

## **Employment Agreement**

This Employment Agreement (“Agreement”) is made and entered into this 21st day of January, 2020 (“Effective Date”), by and between the City of Lakeland, a Florida municipal corporation, whose address is 228 S. Massachusetts Avenue, Lakeland, Florida 33801 (hereinafter called "Employer") and Palmer C. Davis, (hereinafter called "Employee"), whose address is 228 S. Massachusetts Avenue, Lakeland, Florida 33801 (Employer and Employee are collectively referred to herein as the “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. 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. It is governed by a seven (7) member elected commission which directly employs the City Manager and City Attorney, whose duties and responsibilities are prescribed in the Lakeland City Charter. 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 that he has the requisite skills and experience to fulfill the duties of the position of City Attorney.

### **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 City Attorney beginning January 21, 2020, which shall be deemed the Employment Date. The term of this Agreement shall be for an initial period of two (2) years commencing on the Employment Date and ending two years later, which shall be the Initial Term. This Agreement shall be automatically renewed at the expiration of the Initial Term for an additional one year unless notice that the Agreement shall not be renewed is given no less than thirty (30) days prior to the expiration of the Initial Term. Successive renewal terms of one year each will commence automatically upon the expiration of the prior renewal term unless terminated in the same manner as provided in the Initial Term or otherwise terminated in accordance with the provisions of this Agreement.

### **Section 3: Duties and Authority**

Employer agrees to employ Employee as 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**

A. Base Salary: Employer agrees to pay Employee an annual base salary of \$165,000.00, payable bi-weekly in the same fashion as other employees of the Employer are paid.

B. Compensation shall be established annually in accordance with the provisions of the Lakeland City Charter and in such other manner as the City Commission may direct.

C. The Employer agrees to adjust the compensation of the Employee during the initial term on October 1, 2020, and October 1, 2021 upon the results of the performance evaluation conducted under the provisions of Section 12 of this Agreement. Adjustments shall be made in the same manner following the Initial Term, and for each renewal term thereafter.

### **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 and all other benefits provided to other City employees not subject to a collective bargaining agreement.

### **Section 6: Vacation, Sick, and Military Leave**

Upon commencing employment, the Employee shall have all accrued sick and vacation leave previously earned. The Employee shall then accrue vacation leave on an annual basis in accordance with City policy. Sick leave will be accrued in accordance with City policy. Employee shall provide notification to City Commission prior to using any vacation leave in excess of three (3) days, and shall delegate a substitute with signature authority in his absence. In the event this Agreement is terminated, the Employee shall be compensated for accrued vacation and sick time in accordance with City Policy.

### **Section 7: Automobile**

The Employer agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of Five Thousand Four Hundred (\$5,400.00) per year, payable in twenty-four (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 vehicle 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 expenses 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**

As an existing City employee, the Employee participates in the City of Lakeland Employee Pension Plan and is currently enrolled in Plan C. Employee shall be entitled to continue to participate in Plan C, subject to all applicable plan provisions. In addition, Employee may, at his election, participate in any other deferred compensation or retirement plans offered to other City employees to the extent Employee is eligible under applicable plan provisions.

### **Section 9: General Business Expenses**

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

C. Employer shall provide Employee with a computer, software, cell phone and other resources required for the Employee to perform his job duties upon the same terms and conditions as other City employees.

### **Section 10: Termination**

Employer may terminate this Agreement for cause or convenience as follows:

A. Employer may terminate this Agreement for cause by majority vote of the City Commission at a duly authorized public meeting. The effective date of such termination shall be as specified by the City Commission and may be immediate. Cause for

termination may include, but shall not be limited to, inability or refusal to perform the duties and responsibilities of City Attorney under this Agreement and the City Charter, engaging in criminal conduct, violation of the Code of Ethics for Public Officers and Employees as set forth in Chapter 112, Florida Statutes, violation of City policies, and behavior which diminishes the City's good will in the community. Payment of Employee's salary hereunder shall terminate upon the effective date of termination. Employee's rights to health and retirement benefits, as well as accrued vacation and sick leave, shall be determined in accordance with state and federal law, as well as applicable City Charter and ordinance provisions to the extent not inconsistent with state and federal law. Prior to termination for cause, Employer may suspend Employee with or without pay pending the outcome of any investigation into Employee's actions or omissions constituting grounds for termination.

B. Employer may terminate this Agreement for convenience by majority vote of the City Commission at a duly authorized public meeting. The effective date of such termination shall be as specified by the City Commission and may be immediate. In the event of a termination for convenience, Employee shall be paid Employee's then current salary for a period of thirty (30) days following the effective date of such termination. Employee's rights to health and retirement benefits, as well as accrued vacation and sick leave, shall be determined in the same manner as determined for City employees leaving the employ of the City in good standing.

C. If Employer provides notice of its intent not to renew this Agreement at least thirty (30) days prior to the expiration of the Initial Term, or any renewal term hereof, as set forth in Section 2, then such election shall be treated in all respects as a termination for convenience.

### **Section 11: Resignation**

In the event that the Employee voluntarily resigns his position with the Employer, the Employee shall provide a minimum of sixty (60)-days' written notice to Employer unless the parties agree otherwise. This Agreement shall terminate sixty (60) days following notice, and neither party shall have any obligation to the other thereafter, except that Employee shall be entitled to health and retirement benefits, as well as accrued vacation and sick leave, in accordance with state and federal law, as well as applicable City Charter and ordinance provisions to the extent not inconsistent with state and federal law.

### **Section 12: Performance Evaluation**

Employer shall annually review the performance of the Employee, subject to a process, form, criteria and format for the evaluation which shall be determined by the City Commission, and the Employee may provide input and comment during the development of evaluation tools. The process shall include: (1) a written evaluation, (2) a public meeting to discuss the evaluation, and (3) a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee

within thirty (30) days of the evaluation meeting.

### **Section 13: 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 14: Outside Activities**

The employment provided for by this Agreement shall be the Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may elect to accept limited teaching and consulting opportunities with the understanding that such arrangements shall not constitute interference or a conflict of interest with Employee's responsibilities under this Agreement, and such arrangements shall only be undertaken following authorization by the City Commission.

### **Section 15: 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 and the Code of Ethics for Public Officers and Employees as set forth in Chapter 112, Florida Statutes.

### **Section 16: Indemnification**

To the extent provided by law, and subject to the monetary limits set forth in Section 768.28, Florida Statutes, 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 occurring in the performance of Employee's duties as 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 Employee's 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 Employee. 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 Employee's 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 Employer in connection with or resulting from any claim, action, suit or proceeding arising out of any willful act or omission of Employee when such claim, action, suit or proceeding arises out of conduct outside the course or scope of Employee's employment.

### **Section 17: Bonding**

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

### **Section 18: 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, City Code, Personnel Rules and Regulations or by practice.

### **Section 19: Notices**

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

EMPLOYER: City of Lakeland, Attn: Mayor, with a copy to City Manager,  
228 South Massachusetts Avenue, Lakeland, Florida 33801.

EMPLOYEE: Palmer C. Davis, 228 S. 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 or her successor. Notice shall be deemed given as of the date of hand delivery or as of the date of deposit with 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 20: 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 into 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 specified above.

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 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, or Section 16 in the event of an obligation to indemnify. 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. Employee expressly agrees that Employee's 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.

[Signature Page Follows]

**CITY OF LAKELAND:**

**EMPLOYEE:**

By: \_\_\_\_\_  
H. William Mutz, Mayor

\_\_\_\_\_  
Palmer C. Davis

Attest: \_\_\_\_\_  
Kelly S. Koos, City Clerk