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**SUPPLEMENTAL MATERIAL**  
**JUNE 9, 2004**  
**CITY COMMISSION MEETING**

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**SUPPLEMENTAL MATERIAL**

**C7 - Resolutions**

- C7G A Resolution Adopting And Appropriating The Third Amendment To The Police Confiscation Trust Fund Budget For The Fiscal Year 2003/04 In The Amount Of \$26,900 To Be Funded From The Proceeds Of State Confiscated Funds.

(Police Department)

**(Memorandum and Resolution)**

**R7 - Resolutions**

- R7B A Resolution Accepting The Certification Of Default By The City Engineer, Pursuant To Article 8.8 (Entitled, "Annulment Of Contract") Of That Certain Contract Entered Into Between The City And Regosa Engineering, Inc. (Contractor), Pursuant To Request For Proposals No. 21-00/01, For Construction Of The Normandy Park Pool Facility (Project) (Contract); Further, Pursuant To Article 8.8 Of The Contract: (1) Taking The Prosecution Of The Work Out Of The Hands Of The Contractor; (2) Authorizing The Appropriation Or Use Of Any Or All Materials And Equipment On The (Project) Ground As May Be Suitable And Acceptable; And (3) Authorizing And Delegating To The City Manager Such Authority As Shall Be Necessary For Him To Enter Into An Agreement For The Completion Of Said Contract, According To The Terms And Provisions Thereof, Or Use Such Other Methods As In His Opinion Shall Deem Advisable For The Completion Of Said Contract In An Acceptable Manner; Further, In Order To Effectuate The Actions To Be Taken In Item (3) Above, Waiving By 5/7ths Vote, The Competitive Bidding Requirement, Finding Such Waiver To Be In The Best Interest Of The City, And Authorizing The City Manager To Select, Negotiate, And Award Any And All Contracts, Purchase Orders, Change Orders And Other Documents, Including But Not Limited To An Amendment To The City's Existing Contract With The Corradino Group, Inc., The City's Architect/Engineer For The Project, To Provide For Such Additional Services As Necessary To Complete/Administer The Remaining Work On The Project; Provided Further That All Of The Aforestated Contracts, Purchase Orders, Change Orders, Amendments, And Other Documents Shall Be Substantially In Accordance With The Project And The Scope Of The Work Contemplated Within The Current Construction Contract With Contractor, And Shall Not Exceed The Current Amount Appropriated For The Project By The Mayor And City Commission, And Any Such Contracts, Purchase Orders, Change Orders, Amendments, And Other Documents That Exceed Said Appropriated Amount Shall Require The Approval Of The City Commission; Further Authorizing The City Manager Or His Designee To Invoke The Performance Bond Issued By St. Paul Guardian Insurance Company, As A Result Of Contractor's Default Under The Contract.

(Capital Improvement Projects)

**(Resolution)**

**CITY OF MIAMI BEACH  
COMMISSION ITEM SUMMARY**



**Condensed Title:**

A Resolution to adopt and appropriate the Third Amendment to the Police Confiscation Trust Fund Budget for Fiscal Year 2003/04, in the amount of \$26,900 to be funded from the proceeds of State.

**Issue:**

Should the Third Amendment to the Police Confiscation Trust Fund Budget for Fiscal Year 2003/04 be adopted?

**Item Summary/Recommendation:**

The Chief of Police has reviewed and identified the needs for the appropriation and has established that the expenditures of forfeiture funds are in compliance with Section 932.7055, Florida State Statutes and the Guide to Equitable Sharing of Federally Forfeited Property for Local Law Enforcement Agencies.

The Administration recommends authorization to adopt and appropriate the Third Amendment to the Police Confiscation Trust Fund Budget for Fiscal Year 2003/04.

**Advisory Board Recommendation:**

N/A

**Financial Information:**

**Amount to be expended:**

Source of Funds:		Amount	Account	Approved
<input type="checkbox"/> Finance Dept.	1		Confiscation Funds:	
	2	\$ 26,900	607.8000.351210 State funds	
	3			
	4			
	<b>Total</b>	<b>\$ 26,900</b>		

**Sign-Offs:**

Department Director	Assistant City Manager	City Manager
		<i>J. [Signature]</i>

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AGENDA ITEM C76  
DATE 6-9-04

# CITY OF MIAMI BEACH

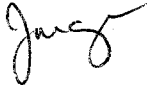
CITY HALL 1700 CONVENTION CENTER DRIVE MIAMI BEACH, FLORIDA 33139  
www.ci.miami-beach.fl.us



## COMMISSION MEMORANDUM

**To:** Mayor David Dermer and  
Members of the City Commission

**Date:** June 9, 2004

**From:** Jorge M. Gonzalez  
City Manager 

**Subject:** **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ADOPTING AND APPROPRIATING THE THIRD AMENDMENT TO THE POLICE CONFISCATION TRUST FUND BUDGET FOR THE FISCAL YEAR 2003/04 IN THE AMOUNT OF \$26,900 TO BE FUNDED FROM THE PROCEEDS OF STATE.**

### ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

### ANALYSIS

Florida Statute 932.7055 provides for expenditures of forfeiture funds for law enforcement purposes.

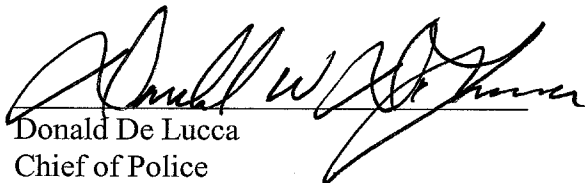
The Miami Beach Chief of Police, Don De Lucca has reviewed and identified the need for the appropriation and has established that the expenditures of forfeiture funds are in compliance with Section 932.7055, Florida State Statutes, and the Guide to Equitable Sharing of Federally Forfeited Property for Local Law Enforcement Agencies. These forfeiture funds have been deposited in the Police Confiscation Trust Fund. The City has complied with all statutory procedures involved in the transaction of these funds.

The Administration requests authorization to adopt and appropriate the Third Amendment to the operating budget for the Police Confiscation Trust Fund for Fiscal Year 2003/04 and to appropriate \$26,900 from State Funds to provide for the expenditures listed in Exhibit "A".

JMG/DD/ic

AFFIDAVIT

I, Donald De Lucca, Chief of Police, City of Miami Beach, do hereby certify that the aforementioned proposed request for expenditures from the City of Miami Beach Police Confiscation Trust Fund, for the 2003/04 fiscal year providing funds for expenditures as indicated on Exhibit "A", complies with the provisions of Section 932.7055(4)(a), Florida Statutes, and the Guide to Equitable Sharing of Federally Forfeited Property for Local Law Enforcement Agencies.

A handwritten signature in black ink, appearing to read "Donald De Lucca", is written over a horizontal line.

Donald De Lucca  
Chief of Police  
Miami Beach Police Department

\_\_\_\_\_  
Date

**EXHIBIT "A"**

**MIAMI BEACH POLICE DEPARTMENT  
CONFISCATION TRUST FUND  
THIRD AMENDMENT  
FISCAL YEAR 2003/04**

**STATE FUNDS:**

<b>MIAMI BEACH POLICE ATHLETIC LEAGUE</b> Operating expenses	<b>\$</b>	<b>12,500</b>
<b>MIAMI BEACH POLICE ATHLETIC LEAGUE</b> Summer Job Program	<b>\$</b>	<b>12,000</b>
<b>REACH-IN STYLE REFRIGERATOR FOR THE PROPERTY UNIT</b> Equipment required to enhance efficient collection, storage, and retrieval of evidence and/or contraband seized during the normal course of police services.	<b>\$</b>	<b>2,400</b>

**SUB-TOTAL STATE FUNDS \$ 26,900**

RESOLUTION No. \_\_\_\_\_

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ADOPTING AND APPROPRIATING THE THIRD AMENDMENT TO THE POLICE CONFISCATION TRUST FUND BUDGET FOR FISCAL YEAR 2003/04 IN THE AMOUNT OF \$26,900 TO BE FUNDED FROM THE PROCEEDS OF STATE CONFISCATED FUNDS.**

**WHEREAS**, Section 932.7055, Florida Statutes, addresses the purpose and procedures to be utilized for the appropriation and expenditures of the Police Confiscation Trust Fund; and

**WHEREAS**, the Chief of Police of the City of Miami Beach has determined that the need for appropriation and expenditures exist and the appropriation and expenditure of forfeiture funds is in compliance with Section 932.7055, Florida Statutes, and the Guide to Equitable Sharing of Federally Forfeited Property for Local Law Enforcement Agencies; and

**WHEREAS**, funds in the amount of \$26,900 are available in the Police Confiscation Trust Fund, and the current budget, increases and amended budget are as follows:

	<b>CURRENT BUDGET</b>	<b>INCREASE</b>	<b>AMENDED BUDGET</b>
<b>STATE-</b>	<b>\$ 115,260</b>	<b>\$ 26,900</b>	<b>\$ 141,160</b>
<b>FEDERAL-</b>	<u><b>710,322</b></u>	<u><b>0</b></u>	<u><b>710,322</b></u>
<b>TOTAL-</b>	<b>\$ 825,582</b>	<b>\$ 26,900</b>	<b>\$ 852,482.</b>

**NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA**, that the Mayor and City Commission hereby adopt the Third Amendment to the FY 2003/04 Police Confiscation Trust Fund Budget for the City of Miami Beach, in the amount of \$26,900, to be funded from the proceeds of State Confiscation Funds as reflected in the attached Exhibit "A".

**PASSED AND ADOPTED THIS** \_\_\_\_\_ **day of** \_\_\_\_\_, 2004

\_\_\_\_\_  
Mayor

**ATTEST BY:**

\_\_\_\_\_  
City Clerk

**FUNDING APPROVED BY:**

\_\_\_\_\_  
Office of Management  
& Budget

**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

  
\_\_\_\_\_  
City Attorney

6-8-04  
Date

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE CERTIFICATION OF DEFAULT BY THE CITY ENGINEER, PURSUANT TO ARTICLE 8.8 (ENTITLED, "ANNULMENT OF CONTRACT") OF THAT CERTAIN CONTRACT ENTERED INTO BETWEEN THE CITY AND REGOSA ENGINEERING, INC. (CONTRACTOR), PURSUANT TO REQUEST FOR PROPOSALS NO. 21-00/01, FOR CONSTRUCTION OF THE NORMANDY PARK POOL FACILITY (PROJECT)(CONTRACT); FURTHER, PURSUANT TO ARTICLE 8.8 OF THE CONTRACT: (1) TAKING THE PROSECUTION OF THE WORK OUT OF THE HANDS OF THE CONTRACTOR; (2) AUTHORIZING THE APPROPRIATION OR USE OF ANY OR ALL MATERIALS AND EQUIPMENT ON THE (PROJECT) GROUND AS MAY BE SUITABLE AND ACCEPTABLE; AND (3) AUTHORIZING AND DELEGATING TO THE CITY MANAGER SUCH AUTHORITY AS SHALL BE NECESSARY FOR HIM TO ENTER INTO AN AGREEMENT FOR THE COMPLETION OF SAID CONTRACT, ACCORDING TO THE TERMS AND PROVISIONS THEREOF, OR USE SUCH OTHER METHODS AS IN HIS OPINION SHALL DEEM ADVISABLE FOR THE COMPLETION OF SAID CONTRACT IN AN ACCEPTABLE MANNER; FURTHER, IN ORDER TO EFFECTUATE THE ACTIONS TO BE TAKEN IN ITEM (3) ABOVE, WAIVING BY 5/7THS VOTE, THE COMPETITIVE BIDDING REQUIREMENT, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY, AND AUTHORIZING THE CITY MANAGER TO SELECT, NEGOTIATE, AND AWARD ANY AND ALL CONTRACTS, PURCHASE ORDERS, CHANGE ORDERS AND OTHER DOCUMENTS, INCLUDING BUT NOT LIMITED TO AN AMENDMENT TO THE CITY'S EXISTING CONTRACT WITH THE CORRADINO GROUP, INC., THE CITY'S ARCHITECT/ENGINEER FOR THE PROJECT (A/E CONSULTANT), TO PROVIDE FOR SUCH ADDITIONAL SERVICES AS NECESSARY TO COMPLETE/ADMINISTER THE REMAINING WORK ON THE PROJECT; PROVIDED FURTHER THAT ALL OF THE AFORESTATED CONTRACTS, PURCHASE ORDERS, CHANGE ORDERS, AMENDMENTS, AND OTHER DOCUMENTS SHALL BE SUBSTANTIALLY IN ACCORDANCE WITH THE PROJECT AND THE SCOPE OF THE WORK CONTEMPLATED WITHIN THE CURRENT CONSTRUCTION CONTRACT WITH CONTRACTOR, AND SHALL NOT EXCEED THE CURRENT AMOUNT APPROPRIATED FOR THE PROJECT BY THE MAYOR AND CITY COMMISSION, AND ANY SUCH CONTRACTS, PURCHASE ORDERS, CHANGE ORDERS, AMENDMENTS, AND OTHER DOCUMENTS THAT EXCEED SAID APPROPRIATED AMOUNT SHALL REQUIRE THE APPROVAL OF THE CITY COMMISSION; FURTHER AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO INVOKE THE PERFORMANCE BOND ISSUED BY ST. PAUL GUARDIAN INSURANCE COMPANY, AS A RESULT OF CONTRACTOR'S DEFAULT UNDER THE CONTRACT.

WHEREAS, pursuant to approval by the voters of the \$15 Million General Obligation Bond for the improvements to the City's parks on November 8, 1994, the City entered into an Agreement with The Corradino Group, Inc. (the A/E Consultant) to provide architecture and engineering services for the Normandy Park and Pool Facility Improvements (the Project); and

Agenda Item R7B  
Date 6-9-04

**WHEREAS**, the Project was extensively reviewed by the community during the programming and design phases; and

**WHEREAS**, based on analysis of the projected demographic data of the region, and in order to upgrade the quality of services being offered to the community, the Administration and the A/E Consultant re-evaluated the scope highlighted in the Master Plan, approved on June 19, 1996, and re-defined the Project to a more comprehensive aquatic facility consisting of a pool with an aquatic play structure, and a four (4) lane lap pool with night-swimming-quality lighting; and

**WHEREAS**, the Project also included construction of new restrooms and shower facilities, multi-purpose activity building, outdoor trellis shade areas, and a concession building; and

**WHEREAS**, also included are a new pedestrian promenade to traverse the length of the park; new landscaping and irrigation, including a buffer between the park and the adjacent residential neighborhood; a new multi-purpose court; a decorative perimeter fence with new entry gate features; on-street parking; and sidewalk improvements; and

**WHEREAS**, on September 1, 2000, Invitation to Bid No. 136-99/00 was issued for construction of the Project; and

**WHEREAS**, from the 1,128 vendors that were notified, the City's Procurement Department received requests for plans and specifications, but the three lowest responsive bids had significantly exceeded the available funding of \$2,381,206, of which \$2,175,000 was allocated for hard construction costs and the remaining balance of \$117,206 for fixtures, furnishing and equipment (FF&E), signage, playground equipment, and special inspection fees; and

**WHEREAS**, on January 31, 2001, the Mayor and City Commission rejected all bids and on February 21, 2001, upon recommendation of the Administration, the City Commission adopted Resolution No. 2001-24279, to issue Request for Proposal No. 21-00/01 for the construction of the Project (the RFP); and

**WHEREAS**, on March 20, 2002, the Mayor and City Commission authorized the execution of a construction contract for the Project with Regosa Engineering, Inc. (Contractor), as the successful proposer pursuant to the RFP; said contract in the amount of \$2,264,000 (Contract); and

**WHEREAS**, additional funds were appropriated in the amount of \$389,000, to complete the construction: \$89,000 for ADA improvements and on-street parking improvements, and \$300,000 to complete funding for the hard construction costs of the aquatic facility, the ramps and walkways, the perimeter fence, and the pool night swimming and security lighting; and

**WHEREAS**, the additional items such as the multi-purpose court, soccer field renovations, and site landscaping and irrigation were not funded at the time; and

**WHEREAS**, since the commencement of construction, several delays related to coordination and unforeseen conditions, omissions and deletions, have arisen; significantly, the Contractor caused two (2) of the major events in the Project that have delayed its timely completion; and

**WHEREAS**, the overall delay caused by the Contractor's actions, considering that the events could have been cured concurrently, affected the construction schedule by approximately sixty (60) days, and do not warrant additional time to the Contractor; and



**WHEREAS**, Contractor submitted a recovery schedule that was approved by the A/E Consultant and accepted by the City, and a small increase in staffing was noted over the last couple of months; and

**WHEREAS**, notwithstanding the aforesaid, the Contractor has failed to demonstrate that the current labor force has the ability to perform both the needed remedial work on rejected items and keep up its own construction schedule; and

**WHEREAS**, as a result, progress continues to be slow on the Project, which is now approaching fifty (50%) completion; and

**WHEREAS**, during the past several months, Contractor has continued to fall seriously behind schedule, and does not appear to have a plan of action to correct this situation in a timely manner; and

**WHEREAS**, as Contractor has failed to prosecute the work of the Project in accordance with the terms of the Contract, on May 5, 2004, the Administration sent Contractor a Notice of Default, attached hereto as Attachment "1", for (among other things) failure to prosecute the work on the Project in a timely manner; and

**WHEREAS**, Contractor responded to the City's Notice of Default on May 7, 2004, in a letter attached hereto as Attachment "2", in which Contractor alleged that the City was in default, based on an unforeseen site condition that happened early in the Project; the City denies Contractor's allegation as the purported unforeseen site condition was a situation for which Contractor negotiated and accepted a Change Order for additional Contract time; and

**WHEREAS**, as required by the Contract, Contractor's response (Attachment "2") does not appropriately address the default items that the City identified in its May 5, 2004 Notice, nor has Contractor made any attempt to timely cure said issues; and

**WHEREAS**, the City responded to Contractor's May 7, 2004 letter, said response attached as Attachment "3" hereto; and

**WHEREAS**, the City's CIP Director, acting within the authority vested in the "City Engineer", as said term is defined in the Contract, has made the finding of Contractor's default under the Contract, and, pursuant to this Resolution and Attachments hereto, as well as the Commission Memorandum accompanying this Resolution and all exhibits thereto, all incorporated by reference herein, hereby submits to the Mayor and City Commission written certification of Contractor's default, as required by Article 8.8 of the Contract; and

**WHEREAS**, pursuant to Article 8.8 of the Contract, the Administration is also recommending that the City Commission remove the prosecution of the work from Contractor and authorize the City Manager, to enter into an Agreement for completion of said Contract, or use such other methods as in his opinion shall deem advisable for the completion of said Contract in an acceptable manner; and

**WHEREAS**, in order to properly invoke the Performance Bond on the Project, the Administration is requesting that the City Commission also authorize the City Manager to make the appropriate claim to the Surety, St. Paul Guardian Insurance Company, in accordance with requirements of the Performance Bond and the Contract; and

**WHEREAS**, several alternatives have been examined to proceed with the completion of the Project and due to the amount of time Contractor has been on the Project, it is important to act in an expedient manner to complete the unfinished work; and

**WHEREAS**, not only is the extended construction time, and therefore continued construction activity within the Project site, creating a hardship for the adjacent residential and commercial areas, but Contractor's defaults relative to delays and non-completion of the Project have the potential effect of creating a potential public health & safety hazard in terms of the unfinished site and structures thereon; and

**WHEREAS**, in order to address the aforesaid issues/potential conditions, and expedite this matter, the Administration recommend that the Mayor and City Commission waive the competitive bidding requirement, finding such waiver to be in the best interest of the City; and

**WHEREAS**, at this time, the Administration contemplates completing the work with a contractor from the City's Job Order Contractor (JOC) Program; and

**WHEREAS**, even with these changes, Substantial Completion of the Project is estimated for November 2004; and

**WHEREAS**, as a result of the Contractor's default, it is likely that the A/E Consultant's Agreement with the City will also have to be amended to provide for additional services to update construction documents and for extended construction administration services; and

**WHEREAS**, it is the recommendation of the Administration, with the concurrence of the City's Program Manager for the Project, URS Corporation, that the City exercise its rights, as contained within the Contract with Regosa, and as set forth in this Resolution by omitting the balance of the remaining work from the Contract, and removing the prosecution of the work from Contractor.

**NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA**, that the Mayor and City Commission hereby accept the Certification of Default by the City Engineer, pursuant to Article 8.8 (entitled, "Annulment of Contract") of that certain Contract entered into between the City and Regosa Engineering, Inc. (Contractor), pursuant to Request for Proposals No. 21-00/01, for construction of the Normandy Park Pool Facility (the Project)(the Contract); further, pursuant to Article 8.8 of the Contract: (1) take the prosecution of the work out of the hands of the Contractor; (2) authorize the appropriation or use of any or all materials and equipment on the (the Project) ground as may be suitable and acceptable; and (3) authorize and delegating to the City Manager such authority as shall be necessary for him to enter into an Agreement for the completion of said Contract, according to the terms and provisions thereof, or use such other methods as in his opinion shall seem advisable for the completion of said Contract in an acceptable manner; further, in order to effectuate the actions to be taken in Item (3) above, waive by 5/7ths vote, the competitive bidding requirement, finding such waiver to be in the best interest of the City, and authorize the City Manager to select, negotiate, and award any and all contracts, purchase orders, change orders and other documents, including but not limited to an amendment to the City's existing Contract with The Corradino Group, Inc., the City's Architect/Engineer for the Project (A/E Consultant), to provide for such additional services as necessary to complete/administer the remaining work on the Project; provided further that all of the aforesaid contracts, purchase orders, change orders, amendments, and other documents shall be substantially in accordance with the Project and the scope of the work contemplated within the

current Construction Contract with Contractor, and shall not exceed the current amount appropriated for the Project by the Mayor and City Commission, and any such contracts, purchase orders, change orders, amendments, and other documents that exceed said appropriated amount shall require the approval of the City Commission; further authorize the City Manager or his designee to invoke the Performance Bond issued by St. Paul Guardian Insurance Company, as a result of Contractor's default under the Contract.

**PASSED** and **ADOPTED** this 9<sup>th</sup> day of June, 2004.

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
MAYOR

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**APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION**

  
\_\_\_\_\_  
City Attorney

6-4-04  
Date