

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement") is entered into as of this 21st day of April, 2021, by and between **ALINA T. HUDAK** ("Alina Hudak") and the **CITY OF MIAMI BEACH, FLORIDA** (the "City") (each, a "Party" and collectively, the "Parties").

WHEREAS, on April 21, 2021, the Mayor and City Commission appointed Alina Hudak as City Manager of the City, effective immediately; and

WHEREAS, the City, acting by and through its City Commission, desires to employ Alina Hudak as its City Manager on the terms and conditions set forth in this Agreement, and Alina Hudak desires to be employed as City Manager on those same terms and conditions;

WHEREAS, on May 12, 2021, the Mayor and City Commission adopted Resolution No. 2021-_____, approving and authorizing the Mayor and City Clerk to execute this Agreement with Alina Hudak, for a term of up to four (4) years, commencing retroactively on April 21, 2021, and expiring on April 21, 2025; and

NOW, THEREFORE, the Parties agree as follows:

1. Recitations. The 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 Alina Hudak as its City Manager and Alina Hudak agrees to be so employed. Alina Hudak will devote her full working time to her duties as City Manager and will not accept or perform any other employment, paid or unpaid, while she is employed as City Manager, 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. Notwithstanding the foregoing, nothing in this Agreement shall prohibit Alina Hudak 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 City Manager, provided, however, that such work shall not interfere with Alina Hudak's duties as City Manager and shall not in any way reflect unfavorably on the City. Alina Hudak shall at all times apply her best efforts to the performance of her duties as City Manager.

3. Employment At Will. Alina Hudak is employed at will and serves at the pleasure of the City Commission. This Agreement and Alina Hudak's 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. Alina Hudak will perform the duties of the office of City Manager 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 City Manager 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 as of April 21, 2021 (the "Effective Date").

6. Term. Subject to the City Commission's annual review and evaluation of Alina Hudak, as provided in Section 7(d) below, the Agreement shall have a term of up to four (4) years, commencing on April 21, 2021 (Commencement Date), and expiring at midnight, April 21, 2025, unless terminated earlier or renewed as set forth herein.

7. Compensation. Alina Hudak shall receive compensation for performing the duties of City Manager 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 Alina Hudak for any purpose whatsoever, including pension or for purposes of Section 448.08, Florida Statutes, or in arbitration.

a. Salary. The City shall pay Alina Hudak a salary annualized at \$320,000, to be earned and to accrue bi-weekly. This salary shall likewise be paid bi-weekly according to the usual payroll practices of the City applicable to unclassified general employees. Alina Hudak is a participant in the Section 457 deferred compensation plan (the Plan). Within fourteen (14) days following the execution of this Agreement, and thereafter on April 21st of each year during the Term of the Agreement, the City shall make a lump sum contribution on Alina Hudak's behalf into (i) the Plan, in the amount of \$26,000, 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 Alina Hudak, in the amount of \$7,000 (or such lesser amount as may be required by applicable law); provided, however, that such IRA contribution shall also be subject to an automatic annual increase to the maximum amount permitted by applicable law. The City agrees to review the annual salary and/or other benefits of Alina Hudak at the time of evaluation of performance as provided in Section 7.d. and make adjustments as the City may determine. An annual salary review of Alina Hudak will be made every year within forty-five (45) days after April 21st of each year, or as soon as practicable thereafter, in accordance with the Agreement terms.

b. Insurance. For FY2021, Alina Hudak has elected to decline coverage for herself and her eligible dependents under the City-offered group medical and group dental plan. During the City's open enrollment period taking place each year of the Term, Alina Hudak may elect to join any City-offered group medical and group dental plan, and in such event, the City shall pay the full amount of premiums for the City-offered group medical and group dental plan selected by Alina Hudak, for herself and her eligible dependents. The City will pay the full amount of premiums for the City-offered life insurance policy and supplemental life insurance policy for Alina Hudak, and the City-offered insurance policies for short-term disability, long-term disability, and long-term care insurance for Alina Hudak. Alina Hudak may (or, if participation is mandatory, shall) participate in other City-offered insurance and benefits for which she is eligible on the terms applicable to unclassified general employees.

c. Leave. Alina Hudak will be eligible to accrue, use, and convert leave hours to the extent and on the terms applicable to unclassified general employees. In addition to the foregoing, Alina Hudak shall accrue an additional 120 hours of annual leave annually.

d. Performance Evaluation and Incentive. Alina Hudak's performance as City Manager shall be evaluated by the City Commission at least once annually, within forty-five (45) days prior to or following the anniversary of the Commencement Date, or at any other time the City Commission may determine. Alina Hudak shall be responsible for notifying the City Commission that her annual performance review is due, and for placing the item on a City Commission meeting agenda within the time period specified herein. The annual performance evaluation of Alina Hudak as City Manager shall occur without regard to whether any additional compensation or bonus incentive is sought pursuant to this Agreement.

i. The annual review and evaluation of Alina Hudak shall be in accordance with the specific goals, priority objectives and initiatives the City Commission shall establish, in consultation with Alina Hudak, as being necessary for the proper operation of the City and the achievement of the City Commission's policy objectives. The Parties anticipate that the performance priorities, goals and objectives for the City Manager shall be adopted by the City Commission as soon as possible, and not later than 120 days after the Commencement Date, and memorialized as an amendment to this Agreement. Until such time as the City Commission and Alina Hudak jointly establish such agreed-upon goals and priority objectives, Alina Hudak's immediate priorities shall focus upon (i) the continuation of the City's COVID-19 efforts, including post-COVID economic recovery; (ii) the continuation of City's ongoing public safety efforts, including during High Impact weekends such as Memorial Day weekend; (iii) City's FY2022 budget process; (iv) the City Manager's staffing and organizational plan, including filling of key vacancies; and (v) any such other priorities as the City Commission may establish from time to time.

ii. The City Commission's annual evaluation of Alina Hudak's performance and progress toward the goals and objectives shall form the basis for the City Commission's determination of any salary increases or performance incentives that may be awarded to Alina Hudak pursuant to this Agreement, or for the renewal or termination of this Agreement, as provided in Sections 9 and 10 of this Agreement, respectively. Based on the performance achieved by Alina Hudak pursuant to the City Commission's annual review of Alina Hudak pursuant to this Section 7, the City Commission may provide to Alina Hudak a onetime Performance Incentive of up to 10 percent of the annualized salary amount set forth in Section 7.a. The Performance Incentive shall not be deemed a part of "base pay" or other earnings for purposes of pension.

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 Alina Hudak for any purpose whatsoever, including pension or for purposes of Section 448.08, Florida Statutes, or in arbitration.

a. Vehicle. The City will pay to Alina Hudak a vehicle allowance in the amount of \$9,600.00 annually, paid in proportionate bi-weekly installments to reimburse her for the use of her personal vehicle for the benefit of the City.

b. Information and Communications Technology Expenses. The City will provide to Alina Hudak adequate and reasonable information and communications hardware, software, and services to support her in the performance of her duties as City Manager.

c. Subscriptions, Memberships, and Fees. Alina Hudak may include, as an expense item in the budget of the Office of the City Manager, 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 any characteristics protected under the City's Human Rights Ordinance.

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 Alina Hudak. 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. Alina Hudak'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 Alina Hudak 90 days' notice of intent not to renew or, if no notice is given, the City shall, commencing upon the end of her employment, pay Alina Hudak 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 her whatsoever. The Separation Payments will be paid bi-weekly according to the City's usual payroll practices. In addition to the Separation Payments, if at the time of such non-renewal, Alina Hudak and her eligible dependents are participating in any City-offered group medical or group dental plan, the City shall pay Alina Hudak the full amount of premiums for the City-offered group medical and group dental plan selected by Alina Hudak, for herself and her eligible dependents, for a period of one (1) year following the expiration of this Agreement. Should Alina Hudak accept employment prior to the expiration of 12 weeks after the date of expiration of the original or succeeding term, the Separation Payments and payments for insurance premiums as provided herein shall immediately cease and the City shall have no obligation to make any Separation Payments then remaining unpaid.

10. Termination by Alina Hudak.

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

b. Without Notice. Should Alina Hudak terminate this Agreement by giving notice less than 90 days prior to termination, the City shall pay her 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 thereafter have no further liability to her whatsoever.

11. Termination by the City. The City Commission may terminate this Agreement and, thereby, Alina Hudak' employment, at any time, without or without notice, and for any reason or for no reason.

a. Without Cause. Should the City terminate this Agreement without Cause, as defined in Section 11.b., it shall pay Alina Hudak an amount equivalent to 20 weeks of the salary amount set forth in Section 7.a., provided, however, that if at the time of such termination, Alina Hudak and her eligible dependents are participating in any City-offered group medical and group dental plan, the City shall also pay the full amount of premiums for the City-offered group medical and group dental plan selected by Alina Hudak, for herself and her eligible dependents, for a period of one-year following the date of termination of this Agreement (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 thereafter City shall have no further liability to her 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 and consider making any adjustments thereto, at its sole discretion. In the event the City at any time during the term of this Agreement reduces the salary or other financial benefits of Alina Hudak 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 benefiting Alina Hudak, or if a majority of the members of the City Commission in a public meeting requests that Alina Hudak resign, then Alina Hudak may, at her option, be deemed to be terminated as of the date of such reduction or such refusal to comply 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 Alina Hudak 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 the City shall thereafter have no further liability to her 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: any material breach of this Agreement, provided, however, that the City Manager's progress or achievement of the goals and objectives as may be established by the City Commission

(and memorialized in an amendment to this Agreement) shall be excluded from the definition of "Cause" and shall not form the basis for the termination of Alina Hudak with Cause; 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. Alina Hudak shall become a member of the Miami Beach Employees Retirement Plan as a condition of her 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 4 percent for her period of service in the position of City Manager).

13. Bonds. The City shall bear the full expense of any fidelity or other bond required of Alina Hudak in her capacity as City Manager under any statute, ordinance, or regulation.

14. Indemnification. The City shall indemnify and defend Alina Hudak or, at its option, provide a defense to Alina Hudak against claims arising out of and in the course and scope of her 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

Alina Hudak: Alina T. Hudak (or heirs)
[Address on file with Human Resources and confidential and exempt from disclosure under Florida law]

16. No Assignment or Delegation; No Third-Party Beneficiaries. The services provided by Alina Hudak are considered unique and personal to her. Accordingly, Alina Hudak 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 Alina Hudak 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. Alina Hudak agrees that she 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.

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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 _____, 2021.

FOR CITY MANAGER ALINA T. HUDAK:

Witness Signature

Alina T. Hudak

Print Name

___ day of _____, 2021.

Witness Signature

Print Name

**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**



City Attorney



Date

5-4-21