

EMPLOYMENT AGREEMENT

This Employment Agreement hereinafter referred to as the "Agreement" is made and entered into on the 4th day of April, 2011, by and between the City of North Port, Florida, hereinafter referred to as the "CITY" or "EMPLOYER", and Jonathan R. Lewis, hereinafter referred to as the "EMPLOYEE or CITY MANAGER."

RECITALS

A. The CITY is a political subdivision of the State of Florida and operates pursuant to a commission/manager form of government.

B. The CITY Commission is the legislative branch of the CITY's form of government and derives its powers from the Florida Constitution, general laws of the State of Florida and the CITY Charter.

C. The CITY Manager is the CITY's chief executive officer whose powers, duties, and responsibilities are set forth in the CITY Charter and Code.

D. Although the CITY Manager is an employee of the CITY, he owes the Commission a higher duty of loyalty and confidentiality than other CITY employees. Accordingly, the CITY and the EMPLOYEE acknowledge that the CITY manager position has greater obligations and responsibilities than other positions of employment and, as a result, may be subject to more restrictions and enhanced benefits than other employees of the CITY.

E. The EMPLOYEE has represented and warranted that, by virtue of EMPLOYEE's education, training, and experience, EMPLOYEE has the requisite skills, background, education, knowledge, and abilities to capably perform the duties and obligations of CITY Manager.

F. As a result of its good faith reliance on those representations and warranties, the CITY wishes to secure, employ, and retain the services of the EMPLOYEE as CITY Manager.

G. The EMPLOYEE desires to accept and assume the position of CITY Manager.

NOW THEREFORE, in consideration of the premises and the mutual covenants expressed herein and pursuant to the employment relationship between the parties, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** The recitals outlined above are true and correct and are incorporated into and made a part of this Agreement.

2. **Position or Job.** The CITY hereby employs, engages, and hires the EMPLOYEE in the position of CITY Manager provided, however, that this Agreement and the EMPLOYEE's employment are subject to and conditioned upon the EMPLOYEE:

- a) successfully passing all post offer background, reference checks, and medical examinations including drug screen conducted by the CITY; and
- b) being approved by a majority of the CITY Commission at a lawful public meeting.

The general duties and responsibilities of this job include, but are not limited to, those specified in the City Charter, Ordinances of the City of North Port and/or assigned to EMPLOYEE by the CITY Commission. The CITY shall have the sole right and discretion to change or modify the duties and responsibilities of the

EMPLOYEE's position or job at any time and for any reason. The EMPLOYEE shall perform all duties, responsibilities, tasks, jobs, and services assigned to EMPLOYEE by the EMPLOYER responsibly, faithfully, industriously and to the best of his ability.

In the event the CITY MANAGER shall serve on any appointed boards or elected boards of any professional organization, or serve on any committees related to his professional activities, any monies paid, or gifts received, by the City Manager related to such service shall be paid over to or delivered to the CITY, unless otherwise provided by the CITY Commission. It is understood that the City Manager will become the President of FCCMA in June of 2011. It is normal practice that FCCMA presents a gift of some type to the President at the completion of his term. Should such a gift be presented it shall remain with the City Manager.

3. **Performance Evaluation.** The CITY Commission shall annually review and evaluate the performance of the EMPLOYEE. The review and evaluation may be in accordance with specific written criteria developed by the CITY Commission, in conjunction with the EMPLOYEE. Further, the individual Commissioners shall provide the EMPLOYEE with the written evaluations and provide the EMPLOYEE ample opportunity to respond. The written criteria should, but is not required to, consist of goals and performance objectives, which the Commission deems necessary for the proper operation of the CITY and the attainment of the Commission's policy objectives. If the goals and performance objectives are established the CITY Commission shall further adopt and establish a relative priority among the goals and performance objectives.

If the goals and objectives are established they shall generally be attainable within the time limitation as specified and the annual operating and capital budgets and appropriations provided. The initial goals and performance objectives may be established after the adoption of the annual operating budget for fiscal year 2011-2012. The first annual review and evaluation under this Agreement shall take place in advance of the adoption of the annual operating budget for the fiscal year 2012-2013. The goals may be re-established on an annual basis, coincident with the annual review and performance evaluation of CITY Manager, or as otherwise deemed necessary by either of the parties. If possible the CITY Commission will perform the goal setting in conjunction with CITY's annual strategic plan update facilitated by an outside neutral third-party. In effecting the provisions of this Section the CITY Commission and EMPLOYEE mutually agree to abide by the provisions of applicable law.

4. **Duration of Employment Indefinite.** The EMPLOYEE shall be employed by the CITY as its Manager, but nothing in this Agreement shall be construed as creating an obligation, duty, or guarantee of employment for any specific duration. Although the CITY hopes that its relationship with the EMPLOYEE will be long term, the employment and compensation of the EMPLOYEE can be ended by either party in accordance with Paragraph 6 below. This term or period of employment shall commence on May 2, 2011.

5. **Compensation or Salary.** During the time that this Agreement is in force the CITY shall pay the EMPLOYEE, and the EMPLOYEE shall accept from the CITY in full payment for the EMPLOYEE's services, an annual gross salary of one

hundred sixty five thousand (\$165,000) payable in the same manner as other general employees are paid through the normal payroll system.

Any increases to EMPLOYEE'S salary shall be based upon; (a) the annual performance evaluation, and/or (b) any amount provided to general employees as an across the board increase, and/or (c) such an amount as the City Commission may deem appropriate.

6. **Termination.** The employment and compensation of the EMPLOYEE can be ended at the option of the CITY or the EMPLOYEE at any time with or without cause, subject to the following conditions:

a. The EMPLOYEE may cancel this Agreement and his employment by giving the CITY thirty (30) days written notice before the effective date of separation, unless CITY agrees to waive such notice requirement. No severance shall be paid to the EMPLOYEE when termination occurs under these circumstances. However, the EMPLOYEE will be paid any unused leave that EMPLOYEE has accrued as of the effective date of termination, in accordance with the Personnel Policy in affect at that time.

b. If CITY reduces any of the terms of this Agreement, or if City refuses following written notice to comply with any other provision of this Agreement benefiting City Manager, CITY Manager may at his option, be deemed to be terminated without cause as of the date of such reduction or refusal. In such event, the severance pay and other termination provisions, as outlined in Section 6 Paragraph c below shall become applicable at the annual salary and benefit level in effect prior to the reduction or refusal.

c. The CITY may cancel this Agreement and the EMPLOYEE's employment without cause by giving the EMPLOYEE ten (10) days written notice before the effective date of termination. If the effective date of this termination without cause is within his first year of employment, the EMPLOYEE shall receive a lump sum severance payment equal to one (1) year's of EMPLOYEE's annual base salary plus the value of health benefits (medical, dental and vision) in affect at that time, together with payment for all unused leave. If the effective date of this termination without cause is within his second year of employment, the EMPLOYEE shall receive a lump sum severance payment equal to nine (9) months of EMPLOYEE's annual base salary plus benefits as defined above, together with payment for all unused leave. Thereafter for terminations under this paragraph, EMPLOYEE shall receive a lump sum severance payment equal to six (6) months of EMPLOYEE's annual base salary plus benefits as defined above, together with payment for all unused leave that EMPLOYEE has accrued as of the effective date of termination.

A formal vote of "no confidence" by the CITY Commission may be considered by CITY Manager as a termination without cause under this Agreement.

d. For "just cause" termination, the CITY shall follow all applicable Federal and State law. In the event the EMPLOYEE is terminated for "just cause" at a duly noticed City Commission meeting, the CITY shall have no obligation to pay the amounts outlined in Section 6, Paragraph c of this Agreement. For purposes of this Agreement, "just cause" is defined and limited for purposes of this Agreement to any of the following:

1. Misfeasance, malfeasance and/or nonfeasance in performance of the EMPLOYEE's duties and responsibilities.

2. Conviction or a plea of guilty or no contest to a misdemeanor or felony crime, whether or not adjudication is withheld.
3. Neglect of duty, including the inability or unwillingness to properly discharge the responsibilities of office.
4. Violation of any substantive CITY policy, rule, or regulation, which would subject any other CITY employee to termination.
5. The commission of any fraudulent act against the interest of the CITY.
6. The commission of any act which involves moral turpitude, or which causes the CITY disrepute.
7. Violation of the International CITY/County Management Association Code of Ethics.

Just cause shall further include any breach of this agreement by EMPLOYEE providing EMPLOYEE shall be given ten (10) days notice to cure such breach before termination may occur under this paragraph.

For terminations for cause and after having served one (1) year, EMPLOYEE may demand written charges and a public hearing upon the same by the CITY Commission and EMPLOYEE's final removal shall not take effect until such hearing has been held, but the Commission may suspend EMPLOYEE from office pending such hearing.

7. **Deferred Compensation and Florida Retirement System.** Each year the CITY shall contribute to the EMPLOYEE's ICMA-RC deferred compensation plan an amount equal to five percent (5%) of the EMPLOYEE's annual salary; the total annual amount is not to exceed the maximum allowable contribution under the Internal Revenue Code. On May 2, 2013, CITY contribution to the EMPLOYEE's ICMA-RC deferred compensation shall increase to seven percent (7%). These contributions, which

will be made on regularly scheduled pay dates, are in addition to the EMPLOYEE's salary referred to in Paragraph 5 above, and will immediately expire if this Agreement and the EMPLOYEE's employment are terminated pursuant to Paragraph 6 above. CITY agrees to authorize all necessary arrangements required by the ICMA-RC for CITY MANAGER'S continued participation in the 457 Deferred Compensation Plan. CITY further agrees to transfer ownership to CITY MANAGER of the Plan account funds upon CITY MANAGER'S resignation or termination.

CITY recognizes the CITY MANAGER is required to participate in the Florida Retirement System (FRS) at the senior management level as provided to other employees. The CITY agrees to authorize all necessary arrangements required under Florida State statute to allow for buy-back of prior service using CITY MANAGER's resources should the CITY MANAGER elect to exercise that option.

8. **Relocation.** In order to mitigate the disruption to the EMPLOYEE's family, the CITY will provide the following relocation benefits:

a. The CITY shall pay EMPLOYEE a temporary lodging allowance of one thousand (\$1000.00) per month for a period commencing on the CITY Manager's start date, and shall continue for a maximum of 6 months, or until a home is purchased and closed on, within the corporate limits of the CITY, whichever event occurs first.

b. The CITY will reimburse the EMPLOYEE for all reasonable expenses of packing, moving, and transporting himself and his family, as well as their personal property or belongings, from Palm Bay, Florida to North Port, Florida. Before incurring such expenses the EMPLOYEE will obtain bids from at least three (3) nationally known and/or Florida based moving companies and the CITY will reimburse

him an amount equal to the lowest bid after the move is satisfactorily completed. However, if the EMPLOYEE terminates this Agreement pursuant to Paragraph 6(a) above during the first two (2) years of employment, he shall repay these moving expenses to the CITY within thirty (30) days.

9. **Insurance.** The CITY will at its expense provide (1) the EMPLOYEE, spouse, and eligible dependents with medical, vision and dental insurance coverage under the CITY's group benefit plan; (2) term life insurance on the EMPLOYEE in the face amount equal to two year's salary; and (3) any other insurance coverage provided to all employees (excluding any voluntary plans offered). *Coverage* will begin on the date of appointment. Should CITY not be able to provide health insurance coverage immediately due to policy constraints, it will compensate CITY MANAGER for the cost of his COBRA policy until he can be added to CITY's policy.

10. **Motor Vehicle Allowance**

EMPLOYEE shall provide his own automobile to travel to and from work and for CITY related business. The EMPLOYER shall provide a base automobile allowance of six hundred (\$600) per month. EMPLOYEE shall provide liability, property, damage, and comprehensive insurance coverage on said automobile. Further, EMPLOYEE shall be responsible for maintenance service, gasoline, and oil for said automobile. The base allowance will be indexed by the percentage change in the IRS standard mileage rate. The allowance shall not go below the base amount. The City Manager, from time to time, may at his discretion, for the purpose of conducting of CITY related business, utilize a CITY vehicle.

11. **Executive Business Allowance** EMPLOYEE shall receive monthly Executive Business Allowance of Two Hundred Fifty Dollars (\$250.00). The allowance is a discretionary expenditure fund which must be used for a public purpose in furtherance of his duties as City Manager.

12. **Leaves Of Absence.** The EMPLOYEE shall be immediately vested with one hundred twenty (120) hours of paid annual leave upon date of hire. Upon the first anniversary of employment, the EMPLOYEE will earn one hundred twenty (120) hours of annual leave with pay, to be accrued bi-weekly. Upon entering the fifth year of employment and for each five (5) years of employment thereafter, EMPLOYEE shall accrue an additional forty (40) hours of annual leave with pay, up to a maximum of two hundred forty (240) hours.

13. **Professional Development.** The CITY shall pay reasonable and necessary professional dues and subscriptions for the EMPLOYEE to participate in national, regional, state, and local associations and organizations essential for the EMPLOYEE's continued professional development as CITY Manager. These include, but are not limited to, the International City and County Management Association (ICMA), and the Florida City and County Management Association (FCCMA). CITY is currently a member of the Alliance for Innovation, and will make every attempt to remain a member for the term of CITY MANAGER.

In addition, the CITY will pay reasonable and necessary expenses and costs for the EMPLOYEE to attend seminars, short courses, lectures, and institutes related to EMPLOYEE's duties and responsibilities as CITY Manager. These include, but are not limited to, travel and attendance at the ICMA annual conference,

FCCMA annual conference and Winter Institute, and the Florida League of Cities' annual and legislative conferences.

14. **Civic Involvement and Outside Activities.** The CITY acknowledges the value of having its Manager participate and be directly involved in local civic clubs or organization. Accordingly, the CITY shall pay for the reasonable membership fees and/or dues to enable the EMPLOYEE to become an active member in two (2) local civic clubs or organizations. Provided such services do not unreasonably interfere with EMPLOYEE's responsibilities as City Manager, he shall be permitted, with the prior approval of the CITY Commission, to engage in teaching or other non-CITY related business and retain any compensation.

15. **Residence.** Although the EMPLOYEE is not required to be a resident of the CITY at the time of appointment, EMPLOYEE shall establish and maintain permanent residence within the CITY's geographical boundaries within one (1) year of the date EMPLOYEE is hired.

16. **Other Benefits.** Except as otherwise provided in this Agreement, the EMPLOYEE shall be entitled to all benefits enjoyed by other general employees of the CITY, and as provided in the CITY's Personnel Policy Manual.

17. **Indemnification.** In addition to that required under state and local law, EMPLOYER shall defend, save harmless, and indemnify EMPLOYEE against any tort, professional liability claim or demand, or other legal action or ethics complaints whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of EMPLOYEE's duties as CITY Manager. EMPLOYER will

compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.

18. **Waiver.** No consent or waiver expressed or implied by any party to any breach or default by the other in the performance of their obligations hereunder shall be deemed or construed to be consent or waiver to or of any other breach or default of this Agreement. Failure of any party to complain or any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver of that party's rights hereunder.

19. **Controlling Law.** This Agreement and the validity, execution, construction, interpretation, performance and enforcement thereof, shall be governed by the substantive and procedural laws of the State of Florida.

20. **Jurisdiction and Venue.** Any and all actions, causes of action, lawsuits, litigation, legal proceedings or special proceedings to construe, interpret, or determine the validity of this Agreement and/or to enforce performance thereof shall be brought only in the State of Florida, in Sarasota County. The EMPLOYEE and the CITY stipulate that subject matter and in personam jurisdiction and venue for any dispute, controversy, or disagreement relating directly or indirectly to the provisions of this Agreement and the enforcement therefore lies exclusively in the State of Florida, in Sarasota County.

21. **Attorneys' Fees.** In any litigation lawsuit, legal or other proceedings brought in connection with the construction, interpretation, meaning, validity, performance or enforcement of this Agreement, the prevailing party shall be entitled to receive all of their costs and reasonable attorneys' fees from the other party.

22. **Renegotiation of Provisions.** Either party may request renegotiation of any provision of this Agreement at any time. If the parties are unable to reach agreement, those terms will remain unchanged.

23. **General Provisions.**

A. Upon CITY MANAGER'S death, CITY'S obligations under this Agreement shall terminate except for:

- 1) Transfer of balances in CITY MANAGER'S ICMA 457 Deferred Compensation Plan and FRS plan to his designated beneficiaries;
- 2) Payment of accrued leave balances in accordance with this Agreement;
- 3) Payment of all outstanding hospitalization, medical, and dental bills, in accordance with CITY'S insurance policies or plans;
- 4) Payment of all life insurance and disability benefits; and
- 5) Any other benefits provided to general employees in the event of death.

B. CITY shall bear the cost of any fidelity or other bond required of CITY Manager under any law or the City Charter.

24. **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 had been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

25. **Integration.** This Agreement sets forth and establishes the entire understanding between the EMPLOYER and the EMPLOYEE relating to the employment of the EMPLOYEE by the EMPLOYER. Any prior discussions or representations by or between the parties are merged into and rendered null and void by

the Agreement. No amendment or modification of this Agreement shall be valid or effective unless it is in writing and properly executed by all parties thereto. This Agreement shall supersede all provisions of CITY resolutions in conflict with this Agreement, to the extent of such conflict.

26. **Notice.** Any notice required or permitted under this Agreement shall be sent by certified mail to: a) the CITY at its principal place of business, and b) to the EMPLOYEE at the address provided to the CITY by the EMPLOYEE for income tax purposes.

27. **EMPLOYEE's Understanding.** Before signing this Agreement, the EMPLOYEE was advised of EMPLOYEE's right to consult with an attorney to review the Agreement and EMPLOYEE's right to have an attorney throughout the process leading up to the execution of the Agreement.

Before signing this Agreement the EMPLOYEE had full and adequate opportunity to review and read it. Moreover, the EMPLOYEE did read and review the Agreement and fully understood its contents, terms, provisions, and conditions before signing it.

28. **Binding Effect.** This Agreement shall be binding on the CITY and the EMPLOYEE as well as their heirs, assigns, executors, personal representatives, and successors in interest.

29. **Code of Ethics.** Inasmuch as the CITY Manager is an active full member of the International CITY/County Management Association (ICMA), the "Code of Ethics" promulgated by ICMA is incorporated herein, and by this reference made a

part hereof. Said "Code of Ethics" shall furnish principles to govern the CITY Manager's conduct and actions as CITY Manager of the CITY.

30. Effective/Anniversary Dates. This Agreement shall become effective on May 2, 2011. Accordingly, May 2 of each succeeding year shall be the anniversary date of the EMPLOYEE's employment with the CITY.

IN WITNESS WHEREOF the EMPLOYEE signed and executed this Agreement on April 4th, 2011, after which the CITY signed and executed it on April 4th, 2011.

CITY OF NORTH PORT FLORIDA

BY:

James Blucher
James Blucher, Commission Chair

ATTEST:

Helen Raimbeau
HELEN RAIMBEAU, MMC, CITY Clerk

Approved as to form and correctness:

Robert K. Robinson
Robert K. Robinson, CITY Attorney

Witnesses:

Sherry L. Borgsdorf
Witness Signature

SHERRY L. BORGS DORF
Printed Name of Witness

EMPLOYEE

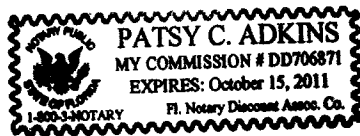
Jonathan R. Lewis
Jonathan R. Lewis

Edwin Bryce
Witness Signature

FRANK BRYCE
Printed Name of Witness

STATE OF FLORIDA
COUNTY OF Sarasota

The foregoing instrument was acknowledged before me this 4th day of April, 2011, by Jonathan R. Lewis who has produced personally known as identification.



Patsy C. Adkins
Notary Public Signature

Patsy C. Adkins
Printed Name of Notary

\\Nh-fs1\rrobinson's documents\Rob Robinson\NORTH PORT\GENERAL\EMPLOYMENT AGREEMENT.doc