RESOLUTION NO. 2014-65

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA AUTHORIZING THE MAYOR AND THE ACTING CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO A PROFESSIONAL AGREEMENT WITH SHARON ARMESTO, AS A CONTINUING CONTRACT, THE DURATION OF WHICH IS AT THE SOLE DISCRETION OF THE CITY, TO PERFORM THE SERVICES OF PUBLIC SAFETY COMMUNICATIONS OFFICER, A COPY OF WHICH IS ATTACHED HERETO AND MADE A PART HEREOF AS EXHIBIT "1".

WHEREAS, the City Council in April 2013, amended the Retirement Code to allow City of Hialeah retirees, formerly employed by the City, to perform the duties of public safety communications officer without affecting the former employee's retirement benefits in circumstances where there is a documented operations necessity involving life safety concerns; and

WHEREAS, due to the recent and unexpected departure of employees of the Public Safety Communications Bureau, the City of Hialeah Chief of Police and Fire Chief find it is of operational necessity to enter into a professional services agreement with Sharon Armesto, a former employee of the City of Hialeah; and

WHEREAS, Sharon Armesto has established to the City of Hialeah Chief of Police and Fire Chief that she is competent, willing and able to perform the duties of a public safety communications officer and having presented her qualifications to the City; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The City of Hialeah, Florida hereby authorizes the Mayor and the Acting City Clerk, as attesting witness, on behalf of the City, to enter into a professional services agreement with Sharon Armesto, on a continuing basis, the duration of which is at the sole discretion of the City, to perform the services of Public Safety Communications Officer, a copy of which is attached hereto and made a part hereof as Exhibit "1".

PASSED AND ADOPTED this 27 day of May, 2014.

Isis Garcia-Martinez
Council President

Attest:

Approved on this 30 day of May, 2014.

Marbelys Fatjo, Acting City Clerk

Mayor Carlos Hernandez

Approved as to form and legal sufficiency:

Lorena Bravo, Acting City Attorney

Resolution was adopted by a unanimous vote with Councilmembers, Caragol, Casáls-Muñoz, Cue-Fuente, Garcia-Martinez, Gonzalez, Hernandez and Lozano voting "Yes".

PROFESSIONAL SERVICES AGREEMENT BETWEEN SHARON ARMESTO AND THE CITY OF HIALEAH

This Agreement entered into this ____day of _____, 2014, by and between the City of Hialeah, Florida, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida ("City"), 501 Palm Avenue, Hialeah, Florida 33010 and Sharon Armesto ("Provider") residing at 18670 S.W. 28 Court, Miramar, Florida, 33029.

WHEREAS, on April 1, 2013, the City of Hialeah amended the Retirement Code to allow City of Hialeah retirees, formerly employed by the City, to perform the duties of a public safety communications officer without affecting the former employee's retirement benefits in circumstances where there is a documented operations necessity involving life safety concerns; and

WHEREAS, the Provider, competent, willing and able to perform the duties of a public safety communications officer and having presented her qualifications to the City and otherwise complied with all re-employment examinations; and

WHEREAS, the City agrees to enter into this Agreement with the Provider and the Provider agrees to accept employment under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and obligations herein contained, and subject to the terms and conditions hereinafter stated, the parties hereto understood and agree as follows:

I. TERM

This agreement is a continuing contract between the Provider and the City, the duration of which is at the sole discretion of the City. All activities as described in the Scope of Services shall be undertaken and performed during the time period of the continuing contract.

II. SCOPE OF SERVICES

The Provider shall perform the professional services of a public safety communications officer under the direction and supervision of a public safety communications supervisor and/or Fire Chief or Head of the Public Safety Communications Section. The Provider shall not perform the services of a public safety communications supervisor.

II. COMPENSATION AND PAYMENT TERMS

The amount of compensation shall be paid at a rate of $25.00 for each hour of professional services rendered to the City as described in the Scope of Services. The

Provider is expected to average 30 hours each week performing professional services. Payment is for work actually performed. The City will not pay for time spent for meals (lunch or dinner) or for breaks from work time. Under no circumstances shall the Provider be paid at an overtime rate or be provided compensatory time. The Provider shall be permitted two- 15 minutes breaks per shift.

Since this is an agreement to engage the professional consulting services, the City has not withheld taxes of contributions on the compensation or amounts paid to the Provider under this agreement. However, the City will report the amount of compensation to the Internal Revenue Service ("IRS") on Form 1099. The Provider understands and agrees that should the IRS, or any other taxing authority or other federal, state or local agency assert, argue or determine that any money received or paid pursuant to this agreement is taxable wages, income or benefits of any kind, the Provider will be solely and individually responsible for the payment of any and all taxes, contributions (either from the Provider or the City or both) or withholdings, including, but not limited to, any related attorney's fees, interest, costs, penalties or other charges regardless of whether the City should have withheld or paid such taxes or made such contributions (including Social Security or Medicare). The Provider will indemnify, reimburse and hold the City harmless for any and all taxes, contributions, withholdings, fees, attorney's fees, interest and/or penalties owed or claimed to be owed by the City on these amounts and assume any and all liability for all such taxes, interest or penalties against the City. The Provider will also indemnify the City for any and all costs, interest and attorney's fees paid or owed by the City as a result of any claim made by any federal, state or local agency for taxes, penalties, costs, interest, fees or contributions that allegedly are owing as a result of the amounts paid to the Provider under this agreement.

IV. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

The Provider shall comply with all applicable laws, ordinances, codes, rules and regulations of federal, state and local governments, including the City of Hialeah. The Provider shall also comply with Hialeah Police Standard Operating Procedures, Departmental Manual, all General Orders and any rules and regulations set forth by the Chief of Police. The Provider shall maintain her Florida Department of Law Enforcement Certification as well as her DAVID certification. The Provider shall also comply with the Public Safety Communications Division Manual and any rules and regulations set forth by the Fire Chief.

V. GENERAL CONDITIONS

All notices or other communications which shall or may be given pursuant to this agreement shall be in writing and shall be delivered by personal service, or by registered mail addressed to the other party at the address indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served; or if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

CITY

Sergio Velazquez
Chief of Police
5555 East 8 Avenue
Hialeah, Florida 33010
Telephone: (305) 953-5300
FAX: (305) 953-5330

CITY

Miguel Anchia
Fire Chief
83 East 5 Street
Hialeah, Florida 33010
Telephone: (305) 883-6900
FAX: (305) 883-2810

PROVIDER

Sharon Armesto
18670 S.W. 28 Court
Miramar, Florida 33029
Telephone: (954) 707-1782

VI. OWNERSHIP OF DOCUMENTS

All documents developed by the Provider under this agreement shall be delivered to City by the Provider upon completion of the services required pursuant to paragraph II hereof and shall become the property of City, without restriction or limitation of its use. City assumes the risk of reuse of all documents developed by the Provider upon delivery after completion of services. The Provider agrees that all documents maintained and generated hereto shall be subject to the applicable provisions of the Public Records Law, Chapter 119, Florida Statutes or any exemptions thereunder.

VII. NONDELEGABLE

The duties and obligations undertaken by the Provider pursuant to this agreement shall not be delegated or assigned to any person or firm.

VIII. AWARD OF AGREEMENT

The Provider warrants that it has not employed or retained any person employed by the City to solicit or secure this agreement and that it has not offered to pay, paid, or agreed to pay any person employed by the City any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or resulting from the award of this agreement.

IX. CONSTRUCTION OF AGREEMENT

This agreement shall be construed and enforced according to the laws of the State of Florida. Venue for any litigation, which may arise in connection with this Agreement,

shall be in Miami-Dade County, Florida. The Provider agrees to be subject to the jurisdiction (subject matter and in personam) of the courts in Miami-Dade County, Florida and amenable to process.

X. SUCCESSORS AND ASSIGNS

This agreement shall be binding upon the parties herein, their heirs, executors, legal representatives, successors and assigns.

XI. CONFLICT OF INTEREST

A. Provider covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this agreement has any personal financial interests, direct or indirect, with the Provider. Provider further covenants that, in the performance of the agreement, no person having such conflicting interest shall be employed. Any such interest on the part of the Provider or its employees must be disclosed in writing to the City.

B. Provider is aware of the conflict of interest laws of the City, Hialeah Code, ch. 26, Art I and II; Miami-Dade County, Florida, Code of Miami-Dade County, Florida § 2-11.1 et seq.; and the State of Florida, Chapter 112, Part III, Florida Statutes and agrees that it shall fully comply in all respects with the terms of said laws.

XII. INDEPENDENT CONTRACTOR

Provider shall be deemed to be an independent contractor and not an agent or employee of the City and shall not attain any rights or benefits under the civil service or pension ordinances of the City, or any rights generally afforded classified or unclassified employees. Provider shall not be entitled to Florida Workers' Compensation benefits as an employee of the City.

XIII. TERMINATION

A. Discretionary. Either party may terminate this agreement without cause upon thirty (30) days written notice mailed to the other party.

B. Cause. Either party may terminate this agreement for cause upon ten (10) days written notice mailed to the other party, and the notified party's failure to cure or correct the cause of the termination notice, to the reasonable satisfaction of the party giving such notice, within fifteen (15) days of receipt of said notice.

C. Effect of Termination. Upon receipt of notice of termination, neither party shall incur additional obligations under any provision of this agreement without the prior written consent of the other.

It is hereby understood that any payment made to the Provider in accordance with this section shall be made only if the Provider is not in default under the terms of this agreement. If Provider is in default, then the City shall in no way be obligated to pay and shall not pay the Provider any sum.

XIV. NONDISCRIMINATION

The Provider agrees that it shall not discriminate as to race, color, creed, national origin, religion, age or disability in connection with its performance hereunder.

XV. DEFAULT

If the Provider fails to comply with the terms and conditions of this agreement, or fails to perform hereunder, or files for bankruptcy or provides assignment or transfer to creditors, then the City, at its sole option upon written notice, may cancel and terminate this agreement, and all payments, advances, or other compensation paid to the Provider, after notice and opportunity to cure as referenced in Article XIII. Payments made to the Provider while the Provider is in default of the provisions contained herein shall be returned forthwith to the City.

XVI. ENTIRE AGREEMENT

This agreement and its attachments and exhibits constitute the sole and only agreement of the parties and accurately set forth the rights, duties, and obligations of each to the other. Any prior agreements, promises, negotiations, or representations not expressly set forth in this agreement are of no force and effect.

XVII. AMENDMENT

No amendments to this agreement shall be binding on either party unless in writing and signed by both parties.

XVIII. MISCELLANEOUS

A. Captions, title and paragraph headings are for convenient reference and are not a part of this agreement. Such captions, title or paragraph headings shall not be deemed in any manner to modify, explain, enlarge or restrict any of the provisions contained in this agreement.

B. In the event of conflict between the terms of this agreement and any terms or conditions in any attached document; the terms in this agreement shall prevail.

C. No waiver or breach of any provision of this agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

D. Should any provisions, paragraph, sentence, work or phrase contained in this agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida or the City of Hialeah, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, then same shall be deemed severable, and in either event, the remaining terms and provisions of this agreement shall remain unmodified and in full force and effect.

E. Further Assurances. All parties hereto upon the request of any other party shall execute such further instruments or documents as may be reasonably required by the requesting party to implement the terms, conditions and provisions of this agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by the respective officials thereunto duly authorized, this the day and year first above written.

City of Hialeah, Florida
501 Palm Avenue
Hialeah, Florida 33010-0040

Attest:

Marbelys Fatjo
Acting City Clerk

(SEAL)

Approved as to form and legal sufficiency:

Lorena Bravo
Acting City Attorney

Authorized signature on behalf of
City of Hialeah

6-13-14

Mayor Carlos Hernandez Date

Sharon Armesto
18670 S.W. 28 Court
Miramar, Florida 33029

Signed, sealed and delivered
in the presence of:

Authorized Signature:

Witness
Typed/printed name: _____

Sharon Armesto Date

PROFESSIONAL SERVICES AGREEMENT BETWEEN SHARON ARMESTO AND THE CITY OF HIALEAH

This Agreement entered into this 24 day of June, 2014, by and between the City of Hialeah, Florida, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida ("City"), 501 Palm Avenue, Hialeah, Florida 33010 and Sharon Armesto ("Provider") residing at 18670 S.W. 28 Court, Miramar, Florida, 33029.

WHEREAS, on April 1, 2013, the City of Hialeah amended the Retirement Code to allow City of Hialeah retirees, formerly employed by the City, to perform the duties of a public safety communications officer without affecting the former employee's retirement benefits in circumstances where there is a documented operations necessity involving life safety concerns; and

WHEREAS, the Provider, competent, willing and able to perform the duties of a public safety communications officer and having presented her qualifications to the City and otherwise complied with all re-employment examinations; and

WHEREAS, the City agrees to enter into this Agreement with the Provider and the Provider agrees to accept employment under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and obligations herein contained, and subject to the terms and conditions hereinafter stated, the parties hereto understood and agree as follows:

I. TERM

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II. SCOPE OF SERVICES

The Provider shall perform the professional services of a public safety communications officer under the direction and supervision of a public safety communications supervisor and/or Fire Chief or Head of the Public Safety Communications Section. The Provider shall not perform the services of a public safety communications supervisor.

II. COMPENSATION AND PAYMENT TERMS

The amount of compensation shall be paid at a rate of $25.00 for each hour of professional services rendered to the City as described in the Scope of Services. The

C. No waiver or breach of any provision of this agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

D. Should any provisions, paragraph, sentence, work or phrase contained in this agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida or the City of Hialeah, such provisions, paragraphs, sentences, words or phrases shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable to conform with such laws, then same shall be deemed severable, and in either event, the remaining terms and provisions of this agreement shall remain unmodified and in full force and effect.

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IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by the respective officials thereunto duly authorized, this the day and year first above written.

City of Hialeah, Florida
501 Palm Avenue
Hialeah, Florida 33010-0040

Attest:

Marbelys Fatjo
Acting City Clerk

(SEAL)

Approved as to form and legal sufficiency:

Lorena Bravo
Acting City Attorney

Authorized signature on behalf of
City of Hialeah

Mayor Carlos Hernandez Date

Sharon Armesto
18670 S.W. 28 Court
Miramar, Florida 33029

Signed, sealed and delivered
in the presence of:

Authorized Signature:

6-24-14

Sharon Armesto Date

Witness
Typed/printed name: _____