



North Bay Village

Administrative Offices

1700 Kennedy Causeway, Suite 132 North Bay Village, FL 33141

Tel: (305) 756-7171 Fax: (305) 756-7722 Website: www.nbvillage.com

OFFICIAL AGENDA

SPECIAL COMMISSION MEETING NORTH BAY VILLAGE 1700 KENNEDY CAUSEWAY, #132 NORTH BAY VILLAGE, FL 33141

APRIL 1, 2013 – 6:00 P.M.

NOTICE IS HEREWITH GIVEN TO ALL INTERESTED PARTIES THAT IF ANY PERSON SHOULD DECIDE TO APPEAL ANY DECISION MADE AT THE FORTHCOMING MEETING OF THE COMMISSION OF NORTH BAY VILLAGE, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSE, HE OR SHE WILL 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. THIS NOTICE DOES NOT CONSTITUTE CONSENT BY THE VILLAGE FOR THE INTRODUCTION OR ADMISSION OF OTHERWISE INADMISSIBLE EVIDENCE, NOR DOES IT AUTHORIZES CHALLENGES OR APPEALS NOT OTHERWISE ALLOWED BY LAW.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990, PERSONS NEEDING SPECIAL ACCOMMODATION OR A SIGN LANGUAGE INTERPRETER TO PARTICIPATE IN THIS PROCEEDING SHOULD CONTACT (305) 756-7171 NO LATER THAN FOUR DAYS PRIOR TO THE PROCEEDING. IF HEARING IMPAIRED, TELEPHONE THE FLORIDA RELAY SERVICE NUMBERS AT (800) 955-8771 (TDD) OR (800) 955-8700 (VOICE) FOR ASSISTANCE.

1. **CALL TO ORDER.**

2. **PLEDGE OF ALLEGIANCE**

3. **ROLL CALL**

4. **RESOLUTIONS**

A. **A RESOLUTION OF THE VILLAGE COMMISSION OF NORTH BAY VILLAGE, FLORIDA, TERMINATING THE EMPLOYMENT AGREEMENT BETWEEN DENNIS KELLY AND NORTH BAY VILLAGE; AUTHORIZING THE MAYOR TO EXECUTE A SEVERANCE AND GENERAL RELEASE AGREEMENT ON BEHALF OF THE VILLAGE; AUTHORIZING THE EXPENDITURE OF BUDGETED FUNDS; AND PROVIDING AN EFFECTIVE DATE. (INTRODUCED BY MAYOR CONNIE LEON-KREPS)**

1.) **Commission Action**

B. **A RESOLUTION OF THE VILLAGE COMMISSION OF NORTH BAY VILLAGE, FLORIDA, APPOINTING AN INTERIM VILLAGE MANAGER; SETTING AN EFFECTIVE DATE. (INTRODUCED BY MAYOR CONNIE LEON-KREPS)**

Mayor
Connie Leon-Kreps

Vice Mayor
Eddie Lim

Commissioner
Dr. Richard Chervony

Commissioner
Wendy Duvall

Commissioner
Jorge Gonzalez

1.) **Commission Action**

5. **ADJOURNMENT**



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MEMORANDUM

North Bay Village

TO: Mayor Connie Leon-Kreps
Vice Mayor Eddie Lim
Commissioner Wendy Duvall
Commissioner Richard Chervony
Commissioner Jorge Gonzalez

FROM: Jenice Rosado
Acting Village Manager 

SUBJECT: Special Meeting of the Village Commission

DATE: March 29, 2013

Mayor Connie Leon-Kreps and Commissioner Richard Chervony have called a Special Meeting of the Village Commission for Monday, April 1, 2013 at 6:00 p.m. in the 3rd Floor of the Causeway Towers Building at 1666 Kennedy Causeway.

The purpose of this Special Meeting shall be to discuss the following matters:

1. A Resolution approving a Severance Agreement for the Village Manager.
2. A Resolution appointing an Interim Village Manager

Cc: Yvonne P. Hamilton, Village Clerk
Nina Boniske, Village Attorney
Kathy Mehaffey, Assistant Village Attorney

Mayor
Connie Leon-Kreps

Vice Mayor
Eddie Lim

Commissioner
Dr. Richard Chervony

Commissioner
Wendy Duvall

Commissioner
Jorge Gonzalez



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MEMORANDUM North Bay Village

TO: Yvonne P. Hamilton, CMC
Village Clerk

FROM: Connie Leon-Kreps 
Mayor

SUBJECT: Special Meeting of the Village Commission

DATE: March 26, 2013

Pursuant to §30.03 of the North Bay Village Code of Ordinances, a Special Meeting of the Village Commission is called for **APRIL 1, 2013 AT 6:00 P.M.** at the 3rd Floor of the Causeway Towers Building, 1666 Kennedy Causeway, North Bay Village, Florida. The purpose of this meeting shall be to address the following:

1. A Resolution approving a Severance Agreement for the Village Manager.
2. A Resolution appointing an Interim Village Manager

Cc: Jenice Rosado, Deputy Village Manager/HR Director
Yvonne P. Hamilton, Village Clerk
Nina Boniske, Village Attorney
Kathy Mehaffey, Assistant Village Attorney

Mayor
Connie Leon-Kreps

Vice Mayor
Eddie Lim

Commissioner
Dr. Richard Chervony

Commissioner
Wendy Duvall

Commissioner
Jorge Gonzalez



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MEMORANDUM North Bay Village

TO: Yvonne P. Hamilton, CMC
Village Clerk

FROM: Richard Chervony
Commissioner

SUBJECT: Special Meeting of the Village Commission

DATE: March 26, 2013

Pursuant to §30.03 of the North Bay Village Code of Ordinances, a Special Meeting of the Village Commission is called for **APRIL 1, 2013 AT 6:00 P.M.** at the 3rd Floor of the Causeway Towers Building, 1666 Kennedy Causeway, North Bay Village, Florida. The purpose of this meeting shall be to address the following:

1. A Resolution approving a Severance Agreement for the Village Manager.
2. A Resolution appointing an Interim Village Manager

Cc: Jenice Rosado, Deputy Village Manager/HR Director
Yvonne P. Hamilton, Village Clerk
Nina Boniske, Village Attorney
Kathy Mehaffey, Assistant Village Attorney

Mayor
Connie Leon-Kreps

Vice Mayor
Eddie Lim

Commissioner
Dr. Richard Chervony

Commissioner
Wendy Duvall

Commissioner
Jorge Gonzalez



North Bay Village

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NORTH BAY VILLAGE **COMMISSION MEMORANDUM**

DATE: April 1, 2013

TO: Mayor Connie Leon-Kreps
Vice Mayor Eddie Lim
Commissioner Richard Chervony
Commissioner Wendy Duvall
Commissioner Jorge Gonzalez

FROM: Nina Boniske, Village Attorney

CC: Dennis Kelly, Village Manager

SUBJECT: Dennis Kelly Employment Agreement
Resolution and Severance Agreement and General Release
Sponsor, Mayor Connie Leon-Kreps

BACKGROUND:

On November 24, 2011 the Village entered into an Employment Agreement with Dennis Kelly to serve as the Village's Manager. The Employment Agreement provided for a three (3) year term ending on December 1, 2014. The Employment Agreement provided for the fiscal and notice responsibilities of each party should either desire to terminate the relationship prior to the expiration of the term.

Pursuant to the Employment Agreement, the Manager is entitled to certain pre-negotiated benefits should he be terminated for convenience. In summary, those benefits are: 30 days notice of termination, 3 months of salary, 3 months of continuation of benefits at the Village's expense (healthy, dental, vision, pension) and payment of any accrued and unused annual leave and sick time. Payment is required within 30 days of the termination. The Village's obligation to pay the benefits would end sooner if Mr. Kelly were to obtain employment elsewhere.

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Mayor
Connie Leon-Kreps

Vice Mayor
Eddie Lim

Commissioner
Dr. Richard Chervony

Commissioner
Wendy Duvall

Commissioner
Jorge Gonzalez

Attached is a draft Resolution and a draft Severance Agreement and General Release prepared jointly by legal counsel for Mr. Kelly and the Village Attorney. The Severance Agreement provides that Mr. Kelly would separate from service with the Village as of April 2, 2013, waiving the 30 day notice requirement. In exchange for the waiver, Mr. Kelly would receive payment of the severance within 7 days of the Effective Date of the Severance Agreement. Additionally, in lieu of the Village being required to maintain Mr. Kelly's benefits for the up to the 4 month period, Kelly would receive a direct payment equal to 3 months of the Village's cost of the benefits. The Severance Agreement further includes a General Release of any claims by Mr. Kelly.

Pursuant to the Employment Agreement, the Village may alternatively terminate Mr. Kelly for cause. If Mr. Kelly is terminated for cause, the Village is not obligated to pay Mr. Kelly any severance.

BUDGETARY IMPACT:

The budgetary impact of the Severance Agreement is specified in the Spreadsheet prepared by staff. The Spreadsheet will be provided under a separate handout.

CONTACT:

Nina Boniske, Village Attorney
Bert Wrains, Finance Director

ATTACHMENTS:

- 1) Draft Resolution
- 2) Draft Severance Agreement and General Release
- 3) Employment Agreement
- 4) Budget Impact Spreadsheet (to be provided by separate handout)

4A(2)

EMPLOYMENT AGREEMENT
CITY MANAGER

This Employment Agreement ("Agreement") is made and entered into this 24th day of November 2011, between the City of North Bay Village, a Florida municipal corporation, (the "City") and Dennis Kelly ("Kelly" or "City Manager").

RECITALS:

WHEREAS, Section 4.01 of the City Charter (the "Charter") requires that there shall be a City Manager who is responsible for the proper administration of the affairs of the City; and

WHEREAS, Kelly represents he has the expertise and skills to serve as the City Manager; and

WHEREAS, the City desires to employ the services of Kelly as City Manager and Kelly wishes to accept this employment.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained in this Agreement the parties agree as follows:

Section 1. Recitals.

The above and foregoing recitals are true and correct and are incorporated herein by this reference.

Section 2. Duties.

2.1 The City Manager shall have all powers and perform all duties and responsibilities required by this Agreement, prescribed in the City Charter and applicable sections of the City Code.

2.2. The City Manager shall carry out the policy directives of the City Commission.

2.3 Upon request of the City Commission, the City Manager shall provide the City Commission with a report, which shall include a list of directives from the City Commission and the status of achievement of the same.

2.4 The City Manager shall perform such other duties as may be assigned by the City Commission from time to time.

2.5 The City Manager shall remain in the exclusive employ of the City and shall not accept any other employment during the term of this Agreement without the prior approval of the City Commission.

Section 3. Salary.

3.1 The City Manager shall receive an initial annual salary in the amount of \$130,000 payable in equal installments in accordance with the City's existing pay periods.

3.2 The salary shall be adjusted from time to time by cost of living adjustments consistent with those provided to other City Department Directors.

3.3 For purposes of this Agreement, the City Manager's Anniversary date shall be January 1st of each year although it is acknowledged his actual start date is December 19th as set forth in Paragraph 17 hereinbelow. Benefits shall be computed from January 1st of each year.

Section 4. Residency/Relocation Expenses.

4.1 Within 90 days of the Commencement Date, the City Manager shall obtain residency in Miami-Dade County and maintain residency throughout the term of this Agreement.

4.2 Because the City Commission requires the City Manager to relocate his residence to Miami-Dade County, the City shall reimburse the City Manager for receipted relocation expenses up to an amount not to exceed \$2,500.

4A(4)

Section 5. Performance Evaluations.

5.1 The City Commission shall conduct its first evaluation of the performance of the City Manager at the completion of the first one hundred and eighty (180) days of the Term ("First Evaluation").

5.2. If the City Manager receives a positive First Evaluation from the City Commission, the City Commission may at its discretion award the City Manager a bonus. Should the City Commission award a bonus to the City Manager, said bonus shall be payable as a contribution into an existing deferred compensation plan selected by the City Manager payable within thirty (30) days of such award or such other manner as determined within the discretion of the City Manager.

5.3 Thereafter, the Commission shall evaluate the City Manager's performance at least once annually within 30 days of the Anniversary Date ("Annual Evaluation").

5.4 Upon completion of each Annual Evaluation, the City Manager may receive a salary or benefit increase within the discretion of the City Commission.

5.5 Evaluations performed in accordance with Section 5.1, 5.2, and 5.3 shall be based upon (a) the City Manager's performance of the duties specified in Section 2 and (b) the City Manager's achievements of the City Commission's policy directives.

Section 6. Annual (Vacation) Leave, Sick Leave and Holidays.

6.1 Vacation. On the start date of the City Manager's Term and every Anniversary Date thereafter, the City Manager shall be credited with a total of twenty-five (25) business days of vacation leave which shall immediately accrue.

6.2 Sick Leave. The City Manager shall accrue sick leave at the rates established in the most recent Employee's Policies and Procedures Manual ("Manual").

4A(5)

6.3 Holidays. The City Manager shall be entitled to the holidays listed in the Manual.

6.4 Consecutive Leave. The City Manager shall not use more than five (5) consecutive business days of Vacation leave without prior approval of the City Commission.

6.5 Pre-Approved Vacation Leave. Notwithstanding the provisions of Section 6.4, the City Manager is approved for vacation days booked prior to his employment with the City for the week commencing January 15th through January 23, 2012. This Vacation leave will be deducted from the accrued leave as described in Section 6.1.

6.6 To the extent the City Manager accrues vacation leave that is unused in any given year, any unused leave in excess of over ten (10) days shall be cashed as of December 31 of each year at the City Manager's salary rate in effect at the time. The remaining ten (10) days annual leave shall be rolled over to the following year.

Section 7. Retirement Plan.

The City shall enroll the City Manager in the Florida Retirement System ("FRS") Management Class and shall make a contribution in an amount set by law in the retirement system available to City employees during the time of his employment and during any severance period.

Section 8. Health Insurance.

8.1 The City Manager shall receive the benefits currently provided to City Director level employees for health insurance to include vision, life and dental insurance, as outlined in the Manual.

8.2 The City shall also provide health, vision and dental insurance to the City Manager's spouse at no additional cost to the City Manager.

Section 9. Life/ Disability/Other Benefits.

9.1 Term Life Insurance. The City shall provide the City Manager with a term life insurance policy equal to the City Manager's annual salary.

9.2 Long Term Disability. The City shall provide the City Manager with a long-term disability policy, at the basic plan level that is available from the City's existing insurance provider.

9.3 Other Benefit Participation. Should the Manual be amended by action of the City Commission, the City Manager's benefits listed in this Section shall be changed to add any benefits provided in the amended Manual provided to other Department Directors of the City, at his option.

9.4 Survivors' Benefits. In the event of the death of the City Manager, his surviving spouse or dependents shall be entitled to payment of all of his accrued vacation and sick leave based on the City Manager's then current salary and shall be further entitled at her expense to COBRA election of continuation of health and dental insurance benefits.

Section 10. Professional Dues and Expenses.

10.1 The City shall pay for all reasonable and customary professional dues and subscriptions necessary for City Manager's participation in municipal associations and organizations, as approved in the City's annual budget.

10.2 The City shall pay reasonable non-personal job related expenses incurred by City Manager, if incurred as part of his duties. Such payments shall be made on a reimbursement basis, based upon submittal of City Manager's actual receipts and expense vouchers.

4A(7)

10.3 The City shall pay for the reasonable and customary travel expenses of City Manager for meetings and seminars, as annually budgeted by the City Commission or as may be directed by the City Commission.

Section 11. Car Allowance.

11.1. The City recognizes that the City Manager will be utilizing his personal automobile in the course of his performance.

11.2. The City Manager shall receive an automobile allowance of \$400 per month.

11.3. The City Manager shall be responsible for his vehicle's operation, maintenance, repairs, taxes, tags, insurance, fuel and other general non specific expenses for said automobile.

Section 12. Telecommunications/Technical Equipment

The City shall provide to the City Manager and shall pay all reasonable charges related to a cellular telephone\PDA and laptop. The City shall provide the City Manager with any other appropriate office supplies, material, and equipment as may be necessary for the City Manager to make himself available to perform his duties and to be able to maintain communications with the City's residents, the City Commission and staff at all times, as approved in the City's annual budget.

Section 13. Days.

Unless otherwise specified, any reference to days in this Agreement shall mean calendar days.

Section 14. Bonds.

The City shall pay for the cost of any bonds for the City Manager required by Florida Law or the City Charter.

Section 15. Indemnification.

15.1 To the extent permitted by law, the City shall defend, save harmless, and indemnify the City Manager against any action, claim, demand or other legal action, whether groundless or otherwise arising directly or indirectly out of the Manager's duties or position with the City.

15.2 The aforesaid indemnification only applies to the extent that the costs, expenses or damages exceed monies covered by insurance including attorneys' fees.

15.3 Notwithstanding the provision of Section 15.1, the City shall not be obligated to indemnify or save harmless the City Manager from claims of any nature arising out of the malfeasance of the City Manager, or from injury or property damage caused by the intentional misconduct of the City Manager.

15.4 This indemnification provision shall survive the termination of this Agreement.

Section 16. Attorney's Fees.

The City and the City Manager are the beneficiaries of this Agreement and as such, may enforce this Agreement by action at law or in equity as more specifically provided herein. In the event of any litigation between the City and the Manager resulting from and/or arising out of this Agreement, it is hereby acknowledged and agreed that the prevailing party shall be entitled to recover any and all reasonable attorney's fees and costs from the non-prevailing party in any such litigation, including attorneys fees and costs incurred at the trial level and on appeal.

Section 17. Term.

17.1 This Agreement shall commence on December 19, 2011 ("Commencement Date") and continue through December 1st, 2014 ("Term") unless terminated earlier as provided in this Agreement.

4A (9)

17.2 At least 90 days prior to December 18, 2014, unless this agreement has terminated earlier as provided in this Agreement, the City Commission shall notify the City Manager of its intention to enter into a new agreement, extend this Agreement for such term as the parties may agree or allow this Agreement to expire. Failure of the City Commission to act shall be deemed a decision to allow this Agreement to expire.

Section 18. Termination.

18.1 In accordance with the City's Charter, the City Manager shall serve at the pleasure of the City Commission. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Commission to terminate the services of the City Manager at any time. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Manager to resign at any time from his position, subject only to the provisions set forth in this Section of this Agreement.

18.2. In the event the City Manager is terminated from the City's employment prior to the expiration of the Term without cause and provided that the Manager is otherwise willing and able to perform his duties under this Agreement, then in that event, the City agrees to give the City Manager thirty (30) day's notice of its intent to terminate him. At the expiration of that time, the Manager shall be deemed terminated and the City shall pay the City Manager a Severance Payment as follows:

18.2.1.

- (i) If terminated within the first 365 days of the Term, two (2) months;
- (ii) If terminated between the 366th and 730th day of the Term, three (3) months;
- (iii) If terminated from the 731st day to the last day of the Term, four (4) months.

YACIO

18.2.2. Medical, dental, vision, and pension benefits shall continue in the same manner and to the same extent as if the City Manager had remained employed to coincide with the number of months of Severance Payment from the date of termination or until the Manager is employed by another employer, whichever occurs first. The Manager shall also be compensated for all accrued unused vacation time calculated based upon the Manager's then current salary.

18.3 In the event City Manager is terminated from the City's employment with cause the City shall have no obligation to pay any Severance Payment. For the purposes of this Section "for cause" shall be defined as: (i) breach of any material term or condition of this Agreement; (ii) violation of any applicable laws or codes; (iii) malfeasance or misconduct as defined by Florida Statutes; (iv) Fraud, misappropriation or embezzlement; (v) violation of the Florida Code of Ethics for Public Officers and employees, the Miami-Dade Conflict of Interest and Code of Ethics, the City Charter, or the City's Conflict of Interest Ordinance; or (vi) conviction of a felony (including a misdemeanor involving moral turpitude) or a finding of guilt of a felony (including a misdemeanor involving moral turpitude) with a withholding of adjudication.

18.4 In the event that the City Manager voluntarily resigns during the Term of this Agreement, the City Manager shall provide the City with 60 days advance written notice, unless the parties agree in writing to a different period of time. In the event of resignation by the City Manager under this Section, the City Manager shall not be entitled to receive the Severance Payment specified in Section 18.2, but the City shall pay the City Manager all accrued unused sick and vacation leave calculated at the City Manager's rate of pay in effect upon the date of termination.

18.5 In the event that the City Manager voluntarily resigns with less than 60 days advance written notice, the City Commission may elect to terminate the City Manager

immediately or allow the City Manager to continue to serve until the date specified in the City Manager's resignation. In the event of a resignation or termination under this paragraph, notwithstanding any other provisions of this Section, the City Manager shall not be entitled to receive either Severance Payment or vacation or sick leave unless the City Commission authorizes payment of same.

18.6 If the City Manager is unable to perform his duties as specified in Section 2 of this Agreement for a period of ninety (90) consecutive days during the Term of this Agreement, due to either disability, sickness, accident, or injury as certified by a physician, this Agreement shall be deemed terminated. In the event of the City Manager's death, this Agreement shall be deemed terminated. If the Agreement is terminated under this Section, then the Severance Payment specified in Section 18.2 shall not be applicable.

18.7 Unless otherwise specified in this Agreement, upon termination or expiration of this Agreement, the City Manager or his beneficiary, shall be entitled to receive payment of any accrued unused sick or vacation leave in accordance with the terms of this Agreement.

18.8 Notwithstanding the provisions of Section 18.7, if the City Manager is terminated for cause, sick and vacation leave shall not be paid.

18.9 For purposes of this Section, "Severance Payment" shall be based upon the salary specified in Section 3.1 and shall include the City's continued payment of the City Manager's medical, dental, vision, and pension benefits as specified in Section 18.2.(i).A. All Severance Payments shall be paid to City Manager in a lump sum upon his termination or within thirty (30) days thereafter at the City Commission's option. The City shall have no further financial obligation to the City Manager beyond those payments specified in this Section.

Section 19. Miscellaneous Provisions.

19.1 Complete Agreement. It is understood and agreed that this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and that the parties agree that there are no commitments, agreement, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

19.2 Amendment. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and with equal dignity herewith.

19.3 No Waiver. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

19.4 Non-Assignment. The rights and obligations herein granted are personal in nature and cannot be transferred or assigned by the City Manager.

19.5 Governing Law. Florida law shall govern this Agreement and any litigation, which may arise from this Agreement, shall be filed and litigated in the Circuit Court in and for Miami-Dade County, Florida, or, if in Federal Court, in the Southern District of Florida.

19.6 Notice. Notice to either party shall be deemed given if sent by certified mail, return receipt requested, by recognized public or private postal facilities, by hand delivery, or delivered at a City Commission meeting. Notice shall be sent as follows or at such address as may be provided in writing to all parties at any time during the Term.:

4A(13)

For the City:

, Mayor

City of North Bay Village
1700 Kennedy Causeway, Suite 132
North Bay Village, FL 33141
(305) 756-7171

With a copy to:

Nina Boniske, City Attorney
Weiss Serota Helfman
Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, FL 33134
(305) 854-0800

For the City Manager:

Dennis Kelly
5700 Graystone Drive
Ft. Smith, Arkansas 72916

Section 19.7 Construction. This Agreement has been a joint effort of the parties, and the resulting documents, solely as a matter of judicial construction, shall not be construed more severely against one of the parties than the other.

Section 19.8 Severability. In the event any term or provision of this Agreement shall be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed to be in full force and effect. In case any one or more of the provisions of this Agreement shall be determined by appropriate judicial authority to be invalid, illegal or unenforceable in any respect, the validity of the remaining provisions of this Agreement shall be in no way affected, prejudiced, or disturbed thereby.

Section 19.9. Terms of Personnel Manual. Unless specifically otherwise addressed or specified in this Agreement, and to the extent applicable, the terms of the Manual shall apply.

Section 20. WAIVER OF JURY TRIAL.

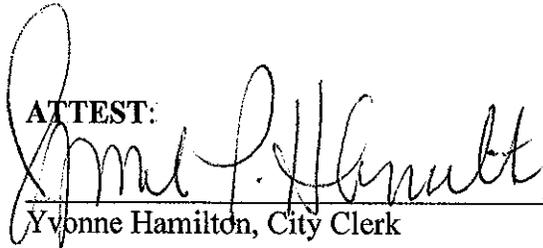
BOTH THE CITY AND THE CITY MANAGER KNOWINGLY,
VOLUNTARILY, AND IRREVOCABLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN

ANY CIVIL PROCEEDINGS THAT MAY BE INITIATED BY EITHER PARTY WITH RESPECT TO ANY TERM OR CONDITION OF THIS AGREEMENT.

IN WITNESS WHEREOF, the City, by signature of the Mayor as authorized by the City Commission in accordance with Resolution No. 2011-57 passed on November 29, 2011, and City Manager have signed and executed this Agreement the day and year first above written.

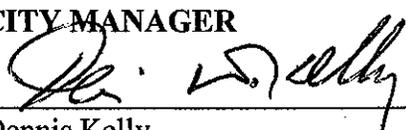
CITY OF NORTH BAY VILLAGE

By: 
Connie Leon-Kreps, Mayor

ATTEST:

Yvonne Hamilton, City Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE OF THE CITY COMMISSION ONLY:


City Attorney
Weiss Serota Helfman
Pastoriza Cole & Boniske, P.L.

CITY MANAGER

Dennis Kelly
Date: 12/9/2011

4A(15)

RESOLUTION NO: 2011-57

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA, APPROVING THE EMPLOYMENT AGREEMENT BETWEEN DENNIS KELLY AND THE CITY OF NORTH BAY VILLAGE; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY; AND PROVIDING AN EFFECTIVE DATE. (INTRODUCED BY INTERIM CITY MANAGER ROBERT DANIELS)

WHEREAS, the Charter of the City of North Bay Village (the "City") provides for a City Manager to act as the Chief Administrative Officer of the City; and

WHEREAS, the City Commission desires to employ Dennis Kelly as the City Manager.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF NORTH BAY VILLAGE, FLORIDA:

Section 1. Recitals. The foregoing whereas clauses are hereby ratified and confirmed as being true; and the same are hereby made a specific part of this Resolution.

Section 2. Approval of Agreement. The Employment Agreement between Dennis Kelly and the City of North Bay Village to serve as the City Manager, attached as Exhibit "A," is approved.

Section 3. Execution of the Agreement. The Mayor is authorized to execute the Agreement on behalf of the City. For purposes of this Agreement Mayor shall include the Interim Mayor.

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

The motion to adopt the foregoing Resolution was offered by Mayor Connie Leon-Kreps, seconded by Commissioner Frank Rodriguez.

FINAL VOTE AT ADOPTION:

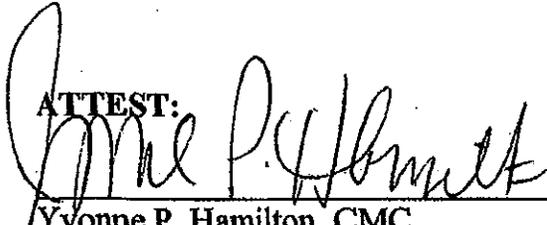
Mayor Connie Leon-Kreps	<u>Yes</u>
Vice Mayor Eddie Lim	<u>Yes</u>
Commissioner Richard Chervony	<u>Yes</u>
Commissioner Frank Rodriguez	<u>Yes</u>
Commissioner Paul Vogel	<u>Yes</u>

PASSED AND ADOPTED this 29th day of November, 2011.



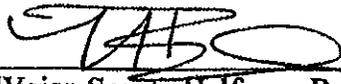
Connie Leon-Kreps
Interim Mayor

ATTEST:



Yvonne P. Hamilton, CMC
City Clerk

**APPROVED AS TO FORM FOR USE ONLY BY
THE CITY OF NORTH BAY VILLAGE;**



Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.

City of North Bay Village Resolution: Employment Agreement-Dennis Kelly

RESOLUTION NO: _____

A RESOLUTION OF THE VILLAGE COMMISSION OF NORTH BAY VILLAGE, FLORIDA, TERMINATING THE EMPLOYMENT AGREEMENT BETWEEN DENNIS KELLY AND NORTH BAY VILLAGE; AUTHORIZING THE MAYOR TO EXECUTE A SEVERANCE AND GENERAL RELEASE AGREEMENT ON BEHALF OF THE VILLAGE; AUTHORIZING THE EXPENDITURE OF BUDGETED FUNDS; AND PROVIDING AN EFFECTIVE DATE. (INTRODUCED BY MAYOR CONNIE LEON-KREPS)

WHEREAS, on November 29, 2011, the Village Commission approved Resolution 2011-57 approving an Agreement, whereby Mr. Dennis Kelly would serve as Village Manager to the Village (“Employment Agreement”), attached hereto as Exhibit “A”; and

WHEREAS, on February 12, 2013, the Village Commission approved the First Amendment to the Employment Agreement, attached as Exhibit “B”; and

WHEREAS, the Village Commission desires to terminate Mr. Kelly’s employment with the Village without cause effective April 2, 2013; and

WHEREAS, Mr. Kelly does not contest this termination in accordance with Section 18.2 of the Employment Agreement; and

WHEREAS, in accordance with their obligations under the Employment Agreement, the Village Commission and Mr. Kelly desire to enter into a Severance and General Release (“Severance Agreement”); and

WHEREAS, Mr. Kelly has agreed to accept the terms and conditions set forth in the Severance Agreement attached hereto as Exhibit “C”.

4A(18)

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COMMISSION OF NORTH BAY VILLAGE, FLORIDA:

Section 1. Recitals. The foregoing whereas clauses are hereby ratified and confirmed as being true; and the same are hereby made a specific part of this Resolution.

Section 2. Termination of Employment. The employment of Village Manager Dennis Kelly is hereby terminated without cause in accordance with Section 18 of the Employment Agreement effective April 2, 2013.

Section 3. Approval of Severance Agreement. The Severance and General Release Agreement between Dennis Kelly and North Bay Village, attached as Exhibit "C," is approved.

Section 4. Execution of the Agreement. The Mayor is authorized to execute the Severance Agreement on behalf of the Village.

Section 5. Authorization of Funds Expenditure. The Interim Village Manager is authorized to expend budgeted funds to implement the terms of this Severance Agreement.

Section 6. Effective Date. This Resolution shall take effect immediately upon adoption.

The motion to adopt the foregoing Resolution was offered by _____ seconded by _____. The votes were as follows:

FINAL VOTE AT ADOPTION:

Mayor Connie Leon-Kreps _____
Vice Mayor Eddie Lim _____
Commissioner Richard Chervony _____
Commissioner Wendy Duvall _____
Commissioner Jorge Gonzalez _____

PASSED AND ADOPTED this ____ day of April, 2013.

Connie Leon-Kreps
Mayor

4A(19)

ATTEST:

Yvonne P. Hamilton, CMC
Village Clerk

**APPROVED AS TO FORM FOR USE ONLY BY
NORTH BAY VILLAGE:**

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
Village Attorney

North Bay Village Resolution: Severance Agreement: Dennis Kelly.



North Bay Village

Administrative Offices

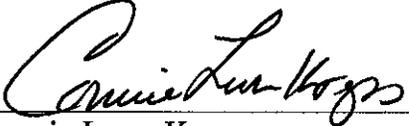
1700 Kennedy Causeway, Suite 132 North Bay Village, FL 33141

Tel: (305) 756-7171 Fax: (305) 756-7722 Website: www.nbvillage.com

MEMORANDUM North Bay Village

DATE: March 29, 2013

TO: Yvonne P. Hamilton, CMC
Village Clerk

FROM: 
Connie Leon-Kreps
Mayor

SUBJECT: Introduction of Resolution

Pursuant to Section 3.08 of the Village Charter, I hereby introduce the following Resolution:

A RESOLUTION OF THE VILLAGE COMMISSION OF NORTH BAY VILLAGE, FLORIDA, TERMINATING THE EMPLOYMENT AGREEMENT BETWEEN DENNIS KELLY AND NORTH BAY VILLAGE; AUTHORIZING THE MAYOR TO EXECUTE A SEVERANCE AND GENERAL RELEASE AGREEMENT ON BEHALF OF THE VILLAGE; AUTHORIZING THE EXPENDITURE OF BUDGETED FUNDS; AND PROVIDING AN EFFECTIVE DATE.

Accordingly, please place the item on the next available agenda.

CLK:yph

4A(21)

Mayor
Connie Leon-Kreps

Vice Mayor
Eddie Lim

Commissioner
Dr. Richard Chervony

Commissioner
Wendy Duvall

Commissioner
Jorge Gonzalez

SEVERANCE AGREEMENT AND GENERAL RELEASE

This Severance Agreement and General Release (“Agreement”) is entered into by and between Dennis Kelly (“KELLY”) and North Bay Village, Florida, a Florida municipal corporation (the “VILLAGE”), jointly referred to herein as the “Parties.”

WHEREAS, KELLY is employed by the VILLAGE as Village Manager pursuant to an Employment Agreement dated November 24, 2011 (the “Employment Agreement”), which was approved by the VILLAGE by Resolution 2011-57 on November 29, 2011; and

WHEREAS, the parties acknowledge that it is in the best interest of the Village’s government for the parties to no longer continue with the current employment relationship; and

WHEREAS, in order to sever the Village’s current employment relationship with KELLY, the Employment Agreement between the VILLAGE and KELLY provides for the method to terminate the relationship as well as the provision of severance benefits that were negotiated into the Employment Agreement at the time of it’s approval by the Village Commission; and

WHEREAS, this Agreement reflects a termination of the employment of KELLY without cause effective April 2, 2013 in accordance with Section 18.2 of the Employment Agreement and Section 4.01 of the Village Charter and KELLY agrees not to contest such termination; and

WHEREAS, as a result of the VILLAGE’s termination of KELLY, KELLY is contractually entitled to a Severance Payment which includes the continuation of certain benefits in accordance with Section 18 of the Employment Agreement and Section 215.425, Florida Statutes.

NOW, THEREFORE, in consideration of their mutual promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. **Recitals.** The Recitals above are incorporated herein.
2. **Last Day of Employment/Termination Date.** The Parties agree that KELLY's last day of employment/termination date as Village Manager shall be April 2, 2013. KELLY shall be required to return to the VILLAGE all VILLAGE personal property in his possession provided to him as specified in Paragraph 12 of the Employment Agreement on or before April 2, 2013 and in no event will the VILLAGE be required to provide KELLY with the Severance Payment set forth in Paragraph 5 of this Agreement until such time as KELLY has returned to the VILLAGE any VILLAGE personal property in his possession.

3. **Full and General Waiver of All Rights and Claims.**
 - a. For and in consideration of the Severance Payment and other consideration provided to him in this Agreement, KELLY hereby knowingly and voluntarily releases, waives, and forever discharges any and all claims, rights, demands, actions, or causes of actions, of any kind whatsoever, known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, and any consequences thereof, which he has or may have against the VILLAGE (including but not limited to, its current and former employees, agents, administrators, representatives, its Mayor and Commissioners, its officers, successors and assigns) from the commencement of his employment with the VILLAGE until the date of execution of this Agreement, including, but not limited to, any claim(s) under:

- The Employment Agreement;
- Title VII of the Civil Rights Act of 1964;

- The Civil Rights Act of 1991;
- The Florida Civil Rights Act of 1992;
- Sections 1981 through 1988 of Title 42 of the United States Code;
- The Constitutions of the United States and the State of Florida;
- The Age Discrimination in Employment Act;
- The Older Workers Benefit Protection Act;
- Florida Wage and Hour laws;
- Florida and federal whistle-blower laws, including § 112.3187, Florida Statutes;
- The Internal Revenue Code;
- The Rehabilitation Act;
- The Consolidated Omnibus Budget Reconciliation Act;
- The Immigration Reform and Control Act of 1986;
- The Americans with Disabilities Act of 1990;
- The Fair Labor Standards Act;
- The Equal Pay Act of 1963;
- The Family and Medical Leave Act of 1993;
- Any other federal, state, or local civil or human rights law or any other federal, state, or local law, regulation, or ordinance;
- The VILLAGE's employment policies, whether written or oral, and regardless of whether contained in the VILLAGE Charter, Code, employment manual/handbook or elsewhere; and/or
- Any public policy, contract or common law claims, including any tort claims (e.g., negligent or intentional infliction of emotional distress; negligent retention, supervision or training; defamation; assault; battery; false imprisonment; wrongful termination; loss of consortium; etc.), whether based on common law or otherwise.

b. KELLY acknowledges and agrees that this release and waiver bars any claim or demand for damages, costs, fees, or other expenses, including attorneys' fees, incurred in connection with his employment with the VILLAGE, his termination from employment, or with any of the above-referenced claims. KELLY understands and agrees that with respect to the claims he is waiving in this Agreement, he is waiving not only the right to recover money or other relief in any action he might institute, but also that he is waiving any right to recover money or any other relief whatsoever in any action that might be brought on his behalf by any other person or entity, including but not limited to, the United States Equal Employment Opportunity Commission or any other federal, state or local government agency or department.

c. KELLY understands that the foregoing list of causes of action which have been waived is meant to be illustrative rather than exhaustive, and understands and acknowledges that he is waiving and releasing the VILLAGE from any and all causes of action of any nature whatsoever up to the date of this Agreement. It is KELLY's intention to fully and finally resolve and release any and all disputes he may have against the VILLAGE with respect to any alleged acts occurring before the Effective Date of this Agreement as set forth in paragraph 7 of this Agreement, whether those disputes presently are known or unknown, suspected or unsuspected.

4. **No Pending Lawsuits, Claims or Charges and Covenant Not to Sue.** KELLY represents that he has no charges or claims pending against the VILLAGE with any federal, state or local agency or department and that he does not have pending before any court any dispute of any kind against the VILLAGE. VILLAGE represents that it has no charges or claims pending against KELLY. KELLY further represents and agrees that he will not hereinafter pursue, initiate, or cause to be instituted any dispute released herein against the VILLAGE, and represents that he has not heretofore assigned or transferred, or purported to have assigned or transferred, to any entity or person, any dispute released by him herein. If it is determined that KELLY or the VILLAGE has any lawsuit, charge or claim of any kind pending against each other, the Parties agree to dismiss all such charges, claims and/or lawsuits with prejudice immediately upon execution of this Agreement.

5. **Consideration.** In consideration of KELLY's waiver and release of all claims against the VILLAGE and the other consideration provided to it under this Agreement, the VILLAGE agrees to provide only the following Severance Payment to KELLY:

- a. A lump sum severance payment equivalent to three (3) months of KELLY's base pay as of April 1, 2013 through June 30, 2013 (less any applicable

withholdings and appropriate payroll deductions) in accordance with Section 18.2.1(ii) of the Employment Agreement.

- b. A lump sum payment for all of KELLY's accrued and unused vacation and sick leave as of April 1, 2013 (less any applicable withholdings and appropriate payroll deductions) in accordance with Section 18.2 and 18.7 of the Employment Agreement.
- c. Notwithstanding the provisions set forth in Paragraph 18.2 of the Employment Agreement, the VILLAGE and KELLY agree to waive the thirty (30) day's notice of intent to terminate as required in Paragraph 18.2 of the Agreement and acknowledge that KELLY's termination date shall be April 2, 2013.
- d. Notwithstanding the provisions set forth in Paragraph 18.2.2 and Paragraph 7 of the Employment Agreement, the VILLAGE and KELLY agree to provide KELLY with a lump sum payment of the equivalent of the Village's cost to continue KELLY's medical, dental, vision and retirement benefits through June 30, 2013 in lieu of the VILLAGE's contractual obligation to continue to provide those benefits to KELLY.
- e. Notwithstanding the provisions set forth in Paragraph 18.9 of the Employment Agreement, payment to KELLY of the Severance Payment listed in Paragraphs 5(a), (b) and (d) of this Agreement shall be made within seven (7) days of the Effective Date of this Agreement.

The Parties agree and acknowledge that the Severance Payment delineated above constitutes good, valuable and sufficient consideration for KELLY's full waiver and release of all claims, and his fulfilling all of his promises as set forth herein. Upon payment of the sums listed above in Paragraph 5 of this Agreement, the VILLAGE shall have no further financial obligations to KELLY.

6. **Indemnification.** The VILLAGE acknowledges its ongoing indemnification obligation to KELLY pursuant to Section 15 of the Employment Agreement.

7. **Effective Date.** This Agreement will become effective when each of the following conditions is met: 1) KELLY executes this Agreement; and 2) the VILLAGE Commission publicly approves this Agreement as specified in Section 4.01(f) of the Village

Charter. In the event that the VILLAGE Commission does not publicly approve the Agreement, the Agreement is null and void.

8. **Governing Law/Waiver of Jury Trial/Attorney's Fees.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida. Venue for any litigation arising out of this Agreement shall be proper exclusively in Miami-Dade County, Florida. The Parties voluntarily and knowingly waive any right to trial by jury in the event of any litigation between the Parties which in any way arises out of this Agreement. The prevailing party in any dispute under this provision shall be entitled to recover its/his reasonable attorneys' fees and costs from the non-prevailing party.

9. **Severability.** If any provision of this Agreement is declared illegal or unenforceable by any court of competent jurisdiction and if it cannot be modified to be enforceable, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect. The language of this Agreement shall be construed as a whole, according to its fair meaning, and not strictly construed for or against either party. If the waiver language of this Agreement is declared unenforceable because of actions taken by KELLY, KELLY shall return all monies paid to his under this Agreement with ten (10) days of the date on which the Agreement is declared unenforceable and this Agreement shall immediately become null and void, and the VILLAGE will owe nothing further pursuant to that Agreement.

10. **Entire Agreement.** This Agreement sets forth the entire agreement between the parties and shall supersede any and all prior agreements, understandings, whether written or oral, between the parties, except as otherwise specified in this Agreement. KELLY acknowledges

that he has not relied on any representations, promises, or agreements of any kind made to his in connection with his decision to sign this Agreement except for those set forth in this Agreement.

11. **Amendment.** This Agreement may not be amended except by written agreement signed by all parties and approved by the VILLAGE Commission.

12. **Waiver.** The failure of either party to this Agreement to object to, or to take affirmative action with respect to, any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

13. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

14. **Headings.** Section headings are used herein for convenience of reference only and shall not affect the meaning of any provisions of this Agreement.

15. **Acknowledgment.** The parties agree that they have carefully read and understand this Agreement consisting of eight (8) pages. The parties agree they have entered into this AGREEMENT voluntarily, without any pressure or coercion and with full knowledge of its significance. KELLY acknowledges that he has been represented by counsel in connection with the negotiation of this Agreement. The terms of this Agreement are the product of compromise between the VILLAGE and KELLY and, as such, this Agreement is not to be construed against either party.

IN WITNESS WHEREOF, the parties hereto knowingly and voluntarily executed this Agreement as of the date set forth below. The Village executing by its Mayor, as authorized by Resolution No. _____, approved by the Village Commission on April 1, 2013.

Dennis Kelly

North Bay Village

By: _____
Dennis Kelly

By: _____
Connie Leon-Kreps, Mayor

Date: _____

Date: _____

Approved as to form and legality for the use
And benefit of North Bay Village only:

Weiss Serota Helfman Pastoriza Cole
& Boniske, P.L.
VILLAGE ATTORNEY

Attest:

Yvonne Hamilton, CMC
VILLAGE Clerk

Kellyterminationagreement04012013

RESOLUTION NO. _____

A RESOLUTION OF THE VILLAGE COMMISSION OF NORTH BAY VILLAGE, FLORIDA, APPOINTING AN INTERIM VILLAGE MANAGER; SETTING AN EFFECTIVE DATE. (INTRODUCED BY MAYOR CONNIE LEON-KREPS)

WHEREAS, Village Manager Dennis Kelly's last day of service with the Village will be on April 2, 2013; and

WHEREAS, the Village Commission will be recruiting for a new Village Manager, pursuant to Article IV, Section 4.01 of the Village Charter; and

WHEREAS, the Village Commission desires to appoint an Interim Village Manager to assume the responsibilities of the position until a permanent Village Manager is hired.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COMMISSION OF NORTH BAY VILLAGE, FLORIDA AS FOLLOWS:

Section 1. Recitals. The foregoing Recitals are ratified and confirmed as being true and correct and are made a specific part of this Resolution.

Section 2. Appointment. _____ is hereby appointed as Interim Village Manager effective from April 2, 2013 through the first date of employment of a new Village Manager.

Section 3. Compensation. _____ shall be compensated _____ during the tenure as Interim Village Manager, effective April 3, 2013.

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

The motion to adopt the foregoing Resolution was offered by _____, seconded by _____.

4B(1)

FINAL VOTE AT ADOPTION:

Mayor Connie Leon-Kreps _____
Vice Mayor Eddie Lim _____
Commissioner Richard Chervony _____
Commissioner Wendy Duvall _____
Commissioner Jorge Gonzalez _____

PASSED AND ADOPTED this ____ day of March, 2013.

Connie Leon-Kreps
Mayor

ATTEST:

Yvonne P. Hamilton, CMC
Village Clerk

**APPROVED AS TO FORM FOR USE ONLY BY
NORTH BAY VILLAGE:**

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
Village Attorney

North Bay Village Resolution: Interim Village Manager-4/1/2013

4B(2)



North Bay Village

Administrative Offices

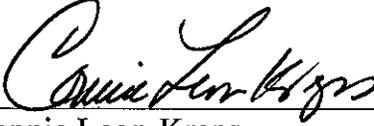
1700 Kennedy Causeway, Suite 132 North Bay Village, FL 33141

Tel: (305) 756-7171 Fax: (305) 756-7722 Website: www.nbvillage.com

MEMORANDUM North Bay Village

DATE: March 29, 2013

TO: Yvonne P. Hamilton, CMC
Village Clerk

FROM: 
Connie Leon-Kreps
Mayor

SUBJECT: Introduction of Resolution

Pursuant to Section 3.08 of the Village Charter, I hereby introduce the following Resolution:

**A RESOLUTION OF THE VILLAGE COMMISSION OF
NORTH BAY VILLAGE, FLORIDA, APPOINTING AN
INTERIM VILLAGE MANAGER; SETTING AN
EFFECTIVE DATE.**

Accordingly, please place the item on the next available agenda.

CLK:yph

HB(3)

Mayor
Connie Leon-Kreps

Vice Mayor
Eddie Lim

Commissioner
Dr. Richard Chervony

Commissioner
Wendy Duvall

Commissioner
Jorge Gonzalez