

CITY MANAGER EMPLOYMENT AGREEMENT

This Employment Agreement hereinafter referred to as the "Agreement" is made and entered into by and between the City of North Port, Florida, hereinafter referred to as the "City" or "Commission," and Peter Lear, hereinafter referred to as "Mr. Lear" or "City Manager."

RECITALS

- A. The City is a municipal corporation of the State of Florida.
- 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 position is a Charter Officer whose powers, duties and responsibilities are set forth in the City Charter, City Code and Commission authorized job description as revised from time to time.
- D. In accordance with City Charter Section 12.05 on March 7, 2017, the City Commission appointed Mr. Lear as the interim City Manager to execute the functions of the office effective April 3, 2017 to temporarily fill the vacancy in the City Manager position until a new City Manager is appointed.
- E. Mr. Lear has been employed with the City since May 12, 2008 and has been serving as the City's Finance Director since January 16, 2011.
- F. As a Charter Officer, the City Manager is appointed by the Commission and employed by the City. Accordingly, the Commission and Mr. Lear 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 general employees of the City.
- G. Mr. Lear has represented and warranted that, by virtue of his education, training and experience, he has the requisite skills, background, education, knowledge and abilities to capably perform the duties and obligations of City Manager.
- H. As a result of its good faith reliance on those representations and warranties, the Commission wishes to appoint, secure, employ and retain the services of Mr. Lear as the City Manager effective as of the date of last execution of this Agreement ("Effective Date").
- I. Mr. Lear desires to accept and assume the position of City Manager.
- J. At any time prior to the Effective Date, the City Commission by a majority vote may cancel this agreement or Mr. Lear may cancel this agreement and notify the Commission of his desire to resume his position as Finance Director.

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. **Implementation:** The following terms and conditions of this agreement shall take effect as of the Effective Date.

3. Position or Job. The Commission hereby appoints and the City hereby employs, engages and hires Mr. Lear as the City Manager provided, however, that this Agreement and Mr. Lear's employment as City Manager are subject to and conditioned upon him:

- a. Successfully passing all post-offer background, and referenced checks.
- b. Being approved and appointed by a majority of the Commission at a public meeting.

The general duties and responsibilities of the City Manager are specified in the City of North Port City Charter, City of North Port Code of Ordinances, Florida State Statutes, job description attached as Exhibit A and as amended from time to time, and such other legally permissible and proper duties and functions as the Commission may assign. The Commission shall have the sole right and discretion to change or modify the duties and responsibilities of the City Manager's position or job at any time and for any reason.

Mr. Lear shall perform all duties, responsibilities, tasks, jobs and services assigned to him by the Commission responsibly, faithfully, industriously and to the best of his ability.

The City Manager is a salaried Charter Officer position exempt from overtime pay and except for illness, vacation and other authorized absences, the City Manager is expected to be available.

4. Performance Evaluation. The Commission may at any time collectively review and evaluate the City Manager's performance. The Commission shall individually and collectively review and evaluate in writing the City Manager annually no later than the anniversary date of the Effective Date. The annual review and evaluation shall be in accordance with specific written criteria and policy approved by the Commission, as may be amended from time to time. Performance evaluations and any associated compensation adjustments shall be brought up for approval by the Commission at a public meeting.

5. Duration of Appointment and Employment Indefinite. Upon execution of this Agreement and providing Mr. Lear successfully passes all post-offer background, and referenced checks conducted by the City, the term of appointment and employment of Mr. Lear as City Manager shall commence on the Effective Date, 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 its relationship with Mr. Lear will be long term, the employment and compensation of Mr. Lear as City Manager can be ended by either party in accordance with Section 7 below.

6. Compensation or Salary. As of the Effective Date, the City shall pay Mr. Lear, and Mr. Lear shall accept from the City, in full payment for his services as City Manager, an annual gross salary of one hundred fifty thousand dollars (\$150,000.00) payable in the same manner as general employees are paid through the normal payroll system. After one year of service as the City Manager, Mr. Lear shall be eligible for consideration of any adjustments in annual gross salary and/or other compensation. Any adjustments to Mr. Lear's annual gross salary or other compensation shall be determined annually by the Commission at a public meeting based upon the annual performance evaluation. Any adjustments to salary or other compensation shall take effect as determined by Commission during the annual review and performance evaluation. Upon timely obtaining ICMA Credentialed Manager (ICMA-CM) certification in accordance with Section 12 herein, Mr. Lear shall receive a compensation increase of no less than five percent (5%) and no more than ten percent (10%) of his then-current base salary. Said increase shall be in addition to any annual review and raise that year, which shall be determined without consideration of the increase granted in conjunction with the ICMA-CM certification. Mr. Lear's annual gross salary shall not exceed the maximum annual salary established for the City Manager position.

7. Termination. Beginning on the Effective Date, the appointment, employment and compensation of Mr. Lear as City Manager can be ended at the option of the Commission or Mr. Lear, subject to the following conditions:

a. Mr. Lear may cancel this Agreement and his employment by giving the Commission at least thirty (30) days written notice before the effective date of separation, unless the Commission agrees to waive such notice requirement. No severance shall be paid to Mr. Lear if he cancels this Agreement and his employment.. However, Mr. Lear will be paid any unused leave that he has accrued as of the effective date of termination, in accordance with the Personnel Policy in effect at that time.

b. Pursuant to Section 12.04 of the City of North Port City Charter, the City Manager shall be removed from office for good cause by a majority vote of the entire Commission who shall within ten (10) days of such determination serve written notice to the City Manager. After having served one (1) year, he may demand written charges and a public hearing upon the same by the City Commission and his final removal shall not take effect until such hearing has been held, but the Commission may suspend him from office pending such hearing. In the event the City Manager is suspended from office the suspension period shall be with pay. Upon the City Manager's removal from office for "good cause," this agreement shall be terminated. No severance shall be paid to Mr. Lear when termination occurs under these circumstances. However, Mr. Lear will be paid any unused leave that he has accrued as of the effective date of termination, in accordance with the Personnel Policy in effect at that time.

For purposes of this Agreement, "good cause" is defined and limited to the City Manager's conviction (or plea of guilty or nolo contendere) of any felony act or misdemeanor, the City Manager's misconduct as defined in Sections 443.036(29), violation of Section 112.313, Florida Statutes, or any of the following:

i. Violation of the City's Personnel Policy or any City policy, rule or regulation, which would subject any City employee or public officer to termination or removal from office.

ii. The commission of any act which involves moral turpitude, or which causes the City disrepute.

iii. Willful dereliction of duty; material dishonesty, or any other act of a similar nature of the same or greater seriousness.

iv. After the Commission's issuance of a performance improvement plan and the City Manager having six months to address complaints therein, the City Manager's continued failure to perform duties and responsibilities satisfactorily or demonstrate requisite skills in his position as determined by the Commission at a public meeting.

"Good cause" shall further include any breach of this Agreement by Mr. Lear, providing Mr. Lear shall be given ten (10) days' notice to cure such breach before termination may occur under this paragraph.

c. Pursuant to Section 6 of the City of North Port City Charter, the City may cancel this Agreement and Mr. Lear's employment without cause by giving Mr. Lear ten (10) days written notice before the effective date of termination. Provided that he signs a waiver and fully releases any and all claims against the City related to his employment and termination, Mr. Lear shall receive a lump sum severance payment equal to sixteen (16) weeks of his annual base salary, together with payment for all unused leave that he has accrued as of the effective date of termination. This provision complies with Section 215.425, Florida Statutes.

d. The employment and compensation of Mr. Lear shall end upon his death, voluntary resignation, retirement or termination.

8. Deferred Compensation and Florida Retirement System. Each year the City shall contribute to Mr. Lear's ICMA-RC deferred compensation plan an amount equal to three and one-half percent (3.5%) of his annual salary; the total annual amount is not to exceed the maximum allowable contribution under the Internal Revenue code. These contributions, which will be made on regularly scheduled pay dates, are in addition to the salary referred to in Section 6 above, and will immediately expire if this Agreement and Mr. Lear's employment are terminated

pursuant to Section 7 above. The City agrees to authorize all necessary arrangements required by the ICMA-RC for Mr. Lear's continued participation in the 457 Deferred Compensation Plan. The City further agrees to transfer ownership to Mr. Lear of the Plan account funds upon his resignation or termination.

The City recognizes that the City Manager is required to participate in the Florida Retirement System (FRS) at the senior management level. The City agrees to authorize all necessary arrangements required under Florida statutes to allow for buy-back of prior service using the City Manager's resources should the City Manager elect to exercise that option.

9. Insurance. The City will at its expense provide: (1) the City Manager with individual medical, vision and dental insurance coverage under the City's group benefit plan, regardless of plan version; (2) term life insurance on Mr. Lear in the face amount equal to one year's salary; and (3) any other insurance coverage provided to all employees (excluding any voluntary plans offered). Coverage will begin on the first of the month beyond the start date of employment.

10. Leaves of Absence. Mr. Lear shall accrue leave in accordance with the Personnel Policy based upon his overall tenure with the City.

11. Motor Vehicle Allowance. Mr. Lear shall provide his own automobile to travel to and from work and for City related business within Sarasota and Charlotte Counties. The City shall pay an automobile allowance of six hundred dollars (\$600.00) per month. Mr. Lear shall provide liability, property, damage, and comprehensive insurance coverage on said automobile. Further, Mr. Lear shall be responsible for all maintenance service, gasoline, and oil for said automobile. For travel outside Sarasota and Charlotte Counties relating to City business, Mr. Lear may be compensated for use of his own automobile in accordance with the IRS standard mileage rate and City travel expense policy. The City Manager may, at his discretion, occasionally from time to time utilize a City vehicle for the purpose of conducting City-related business.

12. Professional Development. The City shall pay reasonable and necessary professional dues and subscriptions as authorized in the budget for Mr. Lear to participate in national, regional, state and local associations and organizations essential for Mr. Lear'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). Mr. Lear agrees to obtain ICMA Credentialed Manager (ICMA-CM) certification no later than five (5) years from the Effective Date. In addition, the City will pay reasonable and necessary expenses and costs as authorized in the budget for Mr. Lear to attend seminars, short courses, lectures and institutes related to Mr. Lear's duties and responsibilities as City Manager. However, the City Manager will be required to reimburse the City for any educational assistance if Mr. Lear leaves employment within one year of completion of any course or certifications.

13. Civic Involvement and Outside Activities. The City acknowledges the value of having its City Manager participate and be directly involved in local civic clubs or organizations. Accordingly, the City shall pay for the reasonable membership fees and/or dues to enable Mr. Lear to become an active member in one (1) local civic club or organization.

Provided such services do not unreasonably interfere with Mr. Lear's responsibilities as City Manager, he shall be permitted, with the prior approval of the Commission, to engage in teaching or other non-City related business and retain any compensation.

14. Residence. Consistent with Section 12.02 of the City Charter, Mr. Lear shall maintain permanent residency within the City during his term as City Manager. Residency shall be established by a valid driver's license and confirmed by annual submittal of an affidavit of domicile. It shall not be necessary that the City Manager be a resident of the City at the time of his appointment on the Effective Date, however, he shall be required to establish residency in the City within a one (1) year period after such appointment.

15. **Relocation.** In order to mitigate the disruption to the City Manager's family, the City will reimburse Mr. Lear for all reasonable expenses of packing, moving, and transporting himself and his family, as well as their personal property or belongings, from Venice, Florida to North Port, Florida. Before incurring such expenses, Mr. Lear 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 Mr. Lear terminates this Agreement pursuant to Section 7(a) above during the first two (2) years of employment as City Manager, he shall repay these moving expenses to the City within thirty (30) days.

16. **Other Benefits and Obligations.** Except as otherwise provided in this Agreement, Mr. Lear shall be entitled to all benefits enjoyed by general employees and obligations as provided in the City's Personnel Policy Manual. In the event of any conflict between this contract and the City's Personnel Policy Manual, this contract will prevail.

17. **Indemnification.** Pursuant to Sections 111.07 and 111.071 of the Florida Statutes, the City will provide a civil defense to any legal action brought against the City Manager. This section shall survive the termination of this Agreement or any other separation of the City Manager's employment.

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 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. Mr. Lear 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. **Attorney's 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 attorney 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 an 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:

i. Transfer of balances in City Manager's ICMA 457 Deferred Compensation Plan and FRS Plan to his designated beneficiaries;

ii. Payment of accrued leave balances in accordance with this Agreement;

iii. Payment of all outstanding hospitalization, medical and dental bills, in accordance with City's insurance policies or plans;

iv. Payment of all life insurance and disability benefits; and

v. Any other benefits provided to general employees in the event of death.

b. The City shall bear the cost of any fidelity or other bond required of the 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 Commission and Mr. Lear relating to the appointment and employment by the Commission of Mr. Lear as the City Manager. 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 Commission at its principal place of business, and (b) to Mr. Lear at the address provided to the City by Mr. Lear for income tax purposes.

27. Understanding. Before signing this Agreement, Mr. Lear was advised of his right to consult with an attorney to review the Agreement and his right to have an attorney throughout the process leading up to the execution of the Agreement. Before signing this Agreement, Mr. Lear had full and adequate opportunity to read and review it. Moreover, Mr. Lear did read and review the Agreement and fully understood its contents, terms, provisions and conditions before signing it. Any legal counsel sought will be at the expense of Mr. Lear.

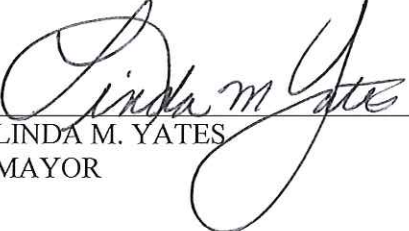
28. Binding Effect. This Agreement shall be binding on the City and Mr. Lear as well as his heirs, assigns, executors, personal representatives and successors in interest.

29. Effective/Anniversary Date. This Agreement shall become effective after signing by both parties. Providing neither party cancels this agreement prior to the Effective Date, the City Manager's start date of appointment and employment as City Manager subject to the terms and conditions contained herein shall be on the Effective Date and is subject to his successfully passing to all post-offer background, and referenced checks conducted by the City. Accordingly, the anniversary of the Effective Date of each succeeding year shall be the anniversary date of the appointment of Mr. Lear as the City Manager.

IN WITNESS WHEREOF, Mr. Lear signed and executed this Agreement on July 7, 2017, after which the City signed and executed it on July 13, 2017.

(This space intentionally left blank; signature pages to follow)

CITY OF NORTH PORT, FLORIDA


LINDA M. YATES
MAYOR

July 13, 2017
DATE

ATTEST


PATSY C. ADKINS, MMC
CITY CLERK

APPROVED AS TO FORM AND CORRECTNESS


AMBER L. SLAYTON
INTERIM CITY ATTORNEY

EMPLOYEE



PETER D. LEAR

WITNESS

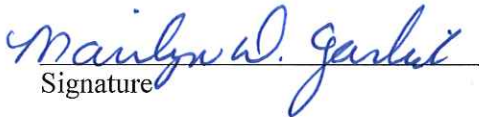


Signature

Josh Taylor

Printed Name

WITNESS



Signature

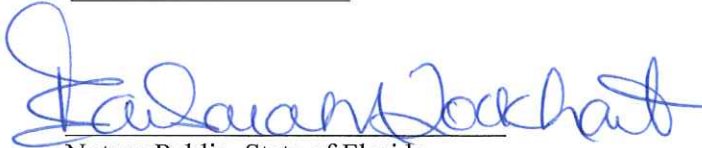
MARILYN D. GARLICK

Printed Name

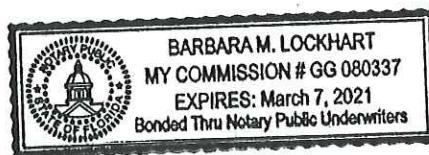
STATE OF FLORIDA

COUNTY OF SARASOTA

The foregoing instrument was acknowledged before me this 7th day of July, 2017, by Peter D. Lear, who is personally known to me or who produced _____ as identification.



Notary Public, State of Florida





CITY MANAGER

Pay Grade: Click here to enter text.

FLSA Status: E

EEO Code: 01

W/C Code: 8810

GENERAL DESCRIPTION

An employee in this class is responsible to the City Commission for the efficient administration of all departments of the City government, unless otherwise specified by the City Charter. This is professional administrative work in the performance of all aspects of managerial expertise required to insure the effective conduct of all functions, business and services of the City. The City Manager shall be the Chief Executive of the City. He/she shall perform the duties of that office and be accountable therefore at all times to the Commission. This should be accomplished through effective leadership and delegation of responsibility and authority to the administrative officers of the City insuring always that their several official duties shall be carried out solely through the office of the City Manager.

ESSENTIAL JOB FUNCTIONS

- Serves as the Chief Executive Officer of the City;
- Appoints all Department Directors and other City employees;
- Supervises and coordinates the work of the administrative officers and departments of the City;
- Prepares and submits to the Commission the annual budget of the City, together with supporting information in explanation thereof;
- Acts as Purchasing Agent for the City;
- Provides administrative direction and leadership to all City departments.
- Submits monthly and year-end financial reports to the City Commission;
- Initiates short and long range planning activities, including a five-year Capital improvement Program detailing the need, scope, probable cost and method of financing priority public improvements;
- Enforces all laws, ordinances and policies of the City;
- Requires periodic inspection of all municipal facilities to assure that proper operation, maintenance and security procedures are being followed;
- Exercises and performs such additional duties as the Commission may see fit to delegate, or as provided in the City Charter.

(These essential job functions are not to be construed as a complete statement of all duties performed. Employees will be required to perform other related duties as assigned, including City-directed work assignments in the event of a declared emergency.)

QUALIFICATIONS*Knowledge/Skills/Abilities:*

- Working knowledge of federal and state laws applicable to the City of North Port;
- Thorough knowledge of the City Charter and Ordinances;
- Ability to establish and maintain effective working relationships with the Commission, employees, developers, business persons, City Boards and the general public;
- Ability to verbally communicate concepts and ideas with the Commission, employees, other officials and the general public;
- Ability to verbally communicate concepts and ideas with the City Commission, employees, other officials and the general public.
- Ability to direct employees in accordance with effective supervisory procedures.

- Ability to prepare oral and written reports.
- Ability to understand and apply statistical charts, graphs and raw data to job-related requirements.
- Ability to analyze and evaluate data and to make statistical computations and evaluations. Knowledge of the principles and practices of all programming, budgeting and municipal finance elements.

Education and Experience:

A Bachelor's Degree in Public Administration, or related field, from an accredited college or university augmented by course work in municipal planning, civil engineering, public finance, community development, personnel/labor relations, or other related fields. A Master's Degree is preferred.

A minimum of five years' professional experience as a City or County Manager, or eight years of increasingly responsible related municipal experience.

(A comparable amount of training, education and/or experience may be substituted for the above qualifications.)

Licenses and Certifications:

Must possess a valid Florida driver's license.

PHYSICAL REQUIREMENTS

Constant sitting, use of hands - arms, grasping, typing, and communication involving speaking and hearing. Frequent standing, walking. Occasional kneeling, stooping, bending, reaching overhead, and lifting up to 25 pounds. Vision and hearing must be correctable. Position requires the operation of a City vehicle.

(Occasional=1-3 Hrs; Frequent=3-5 Hrs; Constant=5-8 Hrs – Per Work Day)

WORK ENVIRONMENT

The work environment characteristics described herein are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee occasionally works near moving mechanical parts and in outside weather conditions and is occasionally exposed to risk of electrical shock and vibration. The employee rarely works in high, precarious places and is occasionally exposed to fumes or airborne particles and toxic or caustic chemicals.

The noise level in the work environment is usually moderate to low.

The work environment will vary from office work to responding and assisting incident command and safety functions at emergency scenes.

EMERGENCY RESPONSE STATEMENT

Every City employee has emergency response responsibilities, though not every position will require routine assignments during an emergency event. All employees are subject to recall around the clock for emergency response operations, which may require irregular work hours, work at locations other than the normal work location, and may include duties other than those specified in the employee's official job description. Assignments in support of emergency operations may be extensive in nature,

City Manager

with little advance notice, and may require employees to relocate to emergency sites with physically and operationally challenging conditions.

Reviewed by: [Employee Name]

Signature: _____

Date: _____