

## FIRST REVISION TO EMPLOYMENT AGREEMENT

THIS FIRST REVISION TO EMPLOYMENT AGREEMENT (hereinafter referred to as "Agreement"), is by and between the CITY OF HALLANDALE BEACH, a Florida municipal corporation (hereinafter referred to as "City"), and ROGER M. CARLTON (hereinafter referred to by name or as "City Manager").

### W I T N E S S E T H:

WHEREAS, the City ~~desires to employ~~ Roger M. Carlton as City Manager of the City of Hallandale Beach, Florida, as provided for in the City Charter of the City of Hallandale Beach effective February 6, 2017; and

WHEREAS, the City, through its City Commission, desires to provide for certain benefits and compensation for the City Manager and to establish conditions of employment applicable to the City Manager; and

WHEREAS, Roger M. Carlton desires to accept employment as City Manager of the City of Hallandale Beach under the terms and conditions set forth herein.

WHEREAS, the City hereby agrees to employ Roger M. Carlton as City Manager to perform the functions and duties specified in Article VI, Division 3 of the City Charter and by the City of Hallandale Beach Code of Ordinances, and to perform other legally permissible and proper duties and functions as the City Commission periodically assigns.

NOW, THEREFORE, in consideration of the mutual promises as set forth in this Agreement, the parties agree as follows:

### **Section 1. Employment.**

A. The City hereby hires and appoints Roger M. Carlton as its City Manager, under the terms established herein, to perform the duties and functions specified in the City Charter and the City Code of Ordinances and to perform such other legally permissible and proper duties and functions as the City Commission shall from time to time assign.

B. The City's employment of Roger M. Carlton as City Manager shall be effective February 6, 2017. Subject to the provisions set forth in Section 1.D below, the City Manager shall serve at the pleasure of the City Commission. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of the City Commission to terminate the services of the City Manager at any time, subject only to the provisions set forth in Section 11 of this Agreement.

C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the City Manager to resign at any time from the position of City Manager, subject only to the provisions set forth in Section 12 of this Agreement.

D. Unless this Agreement is terminated sooner by the City Commission as set forth in Section 11 below or the City Manager as set forth in Section 12 below, the initial term of this Agreement shall be for one (1) year commencing on February 6, 2017 and terminating on February 5, 2018. Thereafter, the initial term of this Agreement may be ~~renewed~~extended by the City Commission for successive one (1) year terms based upon the performance evaluation as set forth in Section 2 below, subject to the right of City Commission to terminate this Agreement as set forth in Section 11 below and the right of the City Manager to terminate this Agreement as set forth in Section 12 below. Should the City Commission not extend the Agreement at the expiration of any then-existing term, the City Manager shall remain employed by the City pursuant to this Agreement without a specific term subject to the provisions set forth in Sections 11 and 12 of this Agreement.

## **Section 2. Salary and Evaluation.**

A. For the performance of services pursuant to this Agreement, the City agrees to pay the City Manager an annual base salary of One Hundred Ninety Thousand and 00/100 Dollars (\$190,000.00) payable in installments at the same time as other City employees are paid. Upon commencement of employment, the City will pay the City Manager a one-time relocation payment of Two Thousand Five Hundred and 00/100 Dollars (\$2,500).

B. The City agrees to increase said base salary and/or other benefits of the City Manager in such amounts and to such an extent as the City Commission may determine desirable on the basis of a performance evaluation of the City Manager. No later than May 6, 2017, the City Manager shall present a strategic and financial plan to the City Commission, at a regularly scheduled meeting, that shall contain measurable goals and objectives covering a five year period. Subsequent to review and adoption of the plan by the City Commission, the City Manager shall report monthly regarding the progress toward obtaining the approved outcomes and the City Commission shall give feedback during the regularly scheduled meeting. During the January 2018 regularly scheduled City Commission meeting (and in each subsequent January while the City Manager remains employed by the City), progress made toward achieving the goals and objectives shall be discussed as well as any other comments related to the City Manager's performance that the City Commission shall wish to make. During that meeting, the City Commission shall ~~determine at its sole discretion if it will make any adjustments to the City Manager's compensation or benefits for the second year of the initial term. Such evaluation shall~~ the City Manager's continue annually performance in order to determine whether ~~the initial term will be~~ extended the Agreement annually as set forth above as well as any adjustments to the City Manager's compensation or benefits.

C. Nothing in this Section shall require the City to increase the base salary or other benefits of the City Manager.

## **Section 3. Duties and Obligations.**

A. The City Manager shall have the duties, responsibilities and powers of said office under the Charter and Ordinances of the City of Hallandale Beach. The City Manager agrees to perform all duties and responsibilities faithfully, industriously, and to the best of his ability and in

a professional and competent manner. The parties recognize that the position of City Manager is not and cannot be an hourly-type employment and the City Manager agrees to devote that amount of time and energy which is reasonably necessary to fully perform the duties required under this agreement. Thus, the City Manager shall work as required, in order to carry out his responsibilities.

B. The City Manager agrees to remain in the exclusive employment of the City. Nothing herein shall prevent the City Manager from occasional teaching or writing on employee's time off. However, the City Manager may also be permitted to do pro bono work with the approval of the City Commission.

C. In the event the City Manager is temporarily unable to perform his duties, he shall designate an Acting City Manager in accordance with the City Charter.

#### **Section 4. Automobile Allowance and Communications Equipment**

The City Manager is required to be on call for twenty-four hour service. In recognition thereof:

A. The City shall grant to the City Manager an automobile allowance of Five Hundred and 00/100 Dollars (\$500.00) per month, and the City Manager shall own, purchase or lease a vehicle, as well as maintain and insure said vehicle. The City agrees to reimburse the City Manager for mileage for travel outside of Broward and Miami-Dade Counties associated with business of the City at the same rate as other City employees are reimbursed.

B. The City shall provide the City Manager with an allowance of One Hundred Fifty and 00/100 Dollars (\$150.00) per month to compensate his for the use of his personal smart phone or other similar device for City Business.

#### **Section 5. Dues and Subscriptions**

The City agrees to pay the City Manager's professional dues for membership in the International City/County Management Association and Florida City/County Management Association. The City shall pay other dues and subscriptions on behalf of the City Manager as are approved in the City's annual budget or as authorized separately by the City Commission.

#### **Section 6. Professional Development**

The City agrees to pay reasonable and customary travel and subsistence expenses for the City Manager's travel to and attendance at the International City/County Management Association annual conference, Florida City/County Management Association Annual Conference, and the Florida League of Cities annual conference, within the budgeted amount. The City shall pay for the City Manager's attendance at other seminars, conferences, and committee meetings as approved in the City's annual budget or as approved by Commission action.

## **Section 7. Vacation, Sick Leave, and Holidays**

City Manager shall be entitled yearly Personal Time Off, the “PTO” account, consisting of thirty two (32) days a year in lieu of sick and vacation, which at the end of each year shall not accrue into the next year of the term, except as set forth in the next sentence. Accrual begins immediately and time may be taken when accrued. Any unused and accrued PTO will be carried forward up to a maximum of ten (10) days per each year ~~of the initial term and any renewal terms~~. PTO shall not accrue or be paid to the City Manager upon separation of service except as set forth in Section 11 below. City Manager shall be entitled to all paid holidays observed by the City.

## **Section 8. Health, Dental, Vision and Life Insurance**

City Manager is covered by his own Medicare, Medicare Supplemental Part B and D and dental. The City shall contribute an amount equal to the total cost to employees and the City to provide the City Manager plus spouse coverage as additional compensation to the City Manager. The City shall also provide the City Manager with an amount, not to exceed One Thousand Three Hundred and 00/100 Dollars (\$1,300) annually, to be used for the purpose of providing additional short-term disability, long-term disability and life insurance/ADD coverage as of the effective date of this agreement.

## **Section 9. Retirement.**

The City agrees to provide to the City Manager a contribution to his ICMA Retirement Plans in the amount of seventeen percent (17%) of his Base Salary.

## **Section 10. Job-Related Expenses**

The City recognizes that certain expenses of a non-personal but job related nature are incurred by Employee, and agrees to reimburse or to pay said general expenses within the budgeted amount. The Finance Director is authorized to disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits. The City Manager shall provide a written report of such expenditures on a monthly basis to the City Commission.

## **Section 11. Termination by the City and Severance Pay**

A. The City Manager shall serve at the pleasure of the City Commission and the City Commission may terminate this Agreement and the City Manager’s employment with the City at any time, by a majority vote of three Commissioners.

B. Should a majority of the entire Commission (three members) vote to terminate the services of the City Manager “without cause,” that is, the City Manager’s services are no longer needed as determined in the discretion of the majority of the Commission, and unless terminated “for cause” under paragraph C below, then within ten (10) business days following such vote, the Commission shall cause the City Manager to be paid any accrued unpaid salary and benefits earned (but excluding such items and allowances as are used in conducting City business such as, but not limited to, the use of the City computer and the automobile and cell phone allowance) prior to the

date of termination based on City Manager's current rate of pay and a forty (40) hour work week. Within fifteen (15) calendar days following the vote to terminate the City Manager's employment, the Commission shall cause the City Manager to be paid a lump sum severance pay equal to twenty (20) weeks of his base salary as full and complete payment and satisfaction of any claims of the City Manager of whatsoever nature arising out of this Agreement or otherwise. The City shall continue to provide and pay for medical coverage for the City Manager and his spouse for the nine (9) months following the date of such termination, in the same manner as the City Manager is receiving at the time of termination. As consideration for such payment, the City Manager shall, prior to receipt thereof, execute and deliver to the City a general release of the City and its Commission members and its officers, agents, and employees for all acts and actions (whether accrued or subsequently accruing) from the beginning of time until the date of release, said release to be prepared by an attorney of the City Commissions choosing.

C. In the event the City Manager is terminated for misconduct as defined in Section 443.036 (29), Florida Statutes, the City shall have no obligation to pay any severance and is prohibited from paying severance pursuant to Section 215.425 (4)(a)(2), Florida Statutes. As used in this agreement, the term "severance pay" does not include earned and accrued annual, sick, compensatory, administrative leave or personal time off.

D. In the event the Commission, ~~at any time during the employment term,~~ reduces the salary or other benefits of the City Manager, as identified herein, in a greater percentage than an equivalent across-the-board reduction for all full-time City employees, or in the event the City allegedly refuses to comply with any other material provision of this Agreement benefiting the City Manager, or the City Manager resigns following a vote of "no confidence" by the City Commission, then, in that event, the City Manager may, at his option, be deemed to be "terminated" within the meaning and context of the severance pay provision in Section 11, paragraph B of this Agreement. The City Manager shall notify the City Commission in writing of the alleged violation. The City Commission shall have forty-five (45) days from such notice within which to cure the violation, otherwise, the City Manager may at his option, consider such violation as termination "without cause" as of the date of such alleged reduction or refusal, and the severance pay provision and other termination provisions contained herein shall become applicable at the annual base salary and benefit level in effect prior to the reduction or refusal.

## **Section 12. Termination by the City Manager**

The City Manager may terminate this Agreement at any time by delivering to the City Commission a written notice of termination not later than sixty (60) days prior to the effective date of the termination, unless waived by the City Commission. If the City Manager terminates this Agreement, then the provisions of Section 11, Paragraph B above, shall not apply. If the City Manager voluntarily resigns pursuant to this Section, the City shall pay to the City Manager all accrued compensation due the City Manager up to the City Manager's final day of employment, including any benefits earned. The City shall have no further financial obligation to the City Manager pursuant to this Agreement.

### **Section 13. Disability**

If the City Manager becomes permanently disabled or is otherwise unable to perform his duties because of, including but not limited to, sickness, accident, injury, mental incapacity or health for a period of four consecutive weeks beyond his personal time off balance, the City shall have the option to terminate this Agreement, subject to the severance pay provision outlined in Section 11, Paragraph B of this Agreement.

### **Section 14. Other Customary Benefits**

The City shall afford the Employee the right to participate in any other benefits, not provided herein, or working conditions as provided for the Professional Management Employees of the City.

### **Section 15 Indemnification.**

A. City shall defend, save harmless, and indemnify the City Manager against any action for any injury or damage suffered as a result of any act, event, or omission of action that the City Manager reasonably believes to be in the scope of his duties or function, unless he acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The City will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon. The City shall not be liable for the acts or omissions of the City Manager committed while acting outside the course and scope of his agreed duties or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. In such instance, as determined by a court of competent jurisdiction, the City Manager shall reimburse the City for any legal fees and expenses the City has incurred or otherwise paid, for or on his behalf, in connection with the charged conduct.

B. Said indemnification shall extend beyond the termination of employment and the expiration of this Agreement to provide protection for any such acts undertaken or committed in his capacity as City Manager, regardless of whether the notice of claim or filing of a lawsuit occurs during or following employment with the City; provided, however, such obligation shall terminate upon the expiration of the applicable statute of limitations where there is no notice of claim or filing of a lawsuit.

### **Section 16. Bonding**

The City agrees to bear the full cost of any fidelity or other bonds required of the City Manager under any policy, regulation, ordinance or law.

### **Section 17. Code of Ethics**

In as much as the City Manager will become an active, Full Member of the International City/County Management Association (ICMA), the "Code of Ethics", as amended from time to time, promulgated by ICMA is incorporated herein, and by this reference made a part hereof. Said

“Code of Ethics” shall furnish principles to govern the City Manager’s conduct and actions as City Manager of the City.

#### **Section 18. Attorney’s Fees**

Except as otherwise set forth herein, if any litigation is commenced between the parties concerning any provision of this Agreement or the rights and duties of any person in relation thereto, in addition to such other relief as may be granted, each party shall bear their own attorney’s fees and expenses incurred in connection therewith, including appellate fees and expenses.

#### **Section 19. General Terms and Conditions**

A. If any provision, or any portion thereof, contained in this Agreement is held by a court of competent jurisdiction to be unconstitutional, illegal, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall not be affected and shall remain in full force and effect.

B. The waiver by either party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

C. This Agreement shall be binding upon and inure to the benefit of the heirs at law or personal representative of the City Manager.

D. This Agreement contains the entire Agreement of the parties. It may not be changed verbally, but only by an Agreement in writing signed by the parties.

E. Florida law shall govern this Agreement and any litigation that may arise from this Agreement, shall be filed and litigated in Broward County, Florida.

F. Upon City Manager’s death, the City’s obligations under this Agreement shall terminate except for:

1. Transfer of ownership of retirement funds, if any, to his designated beneficiaries;
2. Payment of Medicare costs and supplemental Part B and D insurance coverage for spouse as per Section 11(B), for nine (9) months; and
3. Payment of all life insurance benefits in accordance with the City’s insurance policies or plans.

G. The parties acknowledge that each has shared equally in the drafting and preparation of this Agreement and, accordingly, no court construing this Agreement shall construe it more strictly against one party than the other and every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning.

H. This Agreement may be executed in duplicate or counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. No term, condition or covenant of this Agreement shall be binding on either party until both parties have signed it.

I. The effective date of this Agreement shall be February 6, 2017.

J. ~~References in this Agreement to year shall mean each year of the initial term and any renewal terms.~~

JK. **WAIVER OF JURY TRIAL.** EACH PARTY WAIVES ALL RIGHTS TO ANY TRIAL BY JURY IN ALL LITIGATION RELATING TO OR ARISING OUT OF THIS AGREEMENT.

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Executed by the CITY this 25<sup>th</sup> day of January 2017.

CITY OF HALLANDALE BEACH  
a Florida municipal corporation

By: \_\_\_\_\_  
Mayor Joy Cooper

ATTEST:

Approved as to Form and Legal Sufficiency  
For the City Only:

\_\_\_\_\_  
Mario Bataille, CMC, City Clerk

\_\_\_\_\_, City Attorney

Executed by the CITY MANAGER this 25<sup>th</sup> day of January 2017

Witnesses:

\_\_\_\_\_  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Roger M. Carlton, City Manager

\_\_\_\_\_  
Print Name: \_\_\_\_\_

**VOTE**  
**AYE/NAY**

<b>Mayor Cooper</b>	_____ / _____
<b>Vice-Mayor London</b>	_____ / _____
<b>Comm. Lazarow</b>	_____ / _____
<b>Comm. Sanders</b>	_____ / _____
<b>Comm. Taub</b>	_____ / _____