

FIRST REVISION TO EMPLOYMENT AGREEMENT

THIS FIRST REVISION TO EMPLOYMENT AGREEMENT (hereinafter referred to as “Agreement”), is by and between the CITY OF HALLANDALE BEACH, a Florida municipal corporation (hereinafter referred to as “City”), and JENNIFER MERINO (hereinafter referred to by name or as “City Attorney”).

W I T N E S S E T H:

WHEREAS, the City ~~desires to employ~~ed Jennifer Merino as City Attorney of the City of Hallandale Beach, Florida, as provided for in the City Charter of the City of Hallandale Beach effective February 6, 2017; and

WHEREAS, the City, through its City Commission, desires to provide for certain benefits and compensation for the City Attorney and to establish conditions of employment applicable to the City Attorney; and

WHEREAS, Jennifer Merino desires to accept employment as City Attorney of the City of Hallandale Beach under the terms and conditions set forth herein.

WHEREAS, the City hereby agrees to employ Jennifer Merino as City Attorney to perform the functions and duties specified in Section 6.01 of the City Charter and by the City of Hallandale Beach Code of Ordinances, and to perform other legally permissible and proper duties and functions as the City Commission periodically assigns.

WHEREAS, the first revision to this employment agreement shall be retroactive to the original effective date of the agreement.

NOW, THEREFORE, in consideration of the mutual promises as set forth in this Agreement, the parties agree as follows:

Section 1. Employment

A. The City of Hallandale Beach hereby hires and appoints Jennifer Merino as its City Attorney, under the terms established herein, to perform the duties and functions specified in the City Charter and the City Code of Ordinances and to perform such other legally permissible and proper duties and functions as the City Commission shall from time to time assign.

B. The City’s employment of Jennifer Merino as City Attorney shall be effective February 6, 2017. This Agreement shall remain in effect until terminated by the City in accordance with the City Charter or by the City Attorney as provided herein ~~and, in the case of a termination by the City, as provided in Section 6.01 of the City Charter. Unless terminated, this Agreement shall remain in full effect until City Attorney’s next review before the City Commission, and thereafter, the agreement shall be automatically extended until the City Attorney’s next review unless terminated by either party.~~

Section 2. Salary and Evaluation

A. For the performance of services pursuant to this Agreement, the City agrees to pay the City Attorney an annual base starting salary of One Hundred Eighty Thousand and 00/100 Dollars (\$180,000.00) payable in installments at the same time as other City employees are paid.

B. The City agrees to increase said base salary and/or other benefits of the City Attorney in such amounts and to such an extent as the City Commission may determine desirable on the basis of a performance evaluation of the City Attorney. The ~~first such~~ evaluation shall take place ~~six (6) months after the effective date of this agreement, or within 30 days of~~ August 6, 2017, ~~and then be conducted annually thereafter of each year and~~. It shall be in such form manner as the Commission deems appropriate. Performance based increases will be adopted only by majority vote of the City Commission.

C. Nothing in this Section shall require the City to increase the base salary or other benefits of the City Attorney.

~~D. The initial term of this Agreement shall be for one (1) year commencing on February 6, 2017 and expiring on February 5, 2018. Termination at expiration, including failure to renew, by either party is subject to the provisions set forth in Sections 11 and 12 below. Renewals shall be in writing upon agreement of both parties.~~

Section 3. Duties and Obligations

A. The City Attorney shall have the duties, responsibilities and powers of said office under the Charter and Ordinances of the City of Hallandale Beach. The City Attorney agrees to perform all duties and responsibilities faithfully, industriously, and to the best of her ability and in a professional and competent manner.

B. The City Attorney shall remain in the exclusive employment of the City and shall devote all such time, attention, knowledge and skills necessary to faithfully perform her duties under this Agreement. The City Attorney may, however, engage in educational and professional activities.

C. In the event the City Attorney is temporarily unable to perform her duties, she shall designate an Acting City Attorney in accordance with the City Charter.

Section 4. Automobile Allowance and Communications Equipment

The City Attorney is required to be on call for twenty-four hour service, expected to work non-traditional business hours, and may serve the City remotely. In recognition thereof:

A. The City shall grant to the City Attorney an automobile allowance of Five Hundred and 00/100 Dollars (\$500.00) per month, and the City Attorney shall purchase, maintain, and insure said vehicle. The City agrees to reimburse the City Attorney for mileage for travel outside of Broward and Miami-Dade Counties associated with business of the City at the same rate as other City employees are reimbursed.

B. The City Attorney will receive a device allowance of One Hundred Fifty and 00/100 Dollars (150.00) per month to maintain cellular phone and data access.

Section 5. Dues and Subscriptions

The City agrees to pay the City Attorney's professional dues for membership in the Florida Bar, the City, County and Local Government Section of the Florida Bar, and the International Municipal Lawyer Association. The City shall pay other dues and subscriptions on behalf of the City Attorney as are approved in the City's annual budget or as authorized separately by the City Commission.

Section 6. Professional Development

The City agrees to pay reasonable and customary attendance, travel and subsistence expenses for the City Attorney's attendance at professional conferences, seminars and committee meetings, within the budgeted amount, ~~up to a total cost of \$1,500 per event~~. The City may choose to pay for the City Attorney's attendance at other seminars, conferences, and committee meetings as it deems appropriate and as approved by Commission action.

Section 7. Vacation, Sick Leave, and Holidays

City Attorney shall be entitled yearly Personal Time Off, the "PTO" account, consisting of thirty ~~seventwo~~ (327) days a year in lieu of sick and vacation, which at the end of each year shall not accrue into the next year of the term, except as set forth in ~~the next sentence~~ this paragraph. Accrual begins immediately and time may be taken when accrued. Any unused and accrued PTO will be carried forward ~~or paid out at the current base rate~~ up to a maximum of ten (10) days per ~~each year of the initial term and any renewal terms~~. PTO shall not accrue or be paid to the City Attorney upon separation of service except as set forth in Section 11 below. City Attorney shall be entitled to all paid holidays observed by the City.

Section 8. Other Insurance and Benefits

The City shall provide the City Attorney with the same health insurance, dental insurance, disability insurance, health savings account, vision insurance and life insurance and other benefits

not otherwise discussed in this agreement that are afforded the First Tier Management Employment Class.

Section 9. Retirement

The City Attorney shall have the right to participate in the First Tier Management Employment Class Defined Contribution Retirement Plan, but shall be fully vested after one year of continuous service. The City Attorney may elect to participate in all other retirement tools and programs upon the terms offered to the First Tier Management Employment Class.

Section 10. Job-Related Expenses

The City recognizes that certain expenses of a non-personal but job related nature are incurred by Employee, and agrees to reimburse or to pay said general expenses within the budgeted amount. The Finance Director is authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits. The City Attorney shall provide a written report such expenditures on a monthly basis to the City Commission.

Section 11. Termination by the City and Severance Pay

A. The City Attorney shall serve at the pleasure of the City Commission and the City Commission may terminate this Agreement and the City Attorney's employment with the City at any time, by a majority vote of three (3) Commissioners.

B. Should a majority of the entire Commission (three members) vote to terminate the services of the City Attorney "without cause," that is, the City Attorney's services are no longer needed as determined in the discretion of the majority of the Commission, ~~or fail to approve a renewal at expiration of the term as described in Section 2,~~ and unless terminated "for cause" under paragraph C below, then within ten (10) business days following such vote, the Commission shall cause the City Attorney to be paid any accrued unpaid salary and benefits earned (but excluding such items and allowances as are used in conducting City business such as, but not limited to, the use of the City computer and the automobile and devise allowance) prior to the date of termination based on City Attorney's current rate of pay and a forty (40) hour work week. Within fifteen (15) calendar days following the vote to terminate the City Attorney's employment, ~~or the failure to approve a renewal on material terms at least equal to those of the expiring agreement upon expiration of the term as described in Section 2,~~ the Commission shall cause the City Attorney to be paid a lump sum severance pay equal to twenty (20) weeks of her base salary as full and complete payment and satisfaction of any claims of the City Attorney of whatsoever nature arising out of this Agreement or otherwise. The City shall continue to provide and pay for existing medical coverage for the nine (9) months following the date of such termination, in the same manner that the City was providing at the time of termination, and after that, the City Attorney shall have the right to COBRA coverage in accordance with applicable regulations. As consideration for such payment, the City Attorney shall, prior to receipt thereof, execute and deliver to the City a general

release of the City and its Commission members and its officers, agents, and employees for all acts and actions (whether accrued or subsequently accruing) from the beginning of time until the date of release, said release to be prepared by an attorney of the City Commissions choosing.

C. The City shall have no obligation to pay the severance designated in this section if the City Attorney is terminated for misconduct as defined in Section 443.036 (29), Fla. Stat., unethical conducting constituting a violation of Section 112.313, Fla. Stat. (“Standards of Conduct for Public Officers, Employees of Agencies and Local Government Attorneys”), or a conviction or plea of guilty or nolo contendere in connection with a crime that constitutes a felony or involves dishonesty.

D. In the event the Commission, ~~at any time during the employment term,~~ reduces the salary or other benefits of the City Attorney, as identified herein, in a greater percentage than an equivalent across-the-board reduction for all full-time City employees, or in the event the City allegedly refuses to comply with any other material provision of this Agreement benefiting the City Attorney, or the City Attorney resigns following a vote of “no confidence” by the City Commission that she resign, then, in that event, the City Attorney may, at her option, be deemed to be “terminated” within the meaning and context of the severance pay provision in Section 11, paragraph B of this Agreement. The City Attorney shall notify the Commission in writing of the alleged violation. The Commission shall have forty-five (45) days from such notice within which to cure the violation, otherwise, the City Attorney may at her option, consider such violation as termination “without cause” as of the date of such alleged reduction or refusal, and the severance pay provision and other termination provisions contained herein shall become applicable at the annual base salary and benefit level in effect prior to the reduction or refusal.

Section 12. Termination by the City Attorney

The City Attorney may terminate this Agreement at any time by delivering to the City Commission a written notice of termination not later than sixty (60) days prior to the effective date of the termination. If the City Attorney terminates this Agreement, ~~or if the City Attorney does not accept a formal offer of renewal, including material terms at least equal to those of the expiring agreement, upon expiration of the term as described in Section 2,~~ then the provisions of Section 11, Paragraph B above, shall not apply. If the City Attorney voluntarily resigns pursuant to this Section, the City shall pay to the City Attorney all accrued compensation due the City Attorney up to the City Attorney’s final day of employment, including any benefits earned. The City shall have no further financial obligation to the City Attorney pursuant to this Agreement, but may elect to provide severance pay to the City Attorney in exchange for her execution of a full release and waiver of claims against the City in an amount not to exceed 20 weeks of City Attorney’s compensation as of that date pursuant to Section 215.425, Florida Statutes. This subsection shall not prevent the City Attorney from collecting any money accrued and earned as a result of participation in the City’s retirement programs.

Section 13. Disability

If the City Attorney becomes permanently disabled or is otherwise unable to perform her duties because of, including but not limited to, sickness, accident, injury, mental incapacity or health for a period of four consecutive weeks beyond personal time off balance, the City shall have the option to terminate this Agreement, subject to the severance pay provision outlined in Section 11, Paragraph B of this Agreement.

Section 14. Indemnification.

A. City shall defend, save harmless, and indemnify the City Attorney against any action for any injury or damage suffered as a result of any act, event, or omission of action that the City Attorney reasonably believes to be in the scope of her duties or function, unless she acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The City will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. The City shall not be liable for the acts or omissions of the City Attorney committed while acting outside the course and scope of her agreed duties or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. In such instance, as determined by a court of competent jurisdiction, the City Attorney shall reimburse the City for any legal fees and expenses the City has incurred or otherwise paid, for or on her behalf, in connection with the charged conduct.

B. Said indemnification shall extend beyond the termination of employment and the expiration of this Agreement to provide protection for any such acts undertaken or committed in her capacity as City Attorney, regardless of whether the notice of claim or filing of a lawsuit occurs during or following employment with the City; provided, however, such obligation shall terminate upon the expiration of the applicable statute of limitations where there is no notice of claim or filing of a lawsuit.

Section 15. Bonding

The City agrees to bear the full cost of any fidelity or other bonds required of the City Attorney under any policy, regulation, ordinance or law.

Section 16. Arbitration and Attorney's Fees

Except as otherwise set forth herein, if any litigation is commenced between the parties concerning any provision of this Agreement or the rights and duties of any person in relation thereto, in addition to such other relief as may be granted, each party shall bear their own attorney's fees and expenses incurred in connection therewith, including appellate fees and expenses.

Section 17. General Terms and Conditions

A. If any provision, or any portion thereof, contained in this Agreement is held by a court of competent jurisdiction 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 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 City Attorney.

D. This Agreement contains the entire Agreement of the parties. It may not be changed verbally, but only by an Agreement in writing signed by the parties.

E. Florida law shall govern this Agreement and any litigation that may arise from this Agreement, shall be filed and litigated in Broward County, Florida.

F. Upon City Attorney's death, the City's obligations under this Agreement shall terminate except for:

1. Transfer of ownership of retirement funds, if any, to her designated beneficiaries;
2. Payment of all outstanding hospitalization, medical and dental bills in accordance with City's insurance policies or plans; and
3. 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 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. 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. No term, condition or covenant of this Agreement shall be binding on either party until both parties have signed it.

I. The effective date of this Agreement shall be February 6, 2017.

J. ~~References in this Agreement to year shall mean each year of the initial term and any renewal terms.~~

J.K. WAIVER OF JURY TRIAL. EACH PARTY WAIVES ALL RIGHTS TO ANY TRIAL BY JURY IN ALL LITIGATION RELATING TO OR ARISING OUT OF THIS AGREEMENT.

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First Revision Executed by the CITY this ~~25th~~ _____ day of ~~January~~ 2018.7.

CITY OF HALLANDALE BEACH
a Florida municipal corporation

By: _____
Mayor Keith S. London

ATTEST:

Approved as to Form and Legal Sufficiency
For the City Only:

City Clerk

Designated Counsel

Executed by the CITY ATTORNEY this ~~25th~~ _____ day of January 2018.7

Witnesses:

Print Name: _____

Jennifer Merino, City Attorney

Print Name: _____

**VOTE
AYE/NAY**

Mayor	_____ / _____
Vice-Mayor	_____ / _____
Comm. <u>Taub</u>	_____ / _____
Comm. <u>Butler</u>	_____ / _____
Comm. <u>Daley</u>	_____ / _____