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RESOLUTION NO. 2017-43

**A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL FO
THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO
THE VILLAGE CLERK; AUTHORIZING THE COUNCIL TO
EXECUTE AN EMPLOYMENT AGREEMENT WITH VILLAGE
CLERK MISSEL AROCHA (MISSY); AND PROVIDING FOR AN
EFFECTIVE DATE.** (Sponsored by Village Attorney Dexter Lehtinen)

WHEREAS, in November 2016 the Mayor and Village Council selected Missel Arocha (Missy) as their Village Clerk; and

WHEREAS, in the March 2017 Council meeting the Council adopted general principles for the preparation of a contract.

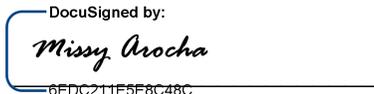
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, AS FOLLOWS:

Section 1. The above whereas clauses are incorporated and reference.

Section 2. Village Council approves in substantial form the employment agreement with Missel Arocha (Missy), to serve as Village Clerk, which agreement is incorporated by reference as Exhibit 1 to this Resolution, as amended by the Council. The Mayor and all members of the Council shall execute the final negotiated agreement.

Section 3. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 19th day of April 2017.

Attest: 
Missy Arocha
Village Clerk


Eugene Flinn
Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE
USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY ONLY:


Dexter W. Lehtinen
Village Attorney

1 FINAL VOTE AT ADOPTION:
2
3 Council Member Karyn Cunningham YES
4
5 Council Member David Singer YES
6
7 Council Member Larissa Siegel Lara YES
8
9 Vice-Mayor John DuBois YES
10
11 Mayor Eugene Flinn YES

EMPLOYMENT AGREEMENT
FOR
VILLAGE CLERK MISSEL AROCHA

This agreement is entered into this 19th day of April, 2017, by and between the Village of Palmetto Bay, a Florida municipal corporation, and Village Clerk Missel Arocha (Missy).

In consideration of the sum of \$10.00, the covenants contained in this agreement, and other good and valuable consideration, the legal sufficiency and receipt of which is acknowledged by the parties, the Village and Mrs. Arocha agree as follows:

Section 1. APPOINTMENT; EFFECTIVE DATE

1.1. Pursuant to Art. III, Section 6, the Village Council shall appoint the Village Clerk (the "Village Clerk"). The Village Clerk shall give notice of all Council meetings to its members and the public, and shall keep minutes of the Council's proceedings. The Village Clerk shall perform such other duties as the Village Council by Resolution or Ordinance may prescribe from time to time. The Village Clerk shall report to the Village Council. The Village Clerk may be removed by the Village Council. The Village Clerk shall maintain the seal of the Village and attest the Mayor's or Clerk's signature, as the case may be, on all documents, if needed.

1.2. The initial appointment of the Village Clerk began in November 2016 and shall continue for the term of this agreement, unless this agreement is terminated as provided below.

1.3. This agreement shall continue in force for a period of four (4) years from execution of this agreement.

Section 2. CONDITION OF EMPLOYMENT

2.1. The Village Clerk is an at-will employee of the Village and shall serve at the pleasure of the Council. The Council shall have the power to terminate the services of the Village Clerk at any time in accordance with the provisions of this agreement.

Section 3. DUTIES AND RESPONSIBILITIES

3.1. The Village Clerk shall perform those duties prescribed by Art. III, Sec. 3.6 of the Charter, prescribed by law, and as directed by the Village Council by Resolution or Ordinance.

3.2. The Village Clerk is responsible only to the Council as a whole. The Village Clerk shall report and be accountable to the Council. The Village Clerk shall work in conjunction with the Village Manager and Village Attorney to fulfill the direction of the Village Council.

3.3 The Village Clerk serves as the Public Records Officer for the purposes of the Florida Public Records Law.

3.4 The Village Clerk shall devote whatever time is necessary to properly perform the duties of her position. The Village Clerk acknowledges that, on average, a minimum of forty (40) hours per week is necessary to adequately perform the duties of the Village Clerk under this agreement. The Parties understand that the Clerk is not entitled to overtime.

Section 4. SALARY

4.1 As of the execution of this agreement, the Village Clerk earns an annual salary of \$75,000.00. The salary shall be paid with the same frequency as payment is made to other Village employees.

4.2 On the date of execution of this agreement the Clerk shall receive a one-time payment of five thousand dollars (\$5,000), which shall be paid by the Finance Department upon presentation to the Department of an executed copy of this agreement.

4.3 The Village Clerk shall be entitled to receive the same annual cost of living increase and other benefits as may be granted to other administrative employees and the Village Council.

Section 5. BENEFITS

5.1 *Personal time off.* In lieu of annual vacation and sick time, the Village Clerk shall accrue personal time off (PTO) at a rate of 8 hours for each bi-weekly period. The use of PTO shall be approved by the Mayor, or in his/her absence, the Vice Mayor or another member of the Council, if he/she is unavailable. The Clerk shall be entitled to annually roll over accrued PTO up to 30 days of PTO. The Village Clerk shall be compensated for unused PTO during the year or upon separation.

5.2 *Holidays.* The Village Clerk is entitled to all paid holidays granted to all general Village employees.

5.3 *Insurance.* The Village shall provide comprehensive medical and dental for the Village Clerk and her family, and disability, accidental death, and life insurance for the Village Clerk. The amount of life insurance coverage shall equal the annual salary of the Village Clerk. The Village shall pay the total premiums for this coverage.

5.4 *Retirement.* The Village has selected retirement programs to be offered to employees. The Clerk's participation in the retirement programs is, as follows: (1) The Village has initiated a defined contribution program, a 401(a) plan. The Village Clerk is entitled to participate equally with all other employees; and, (2) The Village offers a "457" plan as identified under the Internal Revenue Code, as deferred compensation. The Village Clerk shall be entitled to participate in the "457" plan, with the Village paying three (3%) percent into that plan.

5.5 *Equipment.* The Village shall provide appropriate equipment necessary for the Village Clerk to perform her official responsibilities. The Village shall pay a monthly automobile allowance of five hundred fifty dollars (\$550.00). The Village Clerk shall not be required to supply any receipts or other documentation in order to receive this allowance.

5.6 *Other Benefits.* The Village shall afford the Village Clerk the right to participate in any other benefits or working conditions as provided for the Administrative Employees of the Village.

Section 6. PROFESSIONAL DEVELOPMENT AND OUTSIDE ACTIVITIES

6.1. The Village shall pay travel and per diem expenses, as authorized by law, for the Village Clerk's travel and attendance at the International Institute of Municipal Clerks annual conference, Florida City/County Clerks' Association annual conference, and the Florida League of Cities' annual conference. The Village shall pay for the Village Clerk's attendance at other seminars, conferences, committee meetings, and any professional dues, as are approved in the Village's annual budget (on a line item basis), or as authorized by the Village Council. The Village shall agree to permit the Village Clerk to complete her Municipal Clerk Certification, offered by the Florida Association of Municipal Clerks, within three (3) years of execution of this Agreement. The Village shall pay for any and all expenses associated with the completion of the Municipal Clerk Certification, including fees for training sessions and training programs. Attendance at training sessions and training programs shall be considered to be within the Clerk's duties and shall not be considered as personal time off (PTO). The Village Clerk shall notify the Mayor and Village Council of her successful completion of the Municipal Clerk Certification and/or of any exigent circumstances that otherwise prevented her from meeting this education goal.

6.2 With prior approval of the Council, the Village Clerk is permitted to engage in professional activities separate and apart from Village matters provided; however, the activities shall not conflict or interfere with the performance of the Village Clerk's duties and responsibilities under this agreement.

Section 7. EVALUATION.

7.1 *Annual Evaluation.* The Clerk shall be evaluated annually. The evaluations shall be done individually by the Council members on the form attached as **Exhibit "A"**. The Council members shall meet individually with the Clerk and provide her with their individual comments and evaluation. Subsequently, the Council, based upon the results of the evaluation, may grant a merit salary increase, and other benefits to the Clerk. The Council agrees to review the annual salary, and/or other benefits of the Clerk, at the time of evaluation and make adjustments in such amounts and to such extent as the Council may determine that it is desirable to do so.

Should the Council fail to annually evaluate the Clerk's performance within the two months prior to December 15th of each year, it shall be interpreted to mean that the Council is satisfied with her performance; immediately thereafter, the Clerk shall be given a salary

increase equal to maximum increase allowed to Village Administrative Employees as of December 15th of each year. The Finance Department shall automatically implement this maximum salary increase, if the Finance Department has not received a copy of the Clerk's evaluation by the date specified herein.

Section 8. TERMINATION OF AGREEMENT

8.1. *For convenience of the Village.* The Council may terminate this agreement without cause for its convenience upon 30 days' prior written notice. Under a termination for convenience, the Village shall pay the Village Clerk a lump sum cash payment equal to twenty (20) weeks of severance, which is in accordance with Florida Statute 215.425 as of the date of execution of this agreement, or such lesser amount allowed by state law if state law has been subsequently amended, provided that the Village Clerk 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 laws, including, but not limited to, codes of ethics at any level. The Village shall also pay accrued PTO up to the amount provided in Section 5.1. PTO shall be valued based on the Village Clerk's salary at the time of termination. Severance pay shall be paid within 15 working days of termination. The Village shall continue to pay medical, dental, accidental death, and disability insurance coverage for the Village Clerk and her family following the date of termination for three (3) months following termination. The Village shall not pay for automobile and cell phone allowance, professional fees or other expenses after the date of termination. The Village shall have no further financial obligation to the Village Clerk after payment is made under the provisions of this paragraph. Payment made under this paragraph shall constitute full and complete payment and satisfaction of any claim the Village Clerk may have against the Village arising under, or related to this agreement or otherwise.

8.2 *For the convenience of the Village Clerk.* The Village Clerk may terminate this agreement for convenience upon giving the Village at least 30-days written notice prior to the effective date of the resignation. The Village Clerk shall not be entitled to receive any benefits or payments following the effective date of the resignation, other than accumulated PTO, as provided for in Section 5.1.

8.3 *For cause.* The Council may terminate this agreement for cause. The term "for cause" shall be denied to mean (1) breach of any material term or condition of this agreement; (2) violation of any applicable laws; (3) misconduct in office (misfeasance, malfeasance and/or nonfeasance in performance of the Clerk's duties and responsibilities); (4) gross insubordination; (5) willful neglect of duty; (6) conviction or a plea of guilty or no contest to a misdemeanor or felony crime, whether or not adjudication is withheld; (7) violation of any substantive Village policy, rule or regulation that would subject another Village employee to termination; (8) the commission of any fraudulent act against the interest of the Village; (9) commission of any act which involves moral turpitude; (10) a knowing or intentional violation of the Florida or Miami-Dade County conflict of interest or code of ethics law; and (11) any other act of similar nature of the same or greater seriousness. In the event this agreement is terminated for cause, the Village shall have no obligation to pay any severance pay or benefits. The Village shall only pay accrued PTO as capped in

Section 5.1, unless that amount is used as a set-off for any amounts by the Village Clerk to the Village.

Section 9. RETURN OF PROPERTY

9.1. Upon termination of this agreement, the Village Clerk shall return all Village property in his possession or control, including but not limited to keys, vehicle, documents and any other property of the Village, within 10 business days.

Section 10. OTHER TERMS AND CONDITIONS

10.1 *Policy.* The Council shall fix any other terms and conditions of employment it may determine from time to time to be necessary and in the Village's best interest relating to the performance of the Village Clerk, provided that such terms and conditions are compatible with the provisions of this agreement, Florida Statutes and any other law, and which are agreed to in writing by the Village Clerk.

10.2 *Conflict of interest and ethics.* The Village Clerk warrants that: (a) she does not now have, and that she will not enter into, any contract or relationship with another person that creates a conflict of interest, as that term is described in sec. 2-11.1 of the Miami-Dade County code and the Village conflict of interest and ethics codes (ethics codes), and (b) she has not paid, or agreed to pay, any person any consideration for the procurement of this agreement. The Village Clerk represents that she will uphold all the state, county and any Village ethics codes, and the Florida public meeting and public records laws (Sunshine laws). When in doubt, she will seek legal advice and/or direction by the Village Council.

10.3 *Sovereign immunity.* The Village does not waive its sovereign immunity for any claim arising under, or related to, this agreement other than for breach of contract. The Village shall not be liable to pay for damages, other than amounts due under this agreement, in the event it is adjudicated to be liable for breach of contract. Notwithstanding this limited waiver of sovereign immunity, the Village does not waive its immunity from, and shall not pay awards for prejudgment interest and, or attorney's fees.

10.4 *Mediation.* Any claim or dispute arising out of, or related to, this agreement shall be subject to informal mediation as a condition precedent to the institution of legal or equitable proceedings by either party. Both parties waive the right to arbitration. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Miami-Dade County, Florida, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in the Circuit Court for the 11th Judicial Circuit for the State of Florida.

10.5 *Venue.* Any action arising under this agreement, including an action to enforce the agreement shall be brought in state court in Miami-Dade County.

10.6 *Waiver of right to jury trial.* The parties knowingly waive their right to a jury trial in any legal action arising under, or related to, this agreement.

10.7 *No property right created.* The Village Clerk shall serve at the will of the Village Council. This agreement does not create a property right to employment. Breach of this contract shall not be enforced by an action in any federal court.

10.8 *Notice.* Any notice required or provided for in this agreement shall be given to the parties at the addresses provided in the execution of this agreement.

10.9 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.

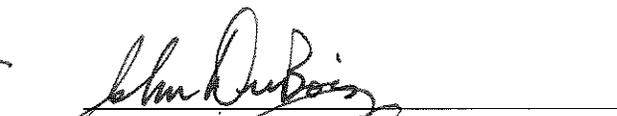
10.10 To the extent permitted by law and as limited by Section 768.28, Florida Statutes, the Village shall defend, save harmless and indemnify the Village Clerk against any tort, professional liability claim or demand or other legal action out of an alleged act or omission occurring in connection with the performance of the duties of the Village Clerk so long as the Village Clerk is acting within the scope of her employment. The Village, or its insurance carrier, will pay or settle any such claim or suit or judgment rendered thereon. The Village agrees to bear the full cost of any fidelity or other bonds as may be approved by the Village Council pursuant to the Village Charter.

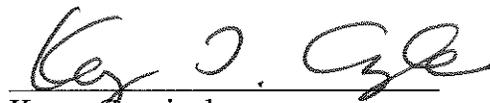
10.11 The agreement may be executed in duplicate or counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. No term, condition or covenant of this agreement shall be binding on either party until both parties have signed it.

IN WITNESS WHEREOF, the parties have executed this instrument for the purpose expressed in this agreement to be effective on the 19th day of April, 2017.

THE VILLAGE OF PALMETTO BAY
9705 East Hibiscus Street
Palmetto Bay, FL 33157


Eugene Flinn
Mayor


John DuBois
Vice Mayor


Karyn Cunningham
Councilmember (District 1)


David Singer
Councilmember (District 2)


Larissa Siegel Lara
Councilmember (District 3)



Missel Arocha (Missy)
Village Clerk

ATTEST:



Edward Silva
Village Manager

APPROVED AS TO FORM:



Dexter W. Lehtinen
Village Attorney

Village of Palmetto Bay
Performance Evaluation

Fiscal Year: _____
Village Clerk

Purpose: The purpose of this annual Performance Evaluation is to increase communication between the Village Clerk and the Council with regard to her performance of the duties prescribed by Article. III, Sec. 3.6 of the Charter, by State Law, and as directed by the Council. The Village Clerk reports and is accountable to the Village Council. The Village Clerk works in conjunction with the Village Manager and Village Attorney to fulfill the direction of the Village Council.

Process: As noted in the 2014 Employment Agreement between the Village Council and the Village Clerk, Paragraph 7.1 *Annual Evaluation*:

1. The Clerk shall be evaluated annually. The evaluations shall be done individually by the Council members on the form provided.
2. The Council members shall meet individually with the Clerk and provide her with their individual comments and evaluation. Subsequently, the Council, based upon the results of the evaluation, may grant a merit salary increase, and other benefits to the Clerk.
3. The Council agrees to review the annual salary, and/or other benefits of the Clerk, at the time of evaluation and make adjustments in such amounts and to such extent as the Council may determine that it is desirable to do so.
4. Should the Council fail to annually evaluate the Clerk's performance within two months of the annual anniversary of this Agreement, it shall be interpreted to mean that the Council is satisfied with her performance; immediately thereafter, the Clerk shall be given a salary increase equal to two percent (2%). The Finance Department shall automatically implement this two percent (2%) salary increase, if the Finance Department has not received a copy of the Clerk's evaluation by the date specified herein.

B. Drafting and presenting all Minutes to the Council for approval and permanent retention:

| | | | | |
|--------------------|------------------------|------------------------|--------------------------|-----------------|
| (1) Unsatisfactory | (2) Improvement Needed | (3) Meets Job Standard | (4) Exceeds Job Standard | (5) Outstanding |
| | | | | |

Comments: _____

C. Responding to all public records requests in an appropriate manner in accordance with Village policy and Chapter 119, Florida Statutes:

| | | | | |
|--------------------|------------------------|------------------------|--------------------------|-----------------|
| (1) Unsatisfactory | (2) Improvement Needed | (3) Meets Job Standard | (4) Exceeds Job Standard | (5) Outstanding |
| | | | | |

Comments: _____

D. Accurately publishing all Village publications and meeting associated mandated deadlines for public and procurement notices:

| | | | | |
|--------------------|------------------------|------------------------|--------------------------|-----------------|
| (1) Unsatisfactory | (2) Improvement Needed | (3) Meets Job Standard | (4) Exceeds Job Standard | (5) Outstanding |
| | | | | |

Comments: _____

H. Supervising all election activities of the Village and acting as liaison with Miami-Dade County, keeping current with Florida election laws, and insuring that candidates are treated fairly and that the public is well-informed:

| | | | | |
|--------------------|------------------------|------------------------|--------------------------|-----------------|
| (1) Unsatisfactory | (2) Improvement Needed | (3) Meets Job Standard | (4) Exceeds Job Standard | (5) Outstanding |
| | | | | |

Comments: _____

I. Drafting proclamations and assisting with elected official speech preparation:

| | | | | |
|--------------------|------------------------|------------------------|--------------------------|-----------------|
| (1) Unsatisfactory | (2) Improvement Needed | (3) Meets Job Standard | (4) Exceeds Job Standard | (5) Outstanding |
| | | | | |

Comments: _____

J. Preparing the Clerk's budget for each fiscal year and monitoring same:

| | | | | |
|--------------------|------------------------|------------------------|--------------------------|-----------------|
| (1) Unsatisfactory | (2) Improvement Needed | (3) Meets Job Standard | (4) Exceeds Job Standard | (5) Outstanding |
| | | | | |

Comments: _____

Overall Evaluation: _____

Village Clerk

Member of the Village Council

Date

Date

The Clerk is requested to sign this sheet, not to necessarily indicate approval, but to show that she has read, discussed, and received a copy of this document and any attachments, and shall file this document promptly with the Personnel Department and add any such statements or explanations that she may desire to add. Refusal of the Village Clerk to sign this document will in no way invalidate the evaluation.