

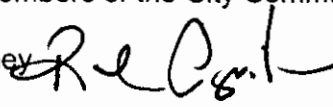


OFFICE OF THE CITY ATTORNEY

RAUL J. AGUILA, CITY ATTORNEY

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Raul J. Aguila, City Attorney 

CC: Jimmy L. Morales, City Manager

DATE: October 23, 2019

SUBJECT: **Inspector General's Employment Agreement**

On November 6, 2018, the City's voters approved an amendment to the City Charter, creating Article IX, which creates the City of Miami Beach Office of Inspector General; establishes the functions of the office; provides the Inspector General with the power to subpoena witnesses, administer oaths, and require production of records, in order to conduct its investigations; and provides that the Inspector General's appointment, term, functions, authority, and powers shall be further established by Ordinance.

On February 23, 2019, the Mayor and City Commission adopted Ordinance No. 2019-4239, to implement the provisions of the newly created Article IX of the City Charter; and

On September 18, 2019, the Ad Hoc Inspector General Selection Committee unanimously recommended the appointment of Mr. Centorino as the City's Inspector General.

On October 16, 2019, pursuant to Section 2-256(b)(2) of the City Code, the Mayor and Commission appointed Joseph M. Centorino as Inspector General of the City of Miami Beach, and authorized the negotiation of an employment agreement with Mr. Centorino.

The proposed Employment Agreement is attached hereto, the main terms of which include:

(1) a term of employment, for a period of up to four (4) years, in accordance with Section 2-256 of the City Code;

(2) base salary in the amount of \$210,000 (the City's advertised salary range for the position was in the range of \$150,000 - \$264,000);

(3) a contribution in the amount of \$25,000 to a deferred compensation 457 Plan, and a contribution to an IRA account in the maximum amount of \$7,000 (the same benefits as provided

to the City Manager, City Attorney, and City Clerk);

(4) a vehicle allowance of \$800 monthly (the same allowance as provided to the City Manager and City Attorney), and an annual cellphone allowance of \$2,600 (the same as provided to other City Charter officers and employees receiving executive benefits);

(5) payment of premiums for medical and dental insurance for Mr. Centorino and eligible dependents, should Mr. Centorino elect to participate in a City-offered health plan;

(5) an annual performance evaluation by the City Commission; and

(6) termination provisions in accordance with Section 9.01 of the City Charter, both for cause or without cause, with severance of twenty (20) weeks pay in the event the City Commission terminates the agreement without cause (the same severance as provided for all other City Charter officers).

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN EMPLOYMENT AGREEMENT BETWEEN THE CITY OF MIAMI BEACH AND INSPECTOR GENERAL JOSEPH M. CENTORINO, TO PROVIDE FOR THE TERMS AND CONDITIONS OF THE INSPECTOR GENERAL'S EMPLOYMENT, FOR A TERM OF UP TO FOUR (4) YEARS, COMMENCING ON NOVEMBER 1, 2019, AND EXPIRING ON OCTOBER 31, 2023, UNLESS TERMINATED EARLIER BY EITHER PARTY IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT.

WHEREAS, on November 6, 2018, the City's voters approved an amendment to the City Charter, creating Article IX, which creates the City of Miami Beach Office of Inspector General; establishes the functions of the office; provides the Inspector General with the power to subpoena witnesses, administer oaths, and require production of records, in order to conduct its investigations; and provides that the Inspector General's appointment, term, functions, authority, and powers shall be further established by Ordinance; and

WHEREAS, on February 23, 2019, the Mayor and City Commission adopted Ordinance No. 2019-4239, to implement the provisions of the newly created Article IX of the City Charter; and

WHEREAS, on September 18, 2019, the Ad Hoc Inspector General Selection Committee unanimously recommended the appointment of Mr. Centorino as the City's Inspector General; and

WHEREAS, on October 16, 2019, pursuant to Section 2-256(b)(2) of the City Code, the Mayor and Commission appointed Joseph M. Centorino as Inspector General of the City of Miami Beach, and authorizing the negotiation of an employment agreement with Mr. Centorino; and

WHEREAS, the City and Mr. Centorino desire to enter into the proposed Employment Agreement, a copy of which is attached as an exhibit to the Commission Memorandum accompanying this Resolution.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve and authorize the Mayor and City Clerk to execute an Employment Agreement between the City and Inspector General Joseph M. Centorino, to provide for the terms and conditions of the Inspector General's employment, for a term of up to four (4) years, commencing on November 1, 2019, and expiring on October 31, 2023, unless terminated earlier by either party in accordance with the terms of the Agreement.

PASSED and ADOPTED this ____ day of _____, 2019.

ATTEST:

Dan Gelber, Mayor

Rafael E. Granado, City Clerk

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

R. E. Centorino - 10/23/19
City Attorney RAP Date

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement") is entered into this ____ day of _____, 2019, by, and between JOSEPH M. CENTORINO ("Mr. Centorino") and the CITY OF MIAMI BEACH, FLORIDA (the "City") (each, a "Party" and collectively, the "Parties").

WHEREAS, on October 16, 2019, the Mayor and City Commission appointed Mr. Centorino as Inspector General of the City of Miami Beach ("Inspector General"); and

WHEREAS, on October 30, 2019, the Mayor and City Commission adopted Resolution No. 2019-_____, approving this Agreement, for a term of four (4) years, as provided in Section 2-256(b)(3) of the City Code, commencing November 1, 2019, and ending on October 31, 2023; and

NOW, THEREFORE, the Parties agree as follows:

1. **Recitations**. Parties agree that the recitations above are true and correct and are incorporated as if fully set forth here.

2. **Employment**. The City agrees to employ Mr. Centorino as its Inspector General and Mr. Centorino agrees to be so employed. Mr. Centorino will devote his full working time to his duties as Inspector General and will not accept or perform any other employment, paid or unpaid, while he is employed as Inspector General except as expressly set forth herein or expressly agreed to by the City Commission by resolution and modification of this Agreement according to its terms. However, nothing in this Agreement shall prohibit Mr. Centorino from occasional other work, such as teaching, writing, community activities, pro bono work, or civic or charitable activities as is appropriate to this position of Inspector General, provided, however, that such work shall not interfere with Mr. Centorino's duties as Inspector General and shall not in any way reflect unfavorably on the City. Mr. Centorino shall at all times apply his best efforts to the performance of his duties as Inspector General.

3. **Employment At Will**. Mr. Centorino is employed at will and serves at the pleasure of the City Commission. This Agreement and his employment may be terminated by the City Commission at any time and for any reason or for no reason, subject only to the express Termination provisions of this Agreement.

4. **Duties**. Mr. Centorino will perform the duties of the office of Inspector General as set forth in the Charter of the City of Miami Beach, Florida, and in the Code of the City of Miami Beach, Florida, and all such duties customary and appropriate to this position of Inspector General and such other appropriate duties as may be assigned by the City Commission or its designee from time to time.

5. **Effective Date**. This Agreement shall become effective November 1, 2019 (the "Effective Date").

6. **Term**. The Agreement shall have a term of four (4) years, commencing at 12:01 a.m., November 1, 2019 (Commencement Date), and expiring at midnight, October 30, 2023, unless terminated earlier or renewed as set forth herein.

7. **Compensation**. Mr. Centorino shall receive compensation for performing the duties of Inspector General as set forth in this Section 7. Nothing other than those items set forth in this

Section 7 shall be considered or treated as compensation, wages, salary, earnings or remuneration to Mr. Centorino for any purpose whatsoever, including pension or for purposes of Section 448.08, Florida Statutes, or in arbitration.

- a. Salary. The City shall pay Mr. Centorino a base salary annualized at \$210,000 to be earned and to be accrued bi-weekly. This salary shall be paid bi-weekly according to the usual payroll practices of the City applicable to unclassified general employees. Notwithstanding the preceding sentence, the Parties agree and acknowledge that Mr. Centorino shall be entitled to and shall continue to receive the employee benefits packages customarily received by unclassified employees. Mr. Centorino will be entitled to participate in the Section 457 deferred compensation plan (the Plan). Starting on the Commencement Date, and on each one year anniversary thereafter during the Term of the Agreement, the City shall make a lump sum contribution on Mr. Centorino's behalf into (i) the Plan, in the amount of \$25,000, according to the terms of the Plan and applicable laws, with such contribution subject to an automatic annual increase to the maximum amount permitted by applicable law; and (ii) an IRA account selected by Mr. Centorino, in the amount of \$7,000, or such lesser amount as may be required by applicable law.

The City agrees to review the annual salary and/or other benefits of Mr. Centorino at the time of evaluation of performance as provided in Section 7.d. and make adjustments as the City may determine.

- b. Insurance. The City will pay the full amount of premiums for the City-offered group medical, and group dental plan selected by Mr. Centorino, for himself and his eligible dependents, if Mr. Centorino elects to participate in a City-offered plan. The City will pay the full amount of premiums for the City-offered life insurance policy on Mr. Centorino. Mr. Centorino may (or, if participation is mandatory, shall) participate in other City-offered insurance and benefits for which he is eligible on the terms applicable to unclassified general employees.
- c. Leave. Mr. Centorino will be eligible to accrue, use, and convert leave hours to the extent and on the terms applicable to unclassified general employees. The City shall waive the three-month waiting period regarding use of annual leave, and shall advance or credit Mr. Centorino 40 hours of annual leave on the Commencement Date (with the credit subject to settlement or "zeroed" out as annual leave is accrued).
- d. Annual Performance Evaluation. Mr. Centorino's performance as Inspector General shall be evaluated by the City Commission at least once annually, including salary and benefits review (the "Evaluation"), within 45 days prior to or following the anniversary of the Commencement Date, or at any other time the City Commission may determine. At such time, the City Commission shall review Mr. Centorino's annual salary and/or benefits, and shall make adjustments in such amounts and to such extent as the City Commission may determine that it is desirable to do so.

8. Non-Compensation Expenses and Reimbursements. The City will pay for, reimburse or otherwise provide for the items set forth in this Section 8. These items are paid for, reimbursed or otherwise provided because they inure to the benefit of the City and do not constitute compensation, wages, salary, earnings or remuneration to Mr. Centorino for any purpose whatsoever, including pension or for purposes of Section 448.08, Florida Statutes, or in arbitration.

a. Information and Communications Technology Expenses. The City will provide to Mr. Centorino adequate and reasonable information and communications hardware, software, and services to support him in the performance of his duties as Inspector General.

b. Subscriptions, Memberships and Fees. Mr. Centorino may include, as an expense item in the budget of the Office of the Inspector General, an amount to be used to pay for such reasonable subscriptions, memberships, and fees and other similar costs, such as travel and lodging, as may be incurred for development and advancement related to, in support of, and inuring to the benefit of the City. No payment authorized hereunder may be made to an entity that illegally discriminates on the basis of race, color, gender, religion, national origin, age, disability, marital status or sexual orientation.

c. Vehicle. The City will pay to Mr. Centorino a vehicle allowance in the amount of \$9,600 annually, paid in proportionate bi-weekly installments to reimburse him for the use of his personal vehicle for the benefit of the City.

d. Mobile Telephone Allowance. The City will pay to Mr. Centorino a mobile telephone allowance in the amount of \$2,600 annually, paid in proportionate bi-weekly installments to reimburse him for the use of his personal vehicle for the benefit of the City.

9. Renewal and Non-Renewal. The City Commission may renew or extend the original term of this Agreement by resolution for succeeding periods as specified by the City Commission on the same terms and conditions as then set forth in this Agreement or on such modified terms and conditions to which it may agree with Mr. Centorino. Should the City Commission not renew or extend the original or any succeeding term, this Agreement shall expire at the end of such original or succeeding term. Mr. Centorino's employment shall simultaneously end with the expiration of the original or succeeding term or period. Should the City not renew this Agreement, it will either give Mr. Centorino 90 days' notice of intent not to renew or, if no notice is given, the City shall, commencing upon the end of his employment, pay Mr. Centorino an amount equivalent to 12 weeks of the salary amount set forth in Section 7.a. (the "Separation Payments"), along with all payments due for work performed through the date of termination and other payments due, if any, upon termination on the same terms and conditions applicable to unclassified general employees and shall have no further liability to him whatsoever. The Separation Payments will be paid bi-weekly according to the City's usual payroll practices. Should Mr. Centorino accept other employment prior to the expiration of 12 weeks after the date of expiration of the original or succeeding term, the Separation Payments shall immediately cease and the City shall have no obligation to make Separation Payments then remaining unpaid.

10. Termination by Mr. Centorino.

a. With Notice. Should Mr. Centorino terminate this Agreement by giving notice not less than 90 days prior to termination, the City shall pay him in like manner as if the Agreement were not renewed pursuant to Section 9 herein.

b. Without Notice. Should Mr. Centorino terminate this Agreement by giving notice less than 90 days prior to termination, the City shall pay him any payments due for work performed through the date of termination and other payments due, if any, upon termination on the same terms and conditions applicable to unclassified general employees and shall have no further liability to him whatsoever.

11. Termination by the City. The City Commission may terminate this Agreement and, thereby, Mr. Centorino's employment, at any time, without or without notice, and for any reason or for no reason, by a 5/7ths vote of the City Commission, in accordance with Section 9.01 of the City Charter.

a. Without Cause. Should the City terminate this Agreement without Cause, as defined in Section 11.b., it shall pay Mr. Centorino an amount equivalent to 20 weeks of the salary amount set forth in Section 7.a. (the "Severance Payment"), along with all payments due for work performed through the date of termination and other payments due, if any, upon termination on the same terms and conditions applicable to unclassified general employees and shall have no further liability to him whatsoever. Should Florida law be changed to permit a Severance Payment greater than that permitted under law at the time of the execution of this Agreement, the City Commission will review the amount of the Severance Payment set forth in this Agreement. In the event the City at any time during the term of this Agreement reduces the salary or other financial benefits of Mr. Centorino in a greater percentage than an applicable across the board reduction for all employees of the City or in the event the City refuses after written notice to comply with any other provision of this Agreement benefitting Mr. Centorino, or if the City Commission, by a 5/7ths vote in a public meeting, requests that Mr. Centorino resign, then Mr. Centorino may, at his option, be deemed to be terminated at the date of such adverse action by the City, as applicable within the meaning and context of this Section 11.a.

b. With Cause. Should the City terminate this Agreement with Cause, as herein defined, it shall pay Mr. Centorino any payments due for work performed through the date of termination and other payments due, if any, upon termination on the same terms and conditions applicable to unclassified general employees and shall have no further liability to him whatsoever, including no obligation to pay the Severance Payment as defined in Section 11.a. Cause is defined as one or more of the following: material breach of this Agreement; conviction of any felony; admission of conduct that would constitute any felony; conduct that would constitute a violation of any applicable code of ethics or professional conduct; conduct that would constitute malfeasance or misfeasance in office as those terms are interpreted under Section 112.3187, Florida Statutes; or other similar conduct that the City Commission reasonably determines merits termination.

12. Pension. Mr. Centorino shall become a member of the Miami Beach Employees Retirement Plan as a condition of his employment pursuant to the governing ordinance of the plan (which plan, at the time of the execution of this Agreement, includes an accrual factor of 2.5 percent for unclassified general employees).

13. Bonds. The City shall bear the full expense of any fidelity or other bond required of Mr. Centorino in his capacity as Inspector General under any statute, ordinance or regulation.

14. Indemnification. The City shall indemnify and defend Mr. Centorino or, at its option, provide a defense to Mr. Centorino against claims arising out of and in the course and scope of his employment or function, consistent with and to the extent of Florida law under Chapter 111, Florida Statutes, and a public official's right to a defense against claims arising from their performance of their public duties performed while serving a public purpose under the common law of Florida.

15. Notice. Any notice hereunder shall be effective if made by delivery, postage paid, to the United States Postal Service or by a manner valid for personal service under the Florida

Rules of Civil Procedure or by public statement on the record during a meeting of the City Commission in the presence of the party to whom notice is to be given. Notice, for purposes of this Agreement, is to be given to:

City: Mayor Dan Gelber (or successor)
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

and

City Attorney Raul Aguila (or successor)
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

Mr. Centorino: Joseph M. Centorino (or heirs)
Office of Inspector General
1130 Washington Avenue
Miami Beach, Florida 33139

16. No Assignment or Delegation; No Third-Party Beneficiaries. The services provided by Mr. Centorino are considered unique and personal to him. Accordingly, Mr. Centorino may not delegate or assign any duty, obligation, or benefit attaching or accruing hereunder. This Agreement is entered into and intended for the benefit solely of the City and of Mr. Centorino and not for the benefit of any other person or entity.

17. Entire Agreement, Severability, Modification, Waiver. The provisions of this Agreement constitute the entire agreement between the Parties on its subject matter and this Agreement supersedes any other agreement, understanding, representation, or promise whatsoever. Mr. Centorino agrees that he has relied solely upon the express language of this Agreement in determining whether to enter into this Agreement and not upon any other understanding or communication of any kind, whether written or oral. Should a court or arbitrator of competent jurisdiction determine that any provision or portion thereof of this Agreement is illegal, invalid, or unenforceable, the remaining provisions or portions thereof shall remain in full force and effect. This Agreement may be modified only by a writing signed by both Parties and approved by the City Commission by resolution. Waiver of any right or of any breach of this Agreement by either party in any instance or instances shall not constitute or be construed as a waiver in any other instance.

18. Construction, Governing Law, Headings. This Agreement shall be construed according to its express language and not strictly for or against either Party, regardless of authorship. This Agreement shall be governed by and according to the laws of the State of Florida. Section headings are for convenience only and shall have no legal effect.

19. Arbitration. The Parties agree that any claim or dispute arising from this Agreement, its interpretation, its renewal or its breach shall be settled in final and binding arbitration by a single arbitrator under the Arbitration Policies and Procedures of the Federal Mediation and Conciliation Service. A panel of arbitrators may be requested by either Party and the Parties will select an arbitrator by alternative strikes. The first Party to strike will be determined by agreement or coin flip. Each Party may one-time reject a proposed panel of arbitrators and request another. The party requesting any panel shall bear the expense of the request. The Parties shall bear equally the expense of the arbitrator and the location of the arbitration hearing.

The Parties shall each bear their own litigation costs, including attorney's fees, court reporter fees, and witness fees, if any. The arbitrator shall apply a preponderance of the evidence standard of proof. The party asserting a claim or affirmative defense shall have the burden of persuasion as to that claim or affirmative defense. The arbitrator shall not have authority to make any award of attorney's fees or the costs of the arbitration. The arbitrator shall confine himself or herself strictly to the language of this Agreement and shall have no authority to add to, subtract from, or modify any term or provision of this Agreement. The arbitrator shall have no authority to construe any law, regulation, rule, principle of law, decision, or provision or provisions of this Agreement or to make any award that would result in or obligate the City, directly or indirectly, to incur any debt, cost, expense, or liability in excess of the amount initially budgeted, approved, and appropriated for the funding of this Agreement. Any such purported construction or award will be null and void. The arbitrator's award shall be subject to enforcement or vacation by the Circuit Court according to law. Moreover, and without waiving the preceding limitation, in no case shall the City be liable for any punitive, consequential, indirect or incidental damages whatsoever.

20. Counterparts, Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute a single instrument. Execution and delivery of this Agreement by electronic exchange bearing the copies of a Party's signature shall constitute a valid and binding execution and delivery of this Agreement by such Party. Such electronic copies shall constitute enforceable original documents.

WHEREFORE, the Parties, after full consideration, including consultation with independent counsel, do knowingly, voluntarily, and intending to be legally bound, hereby enter into this Agreement duly executed on the dates written below.

Attest:

FOR CITY OF MIAMI BEACH, FLORIDA:

Rafael E. Granado, City Clerk

Dan Gelber, Mayor

____ day of _____, 2019.

FOR INSPECTOR GENERAL:

Witness Signature

Joseph M. Centorino,

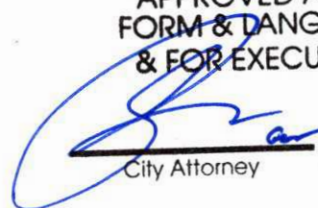
Print Name

____ day of _____, 2019.

Witness Signature

Print Name

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

10/25/19
Date