

RESOLUTION No. 19-114

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING THE EMPLOYMENT AGREEMENT WITH ALBERT P. CHILDRESS AS CITY MANAGER; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, after careful consideration and pursuant to Section 3.02 of the City Charter, the Mayor nominated Albert P. Childress to serve as the City Manager of the City at a duly noticed Council Meeting on April 10th, 2019; and

WHEREAS, the Mayor and City Council voted on April 10, 2019 to approve the appointment of Mr. Childress as City Manager, subject to final approval of employment agreement between the Parties; and

WHEREAS, the City is willing to offer the position of City Manager, subject to the terms of the employment agreement and Mr. Childress is willing to accept the appointment to the position of City Manager, pursuant to the terms and condition of this Resolution and the Employment Agreement by and between the City and Mr. Childress, attached hereto as Exhibit "A" and incorporated herein and made a part hereof by this reference ; and

WHEREAS, the Mayor and City Council find that approving the Employment Agreement with Mr. Childress in order to formally hire him as the City Manager is in the best interest of the community.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are confirmed, adopted, and incorporated herein and made part hereof by this reference.

Section 2. Approval. The Employment Agreement by and between the City and Albert P. Childress, attached hereto as Exhibit "A", is approved and Mr. Childress is formally hired as City Manager for the City.

Section 3. Authorization. The Mayor is hereby authorized to execute the Employment Agreement with Mr. Childress on behalf of the City, binding the City to its terms.

Section 4. Implementation. The City Manager, the City Attorney, and the City Clerk are hereby authorized to take such actions as may be necessary to implement the provisions of the Resolution.

Section 5. Effective Date. This Resolution shall become effective immediately upon its adoption.

EXHIBIT “A”



CITY MANAGER EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into as of the 8th day of May 2019 (the "Effective Date") by and between the City of Doral, Florida, a Florida municipal corporation located in Miami-Dade County (the "City"), and Albert P. Childress, an individual residing in Miami Dade County ("the "City Manager"). The City and the City Manager may be referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, Pursuant to Section 3.01 of the City of Doral Charter, the Mayor nominates the City Manager which is confirmed by the City Council; and

WHEREAS, Mr. Childress meets the qualification of the City Manager position, having obtained a Bachelor of Arts from St. Thomas University, a Master of Public Administration (MPA) from Florida International University and a Master of Business Administration (MBA) from the University of Miami and he is a Credentialed Manager with the International City/County Managers Association (ICMA); and

WHEREAS, the Mayor and City Council-members appointed Mr. Childress as City Manager on April 10, 2019 at the City Council Meeting; and

WHEREAS, it is the desire of the Mayor and City Council-members to enter into an employment agreement to provide certain benefits and to establish certain conditions of the employment; and

WHEREAS, it is the desire of the Mayor and City Council-members to: 1) to retain the services of Mr. Childress as City Manager and to provide inducement for him to remain in such employment, 2) to make possible full work productivity by assuring the City Manager's morale and peace of mind with respect to future security; 3) to provide means for terminating the City Manager services as such time that is deemed expedient to so by a decision of either or both parties; 4) to act as a guide to insure accountability and establish standards of performance; and

WHEREAS, the City Manager desires to enter into an employment agreement with the City of Doral;

Now, therefore in consideration of the mutual covenants herein contained, the parties hereto agree as follows:

AGREEMENT

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 Mr. Childress agree as follows:

Section 1. Duties

- A. The City Council hereby employs Mr. Childress, a resident of Miami Dade County, as City Manager of and for the City of Doral, Florida, to perform the functions and duties as specified in the City Charter and by City Ordinances, and to perform other legally permissible and proper duties and functions as the City Council periodically assigns.
- B. Mr. Childress shall discharge the duties of City Manager in accordance with the terms, conditions, and provisions contained in this Agreement, the City Charter, and any applicable employment policies, as may be established and amended from time to time, and in a professional and respectable fashion as required of City Managers generally and as required by the International Association of City/County Managers Association (ICMA).
- C. During the term of this Agreement, Mr. Childress will not have set work hours or a set work schedule. Mr. Childress acknowledges that the duties of City Manager will be variable and may require work after the City's regular business hours, and on nights, weekends and holidays. Mr. Childress agrees to devote his best efforts and the time and energy necessary to perform fully the duties of City Manager as required under this Agreement. Mr. Childress further agrees to be exclusively employed by the City during the term of this Agreement.
- D. If Mr. Childress is out of the office on vacation or attending training and unable to perform his duties, Mr. Childress shall designate an Acting City Manager for such length of time as may be needed for Mr. Childress to resume his duties. In the event Mr. Childress has a leave of absence, Mr. Childress shall nominate an Acting City Manager. The Mayor and City Council reserve the right to nominate and approve an Acting City Manager different than that individual so designated by Mr. Childress during Mr. Childress' extended leave of absence.

Section 2. Term of Agreement

- A. This Agreement shall commence on the April 10, 2019 and shall remain in effect until terminated by the City or Mr. Childress, as provided herein. Mr. Childress acknowledges that employment with the City is on an at-will basis and that Mr. Childress shall serve at

the pleasure of the City Council. Nothing in this Agreement shall prevent, limit, and/or otherwise interfere with the right of the City Council to terminate Mr. Childress at any time, subject to Section 3.03 of the City Charter.

- B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Mr. Childress to resign at any time from the position of City Manager, subject only to the provisions set forth in Section 5 of this Agreement.
- C. Subject to the annual review and evaluation of Mr. Childress, the Agreement shall have a term of up to four (4) years, commencing on April 10, 2019 and expiring at midnight on April 9, 2023, unless terminated earlier or renewed as set forth herein.

Section 3. Salary

- A. The City agrees to pay Mr. Childress as compensation for his services under this Agreement an initial annual salary of two hundred ten thousand dollars and no cents (\$210,000), payable in biweekly installments at the same time as when other City employees are paid. For each City fiscal year, hereafter, commencing with October 1, 2019, City manager shall receive the standard annual salary increase percentage amount which is granted to all other general employees of the City. This salary is subject to all legally required deductions.
- B. Mr. Childress shall be entitled to an automatic increase in salary based upon the cost of living and merit adjustment approved for City Employees per year, unless specifically reduced or increased by majority of the vote of the Council. The City, at its option, may annually review said base salary and/or other benefits of Mr. Childress and increase/decrease same in such amounts and to such an extent as the City Council may determine desirable based on Mr. Childress' performance, in the City Council's sole and absolute discretion. Such evaluation shall be in such form as the Council deems appropriate and may be made each year, prior to October 1st, in accordance with procedures established by City Council for the duration of this Agreement. Nothing herein shall require the City to increase the compensation and/or other benefits of Mr. Childress. Failure to conduct an annual evaluation shall not constitute a material breach of this Agreement.

Section 4. Termination by the City

- A. In the event the City Council wishes to terminate Mr. Childress, it shall do so in accordance with Section 3.03 of the Charter.
- B. Employment at Will. Mr. Childress is employed at will and serves at the pleasure of the Mayor and City Council. This agreement and his employment may be terminated by the

City Council at any time and for any reason or for no reason, subject only to the express Termination provisions of this Agreement.

- C. Should the City Council terminate the services of Mr. Childress without cause, or a contract is not renewed by the Mayor and City Council members and during such time as the City Manager is willing to perform duties under this agreement, or the City Manager is asked or forced to resign, then and in that event, the City agrees to pay the City Manager severance in an amount equal to twenty (20) weeks of severance, in accordance with Florida Statute § 215.425. within ten (10) business days following the termination, inclusive of accrued retirement contribution, any accrued and unpaid salary and PTO time earned. The City Manager has the option to defer payment amount a reasonable request to a future date.
- D. Should the City terminate this Agreement with Cause, in the event that Mr. Childress has committed an illegal act or for misconduct as referenced in Sec. 215.425(4)(a)(2), F.S. the City shall pay Mr. Childress any payments due for work performed through the date of termination and other payments due, if any, upon terms and conditions applicable to City employees and shall have no further liability to Mr. Childress whatsoever, including no obligation to pay the Severance Payments as defined in Section 4- C.

Section 5. Termination by the City Manager

Mr. Childress may terminate this Agreement at any time upon no less than ninety (90) days advance written notice to the Mayor and City Council. At that time, the City shall obligate to pay him Mr. Childress' any accrued and unpaid salary and PTO time earned. If Mr. Childress voluntarily resigns with less than ninety (90) day notice, the City shall pay to Mr. Childress all accrued compensation due to him up to his final day of employment within ten (10) days of the resignation date. The City shall have no further financial obligation to the Mr. Childress pursuant to this Agreement, including, but not limited to, obligation to pay the severance required upon City initiated termination. The City, through the City Council, reserves the right to dismiss and/or terminate Mr. Childress earlier than the resignation date provided in the notice.

Section 6. Automobile Allowance and Communications Equipment

- A. The City will provide Mr. Childress with an automobile for his use during the term of this Agreement. The City will pay the costs of insurance, maintenance, sun-pass and repairs for the City Manager's assigned automobile and will provide a gasoline allotment for the automobile at the City's Public Works Facility. Mr. Childress agrees to observe the applicable laws and rules of the road when driving. The City reserves the right to take away Mr. Childress' automobile, on any grounds, including, but not limited to, financial reasons and/or Mr. Childress' driving record. In the event that Mr. Childress vehicle is taken away, the City shall provide Mr. Childress a monthly vehicle allowance of \$700.00 per month during his

employment.

B. The City shall provide Mr. Childress a cell phone allowance of \$150.00 per month.

Section 7. Dues and Subscriptions

The City agrees to pay the City Manager's professional dues for membership in the Florida City and County Managers Association (FCCMA) and the International City/County Manager's Association (ICMA). The City shall pay other dues and subscriptions on behalf of City Manager as are approved in the City's annual budget (on a line item basis) or as authorized separately by the Mayor and City Council.

Section 8. Professional Development

The City agrees to pay for the City Manager's travel and attendance at two (2) conferences which shall be the following: (i) Florida Association of City/County Managers held in June in Orlando; (ii) International City /County Managers Association held in October, Nationally. The City shall pay for Mr. Childress' attendance at other seminars, conferences and committee meetings as are approved in the City's annual budget (on a line item basis) or as authorized separately by the City Council.

Section 9. Community Involvement

The City acknowledges that Mr. Childress currently participates in community and civic charitable organizations. The City agrees that Mr. Childress may continue participation in such endeavors during the term of this Agreement, provided that such participation shall be conducted at Mr. Childress' personal expense and that such work shall not interfere with Mr. Childress' duties as City Manager and shall not in any way reflect unfavorably on the City. The City acknowledges that Mr. Childress' participation in these endeavors include, but is not limited to, participation (in person, or via the telephone or internet) in meetings, conferences, seminars, or other activities sponsored by the organizations. If the City Manager will be away from work for one or more full days because of his participation in any community or other civic organization, the City Manager is required to provide advance notice to and receive prior approval from the Mayor of the City.

Section 10. Personal Time Off

Mr. Childress shall accrue Personal Time Off (PTO) in accordance with the Benefits for Administrative Employees, Rule 11.3, Employees Policies and Procedures Manual, but in no event less than at a rate of twenty-six (26) days a year. The use of PTO shall be approved in writing by the Mayor, or in his absence, the Vice Mayor, with notice to the rest of the City Council at the time of approval. Request for extended PTO shall be submitted for approval no less than thirty (30) days prior to the requested, anticipated time off. In addition to the above, Mr. Childress will be granted an additional 75 hours of PTO time beginning each fiscal year.

Section 11. Holidays

- A. Mr. Childress is entitled to the same eleven (11) paid holidays and two (2) paid personal days as provided to all Administrative Employees of the City. If Mr. Childress works on a holiday or does not use a personal day during the year, Mr. Childress can bank such days for future use.
- B. At the termination of this Agreement, Mr. Childress will be paid combined PTO and holiday/personal time accrued hereunder in accordance with the Benefits for Administrative Employees, Rule 11.5, Employees Policies and Procedures Manual, but in no event shall such maximum be more than 1000 hours of PTO and holiday time.

Section 12. Health, Dental, Vision, Life, Disability and Professional Insurance

- A. Mr. Childress shall be entitled, at his option, to (i) receive fully paid health, dental and vision insurance coverage for himself and his family (as provided under, and subject to the terms and conditions of, the City's applicable group health plan), or (ii) in lieu thereof, receive a monthly allowance in the amount equal to the monthly insurance premium for such family coverage applicable at such time, but in no event shall such allowance exceed One Thousand Dollars and No Cents (\$1,000.00) monthly. Mr. Childress at the time of his departure and official retirement from the City, shall at his option be able to continue to be covered by health, dental and vision coverage purchased at the rate offered to City employees as provided for in Section 112.0801 FS. at his expense and not the COBRA rate.
- B. The City shall provide Mr. Childress with life, accidental death and dismemberment, and short-term and long-term disability insurance coverage (as provided under, and subject to terms and conditions of, the City's applicable group insurance plans). The City shall pay the premiums for such coverage, which coverage shall not exceed eight hundred thousand dollars (\$800,000.00) face amount. At the time of Mr. Childress' departure and official retirement from the City, he shall at his option, be able to continue with life insurance coverage at the rate offered to employees at his expense.
- C. The City shall provide Mr. Childress with professional insurance, including, but not limited to, officers and directors insurance, with such policy and coverage limits as deemed appropriate by the City's risk management consultant.

Section 13. Retirement

- A. Mr. Childress shall be able to participate in the same retirement program as all other management employees of the City. The City agrees to contribute to the Mr. Childress'

401(a) plan an amount not to exceed Eighteen Percent (18%) of his then current, annual salary, in which Mr. Childress shall be immediately vested. The City's contribution to the Mr. Childress' 401(a) plan is subject to the availability of funds each fiscal year, which the City Council, in its absolute discretion, may refuse to fund for any given year and/or number of years.

- B. The City agrees to contribute the maximum allowable amount on behalf of the City Manager into his current ICMA-RC Deferred Compensation Plan. The City Manager may elect to take in cash, in whole or in part, the foregoing in the City Manager's sole and absolute discretion but subject nonetheless to applicable Internal Revenue Code provisions. The City's contribution to Mr. Childress' 457 Deferred Compensation Plan is subject to the availability of funds each fiscal year, which the City Council, in its absolute discretion, may refuse to fund for any given year and/or number of years.

Section 14. Expense Account; Other Customary Benefits

- A. Mr. Childress shall be entitled to a monthly expense stipend in the amount of Five Hundred Dollars and No Cents (\$500.00) for expenses incurred by Mr. Childress in the performance of his duties. The amount of the stipend may be adjusted by the City Council in each annual budget to reflect changes in the consumer price index. The City reserves the right to change this stipend from an automatic payment to a reimbursement payment, which would require Mr. Childress to submit reports and receipts corresponding to the expenses for which reimbursement would be sought.
- B. The City shall afford Mr. Childress the right to participate in any other benefits or working conditions as provided for the Administrative Employees of the City.

Section 15. Indemnification

To the extent permitted by law and as limited by Section 768.28, Florida Statutes, the City shall defend, save harmless and indemnify Mr. Childress against any tort, professional liability claims or demand or other legal action out of an alleged act or omission occurring in connection with the performance of Mr. Childress duties so long as Mr. Childress is acting within the scope of his employment. The City, or its insurance carrier, will pay or settle any such claim or suit or judgment rendered thereon.

Section 16. Bonding

The City agrees to bear the full cost of any fidelity or other bonds as may be approved by the

City Council pursuant to the City Charter.

Section 17. Code of Ethics

The "Code of Ethics" promulgated by the Intentional City/County Manager's Association (ICMA) of Professional Conduct is incorporated herein and by this reference made a part hereof. Mr. Childress in the performance of his duties agrees to be governed by the referenced Code of Ethics, as may be amended from time to time, and such other ethics policies as are in existence or may be adopted from time to time by the City. Mr. Childress agrees to abide the International ICMA Code of Ethics that was adopted in 1924 whose principles serve as the foundation for the local government management profession and set the standards for excellence that may be amended by the ICMA.

Section 18. 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: Mayor Juan Carlos Bermudez
City of Doral
8401 NW 53rd Terrace
Doral, FL 33166

City Manager: Albert P. Childress
City Manager
8401 NW 53rd Terrace
Doral, FL 33166

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 19. 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 and 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 insure to the benefit of the heirs at law or personal representative of Mr. Childress.
- 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 Mr. Childress' 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 outstanding hospitalization, medical and dental bills in accordance with City's insurance policies or plans; and
 - 4. 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 strictly against one party than the other and every covenant, term and provision of this Agreement shall be construed simply according to 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. Accordingly, 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 Council and agreed upon by the Parties. Any approved and agreed upon changes to this Agreement shall be reduced to a 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 Mr. Childress, except as provided in Section (I)(D) herein.

- K. In any action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its reasonable attorney's fees, including those incurred in any appeals thereof, plus costs.
- L. Any calculation or computations required herein shall be made by the City Finance Director, subject to verification by the Mayor.
- 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 Mayor and 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.

INDIVIDUALLY

ALBERT P. CHILDRESS, CITY MANAGER

Date: _____

CITY OF DORAL

JUAN CARLOS BERMUDEZ, MAYOR

Date: _____

ATTEST:

CONNIE DIAZ, CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE OF THE CITY OF DORAL:

LUIS FIGUEREDO, CITY ATTORNEY