

ACTING CITY MANAGER EMPLOYMENT AGREEMENT

THIS AGREEMENT made and entered into this 3rd day of May, 2022, with a retroactive effective date of April 19, 2022, by and between the City of Ocala, Florida, a Florida municipal corporation ("Employer or Council") and Pete Lee ("Employee or Manager") both of whom agree as follows:

WITNESSETH

WHEREAS, Employer desires to contract for the continual services of Pete Lee as City Manager of the City of Ocala, Florida, as provided for in the Home Rule Charter of the City of Ocala; and

WHEREAS, it is the desire of Council to provide certain benefits, establish certain conditions of employment and to set working conditions of said Employee; and

WHEREAS, it is the desire of the Council to: (1) retain the services of the Employee, (2) provide inducement for him to remain in such employment, (3) make possible full work productivity and independence by assuring Employee's morale and peace of mind with respect to future security, and (4) to provide a just means for terminating Employee's services at such time that Employer may desire to terminate his employment.

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

Section 1. Incorporation of Recitals. The foregoing recitals are true and correct and incorporated herein by this reference.

Section 2. Powers and Duties of the City Manager. The Manager shall be employed as the Chief Administrative Officer of the City of Ocala. He may head one or more departments and shall be responsible to the Council for the proper administration of all affairs of the City of Ocala. To that end, the Manager shall have the power and perform all duties as required by Section 4.03 of the City Charter, as well as perform of such duties as may be required by the Council, not inconsistent with the Charter, law or ordinances, or this Agreement.

Section 3. Term.

A. Employer employs Pete Lee as City Manager of the City of Ocala to perform the functions and duties specified in the Charter and herein during a term commencing on April 19, 2022 and ending on the date on which a successor City Manager is appointed by City Council.

B. The Manager serves at the pleasure of the Council and nothing herein shall be taken to prevent, limit or otherwise interfere with the right of the Council to terminate the services of the Manager at any time subject only to the provisions of Section 3 of this Agreement.

C. This term may be successively extended for a period of two additional years at a time, pursuant to Section 4.01 of the City Charter, related to the appointment of the City Manager. Appointment as provided for in Section 4.01 of the City Charter shall constitute renewal of this Agreement if a new separate agreement is not negotiated.

D. Employer shall provide at least 30 days' written notice of its intention not to reappoint the Employee as City Manager in accordance with Section 4.01 of the City Charter.

E. In the event Employee voluntarily resigns as Manager before expiration of the term of this Agreement, then Employee shall provide Council with at least 30 days' written notice unless the parties agree otherwise.

F. If a permanent City Manager is appointed during the term of this Agreement other than Manager, then Manager shall continue to be employed by the City as an assistant City Manager for the remainder of the term of this Agreement. Manager shall serve in that position at the direction of the permanent City Manager to assist in the transition and for any other duties assigned to Manager for the remainder of the term of this Agreement.

Section 4. Termination and Severance Pay

A. In the event the Council does not provide at least a 30-day notice as required in Section 3(D), then Employer agrees to pay Manager a lump sum of cash payment equal to 20 weeks compensation as "severance" as that term is defined in Florida Statute, §215.425(4)(d), to include benefits and perquisites such as retirement contribution, deferred compensation payments, and car allowance. The Manager shall also be paid out for all earned Paid Time Off (PTO), holidays, and other accrued benefits to-date, including extended leave bank, calculated at the rate of pay in effect upon termination.

B. In the event the Manager is terminated by the Council without cause at any time, all life, health, dental, and disability insurance and all other Employer provided benefits shall continue in force and coverage, at Employer expense, for a 20-week period or until similar coverage is provided to Manager by a subsequent employer (and in full force and effect) whichever comes first. Said continuation, of group health insurance coverage shall be in addition to any protection afforded Employee by the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Coverage under COBRA shall begin on the date all coverage extended under the severance provisions herein expires.

C. In the event the Council at any time reduces the salary, compensation or other benefits of the Manager in a greater amount than an applicable across-the-board reduction for all employees of Employer, or in the event the Council refuses to comply with any other provision benefiting the Manager herein, then in that event Employee may at his option, be deemed to be terminated without cause, as provided herein.

D. In the event the Manager is terminated for "cause" then Employer's only obligation to employee is to pay all compensation and benefits accrued but unpaid at the date of termination. "Cause" is defined and hereby limited for the purposes of this Agreement to the following reasons: (1) willful dereliction of duty; (2) any felony or misdemeanor conviction of any crime involving moral turpitude; (3) material dishonesty; public insobriety or drug or alcohol addiction; (4) misconduct as defined in Florida Statute, §443.036(29) in which case, by statute, such payment would be prohibited; or (5) any other act of a similar nature of the same or greater seriousness.

E. Should the Manager be permanently disabled or otherwise unable to perform his duties because of sickness, accident, injury, mental incapacity or health for a period of four successive weeks beyond any accrued leave, but not less than 12 weeks, the Council shall have the right to terminate this agreement subject to payment of the severance benefits set forth in Sections 3(A) and (B) above.

F. For purpose of complying with Section 3 of this Agreement, appropriations held as encumbered fund balances in any fund or account shall be deemed to be available and authorized for transfer to the appropriate salary and benefit expenditure accounts to insure fulfillment of this provision of the Employment Agreement.

G. The terms of this Agreement shall remain in full force and effect until employment is terminated under the terms herein, or a new Agreement has been negotiated and entered into by the Manager and Council.

H. Contemporaneously with the delivery of the severance pay hereinabove set out, employee agrees to execute and deliver to Employer a release in a form substantially similar to the attached **Exhibit A** releasing Employer of all claims that employee may have against Employer.

Section 5. Salary. Employer agrees to pay Employee for services rendered pursuant hereto as Manager an annual base salary of \$225,500.00, payable in biweekly installments, effective April 19, 2022.

Section 6. Deferred Compensation. Employer agrees to pay the Manager annual deferred compensation in biweekly installment amounts equal to 6% of base salary. Said deferred compensation shall be paid to the ICMA Retirement Corporation or any other retirement fund or funds designated by the Manager. Employer agrees the employee's interest is 100% vested when biweekly deposits are made to the plan.

Section 7. Retirement Benefits. The Manager shall not participate in any retirement programs maintained by Employer for the benefit of its' other employees. Instead, the Manager shall participate with full approval of the Council in the International City Management Association Retirement Corporation supplemental retirement plan of the Manager's choosing. Employer shall contribute 15% of the Manager's salary, as detailed in Section 5, to said plan, in biweekly installments. Employer agrees the Employee's interest is 100% vested when biweekly deposits are made to the plan.

Section 8. Insurance Coverage.

A. The Manager shall be entitled to participate in the same health, vision, and dental plans as all other employees and on the same payment basis as all other employees.

B. Employer shall pay for term life insurance equal to the employee's base salary rounded to even thousands plus \$100,000 in additional life insurance.

Section 9. Automobile, Travel Reimbursement and Cell Phone. Employer shall provide a car allowance of \$750.00 per month to the Manager, payable in biweekly installments. Said car allowance shall be in lieu of a city vehicle. All business travel outside of Marion County shall be reimbursed at cents per mile equal to the IRS allowable rate then in effect. Employer shall also provide a mobile phone for business use and personal use, provided such personal use does not interfere with business use or result in an expense exceeding the plan limitations for the plan provided to Employee.

Section 10. Other Benefits. The Manager may accumulate up to 6 months unused accruals of PTO without loss or forfeiture, which shall be paid as follows upon the Manager's resignation:

A. If 30 days' notice is given in accordance with Section 3(D) above, the Manager shall be compensated for all earned PTO, and other accrued benefits to-date, calculated at the rate of pay in effect at the time of resignation.

B. If less than 30 days' notice is given in accordance with Section 3(E), Council may determine that insufficient notice has been provided for resignation. In that event, the Manager shall be compensated for earned PTO as provided to other City employees calculated at the rate of pay in effect at the time of resignation.

Section 11. Hours of Work. It is recognized that the Manager must devote a great deal of time outside of normal office hours to business of Employer, and to that end employee will be allowed to establish an appropriate work schedule.

Section 12. Professional Development. Employer agrees to budget for and to pay the professional dues, subscriptions, and travel and subsistence expense of the Manager for professional participation and travel, meetings and occasions adequate to continue his professional development. Said participation shall include, but not limited to attendance at the annual conference of the National League of Cities, International City/County Management Association, Florida City/County Manager's Association, and such other national, regional, state and local governmental groups and committees thereof which Employee serves as a member, or which said participation is beneficial to Employer, as well as associated short courses, institutes, and seminars.

Additionally, Employer encourages the Manager to attain positions of leadership in national, state, regional, and local associations and organizations relevant to his profession. Employer agrees to budget and pay for travel and subsistence expenses necessary for him to discharge his official duties for such associations and organizations.

Section 13. General Expenses.

A. Employer recognizes that certain expenses of a non-personal and generally job-affiliated nature are incurred by the Manager, including participation in civic and other local organizations, and hereby agrees to reimburse or pay said general expenses.

B. The Finance Director (or designated employee) is hereby authorized to disburse funds as needed to fulfill all provisions of this Agreement, upon receipt of duly executed expense or petty cash vouchers, receipts, statements, or personal affidavits.

Section 14. Performance Evaluation. The Council shall review and evaluate the performance of the Manager normally no later than October 1 of each year. Employer agrees to increase base salary and other benefits of the Manager at the time of said review or at a specified date, in such amounts and to such extent as the Council may determine that it is desirable to do so, in light of performance by Manager. It is further understood that merit increases based on annual performance evaluations and salary reviews are exclusive of any general cost-of-living increases provided to other employees. The Manager shall receive all cost-of-living increases, if any, which Employer may grant to its other employees, at the same time and in the same manner said increases are granted to those employees.

Section 15. Conflict of Interest Prohibition. It is further understood and agreed that because of the duties of the Manager within and on behalf of the City of Ocala and its citizenry, the Manager shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of Ocala, except for stock ownership in any company whose capital stock is publicly held and regularly traded, without the prior approval of the Council. For and during the term of this Agreement, Manager further agrees, except for a personal residence or residential property acquired or held for future use as a personal residence, not to invest in any other real estate or real property improvements within the corporate limits of Ocala without the prior consent of the Council.

The Manager may teach as an adjunct professor as long as such activity does not conflict with his duties and responsibilities.

Section 16. General Provisions.

- A. The text herein shall constitute the entire Agreement between the parties.
- B. This Agreement shall become effective upon adoption and approval by the Council of the City of Ocala.
- C. If any provisions, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

IN WITNESS WHEREOF, the City of Ocala has caused this Agreement to be signed and executed in its' behalf by its' Council President and duly attested by its' City Clerk, and the Manager has signed and executed this Agreement the day and year first written above.

ATTEST:

CITY OF OCALA

Angel B. Jacobs
City Clerk

Ire Bethea
President, Ocala City Council

Approval as to form and legality:

Pete Lee
Acting City Manager

Robert W. Batsel, Jr.
City Attorney

EXHIBIT A

GENERAL RELEASE

THIS GENERAL RELEASE is entered into as of the ____ day of _____, by and between the City of Ocala and _____ (“Employee”).

WHEREAS, the City and the Employee previously entered into an Employment Agreement to employ the Employee as the City Manager (the “Agreement”); and

WHEREAS, effective on _____, the City has elected to terminate the Agreement without cause prior to the Agreement’s expiration; and

WHEREAS, the Agreement provides for the payment of severance when it is terminated without cause prior to expiration of its term and the Employee voluntarily executes a General Release; and

WHEREAS, the Employee voluntarily executes this General Release;

NOW, THEREFORE, the parties agree as follows:

1. City will provide Employee with a severance payment in accordance with Section 3(B)(2) of the Agreement.
2. The Employee hereby UNCONDITIONALLY, FULLY AND FINALLY RELEASES AND FOREVER DISCHARGES the City from any and all duties, claims, rights, complaints, charges, damages, costs, expenses, attorneys’ fees, debts, demands, actions, obligations, liabilities, and causes of action, of any and every kind, nature, and character whatsoever, whether known or unknown, whether arising out of contract, tort, statute, settlement, equity or otherwise, whether foreseen or unforeseen, whether past, present, or future, whether fixed, liquidated, or contingent, which he has, had, or may in the future claim to have based on any act or omission concerning any matter, cause, or thing arising prior to the date of this General Release and up to the time of execution of this General Release (all of the foregoing are hereinafter referred to collectively as the “Released Claims”).
3. The Released Claims include, but are not limited to, those directly or indirectly arising out of, or in any way pertaining to, claims arising under Title VII of the Civil Rights Act of 1964, the Consolidated Omnibus Budget Reconciliation Act, the False Claims Act, the U.S. and Florida Constitutions, 42 U.S.C. §§ 1981, 1983, 1985, 1986, the Fair Labor Standards Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Florida Civil Rights Act, the Florida Whistleblower Acts, Chapter 440 of the Florida Statutes, Chapter 112 of the Florida Statutes, the Older Worker Benefits Protection Act, the Family and Medical Leave Act, the Stored Communications Act, the Fair Credit Reporting Act, Chapter 119 of the Florida Statutes, or any other federal, state or local law, ordinance, regulation, custom, rule or policy; or any cause of action in common law, including but not limited to actions in contract or tort, including any intentional torts; or any claim based upon or related to any instrument, agreement, or document entered into by or between the parties.
4. The Released Claims shall be deemed to include a general release by the Employee of all claims against the City and the City’s officials, officers, commissioners, employees, agents, insurers, independent contractors, and attorneys, whether in their official or individual capacities.

5. The Employee waives all rights he has to reinstatement to any position with the City. Additionally, the Employee agrees not to apply for, solicit, seek or otherwise attempt to obtain or accept employment with, contract with, or to provide services to the City. He further agrees that the City shall not be under any obligation to employ or contract with him. He agrees that should any application be made by him, the City shall not have any obligation to process that application or to hire or contract with him. The failure to allow him to apply, consider or process an application, or to hire or contract with the Employee shall not constitute a violation of any local, state or federal law but shall be considered a mutually agreed upon term of this Agreement.

6. Employee acknowledges that Employee is waiving and releasing any rights Employee may have under the Age Discrimination in Employment Act (“ADEA”) and that this waiver is knowing and voluntary. Employee acknowledges that this waiver does not apply to any rights or claims that may arise under the ADEA after the effective date of this waiver. Employee acknowledges that the consideration given for this waiver is in addition to anything of value to which Employee was already entitled. Employee further acknowledges that Employee has been advised by this writing that:

- a. Employee should consult with an attorney prior to executing this General Release;
- b. Employee has up to twenty-one (21) days within which to consider this General Release; and.
- c. Employee has seven (7) calendar days following Employee’s execution of this waiver to revoke the General Release, provided that he understands that he will not be entitled to any severance in the event he validly revokes the General Release. To be effective, a revocation must be in writing and received by the City Clerk, at the address provided in the Agreement, by no later than 4:30 p.m. on the seventh calendar day following Employee’s execution of this General Release.

7. Employee agrees that this General Release is not to be construed as an admission of any violation of any federal, state or local statutes, ordinance, or regulation or any duty allegedly owed by City to Employee. This General Release shall be governed under the laws of the State of Florida. No ambiguity in this Agreement shall be construed against any party based upon a claim that the party drafted the ambiguous language. This Agreement may only be modified, altered or rescinded pursuant to a subsequent written agreement, signed by both parties.

INTENTIONAL PAGE BREAK – SIGNATURES FOLLOW

Date

Employee

STATE OF FLORIDA

COUNTY OF MARION

Sworn and subscribed before me in person this _____ day of _____, by _____
_____, who is personally known to me or who has produced _____ as
identification.

(seal)

Notary Public, State of Florida