

CITY OF FORT PIERCE, FLORIDA

**JAMES M. MESSER
CITY ATTORNEY**

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT is made and entered into this 21ST day of ~~April~~^{March}, 2016, with an effective date of April 25, 2016, by and between the **CITY OF FORT PIERCE, FLORIDA**, a municipal corporation, hereafter referred as to "**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