

## **AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES**

**THIS AGREEMENT** is made this \_\_\_\_\_ day of December, 2014, by and between the City of Ft. Pierce (hereinafter referred to as City), Florida and International Municipal Lawyers Association, Inc., a foreign corporation, with its principal offices located at 7910 Woodmont Avenue, Suite 1440, Bethesda, Maryland (hereinafter referred to as CONSULTANT).

**WHEREAS** CITY desires to engage the services of a Legal Services Review firm for the purpose of evaluation of legal cost savings and efficiency and desires to hire the CONSULTANT to assist in such project; and

**WHEREAS**, CONSULTANT represents it is a foreign corporation, duly registered in the State of Florida, as specified herein, capable and prepared to provide such services.

**NOW, THEREFORE**, in consideration of the promises contained herein, the parties hereto agree as follows:

### **ARTICLE 1 EFFECTIVE DATE AND TERM**

The effective date of this Agreement shall be \_\_\_\_\_ and shall be for the term set forth in Exhibit "A".

The term of this Agreement shall be for a period beginning on the effective date of the agreement, subject to appropriation of funding, except that it may be terminated as provided herein.

### **ARTICLE 2 SERVICES TO BE PERFORMED BY CONSULTANT**

CONSULTANT shall perform the Services as specifically set forth in the proposal attached hereto as **Exhibit "A"** and incorporated herein by this reference, and as may be specifically designated and authorized by CITY (the "Services"). CONSULTANT's required Insurance shall be as specified in Exhibit "B"

### **ARTICLE 3 COMPENSATION**

#### **3.1 GENERAL**

As compensation for providing the Services, CITY shall pay CONSULTANT'S fees based on the amount stipulated in the attached proposal upon delivery of Consultant's report to CITY. The payment for Services herein shall not exceed seven thousand five hundred (\$7,500) dollars. CONSULTANT represents and warrants that it shall notify CITY in writing prior to doing any further work pursuant to this Agreement if it will exceed the contract amount provided for herein.

#### **3.2 DELAY**

The CONSULTANT shall not be entitled to an increase in the agreed to sum or payment from CITY for any direct, indirect, consequential, impact or other costs, expenses or damages arising because of delay from any circumstances.

### **ARTICLE 4 STANDARD OF CARE**

CONSULTANT shall exercise the same degree of care, skill, and diligence in the

performance of the Services as is ordinarily provided by a comparable professional under similar circumstances, and CONSULTANT shall, at no additional cost to CITY, re-perform Services which fail to satisfy the foregoing standard of care. CONSULTANT warrants that all Services shall be performed by skilled and competent personnel to the highest professional standards in the field.

#### **ARTICLE 5 INDEPENDENT CONTRACTOR**

CONSULTANT undertakes performance of the Services as an independent contractor and shall be wholly responsible for the methods of performance. CITY shall have no right to supervise the methods used, but CITY shall have the right to observe such performance. CONSULTANT shall work closely with CITY in performing Services under this Agreement.

#### **ARTICLE 6 COMPLIANCE WITH LAWS**

In performance of the services, CONSULTANT will comply with applicable regulatory requirements, including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards.

IMLA will register to do business in Florida promptly upon execution of this Contract and this Contract is contingent upon and effective (the time from which the duty to perform begins to run) upon the State issuing the appropriate documentation of IMLA's authority to do business in Florida.

#### **ARTICLE 7 FEDERAL AND STATE TAXES**

CITY is exempt from Federal Tax and State Sales and Use Taxes. Upon request, CITY will provide an exemption certificate to CONSULTANT. CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with CITY, nor shall CONSULTANT be authorized to use CITY'S Tax Exemption Number in securing such materials.

#### **ARTICLE 8 AVAILABILITY OF FUNDS**

The obligations of CITY under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Council of CITY. CITY affirms that there are sufficient funds appropriated for this Agreement and that it will reserve funds sufficient to pay the sums due under this Agreement.

#### **ARTICLE 9 CITY'S RESPONSIBILITIES**

CITY shall be responsible for providing information on hand required by CONSULTANT, including existing reports, studies, planning information, and other required data that are available in the files of CITY and to meet with Consultant at times and locations established by Consultant with City.

#### **ARTICLE 10 TERMINATION OF AGREEMENT**

This Agreement may be terminated by CONSULTANT upon thirty (30) days' prior written notice to CITY in the event of substantial failure by CITY to perform in accordance with the terms of the Agreement through no fault of CONSULTANT. It may also be terminated by CITY, with or without cause, upon thirty (30) days' written notice to CONSULTANT. Unless CONSULTANT is in breach of this Agreement, CONSULTANT shall be paid for Services rendered to CITY'S satisfaction

through the date of termination. After receipt of a Termination Notice, and except as otherwise directed by CITY, CONSULTANT shall:

- A. Stop work on the date and to the extent specified.
- B. Transfer all work in process, completed work, and other material related to the terminated work to CITY.
- C. Continue and complete all parts of the work that have not been terminated.

CONSULTANT shall be paid for Services actually rendered to the date of termination.

#### **ARTICLE 11 UNCONTROLLABLE FORCES**

Neither CITY nor CONSULTANT shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Uncontrollable Forces, the effect of which, by the exercise of reasonable diligence, the nonperforming party could not avoid. The term "Uncontrollable Forces" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to, fire, flood, earthquake, storm, lightning, epidemic, war, riot, civil disturbance, sabotage, and governmental action.

Neither party shall, however, be excused from performance if nonperformance is due to forces which are preventable, removable, or remediable, and which the nonperforming party could have, with the exercise of reasonable diligence, prevented, removed, or remedied with reasonable dispatch. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an uncontrollable force, give written notice to the other party describing the circumstances and uncontrollable forces preventing continued performance of the obligations of this Agreement.

#### **ARTICLE 12 GOVERNING LAW AND VENUE**

The laws of the State of Florida shall govern this Agreement. Any and all legal action necessary to enforce this Agreement will be held in St. Lucie County, and the Agreement will be interpreted according to the laws of Florida.

#### **ARTICLE 13 NON-DISCRIMINATION**

CONSULTANT warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, gender, age, or national origin.

#### **ARTICLE 14 WAIVER**

A waiver by either CITY or CONSULTANT of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver; such a waiver shall not affect the waiving party's rights with respect to any other or future breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.

## **ARTICLE 15 SEVERABILITY**

The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement, and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

The provisions of this Article shall not prevent the entire Agreement from being void should a provision, which is of the essence of the Agreement, be determined to be void.

## **ARTICLE 16 ENTIRETY OF AGREEMENT**

CITY and CONSULTANT agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters, or other communications between CITY and CONSULTANT pertaining to the Services, whether written or oral. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.

## **ARTICLE 17 MODIFICATION**

This Agreement may be modified only by a written amendment executed by both parties.

## **ARTICLE 18 ASSIGNMENT**

Nothing under this Agreement shall be construed to give any rights or benefits to any party other than CITY and CONSULTANT. All duties and responsibilities under this Agreement shall be for the sole and exclusive benefit of CITY and CONSULTANT, and not for the benefit of any other party. CONSULTANT shall not assign any right or interest in this Agreement, and shall not delegate any duty owed, without CITY's prior written consent. Any attempted assignment or delegation shall be void and totally ineffective for all purposes, and shall constitute a material breach upon which CITY may immediately terminate or suspend this Agreement.

## **ARTICLE 19 SUCCESSORS AND ASSIGNS**

CITY and CONSULTANT each binds itself and its partners, successors, assigns, and legal representatives to the other party to this Agreement and to its partners, successors, executors, administrators, assigns, and legal representatives. CONSULTANT shall not assign this Agreement without the express written approval of CITY via executed amendment.

## **ARTICLE 20 OWNERSHIP OF DOCUMENTS**

The final report prepared under this Agreement upon delivery to CITY shall become the property of CITY for its use and/or distribution as may be deemed appropriate by CITY; provided, however, Consultant may use the report and facts developed in preparing the report in the course of providing

consulting services to others.

## **ARTICLE 21 ACCESS AND AUDITS**

CONSULTANT shall maintain adequate records to justify all charges and costs incurred in performing the Services for at least three (3) years after completion of this Agreement. CITY shall have access to such books, records, and documents as required in this Article for the purpose of inspection or audit during normal working business hours at CONSULTANT'S place of business.

## **ARTICLE 22 NOTICE**

Any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or sent by certified mail, postage prepaid as follows:

**As To CITY**  
City Manager with Copy to City Attorney  
City Hall  
100 N. US 1  
P.O. Box 1480  
Fort Pierce, FL 34954

**As To CONSULTANT**  
International Municipal Lawyers Association  
7910 Woodmont Avenue-Ste. 1440  
Bethesda, MD 208

Notices shall be effective when received at the addresses as specified above. Changes in the respective addresses to which such notice is to be directed may be made from time to time by either party by written notice to the other party. Facsimile transmission is acceptable notice effective when received; however, facsimile transmissions received (i.e., printed) after 6:00 p.m. or on Fridays, weekends or holidays will be deemed received on the next business day. The original of the notice must additionally be mailed as required herein.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of CONSULTANT and CITY.

## **ARTICLE 23 CONTRACT ADMINISTRATION**

Services of CONSULTANT shall be under the general direction of the City's Mayor and City Manager or designees, who shall act as CITY's representatives during the term of the Agreement.

## **ARTICLE 24 KEY PERSONNEL**

CONSULTANT shall notify CITY in the event of key personnel changes which might affect this Agreement. Notification shall be made within ten (10) days of said changes. CITY has the right to reject proposed changes in key personnel.

## **ARTICLE 25 CONFIDENTIALITY**

No reports, information, computer programs, documentation, and/or data belonging to CITY given to or prepared or assembled by CONSULTANT under this Agreement shall be made available to any individual or organization by CONSULTANT without prior written approval of

CITY until completion of the project. After completion of the project CONSULTANT may make use of any information that would be deemed public information under Florida law and CONSULTANT may make use of such information in advising other clients when providing comparability and efficiency studies.

**ARTICLE 26        TIME**

Time is of the essence in all respects under this Agreement.

**ARTICLE 27        PREPARATION OF AGREEMENT**

This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

**IN WITNESS WHEREOF**, CITY and CONSULTANT have executed this Agreement as of the day and year first above written.

**CONSULTANT: INTERNATIONAL MUNICIPAL ATTORNEYS ASSOCIATION, INC.**

\_\_\_\_\_  
By: Charles W. Thompson, Esq.  
Executive Director

**ATTEST**

**CITY OF FT PIERCE**

\_\_\_\_\_  
Linda Cox, City Clerk

\_\_\_\_\_  
Linda Hudson, Mayor

**Approved as to form and correctness**

  
\_\_\_\_\_  
Robert V. Schwerer, City Attorney



**International Municipal  
Lawyers Association**

*Advancing Excellence in the Practice of Local Government Law*

**PROPOSAL FOR THE  
CITY OF FT. PIERCE, FLORIDA**

Submitted by and reply to:  
Charles W. Thompson, Jr.  
Executive Director and General Counsel  
International Municipal Lawyers Association, Inc.  
7910 Woodmont Ave., Suite 1440  
Bethesda, Maryland 20814  
202-466-5424 x7110  
Direct: 202-742-1016  
Cell: 240-876-6790

**EXHIBIT**

"A"

tabbles

November 24, 2014

City Commission  
City of Fort Pierce  
City Hall  
100 N. US 1  
P.O. Box 1480  
Fort Pierce, FL 34954

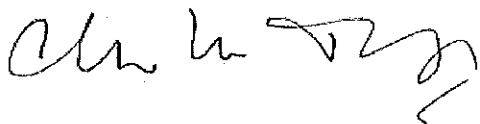
Re: Proposal to Evaluate Legal Services Delivery

Dear City Commission:

IMLA is pleased to offer this proposal to the City of Ft. Pierce in response to your request to provide assistance with City's review of its legal services. IMLA has extensive experience in municipal legal services, organizational structure and staffing, and performance measurement. We pride ourselves on delivering fact based solutions to our clients, and serving as an objective, trusted advisor on a wide range of organizational issues associated with law department management.

As the following proposal describes, our project will be delivered by our Executive Director who has decades of direct experience working in and consulting with local governments. We will provide the City of Ft. Pierce with the proven expertise you need for evaluating your legal services plan. As a membership association for more than 2,500 local governments that are represented through their chief legal officers, both inside counsel and outside counsel, IMLA has provided professional development, legal advocacy, technical assistance, and leading edge information to local governments since 1935. Our ability to provide practical solutions to address organizational challenges, combined with our expertise in law office management, makes IMLA uniquely qualified to assist the City of Ft. Pierce. We look forward to working with you.

Sincerely,



Charles W. Thompson, Jr.

IMLA is prepared to offer its services to enable the City to better control its use of legal services and help the City create a mechanism to measure performance and effectiveness of those services. Based on our understanding of the City's interest, IMLA will evaluate the delivery of legal services in Fort Pierce and offer guidance on increasing the efficiencies and economies of providing those services as detailed below. Our comprehensive approach will deliver broad-based recommendations that the City can use to establish and continue a process to evaluate its legal services and effectively meets its goals.

**I. IMLA's Unique Qualifications**

There are four core concepts that make IMLA uniquely qualified to meet requirements for this project.

1. **Tailored Approach** – Our approach will be tailored to the specific requirements and conditions of the City of Fort Pierce as opposed to an off-the-shelf assessment model.
2. **Knowledge and Experience** – IMLA's Executive Director, its members and its staff have direct, practical experience with organization restructuring that has resulted in improved service delivery. In addition, IMLA's Executive Director has significant experience leading local government law offices that have been recognized for performance excellence. Mr. Thompson's bio is attached.
3. **Capacity Development** – Our approach will build the City's knowledge, skills, abilities, and resources. This will ensure that our recommendations can be fully implemented and are sustainable.
4. **City-wide Perspective** – Our recommendations and assistance are designed to meet the needs of the City as a whole. This means we will be mindful of the complex interrelationships that exist between the various departments and the larger organization. This perspective ensures that our recommendations will not conflict with the City's overall policies, practices and strategic direction, but will meld with the City's long term goals.

**II. International Municipal Lawyers Association (IMLA)**

The International Municipal Lawyers Association (IMLA), located in Bethesda, Maryland, is a non-profit, professional organization that has been an advocate for local governments and a resource for local government attorneys since 1935. Owned solely by over 2500 members, IMLA serves as an international clearinghouse of legal information and cooperation on municipal legal matters. IMLA collects from and disseminates information to its membership across the United States and Canada and help governmental officials prepare for litigation and develop new local laws. Every year, IMLA's legal staff provides accurate, up-to-date information and valuable counsel on hundreds of requests and provides a variety of service, publications and programs to help its members. IMLA participates on behalf of local governments as an amicus in the Supreme Court of the United States, the federal circuit courts of appeal and in state supreme courts.

**III. IMLA's Approach to the Project**

- A. The City of Fort Pierce, Florida as part of its fiscal responsibility desires to assess if it can reduce its costs for legal services or make more efficient use of its budget for those services. The sections below outline in brief the key steps to be taken to address how IMLA can help in the assessment. At the outset, IMLA will meet with the City Commission, City Manager, and City Attorney to discuss the scope of the project, the City's goals and the current structure and satisfaction with service. IMLA will conduct a review of the history of the cost and nature of legal services that have been provided to the City and work with the City Attorney and City Manager to develop a set of options for delivering the service in the most efficient and effective manner and work with the City Attorney to provide the City a more defined scope of services and agreement for delivery of legal services. This approach will result in a draft report and presentation in the areas assessed, as well as a final report and should formalize the City's and Attorney's agreement. The IMLA will work closely with the City Commission, City Manager, and the City Attorney to ensure an accurate understanding of both expectations and the current operating environment.

**B. Project Requirement:**

1. Identify core legal services, functions and priority outputs for the City Attorney's Office.
2. Review staffing in relation to core services, functions and outputs.
3. Analyze delivery methods and offer suggestions for management controls and benchmarks to better control and evaluate the delivery of legal services.
4. Work with the City Attorney to assist with the development of a more defined scope of services that provides for the delivery of legal services and compensation for such services.
5. Investigate opportunities and options for alternative billing methods and alternative delivery methods. Evaluate the current structure for delivering legal services to determine if the City can improve both the efficiency of delivery of legal services and cost.
6. IMLA would spend a day in Fort Pierce meeting with the City Commission, City Manager, and City Attorney. IMLA would thereafter evaluate the structure and reporting relationship for the delivery of legal services to determine efficiencies and evaluate what hurdles may exist that impede the City Attorney and his staff in delivering their services.
7. Work with the City Manager and City Attorney to develop managerial controls and benchmarks to track work and establish deadlines.

**IV: WORK PLAN**

The work listed above will be conducted both on and off-site and will result in a report from IMLA. IMLA will make itself available to review draft results with the City Commission, City Manager, and City Attorney via telephone. A report will be finalized, prepared and presented to the City.

**V. Base Requirements**

Fundamental to the success of this project will be the evaluation of past legal services, their costs, projected future legal service needs and types of legal services utilized. In evaluating future legal service needs, input from the City Manager and City Attorney will be critical to understanding the City's short and long term plans and staffing in relationship to core services. In order to ensure that this evaluation is conducted appropriately, we will need the City Manager and City Attorney to provide critical evaluation of current legal services and a thorough description of the legal services needs of the City and related information regarding the provision of legal services. IMLA will not engage in a review of legal services for any purpose other than to evaluate efficiencies and cost effectiveness. In other words, IMLA will not evaluate the quality of the legal services which it believes to be excellent. This proposal does not contemplate that IMLA's service will involve the practice of law and it will not engage in the practice of law as part of this project.

**VI. Time**

Assuming prompt receipt of the information described in this proposal and information subsequently requested by IMLA, IMLA anticipates that it can complete the report in 90 days from notice to proceed.

**VII. Deliverables**

IMLA will prepare a report describing its analysis with recommendations based on the Project Requirements.

**VIII. Proposed Fees**

IMLA shall provide the above services indicated for \$7,500 including expenses.

## **Charles W. Thompson, Jr.**

Charles W. Thompson, Jr. is the Executive Director and General Counsel of the International Municipal Lawyers Association, Inc. Prior to being appointed to this position Mr. Thompson served as County Attorney for Montgomery County, Maryland from 1995 to 2006 where, under his leadership, the Office of County Attorney received the ABA's Hodson Award recognizing excellence in a public sector law office. For the previous 17 years, Mr. Thompson served as County Attorney for Carroll County, Maryland. Mr. Thompson received a bachelor's degree in history from Virginia Military Institute and earned his Juris Doctor from the University of Baltimore, School of Law where he served as Recent Developments Editor of the Law Review. In addition to serving as President of the Carroll County Bar Association, and as a member of the Executive Committee of the Montgomery County Bar Association, Mr. Thompson served as Chairman of the State and Local Government Law Section of the Maryland State Bar Association, and as Chairman and a member of that Association's Committee on Ethics. Mr. Thompson also served on the Board of Directors and as President of the County Civil Attorneys affiliate of the Maryland Association of Counties. Mr. Thompson is currently serving as an adjunct professor at the George Washington University teaching State and Local Government Law. Mr. Thompson is admitted to practice in Maryland, the U.S. District Court for Maryland, the Fourth Circuit Court of Appeals, and the U.S. Supreme Court. In 2011, Mr. Thompson received the ABA's Jefferson B. Fordham Award for legal advocacy.

## EXHIBIT "B"

### XV. INSURANCE

15.1 CONSULTANT shall, at its own expense, procure and maintain throughout the term of this Agreement, with insurers acceptable to CITY, the types and amounts of insurance conforming to the minimum requirements set forth herein. CONSULTANT shall deliver to CITY the required certificate(s) of insurance before CITY signs this Agreement. CONSULTANT shall not commence work until the required insurance is in force and evidence of insurance acceptable to CITY has been approved by CITY.

As evidence of compliance with the insurance required herein, CONSULTANT shall furnish CITY with one of the following forms of acceptable evidence of insurance:

- (a) a fully completed satisfactory Certificate of Insurance evidencing all coverage required; or
- (b) other evidence satisfactory to CITY.

#### 15.1.1. Workers' Compensation/Employer's Liability Insurance

Such insurance shall be no more restrictive than that provided by the Standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance ("NCCI"), without restrictive endorsements other than those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements).

The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

Part One:	"Statutory"	
Part Two:	\$ 1,000,000	Each Accident
	\$ 1,000,000	Disease - Policy Limit
	\$ 1,000,000	Disease - Each Employee

#### 15.1.2. General Liability Insurance

Such insurance shall be no more restrictive than that provided by the most recent version of standard Commercial General Liability Form (ISO Form CG 00 01) without any restrictive endorsements other than any endorsements specifically required by ISO or the State of Florida. CITY and its members, officials, officers and employees shall be included as an "Additional Insured" on a form no more restrictive than ISO Form CG 20 10 (Additional Insured - Owners, Lessees, or CONSULTANTS - Scheduled Person or Organization).

The coverage may include restrictive endorsements which exclude coverage for liability arising out of:

- Mold, fungus, or bacteria
- Terrorism
- Silica, asbestos or lead
- Sexual molestation

The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

\$ 1,000,000	General Aggregate
\$ 1,000,000	Products/Completed Operations Aggregate
\$ 1,000,000	Personal and Advertising Injury
\$ 1,000,000	Each Occurrence

