

Dr. Solomon C. Stinson, Chair

**SUBJECT: RATIFICATION OF CONTRACT OF EMPLOYMENT FOR THE
INTERIM CHIEF AUDITOR**

**LINK TO DISTRICT
STRATEGIC PLAN: IMPROVE STAKEHOLDER SATISFACTION**

Section 1001.42(12)(l), Fla. Stat. (2008), provides that a district school board "may employ an internal auditor to perform ongoing financial verification of the financial records of the school district. In accordance with §1001.42(12)(l) and Agenda Item H-25 ("That The School Board of Miami-Dade County, Florida Address the Recommendations of the Audit Committee About the Position of the Chief Auditor and Other Relevant Matters"), presented by Ms. Perla Tabares Hantman, Board Member, at its April 22, 2009 School Board meeting, the School Board approved the immediate employment of Mr. Jose Montes de Oca as its Interim Chief Auditor. Item H-25 resulted from the resignation of the former Chief Auditor and was predicated on the Audit Committee's recommendation as to the employment of an Interim Chief Auditor.

Consistent with its approval of Item H-25, the Board also directed the Chair, with the assistance of the Interim School Board Attorney, to negotiate a contract with Mr. Montes de Oca to be presented for the Board's approval at its May 20, 2009 meeting. On May 7, 2009, the Chair, the Interim School Board Attorney, and the Interim Chief Auditor met for the purpose of negotiating a contract for the employment of the Interim Chief Auditor. At the conclusion of this meeting, the parties agreed to a tentative employment agreement, prepared with the assistance of the Interim School Board Attorney, that is subject to the approval of the School Board. The salient provisions of this Employment Agreement, being submitted to the Board under separate cover, are as follows:

- For the period of his employment as Interim Chief Auditor, which began on April 23, 2009, Mr. Montes de Oca will receive a salary, on an annual basis, of \$119,547;
- The employment of the Interim Chief Auditor will be terminable "at will," with or without cause; and
- The Interim Chief Auditor shall receive regular fringe benefits and will be entitled to participate in the benefit plans available to all employees.

**REVISED
H-2**

- Prior to the Board's taking action to employ Mr. Montes de Oca, the Interim Chief Auditor provided services to the Board from April 16-17 and from April 20-22, 2009 without compensation. With the School Board Committee Chair's acquiescence, at the Innovation, Efficiency and Governmental Relations Committee Meeting, Board members present discussed this Item and concurred with the Chair's recommendation that the Interim Chief Auditor be paid for 5 days worked prior to the commencement of Mr. Montes de Oca's employment on April 23, 2009. In accordance with the School Board Committee's recommendation, the proposed contract has been modified to indicate that the Interim Chief Auditor will be paid for 5 days worked prior to April 23, 2009.

ADDED

ACTION PROPOSED BY

DR. SOLOMON C. STINSON, CHAIR: That The School Board of Miami-Dade County, Florida approve the Interim Chief Auditor's Employment Agreement and employ Jose Montes de Oca as its Interim Chief Auditor in accordance with the terms and conditions of the Employment Agreement (attached hereto).

REVISED

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made effective as of April 23, 2009, by and between **THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA** (the "Board") and **JOSE MONTES DE OCA** ("Interim Chief Auditor").

WHEREAS, the Board is responsible for retaining an Interim Chief Auditor for the Miami-Dade County Public Schools ("Schools" or "School District"); and

WHEREAS, the Board has offered and the Interim Chief Auditor has agreed to be employed by the Board in such capacity, and on the terms and conditions provided herein, given the Interim Chief Auditor and the Board's mutual commitments to the furtherance of the School District.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained herein, the adequacy and sufficiency of which are hereby acknowledged, the Board and Interim Chief Auditor hereby agree as follows:

1. Employment and Term. In accordance with Agenda Item *H-2*, duly adopted by the School Board at its meeting held on April 22, 2009, the Board hereby employs **JOSE MONTES DE OCA** as Interim Chief Auditor, and Interim Chief Auditor hereby accepts and agrees to such employment, for a term commencing on April 23, 2009, and ending the date upon which either party terminates this Agreement in accordance with Paragraph 3, *infra*.

2. Duties. During the term of this Agreement, the Interim Chief Auditor will comply faithfully with all applicable laws relating to the performance of his duties as Interim Chief Auditor, including without limitation, all of the applicable provisions of the laws of the State of Florida, as may be amended, and any successor provision thereto ("School Laws"); the rules and regulations of the State of Florida Board of Education ("State Board Rules"); and the rules and regulations of the Board ("Board Rules"), all as may be amended and any successor provisions thereto; and, he will perform all duties which may be lawfully required of him by the Board. During the term of employment hereunder, Interim Chief Auditor shall not, without the prior consent of the Board or except as provided in this Agreement, render services to anyone other than the School District and will devote his full business time, attention and best efforts to the business of the School District and fulfillment of his duties as Interim Chief Auditor hereunder. As indicated in the Miami-Dade County Public Schools Job Description for the Chief Auditor, the Interim Chief Auditor shall be responsible for administering the performance of the Office of Management and Compliance Audits which is designed to assist staff in the effective and efficient discharge of its responsibilities by furnishing objective analyses, appraisals, recommendations, and pertinent comments concerning the activities reviewed; writing Reports submitted concurrently to the School Board Audit Committee and the Superintendent; and making oral presentations and providing answers at the Board's request.

3. “At-Will” Employment. The parties agree that the Interim Chief Auditor’s employment with the Board constitutes “at-will” employment. Interim Chief Auditor and Board acknowledge that the employment relationship may be terminated at any time, upon written notice to the other person at the option of either the Board or the Interim Chief Auditor. At the time this Agreement is terminated, the Board agrees to pay the Interim Chief Auditor any salary and benefits then due for any services rendered prior to termination. All compensation and benefits paid by the Board to the Interim Chief Auditor under the provisions of this paragraph 3 shall be considered liquidated damages, and upon payment, each party waives any and all claims that they might have for additional compensation or services from the other.

4. Termination by the Interim Chief Auditor. If the Interim Chief Auditor at any time elects to terminate this Agreement, the Interim Chief Auditor agrees to provide the Board not less than forty-five (45) days’ prior written notice of such termination.

5. Compensation. For all services rendered by the Interim Chief Auditor pursuant to this Agreement, the Board shall pay to and provide for the Interim Chief Auditor the following salary and retirement and the other benefits described in this Agreement.

(a) Salary. The Interim Chief Auditor shall receive an annual base salary of One Hundred Nineteen Thousand Five Hundred Forty-Seven Dollars (\$119,547.00) per annum, less appropriate deductions for federal, state and local tax withholding. Such salary shall be paid in accordance with the Board’s normal payroll practices for services performed beginning April 23, 2009, and until such time as this Agreement is concluded.

(b) Retirement. The Interim Chief Auditor may continue to participate in the Florida Retirement System, as provided for in Chapter 121 of the Florida Statutes, as may be amended, and all other retirement programs for which he is or may become eligible during his employment as the Interim Chief Auditor.

(c) Prior to the Board taking action to employ Mr. Montes de Oca, the Interim Chief Auditor worked and performed services for the Board from April 16-17, 2009, and April 20-22, 2009 without monetary compensation. Accordingly, the Interim Chief Auditor will be compensated at his daily rate of \$459.80 for 5 days worked prior to the commencement of his employment on April 23, 2009. The Interim Chief Auditor's salary will be adjusted so that such compensation will be paid by June 30, 2009.

REVISED

6. Interim Chief Auditor’s Expenses. In addition, Interim Chief Auditor shall be reimbursed for his reasonable and necessary expenses incurred in the performance of his duties hereunder in accordance with applicable Board Rules. Without limiting the generality of the foregoing, the Board shall pay all expenses for the Interim Chief Auditor to attend professional and official meetings, seminars, conventions, and other meetings and functions that the Interim Chief Auditor deems relevant to the performance of his duties hereunder, including, without limitation, those expenses incurred for coach airline tickets, hotels, meals, rental cars, taxi, and other reasonable expenses incurred by the Interim Chief Auditor in the performance of the business of the School District, and shall pay all membership fees and dues of the Interim Chief Auditor in such organizations as the Interim Chief Auditor deems appropriate and in furtherance

of the performance of his duties hereunder including, but not limited to, the American Institute of Certified Public Accountants ("AICPA"), Institute of Internal Auditors; Florida Chapter of AICPA. All expenses that are payable or reimbursable under this paragraph 6 shall be governed by Section 112.061, Fla. Stat. and Board Rule 6Gx13 - 4C-1 .07.

7. Interim Chief Auditor's Benefits. For the term of this Agreement, the Interim Chief Auditor shall be provided with Board-paid benefits for himself on the same terms and conditions as such benefits are provided to other administrative employees covered by the Managerial Exempt Personnel ("MEP"), pursuant to Board Rule 6Gx13- 4D-1.022. The Interim Chief Auditor shall be entitled to participate in all benefit plans made available to other administrative employees of the School District.

8. Vacation and Sick Leave. During the term of this Agreement, the Interim Chief Auditor shall be provided vacation and sick leave in the same manner that it is provided to similarly situated employees.

9. Outside Activities. The Interim Chief Auditor shall devote his full time, labor and attention to the performance of his official duties. The Interim Chief Auditor may engage in outside professional activities including, without limitation, teaching, consulting, speaking and writing, only if such outside activities: (a) are undertaken by the Interim Chief Auditor on the Interim Chief Auditor's vacation days, personal days, holidays or other non-duty days; (b) do not conflict with any stated policy of the Board; and (c) do not interfere with the performance of the Interim Chief Auditor's duties under this Agreement. The Interim Chief Auditor may receive honoraria for such outside activities to the extent permitted by State law and Board Rules; provided, however, that the Interim Chief Auditor discloses to the Board any compensation he earns as a result of or in connection with such outside activities.

10. Indemnification. In addition to any insurance coverage provided by the Board to the Interim Chief Auditor, the Board shall indemnify and defend the Interim Chief Auditor to the fullest extent permitted by applicable law in effect on the execution date of this Agreement or at any time during the term of this Agreement, for any claims that may arise and be filed against the Interim Chief Auditor for acts performed within the course and scope of his employment.

11. Eligibility for Consideration. Nothing in this Agreement or in the acceptance of the position as Interim Chief Auditor shall, in any way, preclude or prejudice the Interim Chief Auditor from the right and eligibility to apply, be considered and, if selected, to serve in the position of Chief Auditor once said position is duly advertised by the Board.

12. Entire Agreement. This Agreement contains the entire agreement concerning employment arrangements between the Board and the Interim Chief Auditor, and supersedes any prior agreements, understanding or representations, whether oral or in writing. This Agreement may not be amended, modified or changed except by a writing executed by both parties hereto.

13. Notices. Any notice required or permitted to be given under this Agreement shall be sufficient if in writing, and sent by registered or certified mail to the party involved at the addresses provided below, or to such other address as either party may specify to the other in

writing. The date that is four (4) days after the date of mailing of such notice shall be deemed to be the date of delivery thereof.

If to the Board: The School Board of Miami-Dade County, Florida
School Board Administration Building
1450 N.E. 2nd Avenue, Suite 700
Miami, Florida 33132
Attn: Chair of the School Board

with a copy to: Office of the School Board Attorney
School Board Administration Building
1450 N.E. 2d Avenue, Suite 430
Miami, Florida 33132
Attn: School Board Attorney

If to the Interim Chief
Auditor: Jose Montes de Oca
The School Board of Miami-Dade County, Florida
School Board Administration Building
1450 N.E. 2nd Avenue, Suite 415
Miami, Florida 33132

14. Assignment. This Agreement shall inure to the benefit of, and shall be binding upon, the Board, its successors and assigns, and the Interim Chief Auditor, his heirs and personal representatives, but may not be assigned by either party.

15. Severability. In the event any term, paragraph or provision of this Agreement or its applicability to any circumstances shall, to any extent be deemed invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

16. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Venue for any legal actions arising out of this Agreement, including the enforcement, interpretation or alleged breach hereof, shall lie exclusively in the Circuit Court of Miami-Dade County, Florida.

17. Paragraph Headings. The paragraph headings contained herein are for reference only and shall not in any way affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the _____ day of May, 2009.

INTERIM CHIEF AUDITOR

**THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA**

By: _____
Jose Montes de Oca

By: _____
Dr. Solomon C. Stinson, Chairman

Address: 1450 N.E. 2nd Avenue, Suite 415
Miami, FL 33132

Address: 1450 N.E. 2nd Avenue , Suite 700
Miami, FL 33132

**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:**

Luis M. Garcia, Interim School Board Attorney