

Sponsored by: City Council

**CITY OF MARATHON, FLORIDA
RESOLUTION 2015-78**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN EMPLOYMENT AGREEMENT BETWEEN DAVID MIGUT AND THE CITY OF MARATHON, FLORIDA FOR CITY ATTORNEY SERVICES; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the Charter of the City of Marathon, Florida (the "City") establishes a Council-Manager form of government pursuant to which the City Attorney serves as chief legal advisor to the city council, the charter officers, and all city departments, offices, and agencies; and

WHEREAS, the City desires to employ the services of David Migut as City Attorney.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THAT:

Section 1. The above recitals are true and correct and incorporated herein.

Section 2. The Employment Agreement between David Migut and the City of Marathon, Florida, attached hereto as Exhibit "A" (the "Agreement"), is approved. The Mayor is authorized to execute the Agreement on behalf of the City.

Section 3. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED by the City Council of the City of Marathon, Florida, this 28th day of July, 2015.

THE CITY OF MARATHON, FLORIDA



Mayor Chris Bull

AYES: Keating, Kelly, Senmartin, Zieg, Bull
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Diane Clavier, City Clerk

(City Seal)

**APPROVED AS TO FORM AND LEGALITY FOR THE USE AND RELIANCE OF THE
CITY OF MARATHON, FLORIDA ONLY:**



Dirk Smits, City Attorney

EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is made and entered into this 28th day of July 2015, by and between the City of Marathon, Florida, a Florida municipal corporation (the "City") and David Michael Migut ("City Attorney").

WITNESSETH:

WHEREAS, Section 7(4) of the City Charter provides that the City Attorney shall be the chief legal officer of the City and shall be a member of the Florida Bar in good standing; and

WHEREAS, the City Council is familiar with the qualifications of the City Attorney and that he has practiced law in the State of Florida since 2001, remains a member in good standing of the Florida Bar, and has been board certified as an Expert in City, County & Local Government Law by the Florida Bar since 2007; and

WHEREAS, it is the desire of the City to secure and retain the services of the City Attorney; and

WHEREAS, the City Attorney desires to be employed as the City Attorney for the City.

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

SECTION 1. DUTIES

The City Attorney shall perform the functions and duties specified in the City Charter and the City's Code of Ordinances, and shall also perform such other legally permissible and proper duties and functions as the City Council shall from time to time assign.

The City Attorney shall be responsible for all management, administration, supervision, and oversight of the City Attorney's Office.

The City Attorney shall manage the costs of specialized/outside counsel and liaison with specialized/outside legal counsel on all matters assigned thereto.

SECTION 2. TERM

This Agreement shall be for a term of three years and renewable by further agreement between the parties. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Council to terminate the services of the City Attorney at any time, subject only to the provisions set forth in the City Charter and Section 11 of this Agreement. Likewise, nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Attorney to resign at any time from the City Attorney position subject only to the provisions set forth in the City Charter and Section 11 of this Agreement.

SECTION 3. COMPENSATION

The City agrees to pay the City Attorney for his services rendered an annual base salary of \$143,500.00 payable in equal biweekly installments. In addition to any performance-based increases, as specified in Section 17 of this Agreement, beginning in calendar year 2016, any cost-of-living increases will be provided at the same time to the City Attorney consistent with those provided to other City employees generally.

SECTION 4. HEALTH, DISABILITY AND LIFE INSURANCE BENEFITS

The City shall provide the same health, dental and vision insurance options provided to other City employees to the City Attorney and his family. Coverage will begin on the Effective Date. Should the City not be able to provide health insurance coverage immediately due to policy constraints, it will compensate the City Attorney for the cost of any COBRA policies for his family until they can be added to City's policy up to \$3,000.00.

The City shall provide the City Attorney with coverage under its standard disability insurance policy.

The City shall provide term life insurance for the City Attorney in the same amount as all other City employees.

SECTION 5. DEFERRED COMPENSATION AND RETIREMENT

The City shall pay, on the City Attorney's behalf, the same percentage of City Attorney's base salary as is paid by the City on behalf of other City employees into the 401(a) Retirement Plan each pay period.

The City shall also provide City Attorney with a City-paid contribution, payable biweekly, to the City's 457 deferred compensation plan in an amount equal to ten percent (10%) of the City Attorney's base salary, provided that such contribution shall not exceed the maximum allowable contribution as established annually by the IRS.

SECTION 6. VACATION, ADMINISTRATIVE, AND SICK LEAVE

The City Attorney shall earn and be credited with Vacation Leave at a rate equal to the highest rate earned by any other employee of the City. The amount will be capped in accordance with the City's policy, currently 152 hours.

The City Attorney shall receive the same Sick Leave provided to other City employees.

Notwithstanding any limitations in the Employee Resource Guide, the City Attorney is entitled to accrue all vacation and sick leave in the same manner as all other City employees.

SECTION 7. AUTOMOBILE

The City Attorney shall be entitled to reimbursement for mileage at the IRS standard rate per mile for City related travel from City Hall and for tolls, parking and other direct expenses incurred during the performance of the City Attorney's services, understanding that the City Attorney shall use his personal automobile for City business. No automobile reimbursement will be provided for commuting or travel within the City. Mileage out of town will be reimbursed or the use of a City vehicle will be provided.

SECTION 8. PROFESSIONAL DEVELOPMENT

The City Attorney is required to continue professional legal training for the benefit of City. The City Attorney is required to earn the necessary continuing legal education (CLE) credit hours to maintain his licensure with the Florida Bar and his Board Certification status. The City agrees to budget for and pay for reasonable and customary travel and subsistence expenses of the City Attorney to attend courses and seminars that are necessary for his required CLE credits and professional development related to City issues.

SECTION 9. GENERAL BUSINESS EXPENSES

The City shall pay reasonable and necessary professional dues and subscriptions for the City Attorney to participate in national, regional, state, and local associations and organizations essential for the City Attorney's continued professional development. 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, the International Municipal Lawyers Association, and the American Bar Association.

The City acknowledges that the City Attorney has recently been elected to the Executive Council of the City, County & Local Government Section of the Florida Bar and approves of his involvement in such endeavor.

SECTION 10. EQUIPMENT AND OFFICE SPACE

The City shall provide the City Attorney with the use of desktop and laptop computers with appropriate software, a cellular telephone (PDA/smartphone) and such other equipment as may be necessary for the City Attorney to make himself available to perform his duties and to be able to maintain communication with the City Council, City staff, and City residents at all times, as approved in the City's annual budget.

The City shall provide the City Attorney with sufficient space, furniture, and equipment to staff the City Attorney's Office for both the City Attorney and one (1) administrative support staff, subject to approval in the City's annual budget.

SECTION 11. TERMINATION AND SEVERANCE PAY

The City Attorney serves at the pleasure of the City Council. The City may, at any time whatsoever, for any lawful reason whatsoever terminate the employment of the City Attorney by an affirmative vote of a majority of the entire City Council as prescribed by the City Charter. In such event, the City Council will give written notice of termination to the City Attorney of the decision of the City Council not less than thirty (30) days prior to the effective date of the termination of employment. The City Attorney will be entitled to a lump sum severance payment equal to twenty (20) weeks of base salary in compliance with Section 215.425(4)(a), Florida Statutes, to be paid on the effective date of the termination of employment at the City Attorney's rate of pay on the date of separation from employment.

The City shall not be required to pay severance payment set forth in the above paragraph in the event the City Council terminates the employment of the City Attorney because of an adjudication of guilt of any felony, revocation or expiration of membership in the Florida Bar, or because of a finding of misconduct as defined by Section 443.036(29), Florida Statutes. Severance pay is prohibited if the City Attorney is terminated for misconduct as defined by Section 443.036(29), Florida Statutes. The current statutory language reads:

(29) "Misconduct," irrespective of whether the misconduct occurs at the workplace or during working hours, includes, but is not limited to, the following, which may not be construed in pari materia with each other:

- (a) Conduct demonstrating conscious disregard of an employer's interests and found to be a deliberate violation or disregard of the reasonable standards of behavior which the employer expects of his or her employee. Such conduct may include, but is not limited to, willful damage to an employer's property that results in damage of more than \$50, or theft of employer property or property of a customer or invitee of the employer.
- (b) Carelessness or negligence to a degree or recurrence that manifests culpability or wrongful intent, or shows an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his or her employer.
- (c) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.
- (d) A willful and deliberate violation of a standard or regulation of this state by an employee of an employer licensed or certified by this state, which violation would cause the employer to be sanctioned or have its license or certification suspended by this state.
- (e)1. A violation of an employer's rule, unless the claimant can demonstrate that:
 - a. He or she did not know, and could not reasonably know, of the rule's requirements;
 - b. The rule is not lawful or not reasonably related to the job environment and performance; or
 - c. The rule is not fairly or consistently enforced.
- 2. Such conduct may include, but is not limited to, committing criminal assault or battery on another employee, or on a customer or invitee of the employer or committing abuse or neglect of a patient, resident, disabled person, elderly person, or child in her or his professional care.

The City shall not be required to pay severance pay if the City Attorney voluntarily and under free will resigns the position of City Attorney. If the City Attorney voluntarily resigns, then he shall give the City Council written notice no later than thirty (30) days prior to the effective date of the resignation of employment as City Attorney.

Should the City Attorney be permanently disabled or otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four (4) successive weeks beyond any accrued leave, the City shall have the right to terminate this Agreement subject to the severance provisions in this Section, provided that such termination is in full compliance with applicable State and Federal laws.

This Agreement may be terminated by mutual agreement, cause, death, or retirement.

Unless otherwise specified in this Agreement, should the City Attorney leave the employ of the City, the City Attorney, or his beneficiary, shall be entitled to receive payment of all accrued and unused vacation, administrative, and sick leave, calculated at the City Attorney's rate of pay in effect upon the date of termination.

SECTION 12. MOVING AND RELOCATION EXPENSES

In connection with the relocation of the City Attorney and his family to the local area, the City shall reimburse the City Attorney for necessary and reasonable expenses incurred in moving and relocating the City Attorney's family and belongings as well as initial compensation for a property management company for the rental of City Attorney's home in St. Johns, Florida [up to a maximum of \$7,500]. The City Attorney shall document all moving and relocation expenses with receipts, cancelled checks or credit card statements, and the City shall reimburse the City Attorney for all such documented expenses within thirty (30) days of the City's receipt of such documentations.

Should City Attorney decide to rent out his current residence in St. Johns, Florida, necessary and reasonable expenses shall include any one time fee the City Attorney pays to a property management company for the initial placement of a tenant, but shall not include any other fees paid to any property management company regarding such residence.

SECTION 13. 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.

SECTION 14. BOND

The City shall bear the full cost of any fidelity or other bonds required of the City Attorney under any law.

SECTION 15. NOTICES

All notices, requests, and other communications required or permitted to be given under this Agreement shall be in writing (including telefax or telecopy) and shall be sent by certified mail, postage prepaid, return receipt requested, or shall be hand delivered or delivered by a recognized national overnight courier service or shall be sent by electronic communication, whether by telefax or telecopy, addressed as follows:

If to City Attorney: City Attorney, City of Marathon
9805 Overseas Highway
Marathon, Florida 33050

If to City: Mayor, City of Marathon
9805 Overseas Highway
Marathon, Florida 33050
(With a copy to the City Clerk)

SECTION 16. HOURS OF WORK

The City Attorney acknowledges that the proper performance of the duties of the position will require the City Attorney to generally observe normal business hours and will also often require the performance of necessary services outside of normal business hours. The City Attorney agrees to devote such additional time as is necessary for the full and proper performance of the City Attorney's duties and that the compensation herein provided includes compensation for the performance of all such services. However, the City intends that reasonable time off be permitted the City Attorney, such as is customary for exempt employees, so long as the time off does not interfere with the normal conduct of the City Attorney's Office.

The City Attorney will devote full time and effort to the performance of the City Attorney's duties, and shall remain in the exclusive employ of the City during the Term of this Agreement, provided that, with the prior consent of the City, the City Attorney may accept temporary, outside professional employment which will not in any way interfere with the performance of, or the City Attorney's availability for the performance of his duties hereunder. The term "outside professional employment" means professional services provided to third parties for which the City Attorney is compensated and which are performed on the City Attorney's time off. The City encourages the City Attorney to accept invitations to speaking engagements or other opportunities to communicate with the community, subject to the rules regarding confidentiality and attorney client privilege to make use of and share data and information with relevant persons and groups, and encourages the City Attorney to participate in pertinent seminars, groups, associations, and organizations, as well as in informational meetings with those individuals whose particular skills, expertise, or backgrounds would serve to improve the capacity of the City Attorney to perform his duties.

The City Attorney shall be entitled to the same official paid holidays as all other employees.

SECTION 17. PERFORMANCE EVALUATION

The City Council shall annually review and evaluate the performance of the City Attorney. The review and evaluation may be in accordance with specific written criteria developed by the City Council, in conjunction with the City Attorney. Further, the individual Council Members shall provide the City Attorney with the written evaluations and provide the City Attorney 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 2016-2017. In effecting the provisions of this Section, the City and the City Attorney mutually agree to abide by the provisions of applicable law.

If the City Attorney receives an above average evaluation, the City agrees to provide an increase between 3 and 5 percent of the then current base salary of the City Attorney. The exact amount shall be determined by City Council and shall be effective on the first day of the pay period immediately following approval of the increase by City Council.

SECTION 18. NO REDUCTION IN BENEFITS

The City shall not at any time during this Employment Agreement take action to reduce the salary, compensation, or any other benefits of the City Attorney without the written consent of the City Attorney.

SECTION 19. EFFECTIVE/ANNIVERSARY DATES

This Agreement shall become effective on August 25, 2015. Accordingly, August 25th of each succeeding year shall be the Anniversary Date of the City Attorney's employment with the City.

SECTION 20. OPERATION OF THE CITY ATTORNEY'S OFFICE

The City Attorney shall have the responsibility for the management and operation of the City Attorney's Office, subject to Section 7(4)(b) of the City Charter and the limitations imposed by the annual operating budget of the City Attorney's Office. The City Attorney shall manage outside counsel and the selection of outside counsel is solely up to the City Council.

SECTION 21. ETHICAL COMMITMENTS

The City Attorney shall not endorse candidates, make financial contributions, sign or circulate petitions, or knowingly participate in fundraising activities for individuals seeking or holding elected office in the City, nor seek or accept any personal enrichment or profit derived from confidential information, or holding office, or misuse of public time. The City shall support the City Attorney in keeping these commitments by refraining from any order, direction, or request that would require the City Attorney to undertake any of the aforementioned activities. Specifically, neither the City Council nor any individual member thereof shall request the City Attorney to endorse any candidate, make any financial contribution, sign or circulate any petition, or participate in any fund-raising activity for individuals seeking or holding elected office, nor to handle any matter involving personnel on a basis other than fairness, impartiality, and merit. The City Attorney voluntarily agrees to this and shall not cause this provision to formulate any claim against the City whatsoever. The City Attorney acknowledges the above is in no way a restriction on his freedom of speech, and if so claimed is deemed immediately invalid.

SECTION 22. MISCELLANEOUS PROVISIONS

It is understood and agreed that this document incorporates all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein and that the parties agree that there are no commitments, agreement, 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.

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.

If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, illegal, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

The rights and obligations herein granted are personal in nature and cannot be transferred or assigned by the City Attorney

Florida law shall govern this Agreement and any litigation which may arise from this Agreement shall be filed and litigated in the Circuit Court in and for Monroe County, only after mediation to be held within thirty (30) days of notice of any claim or breach between the parties.

Both the City and the City Attorney knowingly, voluntarily, and irrevocably waive their right to a trial by jury in any civil proceeding that may be initiated by either party with respect to any term or condition of this Agreement.

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

If the City Attorney dies during the term of his employment, the City shall pay to the estate of the City Attorney the compensation which would otherwise be payable to the City Attorney up to the end of the month in which his death occurs.

This Agreement will be construed and interpreted according to its language and not strictly against either the City Attorney or the City, regardless of authorship.

This Agreement shall create no rights or claims whatsoever in any person other than a party hereto.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement the day and year first written above.

CITY OF MARATHON



David Michael Migut



Chris Bull, Mayor