

**AMENDMENT NO. 1 TO THE AGREEMENT
BETWEEN THE CITY OF MIAMI BEACH, FLORIDA
AND
CHOICE ENVIRONMENTAL SERVICES OF MIAMI, INC.
AGREEMENT NO. 60-08/09, DATED JUNE 9, 2010,
FOR COLLECTION AND DISPOSAL OF RESIDENTIAL SOLID WASTE,
YARD TRASH, BULK WASTE, AND OPERATION OF THE
CITY'S GREEN WASTE FACILITY**

This Amendment No. 1 to the above subject Agreement is made and entered into this 1 day of October, 2010, by and between the **CITY OF MIAMI BEACH**, Florida (City), and **CHOICE ENVIRONMENTAL SERVICES OF MIAMI, INC.** (Contractor).

WHEREAS, the City and Contractor enter into an Agreement for Collection and Disposal of Residential Solid Waste, Yard Trash, Bulk Waste, and Operation of the City's Green Waste Facility, on June 9, 2010, pursuant to Request for Proposals (RFP) No. 60-08/09 (the Agreement); and

WHEREAS, the Agreement is subject to the City's Living Wage Ordinance (as described below); and

WHEREAS, at its meeting on June 9, 2010, the Mayor and City Commission adopted Ordinance No. 2010-3682 (which Ordinance, is attached as Exhibit "A" hereto), amending certain provisions of the City's Living Wage Ordinance, as codified in Sections 2-407 through 2-410 of the City Code (the Ordinance); and

WHEREAS, the primary purpose of the amendment to the Ordinance was to adjust and increase the hourly living wage rate paid by service contractors covered under the Ordinance to their covered employees; with the proposed increases to be phased in over a three year period, commencing on October 1, 2010; and

WHEREAS, the amendment to the Ordinance also amended the definition of "health benefits" to define the type of health benefits plan service contractors would be required to offer their covered employees in order to be eligible to pay the (lower) hourly living wage rate (with health benefits); and

WHEREAS, the amendment to the Ordinance now also provides that the covered employee may elect, during an annual open enrollment period to be established by the employer, whether or not to take part in the health benefits plan offered by the employer and, should the employee elect to opt out and not receive the coverage, then the employee shall be paid the higher hourly living wage rate (without health benefits); and

WHEREAS, in order to assure that covered service contractors doing business with the City continue to comply with the provisions of the Ordinance, as amended, it is necessary to amend all the current contracts between the City and service contractors subject to and covered by the provisions of the Ordinance; and

WHEREAS, at its meeting on September 20, 2010, the Mayor and City Commission adopted Resolution No. 2010-27514, authorizing the City Manager to amend said Agreements, to the extent required to bring them into compliance with the Ordinance, as amended.

NOW, THEREFORE, for and in consideration of the conditions and covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The above recitals are true and correct and incorporated hereto by reference.
2. Pursuant to Section 2-408 of the Miami Beach City Code, as same may be amended from time to time, service contractors shall be required to pay all employees who provide services pursuant to this Agreement, the hourly living wage rates based on the following three (3) year phase-in approach:
 - Commencing with City fiscal year 2010-11 (October 1, 2010), the hourly living wage rate will be \$10.16/hr. with health benefits, and \$11.41/hr without benefits;
 - Commencing with City fiscal year 2011-12 (October 1, 2011), the hourly living wage rate will be \$10.72/hr with health benefits, and \$12.17/hr without benefits; and
 - Commencing with City fiscal year 2012-13 (October 1, 2012), the hourly living rate will be \$11.28/hr with health benefits, and \$12.92/hr without benefits.
3. Except as amended herein, all other terms and conditions of the Agreement shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials, as of the date first entered above.

FOR CITY:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By: Grant Pancher
City Clerk
2/18/2011
Date

[Signature]
City Manager
2/18/2011
Date

FOR CONTRACTOR:

CHOICE ENVIRONMENTAL SERVICES OF MIAMI, INC.

ATTEST:

By: [Signature]
Secretary
Neal Rodriguez
Print Name
10-27-10
Date

[Signature]
President
Neal Rodriguez
Print Name
10/27/10
Date

By: [Signature] Grant Smith
General Counsel
10-27-10

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

[Signature] 10/5/10
City Attorney Date

EXHIBIT A

ORDINANCE NO.

2010-3682

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 2 OF THE CITY CODE, ENTITLED, "ADMINISTRATION;" BY AMENDING ARTICLE VI THEREOF ENTITLED, "PROCUREMENT", BY AMENDING DIVISION 6 ENTITLED "LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS AND CITY EMPLOYEES", SECTIONS 2-407 THROUGH 2-410 THEREIN; AND PROVIDING FURTHER FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

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

SECTION 1.

That Chapter 2, Article VI, Division 6, Sections 2-407 through 2-410, of the Code of the City of Miami Beach, Florida, is hereby amended as follows:

DIVISION 6. LIVING WAGE REQUIREMENTS FOR SERVICE CONTRACTS AND CITY EMPLOYEES

Sec. 2-407. Definitions.

City means the government of Miami Beach or any authorized agents, any board, agency, commission, department, or other entity thereof, or any successor thereto.

Covered employee means anyone employed by the city or any service contractor, as further defined in this division, either full or part time, as an employee, with or without benefits or as an independent contractor.

Covered employer means the city and any and all service contractors, whether contracting directly or indirectly with the city, and subcontractors of a service contractor.

Health benefits shall, at a minimum, mean health insurance coverage which consists of wellness and preventive care, including maternity, and that meets the requirements of a "standard health benefit plan" as defined in Subsection 627.6699(12)(b)(4), Florida Statutes, as may be amended from time to time.

Service contractor is any individual, ~~business entity~~, corporation (whether for profit or not for profit), partnership, limited liability company, joint venture, or ~~similar other business entity~~ who is conducting business in Miami Beach, ~~or Miami Dade County~~, and ~~who is either meets~~ one of the two following criteria:

~~(1) The service contractor is:~~

a.1. Paid in whole or part from one or more of the city's general fund, capital project funds, special revenue funds, or any other funds, either

~~directly or indirectly~~, whether by competitive bid process, informal bids, requests for proposals, some form of solicitation, negotiation, or agreement, or any other decision to enter into a contract; or ~~b-2. Engaged in the business of, or part of, a contract to provide, or a subcontract to provide, or similarly situated to provide, services, either directly or indirectly for the benefit of the city. However, this does not apply to contracts related primarily to the sale of products or goods.~~

Covered services are the type of services purchased by the city that are subject to the requirements of this division which include the following:

(1) City service contracts. Contracts involving the city's expenditure of over \$100,000.00 per year and which include the following types of services:

- a. Food preparation and/or distribution;
- b. Security services;
- c. Routine maintenance services such as custodial, cleaning, ~~computers~~, refuse removal, repair, refinishing, and recycling;
- d. Clerical or other non-supervisory office work, whether temporary or permanent;
- e. Transportation and parking services;
- f. Printing and reproduction services;
- g. Landscaping, lawn, and or agricultural services; and
- h. Park and public ~~place~~ property maintenance.

(2) Should any services included in subsection 1(a) - (h) that are being performed by city employees at the time this division is enacted be solicited in the future by the city to be performed by a service contractor, such services shall be covered services subject to this division.

Sec. 2-408. Living wage.

(a) Living wage paid.

(1) Service contractors. ~~All~~ Any service contractors, ~~as defined by this division,~~ entering into a covered services contract with the city shall pay to all its employees who provide services covered by this division, a living wage of no less than ~~\$8.56~~ \$11.28 an hour ~~with health benefits~~, or a living wage of not less than ~~\$9.84~~ \$12.92 an hour ~~without health benefits, as described in this section.~~

(2) Phase-in City employees. Effective October 1, 2010, the living wage in subsection (a) will be implemented on a ~~For city employees under the city pay plan, the city will begin to pay a living wage consistent with the goals and terms of this division on phase-in basis beginning in the 2001 - 2002~~ 2010-2011 city

budget year, increasing on an annual basis incrementally so that the living wage is fully implemented for city covered employees in the 2003—20042012-2013 city budget year¹ as may be adjusted pursuant to subsection (c) below. Thereafter, the living wage to be paid by the city to its employees shall not be subject to the annual indexing using the Consumer Price Index for all Urban Consumers (CPI-U) required under subsection (c) below and instead shall be subject to negotiations within the collective bargaining structure.

(b) *Health benefits; eligibility period.* For a covered employer or the city to comply with the living wage provision requirements of this division by choosing to pay the lower wage scale available when a covered employer also provides health benefits, such health benefits shall consist of payment of at least \$4.25¹\$1.64² per hour toward the provision of a health benefits plan for covered employees and their dependents.

If the health benefits plan of ~~the~~ covered employer ~~or the city~~ requires an initial period of employment for a new employee to be eligible for health benefits (eligibility period) the living wage provision requirements of this division shall be deemed to have been complied with during the eligibility period, provided the covered employer or the city commences to pay the applicable living wage rate without health benefits of not less than \$0.84 an hour, effective as of the date of hire of the covered employee.

Upon completion of the eligibility period, and provided the new employee will be provided health benefits, a covered employer may commence to pay the \$8.56 an hour wage scale applicable living wage rate with health benefits.

Proof of the provision of health benefits must be submitted to the awarding authority city's procurement director to qualify for the wage rate for employees with health benefits.

(c) *Annual Open Enrollment/Election of Benefits.* If a covered employee is being paid the hourly living wage rate with health benefits and elects, during such period of time (but no less than once during the covered employer's fiscal year) on which the covered employer permits its employees an opportunity to change their health benefits plan coverage (hereinafter such election period shall be referred to as the "annual open enrollment period") to no longer continue receiving coverage under the employer's health benefits plan, then — notwithstanding the covered employer's continuing to offer a health benefits plan to employees — the covered employee (electing out of coverage during the annual enrollment period) shall, by the next pay period, be paid the applicable hourly living wage rate without health benefits. The covered employer may, in its reasonable judgment and discretion, determine the length of time

¹ Using the proposed three (3) year phase-in, commencing with city fiscal year 2010-11 (October 1, 2010), the living wage rate will be \$10.16/hr. with health benefits, and \$11.41/hr without benefits; commencing with city fiscal year 2011-12 (October 1, 2011), the living wage rate will be \$10.72/hr with health benefits, and \$12.17 without benefits; and commencing with city fiscal year 2012-13 (October 1, 2012), the living wage rate will be \$11.28/hr with health benefits, and \$12.92/hr without benefits.

² Using the proposed three (3) year phase-in pursuant to Section 2-408(2), commencing with city fiscal year 2010-11 (October 1, 2010), the health benefits rate will be at least \$1.25/hr; commencing with city fiscal year 2011-12 (October 1, 2011), the health benefits rate will be at least \$1.45/hr; and commencing with city fiscal year 2012-13 (October 1, 2012), the health benefits rate will at least \$1.64/hr.

for the annual open enrollment period; may require employees to complete and return a benefits election form; and, in the event that a covered employee does not complete and return such election form to the covered employer during the prescribed time of the annual open enrollment period, then the covered employer may treat the covered employee as having elected to continue with the health plan benefits coverage (then in effect) and, accordingly, may continue to pay the covered employee the applicable hourly living wage rate with health benefits.

(de) Indexing. The living wage rate and health care benefits rate will may, by resolution of the city commission be automatically indexed each year annually for inflation using the Miami PMSA Consumer Price Index for all Urban Consumers (CPI-U) Miami/Ft. Lauderdale, issued by the U.S. Department of Labor's Bureau of Labor Statistics. ~~unless the city commission~~ Notwithstanding the preceding, no annual index shall exceed three percent (3%); nor shall an annual increase exceed the corresponding annual compensation increase (if any) provided to unrepresented (i.e. unclassified) city employees. The city commission may also, by resolution, elect not to index the living wage rate in any particular year, if it determines it would not be fiscally sound to implement ~~same~~ the CPI-U (in a particular year). The determination to index (or not index) the living wage rate shall be considered annually during the city commission's review and approval of the city's annual operating budget.

In the event that the city commission has determined, in any particular fiscal year (or years), to not index the living wage rate, and thereafter determines that making up all or any part of the prior year's (or years') unindexed percentage would not have an adverse fiscal impact upon the City, then the city commission shall also have the right, but not the obligation, to cumulatively index the living wage rate to "make-up" for any deficiencies in the prior year (or years) where there was (were) no increase(s) (the "catch up" election). The "catch-up" election must be approved by resolution, and may only be considered during the city commission's review and approval of the city's annual operating budget.

(ed) Certification required before payment. Any and all contracts for covered services shall may be voidable, and no funds may be released, unless prior to entering any agreement with the city for a covered services contract, the employerservice contractor certifies to the city that it will pay each of its covered employees no less than the living wage described in section 2-408(a). A copy of this certificate must be made available to the public upon request. The certificate, at a minimum, must include the following:

- (1) The name, address, and phone number of the covered employer, a local contact person, and the specific project for which the covered services contract is sought;
- (2) The amount of the covered services contract, a brief description of the project or service provided, and the city department the contract will serve;
- (3) A brief description of the project or service provided;
- (43) A statement of the wage levels for all employees; and
- (54) A commitment to pay all covered employees at the living wage, as defined by section 2-408(a), and including, without limitation, any annual indexes thereto (as provided in section 2-408(d)).

(fe) *Observation of other laws.* Every covered employee shall be paid not less than biweekly, and without subsequent deduction or rebate on any account (except as such payroll deductions as are directed or permitted by law or by a collective bargaining agreement). The covered employer shall pay covered employees wage rates in accordance with federal and all other applicable laws such as overtime and similar wage laws.

(gf) *Posting.* A copy of the most current living wage rate shall be kept posted by the covered employer at the site of the work in a prominent place where it can easily be seen and read by the covered employees, and shall also be supplied to ~~the~~an employee within a reasonable time after a request to do so. Posting requirements will not be required where the covered employer prints the following statements on the front of the covered employee's first paycheck and every six (6) months thereafter: "You are required by City of Miami Beach law to be paid at least \$8.56 dollars [NOTE: Covered employer to insert applicable living wage rate]an hour. If you are not paid this hourly rate, contact your employer, an attorney, or the City of Miami Beach." All notices will be printed in English, Spanish, and Creole.

(hg) *Collective bargaining.* Nothing in this division shall be read to require or authorize any covered employer to reduce wages set by a collective bargaining agreement or areas required under any prevailing wage law.

(i) *Tip credit exemption.* For a covered employee who regularly receives tips or gratuities (hereinafter "tips") as part of his/her pay, a covered employer will be exempt from payment of the applicable hourly living wage rate for such employee provided that the following requirements are met:

1. In order to qualify for the exception, the covered employer must claim a "tip credit" under the federal Fair Labor Standards Act (FLSA);
2. The exception shall only apply to covered employees who receive tips as part of their compensation (i.e. waiters, bartenders, hostesses, busboys, etc.);
3. The covered employer shall be solely responsible for assuring that all tipped covered employees meet the eligibility requirements for the tip credit under the FLSA;
4. The covered employer may only credit toward satisfaction of the applicable hourly living wage requirement, tips up to the maximum amount of the allowable tip credit; and
5. The covered employee's tips plus direct hourly wage combined must add up to at least the applicable hourly living wage rate.

Notwithstanding anything in this subsection, tipped covered employees must receive at least the applicable hourly living wage rate when their direct wages and tips are combined.

Sec. 2-409. Implementation.

(a) *Procurement specifications.* The living wage shall be required in the procurement specifications for all ~~city service contracts~~ covered services contracts on which bids or proposals ~~shall be~~ solicited on or after the effective date of this division. The procurement specifications ~~for applicable covered services contracts~~ shall include a requirement that service contractors and their subcontractors agree to produce all documents and records relating to payroll and compliance with this division upon request from the city. All covered service contracts awarded subsequent to the date when this division becomes effective, shall be subject to the requirements of this division.

~~(b) Information distributed. All requests for bids or requests for proposals procurement specifications for city covered services contracts of \$100,000.00 or more shall include appropriate information about the requirements of this division.~~

(eb) *Maintenance of payroll records.* Each covered employer shall maintain payrolls for all covered employees and basic records relating thereto, and shall preserve them for a period of three (3) years or the term of the covered services contract, whichever is greater. The records shall contain:

- (1) The name and address of each covered employee;
- (2) The job title and classification;
- (3) The number of hours worked each day;
- (4) The gross wages earned and deductions made;
- (5) Annual wages paid;
- (6) A copy of the social security returns and evidence of payment thereof;
- (7) A record of fringe benefit payments including contributions to approved plans; and
- (8) Any other data or information this division should require from time to time.

(dc) *Reporting payroll.* Every six (6) months, the covered employer shall file with the city's procurement director a complete payroll showing the covered employer's payroll records for each covered employee working on the covered services contract(s) ~~for covered services~~ for one payroll period. Upon request from the city, the covered employer shall produce ~~for inspection and copying~~ its payroll records for any or all of its covered employees for any period covered by the covered services contract. The city may examine, inspect, and/or copy such payroll records as needed to ensure compliance with the requirement of this division.

Sec. 2-410. Compliance and enforcement.

(a) *Service contractor to cooperate.* The service contractor shall permit the city employees, agents, or representatives to observe work being performed at, in, or on the project or matter for which the service contractor has a covered services contract was issued. The city representatives may examine the books and records of the service contractor relating to the

employment and payroll to determine if the service contractor is in compliance with the provisions of this division.

(b) *Complaint procedures and sanctions.*

(1) An covered employee, or former covered employee, who believes that this division applies or applied to him or her and that ~~at the service contractor~~ covered employer, or the city, is ~~or was~~ not complying with the requirements of this division, has a right to file a an administrative complaint with the procurement director of the city's procurement director. Any individual or entity may also file a complaint with the procurement director of the city on behalf of covered employee for investigation by the city.

(2) Complaints by employees of alleged violations shall be made in writing within one (1) year after the alleged violation occurred. No complaint shall be within the jurisdiction of the city under the administrative complaint procedures in this division if the complaint is filed more than one (1) year after the alleged violation practice occurred.

(3) The complaint shall be signed by the person making the complaint (hereinafter, the "complainant") and, if the complainant is not the covered employee, by the covered employee as well; shall be sworn to or affirmed; and shall, at a minimum, state the full name and address of the complainant; the full name and address of the covered employer against whom the complaint is being made (hereinafter, the "respondent"); the facts upon which the complaint is based; and such other information as may be required by the city. The complaint may be filed by personal delivery, ordinary mail, or certified mail, addressed to the city's procurement director may be made at any time and shall be investigated within 30 days by the city. Written and oral statements by an employee shall be treated as confidential and shall not be disclosed without the written consent of the employee to the extent allowed by the Florida Statutes.

(2) Any individual or entity may also file a complaint with the procurement director of the city on behalf of an employee for investigation by the city.

(43) It shall be the responsibility of ~~the~~ The city's procurement director shall notify the covered employer named in the complaint (the "respondent"), by providing the employer with a copy of the complaint by certified mail or personal delivery. Within thirty (30) working days after a copy of the complaint has been served upon the respondent by the procurement director, the respondent may file an answer thereto. If an answer is filed, the answer shall be in writing and contain, at a minimum, a separate and specific response to each and every particular of the complaint, or a denial of any knowledge or information thereof, sufficient to form a belief. Any allegation of the complaint which is not denied shall be deemed admitted.

(5) If an answer is filed, the procurement director shall cause a copy of the answer to be served on the complainant. If the respondent elects not to answer the complaint, then the matter shall proceed on the evidence in support of the complaint.

(6) Whenever a verified written complaint is filed pursuant to this division, the procurement director shall make a prompt investigation of to investigate all allegations of violations in connection therewith and forward to the city manager a written summary of the investigation of this division within 3060 days after the complaint is filed. If, at any time, the city, upon his/her review of the complaint, answer (if filed), and investigation, the city manager determines that a violation of this division has occurred, itthe city shall, within ~~ten~~thirty (30) working days of a finding of noncompliance, issue a notice of corrective action, in writing, othe the respondent, employer specifying all areas of noncompliance and deadlines for resolutions of the identified violations. A copy of the city manager's notice of corrective action shall be sent to the complainant and the respondent by certified mail, return receipt requested, or by hand delivery.

(7) If a ~~service contractor~~respondent fails to comply with any or all of the resolutions for the identified violations, within the deadlines provided in the notice, issued, the city manager or the city manager's designee may issue an order, in writing, to the ~~service contractor~~respondent, by certified mail or hand delivery, notifying the ~~service contractor~~respondent to appear at an administrative hearing before the city manager or the city manager's designee one of the city's sitting special masters, to be held at a time to be fixed in such order, which date shall be not less than five days after service thereof. A copy of the order shall also be sent to the complainant by certified mail or hand delivery.

(8) The city manager shall also provide a written report to the city commission, informing them of the complaint, which report shall include a brief summary of the facts at issue, the results of the city's investigation, and the recommended administrative disposition of the complaint (including any finding of non-compliance and subsequent recommendation for corrective action).

(49) The hearing proceedings shall be informal, butand shall afford the ~~service contractor~~respondent the right to testify in his/her the service contractor's own defense, present witnesses, be represented by counsel, submit relevant evidence, cross examine witnesses, and object to evidence.

(510) The proceedings shall be recorded and minutes kept by the city. Any ~~service contractor~~respondent requiring verbatim minutes for judicial review may arrange for the services of a court reporter at the expense of the ~~service contractor~~respondent.

(611) Within ~~ten days of~~Upon the close of the hearing, the ~~city manager or the special master~~city manager's designee, shall render a decision in writing determining whether or not the ~~service contractor~~respondent is in compliance, or whether other action should be taken, or whether the matter should be continued, as the case may be, and stating the reasons and findings of fact.

(712) The city manager or the city manager's designee shall file findings with the city clerk, and shall send a true and correct copy of histhe order by certified mail, return receipt requested, or by hand delivery, to the business address as the ~~service contractor~~shall designate in writingrespondent and complainant.

(813) ~~The city manager or special master's designee's findings shall constitute the final administrative action of the city for purposes of judicial review under state law. An aggrieved party, including the city administration, may appeal a final administrative order of a special master to the circuit court, in accordance with Section 30-77 hereof.~~

(914) ~~If a service contractor respondent fails to seek timely appellate review of an order of the city manager or the special master, city manager's designee, or to comply timely with such order, the city may pursue the enforcement of sanctions set forth in section 2-410(c).~~

(c) ~~Private right of action against service contractor covered employee.~~ Any covered employee ~~of or former covered employee of a service contractor may, instead of, but not in addition to, utilizing the city administrative complaint procedures set forth in section 2-410(b) this division, but not in addition to such procedure, bring an action to enforce the provisions of this division by filing suit against the covered employer in any court of competent jurisdiction to enforce the provisions of this division and may be awarded back pay, benefits, attorney's fees, and costs. Upon a finding by a court of competent jurisdiction that a covered employer unlawfully withheld wages under this division, such covered employee shall be entitled to an award of unpaid or underpaid wages, to reasonable costs and attorneys fees and, in addition, to liquidated damages in a sum equal to twice the amount of wages the covered employer is found to have unlawfully withheld in order to compensate the covered employee for the economic losses they suffered by reason of not receiving their wage at the time it was due and in order to deter future noncompliance by the covered employer. The applicable statute of limitations for such a claim will be two (2) years, as provided in F.S. §Section 95.11(4)(c), Florida Statutes, as same may be amended from time to time, for an action for payment of wages. The court may also impose sanctions on the service contractor, including those persons or entities aiding or abetting the service contractor, to include wage restitution to the affected covered employee and damages payable to the covered employee in the sum of up to \$500.00 for each week each service contractor is found to have violated this division.~~

(2)(d) ~~Sanctions against service contractors.~~ For violations of this division, the city shall sanction a service contractor by requiring the service contractor to pay wage restitution at the ~~employers contractor's~~ expense for each the affected covered employee and may ~~also access the following take the following actions:~~

(2)

(1) ~~The city may impose damages, in the sum of \$500.00 for each week for each week that the covered employee was found to have not been paid in accordance with this division; and/or~~

(2) ~~The city may suspend or terminate payment under the covered services contract and/or terminate the contract with the service contractor; and/or~~

(3) ~~The city may declare the employerservice contractor ineligible for future service contracts for up to three (3) years or until all penalties and restitution havehas been paid in full to the covered employee and all penalties (if any) paid to the city, whichever is longer; and/or in addition, all employers shall be ineligible under this section where principal officers of the employer were principal officers of an employer who violated this division.~~

(4) In order to compensate the city for the costs of investigating and remedying the violation, the city may also order the violating covered employer to pay the city's reasonable costs (for investigating and defending the complaint and remedying the violation). Such funds shall be allocated and used to offset the costs of implementing and enforcing this division.

(e) *Public record of sanctions.* All such sanctions recommended or imposed shall be a matter of public record.

(f) *Sanctions for aiding and abetting.* The sanctions in section 2-410(ed) shall also apply to any party or parties aiding and abetting in any violation of this division.

(g) *Retaliation and discrimination barred.* A covered employer shall not discharge, reduce the compensation of, or otherwise discriminate or take adverse action against any covered employee in retaliation for exercising the rights protected under this division including, without limitation, making a complaint to the city, ~~or otherwise asserting his or her rights under this division; or informing any person about any party's alleged non-compliance with this division; or informing any person of his or her potential rights under this division and to assist him/her in asserting such rights.~~ Protections under this subsection (g) shall apply to any person who mistakenly, but in good faith, alleges non-compliance with this division. Taking adverse action against a person within ninety (90) days of the person's exercise of rights protected under this division shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights participating in any of its proceedings or using any civil remedies to enforce his or her rights under this division. Allegations of retaliation or discrimination, if found true, in a proceeding under paragraph (b) or by a court of competent jurisdiction under paragraph (c), shall result in an order of restitution and reinstatement of a discharged covered employee with back pay to the date of the filing of the complaint with the city violation or such other relief as deemed appropriate.

(h) *Enforcement powers.* If necessary for the enforcement of this division, the city commission may issue subpoenas, compel the attendance and testimony of witnesses and production of books, papers, records, and documents relating to payroll records necessary for hearing, investigations, and proceedings. In case of disobedience of the subpoena, the city attorney may apply to a court of competent jurisdiction for an order requiring the attendance and testimony of witnesses and production of books, papers, records, and documents. Said court, in the case of the refusal to obey such subpoena, after notice to the person subpoenaed, and upon finding that the attendance or testimony of such witnesses or the production of such books, papers, records, and documents, (as the case may be), is relevant or necessary for such hearings, investigations, or proceedings, may issue an order requiring the attendance or testimony of such witnesses or the production of such documents, and any violation of the court's order may be punishable by the court as contempt thereof.

(i) *Remedies herein nonexclusive.* No remedy set forth in this division is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce the rights under this division in a court of law. This division shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination; provided, however, that if a complainant has previously initiated, or initiates, a civil action in a court of competent jurisdiction alleging a violation of this division, or other matter, with respect to the same grievance which is the subject of an administrative complaint pursuant to this division, then the administrative complaint shall not be (or shall no longer be, as the case may be) within the jurisdiction of the city under the administrative complaint procedures established herein.

SECTION 2. 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 3. 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 relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article," or other appropriate word.

SECTION 4. EFFECTIVE DATE.

This Ordinance shall take effect ten days following adoption.

PASSED and ADOPTED this 9th day of June, 2010.

ATTEST:

Randy Parcher

CITY CLERK

Matt H. Suarez
MAYOR

F:\attoVAGURRESOS-ORDLiving Wage Ordinance - Amendment (Second Reading 6-9-10).docx

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

[Signature] 6/10/10
City Attorney Date