

RESOLUTION No. 2009-100-1045

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY ATTORNEY AND CITY MANAGER TO NEGOTIATE AND EXECUTE A FEE AGREEMENT WITH JOHNSON, ANSELMO, MURDOCH, BURKE, PIPER & HOCHMAN, P.A., FOR LEGAL SERVICES IN CONNECTION WITH THE MIAMI METRO MEDIA V. CITY OF MIAMI GARDENS LITIGATION; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the law firm of Johnson, Anselmo, Murdoch, Burke, Piper & Hochman, P.A., through Michael T. Burke, Esq., has been representing the City's interest in the litigation styled Miami Metro Media v. City of Miami Gardens as the Florida League of Cities contracted attorneys, and

WHEREAS, the Florida League of Cities has been paying for the City's representation in this regard because initially a damage claim was made by Plaintiff Miami Metro Media, and

WHEREAS, Miami Metro Media has amended its Complaint to drop the damage claim against the City and, as such, the Florida League of Cities has determined that it will not continue to cover the City for the litigation services, and

WHEREAS, the City Attorney's Office is recommending, that the City continue to permit Michael T. Burke, the attorney handling this matter to represent the City's interest in this regard and as such is requesting that the City Council authorize an Agreement with Michael T. Burke, Esq., for this purpose, and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

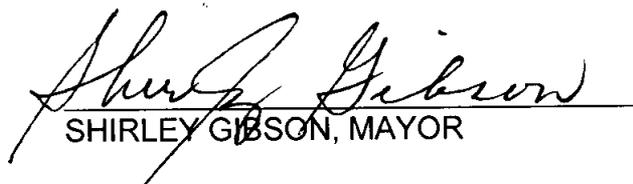
Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORIZATION: The City Council of the City of Miami Gardens hereby authorize the City Attorney and City Manager to negotiate and execute a Fee Agreement with Johnson, Anselmo, Murdoch, Burke, Piper & Hochman, P.A., for legal services in connection with the Miami Metro Media v. City of Miami Gardens litigation.

Section 3. INSTRUCTIONS TO THE CITY CLERK: The City Clerk is hereby authorized to obtain three (3) fully executed copies of the subject Fee Agreement, with one to be maintained by the City; with one to be delivered to Johnson, Anselmo, Murdoch, Burke, Piper & Hochman, P.A.; and with one to be directed to the Office of City Attorney.

Section 4. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON MAY 27, 2009.


SHIRLEY GIBSON, MAYOR

ATTEST:


RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ.
City Attorney

SPONSORED BY: DANNY CREW, CITY MANAGER

Resolution No. 2009-100-1045

MOVED BY: Councilman Gilbert
SECONDED BY: Vice Mayor Watson

VOTE: 7-0

Mayor Shirley Gibson	<u> x </u> (Yes)	<u> </u> (No)
Vice Mayor Barbara Watson	<u> x </u> (Yes)	<u> </u> (No)
Councilman Melvin L. Bratton	<u> x </u> (Yes)	<u> </u> (No)
Councilman Aaron Campbell	<u> x </u> (Yes)	<u> </u> (No)
Councilman Oliver Gilbert, III	<u> x </u> (Yes)	<u> </u> (No)
Councilwoman Sharon Pritchett	<u> x </u> (Yes)	<u> </u> (No)
Councilman André Williams	<u> x </u> (Yes)	<u> </u> (No)

SKD/teh
8479630_1.DOC



1515 NW 167 Street, Building 5 Suite 200
Miami Gardens, Florida 33169

City of Miami Gardens Agenda Cover Memo

Council Meeting Date:	(Enter Date) 5/27/09	Item Type:	Resolution	Ordinance	Other		
		(Enter X in box)	X				
Fiscal Impact: (Enter X in box)	Yes	No	Ordinance Reading: (Enter X in box)	1st Reading		2nd Reading	
	x			Public Hearing: (Enter X in box)	Yes	No	Yes
							x
Funding Source: Legal Services	(Enter Fund & Dept) Ex: General Fund- Police		Advertising Requirement: (Enter X in box)	Yes		No	
						x	
Contract/P.O. Required: (Enter X in box)	Yes	No	RFP/RFQ/Bid #:	(Enter #)			
Sponsor Name	Sonja K. Dickens, City Attorney		Department:	Legal			

Short Title:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY ATTORNEY AND CITY MANAGER TO NEGOTIATE A FEE AGREEMENT WITH JOHNSON, ANSELMO, MURDOCH, BURKE, PIPER & HOCHMAN, P.A., FOR LEGAL SERVICES IN CONNECTION WITH THE MIAMI METRO MEDIA V. CITY OF MIAMI GARDENS LITIGATION; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING AN EFFECTIVE DATE.

Staff Summary:

The law firm of Johnson, Anselmo, Murdoch, Burke, Piper & Hochman, P.A., through Michael T. Burke, Esq., has been representing the City's interest in the litigation styled *Miami Metro Media v. City of Miami Gardens* as the Florida League of Cities contracted attorneys. Up to this point, the Florida League of Cities has been paying for the City's representation in this regard because initially Plaintiff Miami Metro Media made a damage claim. However, Miami Metro Media has amended its Complaint to drop the damage claim against the City and, as such, the Florida League of Cities has determined that it will not continue to pay the City's litigation expenses for litigation services after June 1, 2009.

Michael Burke has been doing a good job of handling the litigation on behalf of the City thus far and for the sake of consistency, the City Attorney's Office is recommending, that the City
**ITEM J-5) CONSENT AGENDA
 RESOLUTION
 Agreement for Legal Services**

continue to permit Michael T. Burke of Johnson Anselmo, et.al, to represent the City's interest in this regard.

Proposed Action:

Authorize the City Attorney and City Attorney to Negotiate and Execute an Agreement with Johnson Anselmo, et. al. al. for legal services.

Attachment:

Attachment A – letter from Michael Burke

Attachment B – Letter from Florida League of Cities

JOHNSON, ANSELMO, MURDOCH, BURKE, PIPER & HOCHMAN, P.A.

A PROFESSIONAL ASSOCIATION

DAMIAN H. ALBERT, P.A.
SCOTT D. ALEXANDER, P.A.
CHRISTOPHER AMBROSIO
MICHAEL T. BURKE *†
HUDSON C. GILL
JEFFREY L. HOCHMAN, P.A.
E. BRUCE JOHNSON *
J. MARCOS MARTINEZ

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ROBERT E. MURDOCH
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DAVID M. SCHWEIGER, P.A.
TAMARA M. SCRUDDERS†
CHRISTOPHER L. SMITH
CHRISTOPHER J. STEARNS, P.A.

RETIRED:
RONALD P. ANSELMO
BURL F. GEORGE

* BOARD CERTIFIED CIVIL TRIAL LAWYERS
† BOARD CERTIFIED APPELLATE LAWYERS

May 6, 2009

Via Email

Sonja Dickens, Esq.
Arnstein & Lehr, LLP
200 E Las Olas Blvd., Ste. 1700
Fort Lauderdale, Florida 33301

Re: Miami Metro Media v. City of Miami Gardens
Our File No. 29-040

Dear Sonja:

Enclosed please find a copy of an April 30, 2009 letter Irma Cohen of the Florida League of Cities directed to Mayor Shirley Gibson concerning the above referenced matter. As you can see, the letter states that since the current Complaint does not seek damages or monetary relief, "it is the position of th Florida Municipal Insurance Trust that a duty to defend and /or provide coverage does not exist". The letter further states that the FMIT will continue to pay defense fees and costs until May 31, 2009.

Please advise how you would like to proceed with the defense of the City of Miami Gardens subsequent to May 31, 2009. Specifically, please advise whether you would like Johnson, Anselmo et al to continue to handle the matter pursuant to a fee agreement with the City of Miami Gardens or whether your office or some other firm will substitute as counsel for the City. As set forth in my prior correspondence, we are preparing a Motion to Dismiss Plaintiff's current Complaint and will timely file the same on or before May 11, 2009.

Very truly yours,

/s/Michael T. Burke
Michael T. Burke
For the Firm

MTB:npw
Encl.



April 30, 2009

Certified Mail Return Receipt
91 7108 2133 3935 3072 4458

Administration

Policy Holder Relations

Financial Services Underwriting

Post Office Box 530065
Orlando, FL 32853-0065

Health Claims

Post Office Box 538140
Orlando, FL 32853-8140

Workers' Compensation Claims

Property & Liability Claims

Post Office Box 538135
Orlando, FL 32853-8135

(800) 445-6248
(407) 425-9142
Fax: (407) 425-9378

www.flcities.com

Mayor Shirley Gibson
City of Miami Gardens
1515 N.W. 167th St.
Suite 200
Miami Gardens, Fl. 33169

RE: MEMBER: City of Miami Gardens
PLAINTIFF: Miami Metro Media
DATE OF LOSS: 01-21-2009
CASE #: 09-20201
District Court – Southern District
OUR FILE #: GC2009062012

Dear Mayor Gibson:

This office has received a copy of the Summons and Complaint as referenced above which was served on the City.

We have reviewed this Complaint and the allegations within to determine if the Liability Agreement, (FMIT-1065) will provide coverage and/or a duty to defend the City in this litigation.

We have used the Liability Agreement with effective dates of October 1, 2008 to October 1, 2009 for your review. This includes Public Officials Prior Acts.

We now refer you to said Liability Agreement, Section B – Coverage Agreement and the information titled Coverage and Defense and Settlement. These are outlined as follows:

COVERAGE AGREEMENT

In consideration of the payment of the contributions and the covenants and agreements set forth in the INDEMNITY AND COVERAGE AGREEMENTS, in reliance upon the statements of the APPLICATION, the DECLARATIONS, and all terms, conditions, limits and other provisions of the COVERAGE AGREEMENT, the Trust agrees with the member as to the following:

RECEIVED MAY 04 2009

DEFENSE AND SETTLEMENT

In addition to the limits of liability the Trust will settle or defend at its own expense, as it considers appropriate, any claim or suit demanding money damages covered by this Agreement. The Trust will defend any suit against a member which alleges a claim for money damages covered by this Agreement even if such suit is groundless, false or fraudulent. However, the Trust has no duty to defend a member in any action which on its face alleges facts excluded or not covered by this Agreement.

In the event a suit or other action contains allegations which allege damages which the Trust has a duty to defend and other allegations which allege damages or other relief that the Trust does not have a duty to defend, the Trust will defend all allegations subject to the terms, conditions, limits of liability and exclusions of the Agreement; however, undertaking such defense shall not obligate the Trust to pay any judgments, settlements or awards which a member becomes legally obligated to pay for allegations to which coverage does not apply.

We also refer you to section entitled Definitions, specifically Paragraphs D-"Bodily Injury", F-"Contractual Liability", G-"Designated Member", L-"Errors and Omissions", Q-"Member", T-"Occurrence", U-"Personal Injury" and X-"Property Damage". These are outlined as follows:

DEFINITIONS

The following definitions apply throughout this Agreement unless modified or excluded:

- D. "Bodily Injury", means bodily injury, disability, disfigurement, sickness or disease or death resulting from an occurrence and sustained by any person, and any loss, injury or damages sustained by any other person because of bodily injury, which occurs during the period of this Agreement.
- F. "Contractual Liability", means liability expressly assumed under a written contract or agreement; provided, however, that contractual liability shall not be construed as including liability under a warranty of the fitness or quality of the designated member's products or a warranty that work performed by or on behalf of the designated member will be done in a workmanlike manner; and provided, however, that contractual liability shall not be construed as including liability under any hold harmless agreement or agreement to indemnify any non-public or private person, corporation, or entity under any contract or agreement.
- G. "Designated Member", means the entity, organization or constitutional officer named in Item I. or V. of the Declarations of this Agreement; designated member does not include employees or agents of that entity or organization.

L. "Errors and Omissions", means any actual or alleged error or misstatement or act of omission or neglect or breach of duty including misconduct or official misconduct by the members in their official capacity, individually or collectively, or any matter of claims against them solely by reason or their having served or acted in an official capacity, that results in bodily injury property damage or personal injury.

Q. "Member", as used herein means:

- a. the designated member;**
- b. while acting within the scope of his employment, any officer (except constitutional officers), volunteer, servant, or employee of the designated member, including elected and appointed officials, and members of Boards or Commissions. However, the coverage so provided any officer, servant, or employee does not apply to bodily injury to another officer, servant or employee of the designated member injured in the course of and arising out of his employment.**

The coverage afforded applies separately to each member against whom claim is made or suit is brought, except with respect to the limits of liability of the Trust; and does not apply to bodily injury or property damage or personal injury liability arising out of the conduct of any partnership or joint venture of which a member is a partner or participant and which is not specified in this Agreement as a designated member.

T. "Occurrence," means an event, including continuous or repeated exposure to conditions which result in bodily injury, property damage or personal injury or advertising injury and not arising from any form of intentional misconduct.

U. "Personal Injury," means injury sustained by any person or organization arising out of one or more of the following offenses committed during the term of this Agreement. However, this coverage does not apply to law enforcement operations.

- 1. False arrest, detention, imprisonment;**
- 2. Wrongful entry or eviction, or other invasion of the right of private occupancy;**
- 3. Publication or utterance:**

a) of a libel or slander or other defamatory or disparaging material;

b) in violation of an individual's right or privacy; or

except that publications or utterances in the course of or related to broadcasting, publishing or telecasting activities conducted by or on behalf of the designated member shall not be deemed personal injury;

X. "Property Damage", means (a) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (b) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an occurrence during the period of this Agreement.

We now refer you to said Complaint. Please be aware there are no claims for monetary damages, nor claims for bodily injury, property damage or personal injury.

We now refer you to said Agreement, Page 12, Exclusions, specifically Paragraphs DD and JJ which read as follows.

EXCLUSIONS

This Coverage Agreement does not apply:

DD. to any claim, demand or action seeking injunctive, declaratory, writ of mandamus or any other non-monetary relief against a designated member or any of its agents;

JJ. to any claim for attorneys' fees or costs for any action not covered by this Agreement.

Based upon the allegations contained within the Complaint and the above outlined exclusionary language, it is the position of the Florida Municipal Insurance Trust that a duty to defend and/or provide coverage does not exist.

Therefore, the Florida Municipal Insurance Trust will continue to pay Mr. Michael Burke of Johnson, Anselmo, Murdoch, Burke, Piper and Hochman, P.A., until May 31, 2009 for his defense of the City and thereafter we will proceed to close our file.

Should you have any questions regarding this matter, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Irma Cohen", with a long horizontal flourish extending to the right.

Irma Cohen
Litigation Specialist
IC/tmb (no encl)

CC: Mike Burke, Esquire
Johnson, Anselmo, Murdoch, Burke, Piper & Hochman