CITY OF MIAMI GARDENS
CITY COUNCIL MEETING AGENDA

Meeting Date: June 8, 2011
1515 NW 167th St., Bldg. 5, Suite 200
Miami Gardens, Florida 33169
Next Regular Meeting Date: June 22, 2011
Phone: (305) 622-8000 Fax: (305) 622-8001
Website: www.miamigardens-fl.gov
Time: 7:00 p.m.

Mayor Shirley Gibson
Vice Mayor Aaron Campbell Jr.
Councilwoman Lisa C. Davis
Councilman André Williams
Councilwoman Felicia Robinson
Councilman David Williams Jr.
Councilman Oliver G. Gilbert III
City Manager Dr. Danny O. Crew
City Attorney Sonja K. Dickens, Esq.
City Clerk Ronetta Taylor, MMC

City of Miami Gardens Ordinance No. 2007-09-115 requires all lobbyists before engaging in any lobbying activities to register with the City Clerk and pay an annual fee of $250.00. This applies to all persons who are retained (whether paid or not) to represent a business entity or organization to influence "City" action. "City" action is broadly described to include the ranking and selection of professional consultants, and virtually all-legislative, quasi-judicial and administrative action. All not-for-profit organizations, local chamber and merchant groups, homeowner associations, or trade associations and unions must also register however an annual fee is not required.

(A) CALL TO ORDER/ROLL CALL

(B) INVOCATION

(C) PLEDGE OF ALLEGIANCE

(D) APPROVAL OF MINUTES
Regular City Council Minutes – May 25, 2011

(E) ORDER OF BUSINESS (Items to be pulled from Consent Agenda at this time**)**

(F) SPECIAL PRESENTATIONS (5 minutes each)
F-1) State Representative Barbara Watson – Post Legislative Session Highlights
F-2) Councilwoman Davis – Silver Knight Winners

F-3) Mayor Gibson – Proclamation Father's Appreciation Month
F-4) Mayor Gibson – Proclamation Code Enforcement Appreciation Week
F-5) Commission for Women Advisory Committee – Rose Ceremony Presentation
F-5) Councilman Gilbert – 8U Little League Champs
F-6) City Manager Danny O. Crew – Employee of the Month

(G) PUBLIC COMMENTS

(H) ORDINANCE(S) FOR FIRST READING:

None

(I) ORDINANCE(S) FOR SECOND READING/PUBLIC HEARING(S)

None

(J) RESOLUTION(S)/PUBLIC HEARING(S)

None

(K) CONSENT AGENDA

K-1) A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN ADDENDUM TO RENEW THAT CERTAIN AGREEMENT WITH ASHBRITT, INC., FOR EMERGENCY DEBRIS REMOVAL SERVICES FOR AN ADDITIONAL TWO (2) YEAR TERM; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR AN EFFECTIVE DATE. (SPONSORED BY THE CITY MANAGER)

K-2) A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXPEND TWENTY-SIX THOUSAND NINE HUNDRED FIFTY DOLLARS ($26,950.00) FROM THE LAW ENFORCEMENT TRUST FUND FOR THE PURCHASE OF RIFLES AND THE INSTALLATION OF VEHICULAR RIFLE RACKS; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR AN EFFECTIVE DATE. (SPONSORED BY THE CITY MANAGER)

K-3) A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER AND THE CITY CLERK TO EXECUTE AND ATTEST RESPECTIVELY, THAT CERTAIN SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT WITH MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS LLC

AND BRI 1814 GGOP, LLC., A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT "A"; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR AN EFFECTIVE DATE. (SPONSORED BY THE CITY MANAGER)

(L) RESOLUTION(S)

(M) REPORTS OF CITY MANAGER/CITY ATTORNEY/CITY CLERK

(N) REPORTS OF MAYOR AND COUNCIL MEMBERS

(O) WRITTEN REQUESTS, PETITIONS & OTHER WRITTEN COMMUNICATIONS FROM THE PUBLIC

(P) ADJOURNMENT

IN ACCORDANCE WITH THE AMERICAN WITH DISABILITIES ACT OF 1990, ALL PERSONS WHO ARE DISABLED AND WHO NEED SPECIAL ACCOMMODATIONS TO PARTICIPATE IN THIS MEETING BECAUSE OF THAT DISABILITY SHOULD CONTACT RONETTA TAYLOR, MMC, CITY CLERK (305) 622-8000 EXT./ 2750, NO LATER THAN 48 HOURS PRIOR TO SUCH PROCEEDINGS. TDD NUMBER 1-800-955-8771.

ANYONE WISHING TO OBTAIN A COPY OF ANY AGENDA ITEM MAY CONTACT RONETTA TAYLOR, MMC, CITY CLERK (305) 622-8000 EXT. 2750. THE ENTIRE AGENDA PACKET CAN ALSO BE FOUND ON THE CITY'S WEBSITE AT www.miamigardens-fl.gov.

ANYONE WISHING TO APPEAL ANY DECISION MADE BY THE CITY OF MIAMI GARDENS WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING WILL NEED A RECORD OF THE PROCEEDINGS AND, FOR SUCH PURPOSE, MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

City of Miami Gardens
Agenda Cover Memo

Council Meeting Date:	**June 8, 2011**		**Item Type:** *(Enter X in box)*	**Resolution**	**Ordinance**	**Other**	
				X			
Fiscal Impact: *(Enter X in box)*	**Yes**	**No**	**Ordinance Reading:** *(Enter X in box)*		**1st Reading**	**2nd Reading**	
	X		**Public Hearing:** *(Enter X in box)*		**Yes**	**No**	**Yes** / **No**
						X	
Funding Source:	**Reserves/FEMA Funds**		**Advertising Requirement:** *(Enter X in box)*		**Yes**	**No**	
Contract/P.O. Required: *(Enter X in box)*	**Yes**	**No**	**RFP/RFQ/Bid #:**		**RFP#07-08-039**		
	X						
Strategic Plan Related *(Enter X in box)*	**Yes**	**No**	**Strategic Plan Priority Area:**		**Strategic Plan Obj./Strategy:** *(list the specific objective/strategy this item will address)*		
			Enhance Organizational ☐ **Bus. & Economic Dev** ☐ **Public Safety** ☐ **Quality of Education** ☐ **Qual. of Life & City Image** ☐ **Communication** ☐		**N/A**		
Sponsor Name	**Dr. Danny Crew, City Manager**		**Department:**		**Public Works Department**		

Short Title:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN ADDENDUM TO RENEW THAT CERTAIN AGREEMENT WITH ASHBRITT, INC., FOR EMERGENCY DEBRIS REMOVAL SERVICES FOR AN ADDITIONAL TWO (2) YEAR TERM; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR AN EFFECTIVE DATE.

Staff Summary:

Background

Council awarded a three (3) year contract for emergency debris removal services on July 23, 2008 to AshBritt, Inc. located in Pompano Beach, FL. The contract has a renewal provision for two (2) additional years.

1515 NW 167 Street, Building 5 Suite 200
Miami Gardens, Florida 33169

Current Situation

City staff inquired with the City of Coral Springs and the City of Weston as to current pricing for debris removal. Both Cities just solicited for emergency debris removal services. The City's current contracted pricing with AshBritt, Inc. is very competitive compared to the current prices submitted to the other cities.

City staff recommends that the contract be renewed for an additional two years. The Purchasing Department issued a renewal notification letter to AshBritt Inc., requesting that the contract terms and conditions, and pricing remain the same during the two-year extension period. AshBritt, Inc. agreed to maintain the contract terms as requested. A resolution authorizing the City Manager to execute a contract extension is needed.

Proposed Action:

That the City Council approve the resolution authorizing the City Manager to exercise the contract extension with Ashbritt, Inc. for an additional two (2) years.

Attachment:

1- Addendum to Agreement for Disaster Debris Removal and Disposal Services

RESOLUTION NO. 2011____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXECUTE AN ADDENDUM TO RENEW THAT CERTAIN AGREEMENT WITH ASHBRITT, INC., FOR EMERGENCY DEBRIS REMOVAL SERVICES FOR AN ADDITIONAL TWO (2) YEAR TERM; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on July 23, 2008, the City Council adopted Resolution No. 2008-154-841, which awarded a three (3) year contract for emergency debris removal services to AshBritt, Inc. located in Pompano Beach, Florida, and

WHEREAS, the Agreement authorized an additional two (2) year renewal period, and

WHEREAS, after City staff consulted with other municipalities regarding prices paid for similar services, it was determined that AshBritt offers competitive prices for emergency debris removal services, and

WHEREAS, AshBritt, Inc. has agreed to renew the current Agreement for an additional two (2) years with the same pricing, conditions and terms,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA AS FOLLOWS:

Section 1: ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2: AUTHORIZATION: The City Council of the City of Miami Gardens hereby authorizes the City Manager to execute an Addendum to renew that certain Agreement with AshBritt, Inc. for emergency debris removal services for an additional two (2) year term.

Section 3: INSTRUCTIONS TO THE CLERK: The City Clerk is hereby authorized to obtain two (2) fully executed copies of the subject Addendum with one (1) to be maintained by the City, one (1) to be delivered to AshBritt, Inc.

Section 4: EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON _____, 2011.

_____
SHIRLEY GIBSON, MAYOR

ATTEST:

_____
RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ., CITY ATTORNEY

SPONSORED BY: DR. DANNY O. CREW, CITY MANAGER

Moved by: _____

VOTE: _____

Mayor Shirley Gibson	____ (Yes)	____ (No)
Vice Mayor Aaron Campbell, Jr.	____ (Yes)	____ (No)
Councilman David Williams Jr.	____ (Yes)	____ (No)
Councilwoman Lisa Davis	____ (Yes)	____ (No)
Councilman Oliver Gilbert, III	____ (Yes)	____ (No)
Councilwoman Felicia Robinson	____ (Yes)	____ (No)
Councilman Andre' Williams	____ (Yes)	____ (No)

ADDENDUM TO AGREEMENT FOR DISASTER DEBRIS REMOVAL & DISPOSAL SERVICES BETWEEN THE CITY OF MIAMI GARDENS AND ASHBRITT, INC.

THIS ADDENDUM ("Addendum") is incorporated into that Agreement between the City of Miami Gardens ("City"), a Florida municipal corporation hereinafter referred to as "City" and AshBritt, Inc., a Florida corporation hereinafter referred to as "Ashbritt".

WITNESSETH

WHEREAS, on September 3, 2008, the City entered into a three (3) year Agreement with AshBritt, Inc. for disaster debris removal and disposal services, and

WHEREAS, the current Agreement provides for an option to renew for an additional two (2) year term, and

WHEREAS, the City and Ashbritt desires to extend the Agreement for an additional two (2) year period under the same prices and conditions,

NOW, THEREFORE, and consideration of the premises and mutual covenants herein named, the parties are to agree as follows:

1. Article 7 - Term shall be amended as follows:

   This Agreement shall commence upon the execution by both parties, and shall continue for a period of one year. Said Agreement shall be automatically renewable for an additional one (1) year period, subject to the City Council budgeting and appropriating funds for the purpose described herein. The Term shall not start until all insurance required as stated herein has been obtained and approved copy provided to the City.

2. **INCONSISTENCY**. In the event of an inconsistency or contradiction between the terms hereof and the terms of the Agreement, to which this Addendum is attached, the terms hereof shall control.

3. **CONFLICT:** In the event of any conflicts between this Addendum and the Agreement, this Addendum shall control. In all other respects, the Agreement shall remain in full force and effect.

4. **EFFECT OF ORIGINAL AGREEMENT**. All terms of the Agreement not affected by this Addendum shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year set forth below their respective signatures.

ATTEST:

_____
Ronetta Taylor, MMC, City Clerk

CITY OF MIAMI GARDENS

_____
Dr. Danny Crew, City Manager

Date: _____ _____

WITNESS:

_____
Print Name

_____

ASHBRITT, INC.

By: _____

Print Name: _____

Approved as to form and legal
Sufficiency:

_____
Sonja K. Dickens, City Attorney

City of Miami Gardens
Agenda Cover Memo

Council Meeting Date:	*June 8, 2011*		**Item Type:** *(Enter X in box)*	**Resolution**	**Ordinance**		**Other**	
				X				
Fiscal Impact: *(Enter X in box)*	**Yes**	**No**	**Ordinance Reading:** *(Enter X in box)*		**1st Reading**		**2nd Reading**	
	X		**Public Hearing:** *(Enter X in box)*		**Yes**	**No**	**Yes**	**No**
Funding Source:	Law Enforcement Trust Fund		**Advertising Requirement:** *(Enter X in box)*		**Yes**		**No**	
							X	
Contract/P.O. Required: *(Enter X in box)*	**Yes**	**No**	**RFP/RFQ/Bid #:**					
		X						
Strategic Plan Related *(Enter X in box)*	**Yes**	**No**	**Strategic Plan Priority Area:**		**Strategic Plan Objective/Strategy:** *(list the specific objective/strategy this item will address)*			
		X	**Enhance Organizational** ☐ **Bus. & Economic Dev** ☐ **Public Safety** ☐ **Quality of Education** ☐ **Qual. of Life & City Image** ☐ **Communication** ☐		**N/A**			
Sponsor Name	**Danny Crew, City Manager**		**Department:**		***Police Department***			

Short Title:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER TO EXPEND TWENTY-SIX THOUSAND NINE HUNDRED FIFTY DOLLARS ($26,950.00) FROM THE LAW ENFORCEMENT TRUST FUND FOR THE PURCHASE OF RIFLES AND THE INSTALLATION OF VEHICULAR RIFLE RACKS; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR AN EFFECTIVE DATE.

Staff Summary:

The Miami Gardens Police Department is progressive and innovative in the use of equipment and tactics employed while conducting law enforcement operations. As part of our initial deployment, the Department purchased 12 rifles to be used by personnel on a sign-out basis and allowed for personally owned and approved rifles to be used on duty as well. The initial purchase of a limited number of riffles was largely due to budgetary constraints when implementing the Department and the exorbitant cost of purchasing a rifle for every officer.

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Miami Gardens, Florida 33169

Additionally, the manner in which the rifles are now carried is in the trunk of each officer's vehicle. This is problematic and not practical given the manner in which the vehicle is operated and the necessity of having the weapon in close proximity to the officer.

The Department was contacted by a vendor contracted by the US Department of Justice, to re-sell surplus rifles from the military. This is part of the United States surplus equipment program, which allows law enforcement entities to purchase equipment at an extremely reduced cost. The cost of each rifle is $83.63 as compared to the regular retail price of $600.00 per unit. All of the rifles will be field tested and inspected by Miami Gardens Police personnel before being entered into service.

An additional component of this request is the purchase of locked / secure rifle racks, which are to be installed and mounted in the vehicles of patrol officers. The installation of these devices inside the cabin of the vehicle will allow better accessibility for the officer and will provide for enhanced security of the weapon. Given the spontaneous and sometimes volatile situations that officers encounter, making these items available for faster response is important for the safety of the officers. The purchase and installation of the locked secured rifle racks, as well as the purchase of the surplus rifles is allowable under Florida Statutes regulating the use of LETF dollars.

Staff recommends that Council approve the use of LETF funds in the amount of $26,950:

- $18,287.00 for the purchase and installation of locked /secure rifle racks
- $8,663.00 for the purchase of 100 rifles

$26,950.00 Total LETF request

Proposed Action:
That the City Council authorize the City Manager to expend $26,950 from the Police Department's LETF account to purchase 100 rifles at a cost of $8,663.00 and install vehicular rifle racks at a cost of $18,287.00.

Attachment:
None

RESOLUTION NO. 2011____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA AUTHORIZING, THE CITY MANAGER TO EXPEND TWENTY-SIX THOUSAND NINE HUNDRED FIFTY DOLLARS ($26,950.00) FROM THE LAW ENFORCEMENT TRUST FUND FOR THE PURCHASE OF RIFLES AND THE INSTALLATION OF VEHICULAR RIFLE RACKS; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Miami Gardens Police Department is progressive and innovative with the use of equipment and tactics during law enforcement operations, and

WHEREAS, the Department currently has twelve (12) rifles which are utilized by personnel on a sign-out basis, and officers are also permitted to use approved personal rifles while on duty, and

WHEREAS, the initial purchase of the limited number of rifles was largely due to budget constraints, and

WHEREAS, the current system is problematic and impracticable given the spontaneous and sometimes volatile situations that police officers encounter, and

WHEREAS, City staff proposes the purchase of rifles and the installation of vehicular rifle racks in the amount of Twenty-Six Thousand Nine Hundred Fifty Dollars ($26,950.00) utilizing the Law Enforcement Trust Fund dollars,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA AS FOLLOWS:

Section 1: ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2: AUTHORIZATION: The City Council of the City of Miami Gardens hereby authorizes the City Manager to expend Twenty-Six Thousand Nine Hundred

Fifty Dollars ($26,950.00) from the Law Enforcement Trust Fund for the purchase of rifles and the installation of vehicular rifle racks.

Section 3: EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON _____, 2011.

_____
SHIRLEY GIBSON, MAYOR

ATTEST:

_____
RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ., CITY ATTORNEY

SPONSORED BY: DR. DANNY O. CREW, CITY MANAGER

Moved by: _____

VOTE: _____

Mayor Shirley Gibson	____ (Yes)	____ (No)
Vice Mayor Aaron Campbell, Jr.	____ (Yes)	____ (No)
Councilman David Williams Jr.	____ (Yes)	____ (No)
Councilwoman Lisa Davis	____ (Yes)	____ (No)
Councilman Oliver Gilbert, III	____ (Yes)	____ (No)
Councilwoman Felicia Robinson	____ (Yes)	____ (No)
Councilman Andre' Williams	____ (Yes)	____ (No)

1515 NW 167 Street, Building 5 Suite 200
Miami Gardens, Florida 33169

City of Miami Gardens
Agenda Cover Memo

Council Meeting Date:	**June 8, 2011**		**Item Type:** *(Enter X in box)*	**Resolution**	**Ordinance**	**Other**	
				X			
Fiscal Impact: *(Enter X in box)*	**Yes**	**No**	**Ordinance Reading:** *(Enter X in box)*		**1st Reading**	**2nd Reading**	
		X	**Public Hearing:** *(Enter X in box)*		**Yes**	**No**	**Yes** / **No**
						X	
Funding Source:	**N/A**		**Advertising Requirement:** *(Enter X in box)*		**Yes**	**No**	
						X	
Contract/P.O. Required: *(Enter X in box)*	**Yes**	**No**	**RFP/RFQ/Bid #:**				
		X					
Strategic Plan Related *(Enter X in box)*	**Yes**	**No**	**Strategic Plan Priority Area:**		**Strategic Plan Obj./Strategy:** *(list the specific objective/strategy this item will address)* **N/A**		
		X	**Enhance Organizational** ☐ **Bus. & Economic Dev** ☐ **Public Safety** ☐ **Quality of Education** ☐ **Qual. of Life & City Image** ☐ **Communication** ☐				
Sponsor Name	**Dr. Danny Crew, City Manager**		**Department:**		**City Manager's Office**		

Short Title:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER AND THE CITY CLERK TO EXECUTE AND ATTEST RESPECTIVELY, THAT CERTAIN SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT WITH MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS LLC AND BRI 1814 GGOP, LLC., A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT "A"; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR AN EFFECTIVE DATE.

Staff Summary:

BRI 1814 GGOP, Inc. owns and manages the business office park where Miami Gardens City Hall is currently located at 1515 NW 167 Street in Buildings 3, 4, 5 and 7.

1515 NW 167 Street, Building 5 Suite 200
Miami Gardens, Florida 33169

BRI 1814 GGOP, Inc. is in the process of refinancing with Morgan Stanley Mortgage Capital Holdings LLC ("Morgan Stanley"), and has requested that the City review and execute the attached Subordination, Non-Disturbance and Attornment Agreement (SNDA), which will be included in the overall refinancing package.

It is a common practice for lenders to require the execution of an SNDA Agreement by landlords and existing tenants of commercial properties. SNDA Agreements address the rights of tenants and lenders, in the event the landlord defaults on its mortgage. By executing the attached SNDA agreement, unless the City is in default under the lease agreement, the City's right to utilize the premises will be undisturbed, even if the landlord defaults on the mortgage.

Proposed Action:

That City Council approved the resolution authorizing the City Manager to execute the Subordination, Non-Disturbance and Attornment Agreement with Morgan Stanley Mortgage Capital Holdings LLC and BRI 1814 GGOP, Inc.

Attachment:

Attachment A – Subordination, Non-Disturbance and Attornment Agreement

RESOLUTION NO. 2011____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AUTHORIZING THE CITY MANAGER AND THE CITY CLERK TO EXECUTE AND ATTEST RESPECTIVELY, THAT CERTAIN SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT WITH MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS LLC AND BRI 1814 GGOP, LLC., A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT "A"; PROVIDING FOR INSTRUCTIONS TO THE CITY CLERK; PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, BRI 1814 GGOP, LLC ("Landlord") owns and manages the office park where the City of Miami Gardens' City Hall is located, and

WHEREAS, the Landlord is in the process of refinancing a mortgage with Morgan Stanley Mortgage Capital Holdings LLC ("Morgan Stanley"), and

WHEREAS, the Landlord and Morgan Stanley requests that the City execute the attached Subordination, Non-Disturbance and Attornment Agreement ("SNDA"), to be submitted with the overall refinancing package, and

WHEREAS, it is common practice for lenders to require the execution of an SNDA agreement by landlords and tenants of commercial properties, and

WHEREAS, by executing the attached SNDA Agreement, the City's rights to utilize the premises will be undisturbed even if the landlord defaults on the mortgage, unless the City is in default of the lease,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA AS FOLLOWS:

Section 1: ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2: AUTHORIZATION: The City Council of the City of Miami Gardens hereby authorizes the City Manager to execute that certain Subordination, Non-Disturbance and Attornment Agreement with Morgan Stanley Mortgage Capital Holdings LLC and BRI 1814 GGOP, LLC, a copy of which is attached hereto as Exhibit "A".

Section 3: INSTRUCTIONS TO THE CLERK: The City Clerk is hereby authorized to obtain three (3) fully executed copies of the subject Agreement with one (1) to be maintained by the City, one (1) to BRI 1814 GGOP, LLC and one (1) to be delivered to Morgan Stanley Mortgage Capital Holdings LLC.

Section 4: EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON _____, 2011.

_____
SHIRLEY GIBSON, MAYOR

ATTEST:

_____
RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ., CITY ATTORNEY

SPONSORED BY: DR. DANNY O. CREW, CITY MANAGER

Moved by: _____

VOTE: _____

Mayor Shirley Gibson	____ (Yes)	____ (No)
Vice Mayor Aaron Campbell, Jr.	____ (Yes)	____ (No)
Councilman David Williams Jr.	____ (Yes)	____ (No)
Councilwoman Lisa Davis	____ (Yes)	____ (No)
Councilman Oliver Gilbert, III	____ (Yes)	____ (No)
Councilwoman Felicia Robinson	____ (Yes)	____ (No)
Councilman Andre' Williams	____ (Yes)	____ (No)

MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS LLC
(Lender)

- and -

City of Miami Gardens
(Tenant)

- and –

BRI 1814 GGOP, LLC
(Landlord)

SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

Dated: _____

Location: _____

Address: _____
_____

County: _____

PREPARED BY AND UPON
RECORDATION RETURN TO:

Winstead PC
5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270

Attention: Brian S. Short, Esq.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made as of the _____ day of _____, ____ by and among **MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS LLC**, a New York limited liability company, having an address at 1585 Broadway, New York, New York 10036, Attention: Mr. Stephen Holmes ("Lender"), **City of Miami Gardens**, having an address at **1515 NW, 167th St., Suite 200, Miami Gardens, FL 33169** ("Tenant"), and **BRI 1814 GGOP, LLC**, having an address at **1140 E Hallandale Beach Blvd., Hallandale Beach, FL 33009** ("Landlord").

RECITALS:

A. Lender is the present owner and holder of a certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Security Instrument") dated as of _____, 20____, given by Landlord to Lender which encumbers the fee estate of Landlord in certain premises described in Exhibit A attached hereto (the "Property") and which secures the payment of certain indebtedness owed by Landlord to Lender evidenced by a certain promissory note dated _____, 20____, given by Landlord to Lender (the "Note");

B. Tenant is the holder of a leasehold estate in a portion of the Property under and pursuant to the provisions of a certain lease dated **March 5, 2004** between Landlord, as landlord, and Tenant, as tenant (the "Lease"); and

C. Tenant has agreed to subordinate the Lease to the Security Instrument and to the lien thereof and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

AGREEMENT:

For good and valuable consideration, Tenant, Lender and Landlord agree as follows:

1. Subordination. The Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate in all respects to the terms, covenants and provisions of the Security Instrument and to the lien thereof, including without limitation, all renewals, increases, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums secured thereby and advances made thereunder with the same force and effect as if the Security Instrument had been executed, delivered and recorded prior to the execution and delivery of the Lease.

2. Non-Disturbance. If any action or proceeding is commenced by Lender for the foreclosure of the Security Instrument or the sale of the Property, Tenant shall not be named as a party therein unless such joinder shall be required by law, provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's possession or use of

the premises demised thereunder, and the sale of the Property in any such action or proceeding and the exercise by Lender of any of its other rights under the Note or the Security Instrument shall be made subject to all rights of Tenant under the Lease, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights (a) the term of the Lease shall have commenced pursuant to the provisions thereof, (b) Tenant shall be in possession of the premises demised under the Lease, (c) the Lease shall be in full force and effect and (d) Tenant shall not be in default under any of the terms, covenants or conditions of the Lease or of this Agreement on Tenant's part to be observed or performed.

3. Attornment. If Lender or any other subsequent purchaser of the Property shall become the owner of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Security Instrument (Lender or such other purchaser being hereinafter referred as "Purchaser"), and the conditions set forth in Section 2 above have been met at the time Purchaser becomes owner of the Property, the Lease shall not be terminated or affected thereby but shall continue in full force and effect as a direct lease between Purchaser and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event, Tenant agrees to attorn to Purchaser and Purchaser by virtue of such acquisition of the Property shall be deemed to have agreed to accept such attornment, provided, however, that Purchaser shall not be (a) liable for the failure of any prior landlord (any such prior landlord, including Landlord and any successor landlord, being hereinafter referred to as a "Prior Landlord") to perform any of its obligations under the Lease which have accrued prior to the date on which Purchaser shall become the owner of the Property, provided that the foregoing shall not limit Purchaser's obligations under the Lease to correct any conditions of a continuing nature that (i) existed as of the date Purchaser shall become the owner of the Property and (ii) violate Purchaser's obligations as landlord under the Lease; provided further, however, that Purchaser shall have received written notice of such omissions, conditions or violations and has had a reasonable opportunity to cure the same, all pursuant to the terms and conditions of the Lease, (b) subject to any offsets, defenses, abatements or counterclaims which shall have accrued in favor of Tenant against any Prior Landlord prior to the date upon which Purchaser shall become the owner of the Property, (c) liable for the return of rental security deposits, if any, paid by Tenant to any Prior Landlord in accordance with the Lease unless such sums are actually received by Purchaser, (d) bound by any payment of rents, additional rents or other sums which Tenant may have paid more than one (1) month in advance to any Prior Landlord unless (i) such sums are actually received by Purchaser or (ii) such prepayment shall have been expressly approved of by Purchaser, (e) bound by any agreement terminating or amending or modifying the Lease, or any voluntary surrender of the premises demised under the Lease, made without Lender's or Purchaser's prior written consent prior to the time Purchaser succeeded to Landlord's interest or (f) bound by any assignment of the Lease or sublease of the Property, or any portion thereof, made prior to the time Purchaser succeeded to Landlord's interest other than if pursuant to the provisions of the Lease. In the event that any liability of Purchaser does arise pursuant to this Agreement, such liability shall be limited and restricted to Purchaser's interest in the Property and shall in no event exceed such interest. Alternatively, upon the written request of Lender or its successors or assigns, Tenant shall enter into a new lease of the Premises with Lender or such successor or assign for the then remaining term of the Lease, upon the same terms and conditions as contained in the Lease, except as otherwise specifically provided in this Agreement.

4. Notice to Tenant. After notice is given to Tenant by Lender that the Landlord is in default under the Note and the Security Instrument and that the rentals under the Lease should be paid to Lender pursuant to the terms of the assignment of leases and rents executed and delivered by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender or as directed by the Lender, all rentals and all other monies due or to become due to Landlord under the Lease and Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant from any liability to Landlord on account of any such payments.

5. Intentionally omitted.

6. Notice to Lender and Right to Cure. Tenant shall notify Lender (with copy to Landlord) of any default by Landlord under the Lease and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof or of an abatement shall be effective unless Lender shall have received notice of default giving rise to such cancellation or abatement and (i) in the case of any such default that can be cured by the payment of money, until sixty (60) days shall have elapsed following the giving of such notice or (ii) in the case of any other such default, until a reasonable period for remedying such default shall have elapsed following the giving of such notice and following the time when Lender shall have become entitled under the Security Instrument to remedy the same, including such time as may be necessary to acquire possession of the Property if possession is necessary to effect such cure, provided Lender, with reasonable diligence, shall (a) pursue such remedies as are available to it under the Security Instrument so as to be able to remedy the default, and (b) thereafter shall have commenced and continued to remedy such default or cause the same to be remedied. Notwithstanding the foregoing, Lender shall have no obligation to cure any such default.

7. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof and confirmed by telephone by sender, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Tenant: **City of Miami Gardens**
1515 NW, 167th St., Suite 200,
Miami Gardens, FL 33169
Attention: _____
Facsimile No. _____

If to Landlord: **BRI 1814 GGOP, LLC**
1140 E Hallandale Beach Blvd
Hallandale Beach, FL 33009
Attention: **Ariel Bentata**
Facsimile No. **954-454-4749**

If to Lender: Morgan Stanley Mortgage Capital Holdings LLC,
1585 Broadway
New York, NY 10036
Attention: Stephen Holmes
Facsimile No.: 212.761.3646

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 7, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in the state where the Property is located. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

8. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Lender, Tenant and Purchaser and their respective successors and assigns.

9. Governing Law. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the State where the Property is located and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State where the Property is located.

10. Miscellaneous. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

11. Joint and Several Liability. If Tenant consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several.

12. Definitions. The term "Lender" as used herein shall include the successors and assigns of Lender and any person, party or entity which shall become the owner of the Property by reason of a foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or otherwise. The term "Landlord" as used herein shall mean and include the present landlord under the Lease and such landlord's predecessors and successors in interest under the Lease, but shall not mean or include Lender. The term "Property" as used herein shall mean the Property, the improvements now or hereafter located thereon and the estates therein encumbered by the Security Instrument.

13. Further Acts. Tenant will, at the cost of Tenant, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts and assurances as

Lender shall, from time to time, require, for the better assuring and confirming unto Lender the property and rights hereby intended now or hereafter so to be, or for carrying out the intention or facilitating the performance of the terms of this Agreement or for filing, registering or recording this Agreement, or for complying with all applicable laws.

14. Limitations on Purchaser's Liability. In no event shall the Purchaser, nor any heir, legal representative, successor, or assignee of the Purchaser have any personal liability for the obligations of Landlord under the Lease and should the Purchaser succeed to the interests of the Landlord under the Lease, Tenant shall look only to the estate and property of any such Purchaser in the Property for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by any Purchaser as landlord under the Lease, and no other property or assets of any Purchaser shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to the Lease; provided, however, that the Tenant may exercise any other right or remedy provided thereby or by law in the event of any failure by Landlord to perform any such material obligation.

15. Estoppel Certificate. Tenant, shall, from time to time, within ten (10) days after request by Lender, execute, acknowledge and deliver to Lender a statement by Tenant certifying (a) that the Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (b) the amounts of fixed rent, additional rent, percentage rent, or other sums, if any, which are payable in respect of the Lease and the commencement date and expiration date of the Lease, (c) the dates to which the fixed rent, additional rent, percentage rent, if any, and other sums which are payable in respect to the Lease have been paid, (d) whether or not Tenant is entitled to credits or offsets against such rent, and, if so, the reasons therefor and the amount thereof, (e) that Tenant is not in default in the performance of any of its obligations under the Lease and no event has occurred which, with the giving of notice or the passage of time, or both, would constitute such a default, (f) whether or not, to the best knowledge of the person certifying on behalf of Tenant, Landlord is in default in the performance of any of its obligations under the Lease, and, if so, specifying the same, (g) whether or not, to the best knowledge of such person, any event has occurred which with the giving of such notice or passage of time, or both would constitute such a default, and, if so, specifying each such event, and (h) whether or not, to the best knowledge of such person, Tenant has any claims, defenses or counterclaims against Landlord under the Lease, and, if so, specifying the same, it being intended that any such statement delivered pursuant hereto shall be deemed a representation and warranty to be relied upon by Lender and by others with whom Lender may be dealing, regardless of independent investigation. Tenant also shall include in any such statement such other information concerning the Lease as Lender may reasonably request.

16. Effective Date. This Agreement shall be of no force or effect until, and unless, Landlord acquires title to the Property, as evidenced by the recording of a deed in the official records of Harris County, Texas.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, Lender, Tenant and Landlord have duly executed this Agreement as of the date first above written.

TENANT:

City of Miami Gardens
a Municipal Corporation

By:_____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was ACKNOWLEDGED before me on _____ ___, 20__, by _____, as _____ of _____, a _____, on behalf of said _____.

[S E A L]

_____
Notary Public, State of _____

My Commission Expires:

_____

_____
Printed Name of Notary Public

LANDLORD:

BRI 1814 GGOP, LLC,

a **Delaware Limited Liability Company**

By:_____
Name:_____
Title:_____

ACKNOWLEDGMENT

STATE OF _____ §
§
COUNTY OF _____ §

This instrument was ACKNOWLEDGED before me on _____ ___, 20__, by _____, as _____ of _____, a _____, on behalf of said _____.

[S E A L]

_____
Notary Public, State of _____

My Commission Expires:

_____

_____
Printed Name of Notary Public

LENDER:

MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS LLC,
a New York limited liability company

By:_____
Name: _____
Title: _____

ACKNOWLEDGMENT

STATE OF NEW YORK §
§
COUNTY OF NEW YORK §

This instrument was ACKNOWLEDGED before me on _____ ___, 20__, by _____, as _____ of MORGAN STANLEY MORTGAGE CAPITAL HOLDINGS LLC, a New York limited liability company, on behalf of said limited liability company.

[S E A L]

_____
Notary Public, State of New York

My Commission Expires:

_____

_____
Printed Name of Notary Public

EXHIBIT A

[Attach Legal Description of Property]