

RESOLUTION NO. 2014- 37

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE THE EMPLOYMENT AGREEMENT BETWEEN THE CITY OF COCONUT CREEK AND TERRILL PYBURN AS CITY ATTORNEY; PROVIDING AN EFFECTIVE DATE

WHEREAS, the City desires to employ the services of Terrill Pyburn as City Attorney as provided in Section 904 of Article IX of the City Charter commencing July 7, 2014; and

WHEREAS, it is the desire of the City Commission to provide certain benefits, establish certain conditions of employment, and to set working conditions for the employment of Terrill Pyburn as City Attorney; and

WHEREAS, Terrill Pyburn desires to accept employment as City Attorney for the City of Coconut Creek;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF COCONUT CREEK, FLORIDA:


Section 1: That the Mayor is hereby authorized to execute the Employment Agreement by and between the City of Coconut Creek and Terrill Pyburn, attached hereto and made a part hereof, for employment as City Attorney pursuant to Section 904 of Article IX of the City Charter.

Section 2: That all of the terms and conditions of the employment of Terrill Pyburn as City Attorney are set forth in the attached Employment Agreement.

Section 3: That this Resolution shall take effect July 7, 2014.

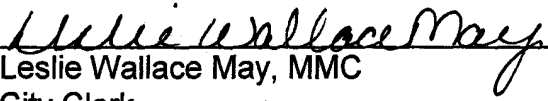
Adopted this 12th day of June, 2014, on a motion by Commissioner Sarbone and seconded by Commissioner Welch.

| | |
|----------------------|----------|
| Ayes | <u>4</u> |
| Nays | <u>0</u> |
| Absent or Abstaining | <u>1</u> |



Lisa K. Aronson, Mayor

Attest:



Leslie Wallace May, MMC
City Clerk

| | |
|-----------|---------------|
| Aronson | <u>Aye</u> |
| Tooley | <u>Absent</u> |
| Sarbone | <u>Aye</u> |
| Belvedere | <u>Aye</u> |
| Welch | <u>Aye</u> |

EMPLOYMENT AGREEMENT

THIS AGREEMENT made and entered into this 12th day of June, 2014, 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 desires 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; and

WHEREAS, it is the desire of the CITY to establish 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 accept 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 the 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, 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 The commencement date of employment of the CITY ATTORNEY shall be July 7, 2014 ("Commencement Date") and shall continue as provided for in this Agreement until July 6, 2016 ("Expiration Date") and be 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 the 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, the CITY ATTORNEY shall observe regular business hours in City Hall. However, it is recognized that the CITY ATTORNEY 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 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 or deleted 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 If the CITY ATTORNEY receives an above average evaluation, the CITY agrees to provide an increase on the anniversary of this Agreement between 3 and 5 percent of the then current salary as determined by City Commission. An unsatisfactory evaluation shall result in no annual increase.

4.0 SALARY:

4.1 The CITY agrees to pay the CITY ATTORNEY for her services rendered pursuant hereto an annual base salary of one hundred sixty two thousand five hundred dollars (\$162,500) 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 the CITY ATTORNEY shall be increased by any CPI adjustments given to Administrative Officers of the CITY.

5.0 PENSION:

5.1 The CITY ATTORNEY shall receive a CITY paid contribution, payable bi-weekly, to the City's ICMA 457 deferred compensation plan in the amount of the maximum allowable contribution as established annually by the IRS.

5.2 The CITY ATTORNEY shall participate in the Florida Retirement System and CITY and CITY ATTORNEY shall each contribute amounts established by the State of Florida for Senior Managers.

6.0 BENEFITS:

6.1 The CITY shall provide the 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 – The 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.

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, the 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 Finance Director 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 City Attorney Department's 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 the CITY ATTORNEY is terminated for reasons other than just cause by the CITY during such time that the CITY ATTORNEY is ready, willing and able to perform her duties under this agreement prior to July 6, 2016 or during any two year extension, then in that event, the CITY agrees to pay the CITY ATTORNEY severance in the amount of 20 weeks of salary and benefits.

10.2 In the event the CITY ATTORNEY is terminated for just cause, including misconduct as defined in Section 443.036 (30) Fla. Stat., or because of conduct unbecoming a public official, including but not limited to a violation of Section 112.313 Fla. Stat., any criminal or unethical conduct, misfeasance, malfeasance, nonfeasance or dereliction of duty, including conduct involving fraud, theft, or any crime related to her employment, then the CITY shall have no obligation to pay the aggregate severance sum designated in Section 10.1.

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

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. The 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 Charter, or any other law.

12.2 All provisions of the City Charter and Code, 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 an across-the-board reduction 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 incorporates and includes all prior 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 the 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. The number of hours will be limited to 10 per month unless approved by the City Commission.

14.5 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 in Broward County, Florida.

14.6 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.

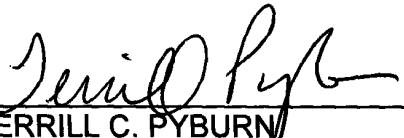
14.7 This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the CITY ATTORNEY.

14.8 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.

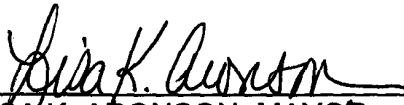
IN WITNESS WHEREOF, the parties hereto have made and executed this Employment Agreement on the respective dates under each signature.

CITY ATTORNEY

CITY OF COCONUT CREEK



TERRILL C. PYBURN

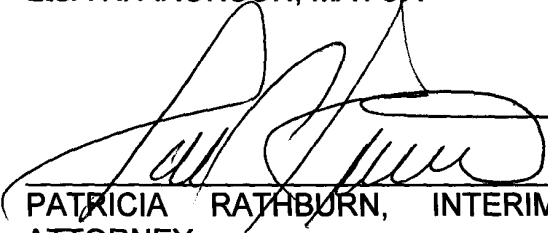


LISA K. ARONSON, MAYOR

ATTEST:



LESLIE MAY, CITY CLERK



PATRICIA RATHBURN, INTERIM CITY ATTORNEY