

RESOLUTION NO. 03-25

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO RELATING TO VILLAGE MANAGER; APPROVING AMENDMENTS TO EMPLOYMENT CONTRACT; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Mayor and Village Council approved a contract with Mr. Charles D. Scurr at its meeting on March 3, 2003, subject to addressing a question concerning the retirement benefit; and,

WHEREAS, the matter is addressed by amendment to the contract; and,

WHEREAS, the Mayor and Village Council desire to give final approval to the contract.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

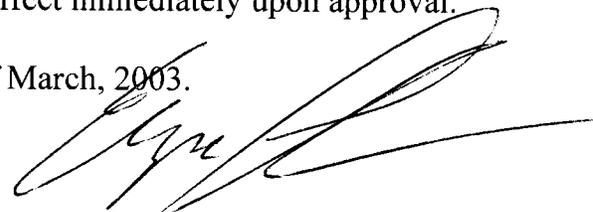
Section 1. The amended village manager employment agreement, which is attached to this resolution, is approved. The village mayor is authorized to execute the contract on behalf of the village.

Section 2. This resolution shall take effect immediately upon approval.

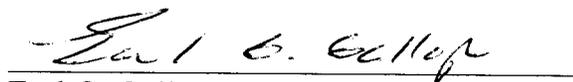
PASSED and ADOPTED this 6th day of March, 2003.

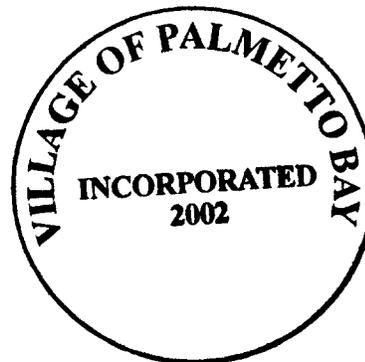
Attest:


Meighan Pier
Village Clerk


Eugene P. Flinn, Jr.
Mayor

APPROVED AS TO FORM:


Earl G. Gallop,
Village Attorney



FINAL VOTE AT ADOPTION:

Council Member Ed Feller	<u>AYE</u>
Council Member Paul Neidhart	<u>AYE</u>
Council Member John Breder	<u>AYE</u>
Vice-Mayor Linda Robinson	<u>AYE</u>
Mayor Eugene P. Flinn, Jr.	<u>AYE</u>

\\Dell_6100\Documents\0293\EGG\17139.doc-amended VM contract

EMPLOYMENT AGREEMENT
VILLAGE MANAGER

This agreement is entered into this 3rd of March, 2003, by and between the Village of Palmetto Bay, a Florida municipal corporation, and Charles D. Scurr.

In consideration of the sum of \$10.00, the covenants contained in this agreement, and other good and valuable consideration, the legal sufficiency and receipt of which is acknowledged by the parties, the village and Mr. Scurr agree as follows:

Section 1. APPOINTMENT; EFFECTIVE DATE

1.1. Pursuant to art. III, sec. 3.2, of the village charter the Village of Palmetto Bay, the village, acting through its village council, appoints Charles D. Scurr as its village manager.

1.2. The appointment is effective February 18, 2003 and shall continue for the term of this agreement, unless this agreement is terminated as provided below.

1.3. This agreement shall continue in force for a period of 18 months from the effective date. This agreement shall be automatically renewed for additional terms of 18 months unless either party provides written notice of non-renewal 90 days prior to the renewal date.

Section 2. CONDITION OF EMPLOYMENT

2.1. The village manager is an at-will employee of the village and shall serve at the pleasure of the council. The council shall have the power to terminate the services of the village manager at any time in accordance with the provisions of this agreement.

Section 3. DUTIES AND RESPONSIBILITIES

3.1. The village manager shall be the chief administrative officer of the village. The village manager shall be responsible to the council for the administration of all village affairs, for carrying out policies adopted by the council and for implementing the village budget as directed by the council.

3.2. The village manager shall perform those duties prescribed by art. III, sec. 3.3 of the charter, prescribed by law and interlocal agreement, and as directed by the council.

3.3. The village manager is responsible only to the council. The village manager shall report and be accountable to the council.

3.4. Subject to the authorization for new employee positions contained in the adopted annual budget, the availability of funds and any direction given by the council, the village manager shall be solely responsible for the hiring and termination of all village employees. Except for purchasing power granted to the village manager by ordinance pursuant to art. III, sec. 3.10(B) of the charter, the council shall be solely responsible for the hiring and termination of all its consultants, contractors and advisors. Nonetheless, the village manager shall be primarily responsible for contract administration and coordinating council directives and policies regarding consultants and advisors.

3.5. The village manager shall devote whatever time is necessary to properly perform the duties of the position. The village manager acknowledges that, on average, a minimum of forty hours 40 per week is necessary to adequately perform the duties of a village manager under this agreement.

Section 4. NON-INTERFERENCE

4.1. To the extent practical, council members shall address their concerns regarding the financial condition, operations, personnel and other village matters directly to the village manager and the village manager shall address those matters with the village staff, consultants, contractors and advisors. Individual members of the village council shall not, acting alone and without authorization of the village council, direct the village manager to hire or fire any person, to enter into or terminate any contract, to grant or withhold funds to any person, nor instruct any village personnel under the village manager's control to take or refrain from taking any action. This paragraph shall not be applied to limit the non-interference provisions of art. IV, sec. 4.2 of the charter.

Section 5. SALARY

5.1. The village manager shall be paid a salary of \$110,000.00 for the first year of employment. Additionally, the village council shall pay the village manager a lump sum bonus of \$5,000.00 within four months of the effective date of this agreement upon determining that the manager has made substantial contribution to the successful implementation of the municipal government. The salary shall be paid with the same frequency as payment is made to other village employees.

5.2. The village manager shall be entitled to receive the same annual cost of living increase as may be granted to other administrative employees.

5.3. The annual salary of the village manager after the first year of employment shall be that amount the council annually budgets and appropriates for the position. In evaluating the salary of the village manager, the council may consider such matters, among others, as experience, length of employment, job performance, overall ability and whether, and the extent to which, the village manager has met or exceeded goals and objectives that may be set by the council.

Section 6. BENEFITS

6.1. *Personal time off.* In lieu of annual vacation and sick time, the village manager shall accrue personal time off (PTO) at a rate of one day for each bi-weekly period. The use of PTO shall be approved in writing by the mayor, or in his, or her absence, the vice mayor. The manager may accrue not more than 52 days of PTO. The village manager shall be compensated for unused PTO upon separation.

6.2. *Holidays.* The village manager is entitled to all paid holidays granted to all general village employees.

6.3. *Insurance.* The village shall provide comprehensive medical and dental for the village manager and his family, and disability and life insurance for the village manager. The amount of life insurance coverage shall equal the annual salary of the village manager. The village shall pay the total premiums for this coverage. The parties acknowledge that the village, as a new municipal corporation, does not currently provide medical, dental and disability insurance. The village shall proceed to expeditiously

and prudently secure the stated insurance coverages. Beginning on the first calendar day of the month following the effective date of this agreement, the village shall pay the village manager's monthly COBRA benefit premiums until medical insurance coverage is in effect.

6.4. *Retirement.* The parties acknowledge that the village has not selected a retirement program to be offered to employees. The village shall proceed to expeditiously and prudently select an appropriate retirement program. In the event a defined benefit program is not selected, the village agrees to pay an amount equal to 11% of the village manager's base salary into a retirement instrument, a qualified program under the Internal Revenue Code, as deferred compensation, or in some combination of the foregoing.

6.5 *Equipment.* The village shall provide appropriate equipment necessary for the village manager to perform his official responsibilities. The village shall pay a monthly cell phone allowance of \$100.00 and a monthly automobile allowance of \$400.00. The manager shall not be required to supply any receipts or other documentation in order to receive this allowance.

Section 7. PROFESSIONAL DEVELOPMENT

7.1. The village shall pay travel and per diem expenses, as authorized by law, for the village manager's travel and attendance at the International County Managers' Association annual conference, Florida City/County Managers' Association annual conference, and the Florida League of Cities' annual conference. The village shall pay for the village manager's attendance at other seminars, conferences, and committee meetings as are approved in the village's annual budget (on a line item basis), or as authorized by the village council.

7.2. The village shall pay the village manager's professional dues for membership in the International County Manager's Association, and the Florida City and County Management Association. The village shall pay other dues and subscriptions on behalf of the village manager as are approved in the village's annual budget (on a line item basis) or as authorized separately by the village council.

Section 8. SURETY BOND

8.1. The village manager shall furnish a surety bond to be approved by the council, as required under art. III, sec. 3.5 of the charter, in such amount as may be determined by the council. The village shall be responsible for payment of the premium of this bond. The village manager shall secure a surety bond, upon the approval of the council, within 90 days of the effective date of this agreement.

Section 9. OUTSIDE ACTIVITIES

9.1. With prior approval of the council, the village manager is permitted to engage in professional activities separate and apart from village matters; provided, however, the activities shall not conflict or interfere with the performance of the village manager's duties and responsibilities under this agreement.

Section 10. TERMINATION OF AGREEMENT

10.1. *For convenience of the village.* The council may terminate this agreement without cause for its convenience. Upon termination for convenience, the village shall pay the village manager a lump sum cash payment equal to salary for three months if termination occurs during the first year of employment. The salary severance benefit shall be increased by one month for each additional year of service; however, the maximum benefit shall not exceed six months. The village shall also pay the greater of accrued PTO or a sum equal to three months of PTO. PTO shall be valued based on the village manager's salary at the time of termination. Severance pay shall be paid within 15 working days of termination. The village shall continue to pay medical, dental and disability insurance coverage for the village manager following the date of termination for a period of time equal to the salary severance benefit. The village shall not pay for automobile and cell phone allowance, professional fees or other expenses after the date of termination. The village shall have no further financial obligation to the village manager after payment is made under this paragraph. Payment made under this paragraph shall constitute full and complete payment and satisfaction of any claim the village manager may have against the village arising under, or related to this agreement or otherwise.

10.2 *For the convenience of the village manager.* The village manager may terminate this agreement for convenience upon giving the village at least 60-days written notice prior to the effective date of the resignation. The village manager shall not be entitled to receive any benefits or payments following the effective date of the resignation.

10.3. *For cause.* The council may terminate this agreement for cause. The term "for cause" shall be defined to mean (1) breach of any material term or condition of this agreement; (2) violation of any applicable laws; (3) misconduct in office; (4) gross insubordination; (5) willful neglect of duty; and (6) a knowing or intentional violation of the Florida or Miami-Dade County conflict of interest and code of ethics laws. In the event this agreement is terminated for cause, the village shall have no obligation to pay any severance pay or benefits. The village shall only pay accrued PTO unless that amount is used as a set-off for any amounts owed by the village manager to the village.

Section 11. REDUCTION IN SALARY AND BENEFITS

11.1. In the event the council, at any time during the term of this agreement, reduces the salary or other benefits of the village manager in a greater percentage than an equivalent across-the-board reduction for all fulltime village employees, or in the event the village allegedly refuses to comply with any other substantive provision of this agreement benefiting the village manager, the village manager shall notify the council in writing of the alleged violation. The council shall have 45 days from the notice within which to cure the violation; otherwise, the village manager may, at his option, consider the agreement terminated for the convenience of the village as of the date of the reduction or refusal. Upon termination under this provision the village shall pay severance pay to the village manager as provided in paragraph 10.1.

Section 12. RETURN OF PROPERTY

12.1. Upon termination of this agreement, the village manager shall return all village property in his possession or control, including but not limited to keys, vehicle, documents and any other property of the village, within 10 business days.

Section 13. OTHER TERMS AND CONDITIONS

13.1. *Policy.* The council shall fix any other terms and conditions of employment it may determine from time to time to be necessary and in the village's best interest relating to the performance of the village manager, provided that such terms and conditions are compatible with the provisions of this agreement, Florida Statutes and any other law, and which are agreed to in writing by the village manager.

13.2. *Conflict of interest and ethics.* The village manager warrants that: (a) he does not now have, and that he will not enter into, any contract or relationship with another person that creates a conflict of interest, as that term is described in sec. 2-11.1 of the Miami-Dade County code and the village conflict of interest and ethics codes (ethics codes), and (b) he has not paid, or agreed to pay, any person any consideration for the procurement of this agreement. The village manager represents that he will uphold all the state, county and any village ethics codes, and the Florida public meeting and public records laws (Sunshine laws). When in doubt, he will seek legal advice and, or, direction by the village council.

13.3. *Sovereign immunity.* The village does not waive its sovereign immunity for any claim arising under, or related to, this agreement other than for breach of contract. The village shall not be liable to pay for damages, other than amounts due under this agreement, in the event it is adjudicated to be liable for breach of contract. Notwithstanding this limited waiver of sovereign immunity, the village does not waive its immunity from, and shall not pay awards for prejudgment interest and, or attorney's fees.

13.4. *Mediation.* Any claim or dispute arising out of, or related to, this agreement shall be subject to informal mediation as a condition precedent to the institution of legal or equitable proceedings by either party. Both parties waive the right to arbitration. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Miami-Dade County, Florida, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in the Circuit Court for the 11th Judicial Circuit for the State of Florida.

13.5 *Venue.* Any action arising under this agreement, including an action to enforce the agreement, shall be brought in state court in Miami-Dade County.

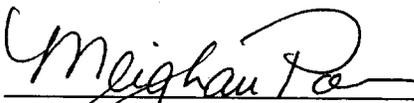
13.6 *Waiver of right to jury trial.* The parties knowingly waive their right to a jury trial in any legal action arising under, or related to, this agreement.

13.7 *No property right created.* The village manager shall serve at the will of the village council. This agreement does not create a property right to employment. Breach of this contract shall not be enforced by an action in any federal court.

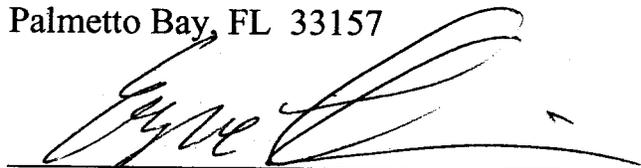
13.8 *Notice.* Any notice required or provided for in this agreement shall be given to the parties at the addresses provided in the execution of this agreement.

ATTEST:

THE VILLAGE OF PALMETTO BAY
C/o Chamber South
900 Perrine Avenue
Palmetto Bay, FL 33157

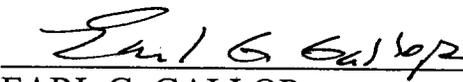


Meighan Pier
Village Clerk

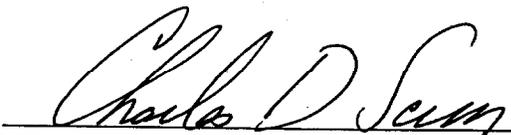


Eugene P. Flinn, Jr.
Mayor

APPROVED AS TO FORM:



EARL G. GALLOP
Village Attorney



Charles D. Scurr
11035 Killian Park Rd.
Pinecrest, FL 33156-4012

