

1 updates as provided on the attached Employment Agreement, included
2 herewith as Exhibit A.

3

4 **Section 3.** This Resolution shall take effect immediately upon
5 approval.

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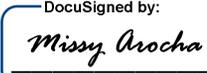
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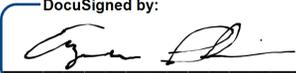
8 **PASSED and ADOPTED** this 5th day of February, 2018.

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12 Attest: 
13 6EFC241E5E8C48C...
14 Missy Arocha
15 Village Clerk


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Eugene Flinn
Mayor

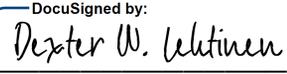
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18 **APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE**
19 **USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY,**
20 **FLORIDA ONLY:**

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22

23 
24 1B1D06E71321445...
25 Dexter W. Lehtinen
26 Village Attorney

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28

29 **FINAL VOTE AT ADOPTION:**

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31 Council Member Karyn Cunningham YES

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33 Council Member David Singer YES

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35 Council Member Larissa Siegel Lara YES

36

37 Vice-Mayor John DuBois YES

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Mayor Eugene Flinn YES

**Village Manager Employment Agreement
Village of Palmetto Bay, Florida
June 25, 2015**

**Section #1
Subject of the Agreement**

This agreement reflects the initial appointment and extension of the employment by the Village Council of the Village of Palmetto Bay, Florida (a Florida municipality) of Mr. Edward Silva as Village Manager, pursuant to the Charter of the Village of Palmetto Bay, and the acceptance of the position by Mr. Silva. For the purposes of this agreement, the term “Council” refers to the Village Council as the Council is constituted from time to time; and under this agreement, the term “Manager” refers to Mr. Edward Silva. The agreement consists of twelve pages (12 pages).

**Section #2
Attestation and Effective Date**

The date of the last signature of the six attesting signatures of the Mayor, Vice-Mayor, and three Council Members (representing the Village) and Mr. Silva (on his own behalf) shall be the effective date of this agreement. The Village Attorney shall sign, approving as to form. The effective date of this agreement is the date upon which the entitlements (salary, etc,) begin to accrue and all other responsibilities and obligations become effective, unless otherwise specified.

**Issue #3
Salary/COLA**

3.1. Salary – The base annual salary for the Manager shall be one hundred seventy-five thousand dollars (\$175,000), paid as direct compensation, exclusive of contributions to qualified retirement plans, deferred compensation, and all other benefits (such as medical insurance, etc).

3.2 COLA -- The Manager is an employee of the Village and will receive the same cost-of-living (COLA) increases as are provided to Village employees under the same terms and conditions as applicable to all Village employees.

3.3 Annual Evaluation and Merit Increase – The Manager shall be evaluated annually under terms and procedures as the Council may adopt from time to time. The Council may begin the evaluation at any time following forty-five days (45 days) prior to each anniversary of the effective date of this agreement. Upon such evaluation, the Council may, in the Council's sole discretion, shall make a merit pay determination, either to maintain the Manager's existing annual salary without change or to grant a salary increase of any amount within the same range of percentage increases granted to other employees of the Village. In the event that the Council has not completed the evaluation of the Manager and has not made a merit pay determination at a Council meeting within the seventy day (70 day) period beginning thirty-five days (35 days) prior to each anniversary of the effective date of this agreement and ending thirty-five days (35 days) following each anniversary of the effective date of this agreement, then the Manager shall automatically receive a merit increase in salary

equal to the maximum percentage rate that is approved in the applicable adopted budget for merit increases, effective on the anniversary of the effective date of this agreement.

Section #4
Retirement Issues

The Manager shall receive individual qualified retirement plan contributions and deferred compensation, as provided herein.

4.1 IRC 401 Contributions/Qualified Retirement Plans -- The Manager shall receive qualified retirement plan contributions from the Village, pursuant to U.S. Internal Revenue Code section 401(a), 401(k) and 401(m) (or equivalent provisions), as follows: (i) an automatic six percent (6%) of annual salary; and (ii) a match contribution by the Village, for each percent, up to six percent (6%) of annual salary deferrals voluntarily contributed by the Manager. These qualified retirement plan contributions by the Village are in addition to base salary.

4.2 IRC 457/Deferred Compensation -- The Manager shall receive six percent (6%) of annual salary as deferred compensation, pursuant to U.S. Internal Revenue Code 457 (or equivalent provision). This deferred compensation is in addition to base salary.

Section #5
PTO, Insurance, and Other Benefits

5.1 PTOs -- The Manager shall receive eight hours (8 hours) personal time off (PTO) bi-weekly (each two week period), with an accrual (unused) limit of one hundred sixty days (160 days). PTO accrued as a Village employee (not as Manager), if any, shall be preserved

("rolled-over") in the Manager position, and may be used or continued as accrued, unrelated (not counted toward) the 160 day limit otherwise applicable to the Manager. Upon termination of employment of the Manager for any reason, accrued PTO (up to the limit plus any accrued in a non-Manager position) shall be paid to the Manager based upon salary at time of termination.

5.2 Holidays – The Manager shall be entitled to all Village recognized holidays, the same as other employees, except for pre-scheduled events or unforeseen circumstances which require his attention.

5.3 Insurance and Medical Issues – The Manager shall receive, at Village expense through Village group insurance plans (or as otherwise determined by the Village), comprehensive medical, dental and eye insurance for himself and his family (spouse and minor children) and life insurance for himself. The term "medical" in this agreement means medical, dental and eye. The Manager shall receive, at Village expense not to exceed one thousand five hundred dollars (\$1,500), short-term disability insurance with benefit period not exceeding six month. The Manager shall receive, at Village expense not to exceed four thousand dollars (\$4,000), long-term disability insurance. The Manager shall receive the same medical leave benefits as are provided to Village employees under the same terms and conditions as applicable to all Village employees.

Upon termination for any reason other than termination for cause, the Manager shall receive the same continued medical insurance benefits as provided under the schedule of

continued medical insurance benefits for Council Members, which is one year (1 year) of post termination medical insurance benefits for each full two years (2 years) of service. If the severance benefits period provided in section 6.3 exceeds the schedule of continued medical insurance benefits for Council Members, the benefits period provided in section 6.3 shall apply; otherwise, the schedule of continued medical insurance benefits for Council Members shall be provided in lieu of the continued medical benefits provided in section 6.3. If the schedule of continued medical insurance benefit for Council Members is modified at any time, continued medical insurance changes earned up to the time of modification shall be maintained and future continued medical benefits thereafter shall be calculated under the modified schedule. Continued medical benefits under this section 5.2 and under section 6.3 shall have no cash value.

5.4 Equipment – The Manager shall receive a monthly cell phone allowance-of two hundred dollars (\$200) and a monthly auto allowance of five hundred fifty dollars (\$550). However, the Village has the option of providing a Village cell phone at Village expense with unlimited in-state use; and the Village has the option of providing a Village owned or leased vehicle with unrestricted use by the Manager and with insurance provided at Village expense. In addition, the Village shall provide appropriate equipment (including a laptop computer).

Section #6
Duration/Termination

6.1 At-Will Employment/Termination Without Cause – This agreement may be terminated by the Council, or by the Manager (by resignation), at-will and without cause no

less than thirty days (30 days) following notice of intent to terminate without cause by the Council, or by the Manager, at a Council meeting, pursuant to the procedures specified in this subsection.

6.1.A. Procedures -- A proposed notice of intent to terminate must be noticed by a Council Member or by the Manager on a Council meeting agenda at least five days (5 days) prior to a Council meeting. Following adoption of a notice of intent to terminate by the Council, or the confirmation of the notice by the Manager, at the Council meeting, a subsequent Council meeting shall be held no less than thirty days (30 days) and no more than forty-five days (45 days) thereafter. At such subsequent Council meeting the Council may terminate the Manager effective immediately, or the Manager may resign effective immediately.

6.1.B. Severance Benefits -- Upon such termination at-will and without cause, by the Council, the Manager shall be entitled to severance benefits as provided herein. Upon such termination by the Manager (resignation), the Manager shall not be entitled to severance benefits except continued medical insurance for two months.

6.2 Termination for Cause – The Council may terminate this agreement for cause as specified herein.

6.2.A. Cause Defined – The Council may terminate for cause at any time as specified herein for any of the following reasons, which constitute cause: (1) breach of any material term or condition of this agreement; (2) violation of any applicable laws; (3)

misconduct in office (misfeasance, malfeasance and/or nonfeasance in performance off the Manager's duties and responsibilities); (4) gross subordination; (5) willful neglect of duty; (6) conviction or a plea of guilty or no contest to a misdemeanor or felony crime, whether or nor adjudication is withheld; (7) violation of any substantive Village policy, rule or regulation which would subject any other Village employee to termination; (8) the commission of any fraudulent act against the interests of the Village; (9) commission of any act which involves moral turpitude; (10) a knowing or intentional violation of the Florida, Miami-Dade, or Village of Palmetto Bay conflict of interest laws or code of ethics laws; or (11) any other act of a similar nature of the same or greater seriousness.

6.2.B. Procedures -- Any proposal to terminate for cause must be noticed on a Council meeting agenda at least five days (5 days) prior to the Council meeting, specifying the reason as enumerated herein (from the immediately preceding list of reason) with a brief description of the factual basis for the proposed termination. Such description need be in no greater detail than reasonably necessary to provide general notice to the Manager. After allowing the Manager a reasonable opportunity to address the reason(s) specified, for such time as determined by the Mayor or presiding officer or as may be granted by the Council, the Council may decide the issue of termination for cause. Upon such termination for cause, the Manager shall not be entitled to severance benefits except continued medical insurance benefits for two months.

6.3 Severance Benefits – Upon termination at-will and without cause (but not upon termination for cause), the Manager shall receive severance benefits as defined herein for the benefits period. The benefits period shall be twenty (20) weeks. Severance benefits shall consist of salary (including compensation contributions by the Village) and benefits for the benefits period, excluding personal time off (PTO), disability insurance benefits and medical leave.

6.4 Length of Contract – This agreement is for a period of eighteen (18) months and shall be renewed automatically for two additional two-year (2 year) terms if neither the Council nor the Manager give notice (in the case of the Council, by action at a Council meeting, and in the case of the Manager, by written notice to the Council with official notice to the Clerk) within the notice period (as defined in this subsection) that the agreement will not be renewed. The notice period is any date from fifty days (50 days) to ten days (10 days) in advance of the second anniversary of the effective date the agreement.

Section #7
Outside Employment

The position of Village Manager is a full-time position and the Manager shall have no other outside employment. The Manager may own a business or company and may exercise ownership functions and powers over such business or company, but such business or company must be managed by another individual other than the Village Manager. Consistent with and as a contractual obligation in addition to ethics codes which prohibit conflicts of interest, the Village and Manager agree that any business or company owned by the Manager

shall not conduct business: (i) within the boundaries of Village of Palmetto Bay; (ii) with the Village of Palmetto Bay; or (iii) with any entity having significant business within or with the Village of Palmetto Bay.

Section #8
Evaluation and Performance Guidelines

The Council and Manager acknowledge that performance measures and criteria may be created by the Village Council from time to time, which shall not be interpreted as diminishing the right of the Council to terminate this agreement at any time without cause.

Section #9
Miscellaneous Provisions

9.1 Sovereign immunity – The Village does not waive sovereign immunity except for breach of contract under this agreement for amounts specifically provided in the agreement. The Village does not waive sovereign immunity for, and shall not be liable for, prejudgment interest or attorney’s fees.

9.2 No Property Rights Created – This agreement does not create a property right to employment and does not create any due process rights to enforcement. The exclusive remedy is breach of contract under the terms of the agreement.

9.3 Reduction in Salary, Contributions or Benefits – If at any time the Council is unable to pay the salary, contributions or benefits to the Manager as specified herein due to a shortfall in revenue, without increasing taxes or fees, the Manager may, at the Manager’s

discretion, consider such reductions as may occur to be a termination of the agreement at will without cause. In such a case, the Manager shall notify the Council at a Council meeting of his choice to consider the reductions to be such a termination. The Council shall have a fifteen day (15 day) period thereafter to eliminate the reductions. If the reductions are not eliminated, the Manager shall be entitled to the severance benefits specified herein for termination at will and without cause.

Alternatively, the Manager may choose to accept such reductions at a Council meeting. In such a case, this agreement will be deemed to have been amended to reflect the reductions. If any such reductions are required and the Manager accepts the reductions, the Council commits as a matter of good faith (but not as an enforceable commitment) in its sole discretion to restore or otherwise compensate for the reductions imposed whenever possible.

9.4 Professional Development -- The Village shall pay for the Manager's membership in professional government management associations, for attendance at meetings of such associations, and for attendance at relevant seminars and conferences as are approved in the Village annual budget or as otherwise approved by the Council. Attendance by the Manager at local civic and governmental organization events is encouraged. Documented expenses for any such event may be sought by the Manager and approved by the Mayor, while documented expenses exceeding this amount may be approved by the Council..

9.5 Surety Bond – The Manager shall secure a surety bond, at the expense of the Village, to be approved by the Council pursuant to Village Charter, Article III, Section 3, in the amount determined by the Council.

9.6 Dispute Resolution – Claims and disputes arising out of this agreement shall be pursued in good faith as specified herein.

9.6.A. Mediation – Any claim or dispute arising out of this agreement shall be subject to mediation as a condition precedent to instituting legal or equitable proceedings in court. The use of a mediator or the mediation itself may be waived by joint agreement of the Council and the Manager. If a mediator is used, costs shall be shared equally by the Council and the Manager. Mediation shall be held in Miami-Dade County unless otherwise agreed. Agreements reached in mediation which the Council and the Manager characterize as enforceable may be enforced as settlement agreements in the Circuit Court, 11th Judicial Circuit, Florida. The Council and the Manager waive any claim or right to arbitration.

9.6.B. Applicable Law and Venue – This agreement shall be interpreted and enforced in accordance with the laws of the State of Florida. It is the intent of the Council and the Manager that no federal (United States) laws or rights are involved herein and that a United States court would not be an appropriate forum. Venue for any legal or equitable action under this agreement shall be in Miami-Dade County, Florida.

9.6.C. Waiver of Jury Trial – The Council and the Manager waive the right to trial by jury.

9.6.D. Interpretation of the Agreement – The Council and the Manager agree that each has shared equally in the drafting of this agreement and therefore the agreement should not be interpreted more strictly against either the Council or the Manager.

9.7 Indemnification – The Village shall defend, indemnify and hold harmless the Manager for any and all acts taken on behalf of the Village within the scope of his duties.

Section #10
Signatures of Mayor, Vice-Mayor, Council Members, and Manager

The agreement hereby agree to the terms of this agreement, with (pursuant to section 2 herein) the effective date being the last date indicated by the signatures (exclusive of the Village Attorney’s signature).

Eugene Flinn
Mayor
Date _____

John DuBois
Vice-Mayor
Date _____

Karyn Cunningham
Council Member
Date _____

Larissa Siegel Lara
Council Member
Date _____

David Singer
Council Member
Date _____

Edward Silva
Manager
Date _____

Dexter Lehtinen
Village Attorney
Approved as to Form
Date _____

*** end ***



To: Honorable Mayor and Village Council

Date: January 8, 2018

From: Councilmember David Singer

Re: Village Manager's Employment Contract

PURPOSE OF THE PROPOSED ACTION:

The purpose of this memorandum is to request Village Council approval to place a Resolution on the Agenda for the Regular Council Meeting scheduled for February 5, 2018 relating to the extension of the Village Manager's Employment Agreement.

MAJOR POINTS/REASONS FOR THE PROPOSED ACTION:

On May 1, 2017, the Village Council adopted a Resolution that extended the Village Manager's Employment Agreement for a period of one-year. However, the initial contract period started in 2015 for a two-year timeframe with a renewal clause that allowed for a two-year extension effective June 1, 2018. In good faith, the Employment Agreement should have been extended for a two-year period as provided for in the contractual language; therefore, I am proposing to extend the Agreement term for a two-year period which is within the intent of the initial Agreement signed by both the Village Council and the Village Manager in 2015 effective May 1, 2018.

I would also like to propose a clause that allows the Village Manager to receive the same merit-based percentage increase as provided to other Village employees and which is approved annually by the Village Council through the budgeting process. Based on information provided by other municipalities, contracts with Managers also include language that allows the Village Manager to work with the municipality for a period of 90-days following termination, unless termination is for cause. This ensures continuity in services and discourages the unjust decision to terminate staff purely for political purposes.

PRELIMINARY ESTIMATE OF THE COST OF IMPLEMENTATION:

There are no costs related to this item other than what has already been discussed and anticipated to be part of the Village Manager's compensation package.

SOURCE OF FUNDS TO PAY SUCH COSTS:

Not applicable.