



City of Coral Gables
CITY COMMISSION MEETING
 April 8, 2014

ITEM TITLE:

A Resolution of the City Commission of the City of Coral Gables, Florida, relating to the Retirement System for City Employees; authorizing the City Attorney to take legal action on behalf of the City and the Retirement Board against The Nyhart Company and Stanley Holcombe & Associates, as actuaries for the Retirement System, to recover damages caused by the actions of The Nyhart Company and Stanley Holcombe & Associates relating to application of the maximum limits on retirement benefits contained in section 415 of the Internal Revenue Code, and any other claims the City and Board may have; authorizing the City Attorney to engage outside legal counsel to assist in taking such necessary legal action; providing for full force and effectiveness; providing for repeal of conflicting Resolutions; and providing an effective date.

DEPARTMENT HEAD RECOMMENDATION:

Approval.

BRIEF HISTORY:

The actuarial firm of Stanley, Holcombe & Associates, ("Stanley") provided actuarial services for the City's retirement system from 2003 until it was acquired by The Nyhart Company ("Nyhart") in 2011. Nyhart continued providing actuarial services for the retirement system until 2013 under the terms of the contract for actuarial services approved by the Retirement Board in 2008. In pertinent part, the contract states that the actuary's responsibilities include: "[c]heck and certify accuracy of retirement and DROP calculations." The contract further states that "the actuary will utilize the skill, prudence, and diligence that would be expected of an expert in a comparable position."

Section 415 of the Internal Revenue Code places a maximum annual dollar limit on the retirement benefits that may be paid from qualified defined benefit plans. The Section 415 limitations, originally enacted by Congress in 1974, have been amended several times since. Retirement plans must comply with the section 415 limits or risk disqualification by the IRS. The current Section 415 annual limit on employer-provided benefits paid from a defined benefit plan is \$205,000 at age 62. This dollar limitation is periodically adjusted for inflation in \$5,000 increments. Section 415 also provides for a downward adjustment of the benefit limit for plan members who retire prior to age 62. In addition, lump sum payments (including DROP distributions) must be annuitized and added to the member's annual benefit for purposes of applying the 415 limit. The combination of younger retirement ages and DROP plans that are features of many governmental pension plans can result in significant reductions to the retirement benefits of some public employees as a result of the Section 415 limitations. The Coral Gables Retirement System is a qualified plan, and has incorporated the Section 415 benefit limitations (section 50-237 of the City Code).

Nyhart and Stanley prepared benefit calculations and issued statements certifying the amount of retirement and DROP benefits for members of the City's Retirement System from 2006 until 2012, without providing advance notice of the reduction in benefits that could result the Section 415 limitations. The retirement benefits of several former City employees have been significantly reduced by application of the limitations on retirement benefits contained in Section 415.

As a result of the benefit reductions and the lack of advance notice to affected retirees, in 2012 the City created a preservation of benefits plan to pay retirees the difference between their benefit calculated in

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accordance with the City Retirement System, and their allowable benefit under Section 415. To date, the City has made payments to retirees totaling \$140,324 through the preservation of benefits plan, and is now making continuing payments to three former employees. In addition, the City entered into settlement agreements with two former employees in which the City agreed to make up the difference between the benefits the employees were promised from the City retirement plan and the reduced benefit allowed by the Section 415 limitations.

In July 2012, the City Commission directed the City Attorney to conduct a comprehensive review of the actions taken by the Retirement Board, its actuary and others related to the application of the maximum limits on retirement benefits contained in Section 415 of the Internal Revenue Code, and to determine whether there was cause for the City Commission to amend or modify the Retirement Board's decision to approve a new contract with Nyhart. The City Attorney engaged the City's pension counsel and actuary to obtain and review documents from the Retirement Board and Nyhart. The City Attorney worked with the City's pension counsel and actuary in the development of the final report. The report on the review of the Coral Gables Retirement Board and Actuary was issued in May 2013. The report found, among other things, that Nyhart and Stanley did not follow generally accepted actuarial standards and practices related to:




- Providing notice to the Administrator, Retirement Board and employees of the expected impact of the section 415 limits when certifying the monthly retirement and/or DROP benefits of plan members.
- Correctly calculating the application of the section 415 limits with respect to the benefits of certain plan members.

Upon receipt of the May 2013 report, the City Commission agreed with the findings and directed the Retirement Board not to renew its contract with Nyhart, and also directed the City Attorney to evaluate possible legal action against Nyhart and Stanley. The City Attorney, working with the city's pension counsel, has concluded that the City and Retirement Board have several causes of action against Nyhart and Stanley.

The City has suffered and will suffer damages as a result of Nyhart's and Stanley's actions, including amounts that have been paid and will be paid in the future to former employees through the preservation of benefits plan, amounts paid to former employees as the result of settlement of their claims, fees paid to attorneys and actuaries in reviewing the actions of Nyhart and Stanley and resolving the claims of former employees, and fees paid to attorneys in connection with the legal action.

The attached Resolution authorizes and directs the City Attorney to bring legal action against Nyhart and Stanley to recover damages that resulted from Nyhart's and Stanley's actions relating to the application of the maximum limits on retirement benefits contained in section 415 of the Internal Revenue Code, and any other claims that the City or Retirement Board may have against Nyhart and Stanley. The Resolution further authorizes the City Attorney to hire outside legal counsel to assist in taking such necessary legal action to recover the City's damages.

1. APPROVED BY:

Department Director	City Attorney	City Manager
		

2. ATTACHMENT(S):**A. Resolution**