

RESOLUTION NO. 09- 711

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, APPROVING THE EMPLOYMENT AGREEMENT BETWEEN FRANK BOCANEGRA AND THE TOWN OF MIAMI LAKES; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Charter of the Town of Miami Lakes (the "Town") provides for a Town Manager to act as the Chief Administrative Officer of the Town; and

WHEREAS, the Town Council desires to employ Frank Bocanegra as the Town Manager.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing Recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Agreement. The Employment Agreement between Frank Bocanegra and the Town of Miami Lakes to serve as the Town Manager, attached as Exhibit "A," is approved.

Section 3. Execution of Agreement. The Mayor is authorized to execute the Agreement on behalf of the Town, subject to any changes to the Agreement directed by the Town Council and as may be acceptable to Mr. Bocanegra, subject to approval by the Town Attorney as to form and legality.

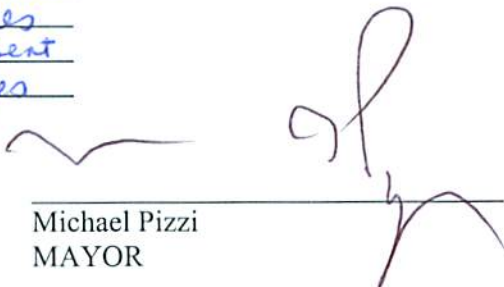
Section 4. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 12th day of January, 2009.

Motion to adopt by Marcy Collins, second by George Lopez.

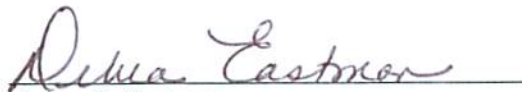
FINAL VOTE AT ADOPTION

Mayor Michael Pizzi	<u>yes</u>
Vice Mayor Richard Pulido	<u>absent</u>
Councilmember Mary Collins	<u>yes</u>
Councilmember Robert Meador II	<u>absent</u>
Councilmember Nicolas Perdomo	<u>yes</u>
Councilmember Nancy Simon	<u>absent</u>
Councilmember George Lopez	<u>yes</u>



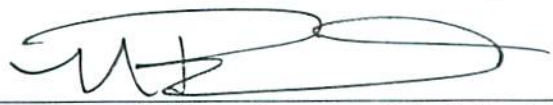
Michael Pizzi
MAYOR

ATTEST:



Debra E. Eastman
TOWN CLERK

Approved as to form and legality for the use
and benefit of the Town of Miami Lakes only:



Weiss, Serota, Helfman, Pastoriza, Cole & Boniske, P.L.
TOWN ATTORNEY

EMPLOYMENT AGREEMENT
TOWN MANAGER

This Employment Agreement (the "Agreement") is made and entered into this 12 day of January, 2009, between the Town of Miami Lakes, Florida, a Florida municipal corporation, (the "Town") and Frank Bocanegra ("Bocanegra" or "Town Manager").

RECITALS:

WHEREAS, Article III, 3.16, of the Town Charter (the "Charter") requires that there shall be a Town Manager, who shall be the Chief Administrative Officer of the Town; and

WHEREAS, the Town desires to employ the services of Bocanegra as Town Manager and Bocanegra wishes to accept this employment.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement the parties agree as follows:

Section 1. Duties.

1.1 The Town Manager shall have all powers and perform all duties and responsibilities required by this Agreement, prescribed in the Charter and applicable sections of the Town Code.

1.2 The Town Manager shall carry out the policy directives of the Town Council including implementation of the Town's Strategic Plan.

1.3 The Town Manager shall provide the Town Council with a monthly report, which shall include a list of directives from the Town Council and the status of achievement of the same.

1.4 The Town Manager shall perform such other duties as may be assigned by the Town Council from time to time.

Section 2. Salary.

2.1 The Town Manager shall receive an initial annual salary in the amount of \$165,000.00 payable in equal bi-weekly installments. This salary shall be adjusted by the Town Council as specified in Section 3 of the Agreement.

2.2 On each anniversary date, the Town Manager shall receive a cost of living increase in salary equal to the percentage increase in the Consumer Price Index for the Miami Area, all categories, or four percent (4%), whichever is less.

2.3 For purposes of this Agreement, the Town Manager's anniversary date shall be February 1 of each year.

2.4 Upon commencement of the Term of this Agreement, the Town Manager shall receive a one-time payment of \$2,500.00.

Section 3. Performance Evaluations.

3.1 The Town Council shall evaluate the performance of the Town Manager after the first 180 days of the Term of this Agreement based upon the criteria listed in Section 3.3. If the Town Manager receives a positive evaluation from the Town Council on all three (3) performance measures specified in Section 3.3, the Town Manager's salary shall be adjusted to \$176,413.60 starting on the 181st day of the Term and the Town Manager shall additionally receive a bonus of five percent (5%). If the Town Manager receives a negative evaluation, the Town Manager shall receive neither a salary adjustment or a bonus.

3.2 In addition to the evaluation specified in Section 3.1, the Town Council shall evaluate the performance of the Town Manager at least once annually within 30 days of the Town Manager's anniversary date. Based upon the results of the annual evaluation, the Town Council may, in its sole discretion, grant a salary increase and/or grant additional benefits to the Town Manager.

3.3 The evaluations specified in Sections 3.1 and 3.2 shall be based upon (i) the Town Manager's performance of the duties specified in Section 1 and (ii) the Town Manager's achievements of the Town Council's policy directives. Notwithstanding the foregoing sentence, the evaluation specified in Section 3.1 shall additionally include consideration by the Town Council of any demonstrated budgetary cost savings to the Town incorporated by the Town Manager through the consolidation of positions. Within the first 30 days of this Agreement, the Town Council shall, with the assistance of the Town Manager, create written quantitative standards and measures upon which to evaluate the performance of the Town Manager.

3.4 Should the Town Manager negotiate a contract with Miami-Dade County Police Department for Local Patrol services that provides a budgetary savings of command services of at least \$100,000.00 per year without a reduction in patrol/line services and requires the Town Manager to provide additional oversight, the Town Manager shall receive an additional salary of \$14,000.00 per year coinciding with the term of the Local Patrol contract.

Section 4. Deferred Compensation/Retirement Benefits.

4.1 The Town shall make a contribution into a deferred compensation program as may be designated by the Town Manager, in an amount equal to 15% of the Town Manager's salary (the "Retirement Contribution"). The Retirement Contribution shall be made in payments coinciding with each salary payment to the Town Manager. The Town shall transfer ownership of its interest in the program to succeeding employers upon Town Manager's resignation or termination. Town Manager shall not be required to contribute to any retirement or deferred compensation fund.

Section 5. Professional Dues and Expenses.

5.1 The Town shall pay for all reasonable and customary professional dues and subscriptions necessary for Town Manager's participation in municipal associations and organizations, as approved in the Town's annual budget.

5.2 The Town shall pay for the Town Manager's participation in those local civic and non-profit job-affiliated organizations that the Town Manager is directed to participate in by the Town Council.

5.3 The Town shall provide the Town Manager with a \$400.00 per month stipend for expenses.

Section 6. Automobile.

6.1 During the term of this Agreement, the Town shall provide to the Town Manager an automobile for his exclusive use and shall pay all expenses related to the operation of said vehicle.

6.2 In lieu of providing the Town Manager with an automobile as specified in Section 6.1, the Town Council may provide the Town Manager with a monthly automobile allowance of \$750.00.

Section 7. Insurance Benefits.

7.1 At the election of the Town Manager, the Town shall either provide at the Town's expense, a policy for hospitalization, major medical, and dental insurance for the Town Manager, and his spouse ("Insurance Benefits") or provide the Town Manager with the cash equivalent of the cost of providing the Insurance Benefits.

7.2 The Town shall purchase a term life insurance policy for Town Manager in the amount equal to 100% of one year's salary. The Town Manager shall designate the beneficiary of such policy.

7.3 The Town shall purchase disability coverage for the Town Manager. ("Disability Benefits")

Section 8. Annual Leave, Sick Leave and Holidays.

8.1. The Town Manager shall annually receive a total of 20 days of vacation leave. Such leave shall accrue equally per pay period. Notwithstanding the preceding sentence, the Town Manager shall immediately accrue 10 days of the first year's vacation leave to coincide with the Start Date of the Town Manager's services.

8.2. The Town Manager shall annually receive a total of 12 days of sick/personal leave. Such leave shall accrue equally per pay period. On October 1 of each year, the Town Manager may

elect to receive payment for the cash value of any unused accrued sick/personal leave as of September 30 of that year, which shall be paid at the Town Manager's salary rate in effect on September 30 of that year. Unused accrued sick/personal leave not cashed out shall be carried over into the following fiscal year.

8.3. The Town Manager shall not use more than seven (7) consecutive days of vacation leave without prior approval of the Town Council. On October 1 of each year, the Town shall make payment to the Town Manager for the cash value of any unused accrued vacation leave as of September 30 of that year, which shall be paid at the Town Manager's salary rate in effect on September 30 of that year. No vacation leave shall be carried over into the following fiscal year.

8.4. The Town Manager shall be entitled to such holidays as are recognized by the Town.

8.5. In the event that the Town Manager provides services to the Town prior to the Start Date specified in 15.1, the Town Manager shall be credited additional vacation leave for each day worked in recognition for working in an uncompensated status.

8.6. As used in this Section, the word day shall mean business day.

Section 9. Travel.

9.1 The Town shall pay for the reasonable and customary travel expenses of Town Manager for meetings and seminars as annually budgeted by the Town Council or as may be directed by the Town Council.

Section 10. Equipment.

10.1 The Town shall provide the Town Manager with the use of electronic equipment necessary for the Town Manager to make himself available to perform his duties. Such equipment shall include those items necessary for the Town Manager utilize the Town's computer network at all times and maintain communication with the Town's residents, Town Council and staff at all times.

Section 11. Days.

11.1 Unless otherwise specified, any reference to days in this Agreement shall mean calendar days.

Section 12. Bonds.

12.1 The Town shall pay for the cost of any bonds for the Town Manager required pursuant to Section 3.5 of the Charter.

Section 13. Reduction of Compensation.

13.1 The Town Council shall not at any time during the term of this Agreement reduce the salary or benefits provided to the Town Manager below the levels provided for in this Agreement.

Section 14. Employment Exclusive.

14.1 The Town Manager shall remain in the exclusive employ of the Town and shall not accept any other employment during the term of this Agreement without the prior approval of the Town Council, except for the teaching of professional education courses.

Section 15. Term.

15.1 This Agreement shall commence on February 1, 2009 (the "Start Date") and continue through January 30, 2014 (the "Term"), unless terminated earlier as provided in this Agreement.

15.2 180 days prior to the expiration of the Term of this Agreement, the Town Council and the Town Manager shall meet to discuss the renegotiation or renewal of this Agreement if requested by either party. Such negotiations or renewal shall be completed no later than 90 days prior to the expiration of the Term. If after such negotiations the Term has not been renewed, the Town Manager may voluntarily resign during the last 90 days of the Term by providing 15 days advance written notice to the Town. A resignation under this Section shall be considered a resignation under the terms of Section 16.6 of this Agreement.

Section 16. Termination.

16.1 In accordance with the Charter, the Town Manager shall serve at the pleasure of the Town Council. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Town Council to terminate the services of the Town Manager at any time.

16.2 In the event the Town Council wishes to terminate Town Manager, it shall do so in accordance with the provisions of Section 3.2 of the Charter.

16.3 In the event the Town Manager is terminated without cause prior to the expiration of the Term specified in Section 15.1, the Town Manager shall receive 52 weeks severance payment. For purposes of this Section, "severance payment" shall be based upon the salary specified in Section 2.1 as of the termination date, plus accrued and unused vacation and sick/personal leave. All severance payments shall be paid to Town Manager in a lump sum upon his termination or within thirty (30) days thereafter at the Town Council's option.

16.4 Notwithstanding the provisions of Section 16.3, in the event Town Manager is terminated for cause, the Town shall have no obligation to pay Town Manager any severance pay. For the purposes of this Section "for cause" shall be defined as: (i) breach of any material term or

condition of this Agreement, (ii) violation of any applicable State or Federal laws or County or municipal codes, (iii) misconduct, (iv) insubordination, or (v) neglect of duty.

16.5 Upon payment of the severance payment specified in Section 16.3, or upon termination as provided for in Sections 16.4 or 16.8, the Town shall have no further financial obligations to Town Manager. The severance pay shall constitute agreed, stipulated, and liquidated damages and constitute the maximum amount of financial liability for which the Town may be liable in the event of termination or breach of contract.

16.6 In the event that the Town Manager voluntarily resigns during the Term of this Agreement, the Town Manager shall provide the Town with 60 days advance written notice, unless the parties agree in writing to a different period of time. In the event of resignation by the Town Manager under this Section, the Town Manager shall not be entitled to receive the severance package specified in Section 16.3, but the Town shall pay the Town Manager all accrued sick/personal and vacation leave calculated at the Town Manager's rate of pay in effect upon the date of termination.

16.7 In the event that the Town Manager voluntarily resigns with less than 60 days advance written notice, the Town Manager shall not be entitled to receive the severance package specified in Section 16.3 nor shall the Town Manager receive payment of any accrued sick or vacation leave, except as provided in Section 15.2.

16.8 If the Town Manager is unable to perform his duties as specified in Section 1 of this Agreement due to disability, sickness, accident, injury or death, as certified by a physician, this Agreement shall be deemed terminated. If the Agreement is terminated under this Section, the severance payment specified in Section 16.3 shall not be applicable, however, the Town Manager's designated beneficiary shall be paid all accrued unused vacation and sick leave.

Section 17. Conflict of Interest Prohibition.

17.1 Town Manager shall not without the express prior approval of the Town Council, individually, as a partner, joint venturer, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the Town, except for stock ownership in any company whose capital stock is publicly held and regularly traded.

17.2 The Town Manager shall abide by the provisions of Chapter 112, Florida Statutes and the Miami-Dade County Code of Ethics pertaining to public employees.

Section 18. Miscellaneous Provisions.

18.1 **Complete Agreement.** 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.

18.2 Amendment. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and with equal dignity herewith.

18.3 Severability. 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 portion thereof, shall not be affected and shall remain in full force and effect.

18.4 No Waiver. 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.

18.5 Non-Assignment. The rights and obligations herein granted are personal in nature and cannot be transferred or assigned by the Town Manager. Notwithstanding the foregoing sentence, the Town Manager may at any time during the Term of this Agreement assign the Agreement to a corporation or partnership wholly owned by the Town Manager.

18.6 Governing Law. Florida law shall govern this Agreement and any litigation which may arise from this Agreement shall be filed and litigated in Miami-Dade County, Florida.

18.7 Waiver of Jury Trial. Both the Town and the Town Manager 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.

18.8 Notice. Notice to either party shall be deemed given if sent by certified mail, return receipt requested, by recognized public or private postal facilities, by hand delivery or delivered at a Town Council meeting. Notice shall be sent as follows:

For the Town:

Michael Pizzi, Mayor
Town of Miami Lakes
15700 N.W. 67th Avenue
Miami Lakes, FL 33014
Telephone: (305) 364-6100
Facsimile: (305) 558-8511

With a copy to:

Nina Boniske, Town Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, FL 33134
Telephone: (305) 854-0800
Facsimile: (305) 854-2323

For the Town Manager: Frank Bocanegra, Town Manager
15700 N.W. 67th Avenue
Miami Lakes, FL 33014

IN WITNESS WHEREOF, the Town, by signature of the Mayor as authorized by Resolution No. _____ adopted January 12, 2009, and Town Manager have signed and executed this Agreement the day and year first above written.

Town of Miami Lakes

Attest:

By: 

Michael Pizzi, Mayor

Debra Eastman, MMC Town Clerk

Approved as to form and legal sufficiency:

Weiss Serota Helfman Pastoriza Cole
& Boniske, P.L.
Town Attorney

Town Manager

Frank Bocanegra

Date: _____