

EMPLOYMENT AGREEMENT
BETWEEN
THE CITY OF NORTH MIAMI BEACH
AND
MARK ANTONIO

THIS EMPLOYMENT AGREEMENT made and entered into on this __ day of April 2023, by the CITY OF NORTH MIAMI BEACH, a Florida municipal corporation, hereinafter referred to as the “City” and MARK ANTONIO, herein after referred to as “Employee”.

WHEREAS, on March 21, 2023, the City Commission voted to employ the services of Mark Antonio, as the City Manager of the City North Miami Beach, Florida, as provided for in Section 3.1 of the City Charter; and

WHEREAS, it is the desire of the City Commission:

- (1) To retain the services of Employee as City Manager; and
- (2) To provide a means for terminating Employee’s services at such time that it is deemed expedient to do so by decision of either or both parties; and
- (4) To establish standards of performance for Employee to function as a guide to ensure accountability; and

WHEREAS, Employee desires to accept employment as the City Manager of the City of North Miami, Florida under the terms and conditions set forth herein.

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

Section 1. Duties.

- 1.1 The City hereby agrees to employ Employee as the City Manager of the City to

perform the functions and duties specified in the City Charter (Section 3.1.1) and Code of Ordinances of the City, and to perform other such legally permissible and proper duties and functions, consistent with the office of the City Manager, as the City Commission shall from time-to-time assign. Employee shall not engage in any outside employment during the term of this Agreement without the specific approval of the City Commission.

Section 2. Effective Date & Term.

2.1 This Agreement shall be effective March 21, 2023, and shall end on September 30, 2023 (“Term”). The Term may be extended at the will of the City Commission for successive monthly periods as mutually agreed to by the Parties. Employee acknowledges that employment with the City is on an at-will basis and that Employee serves at the pleasure of the City Commission.

2.2 Nothing in this Agreement shall prevent, limit, interfere with, or otherwise restrict the rights of the City and the City Commission to terminate the services of the Employee at any time, with or without cause or notice, subject only to the provisions set forth in Sections 4.1 and 4.2 of this Agreement.

2.3 Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Employee to resign at any time from his position with the City, subject only to the provisions set forth in Section 4.3 of this Agreement.

2.4 In the event of Employee's death, this Agreement shall automatically terminate.

Section 3. Salary.

3.1 City agrees to pay Employee for services rendered during the term of this Agreement commencing upon the Effective Date of this Agreement the sum of \$100,000.00, payable in equal installments in accordance with the City’s existing pay periods, subject to all

legally required deductions. If this Agreement is extended as provided for herein, Employee's monthly pay shall be \$16,666.66 per month payable in equal installments in accordance with the City's existing pay periods, subject to all legally required deductions.

3.2 Upon execution of this Agreement by the City, Employee shall be entitled to a one-time payment of \$15,000.00, subject to all legally required deductions.

Section 4. Termination or Resignation.

4.1 If the City Commission by majority vote terminates Employee during the Term of this Agreement, The City shall have no further financial obligation to Employee pursuant to this Agreement except for the payment of Employee's prorated salary to the effective date of the termination to be paid to Employee within forty-five (45) days of termination.

4.2 If Employee is unable to perform his duties as specified in Section 1 of this Agreement for a period of fifteen (15) consecutive days or thirty (30) non-consecutive days during the Term of this Agreement, other than an approved Family Medical Leave Act ("FMLA") absence, the City Commission may terminate this Agreement. If Employee takes FMLA-approved leave and exhausts his statutorily protected, FMLA-approved leave in any six-month period, the City Commission may terminate this Agreement.

4.3 In the event that Employee voluntarily resigns the position of City Manager during the term of this Agreement, Employee shall give the City no less than five (5) business days written notice prior to the effective date of such resignation (the Parties may mutually agree in writing to a different period). The City shall have no further financial obligation to Employee pursuant to this Agreement except for the payment of Employee's prorated salary to the effective date of the resignation to be paid to Employee within forty-five (45) days of resignation.

Section 5. Allowances and Benefits.

5.1 The City agrees to provide Employee with a City-owned vehicle at no cost to Employee and to pay for the fuel, insurance, and maintenance of said vehicle. Employee shall not allow anyone other than himself, or an individual authorized by the City Commission, to drive the City-owned vehicle, and shall immediately report to the Human Resources Director and the City Attorney any accident in which the vehicle is involved.

5.2 The City will pay for Employee's cellular telephone and laptop that shall only be used for City related purposes. If Employee uses any private digital or electronic devices to conduct City business, in accordance with applicable law, Employee is responsible for retaining and providing the City upon request all public records (as defined by applicable law) on any private digital or electronic devices. It shall be a breach of this Agreement if Employee fails to turn over all available public records to the City that are within the employee's possession pursuant to Florida State Law within fifteen (15) days of any request for said public records. The provisions of this paragraph shall survive the termination of this Agreement.

5.2 As of the Effective Date of this Agreement, City shall provide Employee a monthly stipend of \$800.00 for discretionary expenditure without the need to require receipts. Employee understand and agrees that said stipend will be treated as taxable income under applicable IRS rules and regulations, subject to all legally required deductions.

Section 6. Indemnification.

6.1 The City shall provide a legal defense, and indemnification, under the same terms and conditions as provided to the other officers and employees of the City in accordance with the requirements and provisions of the City Charter and Code of Ordinances of the City. The City shall have the right to compromise and settle any such claim or suit and pay the amount of any

such settlement or judgment rendered thereon, in its sole discretion.

6.2 The City shall bear the full cost of any fidelity or other bonds which may in the future be required of the Employee by the Charter, law, or ordinance.

6.3 Public Official's Liability Insurance - City shall provide Public Officials Liability Insurance coverage applicable for all acts or omissions of the Employee acting within the scope of his employment, subject to and as provided for in the Annual Budget and as may be otherwise provided to City Commission members, Department Heads, and based solely upon the policies of insurance held by the City from time to time.

Section 7. Other Terms and Conditions of Employment.

7.1 The City Commission, in consultation with the Employee, shall establish such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in direct conflict with the provisions of this Agreement, the City Charter, the Code of Ordinances of the City, or any other applicable law.

Section 8. Employee Cooperation and Obligations

8.1 In the event of actual or threatened litigation or administrative proceedings involving the City which arise out of the operation or actions which occurred or are alleged to have occurred while Employee performed his duties for the City, Employee will cooperate with the City and its counsel in assisting the City in every legal manner to prevail in said action.

8.2 Employee further agrees that unless required by law, he will not cooperate with or assist any party, person, or entity who has, had, or may have, or asserts that he has or may have any claim or any nature against the City, its agents, officers, employees, City Commissioners, or representatives, without the express written permission of the City Commission, or designee.

8.3 Employee shall not disclose any confidential information involving the business of the City to any person or entity without the written permission of the City Commission, or designee, unless required to do so by law.

8.4 The restrictions in this Section shall not apply in instances of governmental entities with jurisdiction over a claim of a violation of law.

8.5 The provisions of this Section shall survive the termination of this Agreement.

9. Notices.

9.1 Notices pursuant to this Agreement shall be given by deposit in the custody of the United States Postal Service, postage prepaid, return receipt requested, addressed as follows:

City: Mayor
City of North Miami Beach
17011 N.E. 19th Avenue
North Miami Beach, FL 33162

With a copy to: City Attorney
City of North Miami Beach
17011 N.E. 19th Avenue
North Miami Beach, FL 33162

Employee: Mark Antonio
Confidential and Exempt

9.2 Alternatively, notices required pursuant to this Agreement may be personally given by hand delivery or a commercially recognized overnight carrier. Notice shall be deemed given as of the date of personal service, overnight delivery, or as of the date of deposit of such written notice with the United States Postal Service addressed to the parties as stated above and to the Employee at the address on file with the City. The Parties may, by written notice to the other Party, designate any other address to which subsequent notices, certificate or other communications shall be sent.

Section 10. General Provisions.

10.1 It is understood and agreed that this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and that the parties agree that there are no commitments, agreement, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

10.2 No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by both parties.

10.3 The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

10.4 If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, illegal, invalid, or unenforceable, the remainder of this Agreement, or portions thereof, shall not be affected and shall remain in full force and effect.

10.5 The rights and obligations herein granted are personal in nature and cannot be transferred or assigned by Employee.

10.6 Florida law shall govern this Agreement and any litigation which may arise from this Agreement shall be filed and litigated in the Circuit Court in and for Miami-Dade County, Florida.

10.7 Provisions of this Agreement, which by their terms extend beyond the termination, expiration or suspension of this Agreement will survive and remain effective in accordance with their terms and to the extent necessary to the intended preservation of such rights and obligations.

10.8 The parties acknowledge that this Agreement is the result of continual and ongoing

negotiation between the parties of equal bargaining power and any ambiguities herein should not be construed against either party but should be given a fair and reasonable interpretation.

10.9 The headings or captions of Paragraphs in this Agreement are for reference only, do not define or limit the provisions of such Paragraphs and shall not affect the interpretation of such provisions.

10.10 This Agreement may be executed by facsimile signature or by other electronic means, such as electronic signature in one or more counterparts by the parties which, taken together, shall constitute one binding agreement.

10.11 Employee acknowledges that the legal counsel that prepared this Agreement is representing the City rather than Employee and that Employee has been advised to seek the advice of independent counsel. Employee acknowledges that he has had the opportunity to seek the advice of independent counsel. Employee has obtained all information necessary to make an informed decision regarding this Agreement and that any claims regarding any possible conflict of interest regarding this Agreement or its preparation are freely and voluntarily waived.

10.12 While Employee is employed by the City and thereafter, Employee shall cooperate with the City in any internal investigation or administrative, regulatory, or judicial proceeding as reasonably requested by the City. This includes, without limitation, Employee being available to the City upon reasonable notice for interviews and factual investigations, appearing at the City's request to give testimony without requiring service of subpoena or other legal process, volunteering to the City all pertinent information and turning over to the City all relevant public records, whether owned by the City or otherwise, which are or may come into Employee's possession, all at times and on schedules that are reasonably consistent with Employee's other permitted activities and commitments.

10.13 Upon Employee's death, the City's obligations under this Agreement shall terminate except for:

- a. Transfer of ownership of retirement funds, if any, to his designated beneficiaries.
- b. Payment of accrued leave balances in accordance with this Agreement to his designated beneficiaries.

10.14 The rights and obligations herein granted are personal in nature and cannot be assigned, delegated, or transferred by Employee.

10.15 In any action or proceeding to enforce or interpret the provisions of this Agreement, each Party in such action or proceeding shall bear their own attorney's fees.

10.16 Any calculation or computations required herein shall be made by the City Finance Director, subject to verification by the City Attorney. Employee shall be promptly furnished a copy of such calculations and computations.

Section 11. Waiver of Jury Trial.

BOTH THE CITY AND EMPLOYEE KNOWINGLY, VOLUNTARILY, AND IRREVOCABLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY CIVIL PROCEEDINGS THAT MAY BE INITIATED BY EITHER PARTY WITH RESPECT TO ANY TERM OR CONDITION OF THIS AGREEMENT.

IN WITNESS WHEREOF, the City of North Miami Beach, Florida, has caused this Agreement to be signed and executed on its behalf by its Mayor, and duly attested to by its City Clerk, and approved as to form by the City Attorney, and the Employee has signed and executed this Agreement, on the day and year first above written.

**CITY OF NORTH MIAMI BEACH,
FLORIDA**

EMPLOYEE

Anthony DeFillipo, Mayor

Mark Antonio

ATTEST:

Andrise Bernard, City Clerk

**APPROVED AS TO FORM AND SUFFICIENCY FOR THE
USE AND RELIANCE OF THE CITY ONLY:**

John R. Herin, Jr., City Attorney