

# EMPLOYMENT AGREEMENT

This agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022 by and between the City of Lee's Summit, Missouri, a municipal corporation, hereinafter referred to as "City", and, Mark Dunning, hereinafter referred to as "Employee" as follows:

## WITNESSETH:

WHEREAS, City desires to employ Mr. Dunning as City Manager, pursuant to the Constitution and laws of the State of Missouri and the Charter and Code of Ordinances of the City of Lee's Summit, Missouri; and,

WHEREAS, Employee desires to accept employment as City Manager of Lee's Summit, Missouri;

WHEREAS, the City and Employee desire to make provision for the Employees duties, compensation, benefits, and other conditions of employment.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein set forth, including consideration in the form of salary, and other compensation and benefits the parties agree as follows:

1. **Employment:** The City Council on behalf of the City of Lee's Summit, Missouri agrees to employ Employee as the City Manager of Lee's Summit, Missouri as provided by Article V of the Charter of the City of Lee's Summit, Missouri.
2. **Duties & Qualifications:** Employee shall perform the duties specified in and consistent with the ordinances and policies of the City and the laws of the State of Missouri and of the United States, and perform other legally permissible and proper duties and functions as the City Council shall from time to time assign. All such additional duties shall be appropriate and consistent with the professional role and responsibility of the City Manager. The Employee shall perform the duties of the City Manager with reasonable care, diligence, skill and expertise. In recognition of the expertise of the City Manager the parties agree that the Employee may not be reassigned from the position of City Manager without the Employee's express written consent. Employee shall devote his full time to the City and shall have no other employment, except that Employee may participate in teaching or speaking engagement on an unpaid basis. If Employee is to be paid for any type of outside employment then a majority of the City Council must provide prior consent for such paid outside employment.
3. **Attendance at meetings:** The City Manager or his designee shall attend all Council meetings, open and closed, and shall have the right to take part in discussions but may not vote. The City Manager shall receive notice at the same time as the City Council of all regular, special and closed meetings.
3. **Term:** The Agreement shall be effective on September 17, 2022 and shall continue in effect until either the City or Employee shall give notice of termination.

#### **4. Compensation, Additional Retirement and Insurance:**

A. The City shall initially pay Employee an annualized salary of \$195,000.00, payable biweekly. Employer agrees to execute and keep in force all necessary agreements provided by ICMA Retirement Corporation (ICMA-RC) or any other qualified Section 457 deferred compensation plan as determined by the City.

B. Employee may contribute any portion of his salary to any voluntary deferred compensation retirement fund of which the City is a member, subject to the limitations of the law. In addition to the base salary paid by the Employer to Employee, Employer agrees to pay a matching fixed dollar amount of up to Five Hundred Dollars (\$500.00) per month into the designated plan on the Employee's behalf, in an equal proportionate amount each pay period, provided that Employee contributes to the same deferred compensation retirement fund. The City's contribution to the deferred compensation retirement fund shall match the contribution of the Employee, up to a maximum of \$500 per month. If Employee contributes more than \$500 per month, the City's contribution shall be capped at \$500 per month.

C. The City shall provide Employee with the same level of health, insurance, and retirement benefits available to any non-represented employee of the City in accordance with the City's normal policies pertaining to such benefits.

#### **5. Performance Evaluation, Compensation Adjustment and Visioning Process:**

Employee will receive a formal performance evaluation no later than March 31 of each year of his employment, in order to accommodate the City's annual budgeting process. Merit consideration for salary increases will be provided at the same time as other employees of the City or more often if the City Council so desires. Salary increases, if given, will be based upon satisfactory or better performance during each year of employment. The performance evaluation by the Mayor and City Council will include an opportunity for dialogue between the City Manager, Mayor and City Council as a whole. The Mayor will allow a specific time (30 days) for individual Councilmembers to complete an evaluation form and return to the Mayor. The evaluation will then be completed with those evaluations returned to the Mayor within the time constraints (unless there are extenuating circumstances discussed with a Councilmember and the Mayor). The first evaluation of Employee shall be conducted within the first six months of Employee's service as City Manager. This initial evaluation may be less formal given the short time from hiring to evaluation. Notwithstanding any other policy of the City, Employee shall, in the sole discretion of Council, be eligible for a pay increase as a result of this initial 6-month evaluation. Any such pay increase after the initial 6-month evaluation would be effective July 1, 2023. Thereafter, evaluations shall occur on an annual basis as set forth in this paragraph.

The Mayor and City Council shall conduct visioning and goal setting session(s) on an annual basis that result in a set of specific action plans for the City Manager's implementation.

6. **Termination:**

a) Resignation. If Employee terminates this Agreement, he shall provide at least ninety (90) days written notice to the City. Said notice shall be addressed to the Mayor and City Council. In the event of such resignation, Employee shall not be entitled to receive any severance compensation as set forth in this section of the Agreement.

b) Termination Without Cause. In the event Employee is terminated by the City, without cause, while he is willing and able to perform the duties of City Manager, the City agrees to compensate Employee an amount equal to twelve (12) months of the then current budgeted annual salary. Additionally, in the event of a termination without cause, the City will pay twelve (12) months of COBRA benefits at the single employee rate of the base plan provided that the Employee does not secure employment with another employer during such twelve (12) month period. Employee shall notify the City promptly of such employment and the City's payment for COBRA benefits shall cease upon the effective date of any new insurance. Employee acknowledges and agrees that employment and benefits except as described herein above shall end on the termination date. Employee, at the time of execution of this agreement, shall elect one of the following payout options in the case of severance:

**Alternative A – Short-term deferral exemption:** Such amount will be paid to Employee in a single lump-sum payment, within 2 1/2 months following his termination of employment, **except that employee shall be paid for his final pay period of work on his last day of employment.**

[OR]

**Alternative B – Involuntary separation pay exemption:** Such amount will be paid to Employee in increments that coincide with the City's standard payroll cycle for other employees generally. All installments will be paid by the close of the second calendar year beginning after his termination of employment. By selecting this option, Employee acknowledges that employment and benefits except as described above will end on the termination date. Bi-weekly payout will not mean that employment continues through the period of payout for any reason.

c) Termination For Cause. If Employee is terminated for cause, as hereinafter set out, no termination compensation shall be paid under this Section 6. Cause shall include, but is not limited to the following:

- 1) Conviction of a felony or misdemeanor of any federal, state or local law involving moral turpitude or conduct tending to reflect discredit upon the City, or tending to seriously impair his continued usefulness as City Manager, or other misconduct resulting in personal gain;
- 2) Neglect of duties or general neglect of the business of the City.

d) Any termination pursuant to Section 6 of this Agreement shall proceed in accordance with the personnel policies of the City.

e) Notice. Notice of termination by the City shall state whether the termination is with or without cause, shall be in writing and shall be delivered to Employee or mailed by certified mail to his last residential address on file with the City. In the event of termination with cause, the notice shall state the specific cause therefor.

7. **Residency Requirement:** Employee understands and agrees that he shall at all times maintain residency in the City of Lee's Summit, Missouri during his period of employment as City Manager. Employee may temporarily relocate outside of the City limits in the event of act of God or in the event of fire or similar casualty for a period of twelve (12) months.

8. **Automobile and Communication Allowance:** Employee shall be provided an automobile allowance in the amount of \$230.77 per pay period.

Additionally, upon the election of Employee, the City shall also provide either a mobile phone for Employee's use or a communication stipend of \$16.16 per pay period, to be paid in monthly installments.

9. **Leave:** Employee shall accrue vacation at the rate of 7.08 hour per pay period and such higher accrual rate hereafter as may be authorized by normal City policy. Employee shall accrue sick leave and personal leave at the maximum rate provided by policy for salaried, exempt employees.

10. **Termination / Sick Leave:** In the event that Employee is terminated without cause, sick leave will be paid out as if Employee retired. In the event that Employee is terminated with cause, leave balances shall be paid as if he/she voluntarily resigned prior to retirement.

11. **Training, Membership and Conferences:** The City agrees to budget and pay for travel and subsistence expenses for Employee for professional and official travel, meeting and occasions to adequately continue the professional development of Employee and to pursue necessary official function for Employer, including but not limited to the ICMA Annual Conference, the Missouri Municipal League and other such national, regional, state and local government groups and committees in which Employee serves as a member. All such travel, and subsistence expenses shall be reasonably necessary for the Employee's professional development and for the good of the City.

12. **Other Benefits:** Any benefits available to City employees but which are not listed in this Agreement shall also be available to Employee at the same level of benefit granted to any professional, exempt, non-represented employee of the City.

13. **Bonding and Indemnification:** The City shall provide any bonding that may be required by State law and shall pay for any public official's liability insurance for Employee. **The**

**City shall hold harmless Employee, his family, heirs, and assigns, in accordance with Section 2-553 of the City of Lee's Summit Code of Ordinances.**

14. **Severability:** If any clause or provision herein shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision of this Agreement, which shall remain in full force and effect.

14. **Governing Law:** This Agreement shall be deemed to have been made in, and be construed in accordance with the laws of the State of Missouri.

15. **Waiver of Breach:** The waiver by the City of a breach of any provision of this agreement by Employee shall not operate or be construed as a waiver of any subsequent breach by Employee.

IN WITNESS THEREOF, the undersigned have executed this Agreement.

\_\_\_\_\_  
Mayor, *William A. Baird*

\_\_\_\_\_  
Mark Dunning, Employee

ATTEST:

\_\_\_\_\_  
City Clerk, *Trisha Fowler Arcuri*

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney, *Brian W. Head*

NOTARY

STATE OF MISSOURI        )  
  ) SS.  
COUNTY OF Jackson        )

On the \_\_\_\_ day of \_\_\_\_\_, 2022, before me, the undersigned, personally appeared Mark Dunning, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose shown name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, knowingly as his free act and deed, and that by his signature on the instrument, he willingly executed the instrument.

\_\_\_\_\_  
Notary