

RESOLUTION 12-R43

A RESOLUTION NAMING MILTON R. COLLINS AS ASSISTANT CITY ATTORNEY;
PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ST.
LUCIE, FLORIDA:

Section 1. That the City Council of the City of Port St. Lucie, Florida, hereby appoints Milton R. Collins as Assistant City Attorney to serve at the pleasure of the City Council. Said appointment is subject to an employment agreement substantially in the form attached hereto as may be authorized and approved by the City Manager.

Section 2. This Resolution shall become effective immediately upon its adoption.

PASSED AND APPROVED by the City Council of the City of Port St. Lucie, Florida, this 23rd day of April, 2012.

CITY COUNCIL
CITY OF PORT ST. LUCIE

BY: _____
JoAnn M. Faiella, Mayor

ATTEST:

Karen A. Phillips, City Clerk

APPROVED AS TO FORM:

Roger G. Orr, City Attorney

MEMORANDUM

TO: GREGORY J. ORAVEC, CITY MANAGER

FROM: ROGER G. ORR, CITY ATTORNEY

DATE: APRIL 17, 2012

SUBJECT: ASSISTANT CITY ATTORNEYS

Attached you will find three resolutions I have prepared for Council consideration. These resolutions appoint Milton R. Collins, Azlina Goldstein Siegel and Stefanie Beskovoyne as Assistant City Attorneys. Section 9.04 of the City Charter provides that the City Council shall appoint a City Attorney and such Assistant City Attorney as it deems necessary who shall serve at the pleasure of the City Council. The resolution also recognizes there shall be an employment agreement substantially in the attached form as may be authorized and approved by the City Manager.

RGO/dmf
Attach.

Resolutions (3)
Approved
RGO 4/18/12

EMPLOYMENT AGREEMENT

THIS AGREEMENT effective the ____ day of _____, _____, by and between the CITY OF PORT ST. LUCIE, hereinafter referred to as CITY, acting through GREGORY J. ORAVEC, CITY MANAGER, hereinafter referred to as CM, and Milton R. Collins, hereinafter referred to as EMPLOYEE, governs the terms and conditions of EMPLOYEE'S employment.

WHEREAS, the CITY COUNCIL has the authority under Section 9.04 of the City Charter to appoint an Assistant City Attorney; and

WHEREAS, CITY desires to retain the services of an Assistant City Attorney; and

WHEREAS, CITY agrees to employ EMPLOYEE and EMPLOYEE agrees to accept employment with CITY in the position of Assistant City Attorney; and

WHEREAS, it is the desire of the CITY to establish terms and conditions of employment, and to codify working conditions of EMPLOYEE; and

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

I. DUTIES. A job description for the position delineating specific job duties is attached hereto as Exhibit A and incorporated herein by this reference.

II. DURATION OF AGREEMENT.

A. EMPLOYEE shall, pursuant to Section 9.04 of the City

Charter, serve at the pleasure of the CITY COUNCIL and shall be an at-will contractual employee of the CITY. EMPLOYEE waives any rights to a pre- or post-disciplinary hearing in the event of termination.

B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the CITY COUNCIL to terminate the employment of EMPLOYEE at any time, subject only to the provisions set forth in Section XI.

C. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the CITY COUNCIL to cancel this Agreement, subject only to the provisions set forth in Section III (B) or (C).

D. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of EMPLOYEE to resign at any time, subject only to the provisions set forth in Section III (A).

E. The duration of this Agreement shall be for a period of two (2) years, commencing the _____ day of _____ 20__, until the ____ day of _____, 20__.

F. 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. Said Agreement shall continue thereafter for 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 current period of the Agreement. In the event either party provides written notice 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. Notice of non-renewal by CITY hereunder shall be given by CM at the direction of CITY COUNCIL.

III. CANCELLATION OF AGREEMENT.

The parties agree that this Agreement may be canceled in one of the following ways:

A. EMPLOYEE may cancel this Agreement by providing at least 60-days notice to the CITY COUNCIL via a written submission to the City Attorney (hereinafter CA) of EMPLOYEE'S voluntary resignation, unless the parties agree otherwise. A timely notice constitutes a "good standing" separation. EMPLOYEE acknowledges and understands that, in the event of voluntary resignation, EMPLOYEE is not entitled to any severance pay.

B. CITY COUNCIL 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 occur. EMPLOYEE is not entitled to severance in the event of cancellation due to abandonment.

C. IF EMPLOYEE is convicted of a misdemeanor involving moral turpitude or a felony violation of Florida or federal

criminal law, such charges arising from events and prosecution occurring during the term of this Agreement, CITY COUNCIL shall have the option of canceling this Agreement without being obligated to pay any severance pay:

IV. TERMINATION OF EMPLOYMENT. By majority vote of all members, the CITY COUNCIL may, with or without cause, terminate the employment of the EMPLOYEE at any time. If the EMPLOYEE is terminated before the expiration of the Agreement and in the event the EMPLOYEE was continuously employed for a minimum of six (6) months in the position, EMPLOYEE shall be entitled to severance pay as set forth in Section XI. EMPLOYEE shall also be compensated for all eligible accrued benefits to date, based on the limitations and conditions detailed herein.

V. PERFORMANCE CRITERIA AND EVALUATIONS.

A. At least annually, the CA shall meet with EMPLOYEE to establish performance standards, departmental goals and criteria for a performance evaluation. Shortly before each annual anniversary date of this Agreement, CA (or his designee) shall, in accordance with criteria previously established, review and evaluate the performance of EMPLOYEE.

B. CA (or his designee) shall provide EMPLOYEE with a written performance evaluation and provide an opportunity for EMPLOYEE to discuss the contents thereof with CA (or his designee) for the purpose of advancing the overall effectiveness of EMPLOYEE in his position. The performance evaluation will thereafter be

furnished to the CITY COUNCIL.

VI. HEALTH, DISABILITY, AND LIFE INSURANCE.

A. CITY agrees to provide disability, accidental death and dismemberment, and life insurance for EMPLOYEE and to pay the premiums thereon equal to that which is provided to all other CITY employees.

B. The CITY agrees to provide comprehensive health and hospitalization insurance coverage, which includes medical, dental, and vision insurance for EMPLOYEE and EMPLOYEE'S dependents (if eligible), provided EMPLOYEE pays the required contribution(s). Contributions, co-payments, and other fees shall reflect the rate(s) applicable to CITY employees.

VII. SECONDARY EMPLOYMENT. EMPLOYEE agrees not to accept any other full-time employment. However, the CITY agrees that EMPLOYEE shall be allowed to accept part-time employment and to accept normal compensation for such endeavors, provided such part-time employment shall be scheduled so as to not interfere with the normal operations of the CITY and shall require the prior written approval of CA.

VIII. SICK, ANNUAL, COMPENSATORY, PERSONAL, BEREAVEMENT AND MILITARY LEAVES, AND OTHER AUTHORIZED ABSENCES.

SICK TIME. EMPLOYEE shall be granted ninety-six (96) hours sick time upon EMPLOYEE'S hire date and an additional ninety-six (96) hours sick time each year upon subsequent anniversary dates. Said sick time may only be used in accordance with the provisions

outlined in the City's Personnel Rules and Regulations. In the event EMPLOYEE separates from service pursuant to Section III (B), (C) or Section IV, EMPLOYEE shall not be compensated for unused sick time. However, the aforementioned prohibition of unused sick time compensation does not include being separated as part of a "Reduction in Force" (RIF).

If EMPLOYEE leaves City employment pursuant to Section III (A), as part of a RIF, or upon expiration of the Agreement, said separation shall constitute good standing and compensation for unused sick time will be granted in accordance with the following:

Years Employed	Payment Percentage
5 - 9	50%
10 - 14	60%
15 - 19	75%
20 +	100%

Payments are limited to a maximum of one thousand forty (1,040) hours.

ANNUAL LEAVE. EMPLOYEE shall accrue annual leave on a bi-weekly basis as of their date of hire as follows:

Years Employed	Days Accrued Per Year
0-3	10
4-9	15
10-19	20
20 +	25

Annual leave may only be accrued to a maximum of two-hundred forty (240) regular hours. If EMPLOYEE leaves CITY employment after more than six (6) months of continuous employment, he shall receive payment for any accrued annual leave as of the date of separation.

COMPENSATORY TIME: EMPLOYEE shall be granted Forty (40) hours of compensatory time upon employment and upon each anniversary date. Said compensatory time may be used in addition to other approved leaves. No more than (40) hours per year may be utilized within any twelve-month period, namely the period commencing on _____ and ending on _____. Upon separation from employment with CITY for any reason, including but not limited to retirement, termination or cancellation of the Agreement, EMPLOYEE is not entitled to and will not receive payment for any unused compensatory time balance.

PERSONAL DAYS: EMPLOYEE shall be granted three (3) paid personal leave days upon employment and upon each anniversary date. Paid personal leave days may not be accrued from year-to-year. Personal days are not compensated upon separation from City employment.

BEREAVEMENT, MILITARY AND OTHER AUTHORIZED LEAVES/ABSENCES may be granted, pursuant to the City's Personnel Rules and Regulations, and in accordance with applicable law.

HIRE DATE/ANNIVERSARY DATE. Employee's original hire date, January 11, 2007, shall be deemed the "Hire Date" or "Anniversary Date" as those terms are used herein.

IX. RETIREMENT. The CITY agrees to pay an amount equal to ten and one-half (10.5%) percent of EMPLOYEE'S base pay into the ICMA Retirement Corporation 401(A) or 457 Account. Said contributions to coincide with EMPLOYEE'S bi-weekly salary payments

as provided to all other managerial CITY employees.

X. SALARY/ALLOWANCES/COMPENSATORY LEAVE.

A. Starting salary shall be Eighty Nine Thousand Four Hundred Fifty Six Dollars and Sixty Four Cents (\$89,456.64) per annum, payable in bi-weekly installments. EMPLOYEE shall be eligible for, and/or subjected to, any budgeted salary adjustments, based upon annual performance reviews or for other legitimate reasons.

B. EMPLOYEE acknowledges that, pursuant to the Fair Labor Standards Act (FLSA), EMPLOYEE qualifies for the **PROFESSIONAL** employee exemption. As an exempt employee, EMPLOYEE is paid a weekly salary, not subject to minimum wage or overtime provisions of the FLSA. As such, EMPLOYEE shall do all things necessary and required to be available to the CITY during the term of this Agreement.

C. AUTOMOBILE EXPENSES. EMPLOYEE will receive mileage reimbursement for use of EMPLOYEE's personal vehicle for local and out-of-area business travel at the CITY rate, which shall annually coincide with the Internal Revenue Service's standard mileage rate.

D. COMMUNICATION EXPENSES. CITY hereby agrees to provide EMPLOYEE a cellular telephone or similar device for use in the normal conduct of business, in accordance with City policy [OR] CITY hereby agrees to provide EMPLOYEE fifty (\$50) dollars per month, subject to all applicable payroll taxes, for the maintenance of a cellular telephone or similar device for use in the normal

conduct of business, in accordance with City policy.

XI. SEVERANCE PAY. CITY shall grant EMPLOYEE three (3) months' severance pay (equal to thirteen [13] regular weeks' pay) upon termination pursuant to Section IV. After Two years in the position of Assistant City Attorney, CITY shall grant EMPLOYEE five (5) months' severance pay upon termination pursuant to Section IV.

XII. GENERAL EXPENSES. 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 said general expenses, subject to prior approval of the CM and in accordance with City policy. 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.

XIII. CIVIC CLUB MEMBERSHIPS. CITY recognizes the desirability of representation in and before local civic and other organizations. EMPLOYEE shall present to CM for his review and approval a listing of civic organizations for which, if approved, the CITY shall pay all expenses on EMPLOYEE'S behalf.

XIV. EMPLOYEE HANDBOOK. Terms and conditions of EMPLOYEE'S employment not specifically set forth in this Agreement shall be governed by the City's Personnel Rules and Regulations for 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.

XV. POST EMPLOYMENT RESTRICTIONS. EMPLOYEE shall not

personally represent another person or entity for compensation before the CITY COUNCIL or any CITY board or commission for a period of TWO (2) years following EMPLOYEE'S separation of employment. However, this post employment restriction shall not apply to EMPLOYEE'S representation of a group for collective bargaining purposes or any not-for-profit entity serving the needs to the community as may be determined by the CITY COUNCIL.

This section shall survive the termination of employee or cancellation of this AGREEMENT.

XVI. DIRECTION AND SUPERVISION. The authority to direct and supervise EMPLOYEE has been delegated to CA, except as otherwise provided by the CITY Charter or by law.

XVII. MODIFICATIONS. No change or modification of this Agreement shall be valid unless it is reduced to writing and signed by both parties.

XVIII. GOVERNING LAW. This Agreement shall be construed and governed by the laws of the State of Florida, and venue for any proceedings brought hereon shall be in St. Lucie County, Florida.

XIX. 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.

IN WITNESS WHEREOF, the parties hereunto have set their hands
to this instrument this _____ day of _____ 20__.

Milton R. Collins, EMPLOYEE

Gregory J. Oravec, City Manager

APPROVED AS TO FORM:

Roger G. Orr, City Attorney