

OFFICE OF THE CITY ATTORNEY

SHAWN D. SMITH  
LARRY ERSKINE  
RON RAMSINGH



PHONE: (305) 809-3770  
FAX: (305) 809-3771  
POST OFFICE BOX 1409  
KEY WEST, FL 33041-1409

Memorandum

TO: Mayor & Commissioners  
FROM: Shawn D. Smith, City Attorney  
RE: City Attorney Employment Agreement  
DATE: 24 June 2010

Mayor and Commissioners

As you may recall from the email which accompanied my yearly performance review, my employment agreement with the City requires notification prior to August 1, 2010 if either side desires to cancel the agreement. If no action is taken, the agreement is extended for a one year period. While I do desire to continue to work for you and the City, I would prefer an agreement for longer than one year.

My initial agreement, which began in November of 2006, was for a term of four years, with successive one year options. I propose to renew the agreement for another four years based upon the same terms and conditions as contained in the original Employment Agreement, with one addition for the benefit of the City. Recognition of the additional four years can be accomplished by changing the term from 48 to 96 months and replacing 2010 with 2014. I also incorporated a Commissioner's request that I include a provision requiring 120 days notice to the City should I decide to resign during the term. A proposed Amendment with those three changes is enclosed. For your consideration, I'm also attaching the following documents:

- Resolution 06-357, which approved the Employment Agreement;
- A portion Resolution 07-338, which includes the Commission combined performance review for 2006-2007. The full resolution, which includes the form filled out by each Commission member, can be found at <http://www.keywestcity.com/egov/docs/927761213194672.pdf>
- A portion Resolution 08-276, which includes the Commission combined performance review for 2007-2008. The full resolution can be found at <http://www.keywestcity.com/egov/docs/631501223563619.pdf>
- A portion Resolution 09-240, which includes the Commission combined performance review for 2008-2009. The full resolution can be found at <http://www.keywestcity.com/egov/docs/252771253218291.pdf>
- A portion Resolution 10-176, which includes the Commission combined performance review for 2009-2010. The full resolution can be found at <http://www.keywestcity.com/egov/docs/12754921034893.pdf>.

I sincerely appreciate the privilege to serve the City and welcome the continued opportunity to do so. I encourage you to contact me with any questions or comments.

A handwritten signature in black ink, appearing to be "Shawn D. Smith", written over a horizontal line.

Shawn D. Smith

RESOLUTION NO. 06-357

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED EMPLOYMENT AGREEMENT BETWEEN THE CITY OF KEY WEST AND SHAWN D. SMITH FOR THE POSITION OF CITY ATTORNEY; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, at its meeting of October 24, 2006, the City Commission selected Shawn D. Smith as City Attorney and authorized the negotiation of an employment agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached Employment Agreement between the City of Key West and Shawn D. Smith is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 8 day of November, 2006.

Authenticated by the presiding officer and Clerk of the Commission on November 27, 2006.

Filed with the Clerk November 27, 2006.

  
MORGAN MCPHERSON, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK

## EMPLOYMENT AGREEMENT

**THIS AGREEMENT** is entered into on November 8, 2006 by and between the City of Key West, Florida, a local governmental agency operating under the laws of the State of Florida and the Charter of the City of Key West, Florida, ("City"), whose main business address is 525 Angela Street, Key West, Florida 33040, and SHAWN D. SMITH, an attorney licensed to practice law in the State of Florida, ("Attorney"), whose residence address is 13 Blue Water Drive, Key West, Florida 33040; and City and Attorney hereby agree as follows:

**1. Recitals.** The following recitals are an integral part of this Agreement and have been accepted as true by the parties and are part of the inducement for each party to execute this Agreement.

**A.** City desires to employ an attorney licensed to practice law in the State of Florida to be the attorney for the City of Key West (the "City Attorney").

**B.** City has determined that it is in the best interests of the citizens of the City of Key West that the City Attorney will be a full-time employee of the City.

**C.** After an extensive selection process, the City voted to hire Shawn D. Smith as City Attorney at a duly noticed public meeting on October 24, 2006.

**2. Employment.** Attorney is hereby employed by City as City Attorney.

**3. Full Time Employment and Customary Benefits.** City and Attorney agree that the position of City Attorney will be a full-time position. The parties recognize the hours worked by Attorney will necessarily require time outside typical office hours. Attorney will dedicate an average of at least forty (40) hours per week to the duties specified herein. Attorney shall receive all benefits typically accruing to employees of the City, including but not limited to the entitlement to annual and sick leave, parking privileges, health, dental, vision and prescription drug coverage.

**4. Sole Client.** In partial consideration for the agreements to be performed by the City for the benefit of Attorney as contained elsewhere in this Agreement, Attorney agrees that he will not provide legal services, whether for a fee or pro bono, for any other person or entity without the express written approval of the City. It is the general intent of this section that Attorney will have no other private or public clients. Notwithstanding the foregoing, City recognizes that the Attorney currently has a large private practice that will have to be wound down to comply with the terms of this agreement. Accordingly, City and Attorney agree that Attorney shall immediately upon the execution of this agreement, with due diligence and best efforts, endeavor to close that private practice. Attorney will not engage any new clients upon execution of this agreement. Unless otherwise agreed as provided herein, Attorney's private practice will be closed within six months of the execution of this agreement. City further recognizes that during the term of this agreement, Attorney may receive compensation for services performed prior to the execution of this agreement and during the wind down period specified above.

### **5. Term of Agreement; Termination; Cancellation.**

**A. Normal Term.** The normal term of this Agreement will be for a period of forty-eight (48) calendar months, commencing at 9:00 A.M. on the 22<sup>nd</sup> day of December 2006 and ending at 5:00 P.M. on the 21<sup>st</sup> day of December 2010. However, City and Attorney agree that there will also be a "transition term" under this agreement, as specified in subparagraph B below, which is not included as part of the "normal term" of this agreement.

**B. Transition Term.** It is recognized between City and Attorney that it is in the best interests of the parties and the citizens of the City of Key West that a transition period between the current City Attorney and the City Attorney described herein occur. Accordingly, notwithstanding any other provision of this Agreement, Attorney and City further agree as follows:

1. Immediately upon execution of this Agreement and until commencement of the Normal Term specified above, Attorney will devote at least ten hours per week to working with the current City Attorney and City staff to ensure a smooth transition between attorneys. Such time shall include but not be limited to attendance at various Board and Commission meetings, review of case files and meetings with key City staff on relevant issues.

2. Attorney shall be compensated at an hourly rate of SEVENTY-NINE DOLLARS (\$79.00) per hour for work performed during the transition term and until such time as the commencement of the Normal Term of employment specified in paragraph 5A above.

**FIRST AMENDMENT TO EMPLOYMENT AGREEMENT**

This First Amendment to Employment Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the City of Key West, Florida, a municipal corporation, (hereinafter "CITY") and Shawn D. Smith, (hereinafter "SMITH").

**WITNESSETH**

WHEREAS, CITY and SMITH entered into an Employment Agreement on the 8<sup>th</sup> day of November, 2006, (hereinafter the "Agreement"); and

WHEREAS, the CITY and SMITH now desire to amend their Agreement in order to modify the terms and conditions.

NOW, THEREFORE, in mutual consideration of the benefits conferred upon the parties by the terms of this Amendment, CITY and SMITH agree as follows:

**Section 1:** That the first sentence of paragraph 5(A) of the Agreement is amended to provide as follows: The normal term of this agreement will be for a period of ninety-six (96) calendar months, commencing at 9:00 A.M. on the 22<sup>nd</sup> day of December, 2006, and ending at 5:00 P.M. on the 21<sup>st</sup> day of December, 2014.

**Section 2:** That the following language be added at the conclusion of Paragraph 5(F) "Unless otherwise agreed, Attorney shall provide 120 days written notice prior to any such resignation."

**Section 3:** Except as modified herein, the Agreement as amended shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have made this First Amendment to Agreement on the date first written above.

CITY OF KEY WEST, FLORIDA

By: \_\_\_\_\_  
CRAIG CATES, MAYOR

ATTEST:

\_\_\_\_\_  
CHERYL SMITH, CITY CLERK

\_\_\_\_\_  
SHAWN D. SMITH

3. During this transition term it is recognized that Attorney is an independent contractor and not a City employee. According, attorney shall not be entitled to any benefits or other remuneration until the commencement of the "Normal Term" specified above. The current City Attorney shall verify the hours expended by Attorney and payment shall be made to Attorney upon submission of an invoice in accordance with City's standard payment process.

**C. Extension of Term.** This Agreement will automatically renew for successive periods of one year unless either the City or Attorney gives the other written notice of its or his intent to modify or terminate the Agreement. Such written notice will be given not less than one hundred twenty (120) days prior to the expiration of any then existing term of this Agreement. For a renewal term year, the base salary will be increased in the same manner as the yearly increases specified in paragraph six of this agreement.

**D. Termination of Agreement**

**1. By City for Cause.** This Agreement may be terminated by City only for cause, and only by majority vote of the City Commissioners at a public meeting at which the issue is duly noticed and held. At least six members of the Commission shall be present and voting on the issue. At least fifteen (15) days prior to the date on which the agenda for the City Commissioners is prepared that contains the item of termination to be acted upon, City will provide to Attorney a detailed written statement of the reason or reasons for which termination is being sought. The statement will include, but not be limited to, the act or acts, omission or omissions, or default or defaults which form the basis for which termination is sought, along with the relevant date or dates, time or times, and location or locations.

**2. By Attorney for Breach.** This Agreement may be terminated by Attorney upon a breach of this Agreement by City, provided the City has not cured the breach within thirty (30) days following receipt of the notice of the breach. If the breach has not been cured, termination will be effective on the thirty-first (31<sup>st</sup>) day following receipt of written notice from Attorney by the City.

**3. By Normal Expiration.** This Agreement is terminated upon its normal expiration date as stated in Section 5.A.

**4. Definition.** As used in paragraph D.1 above, "for cause" will mean (a) dishonesty with respect to the business and operation of the City; (b) confirmed violation of the City's drug policy; (c) unlawful refusal to cooperate in an investigation regarding any aspect of the business or operation of the City, which investigation is conducted by or at the express direction of the City; (d) conviction of a crime which is classified as a felony or a crime involving moral turpitude; or (e) gross neglect or willful or intentional misconduct.

**E. Cancellation by City.** City may cancel this Agreement without cause, effective thirty (30) days after giving written notice to Attorney. Such cancellation will be by majority vote of the City at a duly noticed public meeting, with at least six City Commissioners present and voting. Upon the effective date of cancellation, Attorney will be entitled to receive from City, and within fifteen (15) days will be paid by City, a sum equal to the total of the prospective benefits that would have been earned by Attorney as if still employed under this Agreement for the six (6) calendar months following the effective date of cancellation. For purposes of this section, "prospective benefits" shall mean the combined base salary, transportation allowance, dues, fees, and costs required to be paid under "professional memberships"; the contributions to be made under the City's Retirement System; all unused sick leave and annual leave hours without regard to any caps imposed by the City. However, in no event will City be required to compensate attorney for more than the number of months and benefits remaining during any unexpired term under this Agreement.

**F. Resignation by Attorney.** In the event that Attorney resigns from the position of City Attorney prior to the normal expiration date of this Agreement, he will not be entitled to any payment for any sums provided for in paragraph 5E above. To effect such resignation, Attorney shall deliver written Notice of Resignation to the City through the City Clerk. Such resignation shall be accepted by the City without prejudice and without recourse to any administrative or civil proceedings, and the resignation shall be effective as of the date given in the written notice.

**G. Appointment to County, State, or Federal position.** In the event that Attorney accepts an appointment to a county, state or federal judicial or quasi-judicial position during the initial term or any extension term of this Agreement, Attorney will give written notice to the City through the City Clerk. The acceptance of the appointment shall be considered as a resignation by Attorney.

**6. Base Salary.** The City will pay to Attorney, as and for a base salary, the sum of ONE HUNDRED SIXTY-FIVE THOUSAND DOLLARS (\$165,000.00) per annum for the first year of employment; the base salary shall increase each year of this Agreement at the same percentage rate as afforded to City department heads and managers in each particular fiscal year.

**7. Transportation Allowance.** Attorney agrees that he will be responsible for providing his own motor vehicle for transportation within the limits of Monroe County that may be necessary, required, or appropriate in fulfilling his responsibilities and duties under this Agreement. In lieu of the preparation, maintenance, submission, review, approval, and auditing of detailed travel expense reimbursement forms, and as partial consideration for Attorney's entering into this Agreement, City agrees to pay to Attorney the sum of TWO HUNDRED FIFTY DOLLARS (\$250.00) per month as and for a transportation allowance. For travel out of Monroe County by motor vehicle, Attorney will be reimbursed by City on a per trip basis at the rate allowed for under Chapter 112, Florida Statutes, or at the rate allowed by any City Ordinance, whichever is greater.

**8. Travel Reimbursement.** City agrees to pay to or reimburse Attorney for the costs of meals, other expenses and lodging incurred by Attorney that may be necessary, required, or appropriate in fulfilling Attorneys duties and responsibilities under this Agreement. Meals, other expenses and lodging will be paid for or reimbursed at the rates specified in Section 112.061, Florida Statutes, or as permitted under City Ordinance, whichever is greater.

**9. City Retirement System.** City agrees that Attorney will be a member of the General Employees Retirement Plan of the City. City and Attorney will contribute such amounts at such times in accordance with standard City policy and procedure.

**10. Duties and Responsibilities.**

**A. General.** Attorney will have those responsibilities and perform those duties which are listed in the City Charter, the City Code of Ordinances, and which are listed in the Position Description attached hereto as exhibit "A" and incorporated herein. If a duty or responsibility contained in the Position Description is in conflict with a duty or responsibility contained in this Agreement, the duty or responsibility in this Agreement will prevail.

**B. Availability.** Attorney will be reasonably available to City Commissioners and key City staff twenty-four (24) hours per day. Such availability will be by telephone or electronic messaging, or in person. Attorney will obtain and maintain cellular telephone service and provide to City Commissioners and key City staff the telephone number. City agrees that such telephone service is of benefit to the City, and agrees to pay to Attorney the sum of ninety-five dollars (\$95.00) per month as partial reimbursement of the costs of obtaining and maintaining cellular telephone service.

**C. Ethical Considerations.** City and Attorney agree that, in general, it is the City Commission as a political body that is the client entity of the Attorney. However, as recognized by the Rules of Professional Conduct of The Florida Bar, the attorney-client relationship for organizational and governmental agencies is not the same as the attorney-client relationship for private individuals, and Attorney's professional relationship with the City will be consistent with the requirements of Rule 4-1.13 of the Rules of Professional Conduct of The Florida Bar.

**D. Performance Review.** The City shall review the performance of Attorney once annually within sixty (60) days of Attorney's anniversary of hire date. Within six (6) months of the execution of this Agreement, City and Attorney shall develop a form for use in such performance review, which will delineate a series of objective criteria for review. Based upon the results of any annual performance review, the City may elect to raise the percentage increase in the base salary amount due for the coming year above that specified in paragraph six.

**11. Professional Development and Memberships.** The City shall pay for all reasonable and customary professional dues for the Attorney as budgeted, including membership in the Florida Bar and its relevant sections, and the Monroe County Bar Association. The City also agrees to budget for and to pay the reasonable costs incurred by Attorney in attending seminars, continuing legal education courses, City-related events and out-of-county meetings as may be necessary or appropriate to Attorney's duties and responsibilities under this Agreement.


**12. Personal Leave.** The City and Attorney agree that, due the variety of hours worked and requirements of the position of City Attorney, interference with Attorney's family life is to be expected and it is recognized that Attorney may from to time absent himself during normal business hours for personal or family time; provided, however, that Attorney remains reasonably available to City Commissioners, the City Manager, and key City staff by telephone or other electronic means. Such personal time or family time will not be considered or debited against vacation time.



**13. Indemnification.** The City will defend, hold harmless, and indemnify Attorney against any tort, professional liability, or other legal demand, claim, or action which is related directly or indirectly to Attorney's lawful actions in his capacity as City Attorney.


**14. Miscellaneous Provisions.** This agreement is made in the State of Florida and be governed by Florida law. This is the entire agreement between the parties and may not be modified or amended except by a written document signed by the party against whom enforcement is sought. This agreement may be signed in more than one counterpart, in which case each counterpart will constitute an original of this agreement. Paragraph headings are for convenience only and are not intended to expand or restrict the scope or substance of the provisions of this agreement. Wherever used herein, the singular will include the plural, the plural will include the singular, and pronouns will be read as masculine, feminine or neuter as the context requires. If any provision of this agreement is held invalid or unenforceable, the remainder of the agreement shall remain in full force and effect, and the offending provision shall be amended to the nearest legally permissible term as permitted by law so as to effectuate the intent of the parties. This Agreement is a joint result of the parties' negotiations and shall not to be construed against any party on the basis of authorship. The prevailing party in any litigation, arbitration or mediation relating to this agreement will be entitled to recover its reasonable attorneys' fees from the other party for all matters, including, but not limited to, appeals. Venue for any litigation involving this agreement shall be Monroe County, Florida.

IN WITNESS WHEREOF the parties have executed this Agreement on this 27 day of November 2006.

  
MORGAN MCPHERSON,  
MAYOR CITY OF KEY WEST

  
SHAWN D. SMITH

  
  
CHERYL SMITH, CITY CLERK

	<b>THE CITY OF KEY WEST Job Description</b>	<b>Unclassified Position</b>	
		<b>DATE OF REVISION</b>	<b>06/06</b>
<b>POSITION</b>	<b>City Attorney</b>		
<b>DEPARTMENT</b>	<b>City Attorney's Office</b>	<b>ANNUAL SALARY</b>	<b>Based on experience &amp; qualifications</b>
<b>JOB CODE</b>		<b>GRADE</b>	<b>Unclassified</b>

**PHYSICAL LOCATION:**

- 525 Angela Street, Key West, Florida

**REPORTING RESONSIBILITIES:**

- Reports directly to City Commission.

**GENERAL FUNCTIONS:**

- This position directs, coordinates and administers all legal matters concerning the City of Key West. Provides legal advice and direction to City Commission, City Manager, department heads in the best interest of the City. Supervises legal staff.

**ESSENTIAL FUNCTIONS (Without Accommodations):**

- Able to read, write, speak and understand English in order to communicate with co-workers, City officials and the general public.
- Able to see and hear well enough to perform the duties of this job description.
- Able to work at least forty hour workweek and additional hours as required.
- Computer literate.
- Able to climb stairs.
- Able to use equipment and/or materials as specified in this job description.
- Able to use legal research resources in researching appropriate responses to legal questions.

**EQUIPMENT TO BE USED:**

- Personal computer equipment with various businesses related software, telephone, copy and fax machine.

**ENVIROMENT:**

- Air-conditioned office environment, 2<sup>nd</sup> floor. Requires climbing stairs. Various city buildings.

**PHYSICAL REQUIREMENTS:**

- Standing 15%
- Reaching 10%
- Climbing 5%



- Using Stairs 5%
- Bending 5%
- Sitting 60%

**DUTIES/TASKS/JOBS:**

- Performs legal research, advice and direction to City Commission, City Manager, City departments, boards and agencies in the best interest of the City.
- Supervises activities of Assistant City Attorneys and department administrative staff.
- Serves as legal advisor in the resolution of complex legal matters.
- Investigates claims and complaints by or against City government, recommends action to be taken.
- Represents City in civil litigation, court actions and before quasi-judicial or administrative agencies of government.
- Attends City Commission and advisory board meetings.
- Provides
- Explain and interpret City Charter/Ordinance/Code questions to general public.
- Prepares and drafts or reviews, revises and approves contracts, deeds, pleadings, agreements and other legal documents for various City departments.
- Advise the City, its departments and its directors on day-to-day matters.
- Perform other legal services for the City as directed by the City Commission.
- Responsible for department budget.
- 

**REQUIRED KNOWLEDGE/ SKILLS/ ABILITIES/ QUALIFICATIONS:**

- Knowledge of City Code and Charter.
- Knowledge of judicial and administrative procedures and rules of evidence.
- Knowledge of established precedents and sources of legal reference applicable to municipal activities.
- Knowledge in preparing civil law cases.
- Knowledge in analyzing and preparing a variety of legal documents, researching legal problems and in preparing legal opinions.
- Ability to express ideas clearly and concisely, both orally and in writing, in an effective and comfortable manner with elected City officials, co-workers and the general public.
- Ability to establish and maintain effective working relationships with the general public, co-workers, elected and appointed officials and members of diverse backgrounds.
- Must possess J.D. from an accredited law school.
- Member of Florida Bar.
- Must possess license/certification to practice law in the State of Florida.
- Must be admitted to practice or obtain certification within twelve months of hire in front of the United States District Court for the Southern District of Florida and the 11<sup>th</sup> Circuit Court of Appeals.
- Demonstrated litigation experience .

Periodically duties, equipment, material and/or job setting(s), other than those listed, are required and will be considered as part of the regular job while in effect.

The listing of tasks is in no way to be considered a complete listing of all possible tasks, nor is the requirement for an ability or skill a guarantee that the ability or skill is going to be used.

I, Shawn D. Smith, have read this job description and hereby agree with the above noted "Acknowledgments" and, if hired, that I can perform these and related duties as assigned. I further affirm that I understand this job description may be amended periodically, as is the right of the City.

  
Applicant Signature

8 September 2006  
Date

**THE CITY OF KEY WEST IS AN EQUAL OPPORTUNITY,  
AFFIRMATIVE ACTION, VETERANS PREFERENCE EMPLOYER  
& A DRUG-FREE WORKPLACE**

Apply at:

City Hall, Human Resources Office  
525 Angela Street  
Key West, FL 33040  
Telephone: (305) 809-3714

RESOLUTION NO. 07-338

**A RESOLUTION OF THE CITY COMMISSION OF THE  
CITY OF KEY WEST, FLORIDA, APPROVING THE CITY  
ATTORNEY PERFORMANCE EVALUATION; PROVIDING FOR  
AN EFFECTIVE DATE**

WHEREAS, individual Commissioners have evaluated the City Attorney based on the City Commission approved City Attorney Performance Evaluation form;

WHEREAS, the City Attorney works for the City Commission, and not individual Commissioners, so their evaluations must be combined to effectuate proper review;

NOW THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:


Section 1: That the attached City Attorney Performance Evaluation of City Attorney Shawn D. Smith is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

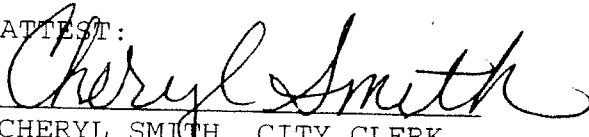
Passed and adopted by the City Commission at a meeting held this 18 day of September, 2007.

Authenticated by the presiding officer and Clerk of the  
Commission on September 19, 2007.

Filed with the Clerk September 19, 2007.

  
\_\_\_\_\_  
MORGAN MCPHERSON, MAYOR

ATTEST:

  
\_\_\_\_\_  
CHERYL SMITH, CITY CLERK

# City Attorney Performance Evaluation

## City Commission Approved Combined Review

City Attorney

September 18, 2007

### RATING SCALE DEFINITIONS (1-5)

- Unsatisfactory (1)** - The employee's work performance is inadequate and definitely inferior to the standards of performance required for the job. Performance at this level cannot be allowed to continue.
- Improvement (2) Needed** The employee's work performance does not consistently meet the standards of the position. Serious effort is needed to improve performance.
- Meets Job (3) Standard** The employee's work performance consistently meets the standards of the position.
- Exceeds Job (4) Standard** The employee's work performance is frequently or consistently above the level of a satisfactory employee.
- Outstanding (5)** The employee's work performance is consistently excellent when compared to the standards of the job.
- Not evaluated (NE)** The employee's work performance was not observed during this evaluation period.

### I. Performance Evaluation and Achievements

<u>1. City Commission/ Boards Relationships</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>NE</u>
A. Provides sound legal advice to the City Commission, Boards, Commissions and City staff.	—	—	—	—		—
B. Reporting to the City Commission, Boards, and City staff is timely, clear, concise and thorough.	—	—	—			—
C. Accepts direction/instructions in a positive manner.	—	—	—	—		—
D. Keeps the City Commission, Boards, and City staff informed of issues relevant to the requirements of the position.	—	—	—	—		—
E. Dedicates the time necessary to the responsibilities of the position and is readily available to Commissioners.	—	—	—	—		—

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**2. Legal Research and Review**

1   2   3   4   5   NE

A. Effectively identifies legal issues and performs research and investigations.      \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_      ||||      \_\_\_\_\_

B. Effectively reviews and interprets legal instruments, reports and documents prepared by departments.      \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_      ||||      \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**3. Employee/Public Relations**

1   2   3   4   5   NE

A. Works well with other employees.      \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_      1      ||||      \_\_\_\_\_

B. Meeting and handling the public while recognizing ethical obligation to the City.      \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_      ||||      \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**4. Communication**

1   2   3   4   5   NE

A. Oral communication is clear, concise and articulate.      \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_      1      ||||      \_\_\_\_\_

B. Written communications (e.g.) contracts, resolutions, and other legal documents are clear, concise and accurate.      \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_      \_\_\_\_\_      ||||      \_\_\_\_\_

Comments: \_\_\_\_\_  
\_\_\_\_\_

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**5. Quantity/Quality**

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>NE</u>
A. Amount of work performed.	—	—	—	—	///	—
B. Completion of work on time.	—	—	—		///	—
C. Accuracy.	—	—	—	—	///	—
D. Thoroughness.	—	—	—	—	///	—

Comments:

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**6. Personal Traits**

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>NE</u>
A. Initiative.	—	—	—		///	—
B. Judgement.	—	—	—	—	///	—
C. Fairness and Impartiality.	—	—	—		///	—
D. Analytical Ability.	—	—	—	—	///	—

Comments:

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**7. Litigation/Administrative Proceedings**

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>NE</u>
A. Provides timely and effective representation of the City's interest in litigation.	—	—	—		///	—
B. Controls and monitors costs and performance of retained outside legal counsel.	—	—	—	—	///	—

Comments:

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RESOLUTION NO. 08-276

**A RESOLUTION OF THE CITY COMMISSION OF THE  
CITY OF KEY WEST, FLORIDA, APPROVING THE CITY  
ATTORNEY PERFORMANCE EVALUATION; PROVIDING FOR  
AN EFFECTIVE DATE**

WHEREAS, individual Commissioners have evaluated the City Attorney based upon the City Commission approved City Attorney Performance Evaluation form;

WHEREAS, the City Attorney works for the City Commission, and not individual Commissioners, so their evaluations must be combined to effectuate proper review;

NOW THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached City Attorney Performance Evaluation of City Attorney Shawn D. Smith is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

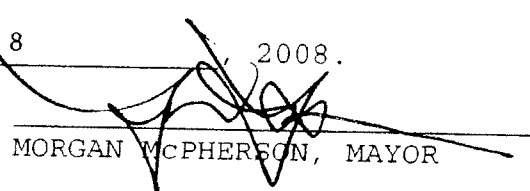
Passed and adopted by the City Commission at a meeting held this 7th day of October, 2008.

Authenticated by the presiding officer and Clerk of the Commission on October 8, 2008.

Filed with the Clerk October 8, 2008.

ATTEST:

  
CHERYL SMITH, CITY CLERK

  
MORGAN MCPHERSON, MAYOR

# City Attorney Performance Evaluation

## City Commission Approved Combined Review

City Attorney

October 7, 2008

### RATING SCALE DEFINITIONS (1-5)

- Unsatisfactory (1)** - The employee's work performance is inadequate and definitely inferior to the standards of performance required for the job. Performance at this level cannot be allowed to continue.
- Improvement (2) Needed** The employee's work performance does not consistently meet the standards of the position. Serious effort is needed to improve performance.
- Meets Job (3) Standard** The employee's work performance consistently meets the standards of the position.
- Exceeds Job (4) Standard** The employee's work performance is frequently or consistently above the level of a satisfactory employee.
- Outstanding (5)** The employee's work performance is consistently excellent when compared to the standards of the job.
- Not evaluated (NE)** The employee's work performance was not observed during this evaluation period.

### I. Performance Evaluation and Achievements

<u>1. City Commission/ Boards Relationships</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>NE</u>	
A. Provides sound legal advice to the City Commission, Boards, Commissions and City staff.	—	—	—	—	—	—	4.86
B. Reporting to the City Commission, Boards, and City staff is timely, clear, concise and thorough.	—	—	—	—	—	—	4.58
C. Accepts direction/instructions in a positive manner.	—	—	—	—	—	—	4.72
D. Keeps the City Commission, Boards, and City staff informed of issues relevant to the requirements of the position.	—	—	—	—	—	—	4.43
E. Dedicates the time necessary to the responsibilities of the position and is readily available to Commissioners.	—	—	—	—	—	—	4.86

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**2. Legal Research and Review**

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>NE</u>	
A. Effectively identifies legal issues and performs research and investigations.	—	—	—	—	—	—	4.84
B. Effectively reviews and interprets legal instruments, reports and documents prepared by departments.	—	—	—	—	—	—	4.50

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**3. Employee/Public Relations**

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>NE</u>	
A. Works well with other employees.	—	—	—	—	—	—	4.84
B. Meeting and handling the public while recognizing ethical obligation to the City.	—	—	—	—	—	—	4.67

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**4. Communication**

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>NE</u>	
A. Oral communication is clear, concise and articulate.	—	—	—	—	—	—	4.58
B. Written communications (e.g.) contracts, resolutions, and other legal documents are clear, concise and accurate.	—	—	—	—	—	—	4.58

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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\_\_\_\_\_

**5. Quantity/Quality**

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>NE</u>	
A. Amount of work performed.	---	---	---	---	---	---	4.72
B. Completion of work on time.	---	---	---	---	---	---	4.29
C. Accuracy.	---	---	---	---	---	---	4.86
D. Thoroughness.	---	---	---	---	---	---	4.86

Comments:

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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**6. Personal Traits**

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>NE</u>	
A. Initiative.	---	---	---	---	---	---	4.58
B. Judgement.	---	---	---	---	---	---	4.15
C. Fairness and Impartiality.	---	---	---	---	---	---	4.72
D. Analytical Ability.	---	---	---	---	---	---	4.72

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_

**7. Litigation/Administrative Proceedings**

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>NE</u>	
A. Provides timely and effective representation of the City's interest in litigation.	---	---	---	---	---	---	4.67
B. Controls and monitors costs and performance of retained outside legal counsel.	---	---	---	---	---	---	4.86

Comments:

\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**II. Summary Rating**

Overall Performance Rating – Considering the results obtained against established performance standards as well as overall job performance, the following rating is provided:

Unsatisfactory \_\_\_    Improvement Needed \_\_\_    Meets Job Standards \_\_\_    Exceeds Job Standards 2    Outstanding 5

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
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**III. Future Goals and Objectives**

Specific goals and objectives to be achieved in the next evaluation period: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
MORGAN MCPHERSON, MAYOR

\_\_\_\_\_  
SHAWN D. SMITH, CITY ATTORNEY

ATTEST:

\_\_\_\_\_  
CHERYL SMITH, CITY CLERK

Dated \_\_\_\_\_

RESOLUTION NO. 09-240

**A RESOLUTION OF THE CITY COMMISSION OF THE  
CITY OF KEY WEST, FLORIDA, APPROVING THE CITY  
ATTORNEY PERFORMANCE EVALUATION; PROVIDING FOR  
AN EFFECTIVE DATE**

WHEREAS, individual Commissioners have evaluated the City Attorney based upon the City Commission approved City Attorney Performance Evaluation form;

WHEREAS, the City Attorney works for the City Commission, and not individual Commissioners, so evaluations must be combined to effectuate proper review;

NOW THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

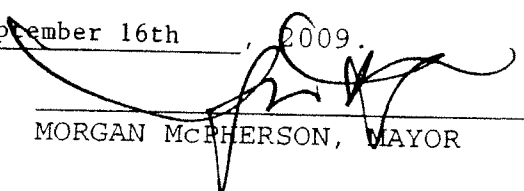
Section 1: That the attached City Attorney Performance Evaluation of City Attorney Shawn D. Smith is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.


Passed and adopted by the City Commission at a meeting held this 15th day of September, 2009.

Authenticated by the presiding officer and Clerk of the Commission on September 16th, 2009.

Filed with the Clerk September 16th, 2009.

  
MORGAN MCPHERSON, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK

# City Attorney Performance Evaluation

## City Commission Approved Combined Review

City Attorney

September 15, 2009

### RATING SCALE DEFINITIONS (1-5)

- Unsatisfactory (1) - The employee's work performance is inadequate and definitely inferior to the standards of performance required for the job. Performance at this level cannot be allowed to continue.
- Improvement (2) Needed The employee's work performance does not consistently meet the standards of the position. Serious effort is needed to improve performance.
- Meets Job (3) Standard The employee's work performance consistently meets the standards of the position.
- Exceeds Job (4) Standard The employee's work performance is frequently or consistently above the level of a satisfactory employee.
- Outstanding (5) The employee's work performance is consistently excellent when compared to the standards of the job.
- Not evaluated (NE) The employee's work performance was not observed during this evaluation period.

### I. Performance Evaluation and Achievements

	Average Combined Ratings					
<u>1. City Commission/ Boards Relationships</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>NE</u>
A. Provides sound legal advice to the City Commission, Boards, Commissions and City staff.	---	---	---	---	---	4.71
B. Reporting to the City Commission, Boards, and City staff is timely, clear, concise and thorough.	---	---	---	---	---	4.43
C. Accepts direction/instructions in a positive manner.	---	---	---	---	---	4.71
D. Keeps the City Commission, Boards, and City staff informed of issues relevant to the requirements of the position.	---	---	---	---	---	4.85
E. Dedicates the time necessary to the responsibilities of the position and is readily available to Commissioners.	---	---	---	---	---	4.85

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**2. Legal Research and Review**

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>NE</u>	
A. Effectively identifies legal issues and performs research and investigations.	—	—	—	—	—	—	4.43
B. Effectively reviews and interprets legal instruments, reports and documents prepared by departments.	—	—	—	—	—	—	4.71

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**3. Employee/Public Relations**

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>NE</u>	
A. Works well with other employees.	—	—	—	—	—	—	4.43
B. Meeting and handling the public while recognizing ethical obligation to the City.	—	—	—	—	—	—	4.43

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**4. Communication**

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>NE</u>	
A. Oral communication is clear, concise and articulate.	—	—	—	—	—	—	4.57
B. Written communications (e.g.) contracts, resolutions, and other legal documents are clear, concise and accurate.	—	—	—	—	—	—	4.71

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



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**5. Quantity/Quality**

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>NE</u>	
A. Amount of work performed.	—	—	—	—	—	—	4.85
B. Completion of work on time.	—	—	—	—	—	—	4.28
C. Accuracy.	—	—	—	—	—	—	4.71
D. Thoroughness.	—	—	—	—	—	—	4.85

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**6. Personal Traits**

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>NE</u>	
A. Initiative.	—	—	—	—	—	—	4.71
B. Judgement.	—	—	—	—	—	—	4.14
C. Fairness and Impartiality.	—	—	—	—	—	—	4.43
D. Analytical Ability.	—	—	—	—	—	—	4.71

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**7. Litigation/Administrative Proceedings**

	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>NE</u>	
A. Provides timely and effective representation of the City's interest in litigation.	—	—	—	—	—	—	4.57
B. Controls and monitors costs and performance of retained outside legal counsel.	—	—	—	—	—	—	4.71

Comments: \_\_\_\_\_  
\_\_\_\_\_



RESOLUTION NO. 10-176

**A RESOLUTION OF THE CITY COMMISSION OF THE  
CITY OF KEY WEST, FLORIDA, APPROVING THE CITY  
ATTORNEY PERFORMANCE EVALUATION; PROVIDING FOR  
AN EFFECTIVE DATE**

WHEREAS, individual Commissioners have evaluated the City Attorney based upon the City Commission approved City Attorney Performance Evaluation form;

WHEREAS, the City Attorney works for the City Commission, and not individual Commissioners, so evaluations must be combined to effectuate proper review;

NOW THEREFORE BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

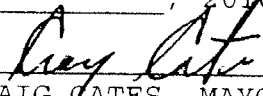
Section 1: That the attached City Attorney Performance Evaluation of City Attorney Shawn D. Smith is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

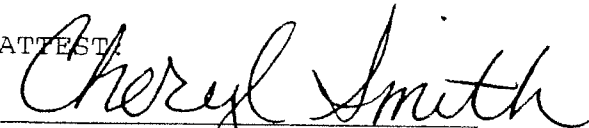
Passed and adopted by the City Commission at a meeting held this 1 day of June, 2010.

Authenticated by the presiding officer and Clerk of the Commission on June 2, 2010.

Filed with the Clerk June 2, 2010.

  
CRAIG CATES, MAYOR

ATTEST:

  
CHERYL SMITH, CITY CLERK

**Calculations of the Commission's Evaluation of  
Shawn Smith as City Attorney submitted June 1, 2010**

Category	Question Letter	5 POINTS	4 POINTS	3 POINTS	2 POINTS	1 POINT	AVERAGE
City Commission & Boards Relationship	A)	4	3	0	0	0	4.57
	B)	3	4	0	0	0	4.43
	C)	2	5	0	0	0	4.29
	D)	5	2	0	0	0	4.71
	E)	6	1	0	0	0	5.67
	Average for Category						
Legal Research and Review	A)	4	2	1	0	0	4.43
	B)	4	2	1	0	0	4.43
Average for Category							4.43

**Calculations of the Commission's Evaluation of  
Shawn Smith as City Attorney submitted June 1, 2010**

Category	Question Letter	5 POINTS	4 POINTS	3 POINTS	2 POINTS	1 POINT	AVERAGE	
Employee/Public Relations	A)	3	4	0	0	0	4.43	
	B)	2	5	0	0	0	4.29	
	Average for Category →							<b>4.36</b>
	A)	4	3	0	0	0	4.57	
	B)	3	4	0	0	0	4.43	
	Average for Category →							<b>4.50</b>
Quantity/Quality	A)	5	2	0	0	0	4.71	
	B)	1	6	0	0	0	4.14	
	C)	2	5	0	0	0	4.29	
	D)	5	2	0	0	0	4.71	
	Average for Category →							<b>4.46</b>

**Calculations of the Commission's Evaluation of  
Shawn Smith as City Attorney submitted June 1, 2010**

Category	Question Letter	5 POINTS	4 POINTS	3 POINTS	2 POINTS	1 POINT	AVERAGE
Personal Traits	A)	3	4	0	0	0	4.43
	B)	3	4	0	0	0	4.43
	C)	4	3	0	0	0	4.57
	D)	3	4	0	0	0	4.43
Average for Category →							<b>4.46</b>
Litigation/ Administrative Proceedings	A)	3	4	0	0	0	4.43
	B)	3	4	0	0	0	4.43
Average for Category →							<b>4.43</b>
<b>TOTAL OVERALL AVERAGE</b>							<b>4.48</b>