

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2014-70

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 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; FURTHER 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.

WHEREAS, in July 2012, the City Commission was made aware of several issues concerning certain actions and advice of the City retirement system actuary, The Nyhart Company ("Nyhart") and its predecessor, Stanley, Holcombe & Associates ("Stanley"), regarding the application of Section 415 of the Internal Revenue Code to the retirement benefits of certain current and former City employees; and

WHEREAS, in July 2012, the City Commission was advised that the City retirement benefits payable to certain former City employees were significantly reduced by application of the limitations on retirement benefits contained in Section 415 of the Internal Revenue Code; and

WHEREAS, questions were raised as to whether the Retirement Board and members of the City of Coral Gables Retirement System had been adequately informed about the effect the Section 415 limitations would have on the retirement benefits of plan members; and

WHEREAS, the City Commission directed the City Attorney to conduct a comprehensive review of the actions taken by Nyhart and Stanley related to the application of the maximum limits on retirements benefits contained in Section 415; and

WHEREAS, the City Attorney has provided the City Commission a report of the comprehensive review of the actions taken by Nyhart and Stanley related to the application of the maximum limits on retirements benefits contained in Section 415 of the Internal Revenue Code, and the City Commission agreed with the findings in that report; and

WHEREAS, as a result of the actions of Nyhart and Stanley relating to the Section 415 benefit limits, the City has incurred damages in the form of professional fees paid for legal and actuarial services in connection with a review and analysis of the Section 415 issues caused by Nyhart's and Stanley's performance; for remediating the damages caused by Nyhart's and Stanley's actions through settlement agreements with former City employees; and in the creation and funding of the Preservation of Benefits Plan; and

WHEREAS, the City Attorney, with the assistance of outside pension counsel, has concluded that the City and Retirement Board have a number of potential claims against Nyhart and Stanley in connection with the application of the Section 415 limits; and

WHEREAS, the City Commission desires to take legal action to recover damages that the City and Retirement Board have suffered;

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

SECTION. 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

SECTION 2. Having considered the facts in this matter as well as the City Attorney's advice, the City Commission has determined that it is necessary and appropriate to bring legal action against The Nyhart Company and Stanley, Holcombe & Associates to recover the damages incurred by the City and Retirement Board related to The Nyhart Company's and Stanley, Holcombe & Associates' actions relating to the application of the maximum limits on retirement benefits contained in section 415 of the Internal Revenue Code. Accordingly, the City Commission authorizes and directs the City Attorney to bring legal action against The Nyhart Company and Stanley, Holcombe & Associates, as well as any other related parties that the City Attorney determines should be named to effectuate full relief, to recover damages that resulted from The Nyhart Company's and Stanley, Holcombe & Associates' actions relating to the application of the maximum limits on retirement benefits contained in section 415 of the Internal Revenue Code, as well as any other claims that the City possesses against these parties. The City Commission authorizes the City Attorney to engage outside legal counsel to assist in taking such necessary legal action to recover any and all damages incurred by the City and retirement Board.

SECTION 3. If any section, sentence, clause or phrase of this resolution shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this resolution.

SECTION 4. This Resolution shall remain in full force and effect until supplemented, amended, repealed or otherwise altered.

SECTION 5. This Resolution hereby repeals all resolutions in conflict herewith.

SECTION 6. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED THIS EIGHTH DAY OF APRIL, A.D., 2014.

(Moved: Keon / Seconded: Kerdyk)

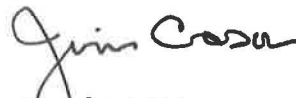
(Yeas: Keon, Kerdyk, Lago, Cason)

(Majority: (4-0) Vote)

(Absent: Quesada)

(Agenda Item: I-1)

APPROVED:



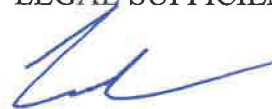
JIM CASON
MAYOR

ATTEST:



WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:



CRAIG E. LEEN
CITY ATTORNEY