RESOLUTION # 2023-33

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF WEST MIAMI APPROVING THE EMPLOYMENT AGREEMENT BETWEEN THE CITY OF WEST MIAMI AND EDWARD SILVA AS CITY MANAGER; AUTHORIZING THE CITY MANAGER YOLANDA AGUILAR, TO EXECUTE THE AGREEMENT ATTACHED HEREIN AS EXHIBIT "A"; DESIGNATING YOLANDA AGUILAR AS ASSISTANT CITY MANAGER PROVIDING FOR AN EFFECTIVE DATE OF MAY 17TH, 2023.

WHEREAS, the City of West Miami Charter provides for a City Manager as Chief Administrator for the City, and

WHEREAS, after forty years of service, the present Manager, Yolanda Aguilar desires to retire, and

WHEREAS, the City desires to retain Edward Silva as the new City Manager, and

WHEREAS, Mr. Edward Silva has accepted the terms and conditions of the attached employment agreement as City Manager of the City of West Miami.

WHEREAS, It was moved and approved by the Commission to designate Yolanda Aguilar as Assistant City Manager effective May 17th, 2023.

NOW, THEREFORE, BE IT RESOLVED by the City Commission of the City of West Miami as follows:

Section 1. The foregoing "whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption thereof.

Section 2. Approval of the Agreement. The Employment Agreement attached hereto as Exhibit "A" between Edward Silva and the City of Wert Miami to serve as City Manager is hereby approved.

Section 3. Execution of the Agreement. Yolanda Aguilar as present Manager of the City is hereby authorized to execute the agreement attached hereto.

Section 4. Yolanda Aguilar is hereby designated as Assistant Manager with an effective date of May 17th, 2023.

Section 5. This Resolution shall take effect immediately upon passage by the City Commission and signature of the Mayor.

PASSED AND ADOPTED this 10th day of May, 2023.

APPROVED:

ERIC DIAZ-PADRON, MAYOR

ATTEST:

ANNERY GONZALEZ, MMC
CITY CLERK

APPROVED AS TO FORM AND SUFFICIENCY:

JOSE A. VILLALOBOS, CITY ATTORNEY

ROLL CALL VOTE:

This Resolution was offered by Vice-Mayor Blanes who moved its adoption. The motion was seconded by Commissioner Chavez. The vote was as follows:

MAYOR ERIC DIAZ-PADRON	**Y**
VICE-MAYOR JUAN M. BLANES	**Y**
COMMISSIONER CANDIDA BLANCA	**Y**
COMMISSIONER IVAN CHAVEZ, JR.	**Y**
COMMISSIONER LUCIANO SUAREZ	**Y**

EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement") is entered into this 10th day of May, 2023, between the City of West Miami, a municipal corporation ("City") and Edward **Silva** ("**Silva**"), collectively referred to as the Parties ("Parties").

BACKGROUND

WHEREAS, the City is desirous of retaining Edward **Silva** as its City Manager; and

WHEREAS, an Agreement is necessary to establish the employment relationship, salary, benefits, and responsibilities as set by the City Charter; and

WHEREAS, the City Commission has approved the Employment Agreement with Edward **Silva** to serve as City Manager for the City of West Miami.

AGREEMENT

Now, therefore, for consideration the parties agree as follows:

1. Employment.

1.1 The City agrees to retain Edward **Silva** as its City Manager to perform the duties and exercise powers as provided by State law, City of West Miami Charter and the City of West Miami Code, and to perform such other legally permissible and proper duties and functions consistent with **Silva's** position as City Manager as may be assigned by the City Commission from time to time.

1.2 **Silva** shall report to the City Commission.

1.3 **Silva** hereby accepts such employment.

1.4 During the Term of **Silva's** employment by City, **Silva** shall devote substantial time, abilities and attention to the diligent performance of his duties with City in a professional manner and in accordance with applicable law, however **Silva**, may engage in other

business activity, whether or not such activity is pursued for profit or advantage; provided, however, so long as such activities do not materially interfere with the performance of his duties under this Agreement and do not result in a conflict of interest in regards to **Silva's** duties and obligations to the City.

1.5 Meeting **Silva's** Obligation. **Silva** shall be deemed having complied with his professional obligations to the City if:

(i) If **Silva** executes all Powers and Duties are specifically determined in the Charter of the City of West Miami, Florida in Article IV, Section 4.04.

(ii) The Financial position of the City is within the parameters as set forth in the approved budget of the City and or any increases as approved by the Commission.

(iii) The City does not have grounds to terminate Agreement for cause under Section 4.1 of the Agreement; and

(iv) **Silva** keeps the City's budget within approved parameters except that this standard can be reasonably exceeded if unexpected or unforeseen circumstances (such as act of God, hurricane, civil disturbance) occur or unanticipated commission approved expenditures and amended budget; and

(v) **Silva** establishes and maintains a professional working relationship with other local governments as needed, in his discretion, to ensure economies of scales and inter-city mutual agreements.

(vi) **Silva** communicates with the commission on all matters related to new ordinances or resolutions with appropriate backup documentation so that the commission as a whole may make appropriate decisions.

(vii) **Silva** informs the commission of specific commission identified critical information requirements which may be amended from time to time.

(viii) **Silva** performs his duties set forth in the City Charter and carries out Commission directives.

(ix) If the city manager executes all powers and performs all duties and responsibilities required and prescribed within the Charter and applicable sections of the Code

(x) **Silva** carries out all policies, directives as determined by a majority if the Commission.

(xi) **Silva** provides a monthly report to the Commission which includes the status of all directives and all other pertinent information including budget in a monthly agenda package.

(xii) **Silva** attends all meetings, unless excused, and assigns an acting city manager if he is unable to attend due to sickness or vacation.

2. Term. Except as otherwise provided in this Agreement, the Term of this Agreement shall commence on May 17th , 2023 and shall terminate at the close of business on May 30th, 2028 (the "Term"); this Term will automatically renew for an additional five (5) years, unless either party advises the other party to the contrary in writing at least 60 days prior to the anniversary date of termination of the contract.

3. Compensation. During the course of **Silva**'s employment by City, pursuant to this Agreement:

3.1 Annual Salary. **Silva** shall be paid an annual salary of $ 195,000 (One Hundred Ninety-Five Thousand Dollars), which shall be payable in equal installments on a bi-weekly basis in accordance with City's compensation practices; provided, however, if City establishes another pay period for its employees which is no less frequent than semi-monthly, **Silva** shall be paid in accordance with that schedule. **Silva's** salary shall be subject to adjustments due to cost-of-living increases during the Term, but at least yearly, at the sole discretion of the City Commission and such increases, if any, shall establish the new base salary for the **Silva**.

3.2 Fringe Benefits. During the Term of this Agreement, the City, at its cost, shall make available to **Silva** the following:

3.2.1 Health Insurance. The City agrees to provide **Silva** with individual ~~M~~ medical, prescription, dental and vision coverage as part of this contract.

3.2.2 Life Insurance. The City agrees to provide **Silva** with life insurance coverage that covers a death benefit of $250,000.00 payable to **Silva's**

beneficiary.

3.2.3 Florida Retirement System. (i) The City agrees to provide a contribution percentage to **Silva's** Florida Retirement System (FRS) benefits in the amount of 31.57% of **Silva's** salary, as provided by the Florida retirement System. Said percentage shall be subject to any changes provided by the Florida Legislature. **Silva** shall contribute three percent (3%) of his salary towards his Florida Retirement System benefit. Said contribution shall be deducted through payroll deductions. (ii) In addition to the contributions provided for in (i) above, the City shall provide additional contributions to, and the City shall include additional payroll deductions from Silva's salary, in a proportionate rate in each payroll period so as to achieve total contributions to FRS on behalf of and by Silva sufficient to equal eight years of contributions at the end of the five-year employment period and therefore achieve the vesting of Silva's retirement benefits under Florida statutes and FRS regulations for the equivalent of eight years FRS employment. It is the understanding of the parties that vesting of FRS benefits can be achieved after five years under these procedures.

3.2.4 Deferred Compensation Retirement Account. The City shall contribute Eight Thousand, Five Hundred Dollars ($8,500.00) per year towards **Silva's** Deferred Compensation Retirement Account through Mission Square, formerly known as, ICMA International City Manager Association.

3.2.5 Automobile. The **Silva** shall receive a monthly vehicle allowance in the amount of Five Hundred Dollars ($500.00). City shall provide maintenance and fuel for **Silva's** vehicle upon the same basis that it provides maintenance and fuel for other vehicles within the municipal fleet. The City shall provide a Sun pass

for **Silva's** vehicle and the sun pass account will be maintained at the City's expense to be funded by the City Manager's Executive Budget.

3.2.6 Vacation and Sick Leave. **Silva** shall accrue twenty-one (21) vacation days per year. Additionally, at time of separation, if in good standing, all unused accrued vacation days shall be paid out at 100%.

(a) **Silva** shall accrue a maximum of thirty (30) days in a sick leave bank/accrual. in addition, and pursuant to the city's personnel rules and regulations, each year the city manager shall accrue seven (7) days per year of sick leave. Any accrual in excess of the seven days at the end of each calendar year is forfeited providing for thirty (30) days maximum. There shall be no payment of Sick Leave to **Silva** at time of separation

(b) **Silva** shall be entitled to two (2) floating holidays and one birthday per calendar year.

(c) **Silva** shall be entitled to holidays in the same manner as senior management employees of the City.

3.2.7 Cellular telephone. **Silva** shall be provided with a City cellular telephone. in the event that the City Manager utilizes his telephone outside the United States for other than city business **Silva** shall reimburse the costs associated with personal calls to the City of West Miami.

3.2.8 Equipment. City shall provide **Silva**, at City's cost, with equipment necessary to fulfill **Silva's** duties, including but not limited to electronic equipment, computer, etc.

3.3 Expenses. City shall pay for or reimburse **Silva** for all ordinary, necessary and reasonable business expenses incurred or paid by **Silva** in furtherance of City's objectives, all of which shall be reimbursed and paid in accordance with City's policies and procedures of general

application, including travel and sustenance expenses for professional and Florida League of Cities annual conferences, within the limits of Section 112.061, Florida Statutes and Florida Administrative Code 691.42.004. The City shall provide **Silva** with a credit card to be used by **Silva** to pay for these expenses

3.4 Professional Development. Subject to City policy and State law, the City agrees to pay the reasonable professional dues and subscriptions of **Silva** necessary for his continuation and participation as a member in national, regional, state and local professional associations and organizations necessary and desirable for his continued professional participation, growth and advancement, and for the good of the City as permitted by the City's Budget. City shall pay for all necessary and reasonable continuing education for **Silva** as determined by **Silva** in his reasonable discretion and as funded by the City's Budget.

3.5 The City will provide bonding to cover any City Manager action during his performance of duties.

4. Legal Representation. In the event that **Silva** is named as a Respondent in a civil or ethical process and the City Attorney is legally conflicted to represent **Silva**, then **Silva** shall have the right to legal representation of his choosing at the City's expense subject to City Commission approval as to attorney's fees.

5. Termination. By a 4/5 vote of the Commission, the City Commission may terminate **Silva** for Cause as specified below and in accordance with City of West Miami Charter. The specifics for the termination must be enumerated in writing to **Silva**, sixty (60) days prior to the Commission Meeting where the termination vote will be heard.

5.1 Termination for Cause. For purposes of this Agreement, a termination by Employer for "Cause" shall mean termination by action of Employer pursuant to this Section 5.1.

Employer shall have the right to terminate **Silva** for Cause upon the occurrence of one or more of the following events:

5.1.1 **Silva's** conviction by a court of competent jurisdiction of fraud with respect to the business or affairs of Employer or any affiliated person or entity of Employer.

5.1.2 **Silva**, by reason of mental or physical disability or illness, is unable to perform his duties as described in Section 1 for more than an aggregate of 180 days in any consecutive 12-month period.

5.1.3 Excessive alcohol or drug usage by **Silva** to an extent that it interferes with the performance of **Silva's** duties under this Agreement.

5.1.4 The conviction by a court of competent jurisdiction of, or pleading *nolo contendre* by **Silva** of (a) a misdemeanor involving dishonesty, fraud, theft, misappropriation, embezzlement or the like or (b) a felony.

5.1.5 A willful violation of the City's Charter.

5.1.6 The death of **Silva.**

5.2. Termination for cause dispute procedures. In the event of a 4/5ths vote of the Commission elects to terminate **Silva** for cause pursuant to Section 5.1, **Silva** may elect to dispute the termination for cause through mediation.

5.2.1. The City shall furnish **Silva** with a list of at least five (5) proposed mediators. The **Silva** shall review such list and agree with the City's choice or make an alternate choice for the City's consideration from the list or disapprove the list and return to the City for additional recommended names. Once a mediator is chosen by both parties the mediation shall take place at the first available opportunity of the mediator. The City shall bear the total cost of the mediation process.

5.2.2. If the mediation process fails to achieve a mutually agreed upon resolution or settlement of the dispute, **Silva** may elect to proceed with binding arbitration within seven (7) working days of an impasse at mediation.

5.2.3. The arbitration shall be conducted under the rules of the American Arbitration Association. Subject to the following, the Arbitrator shall have jurisdiction and authority to decide a dispute solely arising from the specification of this agreement. The Arbitrator shall have no authority to change, amend, add to, subtract from, or otherwise alter or supplement this agreement, or any part thereof, or any amendment hereto.

5.2.4. It is contemplated that the City and the **Silva** shall mutually agree in writing as to the statement of the matter to be arbitrated prior to a hearing; and if this is done, the Arbitrator shall confine his decision to the particular matter thus specified.

5.2.5. Each party shall bear the expense of its own witnesses and of its own representatives. The **Silva** and the City shall bear equally the expense of the impartial Arbitrator, including any retainer fee of the Arbitrator. The party desiring a transcript of the hearing will bear the cost of same.

5.2.6. Copies of the award of the arbitration made in accordance with the jurisdiction or authority under this agreement shall be furnished to both parties within thirty (30) days of the hearing and shall be final and binding on the **Silva** and the City.

5.2.7. The Arbitrator shall be selected in accordance with the rules of the American Arbitration Association.

5.2.8. Upon a final determination by the arbitrator that the City has breached the Agreement, **Silva** shall be entitled to receive (i) the annual salary payable through the balance of the Term of this Agreement and (ii) continued benefits as set forth in Section 3 of

this Agreement (or City can make payments therefore, as applicable) through the balance of the Term of this Agreement.

5.2.9. Upon the final determination by the arbitrator that the **Silva** breached the Agreement or that the City otherwise had good cause to terminate the **Silva**, **Silva** shall be entitled to receive only the salary and other benefits which **Silva** had earned through the effective date of such termination, and **Silva** shall not receive any compensation or benefits in respect of any periods after the effective date of such termination.

5.3 Termination Without Cause. By a 4/5 vote of the Commission, the City may terminate Silva without cause. If **Silva** is terminated without cause, he shall immediately be reassigned from the position of City Manager to the position of City Consultant. In that capacity, Silva shall provide off-site advice to the City Manager and the City Attorney, to assist them with various pending projects. Consultant will, for a period of 12 months, following the Commission reassignment of him, from City Manager to City Consultant, receive all of the salaries and benefits provided by this Agreement. However, Consultant shall not have further authority to bind the City or take any further unauthorized action on behalf of the City.

5.4 Termination Upon Voluntary Resignation. In the event **Silva** voluntarily resigns his employment with City, **Silva** shall be entitled to receive the annual salary and other benefits, which **Silva** earned through the effective date of such resignation; provided, however, following receipt of **Silva's** resignation, City shall have the right to accelerate the effective date of **Silva's** resignation, provided it agrees to pay to **Silva** the amounts **Silva** would otherwise be paid hereunder through the intended resignation date.

5.5 Termination Other Than by Voluntary Resignation or For Cause. Employer may end the employment relationship and terminate this Agreement, ; only with a super majority

vote (4/5) of the Commission, without good cause. If the **Silva** is terminated without good cause she shall immediately be re-assigned from the position of City Manager to City Consultant. In that capacity, the Consultant shall provide off-site advice to the new City Manager and City Attorney to assist them with various pending projects. Consultant will for a period of 12 months following the Commission's re-assignment of him from City Manager to City Consultant receive all of the salary and benefits provided for by this agreement, but Consultant will have no further authority to bind the City or to take any further action on behalf of the City.

5.6 Termination cannot happen 90 days prior to or 90 days after an election cycle for issues without cause.

5.7 The City shall afford the City Manager severance pay which is consistent and not prohibited by Section 215.425, Florida Statutes.

6. Withholding. Anything to the contrary notwithstanding, the annual salary and other payments required to be made by City under this Agreement to **Silva** or **Silva's** estate or beneficiaries shall be subject to the withholding of such amounts, if any, relating to tax and other payroll deductions as Employer may reasonably determine it should withhold pursuant to applicable law or regulation.

7. Miscellaneous.

7.1 Notices. All notices, demands or requests provided for or permitted to be given pursuant to this Agreement must be in writing and shall be delivered or sent, with the copies indicated, by personal delivery, telecopy (with confirmation and additional copy sent by overnight delivery service) or overnight delivery service (by a reputable international carrier) to the parties as follows (or at such other address as a party may specify by notice given pursuant to this Section):

To City:

901 SW 62 AVE
West Miami, FL 33144

With a copy to:

Jose A. Villalobos
City Attorney
98 SE 7th Street, Suite 1100
Miami, Florida 33131

To **Silva**:

Edward **Silva**

All notices shall be deemed given and received one business day after their delivery to the addresses for the respective party, with the copies indicated, as provided in this Section.

7.2 Entire Agreement. This Agreement and any other contemporaneous written agreements entered into by the parties contain the sole and entire binding agreement between the parties and supersede any and all other prior Resolutions, written or oral agreements and representations between them.

7.3 Amendment. No amendment or modification of this Agreement shall be valid unless in writing and duly executed by the parties affected by the amendment or modification.

7.4 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective representatives, heirs, and successors.

7.5 Waiver. Any waiver or changes to this agreement by either party of any breach of any provision of this Agreement must be in written form, signed by both parties, and shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

7.6 Construction. In the construction of this Agreement, whether or not so expressed, words used in the singular or in the plural, respectively, include both the plural and the

singular and the masculine, feminine and neuter genders include all other genders. Since both parties have engaged in the drafting of this Agreement, no presumption of construction against any party shall apply.

7.7 Section References. All references contained in this Agreement to Sections shall be deemed to be references to Sections of this Agreement, except to the extent that any such reference specifically refers to another document. All references to Sections shall be deemed to also refer to all subsections of such Sections, if any.

7.8 Severability. In the event that any portion of this Agreement is illegal or unenforceable, it shall affect no other provisions of this Agreement, and the remainder of this Agreement shall be valid and enforceable in accordance with its terms.

7.9 Business Day. As used in this Agreement, the term "business day" means any day other than a Saturday, Sunday or legal or bank holiday in the City of West Miami, Florida (the "City"). If any time period set forth in this Agreement expires on other than a business day in the City, such period shall be extended to and through the next succeeding business day in the City.

7.10 Assignment. Neither this Agreement nor any rights under this Agreement may be assigned by either party.

7.11 Other Documents. The parties shall take all such actions and execute all such documents which may be necessary to carry out the purposes of this Agreement, whether or not specifically provided for in this Agreement.

7.12 Governing Law. This Agreement and the interpretation of its terms shall be governed by the laws of the State of Florida, without application of conflicts of law principles.

7.13 Counterparts. This Agreement may be executed and delivered in three

counterparts, each of which shall be deemed to be an original and both of which, taken together, shall be deemed to be one agreement.

7.14 Indemnification. The City agrees to defend, hold harmless and indemnify **Silva** from any and all claims, suits, causes of action, or proceedings of any kind brought against **Silva** for actions taken by **Silva** in the course and scope of his public purpose employment with the City, under the limitations of Section 768.28 of Florida Statutes. Should the City Attorney determine that it is disadvantageous or a conflict of interest to provide counsel to **Silva**, **Silva** will obtain separate counsel of his choice at the City's expense. In the event that any separate counsel is hired by **Silva** under this provision, the choice of counsel and rates to be charged must be approved by the City Commission before the City is required to pay for expenses of same.

The parties have executed this Agreement as of the date set forth above.

PASSED AND ADOPTED THIS 10TH day of MAY, 2023.

ATTEST:

Annery Gonzalez, MMC
City Clerk

APPROVED:

Yolanda Aguilar, City Manager

Edward Silva

FOR LEGAL SUFFICIENCY:

Jose A. Villalobos, City Attorney