

RESOLUTION NO. 11885-09

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AND THE CITY CLERK TO ATTEST, ON BEHALF OF THE CITY OF NEWPORT NEWS, VIRGINIA, THAT CERTAIN AGREEMENT BY AND BETWEEN THE CITY OF NEWPORT NEWS, VIRGINIA AND NEIL A. MORGAN DATED THE 8<sup>TH</sup> DAY OF SEPTEMBER, 2009.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Newport News:

1. That it hereby authorizes and directs the Mayor to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, that certain Agreement by and between the City of Newport News, Virginia, and Neil A. Morgan dated the 8<sup>th</sup> day of September, 2009.

2. That a copy of the said Agreement is attached hereto and made a part hereof.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON SEPTEMBER 8, 2009

Mabel Washington Jenkins, CMC  
City Clerk

Joe S. Frank  
Mayor

A true copy, teste:

City Clerk

**AGREEMENT**

**THIS AGREEMENT** is made this 8<sup>th</sup> day of September, 2009, (hereinafter referred to as “this Agreement”) between **THE CITY OF NEWPORT NEWS, VIRGINIA**, a Virginia municipal corporation duly chartered by the Commonwealth of Virginia (hereinafter referred to as “the City”), and **NEIL A. MORGAN**.

**WITNESSETH:**

WHEREAS, the City is a Virginia municipal corporation which operates a municipality in the Commonwealth of Virginia with its primary offices located at 2400 Washington Avenue, Newport News, Virginia 23607; and

WHEREAS, the Newport News City Council in furtherance of its action regarding the appointment of an acting city manager on August 11, 2009, desires to enter into this Agreement with Neil A. Morgan as Acting City Manager upon the terms and conditions hereinafter stated, and he desires to accept such appointment under such terms and conditions.

NOW, THEREFORE, the undersigned City and Neil A. Morgan agree as follows:

1. Neil A. Morgan’s (hereinafter referred to as “the Acting City Manager”) appointment by the City Council is in the capacity as an employee at will to the position of Acting City Manager of the City of Newport News, Virginia, effective the 11<sup>th</sup> day of August, 2009. This appointment shall continue until the appointment of a City Manager, unless earlier terminated by the City Council.

2. The Acting City Manager accepts appointment as the Acting City Manager of the City and to render such services to the City and its City Council as may be necessary and from time to time requested, to include, but not be limited to: those customarily and necessarily performed by a City

Manager of cities in the Commonwealth of Virginia and as required by the City's Charter and Code and the Code of Virginia, and the management, supervision and administration of the City's City Manager's office and of the City's personnel.

3. (a) For the duration of this Agreement, the Acting City Manager agrees to devote his full and exclusive time and effort to perform his duties under this Agreement; and that this appointment is intended to be full time and may require from time to time the Acting City Manager's presence at specific times and places, including meetings of the City Council, and other agencies, bodies, boards, commissions and committees of the City or other governmental officers or agencies; as well as meetings with the respective staffs and members thereof; and the citizens of the City. The Acting City Manager understands and agrees that this appointment is not for a specific amount of work hours during any period of this Agreement, but rather requires such time and effort as is reasonably necessary to effectively accomplish and achieve the work to be undertaken or assigned.

(b) In his capacity as Acting City Manager, he shall perform such duties as are normally performed by persons holding a position of city manager, plus such other duties as may be delegated to him from time to time by City Council. The City shall not delegate any duties or responsibilities to the Acting City Manager, that are not in keeping with his position, education, training and experience.

(c) This Agreement does not bestow upon the Acting City Manager a property right in the appointed position, nor an expectation of continued employment as Acting City Manager. However, if City Council does not subsequently appoint the Acting City Manager as the City Manager, the Acting City Manager shall be entitled to return to his former position of Deputy City Manager, and subject to the laws and regulations applicable to such position.

4. For the City's fiscal year of 2009-2010, the City shall pay to the Acting City Manager \$10,000.00 as an adjustment to his current salary as Deputy City Manager. This amount will remain constant from the commencement of this Agreement through June 30, 2010, or until the appointment of a City Manager, whichever occurs first.

5. The City shall provide the Acting City Manager with a cellular telephone, a laptop computer, and other communication equipment and software for City business use, and the City will pay the charges incurred for service to and by the use of same for City business.

6. (a) The City shall provide the Acting City Manager Six Hundred Dollars (\$600.00) per month in lieu of a motor vehicle, retroactive to August 11, 2009, and the Acting City Manager will be responsible for the cost of all fuel and repairs and for insurance on the vehicle up to a liability limit prescribed by law. The City shall provide additional liability insurance coverage through the application of the City's automobile self-insurance fund as identified in Article XXXVI of Chapter 2 of the City Code.

(b) The Acting City Manager shall be a member of the City's retirement system in the same manner and receive all other benefits and entitlements as provided by the City to all other regular, full-time employees and officers of the City. However, because the Acting City Manager is not appointed under Section 5.01 of the City Charter for an indefinite term, the provisions of the City Code, Section 31-35(f) shall not apply.

(c) Coverage under the City's self-insurance fund for job related incidents shall be provided by the City to the Acting City Manager.

7. The Acting City Manager shall maintain his full time, primary residence and domicile in the City of Newport News for the duration of his appointment as Acting City Manager.

8. Anything to the contrary notwithstanding, the Acting City Manager is entitled to receive and participate in all benefits and entitlements, excluding salary adjustments, customarily provided to regular, full-time City of Newport News employees. That for the purpose of calculating all benefits, retirement benefits, etc., the monthly automobile allowance in section 6 shall be added to the Acting City Manager's salary and the total thereof shall be the amount on which said benefits are paid or therefore provided.

9. Attendance at meetings, conferences, seminars and continuing professional education programs related to the duties and functions of municipal City Managers are encouraged.

10. If still employed in such capacity, the City Council will provide the Acting City Manager with an annual performance evaluation, at which time the City Council will determine the extent to which a salary adjustment for the next fiscal year commencing on July 1, 2010, is warranted. The first such evaluation will occur no later than August 15, 2010, or at the option of the City Council in 2009, and annually by August of each subsequent year if he is still employed in such capacity.

11. The Acting City Manager agrees to provide the City Council with at least 30 days written notice of his intention to, of his own volition, terminate his position as Acting City Manager. The Manager shall be entitled to return to his position of Deputy City Manager unless City Council terminates the Acting City Manager for reasons of fraud, gross negligence, conviction of a crime classified as a felony or a misdemeanor involving moral turpitude. In the event of termination by City Council for any reason, the procedure set forth in Section 4.13 of the City Charter shall not apply.

12. This Agreement will remain in full force and effect unless modified in writing by mutual agreement of the parties or unless terminated.

WITNESS the following signatures and seals:

\_\_\_\_\_  
NEIL A. MORGAN

CITY OF NEWPORT NEWS

By: \_\_\_\_\_  
JOE S. FRANK,  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

Approved as to Form:

\_\_\_\_\_  
City Attorney

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