

RESOLUTION NO. 15-265

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, APPOINTING JEFFREY A. MODARELLI TO THE POSITION OF CITY CLERK OF THE CITY OF FORT LAUDERDALE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 4.13 of the Charter of the City of Fort Lauderdale, Florida, provides that the City Commission shall appoint a city clerk; and

WHEREAS, the City Commission desires to appoint Jeffrey A. Modarelli as City Clerk,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That Jeffrey A. Modarelli is appointed to the position of City Clerk of the City of Fort Lauderdale.

SECTION 2. That the Mayor is authorized to execute an employment contract on behalf of the City with Jeffrey A. Modarelli, in substantially the form attached as Exhibit B, providing for compensation, benefits and the terms of employment.

SECTION 3. That this Resolution shall become effective immediately upon its adoption by the City Commission.

ADOPTED this the 17th day of November, 2015.

ATTEST:


Mayor
JOHN P. "JACK" SEILER


Assistant City Clerk

EMPLOYMENT CONTRACT

THIS EMPLOYMENT CONTRACT ("Contract"), effective December 1, 2015, is by and between the City of Fort Lauderdale, a Florida municipality ("Employer"), and Jeffrey A. Modarelli, an individual, ("Employee" or "City Clerk").

WHEREAS, Section 4.13 of the Charter of the City of Fort Lauderdale, Florida, provides for a city clerk; and

WHEREAS, it is the desire of City to appoint, provide certain benefits, and establish certain conditions of employment for the City Clerk,

NOW THEREFORE, in consideration of the mutual covenants contained in this Contract and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the City and the City Clerk agree as follows:

1. **DUTIES.** City agrees to employ Jeffrey A. Modarelli as the City's City Clerk, to perform the functions and duties as set forth in the City's Charter, ordinances, regulations, rules, and policies, and to perform other associated and legally required duties and functions as the City shall direct and from time to time assign to Employee. Employee agrees to perform all such functions and duties faithfully, competently, professionally, and promptly to the best of Employee's ability.

2. **TERM.**

(A) This agreement shall remain in full force and effect from December 1, 2015, until terminated by the Employer or by the Employee. Nothing in this Contract shall prevent, limit or otherwise interfere with the right of Employer to terminate the services of Employee at any time, subject only to the provisions set forth in Paragraphs 2(D) and 4 of this Contract.

(B) Nothing in this Contract shall prevent, limit or otherwise interfere with the right of the Employee to resign at any time from employment with Employer, subject only to the provisions set forth in Paragraph 2(D), of this Contract.

(C) Employee agrees neither to accept other employment nor to be employed by any other employer during the term of this Contract. The foregoing sentence does not preclude the occasional writing, teaching, or lecturing when performed during Employee's time off from working for the City.

(D) Employee shall give Employer at least sixty days' written notice in advance of his intent to leave employment with the City. Employer shall give Employee at least sixty days' written notice of its intent to terminate this Contract, unless otherwise agreed to by the City.

3. **SUSPENSION.**

Employer may suspend the Employee for cause without any pay or benefits or, absent cause, with full pay and benefits at any time during the term of this Contract.

4. TERMINATION AND SEVERANCE PAY.

(A) In the event the Employer terminates the Employee's employment, Employer agrees to pay Employee a lump sum cash severance payment equal to the aggregate salary and benefits for eight (8) weeks in the first year of this Agreement, twelve (12) weeks in the second year of this Agreement, sixteen (16) weeks in the third year of this Agreement, or twenty (20) weeks in the fourth and following years of this Agreement, except that, in accordance with the prohibition contained in Section 215.425(4)(a)2, Florida Statutes (2015), in the event the Employee is fired by the Employer for misconduct, as defined in Section 443.036(29), Florida Statutes (2015), as amended or revised, Employer shall not pay Employee any severance pay.

(B) In the event that Employer, at any time during the term of this Contract, determines that the City is experiencing or may experience financial difficulties, such that the salaries, other financial benefits or both, of the City's Management Category I employees are to be reduced, then Employee's salary, other financial benefits, or both may also be reduced, upon duly adopted Resolution of the City Commission, so long as all such reductions for such employees, as a group, are made to the same degree.

5. DISABILITY.

If Employee becomes unable to perform the essential functions of his job with or without reasonable accommodation because of a disability for a period of four (4) successive weeks beyond any accrued sick leave, or for sixty work days over a ninety work day period, Employer shall have the option to terminate this Contract, subject to the severance pay requirements of Paragraph 4, subparagraph (A), above. However, in such case Employee shall be compensated for any accrued sick leave, vacation, intervening holidays, and other accrued benefits to the same extent as Management Category I employees of Employer pursuant to any applicable City of Fort Lauderdale ordinance or policy.

6. SALARY.

Employer agrees to pay Employee an initial annual base salary of \$115,000.00, less mandatory and voluntary deductions, subject to the City Commission's adoption of a resolution approving this Contract, payable in bi-weekly installments at the same time as other employees of Employer are paid, said salary being subject to any increases or decreases which Employer may determine are desirable based upon an annual performance review of the Employee, and upon the basis of general salary increases given to Management Category I employees, including cost of living increases.

In addition, Employer agrees to adjust other benefits of Employee in such amounts and to such extent as the Employer may determine that it is desirable to do so on the basis of an annual performance review of the Employee, or on the basis of general benefit increases given to other Management Category I employees.

7. PERFORMANCE EVALUATION.

(A) Employer shall review and evaluate the performance of Employee periodically. Employer shall provide Employee with a summary written statement of the

findings of Employer and provide an adequate opportunity for Employee to discuss the evaluation with Employer.

(B) Periodically, Employer and Employee shall discuss such goals and objectives which Employer determines necessary for the Employee's performance, and for the attainment of the Employer's policy objectives, and Employer shall establish a relative priority among those various goals and objectives.

8. HOURS OF WORK.

The defined work week for the Employee shall be a minimum of forty (40) hours, Monday through Friday, and shall include meetings of the City's City Commission. It is recognized that, on occasion, the Employee must devote time outside the normal office hours to business of the Employer.

9. OUTSIDE ACTIVITIES.

Employee shall not become involved in other forms of employment such as teaching, consulting or other non-Employer connected business without the prior approval of Employer. Any form of permitted outside activity shall not conflict or interfere with Employee's ability to perform the duties and responsibilities as required by this Contract, and shall not be violative of any applicable ethics laws or rules.

10. AUTOMOBILE.

Employee will receive payment of a car allowance in the amount of \$592 per month to cover any automobile expenses including, but not limited to, purchase price or rental payments, accelerated depreciation, parts, labor, tires, fuel, oil, insurance, and any other payments related thereto. Employee shall be responsible for owning or leasing or otherwise legally possessing an automobile for his use, obtaining and paying the premiums for liability insurance with minimum limits of \$100,000.00/\$300,000.00, property damage insurance with minimum limits of \$50,000.00, and comprehensive insurance, and Employee shall be responsible for the expenses of operation, maintenance, repair, and regular replacement of Employee's personal automobile.

11. VACATION, SICK AND MILITARY LEAVE.

(A) Employee shall accrue, and have credited to Employee's personal account, vacation and sick leave, and shall receive longevity pay to the extent he qualifies therefor pursuant to, and to the extent provided by, Section 20-67, Code of Ordinances of the City of Fort Lauderdale, Florida, as amended or revised, at the same rate and subject to the same conditions as Management Category I level employees of Employer.

(B) Employee shall be entitled to military reserve leave time pursuant to state law and City policy.

12. DISABILITY AND HEALTH INSURANCE; PHYSICAL EXAMINATIONS.

(A) Employer agrees to put into effect and pay the City's portion of premiums for group health, group dental, and group life insurance, covering the Employee, to the same extent and providing the same coverage and benefits provided

Management Category I employees of the City, as determined by the City in the City's sole discretion, conditioned upon the Employee's payment of the Employee's portion of the premiums for Employee coverage, and Employee's payment of premiums for dependent coverage, if any, in the amounts and in the manner determined by the City of Fort Lauderdale City Commission from time to time, and conditioned upon the Employee's and, if applicable, the Employee's dependent's or dependents', meeting any medical qualifications and any other qualifications for each respective plan or policy.

(B) City agrees to put into effect and to make required premium payments, up to an annual amount of \$2,500.00, for life insurance, long-term disability insurance, long-term care insurance, or any other insurance product of the City Clerk's choice.

(C) Employee shall be afforded all benefits associated with physical examinations and the City Wellness Program to the same extent as are provided to Management Category I employees of the City.

13. RETIREMENT.

Employee will be enrolled as a participant in the City's Section 401(a) defined contribution plan. In addition to Employee's participation in the City's defined contribution plan, Employee may participate in a City-approved deferred compensation (Section 457) plan by contributing Employee's funds *via* payroll deduction in accordance with and to the extent allowed by such plan and applicable laws and regulations. The City's contribution rate to the Section 401(a) plan for the City Clerk shall be governed by City of Fort Lauderdale Resolution 12-184.

14. DUES AND SUBSCRIPTIONS.

Employer agrees to pay for reasonable professional dues and subscriptions for Employee that are necessary for Employee's participation in local, national and state associations and organizations, that are related to the Employee's employment with the City, and that contribute to the Employee's professional development as city clerk for the City of Fort Lauderdale, subject to budgeting and appropriation and the availability of funds.

15. PROFESSIONAL DEVELOPMENT.

(A) Employer agrees to pay for the travel and subsistence expenses of Employee for conferences, short courses, institutes, and seminars that are related to the Employee's employment with the City, and that contribute to the Employee's professional development as city clerk for the City of Fort Lauderdale, subject to budgeting and appropriation and the availability of funds.

(B) The foregoing expenses shall be paid as prescribed by City ordinance, policy, and standards, and will be afforded to Employee to the same extent as such expenses are paid for Management Category I employees of the City.

16. INDEMNIFICATION.

Subject to the limitations contained in Section 768.28, Florida Statutes (2015), as may be amended or revised, Employer agrees to defend and indemnify

Employee to the extent provided by Section 2-42, Code of Ordinances of the City of Fort Lauderdale, Florida, as amended or revised.

17. RESIDENCY

It shall be a condition of this Contract that Employee maintain his residence within the geographic bounds of the City of Fort Lauderdale, Florida.

18. BONDING.

Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

19. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

The City Commission, subject to the requirements of the City Charter, shall fix any such other terms and conditions of employment as it may determine to be desirable or necessary from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Contract, the City Charter, or any other law.

20. NOTICES.

Notice pursuant to this Contract may be given by mail, by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

(1) EMPLOYER: City Commission
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

(2) EMPLOYEE: Jeffrey A. Modarelli
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

and

Jeffrey A. Modarelli
At His Personal Residence

Alternatively or additionally, any notice required pursuant to this Contract may be personally served. Notice shall be deemed given and effective as of the date and time of personal service, or if mailed, effective as of the date of deposit of such written notice in the course of transmission in the United States Postal Service. The above addresses shall remain effective until written notice changing same has been provided.

21. GENERAL PROVISIONS.

(A) The provisions of this Contract constitute the entire agreement between the parties. No representation or understanding, whether communicated orally or in writing, is or shall be effective unless contained in this Contract.

(B) This Contract shall be binding upon and inure to the benefit of the heirs at law, executor, or personal representative of Employee, pursuant to Florida law.

(C) If any provision, or any portion of a provision contained in this Contract is held unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, the remainder of this Contract, or such portion of it not having been held unconstitutional, invalid, or unenforceable by a court of competent jurisdiction, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

(D) No alteration, modification or amendment of this Contract shall be effective unless contained in a writing, executed by the parties in a document of equal dignity with this Contract.

(E) This Employment Contract shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in Broward County, Florida, and in the event of federal jurisdiction, in the Southern District of Florida.

IN WITNESS WHEREOF, the Employer and the Employee execute this Employment Contract as follows:

ATTEST:

Wendy S. Goryea
Assistant City Clerk

(CORPORATE SEAL)

CITY OF FORT LAUDERDALE

By: John P. "Jack" Seler
John P. "Jack" Seler, Mayor

Approved as to form:

Cynthia A. Everett
Cynthia A. Everett, City Attorney

WITNESSES:

Lynette McIntosh
(Signature)
Print Name: Lynette McIntosh

Erica Francochi
(Signature)
Print Name: Erica Francochi

JEFFREY A. MODARELLI

Jeffrey A. Modarelli
Jeffrey A. Modarelli