

EMPLOYMENT AGREEMENT

This Employment Agreement (Agreement) is made and entered into as of the 18th day of July, 2012, by and between the City of Miami Beach, a municipal corporation (City), and Kathie G. Brooks (Manager). The City and Manager may also be referred to herein, individually, as a "Party" and, collectively, as the "Parties."

WITNESETH:

WHEREAS, the City desires to secure and retain the services of Manager as the Interim City Manager of the City of Miami Beach during such time as the City Commission conducts its search process for a new permanent City Manager; and

WHEREAS, the Manager desires to accept the position under the terms and conditions contained in this Agreement; and

WHEREAS, the Parties acknowledge that in accepting this engagement, Manager has taken (and been given) leave from her position as the City's Director of the Office of Budget and Performance Improvement (Director) and that, upon the normal expiration of the term of this Agreement and successful completion of her services as the Interim City Manager, it is the intent of the Parties that she return to her position as Director, or such other higher level executive staff level position as the new permanent City Manager may appoint her to (since it is contemplated that, during the term of this Agreement, the City will have conducted and successfully completed the aforesaid search process for a permanent City Manager).

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

Section 1. Duties

The City hereby agrees to engage Manager, and Manager agrees to be engaged, as the Interim City Manager, to perform the functions and duties of the City Manager, as specified in the City Charter and the City Code.

Section 2. Term

- a. The term of this Agreement (Term) and, accordingly, the Manager's services under this Agreement, shall be deemed to have commenced retroactively as of July 8, 2012 (Commencement Date), and shall terminate on January 7, 2013 (Termination Date), subject to the earlier termination or extension provisions set forth herein. Upon the normal termination of this Agreement, Manager shall automatically revert to her position as Director, or shall accept such other higher executive staff level position as the new permanent City Manager may appoint her to; provided, however that if, after accepting such position, Manager is either terminated, or demoted to a lesser position, at any time within a period of 120 days from her acceptance of such position, then Manager shall be entitled to a

- severance payment equal to (i) 20 weeks salary at the rate of pay in effect upon the date of termination or demotion; and (ii) 20 weeks of the benefits listed in Section 7 through 9 of the Agreement (Items (i) and (ii) shall collectively be defined as the Severance Payment).
- b. The Term of this Agreement may be extended by mutual agreement of the Parties, and by written amendment to this Agreement duly executed by the Parties and approved by the Mayor and City Commission.
 - c. Notwithstanding subsection 2(a) herein, this Agreement may be terminated by the City Commission at any time, without liability to the City, in the event the City Commission engages the new, permanent City Manager prior to the Termination Date. In the event of a termination of this Agreement under this subsection 2(c), Manager shall either: (i) automatically revert to her position as Director; or (ii) shall accept such other higher executive staff level position as the new permanent City Manager may appoint her to; provided, however, that if, after accepting such position, Manager is either terminated, or demoted to a lesser position, at any time within a period of 120 days from her acceptance of such position, then Manager shall be entitled to the Severance Payment.
 - d. In addition to the termination provision provided in subsection 2(c) herein, the City Commission may also terminate this Agreement, at any time, without cause and for convenience, upon fifteen (15) days prior written notice for Manager. In the event of such termination, Manager's remedies shall be the same as those provided in subsections 2(c)(i) and (ii) hereof.
 - e. In the event this agreement is terminated pursuant to subsections 2(a), 2(c) or 2(d), and the Manager elects to either (i) automatically revert to her position as Director; or (ii) accept such other higher executive staff level position as the new permanent City Manager may appoint her to, it is contemplated that her salary will be adjusted to the level set forth by the City's standard practice when an employee moves from a higher level position to a lower level position.
 - f. The remedies provided to Manager in subsections 2(a)(i) and (ii); 2(c)(i) and (ii); and/or 2(d) above, shall not apply (and, accordingly Manager shall not be entitled to same) in the event of a termination for "cause" pursuant to Section 4 hereof, or Manager's voluntary resignation, pursuant to Section 5 hereof.

Section 3. Exclusivity of Service

The Manager agrees to remain in the exclusive service of the City as long as this Agreement remains in full force and effect; provided, however, that nothing in this Section shall be construed to preclude occasional teaching, writing, pro bono activities, community, and civic or charitable work, as is customary in high executive positions.

Section 4. Termination for Cause

The City Commission may, at any time during the Term, by majority vote, terminate this Agreement for cause, as reasonably determined by the City Commission; provided, however, that prior to any such termination being effective, the Manager shall be given at least thirty (30) days prior written notice of such termination. "Cause" shall be defined as: malfeasance, misfeasance, or nonfeasance; fraud; conviction of felony; refusal to perform the duties and responsibilities of the position; and/or committing any act which is found to be a violation of any applicable City of Miami Beach, State, or Federal, law protecting the

rights of City employees.

In the event the Manager is terminated for cause, the City shall have no obligation to pay, and the Manager shall have no right to collect, the Severance Payment under this Agreement, unless the Parties otherwise agree.

Section 5. Voluntary Resignation

In the event the Manager voluntarily resigns her position with the City prior to the Termination Date, then the Manager shall give the City at least thirty (30) days advance written notice and the City shall have no obligation to pay, and Manager shall have no right to collect, the Severance Payment under this Agreement, unless the Parties otherwise agree.

Section 6. Salary

The City agrees to pay the Manager for services rendered pursuant to this Agreement a salary annualized at Two Hundred and Twenty Thousand Dollars (\$220,000), payable in bi-weekly installments at the same time as other employees of the City are paid.

In addition, the Manager shall be entitled to an automobile allowance, as provided in Section 7; health and life insurance benefits, as provided in Section 9; continued participation in the Miami Beach Employees' Retirement Plan as provided in Section 10, at the respective employer/employee contribution level based upon her annualized salary as Manager; and such other amenities which are customarily provided to other general unclassified employees of the City.

Section 7. Automobile

The Manager shall receive an automobile allowance commensurate with that of an Assistant City Manager position, in recognition of her use of her personal automobile for City business.

Section 8. Vacation and Sick Leave

The Manager shall be entitled to accrued vacation, sick, and other City permitted leave in the same manner as other general unclassified employees of the City, including the same provisions governing payment thereof upon termination of employment.

Section 9. Health and Life Insurance

The City agrees to pay the premiums for the Manager for the following insurance policies, up to the amount and to the extent that the City would pay such premiums (or portions of such premiums as the case may be) for other general unclassified employees of the City of Miami Beach: life, accident, dental, sickness, major medical and dependents' coverage group insurance covering the Manager and her dependents; with all such policies to be of the same type and manner as those that are made available to other general unclassified employees of the City.

Section 10. Retirement

The Manager will remain a member of the Miami Beach Employees' Retirement Plan so long as her engagement continues.

Section 11. Dues and Subscriptions

The City agrees to budget and to pay for the professional dues and subscriptions of the Manager necessary for her continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for the Manager's continued professional participation, growth and advancement, and for the good of the City.

Section 12. Professional Development

- a. The City hereby agrees to budget for and to pay the travel and subsistence expense of the Manager for professional and official travel, meetings and occasions adequate to continue the professional development of the Manager, and to adequately pursue necessary official and other functions for the City.
- b. The City also agrees to budget for and to pay for the travel and subsistence expenses of the Manager for those courses, institutes and seminars that are necessary for the professional development of the Manager.

Section 13. General Expenses

The City recognizes that certain expenses of a non-personal and generally job-affiliated nature are incurred by the Manager and agrees to reimburse or to pay said general expenses, and the City's Finance Department is hereby authorized to disburse such monies upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits. There shall be an annual review of those expenses by the City's independent auditor.

Section 14. Organization Membership

The City recognizes the desirability of representation in and before local civic, social, and other organizations, and the Manager is authorized to become a member of such civic clubs or organizations, for which the City shall pay all job related expenses. No civic club or organization authorized hereunder may engage in discrimination as to race, sex, sexual orientation, color, creed, religion, national origin, or disabilities.

Section 15. Bonding

The City shall bear the full cost and any fidelity or other bonds required of the Manager under any law or ordinance.

Section 16. Other Terms and Conditions of Employment

- a. The City Commission shall fix any such other terms and conditions of employment, as it may reasonably determine from time to time during the Term, relating to the performance of the Manager; provided such terms and conditions

do not reduce the salary and benefits provided in Sections 6, 7, 8 and 9 of this Agreement, (except for a reduction or reductions in accordance to Section 17 hereof), nor conflict with the City Charter or any other law.

- b. All provisions of the City Charter and Code, and regulations and rules of the City relating to vacation and sick leave, holidays, other fringe benefits, and working conditions, as they now exist or hereafter may be amended, shall also apply to the Manager as they would to any other general unclassified employee of the City.

Section 17. No Reduction of Benefits

The City shall not at any time during the Term reduce the salary or those benefits of the Manager, provided in Sections 6, 7, 8 and 9 of this Agreement, except to the degree of a reduction (or reductions) in salaries and/or benefits which are made across-the-board for and apply to all general unclassified employees of the City.

Section 18. Computer/Equipment

The City shall pay for all equipment, systems software and portable communications equipment necessary for the Manager.

Section 19. Notices

Notices pursuant to this Agreement shall be given by deposit in the custody of the U.S. postal Service, postage prepaid, addressed as follows:

City: Mayor Matti Herrera Bower
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

Jose Smith, City Attorney
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

Manager: Kathie G. Brooks, City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 20. General Provisions

- a. The text herein shall constitute the entire Agreement between the parties.

- b. This Agreement shall be binding upon and inure to the benefit of the heirs at law and personal representatives of the Manager.
- c. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.
- d. No alteration, modification or amendment of this contract shall be effective unless contained in writing, executed between the parties in a document of equal dignity with this contract; and approved by the Mayor and City Commission.

Section 21. Expression of Intent

While the City Commission acknowledges that, pursuant to the City Charter, the City Manager, as the chief executive officer and head of the administrative branch of the City government, is the individual authorized by the Charter to appoint and remove, at will, all City employees in the unclassified service of the City (including, without limitation, Assistant City Managers, City department directors, and City division heads), the City Commission also hereby expresses its intent and wishes – which the Commission recognizes to be non-binding and solely advisory in nature—that, should the Manager successfully complete the services to be rendered by her pursuant to this Agreement, that the new permanent City Manager consider appointing her to the position of Assistant City Manager.

Section 22. Investment Disclosure

The Manager hereby advises the City Commission that she has a fiscal interest in a corporation that owns an investment property in El Portal, Florida that is managed by her son.

Section 23. Governing Law and Exclusive Venue

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Florida, both substantive and remedial, without regard to principles of conflict of laws. The exclusive venue for any litigation arising out of this Agreement shall be Miami-Dade County, Florida, if in state court, and the U.S. District Court, Southern District of Florida, if in federal court. BY ENTERING INTO THIS AGREEMENT, CITY AND MANAGER EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

Section 24. Limitation of City's Liability

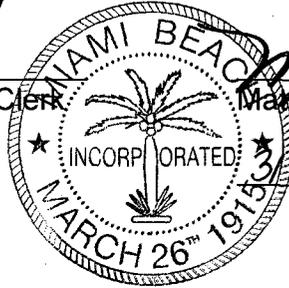
The Severance Payment, when applicable, as provided in this Agreement shall constitute the agreed, stipulated and liquidated damages, and shall constitute of the maximum amount of financial liability for which the City may be liable in the event of a termination and/or breach of this Agreement. Notwithstanding the preceding, in no event and/or circumstances shall the City be liable under this Agreement for any consequential incidental, punitive, or indirect damages arising from or in relation to this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the day and year first above written.

Attest:

FOR CITY OF MIAMI BEACH, FLORIDA:

Rafael E. Granado
Rafael E. Granado, City Clerk



Marti Herrera Bower
Marti Herrera Bower, Mayor

day of July, 2012.

Allia Cardillo
Witness Signature

FOR MANAGER:
Kathie G. Brooks
Kathie G. Brooks,

Lilia Cardillo
Print Name

20 day of July, 2012.

Patricia Dece
Witness Signature

Elizabeth Damien
Print Name

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

[Signature] 7/19/12
City Attorney Date