

EMPLOYMENT AGREEMENT

THIS AGREEMENT is made and entered into this 17th day of October, 2017, by and between the CITY OF DELRAY BEACH, FLORIDA, a municipal corporation, hereinafter called "Employer" or "City," and MARK R. LAUZIER, hereinafter called "Employee" or "Mark R. Lauzier."

WITNESSETH:

WHEREAS Employer desires to employ the services of Employee, as City Manager of the City of Delray Beach, in accordance with applicable provisions of the Delray Beach City Charter and City Code, as amended, and

WHEREAS Employee desires to be employed as City Manager of the City of Delray Beach pursuant to the terms of this agreement and as provided by the Delray Beach City Charter and Delray Beach Municipal Code, and

WHEREAS this Agreement constitutes the entire employment agreement between the Employer and Employee, and

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

WHEREAS the parties acknowledge that Employee is appointed and shall serve at the pleasure of the Commission and that nothing herein is intended to modify Employee's at-will status, and

WHEREAS Employee desires to accept employment as City Manager of said City of Delray Beach, Florida, under the terms provided herein, and

WHEREAS it is the desire that the Employee, as City Manager, shall be responsible to the Commission for the administration of all units of government under its jurisdiction and the Commission shall comply with City Charter provisions of Article IV, Sections 4.01 to 4.06, and

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

1. DUTIES.

Employer hereby agrees to employ Employee as City Manager of said Employer, to perform the functions and duties specified by law, the Delray Beach City Charter, and Delray Beach Municipal Code ("Code"), and to perform other legally permissible and proper duties and functions as Employer shall assign, from time to time.



2. TERM.

Employee agrees to remain in the exclusive employ of Employer as the chief administrative officer of the City beginning November 6, 2017 for an indefinite period of time pursuant to Section 4.01 of the City Charter, and neither to accept other employment nor to become employed by any other employer until termination as hereinafter provided.

3. TERMINATION.

Nothing in this Agreement shall prevent, limit, interfere with, or otherwise restrict the rights of the City Commission to terminate the services of the Employee at any time, with or without cause, subject only to the provisions set forth in Section 3 of this Agreement and those contained in the City Charter of the City of Delray Beach. Accordingly, this Agreement shall terminate:

- A. At any time by mutual agreement of the Employee and the City;
- B. Upon the Employee's death;
- C. At any time by the City's unilateral termination of the Employee's employment, with stated good cause, including, but not limited to, material breach of this Agreement by the Employee, or the conviction of the Employee for any illegal act, or any specific act or failure to act on the part of the Employee which constitutes a willful violation of the Charter;
- D. At any time by the City's unilateral termination of the Employee's employment without stated good cause as permitted by and in compliance with Article IV, Section 4.02(B) of the City Charter; or
- E. By unilateral action of the Employee resigning, provided that the City Manager shall give the City ninety (90) days' written notice in advance of the resignation termination date, unless the City Commission agrees to accept a shorter notice of termination.
- F. The following occurrences are mutually acknowledged and deemed to constructively constitute "termination without cause" pursuant to subsection 3(D) and shall entitle Employee to severance or termination benefits as set forth herein below:
 - (1) The City Manager's resignation following a reduction in salary or other financial benefits in a greater percentage than an applicable across-the-board reduction for all City employees;
 - (2) Refusal of the City, following a written notice from the City Manager, to comply with any other provision of this Agreement benefiting Employee; or

- (3) The City Manager's resignation following a suggestion, whether formal or informal, by a majority of the City Council that he resign.

Upon the occurrence of any of the events set forth in subsections F(1), F(2), or F(3) above, Mark R. Lauzier, at his option, may be deemed to be "terminated without cause" on the date of such occurrence.

4. SEVERANCE OR TERMINATION BENEFITS.

A. There shall be no severance payment to the Employee in the event the Agreement is terminated pursuant to subsection 3(B), 3(C), or 3(E) above. If the Agreement is terminated pursuant to subsection 3(A), any such benefit shall be agreed upon by the City and the Employee.

B. If this Agreement is terminated by the City Commission, then the City shall pay to the Employee his base salary through the date of termination, plus reimbursement for as-yet unreimbursed expenses pursuant to this Agreement, and such benefits as are then earned, accrued, and payable, and such other benefits as may be required by state law, regulation, City Charter, ordinance, or City policy.

C. If the City Commission shall terminate the Employee pursuant to the provisions of subsection 3(D) or effectively terminate the Employee pursuant to the provisions of subsection 3(F), Employee will be provided with twenty (20) weeks' severance pay at his then-current rate of pay and payment of Employee's COBRA insurance premiums for twelve (12) months, provided that, in the event Employee secures and/or begins full-time employment in a position with equivalent or greater pay and benefits prior to or within that twelve (12) month period, the Employer's obligation to pay COBRA insurance premiums shall cease.

D. The City shall not be obligated to make any payment under subsection (C) unless, within ten (10) days from the date of termination, the Employee shall execute and deliver to the City a general release of the City 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 the release, said release form to be prepared by and satisfactory to the City Attorney. The City shall make all payments required under subsection (C) within five (5) days of receiving said general release.

E. In the event the Employee shall resign in accordance with subsection 3(E) only, then in that event, the City Commission shall have the option to cause an earlier termination of the Employee, without cause, and in that event, severance shall be limited to payment to the Employee of such benefits as would have been earned until the date of termination proposed under the Employee's notice of resignation.

5. COMPENSATION AND BENEFITS.

A. Salary. Effective November 6, 2017, Employer agrees to pay Employee an annual base salary of \$235,000, payable in equal installments at the same intervals as the Employer's other administrative personnel are paid.

B. Deferred Compensation. Employer agrees to pay Employee's annual deferred compensation in biweekly installment amounts equal to the maximum annual amount permitted pursuant to Section 457 of the Internal Revenue Code at the time of execution of this Agreement for persons over the age of fifty years under the "catch up" provision, said amount consisting of the maximum contribution totaling \$24,000 annually. Said deferred compensation shall be paid to the ICMA Retirement Corporation or any other Section 457 retirement fund or funds designated by Employee. Employer agrees the Employee's interest is immediately 100 percent vested when biweekly deposits are made to the plan. Under all circumstances Employee shall be responsible for paying any and all federal or state taxes related to withdrawal transactions associated with this section.

C. Retirement and Other Benefits. Employer agrees to pay both the Employer and Employee's contribution into an account created for Employee under the City's defined contribution supplemental benefit plan created pursuant to Internal Revenue Code Section 401(a) and Administrative Policy EB-15 in a total amount of six percent (6%) of Employee's salary. Under all circumstances Employee shall be responsible for paying any and all federal or state taxes related to withdrawal transactions associated with this section. Employee shall receive the same health insurance benefit and other benefit package offerings, such as Life Insurance, Disability, etc. as other senior executive employees of the City of Delray Beach under the same terms and conditions.

D. Auto Allowance. Employer shall pay Employee an automobile allowance of \$650 per month in consideration of the requirement of Employee to use his personal vehicle in conducting all City. The automobile allowance shall be administered for tax purposes in accordance with the Internal Revenue Service regulations. Additionally, Employer will provide Employee with a designated and marked parking space without charge to Employee.

E. Leave. Participation in the personal leave, acute illness, and short-term disability leave programs for City general employees. Upon execution of this Agreement, the Employee shall immediately have a bank of one hundred twenty (120) personal/vacation leave days and forty (40) acute illness/sick leave days and shall earn additional days in accordance with the City policies applicable to general employees. Employee may carry a balance of up to one hundred forty (140) personal/vacation leave days and up to fifty (50) acute illness/sick leave from one calendar year to the next. Any accrued personal or sick leave, which exceeds 140 and/or 50 days respectively shall be

forfeited by Employee if not taken prior to the end of each calendar year. In recognition of the Employee's cumulative local government public service of nearly 30 years, Employee will also immediately begin to accrue vacation leave and sick leave at the maximum accrual rates under City Codes and Policies. Upon permanent separation from employment pursuant to subsections 3(D) or 3(F) hereinabove, Employee shall be paid for all accrued vacation/personal leave and acute illness/sick leave up to one hundred twenty (120) vacation/personal leave days and up to forty (40) acute illness/sick leave days. However, if Employee is terminated pursuant to subsections 3(B), 3(C), or 3(E), Employee shall only be paid for vacation/personal and acute/sick leave up to the limits established for all other non-union general employees in accordance with City Codes and Policies.

6. ONE-TIME PAYMENTS/EXPENSES.

It is the intent of the Employee to reside within the City limits of the City of Delray Beach. Employer agrees to provide Employee the following payments and expense reimbursements to assist in the relocation and housing of Employee, Employee's spouse, and an adult dependent child of Employee from Gig Harbor, Washington:

A. Temporary Housing Allowance Payments. While the Employee seeks to find a permanent residence and must maintain residences in both Washington state and Florida until that time, effective November 6, 2017, Employer agrees to provide Employee a housing allowance payment of \$2,500 per month for a maximum period of six months. The housing allowance shall be provided as a separate payment from the payroll system and administered for tax purposes in accordance with the Internal Revenue Service regulations. Once a permanent residence is found the Employee will immediately notify the City and the temporary housing allowance payment will cease and be pro-rated based on the closing date or initial lease date, as applicable.

B. Relocation Expenses. Effective October 17, 2017, the City agrees to pay the following relocation and transition expenses incurred by the Employee, based on appropriately filed monthly expense reports, in an amount not to exceed twenty-five thousand dollars (\$25,000), including

- (1) Reasonable and customary moving expense by movers and storage facilities selected by the Employee to move personal property and vehicles;
- (2) Reimbursement for lodging, meals and travel expenses (airfare, rental car and personal vehicle mileage) incurred for the actual move, any trips during the transition period while attempting to establish permanent residency, and up to three (3) house hunting trips for the Employee, Employee's spouse, and adult dependent child; and
- (3) Should the Employee voluntarily resign from his position as City Manager prior to 24 months of service, Employee shall reimburse the City for paid Relocation Expenses based on the following schedule:

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|---|------|
| a. Within 12 months of initial employment | 100% |
| b. Within 18 months of initial employment | 50% |

MRZ

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| c. Within 24 months of initial employment | 25% |
| d. On or after 2 years of initial employment | 0% |

C. Vacation and Sick Leave. Effective November 6, 2017, Employee's vacation leave bank shall be credited with twenty (20) days of administrative leave to be used for periods of absence associated with relocation, house hunting, and for future personal time off, which is in addition to the automatically accrued leave set forth above in subsection 5(E).

7. PERFORMANCE EVALUATION.

A. By May 31, 2018 and annually thereafter, the Commission shall conduct an annual performance review of Employee and consider an increase in base salary, a one-time bonus and/or benefit increase in consideration of the compensation policy for other executive management staff subject to the provisions of Section 3(F)(1) of this agreement and the results of the evaluation as hereinafter described.

B. Employee's review and evaluation shall be in accordance with specific criteria developed jointly by Employee and the Commission. Said criteria may be added to or deleted from as the Commission may, from time to time, determine in consultation with Employee. Further, the Commission shall provide Employee with a written summary statement of the findings of the Commission, and Employee will be provided with an adequate opportunity to discuss said evaluation with the Commission.

C. Commencing with the Employee's performance review in May 2018, Employee and the Commission will define such goals and performance objectives as determined necessary for the proper operation of the City of Delray Beach and in furtherance of the Commission's policy objectives, and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be in writing. The objectives shall generally be attainable within the time limitations as specified in the operating and capital budgets and appropriations provided.

8. BUSINESS EXPENSES AND EQUIPMENT. The City shall provide City-owned equipment reasonably necessary to enable Employee to perform his duties as City Manager, including a laptop for Employee's use in his home and a hand-held communication device (smartphone) and pay for the associated voice and data monthly service charges. At termination of employment, the above-mentioned equipment will be returned to the City.

9. ICMA CODE OF ETHICS/OUTSIDE ACTIVITIES. Employee shall not engage in any activity, consulting service or enterprise, for compensation or otherwise, which is actually or potentially in conflict with or inimical to, or which materially interferes with his duties and responsibilities to Employer. Employee will adhere to the International City Management Association (ICMA) Code of Ethics.

10. DUES AND SUBSCRIPTIONS. Employer agrees to budget for and to pay professional dues and subscriptions of Employee necessary for his continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for his continued professional participation growth, and advancement, and for the good of the Employer. This shall include the International City/County Managers' Association (ICMA) and Florida City & County Managers' Association (FCCMA).

11. PROFESSIONAL DEVELOPMENT.

A. Employer hereby agrees to budget for and to pay 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 functions for Employer, including such national, regional, state, local governmental groups, and professional boards and committees thereof which Employee serves as a member, provided such expenses are consistent with the Employer's policy and procedures for payment of employee expenses or any successor policies. This shall include the International City/County Managers' Association (ICMA) Annual Conference and no more than two, additional job-related conferences of Employee's choosing, such as those of the Florida City & County Managers' Association (FCCMA) or Alliance for Innovation's Transforming Local Government (TLG) conferences.

B. Employer also agrees to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for his professional development and for the good of the Employer, provided such expenses are consistent with the Employer's policy and procedures for payment of employee expenses or any successor policies.

12. INDEMNIFICATION. Employer shall defend, save harmless, and indemnify Employee as set forth in the Charter and City Code and subject to the monetary limits set forth at Section 768.28, Fla. Stat.

13. BONDING. Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law, the Delray Beach City Charter, or Delray Beach Municipal Code.

14. OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

A. The Commission, in consultation with the City Manager, 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 provisions of this Agreement, the Delray Beach City Charter, Delray Beach Municipal Code, or any other law.

B. Employee intends to reside within the City limits, and Employee agrees to continue to maintain residency within Palm Beach County during the term of this agreement.

15. NO REDUCTION OF BENEFITS. Employer shall not, at any time during the term of this agreement, reduce the salary, compensation, or other financial benefits of Employee, except to the degree that any such reduction is made "across-the-board" for all exempt, non-union general employees of the Employer.

16. NOTICES. All notices contemplated or required pursuant to this Agreement shall be provided by either hand delivery or by overnight courier (FedEx, UPS, etc..) with signature confirmation upon delivery to the following addresses:

EMPLOYER:

City of Delray Beach
Attn: Mayor and City Commission
100 NW 1st Avenue
Delray Beach, FL 33444
(561) 243-7000

COPY TO:

City of Delray Beach
Attn: R. Max Lohman, City Attorney
200 NW 1st Avenue
Delray Beach, FL 33444
(561) 243-7090

EMPLOYEE: Mark R. Lauzier, City Manager
3603 48th Street Court NW
Gig Harbor, WA 98335
(253) 313-5745

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 postmark of such written notice in the course of transmission in the United States Postal Service.

17. GENERAL PROVISIONS.

A. This Agreement contains the entire Agreement between the City and the Employee. All prior agreements and understandings, whether written or oral, pertaining to the City's employment of the Employee are fully abrogated and of no further force and effect from and after the date of this Agreement.

B. No modification of or amendment to this Agreement shall be valid unless reduced to writing and signed by both parties.

C. This Agreement is binding upon the City Manager's heirs and personal representatives and on the City regardless of any changes in the persons holding office as members of the City Council.

D. This agreement shall become effective commencing October 17, 2017.

E. If any provision, or any portion thereof, contained in this agreement is held 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.

F. No collective-bargaining agreement to which the City is a party shall in whole or in part, govern, apply to, or be deemed a part of or incorporated into this Agreement.

G. Any civil action arising out of this Agreement or the nonperformance or breach of any covenant contained in it shall be brought only in Palm Beach County, Florida.

H. The City's waiver of any breach of any term, condition, or covenant of this Agreement shall not constitute the waiver of any other breach of the same or any other term, condition, or covenant of this Agreement.

I. Regardless of which party or whose attorney prepared the original draft and subsequent revisions of this Agreement, the City and the Employee this Agreement shall not be deemed to be the product of, and therefore, construed against either of them.

J. The omission from this Agreement of a term or provision contained in an earlier draft of this Agreement shall have no evidentiary significance regarding the contractual intent of the parties.

K. This Agreement may be executed in duplicate or in counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. No term, condition, or covenant of this Agreement shall be binding on either party until both parties have signed it.

18. OPPORTUNITY TO CONFER WITH INDEPENDENT COUNSEL. In signing below, Employee expressly represents and affirms that the City Attorney was not acting as Employee's counsel in drafting this agreement and that Employee consulted with independent counsel in reviewing and deciding to execute this agreement.

(The remainder of this is intentionally left blank.)

IN WITNESS WHEREOF, the City of Delray Beach, Palm Beach County, Florida, has caused this agreement to be signed and executed on its behalf by its Mayor and Commission, and fully attested by its City Clerk, and the Employee has signed and executed this agreement in duplicate, the day and year first written above.

CITY OF DELRAY BEACH

EMPLOYEE

Cary Glickstein, Mayor

Mark R. Lauzier 10/16/17

Mark R. Lauzier, City Manager

Attest:

Katerri Johnson, CMC, City Clerk

Approved as to form:

R. Max Lohman, City Attorney