



VILLAGE OF KEY BISCAYNE

Village Council

Robert L. Vernon, *Mayor*
Jorge E. Mendia, *Vice Mayor*
Michael Davey
Enrique Garcia
Steve Liedman
Thomas Thornton
Patricia Weinman

MEMORANDUM

Date: August 22, 2007

To: The Village Council for the Village of Key Biscayne
Steve Helfman, Attorney for the Village of Key Biscayne

From:  Councilmember Michael Davey 

On Wednesday, August 15, 2007, Chip Iglesias, the individual selected to be the next Manager for the Village of Key Biscayne, and I sat down to discuss a draft of his employment agreement (the "Agreement") with which I had provided him. During the course of our conversation, we agreed upon a majority of the points. However, Chip asked to amend several provisions of the Agreement, including the term, termination, compensation, performance evaluation, hours of work, automobile, retirement and professional development sections. Most of the changes he suggested were minor. Furthermore, I feel that he had a reasonable basis on the majority of the changes he requested which I deem to be significant (e.g., compensation, and retirement).

On August 19, 2007, Chip and I had further conversations about the Agreement. Pursuant to those discussions, I made additional, revisions. On August 20, 2007, we had additional conversations about the severance pay section. I have listed below the areas in which we had differences of opinion, and how we either settled those differences, or the options available to the Village Council prior to officially offering Mr. Iglesias the Agreement.

Section 2. Term

Chip suggested that we not have any set term for the contract. I am uncomfortable having an employment agreement with no finite duration. I think it makes renegotiations more contentious, and it does not favor the employer. My assessment is that Chip will accept the term as stated in the Agreement.

Section 3. Termination by Village and Severance Pay

Chip wanted nine (9) months aggregate salary in the event that he is terminated without cause, but he is willing to settle for six (6) months across the board. He does not want the three (3) month provision in effect for the last year. I supplied him with an alternative suggestion in which I offered six months for the entire term of the Agreement, provided that he will not receive any more money than he is entitled to during the term of the Agreement. That is, if he is terminated with less than six months remaining on his contract, he will only be entitled to those amounts which he would have earned had his contract run through to its date of expiration.

Chip's response was that he feels that there should be some measure of protection afforded him, should the Council decide to terminate him within a few months of the end of the Agreement's term. I understand that concern and, as a compromise, would be willing to offer him a minimum of three months of aggregate salary should he be terminated without cause. It is my impression that Chip will want six months. I feel that six months is too much. Three months is a sufficient amount. I am not certain if Chip will accept three months.

Section 5. Compensation

Our initial offer was \$140,000. Chip noted that he would be making less than his department heads. I found that to be a reasonable objection. In order to bring his salary more in line with his employees, we are now offering \$165,000, which is just under than 7.5% more than the salary of the highest paid department director, Jud Kurlancheek.

Section 6. Performance Evaluation

Chip wants a more concrete time frame in which the Council will conduct his performance review. I think that 90 days prior to the beginning of the fiscal year is the proper time to conduct such a review. I believe that Chip will accept this.

Section 7. Hours of Work

Chip has asked that he be allowed to engage in educational opportunities, should they present themselves. I have no objection, though I have included a provision by which the Council could require that Chip cease any such activities should it be deemed that they are interfering with his duties as Manager.

Section 8. Automobile

Chip is concerned as to whether he is permitted to use the vehicle for personal use. I included personal use as permissible. Chip is also concerned as to how quickly he would lose the use of the car if his employment is terminated. When I revised the Agreement, I drafted language to include a provision permitting him to use the vehicle for up to 45 days after termination of

employment, if such termination is without cause. At that time, I was concerned that this may cause liability issues for the Village. The Attorney's office has suggested that we remove that provision because of concerns over liability. I am concerned that Chip will not accept the vehicle without some ability to use the vehicle in the event he is terminated.

Section 9. Retirement

Chip pointed out that Village employees receive 12% of their annual base salary, where I had offered only 7.5%. I conceded that he should receive the same percentage. But Chip wants an additional contribution to a Section 457 plan of his choosing, which he would match. I am not in favor of this. However, I drafted language to allow him to direct no more than 6% of his annual base salary to a plan other than the plan provided for Village employees. The Village Attorney's office has reviewed this language and feels that it needs to be clarified.

Section 12. Professional Development

Chip is concerned that he is, under the Agreement, permitted to attend only on national or state annual conference per year. I have incorporated additional language, pursuant to which he may attend additional conferences if he receives the consent of the Council.

Section 14. Other Terms and Conditions

The Village Attorney's office felt that Section 14.5, concerning litigation over the Agreement is too vague. I added language to make it clear that the Village will only pay Employee's litigation expenses if the litigation involves the Agreement AND the Employee prevails.

RESOLUTION NO. 2007-

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPOINTING GENARO “CHIP” IGLESIAS AS VILLAGE MANAGER AND APPROVING THE EMPLOYMENT AGREEMENT ATTACHED TO THIS RESOLUTION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Village Council desires to appoint Genaro “Chip” Iglesias as Village Manager and to approve the Employment Agreement attached as Exhibit “A” to this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. That the foregoing recitals are true and correct and incorporated herein by this reference.

Section 2. Appointment/Approval of Employment Agreement. The Village Council hereby appoints Genaro “Chip” Iglesias to the Village Manager position and hereby approves the Employment Agreement attached as Exhibit “A”. The Village Mayor is hereby authorized to execute the Employment Agreement on behalf of the Village, in substantially the form which is attached hereto, once approved as to form and legal sufficiency by the Village Attorney.

Section 3. Effective Date. That this Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this 28th day of August, 2007.

MAYOR ROBERT L. VERNON

ATTEST:

CONCHITA H. ALVAREZ, CMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

VILLAGE ATTORNEY

EMPLOYMENT AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into as of the 28th day of August, 2007, between the Village of Key Biscayne (the "Village") and Genaro "Chip" Iglesias (the "Employee").

BACKGROUND

The Village wishes to hire Employee as Village Manager and Employee wishes to accept employment as Village Manager under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Village and Employee agree to the following:

SECTION 1. DUTIES

Village agrees to employ Employee as Village Manager to perform the duties and exercise the powers as prescribed by state law, the Village Charter and the Village Code, and to perform such other legally permissible and proper duties and functions as assigned by the Village Council from time to time.

SECTION 2. TERM

- 2.1 This Agreement shall have a term of three (3) years commencing August 28, 2007 and ending on August 27, 2010, unless earlier terminated as provided in this Agreement.
- 2.2 Village shall have the option to renew this Agreement for up to two additional one (1) year terms. Said renewal shall be effective upon written notice to Employee no sooner than ninety (90) days and no later than thirty (30) days prior to the stated termination dates of this Agreement.
- 2.3 Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Village Council to terminate the services of Employee at any time, subject only to the provisions set forth in Section 3 of this Agreement.

SECTION 3. TERMINATION BY VILLAGE AND SEVERANCE PAY

- 3.1 In the event Employee is terminated by the Village Council, other than for cause (as is defined in Section 3.2 of this Agreement) during the term of this Agreement at a time that Employee is willing and able to perform his duties under this Agreement, the Village agrees to pay Employee a lump sum cash payment equal to six (6) months aggregate salary ("Severance Pay"). However, in the event that less than six (6) months remain of the contract term during which Employee is terminated, the Severance Pay will constitute a lump sum cash payment equal to

the amount of pay that Employee would receive if employed until completion of that respective term, provided that the Severance Pay shall in no case be less than three (3) months of Employee's aggregate salary. In either such event, the Employee shall also receive payment for any and all accrued vacation, sick leave and floating holiday time in accordance with the Village's policies governing other non-police or fire employees of the Village ("Administrative Employees"). Severance Pay shall be paid within fifteen (15) working days of termination. The Village shall continue to provide medical coverage for Employee for three (3) months following the date of such termination, in the same manner and in the same amount as Employee is receiving at the time of termination. After the payment described above is made, the Village shall have no further financial obligation to Employee.

- 3.2 "Cause" for the purpose of this agreement is defined as: (i) fraud, misappropriation or embezzlement; (ii) Employee's intentional breach of the provisions of this Agreement; (iii) Employee's repeated willful failure to perform services hereunder; (iv) Employee's conduct unbecoming a public official; (v) Employee's willful and continued failure to substantially perform his duties for the Village (other than as a result of incapacity due to physical or mental illness); or (vi) willful conduct by Employee that is demonstrably and materially injurious to the Village, monetarily or otherwise. For purposes of this paragraph, and act, or a failure to act, shall not be deemed willful or intentional, as those terms are defined herein, unless it is done, or omitted to be done, by Employee in bad faith or without a reasonable belief that his action or omission was in the best interest of the Village. Failure to meet performance standards or objectives, by itself, does not constitute "Cause." "Cause" also includes any of the above grounds for dismissal regardless of whether the Village learns of it before or after terminating Employee's employment.

If employee's employment is terminated pursuant to this subsection, the Village shall pay to Employee only accrued vacation, sick leave and floating holiday time due to the Employee as of the date of termination. After the payment described in the immediately preceding sentence, the Village shall have no further financial obligation to Employee pursuant to this Agreement.

SECTION 4. TERMINATION BY EMPLOYEE

In the event that Employee voluntarily resigns his position during the term of this Agreement, Employee shall give the Village at least sixty (60) days written notice prior to the effective date of such resignation. Employee shall not be entitled to receive any benefits or payments pursuant to Section 3; however, Employee shall be entitled to accrued vacation, sick leave and floating holiday time as of the date of resignation.

SECTION 5. COMPENSATION

- 5.1 The initial annual salary of Employee shall be One Hundred and Sixty-Five Thousand Dollars (\$165,000.00), which shall be payable in installments at the same time as other employees of the Village are paid.
- 5.2 The Village Council agrees to evaluate the performance of the Employee to determine any adjustment in annual salary and/or benefits at least once annually, pursuant to the terms of Section 6 of this Agreement. Any additional adjustment in said annual salary and/or benefits shall be based upon the result of the performance evaluation.

SECTION 6. PERFORMANCE EVALUATION

- 6.1 The Village Council shall review and evaluate the performance of the Employee at least once annually in advance of the adoption of the annual operating budget. Said review and evaluation shall be conducted in accordance with specific criteria developed jointly by the Village and the Employee. Said criteria may be added to or deleted from as the Village Council may from time to time determine, in consultation with the Employee, and shall occur during the ninety (90) days prior to the beginning of each fiscal year.
- 6.2 Subsequent to the evaluation of Employee's performance, but prior to the beginning of the fiscal year, the Village Council and Employee shall define such goals and performance objectives which they determine necessary for the proper operation of the Village and in attainment of the Village Council's policy objectives and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. They shall generally be attainable within the time limitations as specified and the annual operating and capital budgets and appropriations provided.

SECTION 7. HOURS OF WORK

Employee agrees to remain in the exclusive full-time employ of the Village of Key Biscayne and shall not accept any other employment during the term of this Agreement. Employee further agrees to devote that amount of time and energy which is reasonably necessary for Employee to faithfully perform his duties under this Agreement. Recognizing that certain outside teaching opportunities provide indirect benefits to the Village and to the community, the Employee may elect to accept limited teaching opportunities with the understanding that such arrangements shall not constitute interference with nor a conflict of interest with his responsibilities under this Agreement. If, however, the Village Council determines, in its sole discretion, that Employee's performance has been compromised by his engagement in said educational opportunities, the Council may require that Employee withdraw from those engagements.

SECTION 8. AUTOMOBILE

In lieu of a monthly transportation allowance, the Village shall provide a Village vehicle for Employee's use, both professionally and personally, as a benefit of employment. The Village shall provide insurance, maintenance and fuel for the vehicle as it provides for other vehicles in the Village's fleet.

SECTION 9. RETIREMENT

The Village shall contribute into a retirement plan chosen by the Employee by making a Village contribution as employer of 12% of Employee's annual base salary. Said contribution may be divided so that no less than 6% of the Village's contribution is directed to the Village's defined contribution plan, with any remaining amounts to be directed to any such plan that the Employee designates. [SECTION MAY NEED REVISION]

SECTION 10. INSURANCE

The Village shall provide insurance benefits, including family group health, disability and life insurance in the same manner as provided for other Administrative Employees of the Village.

SECTION 11. VACATION, SICK LEAVE AND HOLIDAYS

Employee shall be entitled to sick leave and holidays at the same rate and in the same manner as other Administrative Employees of the Village. Employee shall be entitled to four (4) weeks annual vacation leave.

SECTION 12. PROFESSIONAL DEVELOPMENT

- 12.1 Subject to Village policy and state law, the Village agrees to pay the reasonable professional dues and subscriptions of Employee 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 Village. Employee shall not hold office in any local, state, regional or national professional association or organization without prior approval of the Village Council.
- 12.2 Subject to Village policy and state law, the Village agrees to pay the travel and subsistence expenses of Employee for travel to either one national or one state association annual conference per year. Employee may, with the approval of the Village Council, attend additional national and/or state conferences.

SECTION 13. NOTICE

Notices pursuant to this Agreement shall be given by certified mail through United States Postal Service delivery, addressed as follows:

Village	Mayor and Members of the Village Council Village of Key Biscayne 88 West McIntyre Street Key Biscayne, Florida 33149
Employee	Genaro "Chip" Iglesias 8545 S.W. 108 th St. Miami, Florida 33156
Village Attorney	Weiss Serota Helfman Pastoriza Cole & Boniske, P.A. 2525 Ponce de Leon Blvd., Suite 700 Miami, Florida 33134

SECTION 14. OTHER TERMS AND CONDITIONS

- 14.1 If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, illegal, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.
- 14.2 The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.
- 14.3 The rights and obligations herein granted are personal in nature and cannot be transferred by the Employee.
- 14.4 This Agreement contains the entire agreement of the parties. It may not be changed orally, but only by an amendment in writing signed by the parties hereto.
- 14.5 This Agreement shall be governed by Florida law and any litigation which may arise from this Agreement shall be filed and litigated in Miami-Dade County, Florida. Any Employee litigation expenses shall be borne by the Village, if the Employee prevails in such litigation which involves this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and executed, in duplicate, on the day and year first written above.

VILLAGE OF KEY BISCAYNE

By: _____
Mayor

Pursuant to Village Council Approval of August 28, 2007.

EMPLOYEE

By: _____
Genaro "Chip" Iglesias

Attest:

Village Clerk

Approved as to Form and Legal Sufficiency:

Village Attorney