

EMPLOYMENT AGREEMENT

THIS AGREEMENT made and entered into this ____day of September, 2017, by and between the City of Margate, State of Florida, a municipal corporation, hereinafter referred to as "Employer", and Samuel A. May, hereinafter called "Employee", both of whom understand as follows:

WITNESSETH

WHEREAS, Employer desires to employ the services of Samuel A. May, as City Manager of the City of Margate as provided by Article IV of the City Charter; and

WHEREAS, it is the desire of the City Commission of the City of Margate, hereinafter called "Commission", to provide certain benefits, establish certain conditions of employment and to set working conditions of Employee; and

WHEREAS, it is the desire of the Commission:

1. To secure and retain the services of Employee and to provide inducement for him to remain in such employment;
2. To make possible full work productivity by assuring Employee's morale and peace of mind with respect to future security;
3. To act as a deterrent against malfeasance or dishonesty for personal gain on the part of the Employee; and
4. To provide a just means for terminating Employee's services; and WHEREAS, Employee desires to continue his employment with the City as the City Manager of said City;

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

SECTION 1. DUTIES

Commission hereby agrees to employ Samuel A. May as City Manager of the City of Margate to perform the functions and duties specified in Article IV of the City Charter and by the City of Margate Code of Ordinances, and to perform other legally permissible and proper duties and functions as Commission shall from time to time assign, effective September _____, 2017.

A. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of Commission to terminate the services of Employee at any time, subject only to the provisions set forth in Section 2, paragraphs A and B, of this Agreement and Section 4.05 of the City Charter and Section 2-70.6 of the City Code.

B. Nothing in this Agreement including termination shall prevent, limit or otherwise interfere with the right of Employee to resign at any time from his position with Employer, or to revert back to his former position as Public Works Director at his salary prior to this appointment; or fill an existing opening as Assistant City Manager through October 15, 2018.

C. This agreement shall commence upon the effective date of any Resolution approved by the Commission authorizing the Employer to execute this Agreement.

SECTION 2. TERMINATION AND SEVERANCE PAY:

A. In the event Employee is removed or discharged by the Commission pursuant to the terms and conditions contained in Section 4.05 of the City Charter of the City of Margate, and Section 2-70.6 of the City Code, then in that event Employer agrees to pay Employee severance pay in an amount equal to twenty (20) weeks' gross salary plus the dollar value as determined by the Employee's then current base hourly rate of pay of 100% of all types of accumulated leave, and other eligible benefits accrued to the date of termination. The dollar value of the twenty (20) week severance pay payment shall be subject to applicable Federal withholding tax and Social Security tax deductions.

In the event Employee is terminated because of his entry of a plea of guilty or conviction of any crime involving moral turpitude related to his duties as City Manager, or in the event Employee is fired for "misconduct" as this term is defined in Sec. 443.036(30), Florida Statutes, Employer shall have no obligation to pay the aggregate severance sum designated in this section except for payment of 100% of all accumulated types of leave and other eligible benefits. If reinstated, Employee shall receive full pay for the period intervening between his removal and his reinstatement.

B. In the event Employee voluntarily resigns his position with Employer, then Employee shall give Employer sixty (60) days written notice in advance, unless the parties otherwise agree. Additionally, Employee shall not be entitled to receive the twenty (20) week severance pay.

In the event of such a situation, at its sole option the Commission may require Employee to immediately vacate his position/employment and also to relinquish any and all emoluments of employment with the Employer, with the exception of his salary for said sixty (60) day period or any portion thereof, together with any type of accrued leave pay-out and all other eligible benefits accrued to the effective date of resignation.

SECTION 3. SALARY:

Employer agrees to pay Employee for his services rendered pursuant hereto an annual base salary of \$191,052. Employee shall be paid in installments at the same time other employees of the Employer are paid.

Employer agrees to increase the annual base salary each year by the cost of living adjustment/across the board pay increase, if any, that is granted to Department Heads of the City of Margate. In addition, the Employee annual base salary may be increased from time to time by the City Commission in its discretion as it deems appropriate. Employer agrees to increase other benefits of Employee in such amounts and to such extent as the Commission may determine.

SECTION 4. PERFORMANCE EVALUATION:

The Commission shall conduct a performance evaluation of Employee on a schedule, procedure, and process determined by its sole discretion, subject to applicable provisions of Charter of the City of Margate or to applicable City Codes.

SECTION 5. HOURS OF WORK:

As much as is practical, Employee shall observe regular business hours in City Hall; however, it is recognized that Employee must devote a great deal of time outside the normal office hours of business of the Employer. Consequently, to that end Employee will be allowed to determine his own office hours and to take time off as he shall deem appropriate.

SECTION 6. OUTSIDE ACTIVITIES:

Employee shall be allowed time for teaching, counseling, consulting or other non-Employer connected business; however, same shall not interfere nor conflict with his full-time duties as City Manager.

SECTION 7. AUTOMOBILE:

A. Employee's duties require that he shall have the exclusive and unrestricted use at all times during his employment with Employer of the automobile currently provided to him by the Employer. Employer shall be responsible for providing for liability, property damage and comprehensive insurance and for the purchase, operation, maintenance, and repair of said vehicle.

B. The vehicle identified in Section 7A above may be replaced at the sole discretion of Commission. The replacement vehicle shall be a new automobile that is an appropriate vehicle for use by the City Manager consistent with good and reasonable requirements as the Chief Administrative Officer of the City.

Employee's duties require that he shall have the exclusive and unrestricted use at all times during his employment with Employer of the automobile provided by Employer.

SECTION 8. PAID LEAVE AND BENEFITS:

All provisions of the City of Margate City Charter, Code of Ordinances, Resolutions, regulations and rules of the Employer relating to the use of vacation, sick, personal, holiday, and other leave, accrual of other fringe benefits including participation in the senior executive level of the Florida State Retirement System (FRS), and working conditions, as they now exist or hereafter may be increased, shall also apply to Employee as they would to Department Heads. The same shall be in addition to said benefits enumerated in this Agreement specifically for the benefit of Employee. Employee shall be entitled to receive holiday, personal and emergency response leave benefits as would be accorded any Department Head of the City of Margate.

Employee shall be credited twenty (20) days of vacation and twelve (12) days of sick leave on October 1 of each year of this Agreement. All leave accumulated by the Employee shall be subject to the accrual cap limits applicable to a City Department Head, except that all accumulated leave hours that exceed such cap on September 30 of each year shall be paid to Employee in a single lump sum payment based on Employee's then current base hourly rate of pay. Except as otherwise provided in Section 2A of this Agreement, upon resignation or termination Employee shall be entitled to a cash out of 100% of all accumulated types of leave based on Employee's then current base hourly rate of pay. The disbursement of said cash out shall be, at the sole discretion and determination of Employee, made via either a lump sum settlement that shall be payable in a single installment due and payable to Employee within one (1) normal pay period of termination or a deferral schedule of up to and through six months, as set solely by Employee.

SECTION 9. DISABILITY, HEALTH, AND LIFE INSURANCE:

The Employer hereby agrees to provide Employee with all insurance related benefits accorded any Department Head of the City of Margate including health and disability benefits. In addition, Employer shall pay the premium due for term life insurance in the amount of one (1) time the Employee's annual base salary, including all increases in the base salary during the life of this agreement. The Employee shall name the beneficiaries of the life insurance policy.

SECTION 10. DUES AND SUBSCRIPTIONS:

Employer agrees to budget and to pay for the professional dues and subscriptions of Employee 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 Employer.

SECTION 11. PROFESSIONAL DEVELOPMENT:

A. Employer hereby agrees to budget for and to pay the travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of Employee, and to adequately pursue necessary official and other functions for Employer, including but not limited to the annual conferences of the International City Management Association, the American Society for Public Administration, the Florida League of Cities, the American Economic Development Council, American Public Works Association, and any other national, regional, state and local governmental groups and committees thereof which Employee serves as a member.

B. Employer also agrees to budget and to pay for the travel and subsistence expenses of Employee to attend or participate in short courses, institutes, and any training and educational conferences, seminars, symposiums, workshops, and similar opportunities that are necessary and desirable for his professional development and for the good of the Employer.

SECTION 12. CELL PHONE AND COMPUTER EXPENSES:

Employee shall be provided an \$80.00 monthly cell phone allowance as provided for other senior management employees or Department Heads. Upon phone upgrade, Employee shall also be provided with a \$200.00 phone upgrade allowance once per year.

The City shall provide desktop computing equipment for Employee's use at City Hall and up to two mobile computing devices (iPad, tablet computing device, laptop, etc.) with computer data service provided for up to two mobile devices at the City's expense.

SECTION 13. INDEMNIFICATION:

Employer shall defend, save harmless and indemnify Employee against any tort (except a tort that constitutes Employee conduct involving fraud, dishonesty, theft, or any crimes relating to his employment or because of a conviction of a felony), and any 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, unless prohibited by law. In accordance with the above provision of this Section, Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, penalties, 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. Employer may compromise and settle any such claim or suit and shall pay the amount of any settlement or judgment rendered thereon. 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. Such expense payments shall continue beyond Employee's service to the Employer as long as litigation is pending.

SECTION 14. BONDING:

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

SECTION 15. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

A. The Commission, in consultation 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 Employee, provided such terms and conditions are not inconsistent with or in conflict with the provision of this Agreement, the Margate City Charter, or any other law.

B. Employer expressly waives any and all residency requirements for Employee.

SECTION 16. DEATH OF EMPLOYEE:

Upon Employee's death, Employer's obligations hereunder shall be the same as for any other Department Head of the City of Margate.

SECTION 17. NOTICES:

Notices pursuant to the Agreement shall be given by deposit in the custody of the United States Postal Service, by certified mail, return receipt requested, postage prepaid, addressed as follows:

Employer:

City Clerk
City of Margate
5790 Margate Boulevard
Margate, FL 33063

Employee:

Samuel A. May
City of Margate
5790 Margate Boulevard
Margate, FL 33063

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

SECTION 18. GENERAL PROVISIONS:

- A. The text herein shall constitute the entire Agreement between the parties.
- B. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Employee.
- C. This Agreement may not be amended except by written agreement by and between the parties.
- D. If any provision, or any portion thereof, contained in this Agreement is held to be 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.
- E. This Agreement has been negotiated and drafted by both parties hereto and shall not be more strictly construed against any party because of such parties' preparation of this Agreement.

IN WITNESS WHEREOF, the City of Margate has caused this Agreement to be signed by, executed in its behalf by, its Mayor, and duly attested by its City Clerk, and the Employee has signed and executed this Agreement, both in duplicate, the day and year first above written.

Attest:

City of Margate, Florida

Joseph J. Kavanagh, City Clerk

By: _____
Tommy Ruzzano, Mayor

Approved as to form:

By: _____
Employee/Interim City Manager

Douglas R. Gonzales
City Attorney