

CITY OF MARGATE, FLORIDA

RESOLUTION NO. 19-077

A RESOLUTION OF THE CITY OF MARGATE, FLORIDA, APPROVING AN EMPLOYMENT AGREEMENT WITH JANETTE M. SMITH AS CITY ATTORNEY OF THE CITY OF MARGATE; PROVIDING FOR APPOINTMENT AS CITY PROSECUTOR; PROVIDING FOR EFFECTIVE DATE.

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BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF MARGATE, FLORIDA:

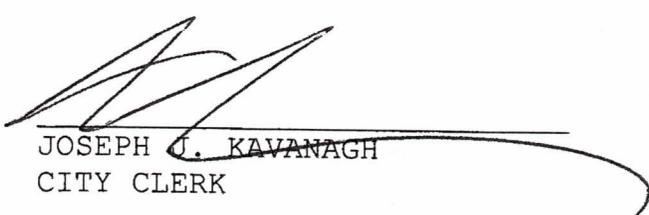
SECTION 1: That the City Commission of the City of Margate, Florida, hereby approves an Employment Agreement with Janette M. Smith as City Attorney of the City of Margate and approves her appointment as City Prosecutor.

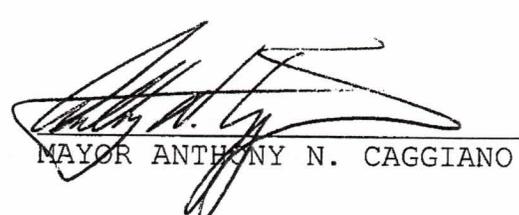
SECTION 2: That the Mayor and City Manager are hereby authorized and directed to execute the above Agreement on behalf of the City of Margate, subject to the successful passing of the City's post job offer screening process.

SECTION 3: That this Resolution shall become effective immediately upon its passage.

PASSED, ADOPTED AND APPROVED THIS 19<sup>TH</sup> day of JUNE, 2019.

ATTEST:

  
JOSEPH J. KAVANAGH  
CITY CLERK

  
MAYOR ANTHONY N. CAGGIANO

RECORD OF VOTE

Simone	<u>YES</u>
Arserio	<u>YES</u>
Schwartz	<u>YES</u>
Ruzzano	<u>YES</u>
Caggiano	<u>YES</u>

**EMPLOYMENT AGREEMENT**

THIS AGREEMENT made and entered into this day of June 19<sup>th</sup>, 2019, by and between the City of Margate, Florida, a municipal corporation, hereinafter referred to as "Employer," and Janette Smith, hereinafter called "Employee," both of whom understand as follows:

WITNESSETH

WHEREAS, Employer desires to employ the services of Janette Smith as City Attorney of the City of Margate as provided by Section 3.13 of the City Charter, and in accordance with this Agreement; and

WHEREAS, it is the desire of the City Commission of the City of Margate, hereinafter called "Commission", to provide certain benefits, establish certain conditions of employment and to set working conditions of Employee; and

WHEREAS, it is the desire of the Commission:

1. To secure and retain the services of Employee and to provide inducement for her to remain in such employment;
2. To make possible full work productivity by assuring Employee'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 Employee; and
4. To provide a means for terminating Employee's services; and

WHEREAS, Employee desires to enter into employment with the City as the City Attorney of said City.

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

SECTION 1. DUTIES

A. The Commission hereby agrees to employ Janette Smith as City Attorney of the City of Margate to perform the functions and duties specified in Section 3.13 of the City Charter and by the City of Margate Code of Ordinances, and to perform other legally permissible and proper duties and functions as Commission shall from time to time assign, effective upon the commencement of her employment as City Attorney on June \_\_\_\_, 2019.

B. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Commission to terminate the services of Employee at any time, subject only to the provisions set forth in Section 2, paragraphs A and B of this Agreement, and Section 3.13 of the City Charter.

C. This Agreement shall commence upon the effective date of any Resolution approved by the Commission authorizing the Employer to execute this Agreement.

## SECTION 2. TERMINATION AND SEVERANCE PAY:

A. In the event Employee is removed or discharged by the Commission pursuant to the terms and conditions contained in this Agreement, then Employer agrees to pay Employee severance pay in an amount equal to twenty (20) weeks' gross salary plus the dollar value as determined by the Employee's then current base hourly rate of pay of 100% of all types of accumulated leave, and other eligible benefits accrued to the date of termination. The dollar value of the twenty (20) week severance pay payment shall be subject to applicable Federal withholding tax and Social Security tax deductions. As consideration for such payment, Employee shall, prior to receipt thereof, execute and deliver to Employer a general release of Employer and its Commission members and its officers, agents, and employees for all acts and actions (whether accrued or subsequently accruing) from the beginning of time until the date of release. Said release to be prepared by an attorney of the Commission's choosing.

In the event Employee is terminated because of her entry of a plea of guilty or conviction of any crime involving moral turpitude related to her duties as City Attorney, or in the event Employee is fired for "misconduct" as this term is defined in Section 443.036(29), Florida Statutes, Employer shall not pay the aggregate severance sum designated in this section except for payment of 100% of all accumulated types of leave and other eligible benefits. If reinstated, Employee shall receive full pay for the period intervening between her removal and her reinstatement.

B. In the event Employee voluntarily resigns her position with Employer, then Employee shall give Employer sixty (60) days written notice in advance, unless the parties otherwise agree. Additionally, Employee shall not be entitled to receive the twenty (20) week severance pay.

In the event of such a situation, at its sole option the Commission may require Employee to immediately vacate her position/employment and also to relinquish any and all emoluments of employment with the Employer, with the exception of her salary for said sixty (60) day period or any portion thereof, together with any type of accrued leave pay-out and all other eligible benefits accrued to the effective date of resignation.

## SECTION 3. SALARY:

Employer agrees to pay Employee for her services rendered pursuant hereto an annual starting base salary of \$178,000. Employee shall be paid in installments at the same time other employees of the Employer are paid.

Employer agrees to increase the annual base salary each year by the cost of living adjustment/across the board pay increase, if any, that is granted to Department Heads of the City of Margate. In addition, the Employee annual base salary may be increased from time to time by the City Commission in its discretion as it deems appropriate. Employer agrees to increase other benefits of Employee in such amounts and to such extent as the Commission may determine.

## SECTION 4. PERFORMANCE EVALUATION:

The Commission shall conduct a performance evaluation of Employee on a schedule, procedure, and process determined by its sole discretion, subject to applicable provisions of Charter of the City of Margate or to applicable City Codes.

#### SECTION 5. HOURS OF WORK:

As much as is practical, Employee shall observe regular business hours in City Hall; however, it is recognized that Employee must devote a great deal of time outside the normal office hours of business of the Employer. Consequently, to that end Employee will be allowed to determine her own office hours and to take time off as she shall deem appropriate.

#### SECTION 6. OUTSIDE ACTIVITIES:

Employee shall be allowed time for teaching, counseling, consulting or other non- Employer connected business; however, same shall not interfere nor conflict with her full time duties as City Attorney.

#### SECTION 7. AUTOMOBILE:

The City will provide an automobile allowance in the amount of \$400 monthly, for utilization of Employee's own vehicle for City duties. Employee will be reimbursed for business travel in accordance with established City policy.

#### SECTION 8. PAID LEAVE AND BENEFITS:

All provisions of the City of Margate City Charter, Code of Ordinances, Resolutions, regulations and rules of the Employer relating to the use of vacation, sick, personal, holiday, and other leave, accrual of other fringe benefits including participation in the senior executive level of the Florida State Retirement System (FRS), and working conditions, as they now exist or hereafter may be increased, shall also apply to Employee as they would to Department Heads, except as noted herein. The same shall be in addition to said benefits enumerated in this Agreement specifically for the benefit of Employee. Employee shall be entitled to receive holiday, personal and emergency response leave benefits as would be accorded any Department Head of the City of Margate.

Employee shall be credited twenty (20) days of vacation and twelve (12) days of sick leave on October 1 of each year of this Agreement. If employee begins service on any day other than October 1, vacation and sick leave shall be prorated through September 30 on the thirtieth (30<sup>th</sup>) day following Employee's start date. All leave accumulated by the Employee shall be subject to the accrual cap limits applicable to a City Department Head, except that all accumulated leave hours that exceed such cap on September 30 of each year shall be paid to Employee in a single lump sum payment based on Employee's then current base hourly rate of pay. Except as otherwise provided in Section 2A of this Agreement, upon resignation or termination Employee shall be entitled to a cash out of 100% of all accumulated types of leave based on Employee's then current base hourly rate of pay. The disbursement of said cash out shall be, at the sole discretion and determination of Employee, made via either a lump sum settlement that shall be payable in a single installment due and payable to Employee within one (1) normal pay period of termination or a deferral schedule of up to and through six months, as set solely by Employee.

#### SECTION 9. DISABILITY, HEALTH, AND LIFE INSURANCE:

The Employer hereby agrees to provide Employee with all insurance related benefits accorded any Department Head of the City of Margate including health and disability benefits. In addition, Employer shall pay the premium due for term life insurance in the amount of one (1) times the Employee's annual base salary, including all increases in the base salary during the life of this agreement. The Employee

shall name the beneficiaries of the life insurance policy.

#### SECTION 10. DUES AND SUBSCRIPTIONS:

Employer agrees to budget and to pay for the professional dues and subscriptions of Employee 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 advancement, and for the good of the Employer.

#### SECTION 11. PROFESSIONAL DEVELOPMENT:

A. Employer hereby agrees to budget for and to pay the travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of Employee, and to adequately pursue necessary official and other functions for Employer, including but not limited to the annual conferences of the IMLA, City County Local Government Section of the Florida Bar, Florida Municipal Attorneys Association, the Florida League of Cities, and any other national, regional, state and local governmental groups and committees thereof which Employee serves as a member.

B. Employer also agrees to budget and to pay for the travel and subsistence expenses of Employee to attend or participate in short courses, institutes, and any training and educational conferences, seminars, symposiums, workshops, and similar opportunities that are necessary and desirable for her professional development and for the good of the Employer.

#### SECTION 12. CELL PHONE AND COMPUTER EXPENSES:

A. Employee shall be provided an \$80.00 monthly cell phone allowance as provided for other senior management employees or Department Heads. Upon phone upgrade, Employee shall also be provided with a \$200.00 phone upgrade allowance once per year.

B. The City shall provide desktop computing equipment for Employee's use at City Hall and up to two mobile computing devices (iPad, tablet computing device, laptop, etc.) with computer data service provided for up to two mobile devices at the City's expense.

#### SECTION 13. INDEMNIFICATION:

A. Employer shall defend, save harmless, and indemnify Employee against any action for any injury or damage suffered as a result of any act, event, or omission of action that Employee reasonably believes to be in the scope of her duties or function, unless she acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Employer may compromise and settle any such claim or suit and shall pay the amount of any settlement or judgment rendered thereon. Employer shall not be liable for the acts or omissions of Employee committed while acting outside the course and scope of her agreed duties or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. In such instance, as determined by a court of competent jurisdiction, Employee shall reimburse Employer for any legal fees and expenses Employer has incurred or otherwise paid, for or on her behalf, in connection with the charged conduct.

B. Said indemnification shall extend beyond the termination of employment and the

expiration of this Agreement to provide protection for any such acts undertaken or committed in her capacity as City Attorney, regardless of whether the notice of claim or filing of a lawsuit occurs during or following employment with Employer; provided, however, such obligation shall terminate upon the expiration of the applicable statute of limitations where there is no notice of claim or filing of a lawsuit.

SECTION 14. OTHER TERMS AND CONDITIONS OF EMPLOYMENT:

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

SECTION 15. DEATH OF EMPLOYEE:

Upon Employee's death, Employer's obligations hereunder shall be the same as for any other Department Head of the City of Margate.

SECTION 16. NOTICES:

Notices pursuant to the Agreement shall be given by deposit in the custody of the United States Postal Service, by certified mail, return receipt requested, postage prepaid, addressed as follows:

Employer:

City Clerk  
City of Margate  
5790 Margate Boulevard  
Margate, FL 33063

Employee:

Janette Smith  
City of Margate  
5790 Margate Boulevard  
Margate, FL 33063

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

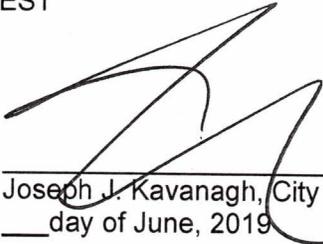
SECTION 17. GENERAL PROVISIONS:

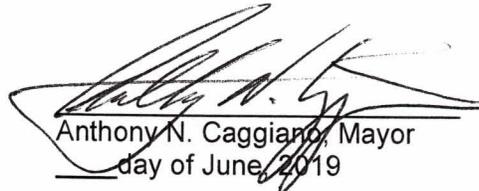
- A. The text herein shall constitute the entire Agreement between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.
- C. This Agreement may not be amended except by written agreement by and between the parties.
- D. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.
- E. 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.

F. 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.

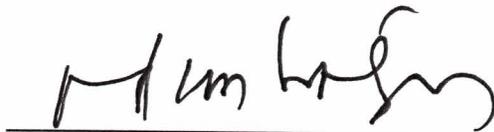
IN WITNESS WHEREOF, the City of Margate has caused this Agreement to be signed by, executed in its behalf by, its Mayor, and duly attested by its City Clerk, and the Employee has signed and executed this Agreement, both in duplicate, the day and year first above written.

ATTEST

  
\_\_\_\_\_  
Joseph J. Kavanagh, City Clerk  
\_\_\_\_ day of June, 2019

  
\_\_\_\_\_  
Anthony N. Caggiano, Mayor  
\_\_\_\_ day of June, 2019

APPROVED AS TO FORM:

  
\_\_\_\_\_  
David M. Wolpin, Interim City Attorney  
\_\_\_\_ day of June, 2019

  
\_\_\_\_\_  
Cale Curtis, City Manager  
\_\_\_\_ day of June, 2019

EMPLOYEE:

By:   
\_\_\_\_\_  
\_\_\_\_ day of June, 2019