

Temp. Reso. No. 6708
10/11/18
10/11/18

**CITY OF MIRAMAR
MIRAMAR, FLORIDA**

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF
MIRAMAR, FLORIDA, APPROVING THE EMPLOYMENT AGREEMENT
WITH VERNON E. HARGRAY TO SERVE AS THE CITY MANAGER;
AUTHORIZING THE MAYOR TO EXECUTE THE EMPLOYMENT
AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, on May 2, 2018, the City Commission approved Resolution No. 18-111, appointing Vernon E. Hargray to serve as the Interim City Manager for a term of 6 months, with an optional 3 month extension; and

WHEREAS, the City desires to appoint Mr. Hargray as the City Manager for the City; and

WHEREAS, the proposed employment agreement attached as Exhibit "A," reflects the proposed terms and conditions of Mr. Hargray's employment as the City Manager; and

WHEREAS, approval and execution of the employment agreement shall be contingent on the adoption of the ordinance amending Section 15-355(j), to allow for in-service distribution of pension benefits to the City Manager or Interim City Manager; and

WHEREAS, the City Commission deems it to be in the best interest of the citizens and residents of the City of Miramar to approve the employment agreement with Vernon E. Hargray, attached as Exhibit "A", and to authorize the Mayor to execute the employment agreement.

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**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY
OF MIRAMAR, FLORIDA, AS FOLLOWS:**

Section 1: That the foregoing “**WHEREAS**” clauses are ratified and confirmed as being true and correct and made a specific part of this Resolution.

Section 2: That the Employment Agreement Vernon E. Hargray, attached as Exhibit “A”, is approved contingent upon the adoption of the ordinance amending Section 15-355(j), to allow for in-service distribution of pension benefits to the City Manager or Interim City Manager.

Section 3: That the Mayor is authorized to execute the employment agreement, attached as Exhibit “A”, together with such non- substantial changes as are acceptable to the Mayor and approved as to form and legal sufficiency by the City Attorney.

Section 4: That the appropriate City officials are authorized to do all things necessary and expedient to carry out the aims of this Resolution.

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Section 5: That this Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this _____ day of _____, _____.

Mayor, Wayne M. Messam

Vice Mayor, Yvette Colbourne

ATTEST:

City Clerk, Denise A. Gibbs

I HEREBY CERTIFY that I have
approved this RESOLUTION
as to form:

City Attorney
Weiss Serota Helfman
Cole & Bierman, P.L.

Requested by Administration

Commissioner Winston F. Barnes
Commissioner Maxwell B. Chambers
Vice Mayor Yvette Colbourne
Commissioner Darline B. Riggs
Mayor Wayne M. Messam

Voted

eso. No. _____

EXHIBIT "A"

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (hereinafter referred to as "Agreement"), is by and between the City of Miramar, Florida, a subdivision of the State of Florida (hereinafter referred to as "City"), and Vernon E. Hargray (hereinafter referred to by name or as "City Manager").

WITNESSETH:

WHEREAS, the City desires to employ Vernon E. Hargray as City Manager of the City of Miramar; Florida, as provided for in Article 3.2 of the City Charter of the City of Miramar; and

WHEREAS, the City, through its City Commission, desires to provide for certain benefits and compensation for the City Manager and to establish conditions of employment applicable to the City Manager; and

WHEREAS, Vernon E. Hargray desires to accept employment as City Manager of the City of Miramar under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises as set forth in this Agreement, the parties agree as follows:

Section 1. Employment.

A. The City of Miramar hereby hires and appoints Vernon E. Hargray as its City Manager, under the terms established herein, to perform the duties and functions specified in the City's Charter and the City Code of Ordinances and to perform such other legally permissible and proper duties and functions as the City Commission shall from time to time assign.

B. The City's employment of Vernon E. Hargray as City Manager shall be effective the last date this Agreement is executed by either of the parties. This Agreement shall remain in effect for three (3) years, unless terminated as provided herein.

Section 2. Salary and Evaluation.

A. For the performance of services pursuant to this Agreement, the City agrees to pay the City Manager an annual base salary of \$225,000.00, payable in installments at the same time as other City employees are paid.

B. The City may increase said base salary and/or other benefits of the City Manager in such amounts and to such an extent as the City Commission may determine desirable on the basis of an annual performance evaluation of the City Manager. Such evaluation shall be in such form, as the Commission deems appropriate and shall be made in October of each year in which this Agreement is effective.

C. Nothing in this Section shall require the City to increase the base salary or other benefits of the City Manager. Furthermore, the City's failure to conduct any of the scheduled evaluations shall not constitute non-compliance with a material provision of this Agreement.

Section 3. Duties and Obligations.

A. The City Manager shall have the duties, responsibilities, and powers of said office under the Charter and Ordinances of the City of Miramar. The City Manager agrees to perform all duties and responsibilities faithfully, industriously, and to the best of his ability and in a professional and competent manner.

B. The City Manager shall remain in the exclusive employ of the City and shall devote all such, time, attention, knowledge, and skills necessary to faithfully perform his duties under this Agreement. The City Manager may, however, engage in educational and professional activities and other employment activities, provided that such activities shall not interfere with his primary obligation to the City as its City Manager. The City Manager shall dedicate no less than an average of forty (40) hours per week in the performance of his duties hereunder.

C. In the event the City Manager shall serve on any appointed boards or elected boards of any professional organization, or serve on any committees related to his professional activities, in the event any monies are paid, or gifts received by the City Manager related to such service, such money or property shall be paid over to or delivered to the City.

D. In the event the City Manager is temporarily unable to perform his duties, he shall designate an Acting City Manager.

Section 4. Automobile.

The City Manager is required to be on call for twenty-four hour service. In recognition thereof, the City shall provide the City Manager with the use of an automobile and shall also pay to maintain and insure said vehicle. The City Manager may take the vehicle home and may use the vehicle for personal use.

Section 5. Benefits.

The City Manager shall receive the same benefits as the City's Department Directors, unless otherwise provided herein, as of the effective date of this Agreement, as set forth in Exhibit "A." The City Manager will receive 160 hours of position basis leave and shall be entitled to a cost of living adjustment, as approved by the Comprehensive Pay Plan. The City Manager shall receive life insurance coverage in an amount of three times his salary, up to a maximum of \$675,000. The City shall make long term care insurance available during the City Manager's tenure with the City, with 100% of the cost covered by the City. This will be transferable to the City Manager upon separation of his employment, at which time any continuation of this benefit will be at the City Manager's expense.

Section 6. Retirement and Deferred Compensation.

The City Manager shall be eligible to receive normal monthly pension retirement benefits. In addition, the City shall make a contribution of twenty-five percent (25%) of the City Manager's base salary into a Retirement Health Savings (RHS) account, and another twenty-five percent (24%) into an authorized 457 deferred compensation plan.

Section 7. Dues and Subscriptions.

The City agrees to pay the City Manager's professional dues for membership in the International City/County Management Association, the Florida City and City Management Association, and the National Forum of Black Public Administrators. The City shall pay other dues and subscriptions on behalf of the City Manager as are approved in the City's annual budget (on a line item basis).

Section 8. Professional Development.

The City agrees to pay reasonable and customary travel and subsistence expenses for the City Manager's travel to and attendance at the International City/County Management Association's annual conference, the Florida City and City Management Association's annual conference, the Florida Association of Counties' annual conference, the National Forum of Black Public Administrators and other forums for public administrators. The City shall pay for the City Manager's attendance at other seminars, conferences, and committee meetings as it deems appropriate.

Section 9. Community Involvement.

The City recognizes the desirability of representation in and before local civic and other organizations, and encourages the City Manager to participate in these organizations to foster a continuing awareness of the City's activities as well as the community's attitudes and ideas.

Section 10. Vacation and Sick Leave.

The City Manager shall earn four weeks' vacation leave annually. Sick leave, accrual, and pay-out of accumulated leave shall be governed by the same policies as those that govern other City Department Directors.

Section 11. Holidays.

The City Manager is entitled to the same paid holidays as the general City staff.

Section 12. Termination by the City and Severance Pay.

A. The City Manager shall serve at the pleasure of the City Commission, and the City Commission may terminate this Agreement and the City Manager's employment with the City as provided in Section 3.2 of the City Charter.

B. In the event the City Commission terminates this Agreement for any reason other than misconduct as defined in Section 443.036(30), Florida Statutes, the City Manager shall receive any accrued and unpaid salary and benefits earned prior to the date of termination, within 10 business days of the vote to terminate, based on a forty (40) hour work week. Additionally, the City Manager shall receive a lump-sum severance payment from the City equal to 20 weeks of his base salary, within 45 days of the vote to terminate, as full and complete satisfaction of any claims of the City Manager of any nature arising out of this Agreement or otherwise.

C. In the event the City Manager is terminated for misconduct, as defined in Section 443.036(30), Florida Statutes, that took place before or during his employment with the City, the City Manager shall not receive any severance pay from the City or any other amounts outlined in Section 12(B) above.

Section 13. Termination by the City Manager.

The City Manager may terminate this Agreement at any time by delivering to the City Commission a written notice of termination not later than sixty (60) days prior to the effective date of the termination. If the City Manager terminates this Agreement, then the provisions of Section 12(B) above, shall not apply. If the City Manager voluntarily resigns pursuant to this Section, the City shall pay to the City Manager all accrued compensation due the City Manager up to the City Manager's final day of employment, including any accrued personal time off. The City shall have no further financial obligation to the City Manager pursuant to this Agreement. This subsection shall not prevent the City Manager from collecting any money earned as a result of participation in the City's deferred retirement program.

Section 14. Disability.

If the City Manager becomes permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity, or health for a period of four consecutive weeks beyond any accrued leave, the City shall have the option to terminate this Agreement, subject to the severance pay provision outlined in Section 12(B) of this Agreement.

Section 15. Indemnification.

A. The City shall defend, save harmless, and indemnify the City Manager against any action for any injury or damage suffered as a result of any act, event, or omission of action that the City Manager reasonably believes to be in the scope of his duties or function, unless he acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The City will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. The City shall not be liable for the acts or omissions of the City Manager committed while acting outside the course and scope of his agreed duties or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. In such instance, the City Manager shall reimburse the City for any legal fees and expenses the City has incurred or otherwise paid, for or on his behalf, in connection with the charged conduct.

B. Said indemnification shall extend beyond the termination of employment and the expiration of this Agreement to provide protection for any such acts undertaken or committed in his capacity as City Manager, regardless of whether the notice of claim or filing of a lawsuit occurs during or following employment with the City.

Section 16. Bonding.

The City agrees to bear the full cost of any fidelity or other bonds required of the City Manager under any policy, regulation, ordinance, or law.

Section 17. Code of Ethics.

Inasmuch as the City Manager is an active full member of the International City/County Management Association ("ICMA"), the "Code of Ethics" promulgated by ICMA is incorporated herein, and by this reference made a part hereof. Said "Code of Ethics" shall furnish principles to govern the City Manager's conduct and actions as City Manager of the City.

Section 18. Notices.

The notices sent to any person pursuant to this Agreement shall be in writing and transmitted by messenger, certified mail, return receipt requested, facsimile or telegram, and shall be mailed or delivered as follows:

As to City:

Mayor
City of Miramar
2300 Civic Center Place Miramar, FL 33025
Telephone: (954) 602-3150
Facsimile: (954) 602-3583

With a Copy to:

Jamie Alan Cole, City Attorney
Weiss Serota Helfman Cole & Bierman, P,L.
200 East Broward Boulevard, Suite 1900 Fort Lauderdale, FL 33301
Telephone: (954) 763-4242
Facsimile: (954) 764-7770

As to City Manager:

Vernon E. Hargray
12573 SW 22th Street
Miramar, FL 33027
Telephone: (954) 602-3115
Facsimile: (954) 602-3672

Any of the foregoing parties may, by Notice in writing given to the other, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand or facsimile transmission or three days after the date mailed.

Section 19. General Terms and Conditions.

A. If any provision, or any portion thereof, contained in this Agreement is held by a court of competent jurisdiction to be unconstitutional, illegal, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect

B. 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.

C. This Agreement shall be binding upon and inure to the benefit of the heirs at law or personal representative of City Manager;

D. This Agreement contains the entire Agreement of the parties. It may not be changed verbally, but only by an Agreement in writing signed by the parties.

E. Florida law shall govern this Agreement and any litigation that may arise from this Agreement, shall be filed and litigated in Broward County, Florida.

F. Upon City Manager's death, the City's obligations under this Agreement shall terminate except for:

1. Transfer of ownership of retirement funds, if any, to his designated beneficiaries;
2. Payment of accrued leave balances in accordance with this Agreement;
3. Payment of all outstanding hospitalization, medical, and dental bills in accordance with City's insurance policies or plans; and
4. Payment of all life insurance benefits in accordance with the City's insurance policies or plans.

G. The parties acknowledge that each has shared equally in the drafting and preparation of this Agreement and accordingly, no court construing this Agreement shall construe it more strictly against one party than the other and every covenant, term, and provision of this Agreement shall be construed simply according to its fair meaning.

H. This Agreement may be executed in duplicate or counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. No term, condition, or covenant of this Agreement shall be binding on either party until both parties have signed it.

I. The effective date of this Agreement shall be the last date it is executed by either of the parties to this Agreement.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement on the respective dates under each signature: THE CITY OF MIRAMAR, through its City Commission, signing by and through the Mayor, duly authorized to execute this Agreement pursuant to City Commission Action on _____, 2018, and VERNON E. HARGRAY, duly authorized to execute this Agreement.

CITY OF MIRAMAR, a Florida municipal corporation

Attest:

Denise A. Gibbs, City Clerk

By: _____
Wayne M. Messam, Mayor

Date: ____ day of _____, 20__

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY FOR THE USE OF AND
RELIANCE BY THE CITY OF MIRAMAR
ONLY:

By: _____
City Attorney
Weiss Serota Helfman Cole & Bierman, P.L.

EXHIBIT "A" BENEFITS

- Health insurance (employee portion shall be paid at \$15 per pay period while the City will pick up the remaining portion of the employee premium) (dependent portion paid at 50%) regardless of whether POS or HMO is selected.
- Dental insurance (employee portion paid at 100%) (dependent portion paid at 50%) regardless of whether PPO or HMO is selected.
- Accidental Death & Dismemberment (the City provides Accidental Death & Dismemberment coverage at no cost to the employee in addition to life insurance).
- Long Term Disability Insurance (the City pays for \$1,000 family benefit).
- Supplemental Insurance Coverage available by payroll deduction for the following voluntary products: Short Term Disability, Secure Life Whole Life Insurance, Cancer Plus, Critical Illness Plan, Accident Plan, Hospital Indemnity and Legal Assistance.
- Non-smoker benefit for additional life insurance, plus additional accidental death & dismemberment in the amount of \$20,000.
- Cellular phone or cellular phone allowance, internet allowance and data allowance.