

## MEMORANDUM

**TO:** MAYOR AND CITY COMMISSION  
**FROM:** CITY ATTORNEY'S OFFICE  
**DATE:** November 2, 2020  
**RE:** **City Manager Employment Agreement**

Attached for your consideration is an Employment Agreement with Shawn Sherrouse ("Sherrouse"), setting forth the terms and conditions governing Sherrouse's service as Lakeland's City Manager. The Agreement is based largely upon the City's contract with Sherrouse's immediate predecessor, Tony Delgado.

Key terms of the Employment Agreement include the following:

- Effective date of November 2, 2020.
- Base salary of \$196,000.00. The advertised salary range for the position was \$196,000 to \$215,000.
- Same health, disability and life insurance benefits as other City employees not subject to a collective bargaining agreement.
- Vacation accrual rate of 20 days per year.
- Vehicle allowance of \$5,400 per year, representing the same allowance offered to the City's department heads and other executives.
- Sherrouse participates in Plan C of the City's Pension Plan. In the event he does not reach the five-year vesting requirement of the Plan, he will have the option of utilizing the Plan's provisions for the purchase of military buyback time in order to meet the Plan's vesting requirement.
- In accordance with the City Charter, Sherrouse can be terminated for cause by a majority vote of the City Commission, subject to a right to a public hearing on the question prior to a final vote.
- Upon a termination for other than cause, Sherrouse will be entitled to severance pay equal to twenty (20) weeks of compensation. Severance pay will not be provided in the event of a termination for cause.
- At least thirty (30) days' notice must be provided to the City in the event of a voluntary resignation.
- Outside employment is allowed only with authorization by the City Commission and only if it will not cause interference or a conflict of interest with City responsibilities.
- Sherrouse must reside within the corporate limits of the City of Lakeland and conduct his private life "in a manner so as to always favorably reflect upon the image of the City of Lakeland and its City Commission, [and] adhere to the highest levels of personal and professional integrity."

It is recommended that the City Commission approve the attached Employment Agreement with Shawn Sherrouse and authorize the appropriate City officials to execute the Agreement.

Attachment

## **Employment Agreement**

This Employment Agreement ("Agreement"), is made and entered into this 2nd day of November, 2020 ("Effective Date"), by and between the City of Lakeland, Florida, a municipal corporation, whose address is 228 S. Massachusetts Avenue, Lakeland, Florida 33801 (hereinafter called "Employer") and M. Shawn Sherrouse, (hereinafter called "Employee"), whose address is 724 Success 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 and part time employees that operates a multi-faceted organization providing municipal services to the residents of the City of Lakeland and its adjacent communities. In addition, the Employer owns and operates a municipal electric utility providing electric service to approximately 120,000 accounts within its authorized service territory.

The Employer has a manager/council form of government which requires a City Manager who has the requisite skills and experience to manage such a large and diverse organization. The Employer has concluded that the Employee has the required skills and experience. 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 also 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 Manager.

### **Section 1: Recitals**

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

### **Section 2: Term**

The Employee agrees to be available for work full time no later than November 2, 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 six (6) months 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. In the event the Agreement is not renewed, all compensation, benefits and requirements of this Agreement shall remain in

effect until the expiration of the Initial Term or applicable renewal term. The City may terminate at any time during the Initial Term or any renewal term unless Employee voluntarily resigns, subject to the provision set forth in Section 10. A voluntary resignation following a notice of nonrenewal, or as a termination for convenience by the City shall also require payment pursuant to Section 10 F.

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

Employer agrees to employ M. Shawn Sherrouse as City Manager to perform the functions and duties of that office specified in Section 21 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 \$ 196,000.00, 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 or about October 1, 2021 and October 1, 2022 upon the results of the performance evaluation conducted under the provisions of Section 13 of this Agreement. Adjustments shall be made in the same manner following the Initial Term, and for each renewal term thereafter. Compensation adjustments can be in the form of a salary increase and/or a bonus.

### **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**

A. Upon commencing employment, the Employee shall have all accrued sick and vacation leave previously earned. The Employee shall then accrue vacation leave at the accrual rate of 20 days annually. 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

B. The Employee is entitled to accrue up to forty (40) days of vacation and the cash value of Eight Thousand Dollars (\$8,000.00) in sick leave. 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 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 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**

A. As an existing City employee, the Employee participates in the City of Lakeland Employee Pension Plan currently enrolled in Plan C. He will continue to participate in the same manner as currently, subject to the applicable plan provisions.

B. As an existing City employee, the Employee's five-year pension vesting date will be reached on September 12, 2021. Should the Employee be terminated prior to his pension vesting date, the Employee shall have the option of utilizing the plan provisions for purchase of military buyback time to meet the pension vesting requirement.

### **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 ICMA Annual

Conference, the Florida City and County Managers' Association meetings and Annual Conference, and those associated with the City's participation in the Florida League of Cities.

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. The Employer shall provide Employee with a computer, software, cell phone required for the Employee to perform his job duties and to maintain communication with staff and the City Commission. He shall be entitled to reimbursement in accordance with City policy for any business use of a personal cell phone.

### **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 for cause at a duly authorized public meeting in accordance with Part I, Section 20 of the Lakeland City Charter.

B. If the Employer, citizens or legislature acts to amend any provisions of the charter, code, or other enabling legislation pertaining to the role, powers, duties, authority, or responsibilities of the Employee's position that materially changes the role, powers, duties, authority, and responsibilities of the office of City Manager, the Employee shall have the right to declare that such amendments constitute termination. He shall do so in writing in accordance with the provisions set forth in Section 21. Any action to declare this Agreement terminated for reasons set forth in this paragraph B. shall be made within sixty (60) days of the effective date of any such change or amendment and shall be deemed a termination for convenience.

C. If the Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this Agreement and will be regarded as a termination for convenience.

D. Upon the approval of a written separation agreement that would provide for a voluntary resignation by the Employee, the resignation shall be effective upon the effective date of such written agreement. A separation pursuant to this section shall be characterized in all respects as a voluntary resignation and, for the purpose of this Agreement, be deemed a termination for convenience.

E. A breach of contract is declared by either party following a fifteen (15) day cure period for either Employee or Employer during which the breach is not cured. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 21 which shall commence the cure period.

F. If the Employer provides notice of its intent not to renew the Agreement six (6) months prior to the expiration of the Initial Term, or any renewal term as set forth in Section 2, then such termination shall be regarded as a termination for convenience. In such event, the Employer may, in its sole discretion, suspend the Employee without pay so long as the severance benefits provided for in Section 11 are paid.

### **Section 11: Severance**

Severance shall be paid to the Employee when this Agreement is terminated pursuant to Section 10 B, C, D, or F above.

A. If this Agreement is so terminated, the Employer shall provide a severance payment equal to twenty (20) weeks salary at the then current rate of pay. This severance shall be paid in a lump sum subject to customary deductions unless otherwise agreed to by the Employer and the Employee.

B. The Employee shall also be compensated for all accrued sick leave and vacation time as of the date of notice as referenced in Section 6 herein in accordance with City policy.

C. For a period of twenty weeks (20) following termination, the Employer shall make available the following benefits:

1. Health insurance for the Employee as provided in Section 5.
2. Life insurance as provided in Section 5.
3. Vehicle allowance as provided in Section 7.

COBRA benefits will be provided in accordance with applicable law.

D. If the Employee is arrested and charged with a crime, then the Employer is not obligated to pay severance under this section until the charges are resolved. If the charges result in a conviction or such other adjudication that establishes culpabilities, then such adjudication shall constitute cause under Section 10 A. and no severance shall be paid. A resolution which fails to establish culpability shall require the Employer to pay severance in accordance with Section 11. If the Employee is reinstated after a suspension pursuant to this section, he shall be entitled to all compensation and benefits from the date of any suspension until reinstatement.

### **Section 12: Resignation**

In the event that the Employee voluntarily resigns his position with the Employer, the Employee shall provide a minimum of thirty (30) days notice unless the parties agree otherwise. This Agreement shall terminate thirty (30) days following notice, and neither party shall have any obligation to the other.

### **Section 13: 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 14: 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 15: 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, consulting or other business opportunities with the understanding that such arrangements shall not constitute interference with, nor a conflict of interest with, his or her responsibilities under this Agreement, and shall only be undertaken following authorization by the City Commission.

### **Section 16: 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 ICMA Code of Ethics.

### **Section 17. Residence**

A. The Employee shall reside within the corporate limits of the City of Lakeland at all times during the initial term or any renewal terms.

### **Section 18: Indemnification**

To the extent provided by law, and subject to the monetary limits set forth in Fla. Stat. 768.28, 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 Manager 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 of, 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 City Manager. 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 19: Bonding**

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

### **Section 20: 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 21: Notices**

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

EMPLOYER: City of Lakeland, Attn: Mr. Palmer Davis, City Attorney, 228 South Massachusetts Avenue, Lakeland, Florida 33801.

EMPLOYEE: M. Shawn Sherrouse, 724 Success Avenue, Lakeland, FL 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 Attorney. Notice shall be deemed given as of the date of hand delivery 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. 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. Except in a termination pursuant to Section 10 A., the parties hereto acknowledge that any claim for damages arising out of this Agreement shall be limited to the maximum amount payable pursuant to Sections 10 and 11 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

\_\_\_\_\_  
M. Shawn Sherrouse

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

Approved as to form and correctness:

\_\_\_\_\_  
Palmer C. Davis, City Attorney