

EMPLOYMENT AGREEMENT

This Employment Agreement hereinafter referred to as the "Agreement" is made and entered into on the 25th day of August, 2014, by and between the City of North Port, Florida, hereinafter referred to as the "CITY" or "EMPLOYER", and Mark Moriarty, hereinafter referred to as the "EMPLOYEE or CITY ATTORNEY."

RECITALS

- A. The CITY is a municipal corporation of the State of Florida.
- B. The CITY Commission is the legislative branch of the CITY's form of government and derives its powers from the Florida Constitution, general laws of the State of Florida and the City Charter.
- C. The CITY ATTORNEY is the CITY's chief legal officer whose powers, duties, and responsibilities are set forth in the City Charter and Code.
- D. Although the CITY ATTORNEY is an employee of the CITY, he owes the Commission a higher duty of loyalty and confidentiality than other CITY employees. Accordingly, the CITY and the EMPLOYEE acknowledge that the CITY ATTORNEY position has greater obligations and responsibilities than other positions of employment and, as a result, may be subject to more restrictions and enhanced benefits than other employees of the CITY.
- E. The EMPLOYEE has represented and warranted that, by virtue of EMPLOYEE's education, training, and experience, EMPLOYEE has the requisite skills, background, education, knowledge, and abilities to capably perform the duties and obligations of CITY ATTORNEY.

F. As a result of its good faith reliance on those representations and warranties, the CITY wishes to secure, employ, and retain the services of the EMPLOYEE as CITY ATTORNEY.

G. The EMPLOYEE desires to accept and assume the position of CITY ATTORNEY.

NOW THEREFORE, in consideration of the premises and the mutual covenants expressed herein and pursuant to the employment relationship between the parties, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** The recitals outlined above are true and correct and are incorporated into and made a part of this Agreement.

2. **Position or Job.** The CITY hereby employs, engages, and hires the EMPLOYEE in the position of CITY ATTORNEY provided, however, that this Agreement and the EMPLOYEE's employment are subject to and conditioned upon the EMPLOYEE:

a) successfully passing all post offer background, reference checks, and medical examinations including drug screen conducted by the CITY; and

b) being approved by a majority of the CITY Commission at a lawful public meeting.

The general duties and responsibilities of this job are specified in the City of North Port City Charter and City of North Port Code of Ordinances and to perform such other legally permissible and proper duties and functions as the Commission shall from time to time assign. The City shall have the sole right and discretion to change or

modify the duties and responsibilities of the EMPLOYEE's position or job at any time and for any reason. The EMPLOYEE shall perform all duties, responsibilities, tasks, jobs, and services assigned to EMPLOYEE by the EMPLOYER responsibly, faithfully, industriously and to the best of his ability.

In the event the CITY ATTORNEY shall serve on any appointed boards or elected boards of any professional organization, or serve on any committees related to his professional activities, any monies paid, or gifts received, by the City ATTORNEY related to such service shall be paid over to or delivered to the CITY, unless otherwise provided by the CITY Commission

3. **Performance Evaluation.** The CITY Commission shall annually review and evaluate the performance of the EMPLOYEE. The review and evaluation may be in accordance with specific written criteria developed by the CITY Commission, in conjunction with the EMPLOYEE. Further, the individual Commissioners shall provide the EMPLOYEE with the written evaluations and provide the EMPLOYEE ample opportunity to respond. The first annual review and evaluation under this Agreement shall take place in advance of the adoption of the annual operating budget for the fiscal year 2015-2016. In effecting the provisions of this Section the CITY Commission and EMPLOYEE mutually agree to abide by the provisions of applicable law.

4. **Duration of Employment Indefinite.** The EMPLOYEE shall be employed by the CITY as its CITY ATTORNEY, but nothing in this Agreement shall be construed as creating an obligation, duty, or guarantee of employment for any specific duration. Although the CITY hopes that its relationship with the EMPLOYEE will be

long term, the employment and compensation of the EMPLOYEE can be ended by either party in accordance with Paragraph 6 below. This term or period of employment shall commence on September 15, 2014.

5. **Compensation or Salary.** During the time that this Agreement is in force the CITY shall pay the EMPLOYEE, and the EMPLOYEE shall accept from the CITY in full payment for the EMPLOYEE's services, an annual gross salary of one hundred thirty eight thousand dollars (\$138,000) payable in the same manner as other general employees are paid through the normal payroll system.

At the end of first year of employment the EMPLOYEE shall receive a five percent (5%) increase in salary. Thereafter any increases to EMPLOYEE'S salary shall be based upon; (a) the annual performance evaluation, and/or (b) any amount provided to general employees as an across the board increase, and/or (c) such an amount as the City Commission may deem appropriate.

6. **Termination** The employment and compensation of the EMPLOYEE can be ended at the option of the CITY or the EMPLOYEE at any time with or without cause, subject to the following conditions:

a. The EMPLOYEE may cancel this Agreement and his employment by giving the CITY thirty (30) days written notice before the effective date of separation, unless CITY agrees to waive such notice requirement. No severance shall be paid to the EMPLOYEE when termination occurs under these circumstances. However, the EMPLOYEE will be paid any unused leave that EMPLOYEE has accrued as of the effective date of termination, in accordance with the Personnel Policy in effect at that time.

b. If CITY reduces any of the terms of this Agreement, or if CITY refuses following written notice to comply with any other provision of this Agreement benefiting CITY ATTORNEY, CITY ATTORNEY may at his option, be deemed to be terminated without cause as of the date of such reduction or refusal. In such event, the severance pay and other termination provisions, as outlined in Section 6 Paragraph c below shall become applicable at the annual salary and benefit level in effect prior to the reduction or refusal.

c. Pursuant to Section 6.02 of the City of North Port City Charter the CITY may cancel this Agreement and the EMPLOYEE's employment without cause by giving the EMPLOYEE ten (10) days written notice before the effective date of termination. The EMPLOYEE shall receive a lump sum severance payment equal to twenty (20) weeks of EMPLOYEE'S annual base salary, together with payment for any unused leave that EMPLOYEE has accrued as of the effective date of termination, in accordance with the Personnel Policy in effect at that time. This provision complies with section 215.425, Florida Statutes.

A formal vote of "no confidence" by the CITY Commission may be considered by CITY ATTORNEY as a termination without cause under this Agreement.

d. In the event the EMPLOYEE is terminated for "just cause" at a duly noticed City Commission meeting, the CITY shall have no obligation to pay the amounts outlined in Section 6, Paragraph c of this Agreement. For purposes of this Agreement, "just cause" is defined and limited for purposes of this Agreement to the CITY ATTORNEY's conviction (or plea of guilty or nolo contendere) of any felony act,

the CITY ATTORNEY's misconduct as defined in Sections 443.036(29), violation of 112.313, Florida Statutes, or any of the following: .

1. Any conduct which has been adjudicated as an act of legal malpractice.
2. Violation of any substantive CITY policy, rule, or regulation, which would subject any other CITY employee to termination.
3. The Commission of any act which involves moral turpitude, or which causes the CITY disrepute.

Just cause shall further include any breach of this agreement by EMPLOYEE providing EMPLOYEE shall be given ten (10) days' notice to cure such breach before termination may occur under this paragraph.

e. The employment and compensation of the EMPLOYEE shall end upon the death or voluntary resignation of the EMPLOYEE.

7. **Deferred Compensation and Florida Retirement System.** Each year the CITY shall contribute to the EMPLOYEE's ICMA-RC deferred compensation plan an amount equal to seven percent (7.0%) of the EMPLOYEE's annual salary; the total annual amount is not to exceed the maximum allowable contribution under the Internal Revenue Code. These contributions, which will be made on regularly scheduled pay dates, are in addition to the EMPLOYEE's salary referred to in Paragraph 5 above, and will immediately expire if this Agreement and the EMPLOYEE's employment are terminated pursuant to Paragraph 6 above. CITY agrees to authorize all necessary arrangements required by the ICMA-RC for CITY ATTORNEY'S continued participation in the 457 Deferred Compensation Plan. CITY further agrees to transfer

ownership to CITY ATTORNEY of the Plan account funds upon CITY ATTORNEY'S resignation or termination.

CITY recognizes the CITY ATTORNEY is required to participate in the Florida Retirement System (FRS) at the senior management level as provided to other employees. The CITY agrees to authorize all necessary arrangements required under Florida State statute to allow for buy-back of prior service using CITY ATTORNEY'S resources should the CITY ATTORNEY elect to exercise that option.

8. **Relocation.** In order to mitigate the disruption to the EMPLOYEE'S family, the CITY will provide the following relocation benefits:

The CITY will reimburse the EMPLOYEE for all reasonable expenses of packing, moving, and transporting himself and his family, as well as their personal property or belongings, from Ft. Myers, Florida to North Port, Florida. Before incurring such expenses the EMPLOYEE will obtain bids from at least three (3) nationally known and/or Florida based moving companies and the CITY will reimburse him an amount equal to the lowest bid after the move is satisfactorily completed. However, if the EMPLOYEE terminates this Agreement pursuant to Paragraph 6(a) above during the first two (2) years of employment, he shall repay these moving expenses to the CITY within thirty (30) days.

9. **Insurance.** The CITY will at its expense provide (1) the EMPLOYEE, spouse, and eligible dependents with medical, vision and dental insurance coverage under the CITY'S group benefit plan; (2) term life insurance on the EMPLOYEE in the face amount equal to one year'S salary; and (3) any other insurance coverage provided to all employees (excluding any voluntary plans offered). *Coverage* will begin on the date of

appointment. Should CITY not be able to provide health insurance coverage immediately due to policy constraints, it will compensate CITY ATTORNEY for the cost of his COBRA policy until he can be added to CITY's policy.

10. **Motor Vehicle Allowance**

CITY ATTORNEY shall provide his own automobile to travel to and from work and for CITY related business. The EMPLOYER shall provide a base automobile allowance of six hundred (\$600) per month. EMPLOYEE shall provide liability, property, damage, and comprehensive insurance coverage on said automobile. Further, EMPLOYEE shall be responsible for maintenance service, gasoline, and oil for said automobile. The base allowance will be indexed by the percentage change in the IRS standard mileage rate. The allowance shall not go below the base amount. The CITY ATTORNEY, from time to time, may at his discretion, for the purpose of conducting of CITY related business, utilize a CITY vehicle.

11. **Leaves Of Absence.** The EMPLOYEE shall be immediately vested with one hundred twenty (120) hours of paid annual leave upon date of hire. Upon the first anniversary of employment, the EMPLOYEE will earn one hundred twenty (120) hours of annual leave with pay, to be accrued bi-weekly. Upon entering the fifth year of employment and for each five (5) years of employment thereafter, EMPLOYEE shall accrue an additional forty (40) hours of annual leave with pay, up to a maximum of two hundred forty (240) hours.

12. **Professional Development.** The CITY shall pay reasonable and necessary professional dues and subscriptions for the EMPLOYEE to participate in national, regional, state, and local associations and organizations essential for the

EMPLOYEE's continued professional development as CITY ATTORNEY. These include, but are not limited to, The Florida Bar, The City County Local Government Section of the Florida Bar, The Florida Municipal City Attorneys Association and the American Bar.

In addition, the CITY will pay reasonable and necessary expenses and costs for the EMPLOYEE to attend seminars, short courses, lectures, and institutes related to EMPLOYEE's duties and responsibilities as CITY ATTORNEY.

13. **Civic Involvement and Outside Activities.** The CITY acknowledges the value of having its ATTORNEY participate and be directly involved in local civic clubs or organizations. Accordingly, the CITY shall pay for the reasonable membership fees and/or dues to enable the EMPLOYEE to become an active member in two (2) local civic clubs or organizations. Provided such services do not unreasonably interfere with EMPLOYEE's responsibilities as CITY ATTORNEY, he shall be permitted, with the prior approval of the CITY Commission, to engage in teaching or other non-CITY related business and retain any compensation.

The CITY acknowledges that the CITY ATTORNEY is an Adjunct Professor at Florida Southwestern State College f/n/a Edison State College and approves his involvement with the college.

The CITY acknowledges that the CITY ATTORNEY has been elected Chair-Elect of the City County Local Government Section of the Florida Bar and approves of his involvement with the Florida Bar.

As much as practical the Attorney shall observe regular business hours in City Hall. However, it is recognized that the CITY ATTORNEY must attend court hearings

and meetings outside of City Hall and must devote a great deal of time outside the normal office hours for business of the CITY and, to that end, the CITY ATTORNEY will be allowed to determine his own office hours and to take time off within reason as he shall deem appropriate.

14. **Residence.** Although the EMPLOYEE is not required to be a resident of the CITY at the time of appointment, EMPLOYEE shall establish and maintain permanent residence within the CITY's geographical boundaries within eighteen months (18) from the date EMPLOYEE is hired.

15. **Other Benefits.** Except as otherwise provided in this Agreement, the EMPLOYEE shall be entitled to all benefits enjoyed by other general employees of the CITY, and as provided in the CITY's Personnel Policy Manual.

16. **Indemnification.** Pursuant to Sections 111.07 and 111.071, Florida Statutes the CITY will provide a civil defense to any legal action brought against the CITY ATTORNEY. This section shall survive the termination of this Agreement or any other separation of the CITY ATTORNEY's employment.

17. **Waiver.** No consent or waiver expressed or implied by any party to any breach or default by the other in the performance of their obligations hereunder shall be deemed or construed to be consent or waiver to or of any other breach or default of this Agreement. Failure of any party to complain or any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver of that party's rights hereunder.

18. **Controlling Law.** This Agreement and the validity, execution, construction, interpretation, performance and enforcement thereof, shall be governed by the substantive and procedural laws of the State of Florida.

19. **Jurisdiction and Venue.** Any and all actions, causes of action, lawsuits, litigation, legal proceedings or special proceedings to construe, interpret, or determine the validity of this Agreement and/or to enforce performance thereof shall be brought only in the State of Florida, in Sarasota County. The EMPLOYEE and the CITY stipulate that subject matter and in personam jurisdiction and venue for any dispute, controversy, or disagreement relating directly or indirectly to the provisions of this Agreement and the enforcement therefore lies exclusively in the State of Florida, in Sarasota County.

20. **Attorney's Fees.** In any litigation lawsuit, legal or other proceedings brought in connection with the construction, interpretation, meaning, validity, performance or enforcement of this Agreement, the prevailing party shall be entitled to receive all of their costs and reasonable attorney fees from the other party.

21. **Renegotiation of Provisions.** Either party may request renegotiation of any provision of this Agreement at any time. If the parties are unable to reach agreement, those terms will remain unchanged.

22. **General Provisions.**

- A. Upon CITY ATTORNEY'S death, CITY'S obligations under this Agreement shall terminate except for:
 - 1) Transfer of balances in CITY ATTORNEY'S ICMA 457 Deferred Compensation Plan and FRS plan to his designated beneficiaries;
 - 2) Payment of accrued leave balances in accordance with this Agreement;

- 3) Payment of all outstanding hospitalization, medical, and dental bills, in accordance with CITY'S insurance policies or plans;
- 4) Payment of all life insurance and disability benefits; and
- 5) Any other benefits provided to general employees in the event of death.

B. CITY shall bear the cost of any fidelity or other bond required of CITY ATTORNEY under any law or the City Charter.

23. **Severability**. 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 had been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

24. **Integration**. This Agreement sets forth and establishes the entire understanding between the EMPLOYER and the EMPLOYEE relating to the employment of the EMPLOYEE by the EMPLOYER. Any prior discussions or representations by or between the parties are merged into and rendered null and void by the Agreement. No amendment or modification of this Agreement shall be valid or effective unless it is in writing and properly executed by all parties thereto. This Agreement shall supersede all provisions of CITY resolutions in conflict with this Agreement, to the extent of such conflict.

25. **Notice**. Any notice required or permitted under this Agreement shall be sent by certified mail to: a) the CITY at its principal place of business, and b) to the EMPLOYEE at the address provided to the CITY by the EMPLOYEE for income tax purposes.

26. **EMPLOYEE's Understanding.** Before signing this Agreement, the EMPLOYEE was advised of EMPLOYEE's right to consult with an ATTORNEY to review the Agreement and EMPLOYEE's right to have an ATTORNEY throughout the process leading up to the execution of the Agreement.

Before signing this Agreement the EMPLOYEE had full and adequate opportunity to review and read it. Moreover, the EMPLOYEE did read and review the Agreement and fully understood its contents, terms, provisions, and conditions before signing it.

27. **Binding Effect.** This Agreement shall be binding on the CITY and the EMPLOYEE as well as their heirs, assigns, executors, personal representatives, and successors in interest.

28. **Effective/Anniversary Dates.** This Agreement shall become effective on September 15, 2014. Accordingly, September 15 of each succeeding year shall be the anniversary date of the EMPLOYEE's employment with the CITY.

IN WITNESS WHEREOF the EMPLOYEE signed and executed this Agreement on August 25, 2014, after which the CITY signed and executed it on August 25, 2014.

CITY OF NORTH PORT FLORIDA

BY:

James Blucher
James Blucher, Mayor

ATTEST:

Helen M. Raimbeau
HELEN RAIMBEAU, MMC, CITY Clerk

Approved as to form and correctness:

Robert K. Robinson
Robert K. Robinson, CITY ATTORNEY

Witnesses:

Susan Hale
Witness Signature

Susan Hale
Printed Name of Witness

Beth Scott
Witness Signature

Beth Scott
Printed Name of Witness

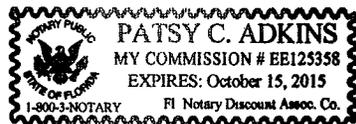
EMPLOYEE

Mark Moriarty
Mark Moriarty

STATE OF FLORIDA
COUNTY OF Sarasota

The foregoing instrument was acknowledged before me this 28th day of August, 2014, by Mark Moriarty who has ^{is} produced ~~as identification.~~ personally known to me.

Patsy C. Adkins
Notary Public Signature
Patsy C. Adkins
Printed Name of Notary



**FIRST AMENDMENT
EMPLOYMENT AGREEMENT**

THIS FIRST AMENDMENT to the Employment Agreement ("Amendment") is made and entered this 26th day of January 2016, by and between the City of North Port, Florida, herein after referred to as the "CITY" or "EMPLOYER" and Mark Moriarty hereinafter referred to as the "EMPLOYEE" or "CITY ATTORNEY".

In consideration of the mutual covenants, promises and representations contained herein, the parties agree the Employment Agreement, executed August 25, 2014 between the parties, is amended as follows:

1. Paragraph 14. Residence is revised and amended as follows: Although the EMPLOYEE is not required to be a resident of the CITY at the time of appointment, EMPLOYEE shall establish and maintain permanent residence within the CITY's geographical boundaries within ~~eighteen months (18)~~ twenty four months (24) from the date EMPLOYEE is hired.

2. Except to the extent herein amended, all of the terms and conditions contained within the Employment Agreement dated August 25, 2014 between the CITY and EMPLOYEE are hereby ratified and confirmed and remain in full force and effect unless expressly modified by this Amendment.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

ATTEST:

CITY OF NORTH PORT, FLORIDA

By: Helen Raimbeau
Helen Raimbeau, MMC, City Clerk,

By: Jacqueline Moore
Jacqueline Moore, Mayor

APPROVED AS TO FORM AND CORRECTNESS:

By: Maggie Mooney-Portale
Maggie Mooney-Portale, Esquire

WITNESS:

EMPLOYEE:

By: Helen Raimbeau

By: Mark Moriarty
Mark Moriarty