

RESOLUTION No. 15-83

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

WHEREAS, in order to fill a vacancy in the position of City Clerk for the City of Doral (the "City"), the City Council convened a search committee to recruit, evaluate, interview and recommend candidates pursuant to Section 3.02 of the City Charter (the "Search Committee"); and

WHEREAS, the Search Committee, in conjunction with the City's Human Resources Department, hosted several meetings, posted the position, and vetted all applicants for the City Clerk position; and

WHEREAS, on March 16, 2015, at duly noticed and called meeting, the Search Committee interviewed six (6) applicants and recommended four (4) applicants for the Council's consideration, of which Mrs. Costanza Diaz was one; and

WHEREAS, during its March 18, 2015 Regular Meeting, the City Council nominated and approved the selection of Mrs. Diaz to the position of the City Clerk, subject to final approval of an employment agreement between the City and Mrs. Diaz; and

WHEREAS, through mutual negotiation, the City and Mrs. Diaz have reached an agreement, the terms of which have been memorialized in the employment agreement attached hereto as Exhibit "A", which is incorporated herein and made a part hereof by this reference (the "Employment Agreement"); and

WHEREAS, the Mayor and City Council believe that the appointment of Mrs. Diaz as City Clerk is in the best interests of the City and its residents.

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

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

Section 2. Employment Agreement Approved. The Employment Agreement by and between Mrs. Costanza Diaz and the City for the position of City Clerk, attached hereto as Exhibit "A", which is incorporated herein and made a part hereof by reference is hereby approved.

Section 3. Authorization. The Mayor is hereby authorized to execute the employment agreement with Mrs. Diaz on behalf of the City.

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

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

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

Mayor Luigi Boria	Yes
Vice Mayor Sandra Ruiz	Yes
Councilman Pete Cabrera	Yes
Councilwoman Christi Fraga	Yes
Councilwoman Ana Maria Rodriguez	Yes

PASSED AND ADOPTED this 7 day of April, 2015.



LUIGI BORIA, MAYOR

ATTEST:



CONNIE DIAZ, CITY CLERK

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



WEISS, SEROTA, HELEMAN, COLE, & BIERMAN, PL
CITY ATTORNEY

EXHIBIT “A”

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into as of the 18th 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 ("Mrs. 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 post 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 Mrs. 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 Mrs. 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 Mrs. Diaz is willing to accept the appointment to the position of City Clerk, pursuant to the terms and conditions in this Agreement.

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 Mrs. Diaz agree as follows:

Section 1. Duties

A. The City Council hereby employs Mrs. 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 to perform such other legally permissible and proper duties and functions as the City Council shall assign from time to time.

B. Mrs. Diaz shall discharge the duties of City Clerk duties 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 clerks generally and as required by the standards of the Code of Ethics of the International Institute of Municipal Clerks.

C. During the term of this Agreement, Mrs. Diaz will not have set work hours or a set work schedule. Mrs. 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. Mrs. Diaz agrees to devote her best efforts and the time and energy necessary to perform fully the duties of City Clerk as required under this Agreement. Mrs. Diaz further agrees to be exclusively employed by the City during the term of this Agreement.

D. In the event that Mrs. Diaz is temporarily unable to perform her duties, Mrs. Diaz shall designate an Acting City Clerk for such length of time as may be needed for Mrs. 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 the Mrs. Diaz.

Section 2. Term of Agreement

A. This Agreement shall commence on the Effective Date and shall remain in effect until terminated by the City or Mrs. Diaz as provided herein. Mrs. Diaz acknowledges that employment with the City is on an at-will basis and that Mrs. Diaz 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 Mrs. 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 Mrs. Diaz 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 the Mrs. Diaz as compensation for his services under this 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. This salary is subject to all legally required deductions.

B. Mrs. 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 Mrs. Diaz and increase/decrease same in such amounts and to such an extent as the City Council may determine desirable on the basis of Mrs. 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 this Agreement. Nothing herein shall require the City to increase the compensation and/or other benefits of Mrs. Diaz. 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 Mrs. Diaz, it shall do so in accordance with Section 3.03 of the Charter.

B. Should the City Council terminate the services of Mrs. Diaz, then within ten (10) business days following the termination, the City shall pay Mrs. 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 2012, 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, provided that Mrs. Diaz is not being removed from office on the grounds that she 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

Mrs. Diaz may terminate this Agreement at any time upon thirty (30) days advance, written notice to the Mayor and City Council. If Mrs. Diaz voluntarily resigns pursuant to this Section, the City shall pay to Mrs. Diaz all accrued compensation 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 the Mrs. Diaz pursuant to this Agreement, including, but not limited to, no obligation to pay the severance required upon City initiated termination. The City, through the City Council, reserves the right to dismiss and/or terminate the Mrs. Diaz earlier than the resignation date provided in the notice. The City has the option to compensate the Mrs. 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.

Section 6. Automobile Allowance and Communications Equipment

A. The City will provide Mrs. Diaz, at her option, with either (i) a \$500.00 per month vehicle allowance for use of his private automobile, or (ii) an automobile for his used during the term of this Agreement. If the Mrs. Diaz elects to receive an automobile, the City will pay the costs of insurance, maintenance and repairs for City Clerk's assigned automobile and will provide a gasoline allotment for the automobile at the City's Public Works Department. Mrs. Diaz agrees to observe the applicable laws and rules of the road when driving. The City reserves the right to take away Mrs. Diaz's automobile, on any grounds, including, but not limited to, no grounds, financial reasons and/or Mrs. Diaz's driving record or. If Mrs. Diaz elects to receive the monthly allowance, the City agrees to reimburse Mrs. 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 Mrs. Diaz with a cell phone allowance of \$150.00 per month.

Section 7. Dues and Subscriptions

The City agrees to pay Mrs. 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 Mrs. 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 Mrs. 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 Mrs. Diaz currently participates in community and civic organizations. The City agrees that Mrs. Diaz may continue participation in such organizations during the term of this Agreement, provided that such participation shall be conducted at Mrs. Diaz's personal expense. The City acknowledges that the Mrs. Diaz 's participation in these organizations 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 Mrs. Diaz will be away from work for one or more full days as a result of Mrs. Diaz's participation in any community or other civic organization, the Mrs. Diaz is required to provide advance notice to and receive prior approval from the Mayor of the City.

Section 10. Personal Time Off

Mrs. Diaz shall accrue Personal Time Off (PTO) in accordance with the Benefits for Administrative Employees, Rule 11.3, Employees Policies and Procedures Manual 2012, 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.

Section 11. Holidays

A. Mrs. Diaz is entitled to the same eleven paid holidays and two paid personal days as provided to all Administrative Employees of the City. If Mrs. Diaz works on a holiday or does not use a personal day during the year, Mrs. Diaz can bank such days for future use.

B. Mrs. 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 2012, but in no event shall such maximum be more than 200 hours of PTO per calendar year. Notwithstanding the foregoing, Mrs. Diaz must maintain a minimum of one full work week of PTO in his PTO balance.

C. At the termination of this Agreement, Mrs. Diaz will be paid combined PTO and holiday/personal time accrued hereunder in accordance with and up to the maximum set forth in the Benefits for Administrative Employees, Rule 11.5, Employees Policies and Procedures Manual 2012, but in no event shall such maximum be more than 400 hours of PTO and holiday time.

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

A. Mrs. Diaz shall be entitled, at his option, to (i) receive fully paid health and dental insurance coverage for he/she and his/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.

B. The City shall provide Mrs. 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 \$300,000.00 face amount. At the Mrs. Diaz's election, the City shall, in lieu of such coverage, pay a monthly allowance to the Mrs. 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 the Mrs. 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

Mrs. Diaz shall be able to participate in the same retirement program as all other management employees of the City. The City agrees to make a contribution to the Mrs. Diaz's 401 (a) plan in amount not to exceed TWELVE PERCENT (12%) of his/her then-current, annual salary, in which Mrs. Diaz shall be immediately vested. Mrs. Diaz is under no obligation to make any contribution to the 401 (a) plan. The City's contribution to the Mrs. 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.

Section 14. Expense Account; Other Customary Benefits

A. Mrs. 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 Mrs. 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 this stipend from an automatic payment to a reimbursement payment, which would require Mrs. Diaz to submit reports and receipts corresponding to the expenses for which reimbursement would be sought.

B. The City shall afford Mrs. 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 Mrs. Diaz against any tort, professional liability claim or demand or other legal action out of an alleged act or omission occurring in connection with the performance of Mrs. Diaz duties so long as the Mrs. Diaz 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 International Institute Municipal Clerks is incorporated herein and by this reference made a part hereof. Mrs. Diaz in the performance of his/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 this Agreement shall be given by certified mail, return receipt requested, through the United States Postal Services delivery, addressed as follows:

City: Mayor Luigi Boria
City of Doral
8401 NW 53rd Terrace
Doral, FL 33166

City Clerk: Costanza Diaz
City Clerk
City of Doral
8401 NW 53rd Terrace
Doral, FL 33166

With a copy to: Daniel A. Espino, Esq.
City Attorney
Weiss Serota Helfman Pastoriza Cole &
Boniske, PL
2525 Ponce De Leon Boulevard, Suite 700
Coral Gables, FL 33134

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 inure to the benefit of the heirs at law or personal representative of the Mrs. Diaz.

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 Mrs. Diaz '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 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 Mrs. Diaz, except as provided in Section (1)(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 City Attorney.

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.

INDIVIDUALLY

COSTANZA DIAZ

CITY OF DORAL

LUIGI BORIA, MAYOR

ATTEST:

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

WEISS, SEROTA, HELFMAN, COLE & BIERMAN, P.L.
CITY ATTORNEY