

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 88-2406-CIV-MORENO

MICHAEL POTTINGER, PETER  
CARTER AND BERRY YOUNG,

Plaintiffs,

vs.

CITY OF MIAMI,

Defendant.

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**JOINT MOTION TO APPROVE SETTLEMENT**

Plaintiffs, MICHAEL POTTINGER, PETER CARTER AND BERRY YOUNG, and Defendant, CITY OF MIAMI (“City”), by and through undersigned counsel, hereby move this Honorable Court to approve settlement of the issues raised by the Motion to Modify Settlement [DE 464] and in support state as follows:

1. This Honorable Court encouraged the parties at the hearing on October 23, 2013, to mediate and attempt to resolve the Motion to Modify Settlement Agreement [DE 508]. The Court followed with an Order requiring mediation and appointing as the mediator the Honorable Angel Cortiñas [DE 516].

2. On December 4, 2013, and December 11, 2013, the parties conducted two lengthy mediations for approximately 23 hours. The parties mediated in good faith with the able services of the Honorable Angel Cortiñas.

3. On December 11, 2013, the parties reached an addendum to Settlement Agreement which resolves all the pending issues and was executed by counsel and the mediator. See attached Addendum to Settlement Agreement.

4. The parties respectfully submit that the Addendum serves the best interests of the parties and the community.

5. The parties ask this Honorable Court to cancel the evidentiary hearings and adopt the settlement.

WHEREFORE, the parties jointly request this Honorable Court to adopt the settlement.

Respectfully submitted,

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By: s/Thomas E. Scott  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 12<sup>th</sup> day of December, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record on the Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: s/Thomas E. Scott  
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#### ADDENDUM TO SETTLEMENT AGREEMENT

The Plaintiffs, MICHAEL POTTINGER, et al., and the class of Plaintiffs they represent (hereinafter collectively referred to as "Plaintiffs"), and the Defendant, THE CITY OF MIAMI (hereinafter "CITY"), by and through their respective undersigned counsel, agree to the following addendum to the settlement agreement effective October 1, 1998. Subject to the approval of this Court, except as herein modified, the terms and conditions of the Settlement Agreement effective October 1, 1998 shall remain in full force and effect. The language underlined constitutes additions to the settlement agreement and the language stricken constitutes deletions to the settlement agreement.

#### VII. Law Enforcement Protocol

10. Definition of "Homeless Person". An individual is considered a "homeless person" if he or she "lacks a fixed, regular, and adequate night time residence and has a primary night-time residency that is: (a) a supervised publicly or privately operated shelter designed to provide temporary living accommodations; (b) an institution that provides a temporary residence for individuals intended to be institutionalized; or (c) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. The term 'homeless person' does not include any person imprisoned or otherwise detained pursuant to an Act of Congress or a state law." 42 U.S.C. §11301, et seq. (1994). An

officer is allowed to make reasonable inquiry to make this determination. For purposes of this Addendum, any person identified as a registered sex offender under section 775.21 F.S. or sexual predator under section 775.215, F.S. or Sections 21-277 to 21-21285, Miami-Dade County Code, because they do not qualify for Available Shelter, is not afforded the protections under Section VII, Paragraph 14, of the Settlement Agreement.

11. Definition of "Available Shelter". An "available shelter" means a shelter for a period of at least 24 hours, with a bed or a mat, at least three inches thick, at no cost to the homeless person, within the territorial boundaries of the CITY or within one mile thereof, or if agreed to by the homeless person, within Miami-Dade County, that treats homeless persons with dignity and respect, imposes no religious requirements, and, unless agreed to by the homeless person, does not impose involuntary substance abuse or mental health treatment as a condition for shelter.

14. Law Enforcement Protocol: The City hereby adopts a protocol to further protect the rights of homeless persons, by limiting the circumstances under which arrests can be made, including the handling of their personal property:

A. "Homeless Person Observed Not Engaging in Any Criminal Conduct:

There can be no arrest or detention. A law enforcement officer, social worker, or ~~CITY outreach worker~~ a community outreach specialist may approach the homeless person and advise him or her of shelter, services, or assistance which are then currently available. When the contact with the homeless person has been initiated by a "citizen's complaint," the law enforcement officer may, whenever appropriate, call for the assistance of ~~outreach worker~~ a community outreach specialist, who, if available, may begin the process of engaging the homeless person in a dialogue which is intended to advise the homeless person of shelter, services or assistance that is/are available. Required Records: (1) If such an approach and advice concerning shelter, services, or assistance occurs by a law enforcement officer, the law enforcement officer shall complete a Field Information Card, or its electronic equivalent. In the case of a homeless person who refuses and who has refused assistance in the

past thirty days, a new Field Information Card, or its electronic equivalent, is not required to be completed for each encounter as long as the prior-filed Field Information Card, or its electronic equivalent, is updated with the new date of contact with the homeless person. Records Filing: A copy of all required records shall be filed with the appropriate unit within the Miami Police Department.

B. Homeless Person Reasonably Believed to be Mentally Ill: Where a homeless person meets the criteria for involuntary examination under Florida Law (currently section 394.463, F.S.), "Baker Act," a law enforcement officer may, in his or her discretion, take the homeless person to a receiving the nearest receiving facility for involuntary examination. Required Records: If the homeless person is taken to ~~a receiving the nearest receiving facility~~ for involuntary examination, a copy of the forms required by section 394.463 (hereinafter "Baker Act Forms"), shall be filed with the nearest receiving facility ~~Mental Health Crisis Center at Jackson Memorial Hospital~~ and a Field Information Card, or its electronic equivalent, to include the name, date, location, and references that the person was Baker Acted shall be completed. Records Filing: A copy of all required records shall be filed with the applicable unit within the Miami Police Department.

C. Homeless Person Observed Violating a "Life Sustaining Conduct" Misdemeanor:

1. "Life sustaining conduct" misdemeanors are those which a homeless individual commits by the mere fact that he or she is without shelter, and must conduct life sustaining activities, such as eating, sleeping, sitting, congregating, or walking in public.

2. If the homeless person described above is observed committing one of the below listed "life sustaining conduct" misdemeanors, the law enforcement officer may warn the homeless person to stop the unlawful conduct. If there is no "available shelter," no warning shall be given. If there is an "available shelter," the law enforcement officer may advise the homeless person of its availability. If there is an "available shelter," and the shelter has been offered to the homeless person, and that person accepts this assistance, no arrest shall take place and arrangements shall be made to transport the homeless person to the shelter. Only if there is an "available shelter" and the homeless person refuses to

accept the shelter, or if the sole Available Shelter at the time is a shelter from which the homeless person is barred because of his or her own purposeful misconduct, criminal or otherwise, which occurred at that shelter, may the law enforcement officer arrest the homeless person for a "life sustaining conduct" misdemeanor. Required Records: (1) If a homeless person is transported to an available shelter," the law enforcement officer shall complete a Field Information Card, or its electronic equivalent.; (2) If an arrest is made, an Arrest Affidavit shall be completed. Records Filing: A copy of all required records shall be filed with the appropriate unit within the Miami Police Department. However, if the homeless person described above is observed committing one of the below listed "life sustaining conduct" misdemeanors, and the life sustaining conduct misdemeanor causes imminent threat of physical injury to the homeless person or other person(s), the law enforcement officer must warn the homeless person to stop, and, if they refuse to do so, may arrest them regardless of whether there is Available Shelter.

3. The "life sustaining conduct" misdemeanors referenced above are as follows:

a. Being in park after hours. Current Provisions:, ~~□□38-3 & 1-13, City of Miami Code ("CMC"); □162.22, F.S. (1994);~~

b. Public nudity where necessary to carry on the daily necessities of life, such as bathing or responding to a call of nature. If the public nudity is done intentionally in plain view of others, the law enforcement officer may arrest the person regardless of whether there is an Available Shelter. Moreover, in no circumstance shall public nudity be allowed for a call of nature if there exists an open public restroom within one-quarter of a mile (1,320 feet) of the homeless person performing a call of nature. Current Provisions: ~~□800.03, F.S. (1994), □37-1, 38-62, CMC.~~

c. ~~Fires in parks. Current provisions: 38-53 & 1-13, CMC; 162.22, F.S. (1994).;~~

d. Obstructing passage on sidewalks. Obstructing a street, road, or highway shall not be construed to be a "life sustaining conduct" misdemeanor within the meaning of this protocol except that, after one warning, no person or persons may lie on the sidewalk in a perpendicular fashion blocking the sidewalk or may obstruct a sidewalk in such a way as to endanger other persons by requiring them to

walk onto a street where, but for the obstruction, such persons would otherwise have been able to safely walk on the sidewalk. Current Provisions: □□54-1 to 54-3, 37-3, CMC; □316.2045, F.S. (1994).

e. Vehicles, living or sleeping in. Current Provision: □37-4,

f. Loitering in Restrooms. Current Provision: □38-68, CMC;

g. Littering, except, if within 300 feet of a usable trash receptacle, a law enforcement officer must warn the homeless person to stop, and, if they refuse to do so, may cite them regardless of whether there is Available Shelter. Current Provisions: □403.314, Fla. Stat.; □22-6, 38-17, 38-63 CMC; and

h. Camping in parks. Current Provision: □38-71, CMC;

i. Use of facilities for other than intended purpose (e.g., sleeping on park bench). Current Provisions: □38-54, CMC;

j. ~~Temporary structures in park, Current Provisions: □38-52, CMC;~~

k. Trespass on "public property" other than structure or conveyance. Current Provision:, □810.09(1), Fla. Stat. Trespass on private property or an "exempt public property" is not a "life sustaining conduct" misdemeanor within the meaning of this protocol, and such violation should always be treated either as specified under paragraph D or E below. A homeless persons' presence interior of an "exempt public property" is not a trespass within the meaning of this paragraph where the homeless person's activities are reasonably related to the governmental business activities normally performed within these physical structures.

4. Nothing in this paragraph discussing "life sustaining conduct" misdemeanors shall prevent an immediate arrest under □800.04, F.S., entitled, "Lewd, lascivious, or indecent assault or act upon or in presence of a person child," if a law enforcement officer has probable cause to make such an arrest.

D. Homeless Person Observed Violating a Misdemeanor (which is not classified above as "Life Sustaining Conduct"):



1. The "non-life sustaining conduct" misdemeanors are those which a homeless individual commits, but are not associated with "life sustaining activities," such as eating, sleeping, sitting, congregating, or walking in public.

2. If the homeless person described above is observed violating a misdemeanor (which is not classified in this Protocol as "life sustaining conduct"), the law enforcement officer may warn the homeless person to stop the unlawful conduct, or, if the officer deems it appropriate, the officer may detain or arrest the homeless person. A law enforcement officer may, in his or her discretion, approach the homeless person and advise him or her of shelter, services or assistance which is then currently available. If the law enforcement officer deems it appropriate, he or she may also offer to call ~~an outreach worker~~ a community outreach specialist to the scene so that the homeless person can be transported to an "available shelter" that is appropriate for the homeless person's needs at that time. Records required: (1) If a homeless person is transported to an available shelter, the law enforcement officer shall complete a Field Information Card, or its electronic equivalent; (2) If an arrest is made, an Arrest Affidavit shall be completed; (3) If the law enforcement officer warns the homeless person to stop the unlawful conduct, but no arrest is made, then the law enforcement officer shall complete a Field Information Card, or its electronic equivalent; (4) If an approach and advice concerning shelter, services or assistance occurs by a law enforcement officer, or if ~~an outreach worker~~ a community outreach specialist is called, the law enforcement officer shall complete a Field Information Card, or its electronic equivalent, except where a homeless person refuses assistance and has refused assistance in the past thirty days, a new Field Information Card, or its electronic equivalent, is not required to be completed for each encounter as long as the prior-filed Field Information Card, or its electronic equivalent, is updated with the new date of contact with the homeless person. Records Filing: A copy of all required records shall be filed with the appropriate unit within the Miami Police Department.

E. Homeless Person Committing Felony Offense:

If a law enforcement officer has probable cause to believe that a homeless person is committing, or has committed, a felony, the law enforcement officer may detain or arrest the homeless person. Required Records: If an arrest is made, an Arrest Affidavit shall be completed. Records Filing: A copy of all required records shall be filed with the appropriate unit within the Miami Police Department.

F. Disposition of Personal Property Belonging to a Homeless Person who is Arrested .

1. The CITY shall respect the personal property of all homeless people. The Miami Police Department and all other Departments including but not limited to Parks and Recreation and Solid Waste) shall follow their own internal procedures for taking custody of personal property. In no event shall any city official or worker destroy any personal property known to belong to a homeless person, or readily recognizable as property of a homeless person (i.e., bedding or clothing and other belongings organized or packaged together in a way indicating it has not been abandoned), except as permissible by law and in accordance with the department's operating procedure, or if the property is contaminated or otherwise poses a health hazard or obvious safety issue to CITY workers or to members of the public. Notwithstanding any language in this Settlement Agreement to the contrary, the CITY is not responsible for taking custody of mattresses. When a homeless person is placed in a shelter, large and bulky items, which are not contaminated or otherwise pose a health hazard or obvious safety issue, and that are not abandoned, shall be secured by an outreach worker and maintained in accordance with existing outreach procedures.

2. The disposition of personal property shall never prevent a law enforcement officer from effectuating an arrest authorized under the previous sections of this protocol. However, the following safeguards shall be undertaken by the arresting officer or any other CITY agent or official to preserve the property of a homeless person, to the extent feasible:

a. The arresting officer shall always attempt to secure personal items such as identification, medicines and eyeglasses and other small items of importance identified by the arrestee, which are not large or bulky, in accordance with the police department's existing procedures;

b. The arresting officer shall ensure that large or bulky items (which are not contaminated or otherwise pose a health hazard or obvious safety issue to CITY officers or workers or to members of the public) are not abandoned at the point of arrest, but rather secured by an outreach worker and maintained in accordance with existing outreach procedures, or, if an outreach worker is unavailable, secured by the arresting officer until an outreach worker becomes available to assume its maintenance in accordance with existing outreach procedures.

#### VIII. Record Generation/Maintenance/Access

15. The CITY shall, within 30 days of the execution of this Settlement Agreement, adopt a procedure for monitoring and accounting for its police officers' encounters with the homeless persons. This procedure shall include the following:

(f) Records Generation – Field Information Cards, or their electronic equivalent, shall be available twice per calendar year to Plaintiffs' counsel at no cost for the six month period prior to the request, to monitor and insure compliance with the Settlement Agreement and Addendum.

#### X. Enforcement/Mediation

25b. The parties agree that the Addendum to the settlement agreement was made in good faith and measurable and observable improvements to the City's homeless population will take time. Therefore, no earlier than January 2, 2016, the parties may mediate further modifications of the settlement agreement and Addendum, including addressing issues related to the chronically homeless, in a non-binding mediation. If such matters are not resolved in mediation, either party may invoke the court's jurisdiction, with consent to having any matters heard before a U.S. Magistrate Judge, to seek further modifications to the settlement agreement given the established prima facie showing and finding by the court.

XII. Class Approval/Notice to Class Members

27b. Notice to the class of the Addendum shall be given by publication in The Miami Herald, El Nuevo Herald, and New Times, on three different days, including one weekend day, of three consecutive weeks, which shall not be less than a 1/4 page in the Local (Locales) section of each paper, to maximize the chance of actual notice to the class members. The costs of such notices shall be borne by the CITY. The notice shall advise class members of the status of this case, and describe, generally, the proposed Addendum. The notice shall be subject to court approval. Class members shall have 30 days following the final notice within which to file any written objections to the Addendum. The court shall convene a hearing at the convenience of its calendar, but at least 30 days thereafter to consider any such objections after which the court shall approve or disapprove the Addendum. The notice shall state the date, time, and location of this hearing. The Court shall set the date for the hearing to consider objections at the time it approves the content of the notice.

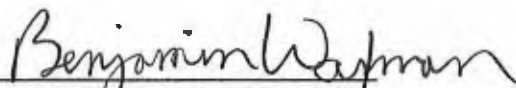
XIV. Court and City Commission Approval

29b. This Addendum to the Settlement Agreement shall not be effective until approved by the City of Miami Commission and the Court. The Court shall retain jurisdiction to enforce the terms hereof.

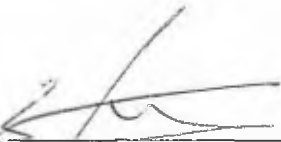
XVI. Integration Clause

31b. The Addendum to the Settlement Agreement contains the entire agreement of the parties reached on this date and supersedes all previous oral or written representations or agreements concerning the Addendum. This Addendum to the Settlement Agreement shall not be supplemented by parol evidence.

DATED December 11, 2013.

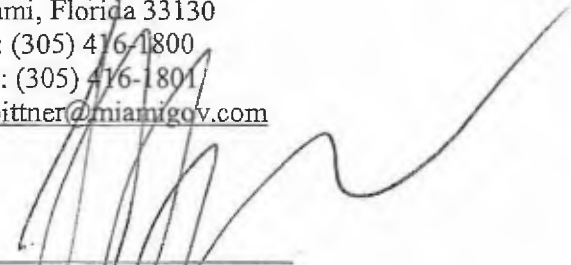


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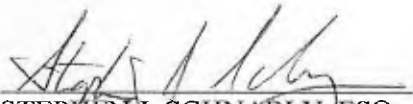
  

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