

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“Agreement”), effective the **8th day of July 2024**, by and between the **CITY OF PORT ST. LUCIE, a Florida municipal corporation** (hereinafter referred to as “CITY”) and **RICHARD BERRIOS** (hereinafter referred to as “EMPLOYEE”), governs the terms and conditions of EMPLOYEE’s employment as follows:

I. DUTIES AND RESPONSIBILITIES.

A. EMPLOYEE is hereby engaged to perform the functions and duties of the City Attorney pursuant to Article IX, Section 9.04 of the City Charter and other legally permissible and proper duties and functions as required of the office or as directed by the City Council.

Attached hereto as **Exhibit “A”** and incorporated herein by reference is a current job description for the position, which generally identifies the duties and responsibilities of this position. This document is not exhaustive and may be modified or amended from time to time at the discretion of the City Council, in consultation with the Human Resources Department and with written notice to EMPLOYEE. Upon such modification or amendment, the parties shall reopen this Agreement and negotiate in good faith to account for any substantial change to

the scope of employment.

B. The City Attorney is a Charter Officer and shall report directly to the City Council. Notwithstanding, the City Attorney shall ensure that the City Attorney's Office implements and abides by the CITY's Personnel Rules and Regulations as applicable to Non-Bargaining Unit Employees, as may be amended, as well as the CITY's established procedures for all personnel actions including, but not limited to, the CITY's procedure for appointing, suspending, or removing any CITY employee and appointive administrative officer provided for, by, or under the Charter. Consistent herewith, the City Attorney is not authorized to enter into employment agreements for subordinate personnel without the approval of the City Manager. The duties and responsibilities of the City Attorney shall take priority over any other business or commercial activities of EMPLOYEE. EMPLOYEE agrees to adhere to, to the best of his ability, all lawful governing body directives, state and federal law, City policies, rules, and ordinances as they exist or may hereafter be amended.

II. TERM OF AGREEMENT.

A. The Term of this Agreement shall be for a period of two (2) years commencing on the 8th day of July 2024 until the 7th day of July 2026.

Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the service of EMPLOYEE or remove him from the position of City Attorney at any time, or with the right of EMPLOYEE to resign at any time, all of which are subject to the provisions in Section VIII herein below.

B. EXTENSION OF AGREEMENT. In the event either party to this Agreement does not give written notice to the other party at least ninety (90) days prior to the expiration date, this Agreement shall be extended for two (2) years on the same terms and conditions as set forth in this Agreement. Thereafter, the term of this Agreement shall continue for successive two-year periods unless either party provides written notice to the other party at least ninety (90) days prior to the expiration date of the then current period of the Agreement. In the event either party provides written notice of non-renewal at least ninety (90) days prior to the expiration date of the initial term or renewal, the Agreement will expire, and EMPLOYEE shall only be compensated for eligible accrued benefits to date, based on the limitations and conditions detailed herein.

III. PROBATIONARY PERIOD.

A. EMPLOYEE has satisfactorily performed the functions of City Attorney in an Interim capacity since October 2023. As such, EMPLOYEE shall not be required to serve a probationary period as City Attorney.

IV. SALARY/ALLOWANCES/ELIGIBLE EXPENSE REIMBURSEMENTS.

- A. EMPLOYEE's initial salary shall be **Two Hundred Thirty Thousand Dollars and no cents \$230,000.00** per annum, payable in bi-weekly installments at the same time as when other City employees are paid. For each fiscal year, EMPLOYEE shall receive the same cost-of-living salary increase granted to all other managerial employees of the City, at the same time as when other City employees receive such increases.
- B. EMPLOYEE's performance may be evaluated by the City Council at the Winter Workshop of the City Council (which usually convenes in the second quarter of the fiscal year), or at another City Council meeting/workshop, as determined by the City Council. The City Council shall have the authority to provide EMPLOYEE a merit salary increase, a benefit which is available to all other City employees as set forth in the Section 12.12(A) of the Personnel Rules and Regulations.
- C. AUTOMOBILE EXPENSES. EMPLOYEE shall be entitled to an automobile allowance in the amount of \$600 per month which shall be disbursed as taxable income on EMPLOYEE's regular paycheck. For any City business conducted outside of St. Lucie County, EMPLOYEE shall be reimbursed for automobile expenses as provided by the City's Rules and Regulations.

D. COMMUNICATION EXPENSES. The CITY shall continue to provide EMPLOYEE with a cellular telephone or similar device for use in the normal conduct of business, in accordance with City policy.

V. HEALTH, DISABILITY, AND LIFE INSURANCE. EMPLOYEE shall remain eligible to continue to participate in various group benefit plans which are offered to all full-time CITY employees, including health insurance, dental insurance, vision insurance, life insurance, disability insurance, retirement, etc. after all applicable waiting periods in accordance with the terms of each plan.

VI. SICK, ANNUAL, COMPENSATORY, PERSONAL, BEREAVEMENT, MILITARY LEAVE AND OTHER AUTHORIZED ABSENCES. EMPLOYEE shall be entitled to the accrual, use, pay-out and/or forfeiture of sick leave, annual leave, personal leave, compensatory time, holidays, and other leaves of absence, the same as other exempt, managerial/professional employees, as set forth in the City's Personnel Rules & Regulations, based upon his original start date with the City of March 20, 2023. Additionally, EMPLOYEE shall receive an additional five (5) days of annual leave effective upon the signing of this Agreement and upon every year thereafter.

VII. RETIREMENT. CITY agrees to continue to pay the current authorized percentage of EMPLOYEE's base salary into the applicable 401(A) Account. The authorized percentage will be announced by CITY on an annual basis.

Said contributions by CITY shall coincide with EMPLOYEE'S bi-weekly salary payments as provided to all other managerial employees. EMPLOYEE agrees to pay the current mandatory percentage of EMPLOYEE's base salary into the applicable 401(A) Account. The mandatory contribution amount shall be the same as is required of all other managerial employees, has been approved by City Council, and may be amended from time to time. Said contributions by EMPLOYEE shall coincide with EMPLOYEE's bi-weekly salary payments.

VIII. SEPARATION OF EMPLOYMENT AND SEVERANCE PAY. EMPLOYEE shall, at all times, be classified as an at-will, management, contractual employee of CITY. EMPLOYEE acknowledges that he is not entitled to any post-disciplinary hearing in the event of discipline, up to and including involuntary separation from employment.

A. SEVERANCE PAY. EMPLOYEE shall be entitled to twenty (20) weeks' severance pay, including all regularly earned benefits, upon termination by CITY without cause. Separation without cause shall include situations where EMPLOYEE is asked to resign or forced to resign, while he remains willing and able to perform his duties under this Agreement. The receipt of severance pay is conditioned upon EMPLOYEE executing a general, full, and complete release of liability of any and all claims against the CITY, including those related to EMPLOYEE's employment with the CITY as well as the

circumstances surrounding EMPLOYEE's separation. Such release shall be in the form prescribed by the City and payment of the severance shall be payable within thirty (30) days of execution of such release. In the event of separation from employment during the Term for any other reason, EMPLOYEE is not entitled to severance pay.

- B. RESIGNATION BY EMPLOYEE. Nothing contained in this Agreement shall prevent EMPLOYEE from providing written notice that he is resigning from his position at any time; however, EMPLOYEE agrees that such notice will be at least ninety (90) calendar days prior to the date of separation unless waived at the sole discretion of the City Council. During the ninety (90) day period, CITY may require EMPLOYEE to cease or limit the work performed on CITY matters, during which time EMPLOYEE is entitled to such regular compensation and benefits as is due under this Agreement until the effective date of the resignation as provided in the notice or ninety (90) days from the date of the notice, whichever occurs earlier.
- C. EMPLOYEE acknowledges and understands that, in the event of a voluntary resignation, EMPLOYEE is not entitled to any severance pay.
- D. If EMPLOYEE is convicted of a misdemeanor involving moral turpitude or a felony violation of Florida or federal criminal law,

with such charges arising from events and/or prosecution occurring during the term of this Agreement, CITY may terminate this Agreement. In the event of termination under this subsection, EMPLOYEE shall not be eligible for severance pay.

E. EMPLOYEE is obligated to advise the Mayor and City Manager of an arrest within four (4) hours, or as soon thereafter as possible to ensure the City Council is promptly notified. EMPLOYEE will have a continual obligation to keep the Mayor advised as to the status of the case until final disposition.

F. Termination by the CITY With Cause. CITY may terminate the employment of EMPLOYEE at any time With Cause.

1. Conduct for which EMPLOYEE may be terminated With Cause includes: the offenses described in the CITY's Personnel Rules and Regulations as applicable to Non-Bargaining Unit Employees, as may be amended.

2. With Cause is also defined as any of the following actions by EMPLOYEE:

a. Misfeasance, malfeasance and/or nonfeasance in performance of the City Attorney duties and responsibilities, as determined by the City Council;

b. Conviction of a misdemeanor or felony crime, whether or not adjudication is withheld (guilty plea constitutes

conviction);

c. Neglect of duty, including the inability or unwillingness to properly discharge the responsibilities of the office as determined by the City Council;

d. Violation of any substantive CITY policy, rule, or regulation, which would subject any other CITY employee to termination including, but not limited to, violation of the CITY's Policy Against Harassment and Discrimination, Equal Employment Opportunity Policy, or Drug Free Workplace Policy as determined by the City Council;

e. The commission of any fraudulent act against the interest of the CITY;

f. Intentional violation of the state or local ethics laws and codes including, but not limited to, the Florida Code of Ethics, and the Sunshine Amendment to the Florida Constitution as determined by the City Council;

g. Failure to return from an approved leave of absence without excuse; or,

h. Misconduct, as defined in Fla. Stat. 443.036(29), as amended from time to time, as determined by the City Council.

3. Upon the City Council's determination to terminate With Cause, EMPLOYEE shall be separated from employment. EMPLOYEE shall not be eligible for severance pay due to termination With Cause.
4. The CITY's termination of EMPLOYEE With Cause from the City Attorney position shall be final and non-appealable.

IX. PAYMENT UPON SEPARATION.

- A. Final Paycheck. If EMPLOYEE separates from employment for any reason, he shall be paid in full any unpaid balance of his salary then earned and due through the final date of employment.
- B. Vacation and Sick Leave. Upon separation EMPLOYEE shall be eligible for the payment of accrued and unused Vacation Leave and Sick Leave up to a maximum established by CITY policy, including the CITY's Personnel Rules and Regulations, as amended from time to time. If eligible, the value of such accruals shall be distributed in accordance with the CITY's Personnel Rules and Regulations, as applicable to Exempt, Non-Bargaining Unit Employees, as may be amended.

- X. GENERAL EXPENSES. The CITY recognizes that certain expenses of a non-personal and job-affiliated nature may be incurred by EMPLOYEE, and hereby agrees to reimburse or to pay the following general expenses, in accordance with CITY policy: Annual dues to The Florida Bar; up to two (2) Section memberships within The Florida Bar, one of which shall be the

City, County & Local Government Law Section; and membership in a local/regional bar association within the limits of the Treasure Coast.

EMPLOYEE shall be allowed to participate in professional development which shall include registration fees, travel, and lodging as necessary to attend a minimum of one (1) continuing education seminar per year, subject to available funds. The topic of such seminar shall be related to local government law and/or involve subject matter which is relevant to the performance of EMPLOYEE's duties. Other routine expenses incurred by EMPLOYEE may be reviewed and approved by the City Manager. In the event of denial of a routine expenditure, the EMPLOYEE may present the request to the City Council for review. The Finance Director is hereby authorized to disburse such monies upon receipt of duly executed expense or petty cash vouchers, receipts, statements, or personal affidavits.

XI. CIVIC CLUB MEMBERSHIPS. The CITY recognizes the desirability of representation in and before local civic and other organizations. EMPLOYEE shall present to the City Council for review and approval a listing of civic organizations for which, if approved, the CITY shall pay all expenses on EMPLOYEE's behalf, provided that such participation shall not in any way reflect unfavorably on the City and subject to budget operating limitations and EMPLOYEE's workload.

XII. EMPLOYEE HANDBOOK. Terms and conditions of EMPLOYEE'S employment not specifically set forth in this Agreement shall be governed

by the Personnel Rules and Regulations as applicable to Exempt, Non-Bargaining Unit Employees, provided said provisions are not inconsistent with or in conflict with the provisions of this Agreement, City Code of Ordinances and/or any law.

XIII. POST-EMPLOYMENT RESTRICTIONS. EMPLOYEE shall not personally, or in association with a new employer, represent another person or entity before the CITY COUNCIL or any CITY board or commission for a period of two (2) years following EMPLOYEE'S separation of employment, whether voluntary or involuntary. This section shall survive the termination of EMPLOYEE or cancellation or expiration of this Agreement.

XIV. SEVERABILITY OF PROVISIONS. If any clause or provision of this Agreement shall be determined to be illegal or to be void as against public policy, the remainder of this Agreement shall not be affected thereby.

XV. INDEMNIFICATION. CITY shall defend, save harmless, and indemnify EMPLOYEE against any action for any injury or damage suffered as a result of any act, event, or omission of action that EMPLOYEE reasonably believes to be in the scope of his duties or function in accordance with the provisions of Sections 111.07 and 111.071, Florida Statutes, unless he acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. CITY may compromise and settle any such claim or suit and shall pay the amount of any settlement or judgment rendered thereon. CITY shall not be liable for the acts or

omissions of EMPLOYEE committed while acting outside the course and scope of his agreed duties or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. In such instance, as determined by a court of competent jurisdiction, EMPLOYEE shall reimburse CITY for any legal fees and expenses CITY has incurred or otherwise paid, for or on his behalf, in connection with the charged conduct. Said indemnification shall extend beyond the termination of employment and the expiration of this Agreement to provide protection for any such acts undertaken or committed in his capacity as City Attorney, regardless of whether the notice of claim or filing of a lawsuit occurs during or following employment with CITY.

XVI. BONDING. CITY agrees to bear the full cost of any fidelity or other bonds required of the City Attorney under any policy, regulation, ordinance or law.

XVII. GENERAL PROVISIONS.

A. The text herein shall constitute the entire Agreement between the parties and supersedes all prior agreements or understandings.

B. The rights and obligations herein granted are personal in nature and cannot be transferred by EMPLOYEE except as provided in any benefit plans upon occurrence of a qualifying event, or as is otherwise legally permissible.

- C. This Agreement shall be construed and governed by the laws of the State of Florida, and venue for any action or proceedings shall be in a state court of jurisdiction in and for St. Lucie County, Florida, exclusively. EMPLOYEE expressly consents to the personal jurisdiction of the courts of St. Lucie County, Florida.
- D. This Agreement may not be modified or changed in any way whatsoever except by mutual written consent of both parties through a written amendment approved by the City Council.
- E. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement or portion thereof shall be deemed severable, shall not be affected, and shall remain in full force and effect.
- F. Failure of either party to enforce or exercise any right(s) under this Agreement shall not be deemed a waiver of that party's right to enforce or exercise said right(s) at any time thereafter.
- G. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.
- H. The headings used in this Agreement are for convenience of reference only and shall not modify, define, expand, or limit any of the terms or provisions herein.
- I. All the provisions contained in this Agreement are subject to, and conditioned upon, compliance with all special acts of the CITY and

applicable laws of the State of Florida, the CITY Charter and CITY ordinances. Such laws shall take precedent over any part or portion of provisions as contained herein.

J. THE PARTIES HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT EACH OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT.

[THIS SPACE LEFT INTENTIONALLY BLANK. SIGNATURE PAGE TO FOLLOW

ON NEXT PAGE.]

IN WITNESS WHEREOF, the parties hereunto have set their hands to this instrument this ____ day of _____ 2024.

Richard Berrios
City Attorney

Shannon Martin
Mayor

APPROVED AS TO FORM:

Milton R. Collins, Esq., Labor Counsel
Weiss, Serota, Helfman, Cole + Bierman, P.L

NEGOTIATED BY:

Jesus A. Merejo
City Manager

Natalie Cabrera
Director, Human Resources