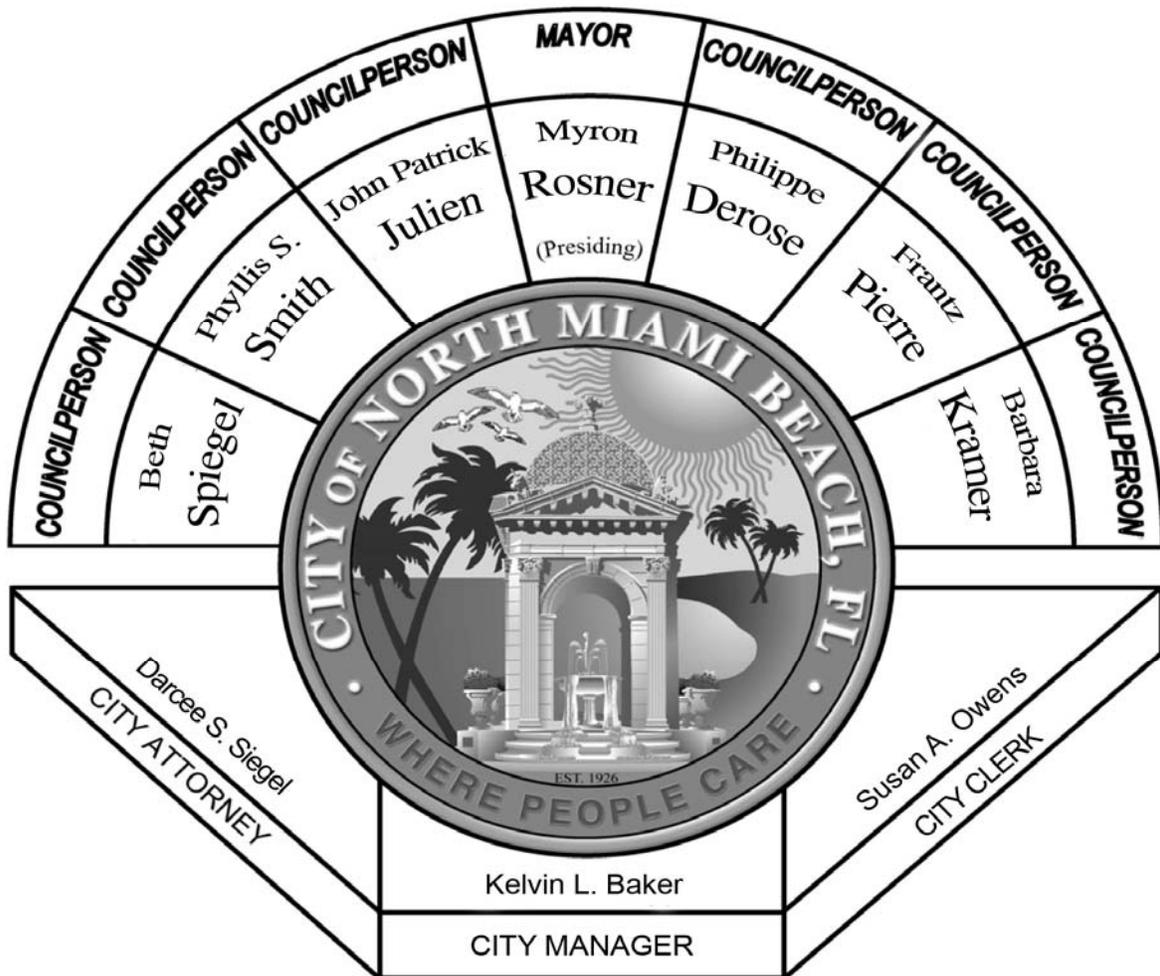


Welcome
To A Meeting of the
City of North Miami Beach City Council
Your City Officials



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

DATE and TIME: TUESDAY, JUNE 2, 2009, 7:30 P.M.

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

NEXT CITY COUNCIL MEETING: TUESDAY, JUNE 16, 2009

AGENDA ITEMS

1. **ROLL CALL OF THE CITY OFFICIALS:**

2. **INVOCATION:**

REVEREND CANON RONALD N. FOX,
ST. BERNARD DeCLAIRVAUX

3. **SALUTE TO THE AMERICAN FLAG.**

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

5. **APPOINTMENTS/PRESENTATIONS:**

A. **APPOINTMENTS:**

1. NEW VICE MAYOR
2. FAITH L. BLOCK - COMMISSION ON THE STATUS OF WOMEN

B. **PRESENTATIONS:**

1. SWEARING IN OF CITY CLERK, SUSAN A. OWENS, CMC
2. PRESENTATION BY RAFAEL P. HERNANDEZ, CHIEF OF POLICE, RECOGNIZING THE NORTH MIAMI BEACH POLICE DEPARTMENT AND MEMBERS OF THE DRUG ENFORCEMENT ADMINISTRATION FOR RECENTLY RECEIVING THE LEO FOUNDATION'S FEDERAL OFFICE OF THE YEAR AWARD
3. SWEARING IN OF POLICE OFFICER KENNETH BAKER BY MAYOR MYRON ROSNER
4. PRESENTATION, BY MAYOR MYRON ROSNER, TO *OFFICER ROBERTO QUINONES* AS THE *OUTSTANDING OFFICER FOR THE MONTH* OF JANUARY 2009
5. PRESENTATION, BY MAYOR MYRON ROSNER, TO *OFFICER NELSON CAMACHO* AS THE *OUTSTANDING OFFICER FOR THE MONTH* OF MARCH 2009

AGENDA ITEMS

5. APPOINTMENTS/PRESENTATIONS - CONTINUED:

B. PRESENTATIONS - CONTINUED:

6. PRESENTATION, BY MAYOR MYRON ROSNER, TO *OFFICER STUART NICHOLS* AS THE *OUTSTANDING OFFICER FOR THE MONTH* OF APRIL 2009
7. RECOGNITION, BY RAFAEL P. HERNANDEZ, CHIEF OF POLICE, OF THE *EMPLOYEE OF THE MONTH* TO *PCO TONYA HOLIMON* FOR JANUARY AND APRIL 2009
8. PRESENTATION OF PROCLAMATION BY MAYOR MYRON ROSNER TO THE CODE ENFORCEMENT DEPARTMENT PROCLAIMING THE WEEK OF JUNE 1, 2009 THROUGH JUNE 5, 2009 AS *CODE ENFORCEMENT OFFICERS APPRECIATION WEEK*
9. PRESENTATION OF THE *APRIL C.A.R.E. SUGGESTION AWARD* BY COUNCILWOMAN SMITH AND KELVIN L. BAKER, CITY MANAGER, TO *MAC SERDA* FOR HIS SUGGESTION TO INCREASE THE OFF DUTY POLICE RATE
10. PRESENTATION OF THE EMPLOYEE OF THE MONTH AWARD BY COUNCILMAN FRANTZ PIERRE AND KELVIN L. BAKER, CITY MANAGER, TO *MARK VINITSKEY* AS THE *EMPLOYEE OF THE MONTH* FOR MAY 2009

6. APPROVAL OF MINUTES:

APRIL 21, 2009
MAY 5, 2009 (CANCELLED)
MAY 19, 2009 (CANCELLED)

7. CITY MANAGER'S REPORT: **KELVIN L. BAKER**

- A. VICTORY POOL SLIDE UPDATE
- B. FEES FOR POOL USAGE
- C. AMPHITHEATER AWNING UPDATE
- D. 15TH AVENUE ROADWAY PROJECT

8. CITY ATTORNEY'S REPORT: **DARCEE S. SIEGEL**

AGENDA ITEMS

9. SCHEDULED CITIZENS APPEARANCE:

TO ALL CITIZENS APPEARING UNDER SCHEDULED APPEARANCES:

THE COUNCIL HAS A RULE WHICH DOES NOT ALLOW DISCUSSION ON ANY MATTER WHICH IS BROUGHT UP UNDER CITIZENS APPEARANCES UNLESS IT IS AN EMERGENCY. WE ARE, HOWEVER, VERY HAPPY TO LISTEN TO YOU. THE REASON FOR THIS IS THAT THE COUNCIL MUST HAVE STAFF INPUT AND PRIOR KNOWLEDGE AS TO FACTS AND FIGURES SO THAT THEY CAN INTELLIGENTLY DISCUSS A MATTER. THE COUNCIL MAY WISH TO ASK QUESTIONS REGARDING THIS MATTER BUT WILL NOT BE REQUIRED TO DO SO. AT THE NEXT OR SUBSEQUENT COUNCIL MEETING YOU MAY, IF YOU SO DESIRE, HAVE ONE OF THE COUNCILPERSONS INTRODUCE YOUR MATTER AS HIS OR HER RECOMMENDATION. WE WISH TO THANK YOU FOR TAKING THE TIME TO BRING THIS MATTER TO OUR ATTENTION.

SPEAKING BEFORE THE CITY COUNCIL:

THERE IS A THREE (3) MINUTE TIME LIMIT FOR SPEAKERS/CITIZENS PARTICIPATION AT ALL PUBLIC HEARINGS AS WELL AS SCHEDULED/UNSCHEDULED CITIZENS APPEARANCE(S). YOUR COOPERATION IS APPRECIATED IN OBSERVING THE THREE (3) MINUTE TIME LIMIT POLICY.

IF YOU HAVE A MATTER YOU WOULD LIKE TO DISCUSS WHICH REQUIRES MORE THAN THREE (3) MINUTES, PLEASE FEEL FREE TO ARRANGE A MEETING OR AN APPOINTMENT WITH THE APPROPRIATE ADMINISTRATIVE OR ELECTED OFFICIAL.

NOTE: IN THE COUNCIL CHAMBERS, CITIZEN PARTICIPANTS ARE ASKED TO COME FORWARD TO THE PODIUM, GIVE YOUR NAME AND ADDRESS, NAME AND ADDRESS OF THE ORGANIZATION YOU ARE REPRESENTING, IF ANY, AND SPEAK ONLY ON THE SUBJECT FOR DISCUSSION.

THANKING 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)

AGENDA ITEMS

9. SCHEDULED CITIZENS APPEARANCE - CONTINUED:

NOTICE TO ALL LOBBYISTS

ANY PERSON WHO RECEIVES COMPENSATION, REMUNERATION OR EXPENSES FOR CONDUCTING LOBBYING ACTIVITIES IS REQUIRED TO REGISTER AS A LOBBYIST WITH THE CITY CLERK PRIOR TO ENGAGING IN LOBBYING ACTIVITIES BEFORE CITY BOARDS, COMMITTEES OR THE CITY COUNCIL. A COPY OF THE APPLICABLE ORDINANCE IS AVAILABLE IN THE OFFICE OF THE CITY CLERK (CITY OF NORTH MIAMI BEACH CITY HALL) LOCATED AT 17011 N.E. 19TH AVENUE, GROUND FLOOR, NORTH MIAMI BEACH, FLORIDA 33162

NONE

10. MISCELLANEOUS ITEMS:

NONE

11. WAIVER OF FEE:

NONE

**12. BUSINESS TAX RECEIPT MATTERS:
CITY CLERK**

NONE

**13A. ADMINISTRATION OF TESTIMONY OATH
(CITY CLERK)**

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

AGENDA ITEMS

13B. LEGISLATION:

RESOLUTIONS (SERIATIM NO. R2009-39):

RESOLUTION NO. R2009-31

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, REVOKING IN ITS ENTIRETY CITY OF NORTH MIAMI BEACH RESOLUTION NUMBER R2008-39, WHICH GRANTED SITE PLAN APPROVAL FOR A MIXED USE PROJECT, ON PROPERTY LEGALLY DESCRIBED AS;

(LENGTHY LEGAL – SEE ATTACH EXHIBIT “A”)

2145 N.E. 164 Street
North Miami Beach, Florida
(P & Z Item No. 08-421 of September 8, 2008)

RESOLUTION NO. R2009-32

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING THE ACQUISITION BY THE CITY OF THE TOWN OF GOLDEN BEACH WATER DISTRIBUTION SYSTEM; ACCEPTING AS THE CITY’S STATEMENT UNDER SECTION 180.301, FLORIDA STATUTES, THE PUBLIC BRIEFING DOCUMENT; DETERMINING THAT THE ACQUISITION OF THE GOLDEN BEACH WATER SYSTEM IS IN THE PUBLIC INTEREST; AUTHORIZING AND APPROVING THE ASSET PURCHASE AGREEMENT BETWEEN THE TOWN OF GOLDEN BEACH AND THE CITY OF NORTH MIAMI BEACH; PROVIDING FOR IMPLEMENTATION; PROVIDING AN EFFECTIVE DATE.

RESOLUTION NO. R2009-33

A RESOLUTION OF THE CITY COUNCIL OF NORTH MIAMI BEACH, FLORIDA; MAKING FINDINGS; AUTHORIZING A STATE REVOLVING FUND LOAN/AMERICAN RECOVERY AND REINVESTMENT ACT APPLICATION IN THE AMOUNT OF \$2,409,000.00 FOR THE HIGHLAND VILLAGE PROJECT; DESIGNATING AN AUTHORIZED REPRESENTATIVE TO PROVIDE ASSURANCES; GRANTING AUTHORITY TO ENTER INTO A LOAN AGREEMENT; ESTABLISHING PLEDGED REVENUES; RECOGNIZING STATUTORY AUTHORITY; PROVIDING FOR CONFLICTS, SEVERABILITY, AND EFFECTIVE DATE.

AGENDA ITEMS

13B. LEGISLATION - CONTINUED:

RESOLUTIONS -CONTINUED:

RESOLUTION NO. R2009-34

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, MAKING FINDINGS; AUTHORIZING A STATE REVOLVING FUND LOAN APPLICATION FOR PRE-CONSTRUCTION FUNDING OF THE MAJOR SEWER REHABILITATION PROJECT IN THE AMOUNT OF \$487,000.00 TO REPAIR FOUR SEWER PUMPING STATIONS; DESIGNATING AN AUTHORIZED REPRESENTATIVE TO PROVIDE ASSURANCES; GRANTING AUTHORITY TO ENTER INTO A LOAN AGREEMENT; ESTABLISHING PLEDGED REVENUES; RECOGNIZING STATUTORY AUTHORITY; PROVIDING FOR CONFLICTS, SEVERABILITY, AND EFFECTIVE DATE.

RESOLUTION NO. R2009-35

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, MAKING FINDINGS; AUTHORIZING A STATE REVOLVING FUND LOAN APPLICATION IN THE AMOUNT OF \$6,000,000.00 FOR THE VOLATILE ORGANIC CHEMICAL FACILITY; ACCEPTING THE WATER FACILITY PLAN; DESIGNATING AN AUTHORIZED REPRESENTATIVE TO PROVIDE ASSURANCES; GRANTING AUTHORITY TO ENTER INTO A LOAN AGREEMENT; ESTABLISHING PLEDGED REVENUES; RECOGNIZING STATUTORY AUTHORITY; PROVIDING FOR CONFLICTS, SEVERABILITY, AND EFFECTIVE DATE.

RESOLUTION NO. R2009-36

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AWARDED BID #2009-05 AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE CITY AND R&D ELECTRIC, INC. FOR THE PURCHASE AND INSTALLATION OF A GENERATOR FOR THE ENTIRE CITY HALL COMPLEX.

RESOLUTION NO. R2009-37

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING A LEASE AGREEMENT BETWEEN THE CITY AND METRO PCS, FLORIDA, LLC FOR THE LEASE OF A PORTION OF THE NORWOOD WATER TREATMENT PLANT SITE FOR THE OPERATIONS OF A WIRELESS COMMUNICATION SITE.

AGENDA ITEMS

13B. LEGISLATION - CONTINUED:

RESOLUTIONS -CONTINUED:

RESOLUTION NO. R2009-38

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, REQUESTING GOVERNOR CHARLIE CHRIST TO VETO THE 2% PAY CUTS PASSED BY THE STATE LEGISLATURE FOR THE STATE ATTORNEY'S OFFICE.

ORDINANCES - FIRST READING, BY TITLE ONLY (SERIATIM NO. 2009-12):

NONE

ORDINANCES - SECOND AND FINAL READING:

ORDINANCE NO. 2009-11

AN ORDINANCE AMENDING SECTION 2-32.4 OF THE CODE OF ORDINANCES OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, REVISING THE PROCEDURE FOR REMOVING BOARD AND/OR COMMISSION MEMBERS FOR FAILURE TO ATTEND MEETINGS; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR THE CODIFICATION OF THIS ORDINANCE.

14. UNSCHEDULED CITIZENS APPEARANCES:

15. CITY COUNCIL COMMITTEE REPORTS:

16. RECESS: (IF APPLICABLE - FOR CITY CLERK'S USE)

17. ADJOURNMENT:

18. NEXT CITY COUNCIL MEETING:

TUESDAY, JUNE 16, 2009

MEMORANDUM

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

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

DATE: June 2, 2009

**RE: RESOLUTION NO. R2009-31
Revocation of Resolution No. R2008-39**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL
OF THE CITY OF NORTH MIAMI BEACH, FLORIDA,
REVOKING IN ITS ENTIRETY CITY OF NORTH MIAMI
BEACH RESOLUTION NUMBER R2008-39, WHICH
GRANTED SITE PLAN APPROVAL FOR A MIXED USE
PROJECT, ON PROPERTY LEGALLY DESCRIBED AS:**

(LENGTHY LEGAL – SEE ATTACHED EXHIBIT “A”)

**A/K/A
2145 N.E. 164 Street
North Miami Beach, Florida**

(P&Z Item No. 08-421 of September 8, 2008)



City of North Miami Beach

Interoffice Memorandum

CITY ATTORNEY'S OFFICE

Phone: (305) 948-2939

Fax: (305) 787-6004

TO: Mayor & City Council

FROM: Darcee S. Siegel, City Attorney *DSS*

DATE: June 2, 2009

RE: Resolution No. R2009-31

This Resolution will formally revoke the site plan approval previously granted for the construction of Sunny Plaza at 2145 N.E. 164 Street, because Applicant has outstanding fees currently amounting to \$70,783.12. The City has continuously requested the payment of these funds and has indicated to the applicant that failure to pay the outstanding fees would result in revocation of the site plan approval.

DSS/mht

RESOLUTION NO. R2009-31

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, REVOKING IN ITS ENTIRETY CITY OF NORTH MIAMI BEACH RESOLUTION NUMBER R2008-39, WHICH GRANTED SITE PLAN APPROVAL FOR A MIXED USE PROJECT, ON PROPERTY LEGALLY DESCRIBED AS:

(LENGTHY LEGAL – SEE ATTACHED EXHIBIT “A”)

**A/K/A
2145 N.E. 164 Street
North Miami Beach, Florida**

(P&Z Item No. 08-421 of September 8, 2008)

WHEREAS, the Applicant, Behar Font & Partners, P.A. (Architects), applied to the City of North Miami Beach for approval of a mixed-use office/retail/residential development project called Sunny Plaza to be located at 2145 N.E. 164 Street in the City of North Miami Beach; and

WHEREAS, Applicant, Architects and the City engaged in extensive review and refinement of the project through several meetings with staff, Technical Review & Development (TRAD) meetings, public hearing before the Planning & Zoning Board, and public hearing before the City Council on October 7, 2008, culminating in the grant of site plan approval for the project; and

WHEREAS, due to the City’s implementation of its recently adopted Land Development Regulation Fee schedule amendments and the ensuing uncertainties, City allowed Applicant to go forward with the process prior to paying the requisite filing and review fees; and

WHEREAS, Applicant’s outstanding fees currently amounting to \$70,783.12 remain unpaid, despite demands for payment and notice that failure to pay would result in revocation of the site plan approval; and

RESOLUTION R2009-31

WHEREAS, more than six months have passed since the grant of site plan approval and Applicant has failed to submit final building plans to the City; and

WHEREAS, pursuant to Sections 5 and 6 of Resolution No. R2008-39, the site plan approval and variances granted are now deemed null and void.

NOW, THEREFORE,

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

Section 1. The foregoing recitals are true and correct.

Section 2. City of North Miami Beach Resolution No. R2008-39 adopted by City Council on October 7, 2008, is hereby revoked in its entirety.

Section 3. All approvals granted by Resolution No. 2008-39 are hereby null and void and of no further legal effect.

Section 4. The City will not consider any development application for the subject property until the Applicant, or his successor or assigns, shall pay the full amount due to the City arising out of the approvals granted in Resolution R-2008-39 to the satisfaction of the City Manager.

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

ATTEST:

SUSAN OWENS
CITY CLERK
(CITY SEAL)

MYRON ROSNER
MAYOR

APPROVED AS TO FORM:

DARCEE S. SIEGEL
CITY ATTORNEY

SPONSORED BY: Mayor and Council

RESOLUTION R2009-31

EXHIBIT #A

LEGAL DESCRIPTION

All that part of Tract "B" of the 2nd Amended Plat of Part of First Addition to Fulford, according to the Plat thereof, recorded in Plat Book 47, at Page 46, of the Public Records of Miami-Dade County, Florida, lying northerly and westerly of a line as described as follows:

Commencing at the permanent reference monument located at the intersection of the northerly and easterly lines of said Tract "B" extended, run thence southerly along the easterly line and the easterly line extended of said Tract "B" a distance of 50 feet to a point for a point of beginning; run thence westerly in a line 50 feet distant from and parallel to the northerly line of said Tract "B" a distance of 200 feet to a point, run thence southerly in a line 200 feet distant from and parallel to the easterly line of said Tract "B" a distance of 215 feet, more or less to its intersection with the southerly line of said Tract "B".

MEMORANDUM

TO: MAYOR AND CITY COUNCIL
CITY CLERK
CITY MANAGER

FROM: DARCEE S. SIEGEL 
CITY ATTORNEY

DATE: June 2, 2009

RE: RESOLUTION NO. R2009-32
Acquisition of Golden Beach Water Distribution System

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING THE ACQUISITION BY THE CITY OF THE TOWN OF GOLDEN BEACH WATER DISTRIBUTION SYSTEM; ACCEPTING AS THE CITY'S STATEMENT UNDER SECTION 180.301, FLORIDA STATUTES, THE PUBLIC BRIEFING DOCUMENT; DETERMINING THAT THE ACQUISITION OF THE GOLDEN BEACH WATER SYSTEM IS IN THE PUBLIC INTEREST; AUTHORIZING AND APPROVING THE ASSET PURCHASE AGREEMENT BETWEEN THE TOWN OF GOLDEN BEACH AND THE CITY OF NORTH MIAMI BEACH; PROVIDING FOR IMPLEMENTATION; PROVIDING AN EFFECTIVE DATE.



**CITY OF NORTH MIAMI BEACH
MEMORANDUM**

City Manager's Office

TO: Mayor and City Council
FROM: Kelvin L. Baker, City Manager
DATE: May 19, 2009

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

RE: Recommendation to Approve Acquisition of Town of Golden Beach Water System

BACKGROUND:

The City of North Miami Beach (CNMB) or their predecessors have operated the Town of Golden Beach's (TGB) water system for roughly 60 years. During this period, TGB has always retained ownership of the system. In the 1990's the system's contract for service expired and in the late 1990's the condition of the system became suspect. TGB alleged that CNMB owned the utility system, which would mean CNMB would bear the cost burden of upgrading this aged and deteriorated pipeline system. However, CNMB successfully proved that the owner of these pipelines was indeed TGB, which meant that TGB was responsible for paying the cost to renew the system. Since then TGB has approved an improvement program to upgrade the system to current CNMB standards. TGB has wholly designed, permitted, and financed the improvements. It is currently under construction and being inspected by CNMB.

Currently, CNMB is operating, maintaining, billing, and collecting revenues (with the 25% outside city surcharge applied to TGB customers). CNMB has encountered difficulties in fulfilling services to Golden Beach customers due to the lack of ownership of the utility. In order to make service delivery less of a burden for the CNMB the following actions are proposed:

- TGB will invest \$3,000,000 into the existing water system and dedicate the new system to CNMB for ownership and thus be consistent with other parts of our service area.
- CNMB will continue to operate, maintain, bill, and collect revenue from TGB residents.

RECOMMENDATION

Given the above stated provisions, it is respectfully recommended that the city council approve the Asset Purchase and Sale Agreement. TGB has already signed the agreement and resolution (Appendix A). This item was unanimously approved at the 4/16/09 PUC meeting.

FISCAL IMPACT

This asset which has a value of \$3,000,000 will be now owned by the NMB. In recent years the emergency repairs to this deteriorated system has cost NMB \$50,000 annually. TGB will install remote monitoring equipment at the request for NMB at an additional cost of approximately \$48,000.

CONTACT PERSON

Martin King, P.E., Director of Public Services

CC: Darcee Siegel, City Attorney, Susan Owens, City Clerk, Miriam Bensinger, Assist. City Attorney

RESOLUTION NO. R2009-32

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING THE ACQUISITION BY THE CITY OF THE TOWN OF GOLDEN BEACH WATER DISTRIBUTION SYSTEM; ACCEPTING AS THE CITY'S STATEMENT UNDER SECTION 180.301, FLORIDA STATUTES, THE PUBLIC BRIEFING DOCUMENT; DETERMINING THAT THE ACQUISITION OF THE GOLDEN BEACH WATER SYSTEM IS IN THE PUBLIC INTEREST; AUTHORIZING AND APPROVING THE ASSET PURCHASE AGREEMENT BETWEEN THE TOWN OF GOLDEN BEACH AND THE CITY OF NORTH MIAMI BEACH; PROVIDING FOR IMPLEMENTATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Golden Beach, Florida (the "Town") desires to sell its water utility system to the City of North Miami Beach, Florida (the "City") pursuant to Chapter 180, Florida Statutes and other applicable law; and

WHEREAS, the City of North Miami Beach, Florida (the "City") desires to acquire the Town of Golden Beach (the "Town") water utility system; and

WHEREAS, the City Council has considered the feasibility of acquiring the water system, and has retained consultants to advise and make recommendations in the form of a Briefing Document (attached hereto as Exhibit "A") and other information to the City Council with respect to the acquisition of the water system; and

WHEREAS, the Mayor and City Council have held a public hearing and received public comment on the acquisition of the Golden Beach water system pursuant to Chapter 180.301, Florida Statutes, and have determined that the acquisition of the water system is in the public interest.

RESOLUTION NO. R2009-32

NOW, THEREFORE,

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

Section 1. Recitals Adopted. That each of the above-stated recitals is hereby adopted and confirmed.

Section 2. Statement of Public Interest. That the Briefing Document prepared by GAI Consultants, Inc., which includes a summary of the City's experience in providing water and a showing of the City's financial ability to provide such service, as well as determinations as to the physical condition of the assets to be acquired and the reasonableness of the purchase price and terms of acquisition, is acknowledged and accepted into the record as the City's statement, as required by Section 180.301, Florida Statutes.

Section 3. Factors Considered in Determination. That the sale and acquisition by North Miami Beach of the water system is in the public interest and necessary and desirable to maintain and improve the quality of public water supply provided to the residents who live, work, or visit the Town and the businesses that operate within the Town. In determining that the acquisition of the water system is in the public interest, the City Council considered information that included, but was not limited to, the following (if applicable):

- (1) The most recent available income and expense statement for the utility;
- (2) The most recent available balance sheet for the utility, listing assets and liabilities and clearly showing the amount of contributions-in-aid-of-construction and the accumulated depreciation thereon;
- (3) A statement of the existing rate base of the utility for regulatory purposes;
- (4) The physical condition of the utility facilities being sold by Golden Beach and acquired by North Miami Beach;
- (5) The reasonableness of the sale price and terms;

- (6) The impacts of the sale on utility customers, both positive and negative;
- (7) Any additional investment required and the ability and willingness of the City to make that investment;
- (8) The alternatives to the sale and the potential impact on utility customers if the sale is not made; and
- (9) The ability of the City to provide and maintain high-quality and cost-effective utility service.

Section 4. Agreement Approved. That the Asset Purchase Agreement (the “Agreement”) is hereby approved in substantially the form attached hereto as Exhibit “A”/Appendix “A”, and the City Manager is authorized to execute the Agreement on behalf of the City once approved as to form and legal sufficiency by the City Attorney.

Section 5. Implementation. The City Manager is authorized to take any and all action, which is necessary to implement this Resolution.

Section 6. Effective Date. That this resolution shall become effective immediately upon approval of the City Council.

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

ATTEST:

 SUSAN OWENS
 CITY CLERK
 (CITY SEAL)

 MYRON ROSNER
 MAYOR

APPROVED AS TO FORM:

 DARCEE S. SIEGEL
 CITY ATTORNEY

SPONSORED BY: Mayor and Council

MEMORANDUM

TO: MAYOR AND CITY COUNCIL
CITY CLERK
CITY MANAGER

FROM: DARCEE S. SIEGEL ~~FS~~
CITY ATTORNEY

DATE: June 2, 2009

RE: RESOLUTION NO. R2009-33
Highland Village Sewer Project Loan

A RESOLUTION OF THE CITY COUNCIL OF NORTH MIAMI BEACH, FLORIDA; MAKING FINDINGS; AUTHORIZING A STATE REVOLVING FUND LOAN/AMERICAN RECOVERY AND REINVESTMENT ACT APPLICATION IN THE AMOUNT OF \$2,409,000.00 FOR THE HIGHLAND VILLAGE PROJECT; DESIGNATING AN AUTHORIZED REPRESENTATIVE TO PROVIDE ASSURANCES; GRANTING AUTHORITY TO ENTER INTO A LOAN AGREEMENT; ESTABLISHING PLEDGED REVENUES; RECOGNIZING STATUTORY AUTHORITY; PROVIDING FOR CONFLICTS, SEVERABILITY, AND EFFECTIVE DATE.



**CITY OF NORTH MIAMI BEACH
MEMORANDUM**

City Manager's Office

TO: Mayor and City Council
FROM: Kelvin L. Baker, City Manager
DATE: May 19, 2009

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

RE: Approval of Resolution for submittal of a loan application to the State Revolving Fund (SRF) to fund the sewer connection (septic tank abandonment) in Highland Village

BACKGROUND

In 2006 the City of North Miami Beach completed the installation of the Highland Village Sewer Project which provided the wastewater (sanitary sewer) infrastructure for this community. The impetus for this project was an environmental study which found that the septic systems are causing ground water contamination thus by connecting this community to the City's sewer system it would alleviate health risk to the general population. Since then, the City obtained CDBG grant monies for qualified low income property owners to defray the cost of connecting to the central wastewater infrastructure. However, an excess of 200 homes were ineligible and remain unconnected and have yet to abandon their septic tanks. This, of course is due to the cost of connection which averages about \$8,000 per home.

The City was recently notified that the Highland Village Sewer Connection Project (to eliminate these septic tanks) was added to the Florida Departmental of Environmental Protection (FDEP) SRF fundable priority list. This was made possible due to the additional funds appropriated by the American Recovery and Reinvestment Act (ARRA). Additionally, competing state-wide against many other projects, we were successful in making it to the priority funding list because of the high scoring given to the "eminent health" component and ready to go status of our submission. The amount of funds approved for the City is \$2,409,000 in the form of a low interest loan. The City intends to enter into individual loan agreements with each property owner in order to complete the project. A resolution by the City Council is needed to complete the loan application process in accordance with the requirements set forth in Chapter 62-503, Florida Administrative Code.

RECOMMENDATION

It is respectfully recommended that the City Council approve this resolution which is a requirement of loan application process as stipulated by the FDEP SRF program.

FISCAL IMPACT

The funding will be received as a loan and requires the use of Sewer Fund revenues to be pledged by the City of North Miami Beach in order to fund the debt service. While terms are not yet finalized, the expected interest rate would range between 2.2% and 2.7% with the loan period being 30 years. At an interest rate of 2.5%, the annual principal and interest payment will be approximately \$115,000. However, the City will in turn be entering into loan agreements with each property owner. On the revenue side, the City's portion of the connection fees that will be paid to our utility is approximately \$300,000. Additionally approximately \$40,000/yr will be generated annually from these new sewer customers.

CONTACT PERSON

Martin King, P.E., Director of Public Services

M&C:KLB:kct

cc: Darcee Siegel, City Attorney, Susan A. Owens, City Clerk, Miriam Bensinger, Assist.
City Attorney

RESOLUTION NO. R2009-33

A RESOLUTION OF THE CITY COUNCIL OF NORTH MIAMI BEACH, FLORIDA; MAKING FINDINGS; AUTHORIZING A STATE REVOLVING FUND LOAN/AMERICAN RECOVERY AND REINVESTMENT ACT APPLICATION IN THE AMOUNT OF \$2,409,000.00 FOR THE HIGHLAND VILLAGE PROJECT; DESIGNATING AN AUTHORIZED REPRESENTATIVE TO PROVIDE ASSURANCES; GRANTING AUTHORITY TO ENTER INTO A LOAN AGREEMENT; ESTABLISHING PLEDGED REVENUES; RECOGNIZING STATUTORY AUTHORITY; PROVIDING FOR CONFLICTS, SEVERABILITY, AND EFFECTIVE DATE.

WHEREAS, Florida Statutes provide for loans to local government agencies to finance the construction of water pollution control facilities; and

WHEREAS, Florida Administrative Code rules require authorization to apply for loans, to establish pledged revenues, to designate an authorized representative; to provide assurances of compliance with loan program requirements; and to enter into a loan agreement; and

WHEREAS, the Florida Department of Environmental Protection's State Revolving Fund loan priority list as well as the American Recovery and Investment Act Funding designate the Highland Village Project as eligible for available state funding; and

WHEREAS, in order to facilitate the construction of the project, the City intends to apply for and enter into a loan agreement with the Department of Environmental Protection under the State Revolving Fund/American Recovery and Reinvestment Act for project financing in the amount of \$2,409,000.00; and

WHEREAS, the City recognizes that in the event funding is received from the American Recovery and Reinvestment Act there are additional requirements that must be met. Those requirements include adherence with the DEP's standard supplemental conditions, Davis-Bacon wage rate provisions, and Buy American Certification; and

WHEREAS, the Public Utilities Commission of the City of North Miami Beach, at their public meeting held on April 16, 2009, approved the Project and the application for State Revolving Final Funding.

NOW, THEREFORE,

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

Section 1. The foregoing recitals are true and correct, and represent the express findings, purpose and intent of the City Council of the City of North Miami Beach.

Section 2. LOAN APPLICATION. The Council hereby authorizes the submittal of an application and all supporting documentation for a State Revolving Fund loan in the amount of \$2,409,000.00 to finance the project.

Section 3. DESIGNATION OF CITY REPRESENTATIVE. The City Manager is hereby designated as the authorized representative to (a) act as the City's representative in carrying out the City's responsibilities under the loan agreement, and (b) delegate responsibility to appropriate City staff to carry out technical, financial, and administrative activities associated with the loan agreement.

Section 4. AUTHORITY TO ENTER INTO AND CARRY OUT LOAN REQUIREMENTS AND OTHER SECURITY. The Council hereby authorizes the City Manager to execute any loan agreement or other security on behalf of the Council in accordance with and required by law to secure the loan.

Section 5. PLEDGED REVENUES. The Council hereby authorizes the use of wastewater utility system revenues for the repayment of the State Revolving Fund loan, which pledged revenues, shall consist of net sewer revenues remaining after payment of debt service on the City's outstanding sewer system utility revenue bonds (none at this

time), the sewer system utility refunding revenue bonds (none at this time), and other such City sewer system debt instruments as may exist as of the date of this Resolution. The City has one outstanding pre-construction loan application for Major Sewer Rehabilitation in the amount of \$487,000. If funds become available through the State Revolving Fund the City will be eligible to take the funding and incur a debt for the project.

Section 6. AUTHORITY. The legal authority for the City to borrow money to construct the Project is Chapter 180, Florida Statutes.

Section 7. CONFLICTS. All prior resolutions or portions thereof in conflict with any of the provisions of this Resolution are hereby repealed.

Section 8. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

Section 9. EFFECTIVE DATE. This Resolution shall become effective immediately upon its passage and adoption.

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

ATTEST:

SUSAN OWENS
CITY CLERK
(CITY SEAL)

MYRON ROSNER
MAYOR

APPROVED AS TO FORM:

DARCEE S. SIEGEL
CITY ATTORNEY

SPONSORED BY: Mayor and Council

MEMORANDUM

TO: MAYOR AND CITY COUNCIL
CITY CLERK
CITY MANAGER

FROM: DARCEE S. SIEGEL 
CITY ATTORNEY

DATE: June 2, 2009

RE: RESOLUTION NO. R2009-34
Major Sewer Rehabilitation Pre-construction Loan

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, MAKING FINDINGS; AUTHORIZING A STATE REVOLVING FUND LOAN APPLICATION FOR PRE-CONSTRUCTION FUNDING OF THE MAJOR SEWER REHABILITATION PROJECT IN THE AMOUNT OF \$487,000.00 TO REPAIR FOUR SEWER PUMPING STATIONS; DESIGNATING AN AUTHORIZED REPRESENTATIVE TO PROVIDE ASSURANCES; GRANTING AUTHORITY TO ENTER INTO A LOAN AGREEMENT; ESTABLISHING PLEDGED REVENUES; RECOGNIZING STATUTORY AUTHORITY; PROVIDING FOR CONFLICTS, SEVERABILITY, AND EFFECTIVE DATE.



**CITY OF NORTH MIAMI BEACH
MEMORANDUM**

City Manager's Office

TO: Mayor and City Council
FROM: Kelvin L. Baker, City Manager
DATE: May 19, 2009

RE: Approval of Resolution for submittal of a loan application to the State Revolving Fund (SRF) for Major Sewer Rehabilitation Pre-construction loan

BACKGROUND

The City's wastewater (sanitary sewer) system infrastructure was originally constructed in the 1950's and while we have made great strides in upgrading the system, there are still components that are aged and have become deteriorated. Several pumping stations and their basin infrastructure are in need of replacement and rehabilitation. Therefore, to seek out funding for this project, the City of North Miami Beach had submitted an application to be added to the Department of Florida Environmental Protection (FDEP) priority list. The project will perform the engineering design required to upgrade wastewater pumping stations in our collection system. The improvements will eliminate or minimize any sanitary sewage overflows in areas served by these pumping stations, which are at the end of their useful life. These improvements will continue to reduce public health hazard.

The project has made it onto the approved fundable priority SRF list for \$487,000 in pre-construction funding. A resolution is needed to complete the loan application process.

RECOMMENDATION

It is respectfully recommended that the City Council approve this resolution which is requirement of funding application process as stipulated by the FDEP SRF program. This item was approved at the April 16, 2009 Public Utilities Commission meeting.

FISCAL IMPACT

The funding will be received as a loan and requires the use of Sewer Fund revenues to be pledged by the City of North Miami Beach in order to fund the debt service. While terms are not yet finalized, the expected interest rate would range between 2.2% and 2.7% with the loan period being 30 years. At an interest rate of 2.5%, the annual principal and interest payment will be approximately \$23,000.

CONTACT PERSON

Martin King, P.E., Director of Public Services

M&C:KLB:kct

CC: Darcee Siegel, City Attorney,
Susan A. Owens, City Clerk,
Miriam Bensinger, Assist. City Attorney

RESOLUTION NO. R2009-34

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, MAKING FINDINGS; AUTHORIZING A STATE REVOLVING FUND LOAN APPLICATION FOR PRE-CONSTRUCTION FUNDING OF THE MAJOR SEWER REHABILITATION PROJECT IN THE AMOUNT OF \$487,000.00 TO REPAIR FOUR SEWER PUMPING STATIONS; DESIGNATING AN AUTHORIZED REPRESENTATIVE TO PROVIDE ASSURANCES; GRANTING AUTHORITY TO ENTER INTO A LOAN AGREEMENT; ESTABLISHING PLEDGED REVENUES; RECOGNIZING STATUTORY AUTHORITY; PROVIDING FOR CONFLICTS, SEVERABILITY, AND EFFECTIVE DATE.

WHEREAS, Florida Statutes provide for loans to local government agencies to finance the construction of drinking wastewater facilities; and

WHEREAS, Florida Administrative Code rules require authorization to apply to loans, to establish pledged revenues, to designate an authorized representative; to provide assurances of compliance with loan program requirements; and to enter into a loan agreement; and

WHEREAS, the Florida Department of Environmental Protection's State Revolving Fund loan priority list designates the Major Sewer Rehabilitation Project to repair four sewer pumping stations ("the Project"), as eligible for available state funding; and

WHEREAS, in order to facilitate the construction of the project, the City intends to apply for and enter into a loan agreement with the Department of Environmental Protection under the State Revolving Fund for project financing; and

WHEREAS, the Public Utilities Commission of the City of North Miami Beach, at their public meeting held on April 16, 2009, approved the Project and the application for State Revolving Fund funding.

NOW, THEREFORE,

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

Section 1. Findings. The foregoing recitals are true and correct and represent the express findings, purpose and intent of the City Council of the City of North Miami Beach.

Section 2. Loan Application. The City Council of the City of North Miami Beach, Florida, hereby authorizes the submittal of an application and all supporting documentation for a State Revolving Fund loan to finance pre-construction funding of the project in the amount of \$487,000.00.

Section 3. Designation of City Representative. The City Manager is hereby designated as the authorized representative to (a) act as the city's representative in carrying out the city's responsibilities under the loan agreement, and (b) delegate responsibility to appropriate city staff to carry out technical, financial, and administrative activities associated with the loan agreement.

Section 4. Authority to Enter into and Carry Out Loan Requirements and Other Security. The City Council hereby authorizes the City Manager to execute any loan agreement or other security on behalf of the Council in accordance with and required by law to secure the loan.

Section 5. Pledged Revenues. The Council hereby authorizes the use of waste water utility system revenues for the repayment of the State Revolving Fund loan, which pledged

revenues shall consist of net sewer revenues remaining after payment of debt service on the city's outstanding sewer system utility revenue bonds (none at this time), the sewer system utility refunding revenue bonds (none at this time), and other such city sewer system debt instruments as may exist as of the date of this resolution.

Section 6. Authority. The legal authority for the City to borrow money to construct the Project is Chapter 180, Florida Statutes.

Section 7. Conflicts. All prior resolutions or portions thereof in conflict with any of the provisions of this Resolution are hereby repealed.

Section 8. Severability. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

Section 9. Effective Date. This Resolution shall become effective immediately upon its passage and adoption.

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

ATTEST:

SUSAN OWENS
CITY CLERK

(CITY SEAL)

MYRON ROSNER
MAYOR

APPROVED AS TO FORM:

DARCEE S. SIEGEL
CITY ATTORNEY

SPONSORED BY: Mayor and Council

MEMORANDUM

TO: MAYOR AND CITY COUNCIL
CITY CLERK
CITY MANAGER

FROM: DARCEE S. SIEGEL 
CITY ATTORNEY

DATE: June 2, 2009

RE: RESOLUTION NO. R2009-35
Volatile Organic Compound Removal Project Loan

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, MAKING FINDINGS; AUTHORIZING A STATE REVOLVING FUND LOAN APPLICATION IN THE AMOUNT OF \$6,000,000.00 FOR THE VOLATILE ORGANIC CHEMICAL FACILITY; ACCEPTING THE WATER FACILITY PLAN; DESIGNATING AN AUTHORIZED REPRESENTATIVE TO PROVIDE ASSURANCES; GRANTING AUTHORITY TO ENTER INTO A LOAN AGREEMENT; ESTABLISHING PLEDGED REVENUES; RECOGNIZING STATUTORY AUTHORITY; PROVIDING FOR CONFLICTS, SEVERABILITY, AND EFFECTIVE DATE.



**CITY OF NORTH MIAMI BEACH
MEMORANDUM**

City Manager's Office

TO: Mayor and City Council
FROM: Kelvin L. Baker, City Manager
DATE: May 19, 2009

RE: Approval of Resolution for submittal of a loan application to the State Revolving Fund (SRF) for Volatile Organic Compound (VOC) Removal Project

BACKGROUND

City of North Miami Beach (the City) owns and operates the Norwood Water Treatment Plant (NWTP), which receives raw water from 16 Biscayne aquifer production wells and 4 Floridan aquifer production wells. Three of the Biscayne Aquifer water supply wells of NWTP have been impacted by volatile organic compounds (VOCs), as evidenced by occurrences of vinyl chloride (VC) in the raw water of supply wells 4, 9, & 10. Finished water from the NWTP continues to meet all federal, state, and local regulations for all drinking water standards. Even so, the City has already begun the efforts to mitigate this issue, and in concert with the Florida Department of Health (FDOH) and Miami-Dade Environmental Protection and Management (DERM), we have developed a plan that includes a short term solution as well as a long term solution. The short term solution was implemented over a year ago and has proven effective. The long term solution which involves providing VOC removal for more of the wells involves a larger capital expenditure. We have been seeking funding for due this project. We were recently notified that the VOC Removal Project was added to the Florida Departmental of Environmental Protection (FDEP) SRF fundable list due to the additional funds appropriated by the American Recovery and Reinvestment Act (ARRA). The amount of funds approved for the City is \$3,000,000 with \$2,550,000 of that amount being a grant and the balance, \$450,000, in the form of a low interest loan.

This resolution is required in order complete the application process to obtain this funding. This item was unanimously approved this item at the April 16, 2009 PUC meeting.

RECOMMENDATION

It is respectfully recommended that the city council approve this resolution which is a requirement of funding application process as stipulated by the SRF program. Additionally, since these are ARRA funds, which carry very stringent deadlines and short time frames, the FDEP is urging all applicants complete the process as soon as possible.

FISCAL IMPACT

The portion of funding that will be received as a loan will require water revenues to be pledged by the City in order to fund the debt service. While terms are not yet finalized, the expected interest rate would range between 2.2% and 2.7% with the loan period 30 years. At an interest rate of 2.5%, the annual principal and interest payment will be approximately \$21,300.

CONTACT PERSON

Martin King, P.E., Director of Public Services

RESOLUTION NO. R2009-35

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, MAKING FINDINGS; AUTHORIZING A STATE REVOLVING FUND LOAN APPLICATION IN THE AMOUNT OF \$6,000,000.00 FOR THE VOLATILE ORGANIC CHEMICAL FACILITY; ACCEPTING THE WATER FACILITY PLAN; DESIGNATING AN AUTHORIZED REPRESENTATIVE TO PROVIDE ASSURANCES; GRANTING AUTHORITY TO ENTER INTO A LOAN AGREEMENT; ESTABLISHING PLEDGED REVENUES; RECOGNIZING STATUTORY AUTHORITY; PROVIDING FOR CONFLICTS, SEVERABILITY, AND EFFECTIVE DATE.

WHEREAS, Florida Statutes provide for loans to local government agencies to finance the construction of drinking water facilities; and

WHEREAS, Florida Administrative Code rules require authorization to apply to loans, to establish pledged revenues, to designate an authorized representative; to provide assurances of compliance with loan program requirements; and to enter into a loan agreement; and

WHEREAS, the Florida Department of Environmental Protection's State Revolving Fund loan priority list designates the Volatile Organic Chemical Facility (DW1301 020), as eligible for available state funding; and

WHEREAS, in order to facilitate the construction of the project, the City intends to apply for and enter into a loan agreement with the Department of Environmental Protection under the State Revolving Fund for project financing in the amount of \$6,000,000.00; and

WHEREAS, the City recognizes that in the event funding is received from the American Recovery and Reinvestment Act there are additional requirements that must be met. Those

requirements include adherence with the FDEP's standard supplemental conditions, David-Bacon wage rate provisions, and Buy American Certification; and

WHEREAS, the Public Utilities Commission of the City of North Miami Beach, at their public meeting held on April 16, 2009, approved the Project and the application for State Revolving Fund funding.

NOW, THEREFORE,

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

Section 1. Findings. The foregoing recitals are true and correct and represent the express findings, purpose and intent of the City Council of the City of North Miami Beach.

Section 2. Loan Application. The City Council of the City of North Miami Beach, Florida, hereby authorizes the submittal of an application and all supporting documentation (including the Water Facility Plan prepared by GAI Consultants, Inc.) for a State Revolving Fund loan in the amount of \$6,000,000.00 to finance the project.

Section 3. Designation of City Representative. The City Manager is hereby designated as the authorized representative to (a) act as the city's representative in carrying out the city's responsibilities under the loan agreement, and (b) delegate responsibility to appropriate city staff to carry out technical, financial, and administrative activities associated with the loan agreement.

Section 4. Authority to Enter into and Carry Out Loan Requirements and Other Security. The City Council hereby authorizes the City Manager to execute any loan agreement or other security on behalf of the Council in accordance with and required by law to secure the loan.

Section 5. Pledged Revenues. The Council hereby authorizes the use of water utility system revenues for the repayment of the State Revolving Fund loan, which pledged revenues shall consist of net water revenues remaining after payment of debt service on the city's outstanding water system utility revenue bonds, the water system utility refunding revenue bonds, and other such city water system debt instruments as may exist as of the date of this resolution.

Section 6. Authority. The legal authority for the City to borrow money to construct the Project is Chapter 180, Florida Statutes.

Section 7. Conflicts. All prior resolutions or portions thereof in conflict with any of the provisions of this Resolution are hereby repealed.

Section 8. Severability. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

Section 9. Effective Date. This Resolution shall become effective immediately upon its passage and adoption.

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

ATTEST:

SUSAN OWENS
CITY CLERK

(CITY SEAL)

MYRON ROSNER
MAYOR

APPROVED AS TO FORM:

DARCEE S. SIEGEL
CITY ATTORNEY

SPONSORED BY: Mayor and Council

MEMORANDUM

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

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

DATE: June 2, 2009

**RE: RESOLUTION NO. R2009-36
 Purchase of Generator for City Hall Complex**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL
OF THE CITY OF NORTH MIAMI BEACH, FLORIDA,
AWARDING BID #2009-05 AND AUTHORIZING THE CITY
MANAGER TO EXECUTE AN AGREEMENT BETWEEN
THE CITY AND R&D ELECTRIC, INC. FOR THE
PURCHASE AND INSTALLATION OF A GENERATOR
FOR THE ENTIRE CITY HALL COMPLEX.**



RECEIVED

CITY OF NORTH MIAMI BEACH 2009 MAY 22 AM 10:11
MEMORANDUM

CITY ATTORNEY'S OFFICE
CITY OF NORTH MIAMI BEACH

City Manager's Office

TO: Honorable Mayor & Council

FROM: Kelvin L. Baker, City Manager

DATE: June 2, 2009

RE: Approval of Bid # 2009-05 City Hall Generator Replacement Project

Background:

The current generator at City Hall has been in service for approximately 40 years. In order to keep the generator operable as it has aged, its load capacity has been significantly reduced; it presently supports only the computer and hallway lighting infrastructure. The replacement unit will supply backup power to the entire City Hall complex.

RECOMMENDATION:

It is the evaluation committee's recommendation that the Bid be awarded to the lowest most responsive responsible vendor, being R&D Electric Inc for the purchase and installation of the City Hall generator, from a source of supply that will give prompt and efficient service.

The City initially received nine submissions. After further review by the committee, it was determined that Canseco Electrical Contractors Inc. and Storage Battery Systems Inc. were deemed to be non-responsible. Therefore, the committee recommended disqualifying these submissions from consideration based on the fact that the equipment and supply costs exceeded their submitted prices.

The information below will provide a brief overview/history of the recommended contractor for the services mentioned above.

Proposed Vendor:

R & D Electrical
7311 NW 12th Street Suite 27

Miami, FL 33126

References & Prior History: (see attached)

An advertisement was placed in the Miami Review and the Bid Document (available for download) and a brief description was posted on the City's website.

Fiscal Impact:

Expenditure: \$426,100.00

Fund: Capital Improvement Fund

Account Name: Capital Outlay

Account #:010850-519830

Contact Person:

Marty King, Director of Public Services

Esmond Scott, Asst. Director of Public Services

Aria Austin, Operation Manager

Brian O'Connor, Chief Procurement Officer

CC: Darcee S. Siegel, City Attorney

Susan Owens, City Clerk

Miriam Bensinger, Assistant City Attorney

RESOLUTION NO. R2009-36

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, AWARDED BID #2009-05 AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE CITY AND R&D ELECTRIC, INC. FOR THE PURCHASE AND INSTALLATION OF A GENERATOR FOR THE ENTIRE CITY HALL COMPLEX.

WHEREAS, the City of North Miami Beach issued an invitation to bid (BID#2009-05) for the purchase and installation of a generator for the entire City Hall Complex; and

WHEREAS, nine bids were submitted to the City, but only seven met the specifications; and

WHEREAS, the review committee recommended awarding the bid to the lowest and most responsive and responsible bidder, R&D Electric, Inc.; and

WHEREAS, the City Council of the City of North Miami Beach desires to award bid #2009-05, and authorize the City Manager to execute an agreement between the City of North Miami Beach and R&D Electric, Inc., at a total cost of \$426,100.00 subject to review and approval of the City Attorney.

NOW, THEREFORE,

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

1. The Mayor and City Council of the City of North Miami Beach hereby award bid #2009-05 to R&D Electric, Inc. in the amount of \$426,100.00 for the purchase and installation of the City Hall generator.

2. The Mayor and City Council of the City of North Miami Beach hereby authorize and direct the City Manager and the City Clerk to execute an agreement between the City and R&D Electric, Inc., subject to the review and approval of the City Attorney.

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

ATTEST:

SUSAN OWENS
CITY CLERK

(CITY SEAL)

MYRON ROSNER
MAYOR

APPROVED AS TO FORM:

DARCEE S. SIEGEL
CITY ATTORNEY

Sponsored by: Mayor & Council

MEMORANDUM

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

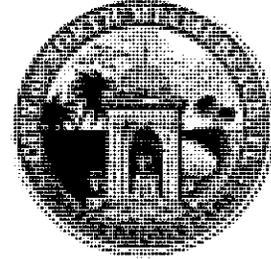
**FROM: DARCEE S. SIEGEL 
CITY ATTORNEY**

DATE: June 2, 2009

**RE: RESOLUTION NO. R2009-37
Lease Agreement with Metro PCS**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL
OF THE CITY OF NORTH MIAMI BEACH, FLORIDA,
APPROVING A LEASE AGREEMENT BETWEEN THE
CITY AND METRO PCS, FLORIDA, LLC FOR THE LEASE
OF A PORTION OF THE NORWOOD WATER
TREATMENT PLANT SITE FOR THE OPERATIONS OF A
WIRELESS COMMUNICATION SITE.**

City of North Miami Beach Memorandum



City Manager's Office

TO: Mayor and City Council
FROM: Kelvin L. Baker, City Manager
DATE: May 18, 2009

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

RE: Approval of Resolution for MetroPCS to Lease Portion of
Norwood Water Plant Site for Wireless Communication

BACKGROUND:

MetroPCS LLC, a Delaware limited liability company, intends to lease portion of Norwood water treatment plant site for operation of a wireless communications site. The lease agreement is attached. MetroPCS will pay annual fee of \$24,000 plus \$375 per month of utilities fee for the lease.

RECOMMENDATION:

It is respectfully recommended that this lease agreement be approved. Utility generate revenues while maintains normal operations of the Norwood water plant.

FISCAL IMPACT: Utility generates revenues \$24,000 per year, plus \$375 per month of utilities fee

There is no personnel impact to the City other than the security check at Norwood Water Plant.

CONTACT PERSON: Martin King/Jeff An, Public Services Department

Attachment

CC: Darcee S. Siegel, City Attorney
Sol Odenz, City Clerk
Miriam Bensinger, Assistant City Attorney
Martin King, Public Services Director

RESOLUTION NO. R2009-37

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, APPROVING A LEASE AGREEMENT BETWEEN THE CITY AND METRO PCS, FLORIDA, LLC FOR THE LEASE OF A PORTION OF THE NORWOOD WATER TREATMENT PLANT SITE FOR THE OPERATIONS OF A WIRELESS COMMUNICATION SITE.

WHEREAS, Metro PCS LLC has requested to lease a portion of the City's Norwood Water Treatment Plant site for the operation of a wireless communications site; and

WHEREAS, the proposed lease will not interfere with the operation or the security of the Water Treatment Plant; and

WHEREAS, the lease will generate revenue to the City in the amount of \$24,000.00 per year.

NOW, THEREFORE,

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

Section 1. The foregoing recitals are true and correct.

Section 2. The Mayor and Council of the City of North Miami Beach, Florida, hereby approve the lease to Metro PCS, Florida LLC of a portion of the Norwood Water Treatment Plant site for the operation of a wireless communication site, as provided in the *Communications Site Lease Agreement* attached hereto as *Exhibit "A"* and incorporated herein by reference.

RESOLUTION R2009-37

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

ATTEST:

SUSAN OWENS
CITY CLERK

(CITY SEAL)

MYRON ROSNER
MAYOR

APPROVED AS TO FORM:

DARCEE S. SIEGEL
CITY ATTORNEY

SPONSORED BY: Mayor and Council

RESOLUTION R2009-37

COMMUNICATIONS SITE LEASE AGREEMENT

THIS COMMUNICATIONS SITE LEASE AGREEMENT ("Lease Agreement") dated as of _____, is made by and between MetroPCS Florida LLC, a Delaware limited liability company, ("Lessee") and City of North Miami Beach, ("Lessor").

R E C I T A L S

This Lease Agreement is entered into based upon the following facts, circumstances and understandings:

A. Lessor owns certain real property legally described in Exhibit "A" attached hereto and commonly known as 19150 NW 8th Ave., Miami Gardens, FL 33169; Assessor's Parcel Number 34-2102-024-0010 ("Lessor's Real Property"). Lessee desires to lease a portion of Lessor's Real Property with any necessary easements over other portions of Lessor's Real Property and/or shared use of Lessor's easements over other real property necessary for Lessee's access and utilities to the leased area (altogether the "Premises"), as described on Exhibit "B" attached hereto. Lessor represents and warrants that it has full rights of ingress to and egress from the Premises from a public roadway.

B. Lessee is a communications carrier that desires to construct and operate a wireless communications site at the Premises as part of its communications network.

C. Lessor is willing to lease the Premises to Lessee for Lessee's proposed use subject to the terms and conditions of this Lease Agreement.

WHEREFORE, the parties hereto agree as follows:

1. **Grant of Lease.** Lessor hereby leases to Lessee the Premises for Lessee's proposed use, subject to the following terms and conditions.

2. **Permitted Uses.** The Premises may be used by Lessee for the operation of a wireless communications site. Under this Lease Agreement, Lessee may install, place, use and operate on the Premises such as antennas, radio transmitting and receiving equipment, conduits, wires, batteries, back-up generators, utility lines and facilities, supporting structures, storage facilities, and related equipment (collectively "Lessee's Facilities") as Lessee deems necessary for the operation of its wireless communications site at the Premises. Further, Lessee may perform construction, maintenance, repairs, additions to, and replacement of Lessee's Facilities as necessary and appropriate for its ongoing business and has the right to do all work necessary to prepare, modify and maintain the Premises to accommodate Lessee's Facilities and as required for Lessee's communications operations at the Premises, provided that Lessee gives Lessor prior written notice.

3. Conditions Precedent: Prior Approvals. This Lease Agreement is conditioned upon Lessee obtaining all governmental licenses, permits and approvals enabling Lessee to construct and operate wireless communications facilities on the Premises. Lessor agrees to cooperate with Lessee's reasonable requests for Lessor's signatures as real property owner on permit applications, for allowing site inspections by governmental agencies required in connection with reviewing permit applications, and for assistance in obtaining such necessary approvals, provided that such cooperation and assistance shall be at no expense to Lessor.

4. Term. The term of this Lease Agreement ("Term") shall be five (5) years commencing on the date Lessee begins construction of Lessee's Facilities on the Premises or twelve (12) months from the date of full execution of this Lease Agreement, whichever occurs first ("Commencement Date"). Lessee shall promptly deliver written notice to Lessor of the Commencement Date. Lessee shall have the right to extend the Term of this Lease Agreement for four (4) additional terms (each a "Renewal Term") of five (5) years each. The terms and conditions for each Renewal Term shall be the same terms and conditions as in this Lease Agreement, except that the Rent shall be increased as set forth hereinbelow. This Lease Agreement shall automatically be extended for each successive five (5) year Renewal Term unless Lessee notifies Lessor in writing of Lessee's intention not to extend this Lease Agreement at least thirty (30) days prior to the expiration of the first year Term or any Renewal Term.

5. Rent. Within thirty (30) days of the Commencement Date, Lessee shall pay Lessor, as rent, the sum of Twenty Four, Thousand Dollars (\$24,000.00) ("Rent") per year. Rent shall be payable on the first day of the month of the anniversary of the Commencement Date, in advance, to Lessor or Lessor's alternate payee specified in Section 22, Notices and Deliveries. If the Commencement Date of this Lease Agreement is other than the first day of a calendar month, Lessee may pay on the first day of the Term the prorated Rent for the remainder of the calendar year in which the Term commences, and thereafter Lessee shall pay a full year's Rent on the first day of the month of the anniversary of the Commencement Date, except that payment shall be prorated for the final fractional month of this Lease Agreement, or if this Lease Agreement is terminated before the expiration of any month for which Rent should have been paid. Rent shall be adjusted as of the fifth (5th) anniversary of the Commencement Date of the Term and of any five (5) year Renewal Term by an increase of fifteen percent (15%) of the Rent paid during the previous Term or five (5) year Renewal Term.

6. Due Diligence Contingency and Pre-Commencement Date Access to Premises. Lessee shall have the right following the full execution of this Lease Agreement and prior to the Commencement Date, to enter the Premises for the purpose of making necessary inspections, taking measurements and conducting engineering surveys (and soil tests where applicable) and other reasonably necessary tests to determine the suitability of the Premises for Lessee's Facilities ("Due Diligence"), and for the purpose of preparing the Premises for the installation or construction of Lessee's Facilities, provided that Lessee shall arrange any such entry with Lessor at least twenty-four (24) hours prior to such entry and shall show state-issued identification. Notwithstanding anything to the contrary contained herein, in the event of an emergency, Lessee shall provide Lessor with notice as soon as practicably possible. During any Due Diligence activities or pre-construction work, Lessee shall have insurance which covers such activities as set forth in Section 16, Insurance. Lessee will notify Lessor of any proposed tests, measurements or pre-construction work and will coordinate the scheduling of such activities with Lessor. If in the course of its Due Diligence Lessee determines that the Premises are unsuitable for Lessee's contemplated use, then Lessee shall have the right to terminate this Lease Agreement prior to the Commencement Date by delivery of written notice thereof to Lessor as set forth in Section 13, Termination.

7. Ongoing Access to Premises. Throughout the Term and any Renewal Term of this Lease Agreement, Lessee shall have the right of access to the Premises for its employees and agents twenty-four (24) hours a day, seven (7) days per week, at no additional charge to Lessee, provided however, Lessee must notify Lessor at least twenty-four (24) hours prior to such access (except in a case of emergency) . In exercising its right of access to the Premises herein, Lessee agrees to cooperate with any reasonable security procedures utilized by Lessor at Lessor's Real Property and further agrees not to unduly disturb or interfere with the business or other activities of Landlord or of other tenants or occupants of Lessor's Real Property. Prior to beginning any construction or other activities, Lessee shall provide Lessor with a list of personnel (including subcontractors, maintenance personnel etc.) expected to be working on the Premises. All Lessee's personnel will be required to check in with the security guard at the plant and will be required to show a state-issued identification in order to be allowed entrance to the Premises. Personnel not on the Lessee's list will not be allowed access to the Premises. Lessee's shall be responsible for updating the list of personnel when necessary. Further Lessee shall notify at least twenty-four (24) hours before any materials are delivered to the Premises. All delivery drivers must check in with the security guard located on Lessor's Real Property and shall be required to show a state-issued identification. Delivery vehicles will not be allowed on Lessor's Real Property unless identification and proper notice has been provided. Lessor is not responsible for delays or costs associated with returned deliveries or denied entrance of personnel, as a result of Lessee's failure to follow these security requirements. Lessor shall maintain all existing access roadways or driveways extending from the nearest public roadway to the Premises in a manner sufficient to allow for Lessee's access to the Premises. Lessor shall be responsible for maintaining and repairing such roadways and driveways at Lessor's sole expense, except for any damage caused by Lessee's use of such roadways or driveways. If Lessee causes any such damage, Lessee shall promptly repair the same at its sole expense.

8. Lessee's Work, Maintenance and Repairs. All of Lessee's construction and installation work at the Premises shall be performed at Lessee's sole cost and expense and in a good and workmanlike manner. Lessee shall submit copies of the site plan, complete set of drawings, and specifications to the Lessor for prior approval, which approval will not be unreasonably withheld, conditioned or delayed. Lessor shall give such approval or provide Lessee with its requests for changes within fourteen (14) business days of Lessor's receipt of Lessee's plans. If Lessor does not provide such approval or request for changes within such fourteen (14) business day period, Lessor shall be deemed to have approved the plans. Lessor shall not be entitled to receive any additional consideration in exchange for giving its approval of Lessee's plans. Lessee shall maintain Lessee's Facilities and the Premises in neat and safe condition in compliance with all applicable codes and governmental regulations. Lessee shall not be required to make any repairs to the Premises except for damages to the Premises caused by Lessee, its employees, agents, contractors or subcontractors. Upon the expiration, cancellation or termination of this Lease Agreement, Lessee shall surrender the Premises in good condition, less ordinary wear and tear; however, Lessee shall not be required to remove any foundation supports for Lessee's Facilities or conduits which have been installed by Lessee.

9. Title to Lessee's Facilities. Title to Lessee's Facilities and any equipment placed on the Premises by Lessee shall be held by Lessee. All of Lessee's Facilities shall remain the property of Lessee and are not fixtures. Lessee has the right to remove all Lessee's Facilities at its sole expense on or before the expiration or termination of this Lease Agreement. Lessor acknowledges that Lessee may enter into financing arrangements including promissory notes and financial and security agreements for

the financing of Lessee's Facilities (the "Collateral") with a third party financing entity and may in the future enter into additional financing arrangements with other financing entities. In connection therewith, Lessor (i) consents to the installation of the Collateral to the extent that the Collateral is part of the approved Lessee's Facilities; (ii) disclaims any interest in the Collateral, as fixtures or otherwise; and (iii) agrees that the Collateral shall be exempt from execution, foreclosure, sale, levy, attachment, or distress for any Rent due or to become due and that such Collateral may be removed at any time without recourse to legal proceedings.

10. Utilities. Lessee shall have the right to install utilities, at Lessee's expense, and to improve the present utilities on or near the Premises (including, but not limited to the installation of emergency back-up power). Subject to Lessor's approval of the location, which approval shall not be unreasonably withheld, Lessee shall have the right to place utilities on (or to bring utilities across) Lessor's Real Property in order to service the Premises and Lessee's Facilities. Upon Lessee's request, Lessor shall execute recordable easement(s) evidencing this right. Lessee shall fully and promptly pay for all utilities furnished to the Premises for the use, operation and maintenance of Lessee's Facilities. Upon Lessee's request, Lessor shall allow Lessee to install sub-metering equipment on existing Lessor utility service(s). Lessee agrees to install, at Lessee's cost, the required equipment, meters and connections and will reimburse Lessor for Lessee's use of utilities at a rate equal to Lessor's unit cost for the utilities. Lessee shall pay the cost of utility service provided to the Premises and attributable to Lessee's use ("Utility Charge"). Lessee shall pay the estimated cost of the Utility Charge monthly in advance. The parties estimate the Utility Charge at the commencement of construction to be Three Hundred Seventy Five Dollars (\$375.00) per month. During the term of this Lease Agreement, at Lessor's request (which request shall not be more frequent than once every twelve months), Lessee shall calculate the actual Utility Charge for the immediately preceding twelve (12) months based on the readings from the privately installed sub-meter at Lessor's property. If the actual Utility Charge varies from the estimated Utility Charges paid, the parties shall reconcile past payments of utility charges and adjust future estimates of the Utility Charge to reflect Lessee's actual usage. The Utility Charge shall be adjusted as of the fifth (5th) anniversary of the Commencement Date of the Term and of any five (5) year Renewal Term by an increase of fifteen percent (15%) of the Utility Charge paid during the previous Term or five (5) year Renewal Term

11. Interference with Communications. Lessee's Facilities and operations shall not interfere with the communications configurations, frequencies or operating equipment which exist on Lessor's Real Property on the effective date of this Lease Agreement ("Pre-existing Communications"), and Lessee's Facilities and operations shall comply with all non-interference rules of the Federal Communications Commission ("FCC"). Upon written notice from Lessor of apparent interference by Lessee with Pre-existing Communications, Lessee shall have the responsibility to promptly terminate such interference or demonstrate to Lessor with competent information that the apparent interference in fact is not caused by Lessee's Facilities or operations. Lessor shall not, nor shall Lessor permit any other tenant or occupant of any portion of Lessor's Real Property to, engage in any activities or operations which interfere with the communications operations of Lessee described in Section 2, above. Such interference with Lessee's communications operations shall be deemed a material breach by Lessor, and Lessor shall have the responsibility to promptly terminate said interference. In the event any such interference does not cease promptly, the parties acknowledge that continuing interference will cause irreparable injury to Lessee, and therefore Lessee shall have the right to bring a court action to enjoin such interference or to terminate this Lease Agreement immediately upon notice to Lessor. Lessor agrees to incorporate equivalent provisions regarding non-interference with Pre-existing Communications into

any subsequent leases, licenses or rental agreements with other persons or entities for any portions of Lessor's Real Property.

12. **Taxes.** Lessee shall pay personal property taxes assessed against Lessee's Facilities, and Lessor shall pay when due all real property taxes and all other taxes, fees and assessments attributable to the Premises and this Lease Agreement. Lessor acknowledges that pursuant to Florida law and the nature of Lessee's installation, this Lease is exempt from sales tax.

13. **Termination.** This Lease Agreement may be terminated by Lessee effective immediately without further liability by delivery of written notice thereof to Lessor prior to the Commencement Date for any reason resulting from Lessee's Due Diligence, or if a title report obtained by Lessee for Lessor's Real Property shows any defects of title or any liens or encumbrances which may adversely affect Lessee's use of the Premises for Lessee's intended use, or for any other or no reason. This Lease may be terminated without further liability on thirty (30) days prior written notice as follows: (i) by either party upon a default of any covenant, condition, or term hereof by the other party, which default is not cured within sixty (60) days of receipt of written notice of default; (ii) by Lessee if it does not obtain licenses, permits or other approvals necessary to the construction or operation of Lessee's Facilities or is unable to maintain such licenses, permits or approvals despite reasonable efforts to do so; (iii) by Lessee if Lessee is unable to occupy or utilize the Premises due to ruling or directive of the FCC or other governmental or regulatory agency, including, but not limited to, a take back of frequencies; or (iv) by Lessee if Lessee determines that the Premises are not appropriate for its operations for economic, environmental or technological reasons, including, without limitation, signal strength or interference; or (v) by Lessor if any time this Lease interferes with Norwood Water Plant operation, or the security of the Plant and Lessee does not address the interference to Lessor's reasonable satisfaction within ten (10) days of receipt if written notice of such interference. If Lessor terminates pursuant to subsection (i) or (v), Lessor shall be entitled to keep all Rent paid by Lessee. If this Lease is terminated for any other reason, Lessor shall return any unearned portion of the annual Rent to Lessee.

14. **Destruction of Premises.** If the Premises or Lessor's Property is destroyed or damaged so as in Lessee's judgment to hinder its effective use of Lessor's Property for the ongoing operation of a wireless communications site, Lessee may elect to terminate this Lease Agreement as of the date of the damage or destruction by so notifying Lessor no more than thirty (30) days following the date of damage or destruction. In such event, all rights and obligations of the parties which do not survive the termination of this Lease Agreement shall cease as of the date of the damage or destruction.

15. **Condemnation.** If a condemning authority takes all of Lessor's Real Property, or a portion which in Lessee's reasonable opinion is sufficient to render the Premises unsuitable for Lessee's ongoing operation of a wireless communications site, then this Lease Agreement shall terminate as of the date when possession is delivered to the condemning authority. In any condemnation proceeding each party shall be entitled to make a claim against the condemning authority for just compensation recoverable under applicable condemnation law. Sale of all or part of the Premises to a purchaser with the power of eminent domain in the face of the exercise of its power of eminent domain shall be treated as a taking by a condemning authority.

16. **Insurance.** Lessee shall maintain the following insurance: (1) Commercial General Liability with limits of One Million Dollars (\$1,000,000.00) per occurrence, (2) Automobile Liability with a combined single limit of One Million Dollars (\$1,000,000.00) per accident, (3) Workers

Compensation as required by law, and (4) Employer's Liability with limits of One Million Dollars (\$1,000,000.00) per occurrence. Lessor shall be named as an additional insured on the policy.

17. **Assignments or Transfers.** Lessor may assign or transfer this Lease Agreement to any person or entity without any requirement for prior approval by Lessee, provided that such assignee or transferee agrees in writing to fulfill the duties and obligations of the Lessor in said Lease Agreement, including the obligation to respect Lessee's rights to nondisturbance and quiet enjoyment of the Premises during the remainder of the Term and any Renewal Term hereof. Lessee may assign or transfer this Lease Agreement without prior approval by Lessor to any of its partners, subsidiaries, affiliates, or to a person or entity acquiring by purchase, merger or operation of law a majority of the value of the assets of Lessee or to a person or entity acquiring by purchase, merger or operation of law a majority of the value of the assets of Lessee or to any entity whose business is the ownership of telecommunication towers. Lessee shall not assign or transfer this Lease Agreement to any other person or entity without the prior written approval of Lessor, which approval shall not be unreasonably withheld. Notwithstanding anything to the contrary contained in this Agreement, Lessee may assign, mortgage, pledge, hypothecate or otherwise transfer without consent its interest in this Agreement to any financing entity, or agent on behalf of any financing entity to whom Lessee (i) has obligations for borrowed money or in respect of guaranties thereof, (ii) has obligations evidenced by bonds, debentures, notes or similar instruments, or (iii) has obligations under or with respect to letters of credit, bankers acceptances and similar facilities or in respect of guaranties thereof.

18. **Nondisturbance and Quiet Enjoyment; Subordination; Estoppel Certificates.**

(a) So long as Lessee is not in default under this Lease Agreement, Lessee shall be entitled to quiet enjoyment of the Premises during the term of this Lease Agreement or any Renewal Term, and Lessee shall not be disturbed in its occupancy and use of the Premises.

(b) This Lease Agreement shall be subordinate to each and every deed of trust, mortgage or other security instrument which may now or hereafter affect Lessor's Real Property and to any renewals, extensions, supplements, amendments, modifications or replacements thereof. In confirmation of such subordination, Lessee shall execute and deliver promptly any certificate of subordination that Lessor may request, provided that such certificate acknowledges that this Lease Agreement remains in full force and effect and recognizes Lessee's right to nondisturbance and quiet enjoyment of the Premises so long as Lessee is not in default under this Lease Agreement. If any mortgagee or lender succeeds to Lessor's interest in Lessor's Real Property through a foreclosure proceeding or by a deed in lieu of foreclosure, Lessee shall attorn to and recognize such successor as Lessor under this Lease Agreement.

(c) At any time upon not less than ten (10) days' prior written notice by Lessor, Lessee shall execute, acknowledge and deliver to Lessor or any other party specified by Lessor a statement in writing certifying that this Lease Agreement is in full force and effect and the status of any continuing defaults under this Lease Agreement.

19. **Indemnifications.**

(a) **Lessee's Indemnity.** Lessee hereby agrees to indemnify and hold Lessor and Lessor's officers, directors, partners, shareholders, employees, agents, contractors or subcontractors harmless from and against any and all losses, claims, liabilities, damages, costs and expenses (including

reasonable attorney's fees and costs) and injuries (including personal injuries or death) arising from or in connection with Lessee's use, operation, maintenance or repair of Lessee's Facilities at the Premises or access over Lessor's Real Property or Lessee's shared use of Lessor's easements for access to the Premises, except those resulting from the gross negligence or willful misconduct of Lessor or Lessor's officers, directors, partners, shareholders, employees, agents, contractors or subcontractors.

(b) **Survival of Indemnity Provisions.** The indemnity provisions of this section shall survive the expiration, cancellation or expiration of this Lease Agreement.

20. **Hazardous Materials.** Lessee agrees that it will not use, generate, store or dispose of any Hazardous Material on, under, about or within the Lessor's Real Property in violation of any law or regulation, or materials detrimental to drinking water wells and water treatment process.

21. **Notices and Deliveries.** Any notice or demand required to be given herein shall be made by certified or registered mail, return receipt requested, confirmed fax, or reliable overnight delivery service to the address of the respective parties set forth below:

Lessor: City of North Miami Beach
17011 NE 19 Avenue
North Miami Beach, FL 33162
Attn: _____
Telephone: _____
Facsimile: _____
Federal Taxpayer ID Number: _____

Lessor Remit: City of North Miami Beach
17011 NE 19 Avenue
North Miami Beach, FL 33162
Attn: _____
Telephone: _____

Lessee: MetroPCS
1000 Sawgrass Corporate Parkway
Suite 400
Ft. Lauderdale, FL 33323
Attn: Property Manager

With a copy to: MetroPCS Florida LLC
2550 Lakeside Boulevard
Richardson, Texas 75082
Attn: Property Manager
Telephone: 214-265-2550
Facsimile: 214-265-2570

City of North Miami Beach
City Attorney's Office

17011 NE 19 Avenue
North Miami Beach, FL 33162

City of North Miami Beach
Public Services Director
17050 NE 19 Avenue
North Miami Beach, FL
Telephone: 305-948-2983
Facsimile: 305-957-3632

Lessor or Lessee may from time to time designate any other address for notices or deliveries by written notice to the other party.

22. Miscellaneous.

(a) Severability. If any provision of the Lease Agreement is held to be invalid or unenforceable by a court of competent jurisdiction with respect to any party, the remainder of this Lease Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable shall not be affected, and each provision of this Lease Agreement shall be valid and enforceable to the fullest extent permitted by law.

(b) Binding Effect. Each party represents and warrants that said party has full power and authority, and the person(s) executing this Lease Agreement have full power and authority, to execute and deliver this Lease Agreement, and that this Lease Agreement constitutes a valid and binding obligation of each party, enforceable in accordance with its terms. This Lease Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective parties.

(c) Waivers. No provision of this Lease Agreement shall be deemed to have been waived by a party unless the waiver is in writing and signed by the party against whom enforcement of the waiver is attempted. No custom or practice which may develop between the parties in the implementation or administration of the terms of this Lease Agreement shall be construed to waive or lessen any right to insist upon strict performance of the terms of this Lease Agreement.

(d) Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Florida.

(e) Attorneys' Fees and Costs. The prevailing party in any legal claim arising hereunder shall be entitled to its reasonable attorneys' fees and court costs.

(f) Survival. Terms and conditions of this Lease Agreement which by their sense and context survive the termination, cancellation or expiration of this Lease Agreement will so survive.

(g) Memorandum of Lease. Lessor acknowledges that a Memorandum of Agreement substantially in the form annexed hereto as Exhibit C will be recorded by Lessee in the Official Records of the County where the Property is located.

(h) **Entire Agreement; Amendments.** This Lease Agreement constitutes the entire agreement and understanding between the parties regarding Lessee's lease of the Premises and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease Agreement must be in writing and executed by authorized representatives of both parties.

(i) **No Presumptions Regarding Preparation of Lease Agreement.** The parties acknowledge and agree that each of the parties have been represented by counsel or has had full opportunity to consult with counsel and that each of the parties has participated in the negotiation and drafting of this Lease Agreement. Accordingly it is the intention and agreement of the parties that the language, terms and conditions of this Lease Agreement are not to be construed in any way against or in favor of any party hereto by reason of the roles and responsibilities of the parties or their counsel in connection with the preparation of this Lease Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Lease Agreement on the dates set forth below and acknowledge that this Lease Agreement is effective as of the date first above written.

LESSOR:

City of North Miami Beach

Witnesses for Lessor:

Print Name: _____

Print Name: _____

By: _____

(Signature)

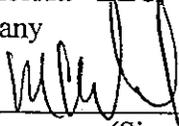
Print Name: Kelvin L. Baker

Title: City Manager

Date: _____

LESSEE:

MetroPCS Florida LLC, a Delaware limited liability company

By: 
(Signature)

Print Name: Michael C. Ward
Vice President - General Manager

Title: _____

Date: 4/9/09

Witnesses for Lessee:


Print Name: Patti Spuntz

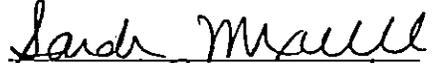

Print Name: Sandra Maxwell

EXHIBIT A

DESCRIPTION OF LESSOR'S REAL PROPERTY

to the Lease Agreement dated _____, 200__, by and between City of North Miami Beach, as Lessor and MetroPCS Florida LLC., a Delaware limited liability company, as Lessee.

Lessor's Property of which Premises are a part is described as follows:

NORWOOD WATER TREATMENT PLANT PB 159-66 T-21037 TRACT A LOT SIZE
374802 SQFT FAU 30-2102-001-0020 0021 & 0370 THRU 0440 & 0650 THRU 0810

Assessors Parcel Number: 34-2102-024-0010

Site No.: SFL865 SW336
Site Address: 19150 NW 8th Ave. Miami Gardens, FL 33169
FINAL LEASE 4.1.09

EXHIBIT B

DESCRIPTION OF PREMISES

to the Lease Agreement dated _____, 200 __, by and between City of North Miami Beach, as Lessor, and MetroPCS Florida LLC., a Delaware limited liability company.

The Premises consist of those specific areas described/shown below or attached where Lessee's communications antennae, equipment and cables occupy Lessor's Real Property. The Premises and the associated utility connections and access, including easements, ingress, egress, dimensions, and locations as described/shown, are approximate only and may be adjusted or changed by Lessee at the time of construction to reasonably accommodate sound engineering criteria and the physical features of Lessor's Real Property.

SEE ATTACHED DRAWINGS

(A final drawing or copy of a property survey or site plan depicting the above shall replace this Exhibit B when initialed by Lessor or Lessor's designated agent and may be modified from time to time when initialed by both Lessor and Lessee.)

EXHIBIT C

MEMORANDUM OF AGREEMENT

CLERK: Please return this document to: MetroPCS Florida LLC
1000 Sawgrass Parkway, Suite 400
Ft. Lauderdale, FL 33323
Attn.: Property Manager

This Memorandum of Agreement is entered into on this ____ day of _____, _____, by and between City of North Miami Beach, with an office at 17011 NE 19 Avenue, North Miami Beach, FL 33162 (hereinafter referred to as "Lessor"), and MetroPCS Florida LLC, a Delaware limited liability company, with an office at 1000 Sawgrass Corporate Parkway, Suite 400, Ft. Lauderdale, FL 33323 (hereinafter referred to as "Lessee").

1. Lessor and Lessee entered into a Communications Site Lease Agreement ["Agreement"] on the ____ day of _____, _____, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing are set forth in the Agreement.
2. The term of the Agreement is for five (5) years commencing on the date Lessee begins construction of Lessee's Facilities on the Premises or twelve (12) months from the date of full execution of this Lease Agreement, whichever first occurs ("Commencement Date") and terminating on the fifth anniversary of the Commencement Date, with four (4) successive five (5) year options to renew.
3. The Land which is the subject of the Agreement is described in Exhibit A annexed hereto.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the day and year first above written.

LESSOR:

LESSEE:

City of North Miami Beach

MetroPCS Florida LLC., a Delaware limited liability company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

STATE OF _____

COUNTY OF _____

On _____, before me, _____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacit(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

(SEAL)

STATE OF FLORIDA

COUNTY OF BROWARD

On _____, before me, _____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacit(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

(SEAL)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

MetroPCS Florida, LLC
1000 Sawgrass Corporate Parkway
Suite 400
Fort Lauderdale, FL 33323
Attn.: Property Management
Site # SFL865

MEMORANDUM OF LEASE AGREEMENT

This Memorandum of Agreement is entered into on this ____ day of _____, 200__, by and between City of North Miami Beach, with an office at 17011 NE 19 Avenue, North Miami Beach, FL 33162 (hereinafter referred to as "Lessor"), and MetroPCS Florida, LLC, a Delaware limited liability company, with an office at 1000 Sawgrass Corporate Parkway, Suite 400, Fort Lauderdale, FL, 33323 (hereinafter referred to as "Lessee").

1. Lessor and Lessee entered into a Communications Site Lease Agreement ["Agreement"] on the ____ day of _____, 200__, for the purpose of installing, operating and maintaining a communications facility and other improvements. All of the foregoing is set forth in the Agreement.
2. The term of the Agreement is for five (5) years commencing on the date Lessee begins construction of Lessee Facilities, or twelve (12) months from full execution of the Lease Agreement, whichever first occurs ("Commencement Date") and terminating on the fifth anniversary of the Commencement Date, with four (4) successive five (5) year options to renew. In no event shall the term of the Agreement exceed twenty-five (25) years.
3. The Land which is the subject of the Agreement is described in Exhibit A annexed hereto.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement as of the day and year first above written.

LESSOR:

City of North Miami Beach

By: _____

Name: _____

Title: _____

Date: _____

Witnesses for Lessor:

By: _____

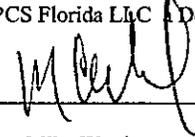
Name: _____

By: _____

Name: _____

LESSEE:

MetroPCS Florida LLC, a Delaware limited liability company

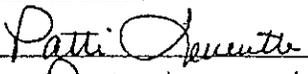
By:  _____

Name: Mike Ward

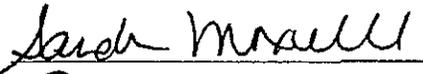
Title: GM / VP

Date: 4/9/09

Witnesses for Lessee:

By:  _____

Name: Patti Leverette

By:  _____

Name: Sandra Maxwell

STATE OF _____

COUNTY OF _____

On _____, before me, _____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

(SEAL)

STATE OF FLORIDA

COUNTY OF BROWARD

On 4/9/09, before me, Mari Arencibia, Notary Public, personally appeared Mike Ward, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Mari Arencibia
Notary Public

(SEAL)

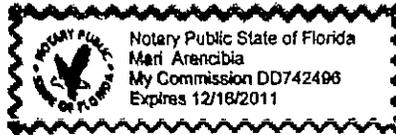


EXHIBIT A
DESCRIPTION OF LAND

to the Agreement dated _____, 200 ____, by and between City of North Miami Beach, as Lessor, and MetroPCS Florida LLC, a Delaware limited liability company..

The Land is described and/or depicted as follows:

NORWOOD WATER TREATMENT PLANT PB 159-66 T-21037 TRACT A LOT SIZE
374802 SQFT FAU 30-2102-001-0020 0021 & 0370 THRU 0440 & 0650 THRU 0810

and otherwise known as:

APN: 34-2102-024-0010

MEMORANDUM

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

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

DATE: June 2, 2009

**RE: RESOLUTION NO. R2009-38
 State Attorney's Office Funding**

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL
OF THE CITY OF NORTH MIAMI BEACH, FLORIDA,
REQUESTING GOVERNOR CHARLIE CHRIST TO VETO
THE 2% PAY CUTS PASSED BY THE STATE
LEGISLATURE FOR THE STATE ATTORNEY'S OFFICE.**

RESOLUTION NO. R2009-38

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL
OF THE CITY OF NORTH MIAMI BEACH, FLORIDA,
REQUESTING GOVERNOR CHARLIE CHRIST TO VETO
THE 2% PAY CUTS PASSED BY THE STATE
LEGISLATURE FOR THE STATE ATTORNEY'S OFFICE.**

WHEREAS, the Florida Legislature recently passed a two (2%) percent pay cut for most employees of the State Attorney's Office; and

WHEREAS, the State Attorney's Office has seen a dramatic increase in homicides and felony cases while simultaneously undergoing an exodus of experienced prosecutors due to the overly demanding work hours and already low scale of pay; and

WHEREAS, police budgets have stayed intact due to the infusion of stimulus monies, thus enabling continued levels of crime detection; however, inadequate funding for the State Attorney's Office, resulting in the inability to timely prosecute and detain those criminals that prey on our families and communities, will result in their all-too-rapid re-entry onto our streets; and

WHEREAS, the Mayor & City Council of the City of North Miami Beach are greatly concerned that the lack of adequate funding for the State Attorney's Office, enabling it to maintain dedicated, experienced and hard-working prosecutorial staff, will result in a public safety crisis for our communities.

NOW, THEREFORE,

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

Section 1. The foregoing recitals are true and correct.

RESOLUTION R2009-38

Section 2. The Mayor and Council of the City of North Miami Beach, Florida, hereby urge Governor Charlie Christ to veto the 2% pay cut passed for the employees of the State Attorney's Office.

Section 3. The City Clerk is hereby directed to send a copy of this Resolution to Governor Charlie Christ and the Honorable Katherine Fernandez-Rundle, Miami-Dade County State Attorney.

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

ATTEST:

SUSAN OWENS
CITY CLERK

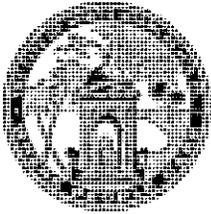
(CITY SEAL)

MYRON ROSNER
MAYOR

APPROVED AS TO FORM:

DARCEE S. SIEGEL
CITY ATTORNEY

SPONSORED BY: Councilwoman Phyllis Smith
Mayor and Council



City of North Miami Beach

Interoffice Memorandum

CITY ATTORNEY'S OFFICE

Phone: (305) 948-2939

Fax: (305) 787-6004

TO: Mayor & City Council
FROM: Darcee S. Siegel, ^{*DSS*} City Attorney
DATE: June 2, 2009

RE: Ordinance No. 2009-11

This Ordinance is intended to simplify, expedite and make uniform the process of removing members from City boards and commissions who fail to take their responsibilities seriously. It is necessary to guarantee that the important work of these boards is not impeded and delayed by quorum failures.

DSS/mht

ORDINANCE NO. 2009-11

AN ORDINANCE AMENDING SECTION 2-32.4 OF THE CODE OF ORDINANCES OF THE CITY OF NORTH MIAMI BEACH, FLORIDA, REVISING THE PROCEDURE FOR REMOVING BOARD AND/OR COMMISSION MEMBERS FOR FAILURE TO ATTEND MEETINGS; PROVIDING FOR THE REPEAL OF ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR THE CODIFICATION OF THIS ORDINANCE.

WHEREAS, the Mayor and City Council of the City of North Miami Beach desire to expedite and simplify the procedure for the removal of Board and/or Commission members who regularly fail to attend meetings and thereby obstruct and impede the ability of said Board and/or Commission from conducting the business of the City.

NOW, THEREFORE,

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

Section 1. The foregoing recitals are true and correct.

Section 2. Section 2-32.4 of the Code of Ordinances of the City of North Miami Beach is hereby amended as follows:

Chapter II Structure of City Government

Article VII Board, Committees and Commissions. Section 2-32.4, Removal, Replacement of Members.

a. Should any member of any Board, Commission or Committee fail to attend two (2) of three (3) consecutive meetings without due cause and without prior approval of the Chairperson, the Chairperson of that Board, Commission or Committee shall declare the member's seat vacant and certify same to the City Council. ~~The member shall be automatically removed and a~~ A replacement shall promptly be named by the City Council for the remainder of the unexpired term.

ORDINANCE NO. 2009-11

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 21st day of April, 2009.

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

ATTEST:

**SUSAN OWENS
CITY CLERK**

(CITY SEAL)

**MYRON ROSNER
MAYOR**

APPROVED AS TO FORM

**DARCEE S. SIEGEL
CITY ATTORNEY**

**Sponsored by: Councilman Philippe Deroose
Mayor and City Council**

ORDINANCE NO. 2009-11