

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CASE NO:

ARTHUR H. SOREY, III,

Plaintiff,

v.

CITY OF NORTH MIAMI BEACH,
FLORIDA, a Florida municipal corporation,
ANTHONY DEFILLIPO, an individual,
JAY R. CHERNOFF, an individual, FORTUNA
SMUKLER, an individual, and
PHYLLIS SMITH, an individual

Defendant.

COMPLAINT

Plaintiff, ARTHUR H. SOREY, III (“Sorey” or “Plaintiff”), through his undersigned counsel, sues Defendants, CITY OF NORTH MIAMI BEACH, FLORIDA, a Florida municipal corporation (the “City”), ANTHONY DEFILLIPO, an individual (“DeFillipo”), JAY R. CHERNOFF, an individual (“Chernoff”), FORTUNA SMUKLER, an individual (“Smukler”), and PHYLLIS SMITH, an individual (“Smith”), and alleges as follows:

NATURE OF THE ACTION

1. This is an action for damages exceeding \$50,000.00, exclusive of interest, costs, and attorneys’ fees, and is within the Court’s subject matter jurisdiction.

THE PARTIES, JURISDICTION, AND VENUE

2. Plaintiff is a resident of Miami-Dade County, Florida, is over 18 years of age, and is otherwise *sui juris*.

3. Defendant the City is and has been a municipal corporation authorized pursuant to the laws of the State of Florida, is located in Miami-Dade County, Florida, and is subject to the personal jurisdiction of this Court.

4. Defendant DeFillipo is an individual that is over 18 years of age, resides in Broward County, Florida (although he has represented that he resides in Miami-Dade County, Florida), is otherwise *sui juris*, and is subject to the personal jurisdiction of this Court. At all times material to this action, DeFillipo was the Mayor of the City, but he also acted in his individual capacity and outside the scope of his authority by engaging in misconduct as alleged against him herein.

5. Defendant Chernoff is an individual that is over 18 years of age, resides in Miami-Dade County, Florida, is otherwise *sui juris*, and is subject to the personal jurisdiction of this Court. At all times material to this action, Chernoff was a Commissioner on the Commission of the City of North Miami Beach, Florida (the “**City Commission**”), but he also acted in his individual capacity and outside the scope of his authority by engaging in misconduct as alleged against him herein.

6. Defendant Smukler is an individual that is over 18 years of age, resides in Miami-Dade County, Florida, is otherwise *sui juris*, and is subject to the personal jurisdiction of this Court. At all times material to this action, Smukler was a Commissioner on the City Commission, but she also acted in her individual capacity and outside the scope of her authority by engaging in misconduct as alleged against her herein.

7. Defendant Smith is an individual that is over 18 years of age, resides in Miami-Dade County, Florida, is otherwise *sui juris*, and is subject to the personal jurisdiction of this Court. At all times material to this action, Smukler was a Commissioner on the City Commission, but she also acted in her individual capacity and outside the scope of her authority by engaging in

misconduct as alleged against her herein.

8. Venue is proper in this judicial circuit because Defendants maintain their principal places of business in Miami-Dade County, Florida, two of the individual Defendants reside in Miami-Dade County, Florida, the causes of action alleged herein accrued in Miami-Dade County, Florida, and the contracts at issue in this action contain a provision in which Sorey and the City stipulated to Miami-Dade County, Florida as the exclusive venue for any disputes.

GENERAL ALLEGATIONS COMMON TO ALL COUNTS

9. Sorey has a Master's Degree in public administration and began his public service career in the City of North Miami (“**North Miami**”) as a budget analyst.

10. Sorey rose through the ranks at North Miami to become its budget administrator, budget director, and the coordinator of its Community Redevelopment Agency.

11. In or around July 2015, North Miami appointed Sorey to be its Deputy City Manager, and on February 4, 2020, North Miami further elevated Sorey to the position of Interim City Manager.

12. Thereafter, Sorey applied to be City Manager for Defendant, the City.

13. On or about April 20, 2021, the City appointed Sorey to be its City Manager for a four-year term.

14. Sorey was and is highly qualified and experienced for the position of City Manager for the City due to his education and his longstanding experience with public service and municipal management.

A. The Employment Agreement and the Amendment

15. On or about April 22, 2021, the City and Sorey signed, and agreed to be bound by, an Employment Agreement (the “**Employment Agreement**”). A true and correct copy of the

Employment Agreement is attached hereto as **Exhibit “A.”**

16. The Employment Agreement provides that if the City terminates Sorey without cause, the City is required to pay Sorey a lump sum severance payment equal to twenty (20) weeks of his regular base salary at the time of termination (the “**Severance Pay**”), along with other benefits, including health insurance premiums, and unpaid and accrued vacation, holidays and sick leave (collectively with the Severance Pay, the “**Severance Benefits**”). *See* Employment Agreement at Section 4(A) and Section 5(D).

17. The Employment Agreement requires the City to pay Sorey his Severance Benefits within 30 days of his termination. *See, e.g., id.* at Section 4(B).

18. The City and Sorey amended the Employment Agreement pursuant to a First Amendment to the Employment Agreement Between the City of North Miami Beach and Arthur Sorey dated June 15, 2021 (the “**Amendment**”). A true and correct copy of the Amendment is attached hereto as **Exhibit “B.”**

19. Among other things, the Amendment credited Sorey with 160 hours of annual leave and 96 hours of sick leave, and provided Sorey with the ability to accrue vacation, holiday, and sick leave each year, including during his first year as City Manager. *See* Amendment at ¶¶6 and 7.

20. The Amendment also entitles Sorey to 100% of the “[a]ccrual and payout of annual [vacation and holiday] and sick leave upon separation from employment [with the City].” *Id.* at ¶8.

B. Sorey Was Obligated to Comply with the City’s Charter and Contractual Obligations

21. Sorey was a valuable asset to the City and he consistently sought to improve the community.

22. Throughout his tenure as City Manager, Sorey refused to engage in unauthorized and inappropriate conduct when requested by City personnel, and Sorey reported such misconduct to other City officials.

23. An example of this included Sorey's refusal to allow non-City personnel, including Defendant Smukler's husband, to review bids for public works projects, as requested by the City's Chief Procurement Officer.

24. More recently, Sorey raised concerns that the City, via the City's Mayor, DeFillipo, and City Commissioners Chernoff, Smukler, and Smith, used improper procedures when attempting to terminate the former City Attorney, Hans Ottinot of Ottinot Law, P.A. ("**Ottinot**").

25. Sorey informed the City, DeFillipo, and the City Commission that unless and until the applicable legal and administrative requirements had been satisfied, Sorey could not succumb to Defendants DeFillipo's, Chernoff's, Smukler's, and Smith's demands to remove Ottinot's access to the City Attorney's emails and/or the City's facilities, nor to Defendants' demands to cause the City to stop paying Ottinot's compensation and benefits.

26. Sorey based his position on the rules and ordinances governing the termination of City officers and Ottinot's employment contract with the City.

27. The City's Charter governs the removal of City officers and requires that the City Attorney "shall be removed by a majority vote of the City Commission." *See* City Charter, Art. III, § 3.3.

28. In or around January 2023, Defendants DeFillipo, Chernoff, Smukler, and Smith signed affidavits outside of a public forum, in violation of, *inter alia*, §286.011, Fla. Stat., with the intention of terminating Ottinot,

29. On January 30, 2023, DeFillipo emailed Ottinot and attempted to terminate Ottinot

pursuant to the aforementioned affidavits. DeFillipo copied Sorey, and instructed Sorey to cause the City to stop paying Ottinot's compensation and benefits.

30. On January 31, 2023, Sorey responded to DeFillipo's email, noting that he could not cause the City to stop paying Ottinot and that Ottinot's employment agreement and the City Charter required Ottinot's termination to be based on a "majority decision" of the City Commission, which could only occur lawfully at a City Commission meeting.

31. Sorey also sent an email to Defendant Chernoff, noting Sorey's opposition to the Defendants' improper attempts to terminate Ottinot and to stop paying Ottinot's compensation and benefits, again opining that neither the City Commissioners nor DeFillipo had terminated Ottinot in compliance with the City's Charter or applicable legal requirements.

32. Consequently, Sorey informed Defendant Chernoff that Sorey could not cause the City to cease paying Ottinot's compensation or otherwise prohibit Ottinot's access to City facilities at that time.

33. As a result of Sorey's refusal to violate the City's Charter, and notwithstanding Sorey's excellent record and demonstrated commitment to the City and the community, Defendant DeFillipo informed Sorey of Defendants' intention to terminate Sorey "without cause."

34. Defendants, however, failed to identify any basis supporting their intention to terminate Sorey.

C. The Negotiation and Drafting of a Separation Agreement

35. Instead of terminating Sorey without cause immediately, in or around January 2023, the City, through DeFillipo and his private counsel, Michael A. Pizzi, Jr. ("**Pizzi**") insisted on preparing a Separation Agreement and General Release Between the City of North Miami Beach and Arthur H. Sorey, III (the "**Separation Agreement**").

36. The Separation Agreement was intended to provide, among other things, the same Severance Benefits for Sorey that are required by the Employment Agreement and the Amendment, and was based upon a termination of Sorey without cause.

37. In consideration for the Severance Benefits, the Separation Agreement also included a release and waiver of claims in accordance with the provisions of Section 4(B) of the Employment Agreement.

D. Defendants' Retaliatory Actions and Termination of Sorey Without Cause

38. On February 9, 2023, before the Separation Agreement was completed or executed by either party, DeFillipo threatened Sorey for refusing to cooperate with Defendants' improper efforts to terminate Ottinot.

39. Sorey reiterated that the City could not stop paying Ottinot under the circumstances, and Sorey noted his concerns regarding DeFillipo's threatening remarks and unprofessional behavior.

40. Instead of causing the City to finalize and execute the Separation Agreement and to pay Sorey all of his Severance Benefits, Defendants pondered ways to fire Sorey for cause.

41. Due to Sorey's and the City's (through DeFillipo's counsel's) negotiations and drafting of the Separation Agreement, and due to DeFillipo's assurances, Sorey had no reason to believe that Defendants intended to seek to terminate his employment supposedly "for cause".

42. On March 21, 2023, Sorey learned, suddenly and without any warning or notice, that most of the Defendants expected the City Commission to vote to terminate Sorey's employment purportedly "for cause" at a March 21, 2023 City Commission meeting.

43. Neither Defendants nor any other City officials had ever informed, or even implied to Sorey, that there were any concerns with his job performance or that there was any reason or

basis to terminate his employment for cause. However, Defendant Smith called Sorey on the telephone and told him that he should “walk away” from his Employment Agreement because it was “too rich”.

44. The City Commission’s vote to terminate Sorey for cause failed during the March 21, 2023 City Commission meeting.

45. The City Commission then voted at the same March 21, 2023 meeting to terminate Sorey *without cause*, which received a majority vote and passed.

46. Accordingly, the City terminated Sorey without cause on March 21, 2023.

47. At the time his employment with the City was terminated, Sorey had accumulated 389 hours of annual leave, 270 hours of sick leave, 16 hours of floater benefits, and 8 hours of birthday leave, in addition to the Severance Pay and other Severance Benefits to which Sorey is legally and contractually entitled.

E. Defendants Subsequently Terminated Sorey Again “For Cause” Without Notice

48. On April 18, 2023, and although it was not on the City Commission meeting’s agenda and Sorey was not given any notice, Defendants caused the City Commission to vote for a second time, this time to terminate Sorey purportedly *for cause*.

49. The City Commission, however, had *already* terminated Sorey *without cause* on March 21, 2023.

50. Sorey did not attend the April 18, 2023 meeting, nor did he have counsel present to lodge his objections or present his position, because there was no prior notice that this issue would be discussed at the April 18, 2023 City Commission meeting, in violation of, *inter alia*, §286.011, Fla. Stat.

51. Again, the City’s Charter governs the removal of City officers and requires that the

City Manager “shall be removed by a majority vote of the City Commission.” City Charter, Art. III, § 3.1.

52. Moreover, Section 4(A) of the Employment Agreement provides that “[i]n the event the City Commission wishes to terminate the City Manager, it shall do so in accordance with Section 3.1 of the Charter.”

53. For the foregoing, and other, reasons, Sorey’s subsequent termination “for cause” is without legal effect, and the City is obligated to pay the full amount of the Severance Benefits to Sorey, as required by Sections 4(B), 5(A), 5(D), and 7 of the Employment Agreement, and by paragraphs 6, 7, and 8 of the Amendment.

F. DeFillipo Was Arrested on May 31, 2023 For Voting Illegally in North Miami Beach

54. On May 31, 2023, Defendant DeFillipo was arrested on charges that he resides in Davie, Florida in Broward County, and not in North Miami Beach, and that he voted illegally several times from North Miami Beach, Florida.

55. DeFillipo is represented by Pizzi in connection with the criminal charges that have been levied against him.

G. The City Only Made a Partial Payment to Sorey of His Severance Benefits

56. On or about July 3, 2023, the City mailed Sorey a check in the amount of \$51,849.44 (the “**Partial Payment**”), representing only a fraction of the Severance Benefits that the City owes to Sorey pursuant to the Employment Agreement, as amended by the Amendment.

57. Sorey deposited the Partial Payment under protest and without waiving or prejudicing his right to recover the full amount of the Severance Benefits to which he is entitled, and without waiving or prejudicing his claims, damages, attorneys’ fees, costs, or interest, which he is pursuing through this action.

H. The City Commission Engaged Pizzi to Prepare an “Investigative Report” *Post Facto*

58. On July 18, 2023, Pizzi released a document purporting to be an “Investigative Report” regarding “Former Administration Expenditure of Taxpayers Funds” (the “**Pizzi Report**”).

59. The Pizzi Report purports to investigate Sorey, at the behest of the City Commission, and concludes (incorrectly) that there was “massive misspending of taxpayer funds and improper use of taxpayer funded government resources for personal and political benefit under the prior administration” when Sorey was the City Manager.

60. Pizzi clearly had a conflict of interest and/or appearance of impropriety given the unlawful acts with which DeFillipo has been charged, the fact that Pizzi is DeFillipo’s personal counsel, and given that the City Commission engaged Pizzi to conduct an “investigation” regarding Sorey after he had been terminated in a thinly veiled effort to justify the Defendant’s misconduct as alleged herein.

61. There is no truth to the Pizzi Report as it relates to Sorey, and Defendants’ retention of Pizzi was a further defalcation of their legal obligations.

62. The City has failed and refused to pay Sorey the full amount of his Severance Benefits.

63. All conditions precedent to the maintenance of this action have occurred, been performed, or have been waived, satisfied, or excused.

64. Plaintiff has retained the undersigned law firm to represent him in this action and is obligated to pay said firm a reasonable fee and costs for their services. Plaintiff is entitled to recover his attorneys’ fees and costs pursuant to the terms of the Employment Agreement, §448.08,

Florida Statutes, and/or §286.011(4), Fla. Stat.

COUNT I--BREACH OF CONTRACT

65. Plaintiff, ARTHUR H. SOREY, III sues Defendant, CITY OF NORTH MIAMI BEACH, FLORIDA, for Breach of Contract, adopts and re-alleges the allegations set forth in Paragraphs 1 through 64 above, as if fully and expressly set forth herein, and further alleges as follows.

66. This is an action against the City for Breach of Contract.

67. The Employment Agreement, as amended by the Amendment, is a valid and binding contract.

68. Sorey served as the City Manager of the City in exchange for promised compensation, benefits, options, and bonuses, and provided by the Employment Agreement, as amended by the Amendment.

69. Sorey fully performed all his obligations pursuant to the Employment Agreement, as amended by the Amendment, or he has been prevented from doing so by Defendant's misconduct.

70. The City is obligated to pay the full amount of the Severance Benefits to Sorey, as required by Sections 4(B), 5(A), 5(D), and 7 of the Employment Agreement, and by paragraphs 6, 7, and 8 of the Amendment.

71. Although the City terminated Sorey without cause (and its subsequent termination of Sorey "for cause" is without legal effect), the City has failed and refused to pay Sorey the full amount of his Severance Benefits.

72. The City is in present material breach of Sections 4(B), 5(A), 5(D), and 7 of the Employment Agreement, and paragraphs 6, 7, and 8 of the Amendment.

73. Plaintiff has sustained damages as a direct and proximate result of Defendant's breaches of contract.

WHEREFORE, Plaintiff, ARTHUR H. SOREY, III, demands that judgment be entered in his favor and against Defendant, CITY OF NORTH MIAMI BEACH, FLORIDA, for compensatory damages, consequential damages, pre-judgment interest, post-judgment interest, attorney's fees, costs, and such other and further relief as the Court deems just and proper.

**COUNT II--BREACH OF THE IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING**

74. Plaintiff, ARTHUR H. SOREY, III sues Defendant, CITY OF NORTH MIAMI BEACH, FLORIDA, for Breach of the Implied Covenant of Good Faith and Fair Dealing, adopts and re-alleges the allegations set forth in Paragraphs 1 through 73 above, as if fully and expressly set forth herein, and further alleges as follows.

75. Florida law recognizes the implied covenant of good faith and fair dealing in every contract.

76. The implied covenant arises because each party to a contract promises to perform their part of the bargain in good faith and expects the other party to do the same.

77. The implied covenant of good faith and fair dealing is intended to protect the contracting parties' reasonable expectations.

78. Sorey and the City entered into the Employment Agreement, as amended by the Amendment.

79. The City has failed to comply with its contractual duties, as alleged more fully above.

80. Furthermore, the City strung Sorey along and led him to believe that it intended to terminate Sorey without cause (even though there was no justifiable reason to terminate Sorey at

all) and pay Sorey his Severance Benefits as required by the Employment Agreement and the Amendment, while plotting with the other Defendants to terminate Sorey for cause.

81. Indeed, the City attempted to terminate Sorey for cause at the March 21, 2023 City Commission meeting.

82. When the City Commission did not obtain enough votes to terminate Sorey for cause, the City terminated Sorey without cause during the same March 21, 2023 City Commission meeting.

83. Almost a month after the City had already terminated Sorey without cause, the City (through the City Commission) purported to terminate Sorey *again*, this time “*for cause*,” notwithstanding that Sorey was no longer a City employee at that time, despite not placing the issue on the agenda for the April 18, 2023 City Commission meeting, and without providing Sorey with advance notice that the issue would be discussed and voted on during the April 18, 2023 City Commission meeting.

84. Sorey had a reasonable expectation that the City would comply with the Employment Agreement, as amended by the Amendment, in good faith.

85. The City undermined Sorey’s reasonable expectations and frustrated the purposes of the Employment Agreement, as amended by the Amendment, by failing to perform in good faith pursuant to the parties’ contracts.

86. Accordingly, the City breached the implied covenant of good faith and fair dealing inherent in every contract, including the Employment Agreement and the Amendment.

87. Sorey has suffered damages as a direct and proximate result of the City’s breaches of the implied covenant of good faith and fair dealing.

WHEREFORE, Plaintiff, ARTHUR H. SOREY, III, demands that Judgment be entered

in his favor and against Defendant, CITY OF NORTH MIAMI BEACH, FLORIDA, for compensatory damages, consequential damages, pre-judgment interest, post-judgment interest, attorneys' fees, costs, and such other and further relief as the Court deems just and proper.

COUNT III--TORTIOUS INTERFERENCE

88. Plaintiff, ARTHUR H. SOREY, III sues Defendants, ANTHONY DEFILLIPO, JAY R. CHERNOFF, FORTUNA SMUKLER, and PHYLLIS SMITH, for Tortious Interference, adopts and re-alleges the allegations set forth in Paragraphs 1 through 64 above, as if fully and expressly set forth herein, and further alleges as follows.

89. Sorey and the City entered into the Employment Agreement, as amended by the Amendment, as alleged above.

90. Defendants DeFillipo, Chernoff, Smukler, and Smith each had knowledge of the contractual relationship between Sorey and the City.

91. Defendants DeFillipo, Chernoff, Smukler, and Smith each intentionally interfered with the Employment Agreement, as amended by the Amendment, without justification or privilege to do so.

92. Indeed, most of the Defendants first attempted to cause the City to terminate Sorey for cause, and when they were unable to garner sufficient votes from the City Commission, Defendants DeFillipo, Chernoff, Smukler, and Smith caused the City to terminate Sorey without cause during the March 21, 2023 City Commission meeting.

93. Almost a month after the City had already terminated Sorey *without cause*, Defendants DeFillipo, Chernoff, Smukler, and Smith caused the City to terminate Sorey *again*, this time "*for cause*", despite not placing the issue on the agenda for the April 18, 2023 City

Commission meeting, and without providing advance notice that the issue would be discussed and voted on during the April 18, 2023 City Commission meeting, in violation of §286.01, Fla. Stat.

94. Defendants also engaged Pizzi to prepare the Pizzi Report to justify Defendants' prior misconduct.

95. As Defendants know, or should know, the Pizzi Report is false, at least with respect to its contentions against Sorey.

96. Defendant's conduct as alleged herein also violates the requirements of the Employment Agreement, as amended by the Amendment, and the City Charter, which is incorporated into the Employment Agreement by reference. *See, e.g.*, Employment Agreement at Section 4(A).

97. Defendants DeFillipo, Chernoff, Smukler, and Smith caused the City to breach the Employment Agreement, as amended by the Amendment.

98. Defendants DeFillipo, Chernoff, Smukler, and Smith's tortious interference was performed with malice, such that each of these Defendants interfered with the Employment Agreement as amended by the Amendment solely out of spite, to do harm, or for some other bad motive and/or ulterior purposes, without an honest belief that their actions would benefit the City.

99. The conduct of Defendants DeFillipo, Chernoff, Smukler, and Smith with respect to the Employment Agreement, as amended by the Amendment, is not in the City's best interest.

100. Defendants DeFillipo, Chernoff, Smukler, and Smith's tortious interference was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of Sorey's rights or property.

101. Plaintiff's claims against Defendants DeFillipo, Chernoff, Smukler, and Smith are not solely predicated on the City Commissioners' act of voting, and Defendants DeFillipo, Chernoff, Smukler, and Smith are not immune to Plaintiff's claims against them.

102. Sorey has suffered damages as a direct and proximate result of Defendants DeFillipo, Chernoff, Smukler, and Smith's tortious interference with the Employment Agreement, as amended by the Amendment.

WHEREFORE, Plaintiff, ARTHUR H. SOREY, III, demands that Judgment be entered in his favor and against Defendants, ANTHONY DEFILLIPO, JAY R. CHERNOFF, FORTUNA SMUKLER, and PHYLLIS SMITH, for compensatory damages, consequential damages, pre-judgment interest, post-judgment interest, attorneys' fees, costs, and such other and further relief as the Court deems just and proper.

Dated: July 21, 2023

**KLUGER, KAPLAN, SILVERMAN,
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EXHIBIT A

THIS EMPLOYMENT AGREEMENT (the “Agreement”) is made and entered into as of the 20th April 2021 by and between the **City of North Miami Beach, Florida**, a Florida municipal corporation located in Miami-Dade County (the “City”), and **Arthur Sorey, III**, an individual residing in Miami-Dade County (“Employee” or “City Manager”). The City and the Employee may be referred to herein individually as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, on April 20, 2021, the City Commission appointed Employee as City Manager; and

WHEREAS, the Parties desire to enter into an initial Employment Agreement, which set forth the terms and conditions of Employee’s employment as City Manager for the period of four (4) years commencing on April 20, 2021 and ending April 20, 2025; and

NOW THEREFORE, in consideration of foregoing recitals, which are incorporated herein and made a part hereof by this reference, the mutual promises set forth in this Agreement, and other good and valuable consideration, the sufficiency of which the Parties hereby acknowledge, the City and City Manager agree as follows:

Section 1. Duties

A. City Manager shall perform the functions and duties of his position as specified in Section 3.1.1 of the City Charter and shall perform such other legally permissible and proper duties and functions as the City Commission shall assign from time to time.

B. The City Manager shall discharge his duties in accordance with this Agreement, the City Charter and Code, and any applicable City employment policies, as may be established and amended from time to time by the City Commission, and in a professional and respectable fashion as required of city Managers generally.

C. City Manager acknowledges that the duties of City Manager will be variable and may require work after the City’s regular business hours, and on nights, weekend and holidays. City Manager agrees to devote City Manager’s best efforts and the time and energy necessary to perform fully the duties of City manager as required under this Agreement and the City Charter and Code.

D. In the event that City Manager is temporarily unable to perform his duties, City Manager may designate by letter filed with the City Clerk, a qualified administrative officer of the City in accordance with Section 3.1.2 of the City Charter. In the event of failure of the City Manager to make such designation, the City Commission may by resolution appoint an officer of the City to perform the duties of City Manager until he is able to perform his duties.

Section 2. Term of Agreement

A. This Agreement shall be effective April 20, 2021. The initial term of this Agreement shall be four (4) years commencing on April 20, 2021 and shall expire on April 20, 2025 (the “Term”). However, Employee first day of work shall be April 22, 2021. The Term may be extended at the will of the City Commission for successive one-year periods. City Manager acknowledges that employment with the City is on an at-will basis and that City Manager shall serve at the pleasure of the City Commission. Nothing in this Agreement shall prevent, limit and/or otherwise interfere with the right of the City Commission to terminate City Manager at any time, subject to the City Charter.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Manager to resign at any time from the position of City Manager, subject only to the provisions set forth in Section 5 of this Agreement.

Section 3. Salary

A. The City agrees to pay the City Manager as compensation for his services under this Agreement an initial annual salary of \$240,000.00 payable in weekly installments at the same time as when other City employees are paid. This salary is subject to all legally required deductions. Beginning April 20, 2022 and each April 20th thereafter that the City Manager is employed by the city, the City Manager shall receive a cost-of-living adjustment of three percent (3%) per year.

B. The City Commission may annually review the City Manager's salary and/or other benefits and may increase same in such amounts and to such an extent as the City Commission may determine desirable on the basis of the performance of the City Manager, in the City Commission's role and absolute discretion. Such evaluation shall be in such form as the Commission deems appropriate and may be made each year beginning in 2022, prior to April 22, in accordance with procedures established by City Commission for the duration of this Agreement. Nothing in this section shall require the City to increase the compensation and /or other benefits of the City Manager.

Section 4. Termination by the City

A. In the event the City Commission wishes to terminate the City Manager, it shall do so in accordance with Section 3.1 of the Charter.

B. In the event the City Commission wishes to terminate the City Manager without cause, the City Manager shall receive a lump sum severance pay equal to twenty (20) weeks of his regular base salary at the time of termination (the "Severance Pay"). In such event, the City also continue to pay the premium for the City Manager's health insurance for twenty (20) weeks. The City shall not provide the City Manager with his automobile allowance, cellular telephone allowance, or any other benefit or reimbursement (except that specifically set forth in this paragraph) beyond the date of his termination. The Severance Pay shall be paid to the City Manager within thirty (30) days of the City Manager's termination, provided the City Manager first executes a release and waiver of claims releasing the City from any liability in connection with his employment with the City.

C. Notwithstanding the provisions of Section 4.B above, in the event City Manager is terminated for misconduct as defined in Section 443.036 (30), Florida Statutes, the City shall have no obligations to pay the City Manager any severance pay. Misconduct includes, but is not limited to: (i) breach of any material term or condition of this Agreement; (ii) conviction of a felony; (iii) gross insubordination; (iv) willful neglect of duty; or (v) adjudicated violation of the Florida Code of Ethics, the City Charter, or the City's Code of Ethics Ordinance.

Section 5. Termination by the City Manager

A. In the event that the City Manager voluntarily resigns or retires, the City Manager shall provide the City with sixty (60) days advance written notice, unless the Parties agree in writing to a different period of

time. In the event of resignation by the City Manager under this Section, the City Manager shall not be entitled to receive severance package, but the City shall pay the City Manager for his accrued unused vacation and sick leave (if applicable) calculated at the City Manager's rate of pay in effect upon the date of resignation in accordance with City Policy for non-union civilian employees.

B. In the event the City Manager voluntarily resigns with less than 60 days advance written notice, the City Commission may elect to terminate the City Manager immediately or allow the City Manager to continue to serve until the date specified in the City Manager's resignation. In the event of a resignation or termination under this paragraph, notwithstanding any other provisions of this Section, the City Manager shall not be entitled to receive either severance payment of vacation or sick leave unless the City Commission authorizes a payment for accrued unused leave.

C. If the City Manager is unable to perform his duties as specified in Section 1 of this Agreement for a period of thirty (30) consecutive days or sixty (60) non-consecutive days during any one-year period for any reason other than an approved Family Medical Leave Act ("FMLA") absence, the City Commission may terminate this Agreement. If the City Manager takes FMLA-approved leave and exhausts his statutorily protected, FMLA-approved leave in any one-year period, the City Commission may terminate this Agreement. In the event of the City Manager's death, this Agreement shall be terminated. If this Agreement is terminated under this Section, the City Manager shall not be entitled to severance pay.

D. Unless otherwise specified in this Agreement, or required by law, upon termination of this Agreement, the City Manager or his beneficiary shall be entitled to receive payment of any accrued or unused sick or vacation leave in accordance with the terms of this Agreement, as may be amended from time to time.

Section 6. Automobile and Cell Phone Allowances

A. Vehicle:

1. The City agrees to provide the City Manager with a City-owned vehicle at no cost to Employee and to pay for the maintenance of said vehicle.
2. City Manager shall maintain an automobile policy covering his use of the City-owned vehicle which names the city as an additional insured, and which provide bodily injury coverage of at least \$200,000 per accident.
3. City Manager shall immediately report to the Human Resources Director and the City Attorney any accident in which the vehicle is involved.
4. City Manager shall not allow anyone other than himself, or an individual authorized by the City Commission, to drive the City-owned vehicle.

B. Cell Phone: The City shall provide City Manager with a cell phone allowance of \$100.00 per month.

Section 7. Vacation, Holidays and Sick Leave

- A. The City Manager shall accrue 160 hours of annual leave per year.
- B. The City Manager shall accrue 96 hours of sick leave per year.
- C. Accrual and payout of annual and sick leave shall be as set forth in the City's Employee manual.
- D. The City Manager shall be entitled to City-sponsored health insurance on the same terms and at the same cost as provided to other Tier 1 Employees of the City.

Section 8. Health, Dental, Life, Disability and Professional Insurance

- A. The City Manager shall be entitled to City-sponsored health insurance on the same terms and at the same cost as provided to other Tier 1 employees of the City.
- B. The City shall provide the City Manager with life insurance in the amount of two hundred thousand dollars (\$200,000.00) at no cost to the City Manager. At separation, the City's obligation to pay for Said policy shall cease. The Policy shall be portable, and the City Manager may keep the policy following separation, provided he pays the premium for said policy.
- C. The City shall provide the City Manager with short and long term disability insurance coverage at no cost to the City Manager.

Section 9. Retirement

The City Manager shall be permitted to participate in the General Management Employees Retirement Plan subject to the terms and conditions of such Plan.

Section 10. Professional Development

The City shall pay City Manager's reasonable dues, subscriptions and travel expense along with subsistence expenses for continuing education, membership and participation in professional associations and organizations.

Section 11. Employee Cooperation and Obligations

- A. In the event of actual or threatened litigation and/or administrative proceedings involving the City which arise out of the operation or actions which occurred or are alleged to have occurred while City Manager performed his duties for the City, City Manager will cooperate with the City and its counsel in assisting the City in every legal manner to prevail in said action.
- B. City Manager further agrees that unless required by law, he will not cooperate with or assist any party, person, or entity who has, had or may have, or asserts that he has or may have any claim or any nature against the City, its agents, officers, employees, City Commissioners or

representatives, without the express written permission of the City Commission, or its designee.

- C. City Manager shall not disclose any confidential information involving the business of the City to any person or entity without the written permission of the City Commission, or its designee, unless required to do so by law.
- D. Restrictions set forth in subparagraphs B and C above shall not apply in instances of governmental entities with jurisdiction over a claim of a violation of law.
- E. The commitments made in Section 11 herein shall survive the termination of this Agreement and be enforceable by the City so long as the law allows.

Section 12. Indemnification

To the extent permitted by law and as limited by Section 768.28, Florida Statutes for tort actions, the City shall defend, save harmless and indemnify the city Manager against any tort, professional liability claim or demand or other legal action arising out of an alleged act or omission occurring in connection with the performance of the City Manager duties so long as the City Manager is acting within the scope of his employment. The city, or its insurance carrier, will defend all such claims and actions at its own cost through competent counsel through administrative, trial, and appellate proceedings pay or settle any such claim or suit or judgement rendered thereon. This Section shall survive cancellation or termination of this Agreement.

Section 13. Notice

Notices pursuant to this Agreement shall be given by certified mail, return receipt requested, through the United States Postal Services delivery, addressed as follows:

City	Anthony F. DeFillipo Mayor City of North Miami Beach 17011 NE 19 th Avenue North Miami Beach, FL 33162
With copy to the	Hans Ottinot, Esq. Interim City Attorney City of North Miami Beach 17011 NE 19 th Avenue North Miami Beach, FL 33162
City Manager	Arthur Sorey, III City Manager City of North Miami Beach 17011 NE 19 th Avenue North Miami Beach, FL 33162

Any of the foregoing Parties may, by written notice to the other Parties, designate any other address to which subsequent notices, certificate 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. Any notice sent by electronic mail shall not be considered delivered unless the recipient has expressly confirmed receipt thereof.

Section 14. Other Terms and Conditions

- A. 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 an 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 continuing waiver of any subsequent breach by that party.
- C. This Agreement shall be binding upon and inure to the benefit of the heirs at law or personal representative of the City Manager.
- D. This Agreement contains the entire Agreement of the Parties. It may not be changed, except by an Agreement in writing signed by the Parties.
- E. Florida law shall govern the construction, interpretation, and enforcement of this Agreement and venue for any litigation which may arise that in any way involves this Agreement shall be in Miami-Dade County in a court of competent jurisdiction.
- F. Upon City Manager's death, the City's obligations under this Agreement shall terminate except for:
 - 1. Transfer of ownership of retirement funds, if any, to his designated beneficiaries;
 - 2. Payment of accrued leave balances in accordance with this Agreement to his designated beneficiaries;
 - 3. 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 or administrative hearing officer construing this Agreement shall construe it more against one party than the other and every covenant, term and provision of this Agreement shall be construed simply according so its fair meaning.
- H. It is understood and agreed that this document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and/or understandings applicable to the matters contained herein and that the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. According, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

- I. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless approved by the City Commission and agreed upon by the parties. Any approved and agreed upon changes to this Agreement shall be reduced to writing with the same formality as this Agreement.
- J. The rights and obligations herein granted are personal in nature and cannot be assigned, delegated, or transferred by the City Manager.
- K. In any action or proceeding to enforce or interpret the provisions of this Agreement, each in such action or proceeding shall bear their own attorney's fees.
- L. Any calculation or computations required herein shall be made by the City Finance Director, subject to verification by the City Attorney. The Manager shall be promptly furnished a copy of such calculations and computations.
- M. On any matter which is not covered or addressed by this Agreement or the City Charter, the general City personnel policies, as amended from time to time, and as may apply, shall control, subject to confirmation by the City Attorney.
- N. 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.

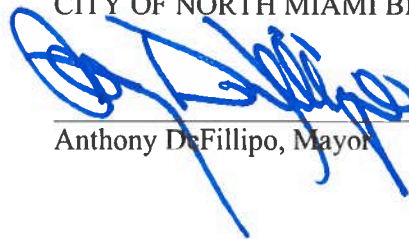
IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed and executed, as of the date first written above.

CITY MANAGER



Arthur Sorey, III

CITY OF NORTH MIAMI BEACH



Anthony DeFillipo, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY



Hans Ottinot, Esq.
Interim City Attorney

EXHIBIT B

**FIRST AMENDMENT TO EMPLOYMENT AGREEMENT BETWEEN THE CITY OF
NORTH MIAMI BEACH AND ARTHUR SOREY, III**

THIS FIRST AMENDMENT (“FIRST AMENDMENT”) to the Employment Agreement is made and entered into this 15th day of June 2021, by and between the City of North Miami Beach (“City”) and Arthur Sorey, III (“City Manager”). This First Amendment amends the Employment Agreement entered into on April 20, 2021, by the City and the City Manager.

WITNESSETH:

WHEREAS, on April 20, 2021, the City Commission appointed Arthur Sorey, III, as City Manager; and

WHEREAS, on or about April 20, 2021, the City and the City Manager entered into an Employment Agreement which outlines the salary and the employment benefits for the City Manager; and

WHEREAS, the City and the City Manager wish to amend the Employment Agreement to modify certain terms and conditions in the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements as hereinafter set forth, the City and City Manager agree as follows:

1. Section 6 entitled “Automobile and Cell Phone Allowances” shall be revised to read as follows: “Automobile and Allowances.”
2. Section 6A (1) shall be revised to read as follows: “The City agrees to provide the City Manager with a City-owned vehicle at no cost to the City Manager and to pay for the maintenance of said vehicle. Until such vehicle is provided to the City Manager, City agrees to provide City Manager with a vehicle allowance of \$750 per month on a pro rata basis.”
3. Section 6A (2) shall be revised in its entirety to read as follows: “Upon delivery of the City-owned vehicle to the City Manager, the City shall maintain an automobile insurance policy covering the City-owned vehicle and its use which provides bodily injury coverage of at least \$200,000 per accident/incident. The insurance policy for the vehicle shall not be activated until the delivery of the vehicle.”
4. Section 6B shall be revised to read as follows: “Cell Phone: The City shall provide City Manager with a cell phone allowance of \$150 per month.”
5. Section 6 shall be revised to add a new subsection C entitled “Expense Allowance” to read as follows: “The City shall provide City Manager with a monthly expense allowance of \$700 per month.”
6. Subsection A of Section 7 entitled “Vacation, Holidays and Sick Leave” shall be amended in its entirety to read as follows: “The City Manager upon the effective date of his Employment

Agreement shall be credited with 160 hours of annual leave and shall be permitted to accrue 160 hours of annual leave per year.”

7. Subsection B of Section 7 entitled “Vacation, Holidays, and Sick Leave” shall be amended in its entirety to read as follows: “The City Manager upon the effective date of his Employment Agreement shall be credited with 96 hours of sick leave and shall be permitted to accrue 96 hours of sick leave per year.”

8. Subsection C of Section 7 entitled “Vacation, Holidays, and Sick Leave” shall be amended to read as follows: “ Accrual and payout of annual and sick leave shall be at 100% upon separation from employment.”

9. Section 7 entitled “Vacation, Holidays, and Sick Leave” shall be amended to add a new subsection E to read as follow: “The City Manager shall be entitled to any holiday or leave time granted to Tier 1 employees under the policies of the City.”

10. Section 9 entitled ‘Retirement’ shall be revised in its entirety to read as follows:

“The City shall contribute 20% of the City Manager’s annual salary in a City sponsored 401b Retirement Plan.”

11. Except as amended herein, the Employment Agreement remains and full force and effect. If any conflict arises between this First Amendment and the Employment Agreement, the First Amendment will supersede the Employment Agreement.

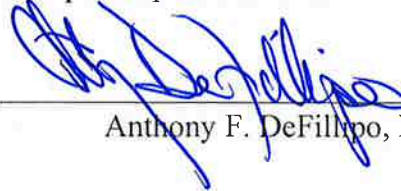
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be signed as of the first date written above.

THE CITY OF NORTH MIAMI BEACH, FLORIDA

A municipal corporation of the State of Florida

By:

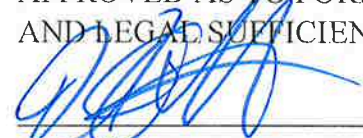


Anthony F. DeFillipo, Mayor

ATTEST:

By: 
Andrise Bernard, City Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:


Hans Ottinot, Interim City Attorney

CITY MANAGER



Arthur H. Sorey, III