

## EMPLOYMENT AGREEMENT

THIS AGREEMENT is made and entered between CARMEN Y. DAVIS ("EMPLOYEE" or "CARMEN Y. DAVIS") and the CITY OF LAKE WORTH BEACH, (hereinafter referred to as "CITY"), collectively "the PARTIES".

WHEREAS the CITY, by and through its City Commission, desires to engage the services of EMPLOYEE as City Manager;

WHEREAS the Commission approved EMPLOYEE to be appointed to the role of City Manager with full authority and responsibility and directed that an Employment Agreement be prepared;

NOW THEREFORE, for and in consideration of the mutual obligations set forth below, the EMPLOYEE and the CITY agree as follows:

### I. EMPLOYMENT OF EMPLOYEE

Subject to the terms and conditions set forth in this Agreement, CITY hereby agrees to employ EMPLOYEE as its full-time, exempt City Manager and EMPLOYEE hereby accepts such employment. The PARTIES recognize and agree that this position is properly designated a mandatory testing position pursuant to the City's drug-free workplace policy.

### II. DUTIES AND RESPONSIBILITIES

The EMPLOYEE shall be responsible to the five-member CITY Commission and shall perform the functions and duties of the City Manager as provided in the Job Description, the Policies and Procedures of CITY, Florida Law, the CITY's enabling legislation, the direction of the CITY Commission, and as mutually agreed to by the EMPLOYEE and CITY from time to time. The EMPLOYEE shall devote whatever time is necessary to perform the duties of the position, which often exceeds forty (40) hours per week and is a minimum of forty (40) hours per week. The EMPLOYEE shall remain in the exclusive employment of CITY until termination or expiration of this Agreement in accordance with Section III.

Because the EMPLOYEE will devote a great deal of time outside normal office hours to business of the CITY, flexibility in hours worked and work schedules benefit both the CITY and the EMPLOYEE. The EMPLOYEE has discretion as to her work schedule and hours worked, with the understanding that her compensation is based on a 40-hour work week. Work in excess of an average 40-hour work week shall be deemed part of the professional responsibility for which the EMPLOYEE shall not be paid overtime; but for which, she shall be allowed to offset, in part, by taking compensatory time off.

### III. EXCLUSIVE EMPLOYMENT

EMPLOYEE shall not be employed by any other employer during the Term of this Agreement. EMPLOYEE shall devote her full time to act as the City Manager and to carry out, to the best of her abilities, all the duties imposed upon her by the Job Description, the Policies and Procedures, the direction of the CITY Commission, applicable laws, and such other duties as the CITY may assign from time to time. During the Term of this Agreement, the EMPLOYEE shall not hold office in any political party or political organization.

### IV. TERM

- A. The Term of this Agreement for employment in the City Manager position shall begin on December 6, 2021 and remain in effect for approximately three (3) years through and including December 6, 2024, unless renewed as provided in Section IV, B, or unless earlier terminated as provided in Section V.

- B. In the event written notice is not given by either party to this agreement to the other party at least forty-five (45) days prior to the termination date as herein provided, this agreement shall be extended on the same terms and conditions for one-year terms. This subsection shall take full effect upon completion of the first thirty-six (36) months of employment. Renewal for the next twelve (12) months shall then occur, with annual renewals or notice as provided. Renewal shall automatically occur unless specific action to the contrary is taken or a mutually agreed upon change is made to the agreement. However, to be eligible for renewal, the City Manager must receive satisfactory performance evaluations during the Term in accordance with Paragraph VII and after a majority of the CITY Commission in attendance concurs with entering into the Subsequent Term. Any such Subsequent Term shall be based on the same terms as provided herein, unless modified by mutual agreement of the parties in the manner provided herein.
  - C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the CITY to terminate the service of EMPLOYEE at any time, subject only to the provisions set forth in Section V herein below.
  - D. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the EMPLOYEE to resign at any time, subject only to the provisions set forth in Section V herein below.
- V. SEPARATION FROM CITY
- A. Termination by CITY Without Cause.
    - 1. CITY may terminate this Agreement and the employment of EMPLOYEE Without Cause immediately or at any time during the Term of this Agreement.
    - 2. In the event the CITY Commission determines, in its sole discretion, that EMPLOYEE'S employment shall be terminated Without Cause at any time during the Term of this Agreement, EMPLOYEE shall be eligible for Severance Pay as described in Section VIII.
    - 3. The CITY'S termination of this Agreement and the employment of EMPLOYEE Without Cause shall be final and non-appealable.
    - 4. Termination Without Cause shall require a majority vote of the CITY Commission in attendance at a public meeting.
    - 5. EMPLOYEE'S refusal to comply with a directive that clearly violates the ICMA Code of Ethics.
  - B. Termination by CITY With Cause.
    - 1. CITY may terminate this Agreement and the employment of EMPLOYEE With Cause, in its sole discretion, as provided herein during the Term of this Agreement.
    - 2. "With Cause" is defined as termination based upon any of the following actions by the EMPLOYEE:
      - a. fraud;
      - b. embezzlement;
      - c. conviction of a felony relating to official duties;
      - d. negligence in the performance of official duties;
      - e. failure to return from an approved leave of absence;
      - f. violation of Florida's Code of Ethics;
      - g. violation of the CITY'S Policy Against Harassment and Discrimination or its Equal Employment Opportunity Policy;
      - h. the Florida Commission on Ethics makes a determination of probable cause, a criminal charge is filed, or a civil or administrative judgment and issued against EMPLOYEE;

- i. violation of CITY's Drug-Free Workplace Policy; or
    - j. misconduct, as defined in Fla. Stat. 443.036(29), as amended from time to time.
  3. CITY may terminate this Agreement and the employment of EMPLOYEE With Cause immediately or at any time during the Term of the Agreement, with written notice issued to EMPLOYEE describing the actions claimed by the CITY constituting such grounds and the effective date of the termination. Such notice shall be issued as soon as practicable after the vote contemplated in Section V, B, 5 below.
  4. The CITY's termination of this Agreement and the employment of EMPLOYEE With Cause shall be final and non-appealable.
  5. Termination With Cause shall require a majority vote of the CITY Commission in attendance at a public meeting.
- C. Resignation by EMPLOYEE.
  1. EMPLOYEE may voluntarily resign her employment from CITY by providing CITY forty-five (45) days written notice in advance. During the 45-day period, CITY may require EMPLOYEE to cease or limit the work performed on CITY matters, during which time EMPLOYEE is entitled to such regular compensation and benefits as is due under this Agreement until the effective date of the resignation as provided in the notice. This Agreement shall terminate on the effective date of resignation.
  2. Resignation by the Employee by giving forty-five (45) days' written notice shall be considered a termination in good standing and shall entitle the Employee to a lump sum payment equivalent to all accrued and unused Vacation Leave up to a maximum established by CITY policy, as amended to time to time.
  3. If Employee resigns following a request for resignation by a majority vote of the CITY Commission in attendance at a public meeting, such resignation shall be considered a termination without cause within the meaning of VA2.
- D. Expiration of Term or Subsequent Term.
  1. At the expiration of the Term or any Subsequent Term, this Agreement and EMPLOYEE's employment shall renew automatically, unless the parties enter into a written amendment or new agreement at least forty-five (45) days prior to the end of the Term or any Subsequent Term.
- E. Death or Disability.
  1. This Agreement, the Term, any Subsequent Term, and EMPLOYEE's employment shall terminate automatically upon the EMPLOYEE's death.
  2. This Agreement, the Term, any Subsequent Term, and EMPLOYEE's employment shall terminate automatically on the 30<sup>th</sup> day after the CITY gives written notice to the EMPLOYEE of its intent to terminate based upon "Disability" unless the EMPLOYEE is determined to be fit for duty by a physician indicating she can perform the essential functions of the position on a full-time basis and does, in fact, return to duty prior to the 30<sup>th</sup> day. "Disability" means the EMPLOYEE's inability to perform her duties, with or without reasonable accommodation, as evidenced by a certificate signed either by a physician mutually acceptable to the CITY and EMPLOYEE or, if the parties cannot agree, by a physician selected by agreement of a physician designated by the CITY and a physician designated by the EMPLOYEE. EMPLOYEE shall submit to a reasonable number of examinations by the physician making the determination of Disability, and hereby authorizes the disclosure and release of all supporting medical records to the CITY and shall execute the necessary documents required for such release.
- F. Post-Termination Name Clearing Meeting

1. EMPLOYEE may avail herself of the CITY's Post Termination Name-Clearing Meeting process in accordance with CITY policy in effect at the time of termination. However, in light of the organizational structure, EMPLOYEE must submit any request for such meeting in writing to the Mayor within 10 calendar days of the date of termination and such meeting will be scheduled to occur at a special or regular CITY Commission Meeting with the Commission presiding at such meeting or, in lieu of attending, a meeting, EMPLOYEE may choose to submit a written statement to be included in her personnel file. The meeting is not an appeal of the termination decision and the CITY Commission is not required to consider reinstatement. The process is designed to allow the EMPLOYEE to present information in the public record regarding the information forming the basis of the termination.

## VI. **COMPENSATION**

- A. Base Salary. CITY agrees to pay EMPLOYEE for services rendered at the base annual salary of Two Hundred Thousand Dollars (\$200,000). The Base Salary shall be paid in installments at the same time as other employees of the CITY are paid.

The CITY may, at any time, increase the Base Salary to the EMPLOYEE, as it may deem desirable to do so, in its sole discretion, which shall not require a written amendment to this Agreement provided a majority of the City Commission in attendance at the meeting vote in favor of such increase. When other City employees are given a cost of living increase during the term of this agreement, the same percentage increase shall be awarded the EMPLOYEE. EMPLOYEE shall not be awarded any across-the board, cost of living, or merit increase provided to other CITY employees without specific approval of a majority of the CITY Commission in attendance at a public meeting.

Base Salary payments are not due for any periods of unpaid leave, including disciplinary suspensions, in accordance with applicable wage and hour laws.

- B. Benefits.

1. Vacation Leave: EMPLOYEE shall receive 200 hours (25 days) of vacation leave into her leave bank in a lump sum upon the commencement of her employment on December 6, 2021, and on December 6<sup>th</sup> of each succeeding year. EMPLOYEE shall obtain approval for use of such leave from the Mayor in office at the time the request for use of leave is made. EMPLOYEE shall notify all CITY Commissioners of her absence.
2. Sick Leave: The EMPLOYEE shall accrue and use Sick Leave in the same manner and under the same provisions as other CITY employees as set forth in the CITY policies, as amended from time to time. In addition, the City Manager shall receive a lump sum contribution of 25 hours (5 days) of sick leave on December 6, 2021. The City Manager shall obtain approval for use of such leave from the Mayor in office at the time the request for use of leave is made. The City Manager shall notify all CITY Commissioners of the absence.
3. Insurance: The EMPLOYEE, her spouse and dependents, if any, shall be entitled to and enjoy inclusion in the CITY's Dental Insurance Program, Health Insurance Program, Vision Care Program, and other insurance benefits that may be offered in the same manner and under the same provisions and benefits as other CITY employees, as the same exists or may be amended from time to time by the CITY.
4. Retirement/Deferred Compensation: The CITY will contribute on an annual basis an amount equal to 10% of EMPLOYEE'S salary to the CITY approved 401A retirement program. The said payment shall be payable in installments at the same time as other retirement benefits

are paid to other CITY employees. The employer's 401A retirement payment will be in lieu of any payments, which the CITY would have otherwise made for the EMPLOYEE'S benefit to the employer's defined benefit retirement system. As a contractually employed city manager, EMPLOYEE shall not be entitled to participate in the employer's general defined benefit retirement plan.

The CITY'S contribution to the 401A retirement program shall not exceed the limit established by federal statutes and/or regulation.

5. Vehicle Allowance: The EMPLOYEE is expected to travel on business for the CITY on a regular and frequent basis including, but not limited to, attendance at meetings, driving the City's jurisdictional area, and site visits in the field. In lieu of an official vehicle, CITY shall provide EMPLOYEE with a monthly car allowance of Five Hundred Dollars (\$500.00) in full payment of any expenses arising from this employment. Pursuant to §112.061, Florida Statutes, such allowance may be changed by the CITY on the basis of a signed statement of the EMPLOYEE, filed before the allowance is changed, and at least annually thereafter. The statement shall show the places and distances for an average typical month's travel on official business, and the amount that would be allowed under the approved rate per mile for the travel shown in the statement, if payment had been made pursuant to the mileage reimbursement provisions of §112.061, Florida Statutes. EMPLOYEE is responsible for any income tax liability relating to such vehicle allowance. In the event of a paid or unpaid leave of absence in excess of 21 consecutive calendar days, such vehicle allowance shall be paid in accordance with a pro-rata calculation for the months during which the leave of absence occurs.

EMPLOYEE further agrees to ensure that the vehicle is properly insured for business use and provide documentation of same to the City.

6. Dues and Subscriptions: CITY shall pay reasonable and appropriate professional dues and subscriptions on behalf of the EMPLOYEE for the purpose of allowing her participation in direct job-related associations, subject to budget constraints and City Commission approval.
7. Professional Development: CITY agrees to pay the reasonable and customary travel and subsistence expenses (in accordance with applicable Florida Law and CITY policies) for EMPLOYEE'S travel to and attendance at professional association events as well as other reasonably necessary seminars and conferences customary to EMPLOYEE's position and/or necessary to meet continuing education requirements, subject to budget constraints and City Commission approval.
8. Per Diem and Subsistence Allowance: EMPLOYEE shall be reimbursed for work-related travel outside Palm Beach County based on the categories and at the standard rates provided in CITY policy, which reimbursement shall not be considered part of the EMPLOYEE'S Compensation. However, no additional reimbursement for mileage or other vehicle expenses related to the maintenance or operation of the CITY vehicle will be provided except as specified in Section VI, B, 5 of this Agreement. As an exempt employee, no additional compensation will be paid for time spent traveling on CITY business other than EMPLOYEE'S Base Salary then in effect.
9. Additional Benefits: Said further and additional benefits which are provided to other CITY employees now or in the future shall be provided to the EMPLOYEE. The CITY may, at any time, provide other additional benefits solely to the EMPLOYEE, as it may deem desirable to do so.

## VII. PERFORMANCE EVALUATION

The CITY and EMPLOYEE will work together to mutually agree upon such goals and performance objectives, generally as a result of the budget process, which they determine to be essential for the proper operation of the CITY and progress towards attaining the CITY's policy directives and shall further establish a relative priority among those various goals and objectives. All agreed-upon goals and objectives shall be realistic and have resources committed to be effectively implemented.

During the Term and any Subsequent Term, the CITY Commission will endeavor to evaluate EMPLOYEE's performance annually on or before the November regular City Commission Meeting. The PARTIES will agree upon an evaluation format in compliance with applicable Florida laws. If the EMPLOYEE's performance is determined to be at least satisfactory based on an average score of all submitted evaluations, the CITY Commission may award an increase in Base Salary as agreed by the CITY Commission in its sole discretion and subject to budget considerations. Any such increase shall not require a written amendment to this agreement provided a majority of the CITY Commissioners in attendance at a public meeting vote in favor of such increase.

In the event the CITY Commission determines that the performance of EMPLOYEE is unsatisfactory in any respect or needs significant improvement in any area, the CITY Commission shall describe these concerns in writing and in reasonable detail or with specific examples so as to be objective and positive and an adequate opportunity shall be provided for the EMPLOYEE to discuss the evaluation with the CITY Commission.

## VIII. PAYMENT UPON SEPARATION; SEVERANCE PAY

A. Final Paycheck. If EMPLOYEE separates from employment for any reason under Section V, she shall be paid in full any unpaid balance of her Base Salary then earned and due through the final date of employment. EMPLOYEE shall also be paid any accrued and unused Vacation Leave up to a maximum established by CITY policy, as amended from time to time. Holidays and Sick Leave are not payable upon separation for any reason. Such payments shall be made on the next regularly scheduled pay date after separation.

B. Severance Pay.

1. Termination Without Cause. If EMPLOYEE is terminated Without Cause she shall be eligible to receive Severance Pay equal to the gross amount Base Salary in effect at the time of termination, and shall not include any Benefits or perquisites as may be permitted by §215.425, F.S. (hereafter referred to as "Severance Pay") of twenty (20) weeks' severance pay.

Severance Pay shall be made within 30 calendar days after receipt of an executed Separation Agreement and General Release, in substantially the same form as attached hereto as Exhibit "A", by EMPLOYEE in favor of CITY in a lump sum payment, less applicable withholdings and other required deductions.

2. Termination With Cause. EMPLOYEE shall not be eligible for or receive Severance Pay.
3. Resignation by EMPLOYEE. EMPLOYEE shall not be eligible for or receive Severance Pay.
4. Expiration of Term or Subsequent Term. EMPLOYEE shall not be eligible for or receive Severance Pay.

5. Death or Disability. EMPLOYEE, or his heirs or assigns, shall not be eligible for or receive Severance Pay.

IX. RELOCATION EXPENSES

- A. The CITY will reimburse EMPLOYEE up to \$2,500 for EMPLOYEE and her spouse to visit Lake Worth Beach and its surrounding area in order to obtain housing. Travel expenses that would be reimbursable for such a trip would include airfare, food, lodging, and rental car expenses for EMPLOYEE and her spouse while searching for housing. Payment of said reimbursement will be made by the CITY upon proof of submission of proper documentation by EMPLOYEE to the CITY.
- B. The CITY will pay EMPLOYEE directly a lump sum of \$15,000 for moving expenses to a residence within Palm Beach County. One-half (\$7,500) of said payment shall be made by November 15, 2021 and the other half (\$7,500) shall be made by December 10, 2021.
- C. In the event that EMPLOYEE either resigns her position with the CITY or her employment is terminated with cause by the CITY prior to December 5, 2022, the EMPLOYEE shall reimburse the CITY for 50% of the moving expenses (\$7,500) paid by the CITY. EMPLOYEE authorizes the CITY to deduct said sums from any payments due her from the CITY including, but not limited, to base salary, payment for leave balances and any other sums that may be due to the EMPLOYEE from the CITY, up to the amount to be refunded to the CITY.

X. COMMUNICATION AND OVERSIGHT

The EMPLOYEE shall regularly communicate with all CITY Commissioners.

EMPLOYEE agrees to notify the CITY Commission in writing within three (3) business days of being provided or notified of any complaint filed with the Florida Commission on Ethics, the Palm Beach County Commission on Ethics, the Palm Beach County Inspector General, any charge or subpoena from any law enforcement agency, or any other civil or administrative claim against EMPLOYEE.

XI. GENERAL PROVISIONS

- A. The text herein shall constitute the entire Agreement between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of EMPLOYEE.
- C. This Agreement may not be modified or changed in any way whatsoever except by mutual written consent of both parties.
- D. 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.
- E. Failure of the CITY to enforce or exercise any right(s) under this Agreement shall not be deemed a waiver of CITY's right to enforce or exercise said right(s) at any time thereafter.
- F. This Agreement shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

- G. The Separation Agreement and General Release (for Severance Pay) referenced in this Agreement has been provided to EMPLOYEE and is attached hereto as Exhibit "A". By entering into this Agreement, EMPLOYEE acknowledges that he has been advised to consult with personal legal counsel to review such Separation Agreement and General Release and has had adequate time to consider same.
- H. All the provisions contained in this Agreement are subject to and conditioned upon compliance with all applicable laws of the State of Florida and local ordinances. Such laws shall take precedent over any part or portion of provisions as contained herein.
- I. This Agreement shall be governed exclusively by Florida law and venue of any action or proceeding relating to this Agreement shall be in Palm Beach County, Florida, exclusively, with each party to bear its own attorneys' fees and costs, up through and including any appellate action. EMPLOYEE expressly consents to the personal jurisdiction of the courts of Palm Beach County, Florida.
- J. All notices required to be given under the terms of this Agreement or which any of the parties desires to give hereunder shall be in writing and personally delivered or sent by registered or certified mail, return receipt requested, addressed as follows:

TO: Mayor Betty Resch  
 CITY OF LAKE WORTH BEACH  
 7 North Dixie Highway  
 Lake Worth Beach, FL 33460

TO: Carmen Y. Davis  
 \_\_\_\_\_  
 \_\_\_\_\_

With a copy to City Attorney:

Glen J. Torcivia, Esquire  
 Torcivia, Donlon, Goddeau & Rubin, P.A.  
 701 Northpoint Parkway, Suite 209  
 West Palm Beach, Florida 33407

Any party may designate a change of address at any time by giving written notice thereof to the other party.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on this 10<sup>th</sup> day of November 2021.

CITY OF LAKE WORTH BEACH

EMPLOYEE – CARMEN Y. DAVIS

BY:   
 Mayor Betty Resch

  
 Carmen Y. Davis

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

 FOR



GLEN J. TORCIVIA, CITY ATTORNEY

Melissa Ann Coyne, City Clerk