

AGREEMENT

This Agreement is made by and between the City of Mount Dora, a Florida Municipal Corporation, 510 N. Baker Street, Mount Dora, Florida 32757, (hereinafter called "Employer" or the "City") and Patrick C. Comiskey, an individual who has education, training and experience in local government management, (hereinafter called "Employee"), both of whom agree as follows:

Section 1. Term

Pursuant to Article V, Section 20 of the City of Mount Dora Charter, Employee was appointed by a majority vote of the full City Council, on September 29, 2021, to serve as the City Manager of the City of Mount Dora. This City Manager Employment Agreement shall be effective on the date of approval by the City; however, Employee shall commence employment with the City of Mount Dora on November 15, 2021 (Commencement Date). This City Manager Employment Agreement shall continue until terminated by such a vote of the City Council, by operation of law or as otherwise as set forth herein.

Section 2. Duties and Authority

A. The City agrees to employ the Employee to serve as the City Manager for the City of Mount Dora, operating as its chief administrative officer and performing the functions and duties established by the City Charter, City Policy, City Codes, applicable state and federal law and such other legally permissible and proper duties and functions for the benefit of the City of Mount Dora.

B. Employee agrees to perform all duties of the City Manager for the City of Mount Dora in a professional, competent, responsible and industrious manner.

C. Employee shall remain in the exclusive employ of the City and shall devote all such time, attention, knowledge and skill necessary to faithfully perform the duties under this Agreement. This shall not be construed to prohibit occasional speaking engagements, limited teaching, consulting or other business opportunities, with the understanding that such arrangements shall not be for compensation and shall not constitute interference with nor a conflict of interest with his responsibilities under this Agreement. Any such undertakings will be disclosed in advance to the City Council.

Section 3. Compensation and Moving Expenses

A. Employer agrees to pay Employee an initial annual salary of One Hundred Seventy Thousand Dollars (\$170,000.00). The salary of Employee will be reviewed no less frequently than annually, at the time of Employee's annual review. Employer agrees to pay Employee in equal installments, on the same schedule as other City employees, during the term of this Agreement, making all required and applicable payroll deductions. Employer may, but is not obligated to, provide merit raises to Employee in accordance herewith.

B. In addition, Employer agrees to increase the salary of Employee in such amounts and to such extent as the Employer increases the pay of other City employees, as a result of an across-the-board or cost of living increase which affects all full-time, non-bargaining unit City employees.

C. The Employee acknowledges the importance of loyalty and the value of longevity and is committed to serving the City of Mount Dora as its City Manager, for at least five (5) years, with the exception of a life-altering event outside of his control, without seeking other employment opportunities. In consideration of this commitment, Employer shall pay Employee \$12,000 for relocation and temporary housing expenses, which shall be included on the Employee's W-2 for 2021. In the event, the Employee voluntarily leaves the employment of the City during the first five (5) year period of this Agreement, the Employee agrees to repay the City for all such relocation and temporary housing expenses based on the following schedule:

- Year 1 – 100%
- Year 2 – 80%
- Year 3 – 60 %
- Year 4 – 40%
- Year 5 – 20%

Section 4. Vacation and Other Leave

A. shall be entitled to four (4) weeks of vacation leave annually. The Employee shall be entitled to carry forward unused vacation leave annually in an amount not to exceed two hundred forty (240) hours. Upon termination of this Agreement, any unused vacation leave shall be paid to Employee in accordance with the City's Personnel Policy in effect at the time.

B. Employee shall be entitled to two (2) days of paid time off annually. The Employee may not accrue or carry forward any unused paid time off.

C. Employee shall be entitled to accrue sick leave in the same manner as all City employees. Upon termination of the Agreement, any unused vacation leave shall be paid to Employee in accordance with the City's Personnel Policy in effect at the time.

D. Employee shall be entitled to bereavement leave in the same manner as all other City employees.

E. Employee shall be entitled to all holidays pursuant to the same schedule as all other City employees.

F. Pursuant to City of Mount Dora Charter, Article V, Section 24, in advance of leave, or temporary disability, of three (3) days or more, up to twenty-one (21) days, Employee shall ensure that the City Council is fully apprised of the time in which he will not be available to accomplish his day-to-day operational tasks. By letter filed with the City Council, and subject to the approval of the City Council, the City Manager shall appoint a qualified City administrative officer or department head to perform the duties of City Manager.

Section 5. Health, Disability, Life Insurance Benefits

A. On the Commencement Date of this Agreement, Employer agrees to provide Health Insurance to Employee, and his dependents, in the same manner as all other City employees. Employer shall provide Vision Insurance, Dental Insurance and other benefits to Employee, and his dependents, in the same manner as all other City employees.

B. Employer shall pay the amount due for term life insurance in an amount equal to two times Employee's annual salary, including all increases during the term of this Agreement. Employee shall have the right to choose the beneficiary on such policy.

Section 6. Automobile, Monthly Expenses and Cell Phone Allowance

A. To compensate Employee for automobile expenses related to the duties of City Manager, Employer agrees to provide a monthly automobile allowance in the amount of Five Hundred Dollars (\$500.00) to compensate Employee for expenses related to the use, purchase, lease, operation, insurance, maintenance, as well as for any and all other expenses related to the duties of Employee pursuant to this Agreement. The City Manager shall be entitled to mileage reimbursement for all travel outside the boundaries of Lake County or in excess of 50 miles from City Hall for official business pursuant to any applicable City Policy.

B. The City shall provide the Employee with a City issued cellular phone with all fees and costs associated therewith paid by the City.

Section 7. Retirement

Employer shall contribute, on behalf of the Employee, fifteen percent (15%) of Employee's salary, including all increases during the term of this Agreement, in equal proportionate amounts each pay period, into a 401(A) retirement plan. Employee may contribute additional amounts to the extent permitted by law. Employee shall be vested as follows:

Year 1 – 50%
Year 2 – 100%

Section 8. Professional Development, Dues and Subscriptions

A. Employer agrees to budget for and to pay for the reasonable travel expenses of Employee for professional and official travel, meetings and occasions adequate to continue the professional development of Employee and to adequately pursue necessary official and other functions for Employer.

B. Employer agrees to budget and to pay for 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 his continued professional participation, growth and advancement, and for the good of the Employer, subject to the approval of Employer and in accordance with City Policies.

Section 9. Civic Club Memberships

Employer recognizes the desirability of representation in and before local civic and other organizations, and Employee is authorized to become a member of two (2) such organizations, for which Employer shall pay all reasonable dues and related expenses, subject to and in accordance with City Policies. Employee shall report to the Employer on each membership that he has taken out at Employer's expense.

Section 10. No Reduction of Benefits

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

Section 11. Parity in Benefits

Employee is entitled to any employment benefit which is now furnished to or is hereafter furnished to any City Department Heads, not including dues, memberships or subscriptions which are particular to the occupation of a particular Department Head, including but not limited to law enforcement and fire and rescue.

Section 12. Termination of Agreement by Act of a Party

Any one of the following acts or events shall constitute termination of this Agreement and the employment relationship created hereby:

A. A vote of the City Council, at a duly authorized public meeting, to terminate the Agreement pursuant to Article V, Section 21, City of Mount Dora Charter. The parties hereto understand that no cause is required for termination pursuant to Article V, Section 21 of the City's Charter.

B. The taking of final action by City, citizens or the Florida Legislature to amend any provisions of the City Charter, ordinances or other legislation governing the role, powers, duties, authorities or responsibilities of Employee's position which substantially changes the form of government of the City. Under such circumstances Employee shall have the right to declare in writing that such amendment or amendments constitute termination, and his doing so will constitute termination of this Agreement.

C. Employee's written declaration of termination, following a request for his resignation by City.

Section 13. Severance Compensation

A. In accordance with Florida Statutes, Section 215.425, severance compensation shall be paid to Employee when employment is terminated for any one of the reasons set forth in Section 12 above. In such an event, Employer shall pay severance compensation equal to twenty (20) weeks of salary, at Employee's then-current rate of pay, excluding the automobile allowance, monthly expenses and cell phone allowance, without the accrual of any leave time and without any other payments otherwise provided under this Agreement, except that during the twenty week severance period, the City shall pay its share to continue the health insurance benefits of Employee and his dependents at the same rate or percentage as prior to termination.

B. In addition, Employee shall be compensated for all permissible accrued leave, if any, pursuant to City Policy in effect at the time of termination. If Employee is terminated during the first five (5) years of this Agreement, the sum amount of severance paid by calculating Employee's then current annual salary, plus accrued leave, shall not exceed \$100,000.

C. Any payments to be made hereunder shall be made in one lump sum, unless otherwise agreed in writing by the parties. In any case, all required and applicable payroll deductions will be made. Except as stated herein, no other severance compensation shall be owed or paid by the City.

D. In the event Employee is terminated for one or more of the following reasons, Employer is not obligated to pay severance under this section:

- (i) malfeasance, misfeasance and/or nonfeasance in performance of duties and responsibilities;
- (ii) Neglect of duty, including the inability or unwillingness to properly discharge the responsibilities of office;
- (iii) violation of any substantive City Policy, rule or regulation would subject another City employee to termination;
- (iv) any act which involves moral turpitude or which cause the City to be held in disrepute;
- (v) the commission by the Employee of any embezzlement, fraud, theft, falsification of records or other deliberate and premeditated act of dishonesty toward the City;
- (vi) the conviction of, or the pleading of *nolo contendere* by the Employee to, a misdemeanor or felony, regardless of whether adjudication is withheld;
- (vii) willfully damaging the City's real or tangible property;
- (iv) the abuse of alcohol, narcotics or other controlled substances on the job to the extent that an independent, third-party investigator finds that it has materially affected the Employee's ability to efficiently perform his responsibilities under this Agreement;
- (viii) willfully causing physical, sexual or verbal harassment and injury to any other employee of the City; or
- (ix) any other act of similar nature of the same or greater seriousness to those matters listed hereinabove.

Section 14. Automatic Termination Without Severance Compensation

This Agreement shall terminate automatically upon the death of Employee; evidence of the commission of any felony by Employee; or the physical or mental incapacity of Employee which renders him unable to perform his duties hereunder and which lasts for 90 consecutive calendar days. Upon any such automatic termination, neither party shall have any further obligation or liability under this Agreement.

Section 15. Resignation

In the event that Employee voluntarily resigns his position with the City, Employee shall provide a minimum of thirty (30) days' notice unless the parties agree otherwise.

Section 16. Performance Evaluation

Employer shall annually review the performance of Employee and at a regularly scheduled City Council meeting in the month of September approve any merit pay increase to be effective on the ensuing October 1st. Neither the contents nor outcome of said review nor the City Council's

decision on a merit increase shall operate as an alteration to or amendment of any provision of this Agreement.

Section 17. Hours of Work

It is recognized that 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 18. Residency.

Employer and Employee acknowledge that Employee will be a resident of the City of Mount Dora, within six months of the Commencement Date of this Agreement and Employee further acknowledges that his continued residency is a condition of his employment, unless waived by the unanimous approval of the City Council.

Section 19. Indemnification.

A. Pursuant to Florida law, 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 which occurs in the scope and course of Employee's employment as City Manager or resulting from the exercise of his judgment or discretion in connection with any such act or omission, unless the act or omission was the result of intentional or wanton misconduct of Employee. In such cases, Employee may request and Employer shall not unreasonably refuse to provide independent legal representation of Employee's reasonable choice at Employer's expense and Employer may not unreasonably withhold approval. Legal representation, provided by Employer for Employee, shall extend through final determination of the legal action, including any appeals brought by either party. Pursuant to Florida law, 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 Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with any act or omission which occurs in the scope and course of his employment hereunder, unless the act or omission was the result of intentional or wanton misconduct of Employee. Any settlement of any such claim, must be made with prior approval of Employer in order for indemnification, as provided in this Section, to be available.

B. Employee recognizes that Employer shall have the right to settle with finality any litigation or other claim described in this Section with its own funds or insurance proceeds. 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. Employee shall at all times cooperate with Employer and its counsel in any such litigation or claim, including after Employee's employment hereunder ends for any reason. 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. Such expense payments shall continue beyond Employee's service to the City, as long as litigation is pending. Further, Employer agrees to pay Employee reasonable consulting fees and travel expenses when Employee serves as a witness, advisor or consultant to

Employer in any such claim or litigation in the event Employee is no longer employed by the City at the time of the needed service.

Section 20. Bonding.

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

Section 21. Notices.

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

EMPLOYER: City of Mount Dora
 Attention: Mayor
 510 N. Baker Street
 Mount Dora, Florida 32757
 Electronic Copy to: official City email

EMPLOYEE: Patrick C. Comiskey
 510 N. Baker Street
 Mount Dora, Florida 32757
 Electronic Copy to: official City email

Alternatively, notice required pursuant to this Agreement may be personally served. 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 22. General Provisions.

A. Entire Agreement and Modification. 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, representations or understandings by or between the parties are merged into and rendered null and void by this Agreement. This Agreement may only be changed by written instrument, fully executed by both parties.

B. Joint Authorship and Binding Effect. This Agreement shall be construed as resulting from joint negotiation and authorship. No part of this Agreement shall be construed as the product of any one of the parties hereto. 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. 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 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. If necessary, to preserve the intent of the parties, the parties shall negotiate in good faith to amend this Agreement, adopting a substitute provision for the one deemed invalid or unenforceable that is legally binding and enforceable.

D. Law and Venue. The laws of the State of Florida shall govern all aspects of this Agreement. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall lie in Lake County, Florida. The parties hereby waive their right to trial by jury in any action, proceeding or claim, arising out of this Agreement, which may be brought by either of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seal this 19 day of October, 2021.

CITY OF MOUNT DORA

Catherine T. Hoechst

CATHERINE T. HOECHST
MAYOR of the City of Mount Dora, Florida

ATTEST:

A. Wisniewski
for **JESSICA BURNHAM, CITY CLERK**

For the use and reliance of City of Mount Dora only. Approved as to form and legal sufficiency.

Sherry G. Sutphen
Sherry G. Sutphen, City Attorney

EMPLOYEE

Patrick C. Comiskey
PATRICK C. COMISKEY

STATE OF Maryland
COUNTY OF Dorchester

The foregoing instrument was acknowledged before me by means of physical presence or online notarization of Patrick C Comiskey, who is personally known to me or who produced Driver's License as identification, and who did/did not take an oath this 14th day of October, 2021.

Caley Davis
NOTARY PUBLIC, State of Maryland

