RESOLUTION NO. 09-170

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO AN AGREEMENT WITH THE STATE ATTORNEY'S OFFICE FOR THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA IN THE FORM ATTACHED AND MADE A PART HEREOF AS EXHIBIT "1" IN ORDER TO REIMBURSE THE STATE ATTORNEY AS PROVIDED HEREIN FOR PROSECUTING CRIMINAL VIOLATIONS OF THE HIALEAH CODE (STATE MISDEMEANORS) AND COUNTY CODE CRIMINAL VIOLATIONS NOT ANCILLARY TO STATE PROSECUTION FOR A TERM COMMENCING ON OCTOBER 1, 2009 THROUGH SEPTEMBER 30, 2010.

WHEREAS, effective July 1, 2004, the Florida Legislature modified section 27.34, Florida Statutes to allow the state attorney prosecuting violations of county or municipal ordinances or special laws punishable by incarceration and not ancillary to state charges to enter into contracts with municipalities and counties to recover the costs of attorney services not to exceed $50.00 hourly;

WHEREAS, pursuant to Hialeah, Fla., Resolution 04-135 (Dec. 17, 2004), Hialeah, Fla., Resolution 05-142 (Dec. 14, 2005), Hialeah, Fla., Resolution 07-57 (May 22, 2007), Hialeah, Fla., Resolution 07-141 (November 27, 2007), and Hialeah, Fla., Resolution 08-156 (November 25, 2008) the City entered into one-year agreements with the State Attorney's office to prosecute state misdemeanors and county code violations and finds it in the best interest to renew the agreement; and

WHEREAS, the City of Hialeah will utilize the funds collected from fines to defray the expenses of prosecutions of state misdemeanors adopted by the Hialeah Code and county ordinances that are not ancillary to state prosecution; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Resolution No. 09-170

Section 1: The City of Hialeah, Florida hereby authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to enter into an agreement with the State Attorney's Office for the Eleventh Judicial Circuit of Florida in the form attached and made a part hereof as Exhibit "1" in order to reimburse the State Attorney as provided herein for prosecuting criminal violations of the Hialeah Code (state misdemeanors) and County Code criminal violations not ancillary to state prosecution for a term commencing on October 1, 2009 through September 30, 2010.

PASSED AND ADOPTED this 27th day of October, 2009.

Carlos Hernandez
Council President

Attest:

Approved on this 28 day of October, 2009.

Rafael E. Granado
City Clerk

Mayor Julio Robaina

Approved as to form and legal sufficiency:

William M. Grodnick, City Attorney

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Resolution was adopted by a 6-0 vote with Councilmembers, Caragol, Casals-Muñoz, Garcia-Martinez, Gonzalez, Hernandez, Yedra voting "Yes" and Councilmember Cue absent.

AGREEMENT BETWEEN THE CITY OF HIALEAH AND THE STATE OF FLORIDA, OFFICE OF THE STATE ATTORNEY FOR THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA TO REIMBURSE THE STATE FOR THE COST OF STATE ATTORNEY PROSECUTION OF CERTAIN CRIMINAL VIOLATIONS OF THE MUNICIPAL CODE.

This agreement is entered into this ____ day of _____, 2009, by and between the City of Hialeah, a municipal corporation of the State of Florida (hereinafter referred to as the "City") and the Office of the State Attorney for the Eleventh Judicial Circuit of Florida (hereinafter referred to as "State Attorney").

WHEREAS, the City finds that in order to maintain and improve the health, safety, and welfare of this community, it is necessary to adequately enforce and prosecute violations of the Municipal Code; and

WHEREAS, Section 27.02, Florida Statutes, authorizes the State Attorney to prosecute municipal ordinance violations punishable by incarceration if ancillary to state prosecution or, if not ancillary to state prosecution, when the State Attorney contracts with the City for reimbursement.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE I
Services

The State Attorney agrees to prosecute municipal ordinance violations as authorized in Sections 27.02, and 27.34, Florida Statutes. The City agrees to remit, subject to the terms outlined in Article III of this agreement, to the State Attorney the required funds to reimburse for costs associated with the prosecution of violations of the Municipal Code for the period of October 1, 2009 through September 30, 2010. The State Attorney shall provide such clerical and professional personnel as may be required for the performance of any of the functions of the

EXHIBIT 1

State Attorney as set forth in this agreement. This agreement does not commit the City to pay for the prosecution of Municipal Code violations ancillary to state prosecution or for the prosecution of municipal ordinance violations not punishable by incarceration. This agreement specifically does not authorize the State to handle appeals of municipal ordinances on constitutional grounds, which shall remain the responsibility of the municipality that passed the ordinance.

ARTICLE II
Terms

This agreement shall expire on September 30, 2010, unless terminated earlier pursuant to Article VII of this agreement. Under no circumstances shall the City be liable to continue or extend this agreement beyond this date. This agreement may only be amended in writing, through a document executed by duly authorized representatives of the signatories to this agreement.

ARTICLE III
Payment Schedule

The City agrees to reimburse the State Attorney on an hourly basis for services rendered at a rate of fifty dollars ($50.00) per hour. On a quarterly basis, the State Attorney shall provide the City with an invoice including, but not limited to, the hours of services rendered, number of cases prosecuted as set forth in this agreement, and the total amount due for payment for the previous month. The City shall remit each payment within 30 days after receiving said invoice from the State Attorney.

ARTICLE IV
Responsibilities

The City does not delegate any of its responsibilities or powers to the State Attorney other than those enumerated in this agreement. The State Attorney does not delegate any of its responsibilities or powers to the City other than those enumerated in this agreement.

ARTICLE V
Reporting

All required reports shall be submitted to the City Attorney's Office, 501 Palm Avenue, Fourth Floor, 501 Palm Avenue, Hialeah, Florida 33010-4789.

ARTICLE VI
Indemnification

It is expressly understood and intended that the State Attorney is only a recipient of the reimbursements paid by the City and is not an agent of the City. The respective parties agree, subject to the provisions of Chapter 768.28 (17), Florida Statutes, that they will hold each other harmless from any claims arising from this agreement.

ARTICLE VII
Termination

Either party may terminate this agreement at any time with or without cause by furnishing written notice to the other party with no less than 90 days notice.

ARTICLE VIII
Service Charges

This agreement is contingent upon all City funding provided, and any interest earned thereon, not being subject to any State service charges or administrative assessments.

ARTICLE IX
Non-Discrimination

The State Attorney agrees to abide and be governed by Title II of the Americans with Disabilities Act of 1990, Title VI and VII, Civil Rights Act of 1964 (42 USC 200d, e) and Title VIII of the Civil Rights Act of 1968, as amended, which provides in part that there will not be discrimination of race, color, sex, religious background, ancestry, or national origin in performance of this contract, in regard to persons served, or in regard to employees or applicants

for employment and it is expressly understood that upon receipt of evidence of discrimination, the City shall have the right to terminate said agreement.

IN WITNESS THEREOF, the parties have caused this agreement to be executed by their respective and duly authorized officers the day and year first above written.

City of Hialeah, Florida
501 Palm Avenue
Hialeah, Florida 33010-0040

Attest:

Authorized signature on behalf of
City of Hialeah

_____
Rafael Granado
City Clerk
(SEAL)

_____
Mayor Julio Robaina Date

Approved as to legal sufficiency and form:

By: _____
William M. Grodnick
City Attorney

STATE ATTORNEY'S OFFICE
ELEVENTH JUDICIAL CIRCUIT

By: _____
Don L. Horn
Chief Assistant State Attorney for Administration

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