AGENDA

NORTH MIAMI CITY COUNCIL

REGULAR MEETING **TUESDAY, DECEMBER 9, 2014**
7:00 P.M.

* * * *

TAB Q

- DISCUSSION REGARDING CITY ATTORNEY AUTOMATIC RENEWAL OF EMPLOYMENT CONTRACT
  Sponsored by: Councilwoman Carol Keys, Esq.

EMPLOYMENT CONTRACT BETWEEN THE CITY OF NORTH MIAMI, FLORIDA AND REGINE M. MONESTIME

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made and entered into on February 29, 2012 (the "Effective Date"), between the CITY OF NORTH MIAMI, a municipal corporation ("CITY"), and Regine M. Monestime ("CITY ATTORNEY").

RECITALS

THE CITY COUNCIL OF THE CITY OF NORTH MIAMI ("COUNCIL" OR "CITY"), desires to employ Regine M. Monestime as the CITY ATTORNEY of the CITY, and Regine M. Monestime desires to accept such employment under the terms and conditions hereinafter set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Appointment of the CITY ATTORNEY**

   Pursuant to Sections 84 and 85 of the CITY Charter, the COUNCIL of the CITY OF NORTH MIAMI, appoints Regine M. Monestime as the CITY ATTORNEY effective February 14, 2012, (the "Appointment Date"). The CITY ATTORNEY shall commence employment with the CITY on March 12, 2012, (the "Start Date").

2. **Duties**

   The CITY ATTORNEY shall perform the functions and duties as set forth in Section 85 of the CITY Charter, ordinances, regulations, rules, policies and standards, and to perform other associated and legally required duties and functions as the COUNCIL shall direct from time to time. The CITY ATTORNEY agrees to perform all such functions and duties faithfully, competently, professionally and promptly to the best of her ability. The CITY ATTORNEY shall perform such duties on an exclusive and full-time basis for the CITY, and shall not engage in any outside employment for compensation without COUNCIL approval. Notwithstanding the foregoing, the CITY ATTORNEY may receive compensation for legal work performed by her law firm prior to the commencement date of this Contract and may perform pro bono legal activities or other activities; which include but not limited to teaching; that are required to maintain her Board Certification in Appellate Law.

3. **Term**

The term of this Contract shall be for three (3) years, commencing on March 12, 2012 (the "Term Date"), and ending on March 11, 2015. The term of the contract shall automatically renew unless the contract is terminated by COUNCIL pursuant to Section 4 below.

4. **Termination and Severance**

Nothing in this Contract shall prevent, limit or otherwise interfere with the absolute right of the COUNCIL to terminate the services of the CITY ATTORNEY at any time, with or without cause, This Contract may be terminated by the COUNCIL upon ninety (90) days written notice to the CITY ATTORNEY, and a duly adopted Resolution of the COUNCIL, which notice shall specify the effective date of termination which shall not be less than ninety (90) days from the date said written notice is given. In the event that the CITY ATTORNEY voluntarily resigns, then she shall give the COUNCIL at least ninety (90) days written notice in advance, unless the parties agree to waive such notice.

(A) Any termination of this Contract without "cause", as defined below, shall entitle the CITY ATTORNEY to (i) payment of all accrued, unused, longevity, vacation and sick leave at the rate of pay in effect at the time of termination and (ii) five (5) months severance if less than five months remain in the term of the Contract or the remaining amount due under the Contract if more than five months remain in the term of the Contract. However, no severance shall be paid if the remaining amount due under the Contract is paid to the CITY ATTORNEY and no such payment shall be construed as severance.

(B) If the CITY ATTORNEY voluntarily resigns her position, the CITY ATTORNEY shall be entitled to payment of all accrued, unused, longevity, vacation and sick leave at the rate of pay in effect at the time of termination but shall not be entitled to any severance payment unless otherwise agreed to by both parties.

(C) In the event, the CITY ATTORNEY is terminated for cause, which shall be defined as fraud or conviction of a criminal offense involving moral turpitude, the CITY ATTORNEY shall not be entitled to any severance payment.

5. **Annual Base Salary**

(A) The CITY ATTORNEY shall be paid at a rate set forth in the Classification and Pay Plan of the CITY, as may be amended from time to time, payable in weekly installments on the same dates as other employees of the

CITY are paid. The initial rate shall be One Hundred Ninety One Thousand Dollars and 00/100 {$191,000.00) per year commencing on March 12, 2012, (the "Start Date"). If the Classification and Pay Plan does not provide for automatic yearly cost of living adjustment, the CITY ATTORNEY shall receive an automatic yearly cost of living adjustment in the amount of three percent (3%) of her annual salary on the date of the execution of this Contract.

(B) The CITY agrees to determine any merit adjustment in annual salary and/or benefits upon performance, at least once annually, during the CITY's annual budget process. If merit increases are provided to general employees, the CITY ATTORNEY shall be entitled to the same merit increases.

6. **Deferred Compensation**

In lieu of enrollment in the CITY'S pension plan, the CITY agrees to pay twelve percent (I 2%) of the CITY ATTORNEY'S annual base salary into her individual ICMA Plan or deferred compensation plan, which shall be in addition to the base salary.

7. **Automobile and Communication Equipment Allowance**

The CITY ATTORNEY shall receive Seven Hundred Fifty Dollars and 00/100 ($750.00) per month as an automobile allowance. The CITY ATTORNEY shall receive One Hundred Fifty Dollars and 00/100 ($150.00) per month as a cellular telephone allowance. If automobile or cellular telephone increases are provided to other employees, the CITY ATTORNEY shall be entitled to the same increase.

8. **General Expenses**

The COUNCIL recognizes that certain expenses of a non-personal nature are incurred by the CITY ATTORNEY and agrees to provide a monthly expense equivalent to that provided to individual members of the COUNCIL.

9. **Health Dental and Life Insurance**

The COUNCIL agrees to provide health, dental and life insurance for the CITY ATTORNEY and her family on the same basis as provided to other unclassified Administrative Staff of the CITY.

10. **Disability Insurance**

The COUNCIL agrees to provide disability insurance for the CITY ATTORNEY at the benefit level provided to other unclassified Administrative Staff of the CITY.

11. **Sick, Annual and Holiday Leave**

The CITY ATTORNEY shall accrue sick, annual and holiday leave at the same frequency as other unclassified personnel of the CITY, but without accrual caps or other limitations. The CITY ATTORNEY shall, upon resignation, termination or death, receive the cash value of one hundred percent (100%) of accrued annual leave and fifty (50%) accrued sick leave. Upon commencing employment, the CITY ATTORNEY shall be credited with four (4) weeks of annual leave.

12. **Dues and Subscriptions**

The COUNCIL agrees to pay the reasonable and customary professional dues and subscriptions of the CITY ATTORNEY necessary for continued professional participation, growth and advancement, including national, state and local professional associations, as shall be approved in the annual CITY budget.

13. **Professional Development**

The COUNCIL agrees to pay the reasonable and customary travel and subsistence expenses for the CITY ATTORNEY'S travel and attendance for the continued professional participation, growth and advancement including national, state and local professional associations, seminars, conferences and meetings customary to the position of CITY ATTORNEY, as shall be approved in the annual CITY budget.

14. **Indemnification**

The CITY shall defend, hold harmless and indemnify the CITY ATTORNEY against any tort, professional liability claim or demand or any and all other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of the CITY ATTORNEY'S duties. The CITY will litigate, compromise, or settle any such claim or suit and pay the amount of any settlement or judgment rendered. The CITY, or its insurance carrier, will provide legal representation for the CITY ATTORNEY acceptable to the CITY ATTORNEY, for any and all claims, proceedings or lawsuits, whether groundless or otherwise, related to or arising out of the CITY ATTORNEY'S affiliation with the CITY. Nothing, however, is intended to provide indemnification for any act of the CITY ATTORNEY which is held by a court of competent jurisdiction to constitute a crime under the laws of the State of Florida or the United States. This indemnification shall survive the termination of this Agreement.

15. **General Provisions**

(A) The provisions of this Agreement constitute the entire understanding

between the parties. Only the representations and understandings contained herein shall be binding upon the CITY and the CITY ATTORNEY. No other representations or understandings are binding on the CITY and the CITY ATTORNEY unless contained in this or a subsequently adopted Agreement.

(B) Upon the CITY ATTORNEY'S death, the CITY'S obligations shall terminate except for:

i. Transfer of balances of the CITY ATTORNEY'S retirement or deferred compensation plan;

ii. Payment of accrued leave balances in accordance with Section 11 above;

iii. Payment of all outstanding hospitalization, medical and dental bills in accordance with the CITY'S insurance policies and contracts for the CITYATTORNEY;

iv. Payment of all life insurance and disability benefits; and

v. Provision of such other benefits the CITY has with respect to its unclassified employees generally

(C) No alteration, modifications or amendments to the terms of this Agreement shall be effective unless contained in writing and executed by the CITY and the CITY ATTORNEY.

(D) The CITY and the CITY ATTORNEY each waive the privilege of jurisdiction and venue and agree that any litigation involving this Agreement shall take place in the appropriate state court, in and for Miami-Dade County, Florida.

(E) The CITY shall afford the CITY ATTORNEY the right to participate in any other benefits or working conditions as provided for to administrative and senior management employees of the CITY.

16. **Severability**

Should any provision of this Agreement be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the Agreement as a whole, or any part, other than the part declared to be invalid.

17. **Effective Date of Agreement**

This Agreement shall become effective on the Effective Date.

18. **Construction**

Both parties have substantially contributed to the drafting and negotiation of this Agreement and this Agreement shall not, solely as a matter of judicial

construction, be construed more severely against one of the parties than the other.

19. **Waiver**

No express or implied consent or waiver by a party to or of any breach by the other party in the performance by such other party of its obligations under this Agreement will be deemed or constructed to be a consent or waiver to or of any other breach or dealt in the performance by such other party of the same or any other obligations of such other party hereunder. Failure by a party to complain of any act or failure to act or the other party or to declare the other party in default, irrespective of how long such failure continues will not constitute a waiver by such party of its rights hereunder. The giving of consent by a party in any one instance will not limit or waive the necessity to obtain such party's consent in any future instance.

20. **Notices**

Unless otherwise provided herein, all notice or other communications hereunder shall be in writing and shall be deemed to have been received (i). when delivered personally by hand to the recipients or when transmitted by facsimile to the recipient (with telephonic confirmation by the sender to the recipient), (ii) one business day after mailing by over-night courier, or (iii) three days after mailing by United States registered or certified first class mail (postage prepaid).

21. **Representations and Warranties**

(A) No prior obligations. The CITY ATTORNEY represents and warrants to the CITY that she is free to accept employment with CITY as contemplated herein, and she has no other prior obligations or commitments of any kind, written or oral, to any person or entity which would in any way interfere with her acceptance, or the full performances of her obligations and responsibilities, or the exercise of her best efforts and judgment to her employment hereunder.

(B) Ability. The CITY ATTORNEY represents and warrants to CITY that she is fully qualified and possesses the requisite skills and experience to perform her duties as set forth herein.

(C) Licenses. The CITY ATTORNEY represents to the CITY that she possesses the necessary license to practice law in the State of Florida and is in good standing with the Florida Bar and shall maintain such license and good standing during the term of this Contract. Any revocation or suspension

of the CITY ATTORNEY'S license to practice law in the State of Florida shall be consideration termination for cause.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the CITY and the CITY ATTORNEY have caused this Agreement to be executed as of the day and year first above written.

COUNCIL/CITY:

CITY OF NORTH MIAMI,
a Florida municipal corporation

By: _____
Andre D. Pierre, Mayor

Attest:

By: _____
Michael Etienne, City Clerk

Approved as to form and legal sufficiency:

By: _____ 2/28/12
Roland Galdos, Esq.
Interim City Attorney

CITY ATTORNEY:

By: _____ 3/2/12
Regine Monestime, Esq.