

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“Agreement”), effective the **23rd day of October 2023**, 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”), is made and entered pursuant to these terms and conditions.

WHEREAS, EMPLOYEE currently serves as an employee of the CITY within its City Attorney’s Office and holds the position of Senior Deputy City Attorney; and

WHEREAS, the City Attorney (as defined by Charter), as of September 15, 2023, assigned EMPLOYEE to attend all meetings of the City Council in the role of legal advisor until October 12, 2023; and

WHEREAS, the City Council, pursuant to the City Charter and Code of Ordinances, has the power of appointment of the City Attorney; and

WHEREAS, on October 9, 2023, the City Council appointed EMPLOYEE to the role of City Attorney on an interim basis (hereinafter referred to as “Interim City Attorney”) effective October 13, 2023, and directed that the City Manager negotiate with EMPLOYEE the terms of EMPLOYEE’s engagement as Interim City Attorney; and

WHEREAS, the City Manager and EMPLOYEE have engaged in said negotiations; and

WHEREAS, CITY agrees to continue the appointment of EMPLOYEE, and EMPLOYEE agrees to continue his appointment to the position of Interim City Attorney

on a temporary basis in accordance with the terms and conditions set forth in this Agreement; and

NOW THEREFORE, in consideration of the mutual covenants herein contained, CITY and EMPLOYEE agree as follows:

I. DUTIES AND RESPONSIBILITIES. In addition to his current responsibilities and assignments from the Senior Deputy City Attorney position, EMPLOYEE is hereby engaged to perform on an interim basis 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 the City Manager.

The Interim City Attorney is a Charter Officer and shall report directly to the City Council. Notwithstanding, the Interim 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 Interim City Attorney is not authorized to enter into employment agreements for subordinate personnel without the approval of the City Manager.

II. TERM OF AGREEMENT.

The Term of this Agreement shall commence on the **23rd day of October 2023, continuing through and including the date upon which a permanent City Attorney begins employment**, unless earlier terminated as provided herein. 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 Interim 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 VII herein below.

III. SALARY/ALLOWANCES/ELIGIBLE EXPENSE REIMBURSEMENTS.

A. During the Term, EMPLOYEE's salary **shall be increased to a total base salary of \$189,750.00 Dollars** per annum, payable in bi-weekly installments, with an additional five percent (5%) increase in salary effective on February 23, 2024. Unless otherwise approved by the City Council, EMPLOYEE shall not be eligible for, and/or subjected to, any

budgeted salary adjustment based upon annual performance reviews or for other legitimate reasons.

B. EMPLOYEE acknowledges that he is exempt pursuant to the Fair Labor Standards Act (FLSA) and, as such, is paid a bi-weekly salary that is intended to cover all hours worked and is not entitled to overtime compensation or subject to the minimum wage provisions of the FLSA. Salary payments are not due for any periods of unpaid leave, including disciplinary suspensions or administrative leave, in accordance with applicable wage and hour laws.

C. AUTOMOBILE EXPENSES. EMPLOYEE shall be entitled to reimbursement of mileage at the approved rate, authorized by the Internal Revenue Service's Standard Mileage Rate applicable to the date of travel from destination city to destination city, for use of EMPLOYEE's personal vehicle for local and out-of-area business travel related to CITY business. EMPLOYEE shall submit a request for reimbursement to the City Manager within thirty (30) working days of completion of travel or the entitlement to reimbursement shall be waived.

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.

IV. 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.

V. SICK, ANNUAL, COMPENSATORY, PERSONAL, BEREAVEMENT, MILITARY LEAVE AND OTHER AUTHORIZED ABSENCES. **Note:** **“Anniversary Date” as referenced in this section shall mean EMPLOYEE’s existing anniversary date of hire.**

A. SICK TIME. EMPLOYEE shall continue to accrue and use sick time benefits may in accordance with the provisions outlined in the City’s Personnel Rules and Regulations as applicable to Exempt, Non-Bargaining Unit Employees, as may be amended from time to time.

B. ANNUAL LEAVE. EMPLOYEE shall continue to be entitled to Annual Leave consistent with the provisions outlined in the City’s Personnel Rules and Regulations, as applicable to Exempt, Non-Bargaining Unit Employees, as may be amended from time to time.

C. COMPENSATORY TIME. EMPLOYEE shall continue to be entitled to compensatory time as described within the City’s Personnel Rules and Regulations, as applicable to Exempt, Non-Bargaining Unit Employees,

as may be amended from time to time. Upon separation from employment with the CITY for any reason including, but not limited to, retirement, termination, expiration or cancellation of the Agreement, EMPLOYEE shall not be entitled to, and will not receive payment for, any unused compensatory time balance.

D. PERSONAL DAYS. EMPLOYEE shall continue to be entitled to paid personal leave days consistent with the provisions set forth in the City's Personnel Rules and Regulation as applicable to Exempt, Non-Bargaining Unit Employees, as may be amended from time to time.

E. BEREAVEMENT, MILITARY AND OTHER AUTHORIZED LEAVES/ABSENCES. Bereavement, Military and other leaves/absences may be granted in accordance with the City's Personnel Rules and Regulations as applicable to Exempt, Non-Bargaining Unit Employees, and as may be amended from time to time. All authorized leave shall also be in accordance with Federal and Florida law.

VI. 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.

VII. SEPARATION OF EMPLOYMENT AND/OR REMOVAL FROM INTERIM CITY ATTORNEY POSITION.

- A. 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.
- B. Severance Pay. EMPLOYEE shall not be eligible for severance pay except when terminated Without Cause as set forth below. In the event of separation from employment during the Term for any other reason, or in the event of reversion to the prior position of Senior Deputy City Attorney, EMPLOYEE is not entitled to severance pay.
- C. 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 thirty (30) calendar days prior to the date of separation unless waived at the sole discretion of the City Council.

During the thirty (30) 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 thirty (30) days from the date of the notice, whichever occurs earlier.

D. Expiration of Term. At the expiration of the Term, this Agreement shall terminate automatically, unless otherwise extended, amended, and/or modified as approved by the City Council, and EMPLOYEE shall return to the at-will position of Senior Deputy City Attorney at the salary of \$138,000.00, plus any nondiscretionary escalation that would have occurred had he remained in that position throughout the Term, and with any probationary requirements of that position deemed satisfied.

E. Removal by CITY Without Cause; Reversion to Prior Position.

1. CITY may terminate EMPLOYEE from employment Without Cause during the Term at any time without prior notice. In the event of termination Without Cause, EMPLOYEE shall be entitled to twenty (20) weeks of base pay at the Interim City Attorney rate set forth herein, as well as payment of all accrued leave as provided for in the CITY's Personnel Rules and Regulations. The receipt of the aforementioned severance pay is conditioned upon the 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.

2. In the event the City Council determines, in its sole discretion, EMPLOYEE should no longer serve as Interim City Attorney Without Cause at any time during the Term, EMPLOYEE may be returned to the at-will position of Senior Deputy City Attorney at the compensation rate of \$138,000.00 per year, plus any nondiscretionary escalation that would have occurred had he remained in that position throughout the Term. If termination Without Cause occurs after December 15, 2023, any probationary requirements of that position shall be deemed satisfied.
3. The CITY's removal of EMPLOYEE Without Cause from the Interim City Attorney position shall be final and non-appealable.
4. Reversion to Prior Position. The Term shall automatically terminate upon commencement of employment of a City Attorney appointed by the City Council and EMPLOYEE shall be returned to the at-will position of Senior Deputy City Attorney at the compensation rate of

\$138,000.00 per year, plus any nondiscretionary escalation that would have occurred had he remained in that position throughout the Term. If such reversion occurs after December 15, 2023, any probationary requirements of that position shall be deemed satisfied. There shall be no payout of benefits accrued during the Term upon reversion to the prior position, unless otherwise approved of the City Manager in accordance with the City's Rules and Regulations.

5. Upon expiration of the Term of this Agreement, the appointment of a City Attorney other than EMPLOYEE, or upon the City Council's determination that EMPLOYEE should no longer serve as Interim City Attorney without cause, this Agreement shall be of no further effect. In such case, EMPLOYEE shall revert to the position of Senior Deputy City Attorney. The reversion shall be effectuated by the City Council requiring the newly appointed City Attorney or other Interim City Attorney to execute an employment agreement with EMPLOYEE reestablishing the terms and conditions of EMPLOYEE's September 15, 2023 Senior Deputy City Attorney agreement, to be effective on the first calendar day following the cessation of the Interim City Attorney Agreement. Provided, however, that the compensation rate shall be \$138,000.00, plus any nondiscretionary escalation that would have occurred had

EMPLOYEE remained in the Senior Deputy City Attorney position throughout the Term.

F. Cancellation.

1. CITY may cancel this Agreement in the event EMPLOYEE abandons the position. A position is considered abandoned after unauthorized absences from work for a consecutive period of three (3) days or three (3) assigned shifts.
2. 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 shall have the option of canceling this Agreement. 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. The EMPLOYEE will have a continual obligation to keep the Mayor and City Manager advised as to the status of the case until final disposition. Under no circumstances shall CITY waive any applicable remedies available to CITY pursuant to the terms and conditions of the Personnel Rules and Regulations applicable to Exempt, Non-Bargaining Unit personnel.
3. In the event of cancellation by the CITY, EMPLOYEE shall be

terminated and shall not revert to his prior position. EMPLOYEE shall not be eligible for severance pay resulting from cancellation.

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

1. Termination 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 the EMPLOYEE:

a. Misfeasance, malfeasance and/or nonfeasance in performance of the Interim 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;
- g. 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;
- h. Failure to return from an approved leave of absence; or,
- i. 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 and shall not revert to the prior Senior Deputy City Attorney position. EMPLOYEE shall not be eligible for severance pay due to termination With Cause.

4. The CITY's termination of EMPLOYEE With Cause from the Interim City Attorney position shall be final and non-appealable.

VIII. 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. EMPLOYEE may also 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.

IX. PERFORMANCE CRITERIA AND EVALUATIONS.

Due to the temporary nature of this appointment, EMPLOYEE as Interim City Attorney shall not be subject to a formal evaluation of his performance in that position.

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 and are relevant to EMPLOYEE's current assignments. Other routine expenses incurred by EMPLOYEE, which are the same as those approved for the Senior Deputy City Attorneys, may be reviewed and approved by the City Manager. In the event of denial of a routine expenditure, the Interim City Attorney 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. OUTSIDE EMPLOYMENT. EMPLOYEE is authorized to engage in outside employment, specifically, as a consultant for the City of Long Beach, New York where no conflict of interest exists with CITY, and the engagement of which is currently scheduled to end on March 19, 2024. EMPLOYEE shall

not engage any new clients or seek new clients during the Term of this Agreement. EMPLOYEE shall not use CITY equipment to provide services to City of Long Beach, New York, and shall not provide such services during regular business hours of CITY. EMPLOYEE understands that, should he be appointed to serve as permanent City Attorney in the future, the City Council may request that he not accept or maintain any other employment as a condition of appointment.

XIII. 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.

XIV. 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.

XV. 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.

XVI. 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 Interim City Attorney, regardless of whether the notice of claim or filing of a lawsuit occurs during or following

employment with CITY; provided, however, such obligation shall terminate upon the expiration of the applicable statute of limitations where there is no notice of claim or filing of a lawsuit.

XVII. GENERAL PROVISIONS.

- A. The text herein shall constitute the entire Agreement between the parties and supersedes all prior agreements including, but not limited to, those dated September 15, 2023 and March 20, 2023.
- B. The rights and obligations herein granted are personal in nature and cannot be transferred by the EMPLOYEE except as provided in any benefit plans upon occurrence of a qualifying event.
- 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 DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

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ON NEXT PAGE.]

IN WITNESS WHEREOF, the parties hereunto have set their hands to this instrument this ____ day of _____ 2023.

Richard Berrios
Employee

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