortgage Foreclosure

Citimortgage v. CNMB (La Fond, et al.)
Mortgage Foreclosure

Citimortgage v. CNMB (Rivaroli, et al)
Mortgage Foreclosure

Cong Vo v. CNMB (Perroti, Miranda)
Action to Quiet Title

Consumers Alliance Corp. v. CNMB (Haronda Realty)
Action to Quiet Title

Countrywide Home Loans, Inc. v. CNMB (Gilles)
Mortgage Foreclosure

Countrywide Home Loans, Inc. v. CNMB (Joseph, et al.)
Mortgage Foreclosure

Countrywide Home Loans v. CNMB (Rodriguez, et al)
Mortgage Foreclosure

Countrywide Home Loans v. CNMB (Schmidt, et al)
Mortgage Foreclosure

Credit Based Asset Servicing v. CNMB (Rojas)
Mortgage Foreclosure

Credit Based Asset Servicing v. CNMB (Rojas, et al)
Mortgage Foreclosure

Deutsche Bank National v. CNMB (Bien-Aime, et al)
Mortgage Foreclosure

CLOSED/SOLD AT AUCTION

Deutsche Bank National v. CNMB (Castaneda)
Mortgage Foreclosure

Deutsche Bank National v. CNMB (Daniels)
Mortgage Foreclosure

Deutsche Bank National v. CNMB (Gonzalez)
Mortgage Foreclosure`

DISMISSED/CLOSED

Deutsche Bank National v. CNMB (Joseph)
Mortgage Foreclosure

Deutsche Bank National v. CNMB (Lindor, et al.)
Mortgage Foreclosure

Deutsche Bank Trust v. CNMB (Marks-Williams)
Mortgage Foreclosure

Deutsche Bank National v. CNMB (Martinez, et al.)
Mortgage Foreclosure

* Deutsche Bank National v. CNMB (McCullough)
Mortgage Foreclosure

Deutsche Bank National v. CNMB (Nascimento)
Mortgage Foreclosure

Deutsche Bank v. CNMB (Oratz, et al)
Mortgage Foreclosure

CLOSED/SOLD AT AUCTION

Deutsche Bank National v. CNMB (Perez/Llarena)
Mortgage Foreclosure

Deutsche Bank National v. CNMB (Phillips)
Mortgage Foreclosure

Deutsche Bank National v. CNMB (Rodriguez)
Mortgage Foreclosure

Deutsche Bank National v. CNMB (Sanchez)
Mortgage Foreclosure

Deutsche Bank National v. CNMB (Sierra, et al)
Mortgage Foreclosure

CLOSED/SOLD AT AUCTION

Deutsche Bank National v. CNMB (Suhag, et al)
Mortgage Foreclosure

Deutsche Bank National v. CNMB (Voltaire, et al)
Mortgage Foreclosure

Deutsche Bank National v. CNMB (Watkins, et al)
Mortgage Foreclosure

Deutsche Bank National v. CNMB (Whittle, et al)
Mortgage Foreclosure

Eastern Shores White House Association v. CNMB (Donoso)
Mortgage Foreclosure

Eastern Shores White House Association v. CNMB (Grimany)
Mortgage Foreclosure

Equitymax, Inc. v CNMB (Fenelon)
Mortgage Foreclosure

Flagstar Bank v. CNMB (Pena)
Mortgage Foreclosure

First Central Savings Bank v. CNMB (Meimoun)
Mortgage Foreclosure

Fiserv ISS & Co., vs. CNMB (Estime)
Mortgage Foreclosure

Florida Title Company v. CNMB (Dali-Bey)
Mortgage Foreclosure

Global Trust v. CNMB (Roth)
Mortgage Foreclosure

GMAC Mortgage v. CNMB (Calix)
Mortgage Foreclosure

GMAC Mortgage v. CNMB (Platel, et al)
Mortgage Foreclosure

Golden Beach (Town of) v. CNMB (Goodman, et al)
Mortgage Foreclosure

Greenfield, Chaim v. CNMB (2101 Holdings LLC, et al)
Mortgage Foreclosure

Greenpoint Mortgage v. CNMB (Global Properties Investment et al)
Mortgage Foreclosure **CLOSED/DISMISSED**

HSBC Bank v. CNMB (Bull)
Mortgage Foreclosure

HSBC Bank v. CNMB (Miller, et al.)
Mortgage Foreclosure

HSBC Bank, N.A. v. CNMB (Mora)
Mortgage Foreclosure

HSBC Bank, N.A. v. CNMB (Perera)
Mortgage Foreclosure

HSBC Bank, N.A. v. CNMB (Saint-Fart)
Mortgage Foreclosure

HSBC Bank, N.A. v. CNMB (Seepersad)
Mortgage Foreclosure

HSBC Bank v. CNMB (Vidal, et al)
Mortgage Foreclosure

Indymac Federal Bank v. CNMB (Hamami, et al)
Mortgage Foreclosure

Indymac Federal Bank v. CNMB (Hernandez, et al)
Mortgage Foreclosure

JP Morgan v. CNMB (Carlos)
Mortgage Foreclosure

JP Morgan v. CNMB (Garcia)
Mortgage Foreclosure

JP Morgan v. CNMB (Lopez, et al)
Mortgage Foreclosure

JP Morgan v. CNMB (Perez, et al)
Mortgage Foreclosure

Lago Mar Ventures v. CNMB (Oliver)
Mortgage Foreclosure

LaSalle Bank Midwest v. CNMB (Gomez)
Mortgage Foreclosure

Metro Bank v. CNMB (Macala, LLC)
Mortgage Foreclosure

Miami-Dade County v. CNMB (Morrobel)
Mortgage Foreclosure

Mortgage Investment Group v. CNMB (Deliford, et al)
Mortgage Foreclosure

OneWest Bank v. CNMB (Gutierrez)
Mortgage Foreclosure

OneWest Bank v. CNMB (Lopez)
Mortgage Foreclosure

OneWest Bank v. CNMB (Rodriguez, et al)
Mortgage Foreclosure

OneWest Bank v. CNMB (Ward, et al.)
Mortgage Foreclosure

OneWest Bank v. CNMB (Wright, et al)
Mortgage Foreclosure

Owen Federal Bank v. CNMB (Bain)
Mortgage Foreclosure

PHH Mortgage v. CNMB (Martinez, et al)
Mortgage Foreclosure

PNC Mortgage v. CNMB (Ordonez/Child, et al.)
Mortgage Foreclosure

Primary Residential Mortgage v. CNMB (Miranda, et al.)
Mortgage Foreclosure

RMS Residential v. CNMB (Heredia)
Mortgage Foreclosure

Sazant v. CNMB(Pluviose)
Mortgage Foreclosure

<u>Sun American Bank v. CNMB (Lehman Family Holdings, et al.)</u> Mortgage Foreclosure	
<u>SunTrust Mortgage v. CNMB (Garcia, et al.)</u> Mortgage Foreclosure	
<u>Transatlantic Bank v. CNMB (Andor Expressway Corp., et al.)</u> Mortgage Foreclosure	
<u>U.S. Bank N.A. v. CNMB (Gonzalez, et al)</u> Mortgage Foreclosure	
<u>U.S. Bank N.A. v. CNMB (Gonzalez, J., et al.)</u> Mortgage Foreclosure	
<u>U.S. Bank N.A. v. CNMB (Hernandez, et al)</u> Mortgage Foreclosure	CLOSED/SOLD AT AUCTION
<u>U.S. Bank N.A. v. CNMB (Hernandez, et al)</u> Mortgage Foreclosure	CLOSED/SOLD AT AUCTION
<u>U.S. Bank NA v. CNMB (Island Place Apts., et al)</u> Mortgage Foreclosure	CLOSED/SOLD AT AUCTION
<u>U.S. Bank NA v. CNMB (Jean-Louis)</u> Mortgage Foreclosure	
<u>U.S. Bank NA v. CNMB (Joseph, et al.)</u> Mortgage Foreclosure	
<u>U.S. Bank NA v. CNMB (Marin)</u> Mortgage Foreclosure	
<u>U.S. Bank NA v. CNMB (Martinez)</u> Mortgage Foreclosure	
<u>U.S. Bank NA v. CNMB (Mendez)</u> Mortgage Foreclosure	
<u>U.S. Bank NA v. CNMB (Oratz, et al)</u> Mortgage Foreclosure	CLOSED/SOLD AT AUCTION
<u>U.S. Bank NA v. CNMB (Otero)</u> Mortgage Foreclosure	

U.S. Bank N.A. v. CNMB (Perez)
Mortgage Foreclosure

U.S. Bank NA v. CNMB (Robinson, et al)
Mortgage Foreclosure

U.S. Bank NA v. CNMB (Rodriguez, et al)
Mortgage Foreclosure

U.S. Bank NA v. CNMB (Rodriguez, Maria A., et al).
Mortgage Foreclosure

U.S. Bank NA v. CNMB (Rosenberg)
Mortgage Foreclosure

U.S. Bank NA v. CNMB (Suarez, et al.)
Mortgage Foreclosure

U.S. Bank NA v. CNMB (Torres, et al.)
Mortgage Foreclosure

Venice Isle, Inc. v. CNMB (Suhag)
Claim of Lien Foreclosure

* Vericrest Financial, Inc. v. CNMB (Palmer/ Webb Estate)
Mortgage Foreclosure

Wachovia Mortgage v. CNMB (Campos)
Mortgage Foreclosure

Wachovia Mortgage Corp v. CNMB (Diaz)
Mortgage Foreclosure

Wachovia Bank v. CNMB (Martinez)
Mortgage Foreclosure

Wachovia Bank v. CNMB (Rodriguez, D)
Mortgage Foreclosure

Washington Mutual Bank, F.A. v. CNMB, Sandra T. Porter, et al
Mortgage Foreclosure

Washington Mutual Bank v. CNMB (Schmidt)
Mortgage Foreclosure

Wells Fargo Bank N.A. v. CNMB (Clozeille)
Mortgage Foreclosure

Wells Fargo Bank, N.A. v. CNMB (Fil-Aimee)
Mortgage Foreclosure

Wells Fargo Bank, N.A. v. CNMB (Frye)
Mortgage Foreclosure

* Wells Fargo Bank, N.A. v. CNMB (Gonzalez)
Mortgage Foreclosure

Wells Fargo Bank, N.A. v. CNMB (Hernandez, et al)
Mortgage Foreclosure

Wells Fargo Bank, N.A. v. CNMB (Ia Torola)
Mortgage Foreclosure

Wells Fargo Bank v. CNMB (Lopez, et al)
Mortgage Foreclosure

Wells Fargo Bank v. CNMB (Mendez, et al)
Mortgage Foreclosure

Wells Fargo Bank v. CNMB (Mohr, et al)
Mortgage Foreclosure

CLOSED/SOLD AT AUCTION

Wells Fargo v. CNMB (Roberts)
Mortgage Foreclosure

Wells Fargo Bank, N.A. v. CNMB (16700-01, LLC)
Mortgage Foreclosure

Woodside Apartments Assoc. v. CNMB (Mizrahi)
Mortgage Foreclosure

VIII. Bankruptcies:

Adams, Evrol C.
American LaFrance LLC
American Home Mortgage Holdings

Carcamo, Ana Maritza
Cimax USA, LLC
Curbelo, Federico
Diversified Displays/Michael Phelan
Filene's Basement, Inc.
Florida Select Insurance
Kaplun, Raul E.
Kim, Myung Ja
K&S Foods LLC
My Tattoo Shop, Inc.
Porter, Michael and Shanda
The New Kosher World Bakery
Rife, Joseph Alan
Rodriguez, Carlos
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
WCI Communities, Inc.

***New Cases**



MEMORANDUM

 Print

TO: Mayor and City Council
FROM: Susan A. Owens, CMC, City Clerk
DATE: Tuesday, August 17, 2010

RE: SMG Entertainment, Inc. d/b/a Queen of Diamonds Gentlemen's Club

BACKGROUND: On July 9, 2010, the City was notified by Mr. Lenny Moore that Encore Gentleman's Club had been sold to his client, SMG Entertainment. On July 12, SMG Entertainment d/b/a Queen of Diamonds Gentlemen's Club applied for the necessary Business Tax Receipts (BTR), as well as a 2:00 a.m.-4:00 a.m. Extension of Hours BTR. All licenses have been issued. Since the City's Code requires that applicants first obtain a 2:00 a.m.-4:00 a.m. Extension of Hours BTR before they can apply for a 4:00 a.m.-6:00 a.m. Extension of Hours BTR, SMG Entertainment then applied on August 11, 2010 for their 4:00 a.m.-6:00 a.m. Extension of Hours BTR.

A copy of the application and the required police report are attached. Per the City's Code of Ordinances, final approval of such Business Tax Receipts is to be made by the City Council. There are no stipulations being requested at this time.

RECOMMENDATION: Approval
FISCAL IMPACT: None
CONTACT PERSON(S): Susan A. Owens, CMC, City Clerk

ATTACHMENTS:

- [SMG Entertainment Application](#)
- [Police Report](#)



City of North Miami Beach • Office of the City Clerk

Business Tax Receipt Division • 17011 NE 19 Avenue • North Miami Beach, FL 33162

Phone: (305) 787-6001 • Fax: (305) 787-6026 • E-mail: NMBBTR@citynmb.com

Business Tax Receipt Application

Form 513

Please make sure to fill out the application completely and legibly, and that you submit all required documentation to prevent any delays or denial of your application. If a question does not apply, please write N/A for that item. Payment of fees due upon application does not constitute approval. If you open your business prior to receiving your Business Tax Receipt, the City may charge additional penalty fees, place a lien on this property, or shutdown your business.

New Business

Transfer of Location From: _____

Transfer of Ownership From: _____

PENDING APPROVAL

10 AUG 10 10:11 AM RECEIVED CHIEF CLERK'S OFFICE

Date Applied: 8/11/10	Date Opening: When APPROVED BY CITY	Hours & Days of Operation: 4AM - 6AM
Trade/DBA Name: QUEEN OF DIAMONDS GENTLEMEN'S CLUB	Corporate Name: SMG ENTERTAINMENT, INC	
Business Address: 17450 BISCAYNE BLVD NMB, FL 33160	Mailing Address: SAME	
Business Phone: 305 945-6030	Alternate Phone: 305 586-1634	
Business Fax:	Plaza/Building Name:	
E-mail: BGENMAG@aol.com	Website:	

Name, Title and Home Address of All Persons Associated With the Business (If additional space is needed, please attach.)

1. LEONARD J. MOORE 10018 LAUREL RUND, DAVIS FL 33328
2. PRESIDENT
- 3.
- 4.

Complete Information Below, if applicable:

Fictitious Name Registration (Please submit a copy of your registration with the application.) **OR** check the appropriate box below: This certifies that the above-named business is exempt from registering for a fictitious name for the following reason: (check one)

- It is a registered legal entity with the State of Florida
- I am licensed by the Department of Business & Professional Regulation or the Department of Health.
- It is operated under the legal name(s) of the owner(s)

*Federal Tax Id #: 200746615 OR *Social Security #: 418-84-0372 [*Required by F.S. 205.0535(5)]

Incorporation Reg #: P04000033830 Driver's License #: M600-530-61-004-0

State Certificate #: _____ (Please submit a copy with the application.) Square Footage of Space: 5,900

1. Previous Business Use of Property: ADULT / NIGHT CLUB Previous Business's Name: ENCORE GENTLEMEN'S CLUB
2. Is this a minority-owned business? (optional) Yes No
3. Are you interested in receiving information from the City regarding economic development opportunities, programs or grants? Yes No

Property Owner/Landlord Name: (if different from business owner)	Trade/DBA Name:
Mailing Address:	Business Phone:

DETERMINATION OF BUSINESS TAX FEES

Nature of Business: Please provide a detailed description of what products will be sold and what services will be rendered.

EXTENSION OF HOURS FROM 4AM - 6AM

1. Are you sharing space with another business? Yes No - If YES, Business Name _____
(Please submit a letter from this Business verifying same.)
2. Will you be serving alcohol on the premises? Yes No - If YES, do you have a 2COP 4COPSRX 4COP
3. Are you requesting an extension of hours? Yes No - If YES, select: 2:00 am - 4:00 am 4:00 am - 6:00 am
4. Is this business going to have retail or wholesale? Yes No - If YES, provide the Cost of Inventory: \$ _____
5. Is this a home-based business? Yes No - If YES, indicate your vehicle: Make: _____ Model: _____ Year: _____
6. Are you designated by the IRS as a 501(c)3? Yes No - If YES, please submit documentation of status
7. Are you claiming any exemptions per F.S. Chapter 205? Yes No - If YES, please submit documentation of status

I, Leonard J. Moure as authorized agent for the above-referenced business do hereby certify that:

1. I have read, understand and will comply with all applicable ordinances of the City of North Miami Beach as it may relate directly to the nature of this business.
2. I will not open a business prior to paying for and receiving my City Business Tax Receipt and my Miami-Dade County Business Tax Receipt (if applicable).
3. I understand that any false or misleading information or failure to comply with the Code of Ordinances of the City of North Miami Beach at anytime could result in the shutdown of my business, a lien being placed on the property, revocation of my City Business Tax Receipt, and additional fines, penalties, and cost collection fees.
4. I acknowledge that my Business Tax Receipt expires on September 30th of each year and that I am responsible for annually submitting all required documents and applicable fees prior to that date or I will be responsible for ALL additional fines, penalties, and cost collection fees provided for by the Code of the City of North Miami Beach and ALL applicable Florida Statutes.
5. I will immediately notify the City, in writing, if this business has any change(s) of ownership, location, contact information, nature of business and/or when this business ceases operations.

X Leonard J. Moure Date: 8/11/10
 Signature of Authorized Agent
LEONARD J. MOURE Title: PRES
 Print Name

Fees & Payment Information (For City Clerk's Office Use Only)					
Class Code: <u>4102</u>	<u>\$3,000</u>	Application Fee	<u>25⁰⁰</u>	Total Due: <u>3,025.00</u>	Account#: <u>792624</u>
Class Code:	<u>6 MONTHS</u>	Certificate of Zoning Use Fee		Payment Type: <u>PAID</u>	CZU: _____
Class Code:		Building Inspection Fee		<u>check # 1016</u>	CRA: _____ Zone: _____
Class Code:		Penalties/Late Fees		Received By: <u>jm</u>	Date Routed: <u>8/11/10</u>
Class Code:		Transfer Fee			

Administrative Approvals (For Review Departments Use Only)			
Department	Approved/Denied	Date	Conditions

City of North Miami Beach Police Department

Inter-Office Memorandum

To: Susan A. Owens
City Clerk

Date: 8/10/10

From: Rafael P. Hernandez Jr.
Chief of Police

Subject: Red Light Ent., LLC
DBA Queen of Diamond

A/ Hernandez

Per your Memorandum dated 07/29/2010, requesting an investigation into the listed business of Red Light District Entertainment, LLC. d/b/a Queen of Diamond's Gentleman's Club 17450 Biscayne Blvd. The following was learned:

Using the SUNBIZ Florida Documents Program, corporate listings revealed that Red Light District Entertainment, LLC Inc. is listed as an "Active" Corporation (FEIN L100000070974).

A request for back ground history was made with Florida Department of Law Enforcement for those person's listed on the occupational license application addendum. Mr. Leonard Moore was the registered Agent. The persons listed have no current criminal history in the State of Florida.

Based on the current information at hand, the business should be allowed to be licensed to conduct business in the City of North Miami Beach as there is nothing irregular regarding the application, applicants' background and business background.

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10 AUG 10 PM 4: 38
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MEMORANDUM

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TO: Mayor & City Council
FROM: Darcee S. Siegel, City Attorney
DATE: Tuesday, August 17, 2010

RE: Ordinance No. 2010-20 (First Reading, By Title Only) -Tabled from July 20, 2010

BACKGROUND: The Retirement Plan for General Employees of the City of North Miami Beach was established by the City Council of the City of North Miami Beach pursuant to Ordinance 65-30, and has been amended on numerous occasions since that time. The Retirement Plan and Trust for General Management Employees of the City of North Miami Beach was established by the City Council of the City of North Miami Beach pursuant to Ordinance 2002-30 and has been amended on several occasions since that time. Pursuant to State law, the City of North Miami Beach is ultimately responsible for the assets and liabilities of both Retirement Plans, and is required to fund both Retirement Plans on a sound actuarial basis. This Ordinance provides for merging the Retirement Plan and Trust for General Management Employees into the Retirement Plan for General Employees, transferring all assets and liabilities of the Retirement Plan and Trust for the General Management Employees to the Retirement Plan for the General Employees. This merger will eliminate duplication of administrative functions and costs. The merger of the two Retirement Plans will not change the current benefits or employee contributions of any City employee who is a member of the Retirement Plan for General Employees of the City of North Miami Beach, and at the same time will maintain all the current retirement provisions of City employees who participate in the Retirement Plan and Trust for General Management Employees of the City of North Miami Beach as of September 30, 2010.

RECOMMENDATION: Staff recommends this ordinance be adopted to eliminate duplication of administrative functions and costs.

FISCAL IMPACT: Savings in administrative costs.

CONTACT PERSON(S): Darcee S. Siegel, City Attorney

ATTACHMENTS:

- [Actuarial Impact Statement](#)
- [Ordinance No. 2010-20](#)

August 9, 2010

Darcee S. Siegel, Esq.
City Attorney
City of North Miami Beach
17011 NE 19th Avenue
North Miami Beach, Florida 33162

**Re: Retirement Plan for General Employees of the City of North Miami Beach /
Retirement Plan and Trust for the General Management Employees of the City of
North Miami Beach**

Dear Ms. Siegel:

As requested, we are pleased to enclose six (6) copies of our 10-year Actuarial Projection Study as of October 1, 2009 illustrating the impact of the proposed merger of the Retirement Plan and Trust for the General Management Employees of the City of North Miami Beach (Management Plan) into the Retirement Plan for General Employees of the City of North Miami Beach (General Plan).

Background – The Management Plan and the General Plan currently operate separately.

Proposed Changes – We understand the City is considering a merger of the Management Plan into the General Plan as of October 1, 2009. Management Employees hired prior to October 1, 2010 will continue to receive benefits and contribute as currently provided under the Management Plan. Management Employees hired after September 30, 2010 will receive benefits and contribute as currently provided under the General Plan.

Results – Based upon the results of our Actuarial Impact Statement, the proposed merger increases the fiscal year 2011 minimum required City contribution to the General Plan by **\$1,099,741** (7.0% of total covered payroll as of October 1, 2009 - \$15,772,584).

Filing Requirements - We have prepared an Actuarial Impact Statement for filing with the State of Florida. Please note that this Statement must be signed and dated on behalf of the Board of Trustees. Copies of the proposed Ordinance upon passage at first reading along with the signed and dated Actuarial Impact Statement should be filed with the State at the following address:

Mr. Douglas E. Beckendorf, A.S.A.
Division of Retirement
Building B
Post Office Box 9000
Tallahassee, Florida 32315-9000

Please forward a copy of the Ordinance upon passage at second reading to update our files.

Actuarial Assumptions and Methods, Plan Provisions, Financial Data and Member Census

Data – For current General Employees, the actuarial assumptions and methods, member census and financial data and Plan provisions for purposes of our Study are the same actuarial assumptions and methods, member census and financial data and Plan provisions outlined in the October 1, 2009 Actuarial Valuation Report of the General Plan.

For Management Employees hired prior to October 1, 2010, the member census and financial data and Plan provisions for purposes of our Study are the same member census and financial data and Plan provisions outlined in the October 1, 2009 Actuarial Valuation for the Management Plan. The actuarial assumptions and methods for purposes of our Study are the same actuarial assumptions and methods outlined in the October 1, 2009 Actuarial Valuation Report of the General Plan - with the exception of assumed rates of retirement and COLA deferrals from the Management Plan, as described in the Summary of Actuarial Assumptions and Actuarial Cost Methods in the Appendix to this Study.

For Management Employees projected to be hired after September 30, 2010, the actuarial assumptions and methods, member census and financial data and Plan provisions for purposes of our Study are the same actuarial assumptions and methods, member census and financial data and Plan provisions outlined in the October 1, 2009 Actuarial Valuation Report of the General Plan.

Throughout the forecast period, projected newly hired General / Management employees are assumed each year at a rate sufficient to maintain a constant active General / Management employee headcount – stationary population. Newly employed General / Management employees are assumed to have the same average demographic characteristics (age, gender, salary – adjusted each year for inflation) as those of General / Management employees hired over the past five (5) years.

Internal Revenue Code Section 415(b) maximum benefit limits and Section 401(a)(17) maximum compensation limits are assumed to increase at a rate of three percent (3%) per year.

This Study is intended to describe the estimated future incremental financial effects of the proposed benefit changes on the General Plan and is not intended as a recommendation in favor of the change nor in opposition to the change.

These calculations are based upon assumptions regarding future events. However, the Plan's long term costs will be determined by actual future events, which may differ materially from the assumptions made. These calculations are also based upon our understanding of present Plan provisions that are outlined in the General / Management Plans' October 1, 2009 Actuarial Valuation Reports.

Darcee S. Siegel, Esq.
August 9, 2010
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If you have reason to believe the assumptions used are unreasonable, the Plan provisions are incorrectly described or referenced, important Plan provisions relevant to this Actuarial Study are not described or that conditions have changed since the calculations were made, you should contact the undersigned prior to relying on information in this Actuarial Study. If you have reason to believe that the information provided in this Actuarial Study is inaccurate, or is in any way incomplete, or if you need further information in order to make an informed decision on the subject matter of this report, please contact the undersigned prior to making such decision.

The undersigned are Members of the American Academy of Actuaries and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

If you should have any question concerning the above or if we may be of further assistance with this matter, please do not hesitate to contact us.

Sincerest regards,



Lawrence F. Wilson, A.S.A.
Senior Consultant and Actuary



Peter N. Strong, A.S.A.
Consultant and Actuary

Enclosures

cc: Ms. Lori Helton
Mr. Martin Lebowitz
James Linn. Esq.



RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH ACTUARIAL STUDY AS OF OCTOBER 1, 2009

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RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH ACTUARIAL STUDY AS OF OCTOBER 1, 2009

EXECUTIVE SUMMARY

At the request of the City of North Miami Beach, 10-year actuarial projections have been prepared to illustrate the impact of the proposed merger of the Management Employees of the City of North Miami Beach (Management Plan) into the Retirement Plan for General Employees of the City of North Miami Beach (General Plan).

Management Employees hired prior to October 1, 2010 will receive benefits and contribute as currently provided under the Management Plan. Management Employees hired after September 30, 2010 will receive benefits and contribute as currently provided under the General Plan.

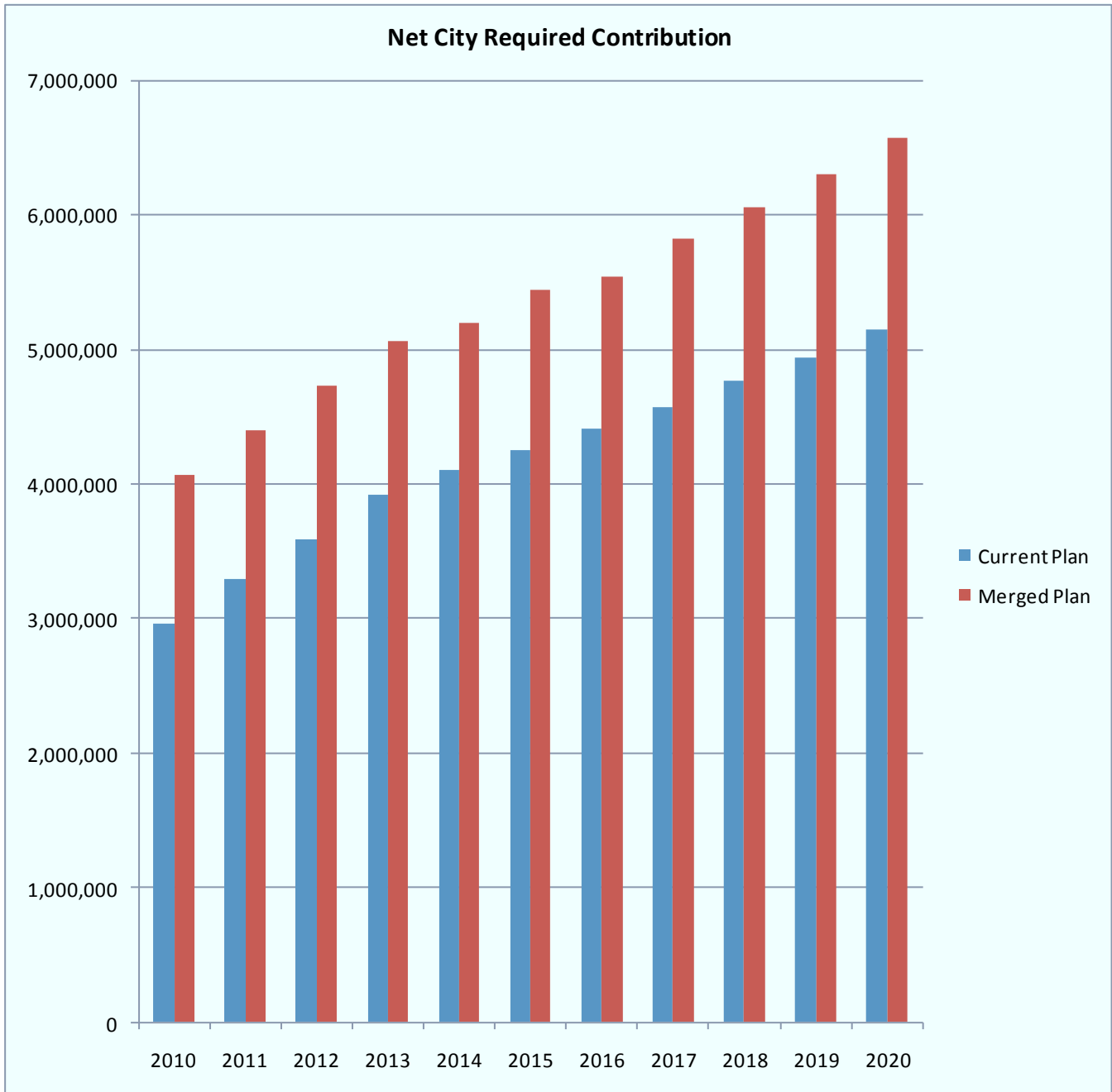
These forecasts project the current Member census data forward each year from October 1, 2009 to October 1, 2019, assuming all valuation assumptions are fully realized. As active General / Management Members decrement each year due to DROP, retirement, termination, death or disability, new General / Management Members are assumed to be hired to replace them. Newly employed General / Management Members are assumed to have the same average demographic characteristics (age, gender, salary – adjusted each year for inflation) as those of General / Management Members hired over the past five (5) years (from October 1, 2004 through September 30, 2009).

The following pages show the results of the projections, including year-by-year results.



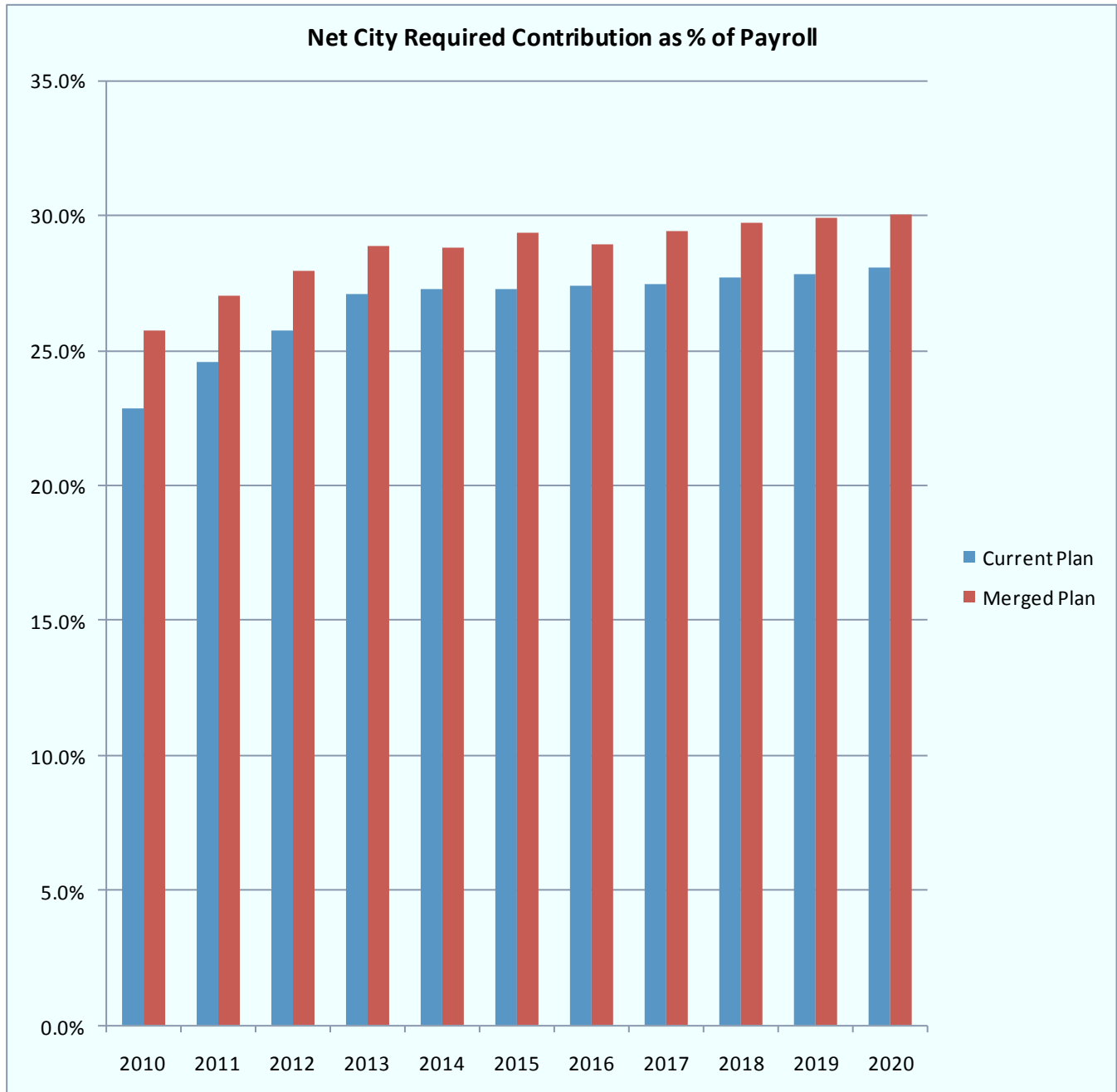
RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH ACTUARIAL STUDY AS OF OCTOBER 1, 2009

PROJECTION RESULTS



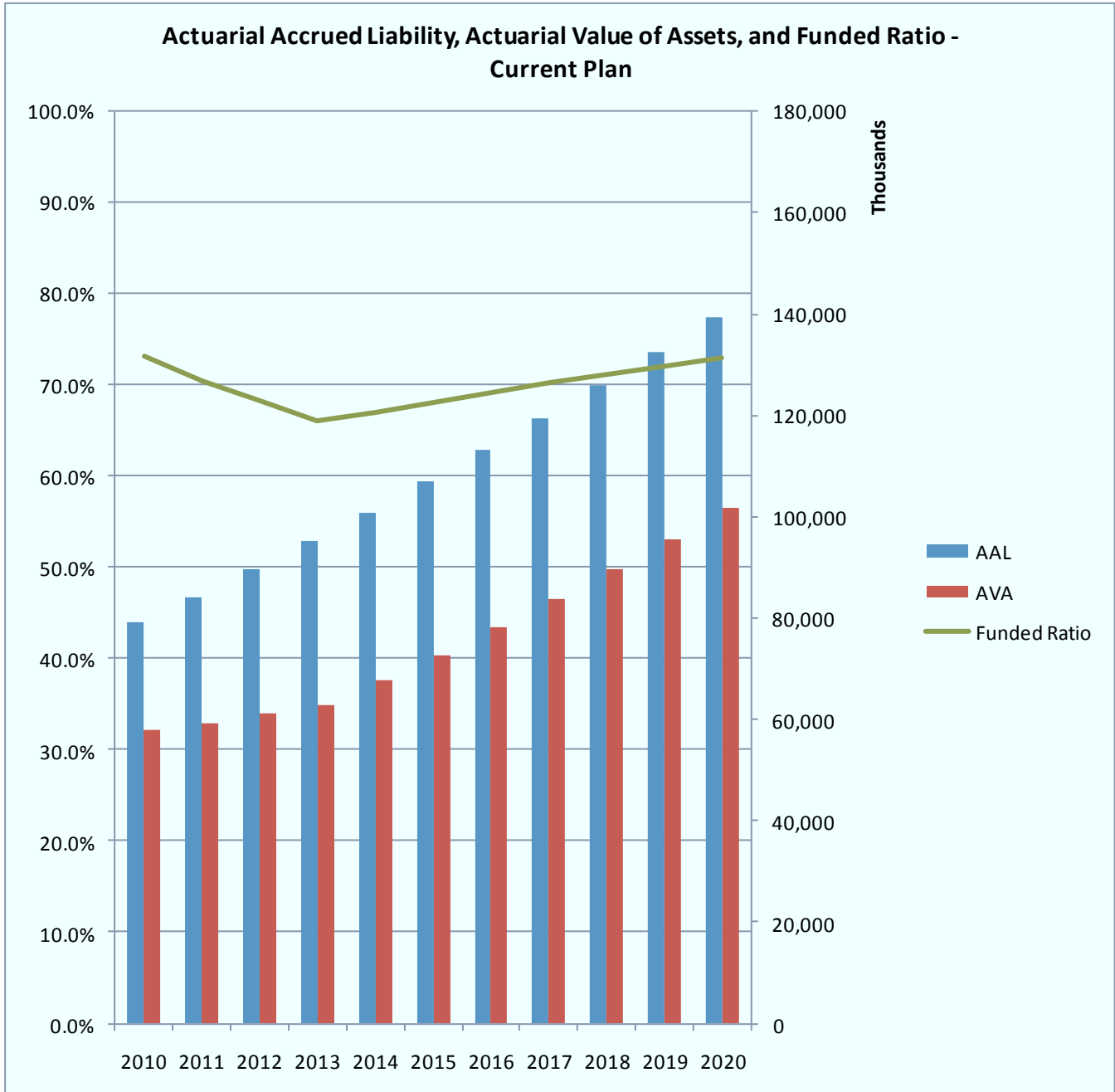


RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH ACTUARIAL STUDY AS OF OCTOBER 1, 2009



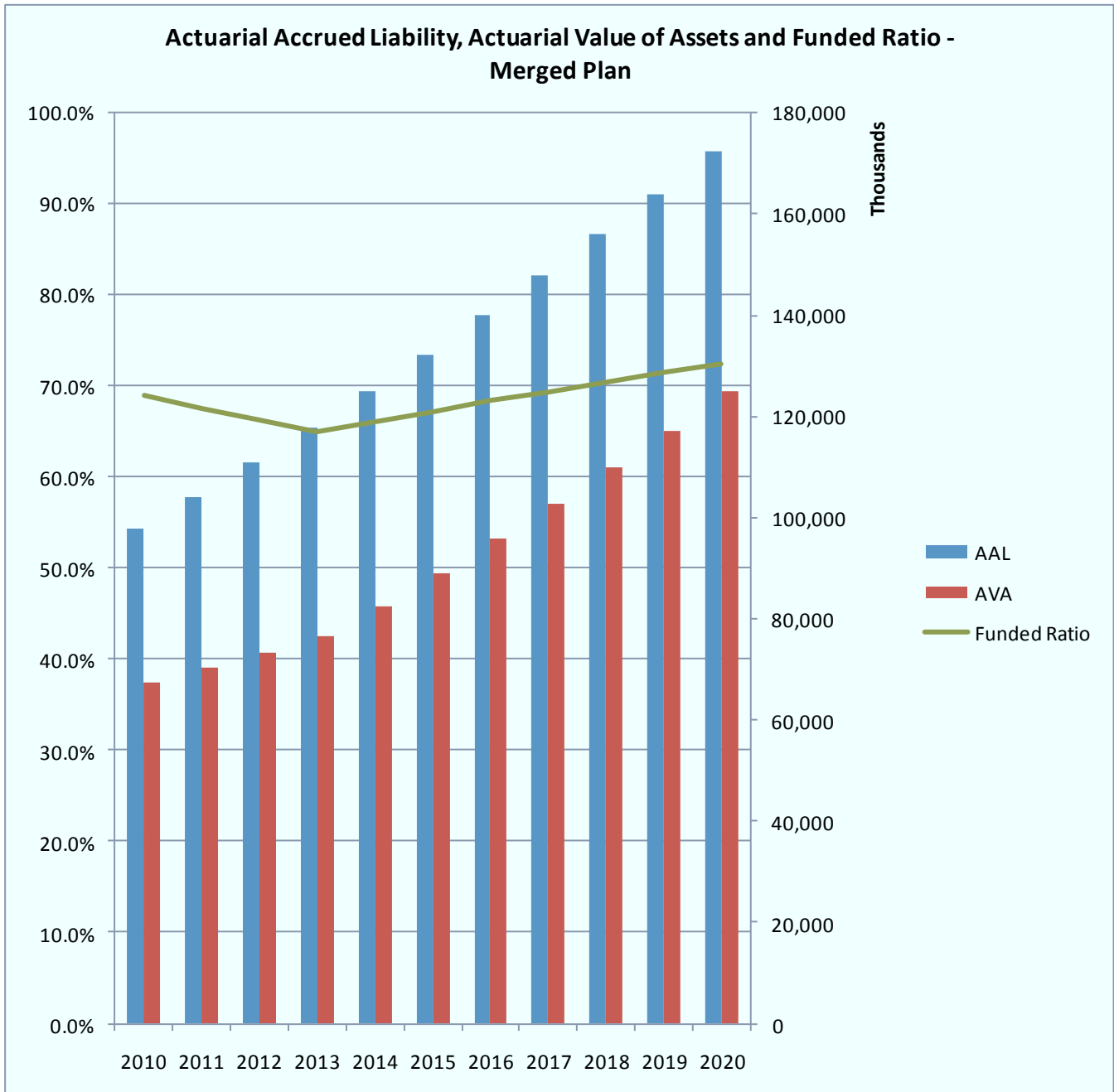


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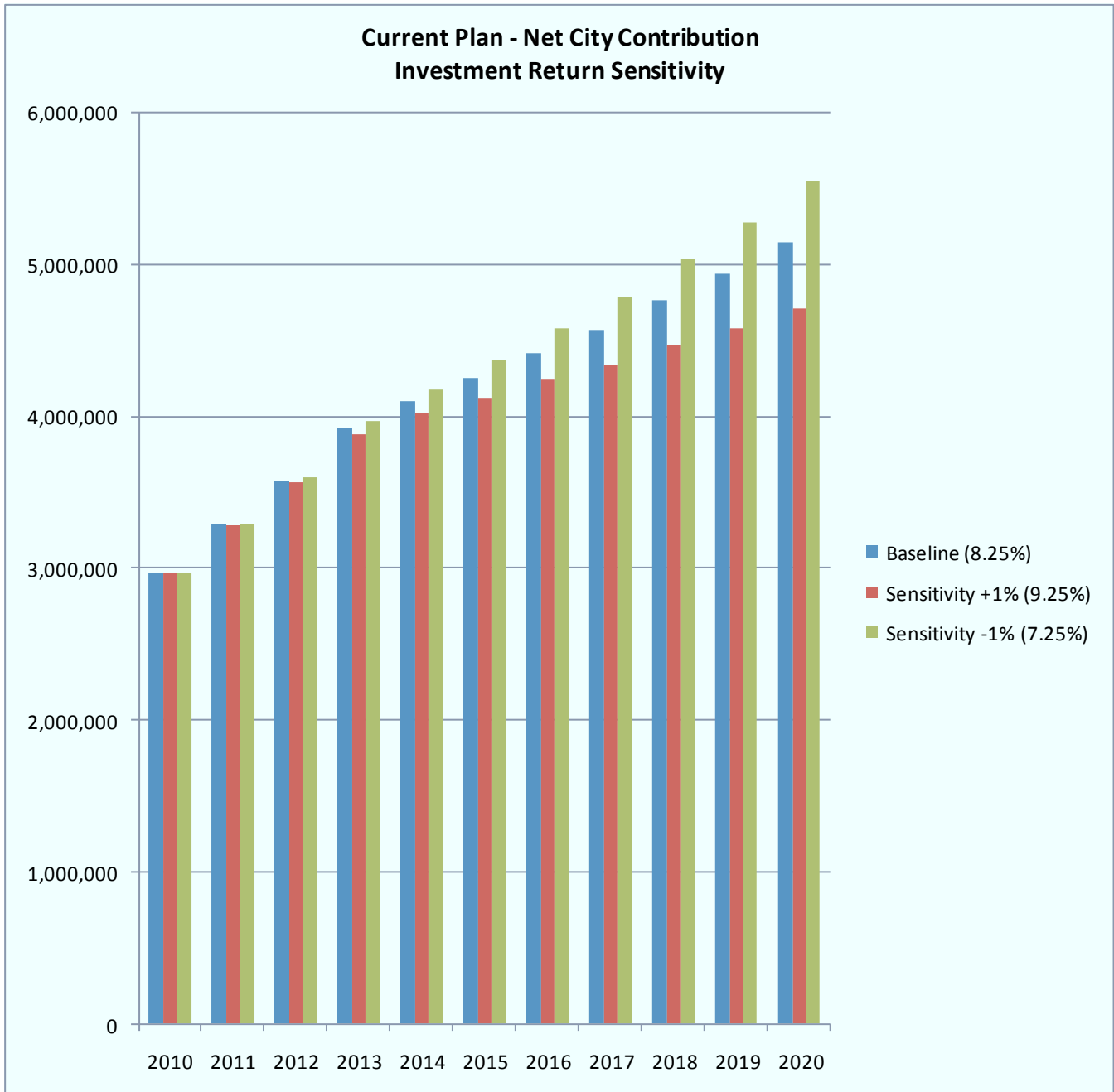


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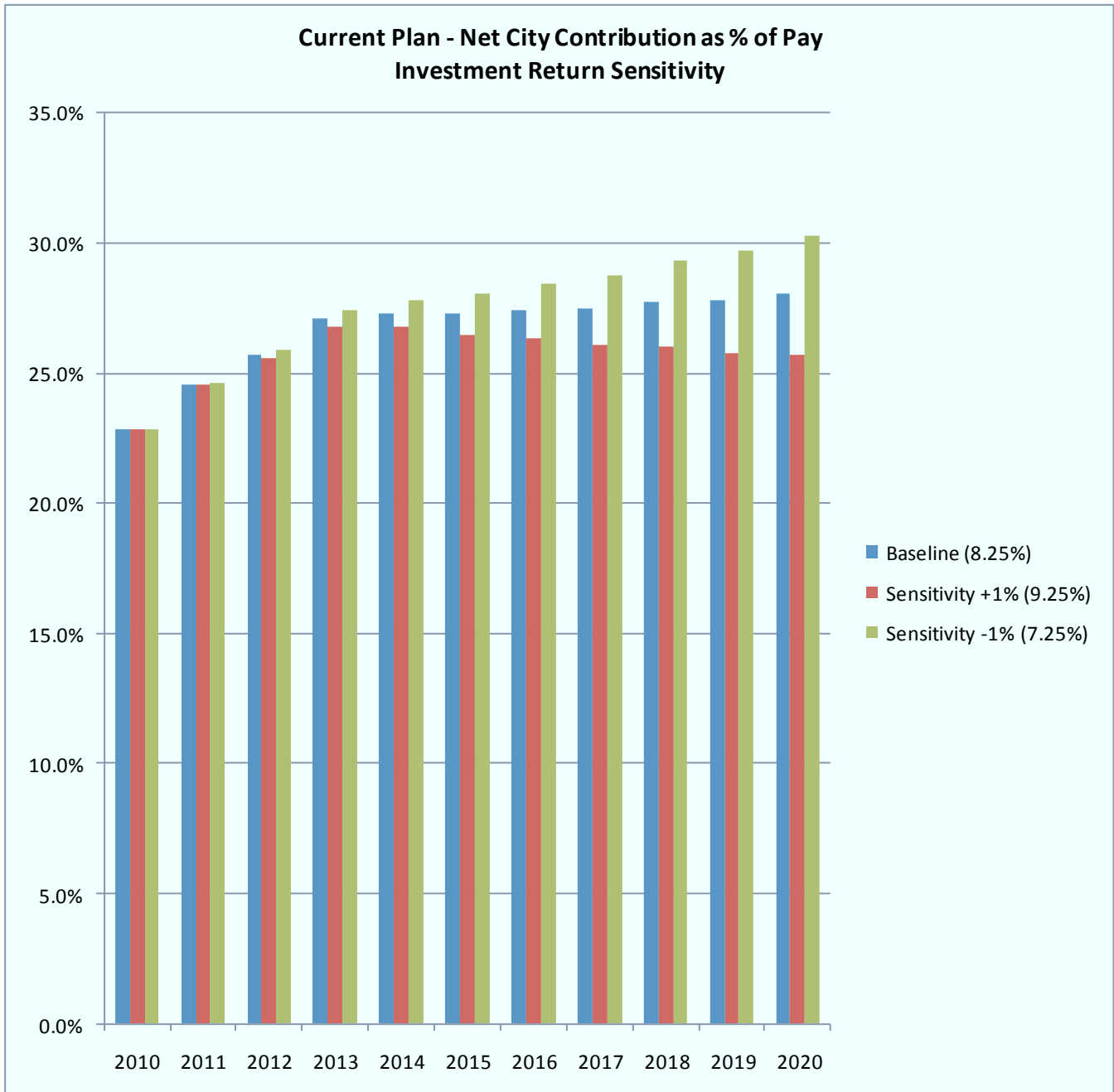


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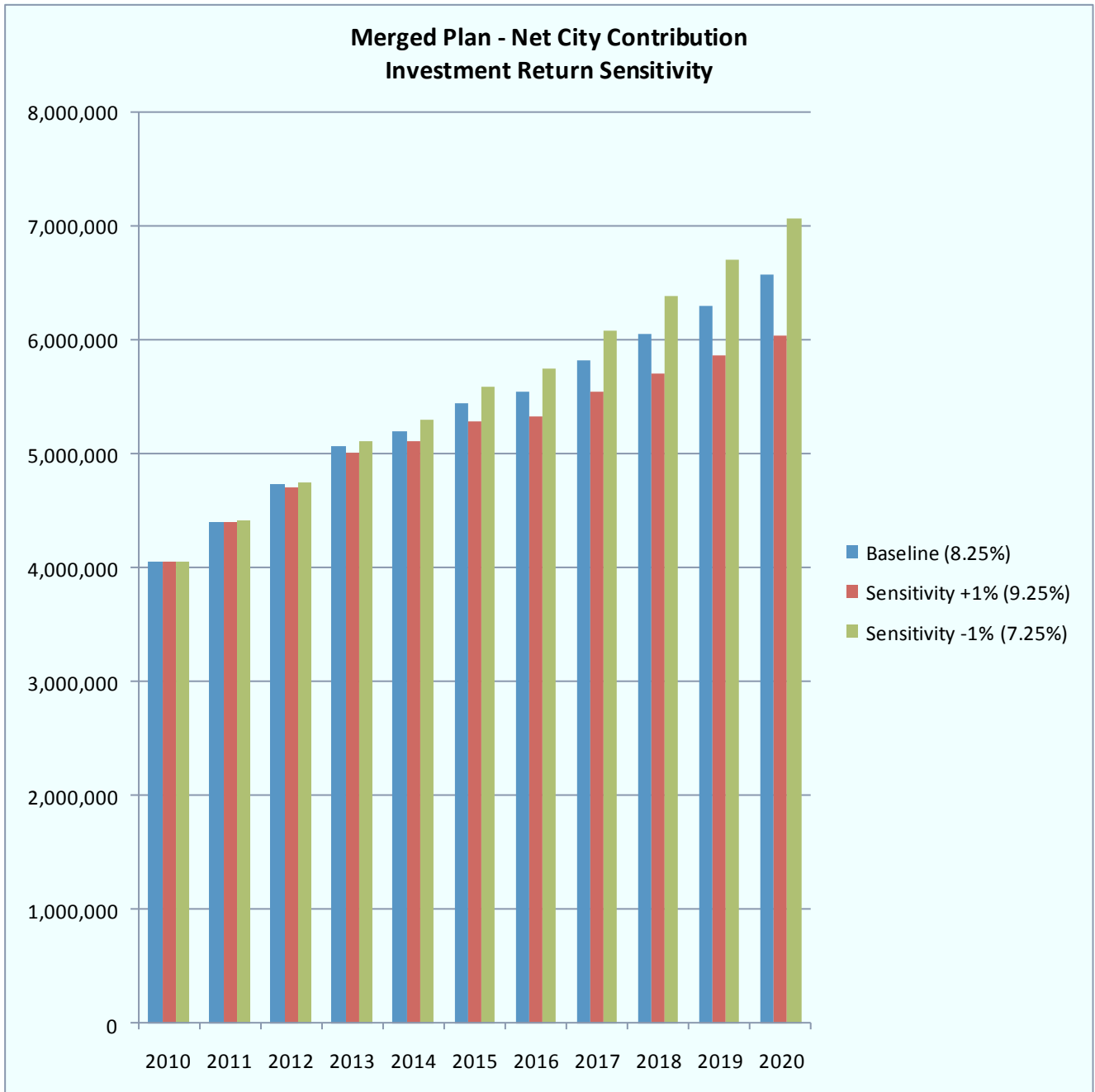


RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH ACTUARIAL STUDY AS OF OCTOBER 1, 2009



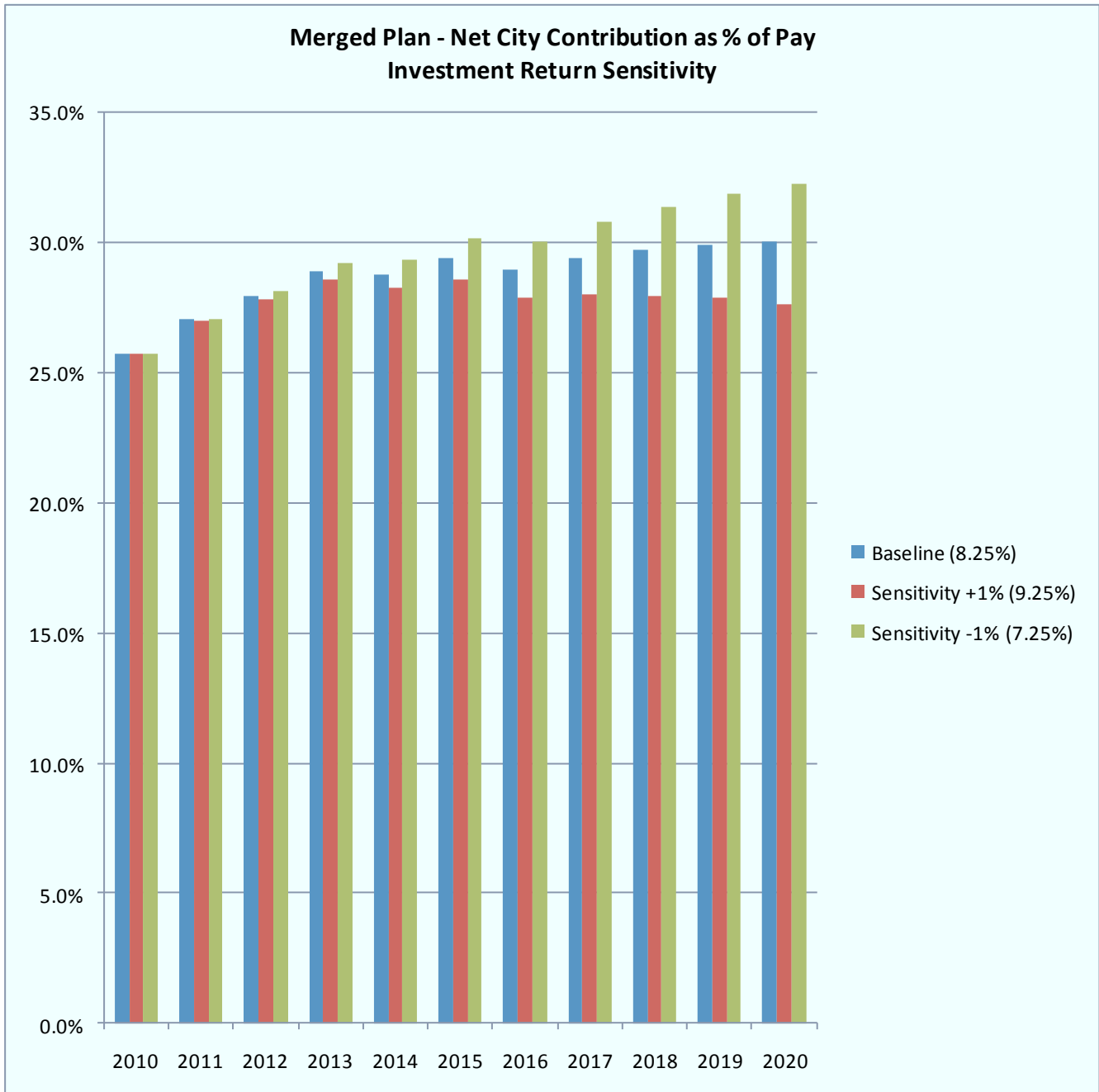


RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH ACTUARIAL STUDY AS OF OCTOBER 1, 2009





RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH ACTUARIAL STUDY AS OF OCTOBER 1, 2009





**RETIREMENT PLAN FOR GENERAL EMPLOYEES
OF THE CITY OF NORTH MIAMI BEACH
ACTUARIAL STUDY AS OF OCTOBER 1, 2009**

The following Table shows the projected payroll, actuarial accrued liability, actuarial value of assets, funded ratio, net City required contribution and net City required contribution as a percentage of payroll for the **current Plan**, assuming investment returns of **8.25%** (current Valuation assumption).

Fiscal Year	Payroll	Actuarial Accrued Liability	Actuarial Value of Assets	Funded Ratio	Net City Required Contribution	
					Amount	% of Pay
2010	12,953,446	79,099,862	57,832,173	73.1%	2,962,423	22.9%
2011	13,379,023	84,222,756	59,248,967	70.3%	3,289,698	24.6%
2012	13,928,313	89,567,066	61,173,143	68.3%	3,582,240	25.7%
2013	14,477,894	95,121,351	62,925,326	66.2%	3,924,844	27.1%
2014	15,031,546	100,896,129	67,590,049	67.0%	4,100,658	27.3%
2015	15,580,411	106,875,310	72,770,989	68.1%	4,251,005	27.3%
2016	16,098,674	113,119,828	78,216,284	69.1%	4,411,730	27.4%
2017	16,646,617	119,513,924	83,865,840	70.2%	4,570,565	27.5%
2018	17,188,581	126,004,142	89,660,593	71.2%	4,765,194	27.7%
2019	17,768,215	132,615,371	95,640,375	72.1%	4,942,818	27.8%
2020	18,350,146	139,279,555	101,738,499	73.0%	5,148,638	28.1%
1 Year Total	12,953,446	79,099,862	57,832,173		2,962,423	22.9%
5 Year Totals	69,770,222	448,907,164	308,769,658		17,859,863	25.6%
11 Year Totals	171,402,866	1,186,315,294	830,662,238		45,949,813	26.8%



**RETIREMENT PLAN FOR GENERAL EMPLOYEES
OF THE CITY OF NORTH MIAMI BEACH
ACTUARIAL STUDY AS OF OCTOBER 1, 2009**

The following Table shows the projected payroll, actuarial accrued liability, actuarial value of assets, funded ratio, net City required contribution and net City required contribution as a percentage of payroll for the **current Plan**, assuming investment returns of **9.25%** (current Valuation assumption + 1%).

Fiscal Year	Payroll	Actuarial Accrued Liability	Actuarial Value of Assets	Funded Ratio	Net City Required Contribution	
					Amount	% of Pay
2010	12,953,446	79,099,862	57,832,173	73.1%	2,962,423	22.9%
2011	13,379,023	84,222,756	59,345,436	70.5%	3,283,612	24.5%
2012	13,928,313	89,567,066	61,502,757	68.7%	3,561,332	25.6%
2013	14,477,894	95,121,351	63,630,606	66.9%	3,879,844	26.8%
2014	15,031,546	100,896,129	68,820,498	68.2%	4,021,659	26.8%
2015	15,580,411	106,875,310	74,683,503	69.9%	4,127,418	26.5%
2016	16,098,674	113,119,828	80,878,860	71.5%	4,238,318	26.3%
2017	16,646,617	119,513,924	87,353,515	73.1%	4,341,479	26.1%
2018	17,188,581	126,004,142	94,053,092	74.6%	4,474,085	26.0%
2019	17,768,215	132,615,371	101,021,534	76.2%	4,582,858	25.8%
2020	18,350,146	139,279,555	108,195,595	77.7%	4,712,529	25.7%
1 Year Total	12,953,446	79,099,862	57,832,173		2,962,423	22.9%
5 Year Totals	69,770,222	448,907,164	311,131,470		17,708,870	25.4%
11 Year Totals	171,402,866	1,186,315,294	857,317,569		44,185,557	25.8%



**RETIREMENT PLAN FOR GENERAL EMPLOYEES
OF THE CITY OF NORTH MIAMI BEACH
ACTUARIAL STUDY AS OF OCTOBER 1, 2009**

The following Table shows the projected payroll, actuarial accrued liability, actuarial value of assets, funded ratio, net City required contribution and net City required contribution as a percentage of payroll for the **current Plan**, assuming investment returns of **7.25%** (current Valuation assumption - 1%).

Fiscal Year	Payroll	Actuarial Accrued Liability	Actuarial Value of Assets	Funded Ratio	Net City Required Contribution	
					Amount	% of Pay
2010	12,953,446	79,099,862	57,832,173	73.1%	2,962,423	22.9%
2011	13,379,023	84,222,756	59,152,515	70.2%	3,295,784	24.6%
2012	13,928,313	89,567,066	60,845,507	67.9%	3,603,022	25.9%
2013	14,477,894	95,121,351	62,228,772	65.4%	3,969,291	27.4%
2014	15,031,546	100,896,129	66,382,989	65.8%	4,178,168	27.8%
2015	15,580,411	106,875,310	70,907,823	66.3%	4,371,442	28.1%
2016	16,098,674	113,119,828	75,643,926	66.9%	4,579,348	28.4%
2017	16,646,617	119,513,924	80,526,083	67.4%	4,790,104	28.8%
2018	17,188,581	126,004,142	85,492,530	67.8%	5,041,732	29.3%
2019	17,768,215	132,615,371	90,580,993	68.3%	5,281,766	29.7%
2020	18,350,146	139,279,555	95,723,414	68.7%	5,555,704	30.3%
1 Year Total	12,953,446	79,099,862	57,832,173		2,962,423	22.9%
5 Year Totals	69,770,222	448,907,164	306,441,956		18,008,688	25.8%
11 Year Totals	171,402,866	1,186,315,294	805,316,725		47,628,784	27.8%



**RETIREMENT PLAN FOR GENERAL EMPLOYEES
OF THE CITY OF NORTH MIAMI BEACH
ACTUARIAL STUDY AS OF OCTOBER 1, 2009**

The following Table shows the projected payroll, actuarial accrued liability, actuarial value of assets, funded ratio, net City required contribution and net City required contribution as a percentage of payroll for the **merged Plan**, assuming investment returns of **8.25%** (current Valuation assumption).

Fiscal Year	Payroll	Actuarial Accrued Liability	Actuarial Value of Assets	Funded Ratio	Net City Required Contribution	
					Amount	% of Pay
2010	15,772,584	97,681,747	67,347,271	68.9%	4,062,164	25.8%
2011	16,283,325	104,077,411	70,321,693	67.6%	4,403,150	27.0%
2012	16,911,894	110,762,842	73,457,799	66.3%	4,731,314	28.0%
2013	17,535,994	117,724,801	76,509,167	65.0%	5,066,343	28.9%
2014	18,064,843	124,942,580	82,493,649	66.0%	5,203,488	28.8%
2015	18,508,071	132,335,754	88,947,768	67.2%	5,440,738	29.4%
2016	19,148,483	140,047,296	95,762,717	68.4%	5,545,211	29.0%
2017	19,768,109	147,950,949	102,675,096	69.4%	5,819,741	29.4%
2018	20,394,152	155,912,090	109,838,907	70.4%	6,059,256	29.7%
2019	21,055,102	164,029,552	117,252,947	71.5%	6,301,893	29.9%
2020	21,892,298	172,299,857	124,856,735	72.5%	6,573,922	30.0%
1 Year Total	15,772,584	97,681,747	67,347,271		4,062,164	25.8%
5 Year Totals	84,568,640	555,189,381	370,129,579		23,466,459	27.7%
11 Year Totals	205,334,855	1,467,764,879	1,009,463,749		59,207,220	28.8%



**RETIREMENT PLAN FOR GENERAL EMPLOYEES
OF THE CITY OF NORTH MIAMI BEACH
ACTUARIAL STUDY AS OF OCTOBER 1, 2009**

The following Table shows the projected payroll, actuarial accrued liability, actuarial value of assets, funded ratio, net City required contribution and net City required contribution as a percentage of payroll for the **merged Plan**, assuming investment returns of **9.25%** (current Valuation assumption + 1%).

<u>Fiscal Year</u>	<u>Payroll</u>	<u>Actuarial Accrued Liability</u>	<u>Actuarial Value of Assets</u>	<u>Funded Ratio</u>	<u>Net City Required Contribution</u>	
					<u>Amount</u>	<u>% of Pay</u>
2010	15,772,584	97,681,747	67,347,271	68.9%	4,062,164	25.8%
2011	16,283,325	104,077,411	70,437,091	67.7%	4,395,869	27.0%
2012	16,911,894	110,762,842	73,852,648	66.7%	4,706,269	27.8%
2013	17,535,994	117,724,801	77,355,531	65.7%	5,012,341	28.6%
2014	18,064,843	124,942,580	83,973,026	67.2%	5,108,511	28.3%
2015	18,508,071	132,335,754	91,251,435	69.0%	5,291,883	28.6%
2016	19,148,483	140,047,296	98,976,304	70.7%	5,335,940	27.9%
2017	19,768,109	147,950,949	106,892,660	72.2%	5,542,760	28.0%
2018	20,394,152	155,912,090	115,159,682	73.9%	5,706,711	28.0%
2019	21,055,102	164,029,552	123,780,707	75.5%	5,865,364	27.9%
2020	21,892,298	172,299,857	132,699,246	77.0%	6,044,425	27.6%
1 Year Total	15,772,584	97,681,747	67,347,271		4,062,164	25.8%
5 Year Totals	84,568,640	555,189,381	372,965,567		23,285,154	27.5%
11 Year Totals	205,334,855	1,467,764,879	1,041,725,601		57,072,237	27.8%



**RETIREMENT PLAN FOR GENERAL EMPLOYEES
OF THE CITY OF NORTH MIAMI BEACH
ACTUARIAL STUDY AS OF OCTOBER 1, 2009**

The following Table shows the projected payroll, actuarial accrued liability, actuarial value of assets, funded ratio, net City required contribution and net City required contribution as a percentage of payroll for the **merged Plan**, assuming investment returns of **7.25%** (current Valuation assumption - 1%).

Fiscal Year	Payroll	Actuarial Accrued Liability	Actuarial Value of Assets	Funded Ratio	Net City Required Contribution	
					Amount	% of Pay
2010	15,772,584	97,681,747	67,347,271	68.9%	4,062,164	25.8%
2011	16,283,325	104,077,411	70,206,316	67.5%	4,410,429	27.1%
2012	16,911,894	110,762,842	73,065,314	66.0%	4,756,210	28.1%
2013	17,535,994	117,724,801	75,673,250	64.3%	5,119,682	29.2%
2014	18,064,843	124,942,580	81,042,311	64.9%	5,296,681	29.3%
2015	18,508,071	132,335,754	86,703,345	65.5%	5,585,805	30.2%
2016	19,148,483	140,047,296	92,657,586	66.2%	5,747,521	30.0%
2017	19,768,109	147,950,949	98,635,613	66.7%	6,085,226	30.8%
2018	20,394,152	155,912,090	104,788,712	67.2%	6,394,238	31.4%
2019	21,055,102	164,029,552	111,113,646	67.7%	6,713,059	31.9%
2020	21,892,298	172,299,857	117,548,485	68.2%	7,068,322	32.3%
1 Year Total	15,772,584	97,681,747	67,347,271		4,062,164	25.8%
5 Year Totals	84,568,640	555,189,381	367,334,462		23,645,166	28.0%
11 Year Totals	205,334,855	1,467,764,879	978,781,849		61,239,337	29.8%



**RETIREMENT PLAN FOR GENERAL EMPLOYEES
OF THE CITY OF NORTH MIAMI BEACH
ACTUARIAL STUDY AS OF OCTOBER 1, 2009**

APPENDIX

- Actuarial Impact Statement in State Required Format
- Outline of Principal Provisions of the Retirement Plan
- Summary of Actuarial Assumptions and Actuarial Cost Methods

Retirement Plan for General Employees of the City of North Miami Beach

Actuarial Impact Statement as of October 1, 2009

A. Description of Proposed Ordinance

The Retirement Plan and Trust for the General Management Employees of the City of North Miami Beach will be merged into the Retirement Plan for General Employees of the City of North Miami Beach, effective October 1, 2009.

Management Employees hired prior to October 1, 2010 will receive benefits and contribute as currently provided under the Retirement Plan and Trust for the General Management Employees of the City of North Miami Beach.

Management Employees hired after September 30, 2010 will receive benefits and contribute as currently provided under the Retirement Plan for General Employees of the City of North Miami Beach.

B. An estimate of the cost of implementing this proposed Ordinance (see attachment).

C. In my opinion, the proposed changes are in compliance with Part VII, Chapter 112, Florida Statutes and Section 14, Article X of the State Constitution.

Chairman, Retirement Committee

Date

Retirement Plan for General Employees of the City of North Miami Beach

Actuarial Impact Statement as of October 1, 2009

	Actuarial Valuation	Actuarial Impact Statement
A. <u>Participant Data</u>		
1. Active participants	300	331
2. Retired participants and beneficiaries receiving benefits (including DROPs)	193	209
3. Disabled participants receiving benefits	15	15
4. Terminated vested participants	26	29
5. Annual payroll of active participants	\$ 12,953,446	\$ 15,772,584
6. Annual benefits payable to those currently receiving benefits (including DROPs)	\$ 3,574,990	\$ 4,472,996
B. <u>Net Assets</u>		
1. Actuarial Value	\$ 57,832,173	\$ 67,347,271
2. Market Value	\$ 50,116,833	\$ 60,019,703
C. <u>Liabilities</u>		
1. Actuarial present value of future expected benefit payments for active members		
a. Retirement benefits	\$ 50,753,767	\$ 59,921,668
b. Vesting benefits	1,581,180	1,787,890
c. Death benefits	1,354,777	1,449,852
d. Disability benefits	3,824,748	4,505,256
e. Total	\$ 57,514,472	\$ 67,664,666
2. Actuarial present value of future expected benefit payments for terminated vested members	\$ 1,979,791	\$ 2,394,260
3. Actuarial present value of future expected benefit payments for members currently receiving benefits		
a. Service retired (including DROPs)	\$ 29,677,962	\$ 42,027,910
b. Disability retired	2,008,546	2,008,546
c. Beneficiaries	4,574,757	4,574,757
d. Miscellaneous	39,594	48,907
e. Total	\$ 36,300,859	\$ 48,660,120
4. Total actuarial present value of future expected benefit payments	\$ 95,795,122	\$ 118,719,046
5. Actuarial accrued liabilities	\$ 79,099,862	\$ 97,681,747
6. Unfunded actuarial liabilities	\$ 21,267,689	\$ 30,334,476

Retirement Plan for General Employees of the City of North Miami Beach

Actuarial Impact Statement as of October 1, 2009

	Actuarial Valuation	Actuarial Impact Statement
D. <u>Statement of Accumulated Plan Benefits</u>		
1. Actuarial present value of accumulated vested benefits		
a. Participants currently receiving benefits	\$ 36,261,265	\$ 48,611,213
b. Other participants	29,416,979	33,032,331
c. Total	\$ 65,678,244	\$ 81,643,544
2. Actuarial present value of accumulated non-vested plan benefits	659,294	937,722
3. Total actuarial present value of accumulated plan benefits	\$ 66,337,538	\$ 82,581,266
E. <u>Pension Cost</u>		
1. Total normal cost	\$ 2,215,642	\$ 2,852,940
2. Payment required to amortize unfunded liability	1,294,009	1,852,598
3. Interest	359,513	488,898
4. Total required contributions	\$ 3,869,164	\$ 5,194,436
5. Item 4 as a percentage of payroll	29.9%	32.9%
6. Estimated employee contributions	\$ 906,741	\$ 1,132,272
7. Item 6 as a percentage of payroll	7.0%	7.2%
8. Expected City contribution	\$ 2,962,423	\$ 4,062,164
9. Item 8 as a percentage of payroll	22.9%	25.8%
I. <u>Disclosure of Following Items:</u>		
1. Actuarial present value of future salaries - attained age	\$ 107,349,496	\$ 129,095,245
2. Actuarial present value of future employee contributions - attained age	\$ 7,514,465	\$ 9,254,125
3. Actuarial present value of future contributions from other sources	N/A	N/A
4. Amount of active members' accumulated contributions	\$ 7,957,621	\$ 10,155,527
5. Actuarial present value of future salaries and future benefits at entry age	N/A	N/A
6. Actuarial present value of future employee contributions at entry age	N/A	N/A

Retirement Plan for General Employees of the City of North Miami Beach

Actuarial Impact Statement as of October 1, 2009

G. Amortization of Unfunded Actuarial Accrued Liability

	<u>Unfunded Actuarial Accrued Liabilities</u>	<u>Current Unfunded Liabilities</u>	<u>Amortization Payment</u>	<u>Remaining Funding Period</u>
10/01/2001	Assumption / Method Change	\$ (2,686,354)	\$ (180,075)	22 years
10/01/2001	Plan Amendment	36,448	2,443	22 years
10/01/2002	Actuarial Loss (Gain)	9,102,135	593,657	23 years
10/01/2003	Actuarial Loss (Gain)	(175,984)	(11,188)	24 years
10/01/2004	Actuarial Loss (Gain)	4,287,461	266,091	25 years
10/01/2005	Actuarial Loss (Gain)	3,615,093	219,360	26 years
10/01/2005	Plan Amendment	39,572	2,401	26 years
10/01/2006	Actuarial Loss (Gain)	1,468,987	87,268	27 years
10/01/2007	Actuarial Loss (Gain)	(1,737,903)	(101,204)	28 years
10/01/2008	Actuarial Loss (Gain)	2,620,235	149,744	29 years
10/01/2008	Assumption Change	1,735,280	99,170	29 years
10/01/2009	Actuarial Loss (Gain)	2,962,719	166,342	30 years
10/01/2009	Unfunded Liability Transferred From Management Plan	5,457,310	355,935	23 years
10/01/2009	Proposed Ordinance	<u>3,609,477</u>	<u>202,654</u>	30 years
	TOTAL	\$ 30,334,476	\$ 1,852,598	

This actuarial valuation and/or cost determination was prepared and completed by me or under my direct supervision, and I acknowledge responsibility for the results. To the best of my knowledge, the results are complete and accurate, and in my opinion, the techniques and assumptions used are reasonable and meet the requirements and intent of Part VII, Chapter 112, Florida Statutes. There is no benefit or expense to be provided by the Plan and/or paid from the Plan's assets for which liabilities or current costs have not been established or otherwise taken into account for in the valuation. All known events or trends which may require a material increase in plan costs or required contribution rates have been taken into account in the valuation.

Enrollment Number: 08-02802

Dated: August 9, 2010



Lawrence F. Wilson, A.S.A.

Retirement Plan for General Employees of the City of North Miami Beach

Outline of Principal Plan Provisions

A. Effective Date

General Employees and Management Employees hired after September 30, 2010 - July 1, 1957 as Amended and Restated under Ordinance No. 89.19. Most recently amended under Ordinance No. 2008-2.

Management Employees hired prior to October 1, 2010 - January 24, 2003 as amended under Ordinance 2006-25.

B. Eligibility Requirements

General Employees -

Permanent full-time or contract employees excluding Police Officers, Firefighters, City Councilmen, City Officials and the City Attorney.

Management Employees -

General Management Employees.

General Employees and Management Employees hired after September 30, 2010 - Completion of two (2) years of credited service.

Management Employees hired prior to October 1, 2010 - Date of hire.

C. Credited Service

General Employees and Management Employees hired after September 30, 2010 - Service measured in completed calendar months from date of employment to date of retirement or prior termination.

Management Employees hired prior to October 1, 2010 -

Service measured in years and fractional parts of years from date of employment to date of retirement or prior termination.

D. Final Monthly Compensation (FMC)

General Employees and Management Employees hired after September 30, 2010 - Average monthly rate of basic compensation during the best 60 successive calendar months out of the last 120 calendar months preceding date of retirement or prior termination. Basic compensation is defined as compensation actually paid to a participant excluding commissions, bonuses, overtime, expense allowances and all other extraordinary compensation.

Retirement Plan for General Employees of the City of North Miami Beach

Outline of Principal Plan Provisions

Management Employees hired prior to October 1, 2010 -

Average monthly compensation during the five highest years of compensation preceding date of retirement or prior termination or the career average, whichever is greater. Earnings include total cash remuneration, but exclude lump sum payments for accrued annual or sick leave.

E. Normal Retirement

1. Eligibility

General Employees and Management Employees hired after September 30, 2010 -
Attainment of age 62, or attainment of age 55 with 20 years of service.

Management Employees hired prior to October 1, 2010 -

Attainment of age 62 with 6 years of service, or attainment of age 55 with at least 75 points (age plus service equals or exceeds 75).

2. Benefit

3.0% of FMC times credited service.

F. Early Retirement

1. Eligibility

General Employees and Management Employees hired after September 30, 2010 -
Attainment of age 55 and completion of 15 years of credited service, or completion of 20 years of service.

Management Employees hired prior to October 1, 2010 -

Attainment of age 50 and completion of 10 years of credited service.

2. Benefit

General Employees and Management Employees hired after September 30, 2010 -
Benefit accrued to date of retirement, actuarially reduced to reflect commencement of benefit at an earlier age.

Management Employees hired prior to October 1, 2010 -

Benefit accrued to date of retirement, reduced 5% for each year the early retirement date precedes the normal retirement date.

Retirement Plan for General Employees of the City of North Miami Beach

Outline of Principal Plan Provisions

G. Deferred Retirement

1. Eligibility

Retirement subsequent to normal retirement date.

2. Benefit

Benefit calculated as for normal retirement based upon FMC and credited service as of deferred retirement date.

H. Disability Retirement

1. Eligibility

General Employees and Management Employees hired after September 30, 2010 -
Total and permanent disability prior to normal retirement age for 6 months.

Management Employees hired prior to October 1, 2010 -
Total and permanent disability prior to normal retirement age.

2. Benefit

General Employees and Management Employees hired after September 30, 2010 -

The greater of (i) or (ii) below, payable for the lifetime of the participant.

- i. A - B, where A is 60% of FMC at date of disability and B is 64% of the monthly Social Security disability benefit to which the participant is entitled.
- ii. The participant's accrued benefit as of date of disability.

Monthly disability retirement income payable until the earliest of recovery from disability, death or normal retirement date. If the participant remains disabled until normal retirement date, the same benefit will be payable for 10 years certain (measured from normal retirement date) and life thereafter.

If death of a disabled participant occurs prior to normal retirement date, benefit to beneficiary payable for 10 years certain and life thereafter, which can be supported by the greater of A or B, where A is the single-sum value of the accrued deferred benefit at date of death assuming continued credited service and assuming continued pay at last monthly rate to date of death and B is the lesser of

Retirement Plan for General Employees of the City of North Miami Beach

Outline of Principal Plan Provisions

(1) and (2), where (1) is 24 times FMC at date of disability and (2) is 100 times the anticipated monthly normal retirement benefit.

Management Employees hired prior to October 1, 2010 -

The greater of (i) or (ii) below, but offset as necessary to preclude the total of the participant's worker's compensation, disability benefit, and other City-financed disability or salary continuation benefit (excluding social security benefits) from exceeding his average monthly earnings, payable for the lifetime of the participant.

- i. 25% of the participant's final monthly compensation.
- ii. The participant's accrued benefit as of date of disability.

I. Death Benefit

General Employees and Management Employees hired after September 30, 2010 -

Benefit to beneficiary (payable for 10 years certain and life thereafter) which can be supported by the greater of A or B, where A is the single-sum value of the accrued deferred benefit at date of death and B is the lesser of (i) and (ii), where (i) is 24 times the monthly rate of pay on October 1 preceding date of death and (ii) is 100 times the anticipated normal retirement benefit.

If death occurs subsequent to normal retirement date, benefit to beneficiary payable for 10 years certain and life thereafter, which can be supported by the single sum value of the accrued benefit as of date of death.

Management Employees hired prior to October 1, 2010 -

Benefit to beneficiary of vested accrued benefit payable for 10 years certain commencing at normal retirement date or reduced payment at early retirement age and reduced for payment prior to the participant's normal retirement age at the rate of 5% per year. The beneficiary is guaranteed to receive at least the value of the participant's accumulated contributions.

If a non-vested participant dies prior to retirement, the participant's beneficiary receives the participant's accumulated contributions.

Retirement Plan for General Employees of the City of North Miami Beach

Outline of Principal Plan Provisions

J. Employee Contributions

General Employees and Management Employees hired after September 30, 2010 - 7% of basic annual compensation contributed on a pre-tax basis beginning after completion of two years of service eligibility requirement continuing until termination or actual retirement date.

Management Employees hired prior to October 1, 2010 - 8% of compensation contributed on a pre-tax basis beginning upon date of hire and continuing until termination or actual retirement date.

K. Vested Benefit Upon Termination

1. Eligibility

100% vesting upon completion of six (6) years of credited service.

2. Benefit

Accrued benefit as of date of termination multiplied by vesting percentage, payable as of normal retirement date in the normal form. An immediate reduced benefit is optional upon the member's otherwise early retirement date.

L. Termination Benefit

1. Eligibility

Less than six (6) years of credited service at date of termination.

2. Benefit

Return of employee contributions plus interest at the rate of 3%, compounded annually.

M. Normal Form of Payment of Retirement Income

10 years certain and life thereafter, subject to COLA adjustments of 2.25% per annum.

N. Deferred Retirement Option Program

1. Eligibility - The attainment of normal retirement age.

2. The maximum period of participation in the DROP is sixty (60) months.

Retirement Plan for General Employees of the City of North Miami Beach

Outline of Principal Plan Provisions

3. General Employees and Management Employees hired after September 30, 2010 -
The COLA is first payable following DROP participation period.

Management Employees hired prior to October 1, 2010 -
The COLA is payable while a member is in the DROP.

4. Interest is credited at the fixed rate of 6.5% per annum.

O. Benefit Restoration Plan

General Employees and Management Employees hired after September 30, 2010 -
None.

Management Employees hired prior to October 1, 2010 -

All participants, pensioners and beneficiaries whose retirement or survivor benefits have been limited by Code Section 415 are eligible to participate in the Benefit Restoration Plan.

P. Changes Since Previous Valuation

There were previously no Management Employees in the Plan, so there were no benefit provisions for Management Employees.

Retirement Plan for General Employees of the City of North Miami Beach

Summary of Actuarial Assumptions and Actuarial Cost Methods

A. Mortality

For healthy participants, the RP-2000 Mortality Table was used, with separate rates for males and females and for annuitants and non-annuitants, and with fully generational mortality improvements projected to each future decrement date.

For disabled participants, the RP-2000 Disabled Mortality Table was used, with separate rates for males and females, and with fully generational mortality improvements projected to each future decrement date.

B. Investment Return

8.25%, compounded annually, net of investment expenses.

C. Allowances for Expenses or Contingencies

Provision for payment of administrative costs added to normal cost based upon non-investment expenses paid in previous year.

D. Employee Withdrawal Rates

<u>Age</u>	<u>Withdrawal Rates Per 100 Employees</u>			
	<u>Males</u>		<u>Females</u>	
	<u>First 4 Years</u>	<u>4+ Years</u>	<u>First 4 Years</u>	<u>4+ Years</u>
20	8.0	8.0	17.0	10.0
25	8.0	8.0	17.0	10.0
30	8.0	6.9	17.0	8.0
35	8.0	5.2	17.0	8.0
40	8.0	3.9	7.0	7.0
45	8.0	2.9	5.5	5.5
50	8.0	1.9	3.0	3.0
55	8.0	0.7	1.0	1.0
60 & Over	0.0	0.0	0.0	0.0

Retirement Plan for General Employees of the City of North Miami Beach

Summary of Actuarial Assumptions and Actuarial Cost Methods

E. Increase in Covered Payroll

4.0%, per year not greater than the average annual increase over most recent ten years (4.9%).

F. Disability Incidence

1985 Class One Disability Study Table with separate rates for males and females.

<u>Age</u>	<u>Disability Rates per 100 Employees</u>	
	<u>Male</u>	<u>Female</u>
20	0.03	0.03
25	0.04	0.05
30	0.05	0.08
35	0.07	0.14
40	0.12	0.21
45	0.20	0.32
50	0.36	0.53
55	0.72	0.95
60	1.26	1.16
65	1.75	1.36
70	0.00	0.00

G. Salary Increase Factor

<u>Service</u>	<u>Salary Increase</u>
0 – 5	7.50%
6 – 10	6.25%
11 – 14	6.00%
15+ years	4.75%

Retirement Plan for General Employees of the City of North Miami Beach

Summary of Actuarial Assumptions and Actuarial Cost Methods

H. Rates of Retirement

General Employees

<u>Age</u>	<u>Rates of Retirement</u>
< 55	2%
55	15%
56 – 60	10%
61	20%
62	30%
63 – 64	15%
65 – 69	20%
70 & above	100%

Management Employees

For those participants who have met the age and service requirements to retire, retirement is assumed to occur at the rate of 2.50% per year at each of ages 50 through 54, 5.00% per year at each of ages 55 through 61, and 100% at age 62; an additional 10% retirement is assumed upon the attainment of age 55 with at least 75 points (age plus service).

I. Deferred Retirement Option Program

General Employees and Management Employees hired after September 30, 2010 -
The assumed period of DROP participation (COLA deferral) is four (4) years.

Management Employees hired prior to October 1, 2010 -

Not applicable, as the COLA is not deferred during DROP participation for these employees.

J. Form of Payment

Future retirees have been assumed to select the 10-year certain and life annuity. 100% of individuals who terminate their employment vested and prior to retirement are assumed to elect to receive a monthly annuity.

Retirement Plan for General Employees of the City of North Miami Beach

Summary of Actuarial Assumptions and Actuarial Cost Methods

K. Actuarial Value of Assets

The method used for determining the actuarial value of assets phases in the deviation between the expected and actual return on assets at the rate of 20% per year. The actuarial value of assets will be further adjusted to the extent necessary to fall within the corridor whose lower limit is 80% of the fair market value of plan assets and whose upper limit is 120% of the fair market value of plan assets.

L. Actuarial Cost Method

Normal Retirement, Termination, Disability, and Death Benefits: Entry-Age-Normal Cost Method. Under this method the normal cost for each active employee is the amount which is calculated to be a level percentage of pay that would be required annually from his entry age to his assumed retirement age to fund his estimated benefits, assuming the Plan had always been in effect. The normal cost for the Plan is the sum of such amounts for all employees. The actuarial accrued liability as of any valuation date for each active employee or inactive employee who is eligible to receive benefits under the Plan is the excess of the actuarial present value of estimated future benefits over the actuarial present value of current and future normal costs. The unfunded actuarial accrued liability as of any valuation date is the excess of the actuarial accrued liability over the assets of the Plan.

M. Changes Since Previous Valuation

There were previously no Management Employees in the Plan, so there were no separate retirement rates assumed for Management Employees.

ORDINANCE NO. 2010-20

AN ORDINANCE OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, MERGING THE RETIREMENT PLAN AND TRUST FOR THE GENERAL MANAGEMENT EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH INTO THE RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH; REPEALING ORDINANCE NO. 2002-30 AND ALL SUBSEQUENT AMENDMENTS THERETO; PROVIDING FOR THE TRANSFER OF ALL ASSETS AND LIABILITIES OF THE RETIREMENT PLAN AND TRUST FOR THE GENERAL MANAGEMENT EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH TO THE RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH; DIRECTING THAT THE ADOPTION AGREEMENT WITH FLORIDA LEAGUE OF CITIES, INC. FOR ADMINISTRATION OF THE RETIREMENT PLAN AND TRUST FOR THE GENERAL MANAGEMENT EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH, DATED JANUARY 24, 2003, AND ALL SUBSEQUENT AMENDMENTS THERETO, BE TERMINATED; AMENDING ARTICLE II THE RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH, ENTITLED "DEFINITIONS"; AMENDING SECTION 3.01 OF THE RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH, ENTITLED "ELIGIBILITY; PARTICIPATION"; AMENDING SECTION 4.01 OF THE RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH, ENTITLED "PARTICIPANT'S CONTRIBUTION ACCOUNT"; CREATING A NEW SECTION 6.15 OF THE RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH, ENTITLED "BENEFITS OF GENERAL MANAGEMENT EMPLOYEES"; 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 AN EFFECTIVE DATE.

WHEREAS, the Retirement Plan for General Employees of the City of North Miami Beach was established by the City Council of the City of North Miami Beach pursuant to Ordinance 65-30, and has been amended on numerous occasions since that time; and

WHEREAS, the Retirement Plan and Trust for General Management Employees of the City of North Miami Beach was established by the City Council of the City of North Miami Beach pursuant to Ordinance 2002-30, and has been amended on several occasions since that time; and

WHEREAS, pursuant to State law, the City of North Miami Beach is ultimately responsible for the assets and liabilities of both Retirement Plans, and is required to fund both Retirement Plans on a sound actuarial basis; and

WHEREAS, the Mayor and City Council of the City of North Miami Beach have determined that it is in the best interest of the City, its citizens and employees to eliminate duplication of administrative functions and costs by merging the Retirement Plan and Trust for General Management Employees of the City of North Miami Beach into the Retirement Plan for General Employees of the City of North Miami Beach; and

WHEREAS, it is the intent of the Mayor and City Council to merge the two Retirement Plans in a manner that will not change the current benefits or employee contributions of any City employee who is a member of the Retirement Plan for General Employees of the City of North Miami Beach, and at the same time maintain all the current retirement provisions of City employees who participate in the Retirement Plan and Trust for General Management Employees of the City of North Miami Beach as of September 30, 2010.

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. Effective September 30, 2010, Ordinance 2002-30, establishing the Retirement Plan and Trust for General Management Employees of the City of North Miami Beach, and all subsequent amendments thereto (the “Management Plan”), shall be repealed. All assets and liabilities of the Management Plan on September 30, 2010 shall be transferred to, and become assets and liabilities of, the Retirement Plan for General Employees of the City of North Miami Beach established by Ordinance 65-30, as subsequently amended (the “General Employees’ Plan”). Also effective September 30, 2010, all active participants of the Management Plan shall become members of the General Employees’ Plan, and all such members shall retain the full value of their accrued benefits under the Management Plan. Beginning October 1, 2010, those active participants of the Management Plan who become members of the General Employees’ Plan pursuant to this Ordinance shall earn benefits under the General Employees’ Plan in accordance with the provisions of the General Employees’ Plan, as amended herein. There shall be no changes to the benefits or employee contributions of members of the General Employees’ Plan who were participating in that Plan prior to September 30, 2010, as a consequence of this Ordinance. After the assets and liabilities of the Management Plan are transferred to the General Employees’ Plan, and all other administrative tasks attendant to the repeal of Ordinance No. 2002-30, as amended, are completed, the Adoption Agreement for the Management Plan dated January 24, 2003, as amended, shall be terminated.

Section 3. Article II of the Retirement Plan for General Employees of the City of North Miami Beach, entitled “Definitions”, is amended to read:

ARTICLE II

DEFINITIONS

For the purposes of the Retirement Plan, certain words and phrases shall have the meanings ascribed to them in this article, except where the context otherwise requires. The masculine pronoun, wherever used, shall include the feminine.

Employee means any person employed by the City on a regular full-time basis, excluding police officers, firefighters or City Council members, who is receiving compensation from the City for personal services, and who is within a group or classification of employees designated by the Retirement Board as eligible for membership in the plan, exclusive of the following groups and classifications:

- (a) Persons employed on a provisional, original probationary or other temporary basis;
- (b) Members of boards or commissions, officers or employees receiving no salary or a nominal salary or a fee basis;
- (c) Persons whose regular employment with the City is for less than twenty (20) hours per week or for not more than five (5) months in any one calendar year.

Effective September 30, 2010, General Management employees employed by the City on a regular full-time basis shall be included as employees for purposes of the Retirement Plan. Any management employee hired on or after October 1, 2010 and employed by the City on a regular full-time basis, excluding police officers, firefighters or City Council members, and also excluding persons described in paragraphs (a), (b) and (c) above, shall be an employee for purposes of the Retirement Plan, but shall not be included as a General Management employee.

General Management Employee or General Management Member means any active participant of the Retirement Plan and Trust for General Management Employees of the City of North Miami Beach established by Ordinance 2002-30, as amended, who became a member of this Retirement Plan on September 30, 2010, pursuant to Ordinance 2010-20.

Participant's Contribution Account means the required contributions paid by any member as provided in Section 4.01 or credited to the member pursuant to Section 4.02, together with any interest allowed thereon under this Plan until such time as the employee's service with the City is terminated at the rate computed annually, as determined by the Committee from time to time. In addition, the Participant's Contribution Account for General Management members shall include the value of the member's accumulated contributions account under the Retirement Plan and Trust for General Management Employees of the City of North Miami Beach established by Ordinance 2002-30, as amended, as of September 30, 2010.

Section 4. Section 3.01 of the Retirement Plan for General Employees of the City of

North Miami Beach, Miami Beach, entitled "Eligibility; Participation", is amended to read:

Sec. 3.01 ELIGIBILITY; PARTICIPATION

(a) Date of Participation - The date on which each such employee will become a participant in the Plan shall be:

(i) January 1, 1990, for each employee who was a participant in the RETIREMENT PLAN FOR EMPLOYEES OF CITY OF NORTH MIAMI BEACH effective October 1, 1965.

(ii) The date after January 1, 1990, as of which each employee completes two (2) years of credited service.

(iii) September 30, 2010 for General Management employees.

Section 5. Section 3.02 of the Retirement Plan for General Employees of the City of

North Miami Beach, entitled "Service", is amended to read:

Sec. 3.02 SERVICE

(a) Definition - The term service means that period of continuous, uninterrupted employment with the City and its designated successors from the employee's or participant's last date of employment to the earlier of the date of termination of his credited service and his retirement as herein described. For General Management members, service shall include the credited service earned by the member under the Retirement Plan and Trust for General Management Employees of the City of North Miami Beach established by Ordinance 2002-30, as amended, as of September 30, 2010, as well as the period of continuous, uninterrupted employment with the City after that date.

Section 6. Section 4.01 of the Retirement Plan for General Employees of the City of

North Miami Beach, entitled "Participant's Contribution Account", is amended to read:

Sec. 4.01 PARTICIPANT'S CONTRIBUTION ACCOUNT

(a) Contributions Mandatory - The "Participant's Contribution Account" will consist of tax-deferred participant contributions. Contributions required of employees will be paid by the City and shall be treated for IRS purposes as employer contributions. However, for all purposes of determining benefits under the Plan, they will be considered participant contributions. This section is intended to comply with Section 414(h) of the Internal Revenue Code.

- (b) Amount of Contribution - Effective July 1, 1998, each participant will contribute toward the cost of the Plan an amount equal to 7% of his basic annual compensation as defined in Article II effective as of January 1, 1973. Notwithstanding the preceding sentence, General Management members shall contribute toward the cost of the Plan an amount equal to 8% of basic annual compensation as defined in Article II.
- (c) Length of Contribution - Each participant shall continue to contribute to the Plan until the date of termination of the participant's service with the City.

Section 7. A new Section 6.15 of the Retirement Plan for General Employees of the City of North Miami Beach, entitled “Benefits for General Management Employees”, is created to read:

Sec. 6.15 BENEFITS OF GENERAL MANAGEMENT EMPLOYEES

Notwithstanding any provision of this Retirement Plan:

- (a) Any person who was a member of the Retirement Plan and Trust for General Management Employees of the City of North Miami Beach prior to October 1, 2010, and became a member of this Retirement Plan on September 30, 2010 pursuant to Ordinance 2010-20, shall maintain the same rights and benefits established by Ordinance No. 2002-30, as amended.
- (b) Any person who was a member of the Retirement Plan and Trust for General Management Employees of the City of North Miami Beach established by Ordinance 2002-30, as amended, and who retired or separated from City employment after vesting under the provisions of that Plan prior to October 1, 2010, shall have their benefits paid from this Retirement Plan on and after October 1, 2010, in accordance with the provisions of the Retirement Plan and Trust for General Management Employees of the City of North Miami Beach in effect at the time of their retirement or separation from employment.

Section 8. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 9. If any section, subsection, clause or provision of this ordinance is held invalid the remainder shall not be affected by such invalidity.

Section 10. 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.

Section 11. This Ordinance shall take effect upon adoption, except as otherwise specifically provided herein.

APPROVED BY TITLE ONLY on first reading this ____ day of _____, 2010.

APPROVED AND ADOPTED on second reading this ____ day of _____, 2010.

ATTEST:

SUSAN A. OWENS
CITY CLERK

(CITY SEAL)

MYRON ROSNER
MAYOR

APPROVED AS TO FORM

DARCEE S. SIEGEL
CITY ATTORNEY

Sponsored by: Mayor & Council



MEMORANDUM

 **Print**

TO: Mayor and City Council
FROM: Kelvin L. Baker, City Manager
DATE: Tuesday, August 17, 2010

RE: Ordinance No. 2010-21 (First Reading By Title Only)

BACKGROUND: In review of the City Code Section 3-3.11 "Guaranteed Energy Savings Contract" it currently states that the City may only enter into an agreement of this nature for a term no longer than ten (10) years, although Florida State Statute 489.145 provides for a maximum financing term of twenty (20) years. At the time this language was added to the City Code the term was ten (10) years, however since then the state statute has been amended to allow for a twenty (20) year financing term. This requested change will make financing of large capital items more economically feasible by extending the term for repayment of these types of projects.

RECOMMENDATION: It is the staff's recommendation that the City Code Section 3-3.11 be amended to reflect the attached proposed changes.

FISCAL IMPACT: The annual cost of the project will be significantly reduced by increasing the period allowable for financing.

CONTACT PERSON(S): Bernard McGriff, Asst. City Manager
Brian O'Connor, Chief Procurement Officer

ATTACHMENTS:

 [Ordinance No. 2010-21](#)

ORDINANCE NO. 2010-21

AN ORDINANCE AMENDING CHAPTER III OF THE CODE OF ORDINANCES OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, ENTITLED PURCHASING AND IN PARTICULAR SECTIONS 3-3.11c. AND 3-3.11d. TO INCREASE FROM TEN YEARS TO TWENTY YEARS THE CONTRACT TERM AND PERIOD FOR PAYMENTS FOR GUARANTEED ENERGY SAVINGS CONTRACTS; 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.

WHEREAS, the City of North Miami Beach Code provides that the City may enter into a guaranteed energy savings contract with a qualified provider to significantly reduce energy or operating costs through one or more energy conservation measures, in compliance with Section 489.145, Florida Statutes; and

WHEREAS, the City of North Miami Beach Code section pertaining to guaranteed energy savings contracts provides for a maximum 10-year period for the contract term and for payments to be made from the savings in energy costs, which include the energy-saving measures, professional fees and financing; and

WHEREAS, it would not be economically feasible for the City to enter into a guaranteed energy performance savings contract providing for a maximum 10-year contract term and 10-year period for payments, while the annual cost of the project would be significantly reduced by increasing the contract term and the period allowable for financing beyond ten years; and

WHEREAS, as acknowledged in the City Code, guaranteed energy performance savings contracts are governed by Section 489.145, Florida Statutes; and

WHEREAS, Section 489.145(4)(g), Florida Statutes, provides, in relevant part, that the contract may extend beyond the fiscal year in which it becomes effective and may be automatically renewed annually up to twenty (20) years; and

ORDINANCE NO. 2010-21

WHEREAS, Section 489.145(4)(c), Florida Statutes, provides for a period not to exceed twenty years for the installment payments that are to be made from the savings in energy costs; and

WHEREAS, it is necessary to amend the referenced City Code Section in order to enter into a guaranteed energy, water, and wastewater performance savings contract and to be consistent with the longer contract term in Section 489.145(4)(g) of the Florida Statutes and the longer installment payment period in Section 489.145(4)(c) of the Florida Statutes; and

WHEREAS, the Mayor and City Council of the City of North Miami Beach recognize that amending the City Code so that the City may enter into a guaranteed energy, water, and wastewater performance savings contract would result in beneficial cost savings to the City; and

WHEREAS, the Mayor and City Council of the City of North Miami Beach further recognize that amending the City Code will provide clarity and consistency in the laws applicable to guaranteed energy performance savings contracts.

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. Chapter III, entitled Purchasing, of the North Miami Beach City Code is hereby amended as follows:

3-3.11 Guaranteed Energy Savings Contract.

The City may enter into a guaranteed energy savings contract with a qualified provider to significantly reduce energy or operating costs through one or more energy conservation measures, in compliance with Section 489.145, Florida Statutes.

a. The qualified provider shall be selected in compliance with Section 287.055, Florida Statutes.

b. The provider must provide a guarantee that savings will meet or exceed the cost of energy conservation measures. Provider shall provide a one hundred (100%) percent performance bond.

ORDINANCE NO. 2010-21

c. The contract may extend beyond the fiscal year in which it becomes effective; however, the term of any contract expires at the end of the fiscal year and may be automatically renewed annually up to ~~ten (10)~~ twenty (20) years, subject to annual appropriations based upon continued realized energy savings.

d. Payments, which include the energy-saving measures, professional fees and financing, shall be made from the savings in energy costs for a term not to exceed ~~ten (10)~~ twenty (20) years.

Section 3. All ordinances or parts of ordinances in conflict herewith 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 August, 2010.**

APPROVED AND ADOPTED on second reading this _____ **day of September, 2010.**

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



MEMORANDUM

 Print

TO: Mayor and City Council
FROM: Kelvin L. Baker, City Manager
DATE: Tuesday, August 17, 2010

RE: Ordinance No. 2010-13 (Second and Final Reading)- Tabled from July 20, 2010

BACKGROUND:

Other post-employment benefits (OPEB) include various non-pension benefits, such as health care and life insurance, which are provided to retirees. Historically, public employers have used a pay-as-you-go method of accounting for OPEB Benefits, resulting in recognition of the cost for these benefits occurring only when premiums or benefit claims for these retirees were paid.

Governmental Accounting Standard Board (GASB) issued Statement 45 to require more complete, reliable, and decision-useful financial reporting regarding costs and financial obligations that governments incur when they provide OPEB Benefits. Thus, Statement 45 requires that public employers annually expense OPEB Benefits that are earned today by active employees, but that will be paid only when the employee retires.

If a public employer does not fund its OPEB Benefits liability, then the employer must report an OPEB Benefits obligations on its balance sheets and disclose any unfunded liability in the notes to its financial statements.

While there is no obligation to fund for OPEB Benefits, it is likely that most public employers will do so for a number of reasons, including credit rating concerns and the ability to use investment returns to reduce the liability.

Funding of OPEB Benefits liability through a trust meeting the GASB requirements allows the public employer to use a higher discount rate in calculating its unfunded liability, which results in a reduction in the amount reported as the OPEB Benefits liability in its financial statements.

TRUST REQUIREMENTS: The primary benefit of an OPEB Trust is to reduce the OPEB cost and liability. The primary benefit of establishing an OPEB trust is that GASB 43 and 45 allows the employer to invest assets long-term to earn a rate of return

higher than the return on general operating funds. This allows the employer to use a higher discount rate to calculate Annual Required Contribution (ARC) and, thus, the balance sheet liability. A higher discount rate translates into a lower accounting cost and reduced liability for retiree benefits. If an employer does not fund the ARC, this balance sheet liability would grow over time.

To avail itself of the advantageous discount rate permitted for trust funded OPEB Benefits, an employer must irrevocably transfer assets to a trust which is dedicated to providing benefits to retirees and their beneficiaries and is legally protected from the employer's creditors.

The plan structure and the manner in which trust assets as assets held in trust for exclusive benefit of retirees and their beneficiaries, not as assets of the employer, and with the specific criteria of irrevocability of contributions, dedication of plan assets (including income from the investment of plan assets) to pay benefits in accordance with the plan, and legal protection of the plan assets from creditors.

In order to effectuate the adoption of the trust, certain documentation is required, including;

- Authorizations from appropriate entity to adopt trust and retain service provider.
- Trust document
- Investment Policy Statement.
- Master Trust Agreement/Custodial Agreements

RECOMMENDATION:

It is recommended that the City Council approve the establishment of an OPEB Trust for the employees and their dependents of the City of North Miami Beach.

FISCAL IMPACT:

General Fund: None

CONTACT PERSON(S):

Susan Gooding-Liburd, Finance Director

ATTACHMENTS:

- 📄 [Ordinance No. 2010-13](#)
- 📄 [Exhibit A-Trust Joinder Agreement OPEB](#)
- 📄 [Exhibit B-Master Trust Agreement \(League\)](#)
- 📄 [Exhibit C-Investment Policy \(League\)](#)

ORDINANCE NO. 2010-13

AN ORDINANCE PROVIDING FOR THE ESTABLISHMENT OF AN OTHER POST-EMPLOYMENT BENEFIT TRUST FOR THE EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH; AUTHORIZING THE JOINING AS A PARTY THE FLORIDA MUNICIPAL PENSION TRUST FUND MASTER TRUST AGREEMENT AND THE PARTICIPATION OF SAID TRUST IN THE OTHER POST-EMPLOYMENT BENEFIT PLAN TRUST UNDER THE FLORIDA MUNICIPAL PENSION TRUST FUND MASTER TRUST AGREEMENT; PROVIDING FOR PUBLICATION; 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 Mayor and City Council have provided post-employment benefits to the City's employees, herein after referred to as "Participants"; and

WHEREAS, the Mayor and City Council under the provisions of the laws of the State of Florida, are authorized to establish an Other Post- Employment Benefit ("OPEB") Trust to provide for specified post-employment benefits for Participants; and

WHEREAS, it is the intent of the City Council to establish such an OPEB Trust for the exclusive benefit of Participants; and

WHEREAS, it is the further intent of the City Council to authorize the participation of the OPEB Trust in the Other Post-Employment Benefit Plan Trust under the Florida Municipal Pension Trust Fund Master Trust Agreement.

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.

ORDINANCE NO. 2010-13

Section 2. An Other Post-Employment Benefit ("OPEB") Trust to provide for the above specified post-employment benefits as specified in Exhibit "A" of Participants of the City of North Miami Beach is hereby established, effective upon adoption of this ordinance. The OPEB Trust shall be for the exclusive benefit of Participants.

Section 3. The City Council hereby expressly (i) authorizes joining the Florida Municipal Pension Trust Fund Master Trust Agreement, attached as Exhibit "B", as a party through a Trust Joinder Agreement, (ii) authorizes the participation of the OPEB Trust in the Other Post-Employment Benefit Plan Trust under the Florida Municipal Pension Trust Fund Master Trust Agreement, and (iii) authorizes the administration of the OPEB Trust, and the investment of assets of the OPEB Trust, within the procedures, policies and methods outlined in the Florida Municipal Pension Trust Fund's Master Trust Agreement, Investment Policy ("Exhibit "C") and Trust Joinder Agreement.

Section 4. The City Council hereby empowers the Manager with the authority to execute such documents and agreements as are required for joining as a party the Florida Municipal Pension Trust Fund Master Trust Agreement and for participation in the Other Post-Employment Benefit Plan Trust under the Florida Municipal Pension Trust Fund Master Trust Agreement.

Section 5. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 6. If any section, subsection, clause or provision of this ordinance is held invalid, the remainder shall not be affected by such invalidity.

Section 7. 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 _____, 2010.

APPROVED AND ADOPTED on second reading this ___ day of _____, 2010.

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

**TRUST JOINDER AGREEMENT
FOR OTHER POST-EMPLOYMENT BENEFIT PLAN TRUST UNDER
FLORIDA MUNICIPAL PENSION TRUST FUND
MASTER TRUST AGREEMENT**

THIS TRUST JOINDER AGREEMENT between the _____,
(Governing Body)

Florida (herein referred to as the "Participating Employer"), and the Master Trustees of the Florida Municipal Pension Trust Fund (herein collectively referred to as the "Master Trustee").

WITNESSETH:

WHEREAS, the Participating Employer is establishing or currently maintains a post-employment benefit plan other than a pension plan for the sole and exclusive benefit of its Participants (herein referred to as the "other post-employment benefit plan");

WHEREAS, the Participating Employer is authorized to vary the investment procedures of the other post-employment benefit plan thereby permitting the assets of the other post-employment benefit plan to be invested in accordance with the Master Trust Agreement and the Investment Policy of the Florida Municipal Pension Trust Fund (herein referred to as the "FMPTF"), and is further authorized to participate in the FMPTF as a Participating Employer in accordance with the procedures, policies and methods outlined in the FMPTF Master Trust Agreement;

WHEREAS, the FMPTF, in accordance with the FMPTF Master Trust Agreement, provides a wide array of administrative, custodial and investment services to the Participating Employers in the FMPTF;

WHEREAS, the Participating Employer intends to avail itself of the services offered by FMPTF in connection with the other post-employment benefit plan; and

WHEREAS, the Participating Employer desires to submit this Trust Joinder Agreement to the Master Trustee to become a Participating Employer in the FMPTF and a party to the FMPTF Master Trust Agreement.

THEREFORE, in consideration of the mutual covenants and agreements flowing to each of the parties hereto, it is agreed as follows:

1. Both parties to this Trust Joinder Agreement agree that the _____,
(Governing Body)
Florida is a Participating Employer as provided in the FMPTF Master Trust Agreement and shall be a party to the FMPTF Master Trust Agreement.

2. The Participating Employer shall attach a copy of its other post-employment benefit plan document or otherwise provide a statement of benefits, plan participants ("Participants") and all other information required for the proper and efficient administration of the other post-employment benefit plan to the Administrator designated by the Master Trustee.
3. The Master Trustee accepts the Participating Employer's other post-employment benefit plan assets for investment in the Master Trust Fund and shall hold the assets in trust for the exclusive benefit of Participants as provided in the FMPTF Master Trust Agreement.
4. The Participating Employer shall cause the assets of the Participating Employer's other post-employment benefit plan to be deposited into a depository designated by the FMPTF.
5. The Participating Employer shall make timely contributions in accordance with the provisions of the other post-employment benefit plan and shall deposit its contributions and any contributions made by Participants into a depository designated by the FMPTF.
6. Neither the Master Trustee nor the Administrator shall be under any duty to determine whether the amount of any contribution is in accordance with the provisions of the Participating Employer's other post-employment benefit plan or to collect or enforce payment of any contribution.
7. Depending on the Participating Employer's other post-employment benefit plan, the Master Trustee or the Administrator may require the other post-employment benefit plan be approved for actuarial soundness prior to participation approval in the FMPTF Master Trust Agreement, as determined by the Master Trustee or the Administrator.
8. No Participating Employer or Participant shall have any right, title or interest in or to any specific assets of the Master Trust Fund but shall have an undivided beneficial interest in the Master Trust Fund; however, there shall be a specific accounting of assets allocable to each Participating Employer and to each participating other post-employment benefit plan.
9. Neither the Master Trustee nor the Administrator guarantee the Other Post-Employment Benefit Plan Trust from loss or depreciation or the payment of any amount which may become due to any person under any Participating Employer's other post-employment benefit plan.
10. In resolving any conflict among the provisions of the Other Post-Employment Benefit Plan Trust and in resolving any other uncertainty as to the meaning or intention of any provision of the Other Post-Employment Benefit Plan Trust, the interpretation that (i) causes the Other Post-Employment Benefit Plan

- Trust to be exempt from tax under Internal Revenue Code Sections 115 and 501(a), and (ii) causes the participating other post-employment benefit plan and the Other Post-Employment Benefit Plan Trust to comply with all applicable requirements of law shall prevail over any different interpretation, as determined by the Master Trustee or the Administrator.
11. The Participating Employer shall timely remit, or timely approve the remittance of, administrative fees as may be due under the FMPTF Master Trust Agreement into a depository designated by the FMPTF. Administrative fees are set by the Master Trustee in a fee schedule, subject to amendment, which shall be provided to the Participating Employer.
 12. The Participating Employer is responsible for making all decisions and determinations under the other post-employment benefit plan. The Participating Employer shall provide to the Administrator all relevant Participant information, and shall promptly update all such information, required under the other post-employment benefit plan. The Participating Employer shall certify said information to be correct to the best of its knowledge, and the FMPTF and the Administrator shall have the right to rely on the accuracy of said information in performing their contractual responsibilities.
 13. The Participating Employer shall be responsible for providing the Administrator, in a timely manner, all information concerning the termination of any Participant (e.g., death, disability, retirement, resignation or dismissal). If the reason for the termination is disability and the Participant is claiming disability benefits, the Participating Employer shall be responsible for ascertaining eligibility through procedures adopted by the Participating Employer. The Participating Employer shall certify said information to be correct to the best of its knowledge, and the FMPTF and the Administrator shall have the right to rely on the accuracy of said information in performing their contractual responsibilities.
 14. The FMPTF shall provide administrative, custodial and investment services to the Participating Employer in accordance with this Trust Joinder Agreement relating to the other post-employment benefit plan and in accordance with the FMPTF Master Trust Agreement.
 15. The FMPTF, in accordance with the policies and procedures established by the Master Trustee and the FMPTF Master Trust Agreement, shall periodically report its activities to the Participating Employer on a timely basis.
 16. The parties to this Trust Joinder Agreement agree to abide by and be bound by the terms, duties, rights and obligations of the parties as set forth in the FMPTF Master Trust Agreement, as may be amended by the Master Trustee, which is attached hereto and is made a part of this Trust Joinder Agreement.

17. The Participating Employer elects to join the FMPTF Other Post-Employment Benefit Plan Trust for:

- Full service, including investment and administrative, other post-employment benefit plan services.
- Investment only other post-employment benefit plan services.

18. The Participating Employer elects to have the other post-employment benefit plan assets invested in accordance with the FMPTF Investment Policy with an equity to fixed income ratio of:

- 50% Equities/ 50% Fixed Income
- 60% Equities/ 40% Fixed Income**
- 70% Equities/ 30% Fixed Income

19. Either party may terminate this Trust Joinder Agreement by giving at least 60 days prior notice in writing to the other party. Any termination shall be governed by the provisions of the FMPTF Master Trust Agreement and the other post-employment benefit plan.

IN WITNESS WHEREOF, the Participating Employer has caused this Trust Joinder Agreement to the Florida Municipal Pension Trust Fund Master Agreement to be executed and the signature of its authorized officer affixed this _____ day of _____, 20__.

(Governing Body)

By: _____
Signature

(Name and Title)

ATTEST:

* * * * *

ACCEPTANCE

FLORIDA MUNICIPAL PENSION TRUST FUND

By: _____
Secretary - Treasurer

**FLORIDA MUNICIPAL PENSION TRUST FUND
MASTER TRUST AGREEMENT**

As Amended and Restated June 1, 2006

THIS AGREEMENT made effective as of June 1, 2006, amends and restates the Agreement dated as of December 16, 1983, and previously amended as of November 29, 2001 ("Agreement"), by and between all of the parties who are now or may hereafter become Participating Employers in the Florida Municipal Pension Trust Fund and the individuals named as Master Trustees pursuant to Section 109 hereof and their successors (such individuals collectively referred to as the "Master Trustees").

W I T N E S S E T H:

WHEREAS, the Florida Constitution, Article VIII, Section 2(b), provides, in part, that municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law, and

WHEREAS, Section 166.021, Florida Statutes, provides, in part, that municipalities shall have the governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law, and further defines a municipal purpose to mean any activity or power which may be exercised by the State or its political subdivisions, and

WHEREAS, in Greene v. Gray, 87 So.2d 504 (Fla. 1956), the Florida Supreme Court held public pension plans serve a public purpose, and

WHEREAS, Section 163.01, Florida Statutes, provides that a public agency of the State may exercise jointly with any other public agency of the State any power, privilege or authority which such agencies share in common, for the purpose of permitting local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage, and

WHEREAS, the initial Master Trustees established the Master Trust Fund for the purpose of receiving, holding, investing, reinvesting, managing, administering and distributing the assets of employee benefit plans maintained by Participating Employers for the exclusive benefit of eligible employees and their beneficiaries, including, without limitation, contributions by Participating Employers to such plans, and

WHEREAS, the Participating Employers with a defined benefit pension plan or plans will execute a covenant or agreement whereby each Participating Employer will covenant and agree that they will deposit their required plan contributions in the Master Trust Fund, based upon appropriate actuarial analysis of benefits or applicable agreement, and out of which lawful and proper claims are to be paid, that there will be no disbursements out of the Master Trust Fund by way of dividends or distribution of accumulated reserves to the respective Participating

Employers, and that they will make expense payments as required for plan design and administration, and

WHEREAS, the Participating Employers with a defined contribution pension plan or plans or with a deferred compensation plan or plans will execute a covenant or agreement to participate in the Master Trust Fund in accordance with the terms of this Agreement, and

WHEREAS, the Participating Employers with a post-employment benefit plan or plans other than a pension plan or plans will execute a covenant or agreement that they will deposit their contributions in the Master Trust Fund, based upon appropriate actuarial analysis of benefits or applicable agreement, and out of which lawful and proper claims are to be paid, that they will covenant and agree that there will be no disbursements out of the Master Trust Fund by way of dividends or distribution of accumulated reserves to the respective Participating Employers, and that they will make expense payments as required for plan design and administration.

NOW, THEREFORE, the parties hereto mutual agree as follows:

PART 1- GENERAL PROVISIONS

Section 100. APPLICATION.

The provisions of Part I are general administrative provisions applicable to each Part of this Agreement.

Section 101. DEFINITIONS.

The following definitions shall apply to each Part of this Agreement, unless the context of the term indicates otherwise, and shall govern the interpretation of this Agreement:

A. Administrator. The term “Administrator” shall mean the Florida League of Cities, Inc. or any successor designated by the Master Trustees to administer the Master Trust Fund and the Plans.

B. Beneficiary. The term “Beneficiary” shall mean a person designated by a Participating Employee to be entitled to a Benefit in case of death of the Participating Employee in accordance with the terms of the applicable Plan.

C. Benefits. The term “Benefits” shall mean any and all benefits provided for Participating Employees and their Beneficiaries payable from the assets of the Master Trust Fund or the assets of a Plan, or the policies of insurance providing for such payments, or both, upon certification by the Participating Employer of eligibility for such benefits.

D. Custodian. The term “Custodian” shall mean the banks, mutual funds, insurance companies or other qualified entities selected by the Master Trustees, under a separate written document with each, to hold the assets of the Master Trust Fund or the assets of any Plan.

E. Deferred Compensation Plan Trust. The term “Deferred Compensation Plan Trust” shall mean the trust created herein that holds the assets of the participating deferred compensation plans.

F. Defined Benefit Pension Plan Trust. The term “Defined Benefit Pension Plan Trust” shall mean the trust created herein that holds the assets of the participating defined benefit pension plans.

G. Defined Contribution Pension Plan Trust. The term “Defined Contribution Pension Plan Trust” shall mean the trust created herein that holds the assets of the participating defined contribution pension plans.

H. Employee. The term “Employee” shall mean the employees and officials of each Employer under a classification established by each Employer and accepted by the Master Trustees.

I. Employer. The term “Employer” shall mean every municipality established within, or public agency or political subdivision of, the State of Florida or, where appropriate, the local board of trustees established pursuant to applicable law.

J. Investment Policy. The term “Investment Policy” shall mean the Florida Municipal Pension Trust Fund Investment Policy, as amended.

K. IRC. The term “IRC” shall mean the Internal Revenue Code of 1986, as amended, and, as relevant in context, the Internal Revenue Code of 1954, as amended.

L. Master Trust Fund. The term “Master Trust Fund” shall mean the Florida Municipal Pension Trust Fund, comprised of all of the assets of the Defined Benefit Pension Plan Trust, Defined Contribution Pension Plan Trust, Deferred Compensation Plan Trust and Other Post-Employment Benefit Plan Trust, which shall include all assets of the Plans.

M. Master Trustees. The term “Master Trustees” shall mean the individuals who serve as trustees of the Master Trust Fund pursuant to Section 109 hereof and their successors.

N. Other Post-Employment Benefit Plan Trust. The term “Other Post-Employment Benefit Plan Trust” shall mean the trust created herein that holds the assets of the participating post-employment benefit plans other than pension plans.

O. Participating Employee. The term “Participating Employee” shall mean any eligible Employee of a Participating Employer.

P. Participating Employer. The term “Participating Employer” shall mean an Employer which becomes a party to this Agreement by executing a Trust Joinder Agreement as provided in Section 102 hereof.

Q. Plans. The term “Plans” shall mean the defined benefit pension plan or plans, the defined contribution pension plan or plans, the deferred compensation plan or plans and the post-employment benefit plan or plans other than pension plans, which are maintained by

Participating Employers pursuant to any applicable statute, regulation, ordinance, resolution, plan, program, policy, agreement, understanding or other arrangement for the benefit of eligible employees and their beneficiaries.

R. State. The term “State” shall mean the State of Florida.

Section 102. PARTICIPATING EMPLOYERS.

A. Approval. The Master Trustees shall be the sole judge of whether an Employer is eligible to become a Participating Employer. The Master Trustees may delegate the ministerial authority for membership approval to the Administrator.

B. Trust Joinder Agreement. Each Employer makes its election to become a Participating Employer by executing a Trust Joinder Agreement in such form and intent as provided by the Master Trustees. By executing the Trust Joinder Agreement, the Employer agrees to be bound by all the terms and provisions of this Agreement, the Trust Joinder Agreement and all rules and regulations adopted by the Master Trustees under this Agreement.

C. Continuing as a Participating Employer. A Participating Employer shall be entitled to continue to be a Participating Employer as determined from time to time by the Master Trustees.

Section 103. MANAGEMENT OF ASSETS OF THE MASTER TRUST FUND.

A. Authority of Master Trustees. Except as set forth in subsections B, C, D, or E of this Section, and except as otherwise provided by law, the Master Trustees shall have exclusive authority and discretion to manage and control the assets of the Master Trust Fund held by them pursuant to the guidelines established by the Master Trustees in the Investment Policy.

B. Investment Managers. The Master Trustees, from time to time, may appoint one (1) or more independent Investment Managers (“Investment Manager”), pursuant to a written investment management agreement with each, describing the powers and duties of the Investment Manager to invest and manage all or a portion of the Master Trust Fund. The Investment Manager shall have the power to direct the management, acquisition or disposition of that portion of the Master Trust Fund for which the Investment Manager is responsible.

The Master Trustees shall be responsible for ascertaining that each Investment Manager, while acting in that capacity, satisfies the following requirements:

1. The Investment Manager is either (i) registered as an investment adviser under the Investment Advisers Act of 1940, as amended; (ii) a bank as defined in that Act; (iii) an insurance company qualified to perform the services described herein under the laws of more than one state; or (iv) a pooled investment program for governmental entities created pursuant to Section 163.01, Florida Statutes; and

2. The Investment Manager has acknowledged in writing to the Master Trustees that it is a fiduciary with respect to the Plan or Plans with assets in the portion of

the Master Trust Fund for which the Investment Manger has responsibility for management, acquisition or disposition.

C. Investment Manager Duties. Subject to the approval of the Master Trustees, each Investment Manager shall establish and carry out an investment policy and method for the portion of the Master Trust Fund for which it is responsible that is consistent with the objectives of the Investment Policy and the particular Plan or Plans with assets in the portion of the Master Trust Fund for which the Investment Manager has responsibility for management, acquisition or disposition. At least annually, the Investment Manager shall review its investment policy and method with the Master Trustees. The Investment Manager shall also make investments in a manner that is consistent with applicable law, and, as advised by the Administrator, the cash requirements of the Plans.

Each Investment Manager shall no less than annually or at the request of the Master Trustees certify the value of any securities or other property of the Master Trust Fund managed by such Investment Manager. The Master Trustees shall be entitled to rely conclusively upon such valuation for all purposes under the trust for the Plans.

D. Absence of Master Trustees' Responsibility for Investment Manager. The Master Trustees shall not be liable for any act or omission of any Investment Manager and shall not be under any obligation to invest or otherwise manage the assets of the Master Trust Fund or of the Plans that are subject to the management of any Investment Manager. Without limiting the generality of the foregoing, the Master Trustees shall not be liable by reason of their taking or refraining from taking at the direction of any Investment Manager any action pursuant to this Section, or pursuant to a notification of an order to purchase or sell securities issued by any Investment Manager, nor shall the Master Trustees be liable by reason of their refraining from taking any action because of the failure of any Investment Manager to give such direction or order; the Master Trustees shall be under no duty to question or to make inquiries as to any direction or order or failure to give any direction or order by any Investment Manager; the Master Trustees shall be under no duty to make any review of an investment acquired for any investment fund at the direction or order of any Investment Manager; and the Master Trustees shall be under no duty at any time to make any recommendation with respect to disposing of or continuing to retain any such investment.

E. Investment of Chapters 175 and 185 Funds. To the extent the Master Trustees determine that delegation of investment authority to Participating Employers with a defined benefit plan or plans is required pursuant to Chapters 175 or 185, Florida Statutes, then such powers as set forth in paragraph A of this Section shall be so delegated.

F. Reporting. The Master Trustees shall be responsible for and shall cause to be filed such annual or periodic audits, valuations, reports and disclosures as are required by law or agreements.

The Master Trustees may employ professional advisors to prepare such audits, valuations, reports and disclosures and the cost of such professional advisors shall be borne by the Master Trust Fund.

G. Commingling Assets. Except to the extent prohibited by applicable law, the Master Trustees may commingle the assets of all Participating Employers and Participating Employees held by the Master Trustees under this Agreement for investment purposes in the Master Trust Fund and shall hold the Master Trust Fund in trust and manage and administer the same in accordance with the terms and provisions of this Agreement and the Plans. However, the assets of Participating Employers and Participating Employees in the various trusts included in the Master Trust Fund shall be accounted for separately. The Master Trustees and the Administrator shall be under no duty to determine whether the amount of any contribution is in accordance with the Plans, or to collect or enforce payment of any contribution. Separate investment funds within the Master Trust Fund and varying percentages of investment in any such separate investment fund by the Participating Employers and Participating Employees, to the extent so determined by the Master Trustees, are expressly permitted.

Section 104. ADMINISTRATIVE POWERS AND DUTIES.

A. Administrator. The Administrator shall serve as Secretary-Treasurer of the Master Trust Fund and shall have the power and authority to implement policy matters set by the Master Trustees as they relate to the on-going operation and supervision of the Master Trust Fund and the provisions of this Agreement and applicable law.

B. Master Trustees. The Master Trustees shall have and in their sole and absolute discretion may exercise from time to time and at any time, either through their own actions or through a Custodian selected by the Master Trustees, the following administrative powers and authority with respect to the Master Trust Fund.

1. To continue to hold any property of the Master Trust Fund that becomes otherwise unsuitable for investment for as long as the Master Trustees in their discretion deem desirable; to reserve from investment and keep unproductive of income, without liability for interest, cash temporarily awaiting investment and such cash as they deem advisable, or as the Administrator from time to time may specify, in order to meet the administrative expenses of the Master Trust Fund or anticipated distributions therefrom.

2. To hold property of the Master Trust Fund in their own names or in the name of a nominee or nominees, without disclosure of the trust, or in bearer form so that it will pass by delivery, but no such holding shall relieve the Master Trustees of their responsibility for the safe custody and disposition of the Master Trust Fund in accordance with the provisions of this Agreement; the books and records of the Master Trustees shall show at all times that such property is part of the Master Trust Fund and the Master Trustees shall be absolutely liable for any loss occasioned by the acts of their nominee or nominees with respect to securities registered in the name of the nominee or nominees.

3. To organize and incorporate under the laws of any state they may deem advisable one or more corporations (and to acquire an interest in any such corporation that they may have organized and incorporated) for the purpose of acquiring and holding title to any property, interests or rights that the Master Trustees are authorized to acquire under Section 103 hereof.

4. To employ in the management of the Master Trust Fund suitable agents, without liability for any loss occasioned by any such agents selected with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

5. To make, execute and deliver, as trustee, any deeds, conveyances, leases, mortgages, contracts, waivers or other instruments in writing that they may deem necessary or desirable in the exercise of its powers under this Agreement.

6. To do all other acts that they may deem necessary or proper to carry out any of the powers set forth in Section 103 or 106 or this Section, to administer or carry out the purposes of the Master Trust Fund or any Plan, or as otherwise is in the best interests of the Master Trust Fund or any Plan; provided, however, the Master Trustees need not take any action unless in their opinion there are sufficient Master Trust Fund assets available for the expense thereof.

7. To adopt bylaws governing the Master Trustees' operations and procedures.

8. To contract with municipal corporations, political subdivisions and other public entities of State or of local government and private entities for the provision of Plan services and for the use or furnishing of services and facilities necessary, useful, or incident to providing Plan services.

9. To contract with public or private entities for the provision of administrative services.

10. To adopt plans, trust agreements, investment guidelines and other documents necessary or desirable for the Plans.

11. To charge fees for administrative services in addition to any fees charged by other administrative service providers.

12. To collect and disburse all funds due or payable from the Master Trust Fund, under the terms of the Plans.

13. To provide for and promulgate all rules, regulations, and forms deemed necessary or desirable in contracting with Participating Employers and Participating Employees, in fulfilling the Master Trustees' purposes of providing benefits through the Master Trust Fund and Plans, and in maintaining proper records and accounts.

14. To employ insurance companies, banks, trust companies, investment brokers, investment advisors, or others as agents for the receipt and disbursement of funds held in trust for Participating Employers and Participating Employees in the Plans.

15. To participate in a tax-exempt group trust that has been determined by the Internal Revenue Service to be a pooled fund arrangement pursuant to Revenue Ruling 81-100.

16. To determine, consistent with the applicable law and the claims procedure under the Plans, all questions of law or fact that may arise as to investments and the rights of any person claiming rights under the Plans, including without limitation, Participating Employees, former Participating Employees, and Beneficiaries.

17. Subject to and consistent with the IRC, to construe and interpret the Master Trust Agreement and to correct any defect, supply any omissions, or reconcile any inconsistency in the Agreement.

18. To contract for, purchase or otherwise procure insurance and investment products.

19. To register any Master Trust Fund asset in the name of the Master Trust Fund or in the name of its agent or nominee or to hold any instrument in bearer form (but the books and records of the Plans shall at all times show that such investments are part of the Master Trust Fund).

Section 105. TAXES, EXPENSES AND COMPENSATION OF MASTER TRUSTEES.

A. Taxes. The Master Trustees, without direction from the Administrator, shall pay out of the Master Trust Fund all taxes imposed or levied with respect to the Master Trust Fund, or any part thereof, under applicable law, and, in their discretion, may contest the validity or amount of any tax, assessment, claim or demand respecting the Master Trust Fund or any part thereof.

B. Expenses and Compensation. The Master Trustees are authorized to set aside from Participating Employer and Participating Employee contributions received and the investment income earned thereon a reasonable sum for the operating expenses and administrative expenses of the Master Trust Fund and the Plans. All remaining funds coming into the Master Trustees shall be set aside, managed and used only for the payment of Benefits as set forth in the applicable Plan.

The Master Trustees may establish from time to time a reasonable amount of compensation to cover attendance at meetings by the Master Trustees and the Administrator in the performance of the normal duties of the Master Trustees or Administrator, which compensation may include reimbursement for necessary expenses incurred therein.

C. Payment of Expenses. The Master Trustees may use and apply assets in the Defined Benefit Pension Plan Trust, Deferred Compensation Plan Trust, Defined Contribution Pension Plan Trust and Other Post-Employment Benefit Plan Trust as part of and in the Master Trust Fund to pay or provide for the payment of all reasonable and necessary expenses which may be incurred in connection with the establishment and maintenance of the Defined Benefit Pension Plan Trust, Deferred Compensation Plan Trust, Defined Contribution Pension Plan Trust and Other Post-Employment Benefit Plan Trust, including but not limited to, the employment of

such administrative, legal, accounting, and other expert and clerical assistance, the leasing of such premises and the purchase or lease of such materials, supplies and equipment as the Master Trustees, in their discretion, may deem necessary or appropriate in the performance of their duties, or the duties of the agents or employees of the Master Trust Fund or the Master Trustees.

Section 106. GENERAL DUTIES AND MEETINGS OF THE MASTER TRUSTEES.

A. General Duties. The Master Trustees and each Investment Manager appointed pursuant to this Agreement shall discharge their respective duties under this Agreement solely in the interest of the Participating Employers and Participating Employees in the Plans and their Beneficiaries and: (i) for the exclusive purpose of providing Benefits to such Participating Employees and their Beneficiaries and defraying reasonable expenses of administering the Plans; (ii) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims; and (iii) by diversifying the investments of the Plans so as to minimize the risk of large losses, unless, under the circumstances, it is clearly prudent not to do so. However, the duties and obligations of the Master Trustees and each Investment Manager, respectively, as such, shall be limited to those expressly imposed upon them, respectively, by this Agreement notwithstanding any reference herein to the Plans.

1. Authority of the Master Trustees. The Master Trustees shall have the power and authority and shall be charged with the duty of general supervision and operation of the Master Trust Fund, and shall conduct the business and activities of the Master Trust Fund in accordance with this Agreement and applicable law. The Master Trustees shall not exercise any powers in a manner that is inconsistent with this Agreement.

2. Approval of New Members. The Master Trustees or other designee shall receive applications from Employers for membership in the Master Trust Fund and shall approve or disapprove such applications for membership in accordance with the terms of this Agreement, the Trust Joinder Agreement and the rules and regulations established by the Master Trustees for admission of new members to the Master Trust Fund. The Master Trustees shall have total discretion in determining whether to accept a new member. The Master Trustees may delegate the authority for membership approval to the Administrator or its designees. In the event that the Plan proposed by the applicant is a defined benefit plan, then, if required by the Plan and before the applicant is approved for membership, the Plan must be approved for actuarial soundness by the Administrator and must comply with Chapter 112, Florida Statutes.

3. Master Trustees' Liabilities. No Master Trustee shall be liable for any action taken pursuant to this Agreement in good faith or for an omission except bad faith or gross negligence, or for any act of omission or commission by any other Master Trustee. The Master Trustees are hereby authorized and empowered to obtain, at the expense of the Master Trust Fund, liability insurance fully protecting the respective Master Trustees, the Administrator, and the Master Trust Fund from any loss or expense incurred, including reasonable attorney's fees, for all acts of the Master Trustees except bad faith or gross negligence. The Master Trust Fund hereby agrees to save, hold

harmless and indemnify the Master Trustees and Administrator from any loss, damage or expense incurred by said persons or entities while acting in their official capacity excepting bad faith or gross negligence.

4. Standard of Review. In evaluating performance of the Master Trustees, compliance by the Master Trustees with this Agreement must be determined in light of the facts and circumstances existing at the time of the Master Trustees' decision or action and not by hindsight.

5. Limitations on Liabilities. The Master Trustees' responsibilities and liabilities shall be subject to the following limitations:

(a) The Master Trustees shall have no duties other than those expressly set forth in this Agreement or the Plans and those imposed on the Master Trustees by applicable laws.

(b) The Master Trustees shall be responsible only for money and property actually received by the Master Trustees, and then to the extent described in this Agreement. The Master Trustees shall not be under any duty to require payment of any contribution to the Master Trust Fund or to see that any payment made to them is computed in accordance with the provisions of the Plans.

(c) The Master Trustees shall not be responsible for the correctness of any determination of payments or disbursements from the Master Trust Fund.

(d) The Master Trustees shall have no liability for the acts or omissions of any predecessor or successor in office.

(e) The Master Trustees shall have no liability for (i) the acts or omissions of any Investment Manager or Managers; (ii) the acts or omissions of any insurance company; (iii) the acts or omissions of any mutual fund; or (iv) following directions that are given to the Master Trustees by the Participating Employer, Participating Employees or the Administrator in accordance with this Agreement or the Plans.

B. Reliance on Counsel. The Master Trustees may employ, retain or consult with legal counsel, who may be counsel for the Administrator, the Florida League of Cities, Inc., any of the Plans or any Master Trustee, in their individual capacities concerning any questions which may arise with reference to the duties and powers or with reference to any other matter pertaining to this Agreement; and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Master Trustees in good faith in accordance with the opinion of such counsel, and the Master Trustees shall not be liable therefor.

C. Meetings. The Master Trustees shall meet at least semi-annually, and more frequently if called, at the principal office of the Master Trust Fund or at such other location as may be acceptable to a majority of the Master Trustees. The Chairman of the Master Trustees or

his designee shall set the date, time and location of each meeting, and notice shall be furnished to each Master Trustee by the Administrator not less than ten (10) days prior to the date of the meeting and may specify the purpose and any action proposed to be taken at the meeting. Furthermore, such notice shall be directed to the Master Trustees by mail to the respective addresses of the Master Trustees as recorded in the office of the Master Trust Fund. The Chairman or any two (2) other Master Trustees may direct the Administrator to send the prerequisite notice for any special meeting of the Master Trustees.

For the purposes of a duly called meeting of the Master Trustees, a quorum shall exist if a majority of the Master Trustees are present.

The Administrator or its designee shall keep minutes of all meetings, proceedings and acts of the Master Trustees, but such minutes need not be verbatim. Copies of all minutes of the Master Trustees shall be sent by the Administrator or its designee to the Master Trustees.

All actions by, and decisions of, the Master Trustees shall be by vote of a majority of the Master Trustees attending a duly called regular or special meeting of the Master Trustees at which a quorum is present.

D. Office of the Master Trust Fund. The Master Trustees shall establish, maintain and provide adequate funding for an office for the administration of the Master Trust Fund. The address of such office is to be made known to the parties interested in or participating in the Master Trust Fund and to the appropriate governmental agencies. The books and records pertaining to the Master Trust Fund and its administration shall be kept and maintained at the office of the Master Trust Fund.

E. Execution of Documents. A certificate signed by the Chairman of the Master Trustees, or such other person as may be designated by the Master Trustees, shall be evidence of the action of the Master Trustees, and any such certificate or other instrument so signed shall be kept and maintained at the office of the Master Trust Fund and may be relied upon as an action of the Master Trustees.

F. Appointment of Administrator. The Master Trustees shall designate and provide compensation for an Administrator to administer the affairs of the Master Trust Fund. An Administrator so appointed shall furnish a fidelity bond with the Master Trustees as obligee. The Master Trustees shall determine the amount of the fidelity bond and evidence of the bond shall be available to the appropriate governmental agencies.

G. Unclaimed Benefit Payments. If any check or share certificate in payment of a Benefit under this Agreement or any Plan, which has been mailed by regular United States first-class mail to the last address of the payee furnished to the Master Trustees or the Administrator, is returned unclaimed, the Master Trustees or the Administrator shall discontinue further payments to such payee until they receive further instructions, subject to any applicable unclaimed property act provisions. The Master Trustees or Administrator shall further take reasonable actions to locate such payees.

H. Duty to Furnish Information. Both the Administrator and the Master Trustees shall furnish to each other any document, report, return, statement or other information that the

other reasonably deems necessary to perform duties imposed under this Agreement or otherwise imposed by law.

I. Authority of Individual Master Trustees. The Master Trustees may delegate a particular function, power or authority to an individual Master Trustee (the "Individual Master Trustee"). When such delegation occurs, no person dealing with the Individual Master Trustee shall be required to make inquiry as to the authority of the Individual Master Trustee to do any act hereunder. Any such person shall be entitled, conclusively, to assume that the Individual Master Trustee is properly authorized to do any act, which he/she purports to do hereunder, and any such person shall be under no liability to any person, whomsoever, for any act done hereunder pursuant to such written direction of the Individual Master Trustee. When such action is so authorized by an Individual Master Trustee, any such person may assume conclusively that the Individual Master Trustee has full power and authority to receive and give receipt for any money or property becoming due and payable to the Master Trustees, and no such person shall be bound to inquire as to the disposition or application of any money or property paid or delivered to the Individual Master Trustee, or paid or delivered in accordance with such written direction of the Individual Master Trustee.

J. Reliance on Communications. The Master Trustees may rely upon a certification of the Administrator with respect to any instruction, direction, or approval of the Administrator and may continue to rely upon such certification until a subsequent certification is filed with the Master Trustees. The Master Trustees shall have no duty to make any investigation or inquiry as to any statement contained in any such writing but may accept the same as fully authorized by the Administrator.

Section 107. ACCOUNTS.

The Master Trustees shall keep or cause to be kept at the expense of the Master Trust Fund accurate and detailed accounts of all their receipts, investments and disbursements under this Agreement and the Plans, with the Master Trustees accounting separately for each Investment Manager's portion of the Master Trust Fund.

Section 108. COMMUNICATIONS.

Until notice is given to the contrary, communication to the Master Trustees shall be sent to them at the Master Trust Fund's office at 301 South Bronough Street, Suite 300, Tallahassee, FL 32302 and communications to the Administrator shall be sent to 301 South Bronough Street, Suite 300, Tallahassee, FL 32302.

Section 109. APPOINTMENT, RESIGNATION OR REMOVAL OF MASTER TRUSTEES.

A. Master Trustees. The operation and administration of the Master Trust Fund shall be the full responsibility of the Master Trustees selected from the ranks of elected officials of municipal governments participating in the Plans.

B. Appointment of Master Trustees and Length of Appointment. The number of Master Trustees shall be five (5).

1. The first group of Master Trustees was selected by the President of the Florida League of Cities, Inc. or his designee in order to create an interim group of Master Trustees to establish the Plans. This interim group of Master Trustees served until successor Master Trustees were elected. The first group of Master Trustees was composed of five (5) Master Trustees. The initial terms of the Master Trustees was as follows: two (2) individual Master Trustees selected for a one- (1-)year term and three (3) individual Master Trustees selected for a two- (2-)year term. The terms thereafter shall be for three (3) years.

2. Beginning in January, 1986 the Master Trustees shall solicit nominations from the Participating Employers for Master Trustee and such nominees shall constitute the basis for the election of Master Trustees by the majority vote of the Master Trustees then in office. The Master Trustees may be re-elected but no Master Trustee shall serve more than two (2) consecutive three- (3-) year terms. In the event a Master Trustee is elected to fill an unexpired term, the unexpired term shall not be included in the two- (2-) term limitation provided herein. Replacement Master Trustees shall be elected from nominations provided by Participating Employers and vacancies shall be filled by the majority vote of the Master Trustees then in office from the nominees offered by such Participating Employers.

3. No individual Master Trustee may be elected or continue to serve as a Master Trustee after becoming an owner, officer or employee of the Administrator or a Custodian.

4. Each Master Trustee and each successor Master Trustee shall acknowledge and consent to his election as a Master Trustee by giving written notice of acceptance of such election to the Chairman of the Master Trustees.

C. Resignation of a Master Trustee.

1. A Master Trustee may resign from all duties and responsibilities under this Agreement by giving not less than sixty (60) days prior written notice sent by registered mail to the Chairman of the Master Trustees. Such notice shall state the date such resignation shall take effect and such resignation shall take effect on such date unless a successor Master Trustee shall have been elected at an earlier date by the Master Trustees in which event such resignation shall take effect immediately upon the election of the successor Master Trustee.

2. Any Master Trustee, upon leaving office, shall forthwith turn over and deliver to the Chairman of the Master Trustees at the principal office of the Master Trust Fund any and all records, books, documents or other property in his or her possession or under his or her control which belongs to the Master Trust Fund.

D. Removal of a Master Trustee. Each Master Trustee, unless due to the resignation, death, incapacity, or refusal to act, shall serve and shall continue to serve subject to the provisions of this Agreement.

A Master Trustee shall relinquish his or her office or may be removed by a majority vote of the Master Trustees ipso facto when he or she no longer serves in an official capacity with the Participating Employer by which he or she was nominated or when the Employer is no longer a Participating Employer in the Master Trust Fund. Notice of removal of a Master Trustee shall be furnished to the other Master Trustees by the Chairman of the Master Trustees and shall set forth the effective date of such removal.

E. Appointment of a Successor Master Trustee. In the event a Master Trustee shall die, resign, become incapacitated, or refuse to act, a successor Master Trustee shall be elected forthwith by the Master Trustees. The notice of the election of a successor Master Trustee shall be furnished to the other Master Trustees by the Chairman of the Master Trustees, and shall be accompanied by the acceptance of the successor Master Trustee.

F. Master Trustees Rights. In case of the death, resignation or refusal or inability to act of any one or more of the Master Trustees, the Master Trustees shall have the powers, rights, estates and interests of this Agreement as Master Trustees and shall be charged with the duties of this Agreement; provided in such cases, no action may be taken unless it is concurred in by a majority of the remaining Master Trustees.

G. Appointment of Chairman. The Master Trustees may appoint or remove a Chairman at any time who shall have such authority, duties and responsibilities as may be set forth in this Agreement from time to time and as provided under applicable law.

Section 110. AMENDMENT OR TERMINATION OF THIS AGREEMENT;
TERMINATION OF PLANS.

A. Amendment. This Agreement and the trusts created hereby may be amended in writing at any time by the concurrence of a majority of the Master Trustees. No amendment to this Agreement, which directly affects the scope of powers of the Master Trustees, terms of office or the selection of Master Trustees shall become effective without the concurrence of the Board of Directors of the Florida League of Cities, Inc.

No change which specifically affects the exercise of powers by the Master Trustees or the fiduciary responsibilities of the Master Trustees to Participating Employers and Participating Employees shall be required to be approved by the Board of Directors of the Florida League of Cities, Inc., nor shall this Section be construed to give the Board of Directors of the Florida League of Cities, Inc. the power to exercise any fiduciary responsibility of the Master Trustees or to interfere with the exercise of those responsibilities by the Master Trustees.

This Agreement may not be amended so as to change its purpose as set forth herein or to permit the diversion or application of any funds of the Master Trust Fund or of the Plans for any purpose other than those specified herein. The Master Trustees, upon adoption of an amendment to this Agreement, shall send a copy of any such amendment to the Participating Employers.

B. Termination. This Agreement and any trust created hereby may be terminated at any time by the Master Trustees with respect to an Employer when the Employer's participation in a participating Plan is terminated or when a Trust Joinder Agreement has been terminated. The Defined Contribution Pension Plan Trust may be terminated in its entirety when all of the

participating defined contribution pension plans have been terminated in their entirety or have terminated their participation in the Defined Contribution Pension Plan Trust. The Deferred Compensation Plan Trust may be terminated in its entirety when all of the participating deferred compensation plans have been terminated in their entirety or have terminated their participation in the Deferred Compensation Plan Trust. The Other Post-Employment Benefit Plan Trust may be terminated in its entirety when all of the participating other post-employment benefit plans have been terminated in their entirety or have terminated their participation in the Other Post-Employment Benefit Plan Trust. The Defined Benefit Pension Plan Trust may be terminated in its entirety pursuant to Florida law. This Agreement and the Master Trust Fund may be terminated in their entirety pursuant to Florida law.

In case of a termination of this Agreement, either in whole or in part, the Master Trustees (subject to the provisions of Section 111 hereof and reserving respectively such sums as the Master Trustees shall deem necessary in settling their respective accounts and to discharge any obligation of the Master Trust Fund for which as trustees the Master Trustees shall be liable) shall hold, apply, transfer or distribute the affected assets of the Master Trust Fund in accordance with the applicable provisions of this Agreement and the affected Plans. Upon any termination, in whole or in part, of this Agreement and the trusts created hereby, the Master Trustees shall have a right to have their respective accounts settled as provided in Section 112.

In the case of the complete or partial termination of this Agreement as to one or more Employers, including a termination arising from the discontinuance or delinquency of contributions, the affected assets of the Master Trust Fund shall continue to be held pursuant to the direction of the Master Trustees, for the benefit of affected Participating Employees and Beneficiaries, pursuant to the benefit provisions of the affected Plan. This Agreement shall remain in full effect with respect to each Participating Employer that does not terminate its participation in the Master Trust Fund on behalf of its Participating Employees, or whose participation is not terminated by the Master Trustees. In the event of a complete termination of the Master Trust Fund, or of the complete termination of the Defined Contribution Pension Plan Trust, the Deferred Compensation Plan Trust, the Defined Benefit Pension Plan Trust or the Other Post-Employment Benefit Plan Trust, the Master Trustees will take reasonable steps to avoid a distribution to the Participating Employees and Beneficiaries, except pursuant to benefit options under the provisions of the participating Plans, including transfers to successor plan(s). However, if distributions must be made, the Administrator shall be responsible for directing distribution of all affected assets of the Master Trust Fund to Participating Employees and Beneficiaries.

Distributions under a participating Plan of existing accounts or accrued benefits to the Participating Employees and Beneficiaries affected by the termination are subject to the benefit provisions of the Plan. However, if a Participating Employer requests a plan-to-plan transfer of Plan assets with respect to the Participating Employer's Participating Employees, the Master Trustees may in their discretion make the transfer.

Notwithstanding the foregoing, the Master Trustees shall not be required to pay out any assets of the Master Trust Fund to Participating Employees and Beneficiaries or a successor plan upon termination of this Agreement or the Master Trust Fund, in whole or in part, until the Master Trustees have received written certification from the Administrator (i) that all provisions

of law with respect to such termination have been complied with, including the termination of a Plan; and (ii) after the Master Trustees have made a determination of the fair market value of the assets of a Plan, that the assets of the Plan are sufficient to discharge when due all obligations of the Plan required by law. The Master Trustees shall rely conclusively on such written certification and shall be under no obligation to investigate or otherwise determine its propriety.

When the assets of the Master Trust Fund affected by a termination have been applied, transferred or distributed and the accounts of the Master Trustees have been settled, then the Master Trustees shall be released and discharged from all further accountability or liability respecting the trust or trusts, or portions thereof, affected by the termination and shall not be responsible in any way for the further disposition of the assets of the trust or trusts, or portions thereof, affected by the termination or any part thereof so applied, transferred or distributed.

Section 111. PROHIBITION OF ASSIGNMENT OF INTEREST.

No interest, right or claim in or to any part of the Master Trust Fund or the funds of the Plans, or any payment therefrom shall be assignable, transferable or subject to sale, mortgage, pledge, hypothecation, commutation, anticipation, garnishment, attachment, execution or levy of any kind, and the Master Trustees shall not recognize any attempt to assign, transfer, sell, mortgage, pledge, hypothecate, commute or anticipate the same, except to the extent required by law.

Section 112. MISCELLANEOUS.

A. Titles. The titles to Parts and Sections of this Agreement are placed herein for convenience of reference only, and the Agreement is not to be construed by reference thereto.

B. Professional Administrator. The Administrator may delegate any of its obligations under this Agreement to a professional administrator.

C. Successors. This Agreement shall bind and inure to the benefit of the successors and assigns of the Florida League of Cities, Inc., the Master Trustees, the Participating Employers and the Participating Employees.

D. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute but one instrument, which may be sufficiently evidenced by any counterpart. Any Participating Employer that formally applies for participation in this Agreement by executing a Trust Joinder Agreement and is accepted by the Master Trustees shall thereupon become a party to this Agreement and be bound by all of the terms and conditions thereof, and said Trust Joinder Agreement shall constitute a counterpart of this Agreement.

E. Jurisdiction. This Agreement shall be interpreted, construed and enforced, and the trust or trusts created hereby shall be administered, in accordance with the laws of the United States and of the State of Florida.

F. Situs of the Trust. The situs of the trust or trusts created hereby is the State of Florida. All questions pertaining to its validity, construction, and administration shall be

determined in accordance with the laws of the State of Florida. Venue for any action regarding this Agreement is Leon County, Florida.

G. Construction. Whenever any words are used in this Agreement in the masculine gender, they shall be construed as though they were also used in the feminine or neuter gender in all situations where they would so apply and whenever any words are used in this Agreement in the singular form, they shall be construed as though they were also used in the plural form in all situations where they would so apply, and whenever any words are used in this Agreement in the plural form, they shall be construed as though they were also in the singular form in all situations where they would so apply.

H. Fiscal Year. The Master Trust Fund and all trusts created by it shall operate on a fiscal year from 12:01 a.m. October 1st to midnight of the last day in September in the following year or as otherwise provided by the participating Plan. Application for participation in this Agreement, when approved in writing by the Master Trustees or their designee, shall constitute a continuing contract for each succeeding fiscal year unless cancelled by the Master Trustees or unless the Participating Employer resigns or withdraws from this Agreement by written notice.

I. Parties Bound. This Agreement shall be binding upon the parties hereto, the Participating Employers and the Participating Employees in any Plan and persons claiming under or through them pursuant to any Plan, and, as the case may be, the heirs, executors, administrators, successors and assigns of each of them.

J. Necessary Parties to Disputes. Necessary parties to any accounting, litigation or other proceedings relating to this Agreement shall include only the Master Trustees and the Administrator. The settlement or judgment in any such case in which the Master Trustees are duly served or cited shall be binding upon all Participating Employers and Participating Employees in any Plan and their Beneficiaries and estates, and upon all persons claiming by, through or under them.

K. Severability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Agreement shall continue to be fully effective. If any provision of the Agreement is held to violate the IRC or to be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise affect any Plan or trust created by this Agreement.

PART 2 - DEFINED BENEFIT PENSION PLAN TRUST

Section 200. APPLICATION.

The provisions of Part 2 apply to the Defined Benefit Pension Plan Trust and the participating defined benefit pension plans of Participating Employers.

Section 201. ESTABLISHMENT AND PURPOSE OF TRUST FOR DEFINED BENEFIT PENSION PLANS.

A. Establishment of Trust For Defined Benefit Pension Plans. The Participating Employers with a defined benefit pension plan or plans establish with the Master Trustees, and the Master Trustees hereby accept, a Defined Benefit Pension Plan Trust for the exclusive benefit of Participating Employees and Beneficiaries of Participating Employers consisting of such cash or other property acceptable to the Master Trustees as shall be transferred to the Master Trustees from time to time by the trustee of any Participating Employer with a defined benefit pension plan or plans, as provided in Section 202 hereof, for investment in the Master Trust Fund, together with the earnings, income, additions and appreciation thereon and thereto.

B. Purposes of Defined Benefit Pension Plan Trust. The Master Trustees may use and apply assets in the Defined Benefit Pension Plan Trust, as part of the Master Trust Fund, for the following purposes:

1. At no time prior to the satisfaction of all liabilities with respect to Participating Employees and their Beneficiaries shall any part of the corpus or income be used for, or diverted to, purposes other than the exclusive benefit of the Participating Employees and their Beneficiaries to distribute the corpus and income of the Defined Benefit Pension Plan Trust to the Participating Employees and their Beneficiaries in accordance with applicable law and the participating defined benefit pension plans.

2. To establish and accumulate as part of the Master Trust Fund an adequate reserve to carry out the purposes of the Defined Benefit Pension Plan Trust.

3. To pay any federal, state or local taxes or fees, which may be properly imposed on or levied against the Defined Benefit Pension Plan Trust or benefits paid therefrom.

4. If deemed appropriate and advisable, to pay premiums on separately administered life insurance coverage on the lives of Participating Employees of Participating Employers.

Section 202. PARTICIPATING EMPLOYERS WITH A DEFINED BENEFIT PENSION PLAN OR PLANS.

A. Approval. Before the approval of the participation of any Employer that has a defined benefit pension plan not established as a Plan by the Master Trustees, such plan must be approved for actuarial soundness by an actuary selected by the Master Trustees or Administrator and such plan must comply with Chapter 112, Florida Statutes.

B. Accumulated Share. No Participating Employer shall have any right, title or interest in or to any specific assets of the Master Trust Fund, but shall have an undivided beneficial interest in the Master Trust Fund; however, there shall be a specific accounting of assets allocable to each Participating Employer and each participating Plan.

C. Contributions. The Administrator shall have the responsibility for accepting contributions by Participating Employers. The Administrator shall be under no duty to determine whether the amount of any contribution is in accordance with the Participating Employer's defined benefit pension plan or plans or to collect or enforce payment of any contribution. All contributions under the participating defined benefit pension plans shall be transferred to the Defined Benefit Pension Plan Trust to be held, managed, invested and distributed as part of the Defined Benefit Pension Plan Trust by the Master Trustees in accordance with the provisions of the Plans and applicable law. All benefits under the Plans shall be distributed solely from the Defined Benefit Pension Plan Trust and Participating Employers shall have no financial liability therefor other than the obligation to make contributions to the Defined Benefit Pension Plan Trust as provided in the Plans.

D. Chapter 175 or 185 Plans. The Master Trustees shall be authorized to take the steps they deem necessary or appropriate to comply with Chapters 175 and 185, Florida Statutes, with respect to any defined benefit pension plan of a Participating Employer established pursuant to such Chapters.

PART 3 - DEFINED CONTRIBUTION PENSION PLAN TRUST

Section 300. APPLICATION.

The provisions of Part 3 apply to the Defined Contribution Pension Plan Trust and the participating defined contribution pension plans of the Participating Employers.

Section 301. ESTABLISHMENT AND PURPOSE OF TRUST FOR DEFINED CONTRIBUTION PENSION PLANS.

A. Establishment of Trust for Defined Contribution Pension Plans. The Master Trustees established the Defined Contribution Pension Plan Trust for the exclusive benefit of Participating Employees of Participating Employers with a defined contribution pension plan or plans. The authority to conduct the general investment operation and the general administration of the Defined Contribution Pension Plan Trust is vested in the Master Trustees. The Master Trustees may contract with the Administrator to perform delegated functions with respect to any participating defined contribution pension plan, and the Administrator may contract with third parties to provide administrative, investment and custodial services in relation to any participating defined contribution pension plan.

B. Purposes of Defined Contribution Pension Plan Trust. The Master Trustees shall maintain the Defined Contribution Pension Plan Trust for the exclusive benefit of the Participating Employees and their Beneficiaries. The Master Trustees intend to maintain sound prudent practices designed to provide easy and convenient access to information and transactions for Participating Employees, including transfers from one investment option to another at the Participating Employee's direction. The Master Trustees intend to maintain these practices at a reasonable cost to the Participating Employers and Participating Employees. The Master Trustees intend to preserve Participating Employees' rights to choose freely among a broad range of investment options and to self-direct investments for their Plan accounts. Further, the Master Trustees intend to perform ongoing evaluations and reviews to ensure that the investment

options offered remain diversified, competitive and attractive to Participating Employers and Participating Employees. It is the Master Trustees' intent that the Defined Contribution Pension Plan Trust be exempt under Sections 501(a) and 115 of the IRC.

Section 302. DEFINED CONTRIBUTION PENSION PLAN TRUST ADMINISTRATION.

A. Defined Contribution Pension Plan Trust Administration. The Master Trustees shall receive and accept for the purposes hereof all property paid to them by or at the direction of the Participating Employers and Participating Employees and shall hold, invest, reinvest, manage, administer and distribute property and the increments, proceeds, earnings and income thereof for the exclusive benefit of the Participating Employees and Beneficiaries under the participating defined contribution pension plans. All assets shall be held by the Master Trustees in the Defined Contribution Pension Plan Trust. The Master Trustees have authority to invest, in accordance with valid Participating Employer and Participating Employee instructions, and manage the assets of the Defined Contribution Pension Plan Trust.

B. Exclusive Benefit Rule. No portion of the vested principal or the income of the Defined Contribution Pension Plan Trust shall revert to any Participating Employer, or ever be used for or diverted to any purpose other than for (i) the exclusive benefit of Participating Employees in the participating defined contribution pension plans and persons claiming under or through them pursuant to such plans and (ii) the payment of reasonable expenses of such plans and the Defined Contribution Pension Plan Trust. The Master Trustees shall administer the Defined Contribution Pension Plan Trust in compliance with IRC Section 503(b).

C. Defined Contribution Pension Plans. All references in this Part 3 to defined contribution pension plans shall mean the participating defined contribution pension plans of the Participating Employers in the Defined Contribution Pension Plan Trust. The participating defined contribution pension plans, as amended from time to time, shall be incorporated herein by reference, and the terms herein shall have the meanings attributed to them in such plans.

D. Property. The word "property" used for the Defined Contribution Pension Plan Trust shall be deemed to refer to any property, real or personal, or part interest therein, wherever situated, including, but without being limited to, preferred and common stocks, shares of investment companies, bonds, notes, debentures and mortgages, equipment trust certificates, investment trust certificates, interest in partnerships whether limited or general, or in any insurance contract, policy, annuity or other investment media offered by an insurance company.

Section 303. DEPOSITS AND DISBURSEMENTS FROM THE TRUST.

A. Trust Deposits. The Master Trustees hereby delegate to the Administrator the responsibility for accepting deposits to the Defined Contribution Pension Plan Trust.

B. Trust Payments. The Master Trustees hereby delegate to the Administrator the responsibility for making payments from the Defined Contribution Pension Plan Trust. The Administrator shall make payments from the Defined Contribution Pension Plan Trust to Participating Employees, their Beneficiaries and such other persons as the appropriate participating defined contribution pension plans may provide. Such payments shall be made in

such manner, in such amounts and for such purposes, including the payment of Benefits under participating defined contribution pension plans and the payment of expenses of administration of the participating defined contribution pension plans, as may be specified in the participating defined contribution pension plans. The Administrator shall ensure that any payment directed under this Section conforms to the provisions of the applicable participating defined contribution pension plan, this Agreement, and the provisions of applicable law. Payments from the Defined Contribution Pension Plan Trust shall be made by check (or the check of an agent) or deposit to the order of the payee. Payments or other distributions hereunder may be mailed to the payee at the address last furnished to the Administrator. The Master Trustees shall not incur any liability or other damage on account of any payment or other distribution made by the Defined Contribution Pension Plan Trust in accordance with this Section.

C. Allocation of Expenses. The Master Trustees shall pay all expenses of the Defined Contribution Pension Plan Trust from the assets in the Defined Contribution Pension Plan Trust. All expenses of the Defined Contribution Pension Plan Trust, which are allocable to a particular investment option or account, may be allocated and charged to such investment option or account as determined by the Master Trustees. All expenses of the Defined Contribution Pension Plan Trust which are not allocable to a particular investment option or account shall be charged to each such investment option or account in the manner established by the Master Trustees.

Section 304. INVESTMENT OPTIONS.

The Master Trustees, in accordance with provisions of the participating defined contribution pension plans, may establish one (1) or more investment options within the Defined Contribution Pension Plan Trust, each option being hereinafter referred to as an “investment option.” The Master Trustees shall transfer to each such investment option such portion of the assets of the Defined Contribution Pension Plan Trust as appropriate. The Master Trustees shall manage, acquire or dispose of the assets in an investment option in accordance with valid specific investment directions given by the Participating Employers or Participating Employees. All income received with respect to, and all proceeds received from, the disposition of property held in an investment option shall be credited to, and reinvested in, such investment option. The Master Trustees shall establish at least one (1) default investment option in the absence of valid Participating Employer or Participating Employee investment direction.

From time to time, the Master Trustees may eliminate an investment option, and the proceeds thereof shall be reinvested in another investment option in accordance with the directions of the Master Trustees.

Section 305. INVESTMENT IN INSURANCE CONTRACTS.

The Master Trustees may offer one (1) or more investment options pursuant to one (1) or more agreements with insurance companies qualified to do business in the State of Florida. Any asset invested pursuant to such an agreement shall be held by the insurance company. Each insurance company so selected shall certify the value of the Defined Contribution Pension Plan Trust’s interest in the property held by it at least annually. The Master Trustees shall be entitled

to rely conclusively on such valuation for all purposes under the Defined Contribution Pension Plan Trust.

Section 306. INVESTMENT IN MUTUAL FUNDS.

The Master Trustees may offer one (1) or more investment options pursuant to one (1) or more agreements with companies offering mutual fund products. Any asset invested pursuant to such an agreement shall be held by the Master Trustees. Each mutual fund so selected shall certify the value of the Defined Contribution Pension Plan Trust's interest in that fund at least annually. The Master Trustees shall be entitled to rely conclusively on such valuation for all purposes under the Defined Contribution Pension Plan Trust.

Section 307. MISCELLANEOUS.

A. Conflict. In resolving any conflict among provisions of the Defined Contribution Pension Plan Trust and in resolving any other uncertainty as to the meaning or intention of any provision of the Defined Contribution Pension Plan Trust, the interpretation that (i) causes the participating defined contribution pension plans to satisfy the applicable requirements of IRC Sections 401(a) and 414(d) and the Defined Contribution Pension Plan Trust to be exempt from tax under IRC Sections 115 and 501(a), and (ii) causes the participating defined contribution pension plan and the Defined Contribution Pension Plan Trust to comply with all applicable requirements of law shall prevail over any different interpretation.

B. No Guarantees. Neither the Administrator nor the Master Trustees guarantee the Defined Contribution Pension Plan Trust from loss or depreciation or the payment of any amount which may become due to any person under any participating defined contribution pension plan or this Agreement.

PART 4 - DEFERRED COMPENSATION PLAN TRUST

Section 400. APPLICATION.

The provisions of Part 4 apply to the Deferred Compensation Plan Trust and the participating deferred compensation plans.

Section 401. ESTABLISHMENT AND PURPOSE OF TRUST FOR DEFERRED COMPENSATION PLANS.

A. Establishment of Trust for Deferred Compensation Plans. The Master Trustees establishes the Deferred Compensation Plan Trust for the exclusive benefit of Participating Employees of Participating Employers with a deferred compensation plan or plans. The authority to conduct the general investment operation and the general administration of the Deferred Compensation Plan Trust is vested in the Master Trustees. The Master Trustees may contract with the Administrator to perform delegated functions with respect to any participating deferred compensation plan and the Administrator may contract with third parties to provide administrative, investment and custodial services in relation to any participating deferred compensation plan.

B. Purposes of Deferred Compensation Plan Trust. The Master Trustees shall maintain the Deferred Compensation Plan Trust for the exclusive benefit of the Participating Employees and their Beneficiaries. The Master Trustees intend to maintain sound prudent practices designed to provide easy and convenient access to information and transactions for Participating Employees, including transfers from one investment option to another at the Participating Employee's direction. The Master Trustees intend to maintain these practices at a reasonable cost to the Participating Employers and Participating Employees. The Master Trustees intend to preserve Participating Employees' rights to choose freely among a broad range of investment options and to self-direct their investments. Further, the Master Trustees intend to perform ongoing evaluations and reviews to ensure that the investment options offered remain diversified, competitive and attractive to Participating Employers and Participating Employees. It is the Master Trustees' intent that the Deferred Compensation Plan Trust be exempt under Sections 501(a) and 115 of the IRC.

Section 402. DEFERRED COMPENSATION PLAN TRUST ADMINISTRATION.

A. Deferred Compensation Plan Trust Administration. The Master Trustees shall receive and accept for the purposes hereof all property paid to them by or at the direction of the Participating Employers and Participating Employees and shall hold, invest, reinvest, manage, administer and distribute property and the increments, proceeds, earnings and income thereof for the exclusive benefit of the Participating Employees and Beneficiaries under the participating deferred compensation plans. All assets shall be held by the Master Trustees in the Deferred Compensation Plan Trust. The Master Trustees have authority to invest, in accordance with valid Participating Employer and Participating Employee instructions, and manage the assets of the Deferred Compensation Plan Trust.

B. Exclusive Benefit Rule. No portion of the vested principal or the income of the Deferred Compensation Plan Trust shall revert to the Participating Employers, or ever be used for or diverted to any purpose other than for (i) the exclusive benefit of Participating Employees in the Deferred Compensation Plan Trust and persons claiming under or through them pursuant to the participating deferred compensation plans and (ii) the payment of reasonable expenses of such plans and the Deferred Compensation Plan Trust. The Master Trustees shall administer the Deferred Compensation Plan Trust in compliance with IRC Section 503(b).

C. Deferred Compensation Plans. All references in this Part 4 to deferred compensation plans shall mean the participating deferred compensation plans of the Participating Employers in the Deferred Compensation Plan Trust. The participating deferred compensation plans, as amended from time to time, shall be incorporated herein by reference, and the terms herein shall have the meanings attributed to them in such plans.

D. Property. The word "property" used for the Deferred Compensation Plan Trust shall be deemed to refer to any property, real or personal, or part interest therein, wherever situated, including, but without being limited to, preferred and common stocks, shares of investment companies, bonds, notes, debentures and mortgages, equipment trust certificates, investment trust certificates, interest in partnerships whether limited or general, or in any insurance contract, policy, annuity or other investment media offered by an insurance company.

Section 403. DEPOSITS AND DISBURSEMENTS FROM THE TRUST.

A. Trust Deposits. The Master Trustees hereby delegate to the Administrator the responsibility for accepting deposits to the Deferred Compensation Plan Trust.

B. Trust Payments. The Master Trustees hereby delegate to the Administrator the responsibility for making payments from the Deferred Compensation Plan Trust. The Administrator shall make payments from the Deferred Compensation Plan Trust to Participating Employees, their Beneficiaries and such other persons as the participating deferred compensation plans may provide. Such payments shall be made in such manner, in such amounts and for such purposes, including the payment of Benefits under participating deferred compensation plans and the payment of expenses of administration of the participating deferred compensation plans, as may be specified in the deferred compensation plan. The Administrator shall ensure that any payment directed under this Section conforms to the provisions of the deferred compensation plan, this Agreement, and the provisions of applicable law. Payments from the Deferred Compensation Plan Trust shall be made by check (or the check of an agent) or deposit to the order of the payee. Payments or other distributions hereunder may be mailed to the payee at the address last furnished to the Administrator. The Master Trustees shall not incur any liability or other damage on account of any payment or other distribution made by the Deferred Compensation Plan Trust in accordance with this Section.

C. Allocation of Expenses. The Master Trustees shall pay all expenses of the Deferred Compensation Plan Trust from the assets of the Deferred Compensation Plan Trust. All expenses of the Deferred Compensation Plan Trust, which are allocable to a particular investment option or account may be allocated and charged to such investment option or account as determined by the Master Trustees. All expenses of the Deferred Compensation Plan Trust which are not allocable to a particular investment option or account shall be charged to each such investment option or account in the manner established by the Master Trustees.

Section 404. INVESTMENT OPTIONS.

The Master Trustees, in accordance with provisions of the participating deferred compensation plans, may establish one (1) or more investment options within the Deferred Compensation Plan Trust, each option being hereinafter referred to as an "investment option." The Master Trustees shall transfer to each such investment option such portion of the assets of the Deferred Compensation Plan Trust as appropriate. The Master Trustees shall manage, acquire or dispose of the assets in an investment option in accordance with valid specific investment directions given by the Participating Employers or Participating Employees. All income received with respect to, and all proceeds received from, the disposition of property held in an investment option shall be credited to, and reinvested in, such investment option. The Master Trustees shall establish at least one (1) default investment option in the absence of valid Participating Employer or Participating Employee investment direction.

From time to time, the Master Trustees may eliminate an investment option, and the proceeds thereof shall be reinvested in another investment option in accordance with the directions of the Master Trustees.

Section 405. INVESTMENT IN INSURANCE CONTRACTS.

The Master Trustees may offer one (1) or more investment options pursuant to one (1) or more agreements with insurance companies qualified to do business in the State of Florida. Any asset invested pursuant to such an agreement shall be held by the insurance company. Each insurance company so selected shall certify the value of the trust's interest in the property held by it at least annually. The Master Trustees shall be entitled to rely conclusively on such valuation for all purposes under the Deferred Compensation Plan Trust.

Section 406. INVESTMENT IN MUTUAL FUNDS.

The Master Trustees may offer one (1) or more investment options pursuant to one (1) or more agreements with companies offering mutual fund products. Any asset invested pursuant to such an agreement shall be held by the Master Trustees. Each mutual fund so selected shall certify the value of Deferred Compensation Plan Trust's interest in that fund at least annually. The Master Trustees shall be entitled to rely conclusively on such valuation for all purposes under Deferred Compensation Plan Trust.

Section 407. MISCELLANEOUS.

A. Conflict. In resolving any conflict among provisions of Deferred Compensation Plan Trust and in resolving any other uncertainty as to the meaning or intention of any provision of Deferred Compensation Plan Trust, the interpretation that (i) causes the participating deferred compensation plans and Deferred Compensation Plan Trust to satisfy the applicable requirements of IRC Section 457(b) and the Deferred Compensation Plan Trust to be exempt from tax under IRC Sections 115 and 501(a), and (ii) causes the participating deferred compensation plans and Deferred Compensation Plan Trust to comply with all applicable requirements of law shall prevail over any different interpretation.

B. No Guarantees. Neither the Administrator nor the Master Trustees guarantee the Deferred Compensation Plan Trust from loss or depreciation or the payment of any amount which may become due to any person under the participating deferred compensation plans or this Agreement.

PART 5 – OTHER POST-EMPLOYMENT BENEFIT PLAN TRUST

Section 500. APPLICATION.

The provisions of Part 5 apply to the Other Post-Employment Benefit Plan Trust and the participating post-employment benefit plans of Participating Employers other than pension plans.

Section 501. ESTABLISHMENT OF OTHER POST-EMPLOYMENT BENEFIT PLAN TRUST.

The Participating Employers with post-employment benefit plan or plans other than pension plans establish with the Master Trustees, and the Master Trustees hereby accept, an Other Post-Employment Benefit Plan Trust for the exclusive benefit of such Participating

Employers' Participating Employees and their Beneficiaries consisting of such cash or other property acceptable to the Master Trustees as shall be transferred to the Master Trustees from time to time by the trustee of any Participating Employer's other post-employment benefit plan or plans, as provided in Section 502 hereof, for investment in the Master Trust Fund, together with the earnings, income, additions and appreciation thereon and thereto.

Section 502. ADMINISTRATION OF OTHER POST-EMPLOYMENT BENEFIT PLAN TRUST.

A. General. The Master Trustees shall receive and accept for the purposes hereof all property paid to them by or at the direction of the Participating Employers and Participating Employees and shall hold, invest, reinvest, manage, administer and distribute property and the increments, proceeds, earnings and income thereof for the exclusive benefit of the Participating Employees and their Beneficiaries under the participating other post-employment benefit plans. All such assets shall be held by the Master Trustees in the Other Post-Employment Benefit Plan Trust. The Master Trustees have authority:

1. to invest, manage and distribute the assets of the Other Post-Employment Benefit Plan Trust;
2. to establish and accumulate as part of the Master Trust Fund an adequate reserve to carry out the purposes of the Other Post-Employment Benefit Plan Trust;
3. to pay any federal, state or local taxes or fees, which may be properly imposed on or levied against the Other Post-Employment Benefit Plan Trust or benefits paid therefrom; and
4. if deemed appropriate and advisable, to pay premiums on separately administered life or other insurance coverage on the lives of Participating Employees of Participating Employers with participating other post-employment benefit plans.

B. Exclusive Benefit Rule. Except as otherwise provided by any applicable provision of any statute, regulation, ordinance, resolution or other post-employment benefit plan, no portion of the vested principal or the income of the Other Post-Employment Benefit Plan Trust shall revert to any Participating Employer, or ever be used for or diverted to any purpose other than for (i) the exclusive benefit of Participating Employees in the participating post-employment benefit plans and persons claiming under or through them pursuant to such plans and (ii) the payment of reasonable expenses of such plans and the Other Post-Employment Benefit Plan Trust. The Master Trustees shall administer the Other Post-Employment Benefit Plan Trust in compliance with IRC Section 503(b).

C. Contributions. The Administrator shall have the responsibility for accepting contributions by Participating Employers. Neither the Master Trustees nor the Administrator shall be under any duty to determine whether the amount of any contribution is in accordance with the Participating Employer's other post-employment benefit plan or plans or to collect or enforce payment of any contribution. All contributions under the participating other post-employment benefit plans shall be transferred to the Other Post-Employment Benefit Plan Trust

to be held, managed, invested and distributed as part of the Other Post-Employment Benefit Plan Trust by the Master Trustees in accordance with the provisions of the Plans and applicable law. All benefits under the Plans shall be distributed solely from the Other Post-Employment Benefit Plan Trust and Participating Employers shall have no financial liability therefor other than the obligation to make contributions to the Other Post-Employment Benefit Plan Trust as provided in the Plans.

D. Other Post-Employment Benefit Plans. All references in this Part 5 to other post-employment benefit plans shall mean the participating other post-employment benefit plans of the Participating Employers in the Other Post-Employment Benefit Plan Trust. The participating other post-employment benefit plans, as amended from time to time, shall be incorporated herein by reference, and the terms herein shall have the meanings attributed to them in such plans.

E. Property. The word “property” used for the Other Post-Employment Benefit Plan Trust shall be deemed to refer to any property, real or personal, or part interest therein, wherever situated, including, but without being limited to, preferred and common stocks, shares of investment companies, bonds, notes, debentures and mortgages, equipment trust certificates, investment trust certificates, interest in partnerships whether limited or general, or in any insurance contract, policy, annuity or other investment media offered by an insurance company.

F. Applicable Laws and Regulations. The Master Trustees shall be authorized to take the steps they deem necessary or appropriate to comply with any laws or regulations applicable to any participating other post-employment benefit plan of a Participating Employer.

Section 503. PARTICIPATING EMPLOYERS WITH AN OTHER POST-EMPLOYMENT BENEFIT PLAN OR PLANS.

A. Approval. Before the approval of the participation of any Employer that has an other post-employment benefit plan not established as a Plan by the Master Trustees, such plan must be approved for actuarial soundness by an actuary selected by the Master Trustees or Administrator, if required, unless such requirement is waived by the Master Trustees.

B. Accumulated Share. No Participating Employer shall have any right, title or interest in or to any specific assets of the Master Trust Fund, but shall have an undivided beneficial interest in the Master Trust Fund; however, there shall be a specific accounting of assets allocable to each Participating Employer and each participating Plan.

Section 504. DEPOSITS AND DISBURSEMENTS FROM THE TRUST.

A. Trust Deposits. The Master Trustees hereby delegate to the Administrator the responsibility for accepting deposits to the Other Post-Employment Benefit Plan Trust.

B. Trust Payments. The Master Trustees hereby delegate to the Administrator the responsibility for making payments from the Other Post-Employment Benefit Plan Trust. The Administrator shall make payments from the Other Post-Employment Benefit Plan Trust to Participating Employees, their Beneficiaries and such other persons as the appropriate participating other post-employment benefit plans may provide. Such payments shall be made in

such manner, in such amounts and for such purposes, including the payment of Benefits under participating other post-employment benefit plans and the payment of expenses of administration of the participating other post-employment benefit plans, as may be specified in the participating other post-employment benefit plans. Payments from the Other Post-Employment Benefit Plan Trust shall be made by check (or the check of an agent) or deposit to the order of the payee. Payments or other distributions hereunder may be mailed to the payee at the address last furnished to the Administrator. The Master Trustees shall not incur any liability or other damage on account of any payment or other distribution made by the Other Post-Employment Benefit Plan Trust in accordance with this Section.

C. Allocation of Expenses. The Master Trustees shall pay all expenses of the Other Post-Employment Benefit Plan Trust from the assets in the Other Post-Employment Benefit Plan Trust. All expenses of the Other Post-Employment Benefit Plan Trust, which are allocable to a particular investment option or account, may be allocated and charged to such investment option or account as determined by the Master Trustees. All expenses of the Other Post-Employment Benefit Plan Trust which are not allocable to a particular investment option or account shall be charged to each such investment option or account in the manner established by the Master Trustees.

Section 505. INVESTMENT OPTIONS.

The Master Trustees, in accordance with applicable provisions of the participating other post-employment benefit plans, may establish one (1) or more investment options within the Other Post-Employment Benefit Plan Trust, each option being hereinafter referred to as an "investment option." The Master Trustees shall transfer to each such investment option such portion of the assets of the Other Post-Employment Benefit Plan Trust as appropriate. The Master Trustees shall manage, acquire or dispose of the assets in an investment option in accordance with valid specific investment directions given by the Participating Employers or Participating Employees. All income received with respect to, and all proceeds received from, the disposition of property held in an investment option shall be credited to, and reinvested in, such investment option. The Master Trustees shall establish at least one (1) default investment option in the absence of valid Participating Employer or Participating Employee investment direction.

From time to time, the Master Trustees may eliminate an investment option, and the proceeds thereof shall be reinvested in another investment option in accordance with the directions of the Master Trustees.

Section 506. INVESTMENT IN INSURANCE CONTRACTS.

The Master Trustees may offer one (1) or more investment options pursuant to one (1) or more agreements with insurance companies qualified to do business in the State of Florida. Any asset invested pursuant to such an agreement shall be held by the insurance company. Each insurance company so selected shall certify the value of the Other Post-Employment Benefit Plan Trust's interest in the property held by it at least annually. The Master Trustees shall be entitled to rely conclusively on such valuation for all purposes under the Other Post-Employment Benefit Plan Trust.

Section 507. INVESTMENT IN MUTUAL FUNDS.

The Master Trustees may offer one (1) or more investment options pursuant to one (1) or more agreements with companies offering mutual fund products. Any asset invested pursuant to such an agreement shall be held by the Master Trustees. Each mutual fund so selected shall certify the value of the Other Post-Employment Benefit Plan Trust's interest in that fund at least annually. The Master Trustees shall be entitled to rely conclusively on such valuation for all purposes under the Other Post-Employment Benefit Plan Trust.

Section 507. MISCELLANEOUS.

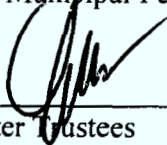
A. Conflict. In resolving any conflict among provisions of the Other Post-Employment Benefit Plan Trust and in resolving any other uncertainty as to the meaning or intention of any provision of the Other Post-Employment Benefit Plan Trust, the interpretation that (i) causes the Other Post-Employment Benefit Plan Trust to be exempt from tax under IRC Sections 115 and 501(a), and (ii) causes the participating other post-employment benefit plan and the Other Post-Employment Benefit Plan Trust to comply with all applicable requirements of law shall prevail over any different interpretation.

B. No Guarantees. Neither the Administrator nor the Master Trustees guarantee the Other Post-Employment Benefit Plan Trust from loss or depreciation or the payment of any amount which may become due to any person under any participating other post-employment benefit plan or this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Master Trustees have caused this Master Trust Agreement to be amended and restated as of the 1st day of June, 2006.

Passed and adopted by the Master Trustees of the Florida Municipal Pension Trust Fund this 1st day of June, 2006.



Chair of the Master Trustees

Accepted by the Administrator

FLORIDA LEAGUE OF CITIES, INC.


By: _____
Executive Director

**FLORIDA MUNICIPAL PENSION TRUST FUND
INVESTMENT POLICY
*Amended and Restated As of June 1, 2007***

I. AUTHORITY

The Master Trust Agreement originally made as of the 16th day of December, 1983, and as amended and restated most recently as of the 1st day of June, 2006, by and between all parties who are now or may hereafter become members of the Florida Municipal Pension Trust Fund (“FMPTF” or the “Master Trust Fund”) and the individuals named as Master Trustees pursuant to Section 109 of the Master Trust Agreement and their successors (such trustees collectively referred to as the “Master Trustees”). The Master Trust Agreement provides that the Master Trustees have the exclusive authority and discretion to manage and control the assets of the Master Trust Fund according to the provisions herein. Except as otherwise defined herein, the capitalized terms in this policy shall have the same meaning as such terms have in the Master Trust Agreement.

II. PURPOSE

The purpose of the Master Trust Fund is to collectively manage the investment of the assets of the Plans of participating Florida governments. The Master Trust Fund operates as a non-profit, tax-exempt entity that provides professional and cost-effective investment and administrative services for all types of retirement plans.

The Master Trustees have established the herein investment policy and portfolio guidelines to assist the Administrator in the administration of the assets of the Master Trust Fund; to guide the investment managers in structuring portfolios consistent with the Master Trust Fund’s desired performance results and an acceptable level of risk; and to assure the Master Trust Fund assets are managed in a prudent fashion.

This policy is applicable to all funds, assets and properties under the control of the Master Trustees and to all consultants, agents, and staff responsible to the Master Trustees.

III. DUTIES AND RESPONSIBILITIES

A. Administrator. Under the direction of the Master Trustees, it shall be the responsibility of the Administrator to supervise and administer the Master Trust Fund’s investment program pursuant to a written agreement between the Master Trust Fund and the Administrator, including, but not limited to, the following:

1. Supervise and coordinate the activities of qualified investment management firms, dealers, brokers, issuers, custodians, consultants and other investment advisors in keeping with this investment policy.
2. Provide advice and assistance in the administration and operation of the Master Trust Fund’s investment program.

3. Establish accounting systems and procedures for the safekeeping, disposal of and recording of all investment assets held or controlled by the Master Trust Fund including the establishment of appropriate internal controls as required.

4. Assist in the design, development, operation, review and evaluation of the Master Trust Fund's investment program for compliance with this policy.

5. Advise the Master Trustees as to recommendations relative to amendments to this policy.

6. Inform the Master Trustees of unaddressed concerns with the Master Trust Fund's investment program.

7. Immediately notify the Master Trustees of any event or of any information that may have a severe and adverse effect on the Master Trust Fund's investment program under the provisions of this policy.

B. Investment Managers. Under the direction of the Master Trustees and subject to an applicable written investment management agreement, the duties and responsibilities of the investment managers for the Master Trust Fund shall include, but not be limited to, the following:

1. Will have full discretion in the management of assets allocated to the investment managers, subject to the overall investment policy and guidelines set by the Master Trustees.

2. Serve as fiduciaries responsible for specific securities decisions.

3. Will abide by duties, responsibilities and guidelines detailed in any specific investment manager agreement.

C. Custodian Under the direction of the Master Trustees and subject to an applicable written custodial agreement, the duties and responsibilities of the Custodian shall include, but not be limited to, the following:

1. Accepts possession of securities for safekeeping; collects and disburses income; collects principal of sold, matured or called items; provides periodic accounting statements; and processes and maintains securities lending program.

2. Meets as required with the Master Trustees and provides reports relative to the status of the Master Trust Fund.

3. In a timely fashion, forwards and transmits to the appropriate investment managers all proxies related to equity securities held in an account.

4. Will abide by duties, responsibilities and guidelines detailed in any specific custodial agreement.

D. Performance Monitoring Consultant (Investment Consultant) Under the direction of the Master Trustees and subject to an applicable written investment consulting agreement, the duties and responsibilities of the investment consultant shall include, but not be limited to, the following:

1. Assists the Master Trustees in developing investment policy guidelines, including asset class choices, asset allocation targets and risk diversification.
2. Provides the Master Trustees with objective information on a broad spectrum of investment management specialists and helps construct a portfolio management team of superior investment managers.
3. Monitors the performance of the investment managers and provides regular quarterly reports to the Master Trustees, which will aid the Master Trustees in carrying out the intent of this policy.
4. Reports conclusions and recommendations to the Master Trustees as required.
5. Evaluates and makes recommendations, as needed, on portfolio management.
6. Evaluates and makes recommendations, as needed, on other areas of investment, such as real estate, foreign securities or venture capital.
7. Will abide by duties, responsibilities and guidelines detailed in any specific investment consulting agreement.

IV. INVESTMENT AND FIDUCIARY STANDARDS

The standard of prudence to be used by investment advisors, money managers or other qualified parties or individuals with contracted investment responsibilities with the Master Trust Fund (the "Managers") shall be the "prudent person", which provides that the investments of the Master Trust Fund shall be made with the judgment and care under the circumstances then prevailing which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of the invested Master Trust Fund assets considering the probable income, total return and probable safety of these Master Trust Fund investments. Managers shall adhere to the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974 at 29 U.S.C. s. 1104(a)(1)(A) through (C). Individuals, acting in accordance with established procedures and exercising due diligence, shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to minimize any investment losses.

Any individual who is involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Managers shall have a written policy which addresses the disclosure of potential conflict-of-interests which shall be submitted to the Administrator upon request. Managers shall also disclose to the Administrator any

material financial/investment position or finding which may be contrary to this policy or otherwise related to the performance of the Master Trust Fund's portfolio. Any adverse findings of the U.S. Department of Labor or the Securities and Exchange Commission regarding a Manager or its financial activities shall be brought to the immediate attention of the Master Trustees by the Administrator once the Administrator is notified.

Before engaging in any investment transactions with the Master Trust Fund, a Manager shall have submitted to the Administrator a signed certification from a duly authorized representative attesting that the individuals responsible for the Master Trust Fund's account have reviewed and shall comply with this investment policy and that they agree to undertake reasonable efforts to preclude imprudent transactions involving the assets of the Master Trust Fund.

V. INTERNAL CONTROLS

The Master Trustees require that the Administrator and any other designees establish a system of internal controls which shall be in writing. These controls shall be reviewed by independent certified public accountants as part of any required periodic financial statement audit. The internal controls should be designed to prevent losses of the Master Trust Fund which might arise from fraud, error, misrepresentation by third parties, or imprudent actions by the Master Trustees, Administrator or other designees.

VI. BROKERAGE AND BID REQUIREMENT

Managers shall use their best efforts to ensure that portfolio transactions are placed on a best execution basis. The Master Trustees intend to utilize recapture commissions when it does not interfere with best execution, solely at the discretion of the investment managers. Managers are required to, on a quarterly basis, report all brokerage transactions and reasons for using brokers to the Master Trustees. The Managers shall competitively bid securities in question when feasible and appropriate. Except as otherwise required by law, the most economically advantageous bid must be selected.

VII. PROXY VOTING

Responsibility for the voting of proxies shall be with the Master Trustees. The Master Trustees may exercise the right to assign this responsibility to the investment managers. Since proxy votes may be considered an asset of the Master Trust Fund, the assignment of voting proxies shall be exercised solely in the interest of the participants and beneficiaries of the Master Trust Fund, and for the exclusive purpose of providing benefits to participants and beneficiaries. Documentation related to the handling and voting of proxies will be reported to the Master Trustees on a quarterly basis.

The Master Trustees may (but are not required to) solicit Participating Employees' instructions as to the voting of a Master Trust Fund investment for their benefit. In so doing, the Master Trustees may solicit instructions from only those Participating Employees whose Plan accounts held the applicable investment on the record date fixed by the investment issuer. To the extent that the Administrator receives proper instructions from these Participating Employees, the Master Trustees shall vote the Master Trust Fund's rights in accordance with the instructions.

To the extent of the Master Trust Fund's rights for which Participating Employees did not give proper instructions, the Master Trustees may vote in their discretion.

VIII. CONTINUING EDUCATION

The Master Trust Fund acknowledges the importance of continuing education for Master Trustees. To that end, the Master Trustees shall attend appropriate educational conferences in connection with their duties and responsibilities as Master Trustees.

IX. REPORTING AND PERFORMANCE MEASUREMENT

The Administrator shall submit to the Master Trustees a quarterly investment report with information sufficient to provide for a comprehensive review of investment activity and performance for the quarter. Performance shall be measured against appropriate indices identified by the Master Trustees for each investment category. This report shall summarize recent market conditions, economic developments and anticipated investment conditions. The report should also summarize the investment strategies employed in the most recent quarter, and describe the portfolio in terms of investment securities, maturities, risk characteristics, adherence to guidelines and other relevant features.

Managers shall provide timely transaction and performance data to record and document investment activity, including asset valuation, yield and total return data and such other relative performance data of the Master Trust Fund's portfolio on a periodic basis as may be reasonably requested by the Administrator.

The Administrator, Managers and other contracted parties shall provide to the Master Trust Fund's auditor such verifications or reports as are required for the purpose of developing and supporting the annual financial statements of the Master Trust Fund and the footnotes thereto.

Managers shall provide immediate written and telephonic notice to the Administrator of any significant event relating to the Master Trust Fund, specifically but not limited to the resignation, termination or incapacity of any senior personnel of any Manager.

X. RISK AND DIVERSIFICATION

The Master Trustees will monitor the return per unit of risk (as measured by the standard deviation of quarterly returns) of the Master Trust Fund's assets on an ongoing basis, with each Manager's contribution being reviewed independently and as to its impact on the overall Master Trust Fund's investment return and volatility of results over time. Each Manager's contribution will be measured against similar data for appropriate benchmarks.

Investment guidelines and monitoring will provide controls for identifying and limiting risk of loss from over concentration of assets invested in a specific maturity, with a single issuer, in like instruments, or dealers or through utilization of intermediaries for purchase and sale of investments.

Risk and diversification strategies shall be reviewed and revised, if necessary, on a regular basis in light of the current and projected market condition and the Master Trust Fund's needs.

Assets in the Master Trust Fund shall be diversified among equities, fixed income and real estate to minimize overall portfolio risk consistent with the level of expected return and thereby improve the long-term return potential of the Master Trust Fund's assets. The Master Trustees reserve the right to add additional diversification by retaining multiple Managers or portfolios, upon Master Trustee approval and amendment to this policy, to further minimize portfolio risk or to maintain the level of expected return.

Managers shall be selected to fulfill a particular diversifying role within the Master Trust Fund's overall investment structure. It is the express intent of the Master Trustees to grant each Manager substantial discretion over the assets under its control.

XI. CUSTODIAN

The Custodian shall hold all actively managed or non-indexed assets of the Master Trust Fund. The Custodian will operate in accordance with a separate agreement with the Master Trustees. All securities shall be held with a third party, and all securities purchased by, and all collateral obtained by the Master Trustees shall be properly designated as an asset of the Master Trustees. No withdrawal of securities, in whole or in part, shall be made from safekeeping except by the Master Trustees or their designee. Securities transactions between a broker-dealer and the custodian involving purchase or sale of securities by transfer of money or securities must be made on a "delivery versus payment" basis, if applicable, to ensure that the Custodian will have the security or money, as appropriate, in hand at the conclusion of the transaction.

XII. DEFINED BENEFIT PLAN SPECIFICATIONS

These provisions relate to the investment of the assets of the Defined Benefit Pension Plan Trust and the portion of the Other Post-Employment Benefit Plan Trust relating to other post-employment benefit plans that are defined benefit plans.

A. Investment Objective and Expected Annual Rate of Return. The primary objective is to seek long-term growth of capital and income consistent with conservation of capital. Necessary liquidity will be maintained to meet payout requirements. Emphasis is placed on achieving consistent returns and avoiding extreme volatility in market value.

As of October 1 of each year, the Master Trustees shall determine for the defined benefit plans in the Master Trust Fund the total expected annual rate of return for the current year, for each of the next several years and for the long-term thereafter. The expected annual rate of return for the current year and long-term thereafter is 7.5%, until amended by the Master Trustees. This determination must be filed promptly with the Department of Management Services, the Administrator, Master Trustees, and the actuaries, if any, for the Plans. Specific Plan provisions may supersede this expected rate of return by approval of the Administrator and Plan actuary.

B. Asset Allocation and Portfolio Composition. Assets of the Master Trust Fund shall be invested in a diversified portfolio consisting of equity and debt. Although cash is not

included in the asset allocation of the Master Trust Fund, surplus cash flows, additional contributions and Manager cash will be utilized to pay obligations of the Master Trust Fund and periodic re-balancing of the assets. The Master Trust Fund may consider investments in other asset classes which offer potential enhancement to total return at risks no greater than the exposure under the initially selected asset classes.

From time to time the Master Trustees will adopt asset allocation strategies within the ranges specified below:

	<u>Maximum Target Limitation</u>
Equities	70% at market

The Master Trustees may employ an independent consultant to perform an annual, or more frequent, Asset Allocation Report that will include, but not be limited to, a strategic analysis and report on asset allocation investments between different types of investments and appropriate changes to the percentages therein. This study will be used to assist the Master Trustees in the determination of the appropriate investment allocation to maximize the return and minimize the risk to the pooled assets of the Master Trust Fund. This study may include a recommendation to add or delete asset classes as is warranted by the risk/reward analysis and by Master Trustees' approval.

The Master Trustees are not bound by acceptance or denial of recommendations presented in conjunction with the Asset Allocation Report.

It is not the intention of the Master Trust Fund to become involved in the day-to-day investment decisions. Therefore, the Administrator is authorized by this policy to make asset allocation decisions to reallocate or redirect either contributions or the investments held by the Master Trust Fund in order to take advantage of changing market conditions. Any tactical allocation that will cause the allocation of the investment classes to vary from the approved strategic allocation percentages of any asset class by more than 5% requires approval by the Chair of the Master Trustees.

The Administrator will report to the Master Trustees at their quarterly meetings on the tactical and re-balancing allocation decisions made during the prior quarter.

C. Maturity and Liquidity. The Master Trust Fund shall provide sufficient liquidity to meet any required payment.

D. Authorized Investments. In an effort to accomplish the objectives of the Master Trust Fund, this policy identifies various authorized investment instruments, issuer diversification, maturity constraints, investment ratings and liquidity parameters. The following are authorized investments:

1. Repurchase agreements which are purchased only from dealers authorized by the Master Trustees and may only involve the sale and repurchase of securities authorized for purchase by this investment policy. Maximum maturity at purchase shall not exceed 180 days with a total average maturity, at any point in time, for all repurchase agreements held of not greater than 60 days.

2. Direct obligations of the United States Treasury including bills, notes, bonds and various forms of Treasury zero-coupon securities.

3. Any authorized investments purchased by or through the State Board of Administration or the Office of the State Treasurer and held on behalf of the Master Trust Fund in a commingled pool or separate account.

4. Commercial paper issued in the United States by any corporation, provided that such instrument carries a rating of A1/P1 (or comparable rating) as provided by two of the top nationally recognized statistical rating organization; and that the corporation's long term debt, if any, is rated at least A1/A+ by a nationally recognized statistical rating organization or, if backed by a letter of credit ("LOC"), the long term debt of the LOC provider must be rated at least AA (or a comparable rating) by at least two of the nationally recognized statistical rating agencies publishing ratings for financial institutions. The maximum maturity shall not exceed 270 days from the time of purchase.

5. Banker's acceptances issued within the U.S. by institutions with a long term debt rating of at least AA or short term debt rating of P1 (or comparable ratings), as provided by one nationally recognized statistical rating organization. Exceptions to the above may be approved by the Administrator from time to time and reported to the Master Trustees. The invested account of a Manager may own no more than 5% of the portfolio in banker's acceptances issued by any one depository institution at one time. Maximum maturity shall not exceed 270 days from the time of purchase.

6. Nonnegotiable Certificates of Deposit issued by Florida Qualified Public Depositories as identified by the State Treasurer's office and/or negotiable certificates of deposit issued in U.S. dollars by institutions, provided such institution carries a short term rating of at least A1/P1 (or comparable rating) and a long term rating of a least A (or comparable rating) as provided by two of the top nationally recognized rating agencies. The invested account of a Manager may own no more than \$5,000,000 in certificates of any one depository institution at one time. Maximum maturity on any certificate shall be 2 years.

7. Obligations of the agencies or instrumentalities of the federal government, including, but not limited to, the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Federal Home Loan Banks, Federal Farm Credit Banks, Student Loan Marketing Association and the Resolution Master Trust Funding Corporation.

8. Money market mutual master trust funds as defined and regulated by the Securities Exchange Commission. Money market master trust funds will be limited to monies held by trustees, paying agents, safekeeping agents, etc. as a temporary investment to facilitate relationships as delineated above.

9. Mortgage obligations guaranteed by the United States government and sponsored agencies or instrumentalities including but not limited to the Government National Mortgage Association, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. Mortgage-backed securities, including

mortgage-pass through securities and collateralized mortgage obligations (“CMOs”) issued, guaranteed or backed by an agency or instrumentality of the federal government or other mortgage securities including CMOs rated AAA or equivalent by a nationally recognized statistical rating organization. Derivative mortgage securities, such as interest only, principal only, residuals and inverse floaters are prohibited.

10. Corporate fixed income securities issued by any corporation in the United States with any A rating or better. A Manager may hold no more than 3% of the invested account in any one corporation at the time of purchase.

11. Asset-backed securities issued in the United States.

12. Securities of state, municipal and county governments or their public agencies, which are rated A or better by a nationally recognized statistical rating organization.

13. Commingled governmental investment trusts, no-load investment master trust funds, or no-load mutual master trust funds in which all securities held by the trusts or master trust funds are authorized investments as provided herein or as may be approved by the Master Trustees.

14. Guaranteed investment contracts (“GIC’s”) with insurance companies rated in the highest category by AM Best Rating System or a comparable nationally recognized statistical rating organization.

15. Investment agreements with other financial institutions. If collateralized, the collateral securing the investment agreement shall be limited to those securities authorized for purchase by this investment policy. The invested account of a Manager may own, at one time, no more than \$10,000,000 in investment agreements from any one financial institution. Investment agreements are obligations of financial institutions typically bearing a fixed rate of interest and having a fixed maturity date. Investment agreements are privately negotiated and illiquid.

16. Equity assets, including common stock, preferred stock and interest bearing obligations having an option to convert into common stock.

17. Securities lending with approved dealers and custodians.

18. Florida Municipal Investment Trust (FMIVT) Portfolios.

E. Valuation of Illiquid Investments. If illiquid investments for which a generally recognized market is not available or for which there is no consistent or generally accepted pricing mechanism, the criteria set forth in Section 215.47(6), Florida Statutes, shall apply, except that submission to an Investment Advisory Council is not required. For each plan year (defined benefit plans only) the Master Trustees must verify the determination of the fair market value for those investments and ascertain that the determination complies with all applicable state and federal requirements. The Master Trustees shall disclose to the Department of Management Services and the Administrator each such investment for which the fair market value is not provided.

F. Master Repurchase Agreements. All approved institutions and dealers transacting repurchase agreements shall execute and perform as stated in a Master Repurchase Agreement. All repurchase agreement transactions shall adhere to the requirements of the Master Repurchase Agreement. This provision does not restrict or limit the terms of any such Master Repurchase Agreement.

G. Criteria for Investment Manager Review. The Master Trustees wish to adopt standards by which ongoing retention of a Manager should be determined. With this in mind, the following guidelines are adopted:

If, at any time, any one of the following is breached, the Manager will be notified of the Master Trustees' serious concern for the Fund's continued safety and performance and that manager termination could occur.

1. Consistent performance below the 50th percentile in the specified universe over rolling 3-year periods.
2. Consistent under-performance of the stated target index over rolling 3-year periods.
3. Loss by the Manager of any senior personnel deemed detrimental to the Manager's ability to perform required duties or any potentially detrimental organizational issues that may arise and have an effect on the management of Master Trust Fund assets.
4. Substantial change in basic investment philosophy by the Manager.
5. Substantial change of ownership of the firm deemed detrimental to the Manager's ability to perform required duties.
6. Failure to attain at least a 51% vote of the confidence of the Master Trustees.
7. Failure to observe any guidelines as stated in this policy.

This shall in no way limit or diminish the Master Trustees' right to terminate the Manager at any time for any reason.

An investment management agreement will be entered into between the Master Trustees and each Manager. Each investment management agreement will include such items as fiduciary standards, notice requirements, duties and responsibilities and specific investment guidelines for the Manager and will be subject to the prior review and approval of an attorney for the Master Trustees.

All Managers must be duly registered with the appropriate government agencies to act in the capacity of investment manager on behalf of the Master Trustees. Any Manager appointed shall promptly notify the Master Trustees in the event any circumstance arises that may result in its failing to continue to meet the requirements stipulated by the respective government agencies.

A Manager's performance will be evaluated with the assistance of performance measurement consultants on an on-going basis and will be a primary criteria for their retention.

XIII. DEFINED CONTRIBUTION AND DEFERRED COMPENSATION PLAN SPECIFICATIONS

These provisions relate to the investment of the assets of the Defined Contribution Pension Plan Trust, the Deferred Compensation Plan Trust and the portion of the Other Post-Employment Benefit Plan Trust relating to other post-employment benefit plans that are defined contribution plans.

A. Purpose. The Master Trustees are charged with the overall responsibility to manage the Master Trust Fund assets prudently on behalf of the Participating Employees. The general purpose of this investment policy is to assist the Master Trustees in discharging their responsibility to supervise, monitor and evaluate the investment of the Master Trust Fund assets. The Master Trustees believe this investment policy should be dynamic and should be reviewed periodically. The Master Trustees intend that this policy will not be overly restrictive given changing economic, business and capital market conditions.

Therefore, this policy is compiled to ensure:

1. The Master Trustees define a formal set of investment objectives, guidelines and procedures for the management of the Master Trust Fund assets, subject to the terms of the Plans' documents and investment advisory agreements entered into by the Managers and the Trustees.
2. Direct and indirect investment expenses are controlled and reasonable.
3. The investments of the Master Trust Fund assets are managed in accordance with the fiduciary prudence and due diligence requirements that experienced investment professionals would utilize and with all applicable laws, rules and regulations from various state, local and federal agencies that may impact the Master Trust Fund assets.
4. If and to the extent permitted by their respective Plans, Participating Employees and Beneficiaries have the ability to invest in a variety of asset classes, thereby gaining exposure to a wide range of investment opportunities.

B. Investment Objective. To the extent any Plans provide for participant-directed investments, the Master Trust Fund will make available a range of different diversified investment options that have varying degrees of risk and return.

It is anticipated, but not required, that the same investment options be available for each Plan. Investment options offered to Participating Employees and their Beneficiaries shall be approved by the Trustees.

To the extent any Plans provide for participant-directed investment, the primary objective of the Master Trust Fund is to offer the Participating Employees and their Beneficiaries a range

of investment choices to permit diversification and a choice of investment strategies. The objectives are further defined as follows:

1. To provide a spectrum of investment options so a Participating Employee will be able to choose the investment mix that may fall within a range of risk and return characteristics customarily appropriate for the Participating Employee.

2. To provide sufficient investment choices so that the asset classes selected shall be such that taken together Participating Employees will have a reasonable opportunity to materially affect the potential investment returns in their accounts, while at the same time controlling risk or volatility. It is the intent that a Participating Employee may be able to build a balanced portfolio in a manner generally consistent with modern portfolio theory.

C. Guidelines

1. Investment options for the Participating Employees shall be determined solely in the interest of the Participating Employees and their Beneficiaries and for the exclusive purpose of providing benefits to the Participating Employees and their Beneficiaries.

2. Investment options for the Participating Employees shall be determined with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and aims.

3. Investment options for the Participating Employees shall be determined so as to offer an array of investment options so Participating Employees can protect themselves from large losses by appropriately diversifying their account.

D. Participant Control. To the extent permitted by the Plans, Participating Employees shall be given control over the investment allocation process. This shall include the right to change investment allocations of existing account balances and future contributions daily. Participating Employees shall also be given information necessary for them to reasonably understand the investments and to make reasonably informed investment decisions.

E. Procedure

1. The Master Trustees shall use business judgment in selecting investment products limited to registered investment company ["mutual fund"] shares and collective investment fund units, which the Master Trustees may own indirectly through a group trust or a securities account. The Plans' investment options shall not include any investment for which the indicia of ownership cannot be held by the Master Trustees in the United States of America. Investment companies need not be classified as "diversified" as defined by the Investment Company Act of 1940. Both passive and actively managed investment strategies will be considered.

2. The following characteristics (when applicable) shall be considered in selecting the specific asset classes and corresponding investments to be made available to Participating Employees:

(a) Investment category and objective as defined in the prospectus or equivalent literature as well as current and historically consistent adherence to the asset classes and investment styles as defined in Section XIII.F below.

(b) The Manager(s) and tenure. (Longer tenure is preferred.)

(c) Acquisition costs and ongoing management fees including turnover. (Lower fees and turnover are preferred.)

(d) Investment record: total returns (net of expenses) on a time-weighted basis over three- and five-year periods and their relationship to appropriate benchmarks and peer groups. (Higher returns are preferred.)

(e) Risk adjusted return measurements: Sharpe Ratio and Alpha Returns and their relationship to appropriate benchmarks and peer groups. (Higher Sharpe Ratio and Alpha Return are preferred.)

(f) Risk characteristics: risk as measured implicitly by reviewing standard deviation and beta as used to compute Sharpe Ratios and Alpha statistics. (Lower standard deviations and betas are preferred.)

(g) Any other criteria that the Master Trustees deem worthwhile in judging the suitability of an investment, including, but not limited to, funds of the type customarily described or classified as socially responsible, as long as the overall range of other investment options meets all requirements of this investment policy.

The Master Trustees shall review the long-term performance, risk and correlation characteristics of various asset classes, focusing on the balance between risk and return and the asset class' market behavior so that the investment options reasonably span the risk/return spectrum.

3. Miscellaneous Criteria: In selecting the specific investments to be made available to participants, the Master Trustees shall consider the following additional criteria:

(a) *Services to Participating Employees*

- (1) Communication from the funds
- (2) Accessibility to fund information
- (3) Ease and cost of investment transfers
- (4) Nature and frequency of reports to Participating Employees

(b) *Services to Master Trustees*

- (1) Nature and frequency of investment reports
- (2) Availability and access to Administrator and Managers
- (3) Corresponding costs and expenses associated with Plan record keeping and reporting and administration
- (4) Quantitative and qualitative due diligence regarding the Managers

F. Asset Classes. As a result of review and analysis, and in consideration of the criteria outlined in this policy, the Master Trustees have selected the following asset classes (investment styles). It is understood that this list is dynamic and subject to change by amendment of this policy at any time and from time to time:

1. Money Market Fund - Seeks income by investing in cash or cash equivalent investments, primarily from banks.

2. Stable Value Fund - Seeks income with capital preservation by investing in a pool consisting of one or more of the following: GICs, synthetic investment contracts and separate account investment contracts issued by insurance companies; bank investment contracts; asset-backed securities; Treasury bonds and cash equivalents. The preponderance of its assets are invested in securities with a credit quality of AAA.

3. Short Term Bond Fund - Seeks income by investing the preponderance of the fund's assets in fixed income securities, primarily corporate bonds of various credit ratings and other investment grade securities. Will generally invest in securities with average credit ratings of at least BBB or better and with average effective durations of between 1 and 3.5 years.

4. Intermediate Term Bond Fund - Seeks income by investing the preponderance of the fund's assets in fixed income securities, primarily corporate bonds of various credit ratings and other investment grade securities. Will generally invest in securities with average credit ratings of at least BBB or better and with average effective durations of between 3.5 and 6 years.

5. Long Term Bond Fund - Seeks income by investing the preponderance of the fund's assets in fixed income securities, primarily corporate bonds of various credit ratings and other investment grade securities. Will generally invest in securities with average credit ratings of at least BBB or better and with average effective durations greater than 6 years.

6. Balanced Fund – Seeks both income and growth of capital by investing in fixed income securities with average credit ratings of BBB or better and large cap domestic equities.

7. Large Company Value Fund – Seeks growth of capital and current income as near equal objectives by investing in securities with above-average yields and with some potential for appreciation. Exhibits an investment style generally categorized as large value by investing the preponderance of its assets in securities with weighted

average market capitalizations of over \$10 billion and exhibiting a value-oriented investment style as generally defined by professional investment analysis.

8. Large Company Core Fund - Seeks to replicate the performance of the S&P 500 Index with an average market capitalization of over \$10 billion and price/earnings and price/book ratios within 12.5% of the S&P 500's ratios. May achieve this objective through passive (index) or active management.

9. Large Company Core Socially Conscious Fund – Having the same financial characteristics as the Large Company Core Fund, invests according to non-economic guidelines. May make investments based on issues such as environmental responsibility, human rights or religious views. May take a proactive stance by selectively investing in companies with good records in these areas or avoid investing in companies involved in promoting alcohol, tobacco, or gambling or in the defense industry.

10. Large Company Growth Fund - Seeks capital appreciation by investing primarily in equity securities of companies that are expected to grow at an above-average rate. Current income is a secondary objective. Exhibits an investment style generally categorized as large growth by investing the preponderance of its assets in securities with median market capitalizations of over \$10 billion and exhibiting a growth-orientated investment style as generally defined by professional investment analysis.

11. Small Company Core Fund - Seeks capital appreciation by investing primarily in stocks of small companies as determined by market capitalization or assets. Exhibits an investment style generally categorized as small blend by investing the preponderance of its assets in securities with median market capitalizations below \$2 billion and exhibiting a core investment style as generally defined by professional investment analysis.

12. Foreign Fund - Invests in equity securities of issuers located outside the United States except under adverse market conditions. Exhibits an investment style generally categorized as large blend by investing the preponderance of its assets in securities with median market capitalizations over \$10 billion and exhibiting a core investment style as generally defined by professional investment analysis.

13. Emerging Markets Fund - Invests in equity securities issued by companies located outside of the United States but within the less developed or emerging market countries as generally defined by the professional investment organizations. Exhibits an investment style generally categorized as blend by investing the preponderance of its assets in securities with median market capitalizations below \$10 billion and exhibiting a core investment style as generally defined by professional investment analysis.

14. Real Estate Fund - Seeks total return with equal emphasis on capital appreciation and current income by investing in equity securities of real estate companies, predominantly within the United States. Exhibits an investment style that is focused (not diversified) and generally categorized as core real estate by professional investment analysis.

G. Trustee-Directed Participant Allocation. The following investment allocation will be made for each Participating Employee's account that does not file and maintain a timely investment election form.

Age Based Default Fund utilizing the Vanguard Target Retirement Funds

H. Performance Measurement

1. Each investment shall be measured against the performance of its corresponding asset class and peer group as defined by performance monitoring services deemed to be acceptable by the investment consultant to the Master Trust Fund.

2. The performance of each investment shall be measured against market indexes that correspond with its investment category.

- (a) Money Market Fund: Morningstar 3-Month Treasury Bill Index
- (b) Pooled GIC Fund: Morningstar 3-Month Treasury Bill Index
- (c) Short Term Bond Fund: Lehman Brothers Government 1-3 year Bond Index
- (d) Intermediate Term Bond Fund: Lehman Brothers Aggregate Bond Index
- (e) Long Term Bond Fund: Lehman Brothers Government/Credit Long Bond Index
- (f) Balanced Fund: S&P 500 Index and the Lehman Brothers Aggregate Bond Index
- (g) Large Company Value: Russell 1000 Value Index
- (h) Large Company Core Fund: S&P 500 Index
- (i) Large Company Growth Fund: Russell 1000 Growth Index
- (j) Small Company Core Fund: Russell 2000 Index
- (k) Foreign Fund: MSCI EAFE Index
- (l) Emerging Markets Fund: MSCI Emerging Markets Free Index
- (m) Real Estate Fund: Wilshire REIT Index

3. The performance of each investment may be measured against additional standards and benchmarks established by the Master Trustees from time to time as criteria for continued acceptance of each investment.

I. Criteria for Evaluating Funds Selected in Each Asset Category

1. The following information shall be considered in determining if an investment option should be replaced. Once an investment is selected for the Master Trust Fund, performance will be evaluated from the date it was added to the Master Trust Fund using these criteria. At all times each mutual fund must carry a Morningstar Star rating of at least a three if available.

- (a) Portfolio statistics as determined by portfolio and style analysis that demonstrates a departure from the fund's intended investment category (asset class).

(b) Termination of the Manager, material change in the management team or change in ownership.

(c) Increase in direct and indirect expenses.

(d) A total return in the lowest 25th percentile in any consecutive 4 calendar quarters as compared to the fund's peer group that defines the comparable investment styles (universes).

(e) Rolling total returns in the bottom 50th percentile for any 3-year period ending on a calendar quarter as compared to the fund's peer group that defines the comparable investment styles (universes).

(f) Sharpe Ratios in the bottom 50th percentile for any 3-year period ending on a calendar quarter as compared to the fund's peer group that defines the comparable investment styles (universes).

(g) Negative Alpha Returns over any three-year period ending on a calendar quarter for actively managed funds. This is an observable and not actionable measurement and should be factored in only if there are other reasons for the fund to be on the monitor list.

(h) Any other information that may lead the Master Trustees to believe the fund is not fulfilling the intent and purpose of this policy, including performance relative to indexes specified in Section XIII.H above.

Investment options offered through the MetLife CHART Program are exempt from the following minimum performance criteria. However, as part of the effort to monitor the viability of the CHART Program, the Master Trustees will generally evaluate their proprietary funds in a manner comparable to what is applied to any fund included on the investment menu. The CHART Program is an advisory service offered by MetLife that utilizes "fund of funds" actively managed by MetLife.

Risk is measured implicitly by reviewing the Sharpe Ratio and Alpha statistic.

If any of these events occur, the Master Trustees shall consider whether the fund continues to be an appropriate investment for the Master Trust Fund. The Master Trustees acknowledge that fluctuating rates of return characterize the securities markets, particularly during short-term time periods. Recognizing that short-term fluctuations may cause variations in performance, the Master Trustees intend to evaluate Manager performance from a long-term perspective giving funds an opportunity to recover from periods of poor returns. If a Manager has consistently failed to adhere to one or more of the above conditions, it is reasonable to presume a lack of adherence going forward. Failure to remedy the circumstances of unsatisfactory performance by the Manager, within a reasonable time, shall be grounds for termination. Any recommendation to terminate a Manager will not be made solely based on quantitative data. Frequent changes are neither expected nor desirable. When a fund is replaced, all assets in the replaced fund will be transferred to the new fund 30 days after the Master Trustees have

voted to remove the fund. Written notice to all affected Participating Employers will be sent within 10 days of the Master Trustees decision to remove the fund. All deposits previously allocated into the replaced fund will be directed to the new fund. Appropriate information about the fund replacement and new fund prospectus will be given to Participating Employees prior to the exchange.

Events that Constitute Immediate Removal of a Mutual Fund.

In an effort to maintain strict oversight of the mutual funds in which assets of the Defined Contribution Pension Plan Trust, Deferred Compensation Plan Trust and Other Post-Employment Benefit Plan Trust are held, the following guidelines have been developed as a basis for when a mutual fund must immediately be removed from the Master Trust Fund. Funds meeting the following criteria may be removed by the Administrator with 30 days written notice to affected Participating Employees and notification to the Chair of the Master Trustees. Written notice to all affected Participating Employers will be sent within 10 days of the decision to remove the fund. Appropriate information about the fund's replacement and new fund prospectus will be given to Participating Employees prior to the exchange.

- Management team termination
- 12-month returns as compared to the relevant universe in the bottom 10th percentile

2. Qualitative due diligence of each fund will be conducted on a periodic basis with appropriate parties at each investment entity. Any issue materially affecting the management staff and investment process associated with each fund will be considered, including:

- (a) Changes to the management team or the firm's ownership.
- (b) Modifications to the fund's investment policy, philosophy and decision process.
- (c) Deviation of investment style, regulatory action and investigation or litigation by a government agency.

J. **Proxy Voting.** The Master Trustees will vote on all proxies issued by the mutual funds.

XIV. REVIEW AND AMENDMENTS

It is intended that the Managers, investment consultants, Administrator and Master Trustees review this investment policy periodically. If at any time a Manager or consultant believes that the specific objectives defined herein cannot be met or that the guidelines unreasonably constrict performance, the Master Trustees shall be notified in writing. By the initial and continuing acceptance of these investment guidelines, the Manager concurs with the provisions of this policy.

XV. FILING OF INVESTMENT POLICY

Upon adoption by the Master Trustees, this investment policy shall be promptly filed with the Department of Management Services, the Participating Employers and the Plans' actuaries, if any. The effective date of this investment policy and any amendment hereto, shall be the 31st calendar day following the date of such filing.

XVI. EFFECTIVE DATE

This amendment and restatement of the Florida Municipal Pension Trust Fund Investment Policy shall become effective as of June 1, 2007.

Adopted by the Master Trustees of the Florida Municipal Pension Trust Fund this 31st day of May, 2007.



Chair of the Master Trustees

Attest:

FLORIDA LEAGUE OF CITIES, INC.

By: 

Executive Director,

**Florida Municipal Pension Trust Fund
Statement of Investment Policy Objectives and Guidelines
Amended September 28, 2006**

I. Investment Objectives and Guidelines

A. Portfolio Asset Allocation Guidelines

There are four asset allocation models or investment options: Fund A, Fund B, Fund C, & Fund D. Fund D is for members who have selected an asset allocation other than Fund A, B, or C. The maximum target asset allocation for Equities is 70% for all asset allocations.

As authorized by Section XII, D., 18. of the Investment Policy, the FMPTF invests in the following Florida Municipal Investment Trust (FMIVT) Portfolios: Enhanced Cash, Broad Market High Quality Bond Fund, High Quality Growth, Large Cap Diversified Value, Diversified Small Cap Equity, Russell 1000 Index and International Blend.

FMPTF's target asset allocation for the three allocations are listed below.

FMIVT Portfolio		50/50 Fund Target	60/40 Fund Target	70/30 Fund Target
Equities		50%	60%	70%
Large Cap				
	High Quality Growth	6%	8%	9.5%
	Russell 1000 Index	23%	23%	28%
	Large Cap Diversified Value	6%	8%	9.5%
Small Cap				
	Diversified Small Cap Equity	7.5%	11%	13%
International				
	International Blend	7.5%	10%	10%
Fixed Income (Incl. Cash)		50%	40%	30%
Core Bonds	Broad Market High Quality	50%	40%	30%

A variance of more than 5% from the approved allocation percentages of any asset class requires approval by the Master Trustees. Percentage allocations are intended to serve as guidelines; the Master Trustees will not be required to remain strictly at the designated allocation. Market conditions or an investment transition (asset class or manager) may require an interim investment strategy and, therefore, a temporary imbalance in asset mix.

Overall asset allocation targets shall be reviewed on an annual basis and formal report submitted to the Board every three years by the current performance monitoring consultant.

B. Performance Objectives

Each Fund's total return will be expected to provide equal or superior results, using a three-year moving average, relative to the following benchmarks:

1. An absolute return objective:
 - 50/50 Fund - 7.0%
 - 60/40 Fund - 7.5%
 - 70/30 Fund - 8.0%
 - Fund D - Set by Member

2. A relative return objective (Policy Benchmark)

The 50/50 Fund - 35% S&P 500 Index, 7.5% Russell 2000 index, 7.5 % MSCI EAFE index and 50% Lehman Aggregate Bond Index

The 60/40 Fund - 39% S&P 500 Index, 11 % Russell 2000 index, 10% MSCI EAFE index and 40% Lehman Aggregate Bond Index

The 70/30 Fund - 47% S&P 500 Index, 13% Russell 2000 index, 10 % MSCI EAFE index and 30% Lehman Aggregate Bond Index

Fund D – Consistent with the strategic asset allocation set by the Member

3. A relative return objective of above median in consultant's total fund peer group universe.

Each Equity and Fixed Income Portfolio's total return is expected to provide equal or superior results relative to an appropriate benchmark as specified in the FMIvT guidelines for the particular portfolio and a relevant peer group universe.

II. Investment Manager Guidelines

The FMPTF hereby adopts the investment manager guidelines as stated for each of the FMIvT portfolios as amended and updated from time to time.



MEMORANDUM

 **Print**

TO: Mayor & City Council
FROM: Darcee S. Siegel, City Attorney
DATE: Tuesday, August 17, 2010

RE: Ordinance No. 2010-15 (Second and Final Reading) - Tabled from July 20, 2010

BACKGROUND: Section 1.05 of the General Employees' Retirement Plan of the City of North Miami Beach provides that the Plan may be amended by the City Council, subject to the approval of 66 2/3% of the active participants of the Plan. The City has received a legal opinion from James W. Linn of Lewis Longman & Walker, P.A. that the requirement that any amendment to the Retirement Plan be approved by a vote of the active participants is an improper and unconstitutional delegation of the City Council's legislative authority.

RECOMMENDATION: Staff recommends this Ordinance be adopted to eliminate the unconstitutional provision in the Retirement Plan.

FISCAL IMPACT: None

CONTACT PERSON(S): Darcee S. Siegel, City Attorney

ATTACHMENTS:

- [Legal Opinion](#)
- [Ordinance No. 2010-15](#)



REPLY TO: TALLAHASSEE

June 28, 2010

Ms. Darcee S. Siegel
City Attorney
City of North Miami Beach
City Hall, 4th floor
17011 N.E. 19 Avenue
North Miami Beach, FL 33162-3100

Re: City Pension Matters

Dear Ms. Siegel:

As requested, we have reviewed the City of North Miami Beach Retirement Plan for General Management Employees and the Retirement Plan for General Employees. You asked that we compare and evaluate the retirement plans, and provide recommendations for eliminating duplication, enhancing administrative efficiency and reducing costs. Our findings and recommendations follow.

Retirement Plan for General Employees – Overview

The Retirement Plan for General Employees (General Plan) was established by City ordinance in 1965, and has been amended on numerous occasions since. As of October 1, 2009, the General Plan had 300 active members (i.e., not retired or in the DROP), 208 retirees and 26 terminated members who are eligible for but have not yet begun receiving benefits. The General Plan is a “defined benefit” pension plan, meaning benefits are based on a formula that includes an employee’s years of service with the City, final monthly compensation (best 60 consecutive months out of the last 10 years of service), and a benefit factor of 3% for each year of service. The normal retirement date (when an employee can retire and receive unreduced benefits) is age 62, or age 55 with 20 or more years of service. The General Plan also includes death and

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disability benefits, a 2.25% annual cost of living adjustment and a five year DROP (deferred retirement option plan).

By law, the City is required to fund the General Retirement Plan on a sound actuarial basis. According to the latest actuarial valuation (as of October 1, 2009), the City's required contribution for FY 2009-10 is \$2.7 million, or 20.7% of covered payroll (payroll of active plan members). For FY 2010-11, the City's required contribution will be \$2.96 million, or 22.9% of payroll. Employees contribute 7% of their basic compensation to the General Plan. As of October 1, 2009, the General Plan had assets of \$57.8 million and liabilities of \$79.1 million (at actuarial value). The unfunded actuarial accrued liability (i.e., the value of plan assets minus liabilities) was \$21.26 million as of October 1, 2009. Over the past six years, the unfunded liabilities have increased from \$9.8 million to \$21.26 million, an increase of 117%. Such increases in unfunded liabilities are not uncommon for governmental pension plans, due largely to investment losses in recent years. The General Plan had administrative expenses of \$113,221 for the plan year ending September 30, 2009.

Retirement Plan for General Management Employees – Overview

The Retirement Plan for General Management Employees (Management Plan) was established by City ordinance in 2003. Prior to the adoption of the Management Plan, general management employees participated in a 401(a) defined contribution plan. Under the defined contribution plan, each employee had an individual account, to which the City and employees contributed. Plan benefits consisted of the balance in an employee's account upon retirement. As a condition of participating in the Management Plan and receiving service credit under the plan for their years of City employment, management employees were required to transfer their entire 401(a) account balances to the Management Plan.

As of October 1, 2009, the Management Plan had 31 active members, 16 retirees and 3 terminated members who are eligible for but have not yet begun receiving benefits. Like the General Plan, the Management Plan is a "defined benefit" pension plan. The benefit formula under the Management Plan is the same as the General Plan: years of service x final monthly compensation x 3%. However, the normal retirement date under the Management Plan is a little different: age 62, or age 55 if age plus years of service equal 75 or more ("Rule of 75"). The Rule of 75 allows management employees who are hired at a later age to retire earlier than age 62 if their age plus years of service equal 75 (example: an employee hired at age 45 could retire with 15 years of service at age 60). Another difference between the Management Plan and the General Plan: management employees contribute 8% of their salary to the plan, as compared to the 7% contribution for General Plan members. The Management Plan also includes death and disability benefits, and the same 2.25% annual cost of living adjustment and five year DROP as the General Plan.

The City is required by law to fund the Management Plan on a sound actuarial basis. According to the latest actuarial valuation (as of October 1, 2009), the City's required contribution for the current fiscal year is \$575,493, or 25.13% of payroll. For the next fiscal year, the City's required contribution will be \$1.2 million, or 57.9% of payroll. This large contribution increase is the result of investment losses, changes in actuarial assumptions, and changes in demographic experience (14 of the 33 active members on October 1, 2007 were no longer employed on October 1, 2009, and 11 of these members are now retired and receiving benefits from the plan). As of October 1, 2009, the Management Plan had assets of \$9.5 million and liabilities of \$14.9 million (at actuarial value). The unfunded actuarial accrued liability was \$5.45 million as of October 1, 2009. Over the past six years, the unfunded liabilities decreased from \$5.7 million to \$5.45 million. The Management Plan had administrative expenses of \$41,488 for the two plan years ending September 30, 2009 (an average of \$20,744 per year).

Analysis

There does not appear to be a valid reason for the City to have two pension plans for its general employees, one for non-managerial and the other for management employees. By law, the City is ultimately responsible for the assets and liabilities of both plans. Section 112.66(8), Fla. Stat. (2009). And by law, the City is required to fund both plans on a sound actuarial basis. Section 112.61, et seq., Fla. Stat. (2009).

The benefit structure of both plans is nearly identical. The only differences are a "Rule of 75" normal retirement provision and a greater employee contribution rate for members of the Management Plan.

With two plans there are two pension boards, two actuaries, two investment advisors, and two sets of investment managers. This results in duplicative administration, and additional administrative costs.

Although there are a few cities in Florida that have established separate pension plans for management employees, the vast majority of local government plans include all general employees in the same plan. The Florida Retirement System (FRS), with more than 680,000 active members, includes several classes of membership. These include regular, special risk, senior management, and elected officers. Each FRS class has different benefits and different contribution rates.

Recommendation

We recommend that the City consider merging the Management Retirement Plan with the General Employees Retirement Plan. By merging the two plans, the City will eliminate duplicative administrative, actuarial, investment and legal requirements, and should reduce administrative costs. We believe the plans can be merged with no change in contributions or benefits for any employee, and no change in total funding requirements, but this would need to be confirmed by an actuary.

Implementation

Merging the Management Plan with the General Plan can be accomplished with a single ordinance. The ordinance would merge the Management Plan into the General Plan, and transfer all assets and liabilities of the Management Plan to the General Plan. Management employees would become members of the General Plan, and would retain their credited service and all benefits accrued under the Management Plan. In addition, management employees would retain the current "Rule of 75" normal retirement provision as members of the General Plan, and would continue to contribute 8% of salary to the General Plan. In all other respects, management employees would be treated the same as current members of the General Plan. There would be no change in General Plan governance or administration, and no change in the member contributions or benefits of General Plan members.

Collective Bargaining

The Florida Supreme Court has ruled that public employee retirement benefits are terms and conditions of employment that are mandatory subjects of collective bargaining. *City of Tallahassee v. Public Employers Relations Commission*, 410 So.2d 487 (Fla. 1981). Several years after *City of Tallahassee* was decided, the Second District Court of Appeal addressed the issue of whether a public employer's unilateral decision to decrease employer contributions to a pension plan, while leaving benefits and employee contributions unchanged, violated the collective bargaining law. The court reiterated the Florida Supreme Court's holding in *City of Tallahassee* that changes in pension benefits are a mandatory subject of collective bargaining. The court similarly concluded that bargaining is also required for any change in employee contributions. However, the court found that where the change affects only employer contributions, and there is no impact on employee benefits or contributions, the public employer is not required to bargain over the change. *City of New Port Richey v. Hillsborough County Police Benevolent Association, Inc.*, 505 So.2d 1096 (Fla. 2d DCA 1987); rev. denied 518 So.2d 1275 (1987). In describing the differing roles of public employers and their employees, the court pointed out a critical distinction:

Additionally, while we recognize that public employees are entitled to the same right to bargain as private employees, we are mindful of the fact that the City, as a public employer, has a responsibility not only to its employees, but also to the taxpayers it serves. The City's duty is to provide services to those taxpayers as inexpensively as possible. Unlike a corporation that is responsible to a limited number of stockholders to produce a profit if possible, a public employer is responsible to the public and to the community as a whole to operate in the public interest as economically as possible. 518 So.2d 1275 at 1098. (Emphasis added)

Applying the above cases to the merger of the North Miami Beach Management and General Retirement Plans, the City is not in our opinion required to bargain this change with the union that represents its general employees (AFSCME Local 3239). The current collective bargaining agreement between the City and AFSCME is silent with respect to the General Retirement Plan.

As outlined above, the plan merger will not impact the pension benefits or contributions of bargaining unit employees. There will be no change in the benefits or member contributions of any employee, including employees in the AFSCME bargaining unit. The only change concerns the participation of management employees in the General Plan. Just as the court in *City of New Port Richey* held that the city was not required to bargain over a change in employer contributions that did not affect the benefits or contributions of bargaining unit employees, the City of North Miami Beach is not required to bargain with AFSCME over the merger of the Management and General Retirement Plans.

Plan Amendment Issue

There is one other issue that must be addressed concerning the merger of the Management and General Retirement Plans. The merger will necessarily involve amending both plans. Section 1.05 of the General Retirement Plan allows the City Council to amend the plan, but only if the amendment is approved by sixty-six and two-thirds of the active plan participants. Section 1.05 further states that approval of participants is not required if the amendment pertains to the actuarial soundness of the plan, or is necessary to comply with federal or state law.

In our judgment, the requirement that a pension plan amendment be approved by sixty-six and two-thirds of the active plan participants is contrary to state law for two fundamental reasons: first, the approval requirement it is an improper delegation of the City Council's legislative authority; and second, it conflicts with the constitutionally-mandated collective bargaining process for any changes that are subject to that process.

The requirement in the North Miami Beach General Employees Retirement Plan that plan amendments be approved by sixty-six and two-thirds of the active plan participants is invalid for a fundamental reason: it is an improper delegation of the City Council's legislative powers. The General Employees Retirement Plan was created by an ordinance adopted by the City Council, and may only be amended by an ordinance of the City Council.¹

A legislative body is not permitted to improperly delegate its authority to legislate to another governmental body or private person or entity. *Vodshalk v. City of Lincoln Park*, 95 So. 2d 9 (Fla. 1957); *Watson v. City of St. Petersburg*, 489 So. 2d 138 (Fla. 2d DCA 1986). Moreover, the Florida Constitution's separation of powers clause prohibits the unlawful delegation of constitutional powers. See Arts. II-III, Fla. Const. The legislature may not parcel out this constitutional duty. *Chiles v. Children A, B, C, D, E and F*, 589 So. 2d 260 (Fla. 1991). A city council is not permitted to delegate its legislative duties to another person. *County of Volusia v.*

¹ Although the General Retirement Plan provides that the Plan may be amended by a resolution of the City Council, in our opinion an ordinance is necessary to amend the plan. The General Retirement Plan was originally established by ordinance, and has been previously amended by ordinance. An ordinance cannot be amended or repealed by a resolution; rather a new ordinance must be passed. *Carlton v. Jones*, 117 Fla. 622 (1934); *Bubb v. Barber*, 295 So. 2d 701 (Fla. 2d DCA 1974).

Ms. Darcee S. Siegel
June 28, 2010
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City of Deltona, 925 So. 2d 340 (Fla. 5th DCA 2006)(holding that the city was not permitted to delegate its legislative functions to a private property owner or administrative agency); See also *Amara v. Daytona Beach Shores*, 181 So. 2d 722 (Fla. 1st DCA 1966)(holding that an ordinance requiring permission from private property owners prior to the issuance of any license or permit was an unlawful delegation of legislative power). However, ordinances have been upheld when certain guidelines must be applied and there is no unbridled discretion. *St. Johns County v. Northeast Florida Builder's Association, Inc.*, 583 So. 2d 635 (Fla. 1991).

In our opinion Section 105(a)(1) of the General Retirement Plan is an unlawful delegation of the City's legislative power because it gives a group of non-elected City employees unbridled discretion to engage in legislative duties. In essence, 34% of the active members of the General Plan members have effective veto power over any plan amendment adopted by the City Council, and the employees may exercise this veto power for any reason whatsoever. There are no guidelines or criteria for approval of amendments to the General Retirement Plan. Employees who are in the General Retirement Plan have unbridled discretion on when, how and whether to amend the Retirement Plan. As such, the amendment approval requirement in the General Retirement Plan is distinguishable from cases such as *St. Johns County v. Northeast Florida Builder's Association, Inc.*, which have allowed limited delegation of legislative authority.

Based on the foregoing cases, the requirement in the North Miami Beach General Employees Retirement Plan that plan amendments be approved by sixty-six and two-thirds of the active plan participants is invalid as an improper delegation of the City Council's legislative powers.

As discussed above, the Florida Supreme Court has held that public employee retirement benefits are terms and conditions of employment, and any changes in such benefits are mandatory subjects of collective bargaining. *City of Tallahassee v. Public Employers Relations Commission*, 410 So.2d 487 (Fla. 1981). In 1983, the Public Employee Relations Commission (PERC), the state agency charged with interpreting and administering Florida's collective bargaining law for public employees, held that a city was not required to submit collectively-bargained changes in employee pension benefits to a referendum. See *In Re Lake Worth Utilities Authority*, 9 FPER ¶ 14178 (1983). In *Lake Worth Utilities Authority*, PERC specifically addressed the apparent conflict between the constitutional right of collective bargaining for public employees and the referendum provision in the Municipal Home Rule Powers Act:

In pertinent part, Section 166.021(4), Florida Statutes (1981), provides that any rights of municipal employees shall not be changed without approval by referendum of the electors. However, changes in the terms of employment of public employees through collective bargaining do not necessitate a referendum. ... [W]e have an obligation to construe Chapter 447, Part II, consistent with the State Constitution. Article I, Section 6, of the Florida Constitution guarantees to public employees the right to collective bargaining and the Legislature in Chapter 447, Part II, has set forth a procedure for public employee bargaining in the state. That statutory scheme does not include a requirement that changes in the wages,

Ms. Darcee S. Siegel

June 28, 2010

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hours, and terms and conditions of employment of public employees be submitted for ratification by the public through a referendum. The Legislature has chosen to grant that authority to the elected or duly appointed representatives of the public; that is, the legislative body of the public employer and the public employees themselves. Therefore, if the [public employer] and the certified bargaining agent for its employees agree upon a change in the retirement system, that change does not require submission to a public referendum.

In Re Lake Worth Utilities Authority, 9 FPER ¶ 14178 at 346.

More recently, in a case involving the City of Miami Beach, PERC again ruled that collectively bargained pension benefits need not be approved by referendum of the voters. See *In Re the Petition for Declaratory Statement of the City of Miami Beach*, 23 FPER ¶ 28230 (1997). The *Miami Beach* PERC decision also addresses the referendum language in Section 166.021:

Section 166.021, Florida Statutes, states that a municipality's home rule authority is subject to any matter expressly preempted to the state government by the Constitution or by general law. See §166.021(3)(c) and (4), Fla. Stat. (1995); see also Art. VIII, § 2(b), Fla. Const. The State Legislature, when it enacted Chapter 447, Part II, Florida Statutes, did not provide for a veto of collective bargaining by the electorate of a municipality. A referendum to effectuate the negotiated changes in pension benefits is not required. See *City of West Palm Beach*, 448 So.2d at 1215 (a proposed ordinance which changed the method of the approval of terms of a collective bargaining agreement was prohibited under the preemption provisions of Article VIII, § 2(b), Fla. Const. and Chapter 166, Florida Statutes).

Accordingly, the Commission holds, consistent with its prior holding in *Lake Worth Utilities Authority*, that Section 447.309(3) does not apply to the factual situation of this case and that there is no need for the City to conduct a referendum to seek a change in its Code to effectuate the collective bargaining provision regarding pension changes.

In Re the Petition for Declaratory Statement of the City of Miami Beach, 23 FPER ¶ 28230 at 361.

In *Int'l Brotherhood of Teamsters, et al. v. City of Daytona Beach*, Case No. 99-31470-CICI (Fla. 7th Cir. Ct. August 10, 1999), the court found that that the referendum procedure, when applied to collectively bargained pension agreements, unconstitutionally abridges the employees' fundamental right of collective bargaining. The Daytona Beach court held that "the right to bargain collectively, as a fundamental right, may only be abridged upon a showing of a compelling state interest."

Ms. Darcee S. Siegel
June 28, 2010
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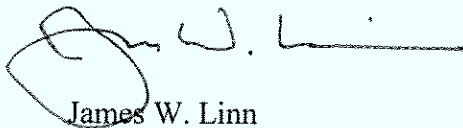
Similarly, in *City of Jacksonville v. Citizens for Public Safety*, Case No. 02-5378-CA (Fla. 4th Cir. Ct. Sept. 5, 2002) (a case affirmed by the First District Court of Appeal), the court found to be unlawful a proposed amendment to the Charter for the City of Jacksonville which would have established minimum health insurance benefits and coverage for City employees and retirees. The court, relying on the *City of Tallahassee* case, found that any Charter provision that would impede the opportunity to collectively bargain would violate the statutory implementation of Article I, Section 6 of the Florida Constitution.

In 2005, in another case involving the City of Miami Beach, the court ruled in favor of the City in a challenge to certain collectively-bargained changes (increased employee contribution rates) to the City's general employees' retirement system. *McKinnon v. City of Miami Beach*, Case No. 01-04241 CA 08 (Fla. 11th Cir. Ct. Dec. 21, 2005) (Final Order on Summary Judgment). The increases in employee contributions were not agreed to in negotiations, but were imposed through the impasse resolution procedure in Section 447.403, Florida Statutes. The challenge was based, in part, on the fact that the increased employee pension contributions had not been approved through the referendum process.

The foregoing court and PERC decisions make clear that a referendum is not required to approve pension changes that are collectively bargained between a city and a union representing its employees. Although a referendum requirement is not at issue here, the requirement in the North Miami Beach General Employees Retirement Plan that plan amendments must be approved by sixty-six and two-thirds of the active plan participants is analogous. If collectively-bargained pension changes prevail over a city's charter referendum requirements, then an ordinance provision requiring employee approval of any plan change is similarly invalid.

If you have questions concerning any of the matters discussed in this letter, please call.

Sincerely,



James W. Linn

JWL/es

ORDINANCE NO. 2010-15

AN ORDINANCE OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING THE RETIREMENT PLAN FOR GENERAL EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH; AMENDING SECTION 1.05, CONCERNING AMENDMENT OF THE PLAN; 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, the Retirement Plan for General Employees of the City of North Miami Beach was created pursuant to an ordinance adopted by the City Council of the City of North Miami Beach; and

WHEREAS, the Retirement Plan has been amended on numerous occasions by ordinances adopted by the City Council of the City of North Miami Beach; and

WHEREAS, Section 1.05 of the Retirement Plan provides that the Plan may be amended by the City Council, subject to approval of 66 and 2/3 percent of the active participants of the Plan; and

WHEREAS, the City has received a legal opinion that the requirement that any amendment to the Retirement Plan be approved by 66 and 2/3 percent of the active participants is an improper and unconstitutional delegation of the City Council's legislative authority; and

WHEREAS, the Mayor and City Council have determined that it is in the best interest of the City and its citizens to eliminate the unconstitutional provision in the Retirement Plan.

NOW, THEREFORE,

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

ORDINANCE NO. 2010-15

Section 1. The foregoing recitals are true and correct.

Section 2. Article I, Section 1.05 of the Retirement Plan for General Employees of the City of North Miami Beach, entitled “Amendment of Plan”, is proposed to be amended as follows:

Section 1.05 AMENDMENT OF PLAN

(a) ~~Ordinance~~Resolution of City – The Plan may be amended by the City from time to time in any respect whatever, by ~~ordinance~~resolution of City Council of North Miami Beach, specifying such amendment, subject only to the applicable requirements of federal and state law. ~~following limitations:~~

~~(1) Approval of Participants – Approval of 66 2/3% of the active participants shall be required before the Plan may be amended by the City Council.~~

~~(A) – Such consent shall not be required if such amendment pertains to the actuarial soundness of the Plan as determined by the actuary employed by the City Council in accordance with Section 5.06 or if such amendment shall be necessary to comply with any laws or regulations of the United States or of any State to qualify this as a tax exempt plan and trust.~~

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 July, 2010.

APPROVED AND ADOPTED on second reading this ____ day of _____, 2010.

ATTEST:

SUSAN A. OWENS
CITY CLERK

(CITY SEAL)

MYRON ROSNER
MAYOR

APPROVED AS TO FORM

DARCEE S. SIEGEL
CITY ATTORNEY

Sponsored by: Mayor & Council



MEMORANDUM

 Print

TO: Mayor & City Council
FROM: Darcee S. Siegel, City Attorney
DATE: Tuesday, August 17, 2010

RE: Ordinance No. 2010-16 (Second and Final Reading) - Tabled from July 20, 2010

BACKGROUND: Section 6 of Ordinance 2002-30 which created the General Management Employees' Retirement Plan of the City of North Miami Beach provides that the Plan may be amended by the City Council, subject to the approval of 60% of the active participants of the Plan. The City has received a legal opinion from James W. Linn of Lewis Longman & Walker, P.A. that the requirement that any amendment to the Retirement Plan be approved by a vote of the active participants is an improper and unconstitutional delegation of the City Council's legislative authority. Important Note: Refer to Opinion Letter attached to Ordinance No. 2010-15.

RECOMMENDATION: Staff recommends this ordinance be adopted to eliminate the unconstitutional provision in the Retirement Plan.

FISCAL IMPACT: None

CONTACT PERSON(S): Darcee S. Siegel, City Attorney

ATTACHMENTS:

 [Ordinance No. 2010-16](#)

ORDINANCE NO. 2010-16

AN ORDINANCE OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING THE RETIREMENT PLAN AND TRUST FOR GENERAL MANAGEMENT EMPLOYEES OF THE CITY OF NORTH MIAMI BEACH; AMENDING SECTION 6 OF ORDINANCE 2002-30, CONCERNING AMENDMENT OF THE PLAN; 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, the Retirement Plan and Trust for General Management Employees of the City of North Miami Beach was created by Ordinance 2002-30, adopted by the City Council of the City of North Miami Beach; and

WHEREAS, Section 6 of Ordinance 2002-30 provides that the Retirement Plan may be amended by the City Council, subject to approval of sixty percent of the active participants of the Plan; and

WHEREAS, the City has received a legal opinion that the requirement that any amendment to the Retirement Plan be approved by sixty percent of the active participants is an improper and unconstitutional delegation of the City Council's legislative authority; and

WHEREAS, the Mayor and City Council have determined that it is in the best interest of the City and its citizens to eliminate the unconstitutional provision in the Retirement Plan.

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 6 of Ordinance 2002-30 is amended as follows:

Section 6. The City Council of the City of North Miami Beach shall have the power to amend said Plan and Trust at such time or times as considered in the best interest of the ~~City Agency~~ and its management employees, subject only to the applicable requirements of federal and state law. ~~upon approval of sixty percent (60%) of the active plan participants, and the recommendation of the~~ The Plan Retirement Committee, which shall consist of the City Manager, the Director of Finance and the City Attorney, or their designees, who shall all be plan participants, and two plan retirees chosen by the other three board members, may recommend amendments to the Plan at any time.

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 **6th day of July, 2010.**

APPROVED AND ADOPTED on second reading this ___ day of _____, 2010.

ATTEST:

SUSAN A. OWENS
CITY CLERK

(CITY SEAL)

Sponsored by: Mayor & Council

MYRON ROSNER
MAYOR

APPROVED AS TO FORM

DARCEE S. SIEGEL
CITY ATTORNEY

ORDINANCE NO. 2010-16



City of North Miami Beach
17011 NE 19 Avenue
North Miami Beach, FL 33162
305-947-7581
www.citynmb.com

MEMORANDUM

 **Print**

TO: Mayor & City Council
FROM: Darcee S. Siegel, City Attorney
DATE: Tuesday, August 17, 2010

RE: Ordinance No. 2010-17 (Second & Final Reading) -Tabled from July 20, 2010

BACKGROUND: Section 1.05 of the Police Officers' & Firefighters' Retirement Plan of the City of North Miami Beach provides that the Plan may be amended by the City Council, subject to the approval of 60% of the active participants of the Plan. The City has received a legal opinion from James W. Linn of Lewis Longman & Walker, P.A. that the requirement that any amendment to the Retirement Plan be approved by a vote of the active participants is an improper and unconstitutional delegation of the City Council's legislative authority.

RECOMMENDATION: Staff recommends this ordinance be adopted to eliminate the unconstitutional provision in the Retirement Plan.

FISCAL IMPACT: None

CONTACT PERSON(S): Darcee S. Siegel, City Attorney

ATTACHMENTS:

 [Ordinance No. 2010-17](#)

ORDINANCE NO. 2010-17

AN ORDINANCE OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING THE POLICE OFFICERS AND FIREFIGHTERS' RETIREMENT PLAN OF THE CITY OF NORTH MIAMI BEACH; AMENDING SECTION 1.05, CONCERNING AMENDMENT OF THE PLAN; 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, the Retirement Plan for Police Officers and Firefighters of the City of North Miami Beach was created pursuant to an ordinance adopted by the City Council of the City of North Miami Beach; and

WHEREAS, the Retirement Plan has been amended on numerous occasions by ordinances adopted by the City Council of the City of North Miami Beach; and

WHEREAS, Section 1.05 of the Retirement Plan provides that the Plan may be amended by the City Council, subject to approval of sixty percent of the active participants of the Plan; and

WHEREAS, the City has received a legal opinion that the requirement that any amendment to the Retirement Plan be approved by sixty percent of the active participants is an improper and unconstitutional delegation of the City Council's legislative authority; and

WHEREAS, the Mayor and City Council have determined that it is in the best interest of the City and its citizens to eliminate the unconstitutional provision in the Retirement Plan.

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. Article I, Section 1.05 of the Retirement Plan for Police Officers and Firefighters of the City of North Miami Beach, entitled “Amendment of Plan”, is proposed to be amended as follows:

Section 1.05 AMENDMENT OF PLAN

(a) ~~Ordinance~~Resolution of City – The Plan may be amended by the City from time to time in any respect whatever, by ~~ordinance~~resolution of City Council of North Miami Beach, specifying such amendment, subject only to the applicable requirements of federal and state law. ~~following limitations:~~

~~(1) Approval of Participants~~ Approval of 60% of the active members shall be required before the Plan may be amended by the City Council.

~~(A) Such consent shall not be required if such amendment pertains to the actuarial soundness of the Plan as determined by the actuary employed by the City Council in accordance with Section 5.06 or if such amendment shall be necessary to comply with any laws or regulations of the United States or of any State to qualify this as a tax exempt plan and trust.~~

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 July, 2010.**

APPROVED AND ADOPTED on second reading this ___ **day of _____, 2010.**

ATTEST:

SUSAN A. OWENS
CITY CLERK

(CITY SEAL)

MYRON ROSNER
MAYOR

APPROVED AS TO FORM

DARCEE S. SIEGEL
CITY ATTORNEY

Sponsored by: Mayor & Council



MEMORANDUM

 Print

TO: Mayor & City Council
FROM: Darcee S. Siegel
DATE: Tuesday, August 17, 2010

RE: Ordinance No. 2010-18 (Second and Final Reading)

BACKGROUND: Section 14-1.3(e) of the Code of Ordinances currently provides for a fee of \$100.00 for Building information requested in writing, including file searches, microfilm research, research of records, research on violations, etc. Section 119.07 of the Florida Statutes allows for certain charges in connection with public records requests. An Attorney General opinion states that an agency should not consider the furnishing of public records to be a revenue-generating operation, and thus the actual cost to reproduce the records should be charged. The Florida Statutes do, however, allow for a special service charge also known as an "extensive use fee" to be assessed if the nature or volume of public records to be inspected or copied requires the extensive use of information technology resources or extensive clerical or supervisory assistance or both. Section 14-1.3(e) is being amended to delete the \$100.00 standard search/research fee mentioned above and add the special service charge, also known as an "extensive use fee".

RECOMMENDATION: Staff recommends this ordinance be adopted in order to be consistent with the Public Records Act.

FISCAL IMPACT: Unknown

CONTACT PERSON(S): Darcee S. Siegel, City Attorney

ATTACHMENTS:

 [Ordinance No. 2010-18](#)

ORDINANCE NO. 2010-18

AN ORDINANCE AMENDING CHAPTER XIV OF THE CODE OF ORDINANCES OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, ENTITLED BUILDING AND HOUSING, AND IN PARTICULAR SUBSECTION (e) OF SECTION 14-1.3, ENTITLED "BUILDING INFORMATION REQUESTED IN WRITING"; DELETING THE STANDARD SEARCH/RESEARCH FEES; ADDING A PROVISION FOR A SPECIAL SERVICE CHARGE ALSO KNOWN AS AN "EXTENSIVE USE FEE" ASSOCIATED WITH PROCESSING BUILDING PERMIT APPLICATIONS AND RELATED ACTIVITIES PURSUANT TO FLORIDA STATUTE §119.07; 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 Code of Ordinances of the City of North Miami Beach, Florida, currently establishes a Permit Fee Schedule associated with permit applications, permit processing, plans examination, permit issuance, field inspections, final processing for completion and occupancy and retention of documents related to the permits; and

WHEREAS, Section 119.07 of the Florida Statutes allows for certain charges in connection with public records requests; and

WHEREAS, the Attorney General has opined that an agency should not consider the furnishing of public records to be a revenue-generating operation, and thus the actual cost to reproduce the records should be charged; and

WHEREAS, it appears that a standard search/research fee for researching and/or searching any public document would be inconsistent with the Attorney General's interpretation of the Public Records Act; and

WHEREAS, the Florida Statutes do, however, allow for a special service charge also known as an "extensive use fee" to be assessed if the nature or volume of public records to be inspected or copied requires the extensive use of information technology resources or extensive clerical or supervisory assistance or both; and

WHEREAS, the Mayor and City Council have determined that it is necessary to amend the City's Permit Fee Schedule in order to be consistent with the Public Records Act.

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. Chapter XIV, Section 14-1.3 of the Code of Ordinances of the City of North Miami Beach, Florida entitled "Same-Double Fees; Reinspections Fees; Permit Fees; Construction Debris Container; Construction Debris Clean-up Fees; Construction Debris Violations; Temporary Portable Storage Structure and Cargo (metal shipping) Container Fees; Temporary Portable Storage Structures and Cargo (metal shipping) Container Violations; Notary Fees; Information Technology Fees; Continuing Education Fees; Document Retention Fees; Microfilming/Imaging Fees; Microfilm/Imaging Copy Fees" is hereby amended as follows:

Section 14-1.3(e) ~~Building Information Requested in Writing~~
(Including file searches, microfilm research, research of records,
research on violations) ————— \$100.00

Special Service Charge - A special service charge, also known as an
Extensive Use Fee, may be charged if the nature or volume of
building records to be inspected or copied requires the extensive use
of information technology resources or extensive clerical or
supervisory assistance or both.

Section 3. All ordinances or parts of ordinances in conflict herewith 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 **20th day of July, 2010.**

APPROVED AND ADOPTED on second reading this ___ day of _____, 2010.

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



MEMORANDUM

 Print

TO: Mayor & City Council

FROM: Darcee S. Siegel, City Attorney

DATE: Tuesday, August 17, 2010

RE: Ordinance No. 2010-19 (Second and Final Reading)

BACKGROUND:

The City is obligated to make annually required actuarial contributions to the Retirement Plan for Police Officers' & Firefighters by state law. The City adopted Ordinance No. 2007-3 providing for additional "supplemental contributions" by the City. The City is not required by state law to make additional "supplemental contributions". Ordinance No. 2007-3 in Section 4.02(a)(2)(d) provided for a supplemental contribution of "the greater of \$200,000 per year or the amount determined by the actuary to be necessary so that the funded ratio of the Plan shall be 70% as of the October 1, 2013 actuarial evaluation."

This Amendment to the Plan creates a new Section 4.02(c) of the City of North Miami Beach Retirement Plan for Police Officers and Firefighters which states that:

- Notwithstanding the provisions of 4.02(a), the supplemental contribution, including restricted reserve account contributions, through the 2019 plan year will be \$200,000 per year, unless the City decides to make a greater supplemental contribution.
- The funded ratio of the Plan will be seventy 70% as of the October 1, 2020 actuarial valuation (to determine the employer contribution for the fiscal year starting October 1, 2021). The provisions of Section 4.02(a)(2)d(i),(ii) and (iii), and (e) continue to apply, except that October 1, 2014 is replaced with October 1, 2020.
- The plan actuary will prepare a report each year reflecting the funding progress toward the 70% funded ratio. The City is required to make all regular contributions required by state statute, including Chapters 175 and 185. In summary, this amendment to the plan allows for a minimum "supplemental contribution" of \$200,000 per plan year and an increased period of time to reach a funded ratio of 70%.

In summary, this amendment to the plan allows for a minimum "supplemental contribution" of \$200,000 per plan year and an increased period of time to reach a funded ratio of 70%.

RECOMMENDATION:

Staff recommends this ordinance be adopted which complies with state law and

provides for fiscally sound City budgeting.

FISCAL IMPACT:

The \$200,000 supplemental contribution results in a savings to the City of almost \$4,000,000.00 for FY2011. Future years' dollar amounts are undetermined at this time.

CONTACT PERSON(S):

Darcee S. Siegel, City Attorney

ATTACHMENTS:

 [Ordinance No. 2010-19](#)

ORDINANCE NO. 2010-19

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AMENDING THE CITY OF NORTH MIAMI BEACH RETIREMENT PLAN FOR POLICE OFFICERS AND FIREFIGHTERS; CREATING A NEW SECTION 4.02(c) PROVIDING A DIFFERENT SUPPLEMENTAL CONTRIBUTION THROUGH THE 2019 PLAN YEAR, BUT REQUIRING A 70% FUNDED RATIO FOR THE OCTOBER 1, 2020 ACTUARIAL VALUATION (TO DETERMINE THE EMPLOYER CONTRIBUTION FOR THE FISCAL YEAR STARTING OCTOBER 1, 2021); PROVIDING FOR SEVERABILITY; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of North Miami Beach has established a retirement plan for police officers and firefighters; and

WHEREAS, the City is obligated to make annually required actuarial contributions by state law; and

WHEREAS, the City adopted Ordinance No. 2007-3 providing for additional “supplemental contributions” by the City; and

WHEREAS, the City is not required by state law to make additional “supplemental contributions”; and

WHEREAS, the Mayor and City Council find that the passage of this Ordinance is in the interest of the residents and citizens of the City of North Miami Beach.

NOW, THEREFORE,

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

Section 1. A new subsection (c) of Section 4.02 of the City of North Miami Beach Retirement Plan for Police Officers and Firefighters is hereby created as follows:

ORDINANCE NO. 2010-19

Section 4.02 CONTRIBUTIONS

(c) Notwithstanding the provisions of Section 4.02(a), the supplemental contribution, including restricted reserve account contributions, through the 2019 plan year shall be \$200,000 per year, unless the City decides to make a greater supplemental contribution. The funded ratio of the Plan shall be seventy percent (70%) as of the October 1, 2020 actuarial valuation (to determine the employer contribution for the fiscal year starting October 1, 2021). The provisions of Section 4.02(a)(2)d(i),(ii) and (iii), and (e) above shall continue to apply, except that October 1, 2014 shall be replaced with October 1, 2020. The plan actuary shall prepare a report each year reflecting the funding progress toward the 70% funded ratio. The City shall be required to make all regular contributions required by state statute, including Chapters 175 and 185.

Section 2. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 3. If any section, subsection, clause or provision of this ordinance is held invalid the remainder shall not be affected by such invalidity.

Section 4. 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 August, 2010.**

APPROVED AND ADOPTED on second reading this _____ **day of September, 2010.**

ATTEST:

SUSAN A. OWENS
CITY CLERK

MYRON ROSNER
MAYOR

(CITY SEAL)

APPROVED AS TO FORM

Sponsored by: Mayor and City Council

DARCEE S. SIEGEL
CITY ATTORNEY