

Employment Agreement

This Employment Agreement ("Agreement"), is made and entered into this 21st day of October, 2019 ("Effective Date"), by and between the City of Lakeland, Florida, a municipal corporation ("hereinafter called "Employer"), whose address is 228 S. Massachusetts Avenue, Lakeland, Florida 33801, and Palmer C. Davis (hereinafter called "Employee"), whose address is 228 S. Massachusetts Avenue, Lakeland, Florida 33801, collectively referred to as "Parties," both of whom agree as follows:

Background

The Employer is a local government employing approximately 2500 full time employees that operates a multi-faceted organization providing a broad array of municipal services to the residents of the City of Lakeland. It is governed by a seven (7) member elected commission who directly employ the City Manager and City Attorney, whose duties and responsibilities are prescribed in the Lakeland City Charter. In addition, the Employer owns and operates a municipal electric utility that generates and distributes electric energy to approximately 130,000 accounts within its authorized electric service territory. The Employer requires a City Attorney who has the requisite skills and experience to manage the legal affairs of its organization. The Employee acknowledges that the position is a highly responsible and highly visible one requiring a significant professional and personal commitment to successfully manage in a demanding public environment. The Employee acknowledges the high level of responsibility expected and represents he has the requisite skills and experience to fulfill the duties of the position of City Attorney.

In order to provide for continuity and a smooth transition when management changes occur, the Employer requires Employee to perform the responsibilities of City Attorney on a temporary or interim basis. Employee, who has been appointed by the Employer as Interim City Attorney, has formally agreed to assume the duties of the Interim City Attorney for the period stated herein.

Section 1: Recitals

The above recitals are true and correct and are incorporated herein by this reference.

Section 2: Term

The Employee agrees to assume the duties of Interim City Attorney beginning October 21, 2019, which shall be deemed the Employment Date. The term of this Agreement shall be for an initial period commencing on the Employment Date and ending on January 21, 2020, which shall be the Initial Term. This Agreement shall be automatically renewed at the expiration of the Initial Term for consecutive 30-day periods, unless terminated by either party as provided herein.

Section 3: Duties and Authority

Employer agrees to employ Employee as Interim City Attorney to perform the functions and duties of that office specified in Sections 25-27 of the Lakeland City Charter and to perform other legally permissible and proper duties and functions as directed by the City Commission.

Section 4: Compensation

Base Salary: Employer agrees to pay Employee an annual base salary of \$150,075.20, payable bi-weekly, in the same fashion as other employees of the Employer are paid. In the event that this Agreement has not been terminated by either party, the Employer agrees to consider an adjustment to the base salary on or about January 21, 2020.

Section 5: Health, Disability and Life Insurance Benefits

A. The Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, and comprehensive medical insurance for the Employee equal to that which is provided to all other employees of the City of Lakeland. Employee shall pay for dependent coverage on the same basis as all employees.

B. Employee shall be provided the same long-and short-term disability coverage as all other City employees.

Section 6: Vacation and Sick Leave

The Employee shall accrue sick and vacation leave in the manner provided in City policy for other employees of the City with similar length of service.

Section 7: Automobile

The Employer acknowledges that the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, will continue to receive the sum of Fifty-Four Hundred Dollars (\$5,400) per year, payable in 24 equal installments, as a vehicle allowance to be used to purchase, lease, or own, operate and maintain a vehicle. Nothing herein shall be construed to establish the City of Lakeland as an owner of any vehicle. The monthly allowance may be increased from time to time as determined by the City Commission. The Employee shall carry automobile liability insurance in accordance with Risk Management guidelines and shall name the City of Lakeland as an additional insured thereon and shall further be responsible for all expense's attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. The Employer shall reimburse the Employee in accordance with City travel policy for any business use of the vehicle beyond Polk County.

Section 8: Retirement

A. The Employee acknowledges that the City of Lakeland does not participate in the Federal Social Security System. The Employee may, at his election, participate in any other deferred compensation plans offered to other employees.

B. The Employee may continue to participate in the City's general employee pension fund, or optional exclusion retirement plan set forth in Section 35, Division II of the Lakeland City Charter.

C. Employer shall provide its contribution to the Employee's plan in accordance with Article II of Division II of the Lakeland City Charter. The Employee will continue to participate in Employers Plan C of the Employee Pension Plan and nothing in this Agreement shall affect his membership in that Plan. The Employee shall obtain vesting specified in the Employee's plan of choice.

Section 9: General Business Expenses

A. Employer agrees to budget for and to pay for professional dues and subscriptions of the Employee necessary for continuation and full participation in national, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the benefit of the Employer.

B. Employer agrees to budget for and to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee, including the FMAA Annual Conference.

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

D. Employer recognizes that certain expenses of a non-personal and job-related nature are incurred by Employee and agrees to reimburse or to pay said general expenses. Employee shall be reimbursed in accordance with established City travel policy.

E. The Employer shall provide Employee with a computer, software, fax/modem, cell phone and pager required for the Employee to perform his job duties and to maintain communication with staff and the City Commission.

Section 10: Termination

For the purpose of this Agreement, termination shall occur when:

A. The majority of the governing body votes to terminate this Agreement, with or without cause, at a duly authorized public meeting. In the event of termination in accordance with this provision, which shall be effective immediately upon action by the governing body, the Employee will return to his employment status immediately prior to the Employment Date. Employee will be reinstated as Assistant City Attorney at a salary of \$136,432 annually, with all benefits as were in place prior to this Agreement reinstated.

B. The Employee may terminate this Agreement upon 30-days written notice to the Mayor, with a copy to the City Manager. In the event of termination in accordance with this provision, which shall be effective at 12:00 midnight of the 30th day following notice, the Employee will return to his employment status immediately prior to the Employment Date. Employee will be reinstated as an Assistant City Attorney at a salary of \$136,432 annually, with all benefits as were in place prior to this Agreement reinstated.

Section 11: Hours of Work

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

Section 12: Outside Activities

The employment provided for by this Agreement shall be the Employee's sole employment.

Section 13: Employee Conduct

To the extent not in conflict with the provisions of this Agreement, the Employee shall conform with the provisions of the City of Lakeland Personnel Policy and Procedure Manual applicable to other employees.

Employee is expected to conduct his or her private life in a manner so as to always favorably reflect upon the image of the City of Lakeland and its City Commission. The Employee agrees to adhere to the highest levels of personal and professional integrity and agrees to abide by the Florida Bar Code of Ethics.

Section 14: Indemnification

To the extent provided by law, Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claims or demand or other legal action,

whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as Interim City Attorney, 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 outside the course or scope of employment. The 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 attorney's 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.

Employee recognizes that Employer shall have the right to compromise and settle any claim or suit so long as such settlement contains no admission of liability or wrongdoing by the Interim City Attorney. Further, Employer agrees to pay all reasonable litigation expenses of Employee throughout the pendency of any litigation to which the Employee is a party, witness or advisor to the Employer which may arise out of the course and scope of his employment. Such expense payments shall continue beyond Employee's service to the Employer as long as litigation is pending.

Employee shall defend, save harmless, and indemnify the Employer against any and all losses, damages, judgments, interests, settlements, fines, court costs, and other reasonable costs and expenses of legal proceedings, including attorney's fees, and any other liabilities incurred by, imposed upon, or suffered by such Employer in connection with or resulting from any claim, action, suit, or proceeding arising out of any willful act or omission when such claim arises out of conduct outside the course or scope of his employment.

Section 15: Bonding

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

Section 16: Other Terms and Conditions of Employment

A. The Employer, only upon Agreement with Employee, shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Lakeland City Charter or any other law.

B. Except as otherwise provided in this Agreement, the Employee shall be entitled to the same level of benefits that are enjoyed by other employees of the Employer not subject to collective bargaining agreements, as provided in the Charter, Code, Personnel Rules and Regulations or by practice.

Section 17: Notices

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

- (1) EMPLOYER: City of Lakeland, Attn: Mayor, with a copy to Tony Delgado, City Manager, 228 South Massachusetts Avenue, Lakeland, Florida 33801.

- (2) EMPLOYEE: Palmer C. Davis, 228 South Massachusetts Avenue, Lakeland, Florida 33801.

Alternatively, notice required pursuant to this Agreement may be personally served by hand delivery to the appropriate party, or to his successor, in the care of the City Manager. Notice shall be deemed given as of the date of hand delivery or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service. The address to which notice shall be given may be changed by providing notice pursuant to the terms of this Section.

Section 18: General Provisions

A. 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 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 the Employer and the Employee, as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective Date. This Agreement shall become effective on the Effective Date.

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.

E. Applicable Law / Venue. This Agreement shall be construed in accordance with the laws of Florida and venue for any action arising out of this Agreement shall be in the appropriate court of Polk County, Florida, or the United States District Court for the Middle District of Florida, Tampa Division.

F. Limitation of Liability. The parties hereto acknowledge that any claim for damages arising out of this Agreement shall be limited to the maximum amount payable pursuant to Section 10 of this Agreement. The Employee, in consideration of the benefits set forth herein and to the extent enforceable, agrees to waive any and all claims based on any local, state or federal statute to the extent such claim may result in a damage award in excess of the limitation on damages provided for herein. **The Employee expressly agrees that his only cause of action arising out of this Agreement shall be for breach of contract and expressly waives any indirect, consequential or special damages arising therefrom.**

CITY OF LAKELAND

EMPLOYEE

H. William Mutz, Mayor

Palmer C. Davis

Attest: _____
Kelly S. Koos, City Clerk

Approved as to form and correctness:

Office of the City Attorney