

RESOLUTION No. 19-157

A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, APPROVING AMENDMENTS TO THE EMPLOYMENT AGREEMENT WITH COSTANZA DIAZ AS CITY CLERK; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on March 15, 2015, Ms. Costanza Diaz was nominated and approved for the position of City Clerk; and

WHEREAS, during this time, a mutual agreement was reached, and terms were negotiated with Ms. Diaz and the City; and

WHEREAS, on May 8, 2019, upon the approval of the current City Manager's Employment Agreement, the Mayor and Council requested that the other Charter Officials' agreements reflect the same benefits as the City Manager; and

WHEREAS, the City is willing to offer the City Clerk amendments to her contract, pursuant to the terms and conditions of this Resolution.

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 Amended Employment Agreement by and between the City and Ms. Costanza Diaz, attached hereto as Exhibit "A", which is incorporated here in and made a part hereof by reference, is approved.

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

Section 4. Implementation. The City Manager and the City Attorney 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.

The foregoing Resolution was offered by Vice Mayor Mariaca who moved its adoption. The motion was seconded by Councilmember Cabral and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Claudia Mariaca	Yes
Councilwoman Digna Cabral	Yes
Councilman Pete Cabrera	Yes
Councilwoman Christi Fraga	Yes

PASSED AND ADOPTED this 13 day of August, 2019.



JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:



CONNIE DIAZ, MMC
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFIENCY
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:



LUIS FIGUEREDO
CITY ATTORNEY

EXHIBIT “A”



CITY CLERK EMPLOYMENT AGREEMENT

AMENDMENT #1

THE EMPLOYMENT AGREEMENT ("Agreement") is made and entered into as of the 18 day of March, 2015 (the "Effective Date") by and between the City of Doral, Florida, a Florida municipal corporation located in Miami-Dade County (the "City"), and Costanza Diaz, an individual residing in Broward County ("Ms. Diaz"). The City and the City Clerk may be referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, as a result of a vacancy in the position of the City Clerk for the City of Doral (the "City Clerk"), and in accordance with the City Charter, the City Council convened a City Clerk Search Committee (the "Search Committee"), which had various meetings to attract, vet, and recommend candidates to the City Council to fill the vacancy; and

WHEREAS, on March 16, 2015, the Search Committee held interviews and recommended a total of four (4) applicants, including Ms. Diaz, to the City Council for consideration; and

WHEREAS, after reviewing the transmitted names and resumes of the applicants, the Mayor and City Council voted unanimously to approve the appointment of Ms. Diaz as City Clerk, subject to final approval of employment agreement between the Parties; and

WHEREAS, the City is willing to offer the position of City Clerk, and Ms. Diaz is willing to accept the appointment to the position of City Clerk, pursuant to the terms and conditions in the Agreement.

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

Section I. Duties

- A. The City Council hereby employs Ms. Diaz, a resident of Broward County, as City Clerk 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 shall assign from time to time.

- B. Ms. Diaz shall discharge the duties of City Clerk in accordance with the terms, conditions, and provisions contained in the 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 clerk's generally, and as required by standards of the Code of Ethics of the International Institute of Municipal Clerks.
- C. During the term of the Agreement, Ms. Diaz will not have set work hours or a set work schedule. Ms. Diaz acknowledges that the duties of City Clerk will be variable and may require work after the City's regular business hours, and on nights, weekends and holidays. Ms. Diaz agrees to devote her best efforts and the time and energy necessary to perform fully the duties of City Clerk as required under the Agreement. Ms. Diaz further agrees to be exclusively employed by the City during the term of the Agreement.
- D. In the event that Ms. Diaz is temporarily unable to perform her duties, Ms. Diaz shall designate an Acting City Clerk for such length of time as may be needed for Ms. Diaz to resume her duties. The Mayor and City Council reserve the right to nominate and approve an Acting City Clerk different than that individual so designated by Ms. Diaz.

Section 2. Term of Agreement

- A. The Agreement shall commence on the Effective Date and shall remain in effect until terminated by the City or Ms. Diaz as provided herein. Ms. Diaz acknowledges that employment with the City is on an at-will basis, and that Ms. Diaz shall serve at the pleasure of the City Council. Nothing in the Agreement shall prevent, limit, and/or otherwise interfere with the right of the City Council to terminate Ms. Diaz 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 the City Clerk to resign at any time from the position of City Clerk, subject only to the provisions set forth in Section 6 of this Agreement.

Section 3. Salary

- A. The City agrees to pay Ms. Diaz as compensation for her services under the Agreement an initial annual salary of EIGHTY-FIVE THOUSAND DOLLARS AND NO CENTS (\$85,000.00), payable in biweekly installments at the same time as when other City employees are paid. The salary is subject to all legally required deductions.

- B. Ms. Diaz shall be entitled to an automatic increase in salary of five percent (5%) 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 Ms. Diaz and increase/decrease same in such amounts and to such an extent as the City Council may determine desirable on the basis of Ms. Diaz's 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 the Agreement. Nothing herein shall require the City to increase the compensation and/or other benefits of Ms. Diaz. Failure to conduct an annual evaluation shall not constitute a material breach of the Agreement.

Section 4. Termination by the City

- A. In the event the City Council wishes to terminate Ms. Diaz, it shall do so in accordance with Section 3.03 of the Charter.
- B. Should the City Council terminate the services of Ms. Diaz, then within ten (10) business days following the termination, the City shall pay Ms. Diaz any accrued and unpaid salary and benefits earned in accordance with the Benefits for Administrative Employees, Rule 11.5, Employees Policies and Procedures Manual, as may be amended from time to time. Additionally, the City Clerk shall be entitled to severance in an amount equal to twenty (20) weeks of severance, in accordance with Florida Statute § 215.425, inclusive of any accrued retirement contribution, any accrued and unpaid salary and PTO time earned, provided that Ms. Diaz is not being removed from office on the grounds that he has committed an intentional, malicious, or reckless act that constitutes a violation of Federal, State, County and/or City laws, including, but not limited to, codes of ethics at any level.

Section 5. Termination by the City Clerk

Ms. Diaz may terminate the Agreement at any time upon ninety (90) days advance written notice to the Mayor and City Council. The City shall pay to Ms. Diaz all accrued compensation and PTO time earned due to her up to her final day of employment within ten (10) days of the resignation date. The City shall have no further financial obligation to Ms. Diaz pursuant to the 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 Ms. Diaz earlier than the resignation date provided in the notice. The City has the option to compensate Ms. Diaz up to and through the proffered resignation date, if dismissed and/or terminated earlier. The decision of the City Council to terminate in advance of the resignation date does not trigger the obligation to pay the severance provided in Section 4 of the agreement.

Section 6. Automobile Allowance and Communications Equipment

- A. The City will provide Ms. Diaz, at her option, with either (i) a \$700.00 per month vehicle allowance for use of her private automobile, or (ii) an automobile for her use during the term of the Agreement. If Ms. Diaz elects to receive an automobile, the City will pay the costs of insurance, maintenance, a sunpass device and repairs for the City Clerk's assigned automobile and will provide a gasoline allotment for the automobile at the City's Public Works Department. Ms. Diaz agrees to observe the applicable laws and rules of the road when driving. The City reserves the right to take away Ms. Diaz's automobile, on any grounds, including, but not limited to, financial reasons and/or Ms. Diaz's driving record. If Ms. Diaz elects to receive the monthly allowance, the City agrees to reimburse Ms. Diaz for mileage for out-of-Miami-Dade and Broward Counties travel associated with business of the City at the same rate as other City employees are reimbursed.
- B. The City shall provide Ms. Diaz with a City issued cell phone or a cell phone allowance of \$150.00 per month.

Section 7. Dues and Subscriptions

The City agrees to pay Ms. Diaz's professional dues for membership in the International Institute of Municipal Clerks, the Florida Association of City Clerks and the Miami-Dade County Municipal Clerks Association. If Ms. Diaz is not a member of the International Institute of Municipal Clerks, the Florida Association of City Clerks and the Miami-Dade County Municipal Clerks Association, she shall become a member within ninety (90) days of execution of this Agreement. The City shall pay other dues and subscriptions on behalf of City Clerk as are approved in the City's annual budget (on a line item basis) or as authorized separately by the City Council.

Section 8. Professional Development

The City agrees to pay for the City Clerk's travel and attendance at one (1) conference which shall be one of the following: (1) International Institute of Municipal Clerks annual conference; (2) Florida Association of City Clerks annual conference; or, (3) the Florida League of Cities' annual conference in accordance with the expense schedule set forth in Chapter 112 of the Florida Statutes for public officials or as otherwise provided by the City Council. The City shall pay for Ms. Diaz's 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.

Ms. Diaz agrees that she shall endeavor to complete her Municipal Clerk Certification within one (1) year of execution of this Agreement. She shall notify the Mayor and City Council of her successful completion of this certification and/or of any exigent circumstances that otherwise prevented her from meeting this education goal.

Section 9. Community Involvement

The City acknowledges that Ms. Diaz currently participates in community and civic organizations. The City agrees that Ms. Diaz may continue participation in such organizations during the term of this Agreement, provided that such participation shall be conducted at Ms. Diaz's personal expense. The City acknowledges that Ms. Diaz 's participation in these organizations include, but are not limited to, participation (in person, or via the telephone or internet) in meetings, conferences, seminars, or other activities sponsored by the organizations. If Ms. Diaz will be away from work for one or more full days as a result of Ms. Diaz's participation in any community or other civic organization, then Ms. Diaz is required to provide advance notice to and receive prior approval from the Mayor of the City.

Section 10. Personal Time Off

Ms. Diaz 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/her 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. Ms. Diaz will be granted an additional 75 hours of PTO time beginning each fiscal year.

Section 11. Holidays

- A. Ms. Diaz 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 Ms. Diaz works on a holiday or does not use a personal day during the year, Ms. Diaz can bank such days for future use.
- B. Ms. Diaz may sell back to the City available PTO hours in accordance with and up to the maximum set forth in the Benefits for Administrative Employees, Rule 11.4, Employees Policies and Procedures Manual, but in no event shall such maximum be more than 200 hours of PTO per calendar year. Notwithstanding the foregoing, Ms. Diaz must maintain a minimum of one full work week of PTO in her PTO accrual balance.
- C. At the termination of the Agreement, Ms. Diaz 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 1,000 hours of PTO and holiday time.

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

- A. Ms. Diaz shall be entitled, at her option, to (i) receive fully paid health and dental insurance coverage for herself and her 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. Ms. Diaz at the time of her departure and official retirement from the City, shall at her 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 112.080 FS. at her expense and not the COBRA rate.

- B. The City shall provide Ms. Diaz 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 seven hundred thousand dollars (\$700,000.00) face amount. At the time of Ms. Diaz's departure and official retirement from the City, she shall at her option, be able to continue with life insurance coverage at the rate offered to employees at her expense. At Ms. Diaz's election, the City shall, in lieu of such coverage, pay a monthly allowance to the Ms. Diaz in the amount equal to the monthly insurance premium for such coverage applicable at such time, but in no event shall such allowance exceed ONE HUNDRED TEN DOLLARS AND TWENTY-FIVE CENTS (\$110.25) monthly.
- C. The City shall provide Ms. Diaz 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. Ms. Diaz 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 Ms. Diaz's 401(a) plan an amount not to exceed EIGHTEEN PERCENT (18%) of her then current, annual salary, in which Ms. Diaz shall be immediately vested. The City's contribution to the Ms. Diaz's 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 Clerk into her current ICMA-RC Deferred Compensation Plan. The City Clerk may elect to take in cash, in whole or in part, the foregoing in the City Clerk's sole and absolute discretion, but subject nonetheless to applicable Internal Revenue Code provisions. The City's contribution to Ms. Diaz's 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. Ms. Diaz shall be entitled to a monthly expense stipend in the amount of FIVE HUNDRED DOLLARS AND NO CENTS (\$500.00) for expenses incurred by Ms. Diaz in the performance of her 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 the stipend from an automatic payment to a reimbursement payment, which would require Ms. Diaz to submit reports and receipts corresponding to the expenses for which reimbursement would be sought.

- B. The City shall afford Ms. Diaz 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 Ms. Diaz 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 Ms. Diaz duties, so long as Ms. Diaz is acting within the scope of her 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 International Institute Municipal Clerks is incorporated herein and by this reference made a part hereof. Ms. Diaz in the performance of her 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.

Section 18. Notice

Notices pursuant to the 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 Attorney: Luis Figueredo
City Attorney
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 the Agreement is held to be unconstitutional, illegal, invalid or unenforceable, the remainder of the 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 the Agreement by the other shall not operate or be construed as a continuing waiver of any subsequent breach by that party.
- C. The Agreement shall be binding upon and inure to the benefit of the heirs at law or personal representative of Ms. Diaz.
- D. The 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 the agreement, and venue for any litigation which may arise that in any way involves the Agreement shall be in Miami-Dade County in a court of competent jurisdiction.
- F. Upon Ms. Diaz's death, the City's obligations under the Agreement shall terminate except for:
 - I. Transfer of ownership of retirement funds, if any, to her designated beneficiaries;

2. Payment of accrued leave balances in accordance with the Agreement to her 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 the Agreement and accordingly, no court or administrative hearing officer construing the Agreement shall construe it more strictly against one party than the other and every covenant, term and provision of the Agreement shall be construed simply according to its fair meaning.
- H. It is understood and agreed that the 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 the Agreement that are not contained in the 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 the Agreement shall be reduced to a writing with the same formality as the Agreement.
- J. The rights and obligations herein granted are personal in nature and cannot be assigned, delegated, or transferred by Ms. Diaz, except as provided in Section (I)(D) herein.
- K. In any action or proceeding to enforce or interpret the provisions of the 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 City Manager.
- M. On any matter which is not covered or addressed by the 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 Manager.

N. The 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 the Agreement to be signed and executed, as of the date first written above.

INDIVIDUALLY



COSTANZA DIAZ, MMC
CITY CLERK

Date: 8/13/19

CITY OF DORAL



JUAN CARLOS BERMUDEZ, MAYOR

Date: 8/13/19

ATTEST:



ALBERT P. CHILDRESS, CITY MANAGER

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



LUIS FIGUEREDO, ESQ.
CITY ATTORNEY