

## **EMPLOYMENT AGREEMENT**

**THIS EMPLOYMENT AGREEMENT** (the "Agreement") is entered into this \_\_\_ day of \_\_\_\_, 2019, by, and between JIMMY L. MORALES ("Morales") and the CITY OF MIAMI BEACH, FLORIDA (the "City") (collectively, the "Parties").

WHEREAS, on March 13, 2013, the Mayor and City Commission appointed Jimmy Morales as City Manager of the City of Miami Beach (City), to be effective on April 1, 2013; and

WHEREAS, on April 17, 2013, the Mayor and City Commission adopted Resolution No. 2013-28184, approving and authorizing the Mayor and City Clerk to execute an employment agreement with Mr. Morales, for a term of two (2) years, commencing retroactively on April 1, 2013, and ending on March 31, 2015; and

WHEREAS, on March 11, 2015, the Mayor and City Commission adopted Resolution No. 2015-28963, approving the execution of a new employment agreement with Mr. Morales, for a term of four (4) years, commencing as of April 1, 2015, and expiring on March 31, 2019; and

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

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 Morales as its City Manager and Morales agrees to be so employed. Morales will devote his full working time to his duties as City Manager and will not accept or perform any other employment, paid or unpaid, while he 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. However, nothing in this Agreement shall prohibit Morales 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 Morales' duties as City Manager and shall not in any way reflect unfavorably on the City. Morales shall at all times apply his best efforts to the performance of his duties as City Manager.

3. Employment At Will. Morales 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. Morales 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 April 1, 2019 (the "Effective Date").

6. Term. Subject to the City Commission's annual review and evaluation of Morales, as provided in Section 7(d) below, the Agreement shall have a term of up to four (4) years, commencing at 12:01 a.m., April 1, 2019 (Commencement Date), and expiring at midnight, March 31, 2023, unless terminated earlier or renewed as set forth herein.

7. Compensation. Morales 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 Morales for any purpose whatsoever, including pension or for purposes of Section 448.08, Florida Statutes, or in arbitration.

a. Salary. The City shall pay Morales a salary annualized at \$305,736.60, 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. Morales is a participant in the Section 457 deferred compensation plan (the Plan). Starting on the Commencement Date, and thereafter on April 1<sup>st</sup> of each year during the Term of the Agreement, the City shall make a lump sum contribution on Morales' 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 Morales, 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 Morales 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 Morales will be made every year within 30 days after April 1 of each year.

b. Insurance. The City will pay the full amount of premiums for the City-offered group medical and group dental plan selected by Morales, for himself and his eligible dependents. The City will pay the full amount of premiums for the City-offered life insurance policy on Morales, and the City-offered long-term care insurance for Morales. Morales 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. Morales 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, Morales shall accrue an additional 120 hours of annual leave annually.

d. Performance Evaluation and Incentive. Mr. Morales'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. Mr. Morales shall be responsible for notifying the City Commission that his 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 Morales 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 Morales shall be in accordance with the specific goals, priority objectives and initiatives set forth in **Exhibit "A"** attached hereto and incorporated by reference, which goals and objectives the City Commission and Morales have jointly determined necessary for the proper operation of the City and the achievement of the City Commission's policy objectives. From time to time, said goals and objectives may be amended in writing and memorialized as an amendment to this Agreement, as the City Commission, in consultation with Morales, may determine.

ii. The City Commission's annual evaluation of Morales's performance and progress toward the goals and objectives set forth in Exhibit "A," shall form the basis for the City Commission's determination of any salary increases or performance incentives that may be awarded to Morales 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 Morales pursuant to the City Commission's annual review of Morales pursuant to this Section 7, the City Commission may provide to Morales 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 Morales 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 Morales a vehicle allowance in the amount of \$9,600.00 annually, paid in proportionate bi-weekly installments to reimburse him for the use of his personal vehicle for the benefit of the City.

b. Moving Allowance. The City will pay to Morales a onetime allowance of up to \$3,500.00 to reimburse Morales for reasonable moving-related expenses should Morales, in his sole discretion, choose to move his primary residence into the City during the first 12 months of this Agreement. The moving allowance will be paid upon submission of satisfactory documentation of the moving-related expenses.

c. Information and Communications Technology Expenses. The City will provide to Morales adequate and reasonable information and communications hardware, software, and services to support him in the performance of his duties as City Manager.

d. Subscriptions, Memberships, and Fees. Morales 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 race, color, gender, religion, national origin, age, disability, marital status, or sexual orientation.

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 Morales. 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. Morales' 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 Morales 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 Morales 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. In addition to the Separation Payments, City shall pay Morales the full amount of premiums for the City-offered group medical and group dental plan selected by Morales, for himself and his eligible dependents, for a period of one (1) year following the expiration of this Agreement. Should Morales 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 Separation Payments then remaining unpaid.

10. Termination by Morales.

a. With Notice. Should Morales 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.

b. Without Notice. Should Morales 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, Morales' 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 Morales an amount equivalent to 20 weeks

of the salary amount set forth in Section 7.a., and the full amount of premiums for the City-offered group medical and group dental plan selected by Morales, for himself and his 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 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 Morales 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 Morales or if a majority of the entire City Commission in a public meeting requests that Morales resign then Morales may, at his option, be deemed to be terminated at 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 Morales 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, provided, however, that the City Manager's progress or achievement of the goals and objectives set forth in Exhibit "A" shall be excluded from the definition of "Cause" and shall not form the basis for the termination of Morales 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. Morales 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 4 percent for the position of city manager).

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

14. Indemnification. The City shall indemnify and defend Morales or, at its option, provide a defense to Morales 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

Morales: Jimmy L. Morales (or heirs)  
6815 Corsica Street  
Coral Gables, Florida 33146

16. No Assignment or Delegation; No Third-Party Beneficiaries. The services provided by Morales are considered unique and personal to him. Accordingly, Morales 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 Morales 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. Morales 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.

**Remainder of Page Intentionally Left Blank**

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 MANAGER:**

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Jimmy Morales,

\_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Print Name

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

*Dan Gelber* 3-11-19  
\_\_\_\_\_  
City Attorney *RAP* Date

# MIAMIBEACH

## **EXHIBIT A to City of Miami Beach City Manager Employment Agreement**

### **City Manager Deliverables, Goals and Objectives**

The following Deliverables, Goals and Objectives (the “Goals”) are expected to be achieved, or substantially achieved, by the City Manager by the completion of his Employment Agreement to which this Exhibit is attached. Certain Goals may be completed sooner and the estimated completion dates are indicated.

#### **Goals, Deliverables and Objectives**

1. Former Par 3 (done within 4 years of Employment Agreement)
2. 600 Alton Park (Phase 1 complete in 30 months from executed DA)
3. North Beach Oceanside Park (complete within 4 years)
4. Beach walk (complete within 3 years)
5. Bay Walk (substantial progress towards completion of entire Bay Walk)
6. North Beach Town Center/Byron Carlyle/Ocean Terrace projects (substantial progress on each)
7. Maurice Gibb Park full plan (completed within 4 years)
8. Convention Center Hotel (by Art Basel 2022)
9. Ocean Drive renovation (design work completed)
10. Lincoln Rd renovation (completed within 3 to 3.5 years after Notice to Proceed)
11. Remove the “pause” on sea level resiliency program and have projects fully underway in South/Mid/North Beach (start immediately upon completion of Jacobs’ analysis)
12. MBCC parks and AIPP (by Art Basel 2019).
13. 50% of all financial transactions with the City available on line or automated (2 years)
14. Electronic plans filing for permitting purposes (2 years)
15. Fire Station 1 (within 4 years of site selection)
16. Implementation of Public Safety Radio System (12-14 months)
17. Complete 21 Quick Wins GOB projects (12-14 months)

Time frames above are subject to regulatory approvals by local, state and federal agencies, and the actions of private developers (where applicable). The City of Miami Beach Commission and the City Manager shall review progress on the Goals listed above on each anniversary of the Commencement Date set forth in the City Manager’s Employment Agreement.

The following categories are deliverables/projects that may extend beyond the term of the City Manager’s Employment Agreement, but shall nevertheless be part of the goals and objectives that the City Manager shall address and shall constitute a basis for his annual evaluation.

## **Categories – Goals, Deliverables and Objectives**

### **Infrastructure and Environment**

#### **1. Stormwater/resiliency program**

- Improve the quality of life enhancements, integrated planning, and execution of neighborhood projects while enhancing engagement with the community.
- Develop a plan to address aging drinking water and sanitary sewer infrastructure.
- Work regionally to come up with plan to improve Biscayne Bay water quality.
- Implement controls to prevent issues of unpermitted work or work exceeding permits on City projects

#### **2. G. O. Bond program**

- Ensure quality planning including performance measures, coordination with other projects and timely, on-budget execution.

### **Mobility and Community**

#### **3. Improve mobility for our community**

- Advocate for and drive regional and creative solutions including the prompt implementation of a successful (e.g. ridership), new dedicated Express Bus on the Julia Tuttle.
- Continue to implement the Transportation Master Plan, expanding the City's bicycle path network.

### **Safe, Healthy, and Clean Neighborhoods**

#### **4. Improve quality of life for residents**

- Enhance ongoing execution of core city services (e.g. public safety, Code enforcement, cleanliness, etc.), especially in the North Beach neighborhood
- Make significant progress on neighborhood revitalization and master plans (e.g. Washington Avenue, 41st street, and North Beach).
- Improvement and expansion of Parks programming and facilities through a Parks Master Plan.
- Increased cultural offerings, including strengthening our existing cultural institutions, bringing the artists back, and elevating the Collins Park cultural district.
- Create an educational campaign to address public perception of crime and the Police Department
- Continue and improve the enhanced use of technology and crime data by the Police Department
- Increased community outreach by the Police Department, including collaboration with neighborhood watch programs, private security and community groups.

#### **5. Maximize community communications**

- Continue development of creative tools and drive utilization (e.g. Engagement Toolbox, online forums, advisory polling, direct mail, Facebook Live).
- Ensure residents have viable avenues of two-way conversation in anticipation of large projects and/or necessary updates and emergencies via a comprehensive internal and

external communications plan utilized by all internal and external project information officers.

- More targeted marketing of City programs and cultural assets.
- Real time outreach to new residents, including tours of city hall.
- Convene quarterly meetings of HOA presidents with senior staff.
- More social media and media monitoring tools to ensure we are reaching our residents and visitors

## **Prosperity**

### **6. Convention Center campus**

- Structure plan and identify financing for renovation of the Fillmore Theater.
- Work with GMCVB and Spectra to program MBCC with conventions and trade shows.

### **7. Lincoln Road**

- Continue to work with BID to achieve robust cultural and arts programming.

### **8. Ocean Drive/ Mixed Entertainment District**

- Bring creative solutions to improve resident appeal, public safety perceptions and business vibrancy.
- Continue to zealously address bad operators and strictly enforce ordinances.
- Work with stakeholder (including a BID, if formed) to create higher end activation and programming.

## **Organizational Innovation**

### **9. Leadership**

- Strategic plan that links Commission goals, management objectives, and the budget.
- Increase the use of fact-based analyses with robust business cases to assess potential transactions (e.g. public-private agreements), and also quantitative performance measures supporting after action analyses.
- Serve as a strong CEO. Further drive the City agenda and ensure that my, and professional staff, expert point-of-view are heard at all Commission hearings, including clear, concise recommendations on memos.
- Increased personal presence at key community meetings
- Encourage stronger staff voice and leadership – especially design and aesthetics
- Build senior leadership team capabilities for succession planning.
- Integrate resilience and sustainability into the capital budget process.

### **10. Continue to fully embrace the new Office of Inspector General**

- Proactively use the Inspector General as a valuable resource to improve City performance and identify inefficiencies

### **11. Chief Information Office**

- Recruit and retain skilled CIO that can also lead on issues of innovation and customer experience

- Work to implement an open data program
- Explore policies to better align City functions for the modern workforce, including work hours, travel, cell phones and social media.

## 12. **Customer Service**

- Address root causes of CMB reputation of being “hard to do business with”.
- Streamline permitting and development review process
- Improve BTR process

## 13. **Fiscal**

- Improve the fiscal health of pensions, health care, and innovative risk management
- Focus on long term viability of enterprise funds (e.g. Parking, Sanitation)
- Full implementation of program management budget
- Explore strategic streamlining/outsourcing opportunities to control head count
- Explore more efficient management staffing and techniques