

Legislative #
150513A

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Third Amendment to Employment Agreement

THIS THIRD AMENDMENT TO EMPLOYMENT AGREEMENT (“THIRD AMENDMENT”), made and entered into this ____ day of _____, 2015, by and between the City of Gainesville, Florida, hereafter also called “CITY,” and Russ Blackburn, hereafter also called the “CITY MANAGER”, both of whom understand as follows:

WITNESSETH:

WHEREAS, the City and City Manager have heretofore entered into an Employment Agreement dated August 30, 2005, a First Amendment to the Employment Agreement dated February 27, 2008, and a Second Amendment to the Employment Agreement dated January 12, 2011 (hereinafter, collectively referred to as the “Employment Agreement”); and

WHEREAS, the City and City Manager wish to provide for an orderly and effective end to the employment relationship and thus agree to amend the Employment Agreement as follows:

Section 1. Section 3(D) of the Employment Agreement is amended in its entirety to read as follows:

D. The City Manager shall be entitled to the rights described in Human Resources Policy Number L-3 except as modified as follows. The City Manager shall accrue PTO at the rate of 10 hours 28 minutes per pay period. Any PTO accrued and unused by the City Manager shall not be subject to a carryover cap. Upon termination of employment with the City under Section 4(A) of this Employment Agreement, the City Manager shall be paid for any accrued and unused PTO and PCLB.

Section 2. Section 4 of the Employment Agreement is amended in its entirety to read as follows:

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A. The City Manager agrees to voluntarily resign from his employment with the City effective November 6, 2015 at 5:00 p.m. and in consideration of such, the City shall pay the City Manager severance pay in the amount of 20 weeks of compensation, which shall only include 20 weeks of base pay and 20 weeks of the City's contributions to health insurance, life insurance, and retirement for the City Manager at the rates existing on November 6, 2015, except as provided below, payable upon the end of the second full pay period in January 2016, less appropriate deductions for federal withholding and other applicable taxes. Such severance pay will be in addition to payment for unused and accrued PTO and PCLB.

B. Notwithstanding any other provision of this Employment Agreement, the City may, upon a vote of least four (4) members of the City Commission, terminate the City Manager's employment with the City at any time prior to November 6, 2015 as follows:

1. In the event such termination is for cause as so stated, the City shall have no obligation to provide any severance pay, but accrued and unused PTO shall be paid for. It is understood and agreed that the City Commission will be the sole judge as to the effectiveness and efficiency with which the City Manager performs his employment, and whether cause exists for the termination of such. By way of illustration, but not limitation, the following are some examples of situations the parties agree could reasonably be deemed "cause" warranting denial of severance pay: gross negligence in the handling of City affairs; willful violation of the provisions of law; willfully disregarding a direct order or demand of the City Commission or a policy of the City; conduct unbecoming of a City Manager; pleading guilty or nolo contendere to, or being found guilty by a jury or court of a misdemeanor involving physical violence, theft,

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driving under the influence of alcohol or drugs or possession or sale of drugs or a felony, regardless of whether or not adjudication is withheld and probation imposed.

2. In the event such termination is under any other circumstances during such time as the City Manager is willing and able to perform the duties of City Manager, then the City Manager shall be entitled to severance pay as described in Section 4(A).

3. In the event such termination occurs under any other circumstance, i.e., death or disability, the City may consider paying the City Manager, effective the last day of employment, an amount, less appropriate deductions for federal withholding and other appropriate taxes up to a maximum of twelve (12) weeks salary at his current rate of pay, in addition to any accrued and unused PTO and any other benefits to which he is entitled.

C. Any severance pay provided to the City Manager by the City shall not exceed an amount greater than 20 weeks compensation, provided, however, the City Manager is prohibited from receiving any severance pay from the City if the City Manager's employment is terminated by the City Commission for misconduct, as defined in Florida Statute Section 443.036(30).

Section 3. A new Section 11, Covenant Not to Sue, is hereby created to read as follows:

Section 11. Covenant Not to Sue.

In consideration of the amendment to Section 4 of the Employment Agreement set forth above, the City Manager agrees to never institute any action or suit at law or in equity against the City, its officers, agents, and employees (covenantees), nor institute, prosecute or in any way aid in the institution or prosecution of any claim, demand, action, or cause of action for damages, costs, loss of services, expenses, or compensation for or on account of any damage, loss of injury either to person or property, or both, whether developed or undeveloped, resulting or to result,

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known or unknown, past, present or future, arising out of the cessation of the employment relationship, due to the City Manager's resignation effective November 6, 2015.

Section 4. Except as hereinabove expressly modified, amended and changed, the terms, conditions and covenants of the Employment Agreement shall remain in full force and effect and shall govern and control the terms, conditions and provisions of this Third Amendment.

IN WITNESS WHEREOF, the City has caused this Third Amendment to be signed and executed on its behalf by its Mayor, and duly attested to by its Clerk of the Commission, and the City Manager has signed and executed this Third Amendment, both in duplicate and on the respective dates under each signature.

Executed at Gainesville, Alachua County, Florida, this ____ day of _____, 2015.

ATTEST:

CITY OF GAINESVILLE

CLERK OF THE COMMISSION

ED BRADDY, MAYOR

RUSS BLACKBURN
CITY MANAGER