

CAM 12-1291
8-21-12
CR-3

To: Lee R. Feldman, City Manager
From: Robert B. Dunckel, Assistant City Attorney *RB*
Date: September 20, 2012
Subject: Consent Resolution Assigning a Supplemental Deferred
compensation Plan to George L. Hanbury, II

✓ 12/28/12
Processed
Duplicate
Assignment +
Assumption
Agreement

Attached please find the original[s] Assignment and Assumption Agreement as referenced above, along with copies of the agenda back-up, dated August 21, 2012.

Please accept the attached in lieu of our standard document routing form and return the original[s] to me.

If you should have any questions, please contact me.

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Attachments

cc: Douglas Wood, Director / Finance
Harry Stewart, City Attorney

 **RUSH**

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT and ASSUMPTION AGREEMENT ("Assignment") is entered into this 21st day of August, 2012 by and between:

CITY OF FORT LAUDERDALE, a Florida municipal corporation, whose address is 100 North Andrews Avenue, Fort Lauderdale, FL 33301 ("Assignor")

and

GEORGE L. HANBURY, II, whose address is 333 Sunset Drive, Unit 807, Fort Lauderdale, FL 33301 ("Assignee")

BACKGROUND FACTS

A. The City Commission of the City of Fort Lauderdale adopted Resolution No. 90-80 on March 21, 1990 appointing George L. Hanbury, II City Manager of the City of Fort Lauderdale and authorized the proper City officials to execute an Employment Contract with George L. Hanbury, II as the City Manager.

B. On December 21, 1990, incidental to the Employment Contract, the City entered into a Supplemental Deferred Compensation Ancillary To Employment Contract ("Supplemental Deferred Compensation Plan" or "Plan") with George L. Hanbury, II, a copy of which is attached hereto as **Exhibit "A"**.

C. Pursuant to the Supplemental Deferred Compensation Plan, the City retained "title to and beneficial ownership of all assets."

D. Pursuant to the Plan, neither the City Manager, his designated beneficiary nor his creditors would have any property interest in the City's specific assets, and, the assets of the Plan, prior to distribution, would remain solely the property of the City and subject to the claims of the City's general creditors and available for the City's use for whatever purposes the City and its City Commission so desire.

E. The Supplemental Deferred Compensation Plan has certain distribution requirements as more particularly set forth therein.

F. The corpus and income of the Supplemental Deferred Compensation Plan have been placed in an account with The Vanguard Group under The Vanguard Group Account # 09867198664 ("Vanguard Account").

G. Efficiencies in the administration of the distributions under the Plan and the Vanguard Account would be realized by The Vanguard Group, the City and George L. Hanbury, II as a result of the City assigning all right, title and interest in and to the Plan and Vanguard Account to George L. Hanbury, II.

H. City administration and George L. Hanbury, II are desirous of realizing those efficiencies in the administration of the distributions under the Plan by the City assigning and George L. Hanbury, II accepting assignment of the Plan and the Vanguard Account.

I. Assignment of the Plan and the Vanguard Account by the City to George L. Hanbury, II serves a valid municipal purpose.

J. The City Commission, by adoption of Resolution No. 12-___, has authorized execution of this Assignment by its City Manager, Lee R. Feldman along with any other instruments or documents necessary or incidental to effectuating this Assignment, including, but not limited to The Vanguard Group's Change of Ownership form.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Assignment, and other good and valuable considerations, the adequacy and receipt of which are hereby acknowledged, the parties agree as follows:

1. Background Facts. The parties stipulate and agree that the Background Facts as stated above are true and correct and are incorporated by reference into this Assignment.

2. Assignment of Supplemental Deferred Compensation Plan and The Vanguard Group Account No. 098677198664 ("Vanguard Account"). Assignor hereby grants, conveys, assigns, sets over and transfers and delivers to Assignee, his successors and assigns, all of Assignor's right, title and interest in and to that Supplemental Deferred Compensation Plan and the Vanguard Account.

3. Assumption. Assignee hereby assumes and agrees to perform all of the covenants, liabilities and obligations of Assignor under the Supplemental Deferred Compensation Plan, including management of the corpus and earnings thereon and on deposit in the Vanguard Account.

4. Indemnification by Assignee. Assignee agrees to indemnify, defend and hold Assignor harmless from and against any and all claims, costs, demands, losses, damages, liabilities, lawsuits, actions and other proceedings in law or in equity or

otherwise, judgments, awards and expenses of every kind and nature whatsoever, including, without limitation, attorneys' fees, arising out of or relating to, directly or indirectly, in whole or in part, the management of the Supplemental Deferred Compensation Plan and the Vanguard Account occurring between the date of its inception through the date this Assignment is consummated.


5. Effect. This Assignment and Assumption shall inure to the benefit of and be binding upon the successors, executors, administrators, legal representatives and assigns of the parties hereto.

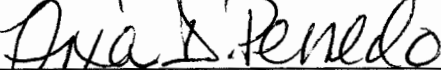
6. Governing Law. This Assignment shall be construed under and enforced in accordance with the laws of the State of Florida.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date first written above.

WITNESSES:

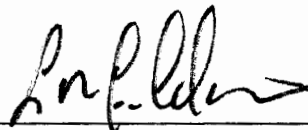
CITY OF FORT LAUDERDALE






[Witness-print or type name]

(CORPORATE SEAL)



Lee R. Feldman
City Manager

ATTEST:



~~Jonda K. Joseph~~ JEFFREY MODARZELI
ASST City Clerk

Approved as to form:



Robert B. Dunckel
Assistant City Attorney



WITNESSES:

[Signature]
SHIRLEY NAIDOO
[Witness print or type name]

[Signature]
GEORGE L. HANBURY, II

[Signature]
JULISSA BATISTA
[Witness print or type name]

STATE OF FLORIDA:
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this 4th day of September, 2012, by GEORGE L. HANBURY, II. He is personally known to me or has produced _____ as identification and did not take an oath.

Witness my hand and official seal in the County and State last aforesaid this 4th day of September, 2012.

(SEAL)



[Signature]
Notary Public, State of Florida
(Signature of Notary taking Acknowledgment)

SHIRLEY NAIDOO
Name of Notary Typed, Printed or Stamped

My Commission Expires:
November 30, 2013
Commission Number

[Handwritten initials]

**SUPPLEMENTAL DEFERRED COMPENSATION PLAN
ANCILLARY TO EMPLOYMENT CONTRACT**

THIS INDENTURE, made this 21st day of December,
1990, by and between:

CITY OF FORT LAUDERDALE, a municipal
corporation of the State of Florida,
hereinafter referred to as "City",

and

GEORGE L. HANBURY, II, an individual,
hereinafter referred to as "City Manager".

City and City Manager, pursuant to the authority granted under Resolution No. 90-80, adopted by the City Commission of the City of Fort Lauderdale, Florida, entered into an Employment Contract on March 21, 1990, pursuant to which the City is obligated to provide for the within Plan.

City Manager is currently enrolled under the City's Deferred Compensation Plan with the City contributing the annual maximum amount allowable under Internal Revenue Code Section 457(b) that is consistent with the City's policies governing enrollment and participation in such Deferred Compensation Plan for its highest management level employees.

Pursuant to the aforementioned Employment Contract, as an incident of the employment considerations, the parties agreed upon a supplemental plan of deferred compensation with annual funding in the initial amount of Twenty-Two Thousand Five Hundred Nineteen Dollars (\$22,519.00) for the City Manager, supplemental to that Deferred Compensation Plan referenced above.

The parties are desirous of setting into effect those prior agreements and understandings and intend the within agreement to be the complete embodiment of such prior agreements and understandings.

Now, therefore, in consideration of the premises and mutual covenants exchanged herein between the parties and other good and valuable considerations, the sufficiency of which is hereby stipulated, the parties do hereby agree as follows:

1. **RECITALS.** The foregoing recitals are true, correct and incorporated in this Agreement.

2. **EMPLOYMENT.** That as an incident of the City Manager's employment with the City, as reflected in the Employment Contract of March 21, 1990, the parties agree to the creation and funding of a Supplemental Deferred Compensation Plan (hereinafter "Plan") as hereinafter provided. Such Plan shall have an Account and an Investment Fund as established under Section 3(a) and (b) hereof.

EXHIBIT "A"

200

3. SUPPLEMENTAL DEFERRED COMPENSATION ACCOUNT.

(a) Credits to Account. A general ledger account (hereinafter "Account") shall be established for the benefit of the City Manager for the purpose of initiating the Supplemental Deferred Compensation Plan. The sum of Twenty-Two Thousand Five Hundred Nineteen Dollars (\$22,519.00) less appropriate withholding for income tax and FICA as provided for in Section 8 hereof, shall be credited to this Account effective June 19, 1990. Thereafter, an amount equal to 21.47 percent of the City Manager's annual salary, as reflected in Section 6 of the Employment Contract, in effect on each successive 19th day of June, shall be credited to said Account, less the appropriate withholding amounts under Section 8 hereof, until the effective date of termination or non-renewal of the Employment Contract. Title to and beneficial ownership of all assets hereunder, whether cash, investments or accumulated earnings, which the City may earmark to pay the deferred compensation hereunder, shall at all times, prior to distributions under Section 4 hereof, be vested in the City. Prior to such distributions, neither the City Manager nor his designated beneficiary shall have any property interests whatsoever in any specific asset of the City and specifically with reference to the Account established herein. Anything herein to the contrary notwithstanding, from the initial Twenty-Two Thousand Five Hundred Nineteen Dollars (\$22,519.00) principal, less withholding as aforesaid, credited to the Account herein, the sum of Three Thousand Six-Hundred Five Dollars and Seventy-Five Cents (\$3,605.75) shall be disbursed therefrom to the City Manager's I.R.C. §457(b) Deferred Compensation Plan on or before December 31, 1990. In addition thereto, the City shall fund an additional amount to the Account on or before December 31, 1990, such additional amount being a sum equal to the earnings which the Twenty-Two Thousand Five Hundred Nineteen Dollars (\$22,519.00) principal, less the appropriate withholding amounts under Section 8 hereof, would have generated had it been on deposit with the State of Florida's Local Government Surplus Funds Trust Fund from June 19, 1990, through the date of actual disbursement to the Account established herein.

(b) Investment Fund. All sums so credited to the aforementioned Account shall as soon as practicable be transferred to and invested in a tax exempt mutual fund (hereinafter "Investment Fund") to be selected by City Manager. All administrative costs and charges of the Investment Fund shall be borne by the corpus and earnings of the Supplemental Deferred Compensation Plan established hereunder and shall not be a charge against the City. Copies of all reports received by the City from the Investment Fund shall be provided to City Manager.

(c) Investment Ownership. The City shall retain title to and beneficial ownership of all assets, whether cash or investments which it may earmark to pay the supplemental deferred compensation herein whether on deposit in the Account or Investment Fund. Neither the City Manager nor his designated beneficiary nor his creditors nor his estate shall have any property interest in the City's specific assets. It is the intent of the parties that all amounts credited or earned under this Supplemental Deferred Compensation Plan will at all times prior to distribution to and receipt by City Manager or his designated beneficiary, shall remain solely the property of the City and subject to the claims of its general creditors and be

available for the City's use for whatever purposes the City and its City Commission so desires.

4. BENEFITS. The benefits to be paid as Supplemental Deferred Compensation distributions hereunder are as follows:

(a) Retirement. In the event the City Manager's employment is terminated, his Employment Contract is not renewed, or he retires on or after his sixtieth (60th) birthday, then City shall pay to him in monthly installments an annual amount sufficient to distribute the entire Account, Investment Fund and accumulated earnings thereon over a ten (10) year period in substantially equal monthly installments commencing at a point set forth in Section 4(g) hereof. During this period of monthly distributions, the City shall continue to keep the funds invested in the manner specified in Section 3, above. Notwithstanding the above, the estimated total amount payable to the City Manager shall be appropriately adjusted on an annual basis, to reflect the change in the value and the net income on the funds which remain invested. In the event the City Manager should die on or after his sixtieth (60th) birthday and before complete distribution of the one hundred twenty (120) monthly installments as referenced above, then the unpaid balance shall continue to be distributed in installments for the unexpired portion of the one hundred twenty (120) monthly period to his designated beneficiary in the same manner as set forth above.

(b) Termination of Employment Before Age 60. In the event the City Manager's employment is terminated or his Employment Contract is not renewed for any reason other than death or disability, but before the City Manager shall have attained the age of sixty (60), then the amount in the Supplemental Deferred Compensation Plan shall continue to remain invested in the manner set forth in Section 3(b), above. In the event of termination or non-renewal of Employment Contract as set forth in this subsection, then no monthly installments as set forth in Section 4(a), above shall be distributed to the City Manager until after he attains the age of sixty (60), at which time monthly installments shall be distributed to him in the same manner and to the same extent as set forth in Section 4(a), above. In the event the City Manager should die or become disabled, as hereinafter defined, before attaining his sixtieth (60th) birthday, then the monthly installments as set forth in Section 4(a), above shall be distributed in the manner as set forth in Section 4(c), below. In the event the City Manager's employment is terminated or his Employment Contract is not renewed for any reason whatsoever, including disability, as hereinafter defined, or death, then the City shall thenceforth be relieved of all further contributions under Section 3, above.

(c) Disability or Death Before Age 60. In the event the City Manager's employment is terminated or his Employment Contract is not renewed because of death or disability, as that term is hereinafter defined, prior to the City Manager attaining the age of sixty (60), then the one hundred twenty (120) monthly installments shall be distributed to him (in the event of disability) or to his designated beneficiary (in the event of death) in the manner and to the extent as provided in Section 4(a), above, except that such distributions shall commence in accordance with the terms of Section 4(g) hereof.

(d) Death; Lump Sum Distribution. In the event that both the City Manager and his designated beneficiary should die before a total of one hundred twenty (120) monthly installments are distributed by the City, then the remaining amounts in the Account and Investment Fund shall be determined as of the date of death of the designated beneficiary and shall be distributed as promptly as possible in one lump sum to the estate of such designated beneficiary, except that if the designated beneficiary shall predecease the City Manager, then the benefits payable hereunder shall be valued as of the date of death of the City Manager and distributed in accordance with Section 4(e) hereof.

(e) Designated Beneficiary. The beneficiary referred to in this subsection may be designated or changed by the City Manager, without the consent of any prior beneficiary, in writing and delivered to and received by the City's Finance Director before the City Manager's death. If no such beneficiary shall have been designated, or if no designated beneficiary shall survive the City Manager, the installment distributions payable under Section 4(c) or 4(d), above shall be distributed to the City Manager's estate.

(f) Disability Determination. The City Manager shall be deemed to have become disabled for the purposes of Section 4(c), above, if the City Commission shall find on the basis of medical evidence satisfactory to the Commission that the City Manager is so totally disabled, mentally or physically, as to be prevented from engaging in further employment by the City as its City Manager and that such disability will be permanent and continuing during the remainder of his life.

(g) Commencement of Distribution. The distributions to be made to the City Manager under Sections 4(a) and 4(c), above shall commence on the first (1st) day of the calendar year next following the effective date of termination or non-renewal of his Employment Contract under Section 4(a) or 4(c) hereof. The distributions to be made to the City Manager under Section 4(b), above shall commence on the first (1st) day of the calendar month next following the date on which the City Manager shall have attained the age of sixty (60).

5. NO TRUST OR ASSIGNMENT. Nothing contained in this Plan and no action taken pursuant hereto shall create or be construed to create a trust of any kind or a fiduciary relationship between the City and the City Manager, his designated beneficiary, or any other person. The right of the City Manager or any other person to the payment of deferred compensation or other benefits hereunder shall not be assigned, transferred, hypothecated, pledged, anticipated, or encumbered, except by will, by the laws of descent and distribution or by designation of beneficiary as set for the herein.

6. CITY'S POWERS AND LIABILITIES. The City shall have full power and authority to interpret, construe and administer this Plan in the event of ambiguity or uncertainty, and the City's good faith interpretations, construction and administration thereof and actions thereunder, including any evaluation of the Account or corresponding Investment Fund or the amount or recipient of the distributions to be made therefrom, shall be binding and conclusive on all persons for all purposes. No member of the City Commission

of the City nor any agent nor employee of the City shall be liable to any person for any action taken or omitted in connection with the interpretation and administration of this Plan, unless attributable to willful, wanton and reckless misconduct on the part of the City.

7. BINDING AFFECT AND GOVERNING LAW. This Plan shall be binding upon and inure to the benefit of the City, its successors and assigns, and the City Manager and his heirs, personal representatives and designated beneficiaries, and shall be construed in accordance with and governed by the laws of the State of Florida. The parties hereto expressly stipulate and agree that venue for any litigation between themselves respecting this Plan shall be within the State of Florida, 17th Judicial Circuit, or the United States Federal District Court, Southern District of Florida, and, each party, for themselves, their respective successors and assigns, hereby waives all rights to any other venue except as otherwise stated herein.

8. COMPLIANCE WITH INTERNAL REVENUE CODE. The parties acknowledge that uncertainty exists as to whether the provisions of this Supplemental Deferred Compensation Plan qualify for non-recognition of income to the City Manager as to the City's contributions, and, as to the accumulation of taxable earnings under this Supplemental Deferred Compensation Plan. Accordingly, taxes and F.I.C.A (to the extent F.I.C.A. is applicable) shall be withheld by the City and paid to the Internal Revenue Service for the City Manager's benefit as to the City's contributions and taxable accumulated earnings thereon, until such time as the City Manager provides the City with a letter ruling from the Internal Revenue Service warranting the non-recognition of income to the City Manager as to the City's contributions and any taxable accumulated earnings thereon.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

WITNESSES:

Richard M. Lopez
Juan Alvarez

CITY OF FORT LAUDERDALE

By

[Signature]
Mayor

[Signature]
Assistant City Manager

ATTEST:

[Signature]
City Clerk

(CORPORATE SEAL)

Approved as to form:

[Signature]
City Attorney

STATE OF FLORIDA:
COUNTY OF BROWARD:

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared ROBERT O. COX, PETER J. WITSCHEN, and KRIS L. MILLS, Mayor and City Clerk, respectively, of the City of Fort Lauderdale, Florida, a municipal corporation of Florida, and acknowledged that they executed the foregoing Agreement as the proper officials of the City of Fort Lauderdale, and the same is the act and deed of the City of Fort Lauderdale.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at Fort Lauderdale, in the State and County aforesaid on December 21, 1990.

(SEAL)



Priscilla M. Royal
Notary Public
My Commission Expires: 8/30/93

WITNESSES:

"OFFICIAL NOTARY SEAL"
PRISCILLA M. ROYAL
MY COMM. EXP. 8/30/93

GEORGE L. HANBURY, II, an individual

Priscilla M. Royal
George L. Hanbury, II

George L. Hanbury, II
George L. Hanbury, II

STATE OF FLORIDA:
COUNTY OF BROWARD:

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared GEORGE L. HANBURY, II, individually, and acknowledged he executed the foregoing Agreement for the use and purposes mentioned in it.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at Fort Lauderdale, in the State and County aforesaid on December 21, 1990.

(SEAL)



"OFFICIAL NOTARY SEAL"
PRISCILLA M. ROYAL
MY COMM. EXP. 8/30/93

Priscilla M. Royal
Notary Public
My Commission Expires: 8/30/93

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10/18/90
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