

**AMENDED AND RESTATED  
EMPLOYMENT AGREEMENT**

THIS AMENDED AND RESTATED AGREEMENT made and entered into this \_\_\_ day of \_\_\_\_\_, 2019, by and between the CITY OF COCONUT CREEK, a Florida municipal corporation, hereinafter called the CITY, and TERRILL C. PYBURN, hereinafter called CITY ATTORNEY, both of whom agree as follows:

WITNESSETH:

WHEREAS. The CITY first employed TERRILL C. PYBURN as CITY ATTORNEY via an Employment Agreement dated June 12, 2014 (hereinafter referred to as "Original Agreement") with a commencement date of July 7, 2014; and

WHEREAS, the CITY desires to continue to employ the services of TERRILL C. PYBURN as CITY ATTORNEY of the City of Coconut Creek pursuant to Article IX of the City of Coconut Creek Charter entitled "General Provisions" and desires for July 7<sup>th</sup> to remain as CITY ATTORNEY'S employment anniversary date (hereinafter referred to as "Anniversary Date"); and

WHEREAS, it is the desire of all parties to this Agreement that this Agreement will supersede and replace the Original Agreement as referenced above; and

WHEREAS, it is the desire of the CITY to update certain conditions of employment and to set working conditions for the CITY ATTORNEY; and

WHEREAS, it is the desire of the CITY to (1) secure and retain the services of CITY ATTORNEY and to provide inducement for her to remain in such employment; (2) to make possible full work productivity by assuring the CITY ATTORNEY's morale and peace of mind with respect to future security; (3) to act as a deterrent against malfeasance or dishonesty for personal gain on the part of the CITY ATTORNEY; and, (4) to provide a just means of terminating the CITY ATTORNEY's services at such time as she may be unable fully to discharge her duties for any reason or when the CITY may otherwise desire to terminate her employment; and

WHEREAS, the CITY ATTORNEY desires to continue her employment as City Attorney of the CITY.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1.0 DUTIES:

The CITY hereby agrees to employ TERRILL C. PYBURN as CITY ATTORNEY to perform the functions and duties specified in Article IX of the City Charter and by the City of Coconut Creek Code of Ordinances, entitled "General Provisions" and to perform other

legally permissible and proper duties and functions as the CITY shall from time to time assign.

## 2.0 TERM:

2.1 This Agreement shall commence upon the date that it is executed by the last party to sign the Agreement (hereinafter referred to as "Commencement Date") and shall continue as provided for in this Agreement for seven (7) years until the Anniversary Date on July 6, 2026 (hereinafter referred to as "Expiration Date") and subject to the terms, conditions, and provisions hereof.

2.2 Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the CITY to terminate the services of the CITY ATTORNEY, subject to the provisions set forth in Section 10.0 of this Agreement.

2.3 Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of CITY ATTORNEY to resign at any time from her position with the CITY, subject only to the provisions set forth in Section 10.0 of this Agreement.

2.4 This Agreement shall be extended for additional two (2) year periods on the same terms and conditions as created herein, unless the City Commission, by means of a formal vote, expresses its intent not to extend this Agreement at least one hundred eighty (180) days prior to the Expiration Date of that period.

2.5 As much as practical, CITY ATTORNEY shall observe regular business hours in City Hall. However, it is recognized that CITY ATTORNEY must devote a great deal of time outside the normal office hours of business of the CITY and, to that end, CITY ATTORNEY will be allowed to determine her own office hours and to take time off within reason as she shall deem appropriate.

## 3.0 PERFORMANCE EVALUATION:

3.1 The CITY shall review and evaluate the performance of the CITY ATTORNEY initially after twelve (12) months from the beginning date of this Agreement and thereafter at least once annually in advance of the annual anniversary date of this Agreement. Said review and evaluation shall be in accordance with specific criteria developed jointly by the City Commission and the CITY ATTORNEY. Said criteria may be added to or deleted from as the City Commission may from time to time determine, in consultation with the CITY ATTORNEY. Further, the City Commission, during a public meeting, shall provide the CITY ATTORNEY with a summary written statement of the findings of the City Commission and provide adequate opportunity for the CITY ATTORNEY to discuss her evaluation with the City Commission, during such public meeting.

3.2 On the CITY ATTORNEY'S Anniversary Date, if the CITY ATTORNEY receives an above average evaluation, the CITY agrees to provide an increase between

three and five percent (3 -5%) of the then current salary as determined by the City Commission. If such increase will exceed the maximum annual compensation limit applicable to retirement plans as provided in Internal Revenue Code Section 401(a)(17) ("IRS Maximum") for that year, then any increase above the IRS Maximum for pay for performance for that year shall be paid as a lump sum bonus. Up to a five percent (5%) lump sum bonus payment of the then current salary may also be provided.

#### 4.0 SALARY:

4.1 The CITY agrees to pay the CITY ATTORNEY for her services rendered pursuant hereto an annual base salary of two hundred thirty-five thousand six hundred one and 60/100 dollars (\$235,601.60) payable in installments at the same time as other employees of the CITY are paid.

4.2 During the term of this Agreement, compensation of CITY ATTORNEY shall be increased by any CPI adjustments given to Administrative Officers of the CITY. Adjustments to annual base salary for CPI shall not be limited by the IRS Maximum.

#### 5.0 PENSION:

5.1 CITY ATTORNEY shall receive a CITY paid contribution to the City's ICMA 457 deferred compensation plan in the amount of the maximum allowable contribution as established annually by the IRS. This benefit shall accrue in full on January 1<sup>st</sup> of each year, but shall be payable bi-weekly.

5.2 CITY ATTORNEY shall participate in the Florida Retirement System and CITY and CITY ATTORNEY shall contribute amounts established by the State of Florida for Senior Managers with CITY to reimburse CITY ATTORNEY bi-weekly for the amount of City Attorney's employee contribution.

5.3 CITY ATTORNEY shall be entitled, upon retirement, to continue to participate in the CITY'S then current group health and dental insurance plans with premiums being paid by CITY until such time as CITY ATTORNEY becomes eligible for Medicare.

#### 6.0 BENEFITS:

6.1 The CITY shall provide CITY ATTORNEY all the benefits provided by the CITY to Administrative Officers.

6.2 Public Official's Liability Insurance – The CITY shall provide Public Official's Liability Insurance coverage applicable for all acts or omissions of the CITY ATTORNEY arising out of her employment, subject to and as provided for in the annual budget and as may be otherwise provided to City Commission members, Department Heads, and based solely upon existing policies of insurance currently held by the CITY.

6.3 Bonding - CITY shall bear the full cost of any fidelity or other bonds required of the CITY ATTORNEY under any statute, ordinance, or other law, as may be amended from time to time.

6.4 Health and Dental Insurance - CITY shall pay for group health insurance for CITY ATTORNEY and her dependents. If CITY ATTORNEY enrolls in the HDHP group health insurance plan, CITY shall provide for a contribution to her health savings account equal to the maximum allowed by law. CITY shall pay for dental insurance coverage for CITY ATTORNEY and her dependents.

6.5 Should the CITY ATTORNEY voluntarily resign or be terminated, the CITY shall pay CITY ATTORNEY all unused sick and vacation hours at one hundred percent (100%) of the value, and any other accrued benefits earned.

#### 7.0 ALLOWANCES, VACATION AND SICK LEAVE:

7.1 The CITY agrees to pay a car allowance of six hundred (\$600.00) dollars per month to CITY ATTORNEY.

7.2 The CITY ATTORNEY shall accrue and be entitled to annual leave, sick leave and holidays in the same manner as Administrative Officers.

7.3 In addition to vacation benefits applicable to Administrative Officers, CITY ATTORNEY will be credited with two weeks' vacation leave at the start of employment.

#### 8.0 GENERAL EXPENSES:

8.1 The CITY recognizes that certain expenses of a non-personal and generally job-affiliated nature are incurred by the CITY ATTORNEY, and hereby agrees to reimburse or to pay said general expenses, and the Director of Finance and Administrative Services is hereby authorized to disburse such monies upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits, subject to and as provided for in the annual budget.

#### 9.0 PROFESSIONAL DEVELOPMENT:

9.1 The CITY agrees to budget and pay the travel and subsistence expenses of the CITY ATTORNEY for professional and official travel, meetings, and occasions adequate to continue the professional development of the CITY ATTORNEY.

9.2 The CITY agrees to budget and pay for the professional dues, continuing education, and subscriptions of the CITY ATTORNEY necessary for her continuation and full participation in national, regional, state and local associations and organizations necessary and desirable for her continued professional participation, growth and development, and for the good of the CITY, including, but not limited to, those dues as may be required to remain in good standing with the Florida Bar.

## 10.0 TERMINATION AND SEVERANCE:

10.1 In the event CITY ATTORNEY is terminated for reasons other than just cause by the CITY during such time that CITY ATTORNEY is ready, willing and able to perform her duties under this agreement, prior to July 6, 2026 or during any two-year extension, then in that event, the CITY agrees to pay CITY ATTORNEY severance in the amount of 20 weeks of salary and benefits.

10.2 In the event CITY ATTORNEY is terminated for just cause, then the CITY shall have no obligation to pay the aggregate severance sum designated in Section 10.1 of this Agreement. For the purposes of this Agreement, "just cause" is defined and limited to any of the following:

- a. Misfeasance, malfeasance and/or nonfeasance in performance of the CITY ATTORNEY'S duties and responsibilities.
- b. Conviction or a plea of guilty or no contest to a felony crime, whether or not adjudication is withheld.
- c. Neglect of duty, including the inability or unwillingness to properly discharge the responsibilities of office.
- d. The commission of any fraudulent act against the interest of the CITY.
- e. Conduct unbecoming of a public official, including, but not limited to a violation of Section 112.313, Fla. Stat.

10.3 In the event CITY ATTORNEY voluntarily resigns her position with the CITY before expiration of the aforesaid term of employment, then CITY ATTORNEY shall give the CITY thirty (30) days written notice unless the parties agree otherwise.

10.4 In the event at any time during the employment term:

- a. The CITY reduces the salary or other benefits of CITY ATTORNEY in a greater percentage than an applicable across-the-board reduction for all CITY employees; or
- b. The CITY refuses to comply with any other contract provisions benefiting CITY ATTORNEY following written notice; or
- c. The CITY ATTORNEY elects to resign following a public suggestion by two (2) or more members of the City Commission at a public meeting, whether formal or informal, that she resign;

Then and in that event, CITY ATTORNEY may, at her option, be deemed to be "terminated" within the meaning and context of this Section 10.0 of this Agreement effective at the date of such reduction or such refusal to comply or resignation of CITY ATTORNEY. For the resignation provision at the suggestion of City Commission to apply

pursuant to this Section, CITY ATTORNEY must provide written notice to the City Commission of her intent to resign within fourteen (14) calendar days of the public meeting where the suggestion to resign was made and therein state with particularity a date certain upon which the CITY ATTORNEY shall vacate her position.

#### 11.0 INDEMNIFICATION:

11.1 To the extent permitted by law, the CITY shall defend, save harmless and indemnify the CITY ATTORNEY against any tort, professional liability claim or demand or other legal action arising out of an alleged act or omission occurring in the performance of her duties as the CITY ATTORNEY. CITY will pay the amount of any settlement or judgment rendered as a result of any claim or suit. This indemnification provision shall survive the termination of this Agreement.

#### 12.0 OTHER TERMS AND CONDITIONS OF EMPLOYMENT:

12.1 The City Commission, in consultation with the CITY ATTORNEY, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the CITY ATTORNEY, provided such terms and conditions are not inconsistent with, or in conflict with, the provisions of this Agreement, the City's Charter, or any other law.

12.2 All provisions of the City Charter, Code of Ordinances, and regulations and rules of the CITY relating to salary, cost of living adjustments, longevity, vacation and sick leave, holidays and other fringe benefits and working conditions as they now exist or hereafter may be amended, shall apply to the CITY ATTORNEY as they would to other Administrative Officers of the CITY, in addition to the benefits enumerated specifically for the benefit of the CITY ATTORNEY except as herein provided.

#### 13.0 REDUCTION OF BENEFITS:

13.1 Except to the degree of a reduction across-the-board in salary for all the employees of the CITY, the CITY shall not at any time during the term of this Agreement reduce the salary, compensation or other financial benefits of the CITY ATTORNEY.

#### 14.0 MISCELLANEOUS:

14.1 Final Agreement: It is understood and agreed that this document supersedes and replaces all prior agreements and represents all negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and that the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

14.2 Modification of Agreement: It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and with equal dignity herewith.

14.3 Counterparts. This document shall be executed in at least three (3) counterparts each of which shall be deemed to be a duplicate original.

14.4 Consulting. This Agreement shall not preclude CITY ATTORNEY from performing consulting work outside of the City of Coconut Creek so long as such work does not interfere with her duties set forth in Section 1.0 of this Agreement.

14.5 Notice. Notice pursuant to this Agreement served upon the CITY may be given by mail, by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follow:

CITY: City Commission  
City of Coconut Creek  
4800 West Copans Road  
Coconut Creek, FL 33063

Copy to: CITY MANAGER  
City Manager's Office  
City of Coconut Creek  
4800 West Copans Road  
Coconut Creek, FL 33063

Notice pursuant to this Agreement served upon the CITY ATTORNEY may be given by mail, by deposit in the custody of the United States Postal Service, postage prepaid, addressed as follows:

CITY ATTORNEY: Terrill C. Pyburn  
Office of the City Attorney  
4800 West Copans Road  
Coconut Creek, FL 33063

as well as

Terrill C. Pyburn  
At her personal residence on file with the Department  
of Human Resources and Risk Management

14.6 Florida Law. This Agreement is executed and is to be performed in the State of Florida and shall be governed by and construed with the laws of the State of Florida. Venue for any legal action shall be set exclusively in Broward County, Florida.

14.7 Litigation. In connection with any litigation arising out of this Agreement, including any administrative, trial level, or appellate proceeding, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorney's fees.

14.8 This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of CITY ATTORNEY.

14.9 Severability. If any provision, or any portion thereof, contained in this Employment Agreement is held unconstitutional, invalid, or unenforceable, that portion shall be deemed severable and the remainder of this Agreement shall not be affected and shall remain in full force and effect.

14.10 This Agreement has been negotiated and drafted by both parties hereto and shall not be more strictly construed against any party because of such parties' preparation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have made and executed this Employment Agreement on the respective dates under each signature.

CITY ATTORNEY

CITY OF COCONUT CREEK

\_\_\_\_\_  
TERRILL C. PYBURN

\_\_\_\_\_  
SANDRA L. WELCH, MAYOR

ATTEST:

APPROVED AS TO LEGAL SUFFICIENCY  
AND FORM:

\_\_\_\_\_  
LESLIE MAY, CITY CLERK

\_\_\_\_\_  
KATHY MEHAFFEY, DEPUTY CITY  
ATTORNEY