

CITY OF FORT PIERCE

CITY COMMISSION AGENDA

Special Meeting - Tuesday, September 18, 2024 - 5:00 p.m.

City Hall - City Commission Chambers, 100 North U.S. #1, Fort Pierce, Florida

1. **CALL TO ORDER**

2. **PLEDGE OF ALLEGIANCE**

3. **ROLL CALL**

4. **COMMENTS FROM THE PUBLIC ON AGENDA ITEMS NOT REQUIRING PUBLIC HEARINGS**

Any person who wishes to comment on an agenda item which is not under Public Hearings on the Agenda may be heard at this time. Please limit your comments to three (3) minutes or less, as directed by the Mayor, as this section of the Agenda is limited to thirty minutes. The City Commission will not be able to take any official actions under Comments from the Public. Speakers will address the Mayor, Commissioners, and the Public with respect. Inappropriate language will not be tolerated.

5. **CITY COMMISSION**

a. Discussion and direction as required by Resolution 24-R47 regarding the following:

1. Status of City Manager, Nick Mimms.
2. Status of independent review of contract and personnel rules and regulations to determine if any violations exist based on the allegations against Nick Mimms.
3. Status of the appointment of Linda Cox as Acting City Manager.

6. **ADJOURNMENT**

Immediately following adjournment, please move toward the doors and exit the chambers.

This allows for the safe and courteous exit of all persons, and those on the dais. Conversations after the meeting should be held outside of chambers, in the foyer or elsewhere, but not in the commission chambers where lights will be out as soon as the chambers are empty.

Pursuant to Sec. 2-49, Fort Pierce Code of Ordinances, persons desiring to place an item on the agenda may make written request to the city manager no later than 5:00 p.m. fifteen (15) days preceding the regular city commission meeting. Such request must state the subject matter of the individual's appearance and should include any background materials pertinent to the issue. The city manager shall review the request to determine if the item might be handled administratively or whether the subject matter is an item of city business. If appropriate, the city manager shall submit the item for placement on the agenda to the city clerk no later than 5:00 p.m. ten (10) days preceding the regular city commission meeting. The mayor may impose a time limitation of five (5) minutes, or allow such additional time he or she determines necessary and appropriate for such person to make presentation. All reports, communications, ordinances, resolutions, contracts, documents or other materials to be submitted to the commission shall, no later than 12:00 noon on Wednesday prior to each meeting, be delivered to the city clerk and furnish each member thereof with a copy of the same prior to the regular meeting.

Pursuant to Section 286.0105, Florida Statutes, the City hereby advises you that if you or another person decide to appeal any decision made by the City Commission with respect to any matter considered at its meeting or hearing, that you or said person will need a record of the proceedings, and that for such purpose, affected persons may need to insure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for the introduction or admission into evidence of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law.

In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons with disabilities needing special accommodation to participate in this meeting should contact the City Clerk's Office at (772) 467-3065 at least 48 hours prior to the meeting.

City Commission Special Meeting 5:00 p.m.

5. a.

Meeting Date: 09/17/2024

Re:

SUBJECT:

Discussion and direction as required by Resolution 24-R47 regarding the following:

1. Status of City Manager, Nick Mimms.
2. Status of independent review of contract and personnel rules and regulations to determine if any violations exist based on the allegations against Nick Mimms.
3. Status of the appointment of Linda Cox as Acting City Manager.

SUMMARY:

This is a follow up on Resolution 24-R47

RECOMMENDATION:

Discuss the items and provide direction.

ALTERNATIVES:

Delay action.

RESPONSIBLE STAFF:

City Attorney

COORDINATED WITH:

n/a

Attachments

24-R47

Mimms Contract

Form Review

Form Started By: Tina Rel

Started On: 09/09/2024 03:19 PM

Final Approval Date: 09/10/2024

RESOLUTION NO. 24-R47

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, PLACING NICHOLAS MIMMS ON ADMINISTRATIVE LEAVE WITH PAY; DESIGNATING AN **ACTING CITY MANAGER**; DIRECTING STAFF TO PROVIDE FOR AN INVESTIGATION; DIRECTING REVIEW OF ACTIONS HEREIN; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Nicholas Mimms, City Manager for the City of Fort Pierce, was arrested on criminal charges on August 14, 2024; and

WHEREAS, the City Commission addressed the arrest at a Special Meeting on August 15, 2024.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA:

SECTION 1. Nicholas Mimms is placed on administrative leave with pay effective August 15, 2024.

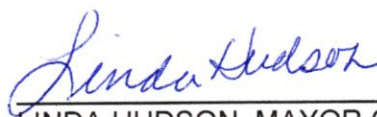
SECTION 2. The City Commission hereby designates Linda Cox to serve as Acting City Manager and perform the additional duties and responsibilities of the City Manager pursuant to the City of Fort Pierce Charter, Code of Ordinances, Policies, and Rules. Ms. Cox shall be compensated at 10% over and above her salary for the duration of the acting appointment. This appointment may be terminated at any time with or without cause.

SECTION 3. The City Attorney is directed to procure the services of an outside entity with no prior history with the City of Fort Pierce or any of its elected officials to conduct an independent investigation into the alleged actions of Mr. Mimms and report to their findings and recommendations to the City Commission. The investigation shall evaluate whether Mr. Mimms in any way violated the City's Personnel Rules and Regulations or his employment contract.

SECTION 4. The actions taken herein shall be reevaluated by the City Commission at its meeting on September 16, 2024.

SECTION 5. This resolution shall become effective August 19, 2024.

IN WITNESS WHEREOF, this Resolution has been duly adopted on this 19th day of August, 2024.



LINDA HUDSON, MAYOR COMMISSIONER

ATTEST:



CITY CLERK

(CITY SEAL)

APPROVED AS TO FORM
AND CORRECTNESS:


SARA K. HEDGES
CITY ATTORNEY



T R A S K
D A I G N E A U L T
— LLP —
A T T O R N E Y S

THOMAS J. TRASK, B.C.S.*
JAY DAIGNEAULT, B.C.S.*
ERICA F. AUGELLO, B.C.S.*
RANDY D. MORA, B.C.S.*
ROBERT M. ESCHENFELDER, B.C.S.*
NANCY MEYER, B.C.S.*
MEGAN HAMISEVICZ

** Board Certified by the Florida Bar in
City, County and Local Government Law*

MEMORANDUM

DATE: August 19, 2024

TO: Sara Hedges, Esq.
City Attorney, City of Fort Pierce

FROM: Randy Mora, Esq., B.C.S.

RE: City of Fort Pierce: Independent Dual Office Holding Analysis

As the City Attorney for the City of Fort Pierce (the “City”), you have requested my assistance as outside counsel to provide independent legal analysis concerning the potential application of constitutional dual office holding restrictions upon the city clerk were she to be made the acting city manager or interim city manager.

I. EXECUTIVE SUMMARY

The city clerk can serve as the *acting* city manager, assuming the duties of that office, while the appointed city manager is on administrative leave or otherwise unable to perform his official duties, while retaining her title as the appointed city clerk. Owing to the constitutional restriction against dual office holding, the city clerk should not, however, serve as the *interim* or *permanent* city manager, effectively occupying the office of city manager, while simultaneously retaining her title as the appointed city clerk.

II. APPLICABLE FACTS & LEGAL AUTHORITY

A. PRESENT POSTURE

On Wednesday, August 14, 2024, the Florida Department of Law Enforcement arrested Fort Pierce City Manager Nicholas “Nick” Mimms (“Mimms”) in connection with charges of bid tampering and official misconduct. In a special meeting held the next day, the City Commission (the “Commission”) unanimously agreed to place Mimms on administrative leave with full pay and authorized an independent investigation into the matter. The Commission also indicated an intention for the city clerk, Linda Cox (“Cox”), to temporarily serve as the *acting* city manager while Mimms is on administrative leave. For whatever period Cox may serve as the acting city

manager, the Commission also expressed its intention to appoint one of the deputy clerks to serve as the acting city clerk.

The Commission will be meeting on Monday, August 19, to provide further guidance and direction concerning this transition period.

B. RELEVANT CHARTER & CODE PROVISIONS

The City's Charter (the "Charter") contemplates the creation of a series of departments and officers.¹ The Commission possesses the authority to appoint and remove, with or without cause: "(1) the city manager, (2) the city clerk, (3) the city attorney, (4) the city prosecuting attorney and (5) the city auditor."² Similarly, the Charter empowers the Commission to "inquire as a body into the conduct of any officer, department or agency of the city and investigate municipal affairs whenever it deems such actions to be in the public interest."³

The Charter contemplates that the city manager shall be the chief executive and administrative head of the City government, subject to appointment by the Commission.⁴ Similarly, the city manager can be removed by the Commission at any time, with or without cause.⁵ The Charter enumerates the city manager's powers and duties, which generally encompass the supervision and control over all city departments, except the office of the city clerk.⁶ This proposition is repeated in the City's Code of Ordinances.⁷

The Charter also provides that the Commission shall appoint an individual to serve as the city clerk.⁸ In contrast to the provisions governing the city manager, the Charter does not enumerate each of the clerk's powers and duties.⁹ Instead, the City's Code of Ordinances (the "Code") enumerates five functions of the city clerk.¹⁰ In addition to four specific duties, the Code tasks the clerk with "perform[ing] such other duties as may be prescribed by the Charter or required by the clerk by the commission."¹¹

C. CHARTER OFFICER EMPLOYMENT AGREEMENTS

On July 6, 2021, the City entered into an employment agreement with Mimms to serve as the City Manager. Mimms' Agreement with the City contemplates his service for a term of five years, unless terminated sooner.¹² Mimms can be terminated by a majority vote of the entire Commission at a duly authorized public meeting, with or without cause, at the sole discretion of the

¹ City Charter at §§ 39, 43, and 44

² City Charter at § 20 (a)

³ City Charter at § 20 (f)

⁴ City Charter at §§ 39 and 42

⁵ City Charter at § 40

⁶ City Charter at § 42

⁷ City Code at § 2-84

⁸ City Charter at § 44

⁹ City Charter at § 44; Cf § 62

¹⁰ City Code at § 2-114

¹¹ City Code at § 2-114 (4); see also §§ 2-53

¹² July 6, 2021, Employment Agreement at § 1

Commission.¹³ Mimms is an employee-at-will and works at the pleasure of the City, which may terminate his agreement at any time.¹⁴

On January 6, 2020, the City entered into an employment agreement with Linda W. Cox to serve as the city clerk. Cox's Agreement with the City contemplates her service as the city clerk for an initial period of three years, and subject to automatic annual renewals thereafter.¹⁵ Cox's Agreement explicitly states that the city clerk is "an independent and co-equal Charter Officer . . ." and "[n]o other Charter Officer shall have any authority or ability to direct, supervise, or interfere with the administration or activity of the Office of the City Clerk."¹⁶

Cox's Agreement requires that she at all times "faithfully, industriously, and diligently perform to the best of her ability all duties that may be required of her by virtue of her position as City Clerk, including the performance of all duties set forth in the City Charter, Ordinances, Resolutions and other City policies, and to perform other legal permissible and proper duties and functions to the reasonable satisfaction of the City Commission."¹⁷

D. FORT PIERCE PERSONNEL POLICIES

Cox's Employment Agreement specifically references or explicitly incorporates the City's Personnel Rules and Regulations (the "PRR") to state that she shall be entitled to receive the same vacation, sick leave, and holiday time as the City Manager, each of which shall be defined in the PRR.¹⁸

The PRR explicitly provides that, except as modified by contract, "all city offices and positions shall be governed by these Rules and Regulations."¹⁹ The PRR identifies both the City Manager and City Clerk, among others, as members of the "Unclassified Service."²⁰ Apart from their identification as members of the Unclassified Service, the PRR does not address the potential interplay, overlap, or direct dynamic between the positions of City Clerk and City Manager.

¹³ July 6, 2021, Employment Agreement at § 5 (a)

¹⁴ July 6, 2021, Employment Agreement at § 11

¹⁵ January 6, 2020, Employment Agreement at § 1

¹⁶ January 6, 2020, Employment Agreement at § 1

¹⁷ January 6, 2020, Employment Agreement at § 1

¹⁸ See January 6, 2020, Employment Agreement at §§ 4 and 6; see also Fort Pierce, Florida Personnel Rules and Regulations, Rev. April 1, 2017, and Adopted Feb. 20, 2018. *available at* www.cityoffortpierce.com/175/Human-Resources

¹⁹ See PRR at § 2.01

²⁰ See PRR at § 2.02 C

E. DUAL OFFICE HOLDING RESTRICTIONS

Article II, Section V of the Florida Constitution governs the performance of public officers. It provides, in pertinent part:

. . . . No person shall hold at the same time more than one office under the government of the state and the counties and municipalities therein, except that a notary public or military officer may hold another office, and any officer may be a member of a constitution revision commission, taxation and budget reform commission, constitutional convention, or statutory body having only advisory powers.

“Underlying this objective is the concern that a conflict of interest will arise by dual officeholding whenever the respective duties of office are inconsistent.”²¹ In contrast, “[w]here additional duties are assigned to constitutional officers and there is no inconsistency between these new and pre-existing duties, however, the dual officeholding prohibition does not preclude such an assignment.”²² In these instances, “newly assigned duties are viewed merely as an addition to existing responsibilities.”²³

While the term “office” is not defined by the Constitution, the Supreme Court of Florida has stated that “[t]he term ‘office’ implies a delegation of a portion of the sovereign power to, and the possession of it by, the person filling the office. . . .”²⁴ The Court added “the term ‘office’ embraces the idea of tenure, duration, and duties in exercising some portion of the sovereign power, conferred or defined by law and not by contract.”²⁵ Consequently it is the nature of the powers and duties of a particular position which determines whether it is an “office”, as opposed to an employment.

Persuasive legal authority²⁶ has opined that persons serving as city managers and city clerks, whose office and duties are provided for in their respective charters, hold ‘offices’ as opposed to employment.²⁷ Consequently, similar persuasive legal authority has opined that while a city manager *cannot* simultaneously serve as a city clerk, and *vice-versa*, their respective duties *can* be imposed on one another in an *ex officio* fashion.²⁸ In 1981, for example, the Office of the Attorney General specifically considered the question of whether “the city clerk [could] serve as acting city manager, performing the duties of that office, without violating the dual officeholding prohibition?” There, the opinion concluded that “the imposition of additional or *ex officio* duties

²¹ Bath Club, Inc. v. Dade County, 394 So.2d 110, 112 (Fla. 1981)

²² Id.

²³ Id.

²⁴ State ex rel. Holloway v. Sheats, 83 So. 508, 509 (Fla. 1919)

²⁵ Id.

²⁶ See, e.g., Palm Beach County v. Hudspeth, 540 So.2d 147, 152 (Fla. 4th DCA 1989) (“Opinions of the Attorney General are considered persuasive, but do not constitute binding authority on the courts of Florida”)

²⁷ State v. Bloodworth, 134 Fla. 369 (Fla. 1938); Fla. Attorney Gen Ops. 81-72 (Oct. 4, 1981); 86-48 (June 24, 1986), 91-48 (July 8, 1991)

²⁸ Attorney Gen. Ops. 81-72 (Oct. 4, 1981), 91-48 (July 8, 1991) and 2007-43 (Oct. 16, 2007); see also “EX OFFICIO”, Black’s Law Dictionary (12th ed. 2024) (defined as “[b]y virtue or because of an office; by virtue of the authority implied by office”)

and responsibilities upon the city clerk by the city council to perform *ex officio* duties of another office would not be violative of s. 5(a), Art. II, State Const., provided that the additional duties imposed are in no way inconsistent with the municipal duties already being performed by the city clerk.”²⁹

Indeed, it has long been a settled rule in the State of Florida that, assuming an officeholder is subject to the constitutional dual office holding prohibition, they can, by legislative designation, perform the functions of another or additional office without contravening the constitutional limitation.³⁰ Again, the newly assigned duties are merely viewed as an addition to the existing duties of the officer, and not the appointment to or occupancy of another office.

The established consequence for dual office holding has traditionally been the resignation of the first office.³¹ The constitutional prohibition provides no sanction for its violation, but instead reflects the common law rule that by accepting an incompatible office, the officeholder made a binding choice to vacate the first office.³² Notably, though Florida recognizes this rule, it also recognizes that in such situations the officer becomes a *de facto* officer as to their original office. In practice, this means that the surrender of the first office does not invalidate the acts in that office, but rather the official is deemed the *de facto* person holding the office until ousted by proper process.

III. LEGAL ANALYSIS & CONCLUSIONS

Based on the foregoing, Cox can serve as the *acting* city manager, assuming the duties of that office, while the appointed city manager is on administrative leave or otherwise unable to perform his official duties. According to the City’s Code the city clerk is tasked with “perform[ing] such other duties as may be . . . required by the clerk by the commission.”³³ Similarly, Cox’s employment agreement provides she must “perform other legal permissible and proper duties and functions to the reasonable satisfaction of the City Commission.”³⁴ At present, the Commission intends to adopt a resolution appointing the Cox, the city clerk, as the “acting” city manager, while the appointed city manager, Mimms, remains on administrative leave. The delegation of the manager’s duties to Cox does not, based on the foregoing authority, contravene dual office restrictions.

The city clerk should not, however, serve as the *interim or permanent* city manager while simultaneously retaining her title as the appointed city clerk. This is a distinction with a meaningful legal difference because, in this context, the city clerk would not merely be performing the manager’s duties but occupying the office of city manager as well. If the Commission desired to

²⁹ Attorney Gen. Op. 81-72 (Oct. 4, 1981)

³⁰ State v. Florida State Turnpike Authority, 80 So.2d 337 (Fla. 1955); State ex rel. Gibbs v. Gordon, 189 So. 437 (Fla. 1939); Bath Club, Inc., 394 So.2d 110 (Fla. 1981); City of Riviera Beach v. Palm Beach County Solid Waste Authority, 502 So.2d 1335 (Fla. 4th DCA 1987); and City of Orlando v. State Dep’t of Ins., 528 So.2d 468 (Fla. 1st DCA 1988).

³¹ Holley v. Adams, 238 So.2d 40, 407 (Fla. 1970)

³² Gryzik v. State, 380 So.2d 1102, 1104-05 (Fla. 1st DCA 1980), *citing* O’Connor v. Calandrillo, 117 N.J. Super. 586, 592-93 (N.J. 1971).

³³ See City Code at § 2-114

³⁴ January 6, 2020, Employment Agreement at § 1

appoint Cox as the interim or permanent manager, and Cox were agreeable to such change, she should first resign from the office of city clerk.

For the same reason, I recommend that the City not appoint one of the deputy clerks to serve as the “acting” city clerk while Cox is serving as the acting city manager. Doing so may imply that the office of the city clerk is vacant, which it would not be as Cox will remain the city clerk while performing some or all of the manger’s duties in an “acting” capacity. The duties Cox performs will be *in addition to* her duties as the city clerk, not in replacement of those duties. Instead, the Commission should allow the city clerk to utilize the City’s deputy clerks and other staff to assist Cox in the performance of her regular and temporary acting duties until the Commission is able to appoint an interim or permanent manager.

This analysis is premised upon an understanding of the facts as they are set forth in this memorandum. The legal analysis and conclusions set forth herein may differ should additional facts become available. This legal analysis does not consider how any such reappointment may impact eligibility for or contributions to any employment benefit, retirement, or deferred compensation program, or any professional membership organization.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be "R. J. [unclear]", written in a cursive style.

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Dual officeholding ; city clerk and manager

Number: AGO 81-72

Date: January 08, 1998

Subject:

Dual officeholding ; city clerk and manager

DUAL OFFICEHOLDERS--CITY CLERK DESIGNATED TO PERFORM EX OFFICIO DUTIES OF CITY MANAGER

To: Mr. Isadore F. Rommes, Jr., City Attorney, City of Perry

Prepared by: Joslyn Wilson, Assistant Attorney General

QUESTION:

May the city clerk serve as acting city manager, performing the duties of that office, without violating the dual officeholding prohibition in s. 5(a), Art. II, State Const.?

SUMMARY:

The city council as the legislative body of the city may by ordinance impose ad interim the additional or ex officio duties and functions of the office of city manager on the city clerk and the designation of such officer to perform ex officio the duties and responsibilities of the city manager until such time as the city council has duly appointed a permanent city manager does not violate s. 5(a), Art. II, State Const.

You state that the City of Perry recently adopted a new charter which substantially revises the governmental structure of the city and provides for the administration of city government by an appointive city manager. The new charter also abolishes the position of city clerk which under the old charter was an elective position. The present city clerk, however, will continue in office until his present term expires in 1983. According to your letter, the city council is now in the process of hiring a city manager but does not anticipate filling that position immediately; the council therefore has discussed the appointment of the city clerk as acting city manager until a permanent city manager is hired. Section 10.03(E), Art. X, places a duty on the city council, subsequent to the adoption of the new charter, to "consider the appointment of a city manager or *acting* city manager." (Emphasis supplied.) A question, however, has arisen as to whether such an appointment or assignment of the duties of city manager to the city clerk violates the dual officeholding provisions of s. 5(a), Art. II, State Const.

Section 5(a), Art. II, State Const., prohibits a person from simultaneously holding "more than one office under the government of the state and the counties and municipalities therein . . ." In the instant inquiry, it is not necessary to determine whether the new appointive position of city manager and the continued elective position of city clerk are municipal offices as both the city manager and the city clerk are clearly designated as officers of the city by the newly adopted city

charter, and under the provisions of the former charter the city clerk clearly is an elected officer of the city. See s. 3.01, Art. III, of the new city charter which states that there shall be a city manager who shall be the chief administrative *officer* of the city; and s. 10.02(c), Art. X, which provides in part that the elective *office* of city clerk as defined in the former charter of the city is abolished but that said *officer*, presently serving in such *office*, will continue until his term expires, pursuant to the provisions of the former charter of the City of Perry. See *also* s. 31, Art. VI, of the former charter of the City of Perry, Ch. 5359, 1903, Laws of Florida, as amended by s. 5, Ch. 5535, 1905, Laws of Florida; s. 4, Ch. 31170, 1955, Laws of Florida; and Ch. 63-1779, Laws of Florida.

Recently the Florida Supreme Court in *Bath Club Inc. v. Dade County*, 394 So.2d 110, 112 (Fla. 1981), considered the constitutional provision against dual officeholding, stating that s. 5(a), Art. II, State Const., was "manifestly fashioned to ensure that multiple state, county, and municipal offices will not be held by the same person. Underlying this objective is the concern that a conflict of interest will arise by dual officeholding whenever the respective duties of office are inconsistent." Where, however, additional or ex officio duties are imposed upon or assigned to a particular officer by the legislative body of a municipality and there is no inconsistency between the new and the preexisting duties, the dual officeholding prohibition does not preclude such an assignment. The newly assigned duties are viewed as an addition to the existing duties of the officer. See *Bath Club Inc. v. Dade County*, *supra*; *State v. Florida State Turnpike Authority*, 80 So.2d 337 (Fla. 1955); *State ex rel. Gibbs v. Gordon*, 189 So. 437 (Fla. 1939), and AGO's 080-97 and 080-12. Thus the imposition of additional or ex officio duties and responsibilities upon the city clerk by the city council to perform ex officio duties of another office would not be violative of s. 5(a), Art. II, State Const., provided that the additional duties imposed are in no way inconsistent with the municipal duties already being performed by the city clerk.

Under the provisions of the former city charter (pursuant to which the city clerk continues to serve, see s. 10.02(C), Art. X, of the new charter), the functions and duties of the clerk "shall be as prescribed by ordinance of the city council." See s. 31, Art. VI, Ch. 5359, 1903, Laws of Florida, as amended. The new charter provides that the city manager is responsible to the city council for the administration of all city affairs, s. 3.01, Art. III; s. 3.04, Art. III sets forth the powers and duties of the city manager which include, *inter alia*, advising the city council as to the financial needs of the city, preparing the annual budget, and performing "such other duties as he may be prescribed by this Charter, or may be required of him by the city council, not inconsistent [sic] herewith." It does not appear from my examination of the former and the new city charters that the offices of city clerk and city manager and the duties and responsibilities assigned to each are incompatible. Accordingly, if the city council by ordinance imposes ad interim the additional or extra duties and functions of the city manager prescribed in the new charter on the city clerk, the clerk may serve as the acting city manager performing such duties until such time as the city council has duly appointed a city manager. *Cf.* s. 3.03, Art. III, of the new charter which provides that during the temporary absence or disability of the city manager, the city manager shall designate, subject to the council's approval, a qualified city administrative officer as acting city manager; the council, however, "may revoke such designation at any time and thereupon shall appoint another officer of the city to serve until the city manager shall return or his disability shall cease."

CITY OF FORT PIERCE, FLORIDA

**NICHOLAS MIMMS
CITY MANAGER**

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT made and entered into effective July 6, 2021, by and between the **CITY OF FORT PIERCE, FLORIDA**, a municipal corporation, hereafter referred as to "**CITY**" and **NICHOLAS MIMMS**, hereafter referred to as "**MIMMS**".

WHEREAS, CITY desires to secure the services of **MIMMS** as City Manager for a minimum of five (5) years from the Effective Date of this agreement and **MIMMS** desires to accept such position; and

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

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

1. Employment.

MIMMS will render full time professional services to **CITY** in the capacity of City Manager of the **CITY** for the term of five (5) years, commencing July 6, 2021 (the "Effective Date"), through July 6, 2026. 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.

MIMMS shall devote all of his time, attention, knowledge and skill, solely and exclusively

to the business and interest of the City of Fort Pierce, and the public which it serves. **MIMMS** 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 Manager, including the performance of all duties set forth in the City Charter, Ordinances, Resolutions and other City policies, and to perform other legally permissible and proper duties and functions to the reasonable satisfaction of the City Commission. In performing such duties, **MIMMS** further agrees to be subject to the ICMA Code of Ethics, and to otherwise devote full time and attention to his work as City Manager. Nothing herein shall prohibit **MIMMS** from maintaining membership in or participating in private social or civic endeavors that do not interfere or detract from his performance of the terms of this Agreement. In the event **MIMMS** makes formal application for full-time employment elsewhere while serving as City Manager, 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 Manager, **CITY** agrees to pay **MIMMS** an annual base salary of ONE-HUNDRED SEVENTY-ONE THOUSAND DOLLARS (\$171,000) per annum, payable in bi-weekly installments, or such higher figure as may be negotiated after a mandatory six-month evaluation of **MIMMS'** 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 **MIMMS'** 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 **MIMMS'** performance as City Manager. These performance evaluations shall occur during the calendar month of June of each year, and the matter of the performance evaluation shall be agendaed by the City Manager, to be discussed by the City Commission, at the first City Commission Conference Agenda Meeting in June of each year of this Agreement. These performance reviews shall consider continuing management objectives and responsibilities as well as achievement of key specific objectives as mutually agreed upon by City Commission and **MIMMS**.

Should it be determined that **MIMMS** 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 **MIMMS'** compensation and benefits, and endeavor to maintain them at a level commensurate with his peers in the city management 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 **MIMMS** with the following benefits:

- a) **MIMMS** 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) Paid attendance at the ICMA annual conference at a rate agreed upon by the City Commission and **MIMMS**.

- c) Lease or car allowance at \$350.00 per month, or such other rate agreed upon by the City Commission.
- d) Membership dues to professional associations and societies and to such service organizations and clubs of which **MIMMS** is a member, subject to the approval of the City Commission.
- e) Comprehensive health and major medical insurance equal to that which is provided to other City employees.
- f) Retirement benefits as per General Coverage Plan eliminating the maximum pension annuity

5. Termination

At all times during the term of this Agreement, **MIMMS** 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 **MIMMS** as City Manager, **MIMMS** shall have the right to declare that such amendments constitute termination; or
- c) If **MIMMS** resigns following a formal offer to accept resignation made by the majority of the entire City Commission at a duly authorized public meeting.

6. Severance.

Except as provided in this Agreement, severance will be paid to **MIMMS** 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 **MIMMS** his then annual base salary for One Hundred Twenty (120) consecutive days thereafter, and the **CITY** shall also maintain **MIMMS'** life insurance and major medical insurance coverage paid up and in effect during such period. **MIMMS** 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, **MIMMS** 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 the One Hundred Twenty (120) days severance in the event **MIMMS** is terminated for cause. "Cause" shall be defined as either conviction of any felony or any misdemeanor involving moral turpitude, commission of any act of fraud involving or affecting the City, willful failure to perform the duties of City Manager, or material breach by **MIMMS** of any duties or obligations under this Agreement and failure to cure such failure or breach after receipt of reasonable written notice, then, in that event, **CITY** shall have no obligation to pay the aggregate severance sum designated in this paragraph.

7. Attendance at Meetings.

The **CITY** agrees to permit **MIMMS** to be absent from the **CITY** during working days to attend professional meetings and to attend to such outside professional duties in the city management field as have been mutually agreed upon between him and the City Commission. Attendance at such approved meetings and accomplishment of approved professional duties

shall be fully compensated service time and shall not be considered vacation time. The **CITY** shall reimburse **MIMMS** for all reasonable expenses incurred by him incident to attendance at approved professional meetings; provided, however, that such reimbursement is appropriate and within the limits of the City's budget.

8. Best Efforts of Employee.

MIMMS 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**.

MIMMS 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.

9. Disability.

If **MIMMS** 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 6. However, **MIMMS** shall be compensated for any accrued sick leave, vacation, holidays, and other accrued benefits.

10. Residency.

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

11. Employee-At-Will.

MIMMS 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.

12. Liability Claims.

The **CITY** shall defend and save harmless **MIMMS**, 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 **MIMMS'** duties as City Manager of the City of Fort Pierce. However, this covenant shall not apply to acts outside the scope of **MIMMS'** employment or services or for claims for punitive damages. The **CITY** will have the authority to compromise and settle any such claim or suit within the scope of **MIMMS'** employment and pay the amount of any settlement or judgment rendered thereon. To the maximum extent permitted by law, the **CITY** and **MIMMS** shall rely upon the doctrine of sovereign immunity and the provisions of Section 768.28, Florida Statutes, or other applicable law.

13. Voluntary Resignation.

In the event **MIMMS** voluntarily resigns his position with the **CITY**, **MIMMS** 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 5(c) above, **MIMMS** shall not be entitled to nor shall the

CITY be liable to pay severance if **MIMMS** resigns.

14. 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 **MIMMS**, 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

ATTEST:




Linda Cox, City Clerk

By: 

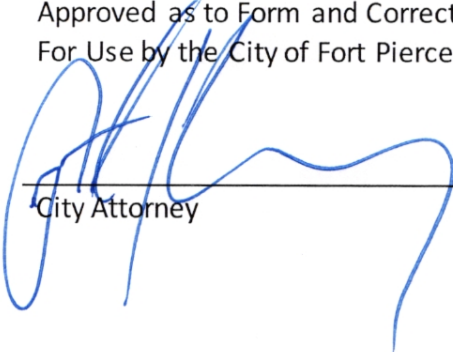
Linda Hudson, Mayor

EMPLOYEE:



Nicholas Mimms

Approved as to Form and Correctness
For Use by the City of Fort Pierce:



City Attorney