

RESOLUTION NO. 2005- 797

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF SUNNY ISLES BEACH, FLORIDA, APPOINTING HANS OTTINOT AS CITY ATTORNEY OF THE CITY EFFECTIVE JUNE 13, 2005, IN THE TERMS AND CONDITIONS SET FORTH HEREIN; AUTHORIZING THE MAYOR TO FINALIZE AND EXECUTE AN AGREEMENT, WITH MINOR MODIFICATIONS IF NEEDED, AND TO DO ALL THINGS NECESSARY TO EFFECTUATE THIS RESOLUTION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Article 3, Section 3.6 of the City of Sunny Isles Beach Municipal Charter provides that the Mayor may nominate, and the City Commission, including the Mayor, by majority shall confirm an individual attorney or a law firm to act as the City Attorney, the chief legal counsel of the City; and

WHEREAS, Article 3, Section 3.6 of the City of Sunny Isles Beach Municipal Charter further provides that the terms and conditions of such appointment are to be established by the City Commission; and

WHEREAS, the Mayor has nominated, and the City Commission has confirmed the appointment of Hans Ottinot, Esquire as City Attorney; and

WHEREAS, the City Commission has agreed to terms and conditions to include an annual salary of One Hundred Sixty-Eight Thousand and 00/100 Dollars (\$168,000.00), regular and customary benefits afforded to administrative and management employees, no housing allowance, a Five Thousand Dollar (\$5,000.00) car allowance, the same retirement benefit as our present City Attorney of 12% contribution to the retirement system, and severance pay of eight (8) months for the first year of the contract and twelve (12) months severance pay thereafter if the employee is terminated without cause; and

WHEREAS, the City Commission hereby authorizes the Mayor to finalize and execute an agreement with Hans Ottinot, Esquire, based upon said terms and conditions.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF SUNNY ISLES BEACH, FLORIDA, AS FOLLOWS:

Section 1. Appointment of City Attorney. Hans Ottinot is hereby appointed to serve as City Attorney effective June 13, 2005.

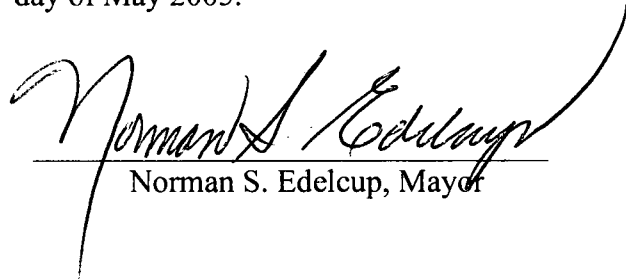
Section 2. Terms and Conditions. The terms and conditions of such appointment include an annual salary of One Hundred Sixty-Eight Thousand and 00/100 Dollars (\$168,000.00), regular and customary benefits afforded to administrative and management

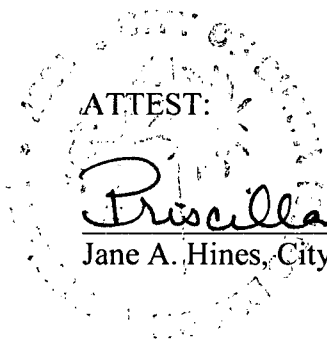
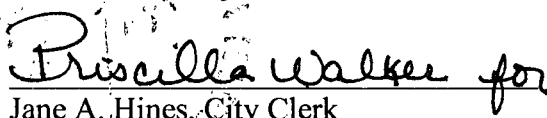
employees, no housing allowance, a Five Thousand Dollar (\$5,000.00) car allowance, the same retirement benefit as our present City Attorney of 12% contribution to the retirement system, and severance pay of eight (8) months for the first year of the contract and twelve (12) months severance pay thereafter if the employee is terminated without cause.

Section 3. Authorization of Mayor. The Mayor is authorized to finalize and execute an employment agreement with Hans Ottinot in the terms and conditions listed herein, with minor modifications if needed, and to do all things necessary to effectuate this Resolution.

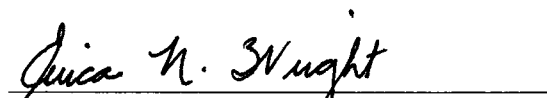
Section 4. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED and ADOPTED this 12th day of May 2005.


Norman S. Edelcup, Mayor

ATTEST:


Jane A. Hines, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:


Erica N. Wright, Acting City Attorney

Moved by: Vice Mayor Thaler

Seconded by: Commissioner Brezin

Vote: 5-0

Mayor Edelcup	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Vice Mayor Thaler	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Commissioner Brezin	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Commissioner Goodman	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)
Commissioner Iglesias	<input checked="" type="checkbox"/> (Yes)	<input type="checkbox"/> (No)

**EMPLOYMENT AGREEMENT BETWEEN
CITY OF SUNNY ISLES BEACH AND HANS OTTINOT**

This agreement is made and entered into this 13th day of May, 2005, between the City of Sunny Isles Beach, Florida (herein after the "City") and Hans Ottinot (hereinafter the "Employee"), pursuant to the following terms and conditions ("Agreement"):

- A. Whereas, the City wishes to employ Hans Ottinot as the City Attorney of the City of Sunny Isles Beach; and
- B. Whereas, Employee wishes to accept employment as City Attorney of said City, under terms and conditions set forth herein.

Now, therefore, in consideration of the mutual promises and covenants contained herein the City and Employee agree to the following:

SECTION 1. DUTIES

- A. The City agrees to employ Hans Ottinot as the City Attorney of the City of Sunny Isles Beach to perform the duties and exercise powers as prescribed by the City Charter, and to perform such other legally permissible and proper duties and functions as assigned by the City Commission from time to time.
- B. The City Attorney shall perform the duties of the City Attorney of the City in accordance with the terms, conditions and provisions contained in this Agreement and the Charter in a professional and respectable fashion and with full decorum required of City Attorneys generally and as required by the Rules Regulating the Florida Bar and the Guidelines for Professional Conduct. The Employee agrees to perform duties of City Attorney on a full-time basis and shall not engage in any outside employment without the approval of the City Commission. Notwithstanding the foregoing, the Employee may engage in pro bono legal activities as required by the Florida Bar.

SECTION 2. TERM OF AGREEMENT

- A. The term of this agreement shall be effective upon execution (except Employee shall commence employment as City Attorney on June 13, 2005) and shall continue until terminated, or otherwise amended from time-to-time, by the City Commission. The City Attorney shall serve at the pleasure of the City Commission.
- B. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the City Commission to terminate the services of the Employee at any time, subject only to the provisions set forth in SECTION 11 of this Agreement.
- C. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from the position of City Attorney, subject only to the provisions set forth in SECTION 11 of this Agreement.

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D. Employee agrees to remain in the exclusive employ and neither to accept other employment nor to become employed by any other employer. Notwithstanding anything to the contrary, the term "employed," however, shall not be construed to include teaching, writing, consulting, or military reserve service performed on employee's time off.

E. SECTION 3. SALARY

A. The Employee shall receive an annual base salary of One Hundred and Sixty Eight Thousand \$168,000.00, which shall be payable in installments at the same time as other Employees of the City are paid. The Employee shall receive periodic merit increases as determined by the City Commission in its reasonable discretion; provided, however, the Employee shall receive an automatic yearly cost of living adjustment in the amount of three percent (3%) of his annual salary on the date of execution of this contract.

B. The City Commission agrees to evaluate the performance of the Employee to determine any adjustment in annual salary and/or benefits at least once annually, pursuant to the terms of this Agreement. Any adjustments in said annual salary and/or benefits should be based upon the results of the performance evaluation, within the sole discretion of the City Commission.

SECTION 4. AUTOMOBILE

In lieu of the automobile allowance previously allotted to the City Attorney, the City shall provide Employee a new City-owned vehicle and shall insure, maintain and repair that vehicle, provided, however that when the employee uses the vehicle for her own personal use, she shall reimburse the City for fuel costs. The car shall be the same model and type provided to other appointed charter officers.

SECTION 5. RETIREMENT/DEFERRED COMPENSATION

- A. The City shall continue to contribute into a Retirement Program chosen by the Employee, a monthly contribution equivalent to 12% of annual salary.
- B. If Employee desires to participate in the ICMA deferred compensation programs, the City agrees to execute all necessary documents or agreements provided by the ICMA Retirement Corporation and contribute into the ICMA deferred compensation programs on behalf of Employee at the level provided in paragraph (A) above.

SECTION 6. LIFE INSURANCE AND DISABILITY INSURANCE

The City shall continue to pay the premiums for the Employee on the following:

1. \$100,000 whole life insurance policy
2. \$300,000 term life insurance policy
3. Disability policy equivalent to the amount of annual salary.

EMPLOYMENT AGREEMENT BETWEEN CITY OF SUNNY ISLES BEACH AND HANS OTTINOT

SECTION 7. HEALTH-DENTAL AND VISION COVERAGE

The City agrees to continue to provide the Employee with full family coverage for Health, Hospitalization, Dental and Vision Care, as may be provided to other employees, or, the City shall pay for the full premium for such coverage, unless employee elects to receive the equivalent dollar cost.

SECTION 8. HOUSING ALLOWANCE

In the event that the City Commission requests that Employee reside within the boundaries of the City, the City agrees to provide the Employee with an annual housing allowance of \$13,000 payable on a monthly basis.

SECTION 9. VACATION, PERSONAL LEAVE, SICK LEAVE AND HOLIDAYS

Commencing upon the ^{Sick leave} effective date of this agreement, Employee shall be accredited with four (4) weeks vacation days per year. Employee shall be accredited with twelve (12) days per year. In the event of a long-term illness during the first year of employment, the City shall pay Employee salary for the period of time uncovered by sick leave, prior to any disability policy taking effect. Employees shall be entitled to holidays and personal days at the same rate as other Employees of the City.

SECTION 10. PROFESSIONAL EXPENSES AND DEVELOPMENT

Subject to City policy, State law, the City agrees to pay the reasonable professional expenses, dues, subscriptions travel and seminar fees required by the Florida Bar to maintain the Florida Bar license in active status and to continue professional development or adequately pursue necessary official and other functions of the City, including, but not limited to, Local Government Lawyers' seminars and the Florida Municipal Attorneys Association Seminar.

SECTION 11. TERMINATION AND SEVERANCE

- A. The Employee shall receive eight (8) months severance in the event that the City Commission terminates his services within one (1) year of the execution date of this agreement. If Employee is terminated on or subsequent to the execution date, the Employee shall be entitled to twelve (12) months severance. The payment of severance shall not include any accumulated vacation or sick time.
- B. In the event that the Employee Voluntarily resigns her position, the Employee shall give the City two months notice in advance, unless the parties otherwise agree in writing. In the event of resignation, severance pay as outlined above shall not be payable.

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- C. In the event that the City Attorney is terminated "for cause," which shall be defined as an act of fraud, dishonesty or conviction of any criminal act (except for minor traffic infractions), the City shall have no obligation to grant severance pay.

SECTION 12. OTHER CUSTOMARY BENEFITS

- F. The City shall afford the Employee the right to participate in any other benefits or working conditions as provided for the Administrative and Management Employees of the City. The Employee shall not be considered as a new employee with respect to any benefits that the Employee may be entitled. The Employee shall retain the same seniority rank that he possessed as of May 6, 2005. It is understood and agreed to by the parties that the City hired the Employee on February 20, 2000.

SECTION 13. INDEMNIFICATION

The City shall defend, save harmless and indemnify the Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in connection with the performance of the Employees duties as City Attorney. The City, or its insurance carrier, will pay or settle any such claim or suit or judgment rendered thereon.

SECTION 14. MISCELLANEOUS

- A. Complete Agreement. It is understood and agreed that this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and that the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.
- B. Severability. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, illegal, invalid, or unenforceable, the remainder of this Agreement, or portions thereof, shall not be affected and shall remain in full force and effect.
- C. No Waiver. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.
- D. Obligations Personal. The rights and obligations herein granted are personal in nature and cannot be transferred by the City Attorney.

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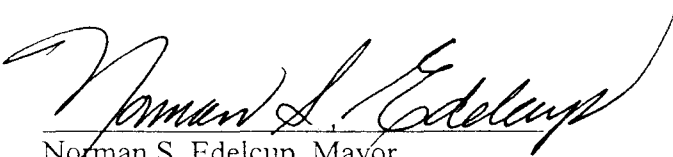
E. Florida Law. This Agreement shall be governed by Florida Law and any litigation which may arise from this Agreement shall be filed and litigated in Dade County, Florida.

-----*Signature Page follows*-----


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CITY OF SUNNY ISLES BEACH
BY ITS CITY COMMISSION

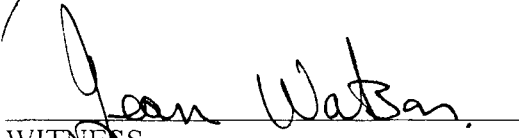
HANS OTTINOT



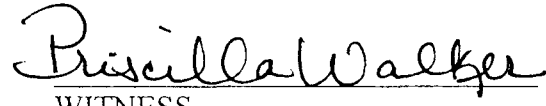
Norman S. Edelcup, Mayor



Hans Ottinot



WITNESS



WITNESS

DATE 5/13/05

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