

CITY MANAGER EMPLOYMENT AGREEMENT

Introduction

This City Manager Employment Agreement (“the Agreement”) is made and entered into this _____ day of _____, 2023, by and between the **City of Flagler Beach** a Florida municipal corporation, (hereinafter called "Employer") and **Dale L. Martin**, (hereinafter called "Employee") an individual who has experience in local government management, both of whom agree as follows:

Section 1: Term

The initial term of Employee’s employment with Employer shall commence on July 29, 2023 and terminate at the close of business on the third anniversary following such date (“Initial Term”), subject to the provisions for early termination as set forth herein. The term of employment shall be automatically renewed for additional successive one year terms (each a “Renewal Term” and together with the Initial Term, the “Term”) unless either party gives written notice to the other at least sixty (60) days prior to the otherwise scheduled termination of the Initial Term or Renewal Term that he or it, as the case may be, does not intend the Term of employment to continue beyond such anniversary. The City Commission of the City of Flagler Beach may terminate Employee’s employment as provided in Section 3.02 of the City Charter during the Term in a manner consistent with the provisions of this Agreement.

Section 2: Duties and Authority

Employer agrees to employ Employee as City Manager to perform the functions and duties specified in the City Charter and City Code of Ordinances and to perform other legally permissible and proper duties and functions.

Section 3: Compensation

Employer agrees to pay Employee an starting annual base salary of \$156,000, payable in installments at the same time the other management employees of Employer are paid. On October 1, 2023, Employee’s annual base salary shall be increased to \$165,000. Subsequently, Employer may increase the compensation of Employee dependent upon the results of an annual performance evaluation conducted by the City Commission.

Section 4: Health, Disability and Life Insurance Benefits

Employer agrees to provide and to pay the full premiums for health insurance for the Employee, and to provide dental, vision, disability and life insurances for Employee to the same extent such benefits are, at the time of this Agreement or in the future, provided to any management employee of Employer consistent with Employer's approved benefits package. In addition, Employer shall pay one-half of the premiums for Employee's spouse to participate in Employer's group health insurance plan. Employer shall extend to Employee any benefits provided to any management employee of Employer consistent with Employer's approved benefits package related to spousal insurance coverage that may become available in the future.

Section 5: Vacation, Annual Leave and Sick Leave

Employee shall be given all scheduled holidays allowed to other general employees.

Employee shall commence employment with 40 hours of annual leave and 32 hours of sick leave.

Employee shall accrue annual leave days at the maximum rate of 120 hours per year throughout the duration of this Agreement. Employee shall not use more than two (2) consecutive weeks of annual leave days during any year of his employment without the advance agreement of Employer to such use, or unless the result of an extenuating circumstance such as flight cancelation, sickness, weather delay, et cetera. Employee is entitled to carry over annual leave days from one year to the next up to a maximum of 120 hours of Employee's annual accrual. The City Commission, by affirmative vote on a case by case basis, may in its sole discretion allow Employee to carry over more than 120 hours of Employee's annual accrual from one year to the next.

Employee shall also accrue 8 hours per month of sick leave per each year of employment in accordance with the personnel policy manual of Employer, including any rollover and use limits placed thereon, as same may be amended by Employer from time to time. Said sick leave is not compensable upon Employee's cessation of employment with Employer for any reason.

Section 6: Automobile Allowance

Employer shall reimburse Employee at the IRS standard mileage rate for any official business use of his personal vehicle. It is understood that the IRS standard mileage rate may go up or down as set by the IRS from time to time.

Section 7: Retirement Benefits

Employer shall contribute to an IRS 401(a) plan on behalf of Employee at the rate of 6.5% of Employee's salary, which is the same percentage of salary that is contributed for other general employees of the City.

In addition to Employer's 401(a) contribution referenced above, Employer agrees to execute all necessary agreements or documents to allow Employee's participation or continuation in the Section 457 deferred compensation plan of Employee's choosing.

Section 8: Professional Development, Dues and Subscriptions; Cell Phone

Employer agrees to budget for and to pay for Employee's professional license fees and continuing professional education classes required for the Employee to maintain his professional license.

Additionally, Employer agrees to budget for and to pay the professional dues and subscriptions of Employee reasonably necessary for his continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for Employee's continued professional participation, growth, and advancement, and for the good of Employer, subject to the approval of the Employer and in accordance with City policies.

Employee may use his personal cell phone for City related calls and understands the implications of public records law in making such decision. For so long as Employee uses his personal cell phone for City related business, Employee shall receive a cell phone allowance of fifty dollars (\$50.00) per month. If at any time Employee decides to accept a City paid cellular account for City related business, the cell phone allowance shall be removed from the compensation package.

Section 9: No Reduction in Benefits

Employer shall not, at any time during the term of this Agreement, reduce the salary, compensation or other financial benefits of Employee, except in the case of such a reduction across the board for all department heads of Employer, and then only in the same proportion to those department heads.

Section 10: Parity in Benefits

Employee is entitled to any employment benefit which is now furnished to or is hereafter furnished to any City Department Head, not including items which are already covered by this Agreement.

Section 11: Termination

Any one of the following acts or events shall constitute termination of this Agreement and Employee's employment under it:

1. A vote of the City Commission pursuant to City Charter Section 3.02 to terminate this Agreement and Employee's employment under it without cause.

2. A vote of the City Commission pursuant to City Charter Section 3.02 to terminate this Agreement and Employee's employment under it for cause. For purposes of this paragraph "cause" shall be defined to mean:

- a. the commission by Employee of any embezzlement or other act of dishonesty toward the Employer;
- b. the conviction, including by plea of no contest, of Employee for any felony;
- c. willful damaging of Employer's real or personal property;
- d. abuse of alcohol, narcotics or other controlled substances, including any conviction, including by plea of no contest, of Employee for operating a motor vehicle under the influence or for public intoxication;
- e. willfully causing physical injury to any other employee of Employer;
- f. the commission by Employee of unlawful sexual harassment of any other employee of Employer;
- g. any other act involving moral turpitude or that would tend to bring dishonor or embarrassment to Employer;
- h. the physical or mental incapacity of Employee, as determined by an independent third party physician, which renders Employee unable to perform his duties and which lasts for ninety (90) consecutive days.
- i. employee's decision to move somewhere other than within the City of Flagler Beach after relocating to the City in accordance with this Agreement.
- j. any act of misconduct as defined in Section 443.036(30), Florida Statutes.

With respect to subsections (a), (c), (d), (e), (f), (g), and (j) above, no "cause" shall be deemed to exist unless and until an independent third party investigator appointed by Employer issues a determination that Employee has engaged in conduct constituting "cause".

3. Final action by Employer, citizens or the Florida Legislature to amend any provisions of the City Charter, ordinances or other legislation governing the role, powers, duties, authority or responsibilities of Employee's position that substantially changes the form of government of the City. Under such circumstances, Employee shall have the right to declare that such amendments constitute termination, and his doing so will constitute formal termination of this Agreement.

4. Employee's written declaration of termination following a request for his resignation by Employer or an offer of Employer to accept his resignation.

5. Employee's written declaration of termination following a breach of this Agreement by Employer, including without limitation a failure by Employer to pay to Employee any of the compensation or benefits due pursuant to this Agreement. Such declaration of termination shall only be effective after Employee has provided written

notice to Employer of the breach and at least sixty (60) days for the Employer to cure the breach. Such notice period shall not be shortened except by mutual agreement by the parties. In the event any breach is cured prior to the expiration of the cure period, the termination pursuant to this paragraph shall not become effective.

6. The death of Employee.

Section 12: Severance

.Except as otherwise expressly provided herein, if Employee's employment is terminated as defined in Section 12 during the Initial Term or any Renewal Term, Employer shall provide Employee severance equal to twenty (20) weeks. No severance shall be paid to Employee if Employee's employment is terminated for the reasons described in Section 12, Paragraph 2, or Section 12, Paragraph 6.

As additional severance, Employee shall also be compensated for all accrued annual leave days.

For the period of time following Employee's termination equal to the number of months for which Employee is receiving severance, Employer shall pay, as a lump sum, its normal Employer portion of Employee's health insurance and any other insurance for which the Employer pays a portion at the time of termination for Employee and dependants, if any.

Severance shall be paid in a lump sum unless otherwise agreed to by Employer and Employee. All required and applicable payroll deductions will be made from any such payment.

Section 13: Resignation

In the event that Employee voluntarily resigns his position with Employer for reasons other than those set forth in Section 12 above, Employee shall provide a minimum of sixty (60) days notice unless the parties agree otherwise and shall not be entitled to any severance. In the event the parties agree to a shorter notification period for resignation, such agreement shall in no event be interpreted as Employer exercising a termination of Employee.

Section 14: Performance Evaluation

Employer shall annually review the performance of Employee subject to a process, form, criteria, and format for the evaluation which shall be determined by Employer. Employer shall make reasonable efforts to conduct this performance review in August of each year or as soon thereafter as reasonably possible.

Section 15: Hours of Work

It is recognized that Employee must devote a great deal of time outside the normal office hours on business for Employer, and to that end Employee shall be

allowed to establish an appropriate work schedule but must work a minimum of forty (40) hours per week unless on other approved leave.

Section 16: Outside Activities

The employment provided for by this Agreement shall be Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to Employer and the community, Employee may, upon the approval in advance of Employer, elect to accept teaching, consulting or other business opportunities with the understanding that such limited arrangements shall not constitute interference with or a conflict of interest with his responsibilities under this Agreement.

Section 17: Indemnification

Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the course and scope of Employee'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. Employer may choose, in its sole discretion, the appropriate attorney or firm to represent Employee as provided herein.

Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee 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 Employer in order for indemnification, as provided in this Section, to be available.

Employee recognizes that Employer shall have the right to compromise and settle any claim or suit covered by this indemnity obligation. If Employee is a named party to any such litigation or claim, he shall have the right to decline to settle the litigation or claim as to himself, but in such event Employer shall have the right to opt to no longer defend and/or indemnify Employee.

Section 18: Bonding

Employer shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance.

Section 19: Other Terms and Conditions of Employment

Employer 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 City Charter or any other law.

Section 20: Notices

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

TO EMPLOYER: Mayor
City of Flagler Beach
P.O. Box 70
Flagler Beach, FL 32136

TO EMPLOYEE: Dale L. Martin
92016 Woodlawn Drive
Fernandina Beach, FL 32034

Either party may update its or his address for notice as necessary from time to time.

Alternatively, notice 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 the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 21: Residency; Relocation and Housing Stipend

City Charter Section 3.01 requires the City Manager to reside in the City of Flagler Beach. Employee shall within ninety (90) days from the commencement of his employment pursuant to this Agreement relocate to a permanent residence located within the City of Flagler Beach. The City Commission by affirmative vote may upon good cause shown extend this period for up to an additional ninety (90) days.

Employer shall pay Employee a relocation stipend in the amount of \$15,000.00 to be used by Employee solely for moving expenses and temporary housing costs. Such stipend shall be paid to Employee in a lump sum with his first regularly-scheduled paycheck. Employee shall retain receipts for all moving expenses and temporary housing costs and shall return to the City any portion of the stipend not used within 180 days of the date of this agreement.

Section 22: General Provisions

A. Integration. This Agreement sets forth and establishes the entire understanding between Employer and Employee relating to the employment of Employee by Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties 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 Employer and Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective Date. This Agreement shall become effective on July 29, 2023.

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 parties subsequent to the expungement or judicial modification of the invalid provision.

"EMPLOYER"

"EMPLOYEE"

City of Flagler Beach

Dale L. Martin

Suzie Johnston, Mayor

Dale L. Martin