

Temp. Reso. No. 7529  
10/6/21  
10/6/21

**CITY OF MIRAMAR  
MIRAMAR, FLORIDA**

**RESOLUTION NO. \_\_\_\_\_**

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

**WHEREAS**, the City Commission desires to appoint Whittingham Gordon 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. Whittingham's employment as the 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  
Whittingham Gordon, attached as Exhibit "A" and to authorize the Mayor to execute the  
Employment Agreement.

**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.

Reso. No. \_\_\_\_\_

Temp. Reso. No. 7529  
10/6/21  
10/6/21

**Section 2:** That the Employment Agreement with Whittingham Gordon, attached as Exhibit "A", is approved.

**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 Whittingham Gordon and the Mayor and approved as to the 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.

Temp. Reso. No. 7529  
10/6/21  
10/6/21

**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,  
Austin Pamies Norris Weeks Powell, PLLC

**Requested by Administration**

Commissioner Winston F. Barnes  
Commissioner Maxwell B. Chambers  
Vice Mayor Yvette Colbourne  
Commissioner Alexandra P. Davis  
Mayor Wayne M. Messam

**Voted**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Reso. No. \_\_\_\_\_

## **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 Whittingham O. Gordon (referred to herein after as "Gordon" or "City Manager").

### **WITNESSETH:**

**WHEREAS**, the City desires to employ Gordon as the City Manager of the City, 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 Gordon and to establish conditions of employment applicable to the City Manager; and

**WHEREAS**, the City Commission recognizes that Gordon has provided over 26 years of loyal service to the City and during that time has accumulated certain employment benefits, and the Commission and Gordon agree that Gordon shall retain those benefits; and

**WHEREAS**, Gordon desires to accept employment as the City Manager of the City under the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual promises as set forth in this Agreement, the City and Gordon agree as follows:

### **Section 1. Employment.**

A. The City hires and appoints Gordon 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 Gordon as City Manager shall be effective on November 6, 2021. This Agreement shall remain in effect for four (4) 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 Two Hundred Seventy Thousand Dollars (\$270,000.00), payable in installments at the same time as other City employees are paid.

B. The City Manager will receive a Cost Of Living Adjustments ("COLA") equal to those provided annually to non-represented employees, as authorized by the City Commission in the annual Comprehensive Pay Plan.

C. The City may increase Gordon's base salary and/or other benefits in such amounts

and to such an extent as the City Commission may determine desirable on the basis of an annual performance evaluation. Such evaluation shall be in such form, as the Commission deems appropriate, and shall be due in October of each year in which this Agreement is effective.

D. Nothing beyond what is provided for in this Section and in Exhibit "A", shall require the City to increase Gordon's base salary or other benefits. 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. Gordon shall have the duties, responsibilities, and powers of the City Manager under the City Charter and Code of Ordinances. Gordon agrees to perform all duties and responsibilities faithfully, industriously, and to the best of his ability and in a professional and competent manner.

B. Gordon 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. Gordon may, however, engage in educational and professional activities and other similar 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 Gordon is temporarily unable to perform his duties, he shall designate an Acting City Manager.

### **Section 4. Automobile.**

Gordon's duties, as City Manager, will require that he use his personally owned automobile for City business. City agrees to pay Gordon, during the term of this Agreement, and in addition to his Annual Base Salary and benefits herein provided, the sum of Six Hundred Dollars (\$600.00) per month as a taxable car allowance, payable with and not otherwise segregated from Gordon's periodic compensation payments. Gordon shall acquire and maintain an automobile during the term of this Agreement. Gordon shall be responsible for paying for liability, property damage and comprehensive insurance coverage upon such automobile and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said automobile.

### **Section 5. Cellular Phone and Electronic Equipment.**

Gordon will be provided with a cell phone allowance, electronic equipment, and services necessary to perform his duties, equal to the allowance provided to the City's other senior management and executive staff, as described in Exhibit "A".

## **Section 6. Benefits.**

Gordon 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"; and at no time during the term of this Agreement will those benefits be reduced below what is provided for in this Agreement and its Exhibit(s), at the time of the execution of this Agreement.

## **Section 7. Retirement and Deferred Compensation.**

The City shall make the maximum contribution allowed by the Internal Revenue Service ("IRS") into an authorized 457 Deferred Compensation Plan. Said amount will be contributed such that it does not exceed the maximum allowed by IRS regulations, until the full amount is funded in equal proportionate amounts each pay period.

A. Upon separation of employment with the City, Gordon Manager shall be authorized to receive 100% coverage for himself and his eligible dependents on the City's employee sponsored HMO or PPO health insurance coverage for active employees, on a basis of one year (twelve months) of such subsidy for every 2.5 years of service with the City, or portion thereof; provided, however, that such coverage will cease if and when Gordon obtains other employment that provides him with health insurance and/or begins coverage under Medicare, whichever comes first.

C. At any time following the effective date of this Agreement, Gordon may elect to enter a deferred retirement option plan (the "DROP"). The DROP will receive all retirement payments due Gordon and will continue to be deposited during the term of the Agreement.

## **Section 8. Dues and Subscriptions.**

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

## **Section 9. Professional Development.**

The City agrees to pay reasonable and customary travel and subsistence expenses for Gordon's travel to and attendance at the International City/County Management Association's annual conference, the Florida City and County 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 Gordon's attendance at other seminars, conferences, and committee meetings as it deems appropriate.

## **Section 10. Community Involvement.**

The City recognizes the desirability of representation in and before local civic and other

organizations, and encourages its 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 11. Vacation and Sick Leave.**

Gordon shall earn five (5) weeks' vacation leave annually. Sick leave, accrual, and pay-out of accumulated leave shall be governed by the same policies as those that govern the Deputy City Manager, Assistant City Managers, and City Department Directors.

#### **Section 12. Holidays.**

Gordon shall be entitled to the same paid holidays as the general City staff.

#### **Section 13. Termination by the City and Severance Pay.**

A. The City Manager serves at the pleasure of the City Commission, and the City Commission may terminate this Agreement and Gordon'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 ("severance pay"), 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 Gordon 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.

D. Regardless of the reason for Gordons' termination, Gordon shall retain all benefits earned or accrued during the term of this Agreement and prior to becoming City Manager.

#### **Section 14. Termination by the City Manager.**

Gordon 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 unless the parties agree in writing to a different period of time. If Gordon terminates this Agreement, then the severance pay provisions of Section 13(B) above, shall not apply. If Gordon voluntarily resigns pursuant to this Section, the City shall pay Gordon all accrued compensation due to him up to his final day of employment, including any accrued personal time off, calculated at the rate of pay in effect upon the date of termination. The City shall have no further financial obligation to Gordon pursuant to this Agreement. This subsection shall not prevent the Gordon from collecting any money earned as a result of participation in the City's deferred retirement program.

## **Section 15. Disability.**

If Gordon 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 13(B) of this Agreement.

## **Section 16. Indemnification.**

A. The City shall defend, save harmless, and indemnify Gordon against any action for any injury or damage suffered as a result of any act, event, or omission of action that he 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 Gordon's acts or omissions 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, Gordon 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 Gordon's capacity as City Manager, regardless of whether the notice of claim or filing of a lawsuit occurs during or following his employment with the City.

## **Section 17. 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 18. Code of Ethics.**

Inasmuch as the Gordon 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 Gordon's conduct and actions as City Manager of the City.

## **Section 19. 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:

Miramar City Attorney  
Austin Pamies Norris Weeks Powell PLLC  
401 North Avenue of the Arts (NW 7<sup>th</sup> Avenue)  
Fort Lauderdale, Florida 33311  
Telephone: (954) 768-9770

As to City Manager:

Whittingham O. Gordon  
8618 S. Lexington Drive  
Miramar, FL 33025  
Telephone: (954) 602-3120  
Facsimile: (954) 602-3568

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 20. 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 Gordon's heirs at law or personal representative.

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 Gordon's death, the City's obligations under this Agreement shall terminate

except for:

1. Transfer of ownership of retirement funds, if any, to Gordon's designated beneficiaries; and
2. Payment of accrued leave balances in accordance with this Agreement; and
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 \_\_\_\_\_, 2021, and WHITTINGHAM O. GORDON, 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,  
Austin Pamies Norris Weeks Powell PLLC

## **EXHIBIT "A" BENEFITS**

- Comprehensive medical insurance shall be provided at a cost to Gordon of \$15 per pay period for single coverage. The City will fund the remaining applicable premium. Dependent coverage is available and paid by the City at a level of 50%. Medical plan options include HMO, POS and HDHP.
- Dental insurance shall be provided at no cost to Gordon for single coverage. Dependent coverage is available and paid by the City at a level of 50%. Dental plan options include an HMO and PPO.
- Long Term Disability Insurance coverage at 100% coverage provided by the City.
- The City shall provide Long Term Care coverage to the City Manager
- 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.
- Gordon will receive 160 hours of position basis leave annually which Gordon will have the option to convert to cash.
- Annual cost-of-living adjustment equal to the amount approved in the annual Comprehensive Pay Plan.
- Gordon shall receive a City-paid life insurance package which includes basic life coverage in an amount of one and a half times his salary up to a maximum of \$675,000. A non-smoker benefit provided upon submittal of a non-smoker affidavit which increases the value by an additional \$20,000. Accidental Death and Dismemberment insurance equal to the full value of the life insurance coverage will also be included. Life insurance benefits can be converted by the City Manager upon separation of his employment, at which time any continuation of this benefit will be at the City Manager's expense.
- Cellular phone or cellular phone allowance, internet allowance, data allowance, and electronic equipment.
- All other benefits afforded to employees covered by the annual Comprehensive Pay Plan.