

# CITY OF FORT PIERCE

## CONFERENCE AGENDA

Conference Agenda Meeting - Monday, October 10, 2016 - 8:30 a.m.

City Hall - 2nd Floor Conference Room, 100 North U.S. #1, Fort Pierce, Florida

1. **Call to Order**
2. **Pledge of Allegiance**
3. **Roll Call**
4. **New Business**
  - A. Status Update Regarding Hurricane Matthew
  - B. Discussion of items for agenda of joint meeting with St. Lucie County scheduled for November 10, 2016 to discuss the Port of Fort Pierce.
  - C. Discussion of Citizen Budget Oversight Committee
  - D. Six Month Performance Evaluation of James Messer, City Attorney
5. **Adjournment**

**City Commission Conference Agenda**

**Agenda Item # 4. B.**

**Meeting Date:** 10/10/2016

**Re:** Joint Meeting with St. Lucie County - 11/10/16

**Submitted For:** Nick Mimms, City Manager, City Manager

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**SUBJECT:**

Discussion of items for agenda of joint meeting with St. Lucie County scheduled for November 10, 2016 to discuss the Port of Fort Pierce.

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**Attachments**

St. Lucie County Items as of 9/13/16

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**Form Review**

**Inbox**

City Manager

Form Started By: Jennifer Robinson

Final Approval Date: 09/15/2016

**Reviewed By**

Nick Mimms

**Date**

09/15/2016 08:34 AM

Started On: 09/14/2016 04:17 PM



**To:** 'Jennifer D Robinson' <jrobinson@city-ftpierce.com>,  
**Cc:**  
**Bcc:**  
**Subject:** RE: Joint City - County Port Meeting - 11/10/16 - 2pm at City Hall  
**From:** Kelly Phelan <PhelanK@stlucieco.org> - Tuesday 09/13/2016 01:03 PM

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History: This message has been replied to and forwarded.

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Thank you Jennifer!

The agenda at this point will include updates on :

- Second Street improvements
- Fishermans Wharf
- Harbour Pointe

Kelly Phelan  
St. Lucie County Board of County Commissioners  
Executive Assistant to the County Administrator  
Phone: 772-462-1156  
Fax: 772-462-2131  
[phelank@stlucieco.org](mailto:phelank@stlucieco.org)



**City Commission Conference Agenda**

**Agenda Item # 4. C.**

**Meeting Date:** 10/10/2016

**Re:** Citizen Budget Oversight Committee

**Submitted For:** Nick Mimms, City Manager, City Manager

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**SUBJECT:**

Discussion of Citizen Budget Oversight Committee

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**Attachments**

Memo from County Administrator with Samples

Resolution No. 10-04 Creating Budget Advisory Committee

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**Form Review**

**Inbox**

City Manager

City Manager

Form Started By: Jennifer Robinson

**Reviewed By**

**Date**

Started On: 09/20/2016 02:22 PM



ITEM NO. (ID # 3794)

DATE: 09/20/2016

AGENDA REQUEST

\*REGULAR  
AGENDA\ADMINISTRATION

**TO:** Board of County Commissioners

**PRESENTED BY:** Howard Tipton, County Administrator

**SUBMITTED BY:** Administration

**SUBJECT:** Citizen Oversight Committee

**BACKGROUND:**

On November 8<sup>th</sup>, our citizens will be asked to vote on whether or not they approve of a half cent increase to the sales tax to support roads, water quality, sidewalks, and public safety. As part of the ballot language, there is a provision for the establishment of a citizen oversight committee and it is envisioned that each of the participating local governments would create their own advisory committee with the charge to: recommend projects to the elected bodies with staff input, monitor the projects for schedule and budget, and report at least annually to the public as to the progress that is being made. Additionally, at least with the County, this oversight committee will coordinate with the Citizen Budget Committee to ensure that these new revenues are in addition to existing capital revenues and not supplanting existing capital revenues.

**PREVIOUS ACTION:**

N/A

**FINANCIAL IMPACT:**

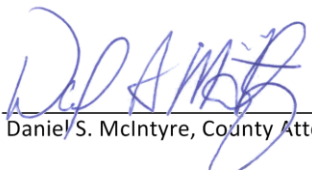
N/A

**RECOMMENDATION:**

Staff would appreciate a discussion with the Board to confirm the committee's initial charter and determine at least conceptually how the Board would like to see the Citizens Oversight Committee developed. You will find attached to this agenda item several examples from other Florida counties for your information, however, there are no limitations or requirements on how this may be structured.

**COMMISSION ACTION:**

Coordination/Signatures



Daniel S. McIntyre, County Attorney

9/16/2016



Howard Tipton, County Administrator

9/19/2016

## Infrastructure Surtax Advisory Committees

### Leon County

On September 13, 2011, the Board adopted the enacting resolution to establish the Leon County Sales Tax Committee (Committee), representing a broad cross section of the community. The enacting resolution states that the Committee “shall make final recommendations to the Board of County Commissioners and the City Commission in the form of a written report, workshop, or other means that shall include: (1) recommendations as to the timing of the infrastructure sales tax referendum, if any; and (2) a review that contains advisory feedback on the projects considered by the committee.”

The Committee was appointed by the Leon County Board of County Commissioners and City of Tallahassee Commissioners representing a broad cross section of our community and includes representatives from the Greater Tallahassee Chamber of Commerce, Capital City Chamber of Commerce, Blueprint Citizen Advisory Committee, and the Economic and Environmental Consensus Committee. The Committee held its first meeting in January 2012 and spent its first year gathering information and receiving public input. Throughout this process, the Committee was committed to engaging the public and reserved the first portion of each meeting to allow the community time to voice their comments, recommendations, or preferred projects for consideration. During the second year, the Committee engaged in a thorough evaluation process of all the projects brought forth for its consideration. The Committee' completed its charge on January 30, 2014.

The Committee embraced the concept of continuing the Blueprint philosophy and identified a series of themes to ensure the holistic approach would be embodied in the projects. As reflected in the Committee’s final report, the projects recommended include many of the County and City projects; projects as presented by the community; and projects recommended by the Committee itself. The Committee considered infrastructure projects, which far exceeded the available funding, as well as Imagine Tallahassee’s recommendations for the economic development component of the sales tax. The Committee ultimately recommended a 20 year continuation of the sales tax to include the existing 80/10/10 funding split (80% Blueprint, 10% County, 10% City) with 12% dedicated to economic development and for the referendum to be placed on the November 2014 General Election ballot.

Frequently Asked Questions: [CLICK HERE](#)

### Palm Beach County

#### SECTION 7. CITIZEN OVERSIGHT.

(a) The County, the Municipalities, and the School Board shall each separately provide for the creation of citizen oversight committees ("Committee" or collectively "Committees") to provide for citizen review of their respective expenditure of Surtax Proceeds, as soon as possible after the Surtax becomes effective, but not later than the date on which Surtax funds are first expended. A Municipality may either participate in an oversight committee created by the Palm Beach League of Cities or create its own committee.

- (b) The Committees shall serve as advisory and reporting bodies to the creating entities. Each creating entity shall establish specific duties and membership requirements governing Committee operations and participation.
- (c) Each Committee shall have the responsibility to review the expenditure of Surtax proceeds by the entity which created it.
- (d) The Committees shall meet monthly, or as otherwise needed to fulfill their duties and responsibilities. Each Committee shall provide an annual report to the governing board of the entity which created it.
- (e) Committee members shall receive no compensation for the performance of their duties.
- (f) The Committees, their members, and all their proceedings shall be governed by and comply with the provisions of the Florida Sunshine Law, Chapter 286, Florida Statutes, the Florida Public Records Law, Chapter 119, Florida Statutes, and the Florida Ethics Code, Chapter 112, Florida Statutes, and all other applicable local or state statutes, ordinances, or rules.

### **Sarasota County**

#### **SECTION 6. CITIZEN TAX OVERSIGHT COMMITTEES.**

A. Formation and Purpose. Within ninety {90} days of approval of the Sales Tax referendum, each Local Governing Body shall establish a Citizen Tax Oversight Committee {the "Committee"}. Each Committee shall:

1. Conduct an annual review of the expenditures made by its Local Governing Body from the Sales Tax proceeds to ensure that expenditures have been made in accordance with infrastructure project lists and any changes thereto; and
2. Review any changes made by its Local Governing Body to the infrastructure projects or to the allocation of Sales Tax proceeds for the sole purpose of ensuring that all procedural requirements have been followed.

B. Term.

#### 1. Sarasota County

a. The Board shall appoint nine {9} individuals residing in unincorporated Sarasota County to the Sarasota County Committee for staggered terms, commencing September 1, 1999. One (1) Committee member shall be appointed from each district by the Commissioner representing that district. Four (4) at-large Committee members shall be appointed by majority vote of the Board. The initial term for the four {4} at-large members shall be for a period of two {2} years. The initial term for the remaining five {5} members shall be for a period of four (4) years. Thereafter, appointments shall be made for a term of four (4) years in the same manner as first appointed, or until expiration of the Sales Tax and any continuances thereto, whichever shall first occur. Vacancies shall be filled for the remainder of the term in the same manner as the vacating member was appointed.

b. Committee organization and procedures shall be established by

1. Board resolution.
2. Municipalities and School Board.

The composition of each Committee, terms of the Committee members, and Committee organization and procedures shall be established by resolution of the respective Local Governing Body.

C. Committee Assistance. Elected officials and staff of each Local Governing Body shall cooperate with its respective Committee to accomplish the objectives and purposes set forth in this Ordinance. Each Local Governing Body shall designate staff to provide administrative assistance to its Committee. Copies of reports and records relating to expenditures of the Sales Tax proceeds shall be made available to each Committee upon request.

# CITY OF FORT PIERCE - OFFICE OF THE CITY ATTORNEY

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## MEMORANDUM

**TO:** Fort Pierce Mayor & Commissioners  
**FROM:** Robert V. Schwerer, Esq., City Attorney  
**SUBJECT:** Citizens Advisory Budget Committee  
**DATE:** January 14, 2010

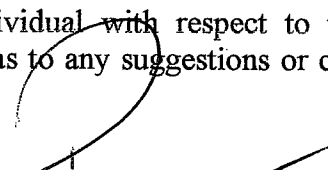
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Attached for your consideration is Resolution 10-04 establishing the City of Fort Pierce Citizen Advisory Budget Committee. It is also forwarded this date to the City Manager.

Please note that the basic model for this Committee comes from the City of Daytona which was believed to provide the most workable type of committee for a city and budget of our size. It was also prepared after consultation with the City Manager and Director of Finance, both of whom have the responsibility of preparing the annual budget according to the charter and our codes. There is no pride of authorship here as far as this office is concerned, and the Commission is free to suggest revisions at your discretion.

As the City Manager is also the lead individual with respect to this Committee's productive functioning, please make inquiry of him as to any suggestions or comments he may have.



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Robert V. Schwerer, Esq.  
City Attorney

RVS/cf

cc: David L. Recor, City Manager  
Cassandra Steele, City Clerk  
Gloria Johnson, Finance Director

**RESOLUTION NO. 10-04**

A RESOLUTION CREATING A CITY OF FORT PIERCE, FLORIDA BUDGET ADVISORY COMMITTEE; PRESCRIBING ITS PURPOSE AND FUNCTION; SETTING THE NUMBER AND QUALIFICATIONS OF APPOINTED MEMBERS TO SAID ADVISORY COMMITTEE; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the projections of revenues and expenditures of the annual budget of the City of Fort Pierce, Florida are the duties and responsibilities of the City Manager working in conjunction with the Director of Finance; and

**WHEREAS**, the City Commission recognizes the need to assist the City Manager with the review of certain assumptions and projections on which the City's proposed annual budget will be based on with respect to both revenues and expenditures; and

**WHEREAS**, the City Commission is further desirous of increasing the effectiveness and efficiency of City Government through the budget process by the creation of a Budget Advisory Committee for the purposes set forth herein; and

**WHEREAS**, the goals and objectives of the City of Fort Pierce in creating this Budget Advisory Committee are for a valid public purpose and serve to further that purpose.

**NOW, THEREFORE, BE IT RESOLVED** by the City Commission of the City of Fort Pierce, Florida, that:

**SECTION 1.** There is hereby created a Budget Advisory Committee (the "Committee") which shall consist of five (5) members. Each City Commissioner shall appoint one member to serve for a term of one year commencing on October 1 of each year and ending on September 30 of the following year, except that the initial Committee members' terms shall commence upon their date of appointment the first year the Committee is established. [The Commission should consider whether designated City Department Staff member(s) for this Committee should be appointed by the City Manager as several jurisdictions have done.] Each Committee member shall serve at the pleasure of the City Commission. The Committee shall select from among its members a Chair, Vice Chair and Secretary to serve for the annual term. The meetings of the Committee shall be governed by basic rules of parliamentary procedure and minutes shall be recorded by the Secretary and maintained by the City as required by law.

**SECTION 2.** Each Committee member shall be a resident of the City of Fort Pierce, or a financial executive whose business is located within the City of Fort Pierce. Committee members shall possess special expertise and experience in management of large businesses, be a financial executive, or be a licensed CPA.

**SECTION 3.** Each Committee member shall serve without compensation and no funds shall be appropriated for the use thereof.

**SECTION 4.** All meetings of the Committee shall be coordinated by the City Manager and be conducted in conformance with Florida law, including, but not limited to, Public Records, Sunshine, Financial Disclosure, and Ethics.

**SECTION 5.** The purpose and function of the Committee shall be to review, study, and make suggestions or recommendations to the City Manager and City Commission with respect to the assumptions, estimates, and projections of revenues and expenditures underlying the City's annual budget, and in the identification of existing community needs and programs. Such suggestions and recommendations from the Committee shall be in the form of an annual written report. The report shall be submitted to the City Manager no later than May 1 annually. The City Manager shall forward the Committee's report to the City Commission with or without comment for the Commission's review.

**SECTION 6.** The actions and recommendations of the Committee shall not be final or binding on the City Manager or the City Commission, but shall be advisory only.

**SECTION 7.** This Resolution shall take effect immediately upon its adoption.

**ADOPTED BY THE CITY COMMISSION OF THE CITY OF FORT PIERCE,  
FLORIDA THIS 14<sup>th</sup> DAY OF JANUARY, 2010.**

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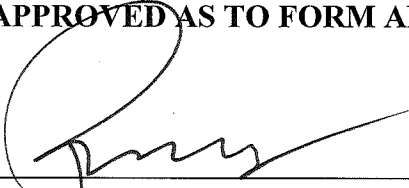
Robert J. Benton, III, Mayor

**ATTEST:**

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Cassandra Steele  
City Clerk

**APPROVED AS TO FORM AND CORRECTNESS;**



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Robert V. Schwerer, Esq.  
City Attorney

**City Commission Conference Agenda**

**Agenda Item # 4. D.**

**Meeting Date:** 10/10/2016

**Re:** Messer 6 month Review

**Submitted For:** Linda Cox, City Clerk, City Clerk

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**SUBJECT:**

Six Month Performance Evaluation of James Messer, City Attorney

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**Attachments**

Evaluation

Messer

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**Form Review**

**Inbox**

City Manager

Form Started By: Linda Cox

**Reviewed By**

**Date**

Started On: 09/27/2016 04:49 PM

**EMPLOYEE PERFORMANCE EVALUATIONS**  
**MANAGEMENT MID-MANAGEMENT NON-BARGAINING**  
**GENERAL INSTRUCTIONS**

1. **PURPOSE OF PERFORMANCE EVALUATION**: To pinpoint strengths and weaknesses, and review past goals and objectives and corresponding accomplishments so as to identify areas where performance can be improved for the benefits of both the employee and the Department /Division and to formulate a practical improvement program of specific challenges.
2. Rate the employee on characteristics pertinent of job performance. Carefully evaluate each of the characteristics separately, based on recurring day-to-day performance since the last review and not on recent or isolated exceptional events. For each characteristic, rate the employee poor, fair, average, good, or excellent using these definitions, and check the appropriate box.

<b>POOR:</b>	<b>Definitely below acceptable standards, performance of job requirements is consistently deficient.</b>
<b>FAIR:</b>	<b>Improvement is needed to meet acceptable standards; performance of job requirement is inconsistent.</b>
<b>AVERAGE:</b>	<b>Meets acceptable standards; performance of job requirement is consistent.</b>
<b>GOOD:</b>	<b>Above acceptable standards; performance of job usually exceeds job requirements.</b>
<b>EXCELLENT:</b>	<b>Outstanding, above acceptable standards; performance consistently exceeds job requirements.</b>

3. Two common mistakes in ratings are: (1) A tendency to rate nearly everyone as “average: on every characteristic instead of being more critical in judgment. The evaluation should use the end of the scale as well as the middle. (2) The “halo effect”, i.e., a tendency to rate the same individual “excellent” on every characteristic or “poor” on every characteristic based on the overall picture one has of the person being evaluated. However, each person has strong and weak points and these should be indicated on the rating scales.
4. The supervisor should discuss the incumbent’s strong points as well as limitations with a view toward improving the employee’s performance.

**EMPLOYEE**

**PERFORMANCE**

**EVALUATION**

**MANAGEMENT – MID-MANAGEMENT – NON-BARGAINING**

**EMPLOYEE**

**INFORMATION:** NAME: James Messer DATE : 09/20/2016

CLASSIFICATION City Attorney Dept: City Attorney

PERIOD COVERED: (Month/Year) FROM: 4/25/2016 TO: 10/25/2016

PURPOSE OF REPORT: **PROBATIONARY** {X} ANNUAL {} MID-TERM { } SPECIAL {}

POOR FAIR AVERAGE GOOD EXC.

	POOR	FAIR	AVERAGE	GOOD	EXC.
<b>WORK PERFORMANCE:</b>					
<b>KNOWLEDGE:</b> Understanding of Fundamentals, skill, methods and procedures required in present job					
<b>PLANNING:</b> Development of methods and work habits to efficiently perform overall work load.					
<b>APPLICATION:</b> Establishment of a team effort toward departmental goals and objectives.					
<b>ACCURACY:</b> Absence of mistakes and errors in job performance.					
<b>THOROUGHNESS:</b> Attention to details. Completes work assignments in a timely manner.					
<b>QUALITY:</b> Overall quality of work.					
<b>QUANTITY:</b> Overall quantity of work.					
<b>MANAGEMENT PERFORMANCE:</b>					
<b>ORGANIZATION:</b> Ability to organize employees, department and operations. Maintain discipline.					
<b>PERSONNEL SELECTION:</b> Identify job-related Characteristics in prospective discipline.					
<b>TRAINING:</b> Development of personnel training methods in department.					
<b>FOLLOW-UP:</b> Ability to follow-up on assignments, instructions, and schedules.					

**Page 2**  
**SUPERVISORY/**  
**MANAGEMENT**  
**PERFORMANCE:**

Poor Fair Average Good Exc.

<b>ECONOMY:</b> Ability to control Cost – optimum utilization of resources.					
<b>SAFETY:</b> Orientation toward safety and health standards.					
<b>LEADERSHIP:</b> Establishment of a team effort toward departmental goals and objectives.					
<b>COMMUNICATION:</b> Ensuring that Personnel adequately informed about departmental issues concerns.					
<b>FACTORS AFFECTING JOB PERFORMANCE:</b>					
<b>ADAPTABILITY:</b> Alteration of activities, plans, etc, to accommodate new situations.					
<b>ATTITUDE:</b> Shows interest, enthusiasm and cooperation to achieve common goals.					
<b>ATTENDANCE:</b> Comes to Work on time and does not abuse leave.					
<b>COOPERATION:</b> Working effectively with others to achieve common goals.					
<b>CREATIVENESS;</b> Improvement of methods and procedures by new and innovative ideas.					
<b>EXPRESSION:</b> Written presentation of ideas					
<b>EXPRESSION:</b> Oral presentation of ideas					
<b>INITIATIVE:</b> Self-confident, enthusiastic performance with a minimum of instruction.					
<b>JUDGMENT:</b> Sound judgment and opinion by careful study of available facts and options.					
<b>RELIABILITY:</b> Dependability instills full confidence.					

**OVERALL EVALUATION  
IN PRESENT POSITION:**

**The supervisor should discuss the incumbent's strong points as well as limitation with a view toward improving the employee's performance.**

**EMPLOYEE'S STRONGEST AREA ON CONTRIBUTION TO THE JOB:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EMPLOYEE'S WEAKNESS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE \_\_\_\_\_ RATING SUPERVISOR \_\_\_\_\_

**OVERALL EVALUATION: POOR { } FAIR { } AVERAGE { } GOOD { } EXCELLENT { }**

**DIVISION DIRECTOR/DEPARTMENT HEAD COMMENTS:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

DATE \_\_\_\_\_ SIGNATURE \_\_\_\_\_

**EMPLOYEE'S COMMENTS:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

MY SIGNATURE DOES NOT NECESSARILY MEAN THAT I AGREE WITH THE RATING. IT DOES, HOWEVER, SIGNIFY REVIEW OF ITS CONTENTS AND ALSO THE OPPORTUNITY TO DISCUSS ANY QUESTION I MIGHT HAVE WITH THE RATING AUTHORITY.

DATE \_\_\_\_\_ SIGNATURE \_\_\_\_\_

Is probationary employee recommended for regular employment? YES \_\_\_\_\_ NO \_\_\_\_\_

Is employee recommended for extended probation? YES \_\_\_\_\_ NO \_\_\_\_\_

**CITY OF FORT PIERCE, FLORIDA**

**JAMES M. MESSER  
CITY ATTORNEY**

**EMPLOYMENT AGREEMENT**

**THIS EMPLOYMENT AGREEMENT** is made and entered into this 21<sup>ST</sup> day of ~~April~~<sup>March</sup>, 2016, with an effective date of April 25, 2016, by and between the **CITY OF FORT PIERCE, FLORIDA**, a municipal corporation, hereafter referred to as "**CITY**" and **JAMES M. MESSER**, hereafter referred to as "**MESSER**".

**WHEREAS, CITY** desires to secure the legal representation of **MESSER** as City Attorney for a minimum of three (3) years from the Effective Date of this agreement and **MESSER** desires to accept such position; and

**WHEREAS, CITY** and **MESSER** intend by this Agreement to provide certain benefits and establish certain conditions of employment to which **MESSER** has agreed.

**NOW, THEREFORE,** in consideration of the material advantages occurring to the parties and the mutual covenants contained herein, **CITY** and **MESSER** agree with each other as follows:

**1. Employment.**

**CITY** employs **MESSER** to perform the duties of City Attorney as specified in the City Charter. **MESSER** will render full time legal services to **CITY** in the capacity of City Attorney of the **CITY** for the initial term of three (3) years, commencing April 25, 2016 (the "Effective Date"), through April 24, 2019. In the event written notice of termination or notice of non-renewal of this Agreement is not given by either party to the other party ninety (90) days prior to the expiration of the term as hereinabove provided, this Agreement shall automatically renew and continue thereafter on a year-to-year basis. **MESSER** agrees to report for work, and the duties and employment of **MESSER** as City Attorney shall commence the Effective Date. In the event the Agreement is not renewed all compensation, benefits, and requirements of this Agreement shall remain in effect until the expiration of the term unless sooner terminated or **MESSER** resigns.

**MESSER** shall devote all of his time, attention, knowledge and skill, solely and exclusively to the legal interests of the City of Fort Pierce. **MESSER** warrants and agrees to maintain his Florida license to practice law in good standing without limitation throughout the term of this Agreement. **MESSER** will at all times faithfully, industriously, and diligently perform to the best of his ability all duties that may be required of him by virtue of his position as City Attorney, including, but not limited to, the performance of all duties set forth in the City Charter, Florida Statutes, City Ordinances, and Resolutions, and to perform other legally permissible and proper duties and functions to the reasonable satisfaction of the City Commission. Should **MESSER** no longer be in good standing with the Florida Bar or authorized to practice law in Florida, this contract will terminate immediately for cause. In the event **MESSER** makes formal application for full-time employment elsewhere while serving as City Attorney, he shall be required to provide written notice to the City Commission simultaneously with such application or submittal.

**2. Compensation.**

In consideration for these services as City Attorney, **CITY** agrees to pay **MESSER** an annual base salary of **ONE HUNDRED AND SIXTY FIVE THOUSAND DOLLARS (\$165,000.00)** per annum, payable in bi-weekly installments, or such higher figure as may be negotiated after a mandatory six-month evaluation of **MESSER's** performance by the City Commission. Base annual salary adjustments, including cost of living increases, for each subsequent year during the term of this Agreement shall be negotiated between the parties on an annual basis.

The **CITY** agrees that it will not, at any time during the term of this Agreement, reduce **MESSER's** base salary or other financial benefits in a greater percentage than an applicable across the board reduction for all employees of the **CITY**.

**3. Performance Evaluations.**

The City Commission shall, upon the expiration of six (6) months of the Effective Date of this Agreement, and on an annual basis thereafter, evaluate **MESSER's** performance as City Attorney. Annual performance evaluations shall occur during the

calendar month of June of each year following the first year of employment, and the matter of the performance evaluation shall be agendaed by the City Attorney to be discussed by the City Commission in June of each year of this Agreement. These performance reviews shall consider continuing City Commission objectives and responsibilities as well as achievement of key specific objectives as mutually agreed upon by City Commission and **MESSER**.

Should it be determined that **MESSER** was successful in his overall performance, and if the Commission, in its sole discretion, determines that the fiscal condition of the **CITY** is sufficient, the City Commission will consider **MESSER's** compensation and benefits, and endeavor to maintain them at a level commensurate with his peers in the profession in similarly situated Florida cities and the rate of general inflation in the economy.

**4. Benefits.**

In addition to annual compensation specified above, the **CITY** agrees to provide **MESSER** with the following benefits:

(a) **MESSER** shall be entitled to receive the same vacation, sick leave, and holiday time as defined in the City of Fort Pierce Personnel Rules and Regulations, including provisions governing accrual and payment thereof on termination of employment.

(b) Lease or car allowance at \$350.00 per month, or such other rate agreed upon by the City Commission.

(c) **CITY** agrees to budget and pay for licensing fees or charges that are required of attorneys to practice law in the State of Florida and professional dues, required CLE seminars, and subscriptions necessary for **MESSER's** continuation and participation in national, regional, state, and local associations, and organizations necessary and desirable for **MESSER's** continued professional participation, growth, and advancement, and for the good of the **CITY**.

(d) Comprehensive health and major medical insurance equal to that which is provided to other City employees.

(e) Retirement benefits as provided to City Employees; provided, however, if

**MESSER** elects not to participate as a member under the **CITY's** retirement plan, the **CITY** shall contribute a sum to his current plan (or other plan designed by **MESSER**) equal to the same percentage contribution, up to the maximum allowed by law, as the **CITY** would have contributed to **MESSER's** retirement under the **CITY's** plan.

5. **Relocation Expenses.**

The **CITY** will pay **MESSER** an amount not to exceed \$3,000.00 for the expenses of moving **MESSER, MESSER's** family, and **MESSER's** personal property from **MESSER's** current residence to the **CITY**, including packing, moving, truck rental, storage costs, unpacking, and insurance charges, and miscellaneous charges incurred or expended by him in effecting this move.

6. **Termination.**

At all times during the term of this Agreement, **MESSER** shall be deemed an employee-at-will, and may be terminated at any time, with or without cause. For purposes of this Agreement, termination shall occur upon the happening of any of the following events:

(a) A majority vote of the entire City Commission at a duly authorized public meeting, with or without cause, at the sole discretion of the City Commission.

(b) If the **CITY**, its citizens, or legislature amends any provision of the Charter or Code substantially changing the form of government directly pertaining to the role, powers, duties, authority and responsibilities of **MESSER** as City Attorney, **MESSER** shall have the right to declare that such amendments constitute termination; or

(c) If **MESSER** resigns following a formal offer to accept resignation made by the majority of the entire City Commission at a duly authorized public meeting.

7. **Severance.**

Except as provided in this Agreement, severance will be paid to **MESSER** when employment is terminated as defined in Paragraph 6 above. Upon termination, all rights,

duties and obligations of both parties shall cease except that the **CITY** shall continue to pay **MESSER** his then annual base salary for Ninety (90) consecutive days thereafter, and the **CITY** shall also maintain **MESSER's** life insurance and major medical insurance coverage paid up and in effect during such period. **MESSER** shall also be compensated for all accrued sick leave and vacation time payable upon termination of employment as provided in the Personnel Rules and Regulations. During any time severance is being paid, **MESSER** shall not be required to perform any duties for the **CITY** or come to the **CITY**.

The severance provisions set forth herein shall not apply and the **CITY** shall not be obligated to pay **MESSER** any severance in the event **MESSER** is terminated for cause. For purposes of this Agreement "For Cause" shall be defined as any of the following actions by **MESSER**:

- (a) Conviction of a felony or any misdemeanor involving moral turpitude;
- (b) Commission of any act of fraud involving or affecting the **CITY** or the public;
- (c) Willful failure to perform the duties of City Attorney, or material breach by **MESSER** of any duties or obligations under this Agreement and failure to cure such failure or breach after receipt of reasonable written notice;
- (d) Incompetence or negligence in the performance of official duties;
- (e) Violation of the **CITY's** Drug-Free Work Place Policy, including illegal use of drugs, hallucinogens, or other substances regulated by state law;
- (f) Violation of Florida's Code of Ethics;
- (g) Loss or suspension of license to practice law;
- (h) Misconduct as defined by Florida Statute 443.036(29), as amended from time to time; or
- (i) Breach of this contract.

8. **Outside Activities.**

The employment provided for by this Agreement shall be **MESSER's** primary

employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to **MESSER** and the community, **MESSER** may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements must neither constitute interference with nor a conflict of interest with **MESSER's** responsibilities under this Agreement. Any outside consulting or business opportunities shall be subject to prior approval by the **CITY**.

9. **Best Efforts of Employee.**

**MESSER** agrees that he will at all times faithfully, industriously and to the best of his ability, experience and talents, perform all the duties which may be required of and from him pursuant to the express and implicit terms hereof, to the reasonable satisfaction of **CITY**. **MESSER** further agrees that he will continue his education and training so that he will keep up with or exceed education requirements of his position. Such duties shall be rendered at Fort Pierce, St. Lucie County, Florida, and at such other places as **CITY** shall in good faith require, or as the interest, needs or opportunity of **CITY** shall require.

10. **Disability.**

If **MESSER** is permanently disabled or is otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of either eight (8) successive weeks beyond any accrued sick leave, or for twenty (20) working days over a sixty (60) working day period, **CITY** shall have the option to terminate this Agreement, subject to the severance pay requirements of Paragraph 7. However, **MESSER** shall be compensated for any accrued sick leave, vacation, holidays, and other accrued benefits.

11. **Residency.**

**MESSER** shall, at all times, maintain permanent residency within the City of Fort Pierce, Florida, during his term as City Attorney.

12. **Employee At-Will.**

**MESSER** is an employee-at-will and works at the pleasure of the **CITY** who may, at

any time and without showing cause, terminate this Employment Agreement.

13. **Liability Claims.**

The **CITY** shall defend and save harmless **MESSER**, but only to the limits of sovereign immunity, against any tort, professional liability claim or demand or other legal claim or action, whether groundless or otherwise, arising out of an alleged act or omission occurring in or arising out of the good faith performance of **MESSER's** duties as City Attorney of the City of Fort Pierce. However, this covenant shall not apply to acts outside the scope of **MESSER's** employment or services or for claims for punitive damages. In the event that the provision of legal representation by the **CITY** may reasonably present a legal conflict of interest, **MESSER** may request independent legal representation at **CITY'S** expense, and the **CITY** may not unreasonably withhold approval of such request. Legal representation provided by the **CITY** for **MESSER** shall extend until a final unappealable determination of the legal action. In the event independent legal representation is provided to **MESSER**, any settlement of any claim against **MESSER** may not be made without prior approval of the **CITY**. The **CITY** will have the authority to compromise and settle any such claim or suit within the scope of **MESSER's** employment and pay the amount of any settlement or judgment rendered thereon. To the maximum extent permitted by law, the **CITY** and **MESSER** shall rely upon the doctrine of sovereign immunity and the provisions of Section 768.28, Florida Statutes, or other applicable law.

14. **Voluntary Resignation.**

In the event **MESSER** voluntarily resigns his position with the **CITY**, **MESSER** shall provide a minimum ninety (90) days written notice unless the parties agree otherwise. Unless such resignation follows a formal offer to accept resignation made by the majority of the entire City Commission as specified in Paragraph 6(c) above, **MESSER** shall not be entitled to nor shall the **CITY** be liable to pay severance if **MESSER** voluntarily resigns.

15. **General Provisions.**

The following general provisions shall govern this Agreement:

(a) This Agreement shall be governed in accordance with the laws of the State of Florida.

(b) Jurisdiction over any dispute arising under this Agreement, and the venue thereof, shall lie in the Circuit Court of the Nineteenth Judicial Circuit, in and for St. Lucie County, Florida.

(c) This Agreement shall become effective immediately upon execution, and supersedes and replaces any prior written employment agreement.

(d) This Agreement constitutes the entire agreement and understanding between the parties and contains all of the agreements between them with respect to the subject matter hereof, and supersedes any and all other agreements or contracts, either oral or written, between the parties with respect to the subject matter hereof.

(e) The parties by mutual written agreement may amend any provision of this Agreement during the life of the agreement by document approved and signed with the same formalities as this Agreement. Such amendments will be incorporated and made a part of this Agreement.

(f) The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

(g) This Agreement shall be binding upon and inure to the benefit of the **CITY** and the City Commission, its successors and assigns, and shall be binding upon **MESSER**, his administrators, executors, legatees, heirs, and assigns.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seals on

the day and year first above written.

**CITY OF FORT PIERCE, FLORIDA**

**BY:** Linda Hudson  
Linda Hudson, Mayor

**ATTEST:**

Linda W. Cox  
Linda Cox, City Clerk

**EMPLOYEE:**

James M. Messer 3/17/2016  
James M. Messer

**Approved as to Form and Correctness**

Robert V. Schwerer  
Robert V. Schwerer, City Attorney