

EMPLOYMENT AGREEMENT FOR MANAGEMENT' SERVICES BETWEEN THE CITY OF LAKE CITY, FLORIDA, AND PAUL DYAL

Table of Contents

Introduction	2
Section 1: Term	2
Section 2: Duties and Authority	2
Section 3: Compensation	3
Section 4: Employee Benefits	4
Section 5: Additional Annual Leave	4
Section 6: General Business Expenses	4
Section 7: Termination	5
Section 8: Severance	5
Section 9: Resignation	6
Section 10: Performance Evaluation	6
Section 11: Hours of Work	7
Section 12: Ethical Commitments	7
Section 13: Outside Activities	8
Section 14: Indemnification	8
Section 15: Bonding	9
Section 16: Other Terms and Conditions of Employment	9
Section 17: Notices	9
Section 18: General Provisions	10
Appendix 1: Separation of Employment and General Release	12

Introduction

THIS EMPLOYMENT AGREEMENT (hereinafter "Agreement" or "agreement"), made and entered into this X X X X X , by and between the City of Lake City, Florida, a municipal corporation, (hereinafter called " City") and Paul Dyal, (hereinafter called "Dyal") an individual who has the education, training, and experience in local government management, both of whom agree as follows:

Section 1: Term

This agreement shall remain in full force and effect from the effective date, provided in section 18, until terminated by the City or Dyal as provided in Sections 7 or 9 of this agreement. In the event that Dyal is terminated, as defined in Section 7 of this agreement, Dyal shall be entitled to all compensation including salary, all accrued annual and sick leave paid in lump sum or in a continuation of salary on the then existing pay period basis, at Dyal's option.

Section 2: Duties and Authority

A. Dyal is the chief executive officer of the City and shall faithfully perform the duties as prescribed in the job description as set forth in the City's charter and ordinances and as may be lawfully assigned by the City and shall comply with all lawful City Council directives, state and federal law, City policies, rules, and ordinances as they exist or may hereafter be amended.

B. Specifically, it shall be the duty of Dyal to employ on behalf of the City all other employees of the City, other than the City Clerk and City Attorney each of which serve at the pleasure of the City Council, consistent with the policies of the City Council and the ordinances and charter of the City. **Except as provided by Section 306 of the personnel manual.**

C. It shall also be the duty of Dyal to direct, assign, reassign and evaluate all of the employees of the City consistent with policies, ordinances, charter, state and federal law. **Except as provided by Section 306 of the personnel manual.**

D. It shall also be the duty of Dyal to organize, reorganize and arrange the staff of the City and to develop and establish internal regulations, rules, and procedures which Dyal deems necessary for the efficient and effective operation of the City consistent with the lawful directives, policies, ordinances, state and federal law. **Except as provided by Section 306 of the personnel manual.**

E. It shall also be the duty of Dyal to accept all resignations of employees of the City consistent with the policies, ordinances, state and federal law, except Dyal 's resignation which must be accepted by the City Council. **Except as provided by Section 306 of the personnel manual.**

F. Dyal shall perform the duties of city manager of the City with reasonable care, diligence, skill, and expertise.

G. All duties assigned to Dyal by the City Council shall be appropriate to and consistent with the professional role and responsibility of Dyal.

H. Dyal or a designee shall attend, and shall be permitted to attend, all meetings of the City Council, both public and closed.

I. The City Council, individually and collectively, shall refer in a timely manner all substantive criticisms, complaints and suggestions called to their attention to Dyal for study and/or appropriate action.

Section 3: Compensation

A. Base Salary: City agrees to pay Dyal an annual base salary of one hundred ~~sixty forty~~ fifty thousand U.S. dollars and zero cents (~~\$140,000.00~~\$150,000.00) payable in installments at the same time that the other management employees of the City are paid. The City agrees to one mandatory review of the annual base salary after Dyal's initial one hundred and eighty days (180) of employment (~~which is the date of this Agreement~~), at which time the annual base salary shall be reviewed for an increase. All future and reviews shall take place pursuant to the terms of Section 10.

B. This agreement shall be amended by resolution to reflect any adjustments that are provided or required by the City's compensation policies to include, but not be limited to, salary adjustments, performance incentives, increases in benefits, or any combination of elements comprising compensation.

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Section 4: Employee Benefits

The City agrees to provide general benefits to Dyal, at a minimum, equal to that which is provided to all other employees of the City.

Section 5: Additional Annual Leave

Upon the effective date of this Employment Agreement, Dyal shall receive two (2) weeks of annual leave which shall be in addition to the accrual of annual leave he shall enjoy as a "full-time employee" as defined within the City Personnel Policies and Procedures Manual.

Section 6: General Business Expenses

A. The City agrees to budget and to pay for the professional dues and subscriptions of Dyal necessary for full participation in national, regional, state and local associations and organizations necessary and desirable for the good of the City. Such expenses shall be approved through the City's budgetary process

B. City agrees to budget and pay for travel and subsistence expenses, pursuant to City ethics and purchasing policies, of Dyal for professional and official travel, meetings, and occasions to adequately continue the professional development of Dyal and to pursue necessary official functions for the *City*.

C. The City also agrees to budget and pay for travel and subsistence expenses of Dyal for short courses, institutes, and seminars that are necessary for Dyal's professional development and for the good of the City.

D. The City recognizes that certain expenses of a non-personal but job related nature are incurred by Dyal, and agrees to reimburse or to pay said general expenses. Such expenses may include meals where the City business is being discussed or conducted and participation in social events of various organizations when representing the City. Such expenditures are subject to annual budget constraints as well as state and City ethics and purchasing policies. The finance director is authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements, or personal affidavits.

E. Recognizing the importance of constant communication and maximum productivity, the City shall provide Dyal, for business use, a laptop computer, software, tablet computer, mobile phone, and use of a City owned vehicle. Upon termination of Dyal's employment, the equipment described herein shall be returned to the City within twenty-four (24) hours from the time of termination of employment. **Dyal may utilize the City owned vehicle for incidental uses, such as stops to and from work.**

~~F. In lieu of a take home city vehicle, the city will pay Dyal six hundred dollars and zero cents (\$600.00) per month for use of personal vehicle.~~

Section 7: Termination

For the purpose of this agreement, termination shall exclude the applicable section of the City Personnel Policies and Procedures Manual and shall occur when one, or more, of the following occurs:

- A. The ~~super~~-majority of the City Council votes to terminate Dyal in accordance with the Charter or City Code at a properly posted and duly authorized public meeting.
- B. If the City reduces the base salary, compensation, or any other financial benefit of Dyal, unless it is applied in no greater percentage than the average reduction of all department directors, such action shall constitute a breach of this agreement and will be regarded as a termination.
- C. If Dyal resigns following an offer to accept resignation, whether formal or informal, by the City as representative of the majority of the City Council that Dyal resign, then Dyal may declare a termination as of the date of the suggestion.
- D. If a breach of contract is declared by either party with a thirty (30) day cure period for either Dyal or the City. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 17.

Section 8: Severance

Severance shall be paid to Dyal when employment is terminated as defined in Sections 7 and 8.

- A. If Dyal is terminated without cause, the City shall provide a minimum severance payment equal to ~~twenty sixteen~~ (2016) workweeks of salary at Dyal's then current rate of pay and ~~twenty sixteen~~ (2016) workweeks of employee benefits. This severance shall be paid in a continuation of salary on the then existing pay period basis, or lump sum, at the City's and Dyal's option.
- B. Dyal shall also be compensated for ~~all 500 all hours~~, including pre-effective date, ~~of~~ accrued paid leave/time off, of any variety, annual and ~~500 all hours of~~ sick at time of termination, whether with or without cause.
- C. If Dyal is terminated because of a felony conviction, or a plea of nolo contendere (no contest) or guilty to a felony charge, or for misconduct, as defined in section 443.036(29), Florida Statutes, then the City is not obligated to pay severance under this section.
- D. The termination and severance of Dyal shall be in accordance with the "Separation Agreement" agreed to by the City and Dyal.

Local and state laws and regulations shall control when any provisions within this section are found to conflict with such laws or regulations.

Section 9: Resignation

- A. In the event that Dyal voluntarily resigns his position with the City, Dyal shall provide a minimum of thirty (30) days' notice unless the City and Dyal agree otherwise. If the City Council offers to accept Dyal's resignation, by majority of the City Council, Dyal may resign and declare a voluntary termination as of the date of the offer to accept Dyal's resignation.

Section 10: Performance Evaluation

- A. The City and Dyal shall mutually agree upon a process, the criteria, and a form to be used for the annual evaluation of Dyal within ninety (90) days from the effective date of this agreement. The City shall then review the performance of Dyal annually. **Dyal agrees with the use of the standard City evaluation form such as is utilized for the City Clerk. The evaluation shall occur in the month of August each year or as soon thereafter as practicable.**

The annual evaluation process, at a minimum, shall include the opportunity for both parties to:

- (1) conduct a formulary session where the City Council and Dyal meet first to discuss goals and objectives of both the past twelve (12) month performance period as well as the upcoming twelve (12) month performance period; and
 - (2) following that formulary discussion, prepare a written evaluation of goals and objectives for the past and upcoming year; and
 - (3) next meet and discuss the written evaluation of these goals and objectives; and
 - (4) present a written summary of the evaluation results to Dyal. The final written evaluation should be completed and delivered to Dyal within thirty (30) days of the initial formulary evaluation meeting.
- B. In the event the City deems the evaluation instrument, format and/or procedure is to be modified by the City and such modifications would require new or different performance expectations, then Dyal shall be provided a reasonable period of time to demonstrate such expected performance before being evaluated.

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Section 11: Hours of Work

It is recognized that Dyal must devote a great deal of time outside the normal office hours on business for the City, and to that end Dyal shall be allowed to establish an appropriate work schedule.

The schedule shall be appropriate to the needs of the City and shall allow Dyal to faithfully perform his assigned duties and responsibilities.

Dyal shall be allowed reasonable flexibility and discretion to take time off during normal business hours for personal reasons provided that doing so does not interfere with the performance of his duties and responsibilities under this Agreement. **(Not in Helfenberger's Agreement)**

Section 12: Ethical Commitments

Dyal shall not endorse candidates, make financial contributions, sign, or circulate petitions, or participate in fund- raising activities for individuals seeking or holding elected office, nor seek or accept any personal enrichment or profit derived from confidential information or misuse of public time.

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Section 13: Outside Activities

The employment provided for by this Agreement shall be Dyal's sole employment. Dyal acknowledges that his performance of city manager duties will often require his performance of said duties outside of normal business hours. In return for the compensation identified herein Dyal agrees to devote his full professional attention to the full and proper performance of the city manager duties.

Section 14: Indemnification

Beyond that required under Federal, State or Local Law, the City shall defend, save harmless and indemnify Dyal against any obligation to pay money or perform or not perform an action, including without limitation, any and all losses, damages, judgments, interests, settlements, penalties, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities arising from, related to, or connected with any tort, professional liability claim or demand or any other threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigation, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Dyal's duties as City Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. Dyal may request and the City shall not unreasonably refuse to provide independent legal representation at the City's expense and the City may not unreasonably withhold approval. Legal representation, provided by the City for Dyal, shall extend until a final determination of the legal action including any appeals brought by either party. The City shall indemnify Dyal against any and all losses, damages, judgments, interest, settlements, penalties, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities incurred by, imposed upon, or suffered by such Dyal in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his or her duties. Any settlement of any claim must be made with prior approval of the City in order for indemnification, as provided in this Section, to be available.

Dyal recognizes that the City shall have the right to compromise and unless Dyal is a party to the suit which Dyal shall have a veto authority over the settlement, settle any claim or suit; unless, said compromise or settlement is of a personal nature to Dyal. Further, the City agrees to pay all reasonable litigation expenses of Dyal throughout the pendency of any litigation to which Dyal is a party, witness or advisor to the City. Such expense payments shall continue beyond Dyal's service to the City as long as litigation is pending. Further, the City agrees to pay Dyal reasonable consulting fees and travel expenses when Dyal serves as a witness, advisor or consultant to the City regarding pending litigation.

Section 15: Bonding

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

Section 16: Other Terms and Conditions of Employment

- A. The City, only upon agreement with Dyal, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Dyal, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City Charter, local ordinances, or any other law.
- B. Except as otherwise provided in this Agreement, Dyal shall be entitled, at a minimum, to earn and accrue the highest level of benefits that are enjoyed by or offered to other [appointed officials, appointed employees, department heads or general employees] of the City as provided in the Charter, Code, Personnel Rules and Regulations or by practice.

Section 17: Notices

Notice pursuant to this Agreement shall be provided by depositing such in the custody of the United States Postal Service, postage prepaid, and addressed as follows:

- A. EMPLOYER: City of Lake City, c/o Mayor, 205 N. Marion Ave., Lake City, FL 32055
- B. EMPLOYEE: Paul Dyal, 205 N. Marion Ave., Lake City, FL 32055

Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 18: General Provisions

- A. Integration. This Agreement sets forth and establishes the entire understanding between the City and Dyal relating to the employment of Dyal by the City. Any prior discussions or representations by or between the City and Dyal are merged into and rendered null and void by this Agreement. The City and Dyal by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.
- B. Binding Effect. This Agreement shall be binding on the City and Dyal as well as their heirs, assigns, executors, personal representatives, and successors in interest.
- C. Effective Date. This Agreement shall become effective on the date of execution by the last party to execute the Agreement.
- D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both the City and Dyal subsequent to the expungement or judicial modification of the invalid provision.
- E. Precedence. In the event of any conflict between the terms, conditions and provisions of this Agreement and the provisions of Council's policies, or the City's ordinances or the City's rules and regulations, or any permissive state or federal law, then, unless otherwise prohibited by law, the terms of this Agreement shall take precedence over contrary provisions of Council's policies, or the City's ordinances, or the City's rules and regulations or any such permissive law during the term of this Agreement.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the respective dates set forth below and each hereby acknowledge receipt of an executed copy of this Agreement.

THE CITY OF LAKE CITY, FLORIDA

BY: _____
Stephen M. Witt /Date
Mayor

(SEAL)

ATTEST:

**APPROVED AS TO FORM AND
LEGALITY:**

BY: _____
Audrey E. Sikes, City Clerk

BY: _____
Thomas J. Kennon, III,
City Attorney

PAUL DYAL

BY: _____
Paul Dyal /Date

APPENDIX I

SEPARATION OF EMPLOYMENT AND GENERAL RELEASE

This Separation of Employment and General Release Agreement ("Agreement") is made by and between the City of Lake City, Florida, a municipal corporation, (hereinafter the "City") and Paul Dyal, (hereinafter called "Dyal") an individual.

WHEREAS, the City has employed Dyal as its City Manager; however, the parties wish to enter into a voluntary agreement to terminate their employment relationship and to resolve any actual or potential claims that either party may have against the other by reason of Dyal's employment or termination thereof.

WHEREAS, the parties desire to set forth the terms and conditions governing Dyal's separation of employment and to provide for the settlement and release of any and all disputes or controversies that have arisen, or which may hereafter arise, between the City and Dyal, including without limitation, any and all claims arising out of or in any way related to Dyal's employment with or separation from the City.

NOW THEREFORE, in consideration of the mutual covenants herein contained and the mutual benefits to be derived therefrom, the sufficiency of which consideration is hereby acknowledged by the undersigned, City and Dyal agree and state:

1. **TERMINATION OF EMPLOYMENT.** Upon their mutual agreement, Dyal's employment shall terminate on the ___ day of _____, 20___, which shall be Dyal's final date of employment.
2. **NO ADMISSION OF LIABILITY.** This Agreement is not an admission by Dyal or the City of any wrongful conduct whatsoever. Both parties deny and disclaim any liability to or wrongful conduct against the other or any third party.
3. **PAYMENT AND BENEFITS.** Dyal shall receive his regular paycheck for the pay period ending ___ day of _____, 20___, on or before ___ day of _____, 20___, Dyal shall receive on or before ___ day of _____, 20___, an additional payment to compensate for all his accumulated paid time off, including pre-effective date, of any variety, annual and sick at time of termination, subject to customary payroll deductions. (CAP annual and sick at 500 hours each)

As consideration for this Agreement and the release contained within, and in full and complete satisfaction of all obligations due and owing Dyal, the City shall:

- A. Pay Dyal an amount equal ~~twenty sixteen~~ (2016) workweeks of his current salary, subject to customary payroll deductions to include Dyal's portion of health, dental and vision insurance premiums for an equal number of weeks.
4. **SURRENDER AND VACATION OF EMPLOYER'S PROPERTY.** Upon execution of this Agreement, Dyal shall deliver all the City's property in his possession and further, shall vacate the City's property.
5. **RELEASE AND WAIVER OF CLAIMS.** In consideration of the benefits to be

provided to Dyal pursuant to this Agreement, Dyal including his heirs and assigns hereby irrevocably and unconditionally releases, acquits and discharges the City and each of its past, present and future elected officials, department heads, officers, employees, agents, representatives and attorneys from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, whether known or unknown, arising out of any act, omission, or event from the beginning of time up to the execution of this Agreement. Dyal specifically acknowledges and agrees that he is releasing and giving up any right that he may now have under federal or state law or political subdivision thereof and any claims that he may now have or could have asserted against the City.

Dyal specifically agrees to release all claims that he may have against the City under many different laws, including but not limited to: *the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, and Executive Order 11141, which prohibit age discrimination in employment*; Title VII of the Civil Rights Act of 1964, Section 1981 of the Civil Rights Act of 1866, and Executive Order 11246, which prohibit discrimination based on race, color, national origin, religion, or sex; the Americans with Disabilities Act and Sections 503 and 504 of the Rehabilitation Act of 1973, which prohibit discrimination based on disability; any other federal, state, or local laws prohibiting employment or wage discrimination; the Fair Labor Standards Act of 1938 and state laws that regulate wage and hour matters; the Family and Medical Leave Act of 1993; Retirement Income Security Act of 1974; any federal, state, or local laws providing workers' compensation benefits, prohibiting retaliatory or wrongful discharge, otherwise restricting an employer's right to terminate employees, or otherwise regulating employment; claims for breach of contract, promissory estoppel, defamation, slander, or libel; claims for termination pay, severance, or other benefits; and any other federal, state, or local tort or contract claim. Dyal expressly waives all rights that he might have under any law that is intended to protect him from waiving unknown claims.

The City hereby irrevocably and unconditionally releases, acquits and discharges Dyal from any and all from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, whether known or unknown, arising out of any act, omission, or event from the beginning of time up to the execution of this Agreement.

6. REFERENCES AND NON-DISPARAGEMENT. If it is necessary for the City to provide a reference to a prospective employer, Dyal agrees that he will direct the prospective employer to contact the City Clerk. Additionally, Dyal and the elected officials agree that they shall not disparage or make negative comments about each other; provided that this Section shall not apply to comments made to any other governmental entity or as required by law.

7. REPRESENTATIONS AND WARRANTIES. The undersigned parties hereby represent and warrant the following to the other:

- A. Dyal represents and warrants that: he is legally and mentally competent to sign this Agreement; he is the sole owner of any claims against the City; he has the requisite capacity and authority to make this Agreement, and no portion of any existing or potential

claims has been sold, assigned or pledged to any third party; and he presently possesses the exclusive right to receive all of the consideration paid in exchange for this Agreement.

- B. Dyal represents and warrants that he has not and will not file any complaints, charges or lawsuits against the City or any of its past, present and future elected officials, department heads, officers, employees, agents, representatives or attorneys with any governmental agency or any court, including without limitation, any claim or matter of any nature whatsoever related to or arising out of his employment with or separation of his employment, except Dyal expressly reserves the right to file a claim for unemployment benefits. Dyal further agrees to indemnify and hold the City harmless from any and all loss, costs, damages or expenses, including reasonable attorney fees incurred by the City, arising out of any claim concerning the separation of employment that may hereafter be made by Dyal or any other party.
- C. The City represents and warrants that it has not and will not file any complaints, charges or lawsuits against Dyal with any governmental agency or any court, including without limitation, any claim or matter of any nature whatsoever relating to or arising out of Dyal's employment with the City or the separation of his employment from the City. The City further agrees to indemnify and hold Dyal harmless from any and all loss, costs, damages or expenses, including reasonable attorney fees incurred by Dyal, arising out of any claim arising from the separation of his employment that may hereafter be made by the City or any other party.
- D. Each party is fully aware of the contents of this Agreement and of its legal effect and understands that it should obtain legal advice regarding this Agreement as they deem appropriate. The parties hereto and each of them, have carefully read this Agreement and know the contents thereof, and they signed the same freely and voluntarily.
- E. This Agreement sets forth the entire agreement between the parties and supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter herein. No waiver of a breach of any provision of this Agreement shall be construed to be a waiver of any breach of any other provision of this Agreement or of any succeeding breach of the same provision. No delay in acting with regard to any breach of any provision of this Agreement shall be construed to be a waiver of such breach. If any provision in this Agreement is found to be unenforceable, all other provisions will remain fully enforceable.
- F. No promise or inducement has been made or offered, except as herein expressly set forth, and this Agreement is executed without reliance upon any statement or representation by any of the released parties or their representatives.
- G. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party.
- H. This Agreement and any amendments hereto may be executed in multiple counterparts by the parties. Each counterpart shall be deemed an original, but all counterparts together shall constitute one and the same instrument.

8. JURISDICTION. This Agreement shall be governed by the laws of the State of Florida, and the Columbia County Circuit Court shall have exclusive jurisdiction of any disputes arising

under this Agreement.

9. BINDING EFFECT. This Agreement shall be binding upon and shall accrue to the benefit of the parties hereto, their respective personal representatives, successors in interest and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the respective dates set forth below and each hereby acknowledge receipt of an executed copy of this Agreement.

THE CITY OF LAKE CITY, FLORIDA

BY: _____
Stephen M. Witt /Date
Mayor

(SEAL)

ATTEST:

APPROVED AS TO FORM AND LEGALITY:

BY: _____
Audrey E. Sikes, City Clerk

BY: _____
Thomas J. Kennon, III,
City Attorney

PAUL DYAL

BY: _____
Paul Dyal /Date