

## **EMPLOYMENT AGREEMENT**

**THIS AGREEMENT**, made and entered into this 22<sup>nd</sup> day of October, 2021, by and between the City of Gainesville, Florida, hereinafter called the "City" and Daniel M. Nee, hereinafter also called "Interim City Attorney," both of whom understand as follows:

### **WITNESSETH:**

**WHEREAS**, Daniel M. Nee has been continuously employed as an attorney with the City of Gainesville since December 18, 2001;

**WHEREAS**, Daniel M. Nee currently holds the full-time regular position of Litigation Attorney with the City Attorney's Office for the City of Gainesville, and has continuously maintained that position since December 21, 2009;

**WHEREAS**, Daniel M. Nee is qualified and competent to serve as the Interim City Attorney, and is ready, willing and able to perform the duties of the Interim City Attorney consistent with the following terms and conditions; and

**WHEREAS**, Daniel M. Nee is a member in good standing of the Florida Bar; he is further qualified and competent to render professional legal services and he is ready, willing and able, consistent with the Code of Professional Responsibility promulgated by the Supreme Court of the State of Florida, to provide professional legal service consistent with the terms and conditions which follow; and

**WHEREAS**, Daniel M. Nee and the City of Gainesville feel it would be mutually beneficial to enter into a contract of employment setting forth agreements and understandings which:

1. provide inducement for the Interim City Attorney to accept such appointment with the City;
2. make possible full work productivity by assurances to the Interim City

Attorney with respect to future security;

3. establish the basis, framework and context for the relationship which shall exist between the City and the Interim City Attorney; and

4. provide a just means of terminating the Interim City Attorney's services at such time as the City Commission or the Interim City Attorney may desire to terminate such appointment;

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the parties agree as follows:

**Section 1. Duties.**

The City Commission hereby agrees to appoint and employ Daniel M. Nee as the Interim City Attorney of the City of Gainesville to perform duties and functions of said position as specified in the City Charter, Code of Ordinances, and job description, if any, and such other lawful duties as the City Commission may from time to time assign the Interim City Attorney.

**Section 2. Term.**

This Agreement shall be of a continuing nature, provided, however, that:

A. Daniel M. Nee shall hold office as the Interim City Attorney at the will of the City Commission, and nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the City Commission to terminate his appointment as the Interim City Attorney at any time, subject only to the provisions set forth in Section 4 of this Agreement.

B. Nothing in this Agreement shall prevent, limit, or interfere with the right of Daniel M. Nee to terminate the appointment as the Interim City Attorney or resign his underlying position with the City, subject only to the provisions set forth in Section 4 of this Agreement.

C. Daniel M. Nee shall report for duty as the Interim City Attorney for the City of Gainesville on November 1, 2021. Because Daniel M. Nee was employed as the Litigation Attorney with the City of Gainesville immediately preceding appointment to Interim City

Attorney, December 18, 2001, the date he first became employed by the City, shall be and remain Daniel M. Nee's leave progression date for the purposes of computing benefits.

**Section 3. Salary and Related Matters.**

A. The City Agrees to pay the Interim City Attorney for his services rendered pursuant hereto an annual base salary of \$197,000, payable in equal installments at the same time as other employees of the City are paid. The City agrees to increase said base salary and/or benefits of the Interim City Attorney in such amounts and to such extent as the City Commission and the Interim City Attorney may determine that it is desirable to do so. The Interim City Attorney's performance, salary, and benefits shall be reviewed after the conclusion of every fiscal year by the City Commission. The performance objectives and review procedures should be established at the beginning of the fiscal year for the next review period. Any salary increases will be based on the Interim City Attorney's performance in the prior fiscal year and become effective on the first Monday of the first full pay period of the next calendar year.

B. The City shall fix any such other terms and conditions of employment as it may determine from time to time, relating to the performance of the Interim City Attorney, provided such terms and conditions are not inconsistent with the provisions of this Agreement, the City Charter, or any other law.

C. All provisions of the City Charter and the Code, and regulations and rules of the City relating to fringe benefits and working conditions as they now exist or hereafter may be amended, including without limitation, health insurance and disability retirement benefits, also shall apply to the Interim City Attorney as they would to other management employees of the City hired on December 18, 2001, except as herein provided.

D. The Interim City Attorney shall be entitled to the rights described in said Human

Resource Policy L-3 except as modified as follows. Beginning with the commencement of appointment as the Interim City Attorney, the Interim City Attorney shall accrue PTO at the rate of 10 hours and 47 minutes per pay period or the rate of accrual per pay period applicable to the Interim City Attorney's leave progression date, whichever is greater. The maximum number of PTO hours that can be accrued (carryover cap) is 560 hours, adjusted as otherwise provided in Policy L-3. This carryover cap shall be retained for two years beyond the termination of this appointment. The City Attorney is not eligible to earn administrative leave.

Upon termination of employment, unused and accrued PCLB shall be resolved as generally allowed for management employees of the City hired on the Interim City Attorney's leave progression date.

E. The Interim City Attorney shall have the option of utilizing either the City's contractual medical provider or his personal physician for a yearly physical exam and EKG, provided that, in the latter case, the monetary exposure for the City shall not exceed \$250. If a personal physician is utilized, the Interim City Attorney will be required to submit any bills for the services provided through any available insurance coverage before requesting reimbursement from the City for non-covered deductibles or co-insurance payments. The scope of the examination will be that of a "Type A" physical examination as described in the City's contract with Family Practice Medical Group or an examination of a similar scope with any successor provider. Services provided by a personal physician other than those listed under Type A above shall not be subject to reimbursement under this paragraph.

F. The City shall provide or pay for term life insurance, in an amount equal to approximately two (2) times the salary of the Interim City Attorney up to a maximum of \$250,000.

#### **Section 4. Termination and Severance Pay.**

A. In the event Daniel M. Nee's appointment as the Interim City Attorney is terminated by virtue of his own initiative, he shall inform the City Commission in writing and shall give the City Commission two (2) months written notice in advance, unless the parties otherwise agree. In the event this appointment is so terminated, the Interim City Attorney shall be returned to his pre-appointment position as Litigation Attorney and afforded all rights and privileges available as any other Management and Professional Services (MAPS) employee employed continuously since December 18, 2001.

B. In the event Daniel M. Nee's appointment as the Interim City Attorney's is terminated upon the appointment of a succeeding Interim City Attorney or permanent City Attorney, he shall be returned to his pre-appointment position as Litigation Attorney and afforded all rights and privileges available as any other Management and Professional Services (MAPS) employee employed continuously since December 18, 2001. If Daniel M. Nee is returned to his pre-appointment position within one (1) year of the date of this Agreement, his previous base salary shall be increased by the rate of increase budgeted for MAPS employees in the preceding year. In the event this appointment remains in effect for one year or more from the date of this Agreement, upon return to his pre-appointment position, Daniel M. Nee shall retain the annual base salary afforded under this Agreement, along with all other benefits attendant to a full-time employee employed continuously since December 18, 2001. If, for any reason, the City is unable to return Daniel M. Nee to his pre-appointment position as Litigation Attorney (or an equivalent position) and during such time as he is willing and able to perform the duties of attorney, Daniel M. Nee shall be entitled to severance pay in the amount equal to 20 weeks' salary (consistent with paragraph 3A, above) less appropriate deductions for federal withholding and other

applicable taxes.

C. In the event Daniel M. Nee's appointment as the Interim City Attorney is terminated for cause as so stated by at least four (4) members of the City Commission, at the time of termination, he shall be returned to his pre-appointment position as Litigation Attorney and afforded all rights and privileges available as any other Management and Professional Services (MAPS) employee. It is understood and agreed that the City Commission will be the sole judge as to the effectiveness and efficiency with which the Interim City Attorney 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 termination of appointment: 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 an Interim City Attorney; pleading guilty or *nolo contendere* to, or being found guilty by a jury or court of a misdemeanor involving physical violence, theft, 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.

D. If termination of employment occurs under any other circumstance, i.e., death or disability, or the Interim City Attorney is unable, or anticipated to be unable, to perform the duties of his position due to a physical or mental impairment for a period of 90 consecutive days, or 180 days out of the next 365 days, then the parties may agree to terminate the Interim City Attorney and pay the Interim City Attorney, effective the last day of his employment, an amount, less appropriate deductions for federal withholding and other appropriate taxes, up to a maximum of 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.

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

**Section 5. Dues and Subscriptions.**

The City agrees to pay for the professional dues and subscriptions of the Interim City Attorney 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 City. The total expenditure for dues and subscriptions may be limited by the amount specifically approved and appropriated in the City's Annual Financial and Operating Plan Budget.

**Section 6. Bonding.**

The City shall bear the full cost of any fidelity or other bonds required of the Interim City Attorney under any law or ordinance.

**Section 7. Vehicle.**

The City agrees to provide the Interim City Attorney the option of choosing either a City-provided vehicle for his use in performing the duties of his employment and for commuting and de minimus personal use or a \$450.00 monthly car allowance.

**Section 8. Retirement.**

A. The City agrees to execute all necessary agreements provided by the International City Management Association Retirement Corporation (ICMARC) or similar City approved

providers for participation in any such retirement plans sponsored by the City. The Interim City Attorney will decide the percentage of his base salary that he desires to have contributed/deferred to such plans and the City will implement his decision to the extent allowed by law by, among other things, deducting appropriate equal proportionate amounts each pay period; provided, however, if the City Attorney elects to participate in the City of Gainesville Employees' Pension Plan, then the City shall be under no obligation to make any additional financial contribution to ICMARC or similar plans other than those funds the Interim City Attorney authorizes to be deducted from his base salary for the purpose of contributing to such ICMARC or similar City approved provider plans. The City agrees to transfer ownership of said funds to succeeding employers upon the Interim City Attorney's termination, if such is in accordance with the plan provisions and legal requirements in effect at that time.

B. The Interim City Attorney is presently a vested member of the City of Gainesville Employees' Pension Plan and the City of Gainesville Employees' Disability Plan and may continue to participate in such plans in accordance with their terms, which shall apply to the Interim City Attorney as they would to other management employees of the City hired on December 18, 2001.

#### **Section 9. General Provisions.**

A. The text herein shall constitute the entire Agreement between the parties.

B. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

C. Except as otherwise provided herein, the terms and conditions of employment described in this Agreement shall be effective November 1, 2021.



**IN WITNESS WHEREOF**, the City has caused this Employment Agreement to be signed and executed on its behalf by its Mayor, and duly attested to by its City Clerk, and the Interim City Attorney has signed and executed this Employment Agreement, both in duplicate on the respective dates under each signature.

CITY OF GAINESVILLE

  
LAUREN POE

MAYOR

DATED: 10/22/21

ATTEST:

BY: 

~~OMICHELE GAINES~~ *Manfred Kessler*

~~CITY CLERK~~

DATED: 10/22/21

  
DANIEL M. NEE

INTERIM CITY ATTORNEY

DATED: 10/14/2021

Approved as to Form and Legality

By: 

Nicolle M. Shalley

City Attorney