



CITY of HOLLYWOOD, FLORIDA

Office of the City Attorney

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Jeffrey P. Sheffel

City Attorney



September 30, 2011

David M. Williams, Plan Administrator
Hollywood Police Officers' Retirement System
4205 Hollywood Blvd., Suite 4
Hollywood, Florida 33021

Re: DROP Applications Submitted on or before 9/30/2011

Dear Mr. Williams:

Regarding the above-captioned matter, you have submitted several DROP applications to the City with a request that the City process them. In response thereto, I am writing to advise you of the City's position that the applications are not proper to the extent that the applicants seek to commence their participation in the DROP on a date subsequent to September 30, 2011. As such, the Board of Trustees (the "Board") should have either denied the applications or approved them with a commencement date on or before September 30, 2011.

In support of the City's position, I state the following:

1. On May 18, 2011, the City Commission adopted Resolution No. R-2011-118 (copy enclosed) declaring a financial urgency for fiscal year 2012 pursuant to Florida Statute Section 447.4095.
2. On September 7, 2011, the City Commission adopted Ordinance No. O-2011-27 (the "Ordinance") (copy enclosed) amending the Police Officers' Retirement Plan. One amendment is the addition of subsection 33.125(2), which, among other things, preserves retirement benefits for members who are eligible for normal retirement on September 30, 2011, "except that any such member who does not *enter* the DROP on or before September 30, 2011 shall not be eligible to enter the DROP after September 30, 2011." There is one other exception that is not relevant for the purposes of this letter.



Our Mission: We are dedicated to providing municipal services for our diverse community in an atmosphere of cooperation, courtesy and respect. We do this by ensuring all who live, work and play in the City of Hollywood enjoy a high quality of life.

"An Equal Opportunity and Service Provider Agency"

David M. Williams, Plan Administrator
September 30, 2011
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3. On September 21, 2011, the City Commission adopted Resolution No. R-2011-254 (copy enclosed) addressing the Fiscal Year 2012 financial urgency by modifying certain wages and other terms and conditions in the collective bargaining agreement between the Broward County PBA and the City.
4. The applicants are apparently eligible for normal retirement but do not wish to *enter* the DROP until sometime after September 30, 2011. The plain language of subsection 33.125(2) establishes September 30, 2011 as the last day on which a member can enter the DROP.
5. You mention in your e-mail that the Board of Trustees affirmed the status of the members who are currently eligible for normal retirement prior to October 1, 2011 through its legal counsel. This seems to be a reference to the principle that when a member becomes eligible for normal retirement, his or her retirement benefits cannot be reduced. However, Florida courts have determined that DROP is an employment status, not a retirement benefit. Thus, effective October 1, 2011, the Ordinance properly terminates the right of a member who is eligible for normal retirement to enter the DROP.

By reason of the foregoing, the City demands that the Board administer the plan in accordance with the terms of Ordinance No. O-2011-27. Should the Board fail to do so, the City is prepared to take any and all steps necessary to enforce the Ordinance.

Sincerely,



Alan Fallik
Deputy City Attorney

Enclosures

Cc: Cathy Swanson-Rivenbark, City Manager
Gail Reinfeld, Director of Human Resources & Risk Management
Stephen Cypen, Esq.

RESOLUTION NO. R-2011-117

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, DECLARING THE EXISTENCE OF A FINANCIAL URGENCY, WITH REGARD TO THE CURRENT FISCAL YEAR (2011), REQUIRING MODIFICATION OF: THE THREE CURRENT COLLECTIVE BARGAINING AGREEMENTS BETWEEN THE CITY OF HOLLYWOOD AND AFSCME LOCAL 2432, THE CURRENT COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF HOLLYWOOD AND BROWARD COUNTY PBA, AND CURRENT COLLECTIVE BARGAINING AGREEMENT BETWEEN THE CITY OF HOLLYWOOD AND HOLLYWOOD PROFESSIONAL FIREFIGHTERS, LOCAL #1375.

WHEREAS, the City Manager is charged with the responsibility of recommending a budget for adoption by the City Commission ("Commission") of the City of Hollywood ("City"); and

WHEREAS, by law, that budget must be balanced between anticipated revenues and projected expenses; and

WHEREAS, the Commission adopted a balanced budget for fiscal year 2011; however, revenues in fiscal year 2011 are not coming in as originally anticipated, resulting in a likely revenue shortfall of approximately \$7,350,000.00 ("Shortfall"); and

WHEREAS, the elimination of a sufficient number of positions to make up the Shortfall would result in an unacceptable reduction in the level of service provided to the citizens and businesses of the City; and

WHEREAS, in order to offset the Shortfall and maintain a balanced budget in accordance with law, while maintaining acceptable levels of service, the City has an urgent and drastic need to modify the agreements between the City and the unions representing its five bargaining units and modify the employee terms and conditions applicable to non-bargaining unit employees;


NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA:

Section 1: That it hereby declares the existence of a financial urgency for fiscal year 2011, pursuant to Florida Statute Section 447.4095 (the "Statute"), requiring modification of the three current collective bargaining agreements between the City and AFSCME Local 2432, the current collective bargaining agreement between the City and the Broward County PBA, and the current collective bargaining agreement between the City and the Hollywood Professional Firefighters, Local #1375.

Section 2: That, in view of the above declaration and pursuant to the Statute, it hereby directs the City Manager to meet with the unions representing the City's five bargaining units as soon as possible to negotiate the impact of the financial urgency.

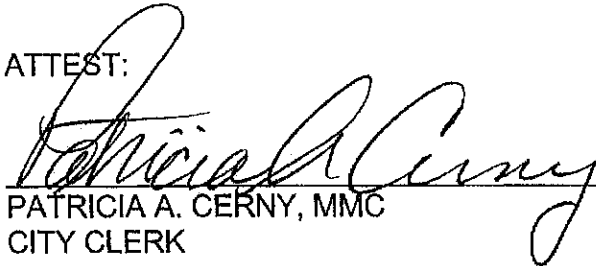
Section 3: That this resolution shall be in full force and effect immediately upon its passage and adoption.

PASSED AND ADOPTED this 18 day of May, 2011.



PETER BOBER, MAYOR

ATTEST:



PATRICIA A. CERNY, MMC
CITY CLERK

APPROVED AS TO FORM & LEGALITY
for the use and reliance of the
City of Hollywood, Florida only:



JEFFREY P. SHEFFEL, CITY ATTORNEY

ORDINANCE NO. 0-2011-27

AN ORDINANCE OF THE CITY OF HOLLYWOOD, FLORIDA, AMENDING THE SUBCHAPTER OF CHAPTER 33 OF THE CODE OF ORDINANCES TITLED "POLICE OFFICER'S RETIREMENT SYSTEM"; FREEZING THE POLICE OFFICERS' RETIREMENT PLAN EFFECTIVE SEPTEMBER 30, 2011 AND CREATING A NEW POLICE OFFICERS' RETIREMENT PLAN EFFECTIVE OCTOBER 1, 2011.

WHEREAS, on May 18, 2011, the City Commission of the City of Hollywood, Florida, declared a financial urgency for fiscal year 2012 pursuant to Florida Statute Section 447.4095; and

WHEREAS, the City Commission has determined that it is necessary to address the financial urgency by amending the Police Officers' Retirement Plan as set forth in this ordinance; and

WHEREAS, Section 33.138 of the Code of Ordinances provides, as one of two methods of amending the Police Officers' Retirement Plan, a majority vote of those qualified electors of the City voting in a referendum election called for such purpose by the City Commission; and

WHEREAS, the City Commission has called a referendum for the purpose of amending the Police Officers' Retirement Plan as set forth in this ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA:

Section 1: That Section 33.125 of the Code of Ordinances is hereby amended to read as follows:

TITLE III: ADMINISTRATION

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CHAPTER 33: CITY EMPLOYEES

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POLICE OFFICER'S RETIREMENT SYSTEM

§ 33.125 ESTABLISHMENT; PURPOSE.

(Coding: Words and figures underscored are additions to existing law; words and figures ~~struck-through~~ are deletions.)

(1) There is hereby established a Police Officer's Retirement System comprising a comprehensive amended retirement plan for the Police Officers of the city. The purpose of this plan is to establish amended terms and conditions under which retirement benefits will be provided to eligible employees of the city. The benefits under the plan shall be in addition to amounts received as Federal Social Security benefits, and shall also be in addition to benefits received by any member from any other private or public retirement system.

(2) The benefit structure in effect on September 30, 2011 is frozen at midnight on that date. All members will be vested in benefits accrued to that date and payable under the terms and conditions of plan provisions then in effect. No additional benefits of any kind shall accrue; provided, however, that for any member who is eligible to retire with normal retirement benefits on September 30, 2011, the benefit structure in effect on September 30, 2011 shall remain in effect beyond September 30, 2011 and shall not be frozen, except that any such member who does not enter the DROP on or before September 30, 2011 shall not be eligible to enter the drop after September 30, 2011 and no such member shall be an eligible person under subsection 33.136(N) below regarding supplemental pension distributions. Effective October 1, 2011, all members who are not eligible to retire with normal retirement benefits on September 30, 2011 are subject to a new benefit structure applicable to future service as herein set forth.

Section 2: That Section 33.126 of the Code of Ordinances is hereby amended to read as follows:

TITLE III: ADMINISTRATION

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CHAPTER 33: CITY EMPLOYEES

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POLICE OFFICER'S RETIREMENT SYSTEM

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§ 33.126 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AVERAGE MONTHLY EARNINGS. One-twelfth of the arithmetic average of earnings for the highest three years preceding the actual retirement or termination date of a member. Effective June 7, 2006, one-twelfth of the arithmetic average of earnings for the highest three 12-month measurement periods preceding the actual retirement or

termination date of a member, excluding, in the determination of the highest three 12-month measurement periods and calculation of the arithmetic average of earnings, pay for overtime in excess of 400 hours for each 12-month measurement period. The definitions of AVERAGE FINAL COMPENSATION set forth above are frozen at midnight on September 30, 2011. Under the benefit structure effective October 1, 2011, AVERAGE FINAL COMPENSATION means the arithmetic average of earnings for the 60 highest consecutive months of the last 120 months of credited service prior to retirement, termination, or death.

* * *

EARNINGS. Earnings shall be the sum of the following amounts actually paid to a member: salary; overtime pay; longevity pay; assignment pay; payments for accrued holiday time; payments for accrued blood time; annual "cash-out" payments for accrued vacation time; and payments for accrued compensatory time. Earnings shall not include payments for unused sick time or for unused vacation time which is paid upon retirement or termination. The definition of earnings set forth above is frozen at midnight on September 30, 2011. Under the benefit structure effective October 1, 2011, earnings shall be the sum of the following amounts actually paid to a member: salary; longevity pay; and assignment pay. Earnings shall not include overtime pay, payments for accrued holiday time, payments for accrued blood time, annual "cash-out" payments for accrued vacation time, payments for accrued compensatory time, and payments for unused sick time or for unused vacation time which is paid upon retirement or termination.

* * *

Section 3: That Section 33.128 of the Code of Ordinances is hereby amended to read as follows:

TITLE III: ADMINISTRATION

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CHAPTER 33: CITY EMPLOYEES

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POLICE OFFICER'S RETIREMENT SYSTEM

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§ 33.128 NORMAL RETIREMENT.

(A) *Normal retirement date.* A member may retire on the first day of the month coincident with or next following the attainment of age 50 or on the first day of the month

coincident with or next following the completion of 25 years of creditable service. Effective June 7, 2006, a member may retire on the day he or she attains age 50 or completes 22 years of creditable service. A member hired prior to October 1, 2011 with less than ten years of credited service as of September 30, 2011 and a member hired on or after October 1, 2011 may retire on the day he or she attains age 55 and completes ten years of creditable service or on the day he or she attains age 52 and completes 25 years of creditable service. A member with 10 or more years of creditable service as of September 30, 2011 shall retain his or her current normal retirement date.

(B) *Normal retirement benefit.*

(1) Amount.

(a) The monthly retirement benefit shall be an amount equal to 3% of average monthly earnings times years and completed months of continuous service, up to September 30, 2011, not exceeding 20 years plus 4% of average monthly earnings times years and completed months of continuous service, up to September 30, 2011, after 20 years. Effective June 7, 2006, upon completion of 22 years of continuous service prior to October 1, 2011, a member shall be provided an accrued benefit of 80% of average monthly earnings (equivalent to three years of continuous service deemed earned at a 4% accrual rate). The maximum normal retirement benefit payable to a member whose accrued benefit as of June 7, 2006 is not in excess of 80% of average monthly earnings shall not exceed 80% of average monthly earnings, and the maximum normal retirement benefit payable to a member whose accrued benefit as of June 7, 2006 is in excess of 80% of average monthly earnings shall not exceed the member's accrued benefit as of June 7, 2006.

(b) Under the benefit structure effective October 1, 2011, the monthly retirement benefit shall equal 2.0% of average monthly earnings times years and completed months of continuous service earned on or after October 1, 2011 up to a maximum benefit equal to the net result of subtracting from 80% the sum of (i) the product of 3% times the number of years of continuous service, not exceeding 20 years, earned up to September 30, 2011 and (ii) the product of 4% times the number of years of continuous service, in excess of 20 years, earned up to September 30, 2011; provided, however, that if the member retires before attaining age 62, an additional benefit equal to 0.5% of average monthly earnings times continuous service on and after October 1, 2011 shall be paid up to age 62.

(c) Anything to the contrary herein notwithstanding, a member's accrual rate shall not be less than 2% per year of continuous service.

* * *

(E) *Deferred retirement option plan ("DROP" plan).* A DROP plan is to be created and administered by the Board of Trustees of the Police Officer's Retirement System at no cost and with no liability to the city. Effective June 7, 2006, a member

may enter into the DROP on the day he or she attains age 50 or completes 22 years of creditable service. A member who elects to enter the DROP plan shall have no recourse against the city for any claims with respect to the DROP payments or the DROP plan. A member, hired on or before September 30, 2009, who elects to enter the DROP plan shall have the option to receive a rate of return on his or her DROP account that is equal to the assumed rate of investment return on fund assets. In the case of a member hired on or after October 1, 2009, his or her DROP account shall earn interest at the rate of 6% per year. In the event the plan earning exceed 6% per year, the earnings in excess of 6% up to and including 12% per year shall offset the city's cost of maintaining the DROP program. Earnings in excess of 12% per year shall be equally divided between the DROP participant and the city. The maximum period of participation in the DROP plan for members who enter the DROP plan after June 7, 2006 shall be the lesser of 8 years or that period of participation in the DROP plan that would result in a total of 30 years of employment with the city. The city employment of each member who elects to participate in the DROP plan after June 7, 2006 shall terminate not later than the end of his or her maximum period of participation in the DROP plan. A member who does not enter the DROP prior to October 1, 2011 shall not be eligible to participate in the DROP.

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Section 4: That Section 33.130 of the Code of Ordinances is hereby amended to read as follows:

TITLE III: ADMINISTRATION

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CHAPTER 33: CITY EMPLOYEES

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POLICE OFFICER'S RETIREMENT SYSTEM

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§ 33.130 VESTING.

If a member terminates his employment with the Police Department, either voluntarily or by discharge, and is not eligible for any other benefits under this system he shall be entitled to the following:

* * *

(B) With ten or more years of continuous service:

(1) Under the benefit structure effective prior to October 1, 2011, the pension benefits accrued to his date of termination, payable for the life of the member and commencing upon the member's attainment of age 50, provided he does not elect to withdraw his member contributions; and, under the benefit structure effective October 1, 2011, the pension benefits accrued to his date of termination, payable for the life of the member and commencing upon the member's attainment of age 55, provided he does not elect to withdraw his member contributions or, in the discretion of the member;

(2) Refund of member contributions plus 3% interest compounded annually, in which event no pension benefit shall be payable.

Section 5: That Section 33.131 of the Code of Ordinances is hereby amended to read as follows:

TITLE III: ADMINISTRATION

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CHAPTER 33: CITY EMPLOYEES

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POLICE OFFICER'S RETIREMENT SYSTEM

* * *

§ 33.131 FINANCING OF THE SYSTEM.

The fund of the retirement system shall consist of monies derived from the following sources:

* * *

(D) Members of the system shall contribute 8% of their earnings. Effective October 1, 2006, members of the system shall contribute 8.5% of their earnings. Payments to the member for overtime in excess of 223 hours for the period from June 7, 2006 through December 31, 2006, and for overtime in excess of 400 hours in calendar year 2007 and each calendar year thereafter shall be excluded from earnings for this purpose. After completion of 27 years of continuous service, members of the system shall contribute only 0.5% of their earnings. Effective October 1, 2009, members of the System shall contribute 9% of their earnings. Effective October 1, 2010, members shall contribute 9.25% of their earnings. ~~Effective October 1, 2011, members shall contribute 9.5% of their earnings.~~

* * *

Section 6: That Section 33.136 of the Code of Ordinances is hereby amended to read as follows:

TITLE III: ADMINISTRATION

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CHAPTER 33: CITY EMPLOYEES

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POLICE OFFICER'S RETIREMENT SYSTEM

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§ 33.136 MISCELLANEOUS PROVISIONS.

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(M) *Annual increase in benefits.* Effective June 7, 2006, commencing three years after the date retirement benefits begin, a retired member who did not participate in the DROP plan shall receive a 2% annual increase in retirement benefits. Effective June 7, 2006, commencing upon the later of (i) separation from employment with the city and (ii) three years after the member entered the DROP plan, a retired member who participated in the DROP plan shall receive a 2% annual increase in retirement benefits. The benefit provided in this subsection is frozen as of midnight on September 30, 2011. Under the benefit structure effective October 1, 2011, there shall be no annual increase in retirement benefits.

(N) *Supplemental pension distribution.* There shall be payable to eligible persons a supplemental pension distribution for each fiscal year in which the actual rate of investment return earned on fund assets exceeds the assumed rate of investment return on fund assets. The total amount of the supplemental pension distribution for a particular fiscal year shall be equal to the actuarial present value of future retirement benefits, as calculated on the eligible retirees' portion of the Fund's earnings attributable to assets apportioned to retiree benefit liability, multiplied by the excess (not to exceed 2%) of the actual rate of investment return over the assumed rate of investment return for the fiscal year. The Board of Trustees shall determine who is an eligible person and the specific amount to be paid to each eligible person; provided, however, that a member who does not retire or enter the DROP on or before September 30, 2011 (and the surviving spouse and other beneficiaries thereof) shall not be an eligible person.

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ORDINANCE FREEZING POLICE PENSION PLAN

Section 7: That it is the intention of the City Commission that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of the City of Hollywood, Florida, and the provisions of this ordinance may be renumbered to accomplish such intention.

Section 8: That if any word, phrase, clause, subsection or section of this ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of any remaining portions of this ordinance.

Section 9: That all sections or parts of sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 10: That this ordinance shall be in full force and effect immediately upon approval by:

A) A 5/7ths vote of the City Commission and 50% plus one of the active members of the Police Officers' Retirement System; or

B) A majority vote of those qualified electors of the City voting in a referendum election called for such purpose by the City Commission.


ADVERTISED on Aug 26, 2011.

PASSED on first reading this 18 day of July, 2011.

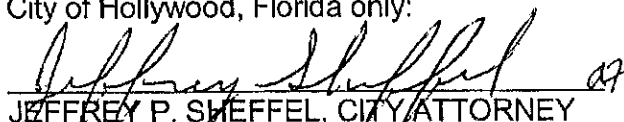
PASSED AND ADOPTED on second reading this 7 day of Sept, 2011.


PETER BOBER, MAYOR

ATTEST:


PATRICIA A. CERNY, MMC
CITY CLERK

APPROVED AS TO FORM & LEGALITY
for the use and reliance of the
City of Hollywood, Florida only:


JEFFREY P. SHEFFEL, CITY ATTORNEY
9/8/11pac

RESOLUTION NO. R-2011-254

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, ADDRESSING THE FISCAL YEAR 2012 FINANCIAL URGENCY PURSUANT TO FLORIDA STATUTE § 447.4095 BY MODIFYING CERTAIN WAGES AND OTHER TERMS AND CONDITIONS IN THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE BROWARD COUNTY POLICE BENEVOLENT ASSOCIATION AND THE CITY OF HOLLYWOOD.

WHEREAS, on May 18, 2011, the City Commission of the City of Hollywood, Florida, pursuant to Florida Statute § 447.4095, adopted Resolution No. R-2011-118 declaring a financial urgency for fiscal year 2012; and

WHEREAS, after a reasonable period of negotiation not exceeding 14 days between the Broward County Police Benevolent Association (the "Union"), and the City, a dispute exists between the Union and the City, resulting in the occurrence of an impasse by operation of law;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA:

Section 1: That it hereby implements, effective October 1, 2011, the following changes to the wages, hours, and terms and conditions of employment set forth in the Collective Bargaining Agreement (CBA) between the Union and the City:

- a) continuation of the across-the-board 12.5% wage reduction implemented by Resolution No. R-2011-162, dated June 23, 2011, which amended Resolution No. R-2011-160, dated June 13, 2011;
- b) elimination of all wage increases and cost-of-living adjustments,
- c) elimination of all merit pay step increases,
- d) elimination of longevity pay increases,
- e) elimination of the Pension Plan Variable (Section 14.5 c) from the CBA,
- f) elimination of the equivalent of the State incentive pay for an Associate & Bachelor Degree (Section 39.3) from the CBA,
- g) deletion of Section 12.6(a) from the CBA,

h) deletion of Article 31, Sec. 1(a) from the CBA and amendment of the Life and Health Group Benefits Plan by increasing co-pays from \$20.00 to \$40.00 and eliminating the vision/hearing program of \$150.00/yr.

i) freezing the current pension plan and creation of a new pension plan, all in accordance with Ordinance No. O-2011-23, and deletion of all contractual language in Article 28 of the CBA that is inconsistent with Ordinance No. O-2011-23.

Section 2: That this resolution shall be in full force and effect immediately upon its passage and adoption.

PASSED AND ADOPTED this 21 day of Sept, 2011.



PETER BOBER, MAYOR

ATTEST:



PATRICIA A. CERNY, MMC
CITY CLERK

APPROVED AS TO FORM & LEGALITY
for the use and reliance of the
City of Hollywood, Florida, only.



JEFFREY P. SHEFFEL
CITY ATTORNEY