

CITY OF MARGATE, FLORIDA

RESOLUTION NO. 22-036

A RESOLUTION OF THE CITY OF MARGATE, FLORIDA, APPROVING THE APPOINTMENT OF AND EMPLOYMENT AGREEMENT BETWEEN JENNIFER M. JOHNSON AND THE CITY OF MARGATE FOR EMPLOYMENT AS THE CITY CLERK; PROVIDING AN EFFECTIVE DATE.

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BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MARGATE, FLORIDA:

SECTION 1: That the City Commission of the City of Margate, Florida, hereby approves the appointment of Jennifer M. Johnson as the City Clerk pursuant to the Employment Agreement between Jennifer M. Johnson and the City of Margate for employment as City Clerk, which is attached hereto.

SECTION 2: That the Mayor and City Manager are hereby authorized and directed to execute the above referenced Agreement on behalf of the City of Margate.

SECTION 3: That this Resolution shall become effective immediately upon its passage.

PASSED, ADOPTED AND APPROVED THIS 16<sup>TH</sup> day of MARCH, 2022.

ATTEST:

  
\_\_\_\_\_  
JOSEPH J. KAVANAGH  
CITY CLERK

  
\_\_\_\_\_  
MAYOR ANTONIO V. ARSERIO

RECORD OF VOTE

Simone	<u>YES</u>
Schwartz	<u>YES</u>
Ruzzano	<u>YES</u>
Caggiano	<u>YES</u>
Arserio	<u>YES</u>

EMPLOYMENT AGREEMENT

This Employment Agreement between Jennifer M. Johnson and the City of Margate for Employment as City Clerk is made this 16<sup>th</sup> day of March, 2022 by and between the City of Margate ("EMPLOYER"), a Florida municipal corporation, and Jennifer M. Johnson ("EMPLOYEE"), an individual (collectively "the Parties") and

WITNESSETH

WHEREAS, the Employer desires to employ the services of Jennifer M. Johnson as City Clerk of the City of Margate as provided by Article III, Section 3.12, of the City Charter; and

WHEREAS, it is the desire of the City Commission of the City of Margate, hereinafter called "Commission", to provide certain benefits, establish certain conditions of employment and to set working conditions of Employee; and

WHEREAS, it is the desire of the Commission:

1. To secure and retain the services of Employee and to provide inducement for her to remain in such employment; and
2. To make possible full work productivity by assuring Employee's morale and peace of mind with respect to future security; and
3. To act as a deterrent against malfeasance or dishonesty for personal gain on the part of the Employee; and
4. To provide a just means for terminating Employee's services; and

WHEREAS, Employee desires to employ her employment as City Clerk of said City;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

SECTION 1. DUTIES

Employer hereby agrees to employ Jennifer M. Johnson as City Clerk of the City of Margate to perform the functions and duties

specified in Article III, Section 3.12, of the City Charter and by the City of Margate Code of Ordinances, and to perform other legally permissible and proper duties and functions as the Commission shall from time to time assign.

A. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Commission to terminate the services of Employee at any time, subject only to the provisions set forth in Section 3, paragraphs A and B, of this Agreement.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from her position with Employer, subject only to the provisions set forth in Section 3, Paragraph C of this Agreement.

C. Employee agrees to remain in the exclusive employ of Employer. The term "employed" shall not be construed to include occasional teaching, writing, or consulting performed on Employee's time off, as defined in Section 9 of this Agreement.

D. The commencement date of this Agreement shall be April 11, 2022.

#### SECTION 2. SUSPENSION:

Employer may suspend Employee with full pay and full benefits at any time during the term of this Agreement, but only if a majority vote of the Commission is taken to suspend the Employee.

#### SECTION 3. TERM, TERMINATION, AND SEVERANCE PAY:

A. This Agreement shall be for a term of one year from the effective date. The City and Employee may agree to renew the Agreement for an additional period, subject to the approval by the City Commission. Following any renewal, this Agreement shall continue from year to year unless otherwise terminated pursuant to the provisions of this Agreement.

B. In the event Employee is removed or discharged by the Commission pursuant to the terms and conditions of this Agreement, Employer agrees to pay Employee severance pay at the time of separation. If the Employee is removed or discharged by the City Commission during the first year of the Agreement, the City agrees to pay the Employee severance pay in an amount equal

to ten (10) weeks' gross salary, as determined by the Employee's then current base hourly rate of pay. In the event the Employee is removed or discharged after the first year of the Agreement, the City agrees to pay the Employee twenty (20) weeks' gross salary, plus the dollar value as determined by the Employee's then current base hourly rate of pay of 100% of all types of accumulated leave (Annual, Sick and Personal), and other eligible benefits accrued to the date of termination. The dollar value of the severance pay payment shall be subject to applicable Federal withholding tax and Social Security tax deductions.

In the event Employee is terminated because of her entry of a plea of guilty or conviction of any crime involving moral turpitude related to her duties as City Clerk, or in the event Employee is fired for "misconduct" as this term is defined in Sec. 443.036(29), Florida Statutes, Employer shall have no obligation to pay the aggregate severance sum designated in this section except for payment of 100% of all accumulated types of leave (Annual, Sick and Personal) and other eligible benefits.

Employee and Employer hereby agree that severance pay, if any, shall be paid at the sole discretion of Employer either by a lump sum settlement in a single installment due and payable to Employee within one (1) day of termination or by a deferral schedule up to and through six months as set solely by Employer.

C. In the event Employer at any time during the term of this Agreement reduces the salary, or in the event Employer refuses, following 90 days after written notice received by Employer demanding that the Employer comply with any other provisions of this Agreement benefiting Employee, or the Employee resigns following a suggestion, whether formal or informal, by three or more members of the Commission while in session that she resign, then, in that event, Employee may, at her option, be deemed to be removed or discharged at the date of such reduction or upon the date of such action by the Commission.

D. In the event Employee voluntarily resigns her position with Employer, then Employee shall give Employer sixty (60) days written notice in advance, unless the parties otherwise agree.

At the option of the Commission, it may require Employee to immediately vacate her position/employment, and relinquish any and all emoluments of employment with the Employer (Employees Welfare Benefit Trust excluded) with the exception of her salary for said sixty (60) day period or any portion thereof, together with accrued

sick leave, vacation (annual leave), personal time and other eligible benefits accrued to date of resignation.

In the event of resignation by the Employee under this Section, the Employee shall not be entitled to receive the severance package specified in Section 3.B.

#### SECTION 4. PERMANENT DISABILITY:

If Employee becomes permanently disabled or is otherwise unable to perform the essential duties of her position because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks beyond any available leave, Employer shall have the option to terminate this Agreement, subject to the applicable severance pay provisions contained in Section 3 of this Agreement. In the event Employee becomes permanently disabled, or is otherwise unable to perform the essential duties and function of her position for the reasons set forth above, and after Employee has used the last day of her available leave, the Employer may at its discretion demand that Employee present herself for a physical examination(s) by a physician(s) selected solely by the Employer, to be paid for by Employer, and Employee hereby agrees that the City shall be entitled to receive from said physician(s) a written report of all the findings and an opinion as to the prognosis relating thereto. The option to terminate this Agreement as referenced above shall be based upon said medical opinion(s). If Employee has for any reason received any funds as a result of any worker's compensation claim made by Employee, or as a result of any claim through any disability insurance, the Employer is entitled to a lien and/or a set off as to all said funds.

#### SECTION 5. SALARY:

Employer agrees to pay Employee for her services rendered pursuant hereto an annual base salary of \$140,000.00 per year.

Employer agrees to increase the annual base salary each year by the cost of living adjustment/across the board pay increase, if any, that is granted to Department Heads of the City of Margate. In addition, the Employee annual base salary may be increased from time to time by the City Commission in its discretion as it deems appropriate. Employer agrees to increase other benefits of Employee in such amounts and to such extent as the Commission may determine.

SECTION 6 - PERFORMANCE EVALUATION:

The Commission shall conduct a performance evaluation of Employee on a schedule, procedure and process determined by its sole discretion, subject to applicable provisions of Charter of the City of Margate or to applicable City Codes.

SECTION 7. HOURS OF WORK:

As much as is practical, Employee shall observe regular business hours in City Hall. However, it is recognized that Employee must devote a great deal of time outside the normal office hours of business of the Employer, and to that end Employee will be allowed to determine her own office hours and to take time off as she shall deem appropriate. Employee shall endeavor to provide the City Commission with notice of any intended absence from the office.

SECTION 8. OUTSIDE ACTIVITIES:

Employee shall be allowed time for teaching, counseling, consulting or other non-Employer connected business, however, same shall not interfere nor conflict with her full-time duties as City Clerk.

SECTION 9. AUTOMOBILE:

A. It is understood that Employee's duties require extensive use of an automobile at all times during her employment with Employer. The City agrees to provide at the Employee's request an automobile allowance in the amount of \$400 monthly, for utilization of her own vehicle for City duties. Employee will be reimbursed for business travel in accordance with established City policy.

SECTION 10. PAID LEAVE AND BENEFITS:

A. All provisions of the City of Margate City Charter, Code of Ordinances, Resolutions, regulations and rules of the Employer relating to the use of vacation, sick, personal, holiday, and other leave, accrual of other fringe benefits including participation in the senior executive level of the Florida State Retirement System (FRS), and working conditions, as they now exist or hereafter may be increased, shall also apply to Employee

as they would to Department Heads. The same shall be in addition to said benefits enumerated in this Agreement specifically for the benefit of Employee. Employee shall be entitled to receive holiday and personal leave benefits as would be afforded any Department Head of the City of Margate.

B. Employee shall be credited twenty (20) days of vacation leave and twelve (12) days of sick leave on October 1 of each year of this Agreement. All leave accumulated by the Employee shall be subject to the accrual cap limits applicable to a City Department Head, except that all accumulated leave hours that exceed such cap on September 30 of each year shall be paid to Employee in a single lump sum payment based on Employee's then current base hourly rate of pay.

C. Except as otherwise provided in Section 3 of this Agreement, upon resignation or termination Employee shall be entitled to a cash out of 100% of all accumulated types of leave (Annual, Sick and Personal) based on Employee's then current base hourly rate of pay. The disbursement of said cash out shall be, at the sole discretion and determination of Employee, made via either a lump sum settlement that shall be payable in a single installment due and payable to Employee within one (1) normal pay period of termination or a deferral schedule of up to and through six months, as set solely by Employee.

SECTION 11. DISABILITY, HEALTH, AND LIFE INSURANCE:

The Employer hereby agrees to provide Employee with all insurance related benefits afforded any Department Head of the City of Margate including health and disability benefits. In addition, Employer shall pay the premium due for term life insurance in the amount of \$250,000. The Employee shall name the beneficiaries of the life insurance policy.

SECTION 12. DUES AND SUBSCRIPTIONS:

Employer agrees to budget and to pay for the professional dues and subscriptions of Employee necessary for her continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for her continued professional participation, growth and advancement, and for the good of the Employer.

SECTION 13. PROFESSIONAL DEVELOPMENT:

A. Employer hereby agrees to budget for and to pay the travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of Employee, and to adequately pursue necessary official and other functions for Employer.

B. Employer also agrees to budget and to pay for the travel and subsistence expenses of Employee for short courses, institutes and seminars that are necessary and desirable for her professional development and for the good of the Employer.

#### SECTION 14. GENERAL EXPENSES

Employee shall be provided an \$80.00 monthly cell phone allowance as provided for other senior management employees or Department Heads. Upon phone upgrade, Employee shall also be provided with a \$200.00 phone upgrade allowance once per year. The City shall provide desktop computing equipment for Employee's use at City Hall and up to two mobile computing devices, subject to reimbursement to the Employee if she makes the purchase, (iPad, tablet computing device, laptop, etc.) with computer data service provided for up to two mobile devices at the City's expense. Any mobile computing devices will remain property of the City and returned to the City upon separation of employment.

#### SECTION 15. INDEMNIFICATION:

Employer shall defend, save harmless and indemnify Employee against any tort (except a tort that constitutes conduct involving fraud, dishonesty, theft, or any crimes relating to his employment or because of a conviction of a felony), and any professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Clerk, unless prohibited by law. Employer may compromise and settle any such claim or suit and shall pay the amount of any settlement or judgment rendered thereon.

#### SECTION 16. BONDING:

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

#### SECTION 17. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

A. The Commission, in consultation with the City Clerk, shall fix any such other terms and conditions of employment as it



may determine, from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provision of this Agreement, the Margate City Charter, or any other law.

B. Employer expressly waives any and all residency requirements for Employee except as required by City Charter.

C. Employee shall be provided all benefits afforded to an employee of the City of Margate as a Department Head, except as otherwise provided herein.

SECTION 18. DEATH OF EMPLOYEE:

Upon Employee's death, Employer's obligations hereunder shall be the same as for any other Department Head of the City of Margate. Additionally, Employer agrees to assist with regard to any claims made by the Employee's estate for payment under all life insurance policies to Employees; designated beneficiaries, including any claims for outstanding hospitalization, medical and dental bills in accordance with the City's insurance policies or plans for same, and to provide such other benefits Employer has with respect to its Department Heads generally.

SECTION 19. NOTICES:

Notices pursuant to the Agreement shall be given by deposit in the custody of the United States Postal Service, by certified mail, return receipt requested, postage prepaid, addressed as follows:

Employer:

City of Margate  
5790 Margate Boulevard  
Margate, FL 33063

Employee:

Jennifer M. Johnson  
7872 NW 33<sup>rd</sup> Street  
Margate, FL 33063

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

SECTION 20. GENERAL PROVISIONS:

A. The text herein shall constitute the entire Agreement between the parties.

B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.

C. This Agreement may not be amended except by written agreement by and between the parties.

D. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

E. This Agreement has been negotiated and drafted by both parties hereto and shall not be more strictly construed against any party because of such parties' preparation of this Agreement.

F. Florida law shall govern this Agreement and any litigation which may arise from this Agreement shall be filed and litigated in the Circuit Court in and for Broward County, Florida, or if in Federal Court, the Southern District of Florida.


G. Both the Employer and Employee knowingly, voluntarily, and irrevocably waive their right to a trial by jury in any civil proceeding that may be initiated by either party with respect to any term or condition of this agreement.

IN WITNESS WHEREOF, the City of Margate has caused this Agreement to be signed by, executed in its behalf by, its Mayor, and duly attested, and the Employee has signed and executed this Agreement, both in duplicate, the day and year first above written.


EMPLOYEE:

By:   
Jennifer M. Johnson

ATTEST:

By:   
Print Name: Theresa Sones  
Title: Clerk Coordinator

CITY OF MARGATE, FLORIDA

By:   
Cale Curtis  
City Manager

EMPLOYMENT AGREEMENT  
JENNIFER JOHNSON

APPROVED AS TO FORM:



\_\_\_\_\_  
David N. Tolces  
Interim City Attorney

By:



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Antonio V. Arserio  
Mayor