



# MIAMI BEACH

## City Commission Meeting SUPPLEMENTAL MATERIAL 1

City Hall, Commission Chambers, 3rd Floor, 1700 Convention Center Drive  
November 14, 2012

Mayor Matti Herrera Bower  
Vice-Mayor Michael Góngora  
Commissioner Jorge R. Exposito  
Commissioner Jerry Libbin  
Commissioner Edward L. Tobin  
Commissioner Deede Weithorn  
Commissioner Jonah Wolfson

Interim City Manager Kathie G. Brooks  
City Attorney Jose Smith  
City Clerk Rafael E. Granado

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### ATTENTION ALL LOBBYISTS

Chapter 2, Article VII, Division 3 of the City Code of Miami Beach entitled "Lobbyists" requires the registration of all lobbyists with the City Clerk prior to engaging in any lobbying activity with the City Commission, any City Board or Committee, or any personnel as defined in the subject Code sections. Copies of the City Code sections on lobbyists laws are available in the City Clerk's office. Questions regarding the provisions of the Ordinance should be directed to the Office of the City Attorney.

### SUPPLEMENTAL AGENDA

#### C7 - Resolutions

C7D A Resolution Approving And Authorizing The Mayor And City Clerk To Execute Amendment No. 2, In A Negotiated Not-To-Exceed Amount Of \$145,876, To The Agreement Between The City Of Miami Beach And Superior Landscaping & Lawn Services, Inc., Dated June 15, 2011, For Ground Maintenance Services For The North Shore/Washington Avenue Area; Said Amendment For The Inclusion Of The Miami Beach Convention Center (MBCC) Ground Maintenance.

(Convention Center/Procurement)  
**(Resolution)**

**C7 - Resolutions** (Continued)

- C7F A Resolution Waiving By 5/7ths Vote, The Formal Competitive Bidding Requirement, Finding Such Waiver To Be In The Best Interest Of The City, And Authorizing The City Manager To Negotiate And Execute An Agreement With Terremark North America Inc., In The Not To Exceed Amount Of \$328,560, For A Period Of One (1) Year, To Provide Internet Access, Managed Router Services, And Hardware Co-Location Space At The Network Access Point (NAP) Of The Americas Data Center Facility.

(Information Technology/Procurement)  
**(Resolution)**

- C7I A Resolution Rejecting All Bids Received Pursuant To Invitation To Bid (ITB) No. 47-11/12, To Provide Grounds Maintenance Services On Selected Sites Throughout The South Beach District, And Authorizing The Administration To Issue A New Invitation To Bid.

(Parks & Recreation/Procurement)  
**(Resolution)**

- C7J A Resolution Approving And Authorizing The Mayor And City Clerk To Execute Amendment No. 2 To The Contract With Radio Satellite Integrators, Inc. (RSI), Dated June 27, 2011, In An Amount Not To Exceed \$193,000, To Install The Automated Vehicle Locator (AVL) Device In Parks And Recreational Department Vehicles, Public Works Department Vehicles, Property Management Division Vehicles, And Additional Fire Department Vehicles; With Funding Previously Appropriated In The FY 2012/13 Budget.

(Public Works)  
**(Resolution)**

- C7N A Resolution Approving And Authorizing The Following Actions With Regard To The City's Neighborhood Stabilization Program 1 (NSP1) Agreements: 1) Approving And Authorizing The Mayor And City Clerk To Execute Amendment Number 4 To The Subgrant Agreement Between The State Of Florida Department Of Economic Opportunity (DEO), And The City Modifying The Expiration Date Of The Subgrant Agreement From November 23, 2012 To February 15, 2013, Re-Allocating Unspent Administration Funds, And Modifying The Program Budgets; 2) Approving And Authorizing The Mayor And City Clerk To Execute Amendment No. 8 To The NSP1 Agreement Between The City And Miami Beach Community Development Corporation (MBCDC), Dated January 21, 2010, Modifying The Expiration Date Of Such Agreement From November 23, 2012 To February 15, 2013, And Allocating The City's Unspent Administration Funds In The Amount Of Approximately \$248,000, To Reduce The Debt Service On The Neptune Apartments; And 3) Further Authorizing The City Manager Or Her Designee To Take Such Actions, As May Be Required, With Regard To Preparing And Having The Mayor And City Clerk Execute Modifications Of Mortgages For The Referenced NSP1 Funded Projects; Such Modifications Revising The Mortgage Amounts To Reflect The Final Budgeted Amounts For Each Project.

(Real Estate, Housing & Community Development)  
**(Resolution)**

**R5 - Ordinances**

- R5D An Ordinance Amending Chapter 2 Of The Miami Beach City Code Entitled "Administration," By Amending Article VI, Entitled "Procurement," By Amending Division 5, Entitled "Debarment Of Contractors From City Work," By Amending Section 2-397, Entitled "Purpose Of Debarment," To Provide The Purpose For Suspensions; By Amending Section 2-398, Entitled "Definitions," To Provide Additional Definitions Regarding Suspension Of Contractors; By Amending Section 2-399, Entitled "List Of Debarred Contractors," To Provide For The Additional Listing Of Suspended Contractors; By Amending Section 2-400, Entitled "Effects Of Debarment" To Provide For The Effects Of Suspension; By Amending Section 2-401, Entitled "Continuation Of Current Contracts," To Provide That Suspension May Affect The Continuation Of Current Contracts Or Bids; By Amending Section 2-402, Entitled "Restrictions On Subcontracting," To Provide For Restrictions On Suspended Contractors; By Amending Section 2-403; Entitled "Debarment," To Provide For The Suspension Of Contractors; By Amending Section 2-404, Entitled "Causes For Debarment," By Providing For Additional Causes For Debarment, And To Provide For Causes For Suspension; By Amending Section 2-405, Entitled "Debarment Procedures," To Amend The Procedures For Debarment And To Provide Procedures For The Suspension Of Contractors; By Amending Section 4-206, Entitled "Period Of Debarment," By Providing For Periods Of Suspension And Requests For Reducing Periods Of Suspension; Providing For Repealer; Severability; Codification; And An Effective Date. **First Reading**  
(Requested by Mayor Matti Herrera Bower)  
(Legislative Tracking: City Attorney's Office)  
**(Ordinance)**

**R7 - Resolutions**

- R7H A Resolution Adopting The Third Amendment To The Fiscal (FY) 2011/12 General Fund Budget And The Second Amendment To The Enterprise, Internal Service And Special Revenue Funds Budget.  
(Budget & Performance Improvement)  
**(Memorandum)**

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

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AMENDMENT NO. 2, IN A NEGOTIATED NOT-TO-EXCEED AMOUNT OF \$145,876, TO THE AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND SUPERIOR LANDSCAPING & LAWN SERVICES, INC., DATED JUNE 15, 2011, FOR GROUND MAINTENANCE SERVICES FOR THE NORTH SHORE/WASHINGTON AVENUE AREA; SAID AMENDMENT FOR THE INCLUSION OF THE MIAMI BEACH CONVENTION CENTER (MBCC) GROUND MAINTENANCE.

WHEREAS, the Miami Beach Convention Center (MBCC) is in the process of improving the esthetics of both the exterior and interior of the facility by replacing old high maintenance plants, as well as plants that have outgrown their space; and

WHEREAS, on August 22, 2012, Request for Quote No. 02-11/12 (an informal bid process) was issued, with an opening dated of September 7, 2011, to all of the full-service landscape providers currently contracted to maintain public areas Citywide; and

WHEREAS, four (4) addenda were issued to provide additional information and to respond to all questions submitted by the prospective bidders, thus extending the bid opening due date to September 21, 2012; and

WHEREAS, on September 21, 2012 three (3) bids were received which exceeded the current available funding, as reflected in the adopted Capital Budget FY 2011/2012; and

WHEREAS, since Superior was the lowest bidder pursuant to the Request for Quotes, the Administration determined that it would be in the City's best interest to proceed to negotiate with Superior, using the price submitted by Superior under the Request for Quote process as a starting point; and

WHEREAS, the negotiated total of \$145,876 consists of purchase and installation of new landscaping and plant inventory in the amount of \$122,518 and ground maintenance for the first year at a cost of \$23,358. Annual landscape ground maintenance is being bid out citywide and the Convention Center will be included; and

WHEREAS, the City currently has a grounds maintenance contract with Superior Landscaping & Lawn Services, Inc., which was awarded pursuant to ITB No. 20-09/10 (the Contract) and the Administration recommends amending the City's existing ground maintenance service contract with Superior (as the lowest bidder in response to the Request for Quotes), in the not to exceed negotiated amount of \$145,876.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby accept the recommendation of the City Manager to execute Amendment No. 2, in a negotiated not-to-exceed amount of \$145,876, to the existing Agreement between the City and Superior Landscaping and Lawn Services, Inc., dated June 15, 2011, for ground maintenance services for North Shore/Washington Avenue areas; with said Amendment providing for the inclusion of the Miami Beach Convention Center (MBCC) grounds maintenance.

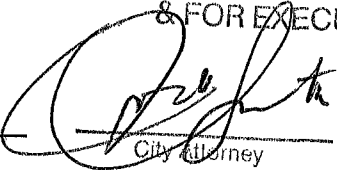
PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2012.

ATTEST:

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

\_\_\_\_\_  
MAYOR

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

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

11/9/12  
\_\_\_\_\_  
Date

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

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, WAIVING BY 5/7THS VOTE, THE FORMAL COMPETITIVE BIDDING REQUIREMENT, FINDING SUCH WAIVER TO BE IN THE IN THE BEST INTEREST OF THE CITY, AND AUTHORIZING THE CITY MANAGER, TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH TERREMARK NORTH AMERICA INC., IN THE NOT TO EXCEED AMOUNT OF \$328,560, FOR A PERIOD OF ONE (1) YEAR, TO PROVIDE INTERNET ACCESS, MANAGED ROUTER SERVICES, AND HARDWARE COLOCATION SPACE AT THE NETWORK ACCESS POINT (NAP) OF THE AMERICAS DATA CENTER FACILITY.**

**WHEREAS**, the Information Technology (IT) Department requires the continued use of Terremark North America, Inc., site as part of the City's Disaster Recovery program to provide internet access, managed router services and hardware collocation space at the Network Access Point (NAP) of the Americas Data Center facility; and

**WHEREAS**, this space, consisting of 100 and 260 square feet of hardened Category 5 rated co-location space, and its associated network connectivity serve, as an off-site disaster recovery and production data center location for the City's critical server/network, and public safety infrastructure; and

**WHEREAS**, the contracted services will also provide for the City's overall connectivity to the internet; and

**WHEREAS**, the IT Department has been using the Terremark North America, Inc., site for the past three (3) years, as authorized by a piggyback memo, utilizing Miami-Dade County Contract No. 7662-4/10, for Internet Access and Managed Router Services, (as it offered discounted rates); and

**WHEREAS**, the City can no longer piggyback on the County contract, as the Board of Miami-Dade County Commissioners authorized the continued use of such contract as a bid waiver which is not permissible and the City Code only allows the piggyback of competitively bid contracts; and

**WHEREAS**, the Administration recommends that the Mayor and City Commission hereby waive, by 5/7ths vote, the formal competitive bid process, and authorize the City Manager, to negotiate and execute an agreement with Terremark North America, Inc., in the not to exceed amount of \$328,560, for a period of one (1) year, as part of the City's Disaster Recovery program to provide internet access, managed router services and hardware collocation space at the Network Access Point (NAP) of the Americas Data Center facility, finding such waiver to be in the best interest of the City;

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA** that the Mayor and City Commission hereby waive, by 5/7ths vote, the formal competitive bidding requirement, finding such waiver to be in the best interest of the City, and authorize the City Manager, to negotiate and execute an agreement with Terremark North America, Inc., in the not to exceed amount of \$328,560, for a period of one (1) year, to provide

internet access, managed router services, and hardware co-location space at the Network Access Point (NAP) of the Americas Data Center Facility.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

ATTEST:

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

\_\_\_\_\_  
MAYOR

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

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*[Signature]*  
\_\_\_\_\_  
City Attorney

*[Signature]* 11-8-12  
\_\_\_\_\_  
Date

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

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, REJECTING ALL BIDS RECEIVED PURSUANT TO INVITATION TO BID (ITB) NO. 47-11/12, TO PROVIDE GROUNDS MAINTENANCE SERVICES ON SELECTED SITES THROUGHOUT THE SOUTH BEACH DISTRICT, AND AUTHORIZING THE ADMINISTRATION TO ISSUE A NEW INVITATION TO BID.

WHEREAS, the ITB was issued on August 17, 2012, with an opening date of September 19, 2012; and

WHEREAS, a pre-bid conference to provide information to prospective proposers was held on August 30, 2012; and

WHEREAS, Bidsync sent notices to 55 prospective proposers resulting in the receipt of four (4) proposals by Everglades Environmental Care, Inc., SFM Services, Inc., Superior Landscaping & Lawn Services, Inc., and Valleycrest Landscape Maintenance; and

WHEREAS, on October 8, 2012, the Parks and Recreation Department met with the Procurement Division to review the proposals received and to discuss inconsistencies regarding the pricing sheets; and

WHEREAS, the recommendation by the Parks and Recreation Department is to reject the bids received and to reissue the ITB with a revised and simplified pricing sheet in addition to including locations in the City Center, Mid Beach, and South Beach Districts; and

WHEREAS, after considering the review and recommendation of the Parks and Recreation Department, the Interim City Manager exercised her due diligence and recommends that the Mayor and City Commission reject all bids received and reissue the ITB upon revisions of the pricing sheet and other specifications.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby accept the recommendation of the City Manager rejecting all bids received pursuant to Invitation to Bid (ITB) No. 47-11/12, to provide grounds maintenance services on selected sites throughout the South Beach District, and authorize the Administration to issue a new Invitation to Bid.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2012.

ATTEST:

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

\_\_\_\_\_  
MAYOR

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

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

11/8/12  
\_\_\_\_\_  
Date



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

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AMENDMENT NO. 2 TO THE CONTRACT WITH RADIO SATELLITE INTEGRATORS, INC. (RSI), DATED JUNE 27, 2011, IN AN AMOUNT NOT TO EXCEED \$193,000, TO INSTALL THE AUTOMATED VEHICLE LOCATOR (AVL) DEVICE IN PARKS AND RECREATIONAL DEPARTMENT VEHICLES, PUBLIC WORKS DEPARTMENT VEHICLES, PROPERTY MANAGEMENT DIVISION VEHICLES, AND ADDITIONAL FIRE DEPARTMENT VEHICLES; WITH FUNDING PREVIOUSLY APPROPRIATED IN THE FY 2012/13 BUDGET.**

**WHEREAS**, on December 8, 2010, the Mayor and City Commission approved Resolution No. 2010-7561, accepting the City Manager's recommendation pertaining to the ranking of proposals pursuant to Request for Proposals (RFP) No. 39-09/10, for the acquisition of an automated vehicle locator (AVL) system, and authorized the Administration to enter into negotiations with the top-ranked proposer, Radio Satellite Integrators, Inc (RSI); and further authorized the Mayor and City Clerk to execute an agreement upon the conclusion of successful negotiations by the Administration; and

**WHEREAS**, the Administration successfully negotiated with RSI and executed a contract on June 27, 2011; and

**WHEREAS**, at its July 18, 2012 meeting, the City Commission approved Amendment No. 1 to the RSI Agreement (Resolution No. 2012-27945) that extended the implementation of AVL installations; and

**WHEREAS**, over 350 AVL devices have been installed to date in vehicles from the Building, Code Compliance, Parking, Police and Sanitation Departments/Divisions; and

**WHEREAS**, funding for a third phase of AVL installation was appropriated in the FY 2012/13 Budget; and

**WHEREAS**, additional phases will extend to all City vehicles and most equipment.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA**, that the Mayor and City Commission hereby approve and authorize the Mayor and City Clerk to execute Amendment No. 2 to the contract with Radio Satellite Integrators, Inc. (RSI), dated June 27, 2011, in an amount not to exceed \$193,000, to install the Automated Vehicle Locator (AVL) device in Parks and Recreational Department vehicles, Public Works Department vehicles, Property Management Division vehicles, and additional Fire Department vehicles; with funding previously appropriated in the FY 2012/13 budget.

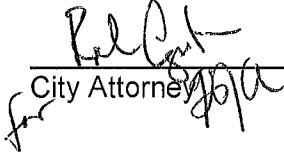
**PASSED and ADOPTED** this 14<sup>th</sup> day of November, 2012.

ATTEST:

\_\_\_\_\_  
Rafael Granado, City Clerk

\_\_\_\_\_  
Matti Herrera Bower, Mayor

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

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

11/8/12  
Date

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

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE FOLLOWING ACTIONS WITH REGARD TO THE CITY'S NEIGHBORHOOD STABILIZATION PROGRAM 1 (NSP1) AGREEMENTS: 1) APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AMENDMENT NO. 4 TO THE SUBGRANT AGREEMENT BETWEEN THE STATE OF FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY (DEO) AND THE CITY MODIFYING THE EXPIRATION DATE OF THE SUBGRANT AGREEMENT FROM NOVEMBER 23, 2012, TO FEBRUARY 15, 2013, RE-ALLOCATING UNSPENT ADMINISTRATION FUNDS, AND MODIFYING THE PROGRAM BUDGETS; 2) APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AMENDMENT NO. 8 TO THE NSP1 AGREEMENT BETWEEN THE CITY AND MIAMI BEACH COMMUNITY DEVELOPMENT CORPORATION (MBCDC), DATED JANUARY 21, 2010, MODIFYING THE EXPIRATION DATE OF SUCH AGREEMENT FROM NOVEMBER 23, 2012 TO FEBRUARY 15, 2013, AND ALLOCATING THE CITY'S UNSPENT ADMINISTRATION FUNDS IN THE AMOUNT OF APPROXIMATELY \$248,000 TO REDUCE THE DEBT SERVICE ON THE NEPTUNE APARTMENTS; AND 3) FURTHER AUTHORIZING THE CITY MANAGER OR HER DESIGNEE TO TAKE SUCH ACTIONS, AS MAY BE REQUIRED, WITH REGARD TO PREPARING AND HAVING THE MAYOR AND CITY CLERK EXECUTE MODIFICATIONS OF MORTGAGES FOR THE REFERENCED NSP1 FUNDED PROJECTS; SUCH MODIFICATIONS REVISING THE MORTGAGE AMOUNTS TO REFLECT THE FINAL BUDGETED AMOUNTS FOR EACH PROJECT.**

**WHEREAS**, on July 31, 2008, the United States Congress enacted the Housing and Economic Recovery Act of 2008, thereby creating the Neighborhood Stabilization Program 1 (NSP1), which directed the Department of Housing and Urban Development (HUD) to allocate \$3.93 billion to states and units of local government as emergency assistance for the purchase and redevelopment of abandoned and foreclosed homes; and

**WHEREAS**, on March 18, 2009, the City approved Resolution No. 2009-27039, approving the City's planned use of and application of NSP1 funds to purchase and rehabilitate one or more foreclosed or abandoned multi-family buildings to be made available as rental housing properties for income qualified households; and

**WHEREAS**, the City was awarded a total of \$9,305,268 in NSP1 funds through an initial allocation plus two subsequent allocations; and

**WHEREAS**, the State of Florida Department of Economic Development (DEO) is the entity managing the NSP1 allocation to the City of Miami Beach; and

**WHEREAS**, the Administration conducted a duly-noticed procurement process for award of the first allocation, resulting in the City Commission's approval on September 9, 2009, of Resolution No. 2009-27194 which authorizing the execution of an Agreement with Miami Beach Community Development Corporation to carry out the City's planned use of, and application for, NSP1 funds ("MBCDC Agreement"); and

**WHEREAS**, the initial strategy was to fund the acquisition and rehabilitation of one affordable housing project, which resulted in the acquisition of the 16-unit foreclosed building located at 7871 Crespi Blvd., which was later named The Madeleine; and

**WHEREAS**, on February 3, 2010, the City's Agreement with MBCDC was amended per Resolution No. 2010-27335, to allow for the allocation of additional NSP1 funds received by the City; and

**WHEREAS**, the additional acquisition and rehabilitation funds resulting from the second and third allocations were authorized for the acquisition and rehabilitation of The Neptune, a 35-unit foreclosed apartment building located at 1632 Meridian Avenue; and The Lottie, a nine-unit foreclosed apartment building which contains large apartments and is suitable for families, located at 530 75 Street;

**WHEREAS**, a total of 60 units were purchased with NSP1 funds and rehabilitated for income-eligible Miami Beach residents; and

**WHEREAS**, the City was allowed to use a maximum of 6.8% of the total NSP1 allocation for administrative expenses, resulting in a total of \$632,758 being allocated for administration expenses and \$8,672,510 being allocated for NSP1 project development; and

**WHEREAS**, as required by NSP1 program monitors and as is the City's customary practice, estimated budgets were prepared for each project prior to plans approval and permitting, and corresponding mortgages were recorded at the time of the acquisitions; and

**WHEREAS**, unanticipated construction costs arose, resulting in necessary budget modifications and requiring MBCDC to cover a project budget shortfall in the amount of \$82,506; and

**WHEREAS**, the City's NSP1 grant agreements with the State DEO and with MBCDC expire November 23, 2012; and

**WHEREAS**, the State's DEO has requested that both Miami Beach contracts be extended through February 15, 2013, in order to close out the grant and resolve the pending issue of the City's unspent administrative funding; and

**WHEREAS**, of the available \$632,758 NSP1 administrative funding allocated to the City, as of September 30, 2012, remaining unexpended administrative funds were \$300,947.93; and

**WHEREAS**, the Administration projects that, based on current administrative expenditure rates, the projected balance of unspent administrative funds, as of February 15, 2013, will be approximately \$247,304.05; and

**WHEREAS**, the State DEO has informed the City that the unexpended administrative funds should be loaned to MBCDC for either debt reduction on The Neptune Apartments, or to establish an operating reserves account for the 60 units; and

**WHEREAS**, MBCDC has requested that the City utilize the unspent administrative funds to provide assistance in covering its current construction budget gap in the amount of \$82,506, and/or that the City allocate the unspent administrative funds to reduce its debt service on The Neptune Apartments; and

**WHEREAS**, while two of the three NSP1 projects were 100% NSP1-funded, The Neptune's acquisition, closing costs, and rehabilitation required additional funding sources; and

**WHEREAS**, on May 12, 2010, the City Commission approved Resolution No. 2010-27390, authorizing: the reallocation of NSP1 funds in the amount of \$246,898.53 from The Madeleine project to The Neptune; utilizing the second NSP1 allocation in the amount of \$4,432,328.24; utilizing FY2009/10 US HUD HOME funds in the amount of \$650,000; subordination of the City's first lien position to private bank financing acquired by MBCDC in the amount of \$700,000; and

**WHEREAS**, MBCDC's resulting annual debt service to International Finance Bank (IFB) on The Neptune is \$53,613, with a November 2, 2012, loan balance in the amount of \$686,132.52; and

**WHEREAS**, while current rents are affordable pursuant to HUD and NSP1 guidelines, the amounts exceed the capability of some low to moderate income residents; and

**WHEREAS**, MBCDC has provided an analysis which demonstrates that if the current debt service is reduced, a further reduction of rent can be achieved so that 18 rental units may be rented for \$620 per month, instead of the HUD-approved maximum rent of \$722; and

**WHEREAS**, in order to comply with the State DEO close-out instructions for the NSP1 grant, the Administration recommends extending the end dates of both the NSP1 Subgrant Agreement and the MBCDC Agreement, so that they both expire on February 15, 2013, as directed by the State DEO, transferring the City's unspent administration funds in the amount of \$248,000 to reduce the debt service at The Neptune Apartments, and modifying the budgets and mortgages for the NSP1 projects.

**NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA**, that the Mayor and City Commission hereby approve and authorize the Mayor and the City Clerk to execute Amendment No. 4 to the Subgrant Agreement between the State of Florida Department of Economic Development (DEO) and the City modifying the expiration date of the Subgrant Agreement from November 23, 2012, to February 15, 2013, re-allocating unspent Administration funds, and modifying the program budgets; and approve and authorize the Mayor and City Clerk to execute Amendment No. 8 to the NSP1 Agreement between the City and Miami Beach Community Development Corporation (MBCDC), dated January 21, 2010, modifying the expiration date of such Agreement from November 23, 2012 to February 15, 2013, and allocating the City's unspent Administration funds in the amount of approximately \$248,000, to reduce the debt service on The Neptune Apartments; and further authorize the City Manager or her designee to take such actions, as may be required, with regard to preparing and having the Mayor and City Clerk execute modifications of mortgages for the referenced NSP1 funded projects; such modifications revising the mortgage amounts to reflect the final budgeted amounts for each project.

**PASSED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

ATTEST:

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

\_\_\_\_\_  
MAYOR

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

*Ral P. ...*  
for City Attorney  
Date 11/8/12

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ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 2 OF THE MIAMI BEACH CITY CODE ENTITLED "ADMINISTRATION," BY AMENDING ARTICLE VI, ENTITLED "PROCUREMENT," BY AMENDING DIVISION 5, ENTITLED "DEBARMENT OF CONTRACTORS FROM CITY WORK," BY AMENDING SECTION 2-397, ENTITLED "PURPOSE OF DEBARMENT," TO PROVIDE THE PURPOSE FOR SUSPENSIONS; BY AMENDING SECTION 2-398, ENTITLED "DEFINITIONS," TO PROVIDE ADDITIONAL DEFINITIONS REGARDING SUSPENSION OF CONTRACTORS; BY AMENDING SECTION 2-399, ENTITLED "LIST OF DEBARRED CONTRACTORS," TO PROVIDE FOR THE ADDITIONAL LISTING OF SUSPENDED CONTRACTORS; BY AMENDING SECTION 2-400, ENTITLED "EFFECTS OF DEBARMENT" TO PROVIDE FOR THE EFFECTS OF SUSPENSION; BY AMENDING SECTION 2-401, ENTITLED "CONTINUATION OF CURRENT CONTRACTS," TO PROVIDE THAT SUSPENSION MAY AFFECT THE CONTINUATION OF CURRENT CONTRACTS OR BIDS; BY AMENDING SECTION 2-402, ENTITLED "RESTRICTIONS ON SUBCONTRACTING," TO PROVIDE FOR RESTRICTIONS ON SUSPENDED CONTRACTORS; BY AMENDING SECTION 2-403; ENTITLED "DEBARMENT," TO PROVIDE FOR THE SUSPENSION OF CONTRACTORS; BY AMENDING SECTION 2-404, ENTITLED "CAUSES FOR DEBARMENT," BY PROVIDING FOR ADDITIONAL CAUSES FOR DEBARMENT, AND TO PROVIDE FOR CAUSES FOR SUSPENSION; BY AMENDING SECTION 2-405, ENTITLED "DEBARMENT PROCEDURES," TO AMEND THE PROCEDURES FOR DEBARMENT AND TO PROVIDE PROCEDURES FOR THE SUSPENSION OF CONTRACTORS; BY AMENDING SECTION 4-206, ENTITLED "PERIOD OF DEBARMENT," BY PROVIDING FOR PERIODS OF SUSPENSION AND REQUESTS FOR REDUCING PERIODS OF SUSPENSION; PROVIDING FOR REPEALER; SEVERABILITY; CODIFICATION; AND AN EFFECTIVE DATE.

WHEREAS, the Mayor and City Commission of the City of Miami Beach deem it in the best interest of the City to amend the City's debarment provisions and to create provisions and procedures for the suspension of contractors under certain specified circumstances.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1.

That Division 5, entitled "Debarment of Contractors from City Work," of Article VI, entitled "Procurement," of Chapter 2, entitled "Administration," of the Miami Beach City Code is hereby amended as set forth below. Other sections in Division 5 are also provided for reference purposes.



**CHAPTER 2**  
**ADMINISTRATION**

\* \* \*

**ARTICLE VI. PROCUREMENT**

**DIVISION 5. Debarment of Contractors from City Work**

**Sec. 2-397. Purpose of debarment and suspension.**

- (a) The city shall solicit offers from, award contracts to, and consent to subcontractors with responsible contractors only. To effectuate this policy, the debarment and suspension of contractors from city work may be undertaken.
- (b) The serious nature of debarment and suspension requires that this sanction be imposed only when it is in the public interest for the city's protection, and not for purposes of punishment. Debarment and suspension shall be imposed in accordance with the procedures contained in this division.

**Sec. 2-398. Definitions.**

As used in this division:

- (a) *Affiliates*. Business concerns, organizations, lobbyists or other individuals are affiliates of each other if, directly or indirectly, (i) either one controls or has the power to control the other, or (ii) a third party controls or has the power to control both. Indicia of control include, but are not limited to, a fiduciary relation which results from the manifestation of consent by one individual to another that the other shall act on his behalf and subject to his control, and consent by the other so to act; interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; or a business entity organized by a debarred entity, individual, or affiliate following debarment of a contractor that has the same or similar management, ownership, or principal employees as the contractor that was debarred or suspended.
- (b) *Civil judgment* means a judgment or finding of a civil offense by any court of competent jurisdiction.

- (c) *Contractor* means any individual or other legal entity that:
- (1) Directly or indirectly (e.g., through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a city contract, including, but not limited to, vendors, suppliers, providers, bidders, proposers, consultants, subcontractors, and/or design professionals; or
  - (2) Conducts business, or reasonably may be expected to conduct business, with the city as an agent, representative or subcontractor of another contractor.
- (d) *Conviction* means a judgment or conviction of a criminal offense, be it a felony or misdemeanor, by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a convictions entered upon a plea of nolo contendere.
- (e) *Debarment* means action taken by the debarment committee to exclude a contractor (and, in limited instances specified in this division, a bidder or proposer) from city contracting and city approved subcontracting for a reasonable, specified period as provided in subsection (j) below; a contractor so excluded is debarred.
- (f) *Debarment committee* means a group of seven individual members, each appointed by the mayor and individual city commissioners, to evaluate and, if warranted, to impose debarment.
- (g) *Greater weight of the evidence* means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.
- (h) *Indictment* means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.
- (i) *Legal proceeding* means any civil judicial proceeding to which the city is a party or any criminal proceeding. The term includes appeals from such proceedings.
- (j) *List of debarred contractors* means a list compiled, maintained and distributed by the city's procurement office, containing the names of contractors debarred under the procedures of this division.

(k) List of suspended contractors means a list compiled, maintained and distributed by the city's procurement office containing the names of contractors suspended under the procedures of this division.

(l) Suspension means action taken by the debarment committee to exclude a contractor, (and, in limited instances specified in this division, a bidder or proposer from city contracting and city approved subcontracting for a reasonable specified period as provided in subsection (k) above; a contractor so excluded is suspended.

**Sec. 2-399. Lists of debarred and suspended contractors.**

(a) The city's procurement office, as the agency charged with the implementation of this division, shall:

- (1) Compile and maintain a current, consolidated list (list) of all contractors debarred and all contractors suspended by city departments. Such lists shall be public record and shall be available for public inspection and dissemination;
- (2) Periodically revise and distribute the list and issue supplements, if necessary, to all departments, to the office of the city manager, and to the mayor and city commissioners; and
- (3) Included in the lists shall be the name and telephone number of the city official responsible for its maintenance and distribution.

(b) The debarment and suspension lists shall indicate:

- (1) The names and addresses of all contractors debarred, or suspended, in alphabetical order;
- (2) The name of the department that recommends initiation of the debarment or suspension action;
- (3) The cause for the debarment or suspension action, as is further described herein, or other statutory or regulatory authority;
- (4) The effect of the debarment or suspension action;
- (5) The termination date for each listing;

- (6) The contractor's certificate of competency or license number, when applicable;
  - (7) The person through whom the contractor is qualified, when applicable;
  - (8) The name and telephone number of the point of contact in the department recommending the debarment or suspension action.
- (c) The city's procurement office shall:
- (1) In accordance with internal retention procedures, maintain records relating to each debarment or suspension;
  - (2) Establish procedures to provide for the effective use of the debarment and suspension lists, including internal distribution thereof, to ensure that departments do not solicit offers from, award contracts to, or consent to subcontracts with contractors on the list; and
  - (3) Respond to inquiries concerning listed contractors and coordinate such responses with the department that recommended the action.

**Sec. 2-400. Effects of debarment and suspension.**

- (a) Debarred and suspended contractors are excluded from receiving contracts, and departments shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the city manager determines that an emergency exists justifying such action, and obtains approval from the mayor and city commission, which approval shall be given by a five-sevenths vote of the city commission at a regularly scheduled city commission meeting. Debarred and suspended contractors are also excluded from conducting business with the city as agents, representatives, subcontractors or partners of other contractors.
- (b) Debarred and suspended contractors are excluded from acting as individual sureties.

**Sec. 2-401. Continuation of current contracts/disqualification from bids.**

- (a) Commencing on the effective date of this division, all proposed city contracts, as well as request for proposals (RFP), request for qualifications (RFQ), requests for letters of interest (RFLI), or bids issued by the city, shall incorporate this ordinance and specify that debarment and suspension may constitute grounds for termination of the contract, as well as disqualification from consideration on any RFP, RFQ, RFLI, or bid.

- (b) The debarment or suspension shall take effect in accordance with the notice provided by the city manager pursuant to subsection 2-405(h) below, except that if a city department has contracts or subcontracts in existence at the time the contractor was debarred, or suspended, the debarment or suspension period may commence upon the conclusion of the contract, subject to approval of same by a five-sevenths vote of the mayor and city commission at a regularly scheduled meeting.
- (c) City departments may not renew or otherwise extend the duration of current contracts, or consent to subcontracts with debarred or suspended, contractors, unless the city manager determines that an emergency exists justifying the renewal or extension or for an approved extension due to delay or time extension for reasons beyond the contractor's control, and such action is approved by a five-sevenths vote of the mayor and city commission at a regularly scheduled meeting.
- (d) No further work shall be awarded to a debarred or suspended contractor in connection with a continuing contract, where the work is divided into separate discrete groups and the city's refusal or denial of further work under the contract will not result in a breach of such contract.

**Sec. 2-402. Restrictions on subcontracting.**

- (a) When a debarred or suspended contractor is proposed as a subcontractor for any subcontract subject to city approval, the department shall not consent to subcontracts with such contractors unless the city manager determines that an emergency exists justifying such consent, and the mayor and city commission approves such decision, by a five-sevenths vote, at a regularly scheduled meeting.
- (b) The city shall not be responsible for any increases in project costs or other expenses incurred by a contractor as a result of rejection of proposed subcontractors pursuant to subsection 2-402(a) above, provided the subcontractor was debarred or suspended prior to bid opening or opening of proposals, where the contract was awarded by the city pursuant to an RFP, RFQ, RFLI, or bid.

**Sec. 2-403. Debarment and suspension.**

- (a) The debarment committee may, in the public interest, debar or suspend a contractor for any of the causes listed in this division, using the procedures outlined below. The existence of a cause for debarment or suspension, however, does not necessarily require that the contractor be debarred or suspended; the seriousness of the contractor's acts or omissions and any mitigating factors should be considered in making any debarment or suspension decision.
- (b) Debarment constitutes debarment of all officers, directors, shareholders owning or controlling 25 percent or more of the stock, partners, divisions or other organizational elements of the debarred contractor, unless the debarred decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarment committee's decision includes any existing affiliates of the contractor, if they are (i) specifically named and (ii) given written notice of the proposed debarment and an opportunity to respond.
- (c) Suspension constitutes suspension of all officers, directors, shareholders owning or controlling 25 percent or more of the stock, partners, divisions or other organizational elements of the suspended contractor, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarment committee's decision includes any existing affiliates of the contractor, if they are (i) specifically named and (ii) given written notice of the proposed suspension and an opportunity to respond.
- (d) A contractor's debarment or suspension shall be effective throughout city government.
- (e) Nothing in this division shall preclude the City from pursuing any other available legal or equitable remedies against the contractor.

**Sec. 2-404. Causes for debarment and suspension.**

- (a) Debarment. The debarment committee shall debar a contractor for a conviction or civil judgment:
  - (1) For commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain, performing, or making a claim upon a public contract or subcontract, or a contract or subcontract funded in whole or in part with public funds;

- (2) For violation of federal or state antitrust statutes relating to the submission of offers;
- (3) For commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (4) Which makes the city the prevailing party in a legal proceeding, and a court determines that the ~~lawsuit between the~~ claim(s) filed by the contractor and against the city was frivolous or filed in bad faith;
- (5) For commission of any offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a City contractor or subcontractor;
- (6) For commission of any criminal activity as defined in Chapter 772 of the Florida Statutes and as that Chapter may be amended; or the aiding or abetting of any offense in subsections (a)(1)-(3) or (a)(5).

(b) Suspension. The debarment committee may suspend a contractor for any of the causes in subsection (a) using the procedures in Section 2-405. In addition, the debarment committee may, upon adequate evidence, suspend a contractor: (i) for any other cause so serious or compelling of a nature that it affects the present responsibility of the contractor; (ii) by reason of a contractor's admitted commission, aiding, or abetting of any offense specified in subsection (a); or (iii) for knowingly failing to disclose criminal or fraudulent conduct relating to public procurement, public officials, or the public trust.

(c) The committee may debar or suspend a contractor (and, in limited instances set forth hereinbelow, a bidder or proposer) based upon the greater weight of the evidence, for:

- (1) Violation of the terms of a city contract or subcontract, or a contract or subcontract funded in whole or in part by city funds, such as failure to perform in accordance with the terms of one or more contracts as certified by the city department administering the contract; or the failure to perform, or unsatisfactorily perform in accordance with the terms of one or more contracts, as certified by an independent registered architect, engineer, or general contractor.

(2) Violation of a city ordinance or administrative order which lists debarment or suspension as a potential penalty.

**Sec. 2-405. - Debarment and suspension procedures.**

- (a) Requests for the debarment or suspension of contractors may be initiated by a city department or by a citizen-at-large and shall be made in writing to the office of the city manager. Upon receipt of a request for debarment or suspension, the city manager shall transmit the request to the mayor and city commission at a regularly scheduled meeting. The mayor and city commission shall transmit the request to a person or persons who shall be charged by the city commission with the duty of promptly investigating and preparing a written report(s) concerning the proposed debarment or suspension, including the cause and grounds for debarment or suspension, as set forth in this division.
- (b) Upon completion of the aforestated written report, the city manager shall forward said report to the debarment committee. The city's procurement office shall act as staff to the debarment committee and, with the assistance of the person or persons which prepared the report, present evidence and argument to the debarment committee. The City Attorney's office shall represent the debarment committee and may present evidence and testimony at the debarment hearing and may rebut evidence and cross-examine testimony presented to the debarment committee.
- (c) *Notice of proposal to debar or suspend.* Within ten working days of the debarment committee having received the request for debarment or suspension and written report, the city's procurement office, on behalf of the debarment committee, shall issue a notice of proposed debarment or suspension advising the contractor and any specifically named affiliates, by certified mail, return receipt requested, or personal service, containing the following information:
- (1) That debarment or suspension is being considered;
  - (2) The reasons and causes for the proposed debarment or suspension in terms sufficient to put the contractor and any named affiliates on notice of the conduct or transaction(s) upon which it is based;
  - (3) That a hearing shall be conducted before the debarment committee on a date and time not less than 30 days after service of the notice. The notice shall also advise the contractor that it may be represented by an attorney, may present documentary evidence and ~~verbal~~ testimony, and may



~~cross-examine~~ rebut evidence and cross-examine testimony presented against it.

- (4) The notice shall also describe the effect of the issuance of the notice of proposed debarment, and of the potential effect of an actual debarment.
- (d) No later than seven working days prior to the scheduled hearing date, the contractor must furnish the city's procurement office a list of the defenses the contractor intends to present at the hearing. If the contractor fails to submit the list, in writing, at least seven working days prior to the hearing, or fails to seek an extension of time within which to do so, the contractor shall have waived the opportunity to be heard at the hearing. The debarment committee has the right to grant or deny an extension of time, and, for good cause, may set aside the waiver to be heard at the hearing, and its decision may only be reviewed upon an abuse of discretion standard.
- (e) Hearsay evidence shall be admissible at the hearing but shall not form the sole basis for initiating a debarment or suspension procedure nor the sole basis of any determination of debarment or suspension. The hearing shall be transcribed, taped or otherwise recorded by use of a court reporter, at the election of the committee and at the expense of the city. Copies of the hearing tape or transcript shall be furnished at the expense and request of the requesting party.
- (f) *Debarment committee's decision.* In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the debarment or suspension committee shall make a decision on the basis of all the undisputed, material information in the administrative record, including any undisputed, material submissions made by the contractor. Where actions are based on disputed evidence, the debarment committee shall decide what weight to attach to evidence of record, judge the credibility of witnesses, and base its decision on the greater weight of the evidence standard. The debarment committee shall be the sole trier of fact. The committee's decision shall be made within ten working days after conclusion of the hearing, unless the debarment committee extends this period for good cause.
- (g) The committee's decision shall be in writing and shall include the committee's factual findings, the principal causes of debarment or suspension as enumerated in this division, identification of the contractor and all named affiliates affected by the decision, and the specific term, including duration, of the debarment or suspension imposed.

- (h) *Notice of debarment committee's decision.*
- (1) If the debarment committee decides to impose debarment or suspension, the city manager shall give the contractor and any named affiliates involved written notice by certified mail, return receipt requested, or hand delivery, within ten working days of the decision, specifying the reasons for debarment or suspension and including a copy of the committee's written decision; stating the period of debarment or suspension, including effective dates; and advising that the debarment or suspension is effective throughout the city departments.
  - (2) ~~If~~ Debarment or suspension is not imposed, the city manager shall notify the contractor and any named affiliates, by certified mail, return receipt requested, or personal service, within ten working days of the decision.
- (i) All decisions of the debarment committee shall be final and shall be effective on the date the notice is signed by the city manager. Decisions of the debarment committee are subject to review by the Appellate Division of the Circuit Court. A debarred or suspended contractor may seek a stay of the debarment or suspension decision in accordance with the Florida Rules of Appellate Procedure.

**Sec. 2-406. - Period of debarment or suspension.**

- (a) The period of debarment or suspension imposed shall be within the sole discretion of the debarment committee. Debarment and suspension shall be for a period commensurate with the seriousness of the cause(s), and, where applicable, within the guidelines set forth below, but in no event shall debarment exceed five years or suspension exceed two years
- (b) Debarment. The following guidelines for the period of debarment shall apply except where mitigating or aggravating circumstances justify deviation:
  - (1) For commission of an offense as described in subsection 2-404(a)(1):  
Five years.
  - (2) For commission of an offense as described in subsection 2-404(a)(2):  
Five years.

- (3) For commission of an offense as described in subsection 2-404(a)(3):  
Five years.
  - (4) For commission of an offense as described in subsection 2-404(a)(4)-(6):  
Two to five years.
  - (5) For commission of an offense as described in subsections 2-404(c)(1) or  
(2): Two to five years.
- (c) Suspension. The following guidelines for the period of suspension shall apply except where mitigating or aggravating circumstances justify deviation:
- For commission of an offense as described in subsection 2-404(b): Up to two years.
- (d) The debarment committee may, in its sole discretion, reduce the period of debarment or suspension, upon the contractor's written request, for reasons such as:
- (1) Newly discovered material evidence;
  - (2) Reversal of the conviction or civil judgment upon which the debarment or suspension was based;
  - (3) Bona fide change in ownership or management;
  - (4) Elimination of other causes for which the debarment or suspension was imposed; or
  - (5) Other reasons the debarment committee deems appropriate.
- (e) The debarred or suspended contractor's written request shall contain the reasons for requesting a reduction in the debarment or suspension period. The city's procurement office, with the assistance of the affected department, shall have 30 days from receipt of such request to submit a written response thereto.

**SECTION 2. Repealer.**

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

**SECTION 3. Severability.**

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

**SECTION 4. Codification.**

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or re-lettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

**SECTION 5. Effective Date.**

This Ordinance shall take effect the \_\_\_\_ day of October, 2012.

**PASSED** and **ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 2012.


**ATTEST:**

\_\_\_\_\_  
MATTI HERRERA BOWER  
MAYOR

\_\_\_\_\_  
RAFAEL E. GRANADO, CITY CLERK

Underline denotes additions and ~~strike through~~ denotes deletions

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney *Dr* 11/9/12  
Date

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**Condensed Title:**

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ADOPTING THE THIRD AMENDMENT TO THE FY 2011/12 GENERAL FUND BUDGET AND THE SECOND AMENDMENT TO THE ENTERPRISE, INTERNAL SERVICE AND SPECIAL REVENUE FUNDS BUDGETS FOR FISCAL YEAR (FY) 2011/12

**Key Intended Outcome Supported:**

Ensure expenditure trends are sustainable over the long term  
 Improve the City's overall financial health and maintain overall bond rating

**Supporting Data (Surveys, Environmental Scan, etc.):**  
 The \$3.4 million in prior years surplus set-aside for FY 2011/13 will not be available for FY 2013/14, immediately creating a gap that will need to be addressed in FY 2013/14.

**Item Summary/Recommendation:**

Overall, there is a preliminary estimated operating budget surplus of \$5,162,214 (2.2 percent) in the General Fund. A significant portion of the surplus is due to Building Department revenues in excess of budget by \$3.8 million, resulting in a surplus of \$535,000 attributable to Building rather than a loss of \$2.3 million as budgeted. As a result, it is recommended that \$535,000 be set aside for building department reserves to offset future Building Department needs, in accordance with state law.

The estimated expenditures include \$2.2 million set aside for FY 2012/13 to help offset increases in pension costs as anticipated during the preparation of the FY 2012/13 budget. This \$2.2 million was derived from the pension savings in each department in FY 2011/12 based on the annual required contribution (ARC) to the City's pension plans that was less than budgeted due to a one-time pension credit pursuant to a rule from the State Division of Retirement which was subsequently rescinded.

Additionally, there are \$440,000 in encumbrances from FY 2011/12 for goods or services which have been procured but not yet received and expended, which will need to be re-appropriated in FY 2012/13. There are also approximately \$530,000 in projects that were budgeted in FY 2011/12 and which have not yet been expended or encumbered and the funding is recommended to be carried forward to be spent in FY 2012/13 along with a set aside for the severance pay for the former City Manager's although this has not yet been finalized. The amendment of the FY 2012/13 Budget for these items will require a separate budget amendment which will be brought to the Commission for consideration once the year-end close-out process is complete. As a result of the reserves required for these encumbrances and set asides, the surplus is reduced from \$5.2 million to \$3.2 million. Since it is still very early in the annual close-out process, an additional \$500,000 is held as contingency for the close-out process and \$2.7 million in surplus be carried forward to FY 2013/14. This, similarly, will require a separate budget amendment which will be brought to the Commission for consideration once the year-end close-out process is complete.

Only the Sewer Fund Enterprise Fund requires a budget amendment primarily due to increased sewer treatment expenses, although funded by associated increased revenues. Only the Fleet Management Internal Service Fund requires a budget amendment primarily due to increases in contributions for "Other Post Employment Benefits", fuel and fuel-related costs, repair and maintenance cost, and increased debt service. The 2 percent Resort Tax Fund expenditures are in excess of budget due to payments to the Visitor's Convention Authority (VCA) which are based on a percent of revenues exceed budget and enhanced efforts for Memorial Day, Spring Break, and other special events. The 1 percent Resort Tax Fund expenditures are in excess of budget due the debt service and transfers for capital projects and arts and cultural programs which increase as revenues increase.

**Financial Information:**

Source of Funds:	Amount		Account
	FY 2011/12		
OBPI		\$2,333,320	General Fund
		\$340,761	Enterprise Funds
		\$1,869,390	Resort Tax Fund
		\$548,610	Internal Service Funds

**Financial Impact Summary:**

**Sign-Offs:**

Department Director	Assistant City Manager	City Manager
		






# MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, [www.miamibeachfl.gov](http://www.miamibeachfl.gov)

## COMMISSION MEMORANDUM

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: Kathie G. Brooks, Interim City Manager 

DATE: November 14, 2012

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ADOPTING THE THIRD AMENDMENT TO THE FISCAL (FY) 2011/12 GENERAL FUND BUDGET AND THE SECOND AMENDMENT TO THE ENTERPRISE, INTERNAL SERVICE AND SPECIAL REVENUE FUNDS BUDGET**

### ADMINISTRATION RECOMMENDATION

Adopt the resolution amending the FY 2011/12 General Fund, Enterprise Funds, Internal Service Funds, and Special Revenue Funds budgets.

### GENERAL FUND ANALYSIS

The Fiscal Year 2011/12 year-end budget to preliminary actual comparisons is presented in the following pages. It is important to note that the Finance Department is still preparing year-end accruals and adjustments through November 15, 2012, as part of the year-end accrual process. The proposed budget amendment represents the budget amendment required by state law for departments or accounts that exceed their appropriated authority.

In past years, the preliminary year-end analysis has been prepared in the early part of the next calendar year. In an effort to provide this information on a more timely basis, the analysis and recommended amendments presented herein are therefore still subject to change. However, staff in the Office of Budget and Performance Improvement and the Finance Departments has worked to identify any major adjustments that might be needed, particularly in the expenditure area that would impact the required appropriation authority. We will continue to refine the estimate and present an update once the year-end close-out process is complete, typically in the March timeframe.

The following comparisons show that, overall, there is a preliminary estimated operating budget surplus of \$5,162,214 (2.2 percent) in the General Fund.

General Fund	Adopted Budget as amended through February 8, 2012	Preliminary FY 2011-12 year-end	Budget/ Projected
Revenues	\$ 245,651,521	\$ 247,984,841	\$ 2,333,320
Expenditures*	245,651,521	242,822,627	(2,828,894)
<b>Surplus/(Deficit)</b>	<b>\$ -</b>	<b>\$ 5,162,214</b>	<b>\$ 5,162,214</b>

Note: Excludes \$1,031,000 in unrealized gains on investments  
 Includes \$2.21 million pension credit surplus to be set aside for FY 2012/13

It is important to note that the estimated revenues are more than the third quarter projections primarily due to increases in Property Taxes, and Licenses and Permits revenues. The third quarter projections included a decline of approximately \$2 million in property taxes due to the difference between the certified taxable value used for calculations of property tax revenue in the adopted budget and the final taxable value after value adjustments. The preliminary year-end revenues do not reflect a decline from budget, despite the six percent decline in values, which will need to be researched further as part of the year-end close-out process.

Further, it is important to note that a significant portion of the surplus is due to Building Department revenues in excess of budget by \$3.8 million, resulting in a surplus of \$535,000 attributable to Building rather than a loss of \$2.3 million as budgeted. As a result, it is recommended that \$535,000 be set aside for building department reserves to offset future Building Department needs, in accordance with state law.

The estimated expenditures include \$2.2 million set aside for FY 2012/13 to help offset increases in pension costs as anticipated during the preparation of the FY 2012/13 budget. This \$2.2 million was derived from the pension savings in each department in FY 2011/12 based on the annual required contribution (ARC) to the City's pension plans that was less than budgeted. Beginning in FY 2010/11, the State Division of Retirement began monitoring employer contribution payments based on percent of payroll, and is now requiring that City's adjust their ARC at year-end based on this calculation. In the Fire and Police Pension Plan, this resulted in a credit at year-end of \$1.7 million that was applied to the FY 2011/12 ARC payment. The MBERP pension plan has a similar credit of \$0.5 million applied to the FY 2011/12 ARC payment. However, this approach by the State Division of Retirement was subsequently suspended and no further credits of this nature are anticipated.

Additionally, there are \$440,000 in encumbrances from FY 2011/12 for goods or services which have been procured but not yet received and expended, which will need to be re-appropriated in FY 2012/13. There are also approximately \$530,000 in projects that were budgeted in FY 2011/12 and which have not yet been expended or encumbered and the funding is recommended to be carried forward to be spent in FY 2012/13. We are further recommending that \$420,000 be set aside for the severance pay for the former City Manager's contract although this has not yet been finalized. The amendment of the FY 2012/13 Budget for these items will require a separate budget amendment which will be brought to the Commission for consideration once the year-end close-out process is complete.

As a result of the reserves required for these encumbrances and set asides, as well as the additional Building operations reserve, the surplus is reduced from \$5.2 million to \$3.2 million.



<b>Projected Surplus</b>	<b>\$</b>	<b>5,162,214</b>
<b>Changes in Expenditure Appropriations</b>		
Reserve - Set Aside for Future Building Department Needs	\$	535,000
Reserve - Encumbrances		440,000
Reserve - Set Aside for FY 2011/12 Projects in FY 2012/13, and former City Managers Severance		950,000
<b>Revised Net Surplus</b>	<b>\$</b>	<b>3,237,214</b>

Historically, surplus funds at year-end have been reserved for future years' budgets. The FY 2010/11, FY 2011/12, and FY 2012/13 budgets have included the use of \$3.7 million, \$3.6 million, and \$3.4 million, respectively. It is recommended that approximately \$0.5 million remain in department budgets to address any unforeseen items that may arise through the year-end close-out process since it is still very early in the process, and that \$2.7 million in surplus be carried forward to FY 2013/14. This, similarly, will require a separate budget amendment which will be brought to the Commission for consideration once the year-end close-out process is complete.

Although the estimated net surplus is similar to the \$3.4 million projected as of the third quarter, there are some three major differences in the components: 1) a difference of \$2 million in property tax revenues as described above; 2) An increase in Citywide Accounts expenditures (excluding transfers and operating contingency) of \$2.7 million above the 3<sup>rd</sup> quarter report (and \$3.4 million above budget), and 3) offsetting decreases in department expenditures due to department vacancies as well as a slowdown in department spending.

The increase in Citywide Accounts expenditures was driven by a significant increase in leave liability payouts which has two primary components:

- The most significant portion of this increase was due to an increase in leave used for pension buybacks. This was impacted by the 2010 pension plan changes that came into effect on June 27, 2012 with the Third District Court of Appeal unanimous decision that the collective bargaining process set out in the Public Employee Relations Act is the final word on implementing the collective bargaining rights guaranteed by the Florida Constitution. Included in the negotiated pension changes was the ability for a member to exercise their right to buyback prior creditable service upon vesting (ten years of service) compared to the previous pension benefit that provided the ability for a member to buyback prior creditable service upon twenty years of creditable service with the City. The 225 members that had ten or more years of creditable pension service time as of September 30, 2010, were notified that they had until September 30, 2013, to exercise their right to purchase these buybacks. As a result, there was an influx of members who exercised this right and purchased creditable pension service time immediately following the Third District Court of Appeal's decision. Given the potential for additional purchases in FY 2012/13, this will need to be closely monitored over the next year, but thereafter would be expected to decline to prior year levels.
- The City also had significant increases in leave payouts due in part to higher numbers of police and fire fighters retiring as well as payouts to several high level, long-term City employees, including the former City Manager.

As in FY 2008/09, FY 2009/10, and 2010/11 no use of the General Fund surplus is recommended to address the City's FY 2011/12 accrued liability for post employment benefits (primarily health insurance) pursuant to recently enacted reporting requirements of Governmental Accounting Standards Board Statement #45 (GASB 45).

An explanation of major variances are provided on the following pages, as well as a summary of estimated actual FY 2011/12 revenues and expenditures.

## GENERAL FUND OPERATING REVENUE AND EXPENDITURE VARIANCES

### Revenues

On the revenue side, approximately \$3.4 million in additional revenues are reflected in the City's financials, of which \$1,031,000 are a result of unrealized gains on investments reflected on the City's financials which have a non-cash impact for FY 2011/12. Governmental Accounting Standards Board Statement #31 (GASB 31) implemented in 1997 requires the City to report its investments at fair market value as if they were immediately liquidated on September 30 each year, and to recognize these impacts as "unrealized gains or losses on investments" on the City's financials, even though there is no cash impact until the investments are actually liquidated in the future. Estimated preliminary year-end actual revenues net of these unrealized gains total \$247,984,841; \$2.4 million or 1 percent higher than the amended FY 2011/12 budget. The \$2.4 million is primarily due to increases in Licenses and Permit fees, Fines and Forfeitures and Miscellaneous revenues. These were offset by declines in Charges for Services – Golf Course revenues, declines in Interest Earnings (net of the unrealized gains), not using the Building Department Operations Reserve, and minor declines in Intergovernmental revenues, Charges for Services – Other, and Rents and Leases.

Detailed comments on those revenue categories with significant variances over \$300,000 or 10 percent are shown in the following section.

1. **Licenses and Permits** - This category is comprised of licenses and building and special use permits. In total, the actual collections for Licenses and Permits exceeded budget by \$4.5 million, or 25.2 percent. The majority of this increase was from building development process fee revenues, as a result of an increased number of permits and larger projects.
2. **Fines and Forfeits** - Year-end collections are above budget by 18.7 percent or \$482,000. This is mainly due to a \$0.5 million settlement for a past violation for the Museum Walk project.
3. **Charges for Services – Golf Courses** – Year-end collections are below budget by approximately \$.5 million consistent with third quarter projections due primarily to a wet spring and summer which resulted in lower green fees and cart fees.
4. **Interest** - Year-end collections are below budget by 20.0 percent or \$687,000. This is due to unrealized gains in the amount of \$1 million.
5. **Reserve – Building Department Operations** - As detailed above, no funds from the Building Department Operations Reserve have been used in FY 2011/12.

**Operating Expenditures**

Preliminary year-end actual expenditures are approximately \$2.8 million (1.2 percent) less than the amended budget or \$242,822,627. The department expenditures reflect the savings in each department associated with the one-time pension credit of \$2.2 million, offset by the set aside to be carried forward to FY 2012/13. Even if this pension credit had not occurred, no department would have exceeded its budget. Some departments were more than \$300,000 or 10 percent under budget as shown below. These departments are highlighted below.

**1. City Clerk**

	Amended Budget	Preliminary Actual	Difference	% Over / (Under)
Expenditures	\$1,566,868	\$1,320,000	(\$246,868)	-15.8%

In addition to the pension credit savings of approximately \$7,000, the department is preliminarily estimated to be below budget by approximately \$240,000. \$67,000 saving in salaries resulted from the vacancies in the City Clerk and Assistant City Clerk for part of the year and replacement of these positions with a lower salaried position and a part-time position for the Assistant City Clerk, pending recruitment of a full-time position. In addition, there are estimated to be \$72,000 savings in professional services as the department did the majority of Spanish translations in-house and a \$97,000 savings in advertising, which is utilized as-needed.

**2. Homeless Services**

	Amended Budget	Preliminary Actual	Difference	% Over / (Under)
Expenditures	\$921,844	\$820,000	(\$101,844)	-11.1%

In addition to the pension credit savings of \$2,356, the department is estimated to have \$143,949 in salary savings. The FY 2011/12 adopted budget included an enhancement package, which provided Homeless Services with three new part-time positions; two Case Worker IIs and an Office Associate II which were vacant for much of the fiscal year. Additionally, there were two full-time Case Worker II positions that were vacant during the early part of the fiscal year due to resignations and layoffs.

**3. Parks and Recreation – Excluding Golf Courses**

	Amended Budget	Preliminary Actual	Difference	% Over / (Under)
Expenditures	\$21,894,546	\$21,200,000	(\$694,546)	-3.2%

In addition to the pension credit savings of \$92,000, the department is estimated to have salary savings of approximately \$400,000 primarily due to vacancies within the Recreation and the Greenspace Management divisions some of which were held during the management transition process. Approximately \$250,000 in estimated savings in the professional services line item were mostly due to savings associated with the independent contractor agreements, utilizing in-house employees in certain areas rather using independent contractors as well as utilizing more grant funding to cover expenditures normally covered by the general fund.

**4. Public Works**

	Amended Budget	Preliminary Actual	Difference	% Over / (Under)
Expenditures	\$6,557,821	\$5,900,000	(\$633,128)	-10.0%

In addition to the pension credit savings of approximately \$25,000, the department is estimated to be below budget by approximately \$630,000 primarily due to \$375,000 saving in salaries which resulted from vacancies throughout the year including the City Engineer, the Streets Operations Supervisor (position eliminated in the FY2012/13 budget), and the Environmental Resource Manager. In addition, the department experienced a \$142,000 saving in professional services, which are utilized on an as needed basis only. The department's budget also included an appropriation of \$132,000 for the building assessments, which they have requested to be rolled over to the FY2012/13 budget and is part of the recommended set aside for funding to be carried forward to FY2012/13.

**5. Capital Improvements Program**

	Amended Budget	Preliminary Actual	Difference	% Over / (Under)
Expenditures	\$4,777,185	\$4,066,872	(\$679,806)	-14.8%

In addition to the pension credit savings for the Capital Improvement Projects Department of approximately \$28,000, the department also had salary saving of approximately \$548,000. This was primarily as a result of the vacancies during the fiscal year including: Assistant Director, the Special Assistant to the City Manager, Financial Analyst I, two Capital Project Coordinators positions, Performance/Scheduling Analyst and a Records Supervisor.

**6. Fire**

	Amended Budget	Preliminary Actual	Difference	% Over / (Under)
Expenditures	\$59,001,680	\$58,000,000	(\$1,001,680)	-1.7%

In addition to the pension credit savings for the Fire Department of approximately \$811,000, the department also had savings of \$133,648 in holiday pay and \$66,000 in uniforms which was partially offset by \$145,267 in overtime. Total operating expenditure savings of \$233,354 due to moving the cost of maintenance for beach restrooms and showers to Citywide Accounts were offset by \$193,890 in excess internal service charges largely due to increased fuel costs and vehicle repairs and maintenance charged back to the department via fleet management.

**7. Police**

	Amended Budget	Preliminary Actual	Difference	% Over / (Under)
Expenditures	\$91,993,213	\$89,600,000	(\$2,393,212)	-2.6%

In addition to the pension credit savings of approximately \$1.1M, the department is preliminarily estimated to be below budgeted by approximately \$1.3M primarily due to a \$1.4M savings in salaries which resulted from vacancies throughout the department caused by retirements, resignations and some restructuring throughout the department. This saving was offset by a \$950,000 increase in overtime over the budget, primarily to cover vacancies, especially in the Patrol division. The department also experienced savings in repairs and maintenance (\$85,000), holiday pay (\$70,000), contract maintenance (\$85,000), other operating expenses (\$101,000); and court overtime (\$25,000) which are utilized on an as-needed basis. The department also experienced \$248,000 savings in professional services, as they did not sponsor Officers to the Police Academy and \$99,000 in rental expenses, due mainly to the reimbursement of some rental expense by two outside agencies for five rental vehicles used by our detectives while assisting other Task Forces.

	FY 2011/12 Adopted Budget	FY 2011/12 Amended 1-11-12	FY 2011/12 Amended 2-08-12	FY 2011/12 Preliminary Estimated Actual	Over/(Under)
<b>REVENUES</b>					
Ad Valorem Taxes	\$ 98,198,923	\$ 98,198,923	\$ 98,198,923	\$ 98,228,000	\$ 29,077
Ad Valorem Taxes-S Pte Costs	10,439,424	10,439,424	10,439,424	10,443,000	3,576
Ad Valorem Cap.Renewal & Replace.	1,755,752	1,755,752	1,755,752	1,756,000	248
Ad Valorem Taxes-Norm Shores	108,469	108,469	108,469	109,000	531
Other Taxes	24,278,385	24,278,385	24,278,385	24,490,000	211,615
Licenses and Permits	17,074,053	17,074,053	17,686,553	22,147,000	4,460,447
Intergovernmental	10,091,000	10,091,000	10,091,000	9,961,000	(130,000)
Charges for Services	4,879,252	4,879,252	4,879,252	4,759,000	(120,252)
Golf Courses	5,805,119	5,805,119	5,805,119	5,298,000	(507,119)
Fines and Forfeits	2,574,000	2,574,000	2,574,000	3,056,000	482,000
Interest	3,430,000	3,430,000	3,430,000	2,743,000	(687,000)
Unrealized Gains/ (Losses)- Investment				1,031,000	1,031,000
Rents and Leases	6,034,143	6,034,143	6,034,143	6,020,000	(14,143)
Miscellaneous	12,423,449	12,423,449	12,423,449	12,575,000	151,551
Other - Resort Tax contribution	26,965,440	26,965,440	26,965,440	26,965,440	
Other - Non Operating revenues	7,981,502	7,981,502	7,981,502	7,981,000	(502)
Reserve-Building Department Ops.	1,546,709	1,546,709	1,546,709		(1,546,709)
Prior Year-End Surplus Set Aside	3,551,120	4,253,401	4,253,401	4,253,401	
Prior Yr Surplus from Parking Oper Fd	7,200,000	7,200,000	7,200,000	7,200,000	
<b>TOTAL REVENUES</b>	<b>\$ 244,336,740</b>	<b>\$ 245,039,021</b>	<b>\$ 245,651,521</b>	<b>\$ 249,015,841</b>	<b>\$ 3,364,320</b>
Total Net of Unrealized Gains/ (Losses)	\$ 244,336,740	\$ 245,039,021	\$ 245,651,521	\$ 247,984,841	\$ 2,333,320
<b>EXPENDITURES</b>					
Mayor and Commission	1,583,448	1,583,448	1,583,448	1,550,000	\$ (33,448)
City Manager	2,335,776	2,335,776	2,335,776	2,210,000	(125,776)
Communications	909,730	909,730	909,730	860,000	(49,730)
City Clerk	1,560,178	1,566,868	1,566,868	1,320,000	(246,868)
Finance	4,275,284	4,275,479	4,275,479	4,160,000	(115,479)
Office of Budget & Perf Improve.	1,917,136	1,917,136	1,917,136	1,810,000	(107,136)
Human Resources/Labor Relations	1,772,358	1,772,358	1,772,358	1,640,000	(132,358)
Procurement	962,664	962,664	962,664	870,000	(92,664)
City Attorney	4,159,498	4,159,498	4,159,498	4,120,000	(39,498)
Real Estate, Housing & Comm Dev	815,091	815,091	815,091	800,000	(15,091)
Community Services	434,834	434,834	434,834	430,000	(4,834)
Homeless Services	921,844	921,844	921,844	820,000	(101,844)
Building	9,975,047	10,043,341	10,655,841	10,400,000	(255,841)
Code Compliance	4,355,491	4,355,491	4,355,491	4,160,000	(195,491)
Planning	3,187,333	3,208,324	3,208,324	3,140,000	(68,324)
Tourism & Cultural Development	2,426,925	2,427,086	2,427,086	2,300,000	(127,086)
Parks and Recreation	21,894,546	21,894,546	21,894,546	21,200,000	(694,546)
Golf Courses	6,198,289	6,198,289	6,198,289	5,910,000	(288,289)
Public Works	6,378,093	6,557,821	6,557,821	5,900,000	(657,821)
Capital Improvement Program	4,744,094	4,777,185	4,777,185	4,070,000	(707,185)
Fire	58,942,391	59,001,680	59,001,680	58,000,000	(1,001,680)
Police	91,992,541	91,993,213	91,993,213	89,600,000	(2,393,213)
Citywide Accounts	8,922,525	9,255,695	9,255,695	12,700,000	3,444,305
Citywide Acc-Operating Contingency	951,612	951,612	951,612		(951,612)
Citywide Accounts-Normandy Shore	166,875	166,875	166,875	166,875	
Citywide Accounts-Transfers	797,385	797,385	797,385	720,000	(77,385)
Capital Renewal & Replacement	1,755,752	1,755,752	1,755,752	1,755,752	
Reserve - Carryforward Pension Credit Surplus				2,210,000	2,210,000
<b>TOTAL EXPENDITURES</b>	<b>\$ 244,336,740</b>	<b>\$ 245,039,021</b>	<b>\$ 245,651,521</b>	<b>\$ 242,822,627</b>	<b>\$ (2,828,894)</b>
<b>EXCESS OF REVENUES OVER/ (UNDER) EXPENDITURES</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 5,162,214</b>	<b>\$ 5,162,214</b>

**GENERAL FUND BUDGET FY 2011/12 AMENDMENT**

Although the total General Fund expenditure is below budget, Florida Statutes require that actual expenditures not exceed budget at the level at which the budget is adopted, which in Miami Beach is at the Department level. Therefore, a budget amendment is required for departments that overspent their appropriation and to allow the transfer to the set aside amounts for future years' budgets.

**ENTERPRISE FUNDS FY 2011/12 BUDGET AMENDMENT**

The City accounts for proprietary operations in Enterprise Funds. Convention Center, Parking, Sanitation, Sewer, Stormwater, and Water are in this grouping. As highlighted in prior quarterly projections, the Sewer Fund requires a budget amendment as the FY2011/12 year end expenses are projected to exceed the adopted budget by approximately \$341,000. This is primarily due to sewer treatment expenses exceeding the budget by \$1.6M (offset by other expenses being under budget including personnel costs and other operating expenses). Since the sewer treatment expense is driven by consumption, the department also experienced a significant increase in revenue over budget, thus allowing for a projected surplus of approximately \$450,000.

<u>ENTERPRISE FUNDS</u>	
	<b>Sewer</b>
<b>Revenue Appropriation</b>	<b>\$ 34,478,643</b>
Charges for Service	35,269,399
<b>Total Revenue Increase</b>	<b>\$ 790,756</b>
<b>Expenditure Appropriation</b>	<b>\$ 34,478,643</b>
Payroll and Fringes	(268,154)
Operating Costs	633,631
Funded for Future Renewal & Replacement	0
Sewer Treatment	1,594,029
Operating Contingency	(988,302)
Internal Service Charges	23,388
Capital & Debt Service	(653,831)
<b>Total Expenditure Increase</b>	<b>\$ 340,761</b>

All other Enterprise funds are anticipated to be under budget despite absorbing increases in contributions for "Other Post Employment Benefits" (OPEB).

**INTERNAL SERVICE FUNDS FY 2011/12 BUDGET AMENDMENT**

The City accounts for those goods and services provided by one department to other departments citywide on a cost reimbursement basis. Central Services, Fleet Management, Information Technology, Property Management, and Risk Management (Self Insurance) are included in this grouping.

All Internal Service Funds are anticipated to be under budget, except Fleet Management.

Despite absorbing increases in contributions for "Other Post Employment Benefits" (OPEB), Fleet Management is anticipated to have expenditures in excess of budget by approximately \$660,000 primarily due to increases in contributions for "Other Post Employment Benefits" (OPEB), increased fuel costs (including associated increases in tire costs), and increased repairs and maintenance, and debt service. These increases are offset by personnel cost savings due to vacancies and turnover.

**INTERNAL SERVICE FUNDS**

	<b>FLEET MANAGEMENT</b>
<b>Additional Revenue Appropriation</b>	
Interdepartmental Revenues	\$ 548,610
<b>Total Revenue Increase</b>	<b>\$ 548,610</b>
<b>Additional Expenditure Appropriation</b>	
Payroll and Fringes	\$ (46,220)
Operating Costs	308,926
Internal Services	(37,190)
Depreciation	-
Capital & Debt	323,094
<b>Total Expenditure Increase</b>	<b>\$ 548,610</b>

**SPECIAL REVENUE FUNDS 2011/12 BUDGET AMENDMENT**

The City's Resort Tax Fund is primarily supported by resort taxes collected pursuant to Chapter 67-930 (Section 6) of the Laws of Florida, as amended, and Section 5.03 of the City of Miami Beach Charter, as amended. This legislation authorizes the use of resort taxes for the promotion of the tourist industry, which includes, but is not restricted to the following: Publicity, advertising, news bureau, promotional events, convention bureau activities, capital improvements and the maintenance of all physical assets in connection therewith; and for the payment of the reasonable and necessary expenses of collecting, handling and processing of said tax.

The City imposes a two percent tax on the rent of rooms in any hotel, motel, rooming house or apartment house. This two percent tax is also levied upon the total sales price of all food and beverages (including alcoholic beverages). In addition to funding collection of the tax, contributions to the Miami Beach Visitor and Convention Authority, and the Greater Miami Visitor and Convention's Bureau, the City has considered the following services as "Services related to the promotion of tourism":

- Police officers serving entertainment areas
- A portion of fire rescue services from Fire Stations 1&2
- Ocean rescue services
- Sidewalk pressure cleaning in south, middle and north beach visitor areas
- South Beach sanitation
- Enhanced code compliance provided to respond to evening entertainment area violations and staffing of special events
- Other code compliance activities in tourism and visitor related facilities/areas

- Tourism and Culture Department and the Cultural Arts Council
- Museums and Theatres (Garden Center, Bass Museum, Colony)
- Golf courses (net of revenues)
- Memorial Day and other special event costs
- Homeless services
- July 4<sup>th</sup>, Visitor Center funding, Holiday Lights, Festival of the Arts, Jewish Museum, MDPL, Orange Bowl, Monuments, etc.

These allowable uses have led to increased tourist activities, such as special events, Art Basel, and various concerts.

An additional one percent resort tax is levied on room rent. The proceeds of the additional one percent (1 percent) tax are used as follows. Fifty percent of the amount earned is committed to the payment of a portion of the debt service on the Miami Beach Redevelopment Agency City Center/ Bonds. The remaining fifty percent is allocated equally among North Beach, Middle Beach, and South Beach for capital projects that enhance Miami Beach's tourist related areas and various arts and cultural programs. Actual revenues from the additional one percent that exceed budget are automatically allocated to these categories, and, therefore, any revenues collected in excess of budget, result in expenditures in excess of budget, thereby requiring a budget amendment.

The 2 percent Resort Tax Fund operating revenues are in excess of budget by approximately \$6.3 million and, as a result, payments to the Visitor's Convention Authority (VCA) which are based on a percent of revenues exceed budget by \$300,000. In addition, expenditures related to Memorial Day, Spring Break, and other special events exceed budget by approximately \$600,000 due to significantly enhanced efforts during these events.

As a result, there is an estimated net operating surplus of approximately \$5.7 million 2 percent Resort Tax revenues and expenditures.

**RESORT TAX FUND**

**Additional Revenue Appropriation**

2% Resort Tax	\$ 488,402
1% Resort Tax	1,300,000
Other Revenues	80,988
<b>Total Revenue Increase</b>	<b>\$ 1,869,390</b>

**Additional Expenditure Appropriation**

Other Operating/Other Uses	447,897
Transfer to Service and Special Improvement Districts Funds	
Contributions to VCA and GMCVB	218,993
Marketing	(97,500)
Contingency	
2% Debt Service	
1% Debt Service	650,000
Transfer to Capital and the Arts (1%)	650,000
<b>Total Expenditure Increase</b>	<b>\$ 1,869,390</b>

<b>Additional 2% Resort Tax Revenues (Surplus)</b>	<b>\$ 5,700,000</b>
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In addition to the uses of the 2 percent Resort Tax, the proceeds of the additional one percent (1 percent) tax are used as follows. Fifty percent of the amount earned is committed to the payment of a portion of the debt service on the Miami Beach Redevelopment Agency City Center/ Bonds. The remaining fifty percent is allocated equally among North Beach, Middle Beach, and South Beach for capital projects that enhance Miami Beach's tourist related areas and various arts and cultural programs. The 1 percent Resort Tax Fund operating revenues in excess of budget by approximately \$1.3 million and, as a result, the debt service and transfers to North Beach, Middle Beach, and South Beach for capital projects and the transfers to the arts and cultural programs exceed budget as shown below.

### **CONCLUSION**

It should be noted that this actual is preliminary in nature due to the fact that the City's financial records will not be closed until after the external auditors complete their review. Historically, this occurs in April, with the City's Comprehensive Annual Financial Report (CAFR) For the Year Ended September 30, 2012, usually available in May and the External Auditor's Report available in July. However, this analysis has considered all year-end entries to date and adjusted for pending entries where appropriate.

The resolution amending FY 2011/12 budgets will allow the third amendment to the departmental appropriations within the General Fund, and the second amendment to the Enterprise Funds, Internal Service Funds and Resort Tax Fund budgets to be enacted. This action is necessary to comply with Florida Statutes which stipulate that we may not expend more than our appropriations provide.

KGB\VK